

# Lancaster, Brooks & Welch

BARRISTERS AND SOLICITORS

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DATE: APRIL 5, 2002

TELECOPIER (FAX) TRANSMITTAL SHEET

RE:

PELHAM / BALLENCROACHMENT AGREEMENT

TO: (FIRM)

TOWN OF PELHAM

ATTENTION:

CHARL MICLETTTE

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Pages 1, 2, 3 and 5 with changes. Could  
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LANCASTER BROOKS &amp; WELCH

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# ENCROACHMENT AGREEMENT

**THIS AGREEMENT** made this      Day of February, 2002 A.D.

BETWEEN:

BALL

JAMES FRASER ~~BALL~~ & SHERRIE JOANNE BALL,  
Hereinafter referred to as the "OWNERS";

- and -

THE CORPORATION OF THE TOWN OF PELHAM  
Hereinafter referred to as the "TOWN"

**WHEREAS** the Owners are the owners of lands more particularly described in Schedule "A";

AND WHEREAS the Owners' retaining wall and rock garden ("the Encroachments") encroach upon lands owned by the Town which are more particularly described as Part of Lots 36 & 37, Plan 59M-107, designated as Parts 1 and 2 on Plan 59R-11589 (the "Encroachment Lands");

AND WHEREAS the Owners have requested and the Town has agreed to permit the Encroachments on the Encroachment Lands, as shown on said Plan 59R-11589 (the "Reference Plan") to continue upon the terms and conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH,  
that in consideration of the mutual covenants and agreements herein contained, the parties  
hereto covenant and agree as follows:

- (1) The Owners shall be permitted to maintain the Encroachments in their current location on the Encroachment Lands as shown on the Reference Plan provided that they comply with the terms and conditions of this agreement.
- (2) The Owners shall, at their expense and throughout the term of this agreement, be responsible for the maintenance and repair of the Encroachments to the complete satisfaction of the Town, acting reasonably, and shall not make any additions, expansions or extensions to the encroachments or excavate, fill, drill or install or erect any other buildings or structures of any kind in or upon the Encroachment Lands.

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(3) The Owners shall, at their expense, keep the Encroachment Lands free and clear at all times of garbage, debris and all obstructions, and shall cut the grass.


(4) (A) The Owners shall, at their expense and at all times throughout the term of this agreement, provide and keep in full force and effect a personal and premises liability policy covering public liability and property damage insurance in respect of the Encroachments naming the Town as an additional insured. Such insurance shall be in an amount of not less than \$1,000,000.00, shall be in a form satisfactory to the Town and shall provide coverage for any injury, including death or damage to any person or property arising directly or indirectly out of the use and location of the Encroachments.


(B) The Owners shall, upon execution of this agreement, furnish to the Town proof, satisfactory to the Town, of the insurance policies covering the above risks. The Owners shall require as a condition of the insurance policies that the insurer give thirty (30) days' prior written notice to the Town of any change or cancellation of any policy. The Owners shall also provide the Town with proof, satisfactory to the Town, of all renewals of the policies, *if requested by the Town.*


(C) If the Owners fail to insure as provided for in this agreement or should the policy or policies of insurance be terminated, revoked or otherwise expire, the Town may, at its option, proceed to obtain the required insurance at the cost of the Owners without prejudice to any other rights and recourses of the Town and such cost shall be due immediately and the Town shall be permitted to recover same from the Owners by action or in like manner and with the same remedy as municipal taxes.

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(5) It is hereby declared and agreed that no length of time of, or enjoyment by the Owners of the permission granted by the Town as well as nothing herein contained shall be construed as granting to the Owners anything more than permission to maintain the Encroachments in their present location in accordance with the terms of this agreement until such time as this permission is terminated in accordance with the terms of this agreement and, without restricting the generality of the foregoing, the Owners shall not acquire any right-of-way, easement or any possessory rights over the Encroachment Lands.

(6) Upon the occurrence of any of the following events:  
(I) the Owners shall have breached any covenant or failed to perform any of their obligations pursuant to this agreement, and the Town shall have given written notice to the Owners specifying the nature of default and the steps required to correct it and the Owners shall have failed to correct the default in the time as required by the notice, which said time shall not be less than fifteen (15) days; 

(II) any insurance policy or policies shall have been cancelled or not renewed and such policy or policies have not been reinstated or renewed within fifteen (15) days of such cancellation; 

 the Town, at its option, may immediately terminate this agreement.

(7) The Owners acknowledge and agree that this agreement and the permission granted to them by the Town for the Encroachments shall immediately terminate upon the earlier of:

(I) the Town electing to terminate this agreement in accordance with paragraph 6;

(II) the Encroachments being destroyed or demolished in total or in part or otherwise removed from their present location;  
or,

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or any other such address that the parties may from time to time give notice of same in writing pursuant to this paragraph and every such notice shall be deemed to have been given upon the day it was so delivered or on the third day after the date upon which it is mailed by registered mail.

- (10) The Owners hereby consent to the registration of this agreement against the title to the lands described in Schedule "A". *The Town consents to the registration of this agreement against the title to the lands described in Schedule "A".*
- (11) *Encroachment Lands.*  
This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter hereof. Any amendments to this agreement shall be in writing signed by both parties hereto.
- (12) The Owners agree that they shall and will, upon reasonable request of the Town, and the Town agrees that it shall and will, upon the reasonable request of the owners, make, do, execute, cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the further and more perfect and absolute perfection of the terms, conditions and covenants of this agreement.
- (13) If any term, clause or provision of this agreement shall be adjudged to be invalid, the validity of any other term, clause, or provision shall not be affected, and such invalid term, clause, or provision shall be deleted from this agreement.
- (14) Any condoning, excusing or overlooking by the Town of any default, breach or non-observance by the Owners of any covenant or condition contained herein does not operate as a waiver of the Town's rights hereunder in respect of subsequent default, breaches or non-observances and does not defeat or affect in any way the rights of the Town herein in respect of any subsequent defaults, breaches or non-observances.