

The Corporation of the Township of Southgate

By-law Number 2020-112

being a by-law to authorize an agreement between Southgate Meadows Inc. and The Corporation of the Township of Southgate

Whereas the Municipal Act, 2001, Chapter 25, as amended, Section 5 (3), states that municipal power, including a municipality's capacity, rights, powers and privileges, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise; and

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the authority to govern its affairs as it considers appropriate and enables the municipality to respond to municipal issues; and

Whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas it is deemed necessary and desirable that the Council of the Corporation of the Township of Southgate enact a by-law authorizing the Corporation to enter into an agreement with Southgate Meadows Inc.,

Now therefore be it resolved that the Council of the Corporation of the Township of Southgate enacts as follows:

1. **That** the agreement between Southgate Meadows Inc. and The Corporation of the Township of Southgate, attached hereto at Schedule A is hereby ratified and confirmed; and
2. **That** the Mayor and the Clerk are authorized to sign the agreement on behalf of the Township of Southgate; and
3. **That** where the provisions of any other by-law, resolution or action of Council are inconsistent with the provisions of this by-law, the provisions of this by-law shall prevail.

Read a first, second and third time and finally passed this 7th day of October, 2020.

John Woodbury – Mayor

Lindsey Green – Clerk

This Site Alteration Agreement made this 7th day of October, 2020, to manage the temporary placement of soil on the owner's lands.

Between:

The Corporation of the Township of Southgate
(hereinafter called the "Township")

Party of the First Part

- and -

Southgate Meadows Inc.
(hereinafter collectively called the "Owner")

Party of the Second Part

Whereas:

- a) The Owner is the owner of the lands described as 231 Glenelg Street in Schedule "A" attached hereto (collectively the "Lands"), which are the subject matter of a draft plan for residential subdivision pursuant to section 51 of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Planning Act");
- b) The Owner and the Township, as of the date of this Agreement, have not entered into a Subdivision Agreement regarding the Lands, and the Owner wishes to proceed with the temporary placement of soil, on the Lands;

Now Therefore this Agreement witnesseth that in consideration of the premises, other good and valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto (the receipt whereof is hereby acknowledged), the parties agree as follows:

Article 1 – Identification of Lands and Registrations

1.1 Legal description

The Lands which are the subject matter of this Agreement are described in Schedule "A" attached hereto.

1.2 Registrations

This Agreement shall be registered against the title to the Lands upon or after execution by the parties to it, but before the commencement of any of the Permitted Site Works, as defined in section 2.1 herein. The Township's solicitor may register this Agreement and the Owner consents to the registration of same. The Township agrees, at Owner's written request and cost, to delete this Agreement from title of the Lands the earlier of i) the Owner and the Township entering into a Subdivision Agreement; or ii) the Owner's compliance with the Permitted Site Works, as defined in section 2.1 herein; or iii) mutual written agreement of the owner and the Township.

Article 2 – Permitted Alterations

2.1 Permitted Site Works

- a) The Owner must submit plans showing the proposed works including; the source of the soil or other fill matter that is to be brought onto the Lands, the soil storage area dimensions and grading; sediment and erosion controls; restoration details; haul routes and any other modifications/works proposed for the Lands. The plans and drawings described in Schedule "B" with respect to 231 Glenelg Street (the "Approved Plans") shall be deemed to have been approved for earthworks purposes only by the Township upon execution and registration of this Agreement and the issuance of a Site Alteration Permit. The Owner shall be issued a Site Alteration Permit to undertake, at its own risk, only the site works shown on the Approved Plans (the "Permitted Site Works").
- b) All Permitted Site Works shall be conducted in conformity with the Approved Plans, the Site Alteration Permit and this Agreement. Furthermore, and notwithstanding anything in this Agreement to the contrary, the Township may require amendments or revisions to any of the Approved Plans if, prior to, or during the course of, the Permitted Site Works, it, acting reasonably, determines such amendments are necessary. The Owner hereby acknowledges that any site works not shown on the Approved Plans must be undertaken pursuant to a Subdivision Agreement, or an additional Site Alteration Agreement may be required, as determined by the Township in its sole and absolute discretion acting reasonably.
- c) The Owner hereby acknowledges and abides by the conditions set out in Schedule "C" (Conditions of Approval).

2.2 Security Requirement

Prior to the issuance of a Site Alteration Permit letter by the Township, the Owner shall deposit with the Township cash, or an irrevocable standby letter of credit from a Canadian chartered bank acceptable to the Township in a form approved by the Township, equal to the sum of \$282,909.00 representing the estimated cost of the soil removal and/or remediation measures that may be required, to be referred to as the "Security". In the

event that a letter of credit is provided, the Township shall be named as a beneficiary secured party therein and shall contain the following provisions:

- (a) The letter of credit shall be security for any obligations of the Owner pursuant to the provisions of this Agreement and the Permit, without any limitations whatsoever
- (b) Drawings on the letter of credit shall be permitted upon presentation of a letter from the Township to the bank claiming default by the Owner under the terms of this Agreement or the Permit, and such default shall not be limited to the actions of the Owner;

Partial drawings on the letter of credit shall be permitted;

- (c) If the letter of credit is not renewed at least thirty (30) days prior to the date of expiry by an irrevocable letter of renewal or replacement letter of credit in such form and on such terms acceptable to the Township, the Township may draw on up to 100% of the letter of credit on or before the date of expiry;

2.3 Insurance

The Owner maintains a certificate of general liability insurance for the Lands, in which the Owner shall name the Township as additional insured upon execution of this agreement by both parties. The amount of such policy to be at least five million dollars (\$5,000,000.00) per occurrence that protects the Township, from all claims, demands actions, suits or causes of action of any kind that may be taken or made against the Township, its officials, employees, representatives and/or agents, for any loss of or damage to property, and personal injury, including bodily injury or death, that may arise with respect to the carrying out of the Permitted Site Works, the terms of this Agreement, and/or the terms of the Permit. The policy shall name the Township as an additional insured and include non-owned automobile liability, employees as additional insured, as well as a cross-liability and severability of interests clause, and shall be endorsed to provide the Township with not less than thirty (30) days' notice in writing in advance of any cancellation or expiration. Concurrent with the delivery of executed copies of this Agreement by the Owner to the Township and prior to the commencement of the Permitted Site Works, the Owner shall provide the Township with a certificate of insurance evidencing the required coverage.

2.4 Completion of Permitted Site Works

Should the Owner fail to complete the removal of the soil stockpiles within three (3) years of executing this Agreement, or fails to comply with the Approved Plans, and the Owner has not entered into a Subdivision Agreement with the Township pertaining to 231 Glenelg Street within that time, the Township shall be entitled to draw upon the Security to complete the Permitted Site Works or to bring the Lands into compliance with the Approved Plans or to stabilize the Lands to the satisfaction of the Township.

2.5 Reduction or Transfer of Security

The Owner may request a reduction/release in security upon completion of the Permitted Site Works, and security may be reduced pending review and/or inspection by the Township Engineer, as recommended by the Township Engineer, acting reasonably. Should there be security remaining on deposit with the Township pursuant to this Agreement at such time as the Owner has entered into a Subdivision Agreement pertaining to 231 Glenelg Street, the balance of security pertaining to this Agreement may be transferred to the security required pursuant to the Subdivision Agreement, at which point the security provisions of the Subdivision Agreement shall apply.

2.6 Default

The Owner shall be held in default in the event the provisions of this Agreement or the Site Alteration Permit are not honoured and the Township has provided the Owner 30 days' notice to remedy same and the Owner has failed to do so. In the event of such default by the Owner, in addition to any other remedies available to the Township and without any limitation thereof, the Township may:

- (a) draw on the security in whole or in part;
- (b) undertake or complete any obligation of the Owner hereunder;
- (c) enter upon the Lands through its servants or agents for any purpose whatsoever;
- (d) issue a stop work order with respect to any further work upon the Lands;
- (e) recover from the Owner all costs and expenses incurred by the Township whether directly or indirectly, with respect to the default or the remedy thereof and collect such costs and expenses as municipal taxes.

Article 3 – Miscellaneous

3.1 Payment of Township's Costs

- (a) The Owner agrees to pay all the Township's costs and expenses, including, but not limited to, engineering review of plans, random soil testing by the Township if required, acting reasonably, soil testing as recommended by the Owner's environmental consultant, and legal fees incurred by the Township in negotiating and preparing this Agreement and with the enforcement thereof. Invoices for such costs and expenses shall be paid by the Owner within thirty (30) days of the date of delivery of the invoice; delivery shall be deemed to have been made on the third (3rd) day after mailing.
- (b) Unless expressly stated otherwise, all and any matters, things or activities required to be done, provided or carried out by the Owner pursuant to this Agreement, the Site Alteration Permit or the Approved Plans shall be at the Owner's sole cost and not at the Township's cost.

1.2 Notices

Any notice, invoice or other writing required or permitted to be given pursuant to this agreement (including notice of a change of address) shall be deemed to have been given if delivered personally to the party or to an officer of the applicable corporation or if delivered by prepaid first class mail, on the third (3rd) day after mailing. The address for service of each of the parties is as follows:

Owner: Flato Developments Inc.
c/o Southgate Meadows Inc.
3621 Highway #7 East, Suite 503
Markham, ON L3R 0G6

Township: The Corporation of the Township of Southgate
185667 Grey Road #9
Dundalk, Ontario NOC 1B0

To any other person at the address shown for such person in the last revised assessment roll or the latest address for such person as shown in the Township's records.

3.3 Owner's acceptance of agreement

The Owner shall not call into question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Township to enter into this Agreement and to enforce each and every term of this Agreement and this Agreement may be pleaded as estoppel against the Owner in any such proceedings.

3.4 Enurement

This Agreement and the covenants, provisions and conditions herein contained shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

[the remainder of this page is intentionally left blank]

In Witness Whereof the parties hereto have executed this agreement under the hand of their duly authorized signing officers.

The Corporation of the Township of Southgate

Per: Mayor John Woodbury

Per: Clerk, Lindsey Greem
We have the authority to bind the Corporation

Southgate Meadows Inc.

Per: Shakir Rehmatullah, President
I have the authority to bind the Corporation

Schedule "A"

Legal Description of the Owner's Lands

231 Glenelg Street

Lt Y PI 480 Dundalk; Pt Lt 225-228 Con 2 Swtsr Proton; Pt Unnamed St PI 480 Dundalk
Closed by R334255, Pt 2 16R7565; Southgate

DRAFT

Schedule "B"

Description of Approved Plans

- Site Plan Drawing detailing the Site Work, Sediment Erosion Control Plan and Site Restoration Plan attached as Schedule B-1 titled, "Glenelg Residential Development Site Alteration Plan (Drawing 104)" and "Glenelg Residential Development Site Alteration Plan – Interim (Drawing 104B)" dated September 3, 2020.
- Soil Testing, Site/Soil Management, and Reporting Protocol Document attached to this document as Schedule B-2 titled, "Glenelg Residential Development Fill Control Report", dated March 2020.

The following information is in the site plan drawing document Schedule B-1 that deals with site operations, erosion control and restoration on the lands.

General Notes:

1. Construction equipment use existing access point, located at Glenelg Street, as indicated on this drawing. Mud mat to be maintained at access point.
2. All works shall be completed in accordance with the Occupational Health and Safety Act. The General Contractor shall be deemed to be the "Constructor" as defined in the act.
3. All sediment and erosion control facilities and works are to be constructed and in place to the approval of the site engineer prior to any grading operations commencing. Typical works include silt fences, interceptor swales, straw bale check dams and sediment traps.
4. All temporary topsoil stockpiles are to be provided with the necessary sediment and erosion control features.
5. All interceptor swales are to be seeded to stabilize their banks immediately following construction.
6. Refer to application form for grubbing of trees within the limits of the fill area.
7. No grading of lands will occur within specified buffers along property lines and internal to site.
8. The location of all underground and aboveground utilities and structures are not necessarily shown on the contract drawings, and where shown, the accuracy of the location of such utilities and structures is not

guaranteed. Before starting work the contractor shall inform himself of the exact location of all such utilities and structures and shall assume all liability for damage to them.

Maintenance & Operations of Sediment Controls

Silt Fence

1. Silt fence must be inspected weekly for rips or tears, broken stakes, blow-outs and accumulation of sediment.
2. Silt fence must be inspected following all 15 mm or greater rain storm events or as directed by the site engineer.
3. Sediment must be removed from silt fence when accumulation reaches 50% of the height of the fence.
4. All silt fences must be removed only when the entire site is stabilized and as directed by the site engineer.

Straw Bale Flow Check Dam

1. Remove accumulated sediment up stream of the check dam if greater than one half of the dam height.
2. Silt removal must be under taken with care to minimize downstream sedimentation in swale or ditch.
3. Straw bale check dam and all accumulated sediment must be removed with care once the construction site is stabilized and as directed by the site engineer.

Mud Mat Maintenance

1. Inspect mud mat weekly to assess condition and ensure operation efficiency.
2. Supply and place additional clear stone as directed by site engineer.
3. Mat to remain in place until site is stabilized or as directed by the site engineer.

Decommissioning / Restoration

1. Following completion of construction and as directed by the site engineer. All erosion and sediment control works are to be removed including any accumulated sediment.
2. All works located on the lands outside the proposed development area are to be graded to match existing surrounding ground and hydroseeded.
3. All sediment build up to be removed from sediment basin. Disturbed areas and sediment basins to be treated with 25mm of topsoil and hydroseeded as directed by the site engineer

SCHEDULE "C"

Conditions of Approval

1. Owner may not commence any site works on the subject property (i.e. within the regulated area) of the Grand River Conservation Authority, (the "GRCA") until the permit has been issued by the GRCA, if required. The Township requires proof of consultation with the GRCA prior to Permitted Site Works proceeding.
2. The Owner shall maintain an entrance permit with Township, and the haul routes to be agreed to by the Owner and the Township.
3. The sediment ponds, if applicable, shall be surrounded with construction/ security fencing to restrict access, and must be reflected on the Site Plan drawing.
4. Inactive areas to be seeded shall include the placing of sufficient topsoil to ensure that the inactive areas are stabilized to the satisfaction of the Township.
5. Any off-site nuisances (i.e. dust, weeds, standing water) shall be minimized and mitigated as necessary by the Owner.
6. Any runoff directed toward other properties are to be controlled in accordance with the Approved Plans, and shall be monitored, modified and maintained as required to ensure sediment is retained on-site. Any off-site impacts shall be mitigated, by the Owner.
7. Siltation and erosion control measures shall be implemented, by the Owner, as indicated on the Approved Plans to the satisfaction of the Township's Consulting Engineer prior to, during and after the undertaking the site works, acting reasonably.
8. The use of tracking pads (i.e. mud mats) during soil receiving operation will be required to prevent tracking of soils onto the public roadway when trucks exit the site. The contractor and/or the Owner will be responsible to inspect daily and remove any mud and/or debris as required from the roadway.
9. Soil Testing, Site/Soil Management, and Reporting Protocol is to address the following:
 - a. Report to the Township test results of soils, prior to the material being received by the Owner at the frequency recommended by the Owner's environmental consultant;

- b. Report to the Township that the actual test results of the soils being received by the Owner will be provided to the Township and in addition the Owner giving a report that states that the material is in accordance to Provincial standards, and that the material is suitable for the intended use and poses no risk to the existing natural environment and local ground water. This report is to be submitted to the Township for comment prior to the material being placed on the Lands.
 - c. Inspection and management protocols of the operation to ensure that only tested material is being received; and
 - d. Incorporate a reference to the MOE documents dated January, 2014, titled "Management of Excess Soil - A Guide for Best Management Practices" and dated April 15, 2011, titled "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act".
10. All site work shall be in accordance with the Approved Plans, as outlined in inclusion documents in this agreement, Schedule B-1 titled "Glenelg Residential Development Site Alteration Plan (Drawing 104)" and "Glenelg Residential Development Site Alteration Plan – Interim (Drawing 104B)", Schedule B-2 titled "Glenelg Residential Development Fill Control Report", dated March 2020 and as approved by the Township, acting reasonably.