



**Lancaster, Brooks & Welch LLP**  
BARRISTERS AND SOLICITORS



**PLEASE RESPOND TO WELLAND OFFICE**

August 14, 2006

The Corporation of the Town of Pelham  
P. O. Box 400  
Fonthill, Ontario  
L0S 1E0

**Attention: Ms. Cheryl Miclette**

Dear Madam:

**RE: Wright/Hatter Encroachment Agreement**

Please find enclosed three copies of the above  
encroachment agreement.

Please sign all three copies together with the Mayor and  
return same to the undersigned.

We trust this is satisfactory and remain,

Yours very truly,

LANCASTER BROOKS & WELCH LLP

PER:

R. Bruce Smith

RBS:pm  
Encls.

PO Box 790, 80 King Street, Suite 800, St. Catharines, Ontario L2R 6Z1 Tel. 905.641.1551, Fax 905.641.1830  
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9 Tel. 905.735.5684, Fax 905.735.3340  
[www.lbwlawyers.com](http://www.lbwlawyers.com)

Rodger A. Gordon, Q.C.	Malte von Anrep, Q.C.**	H. E. Thorsteinson, Q.C.	Gary L. Black	Bruce S. Wormald
David L. Edwards*	H. Christina MacNaughton***	Robert B. Reid	Thomas A. Bielby	Robert W. P. Welch
R. Bruce Smith	Del C. Daignault	Thomas G. Hanrahan	Kenneth W. Garland	Michael A. Mann
Leanne E. Standryk	Stanleigh E. Palka	Joseph B. Doucette		

Geoffrey F. Brooks, QC (retired); Robert S. K. Welch, OC, QC, LLD (1928-2000)

\*Certified by the Law Society as a Specialist in Corporate and Commercial Law \*\*Certified by the Law Society as a Specialist in Civil Litigation \*\*\*Certified by the Law Society as a Specialist in Family Law

## **ENCROACHMENT AGREEMENT**

**THIS AGREEMENT** made this 19<sup>th</sup> day of June, 2006

**B E T W E E N:**

**COLIN ARTHUR WRIGHT and SUSAN MARJORIE HATTER**

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’ two storey sided dwelling and insulated brick garage (the “Buildings”) encroach upon the road allowance between Lots 9 and 10, Concession 9 ( “Centre Street”), which said encroachments are more particularly shown on Plan 59R-12748 deposited on May 5, 2005 in the Land Registry Office for the Land Registry Division of Niagara South (the “Reference Plan”);

**AND WHEREAS** the Owners have requested and the Town has agreed to permit the encroachments of the Buildings to continue upon the terms and conditions contained herein;

**AND WHEREAS** the Town is authorized by section 1 of the Municipal Act, 2001 , S.O. 2001, c.25 to deal with highways;

**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 Buildings in their current locations 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 Buildings, and keeping said Buildings in a good and proper state of repair and safety and to the complete satisfaction of the Town, acting reasonably, and shall not make any additions, expansions or extensions to the Buildings or excavate, fill, drill or install or erect any other buildings or structures of any

kind in or upon Centre Street. In addition the Owners shall comply with such further and additional requirements as may be required by the Town, acting reasonably.

3. The Owners shall, at their expense, keep that portion of Centre Street surrounding the Buildings free and clear at all times of garbage, debris and all obstructions.

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 Buildings naming the Town as an additional insured. Such insurance shall be in an amount of not less than \$2,000,000.00, shall be in 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 Buildings.

(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.

(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 or their successors in title anything more than permission to maintain the Buildings in their present locations in accordance with the terms of this agreement until such time as this permission is terminated. In addition, and without restricting the generality of the foregoing, the Owners and their successors in title shall not

acquire any right, title or interest in Centre Street or any right-of-way, easement or any possessory rights over Centre Street nor shall the permission to maintain the Buildings in their present location as provided for in this agreement deprive the Town by the operation of any limitation period or otherwise of any right to require the removal of the Buildings or any restoration of Centre Street to the satisfaction of the Town at the Owners' expense.

6. The Owners covenant and agree that the Town, and its respective officers, servants, workers, employees, agents and contractors under its control or supervision or any of them shall have the right from time to time and at all reasonable times during the currency of this agreement, to enter in and upon the lands described in Schedule "A" or any part thereof, with all necessary workers, plant, equipment and material for the purpose of inspecting, altering or removing the Buildings from Centre Street in accordance with this agreement. Such inspection shall not free or relieve the Owners in any way whatsoever from the liability under the covenant set out to keep and maintain the Buildings in good and proper repair and condition.

7. The parties acknowledge and agree that this agreement does not in any way whatsoever diminish the rights of the Town, or any gas, telephone, cable, municipal electricity company or other public utility company, their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon Centre Street for the purpose of constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, gas pipes, poles, wires or other underground services and installations and appurtenances thereto. The Owners shall not be entitled to any damages or compensation by reason of the exercise of the Town's or utility company's rights contained in this clause and the Owners at their own expense shall carry out such alteration or removal of the Buildings as the Town may direct pursuant to the exercise of the Town's or utility company's rights.

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

9. The Owners acknowledge and agree that this agreement and the permission granted to them by the Town for the encroachment of the Buildings shall immediately terminate upon the earlier of:

- (i) the Town electing to terminate this agreement in accordance with paragraph 8;
- (ii) the Buildings (or either of them) being destroyed or demolished in total or in part or otherwise removed from their present locations;
- (iii) the Buildings (or either of them) becoming structurally unsound and unsafe and thus a risk to public safety as so determined by the Town;
- (iv) the Town deciding to widen or expand Centre Street in the area occupied by the Buildings; or
- (v) the lands described in Schedule "A" being conveyed, unless the purchasers or transferees of said lands agree in writing, in form satisfactory to the Town, to be bound by the terms of this agreement.

Upon any termination of this agreement the Buildings, 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 Buildings 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.

10. 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 the Buildings or due to or arising:

- (i) out of a breach by the Owners of any provision of this agreement;
- (ii) out of the use and location of the Buildings;
- (iii) out of the permission hereby granted to the Owners by the Town; or

- (iv) out of the exercise by the Owners of such permission.

The Owners grant to the Town full power and authority to settle any such actions, suits, claims or demands on such terms as the Town may deem advisable and the Owners covenant and agree with the Town to forthwith pay to the Town on demand all monies paid by the Town in pursuance of any such settlement and such sum as shall represent the reasonable costs of the Town or its solicitors in defending or settling any such actions, suits, claims or demands, based on a solicitor and own client basis.

11. 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:

501 Canboro Road  
Fenwick, Ontario  
L0S 1C0

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.

12. The Owners hereby consent to the registration of this agreement against the title to the lands described in Schedule "A".

13. 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.

14. The Owners agree that they shall and will, upon reasonable request of the Town, 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.

15. 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.

16. 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.

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

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

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
	) PER: <u>Ronald W. Leavens</u>
	) Mayor - Ronald Leavens
	) PER: <u>Cheryl Miclette</u>
	) Clerk - Cheryl Miclette
	)
	) <u>Colin Arthur Wright</u>
	) COLIN ARTHUR WRIGHT
	)
	) <u>Susan Marjorie Hatter</u>
	) SUSAN MARJORIE HATTER
	)

  

<u>Colin Arthur Wright</u>	
Witness as to the signature	
of Colin Arthur Wright	
<u>Susan Marjorie Hatter</u>	
Witness as to the signature	
of Susan Marjorie Hatter	

## SCHEDULE "A"

Part Lot 10, Concession 9, Town of Pelham, being Part 1 on Plan 59R-6943 save and except

Part 1 on Plan 59R-12748 and being all of PIN 64031-0434 (LT).