



**IN THE MATTER OF** an application submitted by 95-97 Horatio LLC for the modification of Restrictive Declaration D-93, which was previously approved as part of an application for a Zoning Map amendment (M 840260 ZMM), to remove certain use restrictions and marketing requirements on property located at 95 Horatio Street (Block 643, Lot 1), in a C6-2A District, Borough of Manhattan, Community District 2.

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**WHEREAS**, on March 24, 2016, 95-97 Horatio LLC submitted an application (M 840260 (E) ZMM) to modify Restrictive Declaration D-93 as it relates to Tax Lot 1 of Block 643 in the Borough of Manhattan (95 Horatio Street). The application was revised on August 25, 2016; and

**WHEREAS**, Restrictive Declaration D-93 dates from April 13, 1984, and was enacted in connection with an approval for a Zoning Map amendment (M 840260 ZMM), sponsored by the Rockrose Development Corporation and affecting a nearby two-block area bounded by Gansevoort, Washington, W. 12th and West streets. This action generally changed the zoning designation on these two blocks from M1-5 and C8-4 districts to a C6-2A District. The rezoning was intended to facilitate the development of new residential buildings on properties owned by the project sponsor and the residential conversion of non-residential buildings also owned by the project sponsor; and

**WHEREAS**, the application for the Zoning Map amendment (C 840260 ZMM) was the subject of a Final Environmental Impact Statement (FEIS). The FEIS (82-270M) disclosed that

the map amendment could potentially result in adverse impacts on industrial/meat production-related businesses occupying properties owned by the rezoning applicant, located in and outside of the rezoning area, including a 4,700-square-foot ground floor space at 95 Horatio Street (Block 643, Lot 1). To mitigate these potential impacts, it was proposed that industrial uses be required in the subject space so as to prohibit conversions and preserve the southern boundary of the Meat Market; and

**WHEREAS**, the mitigation which was incorporated in Restrictive Declaration (D-93) provides that the use of these properties is limited to certain commercial and light manufacturing uses defined in Section 15-58 of the New York City Zoning Resolution. The declaration obligates the owner of these properties to maintain space for meat-related uses contained in Use Groups 17A and 17B and, in the event of a vacancy, to use best efforts to rent to such uses; and

**WHEREAS**, in its application dated March 24, 2016, the applicant sought to eliminate Section 2.03 of the Restrictive Declaration to remove all use restrictions and marketing requirements on the subject space at 95 Horatio Street. Under the proposal, all uses consistent with regulations of the underlying C6-2A District would be permitted. The proposed modification would allow the vacant space located at 95 Horatio Street to be occupied by a range of commercial uses, however the applicant currently anticipates a retail and/or a restaurant tenant; and

**WHEREAS**, this application (M 840260 (E) ZMM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order 91 of 1977. The designated CEQR number is 82-270M. The lead agency is the City Planning Commission. The effects of the proposed actions were analyzed in Technical Memorandum #003, dated April 8, 2016. Technical Memorandum #004, dated September 2, 2016, reflects the modification that nightclub uses would continue to be prohibited. Given changes in the meatpacking industry in New York City and in the area's land use, neighborhood character and socioeconomic conditions since 1984, the Restrictive Declaration's requirements to use and market the space only to industrial and meat-related uses have become obsolete and these mitigation measures are no longer necessary or appropriate. Technical Memorandum #004 concluded that the proposed actions would not result in any significant adverse environmental impacts. A Negative Declaration was issued on April 11, 2016; a Revised Negative Declaration was issued on September 7, 2016; and

**WHEREAS**, on April 15, 2016, this application was referred by the Department of City Planning to Community Board 2 in accordance with procedures for non-ULURP items; and

**WHEREAS**, Community Board 2, at a meeting on July 21, 2016, by a unanimous vote of 36 to 0, adopted a resolution recommending approval of the proposed modification of Restrictive Declaration D-93 with the following conditions:

1. That D-93 is amended to allow commercial and/or retail uses, excluding nightclubs and eating and drinking establishments; and

2. That a new Restrictive Declaration is recorded pertaining to 91 Horatio Street, limiting its use to educational, cultural and arts non-profit organizations and/or those that provide non-profit services of benefit to the local community and assuring that all future leases will be at preferential rent; and

**WHEREAS**, on August 25, 2016, in response to Community Board 2's concern about the potential impacts of late night uses on the quality of life of local residents, the applicant revised its application to exclude nightclub uses from the set of uses allowed by the underlying C6-2A District. Under the proposed modification, uses consistent with regulations of the C6-2A District would be permitted, except that nightclub uses would continue to be prohibited; and

**WHEREAS**, the Commission has considered this application (M 840260 (E) ZMM) and believes the proposed modification of the Restrictive Declaration is appropriate; and

**WHEREAS**, the Commission notes that the Restrictive Declaration D-93 was intended to mitigate potential adverse impacts on industrial/meat-related businesses from a rezoning that occurred in 1984, and since that time the area's land use, neighborhood character, socioeconomic conditions, as well as the meatpacking industry itself, have changed substantially; and

**WHEREAS**, the Commission also notes that this modification will permit uses already allowed by the underlying C6-2A District, and that the anticipated restaurant and/or retail use of

the subject site is consistent with the existing uses found in the immediate vicinity of the project site, as well as the contemporary character of the surrounding neighborhood. In particular, the Commission notes that on the same block as 95 Horatio Street, the majority of the ground floor spaces are, or will be in the near future, occupied by retail and restaurant uses; and

**WHEREAS**, the Commission believes the proposed modification reflects the changing mix of uses in the vicinity in the past decades, notably the substantial reduction in meat-related uses and the increase in retail, eating and drinking, commercial offices and arts and cultural uses, with the most recent addition of the new Whitney Museum of American Art; and

**WHEREAS**, as recognized in its previous approvals of modifications to Restrictive Declaration D-94 (M 840260 (B) ZMM; M 840260 (C) ZMM), which was recorded against properties immediately east of the site at 46-74 Gansevoort Street as part of the same 1984 rezoning to mitigate similar environmental impacts, the Commission believes this evolving use mix stems not from the rezoning in 1984, but is related to broader economic trends within the city, as well as technological and economic changes within the meat industry affecting production and distribution; and

**WHEREAS**, the Commission also notes that by voluntarily modifying its land use application to exclude nightclub uses from the full range of uses allowed by the C6-2A District which the subject space lies within, the applicant addressed one of the concerns raised by Community Board 2 related to late night uses; and

**WHEREAS**, while the Commission is aware of and applauds other private agreements between the applicant and Community Board 2 concerning the hours of operation for future uses at 95 Horatio Street and the use of a 5,000-square-foot space at an off-site location, the Commission believes that they are beyond the scope of this application and that the modified restrictive declaration only affects the use of the 4,700-square-foot space at 95 Horatio Street; and

**WHEREAS**, the Commission, therefore, concludes that this modification of the Restrictive Declaration provides sufficient flexibility within appropriate parameters to allow the subject property to reasonably adapt to the area's current and foreseeable land use trends;

**WHEREAS**, this application (M 840260 (E) ZMM) was reviewed by the City Coastal Commission 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 30, 2013 and by the New York State Department of State on February 3, 2016, 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 16-034. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program; and

**THEREFORE**, be it **RESOLVED**, the City Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

**RESOLVED**, that the City Planning Commission certifies its approval of the application submitted by 95-97 Horatio LLC for the modification of Restrictive Declaration D-93, which was previously approved in connection with an application for a Zoning Map amendment (C 840260 ZMM), to allow uses permitted by the underlying C6-2A District, except for nightclub uses, in the 4,700-sqaure-foot ground floor space located at 95 Horatio Street (Block 643, Lot 1), in a C6-2A District, Community District 2, Borough of Manhattan.

The above resolution, duly adopted by the City Planning Commission on September 7, 2016 (Calendar No. 19), is hereby filed with the Office of the Speaker, City Council.

**CARL WEISBROD**, Chairman

**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman

**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,  
MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, CHERYL COHEN EFFRON,  
ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ**, Commissioners

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Susan Kent, *Second Vice Chair*  
Bob Gormley, *District Manager*



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## COMMUNITY BOARD NO. 2, MANHATTAN

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July 22, 2016

Carl Weisbrod, Chairman  
City Planning Commission  
22 Reade Street  
New York, NY 10007

Dear Mr. Weisbrod:

At its Full Board Committee meeting on July 21, 2016, Community Board #2, Manhattan adopted the following resolution:

**M 840260(E) ZMM - 95 Horatio Street (north side between 10th Avenue and Washington Street): application for a request for Modification of Restrictive Declaration D-93. Request is to remove use restrictions on a 4,700sf portion of the ground floor space of the existing building. The restrictive declaration was approved as part of zoning map amendment in 1984.**

### Whereas:

1. When former owner Rockrose Development Corporation obtained the 1984 rezoning to allow the conversion of the old Manhattan Refrigeration building complex into the West Coast Apartments (an entire block bordered by Horatio, West, Gansevoort and Washington Streets) along with the residential conversion of nearly all of the block immediately to the south, the community negotiated four restrictive declarations intended to mitigate the potential adverse impacts of residential development on industrial meatpacking businesses and the cumulative impacts on residents of rezoning both blocks.
2. One of these restrictive declarations (D-93) mandated that 4700sf of ground floor space at the northwest corner of the building at West and Gansevoort Sts. (now across from the Whitney) be reserved for meat-related and light industrial uses only. D-93 also states that “best efforts” must be made to rent the space for meat-related conforming uses. Other permitted uses included custom manufacturing (11), semi-industrial (16), light industrial (17) and heavy industrial (18).
3. The proposed development site is actually 11,650sf (an 8105sf ground floor space, 4700sf of which is currently restricted, plus 3550sf in the basement).

4. The space was occupied by Weischel Beef until 2012 when it moved to the NYC meatpacking cooperative at 826 Washington St., which is currently fully occupied and has been for three years. When Weischel moved out, applicant made no “best effort” to find conforming tenants and advertised the space only as retail without obtaining the necessary modifications to the restrictive declaration. Applicant also ripped out all the freezers, the rails and other related infrastructure needed for a meatpacking operation, creating a prohibitive capital investment for anyone considering moving a conforming business into this space. In July, 2015, applicant attempted to rent to an illegal use, a restaurateur who was scheduled to appear before CB2’s SLA committee in an effort to obtain a liquor license.
5. TF Cornerstone wants to hold open the option of renting the two ground floor spaces (one of which is the part currently under the existing restriction) to a single tenant and is unwilling to rule out renting to a restaurant, although it is willing to prohibit nightclubs and limit the hours of operation and create a binding prohibition on late-night hours (midnight Sundays through Tuesdays, and 1 am Wednesdays through Saturdays). However even with restricted hours, a restaurant potentially exceeding 5,000 square feet at this location will extend the noise and traffic of Meatpacking District nightlife onto a block that has hitherto been quiet and residential.
6. Neighbors fear that quality of life is at risk from noise and traffic in this increasingly popular neighborhood and expressed a strong preference that the restrictive declaration be retained but conceded that if conforming uses are no longer appropriate, any changes to D-93 should benefit the community as well as the property owner. Acceptable modifications to the restrictive declaration include arts, cultural, educational or community uses by non-profit organizations.
7. In consideration for the lifting of D-93 and the residents' request, TFC would provide a benefit to the community by leasing in perpetuity an approximately 5000sf (2800sf ground floor, 2200sf basement) space known by the street address of 91 Horatio St., to only not-for-profit cultural, educational, and/or arts tenants.
8. CB2, Man. appreciates the offer of the applicant to provide valuable space for non-profit uses beneficial to the community.
9. TFC would be willing to include the commitment to the community benefit in perpetuity, the above hours of operation, and cabaret license prohibition in a restrictive declaration. If the Department of City Planning is not willing to incorporate all or some of these commitments into the City's restrictive declaration, a separate restrictive declaration reflecting these commitments would be recorded against the property.
10. While grateful for this concession, neighbors continue to be concerned about the increasingly residential nature of the area and the oversaturation by eating establishments (including 6+ million visitors to The High Line, Santina Restaurant, Bubby's Restaurant, The Whitney Museum and its two restaurants and numerous events, and the many other restaurants within a three-block radius).
11. No members of the community appeared or sent testimony in favor of an eating and drinking establishment.

**Therefore bet it resolved that** CB2, Man. recommends approval of the application to remove certain restrictions on the use of 95 Horatio Street created under D-93, with the following conditions:

1. D-93 is amended to allow commercial and/or retail uses but no nightclubs and/or eating or drinking establishments.
2. A new restrictive declaration is recorded pertaining to 91 Horatio Street, limiting its use to educational, cultural and arts non-profit organizations and/or those that provide non-profit services of benefit to the local community and assuring that all future leases will be at preferential rent.

Vote: Unanimous, with 36 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Tobi Bergman, Chair  
Community Board #2, Manhattan



Anita Brandt, Chair  
Land Use & Business Development Committee  
Community Board #2, Manhattan

TB/fa

- c: Hon. Jerrold L. Nadler, Congressman  
Hon. Deborah Glick, Assembly Member  
Hon. Brad Hoylman, NY State Senator  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Corey Johnson, Council Member

## **FIRST AMENDMENT TO DECLARATION**

THIS FIRST AMENDMENT TO DECLARATION (the “Amended Declaration”), made this \_\_\_ day of \_\_\_\_\_, 2016 by 95-97 HORATIO LLC, a Delaware limited liability company with offices c/o TF Cornerstone Inc., 387 Park Avenue South, New York, New York, 10016 (hereinafter called the “Declarant”).

### **WITNESSETH:**

**WHEREAS**, Declarant is the owner in fee simple of certain real property located in the Borough of Manhattan, City and State of New York, Block 643, Lot 1, which property is designated as 95 Horatio Street and described in Exhibit A annexed hereto (the “Subject Property”);

**WHEREAS**, the Subject Property is the subject of a Declaration (D-93) dated April 13, 1984, executed by West Coast Company c/o Rockrose Development Corporation, Declarant’s predecessor-in-title to the Subject Property, filed in Office of the Register of the City of New York, New York County at Reel 818, Page 1139 (the “Declaration”);

**WHEREAS**, the Declaration was executed and recorded in connection with an application to the New York City Planning Commission (“CPC”) for a rezoning (the “Rezoning”) of the Subject Property from M1-5 to C6-2A (Application No. C 840260 ZMM) and an application for a zoning text amendment (Application No. C 840235 ZRY);

**WHEREAS**, the Declaration required Declarant and its successors to maintain a portion of the Subject Property for a “Permitted Use” (as defined in the Declaration and set forth in “Exhibit D” annexed thereto), required Declarant to use “best efforts” to maintain such portion of the Subject Property for meat-related Use Group 17A and 17B uses, and, in the event the spaces were to become vacant, to use best efforts to rent such uses;

**WHEREAS**, in conjunction with the Rezoning, additional restrictive declarations (D-94, D-95 and D-96; collectively, the “Other Declarations”) were recorded against three properties other than the Subject Property and similarly restricted the permitted uses at these sites;

**WHEREAS**, a number of applications have been filed to modify the Other Declarations, including application numbers M 840260(A) ZMM (filed January 24, 1995), M 840260(B) ZMM (filed July 24, 1997), and M 840260(C) ZMM (filed October 2, 1998);

**WHEREAS**, Declarant desires to amend the Declaration by eliminating the use restrictions on the Subject Property, other than the prohibition on eating and drinking establishments with dancing (i.e., night clubs), and filed an application with the CPC under application number M 809260(E) ZMM;

**WHEREAS**, Section 4.05 of the Declaration provides that it may be amended or cancelled only upon application by the Declarant (or any successor in interest) and by approval of the City Planning Commission and the City Council, and that no other legal approval or consent from any public body, private person or legal entity of any kind shall be required;

**WHEREAS**, CPC approved the application on September 7, 2016;

**WHEREAS**, Madison Title Agency, LLC, agent for Old Republic National Title Insurance Company, has certified that, as of March 21, 2016, the sole “Parties-in-Interest” (as defined in subdivision (f) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution) in the Subject Property are set forth in the certification attached to this Amended Declaration as Exhibit B (each a “Party-in-Interest”);

**WHEREAS**, all Parties-in-Interest have either executed this Amended Declaration or waived their rights to execute this Amended Declaration by written instruments in substantially the same form as the waiver, annexed hereto as Exhibit C, which instruments are intended to be recorded simultaneously with this Amended Declaration; and

**WHEREAS**, Declarant represents and warrants that, except for a mortgage held by Deutsche Bank Trust Company Americas, as trustee, no restrictions of record on the use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any lien, obligation, covenant, limitation or encumbrance of any kind presently precludes the imposition of the restrictions, covenants and obligations of this Amended Declaration or the development of the Subject Property in accordance therewith.

**NOW, THEREFORE**, Declarant does hereby declare that the Subject Property shall be held, sold, conveyed and occupied subject to the following restrictions, covenants and obligations which are for the purpose of protecting the value and desirability of the Subject Property and which shall be binding on all heirs, successors, legal representatives, mortgagees in possession and assigns, and shall run with such real property.

1. All capitalized terms used herein not defined in this Amended Declaration shall have the meaning ascribed to such terms in the Declaration.
2. Section 1.09 of the Declaration is hereby deleted in its entirety.
3. Section 1.10 of the Declaration is hereby deleted in its entirety.
4. Section 1.11 of the Declaration is hereby deleted in its entirety.
5. Section 2.03 of the Declaration is hereby deleted in its entirety and replaced with the following: “Use of the Industrial Space consistent with the underlying zoning use regulations shall be permitted, except that use of the Industrial Space as an eating and drinking establishment with dancing (i.e., night club) shall be prohibited.”
6. Section 2.04 of the Declaration is hereby deleted in its entirety and replaced with the following: “The provisions of Section 2.01 shall not impose any obligation on the Declarant to construct any new or rehabilitated building on the Subject Property pursuant to the Rezoning Application. If such new or rehabilitated building is not developed, Declarant shall have no obligation to comply with the provisions of Section 2.01.”
7. Section 4.11 of the Declaration is hereby deleted in its entirety and replaced with the following: “All notices, demands, requests or other communications which may be or are permitted, desirable or required to be given and sent: if intended for Declarant, by mailing to Declarant at its address given in this Agreement, ATTN: Jon McMillan, with copies to Fried, Frank, Harris, Shriver and Jacobson, LLP, One New York Plaza, New York, New York 10004, ATTN: Carol E. Rosenthal and to the holder of any mortgage on the Subject Property who has given CPC notice: of its name and address and has requested that it receive such copy; and if intended for the City or CPC, by mailing to

CPC at 120 Broadway, New York, New York 10271, ATTN: Chairperson. Any change in the above addresses shall be given within thirty (30) days of such change. Each notice, demand, request or other communication which shall be mailed shall be deemed sufficiently given, secured or sent for all purposes hereunder three days (if mailed in New York City) or five days (if mailed outside of New York City) after it shall be mailed by United States registered or certified mail at a branch post office regularly maintained by the United States Postal Service.”

8. “Exhibit C” and “Exhibit D” to the Declaration are hereby deleted in their entirety.
9. Declarant shall file and record this Amended Declaration in the Office of the Register of the City of New York, County of New York, indexing it against the Subject Property immediately following the date hereof. Declarant will promptly deliver to CPC a true copy of this Amended Declaration as recorded and certified by the Register. If Declarant fails to so record this Amended Declaration, the City may record this Amended Declaration at the sole cost and expense of the Declarant, who shall immediately pay such costs to the City.
10. Except as amended by the provisions of this Amended Declaration, all of the provisions of the Declaration shall continue in full force and effect.

[Signature Page Follows.]



## Exhibit A

### Old Lot 1

ALL that certain plot, piece or parcel of land together situate, lying and being in the Borough of Manhattan, City of New York, and bounded and described as follows:

BEGINNING at the corner formed by the intersection of the easterly side of West Street and the northerly side of Horatio Street; and running

THENCE northerly along the easterly side of West Street, 163 feet 5 inches to the corner formed by the intersection of the easterly side of West Street and the southerly side of Gansevoort Street;

THENCE easterly along the southerly side of Gansevoort Street, 367 feet 11 inches to the corner formed by the intersection of the said southerly side of Gansevoort Street and the westerly side of Washington Street;

THENCE southerly along the westerly side of Washington Street, 168 feet 4 inches to the corner formed by the intersection of said westerly side of Washington Street and the northerly side of Horatio Street;

THENCE westerly along the northerly side of Horatio Street, 69 feet 1 inch to the westerly face of the westerly wall of the nine story concrete brick front building on the premises now being described;

THENCE northerly along the westerly face of said westerly wall and along a line forming an angle of 90 degrees 45 minutes no seconds on its easterly side with said northerly side of Horatio Street, 80 feet 11-1/2 inches;

THENCE westerly along the southerly face of the southerly wall of the seven story brick building on the premises now being described, and along a line forming an angle of 90 degrees 39 minutes no seconds on its southerly side with the preceding course, 40 feet 9-3/4 inches;

THENCE northerly along the westerly end of said wall 11 inches to the southerly face of the southerly independent wall of the building on the premises now being described;

THENCE westerly along the southerly face of said southerly wall and along a line which forms an angle of 90 degrees 33 minutes 15 seconds on its southerly side with last mentioned course, 20 feet 7 inches;

THENCE southerly along a line which forms an angle of 89 degrees 24 minutes 20 seconds on its westerly side with the preceding course 10-1/2 inches;

THENCE westerly along the northerly face of the northerly independent wall of the one story brick building on the premises adjoining on the south and along a line which forms an angle of 89 degrees 17 minutes 20 seconds on its northerly side with the preceding course, 17 feet 7 inches;

THENCE southerly along the easterly face of a brick wall on the premises now being described and along a line forming an angle of 89 degrees 2 minutes no seconds on its easterly side with the preceding course, 5 feet 8-1/2 inches;

THENCE westerly along a line forming an angle of 88 degrees 52 minutes no seconds on its northerly side with the preceding course, 17 feet 3 inches to the westerly face of the westerly wall of the six story brick building on the premises adjoining to the south;

THENCE southerly along the westerly face of the last mentioned wall and along a line which forms an angle of 89 degrees 59 minutes no seconds on its easterly side with the preceding course, 75 feet 1-1/2 inches to the northerly side of Horatio Street; and

THENCE westerly along the said northerly side of Horatio Street, 201 feet 3 inches to the first mentioned corner, the point or place of BEGINNING.

### **Old Lot 27**

ALL THAT certain lot, piece or parcel of land, together, situate, lying and being in the Borough of Manhattan, City of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Horatio Street where the easterly face of the easterly wall of the six story building on the premises known as #97-103 Horatio Street intersects the northerly side of Horatio Street and which point is distant 69 feet 1-3/4 inches westerly from the northwest corner of Horatio and Washington Street;

RUNNING THENCE northerly along the easterly face of said wall and along a line forming an angle on its easterly side of 90 degrees 45 minutes with the northerly side of Horatio Street, 80 feet 10-1/2 inches to the northerly face of the northerly wall of the one story brick building standing on the rear of said premises known as #97-103 Horatio Street;

THENCE westerly along the northerly face of said wall and along a line forming an angle of 90 degrees 39 minutes 30 seconds on its southerly side with the last mentioned course, 78 feet 6-3/4 inches to the northwesterly corner of said building and the easterly face of a brick wall;

THENCE southerly along the easterly side of said brick wall and along a line which on its easterly side forms an angle of 88 degrees 24 minutes 30 seconds with the last

mentioned course, 5 feet 9-1/2 inches to the northerly face of the northerly wall of the six story building on the premises herein;

THENCE westerly along said northerly face of said wall to a peg in said wall;

THENCE southerly along the westerly face of said wall, 2 inches to the northerly face of said wall;

THENCE westerly along the northerly face of said wall on a line parallel with Horatio Street, to a point in the westerly wall of said six story building, distant 6 inches easterly from the northwest corner of said six story building;

THENCE southerly, through the westerly wall of said building and along a line which on its easterly side forms an angle of 89 degrees 59 minutes 00 seconds with the last mentioned course, 74 feet 11 inches to the northerly side of Horatio Street, at a point, 6 inches easterly from the southwest corner of said building (the last mentioned course being defined in agreement dated January 29<sup>th</sup>, 1912 and recorded March 8<sup>th</sup>, 1912, New York County Register's Office in Liber 214, Page 178);

THENCE easterly along the northerly side of Horatio Street, 97 feet 3 inches to the point or place of BEGINNING.

Being further known and described as:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Horatio Street where the easterly face of the easterly wall of the six story building on the premises known as #97-103 Horatio Street intersects the northerly side of Horatio Street and which point is distant 69 feet 1 inch westerly from the northwest corner of Horatio and Washington Streets;

RUNNING THENCE northerly along the easterly face of said wall and along a line forming an angle on its easterly side of 90 degrees 45 minutes with the northerly side of Horatio Street, 80 feet 11-1/2 inches to the northerly face of the northerly wall of the one story brick building standing on the rear of said premises known as #97-103 Horatio Street;

THENCE westerly 40 feet 9-3/4 inches;

THENCE northerly 11 inches to the southerly face of the southerly independent wall of the adjoining building to the premises now described

THENCE westerly 20 feet 7 inches;

THENCE southerly 10-1/2 inches;

THENCE westerly 17 feet 7 inches;

THENCE southerly 5 feet 8-1/2 inches to the northerly face of the northerly wall of the six story building on the premises herein;

THENCE westerly 17 feet 3 inches;

THENCE southerly, through the westerly wall of said building and along a line which on its easterly side forms an angle of 89 degrees 59 minutes 00 seconds with the last mentioned course, 75 feet 1-1/2 inches to the northerly side of Horatio Street, at a point, 6 inches easterly from the southwest corner of said building (the last mentioned course being defined in agreement dated January 29<sup>th</sup>, 1912 and recorded March 8<sup>th</sup>, 1912, New York County Register's Office in Liber 214, Page 178);

THENCE easterly along the northerly side of Horatio Street, 97 feet 3 inches to the point or place of BEGINNING.

**Exhibit B**

**Certification of Parties in Interest**

**Exhibit C**

Waiver

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGES**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGES, made this \_\_\_ day of \_\_\_\_, 2016 by Deutsche Bank Trust Company Americas, as trustee (in such capacity, the "Mortgagee"), having an office at 1761 East St. Andrew Place, Santa Ana, CA 92705.

**WITNESSETH:**

WHEREAS, the Mortgagee, as trustee, is the lawful holder of certain mortgages (the "Mortgages") made by 95-97 Horatio LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and having an office at c/o TF Cornerstone, 387 Park Avenue South, New York, NY 10016 (the "Mortgagor"), and assigned to Mortgagee by instrument dated January 28, 2015, and recorded in the Office of the City Register of the City of New York, County of New York, on February 6, 2015, at City Register File No. 2015000041967; and

WHEREAS, the Mortgages encumber all of the property (the "Premises") known as Block 643, Lot 1 on the Tax Map of the City of New York, County of New York, and more particularly described in **Schedule A** attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the "Subject Property"), which Subject Property is the subject of a Declaration dated April 13, 1984, executed by West Coast Company c/o Rockrose Development Corporation, Mortgagor's predecessor-in-title to the Subject Property, filed in Office of the Register of the City of New York, New York County at Reel 818, Page 1139; and

WHEREAS, Mortgagee represents that, as of the date hereof, the Mortgages represent its sole interest in the Subject Property; and

WHEREAS, the First Amendment to the Declaration, which is intended to be recorded in the Office of said Register simultaneously with the recording hereof, shall subject the Subject Property and the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain restrictions, covenants, obligations, easements and agreements contained in the First Amendment to the Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to (i) waive its right to execute the First Amendment to the Declaration and (ii) subordinate the Mortgages to the First Amendment to the Declaration.

NOW, THEREFORE, the Mortgagee hereby (i) waives any rights it has to execute, and consents to the execution by the Mortgagor of, the First Amendment to the Declaration and (ii) agrees that the Mortgages, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgages, shall in all respects be subject and subordinate to the terms and provisions of the First Amendment to the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgages shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgages as of the date and year first above written.

MORTGAGEE:

Deutsche Bank Trust Company Americas,  
as Trustee

By: \_\_\_\_\_  
Name:  
Title:

**STATE OF NEW YORK )**  
**) ss:**  
**COUNTY OF NEW YORK )**

On the \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, personally appeared \_\_\_\_\_, 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