

05-15-2000



FORM PTO-1618A

Expires 06/30/99

CMB 0651-0027

5/3/00

101355962

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

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached 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

License

Security Agreement

Nunc Pro Tunc Assignment

Effective Date

Month Day Year

Merger

Change of Name

Other _____

Conveying Party

Mark if additional names of conveying parties attached

Name Primordial, LLC

Effective Date

Month Day Year

2 27 99

Formerly _____

Individual

General Partnership

Limited Partnership

Corporation

Association

Other

limited liability company

Citizenship/State of Incorporation/Organization

California

Receiving Party

Mark if additional names of conveying parties attached

Name: Tahlequah Group, LLC

DBAAK/TA: _____

Composed of: _____

Address (line 1): 3020 Bridgeway, Suite 246

Address (line 2): _____

Address (line 3): Sausalito

City

CA

State/Country

94109

Zip Code

Individual

General Partnership

Limited Partnership

Corporation

Association

limited liability company

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

Delaware

FOR OFFICE USE ONLY

05/11/2000 JSHABAZZ 00000224 75050933

01 FC:481

40.00 OP

02 FC:482

75.00 OP

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Patent and Trademark Office

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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

302-651-7670

Name: Helen L. Winslow, Esquire

Address (line 1): Richards, Layton & Finger

Address (line 2): P.O. Box 551

Address (line 3): Wilmington, DE 19801

Address (line 4): _____

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

4

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)

75/050,933

2,239,215

2,229,010

2,184,475

Number of Properties

Enter the total number of properties involved.

4

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 115.00

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account of 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. Charge to deposit account are authorized, as indicated herein.

Helen L. Winslow _____

Name of Person Signing

Helen L. Winslow

Signature

May 2, 2000

Date Signed

PRIMORDIAL, LLC/TAHLEQUAH GROUP, LLC
SUBORDINATED CONVERTIBLE PROMISSORY NOTE
AND SECURITY AGREEMENT

(this "Note")

IT IS UNLAWFUL TO SELL OR TRANSFER THIS NOTE AND THE SECURITIES REPRESENTED HEREBY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES.

THIS NOTE AND THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT FOR DISTRIBUTION. THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED OR RESOLD IN THE ABSENCE OF SUCH REGISTRATION OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION IS AVAILABLE OR IS NOT REQUIRED.

\$500,000

San Francisco, California
As of May 27, 1999

PRIMORDIAL, LLC (the "Company"), for value received, receipt of which is hereby acknowledged, hereby promises to pay to the order of TAHLEQUAH GROUP, LLC, 3020 Bridgeway, Suite 246, Sausalito, CA 94109 (the "Holder"), at such place as the Holder may designate in writing, in lawful currency of the United States, the principal sum ("Principal") of Five Hundred Thousand Dollars (\$500,000), together with interest thereon from the date of this Note. Interest shall accrue on the unpaid Principal balance hereof at the prime rate to commercial borrowers of Bank of America NT&SA as in effect from time to time plus two percent (2.0%). The "Maturity Date" of this Note shall be May 27, 2002. On the Maturity Date, the Principal hereunder, plus all accrued but unpaid interest thereon, shall be due and payable.

1. Subordination. The indebtedness evidenced by this Note shall be subject to and subordinate to the Amended and Restated Subordinated Promissory Note and Security Agreement issued by the Company to Jemison Investment Co., Inc. on September 30, 1998, as amended as of May 27, 1999 (the "Prior Note"), and to all outstanding indebtedness of the Company to CivicBank of Commerce of Oakland, California ("CivicBank"), but shall not be subject to nor subordinated to indebtedness owing or owed by the Company to general trade creditors.

2. Acceleration; Collection. If the Company fails to pay any installment of Principal or interest when due hereunder, or if the Company breaches any of its duties, obligations, representations, warranties or agreements set forth in this Note, including without limitation those contained in the Security Agreement provisions set forth in Section 5 below, then the Holder may declare this Note immediately due and payable in its entirety. In the event proceedings are instituted to collect interest on or Principal of this Note, the Holder shall be entitled to recover all

costs of collection, including reasonable attorneys fees as may be awarded by the court having jurisdiction of such proceedings.

3. Conversion of Note.

(a) Optional Conversion of Principal. All or any portion of the unpaid Principal, and any accrued interest owing under, this Note, may be converted at the sole option of the Holder into membership units of the Company ("Units") at the conversion price of \$22.914353 per Unit. The conversion price is subject to reduction if, prior to conversion, any equity interests in the Company are issued or sold by the Company at a price that is less than \$22.914353 per Unit, or if the Company grants, issues or sells options (other than to employees or officers of the Company), warrants, convertible debt or equity instruments, or any other right to acquire equity interests in the Company at a price that is less than \$22.914353 per Unit. In either of the foregoing events, the conversion price hereunder shall be automatically reduced to the lowest price per Unit associated with any such equity interests, options, warrants, convertible instruments or other rights to acquire equity interests in the Company. The method of exercise of such conversion rights shall be as set forth in Section 3(b) below.

(b) Mechanics and Effect. Upon conversion of this Note pursuant to Section 3(a), the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the Company. At its expense the Company will, as soon as practicable thereafter, issue and deliver to such Holder, at such principal office, an amended Exhibit A to the Operating Agreement of the Company reflecting the issuance to the Holder the number of Units to which such Holder is entitled upon such conversion, along with a check payable to the Holder for any cash amounts payable as described herein. No fractional Units shall be issuable upon exercise of such conversion right. If the balance of unpaid principal and any accrued interest, when divided by the per Unit purchase price, would yield a fractional number, the number of Units shall be reduced to prevent the issuance of said fractional share, and the amount not so converted shall be paid by the Company in cash at the time this Note is surrendered for conversion.

(c) Member Rights. The Holder shall not have any rights as a member of the Company with regard to any Units subject to the conversion rights under this Note prior to actual exercise or conversion resulting in the purchase of Units.

(d) Reclassifications. In case of any reclassification or change of the outstanding securities of the Company or of any reorganization of the Company (or any other entity the securities of which are at the time receivable upon the conversion of this Note) or any similar entity reorganization on or after the date hereof, then and in each such case the Holder of this Note, upon the conversion hereof at any time after the consummation of such reclassification, change, reorganization, merger or conveyance, shall be entitled to receive, in lieu of the securities and property receivable upon the conversion hereof prior to such consummation, the securities or property to which such Holder would have been entitled upon such consummation if such Holder had converted this Note immediately prior thereto.

4. Prepayment. Upon twenty (20) days prior written notice to the Holder, all or any portion of Principal or interest due hereunder may be prepaid by the Company only in connection with the sale to a third party of (i) all, or substantially all, of the assets of the Company, or (ii) fifty percent (50%) or more of the issued and outstanding membership interests of the Company.

5. Security Agreement. Subject to the last paragraph of this Section 5, in order to secure all indebtedness now owed or hereafter payable to the Holder under this Note, the Company hereby grants, conveys and assigns to the Holder a security interest in all of the Company's Intellectual Property whether such assets and properties are now owned or hereafter acquired, and all proceeds and products thereof, wherever situated (the "Security"). "Intellectual Property" shall mean and include all copyrights, patents, trademarks, and similar proprietary rights and interests of the Company; all registrations thereof and filings with respect thereto, whether pending, granted or perfected, within the United States or any foreign country; all common law and statutory rights and interests with respect thereto; and all similar or incidental rights and interests. The provisions of this Section 5 shall be referred to in this Note as the "Security Agreement," and in connection with the Company's grant of a security interest in the Security to the Holder pursuant to the Security Agreement, the Company hereby covenants, represents, and warrants as follows:

(a) The Security Agreement also secures: (i) any reasonable extensions or renewals of this Note; (ii) the repayment of all sums, including but not limited to reasonable legal expenses, that may be advanced or incurred by the Holder for the maintenance, protection or preservation of the Security, or any part thereof; and (iii) any and all expenditures that may hereafter be made by the Holder pursuant to the provisions hereof.

(b) The Company shall execute such Financing Statements and other documents and do such other acts and things as the Holder may from time to time require to establish and maintain a valid, perfected security interest in the Security; and Company shall permit the Holder and its representatives to inspect the Security and/or the records pertaining thereto from time to time at any reasonable time upon reasonable advance notice.

(c) The Company shall keep the Security in good condition and repair, and shall not use it for any unlawful purpose.

(d) The Company hereby declares and warrants to the Holder that the Company is the absolute and sole owner of, and is in possession of, all the Security, and that the same is free and clear of all liens, encumbrances, adverse claims, and any other security interests, except for a prior security interest granted by the Company to CivicBank, and Jemison Investment Co., Inc. in connection with the Prior Note. The Company shall not sell or offer to sell or otherwise transfer the Security or any interest therein without the prior written consent of the Holder; nor shall the Company sell, assign or create or permit to exist any lien on or security interest in the Security in favor of anyone other than the Holder, CivicBank, Jemison Investment Co., Inc. under the Prior Note, or the holders of the Pari Pasu Notes (as defined below), unless the Holder consents thereto in writing. The Company shall, upon the Holder's request, remove any unauthorized lien or security interest on the Security, and defend any claim affecting the Security, and the Company shall further pay all charges against the Security, including but not limited to taxes, assessments, encumbrances and insurance, and upon the Company's failure to do so, the Holder may pay any such charge as it deems necessary and add the amount paid to the indebtedness of the Company secured hereunder.

The grant of Security contained in this Section 5 shall (i) be subordinate in right to that security interest granted by the Company (or to be granted by the Company) to CivicBank or Jemison Investment Co., Inc. under the Prior Note; and (ii) rank pari pasu with the grant of Security

by the Company under a series of subordinated convertible promissory notes in a maximum aggregate amount of \$1.2 million issued contemporaneously with this Note (the "Pari Pasu Notes")

Notwithstanding the foregoing, the Holder may exercise any of its rights and remedies with respect to the Security only with the approval of the majority in interest of the holders of the Pari Pasu Notes.

Notwithstanding the foregoing, the grant of Security by the Company contained in this Section 5 shall be effective only (i) upon the grant of Security by the Company to CivicBank, which grant shall rank first in priority; and (ii) an amendment to the Prior Note, pursuant to which the Company shall grant a second priority security interest in the Security to Jemison Investment Co., Inc.

6. Notice. All notices required to be given under this Note shall be in writing and shall be personally delivered or sent by regular, express or certified first-class mail or express mail, or by express courier, charges prepaid or incurred for the account of the sender. Such notices shall be addressed to the address as set forth below.

7. Additional Documents. Each of the parties agrees to execute and provide, at the request of the other party, any and all other documents or other written instruments as may be reasonably necessary to effectuate the purposes of this Note.

8. Construction. This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of California.

9. Counterparts. This Note shall be executed and delivered by the Company to the Holder, and solely for purposes of becoming a signatory to the Security Agreement contained in Section 5 above, the Holder shall execute and deliver a counterpart hereof to the Company.

IN WITNESS WHEREOF, Primordial, LLC has caused this Note to be executed in its name by its officers thereunto duly authorized as of the date first set forth above.

THE COMPANY: PRIMORDIAL, LLC
3040 Larkin Street
San Francisco, California 94109

By: [Signature]
Its: CEO

THE HOLDER: TAHLEQUAH GROUP, LLC
3020 Bridgeway, Suite 246
Sausalito, CA 94965

By: [Signature]
Its: President