

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission by:

**Universal Property Group Pty Ltd**

ACN 078 297 748

Unit 1, 129 Magowar Road, Toongabbie NSW 2146

and

**Bhart Bhushan**

### 1. INTERPRETATION

1.1 In addition to terms defined elsewhere in this undertaking, the following definitions apply:

- (a) **ASIC** means the Australian Securities and Investments Commission.
- (b) **ASIC Act** means the *Australian Securities and Investments Commission Act* 2001 (Cth).
- (c) **associated entity** has the meaning given to that term at section 50AAA of the *Corporations Act*.
- (d) **Corporations Act** means the *Corporations Act* 2001 (Cth).
- (e) **Mr Bhushan** means Bhart Bhushan.
- (f) **unconscionable conduct** means conduct in contravention of sections 12CA, 12CB and 12CC of the ASIC Act.
- (g) **UPG** means Universal Property Group Pty Ltd (ACN 078 297 748).

## **2. BACKGROUND**

### **ASIC's role**

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

### **Details of conduct**

- 2.2 Since about 1997, UPG has carried on the business of residential property development, predominantly in the western suburbs of Sydney.
- 2.3 Mr Bhushan is the sole director and secretary of UPG.
- 2.4 From about 2004 until mid October 2009, UPG offered vendor finance to persons who purchased property from UPG and UPG's associated entities.
- 2.5 Vendor finance was frequently offered on promotional terms, including offers of:
- (a) capped repayments;
  - (b) contributions to the borrower's interest obligations under the borrower's first mortgage loan; and
  - (c) lump sum cash rebates.
- 2.6 Mr Bhushan met with most prospective purchasers who wished to apply for vendor finance. In the course of meeting with a prospective purchaser, Mr Bhushan made oral inquiries as to the person's income, assets and liabilities. Mr Bhushan accepted the information he was given as true and accurate but neither UPG nor Mr Bhushan took steps to verify independently the correctness of the information provided by prospective purchasers about their financial situation.
- 2.7 In instances where prospective purchasers indicated that they did not have their own legal and/or financial advisors, Mr Bhushan offered to refer those persons to:

- (a) any one of a number of mortgage brokers for assistance with applying for a home loan from a bank or other lender; and/or
- (b) any one of a number of solicitors for independent legal advice in respect of the purchase of the property and, if applicable, any loans or mortgages which the person might require,

but in each case, Mr Bhushan made it clear that the prospective purchasers were at liberty to retain whomever they wished to act as their mortgage broker or solicitor.

2.8 As security for monies loaned under a vendor finance agreement, the purchaser/borrower executed a mortgage and caveat over the property in favour of UPG.

2.9 UPG ceased to offer vendor finance in October 2009.

#### **ASIC's investigation**

2.10 In 2009, ASIC commenced an investigation into suspected contraventions of Part 2, Division 2 of the ASIC Act by UPG and Mr Bhushan in connection with UPG's provision of vendor finance in the period from 1 June 2007 to date.

#### **ASIC's Concerns**

2.11 In the course of ASIC's investigations referred to at paragraph 2.10 above, ASIC formed the view that UPG may have engaged in unconscionable conduct in contravention of Part 2, Division 2 of the ASIC Act. In particular, ASIC has identified a number of areas of concern with the lending practices and conduct of UPG and Mr Bhushan, including:

- (a) whether UPG made adequate inquiries as to the borrower's or any guarantor's financial situation;
- (b) UPG's reliance on the borrowers' assertions as to their financial situation and its failure to test or verify independently the borrowers' assertions as to their income, expenses, assets and liabilities;

- (c) whether the borrowers understood to a sufficient degree the terms and conditions of the vendor finance loan in circumstances where UPG knew or ought to have known that some borrowers had a poor understanding of spoken and written English and/or little financial acuity;
- (d) UPG's offer of vendor finance to some borrowers who were recipients of Centrelink benefits;
- (e) UPG's offer of vendor finance on promotional terms, including the offer of:
  - (i) capped repayments;
  - (ii) contributions to the borrower's first mortgage loan;
  - (iii) lump sum cash rebates;

(collectively, **ASIC's Concerns**)

### 3. **ACKNOWLEDGMENTS**

- 3.1 UPG and Mr Bhushan admit that they engaged in unconscionable conduct. UPG and Mr Bhushan do not admit that they engaged in unconscionable conduct in relation to each of the vendor finance transactions nor in respect of each of ASIC's Concerns.
- 3.2 In acknowledgment of ASIC's Concerns, UPG and Mr Bhushan have offered an enforceable undertaking in the terms outlined in section 4 below.
- 3.3 UPG and Mr Bhushan acknowledge that ASIC:
  - (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
- 3.4 Further, UPG and Mr Bhushan acknowledge that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of paragraphs 2.1 to 2.11 of this enforceable undertaking or arising from future conduct;
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

3.5 UPG and Mr Bhushan acknowledge that this undertaking has no operative force until accepted by ASIC. UPG, Mr Bhushan and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

#### 4. UNDERTAKING

4.1 Under section 93AA of the ASIC Act, UPG and Mr Bhushan have offered, and ASIC has agreed to accept as an alternative to pursuing court action, the undertaking set out at paragraphs 4.2 to 4.22 below.

##### Identification of affected consumers

4.2 UPG and Mr Bhushan must, within 30 days of the date of acceptance of this undertaking by ASIC, use their best endeavours to identify all of the vendor finance clients (other than those who have executed a deed of release with UPG as at the date of acceptance of this undertaking by ASIC) and their addresses from UPG's records and send the letter which is Annexure "A" to this undertaking to each of those persons, allowing the person to provide information to UPG and claim compensation within 28 days of the person's receipt of the letter. In the event that a person's address cannot be obtained from those records, the procedure in Annexure "B" should be used.

##### Payment of claims

4.3 If UPG receives a claim for compensation (**Compensation Claim**) from a vendor finance client (**Claimant**), UPG will, within 28 days of receipt of the Compensation Claim, consider such claim and notify the Claimant in writing whether it:

- (a) agrees to pay the Compensation Claim; or
  - (b) offers to pay part of the Compensation Claim; or
  - (c) rejects the Compensation Claim.
- 4.4 In the event that UPG rejects a Compensation Claim, either in part or in full, UPG shall provide the Claimant with brief written reasons for its decision.
- 4.5 In the event that UPG offers to pay a Compensation Claim in part or in full (as referred to in paragraphs 4.3(a) and (b)), such offer:
- (a) may be made conditional upon the Claimant's execution of a deed of agreement in the form set out in Annexure "C"; and
  - (b) may be made on terms, but shall include terms that:
    - (i) the offer is open for acceptance for a period of 28 days from the Claimant's receipt of the offer; and
    - (ii) any compensation payment will be made by UPG within 28 days of UPG receiving notification in writing of the Claimant's acceptance of the offer and a signed copy of the deed referred to in paragraph 4.5(a) (if any).
- 4.6 UPG will pay the amount offered to the Claimant in full within 28 days of its receipt of the Claimant's written acceptance of the offer and a copy of the deed (referred to in paragraph 4.5(a)) signed by the Claimant (if any).
- 4.7 If UPG:
- (a) rejects a Compensation Claim; or
  - (b) offers to pay all or part of a Compensation Claim, which is not accepted by the Claimant within the period provided for at paragraph 4.5(b)(i) above

UPG will send a letter to the Claimant which is Annexure "D" to this undertaking, offering to refer the Compensation Claim to the Compensation Claims Reviewer as set out below.

## **Review by an independent person of Compensation Claims**

### ***Appointment of independent person***

4.8 Within 30 days of the date on which this undertaking is accepted by ASIC, UPG will appoint one (or more) independent person(s) (**Compensation Claims Reviewer**) to conduct a review of the Compensation Claims referred to in paragraph 4.7 above.

4.9 The Compensation Claims Reviewer must be approved by ASIC before they are engaged to conduct this review. To enable ASIC to consider whether the proposed Compensation Claims Reviewer should be engaged, UPG must take all reasonable steps to ensure that as soon as reasonably practicable, and in any event within 14 days of the date of this undertaking, it provides to ASIC the curriculum vitae of the proposed Compensation Claims Reviewer.

4.10 The terms of engagement of the Compensation Claims Reviewer must include those set out in Annexure "E". The terms of engagement may include additional terms but may not include any term that in any way contradicts or qualifies the terms set out in Annexure "E".

4.11 All remuneration and costs associated with the Compensation Claims Reviewer shall be borne by UPG.

### ***Referral of claims to the independent person***

4.12 A Claimant will have 28 days in which to accept in writing UPG's offer to refer the Compensation Claim to the Compensation Claims Reviewer pursuant to clause 4.7 (such period to be calculated from the date of the Claimant's receipt of the referral offer).

4.13 UPG will refer to the Compensation Claims Reviewer any Compensation Claim referred to in paragraph 4.7 within 7 days of

UPG's receipt of written notice from the Claimant accepting UPG's offer to refer the Compensation Claim to the Compensation Claims Reviewer.

- 4.14 Where a Compensation Claim is referred to the Compensation Claims Reviewer, UPG will notify the Claimant that:
- (a) the Claimant's Compensation Claim has been referred within 7 days of the referral; and
  - (b) the Claimant has 28 days from the date of the Claimant's receipt of notification of the referral in which to submit material to the Compensation Claims Reviewer in support of the Compensation Claim.
- 4.15 Upon the referral of a Compensation Claim to the Compensation Claims Reviewer and notification to the Claimant of such referral (as provided for in paragraph 4.14), UPG and the Claimant will have 28 days from the date of the referral in which to submit material (including, but not limited to, submissions and legal authorities) to the Compensation Claims Reviewer in support of their respective positions.
- 4.16 The Compensation Claims Reviewer will determine the Compensation Claim on the basis of the initial Compensation Claim and any further material received from the Claimant or UPG within 28 days of the expiration of the 28 day period referred to in paragraph 4.15. The Compensation Claims Reviewer may determine that the Compensation Claim should be paid in part or in full or that the Compensation Claim should not be paid at all.
- 4.17 The Compensation Claims Reviewer will notify the Claimant and UPG in writing of the Compensation Claims Reviewer's determination and brief reasons for such determination within 7 days of making the determination. Notification sent to the Claimant will be in the form set out in Annexure "F").
- 4.18 The Claimant shall have 28 days from the date of the Claimant's receipt of the Compensation Claims Reviewer's determination in which to notify UPG whether the Claimant accepts the determination in full and final settlement of any claim it may have against UPG and/or Mr Bhushan. Acceptance of the determination is to be made in writing by the Claimant executing and returning to UPG a deed of settlement and release in the form set out in Annexure "C".



- 4.19 UPG shall pay the Claimant the full amount determined by the Compensation Claims Reviewer within 28 days of its receipt of the deed (referred to in paragraph 4.18) signed by the Claimant.
- 4.20 UPG agrees to be bound by the determination of the Compensation Claims Reviewer and to pay any amount determined by the Compensation Claims Reviewer (if applicable) within 28 days of its receipt of written notice of the determination.

### **Reporting to ASIC**

- 4.21 UPG and Mr Bhushan will provide to ASIC 10 months after the date of acceptance of this undertaking by ASIC, a statutory declaration, annexing:
- (a) a spreadsheet which contains the following information:
    - (i) the names and contact details of all vendor finance clients to whom UPG sent letters pursuant to paragraph 4.2;
    - (ii) whether or not each of those vendor finance clients made a Compensation Claim;
    - (iii) whether or not UPG made an offer of compensation;
    - (iv) whether or not the Claimant's claim was referred to the Compensation Claims Reviewer;
  - (b) copies of each offer of compensation as agreed between UPG and any Claimant; and
  - (c) copies of each written determination made by the Compensation Claims Reviewer.

### **Costs of compliance**

- 4.22 UPG and Mr Bhushan undertake to pay the costs of their compliance with this enforceable undertaking.

## **5. VARIATION OF THIS ENFORCEABLE UNDERTAKING**

- 5.1 UPG must seek ASIC's written consent to vary the time by which any of the requirements of this enforceable undertaking must be completed. Any such request must be made prior to the expiry of the time required by this enforceable undertaking for completion of the requirement and must include written reasons for the variation sought. The time for completion of any requirement is not varied until ASIC has provided its written consent. ASIC's consent will not be withheld unreasonably.
- 5.2 Notwithstanding anything else in this enforceable undertaking, ASIC may expressly waive in writing any of the obligations contained in this enforceable undertaking or amend the date by which any such obligation is to be satisfied.

## 6. CONCLUSION OF AN ENFORCEABLE UNDERTAKING

- 6.1 ASIC, UPG and Mr Bhushan acknowledge that this enforceable undertaking ends upon the completion of all of the requirements under this enforceable undertaking.

Signed on behalf of Universal Property )  
Group Pty Ltd: )  
)  
)

Witness signature

*BLT BLT*  
Sole director & Company  
Secretary

**Marc Thomas Hardman**  
Solicitor  
PARRAMATTA  
Print name

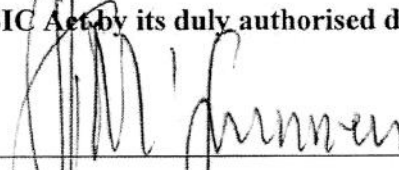
Signed by Bhart Bhushan: )  
)  
)  
)

Witness signature

*BLT BLT*  
Bhart Bhushan

**Marc Thomas Hardman**  
Solicitor  
PARRAMATTA  
Print name

Accepted by the Australian Securities and Investments Commission under s 93AA of the  
ASIC Act by its duly authorised delegate:



---

Delegate of Australian Securities and Investments Commission

Date:

13 April 2011

**ANNEXURE "A"**

**Letter to be sent to vendor finance clients**

(To be sent to Sudanese borrowers in Arabic, Dinka and English)

(To be sent to Filipino borrowers in Tagalog and English)

Dear [names]

On [date] you bought a property from Universal Property Group Pty Limited (ACN 078 297 748) (UPG), located at [address]. You also borrowed \$[amount] from UPG.

UPG may have treated you unfairly in giving you this loan and, if it did, the law says UPG may have to compensate you by paying you some money.

If you would like to claim that UPG has treated you unfairly, fill out the claim form and the statutory declaration that are attached to this letter.

Send both completed forms to this office.

The mailing address is:

Claims Supervisor  
Universal Property Group Pty. Ltd.  
PO Box 270  
WENTWORTHVILLE NSW 2145

For help with filling in the form or translating this letter contact your local Migrant Resource Centre. A list of Migrant Resource Centres in NSW is enclosed.

You will need a qualified person to witness the statutory declaration. Qualified people include Justices of the Peace and Solicitors. Justices of the Peace can be found at police stations, chemist shops, local council offices, libraries and government agencies. You may also make enquiries with the office of your Member of Parliament in NSW.

**Yours faithfully,**

**Universal Property Group Pty Ltd**

For more detailed information please see over the page.

### **Migrant Resource Centres NSW**

Auburn Migrant Resource Centre  
17 Macquarie Road, Auburn NSW 2144  
Phone: (02) 9649 6955; fax (02) 9649 4688; email: [reception@amrc.org.au](mailto:reception@amrc.org.au)

Baulkham Hills/Holroyd/Parramatta Migrant Resource Centre  
15 Hunter Street, Parramatta NSW 2150  
Phone: (02) 9687 9901; fax (02) 9687 9990; email: [enquiries@bhpmrc.org.au](mailto:enquiries@bhpmrc.org.au)

Blacktown Migrant Resource Centre  
Level 2, 125 Main Street, Blacktown NSW 2148  
Phone (02) 9621 6633; fax (02) 9831 5625; email: [bmrc@blacktownmrc.org.au](mailto:bmrc@blacktownmrc.org.au)

Botany Multicultural Resource Centre  
3 General Bridges Crescent, Daceyville NSW 2032  
Phone (02) 9663 3922; fax (02) 9662 7627; email: [botanymrc@pacific.net.au](mailto:botanymrc@pacific.net.au)

Fairfield Migrant Resource Centre (Cabramatta Community Centre)  
Community Centre, Cnr Railway Parade and McBurney Road, Cabramatta NSW 2166 Phone  
(02) 9727 0477; fax (02) 9728 6080; email: [info@fmrc.net](mailto:info@fmrc.net)

Canterbury/Bankstown Migrant Resource Centre  
2nd Floor, 59-63 Evaline St Campsie NSW 2194  
Phone (02) 9789 3744; fax (02) 9718 0236; email: [cbmrcnsw@cbmrc.org.au](mailto:cbmrcnsw@cbmrc.org.au)

Illawarra Migrant Resource Centre  
70 Kembla Street, Wollongong NSW 2500  
Phone (02) 4229 6855; fax (02) 4226 3634; email: [info@imrc.org.au](mailto:info@imrc.org.au)

Inner West Community Settlement Support Scheme  
Level 2, 29-31 Belmore Street, Burwood NSW 2131  
Phone: (02) 9715 3497; fax (02) 9715 3839

Liverpool Migrant Resource Centre  
Level 4, 171 Bigge Street, Liverpool NSW 2170  
Phone (02) 9601 3788; fax (02) 9601 1398; email: [info@lmrc.org.au](mailto:info@lmrc.org.au)

Macarthur Migrant Resource Centre  
Level 2, 101 Queen Street, Campbelltown NSW 2560  
Phone (02) 4627 1188; fax (02) 4628 6068; email: [mmrc@zipworld.com.au](mailto:mmrc@zipworld.com.au)

Migrant Network Services (Northern Sydney Ltd)  
Level 3, 20 George Street, Hornsby NSW 2077  
Phone (02) 9987 2333; fax (02) 9987 1619; email: [mnsnorth@austarmetro.com.au](mailto:mnsnorth@austarmetro.com.au)

Newcastle and the Hunter Region Migrant Resource Centre  
Chaucer House, 8 Chaucer Street, Hamilton NSW 2303

Phone (02) 4969 3399; (02) 4961 4997; email: [mrcnh@mrcnh.org](mailto:mrcnh@mrcnh.org)

St George Migrant Resource Centre  
552 Princes Highway, Rockdale NSW 2216

Phone: (02) 9597 5455; fax (02) 9567 3326; email: [sgmrc@sgmrc.org.au](mailto:sgmrc@sgmrc.org.au)

### **Legal information**

#### **ASIC**

The Australian Securities and Investments Commission ("ASIC") is Australia's corporate, markets and financial services regulator. Part of ASIC's role is to assist and protect retail consumers in the financial economy.

#### **Enforceable Undertaking**

ASIC commenced an investigation into UPG, its director, Mr Bhart Bhushan and vendor finance.

ASIC has concerns with the practices and conduct of UPG and Mr Bhushan in providing vendor finance. Those concerns include:

- (a) UPG not making adequate enquiries about their client's financial situation or their guarantor's financial situation
- (b) UPG did not adequately check information provided their clients
- (c) UPG did not make sure their clients understood the terms and conditions of the vendor finance
- (d) UPG offered vendor finance to borrowers who were receiving Centrelink benefits
- (e) UPG offered vendor finance on promotional terms, including:
  - (i) capped repayments
  - (ii) payments to borrowers to assist the repayment of their bank mortgage
  - (iii) lump sum cash rebates

In [month] 2010, ASIC accepted an enforceable undertaking offered by UPG and Mr Bhushan. A copy of the enforceable undertaking is attached.

#### **Claims process**

If you lodge a claim for compensation, your claim will be determined in accordance with the procedure set out in paragraphs 4.3 to 4.20 of the enforceable undertaking.

## CLAIM FORM

VENDOR FINANCE LOAN AGREEMENT (Office use only)	
Property:	
Sale price:	
Date of loan agreement:	
Amount loaned:	
Outstanding balance (inclusive of interest):	
As at:	
FIRST CLAIMANT	
Name:	
Date of birth:	
Address:	
Telephone:	
Mobile telephone:	
Facsimile:	
Email:	
SECOND CLAIMANT (if applicable)	
Name:	
Date of birth:	
Address:	
Telephone:	
Mobile telephone:	
Facsimile:	
Email:	

PARTICULARS CONCERNING THE PROPERTY
Address of property purchased with assistance of loan from UPG:
<b>Is there a first mortgage over the property? If yes, please provide the following details:</b>
Name of first mortgage lender:
Date of loan agreement between you and the first mortgage lender:
Amount of loan:
Current balance owing (inclusive of any interest due and payable):
<i>Principal due:</i>
<i>Interest due:</i>
<i>Date for which the above balance details apply:</i>
<b>Has the first mortgagee ever sought to take possession of the property on the grounds of default? If so, please specify:</b>
Details of action:
Date of action:
Outcome of action:



**CLAIM DETAILS**

**Please provide full particulars of loss or damage claimed and the conduct of Mr Bhushan and/or UPG which is alleged to have caused or contributed to the loss or damage**

Amount claimed (including details of any calculations):


Description of loss or damage:


**Conduct of Mr Bhushan alleged to have caused or contributed to the loss or damage:**

Particulars of conduct:


Date / period in which conduct occurred:


Documents in support (please list documents and attach a copy):
Other relevant factors or circumstances (if any):
<b>Conduct of UPG alleged to have caused or contributed to the loss or damage:</b>
Particulars of conduct:
Date / period in which conduct occurred:
Documents in support (please list documents and attach a copy):
Other relevant factors or circumstances (if any):


# STATUTORY DECLARATION OF FIRST CLAIMANT

I .....(name of first claimant), of  
 .....(address),

do solemnly and sincerely declare that the facts stated in the attached claim form are true and accurate to the best of my knowledge, information and belief.

And I make this solemn declaration conscientiously believing the contents to be true and by virtue of the *Oaths Act* 1900.

MADE AND SUBSCRIBED by .....(name),

the said declarant at Sydney

on ..... 2010

.....  
 Claimant's signature

Before me:

.....  
 Justice of the Peace/Solicitor

**STATUTORY DECLARATION OF SECOND CLAIMANT (if applicable)**

I .....(name of second claimant), of  
 .....(address),

do solemnly and sincerely declare that the facts stated in the attached claim form are true and accurate to the best of my knowledge, information and belief.

And I make this solemn declaration conscientiously believing the contents to be true and by virtue of the *Oaths Act* 1900.

MADE AND SUBSCRIBED by .....(name),

the said declarant at Sydney

on ..... 2010

.....  
 Claimant's signature

Before me:

.....  
 Justice of the Peace/Solicitor

## ANNEXURE "B"

## Procedure for contacting vendor finance borrowers

- 1 In accordance with paragraph 4.2(b) of this undertaking, UPG must send the letter at annexure A by ordinary pre-paid post to the most recent address UPG has recorded for each relevant person.
- 2 If the letter is returned, UPG must attempt to ascertain a current address for those persons by using the 'Change of Address' database provided by Australia Post. If Australia Post's 'Change of Address' database reveals a different address for any such persons, UPG will send the letter by ordinary pre-paid post to that different address.
- 3 If Australia Post notifies UPG that a person has changed address but has not given their consent to Australia Post to release their new details, UPG will use the 'Re-Connect' service provided by Australia Post to seek to obtain that new address.

Note: Australia Post's 'Re-Connect' service is a service whereby Australia Post writes to relevant persons advising them that UPG is trying to contact them, and asking for their consent to the release of their new address.

- (a) Before using Australia Post's 'Re-Connect' service, UPG will consult with ASIC and Australia Post on the content of any correspondence to be sent to persons using the 'Re-Connect' service.
  - (b) When using the 'Re-Connect' service, UPG must ask Australia Post to notify the person that the proposed communication relates to 'possible compensation payable to you arising from an enforceable undertaking made to the Australian Securities and Investments Commission'.
  - (c) If the person:
    - (i) consents to the release of their new address to UPG, UPG will send the letter at annexure A by ordinary pre-paid post to that different address; or
    - (ii) does not consent to the release of their new address to UPG, UPG must follow the procedure in paragraph 4.
- 4 (a) UPG will carry out an Internet search of the Telstra White Pages On-Line at [www.whitepages.com.au](http://www.whitepages.com.au) if:
  - (i) Australia Post's 'Change of Address' database and 'Re-Connect' service reveal no different addresses for those persons whose letter is returned; or
  - (ii) a letter has been sent to an address revealed by the 'Change of Address' or 'Re-connect' service and has again been returned.
- (b) If:

- (i) an entry which includes an address is found and that entry appears on reasonable grounds to correspond with the person sought, UPG must send the letter by ordinary pre-paid post to that address; or
  - (ii) no entry which includes an address is found which appears on reasonable grounds to correspond with the person sought, UPG is not required to send the letter to that person, subject to paragraph 4(c).
- (c) UPG must send the letter by ordinary pre-paid post to the person if at any time within 12 months from the date of ASIC's acceptance of the undertaking:
  - (i) a person for whom no address has been found contacts UPG; or
  - (ii) UPG otherwise becomes aware of an address which it has reasonable grounds to suspect is the current address of the person.

**Annexure C – <<Deed of settlement and release // Deed of agreement>> [Depending upon whether paragraph 4.5(a) or 4.18 applies]**

**1. Parties**

- A. [Claimant] of [address]
- B. Universal Property Group Pty Ltd (ACN 078 297 748) of Unit 1, 129 Magowar Road, Toongabbie NSW 2146
- C. Bhart Bhushan of Unit 1, 129 Magowar Road, Toongabbie NSW 2146

**2. Interpretation**

- 2.1 For the purposes of this deed, unless the context requires otherwise:

**Claimant** is a reference to [Name].

**Compensation Claim** means a claim for compensation received by UPG pursuant to paragraph 4.3 of the enforceable undertaking.

**Compensation Claims Reviewer** means the independent person(s) appointed to conduct a review of Compensation Claims under paragraph 4.8 of the enforceable undertaking.

**deed** means this deed.

**enforceable undertaking** means the enforceable undertaking entered into by the Australian Securities and Investments Commission, UPG and Mr Bhushan on [date] pursuant to section 93AA of the *Corporations Act 2001* (Cth).

**party** is a reference to any of the persons or corporate entities referred to at clause 1 of this deed.

**UPG** means Universal Property Group Pty Ltd (formerly known



as Bathla Investments Pty Ltd) (ACN 078 297 748).

2.2 In this deed, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include both genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) when a thing is required to be done or money required to be paid under this deed on a day which is not a business day, the thing must be done and the money paid on the immediately preceding business day.

### 3. Recitals

- 3.1 [...] *[To be inserted depending on the particular facts of each claim and whether the deed is drafted pursuant to paragraph 4.5(a) or 4.18 of the enforceable undertaking]*

### 4. Settlement of all claims

- 4.1 Upon consideration of the parties' performance of the matters referred to in clauses 4.2 and 5 of this deed, the parties agree <<to settle all actions, suits, claims, demands and causes of action whatsoever between them which relate to, or are in connection with, the facts and matters referred to in clause 3.1 to 3.[##] above, whether such actions, suits, claims, demands or causes of action are current or arise in the future. //

that any determination made by the Compensation Claims Reviewer under paragraph 4.16 of the enforceable undertaking is final and binding.>>

4.2 <<Within 28 days of the date of the parties' execution of this deed, UPG and Mr Bhushan are to pay the Claimant the sum of \$[##]. // Within 28 days of UPG's receipt of the determination of the Compensation Claims Reviewer pursuant to paragraphs 4.16 and 4.17 of the enforceable undertaking, UPG and Mr Bhushan will pay the Claimant the sum (if any) determined by the Compensation Claims Reviewer.>>

4.3 Any payment to be made pursuant to clause 4.2 is to be made by way of bank cheque in the stipulated sum drawn in favour of "[Name]".

## 5. Releases

5.1 Subject to the terms of this deed, each party unconditionally and irrevocably releases and discharges each other party to this deed from all actions, suits, claims, demands and causes of action whatsoever at law, in equity and under statute which the party may have or which, but for this deed the party would, could or might at any future time have or have had against any other party, either directly or indirectly, in respect of or arising out of:

- (a) the Compensation Claim; and
- (b) [any determination of the Compensation Claims Reviewer of the Compensation Claim; and] *[delete if deed executed pursuant to paragraph 4.5(a) of the enforceable undertaking]*
- (c) arising from the conduct described in clauses 3.1 to 3.[##] of this deed.

5.2 The Claimant acknowledges that UPG and Mr Bhushan enter into this deed in reliance upon the undertaking given by the Claimant by clause 5.1 of this deed.

## 6. General provisions

### Assurance

- 6.1 Each party must do, in a prompt and timely manner, all things reasonably necessary to secure performance of its obligations under this deed.

**Time of the essence**

- 6.2 Time is of the essence in respect of all obligations owed by the parties to this deed.

**Costs**

- 6.3 Each party is to bear its own costs of entering into this deed.

**GST**

- 6.4 If any payment made by one party to any other party under or relating to this deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will not be increased but will be presumed to be inclusive of any GST that is payable.

**Governing law and jurisdiction**

- 6.5 This deed is governed by and construed under the law in the State of New South Wales.
- 6.6 Any legal action in relation to this deed may be brought in any court of competent jurisdiction in the State of New South Wales.
- 6.7 Each party by execution of this deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in the preceding clause.

**Counterparts**

- 6.8 This deed may be executed in any number of counterparts, all of which, taken together, are deemed to constitute one and the same deed.

**Amendments**

- 6.9 Any amendment to this deed has no force or effect, unless effected by a document executed by each of the parties to this deed.

**Assignment**

- 6.10 A party must not transfer any right or liability under this deed without the prior consent of each other party, except where this deed provides otherwise.

**Third parties**

- 6.11 This deed confers rights only upon a person expressed to be a party, and not upon any other person.

**Severability**

- 6.12 Any provision of this deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this deed or the validity of that provision in any other jurisdiction.

**Notices**

- 6.13 Any notice to or by a party under this deed must be in writing and signed by the sender or, if a corporate party, an authorised officer of the corporate party.
- 6.14 Any notice may be served by delivery in person or by post or by facsimile to the address or number of the recipient specified in this deed or most recently notified by the recipient to the sender.
- 6.15 Any notice is effective for the purposes of this deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4:00 pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9:00 am on the next day following delivery or receipt.

**Continuing performance**

- 6.16 The provisions of this deed do not merge with any action performed or document executed by any party for the purposes of performance of this deed.
- 6.17 Any representation in this deed survives the execution of any document for the purposes of, and continues after, performance of this deed.

**Remedies**

- 6.18 The rights of a party under this deed are cumulative and not exclusive of any rights provided by law.

#### **Waivers**

- 6.19 Any failure by any party to exercise any right under this deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **Confidentiality**

- 6.20 This deed and all negotiations and communications relating to it are, and shall remain, strictly confidential. Except as required by law, this deed and those matters must not be disclosed to any person, whether directly or indirectly, in any manner whatsoever without the prior written consent of all of the other parties to the deed, except on a confidential basis to the parties' respective officers, employees, professional advisers, auditors or pursuant to any statutory requirements (including taxation purposes), insurance purposes, or if such disclosure is reasonably required for the purposes of any legal, mediation or arbitration proceedings.

#### **Entire agreement**

- 6.21 This deed constitutes the entire agreement between the parties with respect to the subject matter of the deed and supersedes all prior negotiations, contracts, agreements, arrangements and understandings between the parties with respect to the matters the subject of the deed.

Executed as a deed:

**SIGNED SEALED AND DELIVERED** by )

[NAME] in the presence of: )

)

)

)

\_\_\_\_\_) )

Signature of witness

\_\_\_\_\_) [Name]

\_\_\_\_\_  
Print Name

**SIGNED SEALED AND DELIVERED** for )

and on behalf of **UNIVERSAL PROPERTY** )

**GROUP PTY LIMITED** ACN 078 297 748: )

)

)

)

\_\_\_\_\_) )

Director/Secretary

\_\_\_\_\_) Director/Secretary

)

)

\_\_\_\_\_) )

Print Name

\_\_\_\_\_) Print Name

**SIGNED SEALED AND DELIVERED** by )

**BHART BHUSHAN** in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Bhart Bhushan

\_\_\_\_\_  
Print Name

**Annexure D – Letter to Claimant offering to refer the Compensation Claim for review**

The letter shall include the following:

On [date] you made a claim for compensation in response to a notice provided to you by the Company (**Compensation Claim**).

The Compensation Claim was for <<INSERT matter name>>.

The Company has considered the Compensation Claim and <<declined to make a written offer of compensation // made a written offer of compensation which you rejected>>.

If you would like your Compensation Claim to be reviewed by an independent claims reviewer, the Company will refer the Compensation Claim for such review.

Should you wish to proceed with the independent claims review, please notify the Company in writing within 28 days of your receipt of this letter. The Compensation Claim will then be referred to the independent claims reviewer. You will then be notified in writing of the referral and of the opportunity to put further material (including submissions and legal authorities) before the reviewer within a period of 28 days from the date of your receipt of such notification.

Should you decide against having your Compensation Claim referred to an independent claims reviewer, you do not need to reply to this letter.

In all cases, you may wish to obtain independent legal advice in relation to the matters raised in this letter.



## **Annexure E – Terms of engagement of Compensation Claims Reviewer**

### ***Background***

1. Under the enforceable undertaking which Universal Property Group Pty Limited (**Company**) made to the Australian Securities and Investments Commission (**ASIC**) on <<INSERT date>> (**Enforceable Undertaking**) the Company must appoint an independent person (**Compensation Claims Reviewer**) to review:
  - (a) the rejection by the Company of compensation claims made by consumers (**Claimants**) to the Company (**Compensation Claims**); and
  - (b) the rejection by Claimants of compensation offers made by the Company to Claimants.
2. Consumers made the Compensation Claims to the Company because, under the Enforceable Undertaking, the Company was required to notify consumers that they may be able to claim compensation from the Company.
3. Under the Enforceable Undertaking, the Compensation Claims Reviewer must be appointed by the Company before <<INSERT date>>.
4. Under the Enforceable Undertaking, the Compensation Claims Reviewer must be approved by ASIC.
5. In making a determination pursuant to paragraph 4.16 of the Enforceable Undertaking (and referred to at paragraph 6(b) below), the Compensation Claims Reviewer:
  - (a) is not bound by the rules of evidence; and
  - (b) may not award punitive, exemplary or aggravated damages.

### ***Obligations***

6. I, <<INSERT name of compensation claims reviewer>>, having been approved by ASIC for the purposes of the Enforceable Undertaking, will conduct the following tasks under the Enforceable Undertaking:

- (a) efficiently consider the Compensation Claim and any additional material received from the Claimant or the Company in the 28 day period provided for in paragraph 4.15 of the Enforceable Undertaking;
- (b) within the 28 day period provided for in paragraph 4.16 of the Enforceable Undertaking, determine whether it is fair in all the circumstances and in accordance with legal principles, that the Company ought:
  - (i) pay the Compensation Claim in full; or
  - (ii) pay the Compensation Claim in part; or
  - (iii) not pay the Compensation Claim at all;
- (c) within 7 days of making a determination under paragraph 6(b) above, advise the Claimant and the Company in writing of the determination and provide brief written reasons for such determination; and
- (d) comply with the requirements set out in paragraphs 4.16 to 4.17 of the Enforceable Undertaking.

### *Independence*

#### 7. The Compensation Claim Reviewer warrants that:

- (a) the Compensation Claim Reviewer is independent of the Company, and will at all material times be capable of exercising objective and impartial judgment;
- (b) the Compensation Claim Reviewer's staff have not had a material business relationship with the Company within the period of three years before the date the Enforceable Undertaking was accepted by ASIC;
- (c) the Compensation Claim Reviewer or the Compensation Claim Reviewer's staff have not have previously been a director or officer of the Company or an employee, consultant or contractor in a position to exert a direct and significant interest over the engagement; and

- (d) the Compensation Claim Reviewer will notify the Company and ASIC immediately if the Compensation Claim Reviewer or the Compensation Claim Reviewer's staff are no longer capable of exercising objective and impartial judgment in relation to this engagement. This includes, but is not limited to, circumstances where the Compensation Claim Reviewer or the Compensation Claim Reviewer's staff:
- (i) begin to have a material business relationship with the Company;
  - (ii) could directly or indirectly benefit from a financial interest in the Company (where "financial interest" refers to an interest in any equity or other security, debenture, loan or other debt instrument of the Company);
  - (iii) promote, or may be perceived to promote, the Company's position or opinion to the point that objectivity and/or impartiality is/are compromised;
  - (iv) begin to have a close relationship with the Company, its directors, officers or employees;
  - (v) may be deterred from acting objectively and/or impartially by the conduct of the Company, directors or officers of the Company or employees in a position to exert direct and significant interest over the engagement; or
  - (vi) become aware of past or current circumstances the existence of which places the consultant in breach of any of the warranties contained in this Agreement.

## **Annexure F – Notice of determination of the Compensation Claims Reviewer**

This notice should include the following terms:

You have made a claim for compensation in response to a notice provided to you by the Company (**Compensation Claim**).

The Compensation Claim was for <<INSERT matter name>>.

The Company considered the Compensation Claim and <<declined to make a written offer of compensation / made a written offer of compensation which you rejected>>. Following this rejection, the Compensation Claim was reviewed by an independent claims reviewer (**Compensation Claims Reviewer**).

The Compensation Claim was <<determined by the Compensation Claims Reviewer in the sum of \$## / rejected by the Compensation Claims Reviewer>>.

<<Should you wish to accept the Compensation Claims Reviewer's determination, it is a condition of such acceptance that you enter into a deed of settlement and release with UPG and Mr Bhushan. We **enclose** a copy of the proposed deed for your consideration.

Notably, the deed contains the following terms:

- (a) the parties (including you) agree that the determination made by the Compensation Claims Reviewer is final and binding (see clause 4.1 of the deed); and
- (b) the parties (including you) agree to release each other party from all present and future actions, suits, claims, demands and causes of action whatsoever (see clause 5.1 of the deed).

Should you wish to proceed with acceptance of the Compensation Claims Reviewer's determination, you must sign and return the enclosed deed to the Company within 28 days of your receipt of this letter.

Should you choose to not accept the determination of the Compensation Claims Reviewer, you do not need to sign or return the deed to the Company. >>

Should you require further explanation of the matters raised in this letter you should consider obtaining legal advice or contacting ASIC at [ASIC contact details].

