

AMENDMENT NO. 2 TO MANUFACTURING,
SALES AND LICENSE AGREEMENT

CONFIDENTIAL-PROTECTIVE ORDER

This Amendment No. 2 to the Manufacturing, Sales and License Agreement is hereby entered into this 4th day of ^{QCB. August} ~~July~~, 1981, by and between CREATIVE ENGINEERING, INC., a Florida corporation (hereinafter referred to as "Seller") and AARON FECHTER (hereinafter referred to as "Fechter") and SHOWBIZ PIZZA PLACE, INC., a Kansas corporation (hereinafter referred to as "Buyer").

W I T N E S S E T H:

WHEREAS, the parties hereto have heretofore entered into that certain Manufacturing, Sales and License Agreement dated May 24, 1980, and Amendment No. 1 thereto dated January 23, 1981, (both of which are hereinafter referred to as the "Agreement"); and

WHEREAS, Buyer is embarking upon a national and international franchising arrangement with respect to ShowBiz Pizza Place restaurants; and

WHEREAS, the parties hereto wish to modify the Agreement for the purpose of accommodating the national and international franchising and for other purposes as set forth herein; and

WHEREAS, Buyer wishes to provide for sales of Electroni--
mation Products, as defined in the Agreement, to ShowBiz
Pizza Place Franchisees; and

WHEREAS, Electronimation Products and Seller have been
approved by Buyer for that purpose; and

WHEREAS, Seller is willing to offer Electronimation
Products to Franchisees upon the same terms and conditions
as Seller offers Electronimation Products to Buyer as more
particularly set forth herein; and

WHEREAS, Seller has incurred substantial economic
burdens associated with compliance with its obligations
under the Agreement; and

WHEREAS, the parties hereto wish to provide equitable
means to compensate Seller for its investment in the event
that Buyer elects to reduce or terminate its purchases of
Electronimation Products from Seller for ShowBiz Pizza Place
restaurants;

NOW THEREFORE, in consideration of the premises hereof
and other good and valuable consideration, the receipt and
sufficiency of which is hereby acknowledged, the parties
hereto agree as follows:

1. That portion of Paragraph 1(b) of the Agreement
located 20 lines from the top of Page 4 of the Agreement
shall be modified by inserting the following language after
the word "establishment" as follows, to-wit:

"located within a radius of four (4) miles of any
restaurant, night club, or lodging establishment..."

2. Paragraph 1(e) of the Agreement shall be modified by adding to the end of said paragraph the following, to-wit:

CONFIDENTIAL-PROTECTIVE ORDER

Notwithstanding anything contained in this Agreement to the contrary, Seller and Fechter shall have the right to market music composed or acquired by Buyer as part of, or in conjunction with, the Electronimation Products. In such event, no fee, royalty or any other charge shall be due to Buyer, its successors, assigns, franchisees and licensees with respect to the sales and other proceeds of such recordings. Seller and Fechter shall have the right to sell said music, records, and tapes to any outlet including, without limitation, to Buyer's Franchisees.

3. The second sentence of Paragraph 2(a) of the Agreement shall be deleted in its entirety and in place thereof shall be inserted the following, to-wit:

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 and ten percent (110%) (subject to adjustments as hereinafter provided) of Seller's "total costs" (as defined herein).

4. Paragraph 2(a) of the Agreement, as modified by Amendment No. 1 thereto, shall be modified by deleting all reference therein to "calendar year" and substituting therefor the fiscal year of Seller, which fiscal year commences on March 1. In addition, there shall be added to the end of Paragraph 1 of Amendment No. 1 to the Agreement the following, to-wit:

In calculating an adjustment for each fiscal year, the amount specified above will be multiplied by a fraction. The denominator is to be the Index for May, 1980 (244.9) and the numerator shall be the Index for the February immediately preceding the current fiscal year of the Seller.

CONFIDENTIAL-PROTECTIVE ORDER

5. Paragraph 2(b) of the Agreement shall be modified by adding to the end of said paragraph the following to-wit:

At the beginning of each fiscal year of Seller, subsequent to March 1, 1981, if no other sums have been mutually agreed upon by Buyer and Seller, the sum of \$150,000 specified in Item (iv) and the sum of \$100,000 specified in Item (v) hereof shall be adjusted, upward or downward, in direct proportion to the increase or decrease in the National Consumer Price Index for All Urban Consumers (CPI-U; base: 1967 = 100) published by the United States Bureau of Labor Statistics, or such other comparable index as may then be available. In determining the amount of any adjustment for a fiscal year, reference should be made to the Index for the month of May, 1980 (244.9) and to the Index for the month of February in the immediate preceding fiscal year. In calculating an adjustment for each fiscal year, the amount specified above will be multiplied by a fraction. The denominator is to be the Index for May, 1980 (244.9) and the numerator shall be the Index for the February immediately preceding the current fiscal year of the Seller.

6. The first 7 lines of the first sentence of Paragraph 2(b) of the Agreement shall be deleted in its entirety and in place thereof shall be inserted the following, to-wit:

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 and 17 hereof) reasonably incurred by Seller in the ordinary and normal course of producing Electronimation Products for sale to Buyer or Buyer's Franchisees, provided that such total costs shall include all direct costs associated therewith together with indirect and overhead costs which shall be allocated proportionately based on the ratio of Seller's direct costs for its production of Electronimation Products to Seller's direct costs for its entire business operations. For purposes of determining total costs, "direct costs" shall be deemed to mean the cost of parts, materials, labor, research and development. "Indirect and overhead costs" shall be deemed to mean all other costs including, but not limited to, rent, utilities, insurance, executive compensation and administrative costs, equipment lease expenses, taxes (other than federal or state income taxes) and depreciation. For example, assume that

CONFIDENTIAL-PROTECTIVE ORDER

Seller's indirect and overhead costs for its entire business operation is ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), that its entire business operations direct cost is FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), and that the direct cost for Electronimation Products sold to Buyer and Buyer's Franchisees is FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00), then under such assumptions, the indirect and overhead cost allocable to "total costs" for Electronimation Products sold to Buyer and Buyer's Franchisees shall be EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00); provided...

7. Paragraph 3(a) of the Agreement shall be deleted in its entirety and in place thereof shall be inserted the following, to-wit:

(a) Sale to Franchisees. Notwithstanding Paragraph 11 of the Agreement Seller agrees to offer to Buyer's Franchisees Electronimation Products for ShowBiz Pizza Place restaurants upon the same terms in Paragraph 2(a) provided the Franchisees comply with the additional terms specified in subparagraph 3(b) below.

(b) Payment Terms. Franchisees of Buyer and Buyer will pay to Seller for shows of Electronimation Products which they purchase from Seller, (i) fifty percent (50%) of the "estimated price" therefor at least one hundred and fifty (150) days prior to the delivery date, (ii) forty percent (40%) of the "estimated price" therefor at least sixty (60) days prior to the delivery date and (iii) the final unpaid balance of ten percent (10%) of the "estimated price" therefor at least ten (10) days prior to the delivery date. Notwithstanding anything in Paragraph 9(c) of the Agreement to the contrary, delivery date for purposes of this Agreement shall be one hundred and fifty (150) days after production is commenced as set forth in subparagraph (c) hereinbelow and shall be the date upon which Electronimation Products are completed and ready for delivery from Orlando, Florida. The payment schedule specified in this subparagraph shall not be modified except as agreed to in writing by Buyer and Seller as to any Electronimation Products purchased by Buyer or by Seller and any Franchisee as to any Electronimation Products purchased by that Franchisee.

CONFIDENTIAL-PROTECTIVE ORDER

(c) Inventory Production. The Buyer recognizes that the present production capability of Seller is such that Electronimation Products may be produced in batches of forty (40) shows with actual production commencing in January, April, July and October of each year. In order to assure a sufficient supply of completed shows of Electronimation Products and to assist Seller in achieving efficiency and economy of production and subject to the production limitations hereinafter set forth, Buyer agrees to the following: (1) Buyer shall provide to Seller two hundred and fifty (250) days prior to the delivery date, a written estimate of the number of completed shows needed to be produced. Buyer may thereafter confirm or reduce the number of shows at any time up to one hundred (100) days prior to the delivery date. (2) If Seller has purchased or entered into a binding obligation to purchase components for such shows prior to one hundred (100) days before the delivery date and Buyer has decreased the number of shows ordered within the period 250 to 100 days prior to the delivery date, Buyer shall reimburse Seller the cost of the components for any cancelled shows upon Seller providing an itemized list of the components and their cost to Buyer. The amount of all such reimbursements by Buyer shall be credited by Seller to any future orders by Buyer.

(d) Application of Inventory. Shows that are completed by Seller and paid for by Buyer but not delivered, shall be warehoused in Orlando, Florida, by Seller at no additional cost to Buyer. All orders for new shows of Electronimation Products from Buyer or Buyer's Franchisees shall be filled out of inventory first unless Buyer directs otherwise in writing. For any shows sold to Franchisees out of such inventory, or shows currently in production or shows that are on order, the Seller shall reimburse Buyer for any payments previously paid by Buyer to Seller to the extent of any sums received by Seller from the Franchisees.

8. Subparagraph 3(b) shall be renumbered to become subparagraph 3(e) and shall be amended by the addition of the following language at the end of its last sentence:

Buyer's Franchisees shall have no right under this Agreement to inspect Seller's books and records. For

purposes of computing the adjustments to be made under this subparagraph 3(e) of this Agreement, Seller's total cost shall be apportioned equally among all of the Electronimation Products delivered or completed for delivery during each fiscal year of Seller.

9. Subparagraph (a), (b) and (c) of Paragraph 4 shall be deleted.

10. Subparagraph (d) of Paragraph 4 shall be renumbered to become subparagraph (a) of Paragraph 4, and shall state as follows, to-wit:

(a) Changes in Delivery Date. If, for any reason excused by Section 15 hereof, it becomes apparent that Seller will be unable to meet any 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 and Buyer's Franchisees (to the exclusion of all others) until such time as Seller can reasonably expect to meet all the proposed delivery dates.

11. Subparagraph (e) of Paragraph 4 shall be renumbered to become subparagraph (b) of Paragraph 4.

12. Subparagraph (f) of Paragraph 4 shall be renumbered to become subparagraph (c) of Paragraph 4 and shall state as follows, to-wit:

(c) Products in Development. Notwithstanding anything in this Paragraph 4 to the contrary, Seller shall have no obligation to deliver, and Buyer shall have no right to include for delivery, 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 and to meet the delivery dates reasonably requested by Buyer; provided, however, for the purpose of maintaining uniformity at all ShowBiz Pizza Place restaurants the appearance (i.e., as viewed by the public), of any show delivered by Seller shall be substantially identical to shows being produced as of Amendment No. 2 unless Buyer has given prior written approval to any proposed changes.

CONFIDENTIAL-PROTECTIVE ORDER

13. There shall be added to the Agreement a new Paragraph 19 which shall state as follows, to-wit:

19. Purchase of Animated Entertainment from Other Sources.

(a) Termination of Exclusive Rights. Notwithstanding Paragraph 2(a) of the Agreement, the Buyer has the right to approve additional sources of three-dimensional characters or a portion of a character or characters with animated movements synchronized to sound, hereinafter "Animation Products" for ShowBiz Pizza Place restaurants. In the event that Buyer or Buyer's Franchisees purchases such approved Animation Products from a source other than Seller, then Buyer agrees to furnish to Seller information as to the purchase prices of Animation Products purchased from other sources by Buyer or its Franchisees and agrees to pay to Seller ten percent (10%) of the cost of any Animation Products purchased from such other sources, said payment to be made within thirty (30) days after such Animation Products are installed in a ShowBiz Pizza Place restaurant. Said payment shall be in a minimum sum of \$1,000 for any such Animation Products in a ShowBiz Pizza Place restaurant. At the beginning of each fiscal year of Seller subsequent to March 1, 1981, the minimum amount of \$1,000 shall be adjusted upward or downward as it relates to changes in the Consumer Price Index in the manner set forth in Paragraph 2(b) hereof. The maximum sum payable with respect to the foregoing shall not exceed the sum of \$1,000,000. In addition to the foregoing, for each and every such Animation Products placed in one ShowBiz Pizza Place restaurant, Seller shall be released from the exclusive limitations set forth in Paragraph 1(a) herein, and Seller shall have the right to place Electronimation Products, other than the characters, likenesses and names used in the restaurants operated by Buyer and its Franchisees, in one restaurant either within or without a territory in which a ShowBiz Pizza Place restaurant is located. In the event that Seller shall have sold to Buyer and Buyer's Franchisees less than fifty percent (50%) in amount with respect to the purchase price of all Electronimation Products and Animation Products purchased by Buyer and Buyer's Franchisees with respect to all restaurant, lodging, night club applications as then exist (both inclusive and exclusive of ShowBiz Pizza Place restaurants)

CONFIDENTIAL-PROTECTIVE ORDER

within a given fiscal year of Seller, then under such circumstances Seller shall have the right and option within ninety (90) days after the end of such fiscal year (and under the circumstances hereinabove set forth, for each fiscal year thereafter) to invoke subparagraph (b) hereinbelow, as if Buyer and its Franchisees had ceased all purchases of Electronimation Products from Seller and Buyer had delivered Notice as defined in subparagraph (b) hereinbelow. The sums to be paid pursuant to subparagraph (b) hereinbelow are in addition to the sum to be paid pursuant to this subparagraph (a).

(b) Full Termination of Exclusive Rights. In the event that Buyer and its Franchisees elect to cease all purchases of Electronimation Products from Seller and purchase Animation Products from other sources, then Buyer shall give Seller ten (10) months advance notice before such election becomes effective (hereinafter referred to as the "Notice"). Buyer shall pay to Seller within ninety (90) days after said Notice the sum of \$1,000,000. In consideration of such payment to Seller, Buyer shall retain its exclusive rights to the likenesses and names distinctively associated with Electronimation Products used in the restaurants operated by the Buyer and its Franchisees. Buyer thus shall have the right to have other suppliers produce like-appearing characters and products with identical names, but only for use in restaurants operated by Buyer and its Franchisees. As additional full and complete payment for its exclusive rights to the characters, likenesses and names and the right to have the same produced by other suppliers as hereinabove described, Buyer shall pay or have paid to Seller, the sum of ten percent (10%) of the purchase price paid to such other supplier for production of the characters, likenesses and names. However, Buyer shall not furnish to suppliers of Animation Products any Proprietary Information and Materials as defined in Paragraph 10(a) of the Agreement unless permitted to do so under the license provisions of Paragraph 9. In addition, Buyer shall not give to suppliers of Animation Products access to the interior mechanisms of characters, or components of control systems, computers, or similar devices. In the event that Buyer or Buyer's Franchisees purchases from such other supplier animation components for an entire ShowBiz Pizza Place restaurant, it is agreed that the minimum payment due to Seller shall be \$5,000, to be adjusted annually from March 1, 1981, in accordance with the Consumer Price Index. Said sum shall be paid

CONFIDENTIAL-PROTECTIVE ORDER

to Seller within thirty (30) days after the same has been installed in a restaurant owned or controlled by Buyer or Buyer's Franchisees. It is further understood and agreed that in the event of delivery of Notice, Seller shall have the right to produce and sell Electronimation Products to other restaurants so long as such Electronimation Products use characters, likenesses and names which are different from, and not confusingly similar to, those which are exclusively licensed to Buyer.

(c) Obligation to Purchase After Notice. Buyer or its Franchisees shall purchase within the five (5) month period after the Notice no less than one-half (1/2) as many complete shows of Electronimation Products as Buyer and its Franchisees ordered for the preceding ten (10) month period prior to the Notice. Buyer shall not be required to purchase any shows in the last five (5) of the ten (10) months Notice period. Moreover, Seller shall have the right to fix the price of Electronimation Products sold in the last five (5) months of the ten (10) month period or thereafter at any sum determined by Seller regardless of the provisions of this Agreement relative to pricing.

14. Paragraph 19 of the Agreement shall be renumbered to be Paragraph 20.

15. Buyer and Seller agree to negotiate in good faith an agreement for the purchase of retrofits, replacements and software by the Animated Entertainment Fund (as defined in the Franchise Agreement for ShowBiz Pizza Place restaurants) and any purchase by the Animated Entertainment Fund shall be deemed a purchase by the Buyer for the purpose of this Agreement. The purchase price for the foregoing shall be calculated in the manner set forth in Paragraph 2(a) of the Agreement as modified herein.

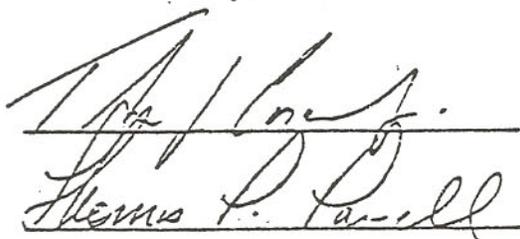
16. This Amendment No. 2 shall be binding upon the heirs, successors, and assigns of the parties hereto.

CONFIDENTIAL-PROTECTIVE ORDER

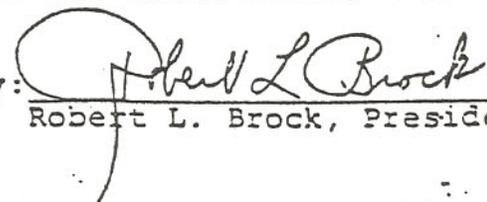
17. Except for the modification set forth herein, the Agreement as amended by Amendment No. 1 shall remain in full force and effect in strict accordance with the terms thereof.

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

SHOWBIZ PIZZA PLACE, INC.



Thomas P. Powell

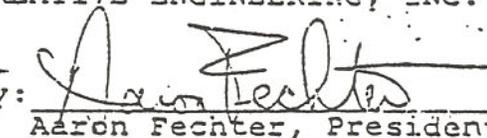
By: 

Robert L. Brock, President

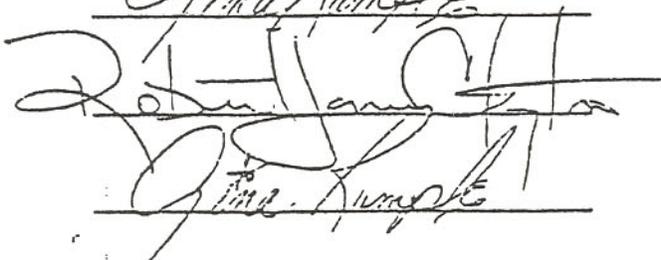
CREATIVE ENGINEERING, INC.



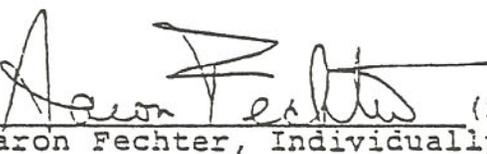
Aaron Fechter

By: 

Aaron Fechter, President



Aaron Fechter



Aaron Fechter, Individually (SEAL)

MANUFACTURING, SALES AND
LICENSE AGREEMENT
(Amendment No. 2)

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Version 1.0

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