CONSENT AND  
TWELFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT  
  
THIS CONSENT AND TWELFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT (this "Amendment") is made and entered into as of November 21, 2007, by and among SMF Energy Corporation, a Delaware corporation and successor-by-merger to Xxxxxxxxx Mobile Fueling, Inc., a Florida corporation ("SMF"); SMF Services, Inc., a Delaware corporation ("SSI"); H & W Petroleum Company, Inc., a Texas corporation ("H & W" and, collectively with SMF and SSI, "Borrower"); and Wachovia Bank, National Association, a national banking association and successor-by-merger to Congress Financial Corporation (Florida) ("Lender").  
  
R E C I T A L S  
  
A. Borrower and Lender are parties to that certain Loan and Security Agreement dated September 26, 2002 (as at any time amended, restated, supplemented or otherwise modified, the "Loan Agreement"). The Obligations under (and as defined in) the Loan Agreement are guaranteed by Xxxxxxxxx Realty, Inc., a Florida corporation ("Guarantor").  
  
B. The parties hereto desire to amend the Loan Agreement upon the terms and subject to the conditions hereinafter set forth.  
  
NOW, THEREFORE, for and in consideration of Ten Dollars ($10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:  
  
1. Each capitalized term used in this Amendment, unless otherwise defined herein, shall have the meaning ascribed to such term in the Loan Agreement.  
  
2. Borrower has requested that Lender consent to SMF's incurrence of unsecured Subordinated Debt pursuant to one or more Promissory Notes dated November 19, 2007 executed by SMF in favor of certain investors in the aggregate principal amount of approximately $2,000,000. Lender hereby consents to SMF's incurrence of such Subordinated Debt provided that: (a) the proceeds of such Subordinated Debt (in an amount not less than $1,800,000 and not more than $2,000,000) shall be fully funded and received by SMF on or before the close of business on the date hereof and shall be used by Borrower exclusively for working capital purposes, (b) Lender shall have received and approved, prior to the date that such Subordinated Debt is incurred, copies of the proposed documents intended to evidence such Subordinated Debt, with true, correct and complete copies of such executed documents to be furnished to Lender promptly after execution, (c) such Subordinated Debt shall be subject and subordinate to the payment of the Obligations pursuant to Subordination Agreements in form and substance similar to the Subordination Agreements attached hereto as Exhibit A with only such changes as may be disclosed to and accepted by Lender in writing in its discretion, and (d) such Subordinated Debt shall otherwise be subject to the terms of Section 9.9(e) of the Loan Agreement.  
  
 3. Subject to the satisfaction of each of the conditions precedent set forth in this Amendment, the Loan Agreement is hereby amended as follows:  
  
(a) By deleting in its entirety the definition of "Capital Expenditures" contained in Section 1.70 of the Loan Agreement and by substituting in lieu thereof the following:  
  
1.70 "Capital Expenditures" shall mean expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year, including the total principal portion of Indebtedness under Capital Leases, but excluding any such expenditures made with restricted cash constituting proceeds of Excluded Assets (including restricted cash deposited in the account described in subclause (i) of the definition of "Excluded Assets").  
  
(b) By deleting the reference to "$300,000" contained in Section 2.2(e) of the Loan Agreement and by substituting in lieu thereof "$1,000,000".  
  
(c) By deleting Section 9.21 of the Loan Agreement in its entirety and by substituting in lieu thereof the following:  
  
9.21 Fixed Charge Coverage Ratio. Borrower shall not, as of any month end in which the Average Excess Availability is less than the amount set forth below and corresponding to such month, or as of the end of any month during which an Event of Default occurs or exists, on a cumulative basis for the applicable fiscal year, permit the ratio of (a) EBITDA to (b) Fixed Charges to be less than 1.0 to 1.0.  
  
Month  
Average Excess Availability  
February 2007  
$1,500,000  
March 2007  
$1,500,000  
April 2007  
$1,500,000  
May 2007  
$1,500,000  
June 2007  
$2,500,000  
July 2007  
$2,500,000  
August 2007  
$2,500,000  
September 2007  
$2,500,000  
October 2007  
$1,800,000  
November 2007  
$800,000  
December 2007  
$800,000  
January 2008  
$800,000  
February 2008 and  
each month thereafter  
$1,800,000  
  
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 (d) By deleting Section 9.22 of the Loan Agreement in its entirety and by substituting in lieu thereof the following:  
  
9.22 Excess Availability. Borrower shall maintain Excess Availability as determined by Lender in an amount not less than: (a) at all times on or before November 22, 2007, $750,000, (b) at all times during the period beginning on November 23, 2007 and ending on December 30, 2007, $500,000, and (c) at all times on and after December 31, 2007, $750,000.  
  
4. Borrower hereby ratifies and reaffirms the Obligations, each of the Financing Agreements and all of Borrower's covenants, duties, indebtedness and liabilities under the Financing Agreements.  
  
5. Borrower acknowledges and stipulates, to induce Lender to enter into this Amendment, that the Loan Agreement and the other Financing Agreements executed by Borrower are legal, valid and binding obligations of Borrower that are enforceable against Borrower in accordance with the terms thereof; all of the Obligations are owing and payable without defense, offset or counterclaim (and to the extent there exists any such defense, offset or counterclaim on the date hereof, the same is hereby waived by Borrower); and the security interests and liens granted by Borrower in favor of Lender are duly perfected, first priority security interests and liens.  
  
6. Borrower represents and warrants to Lender, to induce Lender to enter into this Amendment, that no Default or Event of Default exists on the date hereof; the execution, delivery and performance of this Amendment have been duly authorized by all requisite corporate action on the part of Borrower and this Amendment has been duly executed and delivered by Borrower; and except as may have been disclosed in writing by Borrower to Lender prior to the date hereof, all of the representations and warranties made by Borrower in the Loan Agreement are true and correct on and as of the date hereof.  
  
7. In consideration of Lender's willingness to enter into this Amendment, Borrower hereby agrees to pay to Lender a nonrefundable amendment fee (the "Amendment Fee") in the amount of five thousand dollars ($5,000) in immediately available funds on the date hereof, which shall be fully earned on the date hereof. Additionally, to induce Lender to enter into this Amendment and grant the accommodations set forth herein, Borrower agrees to pay, on demand, all costs and expenses incurred by Lender in connection with the preparation, negotiation and execution of this Amendment and any other Financing Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the costs and fees of Lender's legal counsel and any taxes or expenses associated with or incurred in connection with any instrument or agreement referred to herein or contemplated hereby.  
  
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 8. The effectiveness of the amendments to the Loan Agreement set forth in this Amendment is subject to the satisfaction of each of the following conditions precedent, in each case in form and substance satisfactory to Lender:  
  
(a) Lender shall have received duly executed and delivered counterparts of this Amendment from Borrower and Guarantor;  
  
(b) Lender shall have received full payment of the Amendment Fee and the other amounts described in the preceding paragraph;  
  
(c) Borrower shall have received all of the proceeds of the Subordinated Debt contemplated by Section 2 hereof, and Lender shall have received a fully-executed original counterpart of each Subordination Agreement contemplated by Section 2 of this Amendment with respect to such Subordinated Debt; and  
  
(d) no Default or Event of Default shall exist or occur on the date hereof.  
  
9. Upon the effectiveness of the amendments set forth in this Amendment, each reference in the Loan Agreement to "this Agreement," "hereunder," or words of like import shall mean and be a reference to the Loan Agreement, as amended by this Amendment.  
  
10. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.  
  
11. This Amendment shall be governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to its conflict of laws principles.  
  
12. Except as otherwise expressly provided in this Amendment, nothing herein shall be deemed to amend or modify any provision of the Loan Agreement or any of the other Financing Agreements, each of which shall remain in full force and effect. This Amendment is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction, and the Loan Agreement as herein modified shall continue in full force and effect.  
  
13. This Amendment may be executed in any number of counterparts and by different parties to this Amendment on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any manually-executed signature page delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature page hereto.  
  
  
[Remainder of page intentionally left blank;  
signatures commence on following page.]  
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To the fullest extent permitted by applicable law, the parties hereto each hereby waives the right to trial by jury in any action, suit, counterclaim or proceeding arising out of or related to this Amendment.  
  
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.  
  
  
 "LENDER":  
 WACHOVIA BANK, NATIONAL ASSOCIATION  
 By: /s/ Xxx Xxxxxxxxx   
Name: Xxx Xxxxxxxxx  
Title: Director  
 "BORROWER":  
 SMF ENERGY CORPORATION  
 By: /s/ Xxxxxxx X. Xxxxx   
Name: Xxxxxxx X. Xxxxx  
Title: Senior Vice President & Chief Financial Officer  
 SMF SERVICES, INC.  
 By: /s/ Xxxxxxx X. Xxxxx   
Name: Xxxxxxx X. Xxxxx  
Title: Senior Vice President& Chief Financial Officer  
 H & W PETROLEUM COMPANY, INC.  
 By: /s/ Xxxxxxx X. Xxxxx   
Name: Xxxxxxx X. Xxxxx  
Title: Senior Vice President & Chief Financial Officer  
 Twelfth Amendment to Loan Agreement  
 JOINDER  
  
The undersigned: (1) acknowledges and confirms that Lender’s loans, advances and credit to Borrower have been, are and will continue to be of direct economic benefit to the undersigned, (2) acknowledges that it has previously waived any right to consent to the foregoing Amendment or any future amendment to the Loan Agreement but, nevertheless, consents to all terms and provisions of the foregoing Amendment that are applicable to it, and agrees to be bound by and comply with such terms and provisions, and (3) acknowledges and confirms that its guaranty in favor of Lender executed in connection with the Loan Agreement is valid and binding and remains in full force and effect in accordance with its terms (without defense, setoff or counterclaim against enforcement thereof), which include, without limitation, its guaranty in connection with the Loan Agreement, as modified by the foregoing Amendment.  
 "GUARANTOR":  
  
XXXXXXXXX REALTY, INC.,  
a Florida corporation  
  
By: /s/ Xxxxxxx X. Xxxxx   
Name: Xxxxxxx X. Xxxxx  
Title: Senior Vice President& Chief Financial Officer  
  
 Twelfth Amendment to Loan Agreement  
  
EXHIBIT A  
  
Form of Subordination Agreement  
  
(See attached.)