

Hearing Date and Time: June 21, 2012 @ 10:00 AM  
Objection Deadline: June 14, 2012 @ 4:00 PM

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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<b>In Re</b>	:	Chapter 11
	:	
<b>GETTY PETROLEUM MARKETING, INC., et al.</b>	:	
	:	Case No. 11-15606 (SCC)
Debtors.	:	
	:	<b>(Jointly Administered)</b>

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**MOTION OF BRENNAN'S OIL COMPANY  
FOR LEAVE TO FILE A PROOF OF CLAIM**

Brennan's Oil Company ("Brennan"), by and through its counsel, Weir & Partners LLP, hereby submits this Motion for Leave to File a Proof of Claim ("Motion") and, in support of this Motion, respectfully states as follows:

1. On December 5, 2011 ("Petition Date"), Getty Petroleum Marketing, Inc. (the "Debtor"), filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (Bankruptcy Code") thereby commencing this bankruptcy case ("Debtor's Case). The Debtor's Case was originally filed as case number 05-10207.

2. On December 5, 2011, this Court entered an order directing the joint administration of the Debtor's Case with various other cases and that the cases be jointly administered under case number 11-15606 (Getty Petroleum Marketing, Inc.).

3. A bar date for filing Proofs of Claim was set for April 10, 2012.

4. Prior to the Petition Date, Brennan and the Debtor entered into a sublease of real property in which Brennan was the Sublessor and Debtor was the Sublessee ("Sublease"). A true and correct copy of the Lease is attached hereto as a part of Exhibit "A".



5. The property subject to the Sublease is located at 487 Woodlane Road, Westampton, New Jersey upon which Debtor operated a commercial gas station (“Premises”).

6. Upon information and belief, the Sublease terminated by its own terms prior to the Petition Date. However, certain of Debtor’s obligations under the Sublease survived the termination of the Sublease, including the obligation to remediate environmental contamination and monitor environmental cleanup.

7. There exists an unremediated environmental contamination on the Premises caused by Debtor prior to the expiration of the Sublease and, to the extent that Brennan remains liable to the owner of the Premises for the costs of any required remediation, the Debtor is liable to Brennan and maintains an obligation to defend and indemnify Brennan.

8. Since Brennan was neither the owner of the Premises nor in possession of the Premises once Debtor took possession pursuant to the Sublease, Brennan did not become aware, until after the bar date either that there existed a contamination on the Premises or that Debtor, apparently, was engaging in certain remediation efforts at the Premises that have since ceased.

9. Brennan is informed that the Debtor has not completed the remediation efforts relating to the Premises and that it does not intend to do so.

10. Resultantly, Brennan maintains an unliquidated claim against the Debtor for the costs associated with completing the remediation of the Premises.

11. Likely as a result of the expiration of the Sublease, Brennan did not receive notice of the Debtor’s bankruptcy case and had no knowledge of the prior existing remediation claims given the expiration of the Sublease and therefore could not have had notice of the Bar Date.

12. As a result, Brennan respectfully requests that this Court permit Brennan to file a proof of its unliquidated claim in the form attached hereto as Exhibit “A” and that such claim be

treated for all purposes as though it was filed timely.

WHEREFORE, Brennan's Oil Company respectfully requests that the Court permit the filing of the Proof of Claim in the form attached to this Motion.

WEIR & PARTNERS LLP

BY: /s/ Edward T. Kang, Esquire

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Dated: May 18, 2012

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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<b>In Re</b>	:	Chapter 11
	:	
<b>GETTY PETROLEUM MARKETING, INC., et al.</b>	:	
	:	Case No. 11-15606 (SCC)
Debtors.	:	
	:	<b>(Jointly Administered)</b>

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**ORDER**

AND NOW, this        day of        , 2012, upon consideration of the Motion of Brennan's Oil Company for Leave to File a Proof of Claim ("Motion") and any response thereto, after notice and a hearing, it is hereby

ORDERED that the Motion is GRANTED, and it is further

ORDERED that Brennan's Oil Company is permitted to file a Proof of Claim, substantially in the form attached to the Motion and that such claim shall be treated for all purposes as if such claim had been filed prior to the claim bar date.

BY THE COURT:

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HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

Interested Parties:  
See Attached List

**Getty Petroleum Marketing Inc.**

1500 Hempstead Tpke.  
East Meadow, NY 11554  
Debtor

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Nibur 761921 Queens LLC, Barton-Wayne Wantagh LLC,  
and Nibur Montclair LLC

EXHIBIT "A"

SUBLEASE

#56309  
(13)

SubLease ("lease") Agreement made this <sup>December 10</sup> ~~22~~ day of ~~November~~, 1999, by and between BRENNAN'S OIL COMPANY., having a place of business at 333 Route 9, West Creek, New Jersey 08092, hereinafter called Landlord and GETTY PETROLEUM MARKETING INC., a Maryland corporation, having a place of business at 125 Jericho Turnpike, Jericho, New York 11753, hereinafter called Tenant.

RECITAL:

This Lease Agreement is entered into pursuant to an Agreement to Lease of even date herewith to which Landlord and Tenant are, among others, parties.

WITNESSETH:

1. Premises Leased. The Landlord does hereby lease for any lawful purpose unto Tenant all that parcel of land with improvements thereon, situate in the township of Westampton, Burlington County, State of New Jersey, more fully described below or on Exhibit "A" hereto attached and made a part hereof, together with all rights of way, easements, driveways and pavement, curb and street front privileges thereunto belonging to and together with all the buildings, improvements and equipment thereon or connected therewith, as set forth on Exhibit "B", hereto attached and made a part hereof.

Premises also known as 487 Woodlane Road, Westampton, New Jersey. This lease is subject to a master lease dated \_\_\_\_\_ between Anthony C. Berenato and Brennan's Oil Company (the "Berenato Lease").

2. Term. To have and to hold the premises hereby demised unto the Tenant for a term commencing on December 1, 1999, and terminating on December 31, 2003 or if the contingencies described in the Agreement to Lease or in Paragraphs 8 and 14 hereof have not been fulfilled or waived by such date, on the 10th business day after the contingencies described in the Agreement to Lease or in Paragraphs 8 and 14 hereof have been fulfilled or waived (the "Term Commencement Date"), upon the following terms and conditions, and subject to Tenant's right to extend pursuant to the provisions of Paragraph 4 hereof. The Term Commencement Date shall be the first day of the first "Lease Year."
3. Rental. During the initial term hereof, Tenant shall pay the following rent for said premises:  
  
\$ 32,922.56 per annum payable in monthly installments of \$2,743.55 each.

The rent shall be paid on the first day of each calendar month and for any period less than a full calendar month the rent shall be prorated. Tenant agrees that the rental shall be payable in monthly installments and that if any monthly installment thereof shall be due and unpaid for fifteen (15) days after written notice of such default has been sent to and received by the Tenant, Landlord shall then have the right to terminate this lease.

4. Renewal. Landlord hereby grants to Tenant the right and option of extending the term of this lease for one (1) additional period of five (5) years. The first day of the renewal period shall be the first day of a "renewal period." The rental to be paid by Tenant for the renewal period shall be as follows:

For the renewal period, \$2,743.55 per month plus an amount equal to the percentage increase in the Consumers Price Index - (Philadelphia - Wilmington - Atlantic City - PA - NJ -DE - MD) from the first month of the initial term to the first month of the renewal period.

Provided, however in no event shall the rental increase for any renewal period be less than 10% or more than 15%, even if the percentage increase in the CPI Index is less than 10% or greater than 15%.

Tenant shall notify Landlord in writing of its election to extend this lease for the above period(s) at least two hundred forty (240) days prior to the date of the expiration of the primary term or the then current renewal period, as the case may be and such notice shall be deemed sufficient if given in the manner provided in Paragraph 26 hereof; provided, however, that Tenant shall only have the right to exercise its option hereunder if, at the same time, it exercises its right to extend the leases of not less than 90% of the properties which it leased from Landlord and other Landlords pursuant to the Agreement to Lease of even date herewith.

5. Holdover. Should Tenant hold over after the expiration of the term of this lease or any extension thereof, such tenancy shall be from month to month only, and upon all the terms and conditions hereof. However, Tenant shall vacate the premises at the end of the lease term and shall have no right to holdover unless Landlord's consent is obtained.
6. Title. Landlord covenants, warrants and represents to Tenant that it has a leasehold in the demised premises and has good right to lease same. Landlord agrees to provide evidence of title to Tenant prior to the commencement of this lease. The premises shall be delivered to Tenant free and clear of all tenancies and occupancies.
7. Permits and Ordinances. (a) Landlord represents and warrants to Tenant that all necessary licenses, consents and permits have been obtained to permit the storage, handling, advertising and sale of motor fuels, lubricants, other petroleum products and

automobile accessories and for any and all businesses usually conducted in connection with gasoline service stations, (including without limitation repair services, car wash and convenience store) and that any and all such licenses, consents and permits are valid and now in full force and effect and can be validly assigned to Tenant. Landlord agrees to deliver originals of, and assign all of Landlord's right, title and interest in and to any and all such permits or licenses to Tenant simultaneously with the execution and delivery of this lease.

(b) In case such necessary licenses, consents and permits to operate a drive-in gasoline service station upon the premises shall be hereafter revoked without fault of Tenant, or expire during the term hereof, as extended, and cannot be immediately renewed or reissued in Tenant's name, or if the use of the premises herein demised for any purposes enumerated above (or any aspect of Tenant's business) shall be in any manner restricted or prohibited by reason of any law, ordinance, injunction, regulation or order of any properly constituted authority, then Tenant shall have the right at its option to terminate this lease by giving thirty (30) days written notice of its intention so to do and shall thereupon be relieved from all obligations and liability hereunder without recourse by Landlord.

(c) If the signs on the premises are standing by reason of a variance or special use permit previously granted to Landlord, Tenant acknowledges and agrees that removal of such signs and their poles in their entirety (in lieu of replacing only a sign face insert) may require that a new application be filed for a sign permit, and failure to obtain a permit and the right to use the sign shall be deemed to be the "fault of Tenant" and prevent Tenant from terminating the lease pursuant to Clause (b) above.

8. Contingencies. Tenant's obligations hereunder, including the obligation to pay rent, are subject to and contingent upon, prior to the commencement hereof, of: (a) Tenant obtaining all necessary approvals, variances, licenses, consents, and permits, (collectively the "Approvals"), to operate a gasoline service station on the premises; and (b) all Approvals in connection with Tenant's proposed use and business having been obtained by, or validly assigned to Tenant, including, without limitation, the Approvals referred to in Paragraphs 7 and 32 hereof.
9. Improvements. (a) Tenant may move, remove or alter any tank, curb, pavement or driveway now or hereafter placed on said premises and may construct, build and place upon said premises such buildings, structures, tanks, curbs, pavement, driveways, machinery and other equipment as shall in its opinion be necessary or desirable to use and operate said premises, and may perform any and all acts necessary to the conduct of its business. In addition, so long as Tenant does not diminish the value of Landlord's improvements, Tenant may with Landlord's written consent alter or replace the existing building and structures, such approval not to be unreasonably withheld.



(b) Landlord agrees that all improvements, tanks, machinery, equipment, signs and all other property owned by Tenant, heretofore or hereafter constructed or placed upon the premises, whether annexed to the leasehold or not, shall remain the personal property of Tenant and Tenant shall have the right and privilege (but shall be under no obligation) to remove such property at any time during the term of this lease as it may be extended, provided that upon the termination of this lease Tenant shall transfer, for \$10.00, all of the equipment and other property then on the demised premises which is necessary for the operation of a gasoline service station and if Tenant shall fail to so transfer, title will automatically be transferred to Landlord and further provided, if Tenant is in default hereunder, all other equipment and improvements at the premises shall revert to Landlord as liquidated damages.

(c) Tenant shall have the right to remove at any time during the lease term all equipment and property, including the underground storage tanks and related piping (collectively "UST's") which are leased to Tenant hereunder and shall be obligated to replace them. In the event that Tenant elects to install new UST's, the UST's shall become the property of Tenant and Tenant, shall register such UST's in its own name. At the end of the lease term, Tenant shall transfer any UST's on or under the leased premises for \$10.00 and, if Tenant shall fail to so transfer, title to the UST's will automatically be transferred to Landlord. ✓

(d) Upon the expiration or termination of this lease or any renewal hereof, except as provided in subparagraphs (b) and (c) above, Tenant shall have a period of thirty (30) days within which to remove its property. The leaving of such property on the premises during said period shall not make Tenant liable for storage charges or rent, and shall not constitute a hold-over tenancy nor shall it be considered relinquishment of title to such property. If Tenant is required to perform any remediation or monitoring of the premises after the termination of this lease, Landlord, its agents and tenants hereby grant to Tenant and its agents an easement on the premises to do all such work and monitoring. To the extent possible, such remediation and monitoring shall be performed diligently and in such a manner as to minimize disruption of the business of any subsequent tenants. Getty shall be responsible for any damage or injuries to property or person caused by it or its contractor(s). The granting of such easement shall not entitle Landlord to any rent or items of additional rent and shall not be considered a hold-over tenancy by Tenant. The easement granted hereunder and Tenant's obligations hereunder shall terminate once Tenant has completed its remediation in compliance with applicable environmental laws and Tenant has obtained a "no further action" letter or equivalent. Once Tenant has completed its remediation, Tenant shall have no further obligations or liability with respect to the premises, except that the provisions of Paragraph 15(a) hereof requiring Tenant to indemnify Landlord shall also apply to any claims asserted after the end of the lease term. Tenant shall have no liability or responsibility for any contamination caused

by Landlord, its successors or assigns or their agents or tenants or their respective agents or employees.

10. **Maintenance.** During the term of this lease, Tenant shall at Tenant's expense make all repairs (structural and otherwise) to said premises, buildings and improvements, including without limitation repairs to the roof, plumbing, septic system, heating equipment, electrical wiring, UST's and fixtures, and replace broken windows. Tenant agrees to paint the building and improvements whenever it deems such painting necessary.
11. **Tenant's Right of Set-Off.** Should Landlord or any of the "Landlords" or "Sublessors" referred to in the Agreement to Lease be indebted to Tenant at any time for any reason hereunder, including any payment made or expense incurred by Tenant for the account of Landlord or such other "Landlords" or "Sublessors", Tenant shall have the right to withhold and apply on account of such indebtedness any rent due hereunder and the amount so applied shall constitute payment of rent hereunder. Should the term of this lease or any extension thereof expire before such indebtedness has been fully repaid to Tenant, Tenant may, at its option, continue to occupy said premises upon the same terms and conditions herein contained until such indebtedness shall have been fully repaid without interest. In the event Tenant does not elect to remain on the premises until such indebtedness has been fully repaid, Landlord shall reimburse Tenant for any unpaid indebtedness without interest, within ten (10) days of demand therefor.

Landlord agrees that, in the event Tenant exercises its right of set-off hereunder, Landlord shall be solely responsible for paying the rent due under the Berenato Lease, and both parties agree that this provision shall in no way affect or modify Landlord's obligations under the Berenato Lease.

12. **Fixtures and Equipment.** The Tenant may replace any and all fixtures or equipment, provided, however, that the replacement shall be of at least equal quality and quantity. However, all marketing equipment (other than UST's and fixtures or equipment which are replacements of fixtures or equipment owned by the Landlord), shall not become part of the realty and, provided Tenant is not in default hereunder all equipment, except for dispensers, consoles and canopy (if applicable), may be removed by the Tenant during or after the term of its lease.
13. **Insurance.** During the entire term of this lease, Tenant shall, at Tenant's own cost and expense:

(a) Keep the building located on the demised premises at the commencement of the term hereof, or thereafter erected upon the demised premises, and all alterations, changes, additions and improvements, insured for the benefit of the owner of the fee of the premises against loss or damage by fire (with extended coverage), in an amount equal to

the full insurable value thereof, all policies of which shall provide that loss, if any, payable thereunder shall be payable to the owner of the fee of the premises, or at owner's request, to the owner of the fee of the premises and/or any mortgagees, as their respective interests may appear, and all such certificates to the existence of such insurance Tenant shall furnish Landlord upon request. The proceeds of such fire insurance loss, if payable to a mortgagee, the master landlord under the Berenato Lease or to Landlord, shall be held in trust by Tenant and applied to the restoration of the building and improvements unless insufficient for such restoration, and if so, Tenant can terminate this lease and deliver the insurance proceeds to Landlord, after deducting for Tenant's trade fixtures, equipment, personal property and inventory.

(b) Provide and keep in force, general liability insurance in a combined single limit of \$2,000,000.00 for bodily injury/property damage for the benefit of Landlord and Tenant as their interests may appear and naming Landlord and the master landlord under the Berenato Lease as additional insureds. Such liability insurance shall cover the demised premises only. Certificates evidencing such insurance coverage shall be furnished to Landlord upon Landlord's request.

Landlord shall continue to provide the pollution or environmental impairment insurance presently being provided by Landlord. Landlord shall cause Tenant to be named as an additional insured.

14. Condition of Premises and Contingency. Tenant acknowledges that it has inspected the demised premises and accepts the same in its present condition "AS IS", except for the following:

(a) Tenant has the right to perform UST and line tightness tests prior to the commencement of this lease. If Tenant elects to do such testing, this lease is subject to the tanks and related piping testing tight and, if in conjunction with the UST tightness test, contamination should be discovered, and/or the UST's shall fail the tightness test, then Tenant shall have the right to terminate this lease prior to the Term Commencement Date; and

(b) Tenant shall at its sole cost and expense have the right to conduct at its sole cost and expense, a Phase I, non-invasive investigation, to ascertain if there is any evidence of condemnation and/or spills or discharges on or under the premises. If in Tenants sole judgment there is evidence of any of the foregoing, Tenant shall have the right to terminate this lease prior to the Term Commencement Date.

(c) Landlord represents and warrants to Tenant that, except for the matters described on Exhibit 14 hereto, there have been no spills or discharges on or under the premises and, to his knowledge, the ground water and/or soil is not contaminated, the Stage II vapor

recovery system, heating, electrical and plumbing systems are in good operating condition and that the roof is free of leaks. Tenant shall have the right to test the Stage II vapor recovery system and Landlord shall cause any deficiencies to be replaced or repaired using a qualified contractor selected by Landlord.

15. Environmental Contamination and Indemnification. (a) During the lease term Tenant shall be responsible for any contamination on or under the demised premises or under adjacent properties caused by Tenant and/or Tenant's dealers, contractors or business invitees and for the cost of investigation, remediation and oversight, and Tenant shall take whatever action reasonably necessary to attempt to obtain a "no further action" letter or its equivalent from NJDEP.

(b) Landlord shall retain responsibility and shall be solely responsible for any underground contamination (including the cost of investigation, remediation and oversight) both onsite and offsite except for same caused by Tenant and/or Tenant's dealers, contractors or business invitees. The foregoing obligation of Landlord shall continue throughout the lease term and any renewals or extensions thereof, except that Landlord's obligation shall terminate when all remediation has been completed in accordance with applicable environmental laws and regulations and a "no further action" letter or its equivalent has been issued by NJDEP. Landlord's obligation shall include, but not be limited to, any contamination revealed at the time Tenant may remove the UST's or conducts excavation on the premises for construction of improvements or the like.

(c) The obligations of Landlord and Tenant under subparagraphs (a) and (b) above, respectively, shall include removal of contaminated soil and all investigation and remediation required by applicable laws and governmental authorities, both onsite and offsite.

(d) In the event the Landlord does not fulfill its obligations under its Paragraph 15, Tenant, using a contractor(s) of its choice, shall have the right, but not the obligation, to perform the obligations (including, without limitation, removal of contaminated soil, investigation and remediation both onsite and offsite) and Tenant shall have the right to deduct the cost thereof from the rent due to Landlord, as set forth in Paragraph 11 hereof.

In the event that Tenant does not fulfill its obligations under its Paragraph 15, Landlord, using a contractor(s) of its choice, shall have the right, but not the obligation, to perform the obligations and the cost thereof shall become additional rent hereunder and interest shall accrue at the Prime Rate until Landlord is fully reimbursed.

(e) Landlord and Tenant shall each defend, indemnify and hold harmless the other against all claims, causes of action, costs, damages, penalties and fines asserted by all third parties (including governmental entities) arising out of the failure of a party to perform its obligations under its Paragraph 15 (in the case of Tenant, subparagraph (a) above and in

the case of Landlord, subparagraph (b) above; both parties under subparagraph (c), as applicable).

(f) Landlord shall defend, indemnify and hold harmless Tenant against all claims, causes of action, costs, damages, penalties, fines and liabilities occurring or accruing prior to the Term Commencement Date pertaining to property damage, bodily injury and otherwise, except the foregoing shall not apply to any of same caused by Tenant's negligence.

(g) Except as otherwise provided in its lease, Tenant shall defend, indemnify and hold harmless Landlord against all claims, causes of action, costs, damages, penalties, fines and liabilities occurring or accruing after the Term Commencement Date pertaining to property damage, bodily injury and otherwise, except the foregoing shall not apply to any of same caused by Landlord's negligence.

(h) Landlord shall defend, indemnify and hold harmless Tenant against any claims or causes of action asserted by Cumberland Farms, or by any other supplier or by Dealer arising out of early termination of the supply of Gulf motor fuels or any other motor fuels to the demised premises.

(i) If any party obligated under its lease to defend the other, does not so defend, the other party shall be entitled to recover attorneys' fees and costs and all of the indemnification obligations set forth in its lease shall survive termination of the Lease.

16. **Abandoned Underground Storage Tanks.** Tenant shall have no responsibility or liability to Landlord or to other parties with respect to abandoned underground storage tanks or any underground storage tanks on the demised premises that were not owned or ever used by Tenant or to any contamination related to or emanating from any of such tanks or their associated piping. Landlord shall promptly remove any such tanks and contaminated soil and shall defend, indemnify and hold Tenant harmless from and against any and all costs, claims made or actions brought with respect to such tanks or environmental contamination relating to or resulting from such tanks or their associated lines.

17. **Tenant's Right of Termination.** (a) Should the business of distributing petroleum products on the whole or any part of said premises be prevented or adversely affected in any way due to any law, ordinance or regulation by any public authority or due to any restriction on said premises and said restriction not be removed within ninety (90) days from the date thereof, then, in either of such events, Tenant may terminate its lease upon giving Landlord thirty (30) days written notice of termination, in which event Tenant shall be relieved of all obligations under its lease, including all liability for rent from the date the conduct of such business was so prevented.

(b) If, during the term of its lease, a part only of said premises be taken for public use

under right of eminent domain, and if the remainder, in the opinion of the Tenant, is not suitable for its purpose, Tenant, at its option, may cancel and terminate its lease, but if it shall not elect to do so, the monthly rental thereafter to be paid shall be reduced by an amount which bears the same ratio to that herein provided for as the area taken bears to the total area prior to such taking. Landlord shall restore the remaining premises where necessary. Tenant may make claim for loss of any of its leasehold improvements and leasehold value and the cost of removal or relocating, any buildings and/or equipment.

(c) If access or the approaches to the demised premises are condemned or restricted by public authority, in whole or in part, or if any public authority redirects or diverts traffic away from the demised premises, so that in any such case Tenant's use of the demised premises, is, in Tenant's opinion, materially or adversely affected, Tenant at its option may cancel and terminate its lease. If Tenant shall elect not to terminate its lease then Tenant may, at its option and upon written notice to Landlord, close the service station or other business on said premises during the period such access is so prevented and if the business shall be so closed for a period of fifteen (15) or more successive days the rental payable hereunder shall be and hereby is waived for such period. Tenant's obligation to pay rent shall recommence 24 hours after access is restored and the rent due thereafter shall be paid with the next monthly rental payment due.

18. Taxes and Encumbrances. During the term hereof, Tenant shall pay directly, for all real estate taxes and assessments which may be assessed on the demised premises, and for all taxes which may be assessed on any improvements and equipment of Tenant as well as all sewer charges or assessments. Tenant shall also be responsible for the payment of all charges for water, gas and electricity used on said premises by Tenant. Should any such taxes, assessments or other charges cover a period greater than the term hereof, Tenant's obligations for same shall be prorated and should the payment of any such taxes, assessments or other charges be permitted in installments, Tenant shall be obligated to reimburse Landlord only for such installments falling due during the term hereof and should any of such installments cover a period beyond the term hereof, Tenant's obligations for same shall be prorated. In the event that Tenant fails to pay any of the foregoing taxes, assessments or charges, Landlord shall have the right to pay them directly and any amounts paid will bear interest at the Prime Rate until Tenant has fully reimbursed Landlord for the amounts paid plus interest. Landlord does agree to promptly notify Tenant of any increase in tax assessments and Tenant shall have the right in its own name or in the name of Landlord as the circumstances may require, to protest before the proper authorities any assessment and to prosecute any appeal or other proceeding with respect thereto as fully and to the same extent as if Landlord does hereby constitute and appoint Tenant its agent and attorney-in-fact for and on its behalf to take such proceedings and to execute any and all papers and documents as may be necessary or appropriate in the premises; it being understood and agreed that Tenant shall bear all expenses involved in any such proceeding instituted by it.

19. **Assignment and Subletting.** Landlord consents that Tenant may assign or sublet the premises, in whole or in part, provided that Tenant shall remain liable to Landlord for the performance of all the terms hereof. Tenant shall defend, indemnify and hold harmless Landlord pursuant to Paragraph 15 hereof for the consequences of any such assignee's or sublessee's acts or omissions. Notwithstanding the foregoing, Tenant shall not assign this lease unless the master landlord's consent is obtained pursuant to paragraph 39 of the Berenato lease.
20. **Use.** Tenant shall have the right during the term of its lease to occupy and use said premises for any lawful purpose, including but without limiting the generality of the foregoing, the right to maintain and operate on said premises a gasoline service station for the sale and distribution of gasoline and other petroleum products and such other merchandise and services, including, without limitation, repair services, as may be marketed or performed at gasoline service stations by Tenant from time to time.
21. **First Refusal Purchase Option.** Landlord hereby grants to Tenant the exclusive right, at Tenant's option, to purchase the demised premises, together with all structures, improvements and equipment thereon, at any time during the initial term and any extensions or renewals thereof on the same terms, conditions and at the same price as any bona fide offer to purchase said premises received by Landlord from the master landlord under the Berenato Lease and which such master landlord desires to accept. Upon receipt of a bona fide offer, and each time any such offer is received, Landlord shall immediately send to Tenant a true and correct copy of such bona fide offer or contract of sale evidencing such offer, including the name and address of the offeror, whereupon Tenant shall have forty-five (45) days after receipt thereof, in which to elect to exercise Tenant's prior right to purchase. No sale of or transfer of title to said premises shall be effective, valid, or binding on Tenant or in any way interfere or affect Tenant's rights and obligations hereunder, unless and until the foregoing requirements are fully complied with. If Tenant elects to exercise Tenant's prior right to purchase pursuant to any bona fide offer, it is agreed that the terms and conditions of sale, including title to be conveyed, shall be as specified in said offer. If Tenant does not elect to exercise said prior right to purchase and Landlord accepts the offer to purchase received by Landlord and conveys the premises pursuant thereto, it is specifically agreed that such conveyance shall be subject to the terms and conditions of this lease, as well as to the first refusal purchase option granted by this clause, which option shall continue in effect and apply to other bona fide offers to purchase thereafter received by the new owner of the premises. If Landlord accepts any such offer and such sale is not consummated for any reason, the provisions of this Paragraph 21 shall apply to all subsequent offers received by Landlord.

Tenant agrees that, if Tenant exercises its right hereunder, Tenant will exercise the right

of first refusal under paragraph 27 of the Berenato Lease in a timely manner. Landlord agrees that it will assign its rights hereunder so that Tenant or its nominee can obtain title directly. Tenant agrees that it will reimburse Landlord for any reasonable out-of-pocket costs it may incur in assisting Tenant hereunder.

22. Berenato Lease. Landlord and Tenant acknowledge and agree that the Berenato Lease is superior to its Lease. In the event of any conflict in interpretation, the Berenato Lease shall control and Landlord and Tenant agree to abide by all of the provisions of the Berenato Lease except as otherwise expressly set forth in this lease.

Notwithstanding the foregoing, Tenant shall not be obligated to pay rent under the Berenato Lease and its only obligation is to pay rent to Landlord under its Lease, subject to Tenant's right of set-off under Paragraph 11 of this lease.

Landlord and Tenant agree that in all instances where Tenant is obligated to indemnify Landlord, such indemnity shall also run in favor of the master landlord under the Berenato Lease. Notwithstanding the foregoing, Tenant's obligation with respect to environmental matters are limited to the express obligations under its lease. Under no circumstances shall Tenant be directly responsible for, or a guarantor of, Landlord's obligations under the Berenato Lease.

In the event that the Berenato Lease shall terminate for any reason, the term of this lease shall terminate on the same day as the termination date under the Berenato Lease.

23. [Intentionally omitted.]

24. [Intentionally omitted.]

25. [Intentionally omitted.]

26. Notice. Except as otherwise in this lease provided, a bill, statement, notice or communication which Landlord may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by Certified Mail, return receipt requested, addressed to Tenant at 125 Jericho Turnpike, Jericho, New York 11753, Attention: Real Estate Department or at any such other address as Tenant shall designate by written notice. Any notice by Tenant to Landlord must be served by Certified Mail, return receipt requested, addressed to Landlord at the address first hereinabove given or at such other address as Landlord shall designate by written notice.

27. No Broker. Landlord and Tenant warrant and represent to each other that they have



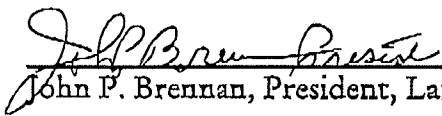
dealt with no broker, real estate salesman, or other person, firm or corporation in connection with its lease.

28. **Change in Ownership.** Landlord shall have the right to assign its Lease; provided, however, no assignment of its lease hereunder shall be binding upon Tenant unless and until Tenant has been furnished either the original instrument evidencing such assignment, or a true copy thereof and such assignee, agrees directly with Tenant to perform all of Landlord's obligations hereunder and to recognize all of Tenant's rights hereunder, and to cure any and all of Landlord's defaults hereunder, if any, any assignments of rentals by Landlord shall be subject to Tenant's right of set-off under Paragraph 11 hereof.
29. **Successors and Assigns.** This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors or assigns.
30. **Entirety of Agreement.** No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of its lease.
31. **Quiet Enjoyment.** Landlord covenants that the Tenant on paying the rent provided for and materially performing the covenants aforesaid shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid, subject to the provisions hereof.
32. **Certificate of Occupancy.** Landlord covenants and represents and warrants to Tenant that the demised premises may lawfully be used as a gasoline service station, car wash, convenience store and/or for the repair and storage of motor vehicles, and that there presently exists a Certificate of Occupancy permitting the use of the demised premises for such purposes. Landlord shall deliver a copy of same to Tenant prior to the Term Commencement Date.
33. **Memorandum of Lease.** Landlord agrees upon the request of Tenant to execute a memorandum of lease in form satisfactory for recording which shall specify the term hereof, all options hereunder to renew or extend the term, and all options to extend the leases the premises hereunder.

34. Governing Law. Its Agreement shall be governed by the laws of the State of New Jersey.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto subscribed their names under seal the day and year first above written.

BRENNAN'S OIL COMPANY

By:   
John P. Brennan, President, Landlord

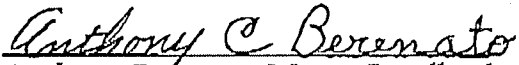
GETTY PETROLEUM MARKETING INC.

By:   
Vincent J. DeLaurentis, President, Tenant

CONSENT OF LANDLORDS TO SUBLEASE

Master landlord under the Berenato Lease hereby consents to the foregoing and acknowledges that there are no defaults under such lease and that it is in full force and effect. Master landlord represents that it is holding \$ \_\_\_\_\_ as the security deposit under the Master Lease. Master landlord agrees that Getty Petroleum Marketing, Inc. (Tenant) may sub-sublet the premises for service station/convenience store uses without Master Landlord's consent, provided that Tenant shall remain fully responsible for any sublessee's acts or omissions.

Notwithstanding the foregoing, Brennan's Oil Company (Tenant under the Berenato Lease) shall remain fully responsible for Getty Petroleum Marketing Inc.'s performance, and its and its sublessee's acts or omissions, under the Sublease.

  
Anthony Berenato, Master Landlord

STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF Ocean )

On this 20 day of December, 1999, before me personally came John Brennan, to me known, who being by me duly sworn, did depose and say that he/she is the PRESIDENT of Brennan Oil Company, the corporation described in and which executed the above instrument; and that he/she signed its/her name thereto by order of the Board of Directors of said corporation.

[Signature]  
Notary Public  
Long at Law State of NJ

STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 1999, before me personally came \_\_\_\_\_ to me known to be the individual(s) described in and who executed the above instrument and acknowledged that he/she/they executed the same.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NASSAU )

On this 10<sup>th</sup> day of Dec., 1999, before me personally came Vincent J. DeLaurentis, to me known, who being by me duly sworn, did depose and say that he is the President of GETTY PETROLEUM MARKETING INC., the corporation described in and which executed the above instrument; and that he signed its name thereto by order of the Board of Directors of said corporation.

[Signature]  
Notary Public

MARY A. MAURO  
Notary Public, State of New York  
No. 30-4747458  
Qualified in Nassau County  
Commission Expires June 30, 2001

EXHIBIT A

Located at the intersection of Woodlane and Springside Roads, Willingboro, New Jersey , more particularly describe as Lot 1, Block 301 on the Tax Map of the Township of Westampton, Burlington County, New Jersey.

**EXHIBIT B**

Westampton # 56309

Underground Storage Tanks

UST Registration # 0043256

1. Gas
2. Lead gas
3. 4-waste oil

B10 (Official Form 10) (12/11)

<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>		<b>Proof of Claim</b>
Name of Debtor: <b>Getty Petroleum Marketing, Inc.</b>	Case Number: <b>11-15606</b>	
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Brennan's Oil Company</b>		
Name and address where notices should be sent: <b>Brennan's Oil Company c/o Weir &amp; Partners LLP Jeffrey S. Cianciulli, Esquire 1339 Chestnut Street, Suite 500 Philadelphia, PA 19107 Telephone Number: 215-665-8181      email: <a href="mailto:jcianciulli@weirpartners.com">jcianciulli@weirpartners.com</a></b>		<b>COURT USE ONLY</b>
Name and address where payment should be sent (if different from above):  Telephone Number:      email:		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ <i>(If known)</i>  Filed on: _____
Name and address where payment should be sent (if different from above):  Telephone Number:      email:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: <u>Unknown</u> If all or part of your claim is secured, complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Breach of Contract/Environmental Cleanup</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:  _____	3a. Debtor may have scheduled account as:  _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional):  _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if your claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____  Annual Interest Rate: <u>0</u> % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____  Basis for perfection: _____  Amount of Secured Claim:      \$ _____  Amount Unsecured:      \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5).  Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B10 (Official Form 10) (12/11)

**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.                       I am the creditor's authorized agent  
(attach copy of power of attorney, if any.)                       I am the trustee, or the debtor, or  
their authorized agent.                       I am a guarantor, surety, indorser, or  
(See Bankruptcy Rule 3004.)                      other codebtor.  
(See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Jeffrey S. Cianciulli, Esquire

Title: Attorney

Company: Weir & Partners LLP

Address and telephone number (if different from notice address above):

(Signature)

(Date)

**1339 Chestnut Street, Suite 500  
Philadelphia, PA 19107**

Telephone number: **215-665-8181** email: **jcianciulli@weirpartners.com**

*Penalty for presenting fraudulent claim: Fine of up to \$500,00 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*



Hearing Date and Time: June 21, 2012 @ 10:00 AM  
Objection Deadline: June 14, 2012 @ 4:00 PM

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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<b>In Re</b>	:	Chapter 11
	:	
<b>GETTY PETROLEUM MARKETING, INC., et al.</b>	:	
	:	Case No. 11-15606 (SCC)
Debtors.	:	
	:	<b>(Jointly Administered)</b>

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**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on May 18, 2012, Brennan's Oil Company filed the attached **MOTION OF BRENNAN'S OIL COMPANY FOR LEAVE TO FILE A PROOF OF CLAIM.**

You are required to file a response to the Motion on or before **June 14, 2012, at 4:00 p.m. (EST).**

At the same time, you must also serve a copy of the response upon the following:

WEIR & PARTNERS LLP  
Edward T. Kang, Esquire  
Jeffrey S. Cianciulli, Esquire  
The Widener Building, Suite 500  
1339 Chestnut Street  
Philadelphia, PA 19107  
(215) 665-8181 (telephone)  
(215) 665-8464 (facsimile)

**A HEARING ON THE MOTION WILL BE HELD ON JUNE 21, 2012 AT 10 A.M. (EST).**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT  
MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER  
NOTICE OR HEARING.

Dated: May 18, 2012

WEIR & PARTNERS LLP

BY: /s/ Edward T. Kang, Esquire

Edward T. Kang, Esquire  
Jeffrey S. Cianciulli, Esquire  
The Widener Building, Suite 500  
1339 Chestnut Street  
Philadelphia, PA 19107  
(215) 665-8181 (telephone)  
(215) 665-8464 (facsimile)  
Attorneys for Movant

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

---

<b>In Re</b>	:	Chapter 11
	:	
<b>GETTY PETROLEUM MARKETING, INC., <i>et al.</i></b>	:	
	:	Case No. 11-15606 (SCC)
Debtors.	:	
	:	<b>(Jointly Administered)</b>

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**CERTIFICATION OF SERVICE**

I, Jeffrey S. Cianciulli, do hereby certify that I caused to be served a copy of the **Motion of Brennan's Oil Company for Leave to File a Proof of Claim**, via U.S. First Class Mail, postage prepaid, on May 18, 2012, upon the parties on the attached service list.

/s/ Edward T. Kang, Esquire  
Edward T. Kang, Esquire

Dated: May 18, 2012

**SERVICE LIST**

**Getty Petroleum Marketing Inc.**

1500 Hempstead Tpke.  
East Meadow, NY 11554  
Debtor

**John H. Bae, Esquire**

**Loring I. Fenton, Esquire**

**Ronald D. Lefton, Esquire**

Greenberg Traurig LLP  
200 Park Avenue, 15th Floor  
New York, NY 10166  
Attorneys for Debtor,  
Getty Petroleum Marketing Inc.

**United States Trustee**

33 Whitehall Street  
21st Floor  
New York, NY 10004

**Nazar Khodorovsky, Esquire**

Office of the United States Trustee  
33 Whitehall Street  
21st Floor  
New York, NY 10004  
Attorneys for United States Trustee

***Claims and Noticing Agent***

**Kurtzman Carson Consultants LLC**

2335 Alaska Avenue  
El Segundo, CA 90245

**Andrew Goldman, Esquire**

**Michael Bongiorno, Esquire**

Wilmer Cutler Pickering Hale  
and Dorr LLP  
399 Park Avenue  
New York, NY 10022  
Attorneys for Official Committee of Unsecured Creditors

**Brent C. Strickland, Esquire**  
**Alan C. Lazerow, Esquire**  
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Baltimore, MD 21202-1626  
Attorneys for Citgo Petroleum Corporation

**Lisa G. Beckerman, Esquire**  
**Robert A. Johnson, Esquire**  
**Alexis Freeman, Esquire**  
**Jennifer L. Woodson, Esquire**  
Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036  
LUKOIL Americas Corporation  
and LUKOIL North America LLC

**Linda H. Martin, Esquire**  
**Mark J. Thompson, Esquire**  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attorneys for TD Bank, N.A.

**Scott K. Charles, Esquire**  
**David C. Bryan, Esquire**  
**Corinne C. Nippert, Esquire**  
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51 West 52nd Street  
New York, NY 10019  
Attorneys for Getty Properties Corp. and Gettymart Inc.

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Rosenberg & Estis, P.C.  
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New York, New York 10017  
Co-counsel for Getty Properties Corp. and Gettymart Inc.

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Roseland, NJ 07068-1791  
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Attorneys for Green Valley Oil Company, LLC

**Joshua G. Losardo, Esquire**

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New York, NY 10016  
Attorneys for Belkin Burden Wenig and Goldman, LLP

**John J. Monaghan, Esquire**

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Boston, MA 02116  
Attorneys for Mutual Oil Co., Inc.

**Prince Altee Thomas, Esquire**

Fox Rothschild LLP  
2000 Market Street, 20<sup>th</sup> Floor  
Philadelphia, PA 19103-3222  
Attorneys for Fox Rothschild LLP

**Michael L. Molinaro, Esquire**

**Theresa L. Davis, Esquire**  
Loeb & Loeb LLP  
321 North Clark Street  
Suite 2300  
Chicago, IL 60654  
Attorneys for Lukoil Pan Americas LLC

**Daniel Besikof, Esquire**

Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10154  
Attorneys for Lukoil Pan Americas LLC

**Michael H. Landis, Esquire**

Law Office of Michael H. Landis, LLC  
204 Two Neshaminy Interplex  
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