

Loan Agreement
(Palmer Hotel – Vendor Finance)

Robert John MacDonald and Karyn Louise MacDonald

**Bear Rock Property Pty Ltd as trustee for the Cooke
Property Trust**

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Loan Agreement

(Palmer Hotel – Vendor Finance)

Parties	
Lender:	<p>Robert John MacDonald and Karyn Louise MacDonald</p> <p>Address for Notices:</p> <p>postal address: c/- Piper Alderman, Level 16, 70 Franklin Street, Adelaide SA 5000</p> <p>email address: robert.macdonald@sa.gov.au</p>
Borrower:	<p>Bear Rock Property Pty Ltd (ACN 637 086 410) as trustee for the Cooke Property Trust</p> <p>Address for Notices:</p> <p>postal address: 274 Payneham Road, Payneham SA 5070</p> <p>email address: jadeovendenclarke@yahoo.com.au</p>
Details	
Palmer Hotel	The property known as the "Palmer Hotel" comprising the land described in Certificates of Title Volume 5157 Folio 938 and Volume 5203 Folio 263.
Palmer Hotel Sale Contract	The sale agreement entered into on or about the date of this document between the Lender (as 'Vendor') and the Borrower (as 'Purchaser') pursuant to which the Lender has agreed to sell to the Borrower and the Borrower has agreed to purchase, the Palmer Hotel.
Payment Date	The last day of each fortnight in which there is at any time any Principal Outstanding commencing on the date being two weeks after the date of settlement of the Palmer Hotel Sale Contract.
Loan Amount:	The amount of \$230,000 plus such amount (if any) as the Borrower (as 'Purchaser') must pay to the Lender (as 'Vendor') in respect of GST upon the Price (as that term is defined in the Palmer Hotel Sale Contract).
Maturity Date:	The date being 5 calendar years after the date all or any part of the Loan Amount is first advanced to the Borrower pursuant to this document.

Introduction

- A. The Borrower and Lender have entered into the Palmer Hotel Sale Contract pursuant to which the Lender (as 'Vendor') has agreed to sell to the Borrower (as 'Purchaser'), and the Borrower has agreed to purchase, the Palmer Hotel.
- B. The Borrower has requested an advance from the Lender in order to assist the Borrower to complete the purchase of the Palmer Hotel under the Palmer Hotel Sale Contract.

- C. The Lender has agreed to advance the Loan Amount on the terms contained in this document.

Operative clauses

1. Definitions

In this document, expressions set out in the left hand column of the Details have the corresponding meaning given in the right hand column of the Details and, unless the context otherwise requires, the parties agree as follows.

Approved Purpose means the acquisition of the Palmer Hotel by the Borrower from the Lender pursuant to the Palmer Hotel Sale Contract.

Attorney means any attorney appointed under a Transaction Document and any person who by delegation derives a right directly or indirectly from an Attorney.

Business Day means any day except a Saturday or a Sunday or other public holiday in Adelaide, South Australia.

Controller has the same meaning as in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs include costs, charges and expenses, including those incurred in connection with advisers.

Details means the table at the beginning of this document so entitled.

Event of Default means any event of default described in clause 8 of this document.

Government Body means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not.

Introduction means the section of this document so entitled.

Loss means any claim, action, damage, loss, liability or Costs (including legal Costs on a solicitor-own-client basis).

Principal Outstanding means, from time to time, the aggregate of:

- (d) the Loan Amount advanced by the Lender to the Borrower under this document; and
- (e) interest capitalised by the Lender under this document,

and still outstanding.

Right includes a remedy or power.

Schedule means a schedule to this document.

Security Documents means each and any one or more of:

- (a) a mortgage entered into by the Borrower (as 'mortgagor') in favour of the Lender (as 'mortgagee') granting a security interest over all of the Borrower's right, title and interest to the Palmer Hotel and other associated property as described in the Security Document; and
- (b) a guarantee and indemnity entered into by each director of the Borrower (as 'guarantors') in favour of the Lender (as 'creditor') guaranteeing the obligations of the Borrower under this document.

Settlement Date means the date of settlement under the Palmer Hotel Sale Contract (as such date may be varied pursuant to the Palmer Hotel Sale Contract).

Taxes means any present or future taxes, rates, levies, imposts, deductions, withholdings, charges and duties (other than a tax on the net overall income of the Lender) which may be incurred in any jurisdiction and any interest, penalty, fine or expense relating to any of them other than any interest, penalty, fine or expense imposed or incurred as a result of an act or omission of the Lender;

Term means the period commencing on and from the date all or any part of the Loan Amount is first advanced to the Borrower and ending at 5:00pm (Adelaide time) on the Maturity Date.

Transaction Documents means each and any one or more of:

- (a) this document;
- (b) the Palmer Hotel Sale Contract;
- (c) each Security Document;
- (d) any agreement or instrument agreed by the Borrower and the Lender to be a Transaction Document; and
- (e) any agreement or instrument contemplated by, varying or delivered pursuant to, any of the above.

2. Interpretation

In this document, unless the context otherwise requires:

- (a) singular includes plural and plural includes singular;
- (b) words of one gender include both other genders;
- (c) reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- (d) reference to a person includes a corporation, a firm and any other entity;

- (e) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (f) if a party comprises more than one person, each of those persons is jointly and severally liable under this document;
- (g) reference to 'dollars' or '\$' is a reference to the lawful currency of Australia;
- (h) headings do not affect interpretation;
- (i) where something is done or received after 4pm on any day it will be deemed to have been done on the following Business Day;
- (j) no rule of construction applies to the disadvantage of the Lender because the Lender put forward this document, a Transaction Document or any portion thereof;
- (k) a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed; and
- (l) the Introduction is correct.

3. Advancing the Loan Amount

- 3.1 Subject to clause 4, the Lender will, at the request of the Borrower, lend to the Borrower the Loan Amount on the Settlement Date in accordance with this clause 3, on the terms of this document.
- 3.2 The parties agree that the Loan Amount will be advanced by the Lender to the Borrower by way of set-off against the purchase price for the Palmer Hotel payable by the Borrower (as 'Purchaser') to the Lender (as 'Vendor') under the Palmer Hotel Sale Contract.
- 3.3 All amounts advanced by the Lender under this document must be used solely for the Approved Purpose.

4. Conditions Precedent to Advance

- 4.1 Notwithstanding any other provision of this document, the Lender is under no obligation to advance any amounts to the Borrower unless and until:
 - (a) the Borrower has provided to the Lender the Security Documents in accordance with clause 4.2 to further secure the Borrower's obligations under this document;
 - (b) there is no subsisting breach of any Transaction Document; and
 - (c) each representation and warranty in clause 7 of this document is true and correct in every particular, and will be so at the time of making the advance.
- 4.2 Each Security Document must be:
 - (a) in form and substance acceptable to the Lender;
 - (b) prepared by the Lender's solicitors at the Borrower's cost;

- (c) properly executed; and
- (d) properly stamped (if stampable) and, where applicable, registered in priority to all other security interests (however described) over the Palmer Hotel.

5. Repayment of Principal and Interest

- 5.1 The Borrower agrees to repay to the Lender on each Payment Date the sum of \$2,099 towards the Principal Outstanding and the interest accrued (calculated at a rate of 7% per annum).
- 5.2 The Borrower must pay to the Lender interest on all overdue amounts under any Transaction Document at a rate equal to 9% per annum. Such interest shall be payable by the Borrower on demand and may be capitalised monthly by the Lender at the times determined by the Lender.
- 5.3 The Borrower may repay all, but not some, of all Principal Outstanding, all accrued but unpaid interest and any other amounts payable by the Borrower to the Lender under or in connection with this document prior to the Maturity Date by providing the Lender with at least 2 Business Days' written notice of the Borrower's intention to pay this sum.
- 5.4 On the Maturity Date, the Borrower must pay to the Lender all Principal Outstanding, all accrued but unpaid interest and any other amounts payable by the Borrower to the Lender under or in connection with this document.

6. Payments and Gross Up

- 6.1 The Borrower shall make payments to the Lender under this document:
 - (a) to such bank account as the Lender may from time to time specify, or in such other manner specified by the Lender; and
 - (b) by 11.00 am on the date for payment (or if that is not a Business Day, on the following Business Day), in Australian dollars in immediately available funds, in full without set-off or counterclaim and without any deduction in respect of Taxes, unless prohibited by law.
- 6.2 If the Borrower is required by law to deduct or withhold Taxes from any payment due to the Lender it shall:
 - (a) make the required deductions and withholdings;
 - (b) pay in accordance with the relevant law the full amount deducted or withheld;
 - (c) deliver to Lender the receipt for each payment; and
 - (d) pay an additional amount with such payment so that, after all applicable deductions or withholdings, the Lender actually receives for its own benefit the full amount which would have been payable to the Lender if no deduction or withholding had been required.

7. Representations and warranties

7.1 The Borrower represents and warrants to the Lender that:

- (a) **(duly incorporated)** it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property;
- (b) **(capacity)** it has capacity unconditionally to execute and deliver and comply with its obligations under each Transaction Document;
- (c) **(authority)** it has taken all necessary action to authorise the unconditional execution and delivery of and the compliance with its obligations under each Transaction Document;
- (d) **(no contravention)** the unconditional execution and delivery by it of, and compliance by it with its obligations under, each Transaction Document does not contravene:
 - (1) a law or directive from a Government Body of which the Borrower is aware or ought reasonably be aware;
 - (2) where the Borrower is a body corporate, its constitution;
 - (3) an agreement or instrument to which it is a party; or
 - (4) an obligation of it to any other person;
- (e) **(benefit)** it benefits by entering into the Transaction Documents to which it is a party;
- (f) **(solvency)** it is solvent (within the meaning of section 9 of the Corporations Act) and no event or circumstance has occurred or arisen which would deem it to be insolvent;
- (g) **(not misleading)** all information given to and each representation, warranty and statement made to the Lender by or at its direction in or in relation to a Transaction Document is, in relation to information and any statement, correct, complete and not misleading;
- (h) **(no default)** no Event of Default has occurred or is subsisting which remains unremedied or unwaived;
- (i) **(independent advice)** it has obtained and relied on such independent legal, accounting and other advice and information as is necessary or desirable to understand the Transaction Documents to which it is a party and to assess the nature and extent of its obligations under those documents and it has not relied on any representation from or information supplied by the Lender in assessing the nature and extent of those obligations; and
- (j) **(trust)** it is not trustee of any trust or settlement other than the Cooke Property Trust and it is validly appointed as sole trustee of the Trust and has the right to be fully indemnified out of the Trust assets for obligations incurred under the Transaction Documents.

- 7.2 The representations and warranties in this clause are taken to be repeated on each date on which any amount remains owing under this document on the basis of the facts and circumstances as at that date.

8. Event of Default

There is an Event of Default if any one or more of the following occurs:

- (a) **(payment default)** the Borrower fails to pay any amount payable to the Lender under a Transaction Document as and when due (after the expiration of any applicable grace period specified in the Transaction Document in respect of such payment);
- (b) **(non-payment default)** the Borrower fails to comply with an undertaking or perform any non-monetary obligation under any Transaction Document which the Lender considers cannot be remedied or which, if the Lender considers that the failure can be remedied, is not remedied to the Lender's satisfaction within the remedy period specified in the relevant Transaction Document or by the Lender or, if no such time is specified, within five (5) Business Days after receipt by the Borrower of written notice from the Lender requiring its remedy;
- (c) **(incorrect representation or warranty)** a warranty, representation, answer to requisition or statutory declaration made or given by or on behalf of the Borrower in connection with this document is found to be incorrect or misleading;
- (d) **(Security Document)** a Security Document is not provided to the Lender in accordance with this document or a Security Document becomes enforceable or loses the priority to which the Lender has agreed;
- (e) **(void)** this document or a transaction in connection with it is or becomes (or is claimed to be) wholly or partly void, voidable or unenforceable;
- (f) **(insolvent)** the Borrower is or becomes insolvent (within the meaning of section 9 of the Corporations Act) or is otherwise unable to pay its debts as and when they are due;
- (g) **(directors initiate external administration)** the Borrower's directors resolve to call a general meeting or a meeting of creditors to consider making the Borrower an externally-administered body corporate (within the meaning of section 9 of the Corporations Act);
- (h) **(other person initiates external administration)** a person seeks or starts to seek a court order to make the Borrower an externally-administered body corporate (within the meaning of section 9 of the Corporations Act);
- (i) **(goes into administration)** the Borrower is or becomes an externally-administered body corporate (within the meaning of section 9 of the Corporations Act);
- (j) **(Controller is appointed)** a person appoints or starts to appoint a Controller of any property of the Borrower; or
- (k) **(material adverse effect)** without limiting any other Event of Default, any other event or circumstance arises, financial or otherwise which, in the reasonable opinion of the Lender is likely to adversely affect:

- (1) the ability of the Borrower to pay the Principal Outstanding;
- (2) the ability of the Borrower to comply with its obligations under a Transaction Document; or
- (3) the property the subject of a Security Document or the value of the Borrower's property.

The Borrower agrees to ensure that no Event of Default occurs.

9. Effect of Event of Default

Despite any delay or previous waiver by the Lender, after an Event of Default occurs or while an Event of Default continues, the Lender may by written notice to the Borrower do any or all of the following:

- (a) end the Term immediately or at a later date specified in the notice;
- (b) declare that the Lender's obligations under the Transaction Documents specified in the notice are terminated;
- (c) enforce the Security Documents; and/or
- (d) declare that any or all amounts owing to the Lender under the Transaction Documents (including accrued but unpaid interest) are either due for payment on demand or immediately payable, in which case such amounts are deemed payable by the Borrower on demand or immediately (as the case may be).

10. Illegality

If, because of:

- (a) any order of any court or any law; or
- (b) the introduction of or any change in the interpretation or application of a law, regulation or a Government Body directive or request which is legally enforceable or compliance with which is in accordance with the practice of responsible financiers in the relevant jurisdiction,

the Lender determines that it is or it will become impossible or illegal or contrary to that law or Government Body directive or request, for the Lender to fund or maintain the financial accommodation which is (or is to be) provided pursuant to this document, the Borrower shall, on receipt of a notice from the Lender to do so, pay to the Lender that part of the Principal Outstanding which the Lender specifies in the notice and pay any unpaid accrued interest, and any other amounts owing by the Borrower to the Lender under any Transaction Document, within 10 Business Days or such longer period as the Lender may specify in such notice.

11. Costs

- 11.1 The Borrower shall pay and if paid by the Lender reimburse to the Lender:

- (a) all of the Lender's Costs (including legal costs on a full indemnity basis) in relation to:
 - (1) the preparation, stamping and registration of the Transaction Documents;
 - (2) any attendance, inspection, valuation, calculation, approval, consent, waiver, variation, release or discharge to be made or given by the Lender under a Transaction Document;
 - (3) any amendment of any Transaction Document;
 - (4) the exercise or the preservation of any rights of the Lender under the Transaction Documents;
 - (5) any Event of Default; and
- (b) any Taxes and registration or other fees (including fines and penalties relating to them) which are payable or are assessed by a relevant Government Body or other person to be payable, in relation to the Transaction Documents or any document or transaction constituted by any of them. However, the Borrower need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Lender in sufficient cleared funds for the Lender to be able to pay the Taxes or fees by the due date.

12. Indemnity

- 12.1 The Borrower indemnifies the Lender against any Loss which the Lender, a Controller (whether acting as agent of the Borrower or (other than itself) of the Lender) or an Attorney pays, suffers, incurs or is liable for, in each case other than as a result of the negligence, fraud or wilful default of the Lender, Controller or any Attorney, in respect of any of the following:
- (a) an Event of Default;
 - (b) any indemnity the Lender gives a Controller of the Borrower;
 - (c) the exercise or contemplated exercise of any Right by the Lender, Controller or Attorney under a Transaction Document, consequent on or arising out of the occurrence of any Event of Default;
 - (d) any statement in, conduct relying on or omission or alleged omission from any information prepared or authorised by the Borrower, or any claim in respect of any of these matters.
- 12.2 The Borrower agrees to pay amounts due under this indemnity on demand from the Lender.
- 12.3 The indemnity in clause 12.1 is a continuing obligation, separate and independent from the other obligations of the indemnifier and survives the termination of this document.

13. Confidentiality

- 13.1 A party may only disclose Confidential Information:
- (a) to that party's professional advisers;

- (b) if required by law;
- (c) if necessary to perform that party's obligations under this document; or
- (d) if the other party consents to the disclosure.

13.2 In this clause, **Confidential Information** is:

- (a) the existence of this document and the fact that the Lender and Borrower have entered into this document;
- (b) any term of this document;
- (c) any information acquired by a party for the purpose of, or under the terms of, this document;
- (d) any other information belonging to a party which is of a confidential nature.

14. Lender's certificate

A certificate signed by or for the Lender as to:

- (a) the amount of money owing to the Lender on a certain date; and
- (b) any other matter in respect of this document,

is sufficient evidence of the matter unless proved incorrect.

15. Assignment

- 15.1 The Borrower may only assign its rights or obligations under this document with the written consent of the Lender.
- 15.2 The Lender may assign its rights and obligations under this document with written notice to the Borrower.

16. Amendment

This document may only be amended in writing signed by the parties.

17. No waiver

- 17.1 A party may only waive a breach of this document in writing signed by that party or its authorised representative.
- 17.2 A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).

18. Counterparts

- 18.1 This document may be executed in any number of counterparts. A counterpart may be a PDF attached to an email or other electronic form.
- 18.2 Together all counterparts make up one document.
- 18.3 If this document is executed in counterparts, it takes effect when each party has received the counterpart executed by each other party, or would be deemed to have received it if a notice.

19. Notice

- 19.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.
- 19.2 Notice may be given to a person:
- (a) personally;
 - (b) by leaving it at the person's address last notified;
 - (c) by sending it by pre-paid mail to the person's postal address last notified; or
 - (d) by sending it by e-mail to the person's e-mail address last notified.
- 19.3 Notice is deemed to be received by a person:
- (a) when left at the person's address;
 - (b) if sent by priority mail within Australia, on the sixth Business Day after posting;
 - (c) if sent by air mail to or from a location outside Australia, on the eighth Business Day after posting;
 - (d) if sent by e-mail:
 - (1) at the time shown in the delivery confirmation report generated by the sender's e-mail system; or
 - (2) if the sender's e-mail system does not generate a delivery confirmation report within twelve (12) hours of the time the e-mail is sent, unless the sender receives a return e-mail notification that the e-mail was not delivered, undeliverable or similar, at the time which is twelve (12) hours from the time the e-mail was sent.

However, if the notice is deemed to be received on a day which is not a Business Day or after 5pm, it is deemed to be received at 9am on the next Business Day.

- 19.4 When two or more people comprise a party, notice to one is effective notice to all.

19.5 Each party hereby notifies the other party that its addresses for notice as at the date of this document are as set out at the beginning of this document.

20. Governing law

- 20.1 This document is governed by the law of South Australia.
- 20.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of South Australia and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them.
- 20.3 No party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

Execution

Executed as an agreement on

2019

Signed by
Robert John MacDonald
in the presence of:

.....
Witness

.....
Name (please print)


.....
Robert John MacDonald

Signed by
Karyn Louise MacDonald
in the presence of:

.....
Witness

.....
Name (please print)


.....
Karyn Louise MacDonald

Executed by
Bear Rock Property Pty Ltd


.....
Director

.....
Name (please print)


.....
Director/Company Secretary

.....
Name (please print)