

STATE OF MICHIGAN
COUNTY OF LIVINGSTON
TOWNSHIP OF GENOA
PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (the "PUD Agreement") is made and entered into on this 21st day of FEBRUARY, 2005, by B/K/G Genoa, LLC, a Michigan limited liability company, of 30100 Telegraph Road, Suite 366, Bingham Farms, Michigan 48025 (referred to as "BKG"), DONALD L. HARVEY and JACQUELINE HARVEY, husband and wife, with an address of 10015 Imus, P.O. Box D, Lakeland, Michigan 48143 (collectively, "Harvey") and the TOWNSHIP OF GENOA, a general law township, 2911 Dorr Road, Brighton, Michigan 48116 (referred to as "Township").

RECITATIONS:

BKG possesses fee title to certain real property consisting of approximately forty-eight (48) acres situated in the Township of Genoa, County of Livingston, and State of Michigan, more particularly described on attached Schedule A (referred to as the "BKG Property"). Harvey possesses fee title to certain real property consisting of approximately one and one-tenth (1.1) acres situated adjacent to and contiguous with the BKG Property, also located in the Township of Genoa, County of Livingston and State of Michigan, as more particularly described on attached Schedule B (referred to as the "Harvey Property").

BKG has submitted a proposal for general land use plan for the future development of the BKG Property. Township has reviewed and revised such plan, requiring, among other things, certain intensity of land uses, residential use density and access points to adjacent properties. Harvey and Township have met and agreed in principle on a general land use plan for the future development of the Brighton Property, but a final PUD concept plan for the Harvey Property has not yet been developed or reviewed and approved by Township. Harvey desires to be included within this PUD Agreement to take advantage of certain setbacks which will be permitted under the terms of this PUD Agreement.

The Township Planning Commission and Township Board, in strict compliance with the Township Zoning Ordinance and with Act 184 of the Public Acts of 1943, as amended, reclassified the BKG Property and the Harvey Property as Residential Planned Unit Development District, finding that such reclassification properly achieved the purposes of Article 10 of the Genoa Township Zoning Ordinance, including the encouragement of innovation in land use, the preservation of open space, the promotion of efficient provision of public services and utilities, the reduction of adverse traffic impacts, and the provision of adequate housing and employment.

The Township has found and concluded that the uses and future development plans and conditions shown on the approved PUD Concept Plan for the BKG Property, prepared by Giffels-Websters Engineers, Inc. dated January 13, 2003, last revised March 2, 2004,

being Job No. 16405 attached as Schedule C ("PUD Plan"), are reasonable and promote the public health, safety and welfare of the Township, and that they are consistent with the plans and objectives of the Township and consistent with surrounding uses of land.

NOW, THEREFORE, BKG, HARVEY AND TOWNSHIP, in consideration of the mutual promises contained in this Agreement, HEREBY AGREE AS FOLLOWS:

ARTICLE I.
GENERAL TERMS OF AGREEMENT

- 1.1 The Township and BKG and Harvey acknowledge and represent that the recitations set forth above are true, accurate and binding.
- 1.2 The Township acknowledges and represents that this Agreement may be relied upon for future land use and development of the BKG Property by BKG's heirs, successors, assigns and transferees.
- 1.3 The PUD Plan for the BKG Property, attached as Schedule C, has been duly approved by Township in accordance with all applicable Township ordinances, and depicts the land uses which will be permitted and which may be developed on the BKG Property. All formal actions necessary or expedient to carry out this Agreement shall be taken by the parties without undue delay.
- 1.4 Except as specifically provided for in this Agreement, final site plans will comply with applicable Zoning Ordinance requirements. However, at the time of review of respective site plans for the development of various portions of the BKG Property, deviations from ordinance regulations may be agreed upon by the Township and the ultimate developers of the BKG Property, subject to the terms and conditions of this PUD Agreement.
- 1.5 The PUD Plan for the BKG Property identifies the location and configuration of the authorized land-uses that may be developed on the BKG Property, or those that must remain undeveloped.
 - A. BKG shall not be entitled to make a modification which substantially increases the impact upon adjoining properties or facilities without the approval of Township.
 - B. BKG shall not be entitled to make any changes without the approval of the Township.
 - C. In those instances in which BKG desires to obtain a modification of the PUD Plan for the BKG Property, Township shall review the proposed change for the purpose of determining whether the change would have a material adverse impact upon surrounding land uses, services,

transportation systems and/or facilities. If the requested modification, in the reasonable opinion of the Township, would adversely impact the surrounding land uses, services, transportation systems and/or facilities, the Township may deny or impose reasonable mitigating conditions upon the proposed modification.

- 1.6 This Agreement, including the uses approved on the PUD Plan for the BKG Property, are for the benefit of the BKG Property, and shall run with the Property, and shall bind and inure to the benefit of the heirs, successors, assigns, and transferees of the parties to this Agreement.
- 1.7 At some future point, Harvey will develop and have prepared the concept PUD plan for the Harvey Property at its sole cost and expense. Harvey shall, at its sole cost and expense, initiate and complete the review and approval process with Township for its concept PUD plan. BKG and Harvey agree that, once final approval for the concept PUD plan for the Harvey Property is obtained from Township, Township, BKG and Harvey will enter into an amendment to this PUD Agreement which will incorporate the approved PUD concept plan for the Harvey Property, and to make any other changes necessary or convenient thereto.
- 1.8 BKG and Harvey acknowledge and understand that each party shall be solely responsible at their sole cost and expense for the development of their respective property, and neither party shall have any responsibility or liability for the action or inaction of the other.

ARTICLE II.

LAND USE AUTHORIZATION AND STANDARDS FOR THE BKG PROPERTY

- 2.1 The Planned Unit Development reflects the change in the zoning for the BKG Property from OSD to Medium Density Residential ("MDR") and shall include a land use authorization for the following uses, as set forth on the PUD Conceptual Plan for the BKG Property:

MDR Medium Density Residential District

- 2.2 The number of residential units and other components to be permitted on the BKG Property shall be as follows:

MDR/ Medium Density Residential District - Single family attached condominium units consisting of ninety six (96) units intended for occupancy as single family residences, all as shown on the PUD Plan for the BKG Property.

- 2.3 The approved setbacks for the condominium buildings shall consist of the following:

MDR/ MEDIUM RESIDENTIAL DISTRICT

<u>Zoning District</u>	<u>No. of Units</u>
MDR	96

BUILDING SETBACKS

Min. Setback Internal Road	Min. Rear Setback East Prop. Line	Min. Wetland Setback	Min. Setback Betw. Bldgs	Min. Setback I-96
20 ft.	30 ft.	25 ft.	20 ft.	80 ft.

ROAD SETBACKS

Road R.O.W. (Private Roads)	Road Pavement
Boulevard 66 ft.	50 ft. (back of curb to back of curb)
Non-blvd 66 ft.	26 ft. (back of curb to back of curb)

HARVEY PROPERTY SETBACKS

Internal Road	18 feet
Grand River	70 feet, or 35 feet if no parking in the front yard
Side Yard	15 feet
Rear Yard	50 feet

- 2.4 BKG, its successors and assigns, shall preserve and protect the upland areas within the site, including designating and/or creating picnic areas, nature trails and areas for passive recreation. The PUD Plan for the BKG Property shall identify such open space areas as a permanent conservation areas, which shall be preserved with vegetation, including seeding, and the installation or construction of any permanent structure or improvement shall be prohibited, in perpetuity, and shall be protected and maintained by the Association of Co-Owners for the condominium to be constructed on the BKG Property.
- 2.5 BKG, its successors and assigns, shall grant shared access easements to the owners of adjoining parcels along Grand River Avenue for the benefit of such owners and their respective successors, assigns, employees, tenants and invitees.
- 2.6 The PUD Plan for the BKG Property has been designed to guaranty the protection and preservation of the natural features of the BKG Property. In order to ensure that such natural features are protected and preserved, BKG, for itself and its successors and assigns, covenants that it will observe strict adherence to the limits of grading and clearing and woodland preservation, all as shown on the PUD Plan for the BKG Property.

ARTICLE III.

CURB CUTS AND OFF-SITE TRANSPORTATION IMPROVEMENTS

- 3.1 The establishment of curb cuts and driveways to public thoroughfares from the property subject to this PUD Agreement shall be limited and restricted for the purpose of reducing the number of turning movements to and from the BKG Property and the Harvey Property.
- 3.2 BKG shall be required to obtain necessary permits for off-site improvements in the public right-of-way from the Livingston County Road Commission for access to Grand River Avenue.

- 3.3 Harvey shall be forever precluded from obtaining any curb cuts and/or driveway access to Grand River Avenue from the Livingston County Road Commission.

ARTICLE IV.
INTERNAL ROAD NETWORK

- 4.1 An internal system of vehicular thoroughfares shall be planned and established throughout the PUD as shown on the Schedule C.
- 4.2 The internal roads in the PUD shall be designated as private, and the drives shall be twenty six (26) feet from back of curb to back of curb and the planned boulevard shall be fifty (50) feet from back of curb to back of curb. Maintenance of the private roads shall be a responsibility of the condominium association and such requirement shall appear in the Master Deed for the BKG Property.
- 4.3 In connection with, and during, the development of the BKG Parcel, BKG shall provide Harvey with two (2) curb cuts on the internal road it will construct and establish in order to provide Harvey access to the Harvey Property. The separation between the two (2) curb cuts shall be one hundred fifty (150') feet from the center line of the northerly curb cut to the center line of the southerly curb cut. In addition, BKG shall grant Harvey a non-exclusive easement for the benefit of the Harvey Property to use that portion of the private internal roadway constructed by BKG for vehicular and pedestrian traffic for the purpose of gaining access to, ingress to and egress from the Harvey Property.

ARTICLE V.
DRAINAGE

- 5.1 The system of drainage on the BKG Property and the Harvey Property, including drainage, sedimentation and detention, as applicable, shall be designed so as to be coordinated throughout the PUD and shall be subject to review and approval by Genoa Township and the Livingston County Drain Commissioner.

ARTICLE VI.
SITE IMPROVEMENTS

- 6.1 There shall be a coordination of site improvements within the overall BKG Property and the Harvey Property, with the objective of creating site improvements that are integrated and mutually supportive among the respective portions or phases of the development, including the utilities and landscaping.
- 6.2 The pedestrian network will consist of the five (5) foot wide concrete and asphalt pedestrian sidewalks and pedestrian pathways (collectively, the "Pedestrian Sidewalks") all as depicted on the PUD Plan for the BKG Property in the MDR District. Harvey acknowledges that a portion of the Pedestrian Sidewalks will be constructed along the common boundary of the BKG Property and the Harvey Property leading up to Grand River Avenue. Harvey further acknowledges that Harvey shall be fully responsible for repairing any disturbance or damage to the Pedestrian Sidewalks and related landscaping, at Harvey's sole cost and expense, which may occur during construction of the project to be developed on the Harvey Property.

- 6.3 Unless the Township reasonably determines that it is not physically or economically feasible, development shall be undertaken with underground electrical, gas, phone and cable T.V. services to the residential buildings on the BKG Property.

ARTICLE VII.
LANDSCAPING

- 7.1 Street Trees: Two (2) trees per unit will be installed, as shown on the PUD Plan for the BKG Property. Street Trees may be interspersed between and among central open space and detention pond areas.
- 7.2 Buffer Area along east property line of the BKG Parcel: One (1) canopy per thirty (30') lineal feet, two (2) evergreen trees per thirty (30') lineal feet, and four (4) shrubs per thirty (30') lineal feet, as shown on the PUD Plan for the BKG Property.
- 7.3 Existing vegetation which shall be preserved is indicated by the limits of clearing line on the PUD Plan for the BKG Property.
- 7.4 Grand River Avenue Frontage: One (1) canopy tree per forty (40') lineal feet. Existing trees meet these requirements for the BKG Property as of the date of this PUD Agreement.
- 7.5 Buffer Area along Interstate-96: One (1) canopy per thirty (30') lineal feet, two (2) evergreen trees per thirty (30') lineal feet, and four (4) shrubs per thirty (30') lineal feet, as shown on the PUD Plan for the BKG Property.
- 7.6 During the periods of any construction, existing vegetation along the wetland boundary shall be preserved and protected with silt fencing, all as shown on the PUD Plan for the BKG Property.

ARTICLE VIII.
UTILITIES

- 8.1 All of the BKG Property is located within the community water district area. Each condominium unit must connect to the community water system. Such connection shall require payment of all applicable tap fees. The fee for connection to the Township community water system shall be \$3,650.00 per condominium unit. Township acknowledges that BKG shall be credited for thirty-eight (38) water taps ("Credit"). Township further acknowledges that the Credit shall be applicable to future water tap fees that will be required as connections to the water system are established during the construction process.
- 8.2 All of the condominium units constructed on the BKG Property shall be connected to and be served by public sanitary system. The Township represents that there has been reserved for BKG adequate municipal waste water treatment capacity to service the BKG Property, and the adequacy of waste water treatment capacity shall not limit the type of use or density of the reasonable development of the BKG Property. Connection to the sanitary system shall require payment of all applicable tap fees. The fee for connection to the Township sanitary sewer system shall be \$4,500.00 per condominium unit.

ARTICLE IX.
MODIFICATION

- 9.1 This Agreement may not be modified, replaced, amended or terminated without the prior written consent of the parties to this Agreement. BKG, Harvey and the Township shall together be entitled to modify, replace or amend this Agreement, with the consent of BKG's mortgagee and Harvey's mortgagee, but without the consent of any other person or entity, regardless of whether such person or entity now or hereafter has any interest in any part of the BKG Property or the Harvey Property, including subsequent purchasers, or their tenants, their mortgagees or others. Notwithstanding anything to the contrary contained in this Section 9.1, in the event that this PUD Agreement is amended or modified specifically with respect to, and affects only, the BKG Property, the consent of Harvey's mortgagee need not be obtained.

ARTICLE X.
MISCELLANEOUS

- 10.1 In the event of any direct conflict between the terms and provisions of this Agreement (including the attached PUD Plan for the BKG Property) and the provisions of the Zoning Ordinance, or other township ordinances, rules or regulations, the provisions of this Agreement shall control.
- 10.2 The undersigned parties acknowledge that the conditions imposed upon the development of the BKG Property are reasonable and necessary to ensure that public services and facilities affected by the proposed land use or activity will be capable to accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Further, it is acknowledged that the conditions meet all of the requirements of MCL 125.286d(2) (a) (b) and (c).
- 10.3 This Planned Unit Development Agreement and any subsequent modification or amendment thereto shall be recorded with the Livingston County Register of Deeds.

APPROVED by Township, BKG and Harvey this 21st day of FEBRUARY, 2005.

B/K/G Genoa, LLC, a Michigan limited liability company

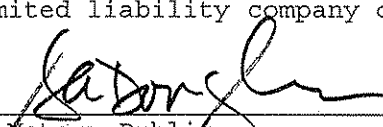
By: Burton-Katzman Development Company, Inc., a Michigan corporation, Manager

By: 

Laurence R. Goss
Vice President
"BKG"

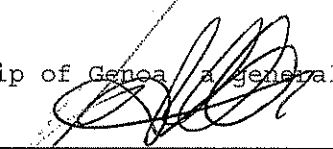
STATE OF MICHIGAN
COUNTY OF OAKLAND

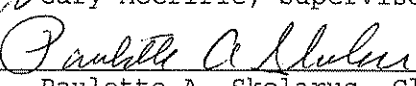
The foregoing instrument was acknowledged before me this 1st day of Feb., 2005 by Laurence R. Goss, the Vice President of Burton-Katzman Development Company, Inc., the Manager of B/K/G Genoa, LLC, a Michigan limited liability company on behalf of the corporation and company.


Notary Public: _____ County, MI
My commission expires: _____
Acting in S. A. DOUGLAS County
Notary Public, State of Michigan
County of Wayne
My Commission Expires Sep. 13, 2010
Acting in the County of OAKLAND

APPROVED BY THE TOWNSHIP BOARD FOR THE TOWNSHIP OF GENOA on the 21st day of FEBRUARY, 2005, at a meeting duly called and held.

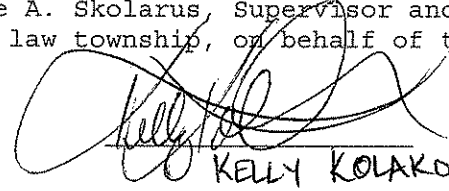
Township of Genoa, a general law township

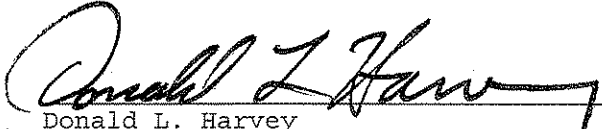
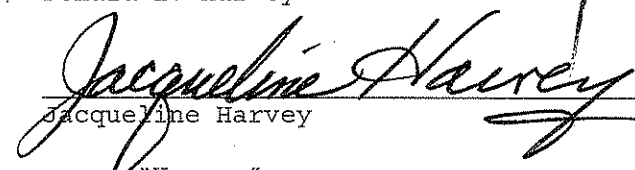
By: 
Gary McCririe, Supervisor

By: 
Paulette A. Skolarus, Clerk
"Township"

STATE OF MICHIGAN, COUNTY OF LIVINGSTON

The foregoing document was acknowledged before me this 21st day of FEBRUARY, 2005, by Gary McCririe and Paulette A. Skolarus, Supervisor and Clerk, respectively, of the Township of Genoa, a general law township, on behalf of the Township.

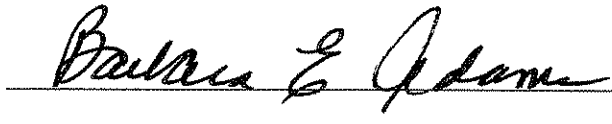

KELLY KOLAKOWSKI
Notary Public: LIVINGSTON County, MI
My Commission Expires: 3/8/06
Acting in LIVINGSTON County


Donald L. Harvey

Jacqueline Harvey
"Harvey"

STATE OF MICHIGAN, COUNTY OF LIVINGSTON

The foregoing document was acknowledged before me this 17th day of Feb, 2005 by Donald L. Harvey and Jacqueline Harvey, husband and wife, on behalf of themselves individually.

BARBARA E. ADAMS
Notary Public, Livingston Co., MI
Acting in Livingston County
My Commission Exp.: 05/22/06


Notary Public: _____ County, MI
My commission Expires:
Acting in _____ County

This document prepared by:

Laura C. Ragold
Barris, Sott, Denn & Driker, P.L.L.C.
211 West Fort Street, 15th Floor
Detroit Michigan 48226
313-965-9725

Recording fee: \$ _

When recorded return to:
Genoa Township Clerk
Genoa Township Hall
2911 Dorr Road
Brighton, Michigan 48116

SCHEDULE A

Attached to the Planned Unit Development Agreement
Between B/K/G Genoa, LLC,
and the Township of Genoa
LEGAL DESCRIPTION OF BKG PROPERTY

A part of the South $\frac{1}{4}$ of Section 10, T-2-N., R-5-E., Genoa Township, Livingston County, Michigan and a part of Lot 11 of "Chemung Acres No. 1" as recorded in Liber 34, Page 7 of Plats, Livingston County Records: more particularly described as: beginning at the South $\frac{1}{4}$ corner of said Section 10; thence S.88°06'49"W., 242.73 feet along the South line of said Section 10 to a point on the Northerly line of Interstate 96; thence N.42°27'05"W., 1686.95 feet along the Northerly line of Interstate 96; thence N.01°31'13"W., 1103.86 feet to a point on the Southerly line of Grand River Avenue (variable width); thence the following two courses being along said Southerly line: (1) along a curve to the right 224.88 feet, said curve having a radius of 2814.79 feet, central angle of 04°34'39" and a long chord bearing of S.73°00'07"E., 224.82 feet; and (2) S.70°42'48"E., 525.65 feet; thence S.20°09'18"W., 418.54 feet; thence S.69°50'42"E., 1100.00 feet in part along the Southerly line of Lots 1 through 10 of "Chemung Acres No. 1", to the Southwest corner of Lot 11 of said subdivision; thence N.20°09'18"E., 435.60 feet along a line common to Lots 10 and 11 of said subdivision to a point on the Southerly line of said Grand River Avenue (variable width); thence S.69°50'42"E., 66.00 feet; thence S.20°09'18"W., 435.60 feet along a line 66.00 feet East of and parallel with the Westerly line of said Lot 11 to a point on the South line of said Lot 11; thence S.69°50'42"E., 13.80 feet to a point on the Westerly line of Lot 15 of said "Chemung Acres No. 1"; thence S.10°40'00"W., 1323.53 feet along the Westerly line of Lots 15 through 18 of said "Chemung Acres Subdivision No. 1", and its extension thereof to a point on the South line of said Section 10; thence S.87°39'46"W., 19.01 feet along said line to the point of beginning and containing 48.026 acres. Subject to any easements, restrictions or rights-of-way recorded or otherwise. (Part of Tax Code Parcels #11-10-300-003 and 11-10-401-011)

SCHEDULE B

LEGAL DESCRIPTION OF HARVEY PROPERTY

The East 34 feet of Lot 11 and the West 80.10 feet of Lot 12 of Chemung Acres No. 1, as recorded in Liber 7 of Plats, Pages 33 and 34, Livingston County Records.

Tax Identification No. 11-10-401-012

SCHEDULE C

Approved PUD Concept Plan for the BKG Property

SEE ATTACHED

**MORTGAGEE'S CONSENT AND SUBORDINATION TO PLANNED UNIT
DEVELOPMENT AGREEMENT**

The undersigned, whose address is 3331 West Big Beaver Road, Suite 205, MAC N2723-020, Troy, Michigan 48084, is the Mortgagee under that certain Construction Mortgage dated May 11, 2004 (the "Mortgage") and recorded in Liber ____, Page ____, Livingston County, Michigan, executed by B/K/G Genoa, LLC, a Michigan limited liability company, in favor of the undersigned, and hereby consents to the foregoing Planned Unit Development Agreement (the "Agreement") and subordinates its interest as Mortgagee under the Mortgage to the Agreement.

Mortgagee:

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By:

Richard L. Kern, Jr.

Its: Vice President

STATE OF MICHIGAN)
) ss
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of September ____, 2004, by Richard L. Kern, Jr., the Vice President of Wells Fargo Bank, National Association, a national banking association, on behalf of said banking association.

Printed Name:

Notary Public, County, Michigan

My Commission Expires:

Acting In _____ County

Document Name: ChemungPUDAgreement
Document #: 247354
Author_Id: LRAGOLD