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Attorney for Third-Party Defendants

Power Test Realty Company Limited Partnership and Getty Properties Corp.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
ENVIRONMENTAL PROTECTION AGENCY,
and THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

vs.

OCCIDENTAL CHEMICAL CORPORATION,
TIERRA SOLUTIONS, INC., MAXUS ENERGY
CORPORATION, REPSOL YPF, S.A., YPF, S.A.,
YPF HOLDINGS, INC. and CLH HOLDINGS,

Defendants,

TIERRA SOLUTIONS, INC. and MAXUS ENERGY
CORPORATION,

Third-Party Plaintiffs,

vs.

TRMI-H LLC, POWER TEST REALTY CO., L.P., GETTY
PROPERTIES CORP., GENERAL MOTORS CORP.,
CYTEC INDUSTRIES, INC. and LEGACY VULCAN
CORP.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**POWER TEST REALTY COMPANY
LIMITED PARTNERSHIP AND
GETTY PROPERTIES CORP.'S
ANSWER TO THIRD-PARTY
COMPLAINT "C"**

**POWER TEST REALTY COMPANY LIMITED PARTNERSHIP AND GETTY
PROPERTIES CORP.'s ANSWER TO THIRD-PARTY COMPLAINT "C"**

Third-Party Defendants Power Test Realty Company Limited Partnership (incorrectly
identified in Third-Party Complaint C as Power Test Realty Co. L.P. but hereinafter "Power Test
Realty") and Getty Properties Corp. ("Getty Properties"), by and through their undersigned

counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answer the Third-Party Complaint "C" filed by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

1. Power Test Realty and Getty Properties deny each and every allegation contained in Third-Party Complaint "C" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First and Second Counts and all headings and titles used in Third-Party Complaint "C."

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 14)

2. Power Test Realty and Getty Properties respond that the referenced pleadings, reports, administrative orders on consent, agreements, and other documents speak for themselves, and therefore no response is required. To the extent a further response is required, the allegations of these paragraphs are not specifically directed to Power Test Realty and/or Getty Properties, and therefore no response to the allegations of Paragraphs 1 through 14 of Third-Party Complaint C is required pursuant to CMO V.

AS TO THE PARTIES

3. The allegations contained in Paragraphs 15 through 18 are not specifically directed to Power Test Realty and/or Getty Properties, and therefore no response to the allegations is required pursuant to CMO V.

4. Power Test Realty and Getty Properties admit the allegations in Paragraphs 19 - 21.

5. The allegations contained in Paragraphs 22 through 25 are not specifically directed to Power Test Realty and/or Getty Properties, and therefore no response to the allegations is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 26 through 120)

6. The referenced paragraphs speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

7. Power Test Realty and Getty Properties admit the allegations in Paragraphs 26 and 27 of the Third-Party Complaint C.

8. As to the allegations contained in Paragraph 28, Power Test Realty and Getty Properties admit that the Newark Terminal has received, stored and dispensed petroleum products during its period of ownership from 1985 to present. Except as specifically admitted, Power Test Realty and Getty Properties state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 28 and therefore leave Third-Party Plaintiffs to their proofs.

9. The allegations contained in Paragraphs 29 and 30 are not specifically directed to Power Test Realty and/or Getty Properties, and therefore no response to the allegations is required pursuant to CMO V.

10. As to the allegations contained in Paragraph 31, Power Test Realty and Getty Properties admit only that on February 1, 1985, the Newark Terminal was sold to Power Test Realty, now known as Getty Properties Corp., which remains the owner of the Newark Terminal. Except as specifically admitted, Power Test Realty and Getty Properties state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 31 and therefore leave Third-Party Plaintiffs to their proofs.

11. As to the allegations contained in Paragraph 32, Power Test Realty and Getty Properties admit only that as of February 1, 1985, Power Test Realty leased the Newark Terminal to Clay Oil Terminals, Inc. (subsequently known as Getty Terminals Corp.), which operated the Newark Terminal until 1997. Except as specifically admitted, Power Test Realty and Getty Properties deny the remaining allegations stated in Paragraph 32.

12. The allegations contained in Paragraph 33 are not specifically directed to Power Test Realty and/or Getty Properties, and therefore no response to the allegations is required pursuant to CMO V.

13. The allegations of Paragraph 34 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required. To the extent that a response is required, the allegations state legal conclusions for which no response is required. To the extent any portion of Paragraph 34 pleads factual allegations requiring a response, Power Test Realty and Getty Properties deny that the Newark Terminal has an extensive history of spills and releases of hazardous substances during its period of ownership.

14. The allegations of Paragraph 35 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required. To the extent that a response to the allegations of Paragraph 35 is required, the allegations state legal conclusions for which no response is required. To the extent any portion of Paragraph 35 pleads factual allegations directed to Power Test Realty and/or Getty Properties, and except to admit a minor release of diesel into the Lower Passaic River in or about 1987, which release was immediately contained and remediated to the satisfaction of the relevant regulatory agencies, Power Test Realty and Getty Properties are without knowledge or information sufficient

to form a belief as to the truth of the remaining allegations stated in Paragraph 35 of Third-Party Complaint C and therefore deny same and leave Third-Party Plaintiffs to their proofs.

15. The allegations of Paragraph 36 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required. To the extent that a response is required, Power Test Realty and Getty Properties deny that the referenced constituents, nor any other substance detected at the Newark Terminal, are commonly associated with dioxin. As to any remaining allegations of Paragraph 36 requiring a response, Power Test Realty and Getty Properties are without knowledge or information sufficient to form a belief as to the truth thereof and therefore deny same and leave Third-Party Plaintiffs to their proofs.

16. The allegations of Paragraph 37 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required pursuant to CMO V. To the extent that a response is required, Power Test Realty and Getty Properties deny that the substances listed in Paragraph 37 are properly characterized as hazardous substances and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and therefore deny same and leave Third-Party Plaintiffs to their proofs.

17. The allegations of Paragraph 38 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required pursuant to CMO V. To the extent that a response is required, Power Test Realty and Getty Properties deny that the substances listed in Paragraph 38 are properly characterized as hazardous substances and are without knowledge or information sufficient to form

a belief as to the truth of the remaining allegations of this paragraph and therefore deny same and leave Third-Party Plaintiffs to their proofs.

18. The allegations of Paragraph 39 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required pursuant to CMO V. To the extent that a response is required, Power Test Realty and Getty Properties are without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore deny same and leave Third-Party Plaintiffs to their proofs.

19. The allegations in Paragraph 40 refer to a written document, which speaks for itself, and therefore no response is required. To the extent a response is required, the allegations of Paragraph 40 refer to the legal conclusions of NJDEP for which no response is required. To the extent any portion of Paragraph 40 plead factual allegations requiring a response, Power Test Realty and Getty Properties deny that they are persons “in any way responsible” for discharges of hazardous substances emanating into the Lower Passaic River, as purportedly alleged in the Directive.

20. The allegations contained in Paragraph 41 are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required pursuant to CMO V.

21. The allegations contained in Paragraphs 42 and 43 refer to conclusions of law for which no response is required and therefore they are denied. To the extent any portion of Paragraphs 42 and 43 plead factual allegations requiring a response, the allegations are denied.

22. The allegations contained in paragraphs 44 through 120 are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required from Power Test Realty and Getty Properties pursuant to CMO V.

AS TO FIRST COUNT

New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.f.a.2(a)

23. Power Test Realty and Getty Properties incorporate by reference as if fully set forth herein their responses and denials as asserted in Paragraphs 1 through 22 herein.

24. The allegations of Paragraphs 122-126 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required pursuant to CMO V. To the extent that a response is required, the allegations of Paragraphs 122-126 state legal conclusions for which no response is required. To the extent any portion of Paragraphs 122-126 plead factual allegations requiring a response, Power Test Realty and Getty Properties deny that they are liable to the Third-Party Plaintiffs pursuant to the New Jersey Spill Compensation and Control Act.

25. Power Test Realty and Getty Properties deny that they are liable to Third-Party Plaintiffs for the relief they seek in the First Count of Third-Party Complaint C.

AS TO SECOND COUNT

Statutory Contribution

26. Power Test Realty and Getty Properties incorporate by reference as if fully set forth herein their responses and denials as asserted in Paragraphs 1 through 25 herein.

27. The allegations of Paragraph 128 contain general and conclusory statements that are not specifically directed to Power Test Realty and/or Getty Properties and therefore no response is required pursuant to CMO V. To the extent that a response is required, the allegations of Paragraph 128 state legal conclusions for which no response is required. To the extent any portion of Paragraph 128 pleads factual allegations requiring a response, Power Test Realty and Getty Properties deny that they are liable to the Third-Party Plaintiffs for statutory contribution.

28. Power Test Realty and Getty Properties deny that they are liable to Third-Party Plaintiffs for the relief they seek in the Second Count of Third-Party Complaint C.

FIRST AFFIRMATIVE DEFENSE

29. The Third-Party Complaint is barred in whole or in part as it fails to state a cause of action against Power Test Realty and Getty Properties upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

30. Power Test Realty and Getty Properties are not dischargers or persons in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. (“Spill Act”).

THIRD AFFIRMATIVE DEFENSE

31. The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

FOURTH AFFIRMATIVE DEFENSE

32. Third-Party Plaintiffs have no Spill Act claim against Power Test Realty and Getty Properties because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

33. Third-Party Plaintiffs have no right of contribution against Power Test Realty and Getty Properties under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

34. Third-Party Plaintiffs’ claims are barred, in whole or in part, by the entire controversy doctrine.

SEVENTH AFFIRMATIVE DEFENSE

35. Some or all of Third-Party Plaintiffs do not have standing to sue.

EIGHTH AFFIRMATIVE DEFENSE

36. Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

NINTH AFFIRMATIVE DEFENSE

37. Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

TENTH AFFIRMATIVE DEFENSE

38. Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from Power Test Realty and Getty Properties. Consequently, the claims in the Third-Party Complaint are barred, in whole or in part.

ELEVENTH AFFIRMATIVE DEFENSE

39. The claims brought by Third-Party Plaintiffs reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

TWELFTH AFFIRMATIVE DEFENSE

40. To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

THIRTEENTH AFFIRMATIVE DEFENSE

41. The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

FOURTEENTH AFFIRMATIVE DEFENSE

42. Third-Party Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

FIFTEENTH AFFIRMATIVE DEFENSE

43. At all relevant times, Power Test Realty and Getty Properties complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

SIXTEENTH AFFIRMATIVE DEFENSE

44. The claims asserted against Power Test Realty and Getty Properties in the Third-Party Complaint are barred because at all relevant times Power Test Realty and Getty Properties exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting

therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Power Test Realty and Getty Properties had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

SEVENTEENTH AFFIRMATIVE DEFENSE

45. The claims set forth in the Third-Party Complaint are barred in whole or in part by the doctrine of preemption.

EIGHTEENTH AFFIRMATIVE DEFENSE

46. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Power Test Realty and Getty Properties.

NINETEENTH AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs' claims against Power Test Realty and Getty Properties are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

TWENTIETH AFFIRMATIVE DEFENSE

48. Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-FIRST AFFIRMATIVE DEFENSE

49. Third-Party Plaintiffs' claims are barred, in whole or in part, by the "unclean hands" doctrine.

TWENTY-SECOND AFFIRMATIVE DEFENSE

50. The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance;

(2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-THIRD AFFIRMATIVE DEFENSE

51. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

52. Third-Party Plaintiffs' claims against Power Test Realty and Getty Properties are subject to setoff and recoupment and therefore must be reduced accordingly.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

53. Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs' have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs' have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

54. Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement ... of any natural resources damaged or destroyed by a discharge" under the Spill Act.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

55. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey

agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the “Newark Bay Complex,” as defined in Plaintiffs’ Second Amended Complaint.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

56. Third-Party Plaintiffs’ claims are not ripe for adjudication, inter alia, because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.

TWENTY-NINTH AFFIRMATIVE DEFENSE

57. If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs’ own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs’ agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs’ recovery against Power Test Realty and Getty Properties, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

THIRTIETH AFFIRMATIVE DEFENSE

58. Although Power Test Realty and Getty Properties deny that they are liable for the contamination described in Third-Party Plaintiffs’ Complaint, in the event they are found liable, Power Test Realty and Getty Properties are entitled to an offset against any such liability on their part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

THIRTY-FIRST AFFIRMATIVE DEFENSE

59. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-SECOND AFFIRMATIVE DEFENSE

60. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Power Test Realty and Getty Properties alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

THIRTY-THIRD AFFIRMATIVE DEFENSE

61. Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

62. The damages or other relief that Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

63. Third-Party Plaintiffs' claims are barred due to its own conduct in unilaterally, and without notice to Power Test Realty and Getty Properties, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

64. Power Test Realty and Getty Properties' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 129 S.Ct. 1870 (2009), and other comparable decisional law.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

65. Third-Party Plaintiffs cannot assert contribution claims against Power Test Realty and Getty Properties because the discharges for which the Plaintiffs are seeking relief are different from Power Test Realty and Getty Properties' alleged discharges.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

66. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Power Test Realty and Getty Properties are not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State of New Jersey.

THIRTY-NINTH AFFIRMATIVE DEFENSE

67. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Power Test Realty and Getty Properties liable, in contribution, for any claims for which it would be a violation of public policy to hold Power Test Realty and Getty Properties liable, including but not limited to punitive damages and penalties.

FORTIETH AFFIRMATIVE DEFENSE

68. Third-Party Plaintiffs' claims are barred, in whole or in part, because no actions or inactions by Power Test Realty and Getty Properties have resulted in any permanent impairment or damage to a natural resource.

FORTY-FIRST AFFIRMATIVE DEFENSE

69. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Power Test Realty and Getty Properties are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Power Test Realty and Getty Properties pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Power Test Realty and Getty Properties. Examples of legal extinguishments that are or may be applicable to Power Test Realty and Getty Properties include, with respect to each such site:

1. Any release or covenant not to sue granted by Plaintiffs to Power Test Realty and Getty Properties;
2. Any settlement or other compromise between Plaintiffs and Power Test Realty and Getty Properties;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Power Test Realty and Getty Properties;
4. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and Power Test Realty and Getty Properties, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
5. Any issuance by Plaintiffs to Power Test Realty and Getty Properties, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FORTY-SECOND AFFIRMATIVE DEFENSE

70. Third-Party Plaintiffs' claims are barred because the relief sought against Power Test Realty and Getty Properties, were it claimed directly by Plaintiffs, would amount to a

“taking” of Power Test Realty and Getty Properties’ property in violation of their constitutional rights to due process and/or in violation of their rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

FORTY-THIRD AFFIRMATIVE DEFENSE

71. Third-Party Plaintiffs’ claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Power Test Realty and Getty Properties’ responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Power Test Realty and Getty Properties, thereby exposing Power Test Realty and Getty Properties to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-FOURTH AFFIRMATIVE DEFENSE

72. To the extent Power Test Realty and Getty Properties are acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Power Test Realty and Getty Properties, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-FIFTH AFFIRMATIVE DEFENSE

73. Without admitting liability, Power Test Realty and Getty Properties allege that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FORTY-SIXTH AFFIRMATIVE DEFENSE

74. Power Test Realty and Getty Properties incorporate by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on Power Test Realty and Getty Properties.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

75. Power Test Realty and Getty Properties reserve the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

76. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

DESIGNATION OF TRIAL COUNSEL

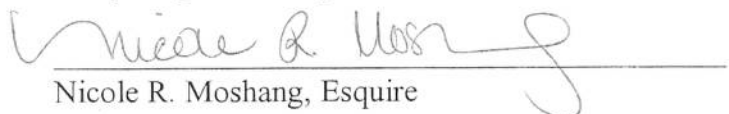
77. In accordance with Rule 4:25-4 you are hereby notified that Nicole R. Moshang is assigned to try this case.

WHEREFORE, Third-Party Defendants Power Test Realty and Getty Properties respectfully request that the Court enter an Order dismissing the Third-Party Complaint "C" with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

Dated: October 15, 2009

Respectfully submitted,

MANKO, GOLD, KATCHER & FOX, LLP
Attorney for Third-Party Defendants, Power
Test Realty Company Limited Partnership and
Getty Properties Corp.


Nicole R. Moshang, Esquire

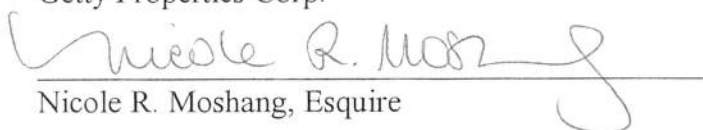
CERTIFICATION PURSUANT TO R. 4:5-1(b) (2)

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that:

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of a third party defendant for the claims set forth in the Third Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R.4:28; but that
- (c) In the event the Court shall determine that the potential liability of a third party defendant, if any, for the claims set forth in the Third Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R. 4:28; and
- (d) In either event, some or all of such non-parties are subject to joinder pursuant to R.4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. Further, Getty Petroleum Marketing Inc., is an additional non-party known to the undersigned counsel.

Respectfully submitted,

MANKO, GOLD, KATCHER & FOX, LLP
Attorney for Third-Party Defendants, Power
Test Realty Company Limited Partnership and
Getty Properties Corp.


Nicole R. Moshang, Esquire

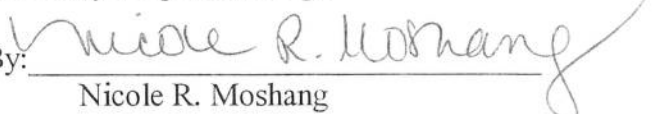
CERTIFICATION OF SERVICE

I, Nicole R. Moshang, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served Power Test Realty Company Limited Partnership and Getty Properties Corp.'s Answer and Affirmative Defenses to Third-Party Complaint "C" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via Hand Delivery.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

Nicole R. Moshang

Attorney for Third-Party Defendants, Power
Test Realty Company Limited Partnership
and Getty Properties Corp.

By: 
Nicole R. Moshang

Dated: October 15, 2009

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