

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this 3<sup>RD</sup> day of JUNE 1996.

B E T W E E N:

BRUNO IAFRATE and JEANNIE IAFRATE

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 a berm constructed by the Owners (the "Berm") encroaches upon a public highway known as Line Avenue, which said encroachment is more particularly shown on Schedule "B";

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

AND WHEREAS the Town is authorized by section 210, subsection 107, of the Municipal Act, R.S.O. 1990, c. M.45 to allow any person owning or occupying any building or other erection that by inadvertence has been wholly or partially erected upon any highway to maintain and use such erection thereon.

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 Berm in its current location as shown on Schedule "B" provided that they comply with the terms and conditions of this agreement.
2. The Owners shall, at their expense, be responsible for the maintenance and repair of the Berm throughout the term of this agreement and shall not make any additions, expansions or extensions to the Berm or excavate, fill, drill or install

or erect any other buildings or structures of any kind in or upon Line Avenue.

3. The Owners shall, at their expense, keep the area surrounding the Berm free and clear at all times of garbage, debris and all obstructions.

4. The Owners covenant and agree to maintain and repair the Berm to the complete satisfaction of the Town as the Town, acting reasonably, shall direct throughout the term of this agreement.

5. (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 Berm 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 Berm.

(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.

6. It is hereby declared and agreed that nothing herein contained shall be construed as granting to the Owners anything more than permission to maintain the Berm in its present location until such time as this permission is terminated and, without restricting the generality of the foregoing, the Owners shall not acquire any right-of-way, easement or any possessory rights over Line Avenue.

7. 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.

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

- (i) the Town electing to terminate this agreement in accordance with paragraph 7;
- (ii) the Berm being destroyed or demolished in total or in part or otherwise removed from its present location; or
- (iii) the Berm becoming structurally unsound and unsafe and thus a risk to public safety as so determined by the Town.

Upon any termination of this agreement the Berm, 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 Berm 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.

9. 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 Berm or due to or arising out of a breach by the Owners of any provision of this agreement or due to any matter arising directly or indirectly out of the use and location of the Berm.

10. 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:

1 Steflar Street,  
Fonthill, Ontario  
L0S 1E4

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.

11. The Owners hereby consent to the registration of

this agreement against the title to the lands described in Schedule "A".

12. 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.

13. The parties agree that they shall and will, upon reasonable request of the other party, 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.

14. 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.

15. 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.

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

17. 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

SCHEDULE "A"

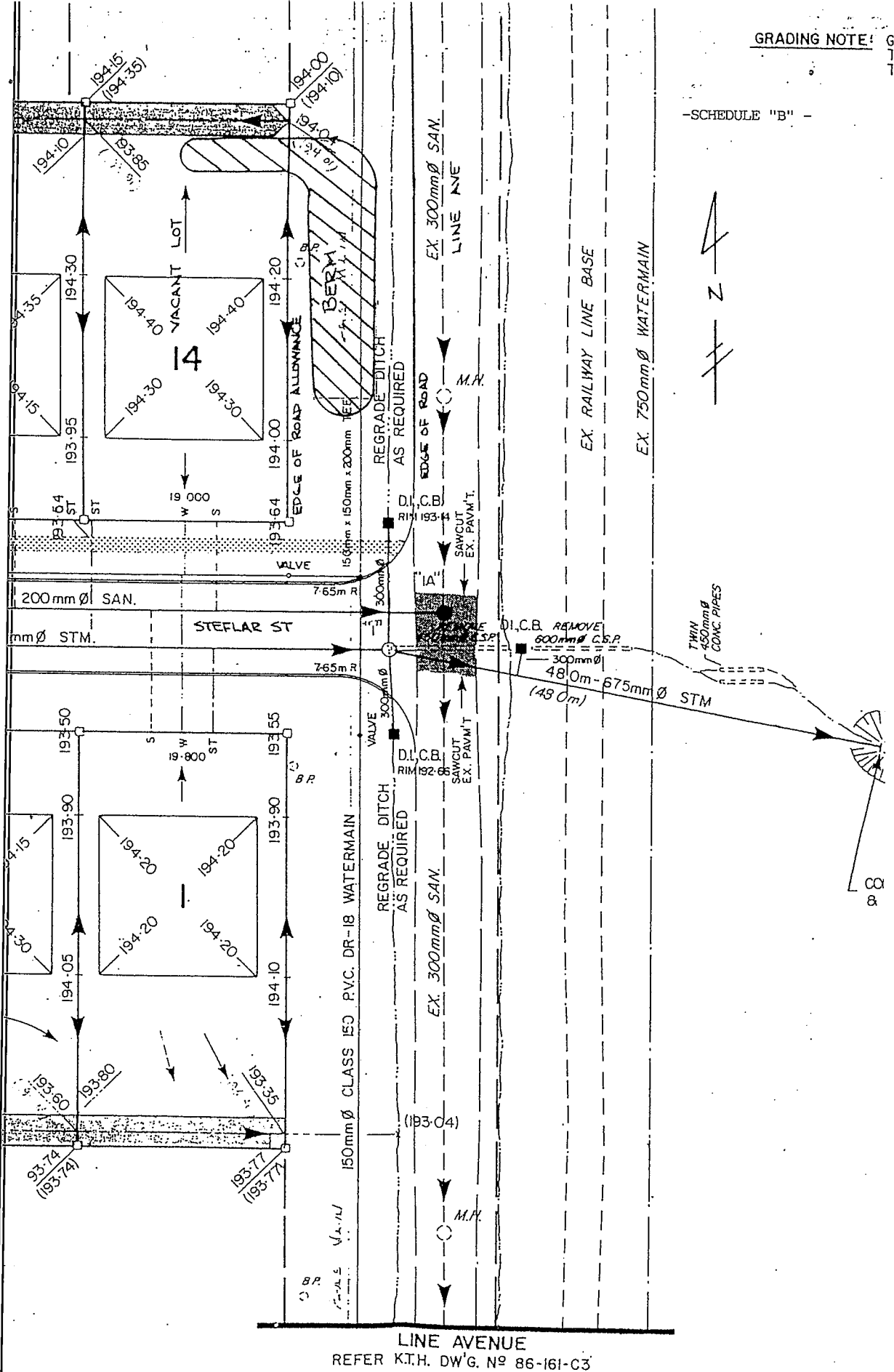
Parcel 14-1, Section 59M-163

Lot 14, Plan 59M-163

Town of Pelham

Regional Municipality of Niagara

-SCHEDULE "B" -



LINE AVENUE  
REFER K.T.H. DW'G. N° 86-161-C3