

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW NO. 2285 (2001)

Being a by-law to authorize the Mayor & Clerk to enter into an
Encroachment Agreement with Jim & Sherrie Ball, owners of 1605
Station Street.

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable
to enter into an encroachment agreement with Jim & Sherrie Ball, owners of 1605 Station Street with
respect to the encroaching of a flower garden, retaining wall and pond upon lands owned by the
municipality;

NOW THEREFORE THE CORPORATION OF THE TOWN OF PELHAM ENACT
AS FOLLOWS:

(1) THAT the Encroachment Agreement attached hereto and made part of this by-law
between the Corporation of the Town of Pelham & Jim and Sherrie Ball be and the same is hereby
approved.

(2) THAT the Mayor & Clerk be and each of them is hereby authorized and instructed
on behalf of the Corporation of the Town of Pelham to execute the said Encroachment Agreement
and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
7th. DAY OF MAY, 2001 A.D.


MAYOR


CLERK

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this 2ND May 2002 A.D.

BETWEEN:

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.

(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.

(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; or,

(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,

(III) the Encroachments becoming structurally unsound and unsafe and thus a risk to public safety as so determined by the Town. The Town confirms that in its opinion the Encroachments are structurally sound and safe as of the date of signing of this Agreement.

Upon any termination of this agreement the Encroachments, if still in existence, shall be demolished or otherwise removed within one (1) month of the termination of this agreement failing which the Town shall be permitted to demolish or otherwise remove the Encroachments at the cost of the Owners 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 remedies as municipal taxes.

(8)

The Owners hereby indemnify and save harmless the Town from and against all liability, losses, damages, actions, causes of action, claims, suits, demands, expenses or any costs whatsoever which may arise either directly or indirectly by reason of an act, neglect or refusal of the Owners, their agents, invitees or licencees with respect to any provision of this agreement or due to any matter arising directly or indirectly out of the use and location of the Encroachments.

(9)

Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at:

Town Clerk

Town of Pelham

P. O. Box 400

Fonthill, Ontario

L0S 1E0

To the Owners at:

1605 Station Street

Fonthill, Ontario

L0S 1E3

JHS AB.

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 Encroachment Lands.

(11) 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.

JTB SB

(15) This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

(16) This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, assigns and transferees and upon those persons or corporations hereafter acquiring title to or an interest in all or any part of the lands described in Schedule "A" and the Encroachment Lands.

IN WITNESS WHEREOF the parties hereto have affixed their Corporate Seals attested to by the hands of their duly authorized officers.

SIGNED, SEALED AND DELIVERED

) THE CORPORATION OF THE

) TOWN OF PELHAM

) Bryan Walker

) MAYOR (ACTING),

) Sherry Fraser Mitchell

) CLERK

)

[Signature]
Witness as to the signature of James

) JAMES FRASER BALL

[Signature]
Witness as to the signature of Sherrie

Joanne Ball

) Sherrie Joanne Ball

) SHERRIE JOANNE BALL

)

STB AB

SCHEDULE "A"

LOT 35, PLAN 59M-107
TOWN OF PELHAM
REGIONAL MUNICIPALITY OF NIAGARA