

L-457 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
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Doc No(s) 2686307

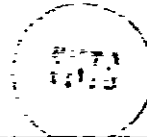
on Cert(s) 574,950

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (x) PICKUP ()

Roger V. Meeker, Attorney at Law
P.O. Box 596
Kamuela, Hawaii 96743
Phone: (808) 885-9696



Tax Map Key: (3) 6-2-001-001 (portion)
Niulikai Subdivision

DECLARATION OF VIEWPLANE AND ACCESS EASEMENTS

WHEREAS, NIULI BY THE SEA LLC, a Hawaii limited liability company (hereinafter referred to as the "Declarant"), is the fee simple owner of certain parcels of land, said parcels being Lots 60, 61, 62 and 63 as shown on Map 20 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1332 of Kohala Sugar Company; said parcels comprising a portion of that certain subdivision known as "Niulikai"; said parcels being also portions of the land(s) described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 574,950; said parcels being more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, in contemplation of Declarant's future divestment of ownership in one or more of said parcels, or any portion thereof; and

WHEREAS, Declarant desires to declare, create and grant certain perpetual easements over and across portions of Lot 60 as provided hereinafter, said easements to be specifically in favor of Lots 61, 62 and 63, respectively; and

WHEREAS, the purpose of said easements is to provide the benefitted parcels with perpetual viewplane protection and exclusive access and use rights over and across certain portions of said Lot 60;

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Declarant as the fee simple owner of those certain properties described in Exhibit "A" attached hereto and by reference made a part hereof, does hereby declare, create, grant and convey unto itself as the fee simple owner of said properties, as appurtenances thereto, and to its successors and assigns in title (and also does hereby encumber said properties with), perpetual exclusive easements for viewplane protection and access and use thereof, to be used and enjoyed by the benefitted properties as follows:

1. Lot 61 is hereby granted an exclusive perpetual easement for viewplane protection and exclusive access and use over and across that certain portion of Lot 60 located immediately makai (seaward) of the makai boundaries of Lot 61, said easement area being specifically demarcated by and located between the following: (a) a line starting from the northernmost corner of Lot 61, and continuing in a northeasterly direction over and across Lot 60 to that certain "Point 30" as shown on the Certified Shoreline Survey Map dated August 25, 2000 and on file with the Department of Land and Natural Resources; and (b) a line comprising a continuation in a northeasterly direction of the southwesterly boundary line of Lot 61 (as said boundary line is shown on the aforesaid Map 20) over and across Lot 60 to the makai (seaward) boundary of Lot 60.

2. Lot 62 is hereby granted an exclusive perpetual easement for viewplane protection and exclusive access and use over and across that certain portion of Lot 60 located immediately makai (seaward) of the makai boundaries of Lot 62, said easement area being specifically demarcated by and located between the following: (a) a line comprising a continuation in a northeasterly direction of the northwesterly boundary line of Lot 62 (as said boundary line is shown on the aforesaid Map 20) over and across Lot 60 to the makai (seaward) boundary of Lot 60; and (b) a line comprising a continuation in a northeasterly direction of the southwesterly boundary line of Lot 62 (as said boundary line is shown on the aforesaid Map 20) over and across Lot 60 to the makai (seaward) boundary of Lot 60.

3. Lot 63 is hereby granted an exclusive perpetual easement for viewplane protection and exclusive access and use over and across that certain portion of Lot 60 located immediately makai (seaward) of the makai boundaries of Lot 63, said easement area being specifically demarcated by and located between the following: (a) a line comprising a continuation in a northeasterly direction of the northwesterly boundary line of Lot 63 (as said boundary line is shown on the aforesaid Map 20) over and across Lot 60 to the makai (seaward) boundary of Lot 60; and (b) a line comprising a continuation in a northeasterly direction of the southwesterly boundary line of Lot 63 (as said boundary line is shown on the aforesaid Map 20) over and across Lot 60 to the makai (seaward) boundary of Lot 60.

The easements created and granted herein are granted for the purpose of providing Lots 61, 62 and 63 with makai (seaward) viewplane protection unobstructed by any development, and for the purpose of providing the owners of said Lots with exclusive access and use of said easement areas as provided hereinabove, said access and use to be limited to livestock grazing, pedestrian, hiking and/or other similar passive activities. No

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dwellings, buildings, structures or other improvements may be constructed or located anywhere within the granted easement areas; PROVIDED, HOWEVER, that fences or rock walls as may be permitted by the State of Hawaii Department of Land and Natural Resources shall be allowed for purposes of the enclosure of livestock and/or for safety and liability purposes.

The easements granted herein are for the specific benefit of the owner(s) of Lots 61, 62 and 63, respectively, as provided hereinabove, and shall be construed as easements appurtenant running with the land, binding upon the owner(s) of Lot 60 or any portion of Lot 60 thereof, and all subsequent owner(s) thereof and of the persons deemed therewith, including tenants and lessees, and inuring to the benefit of such owners and individuals; it being the intent of Declarant that the aforesaid easements and protective restrictions shall bind and restrict the land and the owners, and their grantees, heirs, personal representatives, successors and assigns, of Lots 60, 61, 62 and 63, as applicable.

If any person or entity shall violate or attempt to violate the restrictions contained herein, the owner of Lot 60 may commence legal action at law or in equity against any such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. Said damages may expressly include a judgment for all plaintiff's costs of suit, including reasonable attorney's fees.

EXHIBIT "A"

LOTS 60, 61, 62 and 63, more particularly described as follows:

All of that certain parcel of land situate at Makapala, District of North Kohala, Island and County of Hawaii, State of Hawaii, being LOT 60, area 64.184 acres, more or less, as shown on Map 20, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1332 of Kohala Sugar Company; being a portion of the lands described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 574,950.

All of that certain parcel of land situate at Makapala, District of North Kohala, Island and County of Hawaii, State of Hawaii, being LOT 61, area 9.063 acres, more or less, as shown on Map 20, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1332 of Kohala Sugar Company; being a portion of the lands described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 574,950.

All of that certain parcel of land situate at Makapala, District of North Kohala, Island and County of Hawaii, State of Hawaii, being LOT 62, area 22.981 acres, more or less, as shown on Map 20, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1332 of Kohala Sugar Company; being a portion of the lands described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 574,950.

All of that certain parcel of land situate at Makapala, District of North Kohala, Island and County of Hawaii, State of Hawaii, being LOT 63, area 47.624 acres, more or less, as shown on Map 20, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1332 of Kohala Sugar Company; being a portion of the lands described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 574,950.
