

PATENT ASSIGNMENT

Electronic Version v1.1

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SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

SECURITY AGREEMENT

CONVEYING PARTY DATA

Name	Execution Date
Berkel & Company Contractors, Inc.	06/15/2005

RECEIVING PARTY DATA

Name:	LaSalle Bank National Association
Street Address:	135 South LaSalle Street
City:	Chicago
State/Country:	ILLINOIS
Postal Code:	60603

PROPERTY NUMBERS Total: 2

Property Type	Number
Patent Number:	6033152
Patent Number:	5242027

CORRESPONDENCE DATA

Fax Number: (415)442-1001

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: 415-442-1301

Email: coakley@morganlewis.com

Correspondent Name: Carla B. Oakley

Address Line 1: One Market, Spear Street Tower

Address Line 4: San Francisco, CALIFORNIA 94105

ATTORNEY DOCKET NUMBER:

062590.0000

NAME OF SUBMITTER:

Carla B. Oakley

Total Attachments: 6

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PATENT

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PATENT SECURITY AGREEMENT

THIS PATENT SECURITY AGREEMENT (this "Agreement"), executed June 14, 2005 and dated as of June 15, 2005, is made by BERKEL & COMPANY CONTRACTORS, INC. (the "Company") to and in favor of LaSALLE BANK NATIONAL ASSOCIATION (the "Lender"). Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Loan and Security Agreement of even date herewith, by and between the Company and the Lender ("Loan Agreement").

RECITALS.

A. The Company owns and uses certain Patents (as hereinafter defined) which are registered in, or applications for registration of which have been filed in, the United States Patent and Trademark Office, all as more fully described on Schedule I attached hereto and by reference made part hereof; and

B. The Lender proposes to make certain loans to the Company pursuant to the Loan Agreement; and

C. Pursuant to the Loan Agreement, the Company has assigned, conveyed, mortgaged, pledged, hypothecated and transferred to the Lender, all of its right, title and interest in and to, and granted to the Lender a security interest in, the property described therein, including, without limitation, all of the Company's Patents (as hereinafter defined), whether presently existing or hereafter acquired or arising, or in which the Company now has or hereafter acquires rights and wherever located, and all products and proceeds any of the foregoing, as security for all of the Obligations; and

D. As a condition precedent to the extension of such financial accommodations pursuant to the Loan Agreement and in furtherance of the Loan Agreement, including, without limitation, for purposes of perfecting the security interests granted therein, the Lender has required that the Company grant to the Lender, a security interest in and a collateral assignment of the Property (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. For purposes of this Agreement and in addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings herein specified (such meaning to be equally applicable to both the singular and plural forms of the terms defined):

"Patents" means all of the following: (i) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including, without limitation registrations, recordings and applications in the office or agency of the United States, any

State thereof or any other country or any political subdivision thereof, including, without limitation, those referred to in Schedule I attached hereto, (ii) all reissues, continuations, continuations-in-part or extensions thereof.

2. As security for the payment and performance of all of the Obligations, the Company hereby grants and conveys a security interest to the Lender in, and collaterally assigns to the Lender, all of the Company's right, title and interest in, to and under the following (collectively, the "Property"): (a) each Patent now or hereafter owned by the Company or in which the Company now has or hereafter acquires rights and wherever located, including, without limitation, each Patent referred to in Schedule I hereto and any renewals of registrations thereof; and (b) all products and proceeds of the foregoing, including, without limitation, any claim by the Company against third parties for past, present or future infringement of any Patent including, without limitation, any Patent referred to in Schedule I hereto; and (c) all license agreements with any other party respect to the Patents, whether Company is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Schedule II attached hereto and made a part hereof, and all products and proceeds thereof, including rights to royalties thereunder (the "Licenses").

Notwithstanding the foregoing or anything else in this Agreement to the contrary, unless and until the Lender exercises the rights and remedies accorded to it under the Loan Agreement and by law with respect to the realization upon its security interest in and collateral assignment of the Property, the Lender hereby grants to the Company the exclusive, nontransferable, royalty-free right and license under the Property for the Company's own benefit and account, so that the Company may use and enjoy the Property in connection with its business operations and exercise rights and remedies with respect to the Property, but with respect to all Property being used in the Company's business, only in a manner consistent with the preservation of the current substance, validity, registration and the security interest and collateral assignment herein granted in such Property. The Company agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to the Company in this paragraph, except that the Company may license the Property in the ordinary course of the Company's business but only in a manner consistent with the preservation of the current substance, validity, registration and the security interest and collateral assignment herein granted in such Property. Upon the exercise by the Lender of the rights and remedies accorded to it under the Loan Agreement and by law with respect to the realization upon its security interest in and collateral assignment of the Property, the license granted under this paragraph to the Company shall terminate.

3. From and after the occurrence of an Event of Default and the provision by Lender of written notice to Company of Lender's intention to enforce its rights and claims against any of the Property, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Property and any licenses thereunder, and, if Lender shall commence any such suit, Company shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement and Company shall promptly, upon demand, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this paragraph 3.

4. Company hereby authorizes Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its sole discretion, as Company's true and lawful attorney-in-fact, with power (i) at any time, to endorse Company's name on all applications, documents, papers and instruments necessary or desirable for the Lender to effect or maintain a valid mortgage, lien and security interest on and in and collateral assignment of the Property, and (ii) from and after the occurrence of an Event of Default and written notice given by the Lender to Company of Lender's intention to enforce its rights and claims against any of the Property, to (a) grant or issue any exclusive or non-exclusive license under the Property to anyone, or (b) assign, pledge, convey or otherwise transfer title in or dispose of the Property to anyone. Lender hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been fully and completely paid and satisfied.

5. Company agrees to preserve and maintain all rights in patent applications and patents of the Patents. Any expenses incurred in connection with such applications shall be borne by Company. Unless the benefits to be derived from the following are negligible, immaterial or the following are otherwise of little or no value, Company shall not abandon any Patent without the consent of Lender, which consent shall not be unreasonably withheld.

6. The Company does hereby further acknowledge and affirm that the representations, warranties and covenants of the Company with respect to the Property and the rights and remedies of the Lender with respect to the security interest in and collateral assignment of the Property made and granted hereby are more fully set forth in the Loan Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

7. This Agreement shall terminate upon termination of the Loan Agreement and payment in full of all the Obligations. At any time and from time to time prior to such termination, the Lender may terminate its security interest in or reconvey to the Company any rights with respect to any or all of the Property. Upon termination of this Agreement and following a request from the Company, the Lender shall, at the expense of the Company, execute and deliver to the Company all deeds, assignments and other instruments as may be necessary or proper in reasonable judgment of the Company in order to evidence such termination, subject to any disposition of the Property which may have been made by the Lender pursuant hereto or pursuant to the Loan Agreement.

8. Company represents and warrants that the Patents and Licenses listed on Schedules I and II, respectively, constitute all of the Patents and Licenses now owned by Company. If at any time before the termination of this Agreement, the Company shall obtain or acquire rights to any new Patent (including any Patent application) or License, the provisions of Section 2 shall automatically apply thereto and the Company shall comply with the terms of this Agreement with respect to such new Patent or License. The Company authorizes the Lender to modify this Agreement by amending Schedule 1 and II to include any future Patents (and Patent applications) and Licenses covered by Section 2 or by this Section 8, and shall execute and record any and all other and further documents and shall execute and record any and all other further

documents, agreements or instruments necessary, in the Lender's discretion, to give the Lender a valid and first priority mortgage, lien and security interest on and in the foregoing.

9. The Company further agrees that (a) the Lender shall not have any obligation or responsibility to protect or defend the Property and the Company shall, at its own expense protect, defend and maintain the same in accordance with the terms and conditions set forth in the Loan Agreement, (b) the Company shall forthwith advise the Lender promptly in writing upon detection of infringements of any of the Property being used in the Company's business and (c) if the Company fails to comply with the requirements of the preceding clause (a), the Lender may do so in the Company's name or in its own name, but in any case at the Company's expense, and the Company hereby agrees to reimburse the Lender for all expenses, including attorneys' fees, incurred by the Lender in protecting, defending and maintaining the Property.

10. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS.

11. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE BANK FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS, AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

12. WAIVER OF JURY TRIAL. THE BANK AND THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT, ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING

RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH THE BANK AND THE BORROWER ARE ADVERSE PARTIES, AND EACH AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed under seal by its duly authorized officers as of the date first above written.

BERKEL & COMPANY CONTRACTORS, INC.

By: [Signature]
Name: Michael L. Jones
Title: President

STATE OF KANSAS)
) ss.:
COUNTY OF Wyandotte

On June 14, 2005, before me personally came Mike Jones, to me personally known and known to me to be the person described in and who executed the foregoing instrument as the President of Berkel + Company, who being by me duly sworn, did depose and say that he (she) is the President of said company and which executed the foregoing instrument; that the said instrument was signed on behalf of said company by order of its Board of Directors; that he (she) signed his (her) name thereto by like order; and that he (she) acknowledged said instrument to be the free act and deed of said company.

Notary Public [Signature]
My Commission Expires: 04-04-2009

[NOTARIAL SEAL]

SUSAN MARTLEY
Notary Public - State of Kansas
My Appt. Exp. April 4, 2009

CH 155225

PATENT
REEL: 016784 FRAME: 0688

SCHEDULE I

REGISTERED U.S. PATENTS

<u>DESCRIPTION</u>	<u>REGISTRATION NO.</u>	<u>REGISTRATION DATE</u>
Pile Forming Apparatus (Displacement Drilling Bit)	Patent # 6,033,152	March 7, 2000
Cleaning Device for Earth Augers	Patent # 5,242,027	September 7, 1993

PENDING U.S. PATENT APPLICATIONS

<u>DESCRIPTION</u>	<u>APPLICATION NO.</u>	<u>FILING DATE</u>
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