



Department of Environmental Conservation

# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

## PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

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MAR 02 2020

BUR. OF TECH. SUPPORT

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site?  Yes  No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

**Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

The property located at 1640 Flatbush Avenue, New York, New York, was sold on December 30, 2019, from 1640 Flatbush Owner LLC to 1640 Flatbush OZ Owner LLC.

**\*Please refer to the attached instructions for guidance on filling out this application\***

<b>Section I. Existing Agreement Information</b>		
BCP SITE NAME: 1640 Flatbush Avenue		BCP SITE NUMBER: C224212
NAME OF CURRENT APPLICANT(S): 1640 Flatbush Owner LLC		
INDEX NUMBER OF EXISTING AGREEMENT: C224212-06-15		DATE OF EXISTING AGREEMENT: 8/25/15
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>		
NAME <b>1640 Flatbush OZ Owner LLC</b>		
ADDRESS 3 Columbus Circle, 26th Floor		
CITY/TOWN New York, NY		ZIP CODE 10019
PHONE 212-808-4000	FAX	E-MAIL michaelz@moiniangroup.com
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Same as above		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Environmental Business Consultants		
ADDRESS 1808 Middle Country Road		
CITY/TOWN Ridge		ZIP CODE 11961
PHONE 631-504-6000	FAX	E-MAIL csosik@ebcincny.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Jesse Hiney		
ADDRESS PO Box 9		
CITY/TOWN Shoreham		ZIP CODE 11786
PHONE 917-543-5247	FAX	E-MAIL jesse@jhenvirolaw.com
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant: None other than contract vendee.		<p style="text-align: center;"><b>RECEIVED</b></p> <p style="text-align: center;">MAR 02 2020</p> <p style="text-align: center;">BUR. OF TECH. SUPPORT</p>

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) **1640 Flatbush OZ Owner LLC**

ADDRESS **C/o: 3 Columbus Circle, 26th Floor**

CITY/TOWN **New York, NY**

ZIP CODE **10019**

PHONE **212-808-4000**

FAX

E-MAIL **michaelz@moiniangroup.com**

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site?  Yes  No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?  Yes  No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?  Yes  No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.  Yes  No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information.  Yes  No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants?  Yes  No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?  Yes  No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?  Yes  No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?  Yes  No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?  Yes  No
11. Are there any unregistered bulk storage tanks on-site which require registration?  Yes  No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

Prior Owner  Current Owner  Potential /Future Purchaser  Other \_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached?  Yes  No

**Note: a purchase contract does not suffice as proof of access.**

**Section V. Property description and description of changes/additions/reductions (if applicable)**

ADDRESS 1640 Flatbush Avenue

CITY/TOWN Brooklyn, NY

ZIP CODE 11210

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1640 Flatbush Avenue, Brooklyn, NY			7577	60	.4

Check appropriate boxes below:

Changes to metes and bounds description or TBL correction

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

**Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>From ECL 27-1405(31):</b>	
"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From 6 NYCRR 375- 3.2(a) as of August 12, 2016:	
(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.	
(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.	
(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.	
(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.	

**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

<b>Existing Agreement Information</b>	
BCP SITE NAME: 1640 Flatbush Avenue	BCP SITE NUMBER: C224212
NAME OF CURRENT APPLICANT(S): 1640 Flatbush Owner LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C224212-06-15	
EFFECTIVE DATE OF EXISTING AGREEMENT: 8/25/2015	

**Declaration of Amendment:**

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
(Individual)  I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: _____ Signature: _____  Print Name: _____
(Entity)  I hereby affirm that I am (title <u>authorized signatory</u> ) of (entity <u>1640 Flatbush OZ Owner LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.  _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: <u>12/24/2019</u> Signature: _____  Print Name: <u>Joseph Moinian</u>

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am the Executive 1640 Flatbush  
Vice President (title) of Owner LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. \_\_\_\_\_ My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 12/30/19 Signature: 

Print Name: Andrew S. Levine

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<p><b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.</p>	<p><input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.</p>
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Effective Date of the Original Agreement: 3/25/2015

Signature by the Department:

DATED: 5/5/20

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:   
\_\_\_\_\_  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation



**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**BROWNFIELD CLEANUP PROGRAM (BCP)  
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

**SECTION II NEW REQUESTOR INFORMATION**

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

**SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.**

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

**SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

**SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)**

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

**PART I**  
**SECTION II**  
**SUPPLEMENTARY**  
**DOCUMENTS**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through February 6, 2020.

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**Selected Entity Name:** 1640 FLATBUSH OZ OWNER LLC

**Selected Entity Status Information**

**Current Entity Name:** 1640 FLATBUSH OZ OWNER LLC

**DOS ID #:** 5669903

**Initial DOS Filing Date:** DECEMBER 11, 2019

**County:** NEW YORK

**Jurisdiction:** DELAWARE

**Entity Type:** FOREIGN LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

**Selected Entity Address Information**

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

1640 FLATBUSH OZ OWNER LLC

3 COLUMBUS CIRCLE

26TH FLOOR

NEW YORK, NEW YORK, 10019

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate.](#)

**\*Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
DEC 11, 2019	Actual	1640 FLATBUSH OZ OWNER LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
1640 FLATBUSH OZ OWNER LLC**

This **LIMITED LIABILITY COMPANY AGREEMENT** (together with the schedules and exhibits attached hereto, this "Agreement") of 1640 FLATBUSH OZ OWNER LLC (the "Company"), is entered into as of December 30, 2019, by 1640 FLATBUSH OZ JV LLC, as the sole equity member (the "Member"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Member, by execution of this Agreement, hereby forms the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the "Act"), and this Agreement, and the Member hereby agrees as follows:

Section 1.     Name.

The name of the limited liability company is 1640 FLATBUSH OZ OWNER LLC.

Section 2.     Principal Business Office.

The principal business office of the Company shall be located at 1640 FLATBUSH OZ OWNER LLC, c/o The Moinian Group, 3 Columbus Circle, 26<sup>th</sup> Floor, New York, New York 10019, or such other location as may hereafter be determined by the Member.

Section 3.     Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o United Corporate Services, Inc., 874 Walker Road, Suite C, Dover, Delaware 19904, County of Kent. The Member may, from time to time, change the registered office through appropriate filing with the Secretary of State of the State of Delaware.

Section 4.     Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is United Corporate Services, Inc., 874 Walker Road, Suite C, Dover, Delaware 19904, County of Kent. The Member may, from time to time, change the registered agent through appropriate filing with the Secretary of State of the State of Delaware.

Section 5.     Members.

(a)     The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b)     The Member may act by written consent.

Section 6. Certificates.

Joseph Moinian is hereby designated as an “authorized person” within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware and such filing is hereby ratified and adopted by the Company. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an “authorized person” ceased, and the Member thereupon became the designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Act. The Member or any officer of the Company shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the State of New York and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purpose. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the purpose to be conducted or promoted by the Company is to engage in the following activities:

(a) (i) to acquire, own, develop, improve, hold, sell, lease, transfer, exchange, assign, dispose of, operate, manage or otherwise deal with the Property;

(ii) to borrow money, mortgage the Property or otherwise enter into loan transactions, including, without limitation, to enter into and perform its obligations under the respective loan documents as applicable for any such loan transaction; and

(iii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member or any officer on behalf of the Company is hereby authorized to execute and deliver, the loan documents to which it is a party and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement. The foregoing authorization shall not be deemed a restriction on the powers of the Member and/or any officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

The Company, and the Member and each officer of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.



Section 9. Management.

(a) The business and affairs of the Company shall be managed by or under the direction of the Member.

(b) Powers. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 7, the Member has the authority to bind the Company.

(c) Member as Agent. To the extent of its powers set forth in this Agreement, the Member is an agent of the Company for the purpose of the Company's business, and the actions of the Member taken in accordance with such powers set forth in this Agreement shall bind the Company.

Section 10. Officers.

(a) Officers. The Member may, from time to time, at its sole discretion, appoint officers of the Company and delegate to such officers such authority and duties as the Member may deem advisable. The Member may assign titles (including, without limitation, president, copresident, chief executive officer, executive vice president, senior vice president, vice president, secretary, treasurer and authorized signatory) to any such officer and delegate to such officer such authority and duties as the Member shall determine from time to time. Any individual may hold any number of offices. Any officer may resign at any time by giving written notice to the Company and the resignation shall take effect on the giving of the notice or at any later time specified in the notice. Each officer shall serve until his or her resignation, removal, death or legal incapacity (provided such incapacity continues for thirty consecutive days). A vacancy in any office may be filled by the Member, but the Member shall be under no obligation to do so. The officers shall serve at the discretion of the Member, subject to all rights, if any, of an officer under any contract of employment and any officer may be removed (with or without cause) by the Member at any time. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Member.

(b) Signing Authority of Officers. Any officer acting alone, is authorized to endorse checks, drafts, and other evidence of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts. Any contracts or obligations approved by the Member may be executed by the duly elected and acting president, co-president, chief executive officer or executive vice president of the Company (as appointed by the Member from time to time) and shall be authorized by the Member. The foregoing restrictions may be modified from time to time by the Member. The officers of the Company designated by the Member as of the date hereof are as follows: Joseph Moinian, President, Secretary and Authorized Signatory.

Section 11. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor any officer shall be obligated

personally for any such debt, obligation or liability of the Company solely by reason of being a Member or an officer of the Company.

Section 12. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed on Schedule B attached hereto.

Section 13. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 15. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be permitted to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

Section 16. Books and Records.

The Member shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 17. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member and any Affiliate thereof may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall

not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 18. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, neither the Member nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 by the Company shall be provided out of and to the extent of Company assets only, and the Member shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 18.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

Section 19. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company. Such assignment shall require the delivery by the assignor to the assignee of a duly executed assignment and assumption of the Member's membership interest in the Company. Subject to Section 21, the assignee of a limited liability company interest in the Company shall be admitted to the Company as a member of the Company upon such assignee's written acceptance of the terms and provisions of this Agreement, which acceptance may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the transfer and, if the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, then immediately following such admission, the transferor Member shall cease to be a Member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 20. Resignation.

The Member may not resign unless an additional member is admitted to the Company pursuant to Section 21 hereof. If the Member is permitted to resign pursuant to this Section 20, an additional member of the Company shall be admitted to the Company, subject to Section 21 hereof, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a Member of the Company.

Section 21. Admission of Additional Members.

Subject to Section 19, one or more additional Members of the Company may be admitted to the Company with the written consent of the Member.

Section 22. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the business of the Company is continued in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than (A) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee, if permitted pursuant to the organizational documents of the Company, or (B) the resignation of the Member and the admission of an additional member of the Company, if permitted pursuant to the organizational documents of the Company), to the fullest extent permitted by law, the personal

representative of such member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing to continue the existence of the Company and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(c) The bankruptcy of the Member shall not cause such member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(d) In the event of dissolution of the Company, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 23. Nature of Interest.

The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 15 hereof. The interest of the Member in the Company is personal property.

Section 24. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons).

Section 25. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 26. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 27. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 28. Amendments.

This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Section 29. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 30. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned has duly executed this Limited Liability Company Agreement the day and year first above written.

**SOLE MEMBER:**

**1640 FLATBUSH OZ JV LLC,**  
a Delaware limited liability company

By: 

Name: Joseph Moinian

Title: Authorized Signatory

## SCHEDULE A

### **Definitions**

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules and exhibits attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on December 9, 2019, as amended or amended and restated from time to time.

“Company” means 1640 FLATBUSH OZ OWNER LLC, a Delaware limited liability company.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Covered Persons” has the meaning set forth in Section 18(a).

“Member” means 1640 FLATBUSH OZ JV LLC, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

#### B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase



“without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

**SCHEDULE B**

**Member**

<u>Name</u>	<u>Mailing Address</u>	<u>Agreed Value of Capital Contribution</u>	<u>Limited Liability Company Interest</u>
1640 FLATBUSH OZ JV LLC	c/o The Moinian Group, 3 Columbus Circle, 26 <sup>th</sup> Floor, New York, New York 10019	\$100	100%

**PART I**  
**SECTION IV**  
**SUPPLEMENTARY**  
**DOCUMENTS**  
**(VOLUNTEER**  
**STATEMENT)**

### Volunteer Statement

The Requestor qualifies as a volunteer because (i) it obtained and reviewed all environmental reports performed at the property including a Remedial Investigation Report completed under the NYSBCP, (ii) all disposals/releases of hazardous substances occurred prior to the time of ownership, and (iii) the Requestor does not have affiliation with potentially responsible parties. Since acquiring title in December 2019, the Requestor has exercised appropriate care by hiring an Environmental Consultant to continue progress toward the remediation of the Site in accordance with the requirements of the NYSBCP. In addition, there have not been any ongoing releases and there have not been any new or threatened releases during Requestor's ownership of the Property.

**PART II**  
**SUPPLEMENTARY**  
**DOCUMENTS**

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**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**1640 FLATBUSH OWNER LLC**  
**(a Delaware limited liability company)**

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As of March \_\_, 2015

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**1640 FLATBUSH OWNER LLC**

**THIS LIMITED LIABILITY COMPANY AGREEMENT** (this “**Agreement**”) is made and entered into as of March \_\_, 2015 by 1640 Green Member LLC, a Delaware limited liability company, having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170 (the “**Member**”), as member.

The Member has formed a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (the “**Act**”), as amended from time to time (Title 6, Del. Code § 18-101, et seq.), and hereby agrees as follows:

1. **Name**. The name of the limited liability company formed is 1640 Flatbush Owner LLC, a Delaware limited liability company (the “**Company**”).

2. **Purpose**. The Company is formed for the purpose of, and the nature of the business to be conducted and promoted by the Company is, to engage in any and all activities for which limited liability companies may be formed under the Act.

3. **Registered Office**. The address of the registered office of the Company in the State of Delaware is c/o National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904. The registered office of the Company may be changed from time to time by determination of the Member.

4. **Registered Agent**. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904. The registered agent of the Company may be changed from time to time by determination of the Member.

5. **Member**. The name and the business, residence or mailing address of the Member is as follows:

<u>Name</u>	<u>Interest</u>	<u>Address</u>
1640 Green Member LLC	100%	c/o SL Green Realty Corp., 420 Lexington Avenue New York, New York 10170

6. **Powers**. The Member will act as the manager (the “**Manager**”) of the Company, within the meaning of the Act, and as such, shall devote such time and effort to the business of the Company as may be necessary to promote adequately the interests of the Company;

however, it is specifically understood and agreed that the Manager and its employees, officers and directors shall not be required to devote full time to the business of the Company and that the Manager may at any time and from time to time engage in and possess interests in other business ventures of any and every type and description, including, without limitation, the ownership, operation, financing and management of real estate, interests in real estate or real estate-related securities, independently or with others, and neither the Company nor any other party shall by virtue of this Agreement or otherwise have any right, title or interest in or to such independent ventures. The Manager shall have the right to appoint, from time to time, such officers and directors of the Company as the Manager deems appropriate. The Manager hereby appoints, as officers of the Company (each, an “Officer”), each person who holds the office of senior vice president or higher of SL Green Realty Corp., a Maryland corporation. The Manager hereby confirms that the person named on the formation certificate for the Company is an authorized person, within the meaning of the Act, to execute, deliver and file such certificate. The Manager may designate any other authorized person, within the meaning of the Act, to execute, deliver and file any amendments and/or restatements of such formation certificate and any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

7. **Dissolution.** The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written consent of the Member, (b) the death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company, or (c) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

8. **Capital Contributions.** The initial capital contribution of the Member is reflected on the books and records of the Company as of the date hereof.

9. **Additional Contributions.** No Member is required to make any additional capital contribution to the Company.

10. **Allocation of Profits and Losses.** The Company’s profits and losses shall be allocated 100% to the Member.

11. **Distributions.** Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Such distributions shall be allocated 100% to the Member.

12. **Assignments.** The Member may assign, in whole or in part, its limited liability company interest to one or more parties.

13. **Resignation.** The Member may not resign from the Company.

14. **Admission of Additional Members.** One (1) or more additional members of the Company may be admitted to the Company with the consent of the Member.



15. **Liability of Members.** The Member shall not have any liability for the obligations or liabilities of the Company.

16. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

[Remainder of page left intentionally blank]

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date and year first set forth above.

**MEMBER:**

**1640 GREEN MEMBER LLC,**  
a Delaware limited liability company

By:   
Name: Andrew S. Levine  
Title: Executive Vice President