

**FRANCHISE AGREEMENT**

made and entered into by and between

**LUMBER CITY (PTY) LTD**

(Reg. No. 2002/023565/07)

Business address: 39 B Stella Road, Montague Gardens,  
7441, Western Cape

Postal address: P.O. Box 37066, Chempet, 7442, Western  
Cape

(hereinafter referred to as "the LICENSOR")

10 and .....

Registration No. ....

hereinafter represented by:

.....

15

Business address:

.....

Postal address:

20 .....

(hereinafter referred to as "the LICENSEE")

**Definitions**

In the FRANCHISE AGREEMENT hereafter the terms  
25 and/or words indicated below will have the following  
meanings:

1. Opening date: .....
2. Territory: .....

5 WHEREAS

- (a) The LICENSOR owns the rights to an exclusive and unique style of board, timber and hardware store known as "LUMBER CITY" (hereinafter "LUMBER CITY Stores") and a system of sales promotion and procedure for the sale and/or production and/or processing of certain board, timber and hardware products;  
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- (b) the LICENSOR is the proprietor, has used and has the right to use the trade marks "LUMBER CITY",  
15 "LUMBER CITY LOGO", "WE'RE THE WOOD GUYS", for which South African trade mark applications 2003/03050-03055 are pending, as well as any further trade marks which the LICENSOR may acquire or develop in future (hereinafter "the trade marks");  
20
- (c) the LICENSOR is engaged in providing entities and individuals with a unique and successful business support system (hereinafter referred to as "the system") including information and analysis of  
25 researches in regard to equipping, planning, financing, furnishing and establishing LUMBER CITY Stores, wholesale purchasing and retail marketing of

stock in trade, management expertise, knowledge and information and unique design and set up of each LUMBER CITY Store, inventories and control systems, colour schemes and individually designed patterns of layout of LUMBER CITY Stores;

(d) the LICENSOR grants to selected LICENSEES for specified consideration, the right to conduct a business utilising the trade marks and the system in order to assist them to get started in business and to achieve maximum results;

(e) the LICENSEE desires to establish a business at the premises as indicated in the definitions above and to use in connection therewith the trade marks and to provide related services;

(f) the LICENSEE acknowledges that it is essential to the maintenance of the high standards, which have been established for the LUMBER CITY Store system and to the preservation of the integrity of the trade marks and goodwill, that each LICENSEE operates its business as an integral part of the LICENSOR'S network and in such operation adheres to certain current uniform standards, procedures and policies hereinafter described and to such standard procedures and policies that may be implemented by the LICENSOR from time to time;

(g) the LICENSEE is further desirous of using the LICENSOR'S method of operating a board, timber

and hardware store under the name "LUMBER CITY" together with the trade marks, and the LICENSOR is agreeable thereto upon the terms and conditions herein set forth;

- 5(h) the LICENSEE has conducted an independent investigation of the business contemplated by this agreement; and
- (i) the LICENSEE recognises that an investment in a LUMBER CITY store involves business risks, and the success of the venture, which the LICENSOR does not guarantee, is primarily dependent upon the business ability and efforts of LICENSEE;

**NOW THEREFORE THE PARTIES AGREE AS  
FOLLOWS:**

**GRANT OF LICENCE**

1. The LICENSOR grants a licence to the LICENSEE to use and advertise the term LUMBER CITY and the trade marks, in connection with one LUMBER CITY board, timber and hardware store (hereinafter "the store") situated at the premises as indicated in the definitions above. The LICENSEE shall conduct a business of a board, timber and hardware store (hereinafter "the business") under the name LUMBER CITY, and agrees, when required by the LICENSOR, to enter into a registered user

agreement regarding the trade marks, as required in terms of the Trade Marks Act of 1993 (as amended) and which user agreement will terminate on termination of this agreement.

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## **PAYMENT OF CONSIDERATION**

2. The LICENSEE agrees as follows:

2.1 Simultaneously with the execution of this agreement to pay the LICENSOR the sum of R 30 000-00 (THIRTY THOUSAND RAND) plus VAT as fee for the licence and franchise referred to in Clause 1 above. This amount shall be fully earned by the LICENSOR when paid and shall not be refundable nor transferable for any reason whatsoever.

2.2 The LICENSEE agrees to pay to the LICENSOR each month for the duration of this agreement, free of exchange and without deduction or set off, in monthly payments by the 15<sup>th</sup> day of the following month during the term thereof:

2.2.1 1 % (one percentum) plus VAT of the gross receipts of its board, timber and hardware store received in the previous month,

2.2.2 R50 plus VAT for a website posting fee.

253. The term "gross receipts" for the purpose of this agreement shall mean monies and other

considerations of any kind whatsoever received by the LICENSEE as a result of or in connection with the ownership or operation of the LUMBER CITY board, timber and hardware store pursuant to the  
5 terms of this licence and franchise agreement, excluding any Value Added Tax and/or other properly imposed taxes collected by the LICENSEE for transmission to the S.A. Revenue Services or to any other State, Regional Government or Local  
10 Government Department and less credits passed for unsatisfactory products and/or cancelled sales.

4. The LICENSEE, agrees to deliver to the LICENSOR in conjunction with each monthly payment a full and accurate statement, showing the gross receipts  
15 received by the LICENSEE during the preceding month, and if and when required, other information as requested on such monthly report forms as may be designated by the LICENSOR.

5. The LICENSEE shall furnish to the LICENSOR no  
20 later than three months after the end of the LICENSEE'S financial year a certificate prepared by the person who prepared the LICENSEE'S income tax return reflecting the LICENSEE'S gross sales for such financial year.

**MAINTENANCE AND INSPECTION OF  
RECORDS**

6. The LICENSEE shall at all times keep true and  
5 correct books of account in accordance with good  
standard accounting practices, and shall pay the  
entire cost of establishing, maintaining and auditing  
the books and records, including any computer  
hardware and software.
107. If required by the LICENSOR, the LICENSEE shall  
submit monthly its till audit rolls and half-yearly  
Financial Statements to the LICENSOR, which  
Financial Statements shall consist of a Balance  
Sheet and a Profit and Loss Statement as at the  
15 close of business on the 31<sup>st</sup> August and the last day  
of February each year. The LICENSEE undertakes  
to have its annual financial statements, as at the end  
of February of each year, duly audited by an  
accountant. The half-yearly financial statements  
20 shall be sent to the LICENSOR within 30 days of the  
end of the six month period concerned.
8. The LICENSEE shall take actual physical stock each  
six months as at the close of business on the 31<sup>st</sup>  
August and the last day of February of each year,  
25 which stock figures shall be used in preparing the  
Financial Statements referred to in Clause 7 above.

9. The Financial Statements referred to in Clause 7 above shall indicate the accounts due and payable by the LICENSEE for merchandise, and such amounts shall be reflected in the Balance Sheet and Profit  
5 and Loss Statements.
10. The LICENSOR shall have the right, after appropriate notice and at reasonable intervals, to inspect the accounting records of the LICENSEE, for the purpose of ascertaining that all matters  
10 concerning financial information and reporting are being complied with.
11. The LICENSEE'S books of account and other business records shall be open to the examination and inspection of the LICENSOR and/or the  
15 LICENSOR'S accountant and/or duly authorized agent at all times during the LICENSEE'S business hours.
12. The LICENSEE shall, if required by the LICENSOR, enter into a software licence agreement with the  
20 LICENSOR and any supplier of any computer software used by the LICENSOR in relation to the business.
13. If required by the LICENSOR, the LICENSEE shall furthermore use only the computer hardware,  
25 computer software, point of sale equipment and such other computerised equipment specified by the LICENSOR and maintain, upgrade and replace same



at its costs in terms of directives received from the LICENSOR from time to time.

### **PREMISES**

514. The LICENSEE agrees that it is in the mutual interests of the LICENSEE and the LICENSOR that the decorations, equipment, fixtures and furnishings of the LICENSEE'S store are to be in good taste and of high quality and character in accordance with the  
10 LICENSOR'S style and image specifications. The LICENSEE accordingly agrees that the decorations, equipment, fixtures, furnishings and maintenance of its store shall be subject to the approval of and specifications of the LICENSOR.
1515. The LICENSEE will, at its own expense from time to time, make such reasonable changes, additions and alterations therein, as the LICENSOR may from time to time request in accordance with the LICENSOR'S specifications.
2016. The LICENSEE shall conduct the licensed business only at the premises as described in the definitions above to this Agreement and the LICENSEE further agrees to comply with all its obligations under the lease of the premises, where applicable. In addition  
25 during the currency of this Agreement, the LICENSEE undertakes not to sublet or otherwise part with possession of the premises or any portion

thereof without the prior written consent of the LICENSOR.

17. If the LICENSEE intends to utilize further premises, preferably nearby the premises as indicated in the definitions above, for storage or conducting its business, then the LICENSEE shall obtain the prior written approval of the LICENSOR prior to utilizing such further premises, which approval will not be withheld unreasonably.

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### **OPENING OF STORE**

18. The LICENSEE agrees that the opening date for the LICENSEE'S board, timber and hardware merchant shall be as stated in the definitions above to this agreement.

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### **CONDUCT OF BUSINESS**

19. The LICENSEE shall -
- 19.1 devote its full time and attention and best efforts exclusively to the conduct of the store and shall employ adequate personnel for its maintenance, management and conduct;
- 19.2 use its best endeavours to procure competent personnel and conscientious employees, and further agrees to institute and maintain all reasonable rules and regulations of behaviour,

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which may be established from time to time by the LICENSOR;

5 19.3 not directly or indirectly have any interest, financial or otherwise, in any other business of a similar nature without the prior written permission of the LICENSOR while operating the licensed store: the LICENSOR may in its sole discretion decline such permission;

10 19.4 agree that it shall be solely responsible for all the expenses of the store, and for taxes and for levies of any and all kinds in connection with the store and its income and the LICENSOR shall not be liable for any such expenses, taxes or levies or disbursements otherwise paid or  
15 incurred in connection with the establishment and maintenance of the store;

19.5 keep the store open for business each day during such hours as the LICENSOR may from time to time determine, but at least between  
20 the hours of 8.00 am and 17.00 pm on Mondays to Fridays and from 8.00 am to 13.00 pm on Saturdays. Any variations to these times have to be agreed to in writing by the LICENSOR.

20. In granting this licence and franchise, the  
25 LICENSOR does not authorise or empower the LICENSEE to use the trade marks in any other capacity than as provided herein. Similarly the

LICENSOR does not authorise or empower the  
LICENSEE to hold himself out as a partner or a  
general agent or special agent of the LICENSOR and  
the LICENSEE agrees that all contracts, that it may  
5 enter into for the establishment and maintenance of  
its store and for conducting its business, shall be in  
its own name.

21. The LICENSEE shall conspicuously identify itself in  
all dealings with the customers, suppliers, public  
10 officials and others as the owner of the franchise  
business under a franchise with the LICENSOR and  
shall place such other notices of independent  
ownership on such forms, business cards, stationery,  
advertising and other materials as the LICENSOR  
15 may require from time to time.

### **DISPLAY AND LAYOUT**

22. The LICENSEE shall be obliged:

22.1 to prepare and/or display all products in  
20 accordance with the LICENSOR'S directions  
from time to time;

22.2 to lay out its counters, working equipment and  
displays strictly in accordance with the  
directions given by the LICENSOR from time to  
25 time.

**MANUALS AND OTHER INFORMATION**

23. In order to protect the reputation and goodwill of the system, the details of LICENSOR'S materials used  
5 and to maintain uniform standards of operation under the licensed trade marks, the LICENSEE agrees to operate the system in accordance with such manuals as the LICENSOR may publish from time to time, which the LICENSEE acknowledges  
10 shall be on loan from the LICENSOR to the LICENSEE during the term of this Agreement. The LICENSEE understands and acknowledges that the LICENSOR may from time to time revise the contents of the manuals to implement new, improved  
15 or different requirements with respect to the system and the LICENSEE expressly agrees to comply with such changed requirements.
24. The LICENSEE shall at all times ensure that its copies of the manuals are kept current and up to  
20 date, and in the event of any dispute as to the contents of the manuals, the terms and dates of the master copies maintained by the LICENSOR at its principal place of business shall be deemed to be correct.
2525. The LICENSOR may, by supplements, addenda or amendments to the manual or other communications, supplements, improve or otherwise

alter the system and the methods, procedures and techniques, which the LICENSEE is authorised and required hereunder to utilise in the operation of the business, including additions to or eliminations from the system, services or other activities constituting elements thereof, and the LICENSOR shall do so with respect to all supplements, improvements and alterations, which are conceived or developed by the LICENSOR or suggested to it by others including its LICENSEE'S the adoption of which the LICENSOR deems appropriate and advisable.

26. The LICENSEE shall seek in its operation of the store, to develop and conceive such supplements, improvements and alterations and upon doing so shall in each case promptly and fully advise the LICENSOR thereof.

27. The LICENSOR shall have the right to make use of all supplements, improvements and alterations so conceived and developed by the LICENSEE, including the right to disseminate the same to all LUMBER CITY Stores for their use without payment of royalties, fees or other compensation by the LICENSOR or other LUMBER CITY Store.

28. The LICENSOR may supply periodic bulletins to LICENSEE with information concerning store management and operation and, in addition thereto, may supply the LICENSEE with an exchange of

information between other LUMBER CITY Stores when possible and available.

**SECRECY**

529. The LICENSEE shall not at any time directly or indirectly furnish any information as to the methods of operation, processing of materials or products, advertising, publicity, promotional ideas, materials used in or any other information relative to the  
10 LICENSEE'S store or any store licensed, owned or managed by the LICENSOR, to anyone except the LICENSOR, or in so far as may be necessary to the LICENSEE'S employees.
30. The LICENSEE shall at all times treat the manuals  
15 or other materials created by the LICENSOR and designated for confidential use and the information contained therein as confidential, as well as any other trade secrets and confidential information, knowledge and know-how concerning the  
20 development and operation of the system that may be imparted to, or acquired by the LICENSEE from time to time in connection with this Agreement, and shall use all reasonable efforts to keep such information confidential.
2531. The LICENSEE acknowledges that unauthorised use or disclosure of the LICENSOR'S confidential information, trade secrets and/or material

processing methods will cause incalculable injury and damage to the LICENSOR.

32. The LICENSEE shall not at any time either during or after the term of this Agreement, copy or duplicate, or permit the copying or duplication of, nor publish, disclose or in any manner reveal, or permit the publication, disclosure or revelation of, in any manner, to any person or entity, except employees of the LICENSEE approved by the LICENSOR (and then only after obtaining and delivering to the LICENSOR written agreement of such employees made for the benefit of and enforceable by the LICENSOR as well as of and by the LICENSEE, to be bound by this commitment of non-disclosure), the manuals, any supplements, addenda or amendments thereto or any other information and material supplied by the LICENSOR the LICENSEE and designated by the LICENSOR as confidential information, the LICENSEE hereby recognising and agreeing that all such information and materials are confidential information and trade secrets of the LICENSOR and will be disclosed to the LICENSEE in strict confidence.

33. Any and all information, knowledge and know-how not generally known about the system and LICENSOR'S products, services, standards specifications, material processing methods, systems, procedure and techniques and such other



information or material as the LICENSOR may designate as confidential, shall be deemed confidential hereunder.

34. The manuals and all materials designated for use by  
 5 the LICENSOR are deemed confidential information and trade secrets and as such shall at all times be deemed and remain the sole property of the LICENSOR and the LICENSEE shall acquire no right, title or interest therein by virtue of its  
 10 authorisation pursuant to this Agreement to possess and use the same.

35. The LICENSEE recognises and agrees that the LICENSOR has developed certain trade secrets for the operation of board, timber and hardware stores  
 15 and as a consideration for the teaching and the divulgence of these secrets, the LICENSEE agrees that the LICENSEE will not, at any time, directly or indirectly furnish any information as to the methods of operation, advertising, promotion or  
 20 merchandising programmes, and/or ideas or any other information relative to the operation of a licensed store, to any person or persons.

### **INTELLECTUAL PROPERTY**

2536. The LICENSEE acknowledges that all rights in and to the trade marks, the ownership, title and interest in and to the trading style, designs, insignia,

logograms, characteristics and any other intellectual property associated with the LICENSOR (hereinafter “intellectual property”) are vested and shall remain vested solely and exclusively in the LICENSOR.

537. The LICENSOR hereby authorises the LICENSEE during such time as the LICENSEE shall be registered as a registered user against the trade marks, to use the trade marks in accordance with specifications laid down, directions given and  
10 information supplied by the LICENSOR from time to time.
38. The LICENSEE undertakes to use the trade marks in strict accordance with such specifications, directions and information supplied by the LICENSOR and also  
15 subject to the provisions of this agreement.
39. The LICENSEE will not in any manner represent that it has any right in or to the intellectual property mentioned in clause 36 above, nor will the LICENSEE directly or indirectly at any time during  
20 the substance of this agreement or thereafter, do or have done any act or thing contesting or intending to impair any of the LICENSOR’S rights and interest in and to the intellectual property or the validity of the intellectual property or of this agreement.
2540. All use of the intellectual property referred to above by the LICENSEE shall inure to the benefit of the LICENSOR.

41. Regarding the trade marks, the LICENSEE shall indicate clearly that the LICENSOR is the exclusive owner of the trade marks and that the trade marks are registered (upon the registration thereof, on  
5 written notice by the LICENSOR to the LICENSEE to such effect, and not before) by marking these with an encircled "R" and that the LICENSEE is an authorised user of such trade marks.
42. Consequent upon LICENSEE'S acknowledgement  
10 and recognition of the exclusive rights, title and interest in the intellectual property, the prosecution of or defence of any claim with respect to any such intellectual property shall be the sole responsibility and undertaken at the absolute discretion of the  
15 LICENSOR provided that the LICENSEE shall forthwith notify the LICENSOR of any claims against or infringements of such intellectual property of which the LICENSEE becomes aware and further that the LICENSEE, if required by the LICENSOR,  
20 and at the cost of the LICENSOR, joins with the LICENSOR as a party to any such prosecution and defence as aforesaid.
43. Nothing herein or elsewhere contained shall constitute a warranty by the LICENSOR that its  
25 ownership of any of the intellectual property is not contestable or will not be contested.
44. The LICENSEE hereby gives the LICENSOR full power of attorney with power of substitution and

revocation to make application to the Registrar of Trade Marks for the recordal of the LICENSEE as a registered user under the provisions of the Trade Marks Act and for the purpose to do such acts and sign such documents on behalf of the LICENSEE as may be necessary to finalise the registered user recordal. Upon termination of this agreement the LICENSEE shall join the LICENSOR to have the recordal of the LICENSEE as a registered user cancelled and for this purpose undertakes to do such acts and sign such documents as may be required. In the event of the LICENSEE failing to comply with the requirements of these provisions, the LICENSOR is hereby given full power of attorney by the LICENSEE to do such act, or to take such steps or sign such documents as may be necessary to effect the cancellation of the LICENSEE as a registered user.

45. The LICENSEE will not file any application for registration of any trade marks, or any part of such trade marks, or any trade mark which is deceptively or confusingly similar to the trade marks as part of its company, close corporation or any legal body or any other business name or the name of any subsidiary company, close corporation, legal body or other business or company, close corporation or legal body or other business with which it is associated either directly or indirectly.

46. When using the trade marks, the LICENSEE will cause them to be reproduced exactly and accurately and in accordance with the specifications and directions laid down by the LICENSOR from time to time.

47. The provisions of clauses 36 - 46 shall apply *mutatis mutandis* to any of the LICENSOR'S inventions, innovations, patents and/or designs, whether registered or not, which it may permit the LICENSEE to use from time to time in the establishment, management and conduct of the licensed business.

### **ITEMS SOLD**

1548. In order to ensure uniformity in specification compliance and control, the LICENSEE undertakes to consider handling, promoting and/or selling only those items approved by the LICENSOR and purchased from such wholesalers and/or suppliers as are suggested by the LICENSOR. However, the LICENSEE shall be free to purchase or obtain any items from any source as selected by the LICENSEE in its sole discretion.

### **PACKAGING**

49. The LICENSEE agrees to use such packaging supplies, advertising and promotion materials and

supplies as approved by the LICENSOR, which approval shall not be withheld unreasonably.

### **STORE**

550. The LICENSEE agrees to keep its LUMBER CITY store in a clean and sanitary condition and in good repair at all times, to conform to all local regulations, to apply for and to renew and pay for and keep always in force all trade and other licences  
10 which may be required by the local or any other authorities.

51. The LICENSEE recognises that the LUMBER CITY store to be franchised by the LICENSEE shall be a component part of the chain of similar stores  
15 operating under the LICENSOR'S name LUMBER CITY and to ensure substantial uniformity throughout such chain, and the LICENSEE therefore agrees to conform to any and all reasonable instructions of the LICENSOR regarding basic  
20 policies pertaining to the conduct of its LUMBER CITY store.

### **TRAINING AND ASSISTANCE**

52. The LICENSEE agrees that its staff shall be trained  
25 initially by the LICENSOR at the LICENSEE'S own expense and cost for such period prior to the LICENSEE'S store opening as the LICENSOR

requires for the purpose of becoming acquainted with the operation of a LUMBER CITY Store. No charge shall be made for time spent by the LICENSOR'S staff or representatives in providing  
5 such initial training.

53. Upon the LICENSEE'S request from time to time, the LICENSOR agrees to send, at the LICENSEE'S expense, a representative of the LICENSOR, to consult with, aid and assist the LICENSEE.
1054. The LICENSEE agrees, at the LICENSEE'S cost and at a charge rate for training at the LICENSOR'S then current rates, to send for training, further training or retraining in the LICENSOR'S nominated store or premises, such of the LICENSEE'S employees and  
15 for such period as the LICENSOR, from time to time in its sole discretion, deems necessary.
55. The LICENSOR shall send, at the LICENSOR'S own expense and cost, a representative of the LICENSOR to assist the LICENSEE during the opening of the  
20 LICENSEE'S board timber and hardware store for a period of as deemed necessary by the LICENSOR.
56. The LICENSEE shall at the LICENSEE'S own expense and cost, ensure that such of the LICENSEE'S staff, including managers, attend the  
25 LICENSOR'S training workshops and regular management and other meetings as and when required by the LICENSOR.

### **EQUIPMENT**

57. The LICENSEE shall purchase and use such computerised hardware, computer software, computerised till systems, communication equipment including a facsimile and modem, material processing machines including saws, edging machines and a drill press as may from time to time be specified by LICENSOR.

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### **LICENSEE INDEMNIFIES LICENSOR**

58. The LICENSEE indemnifies and holds the LICENSOR harmless from and against any liability of whatsoever kind and nature arising from or out of any damages or injury to any person, including, but not limited to customers, employees of the LICENSEE, employees of the LICENSOR and members of the public, suffered and incurred in or about the LICENSEE'S store or in connection with any or all the LICENSEE'S activities hereunder. The LICENSEE agrees to keep in full force and effect public liability and product liability insurance from time to time for death and injury to one person and for death and injury to more than one person in any one accident with a reputable insurance company.



**INSURANCE**

59. The LICENSEE agrees to maintain adequate Workmen's Compensation and Employer's Liability Insurance and insurance against all such other risks  
5 as the LICENSOR may from time to time require. The LICENSEE also undertakes to take out insurance:
- 59.1 for all equipment, furnishing, fixtures, fittings, shop-fittings, stocks, material processing  
10 machines and other content of the premises against risk of loss or damage by fire, storm, theft and commercially insurable risks for the full replacement value thereof from time to time;
- 15 59.2 against third party claims for death, injury or other loss in a minimum amount for any one claim as stipulated by a financial institution specialising in insurance as reasonable from time to time;
- 20 59.3 against public liability for injury to persons or property arising out of the conduct of the business of the LICENSEE;
- 59.4 the lives of the LICENSEE, and if the LICENSEE is a Company that of its  
25 shareholders or if it's a Close Corporation, that of its members.

60. The LICENSEE warrants and undertakes:

60.1 to keep all such insurance intact and the  
 LICENSOR may, if it so wishes, pay any  
 premiums due and recover them from the  
 5 LICENSEE;

60.2 not to cause or permit any breach of any  
 insurance policy maintained under the  
 provisions of this Agreement;

60.3 to maintain all policies in accordance with the  
 10 provisions of this Agreement and provide that  
 the insurer shall notify the LICENSOR in the  
 event of the late payment of any premium by  
 the LICENSEE.

61. If required by the LICENSOR the LICENSEE shall  
 15 furnish the LICENSOR with documentary proof that  
 it has complied with all of its obligations under the  
 clauses 59 and 60.

### **TERM OF THIS AGREEMENT**

2062. The term of the license and franchise hereunder is  
 for a period of Ten (10) years commencing on the  
 opening date as indicated in the definitions above,  
 unless the licence and franchise is otherwise  
 terminated by the mutual consent of both parties, or  
 25 in accordance with the provisions hereof. This  
 Licence and Franchise agreement shall be renewed

automatically thereafter for a further period of one  
(1) year in perpetuity, unless either party shall have  
given written notice to the other party at least  
twelve months prior to the end of the current term of  
5 its desire to terminate this Agreement.

### **SALE OR DISPOSAL OF BUSINESS**

63. The LICENSEE shall not sell, transfer, assign, sub-  
license, mortgage or pledge or advertise for such  
10 purpose this License and Franchise Agreement or  
any rights or privileges accruing hereunder or the  
LUMBER CITY Store licensed in terms of this  
Agreement, to any person, firm, close corporation,  
company or other legal entity, without the prior  
15 written consent of the LICENSOR.

64. If during the currency of this Agreement or any  
extension, renewal or tacit renewal thereof, the  
LICENSEE desires to sell or in any manner alienate  
the licensed and franchised LUMBER CITY store  
20 and/or the licence and franchise granted in terms of  
this Agreement, the LICENSOR shall have the right  
to approve the suitability of the party to own and  
operate a licensed LUMBER CITY store.

65. Any purchase offer made by a prospective *bona fide*  
25 purchaser must contain an agreement that the  
LICENSOR, at its sole discretion may require as part  
of the consideration of the purchase, that the new

LICENSEE must invest any additional capital as the LICENSOR deems necessary towards improving equipment and/or increasing stock and/or increasing capital to meet and satisfy the LICENSOR'S  
5 standard or store operation at the time of any such sale.

66. In addition any new LICENSEE shall be obliged to enter into a new Licence and Franchise agreement upon such terms as are then currently in use by the  
10 LICENSOR, shall furthermore pay the LICENSOR its current franchise fee and training fee applicable at such time, pay the current royalty charged at such time by the LICENSOR to its most recently acquired LICENSEE and shall reach an acceptable standard  
15 of operation. In addition the LICENSOR shall be entitled to impose any other conditions which it deems necessary.

67. Notwithstanding anything to the contrary contained in this agreement, if the LICENSEE desires to sell or  
20 in any other manner alienate the store and/or licence and franchise granted in terms of this Agreement as provided for in Clause 64, the LICENSOR reserves for itself or its nominee and the LICENSEE grants to the LICENSOR or its nominee, the option to  
25 purchase the license and franchise LUMBER CITY store and/or licence and franchise granted in terms of this Agreement, upon the same terms and at the same price offered by a *bona fide* purchaser.

68. If, however, the LICENSEE desires to sell or in any other manner alienate the LUMBER CITY store and/or licence and franchise granted in terms of this Agreement and no third party has made a *bona fide* purchase offer as provided for in Clause 64 within 3 (three) months of the LICENSOR having granted its consent in terms of Clause 63 above, the LICENSOR reserves for itself or its nominee and the LICENSEE grants to the LICENSOR or its nominee, the option to purchase the licensed and franchised store and/or licence and franchise granted in terms of this Agreement, at a price equivalent to:  $a + b + c$ :

68.1 where (a) = Nett Profit of the preceding twelve (12) months as determined by the auditor of the LICENSOR;

68.2 where (b) = saleable stock valued at the cost on the basis of first in, first out; and

68.3 where (c) = fixtures and equipment at a fair value, which is to be the average of two valuations carried out by two independent valuers, one whereof shall be nominated and appointed by the LICENSOR and the other by the LICENSEE.

69. Such option shall be exercised by the LICENSOR within 21 (twenty one) days of a request by the LICENSEE for the LICENSOR'S consent as provided for in Clause 63.

70. If the LICENSEE is a company, the LICENSEE shall not permit any shares to be transferred or any further shares to be issued without the prior written approval of the LICENSOR and all the LICENSEE'S  
5 shareholders and directors shall be obliged to bind themselves as sureties and co-principal debtors in solidum, jointly and severally for the due performance of each and every obligation of the LICENSEE in terms of this agreement including the  
10 restraints of trade and secrecy provisions.

71. The LICENSEE shall on or before the commencement date of this agreement, furnish the LICENSOR with certified copies of the LICENSEE'S certificate to commence business as also the  
15 Company documents setting out the full details of the shareholders and directors of the LICENSEE.

72. If the LICENSEE is a Close Corporation, the LICENSEE shall not permit any amendment of such Close Corporations's Founding Statement without  
20 the prior written approval of LICENSOR and all LICENSEE'S members shall be obliged to bind themselves as sureties and co-principal debtors in solidum jointly and severally for the due performance of each and every obligation of the  
25 LICENSEE in terms of this Agreement including the restraints of trade and secrecy provisions. The LICENSEE shall on or before the commencement date of this agreement furnish the LICENSOR with a

certified copy of the LICENSEE'S duly registered Founding Statement (CK1) or Amended Founding Statement (CK2), whichever is applicable.

73. If the LICENSEE is a Trust, then Trustees for the  
5 time being of the LICENSEE shall not permit any amendment of the Trust Deed or any amendment in the Trustees without the prior written approval of the LICENSOR and the following Trustees shall be obliged to bind themselves as sureties and co-  
10 principal debtors *in solidum* jointly and severally for the due performance of each and every obligation of the LICENSEE in terms of this agreement, including the restraints of trade and secrecy provisions.

74. The LICENSEE shall on or before the  
15 commencement date of this agreement, furnish the LICENSOR with a certified copy of the LICENSEE'S duly registered Trust Deed, as also the Letter of Authority, including any amendment thereof.

75. If the LICENSEE exercises its rights under this  
20 clause with the consent of the LICENSOR, and sells or in any manner alienates the licensed and franchised store and/or the licence and franchise, granted in terms of this agreement, to a third party or the LICENSOR, then the LICENSEE shall be  
25 liable for all outstanding accounts of the business. In this respect the LICENSEE agrees and undertakes to place the proceeds of such a sale into an interest bearing trust account of attorneys

appointed by the LICENSOR for a period of not less than 30 (THIRTY) days for the purpose of discharging any outstanding accounts that the LICENSEE has incurred up until the effective date of sale. The LICENSEE furthermore agrees that the provisions of this Clause will be incorporated as a suspensive condition into any Sale Agreement that the LICENSEE may conclude with a third party or the LICENSOR.

1076. The LICENSEE hereby appoints the LICENSOR as its sole agent to sell the franchised business directly or indirectly (by the transfer of shares or member's interest) if applicable, at a pre-determined remuneration of 3 % of the selling price plus VAT thereon.

### **DEFAULT BY LICENSEE**

77. If the LICENSEE fails to make any payment in terms of this Agreement or commits any other breach of this Agreement or fails to carry out any instructions or directions given by the LICENSOR and fails to make such payment or remedy such default within ten (10) days (unless specifically otherwise provided for herein) after delivery by hand or dispatch of written notice by prepaid registered post addressed by the LICENSOR to the *domicilium citandi et executandi* of the LICENSEE requiring such



payment to be made or such default to be rectified,  
or if the LICENSEE is ejected from the premises by  
reason of its default in terms of its lease, or in the  
event of the LICENSEE having received the written  
5 notice as referred to above then the LICENSOR shall  
be entitled:

- 77.1 to terminate this agreement with immediate  
effect without prejudice to its other rights and  
remedies; or
- 10 77.2 to claim specific performance without prejudice  
to its other rights and remedies; or
- 77.3 to terminate this agreement with immediate  
effect and to purchase for itself or its nominee,  
in terms of an option hereby granted to the  
15 LICENSOR by the LICENSEE, the franchised  
store and license and franchise granted in  
terms of this agreement at a price equivalent  
to:

## 77.3.1 a + b + c

where (a) = Nett Profit of the preceding twelve (12) months as determined by the auditor of the LICENSOR;

5        77.3.2 where (b) = saleable stock value at the cost on the basis of first in, first out; and

77.3.3 where (c) = fixtures and equipment at a fair value, which is to be the average of two valuations carried out by two  
10        independent valuers, one whereof shall be nominated and appointed by the LICENSOR and the other by the LICENSEE.

78. It is agreed that the terms of Clause 77 above will  
15        *mutatis mutandis* apply in the event of this option being exercised by the LICENSOR or its nominee.

79. If the LICENSEE files an application for voluntary winding up or for judicial management, or if a person, files an application for the voluntary  
20        surrender of its estate, this agreement shall, at the sole discretion of the LICENSOR, be deemed to have terminated on the day before any such application is filed. If an application is filed against the LICENSEE by any other party and any such application is not  
25        discharged within thirty (30) days of filing thereof, this Agreement shall forthwith terminate.

80. Upon termination of this Agreement for any reason whatsoever and in addition to and without prejudice to the LICENSOR'S common law rights:

5       80.1 all monies owing by the LICENSEE to the LICENSOR shall immediately be due and payable notwithstanding any contrary provision contained in this Agreement;

10       80.2 the LICENSEE shall immediately cease to use or permit the use of the LICENSOR'S trade marks and insignia and shall forthwith surrender to the LICENSOR all paper goods and advertising material bearing any such trade marks, logos, designs, lay-outs and insignia and all system manuals and other documentation  
15       provided by the LICENSOR to the LICENSEE.

20       80.3 the LICENSEE shall remove all décor and other insignia used in its LUMBER CITY store and change the layout of the store in such manner and to the LICENSOR'S sole satisfaction so that the store is altered in such a way that it can no longer be identified as being a LUMBER CITY store.

25       80.4 if this Agreement is terminated due to a default of the LICENSEE either in regard to its obligations to the Lessor of the premises or to the LICENSOR or if the LICENSEE terminates this Agreement prior to the expiration of the

term of this Agreement in circumstances other than those contemplated in terms of Clauses 65-79 above, then the LICENSEE shall be obliged to pay the LICENSOR damages for the unexpired portion of the term of this Agreement calculated in accordance with the following formula:

$$\frac{(X \times Z)}{Y}$$

Y

80.4.1 where X = the amount already paid and payable to date of termination of this agreement;

80.4.2 where Y = the number of months expired in terms of this Agreement; and

80.4.3 where Z = the number of unexpired months in terms of this Agreement.

81. Notwithstanding anything to the contrary herein contained, the LICENSOR shall be entitled to claim from the LICENSEE such additional or alternative damages as it may have suffered as a result of the LICENSEE'S breach of this agreement and/or the cancellation thereof and the LICENSEE shall bear all legal costs (inclusive of costs on a scale as between an Attorney and his own Client) and such accounting costs as the LICENSOR may have incurred pursuant to any breach of this Agreement.

**DEATH OR INCAPACITY OF THE LICENSEE**

82. Upon the death of the LICENSEE or the death of any member if the LICENSEE is a Close Corporation, or  
5 the death of any shareholder if the LICENSEE is a Company, the deceased member's interest or shareholder's shares may, subject to the approval of the LICENSOR upon such terms and conditions for approval as the LICENSOR may determine, be  
10 transferred to the beneficiaries, remaining members or shareholders of the LICENSEE or the beneficiaries of the deceased member or shareholder.
83. Failing such transfer, the interest or shares of the  
15 deceased member or shareholder may be sold or transferred to such person or persons as may be approved of by the LICENSOR upon such terms and conditions as may be agreed upon between the transferee and the representative of the estate of the  
20 deceased LICENSEE, member or shareholder.
84. The LICENSOR may, if it deems expedient, and pending the transfer of the interest or share of the deceased member or shareholder, participate in the control and management of the LUMBER CITY store  
25 and will be entitled to charge its usual fee for such participation, payable by the LICENSEE, and the LICENSOR will be authorised to do all such things

and sign all such documents as may be reasonably necessary for the purposes of participating in such control and management of the LUMBER CITY store.

85. No trustee, liquidator, judicial manager, curator,  
 5 executor, administrator, assignee, heir or legatee without the prior written consent of the LICENSOR signed by a director specifically authorised thereto, shall be entitled to conduct the LUMBER CITY store, whether directly or indirectly, and the LICENSOR  
 10 may in its absolute discretion impose conditions on its consent.

### **RESTRAINT**

86. The LICENSEE agrees that for a period of not less  
 15 than five (5) years following the termination of the license and franchise granted in terms of this agreement or any renewal or extension thereof, it will not without the prior written approval of the LICENSOR either directly or indirectly on its own  
 20 account or as agent, partner, shareholder, owner, employer, employee, financier or otherwise engage in a business similar to that of the LICENSOR within a radius of ten (10) kilometres from the licensed store and within a radius of twenty (20) kilometres  
 25 of any other LUMBER CITY store then in operation or under construction. The LICENSEE'S shareholders in the case of a Company, members in

the case of a Close Corporation or Trustees in the case of a Trust, shall bind themselves to this restraint by signing this agreement as Restrainees.

5      **LICENSED TERRITORY**

87. The territory for which this licence and franchise agreement is granted as is indicated in the “definitions” provided above at the beginning of this agreement.
1088. The LICENSOR agrees not to open any other LUMBER CITY stores in the territory without the written consent of the LICENSEE
89. However, if the LICENSOR is of the opinion that there is a demand for another such store in the  
15 territory in which event, the LICENSEE provided it is in full compliance with the terms of this agreement, shall have a right of first refusal to operate such further store on the subject to the following:
- 20      89.1 the LICENSEE shall pay the fees as stipulated in paragraph 2.1 and 2.2 above subject to variations in accordance with current terms and conditions upon which the LICENSOR at such time licences and franchises LUMBER  
25 CITY stores;
- 89.2 the LICENSEE shall sign and enter into a franchise agreement with the LICENSOR within

one (1) month from receipt of the agreement from the LICENSOR;

89.3 the LICENSEE shall commence business in the further store within three (3) months from receipt of the agreement from the LICENSOR.

90. If, after signature of the agreement by the LICENSEE in terms of sub-clause 89.2 above, the LICENSEE fails to commence business in the further store within three (3) months from receipt of the agreement in terms of sub-clause 89.3 above, then the agreement shall be cancelled and become invalid and the amount paid in terms of sub-clause 89.1 above shall be forfeited to the LICENSOR.

## **JURISDICTION**

91. The parties to this Agreement consent to the jurisdiction of the Magistrate Court in respect of any action that may arise directly or indirectly out of this Agreement. Both parties acknowledge however that they are entitled, but not obliged, to institute such action or proceedings in such Court. If the LICENSEE fails to commence business.

## **NON-WAIVER**

92. No waiver by a party of any breach, failure or default in performance by the other party, and no failure,



refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other's party's obligations in terms of this agreement, shall constitute a waiver of the provisions of this Agreement and a party may at any time require strict compliance with the provisions of this Agreement.

### **COMPANY/CLOSE CORPORATION/TRUST**

1093. If this Agreement is signed by a person as LICENSEE purporting to act for and on behalf of a Company, Close Corporation (other than a Company, Close Corporation not yet formed) or Trust, he shall be deemed to warrant that he is duly authorized to sign this Agreement and shall by his signature hereto bind himself in favour of the LICENSOR as surety and co-principal debtor in solidum with such Company, Close Corporation or Trust under renunciation of the benefits of division, excussion and cession of action for the due performance of all the obligations of the said Company, Close Corporation or Trust in terms of or arising out of this Agreement or any cancellation hereof.

### **NOMINATION OF THIRD PARTY**

94. This Agreement shall become binding upon the LICENSEE as a franchise agreement of purchase

and sale only if the LICENSEE shall not have nominated a third party as LICENSEE in writing who shall validly have accepted such nomination in writing. In the event of the LICENSEE nominating a nominee, then the LICENSEE binds himself as surety and co-principal debtor jointly and severally with such nominee for due fulfilment of the obligations of the LICENSEE in terms of this franchise agreement.

10

### **GENERAL**

95. This agreement shall not be deemed to create any relationship of employment between the parties.
96. The paragraphs of this Agreement are severable, and in the event that any paragraph or portion of the Agreement is declared illegal or unenforceable, the remainder of the agreement shall be effective and binding on the parties.
97. The LICENSOR has the right at any time to transfer some or all of its rights and obligations under the Agreement to any third party.
98. This Agreement constitutes the entire Agreement between the parties who acknowledge that there are no other oral or written understandings, undertakings or agreements between them relating to the subject matter of this Agreement. No amendment or variation of this Agreement including

this Clause shall be binding upon the parties unless reduced to writing and signed by them.

99. The parties agree that the terms of this Agreement are fair and reasonable and necessary in order to  
5 secure and maintain the high standards which must be maintained in the interests of all LUMBER CITY stores.
100. Save as may be contained in this Agreement, the LICENSOR gives no warranties, whether express or  
10 implied, neither has the LICENSOR nor anyone on the LICENSOR'S behalf made any representations inducing the LICENSEE to enter into this Agreement.
101. The parties hereto respectively choose *domicilium*  
15 *citandi et executandi* at, and record their postal address for the purpose hereof, as indicated in the preamble to this agreement.
102. Any notice given by either party to the other shall be deemed to have been received at the time or  
20 personal delivery to such address or on the third day after the same shall have been duly posted by prepaid registered post to such other at the said address.
103. This Agreement shall not be deemed to create any  
25 relationship of agency, partnership or joint venture between the parties. No employee engaged by LICENSEE shall, under any circumstances be

deemed to be an employee of the LICENSOR, and all employees engaged by the LICENSEE shall be so notified.

104. The LICENSOR shall bear all legal costs incurred in  
 5 the negotiation, preparation, drafting, drawing, conclusion and implementation of this Agreement, the registered User Agreement and Suretyship Agreements, (if any) including stamp duty thereon.

105. Nothing contained in this agreement should be  
 10 construed as an intention to act illegally or to promote, condone, support, allow or encourage any illegal act and in so far as any contents in this agreement is found to do any such things, the relevant contents are intended to be *pro non scripto*.

15 THUS DONE AND SIGNED AS INDICATED BELOW:

Date: \_\_\_\_\_

Place: \_\_\_\_\_

AS WITNESSES:

1. \_\_\_\_\_  
 20 for the MANAGING DIRECTOR who warrants that he is duly authorised thereto

25 2. \_\_\_\_\_

THUS DONE AND SIGNED AS INDICATED BELOW:

Date: \_\_\_\_\_

Place: \_\_\_\_\_

AS WITNESSES:

1. \_\_\_\_\_

5

\_\_\_\_\_ for the LICENSEE  
who warrants that he  
is duly authorised  
thereto

2. \_\_\_\_\_

10

Franchise Agreement.doc