

MANUFACTURING, SALES AND LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this 24th day of May, 1980, by and among CREATIVE ENGINEERING, INC., a Florida corporation (hereinafter referred to as "Seller"), AARON FECHTER (hereinafter referred to as "Fechter") and SHOWBIZ PIZZA PLACE, INC., a Kansas corporation (hereinafter referred to as "Buyer"), the reference to the following facts:

R E C I T A L S:

A. As a result of the expenditure of time, effort and money, Seller has acquired or developed certain unique technology, computer hardware and software, artistic designs, character designs, scripts and musical scores, staging and lighting techniques and configurations, manufacturing know-how and other intellectual property relating to three-dimensional computer controlled characters which have original voice and music scores synchronized to animated movements for which Seller and/or Fechter, its majority shareholder, have obtained or applied for the trademark "Electronimation" (which, together with all similar or related products and additional hardware, software, improvements, additions, replacements and other intellectual and artistic property, patents, trademarks, service marks and copyrights relating thereto, and all plans, specifications and written documents necessary for the operation, maintenance and repair thereof, which have been acquired or developed or may be acquired or developed by Seller, Fechter, or any person, entity or corporation controlling, controlled by or under common control with Seller and/or Fechter, during the term of this Agreement, are hereinafter referred to as the "Electronimation Products").

B. Seller, Fechter and Brock Hotel Corporation (formerly "Topeka Inn Management, Inc."), a Delaware corporation, and the majority shareholder of Buyer (hereinafter referred to as "BHC"), have entered into that certain Pre-Incorporation Agreement dated December 13, 1979 whereunder Seller and Fechter

agreed to convey to Buyer the exclusive, worldwide right and license to sell, use, market and exploit the Electronimation Products in and for all applications in the restaurant, nightclub and lodging businesses, with certain specific exceptions hereinafter set forth. In addition, that agreement provides for the formation of Buyer and that Buyer will contract with Seller for the development and manufacture of all Electronimation Products as may be required by Buyer. The Agreement and the Stockholders' Agreement, of even date herewith between Buyer and its stockholders, are intended to fulfill the agreements called for in said Pre-Incorporation Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, covenants and conditions contained herein, the parties hereto do hereby agree as follows:

1 Exclusive Rights to Electronimation Products.

(a) Grant of License. Seller and Fechter hereby grant to Buyer the exclusive worldwide right and license to sell, use, market and exploit, and to grant to others the right and license to use, the Electronimation Products, in and for all applications in restaurant, lodging and nightclub businesses; provided, however, that Seller and Fechter shall retain a non-exclusive right to sell, use, market and exploit and to grant to others a non-exclusive right and license to use, the Electronimation Products in and for (x) lodging and nightclub applications that Buyer has elected not to pursue after Seller presents a complete written proposal with respect thereto and (y) isolated ventures (i.e., not involving a chain of establishments), which may consist in part of a restaurant, for which Seller may desire to provide Electronimation Products, subject, however, to the condition that such project or venture does not compete or conflict with any other existing or proposed application

of Electronimation Products by Buyer or the rights of any licensee of Buyer. All rights not specifically granted herein to Buyer are reserved by Seller. Except as specifically set forth in Section 9 below, the foregoing grant of license shall not be deemed to include the right to manufacture, reproduce or duplicate any of the Electronimation Products.

(b) Minimum Construction Schedule. In order for Buyer to retain the foregoing rights on an exclusive basis, Buyer shall be obligated to begin construction of or acquire restaurants, that will feature Electronimation Products [including not less than four (4) primary characters in stores located within Standard Metropolitan Statistical Areas having a population in excess of one hundred fifty thousand (150,000) and not less than two (2) primary characters in stores located within other areas] and that will be owned, leased or managed by Buyer, as scheduled below during the five (5) years beginning with the date when the first complete set of Electronimation Products, manufactured as new equipment, for such a restaurant is delivered:

(i) By the end of the first year, twenty (20) such restaurants;

(ii) By the end of the second year, forty (40) such restaurants;

(iii) By the end of the third year, sixty (60) such restaurants;

(iv) By the end of the fourth year, eighty (80) such restaurants; and

(v) By the end of the fifth year, one hundred (100) such restaurants.

The foregoing schedule shall be automatically extended by the amount of time during which (i) any event described in Section 15 hereof causes any delay in, or limitation upon,

Buyer's ability to construct or acquire such restaurants, or (ii) there is a delay for any reason in Seller's meeting the delivery schedules established pursuant to Section 4 hereof. In the event that and whenever Buyer shall have failed or refused to meet the foregoing construction schedule, as the same may be extended from time to time as herein provided, Seller shall have the right, at any time prior to the commencement of construction by Buyer of that number of restaurants by which it was short at the end of the immediately preceding year, to convert Buyer's license hereunder from an exclusive, to a non-exclusive, license upon written notice thereof to Buyer; provided, however, that no such conversion of Buyer's license to a non-exclusive basis shall (i) affect the validity or enforceability of any exclusive licenses theretofore granted by Buyer to other in compliance with the conditions set forth in Section 1(f) hereof; (ii) permit Seller to employ, or grant to others a right to employ, any Electronimation Products in a restaurant, nightclub or lodging establishment owned, leased or managed by Buyer which features Electronimation Products or upon which Buyer had commenced construction prior to the receipt of such notice of conversion, or (iii) affect any other rights or obligations of Seller or Buyer hereunder. Buyer shall be deemed to have commenced construction of a restaurant when a location has been secured and an order for Electronimation Products therefor has been firmly scheduled pursuant to Section 4 hereof whether directly by Buyer or by a third party for lease to, or management by, Buyer. Seller's right to convert Buyer's license hereunder from exclusive to non-exclusive shall be Seller's sole and exclusive remedy for any failure or refusal on the part of Buyer to meet the foregoing construction schedule.

(c) Ownership of Characters. The parties hereto acknowledge and recognize that the animated characters included as a part of the Electronimation Products and their likenesses and personalities are essentially the creation of Fechter and/or Seller, and that the ownership of patents, copyrights and similar legal protections relating thereto shall belong to Fechter and/or Seller. The parties hereto also acknowledge and recognize, however, that Buyer has expended, or will expend, significant sums of money on advertising and other methods of developing widespread recognition of the likenesses and personalities of certain of the animated characters and is, therefore, entitled to the exclusive use of such likenesses and personalities, with certain limited exceptions hereinafter provided for. Buyer is hereby granted, and shall have, so long as Buyer retains the exclusive rights granted it under Section 1(a) hereof, the exclusive worldwide right and license (except as hereinafter expressly provided) to use, market and exploit, and to grant to others the right and license to use, the group of animated characters known as the "Wolfpack Five," including, without limitation, "Rolfe Vander Wolf," "Fats Gorilla," "Dingo Starr," "Mitzi Mozzarella," "Beach Bear" and "Billy Bob." It is anticipated that Seller will develop additional characters, from time to time, which may be utilized by Buyer. It is the understanding and intention of the parties that Buyer is to have the best characters available from time to time. Within that spirit and intentions, it is agreed that as new characters are developed Buyer shall have the right to request Seller to grant it an exclusive right to one or more such additional characters and Seller agrees to grant such exclusive right thereto or to a comparable or better character developed by Seller specifically for Buyer.

Anything in this subsection (c) to the contrary notwithstanding (i) Fechter and/or Seller shall have the non-exclusive right to use Buyer's exclusive characters, without payment of any royalty or compensation to Buyer, in motion picture, recording and other applications which will enhance the favorable recognition of such characters and will not compete or conflict with any then existing or proposed application of such characters by Buyer or the rights of any licensee of Buyer and (ii) Seller shall have the right to utilize any non-exclusive character, which is not confusingly similar in appearance to any exclusive character, in any permitted application. Fechter and Seller each agree to do all acts and things required, or reasonably requested by Buyer, to secure and preserve all patents, copyrights and other available legal protections for and in respect of the Electronimation Products and of the characters over which Buyer is granted, or may hereafter acquire, exclusive rights pursuant to this subsection (c).

(d) Other Purchasers of Electronimation Products. Seller will take all reasonable steps deemed necessary by either Buyer or Seller to protect the exclusive nature of Buyer's rights as set forth herein, including without limitation, obtaining agreements from buyers of Electronimation Products other than Buyer not to use such products in any application that would conflict with Buyer's exclusive rights as defined in this Section 1 without Buyer's prior written consent.

(e) Use and Ownership of Music. Title and ownership in and to any music composed or acquired by Seller for use as part of, or in conjunction with, the Electronimation Products shall be and remain with Seller. Buyer, and each licensee of Buyer, shall have a non-exclusive, irrevocable license to utilize any and all such music as part of or in

conjunction with the Electronimation Products and in all advertising and other uses directly related to the operation and promotion of the businesses in which the Electronimation Products are used by Buyer (or its licensees) at no cost to Buyer (or such licensees) except for (i) the original purchase price thereof to be paid by Buyer (or such licensees) pursuant to Section 2 hereof and (ii) any ASCAP or other similar fees payable to the composer or other artist involved in the composition or production of the music which do not inure to the benefit of Seller or any person or entity controlling, controlled by, or under common control with Seller. It is further understood and agreed that such music constitutes a part of the Electronimation Products and, therefore, may not be reproduced or duplicated by Buyer (or its licensees) except as specifically provided herein and in Section 9 below.

(f) Limitation on Buyer's Right to Grant Exclusive Territorial Rights. Buyer shall have the right and power, without further approval of Seller, to grant to others the exclusive right to use the Electronimation Products (to the same extent such right is herein granted to Buyer) within specified territorial limits if, and only if, such licensee agrees, as a condition to the retention of its exclusive rights, to develop, within such reasonable period of time as Buyer may agree upon, not less than one restaurant featuring Electronimation Products [including not less than four (4) primary characters in stores located within Standard Metropolitan Statistical Areas having a population in excess of one hundred fifty thousand [150,000], and not less than two (2) primary characters in stores located within other areas) for each three hundred thousand (300,000) metropolitan area residents located within such specified territorial limits

at the time such license is granted. The number of metropolitan area residents shall be based upon the most recent available published government reports.

2. Purchase of Electronimation Products; Purchase Price.

(a) Purchase and Sale. Subject to all of the terms and conditions hereof, Seller will manufacture and sell to Buyer, and Buyer will buy and take from Seller, all Electronimation Products and similar products as may be used by Buyer, or by any person or entity controlling, controlled by or under common control with Buyer, throughout the term of this Agreement. The price to Buyer of all Electronimation Products and similar products purchased hereunder by Buyer during each fiscal year of Seller shall be equal to one hundred ten percent (110%) (subject to adjustment as hereinafter provided) of Seller's "total costs" (as defined herein) less sixty percent (60%) of the aggregate gross sales price (exclusive of sales on use taxes) paid or payable to Seller in respect of all products purchased from Seller by persons other than Buyer during such fiscal year. In the event that, at the end of any fiscal year of Seller, Buyer fails (for any reason not excused by Section 15 hereof) to own, lease or manage at least thirty-three percent (33%) of all ShowBiz Pizza Place restaurants then in operation, then the one hundred ten percent (110%) figure applied in the immediately preceding sentence shall be increased by one percentage point for each two (2) percentage points by which Buyer's said percentage of all restaurants then in operation is less than thirty-three percent (33%); for example, if at the end of any given fiscal year Buyer owned, leased or managed only twenty-three percent (23%) of all ShowBiz Pizza Place restaurant then in operation, one hundred fifteen percent (115%) would be substituted for said one hundred ten percent (110%) figure in com-

puting the price to be paid by Buyer for all Electronimation Products purchased by it during such fiscal year. As used in this Section 2, a product shall be deemed to have been "purchased" when (i) in the case of Buyer, such product is first firmly scheduled pursuant to Section 4, and (ii) in the case of any other purchaser, such product is first ordered or otherwise contracted for. Anything herein to the contrary notwithstanding, the purchase price to be paid by Buyer hereunder with respect to any complete set of Electronimation Products delivered to it for inclusion in a restaurant shall not exceed EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00) for the characters, computer hardware and software, props, scenery and lighting and TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) for curtains and special audio equipment requested by Buyer.

(b) Definition of Total Cost. For purposes of this Agreement, Seller's "total costs" for any fiscal year shall be the sum of all costs and expenses (exclusive of costs and expenses reimbursed pursuant to Sections 6, 16 or 17 hereof) reasonably incurred by Seller in the ordinary and normal course of producing Electronimation Products, whether for sale to Buyer or others; provided, however, that in determining "total costs" for any such fiscal year, (i) capital equipment having an original unit cost of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) or more shall be depreciated, on a straight line basis, over a four (4) year period, (ii) capital equipment having an original unit cost of less than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) shall be depreciated, on a straight line basis, over a two (2) year period, (iii) buildings, fixtures and leasehold improvements shall be depreciated or amortized, on a straight line basis, over a ten (10) year period, (iv) there shall be included the sum of ONE

HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) (or such other sum as may be mutually agreed upon from time to time by Buyer and Seller) for and in lieu of any and all salaries, bonuses, fringe benefits and other forms of direct or indirect compensation paid or provided by Seller to Aaron Fechter and/or Melvin A. Fechter during such fiscal year, without regard to the actual aggregate amount of such compensation, and (v) there shall be included as research and development expense during such fiscal year the lesser of the actual amount thereof or the sum of \$ 100,000.00 *A.F.* (or such other sum as may be mutually agreed upon from time to time by Buyer and Seller).

(c) Estimated Price. The "estimated price" of Electronimation Products to be sold by Seller to Buyer pursuant to this Agreement shall be an amount mutually agreed upon from time to time by Buyer and Seller as a good faith estimate of the ultimate price to be paid therefor by Buyer pursuant to this Agreement. The parties hereby agree that the initial "estimated price" of a complete six-character show for inclusion by Buyer in one of its ShowBiz Pizza Place restaurants, including all hardware, software and related products, shall be FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00). Following the end of Seller's current fiscal year and the end of each subsequent fiscal year, upon a determination of the actual price of Electronimation Products purchased by Buyer during such fiscal year, the "estimated price" shall be adjusted to approximate such actual price.

(d) Access to Records. The officers, employees and other representatives of Buyer shall be afforded access at reasonable intervals during normal business hours to all of Seller's workbooks, correspondence, instructions, receipts, vouchers, memoranda and similar data relating to

this Agreement and Seller shall preserve all such financial records for a period of three (3) years after the end of each calendar year. Seller will maintain an accurate accounting system in accordance with generally accepted accounting principles. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall reduce Seller's "total costs" and Seller shall make provisions so that they can be secured.

3. Terms of Payment. The purchase price for Electronimation Products ordered by Buyer from Seller shall be paid in accordance with the following schedule:

(a) Estimated Price. Buyer will pay to Seller, in respect of Electronimation Products set forth on the firm delivery schedules established pursuant to Section 4 below, (i) fifty percent (50%) of the "estimated price" therefor at least ninety (90) days prior to the scheduled delivery date, (ii) forty percent (40%) of the "estimated price" therefor at least thirty (30) days prior to the scheduled delivery date, and (iii) the unpaid balance of the "estimated price" upon delivery thereof.

(b) Annual Price Determination. Within ninety (90) days after the end of each fiscal year of Seller, beginning with the current fiscal year, an accurate computation of Seller's "total costs" for such fiscal year shall be prepared by Seller in accordance with Section 2 hereof and furnished to Buyer (together with all worksheets and other information reasonably necessary for Buyer to evaluate the basis for Seller's computation) and, if such computation is accepted by Buyer, a retroactive settlement of the aggregate price so determined, as compared to the "estimated prices" paid pursuant to Subsection 3(a) above, will be made for such products within thirty (30) days following acceptance by Buyer of

such computation or other mutual agreement by the parties upon the aggregate price of such products. Buyer shall be conclusively presumed to have accepted Seller's computations of "total costs" unless it reasonably objects thereto within thirty (30) days following receipt of Seller's computation (together with accompanying worksheets and information). If Buyer reasonably objects to any such computation within said thirty (30) day period, Buyer and Seller shall promptly enter into good faith negotiations for the purpose of agreeing upon a computation of "total costs," in accordance with Section 2 hereof, for such fiscal year.

4. Delivery.

(a) Written Schedules. Seller will deliver Electronimation Products to Buyer in the types and configurations and on the dates of delivery specified in the firm delivery schedules established pursuant to this Section 4.

(b) Contents of Schedules. Buyer will provide to Seller written delivery schedules setting forth the Electronimation Products to be delivered, the types and configurations thereof, and the dates of delivery thereof. Each delivery schedule shall (i) establish a firm schedule for deliveries in the third calendar month after the date the schedule is due (hereinafter referred to as the "firm schedule"), (ii) restate the previously established firm schedule of deliveries for the first two (2) calendar months and, at Buyer's discretion, increase or accelerate the firm schedules for the second (2nd) and third (3rd) months, and (iii) set forth a proposed schedule of deliveries in the next succeeding three (3) calendar months (hereinafter referred to as the "tentative schedule"). The firm schedules shall constitute a firm and binding instruction by Buyer to Seller to effect

delivery of such Shows on such dates, it being the intention of the parties that Buyer will be bound to purchase, and that Seller will be bound to sell and deliver, Electronimation Products on the dates set forth in such firm schedule, subject to the provisions of Subsection 4(d) below.

(c) Dates for Providing Schedules. Buyer will provide Seller with delivery schedules not later than each of the dates set forth below:

(i) On the date hereof, a firm schedule shall be provided which (a) summarizes all Electronimation Products previously scheduled for delivery on or before August 31, 1980, and (b) presents a tentative schedule of deliveries between September 1, 1980 and November 30, 1980.

(ii) On or before July 1, 1980, and on or before the first day of each calendar month thereafter throughout the term of this Agreement, a firm schedule in accordance with Subsection 4(b) shall be provided covering the three (3) calendar months after the date when the schedule shall be due and a tentative schedule of deliveries during the next succeeding three (3) months.

(d) Changes in Schedules.

(i) If, for any reason excused by Section 15 hereof, it becomes apparent that Seller will be unable to meet any firmly scheduled delivery date, Seller shall immediately notify Buyer in writing of the cause and estimated length of such delay and Seller shall not be liable to Buyer for any such failure of delivery provided such notice has been given and that, subsequent to the giving of such notice, Seller shall give first priority to the production of Electronimation Products for Buyer (to

the exclusion of all others) until such time as Seller can reasonably expect to meet all then firmly scheduled delivery dates.

(ii) If, for any reason excused by Section 15 hereof, it becomes apparent that any restaurant for which Electronimation Products are firmly scheduled will not be ready for installation for such Electronimation Products on the firmly scheduled delivery date, Buyer shall promptly notify Seller in writing of the cause of such delay and of a new firmly scheduled delivery date with respect thereto, and Buyer shall not be liable to Seller for any such modification of the delivery schedule provided such notice has been given.

(iii) The tentative schedule may be modified by Buyer from time to time; provided, however, that Buyer agrees that, during each six (6) month period covered by the delivery schedules hereinabove provided for, it will be bound to purchase at least seventy-five percent (75%) of the Electronimation Product covered by such schedules.

(e) Confidentiality of Information. Seller agrees to keep in confidence and not to disclose to any unrelated third parties any information regarding Buyer's order level, including but not limited to the quantity of Electronimation Products which may be scheduled for delivery at any given time and the locations to which such products are scheduled to be delivered; provided, however, that Seller shall have no liability hereunder if any such information is required to be disclosed by an appropriate order of any court, governmental agency or other legal requirement. Seller shall afford Buyer a reasonable opportunity to contest any such required disclosure if Buyer so desires provided that Buyer indemnifies or

otherwise protects Seller from any adverse consequences of such contest.

(f) Products in Development. Notwithstanding anything in this Section 4 to the contrary, Seller shall have no obligation to deliver, and Buyer shall no right to include in any firm schedule, any Electronimation Product that is not fully developed and ready for production on a regular basis. Seller agrees to use its best efforts to complete the development of any such product that Buyer has included in any tentative schedule and to meet the delivery dates reasonably requested by Buyer in such tentative schedules.

5. Taxes. Buyer shall pay, in addition to the purchase price, and as a separate item, all taxes (except taxes based upon net income and corporate franchise taxes of Seller), however designated, levied on or measured by such price or, in lieu thereof, Buyer shall furnish Seller with a tax exemption or resale certificate acceptable to the taxing authorities. At Buyer's expense, Seller will give Buyer all reasonable assistance for it to contest, by appropriate legal or administrative proceedings, the validity or the amount of any such tax.

6. Delivery, Acceptance or Rejection, Passage of Risk of Loss and Title.

(a) Seller shall be responsible for arranging shipment of the Electronimation Products, a Buyer's expense, from Seller's plant to the installation site specified by Buyer. Risk of loss and damage, as well as title, shall pass from Seller to Buyer upon delivery at the installation site. Upon delivery Buyer shall be responsible for arranging appropriate insurance on the Electronimation Products. Notwithstanding the foregoing, loss or damage discovered after delivery which is determined to be proximately caused by faulty packaging or

handling by Seller shall be replaced or repaired by Seller at its actual cost, which shall be reimbursed by Buyer.

(b) As promptly as is reasonable after delivery of each Electronimation Product, Buyer shall proceed to inspect and test the same. Acceptance or rejection of each Electronimation Product shall be communicated to Seller in writing within sixty (60) days after delivery. Any Electronimation Product not accepted or rejected in writing within such sixty (60) day period shall be conclusively presumed accepted. Any Electronimation Product reasonably rejected by Buyer shall be repaired or replaced by Seller at its actual cost, which shall be reimbursed by Buyer.

7. Repair and Maintenance of Electronimation Products.

(a) Training Manuals. Seller agrees to provide one complete service and maintenance manual with each Electronimation Product delivered at no additional cost to Buyer. Buyer is authorized to reproduce such manuals in part or in full as deemed necessary by Buyer for proper service and maintenance of the Electronimation Products. Seller will keep such manuals up to date and furnish all supplements and amendments to said manuals to Buyer as they are completed by Seller.

(b) Maintenance. At the request of Buyer, Seller agrees to provide, on a cost plus ten percent (10%) basis, all necessary spare parts and qualified personnel to maintain, repair and, at Buyer's election, upgrade all Electronimation Products purchased by Buyer or to provide Buyer access to a full maintenance contract for such repair, maintenance and upgrading on a cost plus ten percent (10%) basis.

8. Insurance. Seller agrees that during the term of this Agreement it will maintain insurance with responsible insurance companies in such amounts and against such risks as are usually

insured against by companies in businesses similar to Seller's in the same general area in which Seller operates. The proceeds of all such insurance shall be applied to the reduction of Seller's "total costs" for the year in which actually received.

9. License.

(a) Grant of License. Subject to Section 15 hereof, upon the occurrence of any of the events specified in Section 9(c) hereof Buyer shall automatically be granted a non-exclusive, irrevocable license to manufacture, or to license others to manufacture, all of Buyer's requirements for Electronimation Products and, during the continuance of any such license, Buyer shall not be obligated to purchase any Electronimation Products from Seller. Buyer shall not be obligated to pay any royalty or other consideration in connection with the grant or Buyer's use of such a license. This license is not intended to be the exclusive remedy for Seller's breach of this Agreement, and shall be in addition to any and all other remedies which Buyer may have hereunder at law or in equity. All Electronimation Products manufactured by or for Seller under this license shall be exclusively for Buyer's use in, or sale to licensees for use in, restaurants, nightclubs and lodging establishments, and Buyer shall require any third party manufacturing Electronimation Equipment for Buyer to agree to maintain the confidentiality of any information divulged to it and not to utilize any such information for its own benefit.

(b) Proprietary Information and Materials. Seller shall cause a complete set of copies of all Proprietary Information and Materials [as defined in Section 10(a) hereof] required to manufacture, operate, maintain and repair the Electronimation Products to be assembled in a file and kept, at Seller's option, in the offices of Buyer

or in escrow with an independent third party to be selected by Seller with the approval of Buyer. Seller shall supplement such file with all Proprietary Information and Materials developed during the term of this Agreement and while any such license is outstanding. In the event a license is granted to Buyer pursuant to this Section 9, Buyer shall have access to such file upon thirty (30) days prior written notice thereof to Seller and (if applicable) the escrow holder of the Proprietary Information and Materials. On the thirtieth (30th) day following the giving of such notice, Buyer shall be unconditionally obligated to deliver such file to Buyer unless such delivery is then prohibited by a preliminary injunction or other similar order of a court of competent jurisdiction.

(c) Events Giving Rise to License. The license described in Section 9(a) hereof shall become effective in the event that and whenever (i) Seller shall fail to deliver any firmly scheduled Electronimation Products within sixty (60) days following the firmly scheduled delivery date thereof (which failure is not excused by Section 15 hereof), or (ii) Seller shall become insolvent by reason of its inability to pay its debts as they mature (except as a result of any default hereunder on the part of Buyer), or (iii) any order, judgment or decree is entered adjudicating the Seller bankrupt or insolvent, or (iv) Seller shall make an assignment for the benefit of creditors, or shall petition or apply to any tribunal of the appointment or of a trustee, receiver or liquidation of the Seller or of any substantial part of the assets of the Seller or shall commence any proceedings relating to Seller under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, or (v) any proceeding

relating to Seller is commenced by any third party under any bankruptcy, reorganization, arrangement or liquidation law of any jurisdiction and such proceeding is consented to or acquiesced in by Seller or remains undismissed and in effect for a period of more than sixty (60) days, or (vi) any substantial part of Seller's assets are attached or levied upon and such attachment or levy is consented to or acquiesced and in effect for a period of more than sixty (60) days.

(d) Patent License. In the event that (i) Seller, Fechter or any person, entity or corporation controlling, controlled by or under common control with Seller and/or Fechter now has or is hereafter granted a United States or foreign patent on any elements or features of the Electronimation Products, and (ii) Buyer is granted any license to manufacture Electronimation Products pursuant to Section 9(a) hereof, the holder of such patent shall grant to Buyer a non-exclusive, irrevocable license, for the term of such manufacturing license, to use any patent so granted. Buyer shall not be obligated to pay any royalty or other consideration in connection with the grant or Buyer's use of any such license.

10. Proprietary Information and Materials.

(a) Definition. For purposes of this Agreement, the term "Proprietary Information and Materials" shall include all documentation required for complete fabrication, assembly, operation, maintenance and repair of the Electronimation Products, including but not limited to the following items which belong to or have been or may be acquired or developed by Seller: (i) written information, data, documents and other materials, including but not limited to engineering drawings, blueprints, specifications, diagrams, assembly drawings, memoranda, manuals, materials and parts lists, glossaries, test criteria and

specifications, maintenance procedures, vendors' part numbers and names, manufacturing equipment specifications, and books and instruction books, and (ii) products, designs, inventions, trade secrets, trademarks, trade names and service marks.

(b) Confidentiality. Unless Buyer first shall have obtained the express written consent of Seller, Buyer will not use any Proprietary Information or Materials for purposes other than (i) the acceptance testing of the Electronimation Products to be purchased hereunder, (ii) the use and servicing of Electronimation Products thereafter or (iii) the exercise of its rights under the license provided for in Section 9(a) hereof.

(c) Return of Proprietary Information and Materials to Seller. Unless Buyer has obtained a license to manufacture Electronimation Products pursuant to Section 9(a) hereof, in the event this Agreement is terminated by either party, Buyer shall forthwith turn all Proprietary Information and Materials to Seller; provided, however, that Buyer may retain such information and data as may be reasonably necessary to use and service the Electronimation Products previously purchased from Seller. It is also understood and agreed, however, that Buyer may thereafter proceed with the development on its own behalf, or the purchase from others, of three-dimensional computer controlled characters similar to the Electronimation Products.

11. Use of Electronimation Products. It is understood and agreed that Buyer is purchasing the Electronimation Products from Seller for use in, or for sale to licensees for use in, restaurants, nightclubs or lodging establishments. Buyer shall not use, or offer, sell or distribute the Electronimation Products to third parties, except to the extent contemplated by the foregoing sentence.

12. Development of Electronimation Products. Seller acknowledges and agrees that it is Buyer's intent and desire that the Electronimation Products purchased hereunder shall be the best three-dimensional animated character system available for use in any restaurant, nightclub or lodging establishment. Accordingly, Seller agrees to use its best efforts to develop new Electronimation Products and, at Buyer's option and expense, to provide the materials, equipment, expertise and service necessary to modify or upgrade previously delivered Electronimation Products then in use by Buyer.

13. Term. The initial term of this Agreement shall be twenty (20) years from the date of execution. Buyer may renew this Agreement, provided it is not then in default hereunder, for two (2) successive terms of ten (10) years each by giving Seller written notice of such election to renew at least six (6) months before the end of each such term. Each renewal shall be on the same terms and conditions as provided in this Agreement. Anything herein to the contrary notwithstanding, Seller shall have the right and option to terminate this Agreement, by giving written notice to Seller, in the event that and whenever Buyer shall have failed, for any reason whatsoever, to place any order for Electronimation Products with Seller during the five (5) year period immediately preceding the giving of such notice. Upon termination of this Agreement for any reason whatsoever, the exclusive right and license granted to Buyer in Section 1(a) hereof shall, without further action, be converted into a nonexclusive right and license; provided, however, that no such conversion of Buyer's license to a non-exclusive basis shall (i) affect the validity or enforceability of any exclusive licenses theretofore granted by Buyer to others in compliance with the conditions set forth in Section 1(f) hereof, or (ii) permit Seller to employ, or grant others a right to employ, any Electronimation Products in a restaurant, nightclub or lodging establishment located within a radius of

four (4) miles of any restaurant, nightclub or lodging establishment owned, leased or managed by Buyer which utilizes any Electronimation Products or upon which Buyer had commenced construction prior to such termination and conversion.

14. Events of Default. Without affecting the terms, provisions and remedies afforded by Section 9 hereof, and in addition to any other right or remedy which either party to this Agreement may have at law or in equity by reason of any breach hereof, either party may, by written notice to the other party, terminate this Agreement prior to the expiration of the term hereof in the event the other party:

(a) Shall fail or refuse to pay when due any monies payable under the terms of this Agreement, and shall continue such failure or refusal for thirty (30) days after written demand therefor by the party to be paid; or

(b) Shall fail to comply with any other term, provision or covenant contained herein (other than Buyer's obligations under Section 1 hereof or a default described in Subsection [c] below) and such failure shall not be cured within thirty (30) days after written notice thereof to the breaching party; provided, however, that (i) if, at least thirty (30) days prior to any breach or default of the type contemplated by this subsection (b), one party gives written notice to the other party that a breach or default on the part of the party giving notice under this Agreement will or may occur or that an event or condition has occurred under which it is probably that default under this Agreement will occur, then (ii) if such default in fact shall occur, the party in default shall be entitled to a period of sixty (60) days after the occurrence of such default in which to cure such default; or

(c) Shall (i) make a transfer of all or any significant portion of its assets in fraud of creditors or an assignment for the benefit of creditors; (ii) file a

petition in bankruptcy or be adjudged a bankrupt or insolvent in proceedings filed against it under the bankruptcy laws of the United States or similar laws of any state; or (iii) suffer the appointment of a receiver or trustee for all or any substantial portion of its assets.

15. Force Majeure. Notwithstanding anything in this Agreement to the contrary, no delay or failure of any performance required hereunder by either party hereto shall be an event of default, or result in the granting of any license to Buyer pursuant to Section 9 hereof, which delay or failure such party is unable to prevent by the exercise of its goodfaith best efforts or which has resulted, in whole or in part, from any act of God, fire, flood, strike, riot, war, unavailability of materials through normal commercial channels affecting either such party or any of its sole source suppliers, the unavailability of financing<sup>in the money markets</sup> upon reasonable terms and conditions, or other cause beyond such party's reasonable control; provided, however, that the party invoking the protection of this provision shall give the other party prompt written notice of the occurrence, nature and anticipated duration of any such event and no such delay or failure shall be excused pursuant to this Section 15 during any period that such written notice is not given; and provided further, that in the event any such occurrence affects Seller's ability to meet any firmly scheduled delivery dates hereunder, Seller shall be obligated to give Buyer's orders first priority (to the exclusion of all others) and no delay or any portion thereof which could have been avoided by Seller's recognition of such priority will be excused hereby.

16. Conflicting Rights. Seller represents and warrants to Buyer that, to the best of Seller's knowledge and belief, no Electronimation Products delivered hereunder will, at the time of delivery or thereafter, infringe upon or conflict with any

rights asserted by others under any patent, trademark, copyright or other similar exclusive right. Should any such infringement or conflict be asserted with respect to any Electronimation Products theretofore purchased by Buyer, Seller shall replace or appropriately modify the same, if required to do so or if requested by Buyer, at Seller's actual cost, which shall be reimbursed by Buyer.

17. Limited Product Warranty. Seller hereby warrants to Buyer, and to any other original user of Electronimation Products delivered hereunder, that said products are free from defects in materials and workmanship; provided, however, that Seller's sole liability under this warranty shall be to make such modifications, replacements and repairs as may be necessitated by any defects of which it shall have received written notice within one (1) year following the delivery of such products at its actual cost, which shall be reimbursed by Buyer. Such modifications, replacements and repairs shall be effected at the location of the products found to contain such defects. Seller shall not be liable for consequential damages of any kind.

18. Loans to Seller. Buyer hereby agrees to make loans to Seller, from time to time at its request, to enable Seller to purchase specific items of capital equipment reasonably necessary to enable Seller to produce Electronimation Products for Buyer; provided, however, that Buyer shall, in no event, be required to have loans outstanding to Seller hereunder which, in the aggregate, exceed the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). Each such loan (i) shall be secured by a purchase money security interest in the specific item purchased therewith, (ii) be due and payable in equal monthly installments of principal, plus accrued interest, over the period within which the specific item is permitted to be depreciated pursuant to Section 2(b), (iii) bear interest, upon the unpaid principal amount at a rate, adjusted as of the first

day of each calendar quarter, not in excess of (x) the rate of interest most recently fixed by an unaffiliated lender, for an unsecured loan to Buyer for a term of ninety (90) days or less or (y) if no such loans are outstanding to Buyer, then the "Prime Rate" plus one percent (1%) (the "Prime Rate" being the lowest published rate which Chase Manhattan Bank would charge to its most creditworthy commercial borrower on an unsecured loan, made otherwise pursuant to a prior commitment, having a maturity of ninety (90) days or less, and (iv) shall be secured and otherwise documented to the mutual satisfaction of the parties hereto, it being understood that Seller shall have not less than ninety (90) days from receipt of notice of any default in which to cure any such default.

19. Miscellaneous Provisions.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(b) Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by any party hereto without the prior written consent of the other parties hereto; provided, however, that Buyer shall have the right (without such consent) to assign and transfer any or all of its rights hereunder to any person, entity or corporation controlling, controlled by or under common control with Buyer or which shall succeed to all, or substantially all, of the business and assets of Buyer through merger, consolidation or sale of assets.

(c) Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given and delivered upon the placing of any such notice in the United States mail, postage prepaid, and sent by registered or certified mail, addressed to the parties hereto, as follows:

(i) If to Seller, to:

CREATIVE ENGINEERING, INC.  
47 West Jefferson Street  
Orlando, Florida 32801  
Attention: Aaron Fechter, President

(ii) If to Buyer, to:

SHOWBIZ PIZZA PLACE, INC.  
2209 West 29th Street  
Topeka, Kansas 66611  
Attention: Robert L. Brock, President

(iii) If to Fechter, to:

MR. AARON FECHTER  
47 West Jefferson Street  
Orlando, Florida 32801

or to such other address as may be furnished in writing by any party to the others.

(d) Seller certifies that all Electronimation Products to be sold hereunder will be manufactured by Seller in accordance with all applicable laws and regulations.

(e) In the event any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected thereby.

(f) If any legal action or other proceeding is brought for the enforcement of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding (including such costs and fees upon appeal), in addition to any other relief to which it may be entitled.

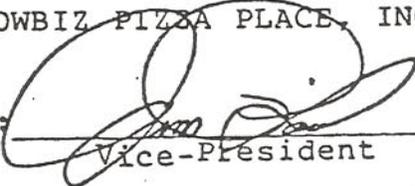
(f) No failure of either party to exercise any power given to it hereunder, or to insist upon compliance by the other with any obligation or condition hereunder, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Waiver of any particular default shall not affect or impair the waiving party's rights with respect to a subsequent default of the

same or of any different nature; nor shall any delay or omission of either party to exercise any of its rights arising from a default of the other party affect or impair such party's rights as to said default.

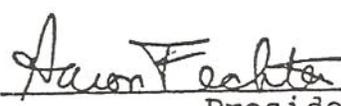
(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

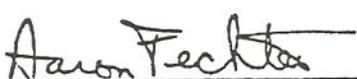
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

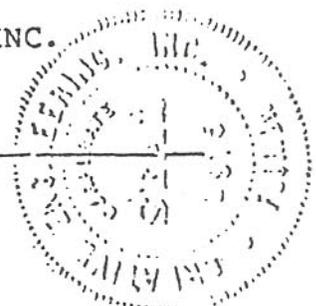
SHOWBIZ PIZZA PLACE, INC.

By:   
Vice-President

CREATIVE ENGINEERING, INC.

By:   
President

 (SEAL)  
Aaron Fechter, Individually



GUARANTY

THIS GUARANTY is made and entered into this 24th day of May, 1980, by BROCK HOTEL CORPORATION, a Delaware corporation (the "Guarantor"); for the benefit of CREATIVE ENGINEERING, INC., a Florida corporation ("Creative");

W I T N E S S E T H :

WHEREAS, the Guarantor is the record and beneficial owner of eighty percent (80%) of the issued and outstanding capital stock of SHOWBIZ PIZZA PLACE, INC., a Kansas corporation ("ShowBiz"); and

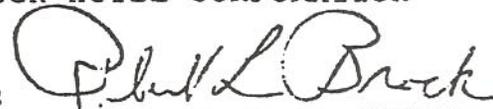
WHEREAS, Guarantor desires to induce Creative to enter into that certain Manufacturing, Sales and License Agreement, of even date herewith, between Creative and ShowBiz, under which ShowBiz shall incur certain debts and liabilities to Creative;

NOW THEREFORE, in consideration of the premises and the due execution and performance of said Manufacturing, Sales and License Agreement on the part of Creative, the Guarantor does hereby irrevocably guarantee unto Creative the prompt payment when due of all debts and liabilities of ShowBiz to Creative arising under or in connection with said Manufacturing, Sales and License Agreement, without limitation as to the amount thereof.

IN WITNESS WHEREOF, BROCK HOTEL CORPORATION has caused this Guaranty to be executed by its President as of the day and year first above written.

BROCK HOTEL CORPORATION

By:



Robert L. Brock, President

# MANUFACTURING, SALES AND LICENSE AGREEMENT

Date of Origin: July 24, 1980

Archived: 1-8-26

Submission by VegaNova

Version 1.0

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