

Exhibit <u>A</u>
Port Commission <u>Audit Committee</u>
Meeting of <u>January 10, 2012</u>



January 10, 2012

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Audit Committee
The Port of Seattle
2711 Alaskan Way
Seattle, Washington U.S.A. 98121

Re: Internal Audit Report – Lease and Concession Audit - Cruise Terminals of America (CTA) -
Report No. 2012-01

Ladies and Gentlemen:

The members and staff of Cruise Terminals of America, LLC ("CTA") have had the opportunity to review and consider the Port of Seattle's Internal Audit Report referred to above (the "Internal Audit Report"). To ensure that the record before the Audit Committee includes additional information and perspective on the underlying issues addressed in the Internal Audit Report, CTA desires to submit to the Audit Committee a letter prepared by its outside counsel. Please see the attached letter of Lane Powell to CTA dated December 27, 2011 (the "Lane Powell Letter").

CTA's members look forward to reaching a resolution of this matter on a basis satisfactory to all.

Very truly yours,

CRUISE TERMINALS OF AMERICA, LLC

By: General Steamship Agencies, Inc., Member

A handwritten signature in blue ink, appearing to read 'Daniel Blackmore', is written over a circular stamp.

Daniel Blackmore, Executive Vice President

December 27, 2011

Jean Cox
General Manager
Cruise Terminals of America, LLC
2225 Alaskan Way, Suite 103
Seattle, WA 98121-1604

Re: Cruise Facility Lease Agreement dated December 21, 2005, as amended May 17, 2006 (the "Lease"), between the Port of Seattle ("Port") and Cruise Terminals of America, LLC ("CTA")

Dear Jean:

You have requested advice about how to resolve a misunderstanding on the part of the Port's auditor over the calculation of percentage rent due under the above-referenced Lease.

You have also indicated that you might consider sharing this letter with Port representatives and that it should therefore discuss applicable facts and legal principles in a neutral and non-adversarial way without legal citations or legal argument. Without intending to disregard that instruction, but instead to protect CTA's right to communicate frankly and provide a framework for discussions without compromising its interests, we will invoke Evidentiary Rule 408 limiting the admissibility of statements made in this letter for settlement purposes.

The first step in resolving any misunderstanding is to make sure that each party understands the material facts and the position that the other party is asserting with respect to them. We will therefore address those matters briefly.

Background

Since April 30, 2003, CTA has leased cruise terminal facilities from the Port and provided cruise terminal services, including parking, dockage, wharfage, demurrage, storage, equipment rentals, food and beverage services, and passenger traffic fees, both directly and through approved subcontractors, to cruise lines and their customers, initially at the Terminal 30 Cruise Facility and Pier 66 Cruise Terminal, and later at the Pier 66 Terminal and the Terminal 91 Cruise Facility. In exchange for the right to use the cruise terminal facilities and provide the cruise terminal services, CTA pays the Port percentage rent consisting of a percentage lease fee and a percentage preferential use fee at rates specified in Section 4.1 of the Lease multiplied by its annual Gross Revenues as defined in Section 1.20 of the Lease.

One of the cruise terminal services that CTA provides under the Lease is parking and shuttle services for cruise line customers and employees ("Parking Services"). To provide those Parking Services, CTA subcontracts with Republic Parking.

Prior to relocating cruise berths from the Terminal 30 Cruise Facility to the Terminal 91 Cruise Facility in 2006, the gross revenue from Parking Services greatly exceeded the cost of providing Parking Services, and Republic Parking would pay the resulting net revenue (i.e. gross revenue less expenses and a management fee) to CTA, which included the net revenue for Parking Services in CTA's annual Gross Revenue for purposes of calculating and paying percentage rent to the Port.

In 2007, the Port conducted an internal audit of CTA's cruise terminal services for the period 2004 through 2006, and raised no issue about CTA's inclusion of Republic's net parking revenue in CTA's Gross Revenue for calculating percentage rent. Following the internal Port audit of CTA's cruise terminal services, in 2009, the Port requested that CTA engage an external and independent accounting firm to conduct annual Lease compliance audits in accordance with audit procedures that were agreed upon by the Port. Accordingly, CTA engaged the accounting firm of Clothier & Head to conduct the external Lease compliance audits for calendar years 2008, 2009 and 2010 in accordance with the Port's agreed upon audit procedures. All three years covered by the Clothier & Head audits showed "No Deficiencies," and written reports from the auditor were submitted to the Port. Based on these findings, CTA has assumed that all accounting has been reported properly and that it is in compliance with the Lease.

The Port and CTA mutually recognized that the relocation of the cruise berths from the Terminal 30 Cruise Facility to the Terminal 91 Cruise Facility in 2006 would significantly and adversely impact the financial results to both of them from parking operations. This adverse impact was principally caused by the need to operate shuttles to transport passengers and their luggage to the departure terminal. Shuttle services had not been required at the Terminal 30 Cruise Facility since the parking lot was immediately adjacent to the departure terminal. When the Port designed the Terminal 91 Cruise Terminal, it was necessary to move the parking areas away from the departure terminal.

In advance of the relocation to the Terminal 91 Cruise Terminal, the Port and CTA understood that the ILWU would assert jurisdiction over the shuttle work, and that the consequence of engaging union labor would be that the parking expenses would substantially consume parking revenues. The upshot of the changed circumstances was that while parking operations had provided a net benefit to both parties due to the low costs at the Terminal 30 Cruise Facilities, parking operations would no longer provide a benefit to either the Port or CTA. However, if parking revenues were to be divided as recently suggested by the Port's auditor (which, with parking costs roughly equal to parking revenue, would mean that for

every dollar of parking revenue, CTA would lose up to 76 cents), CTA obviously would not have accepted this arrangement. This would have turned the entire economics of the cruise terminal operations upside down. That was not anticipated by either the Port or CTA, and doesn't make any sense. This was not the intention of either party.

In light of the dramatic change in parking costs, CTA derives no revenue from Parking Services and believes that losses on Parking Services should be treated as Allowable Expenses under Section 1.5.5 of the Lease, which provides that Allowable Expenses include

1.5.5 Costs associated with parking at the Pier 66 Cruise Facility and parking operations at the Terminal 30 Cruise Facility or Terminal 91 Cruise Facility.

CTA also believes that the negative net revenue for Parking Services should be excluded from Gross Revenues under Section 1.20.12, which provides that Gross Revenue shall not include:

1.20.12 Revenue derived from any item of expense which is passed directly through to a third-party (e.g., the cost of security provided for the benefit of cruise ships during port calls); provided, however, any markup on such pass-through expense shall be included within Gross Revenue.

But, in a recent internal audit, the Port's auditor has interpreted the term Gross Revenues more broadly to include not only the Gross Revenues of CTA, as the parties have historically interpreted Gross Revenues, but also the gross revenue of Republic Parking even though it generates a net loss on Parking Services and produces no revenue whatsoever to CTA.

To understand the Port's interpretation, we need to examine the definition of Gross Revenues in Section 1.20 of the Lease, which provides in relevant part as follows:

1.20 Gross Revenues. "Gross Revenues" shall mean and refer to the aggregate gross amount of revenue derived in, on or about the Premises or from Tenant's Operations, and whether: (i) in cash, on credit or in kind, (ii) at wholesale, at retail or otherwise, and (iii) transacted by Tenant, by any persons, firms or corporations on Tenant's behalf, or by any subtenants, licensees or concessionaires of Tenant (specifically including any Parking Operator), from, in or upon the Premises. Without limiting the generality of the foregoing, Gross Revenue specifically includes the following:

1.20.1 All charges for parking, dockage, wharfage, demurrage, storage, equipment rentals and passenger traffic fees attributable to the Premises

Thus, the question is reduced to whether the term Gross Revenues means the gross amount of revenue derived by the Tenant from Tenant Operations in person or through subcontractors, as CTA believes, or the gross amount of revenue derived by every person conducting any business on the Premises even if it produces no revenue whatsoever to CTA, as the Port's auditor contends.

If the Port auditor's broader interpretation of the term Gross Revenues as gross revenue of all persons is correct, we understand that the monetary effect of the interpretation is that CTA would owe approximately \$1.2 million in additional percentage rent for the previously unreported gross revenues of Republic Parking that generated a net loss and produced no revenue for CTA. On the other hand, if CTA's interpretation of the term Gross Revenues as gross revenues of CTA is correct, CTA would owe no additional percentage rent.

In addition, the Port's auditor has proposed to disallow expenses of approximately \$1.1 million that Republic Parking has paid to SSA Pacific for providing shuttle labor and equipment to Republic Parking, contending that SSA Pacific is an Affiliate of CTA and that Allowable Expenses shall not include under Section 1.5.14 of the Lease

1.5.14 . . . any amounts paid to an Affiliate or Qualifying Person (other than bona fide cost of compensation specifically allowed by Section 1.5.3) unless expressly approved, in advance and in writing, by the Port as necessary and reasonable

Conceding for the sake of discussion that SSA Pacific is affiliated with one of the CTA owners, CTA does not believe that amounts paid to SSA Pacific for shuttle labor and equipment should be disallowed because CTA does not pay any of those expenses. Instead, they are paid by Republic Parking to SSA Pacific in accordance with a third-party Management Agreement. Consequently, under the accounting treatment that had been consistently applied by CTA and the Port, these expenses were not characterized as "Allowable Expenses" otherwise requiring Port approval.

Furthermore, there was no secret that SSA Pacific was employing the labor required to man the shuttle services. This arrangement was subject to extensive discussion between CTA, the Port and SSA Pacific. The simple reality is that, since SSA Pacific was engaged to provide stevedoring services to the cruise lines calling at the Terminal 91 Cruise Terminal, it would be highly impractical (and almost certainly more expensive) for another longshore employer to perform the services. It is now extraordinarily inequitable for the Port's auditor to claim that any amount paid to SSA Pacific by anyone for shuttle labor and equipment should be

disallowed unless expressly approved by the Port as necessary and reasonable and that the Port should enjoy for free the benefit of services it was fully aware of and for which there was no practical alternative.

Discussion

A Lease term is ambiguous if it is reasonably susceptible to more than one meaning. Here, the term Gross Revenues is ambiguous because it can be read, as CTA reads it, to mean the gross amount of revenue received by the Tenant from Tenant Operations in person or through subcontractors, or it can be read as the Port's auditor reads it to mean the gross amount of revenue derived by every person conducting business on the Premises even if it generates no revenue at all for CTA.

If a Lease term is ambiguous, a court will consider extrinsic evidence of the parties' intentions based on their conduct and performance of the Lease, because actions often speak louder than words. In that respect, CTA has consistently reported, and the Port has consistently accepted, Gross Revenues as CTA interprets them from 2003 to 2011. In addition, the Port's internal audit in 2007 for the years 2004 through 2006, and the Clothier & Head Lease Compliance Audits in accordance with agreed upon procedures for calendar years 2008 through 2010 reported no deficiencies or other issues in reporting Gross Revenues or calculating percentage rent. To these extents, the Port auditor's newly adopted and broader interpretation of Gross Revenues as all gross revenues generated by anyone on the Premises is contrary to the conduct of the parties and performance of the Lease from 2003 through 2011.

In addition to extrinsic evidence of the parties' conduct and performance of the Lease, a court may also consider the parol testimony of the parties as to what they intended the term Gross Revenues to mean. In this respect, CTA would testify that it intended that the term Gross Revenues would mean the gross revenue of CTA, because it is an accounting term that is commonly understood to mean the gross "receipts" of a person and not the gross "receipts" of many persons, and because it would make no sense for CTA to pay percentage rent on losses from Parking Services that generated no revenue whatsoever to CTA. We are uncertain how the Port would testify about what it intended the term Gross Revenues to mean, or why it has not said anything on the subject from 2003 to 2011, or why the Port's own auditor and independent auditors have not previously raised the issue, or why it would make sense for CTA to pay percentage rent on losses from Parking Services that generated no revenue at all to CTA.

A court may also examine how the term Gross Revenues is used in the context of the Lease as a whole. Since it is used to calculate percentage rent for CTA's use of the premises and results of operations on the premises, it may be difficult to rationalize charging percentage rent for use of the premises and results of operations that produce no benefit to CTA.

In the final analysis, a court must evaluate such extrinsic evidence and decide which of the conflicting interpretations is the more rational and probable interpretation in light of the evidence. Under the circumstances presented, there should be an ample basis to support the CTA interpretation as the more rational and probable one, and we see no reason for the Port to criticize the oversight of its senior managers in charge of cruise terminal operations for alleged failure to identify and assert the less rational and probable interpretation that the Port should be able to charge percentage rent on negative net revenue or losses, especially when its own auditor in 2007 for calendar years 2004 through 2006 and independent auditors for calendar years 2008 through 2010 found no basis for that position.

However, the point of this letter is not to convince anyone that there is no basis for a misunderstanding of the Lease terms. Instead, the purpose of the letter is to explain why the CTA interpretation of the Gross Revenues definition is more rational and probable than the interpretation given that term by the Port's internal auditor.

On the separate issue of disallowing the expenses that Republic Parking pays to SSA Pacific for providing shuttle equipment and union drivers: (i) CTA should ask the Port to approve the Management Agreement between Republic Parking and SSA Pacific; (ii) the Port should let CTA know what, if anything, it considers unnecessary or unreasonable about that Agreement; and (iii) Republic Parking and SSA Pacific should be asked to address the Port's reasonable concerns by amending the Agreement.

Respectfully,

LANE POWELL PC



Michael D. Dwyer

MDD:jlb