

## CONSERVATION RESTRICTION

### I. GRANTING CLAUSE:

Big Kahuna Properties, LLC, a Massachusetts limited liability company, of North Andover, Essex County, Massachusetts (hereinafter "Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, grants to the **Inhabitants of the Town of North Andover, acting by and through its Conservation Commission**, located at 120 Main Street, North Andover, Massachusetts, and its successors and permitted assigns ("Grantee"), exclusively for conservation purposes as set forth in Section 8C of Chapter 40 of the General Laws, the following described Conservation Restriction on certain land located in the Town of North Andover, Massachusetts, said land being described in Exhibit A attached hereto (the "Conservation Restriction Easement Area"), reserving to Grantor the fee simple in the Conservation Restriction Easement Area and all other rights therein not expressly granted to Grantee.

### II. PURPOSES:

This Conservation Restriction is granted for the purpose of preserving the Conservation Restriction Easement Area in its predominantly natural and/or open condition, with the public benefit of such preservation which includes the following:

- (a) preservation of the natural environment; and
- (b) protection of the public health, safety and welfare.

### III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:

A. Prohibited Acts and Uses. Subject to the exceptions set forth in paragraphs B and C below, the following acts and uses are prohibited in the Conservation Restriction Easement Area:

1. Constructing or placing any building, landing strip, mobile home, tennis court, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, or line or other temporary or permanent structure or facility on or above the Conservation Restriction Easement Area;
2. Mining, excavating, dredging or removing from the Conservation Restriction Easement Area, soil, loam, peat,

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gravel, sand, rock or other mineral resource or natural deposit;

3. The installation of underground storage tanks, or the dumping in the Conservation Restriction Easement Area of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material;
4. Cutting, removing or otherwise destroying of trees or other vegetation;
5. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation; and
6. Undertaking any other use or activity in the Conservation Restriction Easement Area which would impair materially any significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Exceptions to Otherwise Prohibited Acts and Uses. The following acts and uses otherwise prohibited in subparagraph A are permitted but only if such acts or uses do not materially impair significant conservation interests:

1. Excavation and removal from the Conservation Restriction Easement Area of soil, gravel or other mineral resource or natural deposit as may be incidental to the maintenance of good drainage, soil conservation practices or to other permissible use of the Conservation Restriction Easement Area, including maintenance of a garden for personal use;
2. Selective cutting of trees for fire protection, maintenance of a garden for personal use, tick control, or otherwise to preserve the present condition of the Conservation Restriction Easement Area, including vistas;
3. The construction, maintenance, repair and replacement of an entranceway at the beginning of Peach Tree Lane, including, without limitation, fences, lighting, walls, signs, plantings, irrigation and landscaping; and

C. Permitted Acts and Uses. All acts and uses not prohibited by subparagraph A are permissible. Further, notwithstanding anything contained herein to the contrary, Grantor expressly retains and reserves for itself, and its successors and assigns, and the Conservation Restriction Easement Area is

conveyed subject to, the following reserved easements and rights, including, without limitation, the right for installation, maintenance, repair or replacement, which may result from the exercise by Grantor of any rights reserved, all of which are allowed:

1. To the extent presently existing, the right to maintain drainage, retaining walls, utility poles, conduits, lines and appurtenances thereto;
2. The right to drain surface and subsurface water onto the Conservation Restriction Easement Area (including quantity and rate) from the land now or formerly owned by Grantor;
3. The right to convey the Conservation Restriction Easement Area or any portion thereof separately, or any lawful subdivision of the Conservation Restriction Easement Area;
4. The right to cut and harvest hay from the Conservation Restriction Easement Area; and
5. The right to grant easements for utilities, drainage or such other uses in the Conservation Restriction Easement Area.

#### IV. LEGAL REMEDIES OF THE GRANTEE:

A. Legal and Injunctive Relief. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Conservation Restriction Easement Area to its condition prior to the time of injury complained of (it being agreed that Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee.

B. Reimbursement of Costs of Enforcement. Grantor, and their successors and assigns, covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any violation thereof.

C. Grantee's Disclaimer of Liability. By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Conservation Restriction Easement Area.

D. Severability Clause. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

F. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Restriction Easement Area resulting from causes beyond the Grantors' control, including without limitation, fire, flood, storm, earth movement, and acts caused by trespass on the Conservation Restriction Easement Area, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Restriction Easement Area resulting from such causes.

G. Termination of Rights and Obligations. Notwithstanding anything to the contrary herein, the rights and obligations, under this Conservation Restriction, of any party holding any interest in the Conservation Restriction Easement Area shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

## V. ACCESS:

The Conservation Restriction hereby conveyed does not grant to Grantee, to the general public, or to any person any right to enter upon the Conservation Restriction Easement Area except there is granted to the Grantee acting by and through its Conservation Commission the right to enter the Conservation Restriction Easement Area at reasonable times and in a reasonable manner, which shall include not less than forty-eight (48) hour notice to Grantor and the successors and assigns of Grantor holding any interest in the Conservation Restriction Easement Area, for the sole purpose of inspecting the Conservation Restriction Easement Area to determine compliance herewith and to enforce the provisions hereof.

## VI. ASSIGNABILITY:

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Conservation Restriction Easement Area, and shall be enforceable against Grantor and the successors and assigns of Grantor holding any interest in the Conservation Restriction Easement Area.

B. Running of the Benefit. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances and from time to time:

1. As a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out; and
2. The assignee, at the time of assignment, qualifies under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly.

#### **VII. SUBSEQUENT TRANSFERS:**

Grantor agrees to incorporate by reference the terms of this Conservation Restriction in the initial deed(s) from it by which it divests itself of any interest in all or a portion of the Conservation Restriction Easement Area.

#### **VIII. EFFECTIVE DATE AND TERM:**

This Conservation Restriction shall be effective when Grantor and Grantee have executed it and it has been recorded with Essex North Registry of Deeds; Grantor shall record this instrument in a timely fashion.

The restrictions contained herein shall remain in full force and effect until thirty (30) years from this date, and may thereafter be extended and continued for further periods of twenty (20) years each in the manner provided in Massachusetts General Laws, Chapter 184, Section 27, as it may be amended from time to time.

Executed under seal as of the 30 day of August, 2004.

*Signatures on next page.*

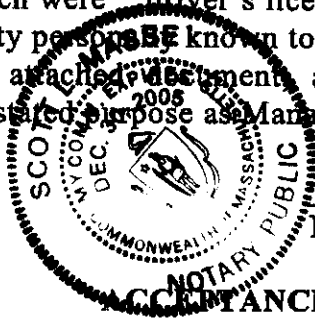
**BIG KAHUNA PROPERTIES, LLC**By: 

Kenneth W. Rea, Manager

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

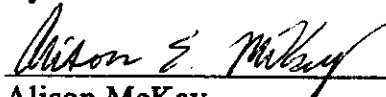
On this 30 day of August 2004, before me, the undersigned notary public, personally appeared Kenneth W. Rea, proved to me through satisfactory evidence of identification, which were driver's license, X personally known to me or personally known to a 3<sup>rd</sup> party personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of the Big Kahuna Properties, LLC.

Notary Public **ACCEPTANCE OF GRANT**

The above Conservation Restriction is accepted pursuant to Section 8C of Chapter 40 of the General Laws for conservation purposes this 30 day of August, 2004.

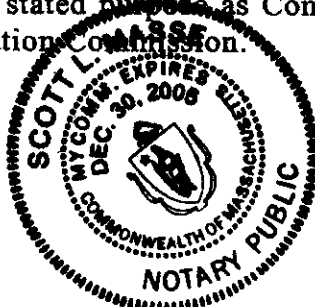
**TOWN OF NORTH ANDOVER**

By its Conservation Commission

  
 Alison McKay,  
 Conservation Administrator
**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this 30 day of August 2004, before me, the undersigned notary public, personally appeared Alison McKay, proved to me through satisfactory evidence of identification, which were driver's license, X personally known to me or personally known to a 3<sup>rd</sup> party personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Conservation Administrator of the Town of North Andover Conservation Commission.

Notary Public 

**EXHIBIT A**

Three (3) certain parcels of land located on the northerly side of Rea Street and easterly side of Chestnut Street, North Andover, Essex County, Massachusetts, and being further described as follows"

**Parcel I**

A certain parcel of land being shown as "**Open Space C**" on a plan of land entitled "Definitive Subdivision and Special Permit Plan Peachtree Farm in North Andover, Mass." dated October 24, 2002, last revised May 16, 2003, prepared by Marchionda & Associates, L.P., filed with the Essex North Registry of Deeds as Plan No. 14502. Containing 0.60 acres according to said plan.

**Parcel II**

A certain parcel of land being shown as "**Open Space A-1**" on a plan of land entitled "Subdivision Plan Open Space Parcel A for Peachtree Farm in North Andover, Mass." dated July 14, 2003, prepared by Marchionda & Associates, L.P., filed with the Essex North Registry of Deeds as Plan No. 14639. Containing 1.17 acres according to said plan

**Parcel III**

A certain parcel of land being shown as "**Open Space Parcel A-3**" on a plan of land entitled "Subdivision Plan Lot 13A-Kara Drive for Peachtree Farm in North Andover, Mass." dated February 4, 2004, prepared by Marchionda & Associates, L.P., filed with the Essex North Registry of Deeds as Plan No. 14779. Containing 16.96 acres according to said plan.