

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT																
NATURE OF CONVEYANCE:	SECURITY INTEREST																
<b>CONVEYING PARTY DATA</b>																	
<table border="1"> <thead> <tr> <th>Name</th> <th>Formerly</th> <th>Execution Date</th> <th>Entity Type</th> </tr> </thead> <tbody> <tr> <td>SMF Energy Corporation</td> <td></td> <td>06/29/2009</td> <td>CORPORATION: DELAWARE</td> </tr> <tr> <td>H &amp; W Petroleum Company, Inc.</td> <td></td> <td>06/29/2009</td> <td>CORPORATION: TEXAS</td> </tr> <tr> <td>SMF Services, Inc.</td> <td></td> <td>06/29/2009</td> <td>CORPORATION: DELAWARE</td> </tr> </tbody> </table>	Name	Formerly	Execution Date	Entity Type	SMF Energy Corporation		06/29/2009	CORPORATION: DELAWARE	H & W Petroleum Company, Inc.		06/29/2009	CORPORATION: TEXAS	SMF Services, Inc.		06/29/2009	CORPORATION: DELAWARE	
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SMF Services, Inc.		06/29/2009	CORPORATION: DELAWARE														
<b>RECEIVING PARTY DATA</b>																	
Name:	Wachovia Bank, National Association																
Street Address:	110 East Broward Boulevard																
Internal Address:	Suite 2050																
City:	Fort Lauderdale																
State/Country:	FLORIDA																
Postal Code:	33301																
Entity Type:	National Banking Association - USA:																
<b>PROPERTY NUMBERS Total: 1</b>																	
<table border="1"> <thead> <tr> <th>Property Type</th> <th>Number</th> <th>Word Mark</th> </tr> </thead> <tbody> <tr> <td>Registration Number:</td> <td>3385559</td> <td>SMF</td> </tr> </tbody> </table>	Property Type	Number	Word Mark	Registration Number:	3385559	SMF											
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Registration Number:	3385559	SMF															
<b>CORRESPONDENCE DATA</b>																	
Fax Number:	(404)522-8409																
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>																	
Phone:	404-420-5527																
Email:	rbirdwell@phrd.com																
Correspondent Name:	Rhonda J. Birdwell, Paralegal -- PHRD																
Address Line 1:	285 Peachtree Center Avenue																
Address Line 2:	1500 Marquis Two Tower																
Address Line 4:	Atlanta, GEORGIA 30303																
ATTORNEY DOCKET NUMBER:	866-219																
NAME OF SUBMITTER:	Bobbi Acord																

CH \$40.00 3385559

**900138760**

**TRADEMARK  
 REEL: 004025 FRAME: 0134**

Signature:	/ba/
Date:	07/16/2009
<p>Total Attachments: 11</p> <p>source=SMF Trademark#page1.tif source=SMF Trademark#page2.tif source=SMF Trademark#page3.tif source=SMF Trademark#page4.tif source=SMF Trademark#page5.tif source=SMF Trademark#page6.tif source=SMF Trademark#page7.tif source=SMF Trademark#page8.tif source=SMF Trademark#page9.tif source=SMF Trademark#page10.tif source=SMF Trademark#page11.tif</p>	

## TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Agreement") is made this 29<sup>th</sup> day of June, 2009, by and among WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association having an office at 110 East Broward Boulevard, Suite 2050, Fort Lauderdale, Florida 33301 (together with its successors and assigns, "Lender"), SMF ENERGY CORPORATION, a Delaware corporation ("SMF"), H & W PETROLEUM COMPANY, INC., a Texas corporation ("H&W"), and SMF SERVICES, INC., a Delaware corporation ("SSI" and, together with SMF and H&W, collectively "Grantor"), each having its principal place of business at 200 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309.

### Recitals:

Lender and Grantor 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"), pursuant to which Lender has made certain loans and other financial accommodations to Grantor from time to time.

Grantor has requested that Lender enter into that certain Eighteenth Amendment to Loan and Security Agreement, of even date herewith (the "Eighteenth Amendment"), and agree to make certain loans and other financial accommodations to Grantor from time to time hereafter pursuant to the terms of the Loan Agreement, as amended by the Eighteenth Amendment.

It is a condition precedent to the effectiveness of the Eighteenth Amendment and Lender's agreements contained therein that Grantor execute and deliver this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby severally acknowledged, Grantor and Lender, intending to be legally bound hereby, agree as follows:

1. Each capitalized term used and not otherwise defined herein (including, without limitation, in the Recitals hereto) shall have the meaning ascribed to such term in the Loan Agreement. As used herein, the term "Full Payment" shall mean the full and final payment of all of the Obligations and the termination of the commitments to provide Loans thereunder; and the term "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of Florida.

2. To secure the prompt payment and performance of all of the Obligations, Grantor hereby grants, assigns and pledges to Lender a continuing security interest in and lien upon all of the following property of Grantor, whether now owned or existing or hereafter created or acquired (collectively, the "Trademark Collateral"):

(a) all trademarks, trademark registrations, trade names and trademark applications, including, without limitation, the trademarks and applications listed on Exhibit A attached hereto and made a part hereof (as the same may be amended from time to time in accordance herewith), and (i) all renewals thereof, (ii) all income, royalties, damages and payments now or hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trademark registrations, trade

names and applications, together with the items described in clauses (i)-(iv), are hereinafter referred to collectively as the "Trademarks");

(b) the goodwill of Grantor's business connected with and symbolized by the Trademarks; and

(c) all proceeds of the foregoing.

3. Grantor hereby represents and warrants to Lender that:

(a) Each of the Trademarks is subsisting and has not been adjudged invalid or unenforceable;

(b) Upon filing of this Agreement in the United States Patent and Trademark Office, this Agreement will create a legal, valid and perfected lien upon and security interest in the Trademark Collateral that is registered in that office and that is listed on Exhibit A attached hereto, enforceable against Grantor and all third Persons in accordance with its terms;

(c) No claim has been made that the use of any of the Trademarks does or may violate the rights of any Person;

(d) Grantor has the unqualified right to enter into this Agreement and perform the terms hereof;

(e) Each of the Trademarks is valid and enforceable; and

(f) Grantor is the sole and exclusive owner of the entire right, title and interest in and to all of the Trademark Collateral, free and clear of any liens, charges and encumbrances (except licenses permitted pursuant to **paragraph 6** below), including, without limitation, pledges, assignments, licenses, registered user agreements and covenants by Grantor not to sue third Persons, except security interests and liens permitted under the Loan Agreement.

4. Grantor hereby covenants and agrees with Lender that:

(a) Grantor will maintain the quality of the products associated with the Trademarks at a level consistent with the quality at the time of this Agreement, and will, upon Lender's request, provide Lender quarterly with a certificate to that effect, in the form attached hereto as Exhibit B and made a part hereof, executed by an officer of Grantor;

(b) Grantor will not change the quality of the products associated with the Trademarks without Lender's prior written consent; and

(c) Except for Trademarks abandoned by Grantor in the ordinary course of business (provided that such abandonment could not reasonably be expected to have a material adverse effect on Grantor's business or Lender's rights under the Financing Documents), Grantor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the registered Trademarks, including, without limitation, filing an affidavit of use with the United States Patent and Trademark Office and any applicable foreign filing office for each registered Trademark as required by applicable law to maintain the registration thereof without loss of protection therefor.

5. Grantor hereby grants to Lender and its employees and agents, with respect to Grantor and the Trademark Collateral, the visitation, audit, and inspection rights set forth in the Loan Agreement with respect to Grantor and the Collateral.

6. Until Full Payment of all of the Obligations, Grantor shall not enter into any license agreement relating to any of the Trademarks with any Person except non-exclusive licenses to customers, vendors, suppliers, agents or other service providers of Grantor in the regular and ordinary course of Grantor's business as presently conducted and for reasonable and customary compensation, and shall not become a party to any agreement with any Person that is inconsistent with Grantor's obligations under this Agreement.

7. If, before Full Payment of all of the Obligations, Grantor shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark or any renewal of any Trademark, then the provisions of **paragraph 2** hereof shall automatically apply thereto, and Grantor shall give to Lender prompt notice thereof in writing.

8. Grantor irrevocably authorizes and empowers Lender to modify this Agreement by amending **Exhibit A** to include any future trademarks and trademark applications under **paragraph 2** or **paragraph 7** hereof.

9. At any time that an Event of Default exists, Lender shall have, in addition to all other rights and remedies given it by this Agreement and the other Financing Agreements, all rights and remedies of a secured party under the UCC and all other rights and remedies under applicable law. Without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without notice (except as described in the next sentence, if required by applicable law) or demand whatsoever to Grantor, each of which Grantor hereby expressly waives, collect directly any payments due to Grantor in respect of the Trademark Collateral, or sell at public or private sale or otherwise realize upon all or, from time to time, any of the Trademark Collateral or any interest that Grantor might have therein. Grantor hereby agrees that ten (10) days notice to Grantor of any public or private sale or other disposition of any of the Trademark Collateral shall be reasonable notice; provided, however, that no notice shall be required hereunder if not otherwise required by applicable law. At any such sale or disposition, Lender may, to the extent permitted by applicable law, purchase the whole or any part of the Trademark Collateral sold, free from any right of redemption on the part of Grantor, which right Grantor hereby expressly waives and releases. After deducting from the proceeds of such sale or other disposition of the Trademark Collateral all costs and expenses incurred by Lender in enforcing its rights hereunder (including, without limitation, all attorneys' fees), Lender shall apply the remainder of such proceeds to the payment of the Obligations, in such order and manner as may be authorized or required by the Loan Agreement. Any remainder of the proceeds after Full Payment of all of the Obligations shall be paid over to Grantor. If any deficiency shall arise, Grantor and each guarantor of the Obligations shall remain jointly and severally liable to Lender therefor.

10. Grantor hereby makes, constitutes and appoints Lender, and any officer or agent of Lender as Lender may select, as Grantor's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall exist: to endorse Grantor's name on all applications, documents, papers and instruments necessary for Lender to continue the registration of or to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of any Trademark Collateral to any other Person. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an

interest, shall be irrevocable until Full Payment of all of the Obligations.

11. Any and all fees, costs and expenses, of whatever kind or nature (including, without limitation, attorneys' fees and legal expenses) incurred by Lender in connection with the preparation of this Agreement and any other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including, without limitation, all taxes in connection therewith) with the United States Patent and Trademark Office or in any other public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, security interests and liens, or otherwise in protecting, maintaining and preserving any Trademark Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to any Trademark Collateral, shall be borne and paid by Grantor (it being the intent of Grantor and Lender that Grantor shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all renewal fees with respect to the Trademarks) or, if paid by Lender in its sole discretion, shall be reimbursed by Grantor **on demand** by Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the per annum rate of interest then applicable for Revolving Loans that are LMIR Loans.

12. Grantor shall use its commercially reasonable efforts to detect any infringers of the Trademarks and shall notify Lender in writing of material infringements detected. Grantor shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark application for a Trademark pending as of the date of this Agreement or thereafter until Full Payment of all of the Obligations, to make federal application on registrable but unregistered Trademarks (subject to Grantor's reasonable discretion in the ordinary course of business or, during the existence of an Event of Default, promptly upon Lender's request), to file and prosecute opposition and cancellation proceedings, to file and prosecute lawsuits to enforce each of the Trademarks and to do any and all acts which are deemed necessary or desirable by Lender to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with such applications or proceedings shall be borne by Grantor. Grantor shall not abandon any right to file a trademark application, or any pending trademark application or trademark without the prior written consent of Lender, unless Grantor has determined that such trademark application or trademark is no longer material to the conduct of its business.

13. Notwithstanding anything to the contrary contained in **paragraph 12** hereof, at any time that an Event of Default exists, Lender shall have the right, but shall in no way be obligated, to bring suit instead in its own name to enforce the Trademarks and any license hereunder, or to defend any suit or counterclaim in its own name to protect the Trademarks or any license hereunder, in either of which events Grantor shall at the request of Lender do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Lender to aid such enforcement, or defense, and Grantor shall promptly, **upon demand**, reimburse and indemnify Lender for all costs and expenses incurred in the exercise of Lender's rights under this **paragraph 13**.

14. If Grantor fails to comply with any of its obligations hereunder and at the time of such failure or as a result thereof an Event of Default exists, then to the extent permitted by applicable law, Lender may discharge such obligations in Grantor's name or in Lender's name, in Lender's sole discretion, but at Grantor's expense, and Grantor agrees to reimburse Lender in full for all expenses, including, without limitation, attorneys' fees, incurred by Lender in prosecuting, defending or maintaining the Trademarks or Lender's interest therein pursuant to this Agreement.

15. No course of dealing between Grantor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under any of the other Financing Agreements shall operate as a waiver thereof; nor shall any single or

partial exercise of any right, power or privilege hereunder or thereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

16. All of Lender's rights and remedies with respect to the Trademark Collateral, whether established hereby or by any of the other Financing Agreements, or by any other agreements or by applicable law, shall be cumulative and may be exercised singularly or concurrently.

17. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable, in whole or in part, in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

18. This Agreement, together with the other Financing Agreements, constitutes and expresses the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions, whether expressed or implied, oral or written. This Agreement is subject to modification only by a writing signed by the parties, except as provided in **paragraph 8** hereof.

19. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Lender and upon the successors and permitted assigns of Grantor. Grantor shall not assign its rights or delegate its duties hereunder without the prior written consent of Lender.

20. Grantor hereby waives notice of Lender's acceptance hereof.

21. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida.

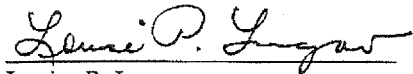
22. To the fullest extent permitted by applicable law, Grantor and Lender each waives the right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or related to this Agreement or the Trademark Collateral.

*[Remainder of page intentionally left blank - signatures commence on following page]*

WITNESS the execution hereof under seal as of the day and year first above written.


"GRANTOR":

ATTEST:

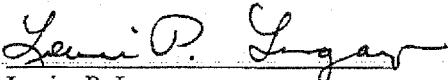
  
Louise P. Lungaro  
Secretary

[SEAL]

**SMF ENERGY CORPORATION**


By:   
Richard E. Gathright  
Chief Executive Officer and President

ATTEST:

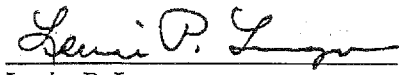
  
Louise P. Lungaro  
Secretary

[SEAL]

**H & W PETROLEUM COMPANY, INC.**


By:   
Richard E. Gathright  
Chief Executive Officer and President

ATTEST:

  
Louise P. Lungaro  
Secretary

[SEAL]

**SMF SERVICES, INC.**

By:   
Richard E. Gathright  
Chief Executive Officer and President

*[Remainder of page intentionally left blank - signatures continue on following page]*



Accepted and agreed:

WACHOVIA BANK, NATIONAL  
ASSOCIATION ("Lender")

By: Pat Cloninger  
Pat Cloninger  
Director

STATE OF Florida §  
COUNTY OF Broward §

BEFORE ME, the undersigned authority, on this day personally appeared **Richard E. Gathright**, the **Chief Executive Officer and President** of each of **SMF ENERGY CORPORATION, H & W PETROLEUM COMPANY, INC.,** and **SMF SERVICES, INC.,** to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacities therein stated, and as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 29<sup>th</sup> day of June, 2009.



**KAREN L. HILL**  
MY COMMISSION # DD 863925  
EXPIRES: March 31, 2013  
Bonded Thru Budget Notary Services

*Karen L Hill*

Notary Public

My Commission Expires: March 31, 2013

\_\_\_\_\_  
[NOTARIAL SEAL]

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared **Pat Cloninger**, **Director** of **WACHOVIA BANK, NATIONAL ASSOCIATION**, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said national banking association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of June, 2009.

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

My Commission Expires:

\_\_\_\_\_  
[NOTARIAL SEAL]

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared **Richard E. Gathright**, the **Chief Executive Officer and President** of each of **SMF ENERGY CORPORATION, H & W PETROLEUM COMPANY, INC.,** and **SMF SERVICES, INC.,** to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacities therein stated, and as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of June, 2009.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
[NOTARIAL SEAL]

STATE OF Florida §

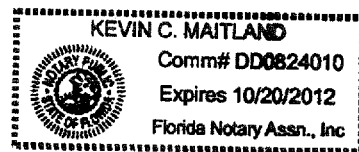
COUNTY OF Broward §

BEFORE ME, the undersigned authority, on this day personally appeared **Pat Cloninger**, **Director** of **WACHOVIA BANK, NATIONAL ASSOCIATION**, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said national banking association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 29<sup>th</sup> day of June, 2009.

Kevin C. Maitland  
Notary Public  
My Commission Expires:

10/20/2012  
[NOTARIAL SEAL]



Trademark Security Agreement

EXHIBIT A

Trademarks

<u>Trademark</u>	<u>Registered Owner</u>	<u>Federal Registration Number</u>	<u>Registration Date</u>
SMF Service Mark Registration	SMF Energy Corporation	3,385,559	02/19/2008

Trademark Applications

None

EXHIBIT B

CERTIFICATE

The undersigned officer of \_\_\_\_\_ (the "Grantor") DOES HEREBY CERTIFY to Wachovia Bank, National Association ("Lender") that the quality of the products associated with the Trademarks listed on Exhibit A of the Trademark Security Agreement dated June \_\_, 2009, between Grantor and Lender (as amended from time to time to include future trademarks and trademark applications, the "Agreement"), has been maintained at a level consistent with the quality of such products at the time of the execution of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_