

02-07-2003



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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Fulcrum Analytics, Inc.

2-4-03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Delaware Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: December 19, 2002

2. Name and address of receiving party(ies)

Name: Hollinger Capital, LLC

Internal Address: 18th Floor

Street Address: 712 Fifth Avenue

City: New York State: NY Zip: 10019

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Limited Liability Company - Delaware

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2338074; 2423347 2160901; 2669641; 2641567

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Etahn M. Cohen

Internal Address: Sugar, Friedberg & Felsenthal

Street Address: 30 N. LaSalle Street, #3000

City: Chicago State: IL Zip: 60602

6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 3.41): \$ 140

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Etahn M. Cohen

Name of Person Signing

Signature

January 20, 2003

Date

Total number of pages including cover sheet, attachments, and document:

18

02/06/2003 6TON11 00000142 2338074

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:8521 40.00 OP 02 FC:8522 100.00 OP

TRADEMARK REEL: 002666 FRAME: 0001

**AMENDED AND RESTATED
TRADEMARK SECURITY AGREEMENT**

This Amended and Restated Trademark Security Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement") is made and entered into as of the 19th day of December, 2002, between FULCRUM ANALYTICS, INC., a Delaware corporation (the "Assignor"), and HOLLINGER CAPITAL, LLC, as agent for certain Lenders referred to below (the "Agent").

Background

Assignor has made and may make various promissory notes (collectively, as amended, amended and restated, supplemented or otherwise modified from time to time, the "Secured Notes") payable to various Lenders (as defined in the Security Agreement (as hereinafter defined)), which are or will be the beneficiaries of an Amended and Restated Security Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), dated as of the date hereof between Agent and Assignor. The Assignor is executing and delivering this Agreement as collateral security for the Secured Notes. The Security Agreement, the Secured Notes, the other agreements securing the repayment of the Secured Notes and the Financing Documents (as defined in the Security Agreement).

NOW, THEREFORE, in consideration of the premises and to induce the Agent and the Lenders to enter into the Loan Documents and to make the loans evidenced thereby, and intending to be legally bound hereby, the parties agree as follows:

1. Grant of Security Interest. As additional collateral security for the payment and performance of the obligations (monetary or otherwise) of the Assignor under the Secured Notes, any other Financing Document or any other document or instrument executed in connection therewith, in each case how so ever created), arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due (the "Secured Indebtedness"), the Assignor hereby grants and conveys to the Agent, for the benefit of the Lenders, and its and their successors and assigns, a security interest in and to all of the Assignor's right, title and interest existing in the trademarks which are registered or for which application for registration has been made with the United States Patent and Trademark Office in the name of the Assignor, as listed on Exhibit A attached hereto (as the same may be amended pursuant hereto from time to time), and in the trademarks hereafter acquired or filed by the Assignor, including without limitation all renewals thereof, all proceeds thereof including, without limitation, proceeds of infringement suits to sue for past, present and future infringements and all rights corresponding thereto in the United States, together with any goodwill of the business in connection with which all such trademarks are used ("Trademarks").

2. Representations and Warranties. The Assignor represents and warrants to the Agent that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

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

(c) There is no outstanding claim that the use of any of the Trademarks violates the rights of any third person;

(d) The 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 the Assignor not to sue third persons);

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

(f) The Assignor will use for the duration of this Agreement, proper statutory notice, where appropriate, in connection with its use of the Trademarks.

3. New Trademarks. If before the Secured Indebtedness shall have been paid in full, the Assignor shall obtain rights to any new trademarks, the provisions of Section 1 shall automatically apply thereto and the Assignor shall give the Agent prompt written notice thereof.

4. Covenants. The Assignor covenants that until the Secured Indebtedness is fully satisfied:

(a) Further Documentation; Pledge of Instruments. At any time and from time to time, upon the written request of the Agent, the Assignor will, at its sole cost and expense, promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Agent may reasonably deem necessary in obtaining the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code with respect to the liens and security interests granted hereby. The Assignor also hereby authorizes the Agent to file any such financing or continuation statement to the extent permitted by applicable law. After Default (as defined in the Security Agreement) which is continuing, if any amount payable under or in connection with any of the Trademarks shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged and delivered to the Agent hereunder, duly endorsed in a manner satisfactory to the Agent.

(b) Maintenance of Trademarks. The Assignor will not do any act, or omit to do any act, whereby the Trademarks which are necessary for the operation of the Assignor's

business or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise diminish in value, and shall notify the Agent immediately if it knows of any reason or has reason to know of any ground under which this result may occur. The Assignor shall take appropriate action at its expense to halt the infringement of the Trademarks.

(c) Indemnification. The Assignor assumes all responsibility and liability arising from the use of the Trademarks, and the Assignor hereby indemnifies and holds the Agent harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of the Assignor's operations of its business from the use of the Trademarks.

(d) Limitation of Liens on Trademarks. The Assignor will not create, permit or suffer to exist, and will defend the Trademarks against and take such other action as is necessary to remove any lien, security interest, encumbrance, claim or right, in or to the Trademarks.

(e) Notices. The Assignor will advise the Agent promptly, in reasonable detail, (i) of any lien or claim made or asserted against any of the Trademarks, (ii) of any material change in the composition of the Trademarks, and (iii) of the occurrence of any other event which would have a material adverse effect on the value of any of the Trademarks or on the security interests created hereunder.

(f) Limitation on Further Uses of Trademarks. The Assignor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license, or otherwise dispose of any of the Trademarks, without prior written consent of the Agent.

5. Remedies, Rights Upon Event of Default

(a) Pursuant to this Agreement and as a condition to various of the Lenders making various loans to the Assignor, the Assignor shall execute and deliver to the Agent a written Assignment of Trademarks (attached hereto as Exhibit B) (the "Assignment"). The Agent shall hold the Assignment in escrow until (i) such time as a Default (as defined in the Security Agreement) occurs and is continuing and the Agent has elected to exercise its remedies hereunder and under the other Loan Documents or (ii) the Assignor requests delivery of the Assignment pursuant to Section 6 hereof. Upon the occurrence and during the continuance of any such Default and the exercise by the Agent of its remedies in respect thereof, the Agent shall be entitled, without prior notice to the Assignor, to file the Assignment with the United States Patent and Trademark Office and shall have the right, at any time (but shall have no obligation) to take, in its name or in the name of the Assignor or otherwise, such actions as the Agent may, at any time or from time to time, deem necessary to sell, transfer and assign the Trademarks. If the Agent shall elect to exercise its rights hereunder and under the Assignment, the United States Patent and Trademark Office shall have the right to rely upon the Agent's written statement of the Agent's right to sell, assign and transfer the Trademarks and the Assignor hereby irrevocably authorizes the United States Patent and Trademark Office to recognize such sale by the Agent either in the Assignor's name or in the Agent's name without the necessity or

obligation of the United States Patent and Trademark Office to ascertain the existence of any default by the Assignor under the Loan Documents.

(b) If a Default shall occur and be continuing, the Agent may direct all account debtors to make all payments directly to Agent, any any payments received by the Assignor under or in connection with any of the Trademarks shall be held by the Assignor in trust for the Agent, shall be segregated from other funds of the Assignor and shall forthwith upon receipt by the Assignor, be turned over to the Agent, in the same form as received by the Assignor (duly indorsed by the Assignor to the Agent, if required), and any and all such payments so received by the Agent (whether from the Assignor or otherwise) shall be applied in whole or in part by the Agent against all or any part of the Secured Indebtedness as provided in Section 4 of the Amended and Restated Agency Agreement (as amended, amended and restated, supplemented or otherwise from time to time) dated as of the date hereof, between Agent and the Lenders. Any balance of such payments held by the Agent and remaining after payment in full of all the Secured Indebtedness shall be paid over to the Assignor or to whomsoever may be lawfully entitled to receive the same.

(c) If any Default shall occur and be continuing, the Agent may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Indebtedness, all rights and remedies of a secured party under the Uniform Commercial Code. The Assignor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Trademarks are insufficient to pay all amounts to which the Agent and the Lenders are entitled. The Assignor shall also be liable for the reasonable fees of any attorneys employed by the Agent to collect any such deficiency and also as to any reasonable attorneys' fees incurred by the Agent with respect to the collection of any of the Secured Indebtedness and the enforcement of any of the Agent's respective rights hereunder.

6. Termination. Upon payment and satisfaction in full of the Secured Indebtedness, the Agent shall, at the Assignor's expense, release the security interest in the Trademarks granted hereunder and execute and deliver such instruments and other documents and take such further actions as may be necessary to carry out such release, including (a) cancellation of this Agreement by written notice (in substantially the form of Exhibit C attached hereto), executed on behalf of the Agent, to the United States Patent and Trademark Office and (b) delivery of the Assignment to the Assignor.

7. Notices. Notices that may or are required to be delivered hereunder shall be sufficient if in writing and sent to the addresses and in the manner set forth in the Security Agreement, or such other address as the Assignor and the Agent may designate in writing by notices similarly sent.

8. Governing Law and Severability. This Agreement and the Assignment shall be construed according to the laws of the State of New York without regard to its conflicts of laws principles and if any of its provisions are judicially determined to be in conflict with any law of the State of New York or otherwise judicially determined to be unenforceable for any reason whatsoever, such provision shall be deemed null and void to the extent of such unenforceability but

shall be deemed separable from and shall not invalidate any other provision of this Agreement or the Assignment.

9. Successors and Assigns. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns.

10. This Amended and Restated Trademark Security Agreement amends and restates the Trademark Security Agreement, dated as of May 24, 2002, made by the Assignor for the benefit of Wand as agent for the Lenders and assigned by Wand to Agent as of the date hereof in connection with Hollinger Capital, LLC becoming Agent in place of Wand.

IN WITNESS WHEREOF, each of the Assignor and the Agent has caused this Agreement to be executed by its duly authorized officer as of the date first above written.

FULCRUM ANALYTICS, INC.

By: 
Its: SECRETARY / CTO

HOLLINGER CAPITAL, LLC

By: _____
Its: _____

shall be deemed separable from and shall not invalidate any other provision of this Agreement or the Assignment.

9. Successors and Assigns. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns.

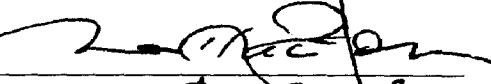
10. This Amended and Restated Trademark Security Agreement amends and restates the Trademark Security Agreement, dated as of May 24, 2002, made by the Assignor for the benefit of Wand as agent for the Lenders and assigned by Wand to Agent as of the date hereof in connection with Hollinger Capital, LLC becoming Agent in place of Wand.

IN WITNESS WHEREOF, each of the Assignor and the Agent has caused this Agreement to be executed by its duly authorized officer as of the date first above written.

FULCRUM ANALYTICS, INC.

By: _____
Its: _____

HOLLINGER CAPITAL, LLC

By:  _____
Its: authorized signatory

STATE OF NEW YORK :
: ss.
COUNTY OF NEW YORK :

On the 20th day of December, 2002, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared C. Richard Vermillion III, who acknowledged himself to be the CTO & Sec'y of FULCRUM ANALYTICS, INC., a Delaware corporation, and that he, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the corporation by himself as such officer.

WITNESS my hand and seal the day and year aforesaid.



Notary Public

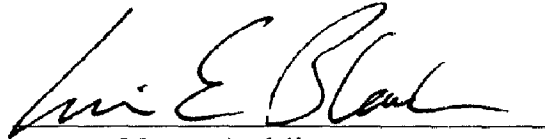
My Commission Expires:

STANLEY TOBIAS
Notary Public, State Of New York
No.41-4976753
Qualified In Nassau County
Certificate Filed In New York County
Commission Expires January 22, 2003

STATE OF NEW YORK :
: ss.
COUNTY OF NEW YORK :

On the 30th day of January, 2003, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Matthew Doull, who acknowledged himself to be an authorized signatory of Hollinger International, Inc. the general partner of HOLLINGER CAPITAL, LLC, and that he, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of HOLLINGER CAPITAL, LLC by himself as a duly authorized representative of such limited partnership.

WITNESS my hand and seal the day and year aforesaid.


Notary Public

My Commission Expires:

LOUISE E. BLACK
Notary Public, State of New York
No. 02BL5331505
Qualified in New York County
Commission Expires October 31, 2004

EXHIBIT A

TRADEMARKS

Fulcrum Analytics, Inc. U.S. Trademarks

Mark	Registr. No. (App. No.)	Registr. Date (App. Date)	Status
ARC 360	(75/891,797)	(1/7/2000)	Our response to an Office Action regarding the Statement of Use was accepted, and we anticipate that the application should proceed to registration in due course.
ARC 360 and Design	(75/914,040)	(2/9/2000)	We are waiting to hear from the U.S. PTO, whether the Statement of Use is accepted. If not, we will amend the application as we amended the ARC 360 application, which should place the application in condition for registration.
CUSTOMER RELATIONSHIPS THROUGH DIGITAL MEDIA	2,338,074 (75/644,033)	4/4/2000 (2/19/1999)	Registered
CYBER DIALOGUE CUSTOMER RELATIONSHIPS THROUGH DIGITAL MEDIA	2,423,347 (75/914,041)	1/23/2001 (2/9/2000)	Registered
TELESCOPE	2,160,901 (75/144,038)	5/26/1998 (8/2/96)	Registered

EXHIBIT B

TRADEMARK ASSIGNMENT

This Trademark Assignment ("Assignment") is made this ____ day of _____, 2002 by FULCRUM ANALYTICS, INC., a Delaware corporation (the "Assignor"), to HOLLINGER CAPITAL, LLC, as agent (the "Agent"), for the Lenders (the "Lenders") from time to time parties to the Amended and Restated Agency Agreement (as amended, amended and restated, supplemented or modified from time to time, the "Agency Agreement"), dated as of the date hereof among the Agent and the Lenders, pursuant to the Amended and Restated Trademark Security Agreement dated as of the date hereof by and between the Assignor and the Agent ("Trademark Security Agreement").

Background

Section 5(a) of the Trademark Security Agreement provides that the Assignor shall execute a written assignment of the Trademarks listed on Exhibit A thereto (attached hereto as Exhibit 1A) and deliver such assignment to the Agent to be held in escrow until such time as (a) Default under the Amended and Restated Security Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or modified from time to time, the "Security Agreement"), between the Assignor and the Agent, shall occur and be continuing and the Agent has elected to exercise its remedies in respect thereof, or (b) the Assignor requests delivery of the assignment pursuant to Section 6 of the Trademark Security Agreement.

1. Assignment. The Assignor hereby assigns to Agent for the benefit of the Lenders, and its and their successors and assigns, the Trademarks referred to in Exhibit 1A, all proceeds thereof including, without limitation, proceeds of infringement suits to sue for past, present and future infringements and all rights corresponding thereto in the United States, together with any goodwill of the business in connection with which such Trademarks are used, and registrations and applications therefor (collectively, the "Assigned Material").

2. Amendment. The provisions of this Assignment shall be read cumulatively with the provisions of Sections 2, 3, 4, 5, 7, 8 and 9 of the Trademark Security Agreement. This Assignment amends the Trademark Security Agreement by deleting Sections 1 and 6 of the Trademark Security Agreement which Sections 1 and 6 shall be of no further force or effect in respect of the Assigned Material.

3. No Other Assignment. The Assignor warrants and represents that it has made no other assignment or disposition of the Assigned Material other than in favor of the Agent.

4. Right to File. Upon the occurrence and during the continuance of a Default and the election by the Agent to exercise its remedies in respect thereof, the Agent shall be entitled, without prior notice to the Assignor, to file this Assignment with the United States Patent and

Trademark Office and shall have the right, at any time (but shall have no obligation) to take, in its name or in the name of the Assignor or otherwise, such actions as the Agent may, at any time or from time to time, deem necessary to sell, transfer and assign the Assigned Material.

5. Reliance. If the Agent shall elect to exercise its rights hereunder and under the Assignment, the United States Patent and Trademark Office shall have the right to rely upon the Agent's written statement of the Agent's right to sell, assign and transfer the Assigned Material and the Assignor hereby irrevocably authorizes the United States Patent and Trademark Office to recognize such sale by the Agent either in the Assignor's name or in the Agent's name without the necessity or obligation of the United States Patent and Trademark Office to ascertain the existence of any default by the Assignor under the Security Agreement.

6. Notices. Notices that may or are required to be delivered hereunder shall be sufficient if in writing and sent to the addresses and in the manner set forth in the Security Agreement, or such other address as the Assignor and the Agent may designate in writing by notices similarly sent.

7. No Further Assignments. The Assignor shall not further assign, transfer or convey its interests in the Assigned Material without the prior written consent of the Agent.

8. Governing Law and Severability. This Assignment shall be construed according to the laws of the State of New York without regard to its conflicts of laws principles and if any of its provisions are judicially determined to be in conflict with any law of the State of New York or otherwise judicially determined to be unenforceable for any reason whatsoever, such provision shall be deemed null and void to the extent of such unenforceability but shall be deemed separable from and shall not invalidate any other provision of this Assignment.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be signed by its officer thereunto duly authorized, and its corporate seal to be hereto affixed and attested by its said officer as of the date first above written.

FULCRUM ANALYTICS, INC.

By: _____
Its: _____

EXHIBIT 1A

TRADEMARKS

Fulcrum Analytics, Inc. U.S. Trademarks

Mark	Registr. No. (App. No.)	Registr. Date (App. Date)	Status
ARC 360	(75/891,797)	(1/7/2000)	Our response to an Office Action regarding the Statement of Use was accepted, and we anticipate that the application should proceed to registration in due course.
ARC 360 and Design	(75/914,040)	(2/9/2000)	We are waiting to hear from the U.S. PTO, whether the Statement of Use is accepted. If not, we will amend the application as we amended the ARC 360 application, which should place the application in condition for registration.
CUSTOMER RELATIONSHIPS THROUGH DIGITAL MEDIA	2,338,074 (75/644,033)	4/4/2000 (2/19/1999)	Registered
CYBER DIALOGUE CUSTOMER RELATIONSHIPS THROUGH DIGITAL MEDIA	2,423,347 (75/914,041)	1/23/2001 (2/9/2000)	Registered
TELESCOPE	2,160,901 (75/144,038)	5/26/1998 (8/2/96)	Registered

STATE OF NEW YORK :

: ss.

COUNTY OF NEW YORK :

On the ____ day of _____, 2002, before me, the subscriber, a Notary Public in and for the State of New York and County aforesaid, personally appeared _____, who acknowledged himself to be the _____ of FULCRUM ANALYTICS, INC., a Delaware corporation, and that he, being authorized to do so, executed the foregoing Assignment for the purposes therein contained by signing the name of the corporation by himself as such officer.

WITNESS my hand and seal the day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT C

TRADEMARK ASSIGNMENT TERMINATION AGREEMENT

WHEREAS FULCRUM ANALYTICS, INC., a Delaware corporation (the "Assignor"), and HOLLINGER CAPITAL, LLC, as agent (the "Agent") for certain Lenders (the "Lenders") entered into a certain Amended and Restated Trademark Security Agreement dated as of the date hereof (as amended, amended and restated, supplemented or modified from time to time, the "Trademark Security Agreement"), between the Agent and the Assignor, that by its terms granted the Agent on behalf of the Lenders a security interest in certain registered trademarks and then pending trademark applications listed in Exhibit A thereto (the "Trademarks"), as any of the same may from time to time be amended or supplemented;

WHEREAS, Section 6 of the Trademark Security Agreement provides that the Agent shall take such actions as are necessary to reassign the Trademarks to the Assignor, including the cancellation of the Trademark Security Agreement upon the Assignor's payment and satisfaction in full of the indebtedness and obligations under the Secured Notes, as defined in that certain Amended and Restated Security Agreement, dated as of the date hereof between the Assignor and the Agent; and

WHEREAS, the Assignor has or has caused to be paid and satisfied in full the obligations for which the security interest in the Trademarks was granted.

NOW THEREFORE the parties hereto agree that the Agent hereby reassigns the Assignor the interest in the Trademarks in which the Agent, on behalf of the Lenders, was granted a security interest under the Trademark Security Agreement and authorizes the Assignor to seek the cancellation of the Trademark Security Agreement from the register of the U.S. Patent and Trademark Office where it was filed on _____, _____ receiving document no. _____.

IN WITNESS WHEREOF the parties hereto by the signature below of their duly authorized representatives agree to be bound by the provisions of this Trademark Assignment Termination Agreement as of this ___ day of _____, _____.

FULCRUM ANALYTICS, INC.

By: _____
Name: _____
Title: _____

HOLLINGER CAPITAL, LLC

By: _____
Name:
Title:

STATE OF NEW YORK :
 : ss.
COUNTY OF NEW YORK :

On the ____ day of _____, _____, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, who acknowledged himself to be the _____ of FULCRUM ANALYTICS, INC., a Delaware corporation, and that he, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the corporation by himself as such officer.

WITNESS my hand and seal the day and year aforesaid.

Notary Public

My Commission Expires:

STATE OF NEW YORK :
 : ss.
COUNTY OF NEW YORK :

On the ___ day of _____, _____, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, who acknowledged himself to be the _____ of HOLLINGER CAPITAL, LLC, and that he, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of HOLLINGER CAPITAL, LLC, as a duly authorized representative of the general partner thereof.

WITNESS my hand and seal the day and year aforesaid.

Notary Public

My Commission Expires: