

12-07-2000



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RECORDATION FORM COVER SH
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 Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

- Individual General Partnership Limited Partnership Corporation Association
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

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.)

12/06/2000 DBYRNE 00000203 75834274

FOR OFFICE USE ONLY

01 FC:481 40.00 OP
02 FC:482 125.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

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

(415) 369.7367

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

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

#

6

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)

Number of Properties

Enter the total number of properties involved.

#

6

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

165.00

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:

#

50-0918

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.

Becky L. Troutman

Name of Person Signing

Becky L. Troutman

Signature

11/17/00

Date Signed

PRIMORDIAL, LLC
AMENDED AND RESTATED
SUBORDINATED 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.

San Francisco, California
As of September 30, 1998

§

PRIMORDIAL, LLC (the "Company"), for value received, receipt of which is hereby acknowledged, hereby promises to pay to the order of JEMISON INVESTMENT CO., INC., 320 Park Place Tower, Birmingham, Alabama 35203 (the "Holder"), at such place as the Holder may designate in writing, in lawful currency of the United States, the principal sum (the "Principal") of

Dollars , , 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 September 30, 2001. The Company shall pay to the Holder one-sixth (1/6) of the Principal, plus all accrued but unpaid interest hereunder, on each of the following dates: March 31, 1999, September 30, 1999, March 31, 2000, September 30, 2000, and March 31, 2001. On the Maturity Date, all remaining unpaid Principal hereunder, plus all accrued but unpaid interest thereon, shall be due and payable.

1. Amendment and Restatement of Second Convertible Subordinated Note. This Note amends and restates in its entirety that certain Second Convertible Subordinated Note dated as of February 3, 1998 and issued to the Holder in the principal amount of \$ (the "Original Note"). The Original Note would have been due and payable on September 30, 1998, but for this amendment and restatement. Accrued and unpaid interest on the Original Note, from its execution and delivery until its

amendment and restatement hereby, equals _____ x (239/365)
or _____ The Principal for purposes of this Note is therefore calculated, as of the
date of this amendment and restatement, as the sum of \$_____ and \$_____ or
\$_____, and each semi-annual payment of one-sixth (1/6) thereof, as described
above, shall be in the amount of \$_____ plus accrued and unpaid interest, as
described above.

2. Subordination. All indebtedness evidenced by this Note shall be subject to and subordinate to outstanding indebtedness of the Company to its principal bank or other institutional lender, but shall not be subject to and subordinated to indebtedness owing or owed by the Company to general trade creditors.

3. 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 Paragraph 6 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.

4. Prepayment. All or any portion of Principal or interest due hereunder may be prepaid by the Company at any time.

5. New Value and Consideration. The Company acknowledges and agrees that the Holder has given new value and consideration to the Company for this Note, in the form of extension of payments otherwise due under the Original Note and the relinquishment of certain rights under the Original Note to convert the amounts due thereunder into equity units of the Company.

6. Security Agreement. 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 accounts, investment properties, and general intangibles to the extent they are rights to payment, whether such assets and properties are now owned or hereafter acquired, and all proceeds and products thereof, wherever situated (the "Security"). The provisions of this Paragraph 6 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; and at the Holder's request, shall provide, maintain and deliver to the Holder physical damage and loss insurance policies covering the Security in the amounts and with insurance companies reasonably satisfactory (in light of the nature of the Security) to the Holder, naming the Holder as loss payee, as the Holder's interest may appear.

(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 its principal bank as contemplated by Paragraph 2 above. 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 and its principal bank or other institutional lender as contemplated by Paragraph 2 above, 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.

(e) Notwithstanding anything contained herein to the contrary, including without limitation the provisions of Paragraph 2 above, the Company represents, warrants, covenants and agrees with the Holder that the Company has not heretofore granted, and shall not hereafter grant, any security interest whatsoever, without the Holder's prior written consent, in any "Intellectual Property" of the Company. For purposes hereof, "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.

(f) Notwithstanding anything contained herein to the contrary, including without limitation the provisions of subparagraph (e) immediately above, in the event that the Company does hereafter grant a security interest in any of its Intellectual Property to any third party, including any bank or other institutional lender, then the

Company agrees that it shall also immediately grant to the Holder a security interest in the same Intellectual Property, on a basis that is in all material respects equivalent to, and pari passu with, the Company's grant of a security interest therein to the third party. Without limiting the preceding sentence, any security interests granted by the Company to the Holder and to any third party in the Intellectual Property of the Company shall be perfected in such a way as to insure that the Holder and such third party share equally in a first priority security interest thereon.

7. 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.

8. 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.

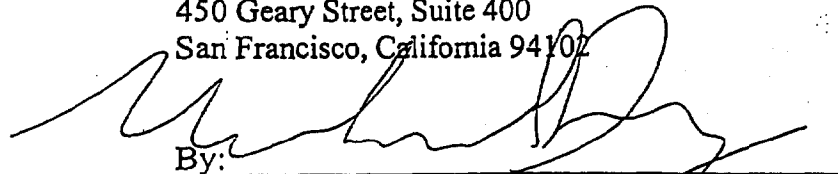
11. Construction. This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of California.

12. 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 Paragraph 6 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.

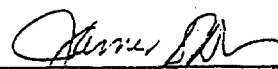
THE COMPANY:

PRIMORDIAL LLC
450 Geary Street, Suite 400
San Francisco, California 94102


By: _____
MICHAEL JOAQUIN GREY,
Manager and Chief Executive Officer

THE HOLDER:

JEMISON INVESTMENT CO., INC.
324 Park Place Tower
Birmingham, Alabama 35203

By:  _____
Its: President