

Smokler Wixom Sub. No. 2  
PROPOSED SUBDIVISIONS  
(Not Platted)

Lib 7074

Pgs 649-654

11-23-77

AGREEMENT - EASEMENT - RESTRICTIONS

This instrument made this 20th day of SEPTEMBER, 1977, by and between the undersigned Owners and THE DETROIT EDISON COMPANY, a corporation organized and existing concurrently under the laws of the states of Michigan and New York, of 2000 Second Avenue, Detroit, Michigan, 48226, hereinafter referred to as "EDISON", and MICHIGAN BELL TELEPHONE COMPANY, a Michigan corporation of 1365 Cass Avenue, Detroit, Michigan, 48226, hereinafter referred to as "BELL".

W I T N E S S E T H :

WHEREAS, Owners are developing land for subdivision purposes in the CITY of WIXOM, OAKLAND County Michigan as described in Appendix "A", attached hereto and made a part hereof, and

WHEREAS, the plat of said subdivision will not be recorded until a later date and Owners desire EDISON and BELL to install their underground lines and facilities prior to said recording.

NOW, THEREFORE, in consideration of the mutual promises and covenants for the installation of underground utility service made by the parties hereto, it is hereby agreed:

(1) The installation, ownership and maintenance of electric services and the charges to be made therefor shall be subject to and in accordance with the Orders and Rules and Regulations adopted from time to time by the Michigan Public Service Commission.

(2) Easements for installation of electric and communication services are hereby granted by the Owners to EDISON and BELL as set forth in the attached copy of proposed plat. Any additional easements needed by EDISON and BELL shall be granted by Owners in a separate instrument.

(3) Owners will place survey stakes indicating property lot lines before trenching.

(4) Where sewer lines will parallel electric and communication lines, sewer taps must be extended into each lot for a distance of one (1') foot beyond the easement limits. Underground sewer and water lines may cross but shall not be installed parallel within the six (6') foot easements used by EDISON and BELL.

(5) Owners must certify to EDISON and BELL that the easements are graded to within four (4") inches of final grade before the underground facilities are installed.

RECORDED FIRST OF MAY NO.

31182

(6) No excavations (except for public utility purposes) and no structures or permanent apparatus of any kind (except line fences and driveways) shall be allowed within the public utility easements used by EDISON and BELL. EDISON and BELL shall have no liability to Owners for removal of trees or plant life lying within said easements which, in the sole opinion of EDISON and BELL, interferes with their facilities or when removal is necessary to repair and maintain the underground service facilities.

(7) Owners to provide for clearing the easements of trees, large stumps and obstructions sufficient to allow trenching equipment to operate.

(8) No shrubs or foliage shall be permitted on Owners property within five (5') feet of the front doors of transformers or switching cabinets.

(9) Owners further agree that if subsequent to the installation of the utility facilities of EDISON and BELL, it is necessary to repair, move, modify, rearrange or relocate any of their facilities to conform to a new plot plan or change of grade or for any cause or changes attributable to public authority having jurisdiction or to Owners action or request, Owners will pay the cost and expense of repairing, moving, rearrangement or relocating said facilities to EDISON and/or BELL upon receipt of a statement therefor. Further, if the lines or facilities of EDISON and BELL are damaged by acts of negligence on the part of the Owners or by contractors engaged by Owners, repairs shall be made by the utilities named herein at the cost and expense of the Owners and shall be paid to EDISON and/or BELL upon receiving a statement therefor. Owners are defined as those persons owning the land at the time damage occurred.

(10) Owners hereby grant EDISON and BELL the right to install their secondary service and communication lines from termination of utility facilities to the meter or communication building entrance point as the case may be. Owners to pay the cost of conduit for electric and/or communication facilities to accommodate patios or similar site conditions.

(11) Owners of each lot will pay EDISON for service lateral conductors an amount equal to the straight line measurement in feet from the termination of utility facilities at the front or rear property line to Owners meter entrance multiplied by \$1.25. When special routing is required, the charge of \$1.25 per foot will apply to the route of the line as installed. These charges are subject to change and modification by Orders, from time to time, by the Michigan Public Service Commission.

(12) The Owner will pay to utility concerned the extra trenching costs involved if trenching is required while ground is frozen.

(13) EDISON and BELL will own and maintain the secondary services and communication laterals from the property line to Owners meter location except such costs or expenses incurred as set forth in Paragraph (9) above shall be borne by Owners.

RECORDED IN REGISTRY NO. 31182

(14) Upon the further acceptance and recording of the plat for the above described land, the easements herein granted and all the terms and conditions hereof shall merge with and be part of the private easements for public utilities indicated on said plat, only on condition that there is no dedication to the use of the public for said easements. The utility making use of such easements shall pay all the costs incurred by all prior public utility users in relocating or rearranging their facilities to make the easements available for subsequent use.

This Agreement-Easement-Restriction shall run with the land and shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the day and year first above written.

IN THE PRESENCE OF:

Mary Ann Klos  
MARY ANN KLOS

Katherine Hayes  
K. KATHERINE HAYES

Charles V. Claphan  
CHARLES V. CLAPHAN

J. Douglas Roy  
J. DOUGLAS ROY

THE DETROIT EDISON COMPANY

By Robert R. Tewksbury  
ROBERT R. TEWKSBURY, DIRECTOR  
Real Estate and Rights of Way Dept.

By Irene C. Kata 10-14-77  
IRENE C. KATA

MICHIGAN BELL TELEPHONE COMPANY

By Robert K. Crowhurst  
ROBERT K. CROWHURST  
Staff Supervisor, Right of Way  
(Authorized Signature)

RECORDED IN BOOK OF REC. NO. 31182

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF WAYNE . )

On this 21st day of October, 1977, before me, the subscriber, a Notary Public in and for said County, personally appeared Robert R. Tewksbury and Irene C. Kata to me personally known, who being by me duly sworn, did say that they are the Director, R/E & R/W Dept. and Assistant Secretary of THE DETROIT EDISON COMPANY, a corporation organized and existing concurrently under the laws of Michigan and New York, and that the seal affixed to said instrument is the corporate seal of the said corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors and Robert R. Tewksbury and Irene C. Kata acknowledged said instrument to be the free act and deed of said corporation.

My Commission Expires: \_\_\_\_\_  
T. KATHERINE HAYES  
Notary Public, Oakland County, Mich.  
My Comm. Expires February 10, 1980

T. Katherine Hayes  
Notary Public  
\_\_\_\_\_ County, Michigan

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF OAKLAND )

On this 10TH day of OCTOBER, 1977 before me, the subscriber, a Notary Public in and for said County, appeared ROBERT K. CROWHURST to me personally known, who being by me duly sworn, did say that he is STAFF SUPERVISOR R/W authorized by and for MICHIGAN BELL TELEPHONE COMPANY a Michigan Corporation, and that the said instrument was signed in behalf of said corporation, by authority of its Board of Directors, and ROBERT K. CROWHURST acknowledged said instrument to be the free act and deed of said corporation.

My Commission Expires: Dec 19, 1978

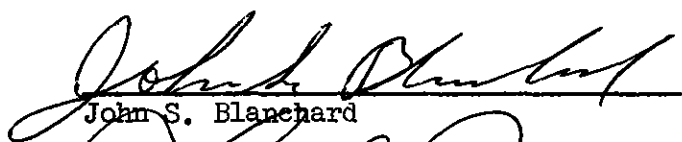
Charles V. Claphan  
Notary Public CHARLES V. CLAPHAN  
LIVINGSTON County, Michigan


RECORDED RETURN OF SIX NO. 31182

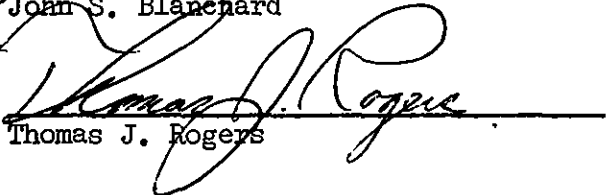
APPENDIX "A"

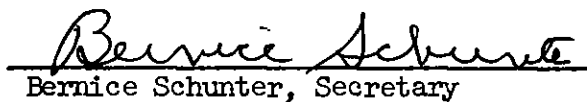
SMOKLER WIXOM SUBDIVISION NO. 2, part of the Northeast 1/4 of Section 30, Town 2 North, Range 8 East, City of Wixom, Oakland County, Michigan, beginning at a point said point being distant South 02° 44' 22" East 1317.16 feet and South 02° 50' 40" East 1332.35 feet along the North and South 1/4 line of said Section 30, said line also being in part the Westerly line of "Smokler Wixom Subdivision No. 1" as recorded in Liber 150, pages 9 and 10, Oakland County Records to a point on the centerline of Charms Road, North 86° 59' 10" East 912.66 feet along said centerline said line also being the East and West 1/4 line of said Section 30 and the Southerly line of said "Smokler Wixom Subdivision No. 1" and North 02° 31' 50" West 870.00 feet along the Easterly line of said "Smokler Wixom Subdivision No. 1" from the North 1/4 corner of said Section 30; thence from said point of beginning the following three courses along the Northerly line of said "Smokler Wixom Subdivision No. 1" South 87° 28' 10" West 143.07 feet and North 86° 08' 31" West 60.30 feet and South 87° 28' 10" West 143.00 feet; thence North 02° 31' 50" West 922.12 feet; thence South 86° 14' 22" East 205.90 feet; thence 30.30 feet along the arc of a curve to the left, radius 275.94 feet, central angle 06° 17' 28" chord length 30.28 feet and a chord bearing of South 00° 36' 54" West; thence South 02° 31' 50" East 35.03 feet; thence North 87° 28' 10" East 142.49 feet; thence South 03° 00' 50" East 61.01 feet, thence South 02° 31' 50" East 779.99 feet to the point of beginning and consisting of 25 lots numbered 40-64 both inclusive, containing 7.011 acres.

Bert L. Smokler & Company  
17515 West Nine Mile Road  
Suite 950  
Southfield, Michigan 48075

  
John S. Blanchard

  
Manuel E. Busch, President

  
Thomas J. Rogers

  
Bernice Schunter, Secretary

State of Michigan )  
                          ) SS  
County of Oakland )

Personally came before me this 30th day of September 1977, Manuel E. Busch, President and Bernice Schunter, Secretary of said corporation, to me known to be the persons who executed the foregoing instrument, to me known to be such president and secretary of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said corporation, by its authority.

Notary Public, Barbara Helen Archer Macomb County,  
(Acting in Oakland County) Michigan

My Commission Expires: 6-14-81

RECORDED RIGHT OF WAY NO. 3182

MEMORANDUM ORDER  
FOR GENERAL USE  
DS FORM NO 77 12-69

TO S. KRINSKY

DATE 10-24-77 TIME \_\_\_\_\_

Re: Underground Service - SMOKHER WIXOM SUB No 2.

Agreement and Easements obtained - OK to proceed with construction. Per MBT

COPIES TO:

FILE ✓

SIGNED

Omer Racine

REPORT

S. KRINSKY SERVICE PLANNER

Omer V. Racine, Representative  
Real Estate, Rights of Way & Claims  
272 Oakland Division Headquarters

DATE RETURNED \_\_\_\_\_

TIME \_\_\_\_\_

SIGNED \_\_\_\_\_

**AGREEMENT FOR UNDERGROUND ELECTRIC DISTRIBUTION SYSTEM  
FOR RESIDENTIAL SUBDIVISIONS, MOBILE HOME PARKS, CONDOMINIUMS  
AND APARTMENT HOUSE COMPLEXES**

AGREEMENT, made this 28 day of September, 1977, between The Detroit Edison Company, hereinafter called the "Company" and Bert L. Smokler Company with offices at 17515 W. Nine Mile Road, Suite 950, Southfield, Michigan hereinafter called the "Developer".

WHEREAS, the Developer desires the Company to furnish a 5Ø 120/240 volt secondary service to 25 lots/buildings numbered 40 thru 64 in the development known as Smokler Wixom No. 2 (Hidden Creek) (hereinafter called the "Development") located in Township 2N, Range 8E, Section 30, Oakland County, Michigan. If not already so recorded, the plat of said Development shall be recorded by the Developer in the Office of the Register of Deeds of Oakland County, Michigan. The approximate location of said underground electric distribution system is shown on the Company's Department Order Drawing # 77A-63734 dated July 27, 1977, a copy of which drawing is attached hereto and made a part hereof as Attachment A.

WHEREAS, the Company, pursuant to the applicable Orders of the Michigan Public Service Commission, is permitted to require payment from the Developer prior to constructing the underground electric distribution system.

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the Company and the Developer agree as follows:

1. The Company, subject to the provisions of this Agreement, shall furnish, install, own and maintain an underground electric distribution system consisting of primary and secondary underground cables, transformers and associated equipment, and any other underground or overhead line extension facilities which are required in connection therewith, but not including service connections, to make available alternating current, 60 hertz, single phase electric service to lots/buildings in the Development. Said underground distribution system shall be designed and installed so that the Company may serve streetlighting luminaires therefrom. The character and location of all streetlighting equipment, if installed by the Company, and all equipment constituting the underground electric distribution system shall conform to specifications prepared by the Company. Streetlighting service is not covered by this Agreement and, if provided by the Company, shall be the subject of separate agreement between the Company and the governmental body requesting such service. Said underground electric distribution system shall be used for furnishing the Company's service to the Developer and to such other persons along such underground electric distribution system, or beyond the same, as may become customers of the Company; provided, however, that such underground electric distribution system shall remain a separate, distinct unit for the purposes of this Agreement and any further extension therefrom shall not be a part of nor have any effect upon this Agreement. Service connections between such underground electric distribution system and houses/buildings or other structures to be served therefrom are not covered by this Agreement and shall be the subject of separate agreements between the Company and parties requesting such service connections.

RECORDED RIGHT OF WAY NO. 31182

2. Upon the execution of this Agreement, the Developer will pay to the Company \$ 4,960.00. This amount is the "Total Payment Required" as determined in the "Computation of Underground Electric Distribution Line Extension Advance and Contribution for Residential Developments," Attachment D, which is attached hereto and made part hereof. It is the Developer's share of the cost, after deducting the allowance for the investment which the Company is authorized to make under its line extension policy. Said "Total Payment" includes a nonrefundable contribution as reflected in "Computation of Underground Electric Distribution Line Extension Advance and Contribution for Residential Developments", computed in accordance with Rule B-3.3 and Rule B-3.4 of the Company's Standard Rules and Regulations as now filed with the Michigan Public Service Commission. No portion of said nonrefundable contribution shall be refunded (except as provided in Paragraphs 9 and 12 hereof) nor any interest paid thereon by the Company. A nonrefundable contribution in addition to that provided herein may be required where, in the Company's judgment, practical difficulties (not considered in determining said nonrefundable contribution) exist, such as but not limited to water conditions, rock near the surface, or where there are requirements for deviation from the Company's filed construction standards.

3. In regard to any amount identified as "Refundable Line Extension Advance" in said "Computation of Underground Electric Distribution Line Extension Advance and Contribution for Residential Developments", the Company will refund to the Developer in accordance with the "Schedule of Refunds", Attachment C, which is attached hereto and made a part hereof. No refund shall be made in excess of said refundable amount and said amount shall bear no interest. Any portion of said amount remaining unrefunded at the expiration of the fifth 12-month period commencing on the first day of the month following the first full billing period after which the service was energized, shall be retained permanently by the Company.

4. Without limiting the generality of the last sentence of Paragraph 2 hereof, if said underground electric distribution system or any portion thereof is to be installed during the period beginning December 15, and ending March 31, both inclusive, the Developer shall pay the Company, prior to installation of said system or portion thereof, an additional contribution (winter charge) of \$ 1.00 per trench foot for the portion of the said system installed during the period beginning December 15 and ending March 31, both inclusive, unless the Developer has signed this Agreement and paid the Total Payment Required, Attachment D, prior to November 1.

5. The Developer will provide to the Company, easements six feet (6') in width for the installation of the underground electric distribution system, which will be subsequently platted or provided by a separate easement instrument. Said easements shall include, but not by way of limitation, right of way for streetlighting in the Development by means of underground facilities.

6. The further maintenance of the underground electric distribution system in the proposed easements does not include repair of damage to said system caused by the Developer, its contractors, agents, employees, successors and assignees. If such damage should occur to said system, Developer will reimburse the Company for all costs arising out of any such damage.

7. Developer agrees that community antenna systems or other cable systems will not be installed in the same trench with Company and telephone cables without a separate written agreement.

RECORDED INDEXED OF WAY NO. 31182



8. The Developer shall provide, at no expense to the Company, rough grading (within four inches of finished grade) so that the underground electric distribution system and the streetlighting cables, if any, can be properly installed in relation to the finished grade level. After rough grading, the Developer shall install and maintain, at no expense to the Company, permanent survey stakes indicating all property lines in the Development. Developer shall also install and maintain final grade stakes along the route of the trench and at the location of all above grade equipment. Developer agrees that the average ground elevation within six feet of any cable, conduit, wire, conductor or other underground facility will thereafter be maintained at a level not to exceed four inches above or below the finished grade level established at the time of installation of said underground facilities. Developer further agrees that changes in the ground surface elevation in excess of the limits herein prescribed may be permitted upon written consent of the Company. No later than five days prior to the start of construction that has been scheduled for October 18, 1977, the Developer will deliver to the Company an executed *Certificate of Grade* certifying the completion of grading in accordance with the foregoing and Developer's payment in the amount specified as "Total Payment Required" on said Attachment D.

9. If the Company, in its sole judgment, determines that all of the customers (or their equivalent) upon which the "Company's Share of Cost" (Attachment D) is based, will not be prepared to receive electric service upon the expected date of completion of construction of the underground electric distribution system, the Company may, upon written notice of the Developer, postpone commencement of construction of said system and delay the date electric service will be available to the Developer. Construction of the underground electric distribution system will begin when the Company, in its sole judgment, determines that all of such customers will be prepared to receive electric service on or before the date of the anticipated completion of the construction of the said system. In the event of such postponement by the Company, the Developer may upon five (5) days written notice to the Company, terminate this Agreement. In the event of such termination, the Company will refund, without interest, all payments made by the Developer hereunder.

10. The Company shall not be responsible for any losses or damages incurred by the Developer arising out of the Company's inability to perform its obligations under this Agreement, where such inability arises from an event of Force Majeure. As used in this Agreement, the term Force Majeure shall include, but not be limited to, weather, labor disputes, unavailability of materials, equipment and supplies, strikes, sabotage, acts of the Developer, or any event not within the control of the Company, and which, by the exercise of reasonable diligence, the Company is unable to prevent.

11. This Agreement, all payments and refunds hereunder, and the construction and operation of the underground electric distribution system, shall be subject to such of the Company's Standard Rules and Regulations as may be applicable, including, but without limitation, Rule B-3.3, entitled "Extension of Service" and Rule B-3.4, entitled "Underground Distribution Systems". All changes in the Company's Standard Rules and Regulations occurring subsequent to the date of this Agreement, for purposes of this Agreement, shall be deemed to have occurred prior to the date hereof, shall be applicable to this Agreement and shall supersede the affected terms and provisions hereof.

12. If at any time prior to the commencement of construction of the underground electric distribution system, changes in the Company's Standard Rules and Regulations cause an increase or decrease in "Total Payment Required", Attachment D, Developer agrees to execute an Amendment to this Agreement reflecting such changes and pay all additional charges to the Company prior to the commencement of construction of the system. The Company agrees to refund any decreases to the Developer. Upon the failure of the Developer to execute such Amendment and pay to the Company the amount

3182

of such increase prior to the commencement of construction of the system, the Company may terminate this Agreement. In the event of such termination, the Company will refund, without interest, all payments made by the Developer hereunder.

13. Any assignment of this Agreement other than an assignment of the right to receive refund of the Advance pursuant to Paragraph 3 hereof, in whole or in part, by operation of law or otherwise, without the prior written consent of the Company, shall be void.

14. All notices required hereunder shall be in writing. Notices to the Company shall be sent by United States mail or delivered in person to:

**THE DETROIT EDISON COMPANY**  
**ATTENTION: DIVISION MANAGER**

30400 Telegraph Road

Birmingham, Michigan, 48010

Notices to the Developer shall be sent by United States mail or delivered in person to:

Bert L. Smokler Company

Suite 950

17515 W. Nine Mile Road

Southfield, Michigan 48075

Either party may at any time change the title or address to which notices to it are to be mailed or delivered by giving written notice of such change to the other party.

15. This Agreement supersedes all previous representations, negotiations, understandings or agreements, either written or oral, between the parties hereto or their representatives pertaining to the subject matter hereof, and constitutes the sole and entire agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the day and year first above written.

THE DETROIT EDISON COMPANY

By Leonard P. Lucas  
Leonard P. Lucas

Its Director, Service Planning

DEVELOPER Bert L. Smokler Company

By Lee Walter  
Lee Walter

Its Director Of Operations

RECORDED IN BOOK OF MAY NO. 3182

ATTACHMENT C

SCHEDULE OF REFUNDS

- (1) The Company will refund to the Developer the sum of \$500.00 for each additional residential customer(s) and two times the actual annual revenue of other customers directly connected to the extension whether by secondary voltage lines or limited purpose primary voltage lines.\* Refunds will not be made until the original customer or their equivalent are actually connected to the extension.
- (2) Refunds under part 1 of this Attachment C shall be made without interest for a five-year period which begins the first day of the month subsequent to the first full billing period after the date the service is energized. The Company shall have no further obligation to refund any remaining portion of the advance. Any unrefunded advance will be considered a permanent contribution in aid of construction. The total amount refunded cannot exceed the amount of the advance under any conditions.

\*A limited purpose primary line is a lateral extension of not more than 250' on the customers property connected to a financed line extension and is installed to serve an individual customer or group of customers from a single transformer installation.

COMPUTATION OF NON-REFUNDABLE CONTRIBUTION

(a) Single Home Subdivisions		
	<u>1,550</u> front lot feet x \$1.75 per front lot foot =	\$ <u>2,713.00</u>
(b) Mobile Home Parks, Condominiums and Apartment House Complexes		
	_____ trench feet x \$1.90 per trench foot =	\$ <u>-0-</u>
	_____ KVA of installed transformer capacity x \$4.00	\$ <u>-0-</u>
(c) As defined in Paragraph 2 of the Agreement, additional nonrefundable contributions may be required where, in the Company's Judgment, practical difficulties exist. The contributions for these practical difficulties amount to		\$ <u>-0-</u>
(d) Where the Developer requires winter construction (see Paragraph 4) an additional nonrefundable contribution is required in the amount of		\$ <u>-0-</u>
	<b>TOTAL</b>	\$ <u>2,713.00</u>

RECORDED RIGHT CO. MAY 10. 3/182

ATTACHMENT D

AGREEMENT NUMBER C377J455

COMPUTATION OF UNDERGROUND ELECTRIC DISTRIBUTION LINE EXTENSION  
ADVANCE AND CONTRIBUTION FOR RESIDENTIAL DEVELOPMENTS

Estimated Direct Construction Cost . . . . .	\$ <u>4,960.00</u>
(Excludes engineering overhead costs and administrative cost. When applicable, in- cludes cost of system extensions required to supply developments.)	
Minus - Company's Share of Cost . . . . .	\$ <u>-0-</u>
(\$500.00 for each residential unit to be immediately served when the under- ground electric distribution system is completed.) (See B Attached)	
Refundable Line Extension Advance . . . . .	\$ <u>2,247.00</u>
(See Schedule of Refunds - Attachment C)	
Plus - Nonrefundable Contribution as required by Rule B-3.4 (See Attachment C) . . . . .	\$ <u>2,713.00</u>
<b>TOTAL PAYMENT REQUIRED</b>	<b>\$ <u>4,960.00</u></b>

RECORDED SERIAL OR FILE NO.

31182



2000 Second Avenue  
Detroit, Michigan 48226  
(313) 237-5000

DATE: September 28, 1977

Bert L. Smokler Company

17515 W. Nine Mile Road - Suite 950

Southfield, Michigan 48075

RE: Smokler Wixom No. 2 (Hidden Creek)

Gentlemen:

Pursuant to establishing a field construction date for the above named project, it is necessary that the conditions of the grade in the area of construction be determined. Work cannot start until this is accomplished.

Please sign and return two copies of the Certificate below. You may retain the third copy for your file.

Very truly yours,

*J. O. Carl*

Service Planner

JJ:dp

9-29-77

Date

C-E-R-T-I-F-I-C-A-T-E

I/We, the undersigned, hereby certify to the Detroit Edison Company that all grading in utility easements and/or the routes of the underground facilities on the above subject development has been completed within four (4) inches of final grade.

I/We further agree that a stake will be placed at the location of each piece of above grade equipment, indicating the final grade to be achieved. A copy of the Detroit Edison Company underground construction drawing No. 77A-63734 for this development is in my/our possession and will be used for this purpose.

Name *Res. [Signature]*

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

RECORDED RIGHT OF WAY NO.

31182

