

CREATIVE ENGINEERING

INCORPORATED

HOME OF ELECTRONIMATION™

47 WEST JEFFERSON STREET
ORLANDO, FLORIDA 32801
(305) 423-1001

333 WEST MICHIGAN AVENUE
ORLANDO, FLORIDA 32806
(305) 422-4061

December 18, 1981

Mr. Tom Corcoran
ShowBiz Pizza Place, Inc.
2209 W. 29th Street
Topeka, Kansas 66611

REPLY TO:
47 W. Jefferson St.

Dear Tom:

Enclosed please find copy of:

1. SALE AND PURCHASE AGREEMENT. The changes conform closely to our discussion. I believe the change at Article II, Section 4 is sufficiently specific as the section references that the good faith determination between ShowBiz and Creative will be made within 90 days of the end of Creative's fiscal year (February 28) and that settlement with franchisees will be made within 30 days of the good faith determination. I am also enclosing a copy of a proposed EXHIBIT "A" to meet the other matters we have discussed. If this language seems suitable to you I will run it past Hal Kantor.

2. ANIMATED ENTERTAINMENT FUND AGREEMENT. I am indicating my suggestions for specific changes, mostly, but in one or two matters am suggesting problems that I think need a little more consideration. I have suggested no reference to R&D since this will be addressed by increasing the R&D limits in the License Agreement.

Sincerely,

Melvin A. Fechter

MAF:vc

SALE AND PURCHASE AGREEMENT

This Sale and Purchase Agreement (hereinafter referred to as the "Agreement") made and entered into this ____ day of _____, 198_, by and between CREATIVE ENGINEERING, INC., a Florida corporation (hereinafter referred to as "Creative"), and _____ (hereinafter referred to "Buyer").

W I T N E S S E T H:

WHEREAS, Creative, as a result of the expenditure of time, effort and money, 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, which Creative identifies by the trademark "Electronimation" (which shall hereinafter be referred to as the "Electronimation System"); and

WHEREAS, Buyer is a franchisee of ShowBiz Pizza Place, Inc., and desires to build a ShowBiz Pizza Place Restaurant and to use thereat the Electronimation System; and

WHEREAS, Buyer desires to purchase and Creative desires to sell the Electronimation System; and

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration not herein recited but the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS

1. Electronimation System. The term "Electronimation System" shall mean and refer to those elements of Electronimation System described on Exhibit "A" attached hereto and by this reference incorporated herein. ~~Electronimation~~

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~~System is not a component system and shall be the product sold by Creative to Buyer under this Agreement.~~

2. Date Of This Agreement. The term "Date of this Agreement" shall mean and refer to the date reflected in the first paragraph hereof, notwithstanding the date on which this Agreement is signed by either the Buyer or Creative.

3. Proprietary Information and Materials. The term "Proprietary Information and Materials" shall mean and refer to all or any of the documentation required for complete fabrication, assembly, operation, maintenance and repair of the Electronimation System, including but not limited to the following items which are owned or may be acquired or developed by Creative: (i) written information, data, documents and other materials, including but not limited to engineering drawings, memoranda, manuals, materials and parts lists, glossaries, test criteria and specifications, service and maintenance manuals, 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, service marks, technical information and knowhow.

ARTICLE II - TERMS FOR SALE AND PURCHASE

1. Agreement for Sale and Purchase. Creative hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Creative the Electronimation System described on Exhibit "A" attached hereto on the terms and conditions hereinafter set forth.

2. Estimated Purchase Price. The Estimated Purchase Price for the Electronimation System shall be _____ (\$ _____) which amount shall hereinafter be referred to as the "Estimated Purchase Price." The Estimated Purchase Price shall be paid in the following manner:

A. Fifty percent (50%) of the Estimated Purchase Price

shall be paid in cash or certified funds upon execution and delivery of this Agreement by Buyer to Creative.

B. Forty percent (40%) of the Estimated Purchase Price shall be due and payable in cash or certified funds by Buyer to Creative on or before ninety (90) days after the Date of this Agreement.

C. Ten percent (10%) of the Estimated Purchase Price shall be due and payable in cash or certified funds by Buyer to Creative on or before one hundred forty (140) days following the Date of this Agreement.

3. Time and Place for Delivery. Creative shall deliver the Electronimation System to Buyer in accordance with the terms herein set forth on or before one hundred fifty (150) days after the Date of this Agreement. Delivery shall be made to the location designated by Buyer in this Agreement for delivery of Notice under Article VIII, Paragraph 3, or subsequent to execution and delivery of this Agreement by separate writing delivered by Buyer by hand delivery or by certified mail, return receipt requested, to Creative at the address for Creative set forth herein. All costs of delivery shall be F.O.B. Orlando, Florida, and shall be borne by Buyer.

4. Adjustment in Purchase Price. Pursuant to that certain Manufacturing Sales and License Agreement as amended from time to time between Creative, ShowBiz Pizza Place, Inc., and other parties, the actual purchase price shall be at Creative's cost of production, including without limitation direct and indirect costs and expenses incidental or allocable to production and delivery, plus ten percent (10%), or plus such other percentages as may be applicable under the Manufacturing Sales and License Agreement as established by a good faith determination between Creative and ShowBiz Pizza Place, Inc., within ninety (90) days of the end (February 28) of that fiscal year of Creative during which the Electronimation System is delivered. Said actual purchase

price shall be the same price as that charged for identical Electronimation System, if any, provided to ShowBiz Pizza Place, Inc. company-owned stores during the same fiscal year. Buyer hereby acknowledges that it makes no claim against Creative under Creative's Agreement with ShowBiz Pizza Place, Inc. and further acknowledges that it has no right to and will make no claim to examine the books of account and records of Creative or ShowBiz Pizza Place, Inc. To the extent that the cost of the Electronimation System is determined pursuant to said Agreement to vary from the Estimated Purchase Price herein, then the difference shall be returned or charged to Buyer as the case may be, without interest, ^{within 30 days} ~~as soon as is~~ *of the aforesaid good faith determination between Creative and ShowBiz Pizza Place, Inc. of the actual purchase price.* reasonably practicable after the pricing is determined.

5. Delivery, Acceptance or Rejection, Passage of Risk of Loss and Title, Cost of Delivery. Creative shall be responsible for arranging shipment of the Electronimation System, at Buyer's expense, from Creative's plant in Orlando, Florida, to the location designated by Buyer in this Agreement or otherwise as provided for in Paragraph 3 of this Article II. Risk of loss and damage, as well as title, shall pass from Creative to Buyer upon delivery at the location designated by Buyer. Upon delivery, Buyer shall be responsible for arranging appropriate insurance on the Electronimation System. Buyer shall look to the shipper for any loss or damage proximately caused by handling in shipment. As promptly as is reasonable after delivery of the Electronimation System, Buyer shall proceed to unpack, install, inspect and test the same. Acceptance or rejection of the Electronimation System shall be communicated to Creative in writing within ten (10) days after delivery. If Buyer fails to accept or reject in writing within ten (10) days following the delivery of the Electronimation System, the same shall be conclusively presumed accepted. Any part of the Electronimation System reasonably rejected by Buyer shall be repaired or replaced by Creative.

6. Taxes. Buyer shall pay, in addition to the Estimated Purchase Price, and as a separate item, all sales, use, or excise taxes, however designated, levied on or measured by the Estimated Purchase Price, or in lieu thereof, Buyer shall furnish Creative with a Tax Exemption Certificate acceptable to the appropriate taxing authorities.

ARTICLE III - OWNERSHIP OF INTELLECTUAL PROPERTY

1. Ownership of Characters and Names. The parties hereto acknowledge and recognize that the animated characters included as a part of the Electronimation System and their likenesses and personalities, the names applied to these characters and any patents, trademarks, copyrights and other similar intellectual property rights relating to such characters are owned exclusively by Creative or its majority shareholder, Aaron Fechter.

2. Use and Ownership of Music. Title and ownership to any music composed or acquired by Creative for use as part of, or in conjunction with, the Electronimation System shall be and remain with Creative. Buyer shall have a non-exclusive, revocable license to utilize any and all such music as part of or in conjunction with the Electronimation System and in all advertising and other uses directly related to the operation and promotion of the ShowBiz Pizza Place Restaurant in which the Electronimation System is used by Buyer at no cost to Buyer except for (i) the original purchase price thereof to be paid by Buyer pursuant to Article II hereof and (ii) any performing rights fees payable for music on which the copyright is owned by a party other than Creative or any person or entity controlling, controlled by or under, common control with Creative. Buyer shall not have any right or license to use the music for any other purpose. It is further understood and agreed that music constitutes a part of the Electronimation System and, therefore, may not be reproduced or duplicated by Buyer except as provided for herein.

3. Proprietary Information and Materials. Buyer shall not use any Proprietary Information or materials for purposes other than (i) the acceptance testing of the Electronimation System purchased hereunder or (ii) the use and servicing of the Electronimation System thereafter.

~~4. Return of Proprietary Information and Materials to Creative. In the event that Buyer's franchise for a ShowBiz Pizza Place, Inc. restaurant terminates or expires, Buyer shall forthwith return all Proprietary Information and Materials to Creative.~~

4.5. Use of Electronimation System. Buyer hereby acknowledges that, subject to certain non-exclusive rights that have been retained by or that may revert to Creative, Creative has granted to ShowBiz Pizza Place, Inc., an exclusive right and license to use, market, and exploit in the restaurant, nightclub and lodging business, and to grant to others, including Buyer, the right and license to said uses of the animated characters which are a part of the Electronimation System. Buyer hereby agrees and covenants not to use any portion of the Electronimation System in any application except as specifically authorized by ShowBiz Pizza Place, Inc. Pursuant to Buyer's status as a franchisee of ShowBiz Pizza Place, Inc., Buyer shall not use, or sell, convey or otherwise distribute the Electronimation System to a third party, except as authorized in writing by ShowBiz Pizza Place, Inc., as part of the franchise agreement between Buyer and ShowBiz Pizza Place, Inc. (hereinafter referred to as the "Franchise Agreement").

ARTICLE IV - REPAIR AND MAINTENANCE
OF ELECTRONIMATION SYSTEM

1. Training Manuals. Creative agrees to provide one complete service and maintenance manual with the Electronimation System at no additional cost to Buyer. It is agreed that any such manual forms a part of the Proprietary

Information and Materials. Buyer is authorized solely to use such manual for proper service and maintenance of the Electronimation System. Creative will keep such manual up to date and shall furnish all supplements and amendments to said manual to Buyer as such are completed by Creative, at Buyer's expense. Buyer shall be charged the same price for supplements and amendments to said manual as is charged by Creative to other Franchisees or those operations owned by ShowBiz Pizza Place, Inc. using the same or similar Electronimation System.

2. Maintenance. The obligation for periodic ordinary maintenance of the Electronimation System shall be that of Buyer. Buyer shall be obligated to maintain the Electronimation System in accordance with the procedures and upon the schedules set forth in the service and maintenance manual delivered by Creative with the Electronimation System. Creative shall have no obligation to maintain the Electronimation System, nor any liability for costs, expenses or problems associated with said maintenance. At the request of Buyer, Creative agrees to provide, on a cost plus ten percent (10%) basis, all necessary spare parts to maintain and repair the Electronimation System. In the event on-site assistance is required of Creative, Creative will provide a technician on a per diem basis at its regular rate in effect at that time plus out-of-pocket expenses (its per diem rate on the date of this agreement is \$ _____).

ARTICLE V - DEFAULT AND DAMAGES

1. Liquidated Damages. In the event Buyer fails to pay when due the payments of the Estimated Purchase Price set forth in Article II, then in such event Creative may terminate this Agreement, and retain the Electronimation System. In the event this Agreement is terminated as a result of the failure to pay any such sums when due as provided herein, then in such event, Creative may retain as liquidated damages, and not as a penalty, a portion of the Estimated Purchase Price paid

pursuant hereto based upon the following schedule:

<u>Time Period</u>	<u>Percentage Retained</u>
i. During the 90 days following the Date of this Agreement	___ %
ii. 91 to 140 days following the Date of this Agreement	___ %
iii. 141 through 150 days following the Date of this Agreement	___ %

The parties hereto recognize and acknowledge that the Electronimation System is a unique product and that the foregoing schedule of liquidated damages represents a fair and equitable arrangement because of the impossibility of determining actual damages.

ARTICLE VI - FORCE MAJEURE

Notwithstanding anything in this Agreement to the contrary, no delay or failure of any performance required by Creative hereunder shall be an event of default, which delay or failure Creative is unable to prevent by the exercise of its good faith 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 Creative or any of Creative's sole source suppliers, or other causes beyond Creative's reasonable control; provided, however, that Creative in evoking the protection of this provision shall give Buyer 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 Article VI during any period that such written notice is not given; and provided further, that in the event any such occurrence affects Creative's ability to meet a delivery date set forth hereunder, Creative shall be obligated to give Buyer's order, the orders of other ShowBiz Pizza Place, Inc. franchisees, and ShowBiz Pizza Place, Inc., orders first priority (to the exclusion of all others) and no delay or any portion thereof which could have been avoided by Creative's

recognition of such priority shall be excused hereby.

ARTICLE VII - LIMITED PRODUCT WARRANTY

Creative hereby warrants to Buyer that the Electronimation System is free from defects in materials and workmanship; providing, however, that Creative'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 the Electronimation System at Creative's 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. Creative shall not be liable for consequential damages of any kind including, but not limited to, loss of business resulting from failures or defects in the Electronimation System.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

1. Governing Law. This Agreement shall be interpreted under, construed in accordance with and governed by the laws of the State of Florida.

2. Assignment. Neither this Agreement, nor any of the rights or obligations hereunder may be assigned by Buyer without the prior written consent of Creative; provided, however, this Agreement may be assigned to ShowBiz Pizza Place, Inc., or to any franchisee of ShowBiz Pizza Place, Inc., provided that ShowBiz Pizza Place, Inc., gives its consent thereto and provided further, that Creative is notified in writing of such assignment.

3. Notice. 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, or by actual delivery at the addresses set forth hereinafter, or to such other address as may be furnished in writing by

either party to the other at the given address of the other party..

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

5. Attorney's Fees and Costs. If any legal action or other proceeding is brought by Creative for the enforcement of this Agreement, if successful or prevailing, Creative shall be entitled to recover reasonable attorney's 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 might be entitled.

6. Non-Waiver. 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.

7. Execution of Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

8. Survival of Obligations. The obligations upon Buyer by the terms of this Agreement shall survive termination of this Agreement and any closing hereunder and shall remain fully effective thereafter.

9. Entire Agreement. This Agreement contains the entire Agreement of the parties and no representations, inducements,

promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

10. Indemnify. Buyer shall forever protect, save, and keep Creative harmless and indemnify Creative against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses, and liabilities of any kind or nature whatsoever arising directly or indirectly out of or in connection with the use of the Electronimation System.

11. Compliance of Laws. Buyer shall conduct its business and its use of the Electronimation System in strict compliance with all applicable laws, ordinances, regulations, and other requirements of any federal, state, county, municipal, or other government and the requirements of ShowBiz Pizza Place, Inc., and will obtain all necessary permits, licenses or other consents for the operation of its business.

12. Remedies. Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise shall not be exclusive but shall be cumulative upon all other rights and remedies set forth herein are allowed or allowable by this Agreement or by law.

13. Titles of Paragraphs. The various titles of the paragraphs herein contained are used solely for convenience and shall not be used for interpreting or construing any word, clause, paragraph, subparagraph or article of this Agreement.

14. Benefit. This Agreement shall inure to the benefit of the successors and assigns of the parties hereto.

WHEREFORE, the parties hereto have signed and sealed with Agreement in manner and form sufficient to bind them on the day

and year first above written.

CREATIVE ENGINEERING, INC.

By: _____ President

Attest: _____ Secretary

"CREATIVE"

Address:

47 West Jefferson Street
Orlando, Florida 32801

By: _____

Attest: _____

"BUYER"

Address:

Date: _____

Electronimation Show	\$ _____
Electronimation Stage Accessories	_____
Total	\$ _____

The Electronimation Show and the Electronimation Stage Accessories will be substantially identical to the Rock-a-fire Explosion Group and accessories that presently appear at various ShowBiz Pizza Place restaurants, and in particular at ShowBiz Pizza Place, _____

_____ as of the date of this Agreement. They will include all electronic and mechanical equipment needed to operate the show.

It is anticipated that the character(s) and accessories on one or more of the stages will from time to time be replaced or alternated among restaurants as a consequence of a separate agreement, titled "The Animated Entertainment Fund Agreement," between Seller and ShowBiz Pizza Place, Inc., and may result in some reconditioned equipment being delivered to Buyer either under this Agreement or subsequently through purchase ~~from~~^{by} the Animated Entertainment Fund.

CREATIVE ENGINEERING, INC.

By: _____
President

Attest: _____

"CREATIVE"

Address:

47 West Jefferson Street
Orlando, Florida 32801

By: _____

Attest: _____

"BUYER"

Address:

1. Insert: "which for the purposes of this Agreement shall be regarded as an operating arm of ShowBiz Pizza Place, Inc.,"

2. Definition needed.

3. I should like to suggest some language at this point to meet Aaron's hand-written comment: "I don't want to have to come and ask a panel of judges if it's OK if I improve the show. The only thing this can do is stifle our creativity. Somethings can't be explained in terms of the art of electronimation to someone outside the field. If for any reason we don't meet one of these requirements, contract is satisfied by 'reasonable efforts' to meet the aforementioned requirement."

4. Insert: "The purchase of replacements, retrofits and software by the Animated Entertainment Fund shall be deemed the purchase of Electronimation Products by ShowBiz. Accordingly, the price of replacements, retrofits and software shall be determined under Section 2 of the License Agreement."

5. Insert a subparagraph "(b)". Follow 3(b) of the License Agreement, making the necessary language changes:

Buyer-----Fund
Section 2-----Article V
Subsection 3(a)-----Subsection (a), Article V .

6. The language you have here is intended, of course, to follow language in Section 2 of the License Agreement. However, Section 2 of the License Agreement would be picked up in toto by Item 4 above, the change I have suggested in your Article V.

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7. Insert: " A failure or refusal to pay when due any monies payable under the terms of this Agreement shall be deemed a failure or refusal to pay when due monies payable under the terms of the License Agreement. A failure to comply with any other term, provision or covenant contained herein shall be deemed a failure to comply with a term, provision or covenant of the License Agreement.

8. Insert: ", to the extent ShowBiz waives its first priority rights under the License Agreement,"

9. I wonder if this Article says what you really want it to say. Do you want the cost of shipment to be borne by the Fund or by the recipient of the goods, ShowBiz if to ShowBiz, the franchisee if to a franchisee? Wouldn't you want the risk of loss, upon receipt, to pass to the recipient, not to the Fund? Don't you want the recipient to be responsible for insurance, upon receipt? Don't you want the recipient, not the Fund, to "inspect and test"? Of course, the franchisees are not directly parties to this Agreement and cannot be bound directly to it. Still, I doubt that this language is quite what you want.

ANIMATED ENTERTAINMENT FUND AGREEMENT

(hereinafter "Agreement")
THIS AGREEMENT, dated this ___ day of _____, 1981 by and

between CREATIVE ENGINEERING, INC., a Florida corporation, (hereinafter referred to as "Seller"), and SHOWBIZ PIZZA PLACE, INC., a Kansas Corporation, (hereinafter referred to as "ShowBiz"), provides as follows:

WITNESSETH:

WHEREAS, the Manufacturing, Sales and License Agreement (~~hereinafter License Agreement~~) entered into on the 24th day of May, 1980 and subsequently amended on the 23rd day of January, 1981 and the 4th day of August 1981, by and between CREATIVE ENGINEERING, INC., AARON FECHTER, and SHOWBIZ PIZZA PLACE, INC. (~~attached hereto as Exhibit "A"~~ ^{; hereinafter, as amended from time to time, "License Agreement"}) provides that the parties agree to negotiate in good faith an agreement for the purchase of retrofits, replacements, and software by the Animated Entertainment Fund (hereinafter "Fund"), and

WHEREAS, said License Agreement further provides for the following:

"... 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."

and

WHEREAS, the parties hereto now desire to set out the terms and procedures under which said Fund is to operate;

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

ARTICLE I

TERM

^{extend from its effective date through}
The term of this Agreement shall ~~coincide with~~ the term of the License Agreement.

ARTICLE II

APPOINTMENT OF COMMITTEE

SHOWBIZ shall select and appoint a Committee for the Fund (hereinafter referred to as "Fund Committee").

The Fund Committee shall designate an Executive Director to coordinate all matters contained in this ^A agreement on behalf of ShowBiz with Seller.

PRELIMINARY DRAFT

Date: 12-5-81

ARTICLE III

DUTIES OF THE FUND COMMITTEE

The Fund Committee shall have the following duties:

1. The Fund Committee shall act as purchasing agent for replacements, retrofits and software for all system restaurants. System restaurants as used in this Agreement shall be construed to mean all Company owned or managed restaurants and franchise restaurants.
2. Replacements, retrofits and software shall be submitted to the Fund Committee by Seller for review and recommendation to ShowBiz.
3. Within the time limitations hereinafter set forth, the Fund Committee shall notify Seller of ShowBiz's decision with regard to the replacements and changes to the show as viewed by the public.

ARTICLE IV

DUTIES OF SELLER

1. Seller shall ^{make reasonable effort to} submit no fewer than three (3) proposals for software programs monthly for use in the system restaurants. A proposed software program shall contain the proposed script when submitted to the Fund Committee. A software program shall have a minimum length of three (3) minutes.
2. Seller shall correspond with the Fund Committee with respect to replacements, retrofits and software for existing operating restaurants, and changes to the show as viewed by the public.
3. Seller ^{shall} ~~must~~ submit ^{for approval any proposed} ~~any new~~ replacements, retrofits, software and changes to the show as viewed by the public and the estimated price thereof to the Fund Committee.
4. The Fund Committee or the ShowBiz Executive Committee ² shall ¹ respond to Seller within the following time periods:
 - a. The Fund Committee shall have up to thirty (30) days to respond to Seller regarding software.
 - b. The Fund Committee shall have up to sixty (60) days to respond to Seller regarding retrofits.

- c. The ShowBiz Executive Committee shall have up to ninety (90) days to respond to Seller regarding replacements.
 - d. The ShowBiz Executive Committee shall have up to ninety (90) days to respond to Seller regarding any change to the show as viewed by the public.
5. a. Seller shall deliver (F.O.B. Orlando, Florida) replacements, retrofits and changes to the show as viewed by the public as soon as is practicable or as agreed by and between the parties.
- b. Seller shall deliver (F.O.B. Orlando, Florida) software purchased by the Fund Committee within thirty (30) days of receipt of an order. However, Seller will not be required to deliver three (3) software programs for a one-month period if ShowBiz requests in writing Seller to provide advertising programming.

ARTICLE V

COST

³
~~The cost to ShowBiz for replacements, retrofits and software and similar products purchased hereunder shall be equal to one hundred and ten percent (110%) of Seller's "total cost" (as defined herein).~~

ARTICLE VI

PAYMENT

⁴ (a) Terms of payment.
¹ The Fund Committee shall pay to Seller with respect to replacements, retrofits and software the total ^{estimated price} cost thereof at the time of delivery or sooner but in no event sooner than as provided for in the License Agreement with respect to the payment for new shows.

⁵
¹ ~~Total cost as used in this Agreement shall be the entire, full and complete amount, including but not limited to 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 replacements, retrofits and software to Seller's direct costs for its entire business operations.~~

~~For purposes of this Agreement, 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.~~

~~In the event the above total cost definition is unworkable; Seller shall develop, subject to the approval of ShowBiz, a cost accounting method whereby the total cost of Seller's expenses and overhead are properly allocated to the manufacturer of replacements, retrofits and software.~~

~~ARTICLE VII~~

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~~ACCOUNTING AND RECORDS~~

~~The officers, employees and other representatives of the Fund Committee 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.~~

~~ARTICLE VIII~~ ✓✓

~~EVENTS OF DEFAULT~~

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~~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 and such failure shall not be cured within thirty~~

~~(30) de 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 any event or condition has occurred~~
~~under which it is probable 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:~~

~~(e) 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.~~

ARTICLE IX VIII

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 ^{which delay or failure} if such party is unable to prevent by the exercise of its good faith 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 in the money market upon reasonable terms and conditions or any 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 Article IX 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 the Fund Committee's orders _A

PRELIMINARY DRAFT
12-8-81

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.

ARTICLE ~~X~~ /X

NOTICES

All notices, demands, consents and requests which may or are to be given by either party to the other 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 the Fund Committee, to:

SHOWBIZ PIZZA PLACE, INC.
ANIMATED ENTERTAINMENT FUND COMMITTEE
2209 West 29th Street
Topeka, Kansas 66611

ARTICLE ~~XI~~ X

DEFINITION OF TERMS

Section 1. Whenever in this Agreement the term "Retrofit" appears, they shall be construed to mean adaptive parts or equipment not available at the time of manufacture.

Section 2. Whenever in this Agreement the term "Replacement" appears, they shall be construed to mean a component or circuit that may be substituted directly for another.

Section 3. Whenever in this Agreement the term "Software" appears, they shall be construed to mean a program, the entire set of programs, procedures and related documentation associated with the animated entertainment system to be used in the system restaurants.

ARTICLE ~~XII~~ X

MISCELLANEOUS PROVISIONS

Section 1. This Agreement takes effect upon its acceptance and execution by SnowBiz in the State of Kansas and shall be interpreted

PRELIMINARY DRAFT

and construed under the laws thereof, which laws shall prevail in the event of any conflict of law.

ARTICLE XIII ~~XII~~

REJECTION OF GOODS

- 9
1. Seller shall be responsible for arranging shipment of the replacements, retrofits, software and changes to the show as viewed by the public (hereinafter product) at the Fund Committee's expense, from Seller's plant to the installation site specified by the Fund Committee. Risk of loss and damage, as well as title, shall pass from Seller to the Fund Committee upon delivery at the installation site. Upon delivery the Fund Committee shall be responsible for arranging appropriate insurance on the product. 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 the Fund Committee.
 2. As promptly as is reasonable after delivery of each product, the Fund Committee shall proceed to inspect and test the same. Acceptance or rejection of each product shall be communicated to Seller in writing within a sixty (60) day period and shall be conclusively presumed accepted. Any product reasonably rejected by the Fund Committee shall be repaired or replaced by Seller at its actual cost, which shall be reimbursed by the Fund Committee.

ARTICLE XIV ~~XIII~~

This Agreement may be assigned by ShowBiz to a corporation to be formed, and such corporation shall thereupon ^{assume} ~~succeed to~~ all the duties, liabilities, responsibilities ^{and succeed to the rights,} and rights of the assignor. *ShowBiz guarantees the obligations under this Agreement of any and all assignors.*

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

SHOWBIZ PIZZA PLACE, INC.

By _____

Its _____

CREATIVE ENGINEERING, INC.

By _____

Its President _____

SALE AND PURCHASE AGREEMENT /
ANIMATED ENTERTAINMENT FUND AGREEMENT
(Preliminary Versions)

Date of Origin: 1981
Archived: 1-8-26
Submission by VegaNova
Version 1.0

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