

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2005-47

**Being a by-law to authorize the execution of a
Subdivision Agreement**

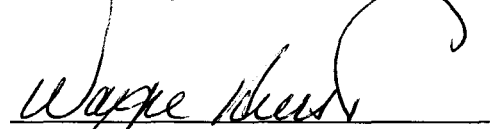
WHEREAS Fortress Building Group Inc. has proposed the subdivision and servicing of lands owned by it within Registered Plan 12M-198 in the Town of Amherstburg;

AND WHEREAS the Corporation of the Town of Amherstburg have settled with Fortress Building Group Inc., the requirements for the provisions of Municipal Services within the area to be subdivided, which requirements are set out in the agreement hereto annexed, and which agreement is ratified and adopted by Fortress Building Group Inc.;

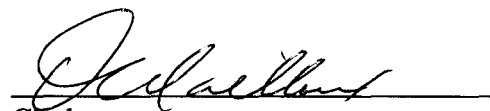
NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:

1. That the Corporation of the Town of Amherstburg enter into a Subdivision Agreement with Fortress Building Group Inc. in the form annexed hereto, and the Mayor and Clerk be and they are hereby authorized to sign the original and copies thereof and affix the Corporate Seal thereto.
2. This By-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 27th day of June, 2005.



Mayor



Clerk

The applicant(s) hereby applies to the Land Registrar.

Properties

P' 70554 - 0414 LT Estate/Qualifier
Description LOTS 1 TO 9 INCL. PLAN 12M198; AMHERSTBURG
Address AMHERSTBURG

PIN 70554 - 0415 LT Estate/Qualifier
Description LOTS 10 TO 18 INCL. PLAN 12M198; AMHERSTBURG
Address AMHERSTBURG

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name THE CORPORATION OF THE TOWN OF AMHERSTBURG
Address for Service 271 Sandwich St. S.
 Box 159
 Amherstburg, Ontario
 N9V 2Z3

I, MANDO F. DELUCA, Q.C., SOLICITOR, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)	Capacity	Share
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<i>Name</i>	FORTRESS BUILDING GROUP INC.
<i>Address for Service</i>	150 Ouellette Pl. Suite 140 Windsor, Ontario N8X 1L9

Statements

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Armando Felice Antonio DeLuca	500-251 Goyeau Street Windsor N9A 6V2	acting for Applicant(s)	Signed	2005 07 21
Tel	519-258-0615			
Fax	5192586833			
Armando Felice Antonio DeLuca	500-251 Goyeau Street Windsor N9A 6V2	acting for Party To(s)	Signed	2005 07 21
Tel	519-258-0615			
Fax	5192586833			

Submitted By

MOUSSEAU DELUCA MCPHERSON PRINCE	500-251 Goyeau Street Windsor N9A 6V2			2005 07 21
Tel	519-258-0615			
Fax	5192586833			

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

The applicant(s) hereby applies to the Land Registrar.

File Number

Applicant Client File Number : 23012

**FORTRESS BUILDING GROUP INC.
SUBDIVISION AGREEMENT**

**FORTRESS BUILDING GROUP INC.
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SUBDIVISION AGREEMENT

THIS AGREEMENT made in triplicate this 27 day of JUNE, 2005.

BETWEEN:

FORTRESS BUILDING GROUP INC.
hereinafter called "the Developer"

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF AMHERSTBURG
hereinafter called "the Town"

OF THE SECOND PART;

WHEREAS the Developer proposes the development, servicing and sale of lands within Lots 1 to 18 inclusive, Registered Plan 12M-198 Town of Amherstburg, County of Essex which lands are more particularly described in Schedule "A" annexed hereto;

AND WHEREAS the Corporation requires that the Developer bring Forhan Street to municipal standards prior to any building permits being issued;

AND WHEREAS the Corporation requires that a development agreement be entered into;

AND WHEREAS the agreement will contain provisions that the owner agrees in writing to satisfy all of the requirements, financial and otherwise, of the Town concerning the provision of roads, installation of services, drainage, the dedication and naming of streets, the granting of easements and parkland and other matters;

AND WHEREAS the Developer represents and warrants to the Town that it is now the registered owner of all of the lands described in Schedule "A" annexed hereto and that all of the right, title and interest of its predecessors in title and all the right and authority to complete the subdivision and to develop the lands is vested in it.

NOW THEREFORE IN CONSIDERATION of the premises, the parties hereto agree as follows:

1. Recitals

The foregoing Recitals are true in substance and in fact and are hereby incorporated herein by reference.

2. Interpretation

The meanings of various terms used within this Agreement are as indicated in the definitions contained with the attached Schedule "B".

3. Installation of Services

The Developer will design, construct and install Services at its own expense on the Lands in accordance with such design criteria, detailed plans and work schedules to be filed in the office of the Clerk of the Town, with good materials, in a good, workmanlike and timely manner, in accordance with good and accepted engineering practices, and to the satisfaction of the Town, and in all cases the Town engineer, acting reasonably.

4. **Certificate of Liability Insurance**

The Developer will provide to the Town, on or before the commencement of any construction and installation of any of the Services called for herein, a certificate of liability insurance satisfactory to the Town, naming the Town as an additional insured party. The insurance shall protect the Developer and the Town against any liability that might arise out of the construction or installation of any of the Services herein referred to, and the said Developer shall continue such insurance in full force and effect so long as any Services are to be constructed or installed, and for a period of two (2) years after completion and Final Acceptance of the last of such Services. The limits of liability for public liability and property damage coverage under such insurance shall not be less than \$5,000,000.00. Before commencement of the installation of the Services, the Developer's consulting engineer shall provide satisfactory evidence to the Town that the said consulting engineer maintains a policy of public liability insurance and errors and omissions insurance satisfactory to the Town, which policy is to be maintained in full force and effect until the Services are completed and formally accepted by the Town.

5. **Save and Hold Harmless**

The Developer covenants and agrees to save the Town harmless from any and all claims, demands, loss, costs, or damages, including legal costs on a substantial indemnity basis in any way arising from or related to the subdivision and the proposed development thereof, arising or accruing to anyone up to two years after the completion and Final acceptance of the last of the Services in the subdivision.

6. **Drawings and Tenders**

The Developer shall submit all plans, design drawings, grading plans and specification lists, all of which shall carry the seal of the professional engineer who is responsible for such design and be signed by him, to the Town for examination by them and the Town engineer. In the case of any Services to be constructed by contract, the Developer shall also submit to the Town a copy of each set of "information for tenders" documents and each proposed contract together with the names of the proposed contractors and sub-contractors to be engaged. The Developer shall file with the Town work schedules for the construction and installation of all Services, whether by the Developer, the contractors, sub-contractors or others. The Developer shall obtain the approval in writing of the Town to all of the foregoing, except the selection of contractors or sub-contractors before granting any contract or commencing any work. The design criteria contained in Schedule "C" hereto shall constitute the minimum conditions upon which tenders are made, contracts let, or work done. The Developer's consulting engineer, or successor thereto, shall continue to be retained by the Developer until the works are complete and formally accepted by the Town.

7. **Construction of Services by Contractors**

In case of construction of Services by contractors, the Developer shall comply with all of the holdback provisions of the Construction Lien Act. In the construction of all Services the Developer shall indemnify and save the Town harmless from any and all claims, actions and demands resulting from the construction and installation of Services.

8. Inspection

The Town, and its authorized agents, including the Town engineer, shall have the right at any time and from time to time to inspect all Services during and after construction and to inspect and test all materials proposed to be used in the construction of any of the Services. The reasonable costs of such inspections and tests shall be paid by the Developer within 15 days of written demand by the Town. If at any time, the construction of any service or material is, in the opinion of the Town engineer, acting reasonably, not in accordance with the plans and specifications or not in accordance with good engineering practices or any of the provisions of this Agreement, the Town engineer may order the materials to be replaced or the work to be placed in satisfactory condition within such time as he may specify, and in the event of the Developer failing to comply or obtain compliance with such order, the Town engineer may stop work upon such services, or in his sole discretion upon all services. The Developer shall at all times provide all information requested by the Town, its authorized agents and the Town engineer in relation to the various materials and services and shall at any time at his expense expose any municipal service for inspection by the Town engineer. Notwithstanding the generality of the foregoing, the rights of the Town and its authorized agents including the Town engineer hereunder shall be limited to a period of one year after the initial acceptance of the last of the services within or required to facilitate the servicing of lots where such inspection, testing or other action is proposed.

9. Approval for Commencement of Work

No work shall commence without the approval of the Town and any work requiring the approval or consent of any other governmental authority shall not commence until such approval or consent has also been obtained. No watermain, sanitary sewer, storm sewer or hydro line shall be connected to any existing municipal services without the written approval of whichever of the Town or the approval of the Authority which has jurisdiction over such municipal system.

10. Work Schedule/Quality of Work

The Developer will prepare and submit to the Town, plans for the installation of Services for each phase of the development and will request a pre-construction meeting with the Town and its consultants in order to establish a work schedule acceptable to the Town and shall proceed with reasonable development procedures and in accordance with such work schedule. Subject to Force Majeure, if the Developer fails to proceed with reasonable development procedures and in accordance with the accepted work schedule or if in the opinion of the Town engineer, fails or neglects to proceed with reasonable development procedures and accordance with an accepted work schedule or if the opinion of the Town engineer the Services are not being installed in accordance with the drawings, or specifications approved therefor, or in accordance with good engineering practices in a good, workmanlike manner, using good materials, then the Town shall give the Developer thirty (30) days to Cure any default following which and in addition to any other remedy the Town may have, the Town may, without further notice, enter upon the lands of the Developer and proceed to supply all materials and do all necessary work in connection with the installation of the Services, including the repair or reconstruction of faulty work, and replacement of materials not in accordance with the drawings or specifications and the Town shall charge the cost thereof, including all engineering and other fees to the Developer, who shall forthwith pay the same within thirty (30) days of a written demand therefor by the Town. In the event that the payment is not received within thirty (30) days of the written demand by the Town, the amount expended shall constitute and be a lien

and charge upon the lands of the developer and may be collected as real property taxes in accordance with the Municipal Act as amended from time to time.

11. Developer's Responsibilities Until Final Acceptance

Until such time as the Town has finally accepted each of the Services, including roadways herein referred to, the Developer shall be responsible therefor. The responsibility of the Developer prior to Final Acceptance by the Town shall include liability for all types of maintenance in connection therewith. If the Developer should in the opinion of the Town or of its agents or employees fail to maintain any Service including roadways, prior to the Final Acceptance by the Town, the Town may without notice in case of emergency, or in any other case on 30 days notice, if such default is not Cured by the Developer during the 30 day notice, maintain the same, but in so doing, the Town shall for all purposes be deemed to have acted as agent for the Developer, without in any way being deemed to have finally accepted such Service, or to have incurred any liability for future maintenance, and the Town shall be entitled to reimbursement for the cost of any such maintenance, within thirty (30) days of written demand therefor, and the Town shall further be relieved of liability for damages caused unintentionally, in the course of such maintenance. Snow removal, salting or sanding by the Town shall not constitute acceptance of the roads by maintenance thereof. The Developer shall also be responsible for the cleaning and flushing of sewers throughout the development until such time as the maintenance period for the construction of the Services has expired. The Town shall have the right to inspect the said sewers from time to time and, if deemed necessary, may require the Developer to clean and flush same immediately, and the Developer hereby agrees to perform such cleaning and flushing on demand to the entire satisfaction of the Town.

12.(a) Building Permits

The Developer covenants and agrees on behalf of itself and its successors in title to any lot, not to apply for any building permit for the construction of any building on any lots covered by this agreement until:

- i) **Initial Acceptance of Services**
All of the services relating to all of the lots therein have been installed and initially accepted by the Town with the exception of the final asphalt surface course of the roadway.
- ii) **Model Homes**
The Developer will be allowed to construct two (2) model semi-detached dwellings in the subdivision prior to the acceptance of services by the Town in accordance with the requirements of the Town's Development Manual.

12.(b) Tree Provisions/Mailbox Requirements

The Developer shall:

- i) **Tree Provision**
Include in all Agreements of Purchase and Sale a requirement for planting on private property a minimum of one (1) tree in the front yard of each lot having a minimum diameter of 60 mm. The subject tree to be planted no closer than one (1) metre to any lot line. The tree shall be planted within 12 months of the initial occupancy of the house. Such tree shall be maintained in

perpetuity. A list of the acceptable trees is available at the Public Works Department at the Town of Amherstburg. The Developer shall impose a covenant as to the planting and maintenance of the tree in the transfer of each lot conveyed by it; and

- ii) Super Mailboxes
Contact Canada Post to determine the location of super mailboxes throughout the subdivision and shall notify all purchasers of the exact location thereof. The location of super mailboxes also to be satisfactory to the Town.

12.(c) Landscaping Requirements

- (i) Front and Sideyards
The front lawn and exterior side yard of each lot shall be sodded, seeded or otherwise landscaped within six months of the construction of a house thereon, and such sodding, seeding or landscaping shall be continued over the unpaved portion of the road allowance, including any lands between a sidewalk and the road, to the back of the curb and gutter in front of such lot. Such sodding, seeding or landscaping shall be maintained in perpetuity. The Developer shall impose a covenant to this effect in the transfer of each lot conveyed by it.

12.(d) Registration Requirements

The Developer covenants and agrees to cause the local Land Registrar to register, immediately after registration of the proposed plan of subdivision, as annexed to each lot in the proposed plan of subdivision, a condition of restriction running with the lands, that such lot is not to be built upon unless the provisions of paragraph 12 of this agreement, limiting entitlement to building permits has been complied with.

13. Financial Security

The Developer will provide to the Town, before the commencement of any construction or installation of any service, a labour and materials payment bond, in all respects satisfactory to the Town, covering the proposed Services, and irrevocable letters of credit, or a performance and maintenance bond, or Province of Ontario or Government of Canada securities, satisfactory to the Town, in an amount equal to 100% of the value set by the Town for all Services to guarantee satisfactory installation of all Services. If the provision of Services to the lots requires the construction or installation of any services outside the subdivision, the foregoing provisions as to the labour and materials payment bond and of security equal to 100% of the value for services shall extend to and be required in connection with any service extending outside.

14. Maintenance Security

The Developer shall provide to the Town irrevocable letters of credit, or a performance and maintenance bond, or Province of Ontario or Government of Canada securities, satisfactory to the Town in an amount equal to 50% of the value set by the Town upon initial acceptance thereof, for all services within or extending outside of the subdivision but required to facilitate the servicing of lots within the subdivision, for a period of one year after completion and initial acceptance by the Town of the last service provided.

15. Iron Bars

The Developer will file with the Town a surveyor's certificate dated within 30 days before the application for initial acceptance by the Town of asphalt surfacing on roadways, to the effect that all Standard Iron Bars shown upon the plan of subdivision have been located or replaced.

16. Staking of Bars Prior to Construction

Before the sale of any lot or the issue of any building permit within the subdivision the Developer shall stake to the satisfaction of the Town engineer, the locations of all Standard Iron Bars, and shall maintain such staking to the satisfaction of the Town, its respective servants and agents and the Town engineer, in relation to each lot until the home foundation is installed and all services to the proposed home have been provided. The Developer will provide to the Town engineer on request, and to any proposed builder, all usual information as to grades and levels for each lot within the subdivision.

17. Developers Responsibilities in Regard to Damages

The Developer undertakes and agrees to pay for any damage caused to any existing road, road allowance, structure or plant and any costs involved in the relocation of or repair or connection to any existing services arising in any way from or in connection with this agreement or the provision of services called for herein including the changing of grades of existing adjacent roads, and also any taxes or other charges levied or to be levied upon the lands to be subdivided, until such time as the lands have been assessed and entered on the collector's roll according to the proposed and presently registered plans.

18.(a) Stormwater Management/Municipal Drain

The development of the subdivision requires special measures to deal with stormwater management wherein the owner agrees;

- i) that prior to final approval, the Owner shall submit for the review and approval of the Town, the Essex Region Conservation Authority and the Ministry of the Environment a final stormwater management plan;
- ii) conduct regular inspections once every two weeks and after each sizeable storm event of all sediment and erosion control measures recommended in the approved stormwater management plan during the construction phase;
- iii) maintain an inspection log which shall be made available for review by the municipality and the Ministry of Environment and Essex Region Conservation Authority, upon request. The log shall state the name of the inspector, date of inspections and the rectification or replacement measures which were taken to maintain the sediment and erosion control measures. Inspections shall continue until the assumption of services by the municipality or until site construction conditions warrant cessation of the visits;
- iv) to seek statutory approval under the Ontario Water Resources Act for the storm water management works associated with this plan of subdivision, if required.

18.(b) Engineering Analysis

The Developer shall undertake an engineering analysis to determine the effect of increased runoff due to the development of the site, and to identify stormwater management measures as necessary to control any increases in flows in downstream watercourses, up to and including the 1:100 year design storm to the satisfaction of the Town and the Essex Region Conservation Authority.

18.(c) Road Maintenance Requirements

The Developer shall inspect the works, including roadways, catch basins, curbs and storm sewer system, on a regular basis, particularly during the house building phase of the subdivision, and remove as required all debris, silt, etc. by sweeping and cleaning the roadway gutters and pavement, replacing silt bags in the catch basins and cleaning catch basin and manhole sumps, all as directed by the Town Engineer. During peak construction periods, the frequency may be as often as weekly.

The Developer shall maintain a logbook to record the results of all inspections and any cleaning and maintenance operations undertaken and make it available for inspection by the Town.

Should the Developer fail to maintain the road as described above, the Town will undertake the required work at the expense of the Developer and the amount expended shall constitute and be a lien and charge upon the lands of the Developer and may be collected as real property taxes in accordance with the Municipal Act as amended from time to time.

18.(d) Design Drawings

For all the works outlined therein and referred to in this section, the Developer shall provide design drawings, specification lists, tender documents, work schedules, all approvals, and security for due completion in the same manner as for services in the subdivision, as detailed in paragraphs 3 through 11 and 13 and 14 hereof, and shall obtain approval of the works as detailed in paragraph 25 hereof.

18.(e) Environmental Protection Act

Under Section 46 of the Environmental Protection Act, a Section 46 Approval may be required from the Minister of Environment if future site investigations established that waste is deposited within the boundaries of this subdivision. The Developer therefore agrees to comply with all conditions and/or restrictions which may be imposed by the Minister of the Environment involving the results of soil, groundwater or atmosphere testing with respect to this subdivision.

19. Additional Work

If at any time prior to final acceptance of the last of the services by the Town it is of the Town's reasonable opinion that additional works are proven necessary to provide adequately any of the public services specified in the schedules hereto, which were not reasonably foreseeable at the date of this Agreement then the Developer shall construct, install or perform such additional work at the request of the Town provided that, if the Developer disagrees that such additional works are necessary, the question shall be resolved by a single arbitrator if the parties can agree on one, otherwise by a panel of

three arbitrators proceeding under The Arbitrations Act. In the event that the Arbitrator finds in favour of the Town then the Developer shall pay the same within thirty (30) days of written demand. In the event that the payment is not received within thirty (30) days of the written demand by the Town, the amount expended shall constitute and be a lien and charge upon the lands of the developer and may be collected as real property taxes in accordance with the Municipal Act as amended from time to time.

20. Grading of Topsoil

The Developer covenants and agrees that topsoil excavated for roadways shall be left and leveled within the subdivision, except as provided in paragraph 20 hereof. Any topsoil that is stockpiled shall be neat and sloped in such a manner that weed cutting can be carried out with mechanical equipment by the Developer to the entire satisfaction of the Town.

21. Grading/Dumping/Removal of Material

The Developer shall carry out all grading of all lands, in accordance with the grading plans to be filed in the office of the Clerk of the Town of Amherstburg, and shall forthwith carry out temporary or permanent drainage work that the Town engineer may certify to be necessary to eliminate ponding erosion, channeling of underground water or other drainage problems. The Developer shall neither dump nor permit to be dumped any fill or debris, or remove or permit the removal of any soil or fill from any of the lands to be subdivided without the written consent of the Town engineer. In seeking consent of the Town engineer to the removal of topsoil the Developer shall establish that when final grades are established for all of the lots and blocks within the subdivision there will be topsoil to a depth of at least four inches (4") over the entire area not covered by buildings, roadways and driveways.

22. Rear Yard Drainage

Rear lot drainage shall be installed on each lot, in connection with the construction of a house thereon, and shall be connected to the storm sewer system. The specifications, design and installation of such rear yard drainage shall be acceptable to, and subject to the approval of the Town engineer. On an application for a building permit on any lot within the lands to be subdivided, the builder shall produce a plan or sketch satisfactory to the Chief Building Official of the proposed rear yard drainage, which shall be in accordance with the Building Code. The installation of such rear yard drainage shall be subject to the same inspections as foundation drains and the Chief Building Official may issue work orders or stop work orders in relation thereto.

23. Municipal Numbers

The Developer shall ascertain from the Town the appropriate municipal numbers for each lot, and shall provide such numbers to prospective purchasers, builders and lenders.

24. Interim Acceptance of Services

The Developer shall apply for initial acceptance of each individual Service by filing with the Town a certificate under the hand and seal of its project engineer that the construction and/or installation of such Services has been completed in accordance with the design criteria and the plans and specifications therefore approved and filed by the Town before construction, and by filing as-built drawings of such Service, and a certificate of payment therefor and of compliance with the Construction Lien Act. The Town and its authorized agents, including the Town engineer, shall carry out such inspections as they deem necessary, and such Service shall then be deemed to have received Interim Acceptance after the Town engineer certifying that such Service has been completed in accordance with this Agreement, providing that all the covenants of this Agreement have been complied with to the date of such certificate. After Interim Acceptance and after maintenance securities or bonds have been filed, the labour and materials payment bond and the performance bond or security in lieu thereof relating to such service shall be released.

25. Final Acceptance of Services

The Town shall have granted Final Acceptance of the Services in each phase upon the Town engineer and the Town being satisfied that all covenants under this Agreement have been fully complied with and all repairs and replacement required during the maintenance period have been carried out within such phase, and then authorizing release of the maintenance securities or bonds. Immediately prior to requesting Final Acceptance of the Services, the Developer shall flush clean and camera inspect the sanitary and storm sewer system. The Developer's consulting engineer shall certify that the Services have been inspected and the camera inspection has been reviewed, and that there are no sumps, cracks, blockages or other deficiencies within the system to the entire satisfaction of the Town.

26. Town's Fees

The Developer undertakes, covenants and agrees to pay any planning, engineering, legal, auditing or other fees or disbursements incurred by the Town relating in any way to the proposed subdivision, or the servicing thereof, or to this agreement, including negotiations and preparations prior to its execution and including the entire fees and disbursements of the Town engineer when acting pursuant to the terms of this agreement, and any clerical or administrative expense of the Town relating in any way to or arising from this agreement, forthwith upon being invoiced therefor. The Developer agrees to deposit with the Town on or before the execution of this agreement, the sum of \$2,000.00 to be applied against such fees as may be incurred from time to time, with such deposit to be renewed from time to time as used up, when requested by the Town, any unused balance to be returned to the Developer without interest, on the expiry of the maintenance period.

27. Reserves for Public Highways

The Developer covenants and agrees to convey to the Town, at the time of registration of the proposed plan of subdivision 0.30 metre reserves extending across the open end of the adjoining public roadways, if applicable. Upon Final Acceptance of all of the Services except the final asphalt course of any roadway, for which ingress and egress to and from the lots therein would be by passage over one or more of such 0.30 metre

reserves, the Town will by by-law dedicate such reserve or reserves as a public highway. Until such dedication the Developer and those claiming under it shall have a mere license to pass over such reserve or reserves subject to revocation at any time upon the Town deeming that any of the covenants and agreement of the Developer herein have not been fulfilled.

28. Register Notice of Agreement

The Developer covenants and agrees to cause the Local Land Registrar to register notice of this agreement against all of the lands affected hereby, immediately after registration of the proposed subdivision, and to obtain acknowledgment, consent and postponement agreements, from any and all encumbrancers registered prior to registration of such notice.

29. Development Charges

The Developer acknowledges that the lands subdivided by this agreement are subject to By-law 2004-64 passed August 9, 2004 as amended from time to time, which established development charges for residential development in the Town, and provided that a development charge of \$7,870.00 be paid for each single detached dwelling to be constructed and \$7,420.00 be paid for each semi-detached dwelling to be constructed. The Developer further acknowledges that the by-law provides for an annual inflationary adjustment in accordance with Section 5 of the Development Charges Act, and that the above noted figure may change annually. The Developer also acknowledges that due to the potential impact of a modified sanitary sewage system, the sanitary sewage portion of the development charge may be adjusted by an amendment to the Development Charges By-law. The said development charge shall be paid prior to the issuance of a building permit for each lot. The Developer undertakes and agrees to provide that all Offers of Purchase and Sale include information that satisfies Subsection 59(4) of the Development Charges Act.

30. Town Engineer

Throughout this agreement the term "Town Engineer" shall mean the professional engineer or firm of professional engineers retained by the Town to carry out the duties referred to in this agreement. Notwithstanding the above, the Town may agree to the use of a single engineering firm. However, should any dispute arise as a result of this agreement, the selected engineering firm shall be responsible to the Town, and the Developer shall be required to retain its own professional engineer.

31. Use of General Terms

Throughout this agreement the singular shall be deemed to include the plural, and the masculine, feminine and neuter genders shall be interchangeable as the context and applicable situations may require.

32. Enforcement of Agreement

The Developer will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the

Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right. If any provision of this agreement shall be found to be or deemed illegal or invalid, the remainder of the agreement shall not be affected thereby.

33. No Waiver of Rights

No indulgence or forbearance by the Town shall be deemed to constitute a waiver by the Town of its rights to insist on performance in a full and timely manner of all the covenants contained herein, and any such waiver, in order to be binding, must be in writing and duly authorized by the Town Council. No such waiver of any provisions, conditions or covenants shall be deemed to be a waiver of the right to later require full and timely compliance with the same terms, conditions or covenants, or with any other terms, covenants or conditions of this agreement at any time.

34. Parkland Dedication

In satisfaction of the requirement of the Planning Act that the owner convey up to 5% of the land included in the plan to the Town for park purposes, or cash-in-lieu thereof, the Developer covenants and agrees to pay the Town the sum of \$54,000.00 in total with said fee to be paid prior to the Interim Acceptance of services as detailed in Section 24.

35. Schools

In accordance with the requirements of the Greater Essex County District School Board and the Windsor Essex Catholic District School Board, the Developer is required to place notice on title for purchasers of the lots to be aware that students may not be able to attend the closest school and could be bused to a distant school with available capacity.

36. Sidewalks

Sidewalks are to be installed in accordance with the Town's Development Manual or as otherwise approved by the Town.

37. Streetlights

The Developer shall install streetlights in accordance with the present design standards and the Town's Development Manual, all to be approved by the Town of Amherstburg.

38. Street Signs

The Developer shall arrange with the Town to install street signs at each intersection and where necessary, all to be done in accordance with present standards and satisfactory to the Town.

39. Cure Period

Throughout this Agreement, where reference is made to the Town undertaking works on behalf of the Developer because of default or some other reason, it is agreed that the Developer will be given thirty (30) days to Cure any such deficiency, default or other problem or commence to Cure default and proceed diligently to remedy same prior to the Town undertaking the required works unless such deficiency, default or other problem is deemed to be an emergency.

40. Notice

- (a) Any notice, direction or other instrument required or permitted to be given by any party under this Agreement shall be in writing and shall be sufficiently given if delivered personally, sent by prepaid first-class mail or transmitted by telecopier or other form of electronic communication during transmission of which no indication of failure or receipt is communicated to the sender:

In the case of notice to the Developer:

Fortress Building Group Inc.
150 Ouellette Place, Suite 140
WINDSOR, ON N8X 1L9
Attention: Scott Mackenzie
Fax: (519) 972-2594

In the case of notice to the Town:

271 Sandwich Street South
P.O. Box 159
AMHERSTBURG, ON N9V 2Z3

Attention: The Clerk
Fax: (519) 736-0011

Planning Coordinator
Fax: (519) 736-9859

Manager of Public Services
Fax: (519) 736-7080

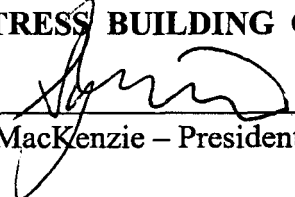
- (b) Any such notice, direction or other instrument if delivered personally, shall be deemed to have been given and received on the date on which it was received at such address, or, if sent by mail, shall be deemed to have been given and received on the date which is five (5) days after which it was mailed, provided that if either such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice transmitted by telecopier or other form of electronic communication shall be deemed to have been given and received on the date of its transmission provided that if such day is not a Business Day or it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been given and received at the opening of business in the office of the recipient on the first Business Day next following the transmission thereof. If normal mail service, telex, telecopier or other form of electronic communication is interrupted by strike, slowdown, Force Majeure, or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

41. **Agreement Binding on Parties**

This agreement shall enure to the benefit of, and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.


IN WITNESS WHEREOF the Town has hereunto affixed their seals attested by the signatures of their proper signing officers and the Developer has hereunto affixed its seal attested by the signature of its proper signing officer in that regard.

FORTRESS BUILDING GROUP INC.

Per: 
Scott MacKenzie – President

**THE CORPORATION OF THE
OF AMHERSTBURG**

Per: 
Mayor Wayne Hurst

Per: 
Clerk David Mailloux

SCHEDULE "A"

LEGAL DESCRIPTION

Lots 1 to 18 inclusive
Plan 12M-198
Town of Amherstburg,
County of Essex,
Province of Ontario

SCHEDULE "B"

DEFINITION OF TERMS

The following definitions shall apply in the interpretation of this Agreement:

"Cure" means that the Developer has commenced the works required to address the Event of Default that has been identified and for which notice in accordance with this Agreement has been provided and is proceeding diligently to remedy any deficiency or default.

"Event of Default" means if the Developer fails in the performance of an obligation under this Agreement, and the Town issues a notice of such failure or default and a demand for performance, observance or compliance has been given. In such cases, the Town must allow the Developer a minimum of thirty (30) days to Cure the default (Cure as defined herein) unless such default is determined to be an emergency by the Town in which case a minimum less than thirty (30) days can be established for the Developer to Cure the default.

"Final Acceptance" means the date, commencing no sooner than the expiry of the maintenance period wherein the Developer's Consulting Engineer has provided a declaration to the Town confirming that the works and Services have been completed in accordance with the terms of this Agreement and the Town engineer formally accepts the Services in writing.

"Force Majeure" means and includes acts of God, terrorist attacks, weather conditions, labour disputes, shortage of labour and materials and any happening, condition or thing beyond the control of a person which could not reasonably have been anticipated and avoided by such person which delays or prevents such person from performing any of its obligations hereunder, financial inability excepted.

"Improvements" means modifications to the Town-owned infrastructure that may be reasonably required from time to time.

"Indemnifiers" means jointly and severally.

"Interim Acceptance" means when Services are placed on maintenance by the Town.

"Lands" means those lands as described in Schedule "A" attached hereto.

"Plan of Subdivision" means a registered plan of the lands where new, separate parcels of land have been created and can be legally used for the sale of lots.

"Services" means the storm sewers, sanitary sewers, waterlines, roads, curbs and hydro services, including those components of infrastructure described in Schedule "C".

"Substantial Performance" means the date that the Developer's Consulting Engineer has provided a declaration to the Town confirming that the works are ready for use or are being used for the purposes intended.

"Town's Infrastructure Work" means the infrastructure work being undertaken by or on behalf of the Town to the portions of the Lands not designated for private development.

SCHEDULE "C"

DESIGN CRITERIA

FOR SERVICES TO BE PROVIDED IN THE FORHAN STREET SUBDIVISION TOWN OF AMHERSTBURG

Sanitary and storm sewers, watermains, curbs and gutters, sidewalks, street lighting and electric service connections shall be constructed in accordance with plans and specifications prepared by a professional engineer, registered to practice in the Province of Ontario, and acceptable to the Town of Amherstburg. Criteria upon which these services are to be designed, are as described in this schedule.

STORM DRAINAGE

- (a) Storm sewers, together with catch waterbasins shall be installed in all streets in the development in accordance with the approved engineering drawings and as approved by the Ministry of the Environment and Energy, E.R.C.A. and the Corporation. A copy of the design calculations shall be submitted to the Corporation.
- (b) Private service connections (including cleanouts) from the storm sewers to the front property line of each building lot shall be provided and the developer shall install one private service connection for each unit. The minimum size of service connections shall be 150 mm. (6") diameter. Private storm service connections and clean-outs shall not be constructed under future driveways. Each storm service shall be provided with a clean out situated at the property line as per clean out detail on the approved engineering drawings.

Sewers shall be designed in accordance with the following criteria:

Design Method	-	rational method
Design Frequency	-	1:2 year
Runoff Coefficient	-	0.33
Minimum Pipe Size	-	300 mm. dia.
Manning Coefficient	-	0.013
Minimum Velocity	-	0.6 m/s
Private Drain Connection	-	150 mm. dia.
Minimum Cover	-	0.9 m.
Maximum Manhole Spacing	-	122 m.
Pipe Material	-	concrete or PVC

Restrictions imposed on the storm sewer outlet by the Town or by the Essex Region Conservation Authority shall be incorporated in the design of the storm sewer system. A stormwater management study shall be completed to the satisfaction of the Town and the Essex Region Conservation Authority. The study shall determine the effect of increased runoff due to development of the site and identify stormwater management measures to control any increases in flows in downstream watercourses up to and including the 100 year design storm. The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.

SANITARY SEWERS

Sanitary sewers together with all necessary appurtenances and service connections from the appropriate sewer to the front property line of each unit shall be constructed to the approved design of the Ministry of the Environment and Energy and the Corporation. Each building lot shall be provided with access to a sanitary sewer service connection for each unit. The minimum sanitary service connection size shall be 5” in diameter. Each sanitary service shall be provided with a clean out situated at the property line as per clean out detail on the approved engineering drawings. The Developer shall be responsible for all costs associated with the construction of the Ontario Ministry of the Environment and Energy and the Provincial sewage works program across the Developer’s property.

Sewers shall be designed in accordance with the following minimum design criteria:

Average Daily Flow	-	360 L/cap/day
Peaking Factor	-	harmon formula
Population Density	-	3 ppu
Minimum Pipe Size	-	200 mm. dia.
Manning Coefficient	-	0.013
Minimum Cover	-	2.5 m.
Maximum Manhole Spacing	-	122 m.
Private Drain Connection	-	125 mm. dia.
Pipe Material	-	PVC

The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.

WATERMAINS

The Developer shall construct and install sufficient watermains including hydrants, valves and blow-offs to service the entire subdivision with connections to all units in accordance with the approved engineering drawings. Each unit shall be serviced by a single water service connected to the mainline.

Minimum Cover	-	1.5 m.
Maximum Hydrant Spacing	-	150 m.
Maximum Valve Spacing	-	150 m. and at intersections
Minimum Pipe Size	-	150 mm. dia.
Lot Connection	-	19 mm. dia.
Pipe Material	-	PVC

Design and installation shall be in accordance to the Town’s watermain specification to the satisfaction of the Town of Amherstburg.

The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.

ROADS

The Developer shall construct and install roadways and curbs and gutters upon all allowances for roads within the draft plan and upon the detail plans of services, in accordance with the following minimum design criteria:

(a) Roads within the Subdivision

Width (face to face of curb)	-	8.6 m.
Curb and Gutter	-	Barrier type concrete curbs and gutters

Barrier type concrete curbs and gutters shall be constructed on both sides of all roadways including all turning radii. Design and type of curb is shown on the approved engineering drawings. All catch basin grates are to open towards the property line and not towards the street.

Alignment:

- Minimum Turning Radius - 9 m.
- Minimum Road Grade - 0.30%
- Cross Fall Grade - 2.0% min.
- Cul De Sac Radius - 10.5 m

and design parameters recommended by the Ministry of Transportation.

In general, any trenches crossing under pavement shall be backfilled with granular material acceptable to the Town engineer and such trenches shall be mechanically compacted as required by the Town engineer. Boulevards and other unpaved portions of the allowances for roads (except where forming part of the front lawn of residential lots) must be graded and sodded or seeded by the Developer.

SIDEWALKS

Sidewalks are to be installed in accordance with the Town's Development Manual or otherwise approved by the Town.

STREET LIGHTS

The Developer shall install street lights in accordance with the present design standards and the Town's Development Manual, all to be approved by the Town of Amherstburg.

STREET SIGNS

The Developer shall arrange with the Town to install street signs at each intersection and where necessary, all to be done in accordance with present standards and satisfactory to the Town.

HYDRO SERVICE

The Developer shall construct and install a sufficient hydro distribution system to service the entire subdivision with connections to all lots therein and connect the same to the existing hydro distribution system. Individual lot services, where possible, shall be provided on common lot lines so that residential hydro meters face each other. The hydro distribution system within the subdivision shall not be grounded to the water distribution system. All hydro service within the subdivision shall be underground and designed and installed in accordance with the requirements and criteria of the Town of Amherstburg and Hydro One.

TELEPHONE

The Developer shall arrange for Bell Telephone to provide underground telephone service to all of the lots within the subdivision.

GAS

The Developer shall arrange for Union Gas Company to provide underground gas service to all of the lots within the subdivision.

CABLE T.V. SERVICE

The Developer shall, at its' own expense, make satisfactory arrangements with the cable company providing cable television service to the municipality to provide for a buried or underground cable television service for this development. The Developer shall provide to the Corporation, upon demand, confirmation from the said cable company that such arrangements have been made.

SERVICE LOCATION

ADJUSTMENTS

The grade of any and all water service boxes, valves chambers, hydrants, manholes, drains and transformer boxes shall be adjusted by the Developer when and as may be required by the Town engineer.

TEMPORARY SERVICES

Upon a connection of any type being made to the hydro or water services, a temporary meter or meters of a type and in a location or locations satisfactory to the Town shall be installed and continuously maintained until all hydro and/or water used within the subdivision, once the same is accepted by the Town, is metered through approved private connections. The Developer shall be responsible for, and will promptly pay or cause to be paid all charges for hydro and water supplied to the subdivision.

DRIVEWAY APPROACHES

Residential driveways and their approaches shall be constructed to a width that complies with the provisions of the Corporation's Zoning By-Law, as amended from time to time. Residential approaches shall consist of 250 mm. (10") Granular "A" stone base with interlocking paving stone, concrete or asphalt paving from the back of the curb to the property line.

It is understood and agreed that under no circumstances will the Developer herein be permitted to install a new residential driveway approach within the corner radii of a curb constructed along any street in this development.

It is further understood and agreed that under no circumstances will the Developer or any other persons be permitted to install a new residential driveway approach over any private service connections from the storm or sanitary sewers or water system except where such connections cross driveways laterally (over the shortest possible distance) to enter the dwelling.

This provision is to be specifically brought to the attention of purchasers of lots at the time of purchase.

COMMUNITY MAILBOXES

The Developer will be responsible for negotiating specific locations within the subdivision with Canada Post for the location of community mailboxes.

EASEMENTS

The Developer agrees that such easements as may be required for utility or drainage purposes shall be granted to the appropriate authority.

ROAD ALLOWANCES

All road allowances shown on the draft plan shall be dedicated as public highways and shall be not less than 20.00 m. (66') wide and shall be shown on the approved engineering drawings.

REAR YARD DRAINAGE

- (a) Rear yard drainage shall be provided for each building unit in the locations and according to the specifications prescribed by the approved engineering drawings and as approved by the Corporation. Rear yard drainage shall be installed contemporaneously with the construction of dwellings on each building lot. A separate rear yard drainage system, with 300 mm. diameter pre-fabricated polyethylene catch basins in accordance to the rear yard drainage detail shown on the approved engineering drawings, shall be provided for each building lot.
- (b) The Developer shall, at its' own expense, prepare a lot grading and rear yard drainage plan for each individual building unit within this development and shall file same with the Corporation. The lot grading plan shall show proposed dwelling elevation, proposed elevations at lot corners and direction of flow of the rear yard drain pipe. The final elevations of all dwellings and other buildings, minimum opening elevations, where applicable and the final lot grades relating thereto and the rear yard drainage shall conform to the proposed lot grading and rear yard drainage plan filed for that lot. The consulting engineer, or a certified Ontario Land Surveyor, shall certify upon completion of the construction of the dwelling and building on each lot that the said lot grading and rear yard drainage plan has been complied with, in accordance with the approved engineering drawings, and until such time as the said certification has been received by the Corporation, occupancy of the dwelling on the subject building lot shall not be permitted.

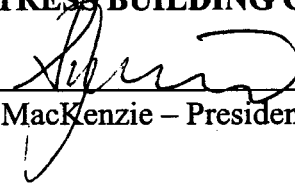
SPECIAL SERVICING REQUIREMENTS

The construction of structures shall conform to the following requirements:

- (a) Roof or rain water leaders and weeping tile drains from each respective building must be discharged into the storm sewer. A sump pump connected to the storm sewer must be provided for each building.
- (b) Weeping tile drains shall not be connected to the sanitary sewers.
- (c) Basement floor drains shall be connected to the sanitary sewers provided for each dwelling.
- (d) Rear yard drainage, including 300 mm. diameter pre-fabricated polyethylene catch basins, shall be provided for each building unit in the locations and according to the design and specifications as shown on the approved engineering drawings.
- (e) A lot grading plan shall be included in the final set of plans approved for construction of the works. The consulting engineer or a certified land surveyor shall certify, upon completion of the works, that the lot grades and catch basin elevation are in accordance with the design and that the lands abutting the subdivision are draining adequately. The Developer acknowledges that, until such time as the provisions of this paragraph have


been complied with, no occupancy of any building shall be permitted and any and all securities delivered to the Corporation by the Developer herein shall be held to ensure the provisions of this paragraph are complied with.

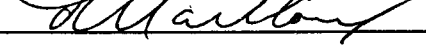
FORTRESS BUILDING GROUP INC.

Per: 
Scott MacKenzie – President

I have the authority to bind the corporation

**THE CORPORATION OF THE TOWN
OF AMHERSTBURG**

Per: 
Mayor Wayne Hurst

Per: 
Clerk David Mailloux