

04-04-2000

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK



101306258

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New

☐ Resubmission (Non-Recordation)

Document ID #

☐ Correction of PTO Error

Reel #

Frame #

☐ Corrective Document

Reel #

Frame #

Conveyance Type

☐ Assignment

☐ License

☒ Security Agreement

☐ Nunc Pro Tunc Assignment

☐ Merger

☐ Change of Name

☐ Other

Effective Date
Month Day Year

Conveying Party

☐ Mark if additional names of conveying parties attached

Name Benteler Automotive Corporation

Execution Date
Month Day Year
03 22 2000

Formerly Benteler Industries, Inc.

☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association

☐ Other

☒ Citizenship/State of Incorporation/Organization Delaware

Receiving Party

☐ Mark if additional names of receiving parties attached

Name Foothill Capital Corporation, as Collateral Agent

DBA/AKA/TA

Composed of

Address (line 1) 1111 Santa Monica Blvd.

Address (line 2) Suite 1500

Address (line 3) Los Angeles

California, USA

90025

City

State/Country

Zip Code

☐ Individual ☐ General Partnership ☐ Limited Partnership

☒ Corporation ☐ Association

☐ Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

☒ Citizenship/State of Incorporation/Organization California

FOR OFFICE USE ONLY

04/03/2000 DC0ATES 00000080 2079650

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40.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK

REEL: 002042 FRAME: 0595

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**RETURN TO:
FEDERAL RESEARCH CORP.
400 SEVENTH STREET NW
SUITE 101
WASHINGTON DC 20004**

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

☐ Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,079,650"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed ☐

Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

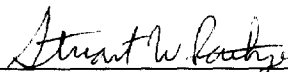
Authorization to charge additional fees:

Yes ☐ No ☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Stuart W. Rathje



3/28/00

Name of Person Signing

Signature

Date Signed

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (this "Agreement") is made as of the 22nd day of March, 2000, between Benteler Automotive Corporation, a Delaware corporation, fka Benteler Industries, Inc., having a mailing address at 50 Monroe Avenue N.W., Suite 500, Grand Rapids, Michigan 49503-2643 ("Assignor") and Foothill Capital Corporation, as Collateral Agent ("Collateral Agent") for the Administrative Agent and the Lenders (the Collateral Agent, the Administrative Agent and each of the Lenders, the "Secured Parties") under the Loan and Security Agreement dated as of even date herewith among the Assignor, the Lenders, the Administrative Agent and the Collateral Agent (as the same may be amended and modified from time to time, the "Loan Agreement"), having a mailing address at 11111 Santa Monica Blvd., Suite 1500, Los Angeles, California 90025.

PRELIMINARY STATEMENT. Reference is hereby made to the Loan Agreement. All capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement. Assignor has executed and delivered to the Collateral Agent and the other Secured Parties various Loan Documents evidencing certain Obligations in respect of credit extended to Assignor by the Lenders, and each of them. In order to induce the Secured Parties to execute and deliver certain of the Credit Documents, to extend the credit evidenced thereby or referred to therein, or to forbear from demanding immediate payment of the Obligations, Assignor has agreed to grant a security interest in, and to collaterally assign to the Collateral Agent, for the ratable benefit of the Secured Parties, certain trademark rights.

Pursuant to the Loan Agreement, Assignor has granted to Collateral Agent a lien on and security interest in, *inter alia*, machinery, equipment formulations, manufacturing procedures, quality control procedures, product specifications, goodwill, customer lists and trade secrets (collectively, the "Other Assets") relating to products sold under the Trademarks, whereby Collateral Agent shall have the right to foreclose on the Trademarks and the Other Assets in the event of the occurrence and continuance of an Event of Default, as that term is defined in the Loan Agreement, in order that the owner of the Trademarks may continue the publication, marketing and distribution of products to be sold under the Trademarks and maintain substantially the same product specifications and quality as maintained by Assignor. This Agreement is executed in connection with the Loan Agreement.

NOW, THEREFORE, in consideration of the premises, Assignor hereby agrees with Collateral Agent as follows:

1. Assignment of Trademarks. (a) To secure the complete and timely satisfaction of all Obligations, as that term is defined in the Loan Agreement, of Assignor to the Secured Parties, and to each of them, Assignor hereby grants, assigns and conveys to Collateral Agent, for the ratable benefit of the Secured Parties pursuant to the Loan Agreement, a continuing security interest in all of its right, title and interest in and to any and all now owned or existing or

hereafter acquired, created or arising trade names, trademarks, service marks, designs, trademark, service mark and trade name registrations, and applications for registration (including registrations resulting therefrom), logos and other business identifiers, domestic and foreign, and all rights of whatever kind appurtenant thereto (whether pursuant to a license or otherwise), including without limitation all of those used by the Assignor in whole or in part in conducting its business and including without limitation the marks, names, applications and registrations which are listed in Schedule A attached hereto, together with all proceeds and rights to receive income therefrom (such as, without limitation, licenses, royalties and proceeds of infringement suits), the right (but not the obligation) to register claims under any law and to apply for, renew and extend the same, the right to sue for past, present, and future infringements, the common law rights therein, goodwill of the businesses to which they relate and the rights to apply for registrations therefor throughout the world (collectively the "Trademarks"), and the good will of the business to which each of the Trademarks relates.

(b) In addition to the grant of a security interest provided in paragraph 1(a), Assignor hereby assigns and conveys to Collateral Agent, for the ratable benefit of the Secured Parties pursuant to the Loan Agreement, all of its right, title and interest in and to the Trademarks, which assignment and conveyance shall be evidenced by an Assignment of Marks, Registrations and Applications to be executed contemporaneously herewith, as the same may be amended and modified from time to time pursuant to paragraph 4 hereof or otherwise (the "Assignment"), the form of which is attached hereto as Exhibit 1; provided, however, that such assignment and conveyance shall be and become of force and effect only, and shall immediately and automatically become of force and effect without further action, upon notice to Assignor by Collateral Agent of the occurrence of an Event of Default, and Collateral Agent shall be authorized to record the Assignment with the Patent and Trademark Office only upon the furnishing of such notice. Unless and until Collateral Agent provides Assignor with notice of an Event of Default, Assignor shall own the title to the Trademarks and shall have the exclusive, non-transferable right to use the Trademarks on and in connection with products sold by Assignor, for Assignor's own benefit and account and for none other.

2. Representations and Warranties. Assignor covenants and warrants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, and, except as disclosed in Schedule 2(a) attached hereto, are not subject to or a subject of any pending or, to the best of Assignor's knowledge, threatened litigation;

(b) To the best of Assignor's knowledge, each of the Trademarks is valid and enforceable;

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

(d) Except as disclosed in Schedule 2(d) attached hereto, Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation

pledges, assignments, licenses, registered user agreements and covenants by Assignor not to sue third persons;

(e) Assignor has the unqualified right to enter into this Agreement and perform its terms;

(f) Assignor has used, and will continue to use for the duration of this Agreement, notice in connection with its use of the Trademarks;

(g) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its publication, marketing and distribution of products sold under the Trademarks;

(h) Schedule A attached hereto identifies all of the Trademarks that Assignor owns or of which Assignor is entitled to the benefit; and

(i) Assignor agrees not to sell or assign its interest in, or grant any license under the Trademarks, without the prior written consent of Collateral Agent.

3. Collateral Agent's Right to Inspect. In addition to the rights granted under the Loan Agreement, Assignor hereby grants to Collateral Agent and to the Secured Parties, and to their respective employees and agents, the right to visit Assignor's plants and facilities which publish or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto upon reasonable notice to Assignor and at reasonable times during regular business hours. Assignor shall do any and all acts required in good faith by Collateral Agent to ensure Assignor's compliance with paragraph 2(g).

4. Rights to New Trademarks. If, before the Obligations shall have been satisfied in full and Assignor has no further right to obtain extensions of credit pursuant to the Credit Documents, Assignor shall obtain rights to any new trade names, trademarks, service marks, designs, or trademark, service mark and trade name registrations or applications, the provisions of paragraph 1 shall automatically apply to such new Trademarks and Assignor shall give Collateral Agent prompt written notice thereof.

Assignor authorizes Collateral Agent to modify this Agreement, without the signature of Assignor, by amending Schedule A and the Assignment to include any new Trademarks covered by paragraphs 1 and 4 hereof.

5. Remedies upon Default. Upon Collateral Agent's provision of notice to Assignor of the occurrence of an Event of Default, as that term is defined in the Loan Agreement, Assignor's ownership and rights in the Trademarks shall terminate forthwith, and Collateral Agent shall have, in addition to all other rights and remedies given it by this Agreement, those provided in the Loan Agreement and Loan Documents and those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located.

6. Termination of Agreement. At such time as Assignor shall completely satisfy all of the Obligations and shall have no further right to obtain extensions of credit pursuant to the Loan Documents, this Agreement shall terminate and Collateral Agent shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by Collateral Agent pursuant hereto.

7. Fees and Expenses. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and legal expenses incurred by Collateral Agent in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by Assignor on demand by Collateral Agent and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in any of the Loan Documents.

8. Duties of the Assignor. Assignor agrees that, until all of the Obligations shall have been satisfied in full and Assignor shall have no further right to obtain extensions of credit pursuant to the Loan Documents, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Agreement, without Collateral Agent's prior written consent. Assignor further agrees that at any time and from time to time, at the expense of Assignor, Assignor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Collateral Agent may in good faith request, in order to perfect and protect the security interest and collateral assignment granted or purported to be granted hereby or to enable Collateral Agent to exercise its rights and remedies hereunder.

Assignor shall have the duty to prosecute diligently any trademark applications of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full and Assignor shall have no further right to obtain extensions of credit pursuant to the Loan Documents, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by Assignor. After an Event of Default, the Assignor shall not abandon any Trademark without the consent of the Collateral Agent, which consent shall not be unreasonably withheld.

Assignor shall have the right, to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event Collateral Agent may, if necessary, be joined as a nominal party to such suit if Collateral Agent shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify Collateral Agent for

all damages, costs and expenses, including attorney's fees, incurred by Collateral Agent in the fulfillment of the provisions of this paragraph 8.

9. Appointment as Attorney-In-Fact. In the event of the occurrence of an Event of Default, Assignor hereby irrevocably authorizes and empowers Collateral Agent to make, constitute and appoint any officer or agent of Collateral Agent as Collateral Agent may select, in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary to assign, pledge, convey or otherwise transfer or dispose of all of Assignor's right, title and interest in and to the Trademarks to Collateral Agent or any other party, or to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or necessary for Collateral Agent to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable for the life of this Agreement. The rights and powers conferred upon Collateral Agent under this Agreement are solely to protect its interest in the Trademarks and shall not impose any duty upon Collateral Agent to exercise any such rights or powers. Collateral Agent shall be accountable only for amounts that Collateral Agent actually receives as a result of the exercise of such rights and powers and neither Collateral Agent nor any of its officers, directors, employees or agents shall be responsible to Assignor for any act or failure to act, except for Collateral Agent's own gross negligence or willful misconduct.

10. Right to Enforce Trademarks. If Assignor fails to comply with any of its obligations hereunder, Collateral Agent may do so in Assignor's name or in Collateral Agent's name, but at Assignor's expense, and Assignor hereby agrees to reimburse Collateral Agent in full for all expenses, including reasonable attorney's fees, incurred by Collateral Agent in protecting, defending and maintaining the Trademarks.

11. Cumulative Rights and Remedies; Waiver. All of Collateral Agent's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

No course of dealing between Assignor and Collateral Agent, nor any failure to exercise, nor any delay in exercising, on the part of Collateral Agent, any right, power or privilege hereunder or under the Loan Agreement 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 further exercise thereof or the exercise of any other right, power or privilege.

12. Notices. (a) All communications under this Agreement shall be in writing and shall be mailed by certified mail, postage prepaid, by facsimile, or by commercial overnight courier (1) if to Collateral Agent, at the following address, or at such other address as may have been furnished in writing to Assignor by Collateral Agent:

Foothill Capital Corporation
11111 Santa Monica Blvd., Suite 1500
Los Angeles, California 90025
Attn: Business Finance Division Manager
Fax: (310) 478-9788

(2) if to Assignor, at the following address, or at such other address as may have been furnished in writing to Collateral Agent by Assignor:

Benteler Automotive Corporation
Corporate Office
50 Monroe Avenue, N.W., Suite 500
Grand Rapids, Michigan 49503-2643
Attn: Keith J. Carpentier, Vice President and CFO
Fax: (616) 732-1695

(b) any notice so addressed and mailed by registered or certified mail shall be deemed to be given on the third Business Day next following the postmark dated which it bears; or by overnight courier shall be deemed to be given when delivered; and any notice sent by telecopier shall be deemed to be given when confirmed.

13. Enforceability; Governing Law. 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. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Ohio, without regard to the conflicts of law principles thereof.

14. Modification. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 4.


15. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties; provided, however, that the foregoing provisions shall not invalidate or otherwise modify the restriction imposed on Assignor hereunder with respect to transferring any part of or interest in the Trademarks.

16. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provisions of this Agreement.

IN WITNESS WHEREOF, Assignor and Collateral Agent have executed this instrument as of the date set forth above.

ASSIGNOR:

BENTELER AUTOMOTIVE CORPORATION,
fka Benteler Industries, Inc.

By: 
Keith J. Carpentier
Its: Vice President and Chief Financial Officer

COLLATERAL AGENT:

FOOTHILL CAPITAL CORPORATION,
as Collateral Agent

By: _____

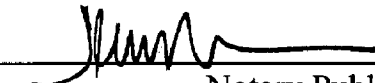
Its: _____

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

On this 17th day of March 2000, before me, a Notary Public in and for said County and State, personally appeared Keith J. Carpentier, known to me to be the person who as Vice President and Chief Financial Officer of Benteler Automotive Corporation, fka Benteler Industries, Inc., the corporation which executed the foregoing instrument, sign the same, and acknowledge to me that he did so sign said instrument in the name and upon behalf of said company as such officer, and by authority of the resolution of its Board of Directors; and that the same is his free act and deed as such officer, and the free and corporate act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public

JENNIFER T. MILLS
ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
LIFETIME COMMISSION

IN WITNESS WHEREOF, Assignor and Collateral Agent have executed this instrument as of the date set forth above.

ASSIGNOR:

BENTELER AUTOMOTIVE CORPORATION,
fka Benteler Industries, Inc.

By: _____
Keith J. Carpentier
Its: Vice President and Chief Financial Officer

COLLATERAL AGENT:

FOOTHILL CAPITAL CORPORATION,
as Collateral Agent

By: _____
Christopher J. Jann
Its: Vice President

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

On this 17th day of March 2000, before me, a Notary Public in and for said County and State, personally appeared Keith J. Carpentier, known to me to be the person who as Vice President and Chief Financial Officer of Benteler Automotive Corporation, fka Benteler Industries, Inc., the corporation which executed the foregoing instrument, sign the same, and acknowledge to me that he did so sign said instrument in the name and upon behalf of said company as such officer, and by authority of the resolution of its Board of Directors; and that the same is his free act and deed as such officer, and the free and corporate act and deed of said company.

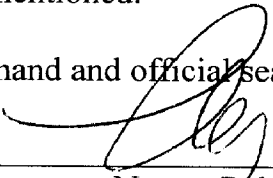
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

STATE OF Massachusetts
COUNTY OF Suffolk, SS:

On this 23 day of March, 2000, before me, a Notary Public in and for said County and State, personally appeared Christopher O'Conner, who acknowledged himself to be the Vice President of Foothill Capital Corporation, the corporation that executed the foregoing instrument in its capacity as Collateral Agent for the ratable benefit of the Secured Parties, and who acknowledged that he, as such officer of said corporation, being duly authorized by the Board of Directors of said corporation, did execute the foregoing instrument for and on behalf of said corporation in such capacity and that such signing is the free act and deed of said corporation for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

COLUMBUS/791033 v.07

SCHEDULE A

List of Trademarks

	<u>Trademark</u>	<u>Serial No.</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
1.	BENCHMARC	74-600,189	2,079,650	July 15, 1997

SCHEDULE 2(A)

Pending Litigation

None.

SCHEDULE 2(D)

Liens, Charges, Etc.

None.

EXHIBIT 1
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ASSIGNMENT OF MARKS, REGISTRATIONS AND APPLICATIONS

WHEREAS, Benteler Automotive Corporation, a Delaware corporation, fka Benteler Industries, Inc., having a mailing address at 50 Monroe Avenue, N.W., Suite 500, Grand Rapids, Michigan 49503-2643 ("Assignor") is the owner of the trademark registrations and the trademark applications identified by serial number shown in Schedule A (collectively "the Marks"); and

WHEREAS, Foothill Capital Corporation, a California corporation with offices at 11111 Santa Monica Blvd., Suite 1500, Los Angeles, California 90025, as Collateral Agent for the Administrative Agent, the Lenders and the Collateral Agent (the Administrative Agent, Collateral Agent and each of the Lenders, the "Secured Parties") from time to time party to the Loan and Security Agreement among the Collateral Agent and the Secured Parties, dated March ___, 2000, as the same may be amended and modified from time to time ("Assignee"), is desirous of acquiring the Marks;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby assign unto Assignee all right, title and interest in and to the Marks, including all claims for damages for past infringement, together with the goodwill of the businesses symbolized by the Marks.

BENTELER AUTOMOTIVE CORPORATION, fka
Benteler Industries, Inc.

By: _____

Keith J. Carpentier

Its: Vice President and Chief Financial Officer

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF OHIO

COUNTY OF FRANKLIN, SS:

On this 17th day of March 2000, before me, a Notary Public in and for said County and State, personally appeared Keith J. Carpentier, known to me to be the person who as Vice President and Chief Financial Officer of Benteler Automotive Corporation, fka Benteler Industries, Inc., the company which executed the foregoing instrument, sign the same, and acknowledge to me that he did so sign said instrument in the name and upon behalf of said company as such officer, and by authority of the resolution of its Board of Directors; and that the same is his free act and deed as such officer, and the free and corporate act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

COLUMBUS/791033 v.02