

12-07-2000



101543579

11.21.00

**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

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)

- Individual General Partnership Limited Partnership 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.)

FOR OFFICE USE ONLY

12/06/2000 DBYRNE 00000202 75834274

01 FC:481 40.00 OP
02 FC:482 125.00 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: 002190 FRAME: 0542

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)

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" value="75/834,274"/>	<input type="text" value="75/833,984"/>	<input type="text" value="75/833,997"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2,184,475"/>	<input type="text" value="2,229,010"/>	<input type="text" value="2,239,215"/>
<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.

Becky L. Troutman

Name of Person Signing

Becky L. Troutman

Signature

11/17/00

Date Signed

FIRST AMENDMENT
TO
PRIMORDIAL, LLC
AMENDED AND RESTATED
SUBORDINATED PROMISSORY NOTE
AND SECURITY AGREEMENT

REFERENCE IS MADE to that certain PRIMORDIAL, LLC AMENDED AND RESTATED SUBORDINATED PROMISSORY NOTE AND SECURITY AGREEMENT dated as of September 30, 1998, in the principal amount of \$ _____, with PRIMORDIAL, LLC of San Francisco, California, as the maker thereof and JEMISON INVESTMENT CO., INC., of Birmingham, Alabama, as the holder thereof (the "Note," with all capitalized terms used but not otherwise defined herein having the meanings ascribed to them in the Note). A copy of the Note is attached hereto and incorporated herein by this reference.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Company and the Holder hereby agree to amend and modify the Note as follows:

1. **MATURITY DATE AND SCHEDULED PAYMENTS.** The third, fourth and fifth sentences of the unnumbered introductory paragraph of the Note are hereby amended and restated to read in their entirety as follows:

The "Maturity Date" of this Note shall be February 28, 2002. The Company shall pay to the Holder all accrued but unpaid interest hereunder as of April 30, 1999, and thereafter 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: August 31, 1999, February 28, 2000, August 31, 2000, February 28, 2000, and August 31, 2001. On the Maturity Date, all remaining unpaid Principal hereunder, plus all accrued but unpaid interest thereon, shall be due and payable.

2. **REMEDIES AND WARRANTS.** Paragraph 3 of the Note is hereby amended by adding the following new provisions to the end thereof:

In addition to all other rights and remedies available to the Holder in the event of default hereunder, including without limitation those remedies available to the Holder under the provisions of this Paragraph and those of Paragraph 6 below, the Company shall, without the need for notice or further action on the part of the Company or the Holder, issue to the Holder "Warrants" as defined below in the event the Company fails to make any payment of Principal or interest due hereunder within fifteen (15) days after the date upon which such payment is due. For purposes hereof, "Warrants" shall mean warrants of the Company, in form and substance materially similar to those warrants previously issued by the Company to the Holder, which will entitle the Holder to purchase from the Company up to two thousand (2,000) units of equity ownership interest in the Company ("Units") at a price of \$ _____ per Unit, with the Holder's

right to purchase such Units expiring upon the tenth (10th) anniversary of the issuance of the Warrants. It is the express intent of the parties that Warrants as defined above shall be issued to the Holder for each and every instance where the Company fails to make its scheduled payments of Principal and interest due hereunder within the fifteen (15) day grace period set forth above, so that a maximum aggregate number of Warrants for the Holder to purchase up to twelve thousand (12,000) Units would be issued pursuant to the preceding provisions if the Company were to fail to make each of its scheduled payments of Principal and interest due hereunder within the fifteen (15) day grace period set forth above.

3. SECURITY AGREEMENT.

a. The introductory paragraph to Paragraph 6 of the Note is hereby amended and restated to read as follows:

"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, Intellectual Property and general intangibles, whether such assets and properties are now owned or hereafter acquired, and all proceeds and products thereof, wherever situated (the "Security"). For purposes hereof, "Intellectual Property" shall mean and include all copyrights, patents, trademarks, and similar proprietary rights and interest 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 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:"

b. Paragraphs 6(e) and 6(f) of the Note are hereby amended by deleting such paragraphs in their entirety.

c. There shall be added a new Paragraph 6(e) to the Note which shall read as follows:

"(e) The grant of Security contained in this Paragraph 6 shall (i) be subordinate in right to the security interest granted by the Company (or to be granted by the Company) to its principal bank or other institutional lender; and (ii) be senior in right to that security interest granted by the Company pursuant to the a series of subordinated convertible promissory notes dated on or about May 27, 1999 in a maximum amount of \$ _____."

4. CONSENT. The Holder hereby consents to the grant of the Security by the Company to its principal bank or other institutional lender and to the holders of a series of notes issued on or about May 27, 1999.

5. RATIFICATION. Except as expressly amended by the preceding paragraphs hereof, the Note as originally executed is hereby ratified, confirmed, acknowledged, agreed to, and deemed for all purposes to be in full force and effect according to its terms.

6. COUNTERPARTS. This First Amendment to the Note may be executed in counterparts, all of which shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this First Amendment to the Note to be executed in their names by their officers thereunto duly authorized as of the 27th day of May, 1999.

THE COMPANY: PRIMORDIAL, LLC

By: K. S. [Signature]
Its: [Signature]

THE HOLDER: JEMISON INVESTMENT CO., INC.

By: _____
Its: _____

4. CONSENT. The Holder hereby consents to the grant of the Security by the Company to its principal bank or other institutional lender and to the holders of a series of notes issued on or about May 27, 1999.

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IN WITNESS WHEREOF, the parties have caused this First Amendment to the Note to be executed in their names by their officers thereunto duly authorized as of the 27th day of May, 1999.

THE COMPANY: PRIMORDIAL, LLC

By: _____
Its: _____

THE HOLDER: JEMISON INVESTMENT CO., INC.

By: James M. [Signature]
Its: PRESIDENT