



**BOROUGH OF WOODCLIFF LAKE
MAYOR AND COUNCIL SPECIAL MEETING AGENDA
FEBRUARY 1, 2018
6:45 PM**

CALL TO ORDER

Notice of this meeting, in accordance with the "Open Public Meetings Law, 1975, C. "231", has been posted and two newspapers, The Record and The Ridgewood News, have been notified.

ROLL CALL

Mayor Carlos Rendo
Council President Corrado Belgiovine
Councilwoman Jacqueline Gadaleta
Councilwoman Nancy Gross
Councilwoman Angela Hayes
Councilwoman Kristy Herrington
Councilman Brian Singleton

PLEDGE OF ALLEGIANCE

CLOSED SESSION

Resolution No. 18-40 Resolution Authorizing the Holding of Closed Session

PUBLIC COMMENT

(limited to 5 minutes per speaker)

RESOLUTIONS

Resolution No. 18-42 Depositories Designated

Resolution No. 18-41 A Resolution of the Borough Council of the Borough of Woodcliff Lake Authorizing the Execution of a Purchase and Sale Agreement for the Acquisition of the Real Property Known as 223 Woodcliff Avenue, Block 1402, Lot 7 on the Official Tax Map of the Borough of Woodcliff Lake

ADJOURNMENT

******Disclaimer******

Subject to Additions and/or Deletions

Council Member	Motion	Second	Yea	Nay	Abstain	Absent
Gadaleta						
Gross						
Hayes						
Herrington						
Singleton						
Belgiovine						
Mayor Rendo						

RESOLUTION AUTHORIZING HOLDING OF CLOSED SESSION

**RESOLUTION NO. 18-40
FEBRUARY 1, 2018**

WHEREAS, the Mayor and Council of the Borough of Woodcliff Lake, pursuant to the provisions of N.J.S.A. 10:4-12(b), may meet in closed session; and

WHEREAS, the following are the subject matters to be discussed in closed session:

1. Galaxy Gardens
2. Contract Negotiations

WHEREAS, these Minutes will be kept and once the matter involving the confidentiality of the aforementioned no longer requires that confidentiality, then the minutes can be made public.

NOW THEREFORE BE IT FURTHER RESOLVED that formal action may be taken at the Meeting.

CERTIFICATION

I, Deborah Dakin, Municipal Clerk of the Borough of Woodcliff Lake in the County of Bergen and the State of New Jersey do hereby certify that the foregoing resolution is a true copy of the original resolution duly passed and adopted by the Mayor and Council at the meeting of February 1, 2018.

**DEBORAH DAKIN, RMC, CMR
BOROUGH CLERK**

Council Member	Motion	Second	Yea	Nay	Abstain	Absent
Belgiovine						
Gadaleta						
Gross						
Hayes						
Herrington						
Singleton						
Mayor Rendo						

DEPOSITORIES DESIGNATED

**RESOLUTION NO. 18-42
FEBRUARY 1, 2018**

WHEREAS, the Mayor requests a resolution for the designation of depositories; and

WHEREAS, it is provided that the Mayor and Council shall designate by resolution the banks and trust companies in which the Tax Collector and Chief Financial Officer shall deposit the moneys coming into their hands by virtue of their offices:

BE IT RESOLVED, that
Lakeland Bank
Oritani Bank

hereby are designated as additional depositories in which the Tax Collector and Chief Financial Officer shall deposit all moneys coming into their hands by virtue of their offices.

CERTIFICATION

I, Deborah Dakin, Municipal Clerk of the Borough of Woodcliff Lake in the County of Bergen and the State of New Jersey do hereby certify that the foregoing resolution is a true copy of the original resolution duly passed and adopted by the Mayor and Council at the meeting of February 1, 2018.

**DEBORAH DAKIN, RMC, CMR
BOROUGH CLERK**

Council Member	Motion	Second	Yea	Nay	Abstain	Absent
Gadaleta						
Gross						
Hayes						
Herrington						
Singleton						
Belgiovine						
Mayor Rendo						

**A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF WOODCLIFF LAKE
AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT FOR THE
ACQUISITION OF THE REAL PROPERTY KNOWN AS 223 WOODCLIFF AVENUE, BLOCK
1402, LOT 7 ON THE OFFICAL TAX MAP OF THE BOROUGH OF WOODCLIFF LAKE**

**RESOLUTION NO. 18-41
February 1, 2018**

WHEREAS, pursuant to N.J.S.A. 40A:12-1 et seq., and N.J.S.A. 20:3-1 et seq., the Borough of Woodcliff Lake (the "Borough") has the power to acquire real property for a public purpose through negotiated agreement or by the exercise of its powers of eminent domain; and

WHEREAS, the Borough desires to acquire the property located at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey also known as Block 1402 Lot 7 on the official tax map of the Borough (the "Galaxy Gardens Property") in order to expand the open space available in the Borough for the use and enjoyment of the local population; and

WHEREAS, by way of Ordinance 16-19, the Borough authorized the acquisition of the Galaxy Gardens Property by way of negotiation or by use of its power of eminent domain; and

WHEREAS, by letter dated February 13, 2017, the Borough made a formal written offer pursuant to N.J.S.A. 20:3-6 to purchase the Property from Seller; and

WHEREAS, the Borough and Mr. Peter Molyneux, the owner of the Galaxy Gardens Property, entered into extensive negotiations which have resulted in an Agreement for the Borough to purchase the Property upon the terms and conditions set forth in a Purchase and Sale Agreement between the parties; and

WHEREAS, by entering into the Purchase and Sale Agreement it allows the Borough to acquire the Galaxy Gardens Property while avoiding the costs and uncertainty associated with lengthy litigation;

and

WHEREAS, the acquisition of the Galaxy Gardens Property to be utilized as open space will fulfill a primary goal of the Borough with regard to preservation of the Borough's character by providing for open space for the Borough's residents; and

WHEREAS, the acquisition of the Galaxy Gardens Property is being done in connection with and pursuant to the terms of the Open Space Trust Fund Grant obtained by the Borough from the County of Bergen by way of Resolution No. 861-16, dated August 10, 2016; and

WHEREAS, the Borough has determined that the execution of the Purchase and Sale Agreement is necessary, beneficial and in the public interest so that the Borough can acquire the Galaxy Gardens Property for public use as open space; and

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Woodcliff Lake, County of Bergen, State of New Jersey as follows:

SECTION 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

SECTION 2. The Mayor be and is hereby authorized and directed to execute, and the Borough Clerk to attest to, the attached Purchase and Sale Agreement and any other documents necessary to ensure the fulfillment of the Borough's obligations pursuant to that Agreement.

SECTION 3. The Borough shall use the funds in its Open Space Trust Fund to pay for the acquisition and remediation of the Galaxy Gardens Property and shall seek reimbursement of a portion of those funds in the amount of \$500,000 from the County in accordance with the terms of the Open Space Trust Fund Grant.

SECTION 4. This Resolution shall take effect immediately.

SECTION 5. All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution be, and the same hereby are rescinded

CERTIFICATION

I, Deborah Dakin, Municipal Clerk of the Borough of Woodcliff Lake in the County of Bergen and the State of New Jersey, do hereby certify that the foregoing resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting of February 1, 2018.

DEBORAH DAKIN, RMC, CMR
BOROUGH CLERK

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement” or “Contract”), is made as of the ___ day of February, 2018 (“**Effective Date**”), by and between **PETER MOLYNEUX, (“Molyneux”)** an individual with an address at 265 Colby Place, Paramus, New Jersey 07652, **GALAXY LANDSCAPE CO., INC. d/b/a GALAXY GARDENS** which has a place of business at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey 07677 (“**Galaxy Gardens**” and together with Peter Molyneux in his individual capacity, the “**Seller**”), and the **BOROUGH OF WOODCLIFF LAKE**, a Municipal Corporation of the State of New Jersey, with a mailing address of 188 Pascack Road, Woodcliff Lake, New Jersey 07677 (“**Borough**” or “**Purchaser**”) (Seller and the Borough each being a “**Party**”, and together referred to as the “**Parties**”).

Witnesseth:

WHEREAS, Molyneux owns certain property located at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey, also known as Block 1402, Lot 7 on the official tax map of the Borough of Woodcliff Lake (the “**Property**”); and

WHEREAS, Galaxy Gardens is a tenant and operator at the Property; and

WHEREAS, pursuant to N.J.S.A. 40A:12-1, et seq., and N.J.S.A. 20:3-1 et seq., the Borough has the power to acquire real property for a public purpose through negotiated agreement or by the exercise of its powers of eminent domain; and

WHEREAS, the Borough has determined that it is necessary, beneficial, and in the public interest to acquire the Property for public use as open space; and

WHEREAS, according to the Borough, the acquisition of such property to be utilized as open space will fulfill a primary goal of the Borough with regard to the preservation of the Borough’s character by providing open space for the Borough’s residents; and

WHEREAS, by way of Ordinance 16-19, the Borough authorized the acquisition of the Property by way of negotiation or by use of its power of eminent domain; and

WHEREAS, by letter dated February 13, 2017, the Borough made an offer pursuant to N.J.S.A. 20:3-6 to purchase the Property from Seller; and

WHEREAS, the parties entered into extensive negotiations which have resulted in this Agreement for the Seller to sell the Property to the Borough upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Seller and Borough agree as follows:

1. **Recitals.** All Recitals above are incorporated herein and made a part hereof.

2. **Sale and Purchase.** On the terms and conditions set forth in this Agreement, Seller agrees to sell to the Borough, and the Borough shall purchase from Seller, fee simple title to the Property. The Property is being sold in "as is" condition with regard to all matters including but not limited to the improvements there upon and the environmental condition of the real property.

3. **Purchase Price.** The purchase price for the Property shall be the sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000), subject to a One Hundred Thousand Dollar (\$100,000) credit to the Borough for remediation costs, for a total purchase price of One Million Six Hundred and Fifty Thousand Dollars \$1,650,00.000 ("**Purchase Price**") due to the Seller. The Purchase Price (subject to Closing adjustments) shall be delivered by Purchaser as set forth herein and held in escrow by Seller's attorney, Robert F. Simon, Esq., of Herold Law, P.A., ("Escrowee") pending closing on the Property. The Purchase Price shall be made payable in cash, Bank or Cashier's Check, or wire transfer of immediately available funds to be paid to Seller's attorney's trust account by no later than March 30, 2018. The Purchase Price shall be held, paid over and/or applied, by Escrowee in accordance with the following provisions:

(a) Escrowee shall hold the Purchase Price pursuant to the terms below in a non-interest-bearing account.

(b) If this Agreement is validly terminated by Purchaser in accordance with the provisions hereof, the Purchase Price shall be refunded to Purchaser.

(c) If for any reason the Closing does not occur and Subsection (b) above is not applicable, Escrowee shall have the right at any time to deposit the Purchase Price with the clerk of the Superior Court of the State of New Jersey. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(d) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in willful disregard of this Agreement or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in willful disregard of this Agreement or involving gross negligence on the part of Escrowee.

(e) Upon any delivery of the amount in escrow as provided above, Escrowee shall be relieved of all liability, responsibility or obligation with respect to or arising out of the escrow or under this Agreement.

(f) Escrowee shall be entitled to rely or act upon any notice, instrument or document believed by Escrowee to be genuine and to be executed and delivered by the proper person, and shall have no obligation to verify any statements contained in any

notice, instrument or document or the accuracy or due authorization of the execution of any notice, instrument or document.

(g) Escrowee shall be entitled to retain attorneys of its choice, including itself, in connection with this escrow and Escrowee may continue to represent Seller in connection with this Agreement or any dispute which may arise hereunder or otherwise.

4. Closing.

A. The Closing shall occur on June 29, 2018, which closing date shall be TIME OF THE ESSENCE of the Contract. The date of Closing shall be referred to as the “**Closing Date**”.

B. The Closing shall occur at the Borough’s office located at 188 Pascack Road, Woodcliff Lake, New Jersey. If Seller does not intend to attend the Closing, he will sign the requisite Closing documents in advance and have them delivered on or before the Closing Date to the settlement agent. The following shall be conditions precedent for Closing:

- (i) Seller delivering title to the Property as required by Article 5;
- (ii) The Property being free of any known violations of law between the Contract date and the date of the Closing;
- (iii) The parties’ representations as set forth in Article 13 being complete, true and correct in all material respects as of the Closing date; and

C. All obligations of the Borough and Seller having been performed as required pursuant to the terms of this Agreement.

5. Title.

A. Seller shall convey to the Borough good and marketable title to the Property by Bargain and Sale Deed, insurable at regular rates by a title company authorized to do business in New Jersey. The Borough’s title examination will be conducted as follows:

(i) **Seller’s Obligations:**

Seller shall be obligated to pay any mortgage or other monetary liens outstanding against the Property and to cure any objections that can be cured by the payment of money. Accordingly, Seller hereby authorizes the Closing attorney or Escrow Agent to satisfy all existing monetary liens against the Property from the proceeds of this sale.

(ii) **The Borough's Title Objections:**

- a. The Borough shall obtain a title commitment to insure marketable title to the Subject Property, free from liens, claims, non-utility easements, restrictions or encumbrances; and shall, within fourteen (14) days from the Effective Date, submit to Seller any written objections to the title commitment and any matters shown thereon ("**Title Objections**"). Any items not objected to by the Borough shall be a "**Permitted Exception**" hereunder, except for any matters arising after the date of the title report.
- b. If the Borough timely makes Title Objections by written notice which identifies the exception, Seller shall have the right, but not the obligation, to cure or attempt to cure the exception within twenty (20) days after receipt of such written notice. In the event Seller is unable to, or elects not to, cure any one or more of the exceptions, the Seller shall notify the Borough of its inability to cure the exception or of its election not to cure the exception. The Borough shall then be permitted to either elect to make the exception a Permitted Exception, or to terminate this Agreement and any monies held by the Escrowee shall be returned to the Borough within 3 days of the termination of the Agreement.
- c. Immediately prior to Closing, the Borough shall have the right to update the title report for the Property ("**Title Update**"). If the updated title report reveals (or the Borough otherwise becomes aware of) a title defect or exception created after the conclusion of the title review as set forth in this Article 5, the Borough shall notify Seller of such title defect or exception and Seller shall use commercially reasonable efforts to cause such title defect or exception to be removed on or before Closing. If Seller is unable to, or has failed to, cure such title defect or exception using commercially reasonable efforts on or before Closing, the Borough may either 1) elect to take title subject to the exceptions which shall be treated as Permitted Exceptions, or 2) terminate this agreement. Notwithstanding the foregoing, Seller shall be required to discharge all mortgages, judgments, tax liens, and other liens which are dischargeable by the payment of a sum certain at the Closing.

B. **Marketable Title:** Seller agrees to convey the Property to the Borough and the Borough agrees to accept from Seller, title that is free and clear of all liens, encumbrances, easements, leases, options, agreements, dower, curtesy and any other rights of others except for any Permitted Exceptions and the following which shall be deemed acceptable by the Borough and/or constitute Permitted Exceptions:

- (i) The rights of utility companies to maintain pipes, poles, cables, and wires

over, on and under the street, the part of the Property next to the street or running to any improvement on the Property, provided any encroachment of same onto the Property is as of record, and

- (ii) Recorded agreements, unless objected to under Article 5(A)(ii) or such agreements are presently violated by either party thereto or such agreement limits the use of the Property for the Borough's intended use as open space, and
- (iii) Possible encroachment of signs, arbor and macadam parking area onto Werimus Road.
- (iv) The environmental condition of the property including the open NJDEP Case No. 96-05-07-1620-44 (the "NJDEP Case").
- (v) All exceptions to title identified on Exhibit A, attached hereto and made a part hereof.

C. **Further Encumbrances**: Upon execution of this Agreement, Seller shall not take any action that would encumber the Property's title in a manner that would preclude the conveyance of marketable title at Closing.

D. **Environmental Contamination**: Upon execution of this Agreement, Seller shall continue to abide by all laws and regulations governing the use of the Property. Seller shall not take any action that would result in a discharge of any hazardous substances as defined by the NJ Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et. seq., onto the Property or take any action which would result in an increase to the level(s) of contamination on the Property or cause the spread of such contamination, including but not limited to, pesticides, soil and/or groundwater contamination, currently present on the Property.

6. **Leases**. The Seller represents and warrants that there are currently no leases or rental agreements affecting the Property or rights to the Property that will not be terminated by the date of Closing. Upon execution of this Agreement, Seller shall not take any action which would result in the creation of new any lease or rental agreement upon the property or which would otherwise affect rights to the Property as of the date of Closing.

7. **Due Diligence**.

Due Diligence shall be limited to the examination of title and securing a title commitment as set forth in Article 5. The Borough hereby expressly acknowledges and agrees that except as expressly provided to the contrary in this Agreement: (a) Seller makes and has made no warranty or representation whatsoever as to the condition or suitability of any portion of the Property; (b) Seller has made no warranty, express or implied, with regard to the accuracy of any information furnished to Borough, and Seller shall not be bound by any statement of any broker, employee, agent or other representative except as set forth herein; (c) Borough has examined and inspected

the Property (including without limitation, whether or not hazardous or toxic materials are located on or under or generated from any portion of the Property) and is fully satisfied with said examination and inspection; (d) notwithstanding the nature or extent of the inspections Borough has made or will make, and with the exception of Seller vacating the Property and Seller's obligation to remove personal property including the current items listed in Exhibit B from the Property on or before the Closing Date; the Borough shall purchase and accept every portion of the Property in its "AS-IS" condition without requiring any action, expense or other thing or matter on the part of the Seller to be paid or performed and, upon acceptance of the Deed at Closing; and (e) other than as set forth herein or in any document delivered at Closing, Seller makes and has made no warranty, express or implied, concerning any portion of the Property, its condition, the use of which it may be put, any environmental matters, or any other thing or matter directly or indirectly related thereto.

The provisions of this Article shall survive Closing and delivery of the Deed.

8. Obligations of Seller. Upon the Effective Date, Seller shall have the following obligations:

- A. Seller shall give the Borough prompt notice (within five (5) business days after its receipt of notice of same) of: (i) any actual or threatened enforcement action by any governmental agency or authority other than the Borough relating to the use, condition, or environmental condition of the Property; or (ii) the commencement of any action by any party seeking relief which could result in the imposition of a lien on the Property, including, without limitation, an action to foreclose any mortgage on the Property; and
- B. Documents. Within 30 days of full execution of this Agreement, Seller shall provide Carlin & Ward, P.C. without any representation or warranty, documents submitted to and received from the NJDEP in connection with the NJDEP Case that are in the actual possession of Seller's LSRP, subject and pursuant to the terms of the fully executed Confidentiality and Nondisclosure Agreement between Herold Law, P.A. and Carlin & Ward, P.C. dated May, 2017.
- C. Cooperate with the Borough with respect to providing all necessary documents for closing of title.
- D. Post-closing, Seller shall have its LSRP cooperate fully with the Borough's LSRP, at the Borough's sole cost and expense, as to the then-pending status of the NJDEP Case, and provide to the Borough, at the Borough's sole cost and expense, all documents submitted to and received from the NJDEP in connection with the NJDEP Case that are in the actual possession of Seller's LSRP.

9. Obligations of the Borough. Upon the Effective Date, the Borough shall have the following obligations:

- A. In accordance with Article 22(A), file a Form C-9600 with the New Jersey Division of Taxation at least 21 days prior to Closing for the determination of any Bulk Sale escrow that may be required in connection with the transaction.

10. Documents To Be Delivered By Seller At Closing. At the Closing, Seller shall deliver to the Borough:

- A. The customary New Jersey form of Bargain and Sale deed, with covenant against grantor's acts, together with Seller's Residency Form and Affidavit of Consideration, in recordable form.
- B. A customary title affidavit from the Seller;
- C. A Closing statement showing the applicable Closing adjustments;
- D. FIRPTA affidavit from the Seller;
- E. Completed IRS 1099-S form from the Seller;
- F. Certification that Seller's representations set forth in Article 13 remain true and correct in all material respects, or if not so true and correct, setting forth any changes therein;
- G. Any required transfer tax forms, executed and acknowledged by Seller and in proper form for submission;
- H. Other documents reasonably requested by the Borough's title company or attorney to be executed and delivered at Closing;
- I. An executed Release in the form annexed hereto as annexed hereto as Exhibit C.
- J. Executed NJDEP Forms to transfer in total the open NJDEP Case to the Borough.

11. Documents to be Delivered by the Borough at Closing. At the Closing, the Borough shall deliver to Seller:

- A. Written authorization for the Escrowee to release from escrow and deliver to Seller the Purchase Price in the manner set forth in Article 3, and to deliver directly the Relocation Payment set forth in Article 23, subject to Closing adjustments;
- B. All required transfer tax forms, executed and acknowledged by the Borough and in proper form for submission including, but not limited to, Buyer's Affidavit of Consideration;
- C. Bulk Sale Escrow Letter, as defined in Article 22(B), or Bulk Sales Clearance Letter, whichever is received before Closing, from the Division of Taxation;

- D. Resolution or other evidence of the Borough's approval of this transaction and its authorized signatory.
- E. A Release in the form annexed hereto as Exhibit C.
- F. Other documents reasonably requested by the Seller's attorney to be executed and delivered at Closing, including but not limited to documentation in connection with any 1031 or 1033 exchange.
- G. Executed NJDEP Forms to transfer in total the existing NJDEP Case to the Borough.

12. Adjustments.

- A. The Parties acknowledge that the New Jersey Realty Transfer Tax and Mansion Tax are inapplicable as this transaction is exempt from same due to it being a conveyance of property to an instrumentality of the State of New Jersey. The Borough shall take such steps as may be necessary to obtain such exemption from New Jersey Realty Transfer Tax and any such exemption from the Mansion Tax. In the event Seller is required to establish the Division Escrow with the Escrow Agent, defined in Article 23, below, such amount shall be escrowed from the Purchase Price at Closing as set forth in Article 23. This provision shall survive the Closing.
- B. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement (or would have been included if not for any such error or omission) and notice is given within two (2) months of the date of the delivery of the Deed to the party to be charged, then such party agrees to make a payment to correct the error or omission. This Article shall survive Closing.

13. Seller's Representations. In all material respects, Seller represents and warrants, which representations and warranties are a condition precedent to the Borough's obligation to close title and shall be true and correct as of the Closing but shall not survive closing:

- A. Seller is authorized to enter this Agreement and to sell the Property to the Borough;
- B. Seller has no actual knowledge of, and has not received any written notice of, any violations from any municipal, county, or state agency relating to the Property not known to the Borough which remain uncured;
- C. Except for the NJDEP Case, there are no third party judicial, administrative, mediation, or arbitration actions, suits or proceedings pending or, to Seller's actual knowledge, threatened against or affecting the Property, title to the Property, or Seller's ability to convey title to the Property;
- D. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the

Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations;

- E. No bankruptcy, reorganization, or insolvency proceedings are pending or contemplated either by Seller or, to the Seller's actual knowledge, against Seller;
- F. Seller has no knowledge of any rights-of-first-refusal, options to purchase, rights of entry, options to lease or purchase, or similar agreements that exist in regard to the Property;
- G. Seller has not taken any intentional and knowing action that would result in an increase to the levels of any existing contamination, including but not limited to, pesticides, soil and/or groundwater contamination;
- H. Expressly subject to the terms contained in Articles 20(T) and 20(U) below, and expressly subject to the right of Seller to initiate suit to enforce his rights and remedies under this Agreement, the Seller will not file against the Borough any lawsuit pertaining to the Property during the pendency of this Agreement.
- I. To the Seller's knowledge, no one has claimed a right to, or otherwise asserted a right to, an easement that would encumber the Property and title being conveyed by Seller, and
- J. To the Seller's knowledge, there are no unrecorded mechanic's liens or other liens encumbering the Property.
- K. Other than the current DEP Case, the historic pesticides and the impacted water and soil underneath the building, Seller has no knowledge of any additional contamination with respect to the Property.
- L. The Purchaser acknowledges and agrees that, except as expressly set forth herein, neither the Seller, nor any agent or representative of the Seller has made, and the Seller is not liable or responsible for or bound in any manner by, any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information, or inducements pertaining to the Property or any part thereof, title to the Property, the physical condition thereof, the fitness and quality thereof, the value and profitability thereof, or any other matter or thing whatsoever with respect thereto. The Purchaser acknowledges, agrees, represents, and warrants that it has had access to the Property and such other matters and to information and data relating to all of same as the Purchaser considers necessary, prudent, appropriate, or desirable for the purposes of this transaction and, without limiting the foregoing, that the Purchaser and its agents and representatives have independently inspected, examined, investigated, analyzed and appraised all of same. Without limiting the foregoing, the Purchaser acknowledges and agrees that, except as expressly set forth in this Contract, neither the Seller nor any member, manager, officer, employee, agent, or

representative of the Seller is liable or responsible for or bound in any manner by (and the Purchaser has not relied upon) any verbal or written or supplied representations, warranties, covenants, agreements, obligations, guarantees, statements, information, or inducements pertaining to the Property or any part thereof, and any other information respecting same furnished by or obtained from the Seller or any agent or representative of the Seller. The Purchaser acknowledges and agrees that, except as otherwise provided in this Contract, the Purchaser is purchasing the Property "as is" at the date hereof including but not limited to the environmental condition of the Property. Upon the closing of title, the Purchaser shall forever defend, indemnify and hold harmless the Seller from any and all claims, notices, demands, directives, orders, actions, suits, complaints of any kind, and costs (including attorney and expert witness fees) arising, either directly or indirectly, from the Property or the condition of the Property. Purchaser's obligations in this paragraph shall survive closing of title and delivery of the deed.

14. The Borough's Representations. The Borough represents and warrants as follows to Seller, knowing that Seller shall rely thereon in executing this Agreement and consummating this transaction, which representations and warranties are a condition precedent to the Seller's obligation to close title and shall be true and correct as of the Closing:

- A. The Borough is a duly formed New Jersey body politic and has the requisite power and authority to enter into this Agreement, and has passed a Resolution specifically authorizing the execution of this Agreement. This Agreement and all documents to be delivered by the Borough at Closing are and will be properly executed and will constitute the valid and binding obligations of the Borough, enforceable in accordance with their terms;
- B. Neither the Borough nor its principles have ever filed a voluntary bankruptcy petition nor does it contemplate filing such petition, and further, no involuntary bankruptcy petition has ever been filed against it. The Borough and its principles further represent that it has not made an assignment for the benefit of creditors, nor filed for any other form of creditor protection in state court. The Parties agree that if, during the pendency of this Contract, a voluntary or involuntary bankruptcy petition is filed by or against the Borough and its principles, or if a state court insolvency (creditor protection action) is filed against the Borough and its principles, Seller shall have the option of declaring this Agreement null and void by written notice directed to the Borough and the Borough's attorney, and
- C. The Borough represents it has and shall maintain the financial resources and capacity required to fund the Borough's obligations under this Agreement including, but not limited to, the full amount of the Purchase Price and Relocation Payment and the environmental investigation and remediation costs. Seller is not responsible for any violations of law at the Property existing on the date of full execution of this Agreement. Other than those violations of law previously disclosed by Seller as set forth in this Agreement, the Borough is not aware of any other violations of law at the Property and Seller shall be responsible only for any new intentional or negligent violations of law at the Property that occur between the date of full execution of this

Agreement and the date of closing.

- D. In consideration of this Agreement, the Borough will not file against Seller any claim, lawsuit, charge, or complaint, or any other legal or administrative proceeding pertaining or relating to the Property. Notwithstanding the foregoing, the Borough may enforce its ordinances as to any new intentional or negligent violations of law at the Property by Seller that occur between the date of full execution of this Agreement and the date of closing. Further, Seller and the Borough each have the right to initiate suit to enforce their respective rights under this Agreement.

15. Brokers. Seller and the Borough each represents and warrants to the other that it has not dealt with any broker, finder or similar agent in connection with the transaction contemplated by this Agreement, and that it has not taken any action which would result in any broker's, finder's or other fee or commission being due or payable to any party. The Seller and the Borough shall each indemnify and hold harmless the other against all liability, loss, cost and expense (including reasonable attorney's fees) resulting from a breach of the forgoing representation and warranty of the indemnifying party. This Article shall survive Closing.

16. Possession. At the Closing, the Borough will be given possession of the Property free and clear of any tenants, occupants, lease agreements, and/or rights or agreements of others to occupy, possess or hold any title or interest in the Property other than those which may have been given by the Borough.

- A. Attached as Exhibit B is the list of Personal Property that will be removed from the Property by Seller no later than the Closing Date. This Article shall survive Closing.

17. Environmental: Subject to Seller's representations and warranties as set forth in Article 13 to this Agreement, and the One Hundred Thousand Dollar (\$100,000) credit for the costs of any required remediation, the Borough shall acquire the Property in "as-is whereas" condition. Upon Closing, the Borough shall accept responsibility for the remediation of any contamination upon the Property as may be required at law. The Borough shall execute and deliver to Seller a Release in the form of Exhibit C hereto, of any further liability for any contamination existing on the Property. At or prior to closing, Seller's LSRP shall file an online withdrawal with NJDEP for the existing NJDEP Case, and the Borough shall cause its LSRP to file contemporaneously with the above withdrawal an online retention for the NJDEP Case, and, further, at or prior to Closing Seller and the Borough shall execute and file with NJDEP all forms necessary to substitute the Borough in place of Seller as the Party Responsible for the Remediation and at and after Closing the Borough shall be responsible for all investigation and remediation costs associated with contamination at, on or emanating from the Property and for all LSRP costs and NJDEP fees assessed thereto.

This Article shall survive Closing.

18. Default. Seller and the Borough shall each provide the other with written notice of any alleged default under this Agreement. The Party in default shall have ten (10) days to cure from receipt of such notice. Either party can seek relief from the Court for any default under this Agreement.

19. Notices. Any report, demand, notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by (a) recognized overnight national courier service (such as Federal Express) for next day delivery; (b) certified or registered mail, return receipt requested, first class postage prepaid; (c) personal delivery, to the attorneys for the Seller and Borough, or (d) email to the attorneys for the Seller and Borough. In any event, copies of all notices under this Agreement shall be sent:

If to Seller:

Peter Molyneux
265 Colby Place
Paramus, New Jersey 07652,

With a copy to:

Robert F. Simon, Esq.
Herold Law, PA
25 Independence Blvd.
Warren, NJ 07059-2720
Phone: 908-647-1022
Email: rsimon@heroldlaw.com

If to the Borough:

Tom Padilla
Borough Administrator
88 Pascack Road,
Woodcliff Lake, New Jersey 07677

With a copy to:

Scott A. Heiart, Esq.
Carlin & Ward, P.C.
25A Vreeland Road
P.O. Box 751
Florham Park, New Jersey 07932
Phone: 973-377-3350
E-mail: Scott.Heiart@carlinward.com

20. Miscellaneous.

- A. This Agreement provides for the Borough's acquisition of the Property by negotiated agreement in lieu of condemnation.
- B. No provision of this Agreement may be amended, changed or waived orally, but only by an instrument in writing signed by Seller and the Borough.

- C. Each of the Parties hereby agrees to execute, acknowledge, and deliver such other documents or instruments as the other may reasonably require from time to time to carry out the purposes of this Agreement.
- D. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- E. If the time by which any right, option, or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, or legal or bank holiday, then such time shall be automatically extended through the close of business on the next business day.
- F. Each party acknowledges that it has participated, with the advice of counsel, in the preparation of this Agreement. No party is entitled to any presumption with respect to the interpretation of any provision hereof or the resolution of any alleged ambiguity based on any claim that the other party drafted or controlled the drafting of this Agreement.
- G. This Agreement constitutes the entire agreement of Seller and the Borough with respect to the subject matter hereof, and supersedes all prior and contemporaneous representations, agreements, and understandings, whether written or oral.
- H. Any paragraph, Article or Article headings or captions contained in this Agreement shall be for reference purposes only and shall not affect the construction or interpretation of any provision in this Agreement.
- I. The Parties hereby agree to indemnify and defend the Escrow Agent from all suits, actions, or claims if the Escrow Agent acts in good faith on the written notice and direction of the Parties.
- J. This Agreement shall be governed by New Jersey law without regard to its conflict of law principles and any dispute shall be venued in the Superior Court of New Jersey, Bergen County vicinage, unless otherwise agreed to by the Parties.
- K. **Jury Trial Waiver.** Seller and the Borough hereby waive their rights to a trial by jury in any action or proceeding concerning the breach or enforcement of this Agreement.
- L. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Agreement remains valid and enforceable to the fullest extent

permitted by law, but only if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable.

- M. Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by email is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged. Any party delivering an executed counterpart of this Agreement by email shall also deliver a manually executed counterpart of this Agreement, but the failure to do so does not affect the validity, enforceability, or binding effect of this Agreement.
- N. Gender Usage.** All words and phrases used in this Agreement, including, without limitation, all defined words and phrases, regardless of the number or gender in which used, shall be deemed to include any other number or gender as may be reasonably required by the context. If Seller is designated in this Agreement to be more than one person, then, in such event, each person so designated shall be jointly and severally liable for all duties, obligations and liabilities of Seller.
- O. Waiver.** Each party shall have the right, in its sole discretion, for any reason or for no reason, to waive any condition precedent or contingency contained in this Agreement for the benefit of said party, provided that such waiver shall be in writing and if any such waiver occurs, this Agreement shall be interpreted and construed as if such condition precedent or contingency had never been a party of this Agreement, except to the extent that said condition precedent or contingency is stated in this Agreement to be also for the benefit of the other party.
- P. Authority to Execute.** The parties executing this agreement represent and warrant that they have full authority and/or have been duly authorized by their respective corporations to do so on behalf of such corporations.
- Q. Date of Agreement.** The date of this Agreement shall be the date on which a fully executed copy is first exchanged between the parties, which date will be inserted at the top of the first page hereof.
- R. Attorney Fees.** In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, but without limitation, the obligation to pay costs of defense in the form of court costs and attorneys' fees.

- S. **Next Business Day.** If any date on which a time period scheduled to expire herein or on which payment or performance is due falls on a Saturday, Sunday or holiday, the subject date shall be extended to the next business day.
- T. **Non-Evidential and No Recording.** The execution of this Agreement shall not operate as an admission, release or acknowledgment of any fact, conclusion of law, liability, responsibility or waiver of any claim or defense by any Party (except as provided herein), and nothing herein shall waive, prejudice or affect any other rights or liabilities of any Party in that regard. This Agreement shall not be evidential in any determination of “just compensation” by a court of competent jurisdiction should formal condemnation proceedings be pursued, nor shall it constitute a waiver of any claims or defenses of Seller relating to the Borough’s actions, including its authority to condemn. This Agreement shall not be used as evidence in any action or proceeding for any purpose other than to establish or to enforce its terms. Should this Agreement be terminated for any reason, or should closing not take place or be challenged by any third party, Seller shall not waive any and all rights to contest the Borough’s authority to acquire the Property and does not waive Seller’s right to seek damages including additional compensation beyond the Purchase Price and relocation funds. In such an event, Seller reserves the right to raise any and all claims and defenses against the Borough pertaining to this matter, or any matter. Further, any Relocation Self Move Agreement or Mutual Releases that may be attached as an Exhibit to this Agreement as to form (and which shall not be operable until closing of title and delivery of the deed) shall continue to be declared null and void and of no force or effect. Should there be a third party legal challenge of this Agreement or the Borough’s authority or right to enter into same, the Borough shall immediately notify the Seller in writing and provide Seller with a copy of the applicable pleading, and the Seller shall have the option to terminate this Agreement within 21 days of being notified in writing of said legal challenge and being provided with a copy of the applicable pleading. Should Seller not terminate within 21 days, the Borough shall defend said legal challenge. Should the Borough notify the Seller in writing of said challenge subsequent to March 30, 2018, the Borough shall reimburse the Seller for all damages and expenses incurred by Seller to the extent that the items set forth on Exhibit B have been removed from the Property. This paragraph shall survive closing of title.
- U. All statutes of limitation or any other time-based limitations or defenses, including, but not limited to, any time-based claims or defenses pursuant to New Jersey Court Rule 4:69-6, whether at law, in equity, under statute, contract, or otherwise, including those that might be asserted as a bar, limitation, or defense to any suit, action, arbitration, claim, counterclaim or defense arising from or relating in any way to the Property or the acts or omissions of the Borough, including but not limited to the Borough’s authority to condemn (“Claims and Defenses”), are hereby tolled until the later of the following: (1) the Closing Date, (2) the expiration of any statutes of limitation or any other time-based limitations, or extensions thereof, for any third party to challenge or otherwise object to this Agreement, any Resolution adopted in connection therewith, or to the authority of any of the parties to said Agreement to

enter into same, or (3) the final adjudication and disposition of any third party challenge or objection to this Agreement, any Resolution adopted in connection therewith, or to the authority of any of the parties to said Agreement to enter into same (the "Tolling Period"). Any defenses of laches, estoppel, or waiver, or other equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the tolled Claims and Defenses. This Agreement shall not be recorded and any recording shall be deemed a material default under this Agreement. This paragraph shall survive closing of title.

- V. **Like Kind Exchange.** If requested by Seller and it will not result in a delay of the Closing, Purchaser will cooperate with Seller so this transaction may be part of a like kind exchange under Section 1031 or Section 1033 of the Internal Revenue Code of 1986, as amended, and to execute any agreements and documents that may be required by the other party to effectuate same including, without limitation, executing such documents as may be required by any qualified intermediary, at the requesting party's sole cost and expense.
- W. The Parties shall not assign this Contract, in whole or in part, to another party, without the prior written consent of the other party, which consent the non-requesting party may grant or withhold in its absolute discretion. In the event of any permitted assignment, the assignee of this Contract shall personally assume all of the assignor's obligations hereunder. Notwithstanding the foregoing, Seller may assign this Contract as part of a like kind exchange under Section 1031 or Section 1033 of the Internal Revenue Code of 1986, as amended.
- X. It is Purchaser's sole obligation to obtain any certificates of occupancy, certificates of approval and/or certificates of habitability required for transfer of the Property, and Purchaser undertakes to do so prior to the Closing at its sole cost, and to take all steps necessary for such certificates to issue.
- Y. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Seller, that there shall be absolutely no personal liability, on the part of Seller, its constituent members, (to include but not be limited to officers, members, managers, directors, beneficiaries, partners and trustees), their respective successors and assigns (for the purpose of this Section, collectively referred to as "Seller", with respect to any of the terms, covenants and conditions of this Agreement), and that Purchaser shall look solely to the equity of Seller in the Property for the satisfaction of each and every remedy of Purchaser in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by Seller, such exculpation of liability to be absolute and without any exceptions whatsoever. The foregoing limitation of liability shall be noted in any judgment secured against Seller and in the judgment index.
- Z. **Casualty.** If, prior to Closing, all or a significant portion of the items to be relocated as set forth in Exhibit B are substantially damaged or destroyed by fire or other casualty,

the Parties will attempt in good faith to negotiate a revised Self Move Agreement, with the Seller reserving all rights and remedies as to relocation. In the event that the items to be relocated are only partially damaged, Seller shall be entitled to restore any such partial damage, through the proceeds of insurance or otherwise, and this Agreement will remain in full force and effect.

21. Escrow Agent.

- A. Escrow Agent shall not be required to institute legal action or proceedings of any kind or nature and shall have no responsibility for the genuineness or validity of any document or other item deposited with it or the collectability of any check delivered in connection with this Agreement. Escrow Agent shall be fully protected in acting in accordance with any written instructions given to it hereunder and believed by it to be signed by the proper Parties. This provision shall survive Closing.
- B. Escrow Agent shall provide the Parties with five (5) business days written notice before releasing the Purchase Price. If Escrow Agent receives written notice of an objection to the release of the Purchase Price, Escrow Agent shall not release or deliver the Purchase Price to either party until otherwise directed in a writing signed by the Borough and Seller, or by a final, non-appealable order of a court of competent jurisdiction. The Escrow Agent may also deposit the Purchase Price with the clerk of any court of competent jurisdiction. Upon such deposit, Escrow Agent will be released from all duties and responsibilities hereunder.
- C. The Parties authorize Robert F. Simon, Esq., Herold Law, P.A., counsel for the Seller, to serve as Escrow Agent and waive any conflict of interest that may be created by acting as both counsel for the Seller and as Escrow Agent.

22. Bulk Sale Provision.

- A. Seller acknowledges that, at least twenty (21) days in advance of Closing, the Borough will be required to file with the State of New Jersey, the Division of Taxation (the "**Division**"), a form C9600, Notification of Sale, Transfer, or Assignment in Bulk, along with an executed copy of this Agreement, enumerating the purchase price and the terms and the conditions hereof, and such other documents and information as required by the Division and/or law. Seller further acknowledges that the Borough may be given notice by the Division to withhold a portion of the Purchase Price in escrow ("**Division Escrow Letter**") for the payment of Seller's taxes and other obligations due the State of New Jersey and that same shall be withheld from the Purchase Price in an Escrow ("**Division Escrow**") to be held by the Escrow Agent. Seller further acknowledges that it is Seller's obligation to obtain a letter of clearance from the Division to release the Division Escrow as permitted and directed by the Division (a "**Letter of Clearance**"). To facilitate obtaining the Letter of Clearance, Seller may file an asset transfer tax declaration with the Division. The Parties agree to cooperate in good faith with each other with filing the documents required by the Division under the Bulk Sale and any other applicable law.

B. The Borough shall have the right to hold back the Division Escrow from the Purchase Price as required by the Division under the Bulk Sale Law as same may be directed by the Division Escrow Letter or such other directive from the Division. The Division Escrow, including any interest accrued thereon, shall be held by the Escrow Agent. The Borough and Seller agree to be bound by the escrow requirements imposed by the Division. Upon demand by the Division, the Escrow Agent shall disburse to the Division such amounts from the Division Escrow as the Division shall require. Any remaining balance of funds in the Division Escrow shall be disbursed to Seller immediately after the Division has authorized the release of such funds in writing by issuing a Letter of Clearance, and Seller shall have no further obligations hereunder.

C. The provisions of this Article 22 shall survive the Closing.

23. Relocation Assistance. The Seller is entitled to relocation assistance as provided for under New Jersey relocation laws and regulations, including the Relocation Acts (N.J.S.A. 52:31b-1 et seq. and N.J.S.A. 20:4-1 et seq.) and the regulations promulgated thereunder for Relocation Assistance (N.J.A.C. 5:11-1 et seq.). The Seller has determined it will be relocating its operations conducted on the Property. The Parties have examined the prospective claims that Seller may have for such assistance and have agreed upon the sum of Seventy-Five Thousand Dollars (\$75,000.00) as the liquidated amount of relocation assistance (“Relocation Payment”) the Seller is entitled to under law. The Seller shall execute a self-move agreement in the form annexed hereto as Exhibit D at the time the Relocation Payment is made. The Relocation Payment shall be paid to Seller at Closing in addition to the Purchase Price. As set forth in Exhibit D annexed hereto, Seller shall remain in possession of the Property until the Closing Date. On said Closing Date Seller shall have the obligation to deliver the Property to the Borough free and clear of all items listed on Exhibit B.

(Signature page follows)

IN WITNESS WHEREOF the Parties have executed this Agreement the day and year first above written.

SELLER:

PETER MOLYNEUX

By: _____
Peter Molyneux

Galaxy Landscape Co., Inc. DBA GALAXY GARDENS

By: _____

Name: _____

Title: _____

BUYER:

BOROUGH OF WOODCLIFF LAKE

By: _____
Carlos Rendo
Mayor

I agree to serve as Escrow Agent in accordance with the terms of this Agreement.

Herold Law, P.A.

By: _____
Robert F. Simon, Esq.

EXHIBIT A EXCEPTIONS
TO TITLE

EXHIBIT B

LIST OF PERSONALY PROPERTY TO BE RELOCATED

Trucks
Trailers
Backhoes
Forklifts
Container nursery trees
Container nursery shrubs
Perennials
Seed
Business equipment and supplies
Tools
Tables
Storage racks and sheds
Cabinets
Computers
Stone items (Pillars and stone materials)
Mulch bag and bulk
General garden center equipment
Cement Blocks
Mechanical and garden Tools
Fertilizer
computers
Telephone system
Greenhouses Security equipment
Well pump and motor and tanks
Two Plastic Greenhouses

EXHIBIT C

RELEASES TO THE BOROUGH OF WOODCLIFF LAKE AND MOLYNEUX PARTIES

MUTUAL RELEASE

This MUTUAL RELEASE (the "Release"), is made this ___ day of _____, 2018 by and between **PETER MOLYNEUX** ("**Molyneux**"), an individual with an address at 265 Colby Place, Paramus, New Jersey 07625, **GALAXY LANDSCAPING CO., INC.** d/b/a **GALAXY GARDENS** which has a place of business at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey 07677 ("**Galaxy Gardens**" and together with Molyneux are hereinafter referred to as the **Molyneux Parties**"), and the **BOROUGH OF WOOLCLIFF LAKE**, a Municipal Corporation of the State of New Jersey with a mailing address of 188 Pascack Road, Woodcliff Lake, New Jersey 07677 ("**Borough**") (the Molyneux Parties and the Borough each being a "**Party**", and together referred to as the "**Parties**"),

In consideration of closing of the transaction pursuant to the promises, covenants, agreements and mutual promises contained in the Purchase and Sale Agreement between the Parties (the "PSA"), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RELEASE BY MOLYNEUX AND GALAXY GARDENS TO THE BOROUGH.** The Molyneux Parties, hereby, for themselves and their officers, directors, agents, employees, representatives, shareholders, joint venturers, divisions, parent corporations, affiliates, subsidiaries, successors, assigns, heirs, and all related corporate or non-corporate entities, if any and where applicable, hereby release and forever discharge the Borough, including its agencies, offices, affiliates, elected officials, officers and directors, servants, employees, attorneys, agents, and insurers, of and from any and all actions and causes of action, suits, debts, dues, accounts, covenants, contracts, agreements, judgments, promises, rights, damages, costs, attorney's fees, expenses obligations, compensation, claims, liabilities and any other demands whatsoever, in law or in equity (the "Galaxy Gardens Claims"), which the Molyneux Parties have, had, or might have or could claim or assert against the Borough in connection with the property located at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey, also known as Block 1402, Lot 7 on the Borough of Woodcliff Lake tax maps. The Molyneux Parties hereby represent and warrant that they have not assigned any such released claim to any third party. This release shall be effective upon the performance of all obligations under the PSA and this Release and upon the Closing Date as defined within the PSA, unless as otherwise set forth in the PSA.

2. **RELEASE BY THE BOROUGH TO THE MOLYNEUX PARTIES** The Borough, hereby, for itself and its agents, employees, representatives, divisions, elected officials, agencies, affiliates, successors, assigns, and all related government or non-government entities, if any and where applicable, hereby release and forever discharge the Molyneux Parties, including their agencies, offices, affiliates, elected officials, officers and directors, servants, employees, attorneys, agents, heirs, successors and assigns, and insurers, and any predecessor owners and operators on the Property, of and from any and all actions and causes of action, suits, debts, dues, accounts, covenants, contracts, agreements, judgments, promises, rights, damages, costs, attorney's fees, expenses obligations, compensation, claims, liabilities and any other demands whatsoever, in law or in equity (the "Borough Claims"), which the Borough did have, had, or might have or could claim or assert against the Molyneux Parties in connection with the property located at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey, also known as Block 1402, Lot 7 on the Borough of Woodcliff Lake tax maps. The Borough hereby represents and warrants that it has not assigned

any such released claim to any third party. This release shall be effective upon the performance of all obligations under the PSA and this Release and upon the Closing Date as defined within the PSA, unless otherwise set forth in the PSA.

2. **NO ADMISSION OF WRONGDOING.** The Parties acknowledge and agree that the making and performance of this Mutual Release is not intended to, and shall not be construed as, an admission of wrongdoing by either Party or any of the released parties.

3. **NO OTHER PROCEEDINGS.** Each Party represents to the other that it has not filed any charges, complaints, claims or legal proceedings of any kind by one against the other Party in any court or administrative agency.

4. **COVENANT NOT TO SUE.** The Parties covenant and agree that, except as provided for and/or reserved in the PSA and this Release, they will not file, against one another or any of the released parties, any claim, lawsuit, charge, or complaint, or any other legal or administrative proceeding, at any time hereafter for the Galaxy Gardens Claims and the Borough Claims released herein. If either Party violates this covenant, it shall indemnify and hold harmless the other from and against any and all costs, expenses, legal fees, reasonable attorneys' fees, expert costs, and damages paid by them. If any such proceedings have already been filed, the Party shall take all necessary actions to dismiss it with prejudice prior to receipt of any payments made pursuant to the PSA. Nothing in this Section is intended or shall be construed to limit the Parties' remedies in the event of a breach of this Agreement or otherwise limit their ability to enforce the PSA or this Release as provided for herein.

5. **RIGHT TO ENFORCE.** Nothing in this Release is intended or shall be construed to limit the Parties' remedies in the event of a breach of this Release or of the PSA or of the Relocation Self Move Agreement or otherwise limit their ability to enforce the PSA or this Release or the Relocation Self Move Agreement.

5. **AUTHORITY TO EXECUTE** Each of the Parties represent and warrant to each other that the individual signing for and on behalf of it has complete and full authority to act on such Party 's behalf and has the authority to bind all other persons or entities with any right, title or interest in that Party's claims. Each of the Parties warrants that it has not assigned any right, title or interest in the claims that are hereby released in this Agreement.

6. **INTEGRATION.** This Release, together with the PSA and exhibits thereto, constitutes a single, integrated written contract expressing the full and entire agreement between the Parties with respect to the subject hereof and supersedes any prior representations, promises, or warranties (oral or otherwise) made by any Party. No Party shall be liable or bound to the other Party for any prior representations, promises, or warranties except those expressly set forth in the PSA, and in this Release upon its execution.

7. **MODIFICATION.** This Release may not be amended or modified without the written consent and approval of all Parties.

8. **MULTIPLE IDENTICAL COUNTERPARTS.** This Release may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement.

[The Rest of This Page is Intentionally Left Blank—The Next Page is the Signature Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Release to be executed and delivered as of the date last written below:

**Galaxy Landscape Co., Inc. D/B/A
Galaxy Gardens**

Peter Molyneux

By: _____

By: _____

Title: _____

Date: _____

Date: _____

Borough of Woodcliff Lake

By: _____

Title: _____

Date: _____

EXHIBIT D
SELF-MOVE AGREEMENT

RELOCATION SELF MOVE AGREEMENT

THIS RELOCATION SELF MOVE AGREEMENT (“Agreement”) made on _____, between Peter Molyneux and Galaxy Landscape Co., Inc. d/b/a/ Galaxy Gardens hereinafter collectively referred to as the “Displacee,” and the Borough of Woodcliff Lake, hereinafter referred to as the “Borough, collectively referred to as “the Parties” and individually as a “Party”;

WHEREAS the Displacee is relocating from the property identified as 223 Woodcliff Avenue, Woodcliff Lake, New Jersey, also known as Block 1402, Lot 7 on the official tax map of the Borough of Woodcliff Lake (the “**Property**”) as a result of the Displacee’s sale of the Property to the Borough in lieu of eminent domain proceedings;

WHEREAS under law, the Displacee is entitled to relocation assistance in accordance with the Relocation Assistance Act of 1971 N.J.S.A. 20:4-1 et seq., and the regulations promulgated thereunder in N.J.A.C. 5:11-1 et seq., all as amended;

WHEREAS the Displacee has requested and now agrees to relocate from the Property by moving its own personal property;

WHEREAS the required relocation assistance includes compensating the Displacee for certain eligible relocation expenses; and

WHEREAS the parties have agreed that the cost to move Displacee’s personal property from the Property would be Seventy-Five Thousand Dollars (\$75,000.00) and that the Borough believes said amount is reasonable and agrees to pay same (“Relocation Payment”) in return for the Displacee to conduct a self- move from the Property;

NOW THEREFORE, it is hereby understood and agreed by and between the Parties hereto:

1. All Recitals above are incorporated herein and made a part hereof.
2. The Borough shall pay to Displacee, through its attorney Robert F. Simon, Esq. the Relocation Payment at the Closing as set forth in the Purchase and Sale Agreement between the parties.
3. Under no circumstances will the Borough pay an amount greater than that agreed to Relocation Payment and the Displacee waives any right to later claim any additional relocation reimbursement or assistance it may be entitled to under law.
4. The Relocation Payment for the personal property being moved includes all necessary disconnects and reconnects of any machinery, equipment or other items.
5. The Displacee shall notify the Borough in writing once it has vacated the Property. The Displacee shall also turnover all keys and security codes to the Borough at the Closing.

6. At or before the time of the Borough making the Relocation Payment, the Displacee shall provide by a statement stating it has moved from the Property and, to the extent reasonably practical, setting forth the new location of the personalty that has been moved.
7. The Borough reserves the right to inspect the personal property to be relocated by Displacee as set forth on Exhibit B of the Purchase and Sale Agreement. The Borough agrees to complete such inspection within five (5) working days after notice by the Displacee of the intended move date.
8. The Relocation Payment is full payment of all Displacee's relocation benefits under all applicable relocation laws, including all claims by the Displacee, its successors, assigns, tenants, lessees, or anyone acting in its behalf, for damages resulting or alleged to have resulted directly or indirectly from the performance of the agreed upon relocation self-move. The Relocation Payment is agreed by the Parties to be payment in full of all claims of whatever nature the Displacee may have now or in the future against the Borough for relocation expenses.
9. The Displacee agrees to complete the move and vacate the Property prior to the Closing Date as set forth in the Purchase and Sale Agreement. In the event the Displacee fails to relocate all of its Personal Property as provided for in Exhibit B to the Purchase and Sale Agreement, the Borough shall have the right to dispose of same and seek all costs associated therewith, but not including attorney's fees and costs.
10. The terms of this written agreement shall be binding and represent the full and final understanding between the Displacee and the Borough.
11. **Notices.** Any report, demand, notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by (a) recognized overnight national courier service (such as Federal Express) for next day delivery; (b) certified or registered mail, return receipt requested, first class postage prepaid; (c) personal delivery, to the attorneys for the Displacee and the Borough, or (d) email to the attorneys for the Displacee and the Borough. In any event, copies of all notices under this Agreement shall be sent:

If to Seller:

Peter Molyneux
265 Colby Place
Paramus, New Jersey 07652,

With a copy to:

Robert F. Simon, Esq.
Herold Law, PA
25 Independence Blvd.
Warren, NJ 07059-2720
Phone: 908-647-1022
Email: rsimon@heroldlaw.com

If to the Borough:

Tom Padilla
Borough Administrator
88 Pascack Road,
Woodcliff Lake, New Jersey 07677

With a copy to:

Scott A. Heiart, Esq.
Carlin & Ward, P.C.
25A Vreeland Road
P.O. Box 751
Florham Park, New Jersey 07932
Phone: 973-377-3350
E-mail: Scott.Heiart@carlinward.com

12. **Miscellaneous.**

- A. No provision of this Agreement may be amended, changed or waived orally, but only by an instrument in writing signed by Displacee and the Borough.
- B. Each of the Parties hereby agrees to execute, acknowledge, and deliver such other documents or instruments as the other may reasonably require from time to time to carry out the purposes of this Agreement.
- C. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- D. If the time by which any Party hereto must act under this Agreement expires on a Saturday, Sunday, or legal or bank holiday, then such time shall be automatically extended through the close of business on the next business day.
- E. Each Party acknowledges that it has participated, with the advice of counsel, in the preparation of this Agreement. No Party is entitled to any presumption with respect to the interpretation of any provision hereof or the resolution of any alleged ambiguity based on any claim that the other Party drafted or controlled the drafting of this Agreement.
- F. This Agreement constitutes the entire agreement of Displacee and the Borough with respect to the subject matter hereof, and supersedes all prior and contemporaneous representations, agreements, and understandings, whether written or oral.
- G. Any paragraph, Article or Article headings or captions contained in this Agreement shall be for reference purposes only and shall not affect the construction or

interpretation of any provision in this Agreement.

H. This Agreement shall be governed by New Jersey law without regard to its conflict of law principles and any dispute shall be venued in the Superior Court of New Jersey, Bergen County vicinage, unless otherwise agreed to by the Parties.

13. **Jury Trial Waiver.** Displacee and the Borough hereby waive their rights to a trial by jury in any action or proceeding concerning the breach or enforcement of or related to this Agreement.

14. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to Parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Agreement remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Agreement for each Party remain valid, binding and enforceable.

I. **Counterparts.** The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by email is as effective as executing and delivering this Agreement in the presence of the other Parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each Party to the other Parties. In proving this Agreement, a Party must produce or account only for the executed counterpart of the Party to be charged. Any Party delivering an executed counterpart of this Agreement by email shall also shall deliver a manually executed counterpart of this Agreement, but the failure to do so does not affect the validity, enforceability, or binding effect of this Agreement.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have each duly executed this Agreement as of the day and year first above written.

**Galaxy Landscape Co., Inc. D/B/A
Galaxy Gardens**

Peter Molyneux

By: _____

By: _____

Title: _____

Date: _____

Date: _____

Borough of Woodcliff Lake

By: _____

Title: _____

Date: _____