

## **The Corporation of the Township of Southgate**

### **By-law Number 2023-035**

being a by-law to enact an amending agreement to amend By-law No. 2022-083, being a by-law to authorize a purchase and sale agreement between Flato Greens Inc., being a subsidiary of Flato Developments 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 an amending agreement to amend the purchase and sale agreement with Flato Greens Inc.,

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

1. **That** the amending agreement between Flato Greens Inc. and the Corporation of the Township of Southgate attached hereto as Schedule A, is hereby ratified, and confirmed; and
2. **That** the Mayor and the Clerk are authorized and directed to sign the agreement, in substantially the same form as the agreement attached hereto as Schedule "A", on behalf of the Council of the Corporation of the Township of Southgate and all other documents as may be necessary to give effect thereto; and
3. **That** this by-law shall come into force and effect upon the final passing hereof.

**Read a first, second, and third time and finally passed this 5<sup>th</sup> day of April, 2023.**

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Brian Milne – Mayor

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Lindsey Green – Clerk

THIS AMENDING AGREEMENT made this 5<sup>th</sup> day of April, 2023

B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE

(the “Seller”)

OF THE FIRST PART

- and -

FLATO GREENS INC., being a subsidiary of Flato Development Inc.

(the “Buyer”)

OF THE SECOND PART

WHEREAS the Buyer and the Seller entered into a Purchase and Sale Agreement dated June 15, 2022 (the “Purchase Agreement”);

AND WHEREAS the Municipality and the Developer have agreed to amend the Purchase Agreement on the terms and conditions set out herein.

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants and agreements contained herein, the parties agree with each other as follows:

1. The Purchase Agreement is hereby amended as follows:

The Schedule attached as Schedule “B” to the Purchase Agreement is hereby replaced with the revised Schedule “B” [being the draft General Arrangement plan for the Works] which is attached as Amended Schedule “B” to this Amending Agreement.

2. The Purchase Agreement is hereby further amended as follows:

The Schedule attached as Schedule “C” to the Purchase Agreement is hereby replaced with the revised Schedule “C” [being Costing of the development works] which is attached as Amended Schedule “C” to this Amending Agreement.

3. The Purchase Agreement is hereby further amended as follows:

The Schedule attached as Schedule "E" to the Purchase Agreement is hereby replaced with the revised Schedule "E" [being the Development Agreement] which is attached as Amended Schedule "E" to this Amending Agreement.

4. The Buyer hereby agrees that this agreement may be registered upon title of the Property (as same has been defined in the Purchase Agreement). Such registration shall be at the instance of the Seller and at its sole discretion and at the expense of the Buyer.
5. In all other respects, the Purchase Agreement shall remain in full force and effect.
6. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
7. This agreement and any amendments, waivers, consents, or supplements hereto may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by sending a scanned ("PDF" or "tif") by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(Signature page to follow)

IN WITNESS WHEREOF the Parties hereto have by their hands and seals signed this Agreement as at the date first set out above.

THE CORPORATION OF THE TOWNSHIP  
OF SOUTHGATE

Per:

\_\_\_\_\_  
Mayor: Brian Milne

\_\_\_\_\_  
Clerk: Lindsey Green

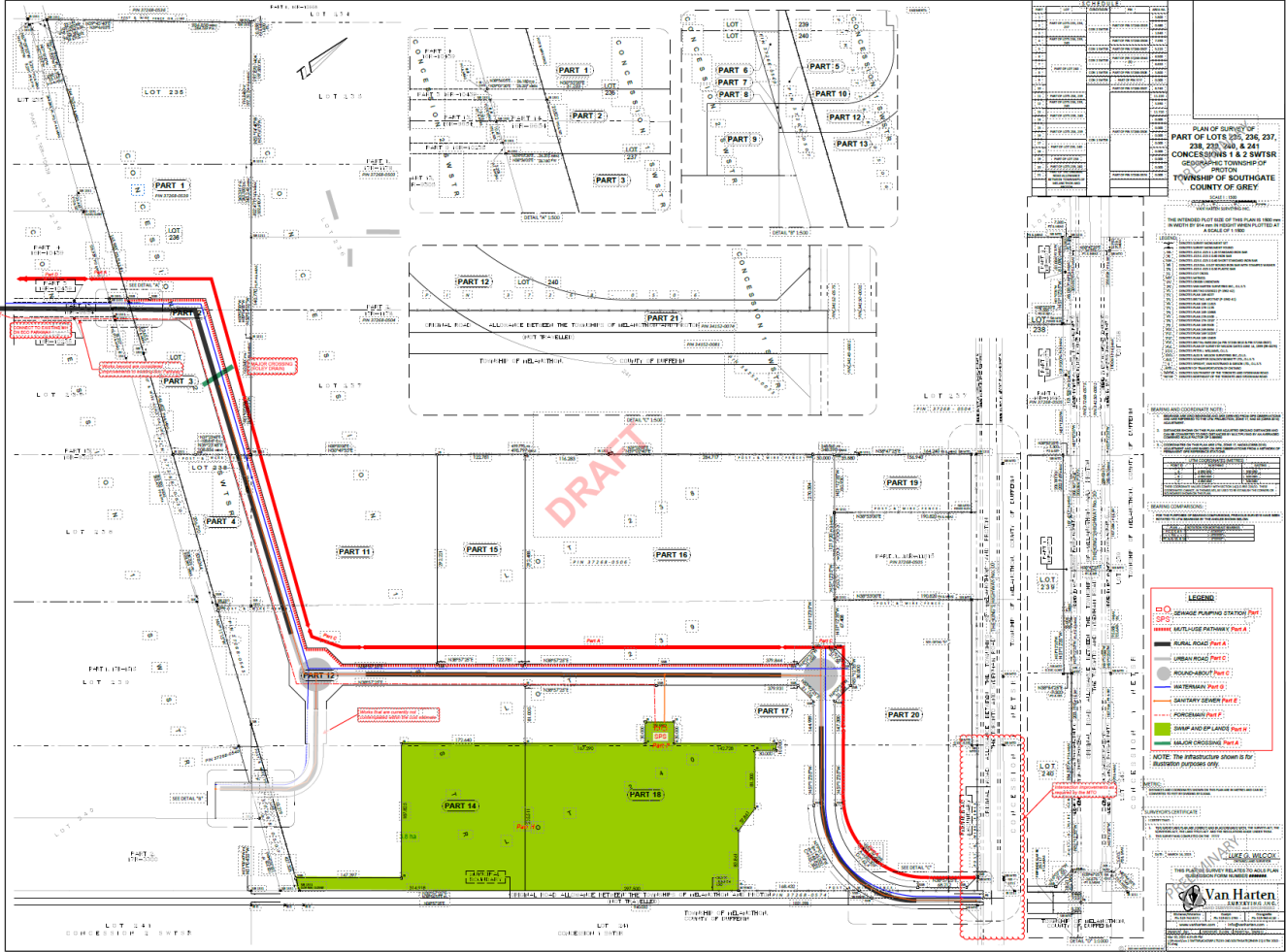
[We have authority to bind the corporation]

FLATO GREENS INC.

Per: \_\_\_\_\_  
President: Shakir Rehmatullah

[I have authority to bind the corporation]

SCHEDULE "B"  
ECOPARK PHASE 2 GENERAL ARRANGEMENT SKETCH



\*Subject to amendment

SCHEDULE "C"  
ECOPARK PHASE 2 ESTIMATED COSTING  
(subject to change)

The costing in this schedule is based on Triton Engineering Services Memorandum dated March 31, 2023, RE: Dundalk Industrial Lands Preliminary Constructing and Servicing Costs 2023 Update, File M5616B, and forms part of this agreement, subject to amendments as determined by the Triton Engineering Services, the Township Engineers.

**Land Assessment:**  
Based on preliminary plans of estimated retained developable/saleable land for each party.

Table 10 Eco Parkway Extension & Improvements Land Assessment						
Part	Zoning or Use	Township Retained (ha)		Flato Purchased (ha)		Total Area (ha)
		Developable <sup>1</sup>	Undevelopable	Developable <sup>1</sup>	Undevelopable	
PART 2	ROW		0.92			0.92
PART 4	Industrial	3.02				3.02
PART 11	Industrial	6.26				6.26
PART 12	ROW		5.84			5.84
PART 13	Industrial	4.95				4.95
PART 14	SWMF		3.80			3.80
PART 15	Residential			3.59		3.59
PART 16	Residential			11.72		11.72
PART 17	Residential			5.22		5.22
PART 18	SWMF				6.50	6.50
PART 19	Commercial			1.54		1.54
PART 20	Commercial			7.39		7.39
PART 21	ROW		0.21			0.21
Totals		14.23	10.77	29.46	6.50	60.96
Total Share		23%	18%	48%	0.11	
Total Developable		33%		67%		43.69

<sup>1</sup>Actual developable area will need to be verified by way of various studies and approvals. The values are only representative of the lands that are not specifically designated for non-development purposes Areas that maybe environmentally protected, but not specifically zoned as such, are not necessarily accounted for.

**Estimated Cost Sharing Calculations (subject to change)**  
The below cost estimates are preliminary and may change as design progresses or additional specifics become known.

Table 11 Eco Parkway Extension & Improvements Total Estimated Design & Construction Cost Sharing					
Description	Total Cost	Township		Flato	
		Share	Cost	Share	Cost
Part A - Highway 10 Intersection Improvements	\$1,120,000	50%	\$560,000	50%	\$560,000
Part B - Highway 10 to Existing Eco Parkway	\$3,012,000	50%	\$1,506,000	50%	\$1,506,000
Part C - Round-Abouts	\$1,380,000	50%	\$690,000	50%	\$690,000
Part D - Existing Eco Parkway	\$642,000	100%	\$642,000	0%	\$0
Part E - Sanitary Sewers	\$837,800	50%	\$418,900	50%	\$418,900
Part F - Sewage Pumping Station & Forcemain	\$3,680,000	33%	\$1,214,400	67%	\$2,465,600
Part G - Watermain	\$1,358,240	50%	\$679,120	50%	\$679,120
Part H - Storm Water Management Facility	\$1,000,000	33%	\$330,000	67%	\$670,000
Part I – Utilities	\$437,500	33%	\$144,375	67%	\$293,125
Total Estimated Design & Construction Cost (Excluding HST)	\$13,467,540		\$6,184,795		\$7,282,745

**AMENDED SCHEDULE "E"**

**DEVELOPMENT PLAN AGREEMENT**

**THIS AGREEMENT** made as of the 5th day of April, 2023.

**BETWEEN:**

**THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE**

hereinafter called the "Township" of the FIRST PART;

and

**FLATO GREENS INC., being a subsidiary of Flato Development Inc.**

hereinafter called "Flato" of the SECOND PART;

**WHEREAS** the parties hereto entered into a Purchase and Sale Agreement dated June 15, 2022 (the "Purchase Agreement"), for the conveyance of certain lands described as follows, Part of Concession I SWTSR PT Lot 238, Lots 239 & Lot 240, being the lands described municipally known as 772060 highway 10, Dundalk, Township of Southgate, (the "Property");

**AND WHEREAS** it is a requirement of the Agreement that the parties enter into this Municipal Servicing and Development Plan Agreement, which the parties agree may be registered on title to the Property at the instance of the Township and at the expense of Flato;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and promises in this Agreement, the parties agree as follows:

***ROAD CONSTRUCTION & DEVELOPMENT PLAN***

1. The parties hereto agree as follows:
  - (a) The parties will share the construction costs and other ancillary costs of the roadway and servicing on the Property (the "Works") on a 50-50 basis. The preliminary costing and general requirements for the Works (including, but not limited to the turning circles, Foley Drain culvert, ditches, local culverts, curbs, gutters, medians, wastewater/water servicing, stormwater management) have been preliminarily set out in Parts A, B, C, E, G of Amended Schedule "C" of the Purchase Agreement (with such Amended Schedule "C" to be referred to as the Costing herein this Agreement). It is agreed by the parties that the Costing will be subject to change during the currency of the overall development with such changes to be determined by the Township Engineer's, *Triton Engineering Services Limited* from time to time. The present draft Preliminary General Arrangement plan for the Works, which is subject to amendment, is set out in the Amended Schedule "B" to the Purchase Agreement.
  - (b) As part of the Works, it is agreed that the parties will equally share the costs to complete the asphalt paving of the roadway as shown on Amended Schedule "B", which may be further amended. The Parties acknowledge that such paving may not occur until a future time when property development and site construction has neared completion, as shall be determined by the Township and its engineers, acting reasonably. The parties agree that this shall include sharing these costs relating to access from Highway 10, permitting, and applicable MTO road improvement costs, and other related costs as may be applicable and/or as have been set out in the Costing.
  - (c) It is agreed that Flato shall be responsible for all costs relating to any future entrance and service connection(s) (water, sanitary, storm, utility) to and within the individual development parcels.
  - (d) Should any other development within the immediate vicinity of the Property benefit from the sewage pumping station that is constructed for this development project, the Township will endeavour to negotiate a reimbursement of a reasonable percentage of the costs of the construction of the sewage pumping station with the other developer. Any reimbursement amount that is successfully negotiated and received shall be shared proportionally between the parties hereto.

- (e) The parties have agreed to proportionally pay the costs of those works as set out in Parts F, H and I of the Costing (the “Proportional Works”), which may be subject to change.
- (f) Each party’s proportional share of the costs (“Proportional Share”) relating to the Proportional Works shall be based on each party’s retained land following the completion of the sale transaction pursuant to the Purchase Agreement, which is subject to change until the completion of all items set out in the Costing. Changes may be required due to, *inter alia*, studies and approvals as the development is completed. At the time of this Agreement, the proportion of land ownership is set out at Table 10 of the Costing).
- (g) All payments for project works being shared by the Parties, in accordance with this Agreement (whether equally or proportionately as the case may be), as set out in terms of this Agreement shall be based on the contractors’ and/or engineers’ progress payment certificates and invoicing for completed work and applicable taxes. Each party shall bear its own legal costs relating to this agreement including its review and execution.

**DEVELOPMENT TIMELINES**

- 2. The parties agree to the following intended project and construction schedule:
  - a) Municipal Class EA for SPS and SWMF Initiated: April 2023
  - b) Municipal Class EA Process: April – August 2023
  - c) Detailed Design: August 2023 – February 2024
  - d) Tendering: March 2024
  - e) Earth Works: April - May 2024
  - f) SPS & SWM Construction: May – August 2024
  - g) Infrastructure & Road Construction: June 2024 – December 2024
  - h) Surface Asphalt: August 2025

**NOTICES AND GENERAL**

- 3. All notices in this Agreement shall be in writing and shall be deemed to have been given if delivered by hand or mailed by ordinary mail, postage prepaid, addressed to the following addresses:

Solicitors for the Township:

Stutz Brown Self Professional Corporation  
269 Broadway  
Orangeville, ON  
L9W IK8

Contact: Stephen Christie  
Email: [scbristie@sbslaw.ca](mailto:scbristie@sbslaw.ca)  
Phone 519-941-7500  
Fax 519-941-8381

Solicitor for Flato: Garfinkle

Biderman LP  
Suite 801 - 1 Adelaide Street East  
Toronto, Ontario  
M5C2V9

Contact: Michelle R. Frost  
Emails: [mfrost@garfinkJe.com](mailto:mfrost@garfinkJe.com)  
Phone: 416-869-7605

If mailed, such notices must also be given by electronic transmission on the date it was so mailed. If so given, such notices shall be deemed to have been received on the first business day following the date it was delivered or marked mailed out.

- 4. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
- 5. This agreement and any amendments, waivers, consents, or supplements hereto may be executed in



counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by sending a scanned ("PDF" or "tif") by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

6. Severability - If any provision of this Agreement, or the application thereof to any circumstances, shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement, or the application thereof to other circumstances, shall not be affected, and shall be valid and enforceable.

In witness whereof Flato has executed this Agreement, duly attested to by the hands of its proper signing officers duly authorized in that behalf, this 5 day of April, 2023.

**FLATO GREENS INC.**

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Name: Shakir Rehmatullah  
Title: President  
I have Authority to bind the Corporation.

In witness whereof the Township has executed this Agreement, duly attested to by the hands of its proper signing officers duly authorized in that behalf, this 5 day of April, 2023.

**THE CORPORATION OF THE TOWNSHIP OF  
SOUTHGATE**

\_\_\_\_\_

Name: Brian Milne  
Title: Mayor

\_\_\_\_\_

Name: Lindsey Green  
Title: Clerk

We have the Authority to bind the Corporation