

# Mortgage Linked Loan Agreement

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THIS DEED dated            day of            2019

## BETWEEN

Mortgagee:            **Neville James Millar and Dianne Therese Millar as joint tenants as to 5/17<sup>th</sup>; Truebin Pty Ltd ACN 062 178 054 as to 5/17<sup>th</sup> and Truebin Pty Ltd ACN 062 178 054 as trustee for Millar Family Super Fund as to 7/17<sup>th</sup> as tenants in common** of 18B Cornwallis Close, Port Macquarie NSW 2444

Mortgagor:            **Universal Property Group Pty Ltd ACN 078 297 748** of 137 Gilda Rd., Girraween NSW 2145

Guarantor:            **UPG 87 Pty Ltd ACN 633 514 815** of 137 Gilba Rd., Girraween NSW 2145

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## SUMMARY

|   |  |                   |                                  |
|---|--|-------------------|----------------------------------|
| Mortgagor email address:  | bobby@bathla.com.au  |                   |                                  |
| Mortgagor fax number:   | 02 9688 4762   |                   |                                  |
| Principal:  | \$ 1,700,000.00  |                   |                                  |
| Term of loan:   | Twelve (12) months   |                   |                                  |
| Date advance anticipated:   | 17 September 2019  |                   |                                  |
| Date advance made (insert after completion)                                       |  |                   |                                  |
| Instalments due:  | Three months after advance and thereafter quarterly in arrears         |                   |                                  |
| Fixed or variable interest rate:  | Fixed  |                   |                                  |
| Instalments interest only or principal and interest:                              | Interest only  |                   |                                  |
| Additional interest on early repayment:   | Not applicable   |                   |                                  |
| Rate of interest:   | 12% fixed  |                   |                                  |
|   |  |                   |                                  |
| Amount of quarterly instalments   | \$51,000.00  |                   |                                  |
| Multiples by which principal can be reduced on any monthly interest payment date: | Not applicable   |                   |                                  |
| Mortgaged property:   | <input type="checkbox"/> Mortgagor:                                    | Folio identifier: |                                  |
|   |  | Address:          |                                  |
|   | <input checked="" type="checkbox"/> Guarantor:                         | Folio identifier: | 2/1223464                        |
|   |  | Address:          | 16B Pelican Road, Schofields NSW |
| Are guarantors liable for further advances?                                       | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    |                   |                                  |
| Are guarantors liable for redraws?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    |                   |                                  |
| Limit of guarantors liability   | All liability under this agreement <input checked="" type="checkbox"/> |                   |                                  |

Unless varied as an additional agreement below, this deed and the memorandum prohibit the mortgagee from exercising its rights against the security provided by the guarantor until it has exercised its rights against security provided by the mortgagor.

## ADDITIONAL AGREEMENTS

(it is agreed that amendments to the operative part will be recorded here)

1. This Loan Agreement creates in favour of the Mortgagee an interest in land over the Mortgaged Property for the purposes of s.74F Real Property Act which would enable the Mortgagee to lodge a Caveat against the Mortgaged Property. Whilst ever the Mortgagor is not in breach of the terms of this Agreement the Mortgagee agrees not to lodge such caveat.

## **OPERATIVE PART**

### **1. Loan**

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At the request of the guarantor (if any) the mortgagee agrees to advance to the mortgagor the principal sum on the terms of this deed.

The mortgagor agrees to grant to the mortgagee a registered mortgage over the mortgaged property described in the summary on the terms provided for in memorandum No. AJ843928 registered at the land titles office. The provisions of that memorandum are incorporated in this deed.

The guarantor agrees to grant to the mortgagee a registered mortgage over the mortgaged property described in the summary on the terms provided for in memorandum No. AJ843928 registered at the land titles office. The provisions of that memorandum are incorporated in this deed.

### **2. National Credit Code does not apply**

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This deed is not made pursuant to the National Credit Code regulating loans by mortgagees in the business of making residential loans. If this deed is found to be governed by such code resulting in different obligatory requirements from those set out herein then the performance of those obligations shall apply to the extent required by such code without affecting the enforceability of the other provisions hereof.

### **3. Repayments**

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The mortgagor must make repayments of principal on the dates set out in the summary and must pay the balance remaining of the principal on or before the date of repayment set out in the summary.

The mortgagor must make payments of interest on the dates set out in the summary and must pay all outstanding interest on or before the date of repayment set out in the summary.

### **4. Calculation of interest**

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#### **Compounding**

For the purposes of calculation of interest, the loan balance shall include the balance of principal, all unpaid interest and all other amounts then due under this deed or the mortgage.

#### **Rate discount for on time payments**

In each month that all payments due under this deed are made on or before the due date, interest shall be calculated by applying the lower rate to the loan balance.

In each month that a payment due under this deed is not made on or before the due date, interest shall be calculated by applying the higher rate to the loan balance.

In the event one or more payments are overdue, notwithstanding the mortgagor may seek to specify that a payment is a payment in respect of a specific month, all payments shall be credited to such overdue payments before being credited to presently due payments.

### **5. Fixed interest**

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If the summary specifies this is a fixed interest loan, interest shall be calculated by applying the rates specified in the summary to the loan balance.

### **6. Variable interest**

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If the summary specifies the interest rate is variable, subject to the following clause, each change in interest rate shall take effect on the date the Reserve Bank of Australia publishes a change in the Cash Target Rate.

The mortgagee must notify the mortgagor of each interest rate change within 14 days of such change. If the mortgagee fails or chooses not to so notify the mortgagor of an interest rate increase within 14 days of publication by the Reserve Bank of an

increase in the Target Cash Rate, that interest rate increase shall not apply.

The mortgagee may recalculate the instalments payable by the mortgagor if there is an alteration to the rate of interest payable or if there is any further advance or any other money become payable.

The mortgagee shall recalculate the instalments payable so as to ensure, as nearly as practicable, that the principal money secured and interest thereon will be repaid to the mortgagee on the due date.

In the event that instalments are not recalculated then any additional interest payable shall be capitalized monthly.

The mortgagee shall give notice in writing to the mortgagor of any recalculation and upon receipt of such notice the mortgagor shall pay to the mortgagee the instalments as recalculated by the mortgagee.

If the mortgagor pays to the mortgagee payments in excess of those then due and the mortgagee accepts them, those payments shall be credited to the mortgagor's account with the mortgagee but the mortgagor's obligation to make any succeeding payment on the due date for payment shall not be altered.

The commencing interest rates are as specified in the summary.

## **7. Advance repayment of loan balance**

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In addition to making payments of principal and interest as provided for in this deed the mortgagor may pay multiples of the amount shown in the summary in reduction of the loan balance on any due day for payment of an instalment of interest.

## **8. Early repayment**

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The mortgagor may repay the whole of the loan balance at any time on payment of interest to the end of the then current month together with the additional interest set out in the summary.

## **9. Guarantee**

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The guarantor warrants that before execution of this deed the guarantor sought such advice as the guarantor considered necessary to fully understand this guarantee and in particular the financial consequences for the guarantor of default by the mortgagor. The guarantor has satisfied itself as to the financial position of the mortgagor and the mortgagor's capacity to service this loan and comply with the mortgagor's obligations under this deed.

The guarantor hereby guarantees to the mortgagee the due and punctual performance of all the obligations of the mortgagor contained or implied in this deed and hereby indemnifies the mortgagee against all losses, expenditure, costs and expenses of whatever nature suffered or incurred directly or indirectly by the mortgagee in recovering the principal sum, interest and all other amounts that may become due under this deed or the mortgage.

Unless otherwise stated in the summary this guarantee does not extend to include the principal and interest of any further advances made after the date of this deed.

Unless otherwise stated in the summary this guarantee does not extend to include the principal and interest of any redraws made after the date of this deed.

If the summary specifies a limit to the guarantee then this guarantee is limited to that amount.

This guarantee and indemnity is continuing and irrevocable and the obligations of the guarantor are absolute and unconditional in all circumstances and must continue notwithstanding that there is any change to the constitution, membership or board of the mortgagor.

This guarantee continues despite the payment of any part of the amount owing and despite any time or other concession or compromise extended by the mortgagee to the mortgagor or any other person.

The guarantor hereby consents to any variation of this deed by extension of the period for repayment of the amount owing.

This guarantee and indemnity is a principal obligation and is not to be treated as ancillary or collateral to any obligation to the intent that this guarantee and indemnity will be enforceable notwithstanding that any of the deeds and other obligations arising between the mortgagee and the

mortgagor are in whole or part unenforceable for any reason.

Except as provided below this guarantee will not be affected by the neglect or omission of the mortgagee to enforce any of its rights in relation to this or any other security or releasing any security in whole or in part or if the mortgagor dies or becomes of unsound mind or bankrupt or being a company goes into liquidation or any other obligation for any reason becoming unenforceable in whole or in part.

The mortgagee shall not exercise its rights against any security provided by the guarantor before first exercising its rights against security provided by the mortgagor.

## **10. Further advances**

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From time to time the mortgagor and the mortgagee may agree in writing to the making of further advances on such terms as to interest and repayments as are agreed. Such writing shall form part of this deed and all rights and obligations relating to such further advances shall be the same as those contained in this deed.

## **11. Trusts**

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If the mortgagor holds the property as a trustee of a trust then the mortgagor is bound by the obligations of this mortgage personally as well as in the capacity of the trustee of a trust whether or not the instrument evidencing the trust has been produced to the mortgagee.

The mortgagor as trustee covenants that the trustee has full power to enter into this mortgage and is indemnified by the trust against any losses that may eventuate as a result of the trustee entering into this mortgage.

The mortgagor is personally liable for the obligations in this deed and its liability is not limited to the estate or interest of the mortgagor as trustee of the mortgaged property.

Nothing shall prejudice, affect or in any way limit the personal liability of the mortgagor under this mortgage or oblige the mortgagee to concern itself with the application of any money paid or credited to the mortgagor, or to make any inquiry as to any right or claim by any person other than the

mortgagor to any money so paid or credited; or oblige the mortgagee to take notice of any actual, contingent or future interest of any person in or under the trust.

## **12. Default**

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In the event any one or more of the default events set out below shall occur, the mortgagee may by notice in writing to the mortgagor require the mortgagor to immediately repay the principal and accrued interest. For the purposes of this clause the following are events of default:

- (a) Failure by the mortgagor to comply with any of the covenants express or implied in this deed or the mortgage;
- (b) Failure by the mortgagor in the due and punctual payment of any money as payment falls due under this deed or any deed;
- (c) Being a trustee the mortgagor without the prior consent of the mortgagee ceases to be the trustee;
- (d) The mortgagor becoming bankrupt or being a corporation going into liquidation;
- (e) If the mortgagor is a company, a change in the ownership of shares attaching more than 50% of the voting rights.

## **13. Interest following judgement**

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The mortgagor agrees as an independent obligation which will not merge in any judgment, to pay interest on any judgment or order for the payment of all or any part of the money secured at either the rate payable under the judgment or at the higher rate specified in the summary, whichever is the greater.

## **14. Invalidity by operation of law**

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If any provision of this deed is invalid due to the operation of any statute or rule of law, then such provision is severed from this deed.

## **15. Further assurance and power of attorney**

The mortgagor shall, whenever requested by the mortgagee and at the cost and expense of the mortgagor, do or cause to be done anything requested by the mortgagee to further and more satisfactorily assure the mortgagor's obligations under this deed.

The mortgagor irrevocably appoints the mortgagee as its attorney with authority to do any act and sign any document as may be necessary to give effect to the mortgagor's obligations under this deed.

## **16. Indemnity**

The mortgagor indemnifies the mortgagee against all liabilities arising out of the mortgagee's exercise of its powers under this deed and against any actions or proceedings against the mortgagee in respect of any action or omission by the mortgagee whilst exercising the mortgagee's powers. Any money received by the mortgagee may be used to give effect to this indemnity.

## **17. Loss**

The mortgagee will not be liable for any loss arising out of the exercise of any of the mortgagee's powers.

## **18. Costs**

All costs, fees and expenses including legal expenses on a full indemnity basis in connection with the negotiation, preparation, execution, stamping and registration of this deed and the mortgage, the preservation or protection of the mortgaged property or of the title thereto, the repair maintenance and management of the property and the exercise of the powers of the mortgagee on default, are payable by the mortgagor to the mortgagee on demand.

## **19. Independent financial and legal advice**

The mortgagor agrees that they have sought such financial and legal advice as they considered

appropriate for an understanding of this deed before entering into it.

## **20. Notices**

A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to the address specified in the summary, when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to the facsimile number specified in the summary, when it will be treated as received when it is transmitted; or
- (d) Sent by email to the email address specified in the summary, when it will be treated as received when it enters the recipient's information system.

## **21. Interpretation**

This deed is governed by the law of the state in which the mortgaged property is located and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this deed:

- (a) Words denoting the singular include the plural and vice versa; words denoting individuals or persons include bodies corporate and vice versa; references to documents or deeds also mean those documents or deeds as changed, novated or replaced, and words denoting one gender include all genders;
- (b) Grammatical forms of defined words or phrases have corresponding meanings;
- (c) Parties must perform their obligations on the dates and times fixed by reference to the state in which the mortgaged property is situated.
- (d) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (e) If the day on or by which anything is to be done is a Saturday, a Sunday or a public

holiday in the place in which it is to be done, then it must be done on the next business day;

- (f) References to a party are intended to bind their executors, administrators and permitted transferees;
- (g) Obligations affecting more than one party bind them jointly and each of them severally.
- (h) Reference to the advance or the debt or money secured or money owing means the advance, the principal, interest, further advances and all other money payable from time to time by the mortgagor to the mortgagee.

# EXECUTION PAGE

## EXECUTED AS A DEED

|   |        |                                |
|---|--------|--------------------------------|
| <b>EXECUTED BY Neville James Millar and<br/>Dianne Therese Millar in the presence<br/>of:</b> | )<br>) | _____<br>Neville James Millar  |
| .....<br>Witness  |        | _____<br>Dianne Therese Millar |

|  |        |                             |
|--|--------|-----------------------------|
| <b>EXECUTED BY TRUEBIN PTY LTD ACN<br/>062 178 054</b> | )<br>) |                             |
| .....<br>Director                                      |        | .....<br>Director           |
| Name: Neville James Millar                             |        | Name: Dianne Therese Millar |

|   |        |                             |
|---|--------|-----------------------------|
| <b>EXECUTED BY TRUEBIN PTY LTD ACN<br/>062 178 054 as trustee of Millar Family<br/>Super Fund</b> | )<br>) |                             |
| .....<br>Director   |        | .....<br>Director           |
| Name: Neville James Millar  |        | Name: Dianne Therese Millar |

|   |        |  |
|---|--------|--|
| <b>EXECUTED BY UNIVERSAL PROPERTY GROUP<br/>PTY LTD ACN 078 297 748</b> | )<br>) |  |
| .....<br>Sole Director/Secretary  |        |  |
| Name: Bhart Bhushan   |        |  |



**EXECUTED BY UPG 87 PTY LTD ACN 633 514     )**  
**815   )**

.....  
Sole Director/Secretary

Name: Bhart Bhushan