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TCF NATIONAL BANK FIRST AMENDMENT TO COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

PREPARED BY AND AFTER RECORDING MAIL TO:

TCF NATIONAL BANK
800 Burr Ridge Parkway
Burr Ridge, Illinois 60527
Attn: Commercial Lending Department



Doc#: 0705702214 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/26/2007 01:53 PM Pg: 1 of 7

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This First Amendment to Commercial Mortgage, Assignment of Rents, Security Agreement and Financing Statement ("First Amendment") is dated as of the 29th day of January, 2007, and is made between Nasiruddin M. Daya, individually, whose address is 850 E. Northwest Highway, Palatine, Illinois 60074 ("Mortgagor") and TCF National Bank, a national banking association ("Mortgagee"), with an office located at 800 Burr Ridge Parkway, Burr Ridge, Illinois 60527.

UNDERSTANDINGS

1. The Mortgagor executed a Mortgage in favor of the Mortgagee dated as of January 6, 2006 and recorded January 23, 2006 as document number 0602304018, in the office of the County Recorder in and for Cook County, Illinois ("Mortgage") encumbering the real estate described on Exhibit A, attached hereto and made a part hereof.
2. The Mortgage secures the indebtedness, obligations and liabilities of Mortgagor pursuant to a promissory note in the original principal amount of One Million One Hundred Fifty Thousand and 00/100 Dollars (\$1,150,000.00), payable to Mortgagee and executed jointly and severally by Mortgagor ("Note").
3. The principal balance of the Note is due and payable on July 10, 2007 and as of the date hereof, the outstanding principal balance due is \$1,122,100.55.
4. Mortgagor wishes to amend the terms of the Notes and the Mortgage, and Mortgagee is willing to do so.

NOW, THEREFORE, in consideration of the Understandings as set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor and the Mortgagee agree as follows:

A. That the Mortgagor has requested to make a principal reduction and decrease the face amount of the Note from One Million One Hundred Fifty Thousand and 00/100 Dollars (\$1,150,000.00) to One Million and 00/100 Dollars (\$1,000,000.00) and executed an amended and restated commercial mortgage installment note dated January 29, 2007 in the original principal amount of One Million and 00/100 Dollars (\$1,000,000.00), payable to Mortgagee and executed jointly and severally by Mortgagor, issued in replacement of but not in repayment of said note ("Note A").

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B. That the Mortgagor executed a commercial mortgage non-revolving note-variable rate dated January 29, 2007 in the original principal amount of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), payable to Mortgagee and executed jointly and severally by Mortgagor ("Note "B").

C. That the second (2nd) paragraph of page one (1) of the mortgage is hereby deleted in its entirety, and the following is substituted in its place:

Whereas, Mortgagor has executed an amended and restated commercial mortgage installment note dated January 29, 2007, in the original principal amount of One Million and 00/100 Dollars (\$1,000,000.00), payable to Mortgagee and due on February 10, 2012 ("Note A Maturity Date") together with any and all amendments or supplements thereto, extensions and renewals thereof and any other promissory note which may be taken in whole or partial renewal, substitution or extension thereof ("Note A") and a commercial mortgage non-revolving note – variable rate dated January 29, 2007 in the original principal amount of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), payable to Mortgagee and due on February 10, 2008 ("Note B Maturity Date") together with any and all amendments or supplements thereto, extensions and renewals thereof and any other promissory note which may be taken in whole or partial renewal, substitution or extension thereof ("Note B"); hereinafter, jointly and severally, Note A and Note B are referred to as the "Note" or "Notes". The Notes initially shall bear interest on the principal balance from time to time outstanding from date of first disbursement until maturity, whether by acceleration or otherwise and hereafter. The lien of this Mortgage secures payment and performance of the Liabilities (as defined in the Note) including without limitation, any existing indebtedness and future advances, whether obligatory or non-obligatory, made pursuant to the Note, the terms and provisions of which Note are hereby incorporated, to the same extent as if such future advances were made on the date of execution of this Mortgage without regard to whether or not there is any advance made at the time this Mortgage is executed and without regard to whether or not there is any indebtedness outstanding at the time any advance is made.

D. Pursuant to this First Amendment, the following paragraph is added immediately following the second (2nd) paragraph on page one of the mortgage and is made a part of and incorporated herein:

CROSS COLLATERALIZATION: In addition to the Note, this Mortgage secures all obligations, debts, and liabilities, plus interest thereon, of Mortgagor, D & D Petroleum, Inc. ("D&D"), GNS Petroleum, Inc ("GNS"), Harris, N.A., as trustee u/t/a dated December 16, 1988 and known as Trust Number 5458 ("Trust"), Nasiruddin M. Daya a/k/a Nasir Daya ("Nasir"), Daya Investments LLC ("Invest"), Daya Retail Fuel Inc ("Retail"), and Shamsuddin Daya ("Sham"), or any parent, subsidiary, affiliate, or guarantor of Mortgagor or of D & D, GNS, Trust, Nasir, Invest, Retail, and Sham (collectively, "Obligor") to Mortgagee, or any one or more of them, whether evidenced by any other notes, instruments, agreements, guaranties or otherwise (including without limitation (i) ~~that promissory note executed or issued for the benefit of GNS, Nasir and Trust in the amount of \$1,400,000.00, dated of even date herewith and that promissory note in the amount of \$300,000.00 dated of even date herewith,~~ (ii) ~~that promissory note executed or issued for the benefit of Invest, Retail, Nasir and Sham in the amount of \$450,000.00 of even date herewith (iii) that certain guaranty executed by D&D, Invest and Retail dated of even date herewith for the benefit of Mortgagee, and (iv) that certain guaranty executed by D&D and GNS dated of even date herewith for the benefit of Mortgagee, relating to any and all loans made by Mortgagee to or for the benefit of Mortgagor, any other Obligor, payable to Mortgagee, and any and all other notes, instruments, agreements and guaranties in connection therewith,)~~ together with any and all amendments or supplements thereto, extensions and renewals thereof and any notes, instruments, agreements, guaranties or otherwise which may be taken in whole or partial renewal, substitution or extension thereof, as well as all claims by Mortgagee against Obligor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Obligor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable. All of the obligations, debts and liabilities, plus interest thereon, described in this paragraph, shall be deemed to be included within the definition of "Liabilities" contained in subparagraph 2 (i) below.

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E. That the paragraph numbered 1.4 on page three (3) is hereby deleted in its entirety, and the following is substituted in its place:

1.4 Absolute Assignment of Leases and Rents. As further security, Mortgagor grants a continuing security interest in, pledges, assigns, transfers, delivers and grants to Mortgagee all now existing and hereafter arising leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whereby any person or entity agrees to pay money or other consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof (collectively referred to as the "Leases") and all now existing and hereafter arising rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Premises (collectively, the "Rents"), it being the intention hereby to establish an absolute transfer and assignment of all such Leases and Rents. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee) with or without taking possession of the Premises as provided in this Mortgage, to lease any portion of the Premises to any party on such terms as Mortgagee shall determine, and to collect all rents due with the same rights and powers and subject to the same immunities as Mortgagee would have upon taking possession pursuant to the terms of this Mortgage. Mortgagor represents that no rent has been or will be paid by any person or entity in possession of any portion of the Premises for more than one (1) installment in advance and that payment of none of the Rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set off against any person in possession of any portion of the Premises. Mortgagor agrees that Mortgagor will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee-in-possession in the absence of the taking of the actual possession of the Premises pursuant to this Mortgage. Mortgagor hereby expressly waives all liability of Mortgagee in the exercise of the powers granted to Mortgagee pursuant to this Mortgage. Mortgagor shall assign to Mortgagee all future leases on any part of the Premises and shall execute and deliver to Mortgagee, upon request by Mortgagee, all such further assurances and assignments as Mortgagee may require. Although the assignment herein is a present assignment, Mortgagee shall not exercise any of the rights or powers conferred upon Mortgagee pursuant to this **Section 1.4** until a Default (defined below) occurs or exists pursuant to the terms of this Mortgage. This Mortgage shall not obligate Mortgagee with any of the duties or obligations of a lessor of the Premises as set forth in any lease of any portion of the Premises. The Liabilities secured by this Mortgage shall not exceed ~~\$7,000,000.00~~ **\$3,600,000.00**. *A. M. W.*

F. That the paragraph numbered 2 – sub-section (d) on page three (3) and continuing on page four (4) and five (5) is hereby deleted in its entirety, and the following is substituted in its place:

(d) "Default" means the occurrence or existence of any one or more of the following events, conditions, acts or omissions:

- (i) Mortgagor fails or neglects to make timely payment of any amount due on the Note or hereunder and continuance of such Default for a period of ten (10) calendar days;
- (ii) Mortgagor, **any other Obligor** or a Guarantor (defined hereunder) fails or neglects to make any timely payment of any amount due, or to comply with any performance in accordance with any non-monetary representation, warranty, covenant, condition or other provision under any other note, instrument, document or agreement which, after notice or the lapse of any applicable grace or cure period, shall cause or permit the holder thereof to cause the obligations of Mortgagor, **any other Obligor** or any Guarantor to become due prior to maturity;
- (iii) Mortgagor, **any other Obligor** or any Guarantor fails or neglects to comply with or to perform in accordance with any non-monetary representation, warranty, covenant, condition or other provision contained in this Mortgage, or under any of the other Financing Loan Documents and continuance of such Default for a period of thirty (30) calendar days after Mortgagee sends written notice of a Default under this Mortgage;

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- (iv) Mortgagor, **any other Obligor** or any Guarantor fails to make any timely payment of any other Liabilities when due under this Mortgage or any other of the Financing Loan Documents and continuance of such Default for a period of ten (10) calendar days;
- (v) any statement, application or agreement furnished at any time or from time to time to Mortgagee by Mortgagor, **any other Obligor** or any Guarantor is false or incorrect in any material respect in light of the circumstances under which it was made;
- (vi) Mortgagor, **any other Obligor** or any Guarantor fails to furnish Mortgagee with additional or periodic financial statements or true and complete copies of filed federal and state income tax returns, and any amendments thereto, of the Mortgagor, **any other Obligor** or any Guarantor, as Mortgagee may request from time to time;
- (vii) the insolvency of Mortgagor, **any other Obligor** or any Guarantor or the inability of Mortgagor, **any other Obligor** or any Guarantor to pay their respective debts as they mature;
- (viii) any admissions, either verbal or written, by Mortgagor, **any other Obligor** or any Guarantor of the inability to pay their respective debts as they mature;
- (ix) the execution of an assignment for the benefit of creditors by Mortgagor, **any other Obligor** or any Guarantor or Mortgagor, **or any other Obligor** or any Guarantor files or commences any proceedings for relief under the Bankruptcy Code, as may be amended from time to time, or other insolvency laws or any laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or a receivership or a trusteeship;
- (x) there shall be any proceedings filed or commenced against Mortgagor, **any other Obligor** or any Guarantor for relief under the Bankruptcy Code, as may be amended from time to time, or insolvency laws or any laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or a receivership or a trusteeship is filed or commenced against Mortgagor, **any other Obligor** or any Guarantor and the continuance of any such Default for more than sixty (60) calendar days thereafter;
- (xi) any judgment, attachment, lien, execution, or levy against Mortgagor, **any other Obligor** or any Guarantor, or against the Premises or any other property of Mortgagor, **any other Obligor** or any Guarantor, including any of the Collateral, in any amount which is not promptly paid, discharged, released, bonded, stayed on appeal or otherwise fully satisfied and the continuance of such Default for a period of forty-five (45) calendar days thereafter;
- (xii) any garnishment summons or a writ of attachment is issued against or served upon Mortgagee for the attachment of any property of Mortgagor, **any other Obligor** in Mortgagee's possession or any indebtedness owing to Mortgagor, **any other Obligor** or any Guarantor;
- (xiii) the death or incompetency of Mortgagor, **any other Obligor** or any Guarantor;
- (xiv) the failure of Mortgagor, **any other Obligor** or any Guarantor to pledge or grant or cause to be pledged or granted to Mortgagee a continuing security interest in the Collateral, or to furnish immediately additional and satisfactory Collateral upon request from Mortgagee when Mortgagee, in its sole discretion exercised in good faith, shall deem itself insecure for any reason whatsoever and continuance of such a Default for a period of thirty (30) calendar days after Bank sends such written request to the Mortgagor, **any other Obligor** or Guarantor;
- (xv) any change of control in, sale of, or cessation of the business, dissolution or termination of Mortgagor, **any other Obligor** or any Guarantor whether by voluntary or involuntary action;

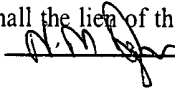
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(xvi) any and all other events or circumstances which cause Mortgagee, in its sole discretion exercised in good faith, to deem itself insecure for any reason whatsoever, including without limitation any adverse change in the financial condition or operations of Mortgagor, **any other Obligor** any Guarantor, the Premises or in any of the Collateral;

(xvii) the commencement of foreclosure proceedings or their judicial equivalent with respect to any lien or other mortgage encumbering the Premises regardless of whether or not that lien or mortgage is a Permitted Lien; or

(xviii) any default which continues after notice or lapse of any applicable grace or cure period, under any of the other Financing Loan Documents or in any instrument, documents or agreements entered into by the Mortgagor or **any other Obligor** in connection with any loans or financial transactions by or with the Mortgagee.

G. That the paragraph **numbered 2 – sub-section (i)** on **page five (5)** is hereby deleted in its entirety, and the following is substituted in its place:

(i) "Liabilities" means any and all liabilities, obligations and indebtedness including interest that, but for the provisions of the Federal Bankruptcy Code as may be amended from time to time, would have accrued on the Note and under the Mortgage and any other Financing Loan Documents, owing by Mortgagor, **any other Obligor** or any Guarantor, **or more than one of them**, to Mortgagee for performance and payment of any and all amounts due under any of the Financing Loan Documents, all without relief from valuation and appraisal laws, and for any other liabilities, indebtedness and obligations of every kind and nature of Mortgagor, **any other Obligor** or Guarantors, **or more than one of them**, owing to Mortgagee, whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise, together with reasonable attorneys' and paralegals' fees and costs (including the costs to Mortgagee of using internal counsel, if applicable), experts', opinion witnesses' and other professionals' fees, costs and expenses relating to or arising out of protecting or enforcing or attempting to enforce Mortgagee's rights, remedies, liens, and security interests hereunder and under any other Financing Loan Documents from any lawsuits or actions at law or in equity, or administrative proceedings, appeals therefrom, or any matters arising from or relating to bankruptcy, reorganization, insolvency, compositions or assignment for the benefit of creditors, including without limitation advising Mortgagee, drafting and negotiating any of the Financing Loan Documents and extensions or renewals thereof and amendments or modifications thereto, and any other agreements and documents relating thereto at any time and from time to time in connection with the Liabilities. Liabilities includes all of the liabilities, obligations and indebtedness of any partnership owing to Mortgagee, created or arising by such partnership while Mortgagor may have been or may be a member of such partnership. **Liabilities also includes all obligations, debts and liabilities, plus interest thereon, described in the paragraph entitled "Cross Collateralization" on the second page hereof.** Notwithstanding the foregoing, in no event shall the lien of this Mortgage secure outstanding Liabilities in excess of ~~\$7,000,000.00~~ **\$3,600,000.00.** 

H. That the paragraph **numbered 4.11 – sub-section (e)** on **page thirteen (13)** is hereby deleted in its entirety, and the following is substituted in its place:

(e) Mortgagor shall cause each **other Obligor and each** Guarantor to annually submit to Mortgagee within one hundred twenty (120) calendar days after the end of such **party applicable** calendar or fiscal year, as the case may be, or more frequently as Mortgagee may request from time to time, such (i) **Party's** financial statements prepared by an individual or entity required by Mortgagee in accordance with generally accepted accounting principles consistently applied and signed by such **party**, and (ii) federal income tax returns and any amendments thereto filed for the immediately preceding fiscal or calendar year of such **party**.

I. In all other respects, unless specifically modified hereby, the Mortgage shall remain unchanged and in full force and effect. This First Amendment may be signed in counter parts all of which when taken together shall be deemed an original.

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EXHIBIT A

To

FIRST AMENDMENT TO MORTGAGE
DATED AS OF JANUARY 29, 2007 BETWEEN
NASIRUDDIN M. DAYA, INDIVIDUALLY

AND

TCF NATIONAL BANK

Legal Description

LOT 3 IN WILLOW CREEK, BEING A SUBDIVISION OF PART OF SECTION 24, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Commonly known as 850 E. NORTHWEST HIGHWAY, PALATINE, ILLINOIS 60074

P.I.N.: 02-24-106-007-0000

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