

TRUE LEGAL

Specialist legal advisors.

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27 September 2019

Email: adminDLC@tauranga.govt.nz

Tauranga City Council  
Private Bag 12022  
**TAURANGA 3143**

**Gambling Venue Relocation Consent Application – Rossco’s Café and Bar, 40 Wharf Street, Tauranga to Worlds End, Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga**

1. I act for The Lion Foundation 2008 (“The Lion Foundation”).
2. The Lion Foundation seeks consent to relocate its 18-machine gaming licence from 40 Wharf Street, Tauranga (the current Rossco’s Café and Bar site) to Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga (the current Worlds End Bar and Restaurant site).
3. Please find attached:
  - a. Completed application form;
  - b. Confirmation that the filing fee of \$1,020.00 has been paid by direct credit;
  - c. Consent from the existing Rossco’s venue operator to the licence relocation;
  - d. Confirmation from Chief Licensing Inspector, Graeme Cushing, that the Worlds End site is within the required blue zone as specified in the gambling venue policy maps;
  - e. Confirmation that the current site is listed on the register of earthquake-prone buildings; and
  - f. Confirmation that the new site will achieve at least an A grade seismic rating; and
  - g. A copy of the current Rossco’s lease.
4. Although only one ground is required in order for the relocation consent to be granted, there are three valid grounds in the current case as to why the premises cannot continue to operate at the existing venue.
5. The gambling venue policy confirms that being earthquake-prone is valid grounds for relocation. The premises at 40 Wharf Street are listed on the register of earthquake-prone buildings (confirmation attached). The deadline for completing seismic work on the property was 13 January 2019. The work has not been undertaken. In contrast, the

premises at Fraser Cove Shopping Centre are very modern premises that are expected to achieve a seismic capacity close to 100% of the new building standard. Attached is the report from Engineer, Steve Dwyer, confirming that he expects the building to achieve at least an A grade rating.

6. The gambling venue policy also cites expiration of lease as valid grounds for relocation. The lease for the Wharf Street premises (copy attached) has a final expiry date of 31 January 2020. The fact that only four months remain on the lease means that it is not viable to reinstate the business at the existing site.
7. The third ground for relocation is the fact that the current premises are too small to comply with the new liquor licence decisions. Over the last two years, we have seen a body of case law develop regarding eligibility for liquor licences. The new precedent-setting cases include *Re L & H Graces Place Ltd* [2017] NZARLA 448 and *Re Kaiti Club Hotel Ltd* [2018] NZARLA 225. These cases provide that in order for bars with gaming to obtain a tavern liquor licence, the premises must be sufficiently large and successful that the sale of alcohol (in terms of revenue and patronage) is greater than the gaming revenue and gaming patronage. The Rossco's bar has a public area of only 89 square metres. The modest size has limited the venue's ability to sell a large amount of alcohol and provide a large range of non-gambling activities. This has resulted in the liquor licence being cancelled. In contrast, the premises at Worlds End are much larger and able to offer a very comprehensive liquor and food offering.
8. The application is an application to relocate an existing 18-machine licence to a site that currently holds a 9-machine licence. This is not unprecedented. On 13 June 2018, an 18-machine gaming licence was relocated to an existing 9-machine site following council consent (the Flying Mullet Ale House example, 38 Gravatt Road, Papamoa Beach). The relocation of the 18-machine licence to an existing 9-machine site is positive. This will result in the total number of gaming machines in Tauranga City reducing by 9. The relocation to an existing site also ensures that the operator is reputable and has the necessary harm minimisation and gaming compliance experience.

**True Legal Limited**

**Jarrold True**  
Director

**Application Form:  
Application for Relocation Gambling Class 4 or TAB Venue Consent**



**SECTION 1: DETAILS OF APPLICANT**

Name of Society or Trust: **The Lion Foundation 2018**

Postal Address: **C/- True Legal, PO Box 28043, Rototuna, Hamilton 3256 (please email correspondence)**

Contact Person: **Jarrold True**

Mobile Phone: **0274527763** Business Phone: **0274527763**

Email: **Jarrold.True@truelegal.co.nz**

**SECTION 2: DETAILS OF GAMBLING VENUE**

Name of current Gambling venue: **Rossco's Cafe and Bar**

Street Address of current Gaming venue: **40 Wharf Street**

Is this a Stand alone TAB venue? ☐ Yes ☒ No

Name of proposed Gambling venue: **Worlds End**

Street Address of proposed Gaming venue: **Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga**

Name and Address of Organisation / Company that holds the Liquor Licence for this venue: **Mazmac Limited**

Liquor Licence number of the proposed venue: (Not applicable for stand alone TAB venues) **21/ON/21618/2017**

What is the primary activity of the proposed business? **Sale of alcohol**

Reason for Relocation: **Building earthquake prone, lease expires January 2020, and premises too small to meet new liquor licence requirements.**

**SECTION 3: SIGNATURE OF APPLICANT**

I hereby declare that the above information is accurate and correct

Applicant's Signature:

Date:

**26/9/19**

**Fee of \$1,020.00 must be paid with Application**

(for office use)

Lodgment Code: PREG

Fee Paid.....

Application No.....

Premise No:.....

Date Received

Receipt No.....

Approved/Declined by.....

# Information Sheet: Application for Relocation Gambling Class 4 or TAB Venue Consent



## WHO SHOULD APPLY:

The consent applies to:  
Relocation of class 4 or TAB venue Consents

Applications must be made by a society or trust and cannot be made by an individual. The consent is specific to the venue.

Once you have received a gambling consent from Council you must also apply for any gaming licenses required by the Department of Internal Affairs

## COUNCIL POLICY:

Tauranga City Policy objectives are:

- to control the growth of class 4 and TAB venue gambling in Tauranga
- to minimise the harm to the Tauranga community caused by Class 4 and TAB venue gambling
- to allow people who wish to participate in gambling to continue to do so
- to define the parameters for when consent for a Class 4 or TAB venue will be granted.

## ON PAYMENT THIS BECOMES A - TAX INVOICE :

**Tauranga City Council - GST No: 51-938-283**

### Description:

Relocation Application fee for Gambling Class 4 or TAB Venue Consent

### Amount Payable

\$1,020.00 (Including GST)

Date payment made: \_\_\_\_\_  
(Becomes date Tax Invoice Issued)

## PAYMENT OPTIONS:

Fee of \$1,020.00 must be paid with Application:

Payment may be made either,

**Electronically to:** ANZ Tauranga Account Number: 06 0433 0213474 00 **Reference:** Gambling **Code:** Applicant Name

**In Person:** At Tauranga City Council, 91 Willow Street, Tauranga

**Or posted to:** Tauranga City Council, Private Bag 12022, Tauranga 3143

## HOW TO SUBMIT YOUR APPLICATION:

**Your application form must be submitted to Tauranga City Council by either,**

**On Line:** adminDLC@tauranga.govt.nz

**In Person:** At Tauranga City Council, 91 Willow Street, Tauranga

**Or posted to:** Tauranga City Council, Private Bag 12022, Tauranga 3143

EFT REMITTANCE

Please note that the following payment total will be credited to your account  
06 -0433 -0213474-00

Vendor ID                      TAUR001  
Vendor Name                  Tauranga City Council  
Account                        Tauranga City Council

Payment Number              00000224404  
Payment Date                 27/09/2019

Our Voucher No	Your Voucher No	Date	Document Amount	Amount
Paid	Write Off	Net Amount		
0000372775	GAMBLING270919	27/09/2019	\$1,020.00	
\$1,020.00	\$0.00	\$0.00	\$1,020.00	
Total:		\$1,020.00		

**Consent to Relocate 18 Gaming Machines from Rossco's Café and Bar, 40 Wharf Street, Tauranga to Worlds End, Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga**

SBS NZ Limited, the current venue operator of Rossco's Café and Bar, 40 Wharf Street, Tauranga, consents to the 18 gaming machines being relocated to Worlds End, Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga.

This consent is given in accordance with section 99(3) of the Gambling Act 2003.

  
\_\_\_\_\_  
Signed – Sanchi Sharma (Sole Director – SBS NZ Limited)

20-09-2019  
\_\_\_\_\_  
Dated

## Jarrod True

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**From:** Graeme Cushing <Graeme.Cushing@tauranga.govt.nz>  
**Sent:** Monday, 23 September 2019 11:08 AM  
**To:** jarrod.true@truelegal.co.nz  
**Subject:** Worldsend, Fraser Cove, Tauranga

Hi

In reply to your query on Worldsend at Fraser Cove.

It is my belief that Worldsend is situated in the blue zone shown on the maps in the Gaming Policy.

It is shown as 121 metres from the nearest residential boundary.

Regards

**Graeme Cushing** Chief Licensing Inspector  
Tauranga City Council | 07 5777465 [graeme.cushing@tauranga.govt.nz](mailto:graeme.cushing@tauranga.govt.nz) | [www.tauranga.govt.nz](http://www.tauranga.govt.nz)



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## Register of earthquake-prone buildings (EPB Register)

EPB Register Home

# Building record

Export to PDF 

## Territorial authority

TA name	Tauranga City Council	<a href="http://www.tauranga.govt.nz/">http://www.tauranga.govt.nz/</a>
TA reference		

## Address

Address 1 (primary)	40 Wharf Street Tauranga
------------------------	-----------------------------

## Building

Legal description	Allot 87 Sec 1 SO 441b
Area of seismic risk	Medium

MapSatellite

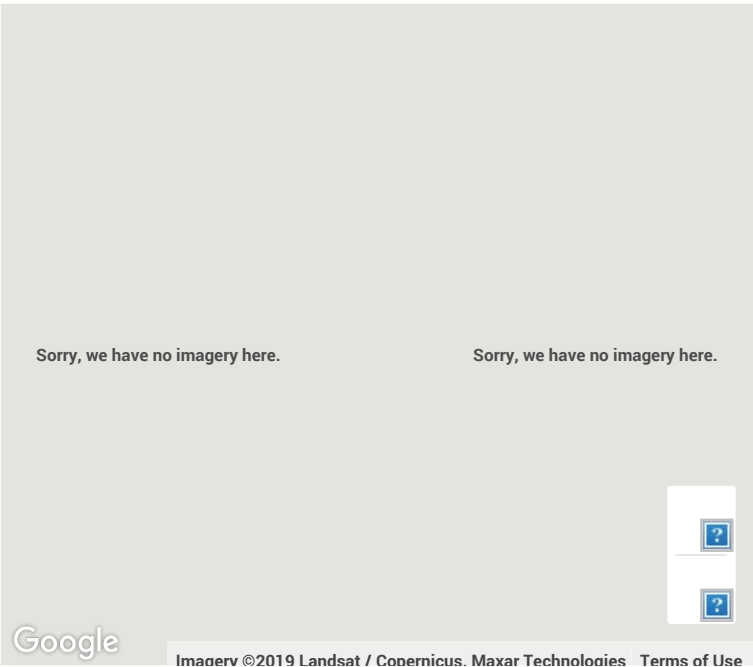
Sorry, we have no imagery here.

Sorry, we have no imagery here.





Region Bay of Plenty



## Notice details

EPB Register notice ID	N002230
Notice type	EPB notice
Date of notice	12 December 2017
Earthquake rating	Not determined
Deadline for completing seismic work	13 January 2019

*No documents*

The territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had because the owner has not provided an engineering assessment by the due date, or because the engineering assessment does not comply with the EPB methodology. The EPB notice issued for the building or part is in the form prescribed for the category of earthquake ratings that includes the lowest rating.

The earthquake rating for this building or part has not been determined.



4 September 2013

NZRP

Attention: Tom Hammond

Re: **Fraser Cover Shopping Centre, Block A, Tenancies T1, K1, T9D, T9C, T9A, T7, T8, T6, T5, T23, T24, T26, V2, V1**

We carried out the structural design for the primary structural elements for the above project in 2002 and 2004. The structural design was carried out in accordance with the seismic provisions of the then current building loadings code NZS4203-1992. Subsequently this code was replaced by the current loadings code, AS/NZS1170.5-2004 which was finally gazetted for use in 2010. Seismic design loads for this type of structure were not significantly different as a result of this code change.

Given the age of the building and the design parameters under which it was designed we would expect the building to achieve a seismic capacity **close to 100% of the new building standard**. I have not visited the site recently and have assumed that there have been no significant changes to the building primary structural elements since its construction.

The building would be expected to achieve at least an **A grade rating** in relation to its seismic performance. Therefore we are satisfied that the building is neither earthquake prone nor an earthquake risk.

Should you have any questions, please do not hesitate to contact me.

Thanks

Steve Dwyer  
Director

THORNE DWYER  
STRUCTURES LIMITED

CONSULTING ENGINEERS

88 CHARLOTTE STREET  
EDEN TERRACE  
PO BOX 99 812 AUCKLAND  
FAX 09-358 5891  
TELE 09-307 2702  
EMAIL [engineer@tdstructures.co.nz](mailto:engineer@tdstructures.co.nz)

# DEED OF ASSIGNMENT OF LEASE

**GENERAL** address of the premises:

Tenancy 2 on the ground floor, 40 Wharf Street, Tauranga as highlighted in yellow on the plan attached to the Deed of Lease

**DATE:** 20 July 2017

**ASSIGNOR:** Rendog 2008 Limited

**ASSIGNEE:** SBS NZ Limited (6276214)

**SHAREHOLDER(S) and DIRECTOR(S):** Robert Maurice Dinneen and Judith Jean Dinneen  
(of Assignor)

**GUARANTOR:** Sanchi Sharma  
(of Assignee)

**LANDLORD:** Ewen George Castle

**THE ASSIGNOR** assigns to the Assignee all the Assignor's estate and interest in the Premises and the Lease as set out in the First Schedule.

**THE ASSIGNOR**, the Assignee and the Landlord agree and acknowledge as set out in the Second Schedule.

**THE GUARANTOR** guarantees as set out in the Third Schedule.

**THE ASSIGNOR** and the Shareholder(s) and Director(s) (if any) and the Assignee agree as set out in the Fourth Schedule.

**THE ASSIGNOR**, the Assignee, the Landlord and the Guarantor all acknowledge that the Lease expires on the Expiry Date of Current Term set out in the First Schedule and the rent is the Annual Rent set out in the First Schedule.

**THE LANDLORD** consents to the assignment but without prejudice to the Landlord's rights powers and remedies under the Lease. If any Lease Variations are specified in the First Schedule the Landlord, the Assignor, the Assignee and the Guarantor agree that as from the Date of Assignment the Lease is varied as set out in the Lease Variations.

**THE LANDLORD** acknowledges that as at the Date of Assignment the Landlord is not aware of any existing breach of the Lease by the Assignor and has no interest in any of the Assignor's Assets.

**WHENEVER** words or phrases appear in this Deed and in the Second, Third and Fourth Schedules that also appear in the First Schedule then those words or phrases shall also mean and include the details supplied after them in the First Schedule.

**IN this Deed:**

- (a) The expressions "the Assignor", "the Assignee", "the Guarantor", "the Shareholder", "Director" and "the Landlord" include their respective executors administrators successors and permitted assigns.
- (b) The expression "Business Use" in the First Schedule means the permitted use of the Premises as at the Date of Assignment or as varied by any Lease Variation.
- (c) The expression "Assignor's Assets" shall mean all the chattels, fixtures and fittings in the Premises which are owned by the Assignor.
- (d) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (e) Where any party comprises more than one person, such persons shall be deemed to have entered into the Deed both jointly and severally.

EL MK  Avondale Law S.S

**SIGNED** by the Assignor\*  
in the presence of:

Witness Signature

Nicholas John Earl

Witness Name

Solicitor  
Tauranga

Witness Occupation

Witness Address

Signature of Assignor

**Robert Maurice Dinneen**

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

Signature of Assignor

**Judith Jean Dinneen**

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

**SIGNED** by the Assignee\*  
in the presence of:

Witness Signature

Witness Name **Logapragasam Pullar**  
Barrister & Solicitor

Witness Occupation **Auckland**

Witness Address

Signature of Assignee

**Sanchi Sharma**

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

Signature of Assignee

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

**SIGNED** by the Landlord\*  
in the presence of:

Witness Signature

Witness Name **SARAH CHRISTIE**  
**LEGAL SECRETARY**  
**TAURANGA**

Witness Occupation

Witness Address

Signature of Landlord

**Ewen George Castle**

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

Signature of Landlord

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

Note: Signing by a company – please refer to the note on page 3

**SIGNED** by the Guarantor\*  
in the presence of:

Witness Signature

Witness Name Logapragasam Pullar  
Barrister & Solicitor  
Witness Occupation Auckland

Witness Address

Signature of Guarantor

Sanchi Sharma

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

Signature of Guarantor

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

**SIGNED** by the Shareholder(s) and Director(s)  
in the presence of:

Witness Signature

Witness Name Logapragasam Pullar  
Barrister & Solicitor  
Witness Occupation Auckland

Witness Address

Signature of Shareholder/Director

Sanchi Sharma

Print Full Name

Signature of Shareholder/Director

Print Full Name

Witness to Rob & Judy:

Nicholas John Earl  
Solicitor  
Tauranga

Print Full Name

ROBERT MARCIE DINNER

SHARON

Sudith Jean Dinner

(as Shareholders and Directors of the Assignor)

\* If appropriate, add:

"by its director(s)" OR "by duly appointed attorney"

**Note:**

**Signing by a company** – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.  
If two directors sign, no witnessing is necessary.  
If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

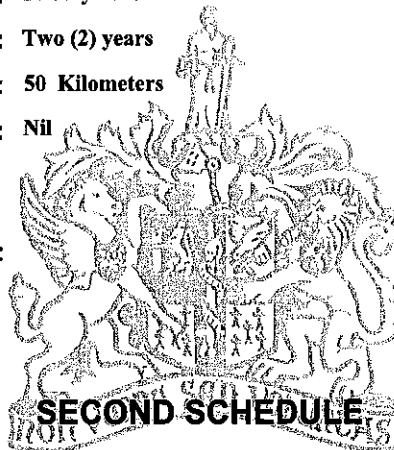
**FIRST SCHEDULE**

1. **PREMISES:** Tenancy 2 on the ground floor, 40 Wharf Street, Tauranga as highlighted in yellow on the plan
2. **CAR PARKS:** one (1)
3. **DATE OF LEASE:** 17 May 1995
4. **RIGHTS OF RENEWAL:** NIL
5. **FINAL EXPIRY DATE:** 31 January 2020
6. 

<b>ANNUAL RENT:</b>	Premises	\$ 20,478.00	plus GST per annum
(Subject to review if applicable)	Car Parks	\$	plus GST per annum
	<b>TOTAL</b>	<b>\$20,478.00</b>	<b>plus GST per annum</b>
7. **EXPIRY DATE OF CURRENT TERM:** 31 January 2020
8. **BUSINESS USE:** Licensed Premises

9. **DATE OF ASSIGNMENT:** 20 July 2017
10. **RESTRAINT OF TRADE PERIOD:** Two (2) years
11. **RESTRAINT OF TRADE RADIUS:** 50 Kilometers
12. **LEASE VARIATIONS:** Nil

13. **LIMITED LIABILITY TRUSTEE:**



1. **THE** Assignee agrees with the Assignor to perform all the provisions in the Lease from the Date of Assignment.
2. **THE** Assignee indemnifies the Assignor and any guarantor of the Assignor against all liability arising out of any default by the Assignee in the performance of the provisions in the Lease as from the Date of Assignment.
3. **THE** Assignor warrants that all the provisions of the Lease have been performed up to the Date of Assignment.
4. **THE** Assignee agrees with the Landlord that the Assignee will perform all the provisions of the Lease from the Date of Assignment.
5. **THE** Assignor acknowledges to the Landlord that the covenants of the Assignee are not in substitution for and do not alter the liability of the Assignor under the Lease.
6. **IF** any person enters into this Deed as trustee of a trust, then:
  - (1) That person warrants that:
    - (a) that person has power to enter into this Deed under the terms of the trust; and
    - (b) that person has properly signed this Deed in accordance with the terms of the trust; and
    - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Deed; and
    - (d) all of the persons who are trustees of the trust have approved entry into this Deed.
  - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this Deed will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
7. Notwithstanding clause 6, a party to this Deed that is named in item 13 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with clause 6.

### THIRD SCHEDULE

1. **FROM** the Date of Assignment the Guarantor:
  - (1) Guarantees to the Assignor and the Landlord the performance by the Assignee of all the tenant's obligations under the Lease.
  - (2) Indemnifies the Assignor, any guarantor of the Assignor and the Landlord against any liability or losses suffered by the Landlord as a result of the Lease being lawfully disclaimed by any liquidator or receiver or arising through default by the Assignee in the performance of the provisions in the Lease.
2. **THE** Guarantor agrees that neither an assignment of the Lease nor any rent review in accordance with the Lease nor any indulgence granting of time waiver or forbearance to sue or any other thing whereby the Guarantor would be released as a surety in any way releases the Guarantor from liability under the Lease.

### FOURTH SCHEDULE

**THE** Assignor and the Shareholder(s) and Director(s) (if any) agree with the Assignee that the Assignor and the Shareholder(s) and Director(s) (if any) will not during the Assignor's Restraint of Trade Period either directly or indirectly carry on or be interested either alone or in partnership with or as manager, agent, director, shareholder or employee of any other person in any business similar to that carried on by the Assignee within the Restraint of Trade Radius from the Premises stated in the First Schedule.

3. The Landlord agree to assist in the negotiation with the Tauranga City Council to extend the lease beyond 31 January 2020. However, any extension to the existing Lease is entirely dependent on action taken by Tauranga City Council regarding Earthquake Prone Building Legislation and the Landlord is not liable for any loss suffered by the Tenant as a result of the building being assessed as earthquake prone by Tauranga City Council or any competent authority or individual. The Landlord is not liable for any loss suffered by the Tenant as a result of earthquake strengthening of the building being undertaken by the Landlord.



NE  
EE  
Avondale Law  
SS

Dated 20 July 2017

Between  
Rendog 2008 Limited

Assignor

and  
SBS NZ Limited (6276214)

Assignee

and

Shareholder(s)

and

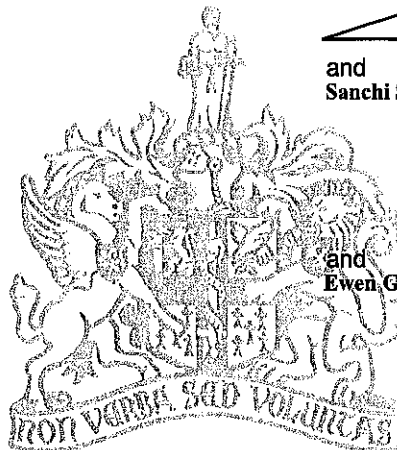
Director(s)

and  
Sanchi Sharma

Guarantor

and  
Ewen George Castle

Landlord



## DEED OF ASSIGNMENT OF LEASE

### General address of the premises:

Tenancy 2 on the ground floor, 40 Wharf Street,  
Tauranga as highlighted in yellow on the plan attached  
to the Deed of Lease