

# PATENT ASSIGNMENT

Electronic Version v1.1  
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
Name	Execution Date
Kern, Inc.	02/01/2011
<b>RECEIVING PARTY DATA</b>	
Name:	Columbus-Franklin County Finance Authority
Street Address:	150 South Front Street, Suite 200
City:	Columbus
State/Country:	OHIO
Postal Code:	43215
<b>PROPERTY NUMBERS Total: 1</b>	
Property Type	Number
Patent Number:	7717418
<b>CORRESPONDENCE DATA</b>	
Fax Number:	(614)222-3485
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	(614) 462-2218
Email:	jrobinett@szd.com
Correspondent Name:	John D. Robinett
Address Line 1:	250 West Street
Address Line 4:	Columbus, OHIO 43215-2538
ATTORNEY DOCKET NUMBER:	638790-00182
NAME OF SUBMITTER:	John D. Robinett
<b>Total Attachments: 11</b> source=Assignment and License Agreement (H2179751)#page1.tif source=Assignment and License Agreement (H2179751)#page2.tif source=Assignment and License Agreement (H2179751)#page3.tif source=Assignment and License Agreement (H2179751)#page4.tif source=Assignment and License Agreement (H2179751)#page5.tif	

CH \$40.00 7717418

**501473441**

**PATENT**  
**REEL: 025988 FRAME: 0707**

source=Assignment and License Agreement (H2179751)#page6.tif  
source=Assignment and License Agreement (H2179751)#page7.tif  
source=Assignment and License Agreement (H2179751)#page8.tif  
source=Assignment and License Agreement (H2179751)#page9.tif  
source=Assignment and License Agreement (H2179751)#page10.tif  
source=Assignment and License Agreement (H2179751)#page11.tif

## **ASSIGNMENT AND LICENSE AGREEMENT**

THIS ASSIGNMENT AND LICENSE AGREEMENT (this "Agreement") is made and entered into as of this 1st day of February, 2011 (the "Effective Date"), by and between Columbus-Franklin County Finance Authority, a port authority having a business address of 150 South Front Street, Suite 200, Columbus, Ohio 43215 (the "Finance Authority"), and Kern, Inc., a New Jersey corporation having a business address of 3940 Gantz Road, Grove City, Ohio 43123 ("Kern").

### **RECITALS**

**WHEREAS**, Kern is the owner of the Licensed Patent and Intangibles (as each term is defined below);

**WHEREAS**, pursuant to Section 13 of Article VIII of the Ohio Constitution and Chapter 4582 of the Ohio Revised Code, the Finance Authority has applied for a development loan (the "Loan") from The Director of Development of the State of Ohio (the "Director") and determined to issue and deliver a bond of the Finance Authority to the Director (as the same may be amended, modified, supplemented, restated or replaced from time to time, the "Bond") to evidence the loan from the Director to the Finance Authority pursuant to the terms of the Bond and that certain Loan Agreement, dated as of February 1, 2011 (as the same may be amended, modified, supplemented, restated or replaced from time to time, (the "Loan Agreement"), between the Director and the Finance Authority, and Kern has agreed to guaranty the performance and obligations of the Finance Authority under the Bond, the Loan Agreement and the other Loan Documents pursuant to the Guaranty, dated as of February 1, 2011 by Kern in favor of the Director (as the same may be amended, modified, supplemented, restated or replaced from time to time, the "Guaranty");

**WHEREAS**, as a condition to the making of the Loan, the Finance Authority has agreed to use the Loan for the Project (as defined in the Loan Agreement) which includes obtaining an assignment of the Licensed Patent and Intangibles from Kern and licensing the Licensed Patent and Intangibles back to Kern; and

**WHEREAS**, Kern is willing to assign its rights in and to the Licensed Patent and Intangibles to the Finance Authority, and the Finance Authority is willing to grant the license to the Licensed Patent and Intangibles to Kern, all on the terms and conditions contained in this Agreement for purposes of the Project.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement without definition have the meanings ascribed to such terms in the Loan Agreement. In addition to other terms defined elsewhere in this Agreement, as used herein, the following terms shall have the following meanings:

(a) "Confidential Information" means information or materials disclosed to a party by the other party that are marked as "Confidential" or "Proprietary" or, if disclosed orally, identified as such at the time of disclosure and reduced by the disclosing party to written form marked "Confidential" or "Proprietary" within thirty (30) days after oral disclosure.

(b) "Intangibles" shall have the meaning set forth in Paragraph 2.

(c) "Interest Rate" means a rate per annum which is three percent (3%) in excess of the Prime Rate, with each change in such rate automatically and immediately changing the Interest Rate.

(d) "License" shall have the meaning set forth in Paragraph 3.

(e) "Licensed Patent" means (i) United States Patent No. 7,717,418, (ii) all additional patent applications based thereon, (iii) all patents issuing therefrom, (iv) all substitutions, continuations, continuations-in-part, additions, divisions, renewals, extensions, or examinations and reissues of any of the foregoing, and (v) all United States or foreign counterparts of any of the foregoing.

(f) "Prime Rate" shall mean the highest "prime rate" as published daily in the Wall Street Journal under the heading "Money Rate". The Prime Rate in effect at any time will change each time and as of the date that a new Prime Rate is published. In the event such Prime Rate is discontinued, the Director shall substitute an index determined by the Finance Authority to be comparable, in its reasonable discretion.

(g) "Term" shall have the meaning set forth in Paragraph 5(a).

2. Assignment. In consideration of the Finance Authority's issuance of the Bond and its payment of the proceeds thereof in the amount of \$2,000,000 to Kern, Kern hereby sells, assigns, transfers, and conveys to the Finance Authority and its successors, assigns, and nominees, absolutely and in perpetuity, Kern's entire right, title, and interest worldwide in and to (a) the Licensed Patent; (b) all general intangibles including all intellectual or other intangible property of Kern of any kind or nature, including without limitation technical information, know-how, processes, compositions, methods, techniques, drawings, designs or data, associated with or arising out of or related to the Licensed Patent (the "Intangibles"); (c) the right to sue for and receive all damages from past, present or future infringements and/or misappropriations of the Licensed Patent and Intangibles, the same to be held and enjoyed by the Finance Authority, its successors, and assigns; and (d) all proceeds of the foregoing.

3. Grant of License. During the Term, the Finance Authority hereby grants to Kern and Kern hereby accepts (a) an exclusive, non-transferable, right and worldwide license under the Licensed Patent to practice the methods and to make, have made, use, manufacture, have manufactured, offer to sell, sell, have sold, support and import the systems, methods and inventions described and claimed in the Patent, and (b) an exclusive, non-transferable, right and worldwide license to use the Intangibles in connection therewith (the "License"). Kern shall have the right to grant sublicenses under the foregoing License.

4. Consideration and Payment. In consideration of the License granted in Paragraph 2, Kern agrees to pay the Finance Authority the following amounts at the following times:

(a) total principal on the Loan, plus interest and any fees as described in the Bond, which payments shall be made timely in accordance with the Bond as and when due;

(b) a one time fee in the amount of 0.20% of the principal amount of the Loan which shall be due and paid on the Effective Date; and

(c) an annual fee on January 1 of each year in the amount of 0.10% of the principal amount of the Loan outstanding on each such date during the Term, commencing on January 1, 2012.

Any amounts due but not timely paid under this Paragraph 4 shall bear interest at the Interest Rate.

5. Term and Termination.

(a) Term. The term of the License granted hereunder (the "Term") shall commence on the Effective Date and shall continue in effect through [March 1], 2017 unless earlier terminated in accordance with Paragraph 5(b).

(b) Termination. The Finance Authority shall have the right to terminate the License granted hereunder in the event that (i) any representation or warranty made by Kern (or any of its officers) herein or in the Guaranty shall prove to have been incorrect in any material respect when made; (ii) Kern shall fail to observe or perform any agreement, term or condition stated in this Agreement or in the Guaranty; or (iii) an "Event of Default" occurs under the Loan Agreement or the Guaranty. In the event the License granted hereunder is so terminated, it shall be of no further force or effect from and after the date of that termination. The Finance Authority shall give Kern thirty (30) days advance notice of any such termination. Kern shall have the absolute and unconditional right during that thirty-day period to either (x) cure any failure described in subparagraph (ii) of this paragraph and any "Event of Default" described in subparagraph (iii) of this paragraph, and upon such cure within such thirty-day period the License shall not be terminated, or (y) comply with the requirements of subparagraphs (i), (ii) and (iii) of paragraph (c) below, and upon compliance with such requirements within such thirty-day period, Kern shall have the right to repurchase the Licensed Patent and Intangibles from the Finance Authority for One Dollar (\$1.00) as set forth in paragraph (c) below. Upon any subsequent failure or "Event of Default," no thirty-day grace period shall apply and the Finance Authority shall have the right to terminate the License immediately; provided, however, if the License is so terminated after the occurrence of any subsequent failure or "Event of Default," Kern shall have the absolute and unconditional right to repurchase the Patent and Intangibles by paying the amounts set forth in paragraph (c) below within 15 days after such termination. Any notice of termination pursuant to this paragraph shall include an estimate of the amounts which would be due pursuant to (A), (B) and (C) of subparagraph (i) of paragraph (c) of this Section if Kern exercises its right to purchase as stated in this paragraph. Kern will provide the purchase date to the Finance Authority and the Finance Authority and the Director will then provide Kern with the final amounts due within 7 days of receipt of the purchase date from Kern; provided, however, that any such final amounts provided may include a retainer for attorneys' fees of

counsel to the Finance Authority and the Director not yet determined at that time and provision of any such final amounts shall not prejudice the rights of the Finance Authority and the Director to collect any amounts due under sections that survive the termination of this Agreement.

(c) Reversion. Provided the License granted herein has not been terminated pursuant to Paragraph 5(b), upon (i) payment in full of (A) the entire principal of, and interest and monthly service fee on, the Bond, (B) all amounts payable under this Agreement, the Loan Agreement and other Loan Documents, and (C) all expenses and charges, including, to the fullest extent permitted by law, court costs and reasonable attorneys' fees paid or incurred by the Finance Authority or the Director in realizing any of the payments described in this Agreement, the Guaranty or the other Loan Documents, (ii) fulfillment of all of the obligations of the Finance Authority under the Loan Documents and Kern under this Agreement and the Guaranty, and (iii) termination of the Loan Agreement, Kern shall have the right to repurchase the Licensed Patent and Intangibles from the Finance Authority for One Dollar (\$1.00). Such right shall exist only upon written confirmation from the Director to the Finance Authority that all of the conditions set forth in this Paragraph 5(c) with respect to the Director have been satisfied in full, which written confirmation shall not be unreasonably withheld.

6. Representations and Warranties. Kern hereby represents and warrants that, immediately prior to the assignment set forth in Paragraph 2 of this Agreement:

(a) it owns and possesses all right, title, and interest in and to the Licensed Patent and Intangibles, free and clear of any lien, license, or other restriction and that the value of the Licensed Patent and Intangibles is no less than \$4,000,000;

(b) the Licensed Patent and Intangibles are not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

(c) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the knowledge of Kern or any director or officer (or employees with responsibility for intellectual property) of Kern, is threatened which challenges the legality, validity, enforceability, or ownership of the Licensed Patent or Intangibles;

(d) it has never agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the Licensed Patent or Intangibles;

(e) no loss or expiration of the Licensed Patent or Intangibles is threatened, pending, or reasonably foreseeable, except for the Licensed Patent expiring at the end of its statutory terms (and not as a result of any act or omission by Kern, including without limitation, a failure by Kern to pay any required maintenance fees);

(f) none of Kern's current or former officers, employees, contractors or consultants has any rights in the Licensed Patent or Intangibles, and if any of Kern's current and former officers, employees, contractors and consultants are inventors of the inventions claimed in the Licensed Patent, or otherwise had claims in the Intangibles, such parties have validly assigned all rights in such inventions and the Licensed Patent and Intangibles to Kern free and clear of any rights of or claims by such officers, employees, contractors and consultants; and

(g) the Licensed Patent is the core patent in the family of patents that protects Kern's patented system of equipment for insertion of documents and materials into the envelopes for mailing, and the Licensed Patent has value, and can be disposed of, independently of the other patents that protect the patented system.

7. Indemnification.

(a) Scope of Indemnification. Kern releases the Finance Authority from, agrees that it shall not be liable for, and indemnifies the Finance Authority against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Paragraph 7(a)) imposed upon, incurred by or asserted against the Finance Authority on account of (i) a breach of any representations or warranties contained in this Agreement, (ii) any actual or alleged infringement or misappropriation of third party rights (including, but not limited to, patents, copyrights, trademarks and trade secrets) arising out of or related to the manufacture, use, sale, lease or other disposition of any product or service, or the exercise of any rights granted, under the license granted in this Agreement, (iii) the issuance of the Bond or the financing, acquisition, use or maintenance of the Project (including, but not limited to, claims relating to compliance with Chapter 4115, Ohio Revised Code), (iv) any act, failure to act or misrepresentation by any person in connection with the Loan, (v) any act, failure to act or misrepresentation by the Finance Authority in connection with, or in the performance of any obligation related to the Loan, the Loan Agreement, the Security Documents or this Agreement, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim, (vi) ownership of any interest in the Project or any part thereof, (vii) any accident, injury to or death of persons or loss of or damage to property arising out of or related to the Project, or any part thereof, including, but not limited to, any accident, injury to or death of persons or loss of or damage to property arising out of or related to the manufacture, use, sale, lease or other disposition of any product or service, or the exercise of any rights granted, under the license granted in this Agreement, (viii) any use, disuse or condition of the Project or any part thereof, (ix) any failure on the part of Kern to perform or comply with any of the terms hereof or with the terms of the Guaranty, (x) the performance of any labor or services or the furnishing of any materials or other property in respect of the Project or any part thereof, or (xi) the enforcement of any obligations of Kern under this Agreement or the Loan Documents.

(b) Indemnification Procedure. The Finance Authority shall have the sole right to employ counsel and to direct the handling of the liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorney's fees and expenses described above) and the settlement thereof. Any amounts payable to the Finance Authority under this Paragraph 7 which are not paid within ten (10) days after written demand therefor shall bear interest at the Interest Rate. The obligations of Kern under this Paragraph 7 shall survive any termination of this Agreement.

8. Disclaimer. THE FINANCE AUTHORITY MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, CONCERNING THE LICENSED PATENT, INTANGIBLES, OR WITH RESPECT TO ANYTHING ELSE, AND THE FINANCE AUTHORITY HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED

WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. THE LICENSED PATENT AND INTANGIBLES ARE LICENSED TO KERN UNDER THIS AGREEMENT ON AN "AS-IS" BASIS.

9. Patent Maintenance and Use.

(a) Patent Maintenance. Kern shall take responsibility for the preparation, filing, prosecution, and maintenance of any and all domestic and foreign patent applications or patents included in the Licensed Patent and shall furnish copies of relevant patent-related documents to the Finance Authority. All filings made during the Term of this Agreement and relating to the prosecution or maintenance of the Licensed Patent shall be made in the name of the Finance Authority. In the event that Kern decides not to prepare, file, prosecute, and maintain any and all domestic and foreign patent applications or patents included in the Licensed Patent, the Finance Authority shall have the right, but not the obligation, to handle such preparation, filing, prosecution, and maintenance to prevent loss of any rights in or to the Licensed Patent; provided, however, that Kern shall not abandon any of the rights comprising the Licensed Patent in any jurisdiction without the prior written consent of the Finance Authority. Kern shall be solely responsible for all costs incurred by either Kern or the Finance Authority pursuant to this Paragraph 9(a). Each party shall provide the other prompt notice as to all matters that come to its attention that may affect the preparation, filing, prosecution or maintenance of the Licensed Patent.

(b) Validity; Marking. Kern shall not take any action that would materially jeopardize the validity or legal status of the Licensed Patent and shall reasonably comply with all patent marking requirements as specified in 35 U.S.C. §287, as amended, and any applicable laws or regulations of any jurisdiction.

10. Third Party Infringers.

(a) Notice of Infringement. Each party shall notify the other party promptly in writing of any alleged infringement of the Licensed Patent by a third party and provide any available evidence of such infringement to the other party.

(b) Finance Authority's Right to Sue. The Finance Authority shall have the right, but no obligation, to prosecute all actual and suspected infringements of the Licensed Patent and to bring any opposition, cancellation or lawsuit in order to enforce and protect the Licensed Patent. With respect to all claims and suits brought by the Finance Authority, including suits in which Kern is joined as a plaintiff, the Finance Authority shall have the sole right to employ counsel and to direct the handling of the claim and litigation and the settlement thereof. The total cost of any infringement action commenced or defended by the Finance Authority under this Paragraph 10(b) shall be borne by the Finance Authority and the Finance Authority shall be entitled to retain all recovery or damages for infringement derived therefrom. The Finance Authority shall have the right to assign its rights under this Paragraph 10(b) to the Director.



(c) Kern's Right to Sue. If within ninety (90) days of receipt of notice of an alleged infringement, the Finance Authority notifies Kern of its intention not to enforce or protect the Licensed Patent as set forth in Paragraph 10(b), Kern shall have the right, but not the obligation, to prosecute, at its own expense, any infringement of the Licensed Patent and to bring any opposition, cancellation or lawsuit in order to enforce and protect the Licensed Patent and Kern shall be entitled to retain all recovery or damages for infringement derived therefrom. In the event Kern elects to prosecute the actual or suspected infringement and if the Finance Authority is a legally indispensable party, Kern shall be permitted to bring such action in the name of the Finance Authority after having provided written notice to the Finance Authority of its intention to do so. Any costs or expenses incurred by the Finance Authority in connection with Kern's prosecution of the infringement of the Licensed Patent under this Paragraph 10(c) shall be borne solely by Kern.

(d) Finance Authority Assistance. If the Finance Authority files suit against a third party for infringement of the Licensed Patent, Kern: (i) shall render all reasonable assistance to the Finance Authority in the prosecution and any negotiations for settlement of the suit; (ii) whenever requested by the Finance Authority, shall sign any and all proper documents relating to the prosecution and any settlement of the suit; (iii) shall have the right to be represented in the suit, and during any negotiations for settlement of the suit, by counsel of its own selection and at its own expense; and (iv) if necessary to permit the Finance Authority to proceed with the suit, shall provide an affidavit for the court stating under oath that it will be bound by any judgment rendered in the suit, and/or shall permit its joinder in the suit as a nominal plaintiff.

## 11. Confidentiality

(a) Restrictions on Use and Disclosure. Each party agrees: (i) to protect and safeguard the other party's Confidential Information against unauthorized use, publication or disclosure with the same degree of care that it uses to protect the confidentiality of its own Confidential Information and, in any event, not less than reasonable care; (ii) to restrict access to the other party's Confidential Information to those of its officers, directors, employees, contractors and agents who demonstrably need such access either to perform its obligations or exercise its rights under this Agreement, and who have entered into confidentiality agreements that afford the Confidential Information the same level of protection afforded by this Agreement; and (iii) not to use, or permit others to use, the other party's Confidential Information except as is reasonably necessary to perform its obligations or exercise its rights under this Agreement. Any reproduction or copy of Confidential Information shall carry the same proprietary and/or confidential notices and legends that appear on the original.

(b) Exceptions. The foregoing restrictions shall not apply to information that: (i) is already known to the receiving party without restriction on use or disclosure at the time of communication to the receiving party; (ii) is or becomes publicly known through no wrongful act or inaction of the receiving party; (iii) has been rightfully received from a third party authorized to make such communication, without restriction on use or disclosure; or (iv) has been independently developed by the receiving party without use of the Confidential Information of the other party. The receiving party shall have the burden of proving the existence of the foregoing exceptions.

(c) Authorized Disclosure. Notwithstanding any other provision of this Agreement, each party may disclose Confidential Information of the other party if such disclosure is required: (i) by an order of a court or other governmental authority of the United States or any other country, or any political subdivision thereof; or (ii) by law or regulation (including, without limitation, to comply with any applicable stock exchange disclosure requirements and the public records laws of the State of Ohio), but only to the extent that any such disclosure is necessary. With respect to any order of a court or other governmental authority, the disclosing party shall first have given notice to the other party hereto, shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued and shall cooperate with the other party to minimize the scope and content of such disclosure. With respect to disclosure required by applicable laws or regulations (including, without limitation, any applicable stock exchange disclosure requirements and the public records laws of the State of Ohio), the disclosing party shall first give notice to the other party hereto and shall, to the extent practicable, allow the other party sufficient time to comment on the content of such disclosure and shall consult with the other party with respect to the comments of such other party.

12. Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER PARAGRAPH 7 OR FROM A BREACH OF PARAGRAPH 11 ABOVE, NEITHER PARTY SHALL BE RESPONSIBLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Non-Recourse. Nothing in this Agreement or the Loan Documents shall constitute a general obligation, debt, or bonded indebtedness, or a pledge of the general credit or taxing power, of the Finance Authority, and neither the Director nor Kern has been given and neither has any right to have excises or taxes levied by the Finance Authority or the taxing authority of any other political subdivision or other local agency for any payment or other obligation required or secured thereby, but all such payments and obligations shall be payable solely from the Project Revenues and from any other collateral that may from time to time be assigned to provide for or secure such payments or other obligations.

14. Assignment. The Finance Authority shall be permitted to freely transfer or assign its rights or obligations under this Agreement without obtaining the consent of Kern so long as (i) the transfer is to the Director, a successor to the Director as holder of the Bond, or any other public body or governmental entity in the State of Ohio or (ii) Kern is in default under this Agreement or the Guaranty and the default has continued for thirty (30) days without cure of the default to the satisfaction of the Finance Authority in its sole discretion. Kern may not transfer or assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the Finance Authority and the Director, which consent may be withheld in the Finance Authority's or the Director's sole discretion. Subject to the foregoing sentences, this Agreement and the terms, conditions, and obligations herein contained shall be binding upon and inure to the benefit of the parties hereto and each of its respective successors and permitted assigns.

15. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when sent by overnight courier

service or mailed by registered or certified mail, postage prepaid, and addressed to the appropriate party at the address listed below. Either party may change its address upon written notice to the other party.

If to the Finance Authority: Columbus-Franklin County Finance Authority  
150 South Front Street, Suite 200  
Columbus, Ohio 43215  
Attn: Executive Director

If to Kern: Kern Inc.  
3940 Gantz Rd.  
Grove City, Ohio 43123  
Attention: Rick Stepp

16. Independent Contractors. The relationship between the parties shall be that of independent contractors. Nothing contained in this Agreement shall make either party a partner, joint venturer, employee or agent of the other party for any purpose whatsoever. Neither party shall have any right, power or authority in any way to bind the other party to the fulfillment of any condition or warranty or to any contract or obligation, expressed or implied, between that party and any other person.

17. Third Party Beneficiary. The Finance Authority and Kern intend that the Director be and is a third party beneficiary to Sections 14 and 27 of this Agreement and shall be entitled to enforce its rights thereunder.

18. Severability. Any term in this Agreement that is prohibited by, or unlawful or unenforceable under, any applicable law or jurisdiction is void without invalidating the remaining terms of this Agreement. However, where the provisions of any such applicable law may be waived, they are hereby waived by either party, as the case may be, to the fullest extent permitted by the law, and the affected terms are enforceable in accordance with the parties' original intent. Should any term of this Agreement be adjudicated unenforceable, the parties shall replace such unenforceable term with an enforceable term that has a substantially similar economic and legal effect as the unenforceable term.

19. Headings. The captions and headings in this Agreement shall be solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

20. Entire Agreement. This Agreement and the Guaranty constitute the entire and final agreement between the parties on the subject matter hereof and supersedes any and all prior oral or written agreements, understandings or discussions on the subject matter hereof.

21. Interpretation. This Agreement shall be deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be interpreted against any party but shall be interpreted according to the rules for the interpretation of arm's length agreements.

22. Amendments. This Agreement may not be amended or supplemented in any respect except by a writing signed by both parties hereto.

23. Waiver. No waiver of any of the terms and conditions of this Agreement shall be binding or effectual for any purpose, unless expressed in a writing and signed by the party hereto giving the same, and any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

24. Governing Law; Jurisdiction. This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of Ohio, without regard to the principles of conflicts of laws. Kern hereby irrevocably submits to the non-exclusive jurisdiction of any United States federal or Ohio state court sitting in Columbus, Ohio in any action or proceeding arising out of or relating to this Agreement and Kern hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in any such court and irrevocably waives any objection it may now or hereafter have as to the venue of any such suit, action or proceeding brought in such a court or that such court is an inconvenient forum. Nothing herein shall limit the right of the Finance Authority to bring proceedings against Kern in the courts of any other jurisdiction. Any judicial proceeding by Kern against the Finance Authority involving, directly or indirectly, any matter in any way arising out of, related to, or connected with this Agreement shall be brought only in a court in Columbus, Ohio.

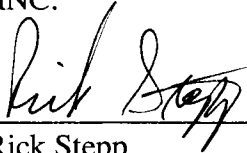
25. Counterparts. This Agreement may be executed in counterparts and such executed counterparts shall constitute one Agreement, binding on both parties, notwithstanding the fact that both parties are not signatory to the original or same counterpart.

26. Further Assurances. The Finance Authority and Kern agree to execute and deliver such further documents (including, but not limited to, separate assignment agreements for the purposes of recording the transfer of the Licensed Patent to the Finance Authority) and to cooperate in such manner as may be necessary to implement and give effect to the agreements contained herein.

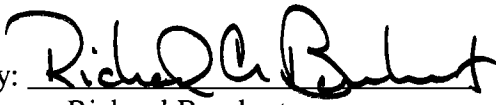
27. Power of Attorney. Kern will assist the Finance Authority, or its designee, in every proper way to secure the rights in the Licensed Patent and Intangibles as provided in Paragraph 2, and will disclose to the Finance Authority all pertinent information and data, and execute all applications, specifications, oaths, assignments and all other instruments and take such steps as the Finance Authority may reasonably request to establish, evidence, maintain, defend or enforce the Finance Authority's exclusive rights in and to the Licensed Patent and Intangibles as set forth in this Agreement. Kern hereby irrevocably appoints the Director and the Finance Authority as Kern's attorney-in-fact, with full authority in the place and stead of Kern and in the name of Kern, from time to time in the Director and the Finance Authority's discretion, to take any action and to execute any instrument that the Director or the Finance Authority may deem necessary or advisable to accomplish the provisions of this Agreement. The foregoing powers are coupled with an interest and are and shall be irrevocable by Kern or by dissolution of Kern or in any manner or for any reason whatsoever.

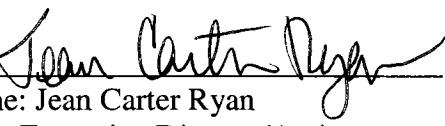
IN WITNESS WHEREOF, this Agreement has been prepared and executed by the parties or their duly empowered representatives to be effective as of the date first above set forth.

KERN, INC.

By:   
Name: Rick Stepp  
Title: Chief Financial Officer

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY

By:   
Name: Richard Barnhart  
Title: Chair of the Board of Directors

By:   
Name: Jean Carter Ryan  
Title: Executive Director/Assistant  
Secretary-Treasurer