

01-05-2000

ET 10
Y

Docket No.:

23879-2



101237595

Tab settings → → → ▼ 12.15.99 ▼ ▼

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

1. Name of conveying party(ies):
The Village Idiot, Inc.

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State **South Carolina**
 Other _____

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: **T.R.C., Inc. of Columbia**

Internal Address: _____

Street Address: **2009 Devine St.**

City: **Columbia** State: **SC** ZIP: **29205**

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **South Carolina**
 Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from
Additional name(s) & address(es) Yes N

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other **Corrected Recordation Form for Asset Purchase**

Execution Date: **June 23, 1995**

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

A. Trademark Application No.(s)
N/A

Additional numbers Yes No

B. Trademark Registration No (s)
1,746,227

12-15-1999
U.S. Patent & TMO/TM Mail Rpt Dt. #64

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

Name: **Michael A. Mann**

Internal Address: _____

Street Address: **Nexsen Pruet Jacobs & Pollard, LLP**
P.O. Drawer 2426

City: **Columbia** State: **SC** ZIP: **29202**

6. Total number of applications and registrations involved:..... **1**

7. Total fee (37 CFR 3.41):.....\$ **\$40.00**

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: _____

01/04/2000 DNGUYEN 00000183 1746227
01 FC:481 | 40.00 OP |

DO NOT USE THIS SPACE

9. 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.

Kathy Steading Guerrero *Kathy S. Guerrero* **December 9, 1999**
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and **17**

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 23rd day of June, 1995, by and between VILLAGE IDIOT, INC., a South Carolina corporation (hereinafter referred to as "Seller"), and T.R.C., INC. OF COLUMBIA, a South Carolina corporation (hereinafter referred to as "Purchaser");

W I T N E S S E T H T H A T:

WHEREAS, Seller is the owner and operator of a restaurant business located at 2009 Devine Street, Columbia, South Carolina (hereinafter referred to as the "Business"); and

WHEREAS, Seller desires to sell the Business and the related assets to Purchaser and Purchaser desires to purchase the Business and related assets from Seller;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises hereof, Ten Dollars (\$10.00) in hand paid by Purchaser to Seller, and the mutual and reciprocal covenants and promises set forth and contained herein, Purchaser and Seller hereby agree and contract as follows:

1. ASSETS TO BE SOLD AND PURCHASED. Seller hereby agrees to sell, transfer, assign and deliver to Purchaser, and Purchaser hereby agrees to purchase and acquire from Seller, the properties and rights hereinafter described (hereinafter collectively referred to as the "Assets"), to-wit:

1.1 FURNITURE, FIXTURES, EQUIPMENT. All the furniture, fixtures, equipment, signage, and tools owned by Seller and used or useful in the Business (hereinafter referred to as the "Equipment").

1.2 INVENTORY. All the inventory of the Business existing as of the Closing Date having a value of no less than \$7,000 and no more than \$8,000. The inventory in excess of such value to be retained by Seller, subject, however, to the right of Buyer to designate the items of inventory to be retained by Seller.

1.3 LICENSES AND PERMITS. All business licenses and permits issued and used in connection with the Business, to the extent transferrable.

1.4 INTANGIBLE ASSETS. All of Seller's goodwill, going concern value and intangible properties utilized in connection with the Business, the trade name "Village Idiot", the right to retain and use the recipes and other

procedures contained in written materials or otherwise utilized by Seller in the operation of Business, and all other intangibles and rights of Seller in connection with the Business.

2. **EXCLUDED ASSETS.** Seller shall not sell, and Purchaser shall not purchase, the following assets of Seller (hereinafter referred to as the "Excluded Assets"):

2.1 **ACCOUNTS RECEIVABLE.** Any of Seller's accounts receivable (hereinafter referred to as the "Receivables").

2.2 **CASH.** Any cash, deposit accounts, and certificates of deposit of Seller.

2.3 **INVESTMENT ASSETS.** Any marketable securities or other investment assets of Seller.

2.4 **AMOUNTS DUE FROM SHAREHOLDERS OR AFFILIATES.** Any amount owed to Seller by any shareholder of Seller or by any entity having common ownership with Seller.

3. **PURCHASE PRICE AND PAYMENT.** The Purchase Price (the "Purchase Price") payable by Purchaser to Seller for the Assets shall be One Hundred Fifty Five Thousand and no/100 (\$155,000.00) Dollars. At the Closing, the Purchaser shall pay the Purchase Price by (i) the payment of \$15,000 by a certified check or a bank check, and (ii) executing and delivering to Seller a promissory note in the amount of \$140,000 in the form attached hereto as Schedule "A", which shall be secured by the Assets. The Purchase Price shall be allocated by Purchaser and Seller as follows:

\$ 25,000.00	To the Equipment
7,000.00	To the Inventory
<u>123,000.00</u>	To Goodwill
<u>\$155,000.00</u>	Total

If the Inventory exceeds the value of \$7,000, then the allocation for Goodwill will be adjusted accordingly in that the total Purchase Price shall remain at \$155,000.

The due date for the first payment of the promissory note attached hereto as Schedule "A" will be 45 days from the Date of Closing and Buyer shall pay to Seller interim interest for 15 days with the first payment.

4. **NO ASSUMPTIONS OF LIABILITIES.**

(a) Purchaser shall not assume or become liable for any indebtedness, obligation or liability of Seller. Without limiting the foregoing, Purchaser shall not assume or become liable for any

(i) notes, (ii) contracts, (iii) accounts payable, (iv) other payables, (v) federal, state or local income, sales, use, excise or other taxes, (vi) wages, salaries, overtime, holiday pay, pensions or other employee benefits, or obligations under ERISA, (vii) any liability arising or allegedly arising out of any tortious or illegal conduct, or (viii) any other obligations or liabilities of Seller (hereinafter referred to as the "Seller's Liabilities"). Seller shall indemnify and hold Purchaser harmless from any loss, claim, liability or expense (including reasonable attorney's fees) or other damage of any kind or nature caused by or arising out of the failure of Seller to pay, perform or satisfy any of the Seller's Liabilities provided such loss is incurred or such claim is made before the earliest of the following dates: (i) forty-two (42) months from the Closing Date; or (ii) the date of the payment in full of the Promissory Note referred to in Paragraph 3 hereof. The Promissory Note shall contain a provision for an offset for any amounts owed Purchaser for the indemnification given hereby.

(b) Any ad valorem taxes on the Assets shall be prorated to the Closing Date, and any sales tax or other type of transfer tax shall be paid by Seller on the closing date or at any time thereafter.

5. CONDUCT OF SELLER'S BUSINESS PRIOR TO CLOSING. Except with the consent in writing of Purchaser, and except as may be required to effect the transactions contemplated by this Agreement, Seller covenants and agrees that, between the date of this Agreement and the Closing, Seller will conduct its business in the ordinary course and will, except as otherwise provided in this Agreement (i) use reasonable efforts to preserve the goodwill of customers, employees and others having business relations with Seller and to preserve its business intact and in its current condition; (ii) maintain the Equipment in the same working order and condition as such properties are in on the date hereof, reasonable wear and tear excepted; and (iii) keep in force at no less than present limits all existing policies of insurance insuring the Equipment. Except with the consent in writing of Purchaser, Seller shall not remove any of the Equipment from the Business.

6. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby represents and warrants to Purchaser as follows:

6.1 TITLE TO ASSETS. Seller has, or at the Closing will have, good and marketable fee simple title to the Assets, free of any and all liens and security interests. Seller shall warrant and forever defend unto Purchaser, and Purchaser's successors and assigns, the right and title to the Assets, against Seller, and against the claims of Seller's successors and assigns, and against the claims of all other persons whomsoever.

6.2 LICENSES, PERMITS AND AUTHORIZATIONS. Seller has all necessary approvals, authorizations, consents, licenses, and other permits of any federal, state or local governmental or regulatory agency required in order to carry on its business as presently conducted, all of which are valid and in full force and effect. Seller has not received notice of any claim or action pending or threatened which disputes the validity of any of such approvals, authorizations, consents, licenses, franchises, orders or other permits.

6.3. PAYMENT of DEBTS. Seller shall pay, when due according to the normal payment terms, all accounts payable and other debts connected with the Business incurred prior to the Closing Date.

7. NON-COMPETITION AGREEMENT.

7.1. SELLER. After the closing, Seller agrees that it will not engage in the restaurant business with pizza as a menu item within a ten (10) mile radius of the present location of the Business (hereinafter referred to as the "Prohibited Area"), for a period of three (3) years from the Date of Closing, either directly or as a partner, joint venturer, shareholder, consultant, or limited liability company member. During such period of time, Seller also agrees that it will not engage in the call-in delivery service business with pizza as a menu item either as a separate operation or in conjunction with a sit down service within the Prohibited Area. Seller agrees that no adequate remedy at law exists in the event of its breach of this Non-Competition Agreement and, therefore, Seller agrees that in the event of a breach, Purchaser may immediately enjoin Seller from engaging in such business. In addition, Seller will be required to pay the attorney's fees and costs incurred by Purchaser for the enforcement of this Non-Competition Agreement. Provided, however, this Non-Competition Agreement shall immediately terminate in the event of a default under the Promissory Note or the Security Agreement.

7.2. SHAREHOLDERS. At closing, Seller shall deliver agreements signed by the three (3) shareholders of Seller prohibiting each of them, after the closing, from engaging in the restaurant business with pizza as a menu item within a ten (10) mile radius of the present location of the Business (hereinafter referred to the "Prohibited Area"), for a period of three (3) years from the Date of Closing, either directly or indirectly, whether as an employee, officer, director, agent, security holder, creditor, consultant or otherwise. The

agreements shall also prohibit the three (3) shareholders from engaging in the call-in delivery service business with pizza as a menu item either as a separate operation or in conjunction with a sit down service within the Prohibited Area. The agreements shall also provide that the shareholders will agree that no adequate remedy at law exist in the event of their breach of the Non-Competition Agreement and, therefore, each shareholder will agree that in the event of a breach, Purchaser may immediately enjoin the affected shareholder from engaging in such business. In addition, the agreements will provide that the affected shareholder will be required to pay the attorney's fees and costs incurred by Purchaser for the enforcement of the Non-Competition Agreement. The agreements shall also provide that the agreement will immediately terminate in the event of a default under the Promissory Note or the Security Agreement. For the execution of the agreements, Purchaser shall pay to each shareholder the sum of \$20,000 at closing.

8. CONDITIONS TO THE PURCHASER'S OBLIGATIONS. The consummation of the purchase of the Assets by Purchaser and the performance by Purchaser of each of his other obligations under this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

8.1 REPRESENTATIONS AND WARRANTIES TRUE. The representations and warranties of Seller and Purchaser contained herein shall be true and accurate as of the date of this Agreement and as of the Closing Date.

8.2 REAL ESTATE MATTERS. Purchaser shall have entered into a sublease agreement with Seller (hereinafter referred to as the "Sublease") with respect to the space in which the Business is located.

8.3 NON-COMPETITION AGREEMENTS. Each of the three (3) shareholders of Seller shall have entered into a Non-Competition Agreement contemplated by Paragraph 7.2 hereof.

9. TIME AND PLACE OF CLOSING. The closing of the sale and purchase contemplated by this Agreement (hereinafter referred to as the "Closing") shall take place on June 23, 1995 (hereinafter referred to as the "Closing Date") at 9:00 A.M. at the offices of Lays, Foster, Booth & Gunter, 2512 Devine Street, Columbia, South Carolina.

10. TRANSACTIONS AT THE CLOSING. At the Closing each of the following transactions shall occur:

(a) Seller shall deliver to Purchaser Warranty Bills of Sale, and other instruments of conveyance, sale, transfer and assignment, in form reasonably acceptable to Purchaser and Purchaser's counsel, effectively vesting in Purchaser good and marketable title to the Assets, free and clear of any liens or encumbrances.

(b) Purchaser shall enter into the Sublease contemplated by Paragraph 8.2 hereof.

(c) Seller shall deliver to Purchaser such other documents as Purchaser and Purchaser's counsel may reasonably request prior to the Closing.

(d) Seller shall deliver to Purchaser the Non-Competition Agreements signed by each of the three (3) shareholders of Seller as contemplated by Paragraph 7.2.

(e) Purchaser shall pay the sum of \$15,000 to Seller by certified or bank check.

(f) Purchaser shall pay the sum of \$20,000 to each of the three (3) shareholders of Seller in the form of a certified or bank check.

(g) Purchaser shall execute and deliver to Seller a promissory note in the amount of \$140,000 in the form attached hereto as Schedule "A" and a Security Agreement conveying a security interest in the Assets, subject only to a lien as to the furniture, fixtures, and equipment of no more than \$65,000, to secure Purchaser's obligations. This lien will be terminated as provided in Paragraph 26 hereof.

(h) Purchaser shall deliver to Seller such other documents as Seller and Seller's counsel may reasonably request prior to the Closing.

(i) Timothy R. Coletta shall execute and deliver an unconditional guaranty, in form satisfactory to Seller, of the Purchaser's obligations under the Note, the Security Agreement, and the Sublease.

11. **INSPECTION OF ASSETS; NO WARRANTIES.** Purchaser acknowledges that it has inspected the Assets and that it is purchasing the Assets "AS IS" and "WHERE IS" and with no warranties, express or implied, of merchantability, condition, fitness for a particular purpose, or otherwise, except for the warranty of title set forth in Paragraph 6.1 above. Purchaser further acknowledges that it is not relying on any information provided by Seller in connection with the Assets or the Business, except as expressly provided herein.

12. DEFAULTS; REMEDIES. In the event the sale and purchase of the Assets is not consummated due to a default by Seller, Purchaser may pursue any and all remedies allowed by law, and shall be entitled to recover reasonable attorney's fees and costs incurred.

In the event the sale and purchase of the Assets is not consummated due to a default by Purchaser, Seller may pursue any and all remedies allowed by law, and shall be entitled to recover reasonable attorney's fees and costs incurred.

13. DAMAGE TO PROPERTIES; CONDEMNATION. In the event any material portion of the Assets is substantially damaged by fire or other natural causes, lost or stolen, prior to the Closing, Purchaser shall have the option of either (i) terminating this Agreement, or (ii) complying with the terms of this Agreement and consummating the sale and purchase of the Assets contemplated herein, in which case all insurance carried by or for the benefit of Seller insuring such Assets shall be assigned by Seller to Purchaser at the Closing.

14. CLOSING COSTS; PRORATIONS. Seller shall pay any attorney's fees of counsel for Seller. Purchaser shall pay any attorney's fees of counsel for Purchaser.

15. FURTHER ASSURANCES. At any time and from time to time after the Closing, at any party's request and without further consideration, the other party hereto shall execute and deliver such other instruments of sale, conveyance, transfer, lease, assignments, assumption and confirmation and take such other action as the requesting party may reasonably deem necessary or desirable in order to carry out and implement more effectively the provisions and purposes of this Agreement. The parties hereto agree to cooperate fully in implementing a smooth and orderly transition from Seller to Purchaser of the properties and business operations being sold hereunder.

16. NOTICES. All notice, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or mailed, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

If to Seller: Dominic Como
 315 Senn Street
 West Columbia, SC 29169

With a copy to: William E. Booth III
 Mays, Foster, Booth & Gunter
 2512 Devine Street
 Columbia, SC 29205

If to Purchaser: Timothy R. Coletta
2009 Devine Street
Columbia, SC 29205

17. **SEVERABILITY.** In the event any provision of this Agreement shall be held to be invalid or unenforceable in whole or in part, neither the validity nor the enforceability of the remainder of this Agreement shall be affected in any way.

18. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. **ENTIRE AGREEMENT.** This Agreement and the Exhibits hereto contain the entire agreement between the parties hereto concerning the transactions contemplated hereby and supersede all prior agreements or understandings between the parties hereto relating to the subject matter hereof. No oral representation, agreement or understanding made by any party hereto shall be valid or binding upon such party or any other party hereto.

20. **CONSTRUCTION.** This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina, but the jurisdiction and venue for any lawsuit with respect to this Agreement shall be in Richland County, South Carolina, and each party hereby consents to such jurisdiction and venue.

21. **SURVIVAL.** The provisions of this Agreement shall survive the closing of the sale and purchase of the Assets.

22. **CAPTIONS AND SECTION HEADINGS.** Captions and section headings used herein are used for reference purposes only and are not a part of this Agreement and shall not be used in construing this Agreement.

23. **CONSULTING AGREEMENT.** For a period of thirty (30) days from the Closing Date, Seller agrees to provide advisory and consulting services that the Purchaser may reasonably request during the business hours of the Business through one or more of its shareholders. Provided, however, the maximum number of hours of such services that will be provided during a seven day period of time shall not exceed 40. For a period of six months from the Closing Date, Seller agrees to provide advisory and consulting services that the Purchaser may reasonably request at reasonable times by telephone only. Seller shall have the right to designate the shareholder or shareholders that will provide such services. For payment of such services, the shareholders of Seller will be considered employees of Buyer during the 30 day period during which in-person services will be provided and each shareholder will be provided health insurance coverage to the same extent previously

provided shareholders as employees of Seller. Each shareholder will also receive the additional payment of \$1.00 for providing such services.

24. **BEER AND LIQUOR LICENSES.** The parties understand that the beer and liquor licenses used by Seller in the operation of Business were issued to Dominic Como, a shareholder and officer of Seller. The parties also understand that these licenses are not transferrable and that as long as Dominic Como is an employee of Buyer pursuant to Paragraph 23 hereof, Buyer will be able to sell beer and liquor. However, the intent of the parties is that Buyer will seek, from the appropriate state agency, beer and liquor licenses for use in the Business through an officer of Buyer. The parties also understand that these licenses may be obtained on a temporary basis, subject to withdrawal in the event of a protest, within a short period of time after the Date of Closing. Therefore, the further intent of the parties is that the Buyer shall have an officer file an application for temporary beer and liquor licenses within five days from the Date of Closing. In the event there is a protest to the application and the temporary licenses are withdrawn, Dominic Como will allow the use of his licenses as long as he is an employee of Buyer. If this period of time exceeds 30 days, Buyer shall pay for health insurance coverage for Dominic Como until permanent beer and liquor licenses are obtained and he will continue as an employee of Buyer, for a period of time not to exceed 180 days, and also will be paid the additional amount of \$1.00.

25. **FILING OF FORM 8594.** Upon the request of Seller or its accountant, Buyer agrees to sign Form 8594 indicating the allocation of the Purchase Price as set forth in Paragraph 3 hereof.

26. **RELEASE OF LIEN.** Buyer shall obtain from the lender an agreement that its lien as to the furniture, fixtures, and equipment will be terminated when the principal amount due on a loan to be obtained by Buyer is less than \$42,000.

(Signatures on following page.)

1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, by and through its duly authorized corporate officers, as of the date first above written.

IN THE PRESENCE OF:

W.S. Book
Reg. Secy

SELLER:

VILLAGE IDIOT, INC. (SEAL)

By: Appl. J.R.H.
Its: Vice President

By: John R. Fredericks
Its: Secretary + Treasurer

By: J.M.H.
Its: President

Federal ID No. 57-0916539

PURCHASER:

T.R.C., INC. OF COLUMBIA (SEAL)

W.S. Book
Reg. Secy

By: Tinglett
Its: President

Federal ID No. 57-1023581

SCHEDULE A

SECURED PROMISSORY NOTE

RICHLAND COUNTY
Columbia, South Carolina
Principal: \$140,000.00

June 23, 1995

FOR VALUE RECEIVED, the undersigned, T.R.C., INC. OF COLUMBIA, a South Carolina corporation (hereinafter referred to as "Maker"), promises to pay to the order of VILLAGE IDIOT, INC., a South Carolina corporation (hereinafter referred to as "Holder"), at 315 Senn Street, West Columbia, South Carolina, 29169, or at such other place as the Holder hereof may designate in writing to Maker, the principal sum of ONE HUNDRED FORTY THOUSAND AND NO/100 (\$140,000.00) DOLLARS, which principal sum, together with interest at the rate of seven (7.0%) percent per annum on the outstanding principal balance (computed on the basis of a 365-day year), shall be due and payable in thirty-eight (38) monthly payments of Two Thousand Seven Hundred Seventy-Two and 17/100 (\$2,772.17) Dollars each, beginning on August 7, 1995, and continuing on the first day of each month thereafter, except that the following additional payments shall be made on the dates shown below:

<u>Amount</u>	<u>Due Date</u>
\$ 5,000	January 7, 1996
\$15,000	July 7, 1996
\$10,000	January 7, 1997
\$15,000	July 7, 1997
\$10,000	July 7, 1998

A thirty-ninth (39th) and final payment of all unpaid principal and interest shall be due and payable on October 7, 1998.

Each monthly payment and any other payments made hereunder shall be applied first to the payment of interest accrued to the date of payment, and the remainder, if any, applied to the payment of principal.

If any payment provided for herein remains wholly or partially unpaid for more than ten (10) days after such payment is due and payable, then Maker agrees to pay a late fee of five percent (5%) of the amount of such payment.

Provided Maker is not in default, Maker may prepay all or part of this indebtedness at any time and from time to time without penalty. All such prepayments shall first be applied to accrued interest and the balance shall be applied to the principal balance owing. No such prepayments shall release or relieve Maker from

205\assetpur

paying the obligatory payments or principal and interest provided herein.

This Promissory Note is secured by that certain Security Agreement of even date (hereinafter referred to as "Security Agreement").

This Promissory Note shall immediately mature and become due and payable upon the filing of any petition or the commencement of any proceeding by Maker for relief under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt, which petition or proceeding is not dismissed within sixty (60) days of the date of filing thereof. Furthermore, this Promissory Note shall, at the option of the Holder, immediately mature and become due and payable, after notice as herein provided, upon the happening of any one or more of the following events: (1) nonpayment when due of any amount due hereunder or under the Security Agreement; (2) failure of Maker to perform any other obligation to the Holder under this Promissory Note or under the Security Agreement; (3) the suspension of the transaction of the usual business of Maker, or the dissolution, liquidation or transfer to another party of a significant portion of the assets of Maker; (4) the issuance or filing of any levy, attachment, garnishment or lien against the property of Maker which is not discharged within 15 days; (5) the failure of Maker to satisfy immediately any final judgment, penalty or fine imposed by a court or administrative agency or any government, provided, however, that the amount owed is greater than \$100,000.00; (6) the occurrence of an event of default under the Security Agreement; (7) the occurrence of an event of default under the sublease agreement of even date herewith between Maker and Village Idiot, Inc. (the "Sublease"); and/or (8) the occurrence of an event of default under the Asset Purchase Agreement of even date herewith between Maker and Village Idiot, Inc. (the "Asset Purchase Agreement"). The foregoing is subject to any cure or grace period provision provided for in the Security Agreement, any other document executed by Maker in connection with this loan or any other document executed by Maker for which default may be claimed hereinabove.

Except as otherwise provided herein, Maker shall not be deemed to be in default under this Secured Promissory Note for nonpayment when due of any amount due hereunder unless Holder shall first give to Maker ten (10) days' written notice of the default and Holder fails to pay the amount due hereunder within ten (10) days, and Maker shall not be deemed to be in default under this Secured Promissory Note for any other event listed in the preceding paragraph (other than non-payment) unless Holder shall first give to Maker twenty-five (25) days' written notice of the default and Maker fails to cure the default within twenty-five (25) days.

5\note

Page 2

In the event of the occurrence of any default hereunder, under the terms of the Security Agreement, under the terms of the Asset Purchase Agreement, or under the terms of the Sublease, Holder hereof may, at its sole option, as may be required pursuant to this Secured Promissory Note, the Security Agreement, the Asset Purchase Agreement, or the Sublease, if any, declare all unpaid principal and accrued interest to be immediately due, payable and collectible, time being of the essence of this Promissory Note.

After acceleration of the maturity of this debt or any installment of principal or interest due hereunder as provided herein, all unpaid principal shall bear interest at the "Default Rate" which is equal to fifteen percent (15%) per annum.

The Maker agrees that in the event the Holder hereof fails to exercise any privilege or option granted to him under this Promissory Note, such failure shall not constitute a waiver or forfeiture of the right to exercise such option or privilege for successive breaches of this contract.

In the event the Maker defaults in the payment of the debt evidenced hereby or of any installment of principal and interest as provided herein, Maker agrees to pay all costs of collection including reasonable attorney's fees if collected by and through an attorney at law.

The amount due under this Secured Promissory Note shall be reduced by the amount, if any, owed to Maker by Village Idiot, Inc. under the indemnification contained in Paragraph 4 of that certain Asset Purchase Agreement of even date herewith between Maker and Village Idiot, Inc.

If, from any circumstances whatsoever, fulfillment of any provision of this Promissory Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Promissory Note that is in excess of the then current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

Maker does hereby waive demand, presentment for payment, protest, notice of protest, dishonor, notice of dishonor, notice of nonpayment and the effectiveness of any moratorium laws of the United States of America, the State of South Carolina or any other state whatsoever.

The laws of the State of South Carolina shall apply and be controlling in the determination of the validity, application

and construction of this Promissory Note, but the jurisdiction and venue for any lawsuit with respect to this Promissory Note shall be in Richland County, South Carolina, and Maker and Holder hereby consent to such jurisdiction and venue.

IN WITNESS WHEREOF, Maker has executed this Promissory Note, under seal, as of the day, month and year first above written.

T.R.C., INC. OF COLUMBIA (SEAL)

By: _____

Its: _____

Address:

2009 Devine Street

Columbia, SC 29205