

## **SCHEDULE 1**

### *Disclosure statement – regulation 5*

#### **DISCLOSURE STATEMENT UNDER SECTION 12 OF RETAIL AND COMMERCIAL LEASES ACT 1995**

##### **INFORMATION FOR LESSEES**

**Please read the following information carefully.**

##### **What is a lease?**

A lease is a very important document. It is a legally binding contract between the lessor (landlord) and the lessee (tenant). It sets out the rights and obligations of the lessor and the lessee.

A document that binds the lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

##### **What should I look for in a lease?**

The main features to consider are –

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the lessee will have to pay in addition to rent *eg* fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

##### **What information is the lessor required to give me?**

The lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995*.

##### **What should I do before signing a lease or other binding document?**

Do not sign until you understand exactly what your obligations under the lease will be.

##### **Before signing a lease or other binding document, you should obtain independent legal and financial advice.**

- You should discuss the lease (or any agreement for a lease) and the disclosure statement with your own lawyer or leasing adviser.
- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of lessees.

**Before signing a lease or other binding document, oral representations made by the lessor or the lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the lessor.**

**Before signing a lease or other binding document, the lessee should sign an acknowledgement of receipt of the disclosure statement.**

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**ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE STATEMENT**

I have received a disclosure statement under section 12 of the *Retail and Commercial Leases Act 1995*

On: Wednesday, July 16, 2008

From: Brock Harcourts Barossa, acting as Agent for Barossa Land Developments

PO Box 382 Tanunda SA

Relating to: Premises at Shop 1, 46 Murray Street, Tanunda, SA 5352

Date: .....22<sup>nd</sup> September 2008.....

Lessee:

ND and CD Hambour  
Trading as Luxaflex Gallery Barossa  
12 Ward Street  
Eudunda SA 5374

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## DISCLOSURE STATEMENT

### Shop details

1. Shop to be leased: Shop 1, 46 Murray Street, Tanunda
2. Lettable area of shop: 104.7m<sup>2</sup> approximately
3. The shop may be used only for the following purposes:
  - Luxaflex Gallery
4. *[tick one box]*
  - ☒ The shop is in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*. See Appendix B for details.
  - ☐ The shop is not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*.

### Lessor details

5. *[tick one box and fill in details if required]*
  - ☒ The Lessor is the owner of the shop.
  - ☐ The lessor leases the shop. The following rights and obligations of the lessor under the lessor's lease are relevant to the proposed lease:
    - N/A

### Term of the lease and renewal or extension

**NOTE:** Part 4A of the *Retail and Commercial Leases Act 1995* contains provisions that govern the term and renewal of certain leases. In some circumstances, Division 3 of Part 4A provides a preferential right of renewal of a lease of a shop in a shopping centre entered into on or after 6 October 1997.

6. Term of lease: Three(3) years
7. *[tick one box and fill in details if required]*
  - ☐ There is no right to renew or extend the term of the lease.
  - ☒ The lessee has a right to renew or extend the term of the lease as follows:

One (1) further Term of Three (3) years.

### **Lessee's access to shop**

8. The lessee will have access to the shop during the following hours that fall outside trading hours:
- No restriction
9. The shop will be available for occupation by the lessee on:
- Mid August, date to be confirmed at completion of renovations.

### **Legal consequences of breach of lease**

10. The legal consequences of breach of a term of the lease are set out in the following clauses of the lease: 4.1
- Breaching an essential term or condition of the lease, or of this document once it becomes a legal document, may give rise to legal action against the infringing party

The consequences of early termination of the lease by the lessee are as follows:

- Liability to pay rent exists unless Lessor consents to an assignment of lease

The consequences of other breaches are as follows:

- As above in regards to lease document preparation

### **Monetary obligations of lessee**

11. The lessee's obligations to pay rent, capital expenditure, outgoings and other monetary amounts are set out in:
- Appendix A

Date:

Lessors:



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## APPENDIX A: MONETARY OBLIGATIONS OF LESSEE

### PART 1 – RENT

1. The base rent payable for the shop under the lease is:
  - \$24,433.56 per annum inclusive of GST of \$2,221.23 payable in calendar monthly instalments in advance of \$2,036.13 inclusive of GST of \$185.10
2. The base rate may be changed on the following basis:
  - Annually to the Consumer Price Index (all groups) for Adelaide  
At the end of the initial term, and at the end of each subsequent term, if the options are exercised to Market Value.
3. The following rent calculated on the following basis is also payable under the lease:
  - N/A

### PART 2 – CAPITAL EXPENDITURE

*[tick the appropriate box or boxes and include relevant attachments as required]*

The lessee will be liable for the following kinds of capital expenditures:

- ☒ making good damage to the premises arising when the lessee is in possession or entitled to possession of the premises;
- ☐ fitting or refitting the shop – see attachment marked “\*” for details *[sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation must be disclosed]*;
- ☐ providing fixtures, plant or equipment – see attachment marked “\*” for details *[sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation must be disclosed]*;
- ☐ contributions to a sinking fund to cover major items of repair or maintenance – see attachment marked “\*” for details *[reasonable details of lessee’s obligations must be disclosed]*.

### PART 3 – OUTGOINGS

1. The lessee will be liable to pay or reimburse the following categories of outgoings:

Category of Outgoings	Estimate of Lessee's annual liability
Local Government Rates and Charges (directly assessable)	\$1,154.76 per year
SA Water Rates and Charges	\$288.90 per year
Emergency Services Levy	\$92.51 per year
AGL Common area	\$135.42 per year
Common Cleaning	\$1,531.14 per year
ISS	\$67.34 per year
<b>Total</b>	<b>\$3,270.07 per year</b>
<b>GST of 10% is to be added to these amounts</b>	

2. *[tick one box and fill in details if required]*

- ☐ The lessee is liable for the full amount of the outgoings.
- ☒ The lessee is liable for a proportion of the outgoings calculated according to the following formula:
- 100% of directly assessable outgoings and 19.63 % of all other outgoings

3. *[tick one box and fill in details if required]*

- ☒ The amount the lessee is required to pay towards outgoings does not include a margin of profit for the lessor.
- ☐ The amount the lessee is required to pay towards outgoings includes a margin of profit for the lessor as follows:

### PART 4 – OTHER MONETARY OBLIGATIONS

*[tick one box and fill in the details if required]*

- ☐ The lessee will not be liable for any other kinds of monetary obligations.
- ☒ The lessee will also be liable for the following kinds of monetary obligations:
- Insurance premium for Public Liability Insurance
  - 50% share of legal costs and disbursements (estimated to be \$400; cost is based on Lessee using the standard lease provided to it during lease negotiations; alterations to this lease document will incur additional charges and cannot be estimated at this stage)
  - Additional legal costs and disbursements if the Lessee elects to register its Lease (approx. \$500)
  - Goods and Services Taxes

- Costs of Utilities(electricity, gas, water, telephone)
- Otherwise as required by the terms of the Lease.

- **Exclusion of Warranty of Fitness for Purpose**

- Retail and Commercial leases Act 1995: Section 18
- Retail and Commercial Regulations 1995: Regulation 7

- **The Lessor does not warrant that the premises that you are about to lease will, for the duration of your lease, be structurally suitable for the type of business that you intend to carry on.**