



Legislation Text

File #: Res 1297-2016, Version: *

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1297**

Resolution approving with modifications the decision of the City Planning Commission on Application No. M 840260 (E) ZMM 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 (the "Project Site") (L.U. No. 479).

By Council Members Greenfield and Richards

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;

WHEREAS, as mitigation of potentially significant adverse impacts resulting from the rezoning a Restrictive Declaration (D-93) (the "Original Declaration") was imposed on the Project Site, providing that the use of the Project Site 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;

WHEREAS, the City Planning Commission filed with the Council on September 9th, 2016 its decision dated September 7th, 2016 (the "Decision"), on the application submitted by 95-97 Horatio LLC, for modification of the Original Declaration to remove the use restrictions and permit all uses allowed under zoning regulations with the exception of nightclub uses, for the Project Site (ULURP No. M 780389 (B) ZSK) (the "Application");

WHEREAS, the Decision is subject to review and action by the Council, as the successor in jurisdiction to the New York City board of Estimate, pursuant to the terms of the Original Declaration;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on November 21, 2016;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application;

WHEREAS, the Council has considered the relevant environmental issues, including were analyzed in Technical Memorandum #003, dated April 8, 2016. Technical Memorandum #004, dated September 2, 2016,

the Negative Declaration issued on April 11, 2016; and the Revised Negative Declaration issued on September 7, 2016 (together the “Environmental Analysis”),

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Environmental Analysis.

Pursuant to Original Declaration and on the basis of the Decision and Application, M 840260 (E) ZMM, incorporated by reference herein, and based on the environmental determination and consideration described in this report, the Council approves the Decision with the following modifications and subject to the following conditions:

1. Development pursuant to this resolution shall be in accordance with the terms of the First Amendment to Declaration with the modifications made by the Council attached hereto and made part hereof;
2. Development pursuant to this resolution shall only be permitted after such First Amendment to Declaration as modified is executed by 95-97 Horatio LLC, or its successors, and has been recorded and filed on the Project Site in the Office of the Register of the City of New York, County of Kings.

Matter in double strikeout is deleted by the City Council;
Matter in double-underline is added by the City Council

FIRST AMENDMENT TO DECLARATION

THIS FIRST AMENDMENT TO DECLARATION (the “Amended Declaration”), made this 21st day of November, 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 840260(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 provided that (i) use of the Industrial Space as an eating and drinking establishment with dancing (i.e., night club) shall be prohibited.”, (ii) no more than 5,000 zoning square feet within the area indicated as “Anticipated Restaurant/Retail” on the Restaurant Space Diagram attached hereto as Exhibit C may be operated as an eating and drinking establishment (without dancing) (a “Restaurant”), (iii) the Restaurant shall contain no more than a total of 220 table seats and/or bar stools, combined, and (y) food and beverage service in the Restaurant shall end by 12:00 a.m. each day.”
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 to the Declaration is hereby deleted and replaced with the diagram attached as Exhibit D

to this Amended Declaration. "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.]

IN WITNESS WHEREOF, Declarant has executed this Amended Declaration as of the date first written above.

95-97 HORATIO LLC

By: _____

Name:

Title:

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

On the ___ day of _____ in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of

satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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 southwesterly corner of said building (the last mentioned course being defined in agreement dated January 29th, 1912 and recorded March 8th, 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 southwesterly corner of said building (the last mentioned course being defined in agreement dated January 29th, 1912 and recorded March 8th, 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, dated _____, 2016, 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

Exhibit D

Restaurant Space Diagram

(Attached behind)

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on November 29, 2016, on file in this office.

.....
City Clerk, Clerk of The Council