

224-011005



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 South Nimitz Highway
Honolulu, Hawaii 96813

PERMIT NO. H-86-10
(Federal Maritime Commission Agreement No. _____)

The STATE OF HAWAII, ("STATE") hereby grants to MATSON TERMINALS, INC. ("PERMITTEE") under the Terms and Conditions set forth in this Permit, including Exhibit A, attached hereto and incorporated herein by this reference, permission to enter, occupy, use, improve, maintain and repair the premises described in Item 2, which appear on Exhibit "B," attached hereto and incorporated herein by this reference (the "Premises"), for the purpose specified in Item 4. PERMITTEE agrees to enter, occupy, use, improve, maintain and repair the Premises, pay the rental specified in Item 5 and perform all other obligations imposed upon it by Items 2 through 7 and Exhibit A.

1. PERMITTEE (NAME AND ADDRESS):
Matson Terminals, Inc.
Sand Island Access Road
P. O. Box 2630
Honolulu, Hawaii 96803

2. PREMISES:

The premises consists of four easements at the Container Handling Facilities at Hilo Harbor Island of Hawaii, State of Hawaii, as shown on Exhibit B which are described as follows:

	<u>Square Feet</u>	<u>Annual Ground Rent</u>
Easement 1 - For refrigerated container electric power conduit and twenty-five (25) receptacles on interior wall of Pier 1 Shed.	728	\$1,468.00



	<u>Square Feet</u>	<u>Annual Ground Rent</u>
Easement 2 - For refrigerated container electric power conduit, twenty-three (23) receptacles, circuit breakers and meter on exterior wall of Pier 1 Shed and connection with Hawaiian Electric Light Company, Inc. transformer in adjacent vault.	708	\$1,427.00
Easement 6 - For refrigerated container electric power conduit underground between Pier 1 Shed and Container Yard.	610	\$ 218.00
Easement 7 - For refrigerated container electric power pedestal and eight (8) receptacles on surface of Container Yard.	97	\$ 128.00
TOTAL		<u>\$3,241.00</u>

3. LOCATION: Container Handling Facilities at Hilo Harbor,
Island of Hawaii, State of Hawaii.
4. PURPOSE: Provide electric power for refrigerated cargo
containers.
5. RENTAL: \$3,241.00 per year during first fifteen (15)
years. The annual rent during the remaining
twenty (20) years shall be determined as
provided in Section 24B of Exhibit A. Rent
shall be payable as provided in Section 6 of
Exhibit A.
6. SECURITY DEPOSIT: \$540.00

7. EFFECTIVE DATE: This Permit shall be filed with the Federal Maritime Commission under Section 5(a), Shipping Act of 1984, by Wayne J. Yamasaki, Director of Transportation of the State of Hawaii. The effective date of this Permit shall be as provided in Section 6(c), Shipping Act of 1984. Any subsequent amendment hereto shall be filed with the Federal Maritime Commission as provided in Section 5(a) and become effective as provided in Section 6(c), Shipping Act of 1984.

Dated at Honolulu, Hawaii, August 11, 1986.

APPROVED AS TO FORM
Randall Y.K. Young
DEPUTY ATTORNEY GENERAL, STATE OF HAWAII
Randall Y.K. Young
Approved by the Board
at its meeting held on
August 8, 1986, J-6

STATE OF HAWAII

BY Wayne J. Yamasaki
for Director of Transportation
Name Typed Wayne J. Yamasaki

BOARD OF LAND AND NATURAL RESOURCES

MATSON TERMINALS, INC.

By S. Ono
Chairman and Member
Name Typed _____

By C. B. Mulholland
President
Name Typed C. B. Mulholland

By [Signature]
Member
Name Typed _____

EXHIBIT A TO PERMIT
TERMS AND CONDITIONS

1. Term. This Permit is granted for a period of thirty-five (35) years from the effective date hereof.

2. PERMITTEE's Prior Inspection. PERMITTEE warrants that it has inspected the Premises and all improvements thereon, knows the condition thereof and fully assumes all risks incident to the use and enjoyment of the Premises.

3. Security Deposit. PERMITTEE, upon execution of this Permit, shall deposit with STATE in legal tender or in such other form as may be acceptable to STATE an amount equal to two months' rental as security for the faithful performance on its part of all the terms and conditions, including the special terms and conditions, if any, specified in paragraph 24 of this Permit. The said deposit will be returned, without interest, to PERMITTEE upon the termination of this Permit only if it has faithfully performed said terms and conditions to the satisfaction of STATE. In the event PERMITTEE does not so perform, STATE may declare the deposit forfeited or apply it as an offset to any amounts owed by PERMITTEE to STATE under this Permit or to any damages or loss to STATE caused by the breach by PERMITTEE of such terms and conditions. The exercise of this option is without prejudice to the right of STATE to institute actions for debt or damages against PERMITTEE or to take any other or further action against PERMITTEE provided by law for the enforcement of the rights of STATE under this Permit.

4. Insurance. PERMITTEE shall, concurrently with the execution of this Permit, deliver to STATE a certificate of Comprehensive General Liability Insurance evidencing that such a policy has been issued and is in force, with a combined single limit of not less than \$500,000 for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of PERMITTEE for any injury or damage or for any rent, service charge or other charges under this Permit.

Such insurance shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the Director of Transportation; (b) name STATE as an additional insured; (c) provide that the Department of Transportation shall be notified at least thirty

(30) days prior to any termination, cancellation or material change in such insurance coverage; (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PERMITTEE, its officers, agents, employees, invitees or licensees, in connection with PERMITTEE's use or occupancy of the Premises; (e) have a deductible or retention approved by the State; and (f) be maintained and kept in effect at PERMITTEE's expense throughout the life of this Permit, evidenced by furnishing STATE without notice or demand a like certificate upon each renewal thereof.

5. Indemnity. PERMITTEE shall at all times with respect to the Premises use due care for public safety and shall defend, hold harmless and indemnify STATE, its officers, agents and employees from and against all claims or demands for damages, including claims for property damage, personal injury or death, (a) arising on the Premises, or by reason of any fire or explosion thereon; or (b) arising from, growing out of, or caused by any act or omission on the part of the PERMITTEE, its officers, agents, employees, invitees or licensees, in connection with PERMITTEE's use or occupancy of the Premises.

6. Method of Payment of Rental and Service Charge on Delinquent Rentals and Other Charges. Rental shall be payable quarterly in advance at the Harbors Division Fiscal Office on Oahu within thirty (30) days after the date of the invoice delivered by the Harbors Division to PERMITTEE for the quarterly rental. Without prejudice to any other remedy available to STATE, a service charge of one per cent (1%) per month shall be assessed against PERMITTEE for any rental and other charge not paid within five (5) business days after the expiration of such thirty (30) day period and such sum shall continue to be assessed against PERMITTEE until the principal sum thereof is paid in full.

7. Acceptance of Rent Not a Waiver. The acceptance of rent by STATE shall not constitute a waiver of any breach by PERMITTEE of any of the terms and conditions upon which this Permit is granted and to which PERMITTEE agrees, or of STATE's right to terminate or revoke this Permit. Failure by STATE to insist upon strict performance hereof by PERMITTEE, or to exercise any option herein reserved, shall not be construed as a waiver or as a relinquishment of any of STATE's rights under this Permit.

8. Utilities and Other Charges. PERMITTEE shall be responsible for and pay all charges for electricity.

9. Waste, Strip and Nuisance; Maintenance. PERMITTEE shall not make, permit or suffer any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises.

10. Entry by STATE. STATE or its agents and employees may enter the Premises at all reasonable hours to inspect the Premises and determine if PERMITTEE is complying with the terms and conditions of this Permit or for any other proper purpose. PERMITTEE shall not make any claim for damages or set off of rent, service charge or other charges by reason or on account of such entry.

11. Repairs. PERMITTEE shall, at its own expense, keep and maintain the Premises in a condition similar to that which existed on the effective date of this Permit, ordinary wear and tear and damage by acts of God excepted.

12. Structural Improvements, Alterations or Additions. No substantial improvement, alteration or addition of a structural nature shall be made, installed or constructed on, under or within the Premises by PERMITTEE unless it first submits its plans and specifications thereof to STATE for its approval and unless said plans and specifications are in fact approved in writing by STATE. Such plans and specifications shall not be submitted unless they are in full compliance with all applicable statutes and rules and regulations.

Any improvements, alterations or additions shall be accomplished at the sole cost and risk of PERMITTEE. STATE shall not be responsible for any damage to or destruction of any such improvements, alterations or additions or any personal property on the Premises.

13. Removal of Improvements or Additions. PERMITTEE may remove, at its own cost and risk, any and all improvements or additions or any portion thereof, acquired by PERMITTEE from STATE or constructed or installed by PERMITTEE upon the Premises, at any time during the life of this Permit within thirty (30) days after the termination or revocation hereof; provided that PERMITTEE shall give, prior to said termination or revocation, written notice of its intent to remove the same and that in the event of such removal, the Premises shall be restored by PERMITTEE to a condition similar to that which existed immediately prior to the construction or installation thereof, ordinary wear and tear and damage by acts of God excepted; provided further that, until such removal and, subject to the foregoing standards, restoration has been completed to the satisfaction of STATE, PERMITTEE shall

continue to pay the rent set forth in Item 5 of the Permit. Failure of PERMITTEE to give notice of intention to remove prior to termination or revocation shall be deemed to be an abandonment of said improvements or additions.

14. Option to Require Removal of Improvements or Additions. STATE, with respect to any improvements or additions or any portions thereof acquired by PERMITTEE from STATE or constructed or installed by PERMITTEE on the Premises, reserves the right within sixty (60) days after the date of termination or revocation of this Permit to require PERMITTEE to remove the same at PERMITTEE's cost and risk. Upon failure of PERMITTEE to effect such removal within the specified time, STATE may effect such removal and restore the Premises to a condition similar to that which existed immediately prior to the construction or installation of the improvements or additions by its own employees or by an independent contractor and assess PERMITTEE the total cost thereof.

15. Compliance with Laws; Discrimination Prohibited. PERMITTEE shall comply with all laws, ordinances and rules and regulations of all governmental agencies, applicable to the Premises.

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex or national origin.

16. Transferability. This Permit and the Premises or any part thereof, inclusive of any and all rights or obligations accruing or arising under it, shall not be sold, transferred, assigned, leased, mortgaged, sublet or otherwise alienated or encumbered in any manner whatsoever; provided that PERMITTEE may arrange with another person, firm or corporation to maintain, repair and operate improvements on the Premises owned by PERMITTEE.

17. Property Taxes. PERMITTEE shall pay all real property taxes lawfully assessed against the Premises.

18. Termination and Revocation. In the event PERMITTEE fails to pay any rental, service charge, fees or charges when due or otherwise breaches any of the material terms and conditions of this Permit, STATE may revoke this Permit if, within thirty (30) days after delivery by STATE to PERMITTEE of written notice that PERMITTEE is in default under this Permit PERMITTEE has not cured such default or failure to cure such default has not been waived by STATE.

19. Right to Re-enter and Assume Possession. In the event of termination of this Permit under Section 18 STATE may, without the necessity of court action, enter upon and administratively take possession of the Premises from PERMITTEE.

20. Restoration. Subject to the provisions of Sections 13 and 14, PERMITTEE shall, within thirty (30) days after termination or revocation of this Permit, restore the Premises, at its own cost and risk, to a condition similar to that which existed prior to the effective date of this Permit, ordinary wear and tear and damage by acts of God excepted, and peacefully surrender possession thereof to STATE. In the event PERMITTEE fails to effect such restoration of the Premises within such period, STATE may accomplish the same by its own employees or by an independent contractor and assess PERMITTEE the total cost thereof.

21. Liquidated Damages. If PERMITTEE does not vacate the Premises upon the revocation of this Permit by STATE PERMITTEE shall pay STATE liquidated damages in an amount equal to 20% of the current quarterly rental for each day or portion thereof PERMITTEE remains on the Premises beyond said date of revocation. Such payment is to be in addition to any other rights or remedies STATE may be entitled to pursue for breach of contract or for illegal occupancy.

22. Court Costs and Attorney's Fees. PERMITTEE shall pay any and all court costs and attorney's fees incurred or paid by STATE in collecting rents, penalties, service charges, fees or other charges due from PERMITTEE or payable to STATE under this Permit in removing from the Premises PERMITTEE and any improvements or additions acquired by PERMITTEE from STATE or constructed or installed by PERMITTEE on the Premises, or in recovering any damages or losses caused by PERMITTEE's breach of any of the terms or conditions of this Permit.

23. Interpretation. The use of any gender shall include all genders, the use of the singular shall include the plural and the use of the plural shall include the singular, as the context may require.

24. Special Terms and Conditions.

A. Refrigerated Shipping Device Surcharge. The refrigerated shipping device surcharge prescribed in Section 19-44-12, Commercial Harbors and Tariff, Part 1, Subtitle 3, Title 19, Hawaii Administrative Rules, shall not apply to refrigerated containers loaded or off-loaded by or for the account of Matson Navigation Company at the port to which this

Permit applies so long as there are at such port electrical outlets for refrigerated containers owned by Matson Terminals, Inc. whether the outlets are actually used or not.

B. Rent Redetermination. The annual ground rental payable by PERMITTEE to STATE under this Permit shall be reopened and redetermined as of the expiration of the fifteenth (15th) and twenty-fifth (25th) year of the term of this Permit. At any time not less than six (6) months prior to the expiration of the fifteenth (15th) year of the term of this Permit STATE shall appoint an appraiser who shall determine the fair market ground rental for the Premises as of the date of reopening. The fair market ground rental shall be the higher of (1) the ground rent in effect for the fifteenth (15th) and twenty-fifth (25th) year respectively or (2) the fair market ground rental at the time of reopening. In determining the fair market ground rental, the appraiser shall consider the permitted use of the Premises and the uses permitted by other Permits in the same port which are comparable. The value of the improvements owned by PERMITTEE on the Premises shall not be considered in determining the said rental rate. The respective new rental rates shall be effective for the period beginning with the sixteenth (16th) and twenty-six (26th) year of the term of the Permit.

If the fair market ground rental as so determined is not agreed to by PERMITTEE within three (3) months after notification in writing by STATE, the rental shall be determined by three (3) appraisers. Within thirty (30) days after PERMITTEE has indicated its nonconcurrence, PERMITTEE shall appoint an appraiser and give notice thereof to STATE. In the event of a failure on the part of PERMITTEE to appoint an appraiser within the time limit specified and to notify STATE of such selection, STATE may apply to any judge of the Circuit Court having jurisdiction over the Premises, requesting an appraiser to represent PERMITTEE. The two appraisers so appointed (in either manner) shall appoint a third appraiser and give notice thereof to STATE and PERMITTEE. In the event the two appraiser so appointed (in either manner) shall fail to appoint a third appraiser within fifteen (15) days after the second appraiser shall have been appointed, either STATE or PERMITTEE thereafter, upon the expiration of ten (10) days after the mailing of a written notice to the other party, may have the third appraiser appointed by any judge of said Court. The three appraisers so appointed shall thereupon proceed

independently to determine the ground rental rate for the Premises based on the permitted use for the succeeding ten (10) year period and the decision of any two of them shall be final, conclusive and binding upon both parties. Each appraiser shall be a recognized real estate appraiser and a member of a recognized professional real estate appraisal operation. STATE and PERMITTEE shall pay the fees of the appraiser appointed by or for it. The expenses of the third appraiser shall be borne equally by STATE and PERMITTEE. Should the appraisal not be completed in time for the ensuing ground rental period, the ground rental payment will continue at the same rate as for the tenth (10th) year subject to later adjustment.

STATE and PERMITTEE shall evidence such redetermination of annual ground rental made hereunder by a written instrument signed by STATE and PERMITTEE. STATE shall submit to the Federal Maritime Commission for its information a statement of the amount of the annual ground rental as so redetermined hereunder.

C. Purchase of Existing Equipment. STATE agrees to sell to PERMITTEE and PERMITTEE agrees to buy from STATE the existing thirty-two (32) refrigerated container electric power receptacles on interior and exterior shed wall, conduits for electric power, wiring and switches for Five Thousand Nine Hundred Thirty One Dollars (\$5,931.00) to be paid by PERMITTEE to STATE within ten (10) business days after the effective date of this Permit.

D. Initial Improvements. State approves the following initial improvements to be performed by PERMITTEE at PERMITTEE'S expense:

(i) Relocate the secondary circuit breaker from the vault to the shed wall. Install new conduit, wire and meter socket connecting the transformer to the relocated second circuit breaker.

(ii) Replace transformer, Reconnect primary wiring ahead of State meter to power supply point in vault of Hawaiian Electric Light Company, Inc.

(iii) Install sixteen (16) electric power receptacles on interior and exterior shed wall.

(iv) Install pedestal in container yard with eight (8) electric power receptacles.