

RIGHT-OF-ENTRY AGREEMENT

THIS AGREEMENT, made and entered into by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter called the "STATE," and CHIEF CLERK OF THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, TRUSTEE

hereinafter called the "GRANTOR",

WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as Parcel 4 and Boundaries 3 and 4

Island of MAUI, State of Hawaii, for a public purpose, to wit: the construction, preservation and protection of HONOAPIILANI HIGHWAY, Federal Aid Project No. RF-030-1 (3) Alaeloa to Honokahua

and

WHEREAS, the STATE is desirous of obtaining immediate possession of said property in order that construction of such project may be commenced without delay, it being contemplated that a construction contract will be awarded in the near future; and

WHEREAS, the GRANTOR is the owner of or may have an interest in said property which will be affected by the above-stated project; and

WHEREAS, the GRANTOR is desirous of cooperating with the STATE so that the construction of the aforesaid project may be started without delay,

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

1. The GRANTOR hereby grants to the STATE, its officers, employees and contractors, permission to enter upon and take possession of the aforementioned property as shown on the Right-of-Way Map filed in the Land Transportation Facilities Division, Department of Transportation, State of Hawaii, for the purposes of the above-entitled project, which is admitted to be for a public use;

2. The STATE shall indemnify the GRANTOR, to the extent permitted by law, against any liability for any damage to real or personal property or injury to or death of persons when such damage, injury or death is caused by the negligence of the STATE in the exercise of the rights granted under this Agreement, and when the STATE is determined to be liable under the provisions of Chapter 662, Hawaii Revised Statutes, the Director of Transportation shall request legislative appropriation to pay for any such damage, injury or death. This paragraph shall become inoperative when the STATE acquires the aforementioned property by voluntary conveyance or takes possession of the same in a condemnation action, excepting any causes of action that may have accrued prior to said event;

3. The STATE shall acquire said property either by voluntary conveyance or by the exercise of its power of eminent domain within one year from the date of this Agreement, and should the STATE fail to do so, this Agreement

shall automatically terminate, in which event the STATE shall restore said property to a condition similar to that which existed prior to the commencement of such work;

4. The GRANTOR does not in any way bind himself, his successors or assigns to accept or agree with the appraisal of market value of the property made for or on behalf of the STATE, and the parties hereto agree that said value shall be based on the physical condition of the property as it exists as of the date of this Agreement;

5. The GRANTOR acknowledges that he is aware of his right to payment of fair market value before relinquishing possession of the property and waives said right knowingly and willingly;

6. That when more than one person is involved in the grant of this indenture and the covenants herein contained, the term "GRANTOR" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include the feminine or neuter gender;

7. The term "GRANTOR" wherever used herein shall include the GRANTOR, his heirs, executors, administrators, successors or assigns, and the term "STATE" wherever used herein shall include the State of Hawaii, its contractor, representatives, successors or permitted assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors or assigns.

IN WITNESS WHEREOF, the parties hereto have set
their hands this 10th day of April, 1981.

STATE OF HAWAII

By Paul H. Sauer P/S
Its Director of Transportation

APPROVED AS TO FORM:

Alan O. Kemura
Deputy Attorney General

Robert M. Menden
CHIEF CLERK OF THE CIRCUIT COURT OF
THE SECOND JUDICIAL CIRCUIT,
TRUSTEE