



Dated *22 January* 20 *18*

DAY BARE PTY LIMITED
(ACN 622 860 799)
Bare Trustee

-and-

MK DAY PTY LIMITED
(ACN 620 963 644)
ATF
MK DAY SUPERANNUATION FUND
Beneficial Owner

Day Bare Trust
Bare Trust Deed

THIS DEED is dated 22 January 2018

BETWEEN:

MK Day Pty Limited (ACN 620 963 644) ATF MK Day Superannuation Fund
of Level 4, 16A Bolton Street Newcastle NSW 2300 (**Beneficial Owner**); and

Day Bare Pty Limited (ACN 622 860 799)

of Level 4, 16A Bolton Street Newcastle NSW 2300 (**Bare Trustee**).

RECITALS:

- A** The Beneficial Owner is the trustee of a self managed superannuation fund that falls within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth) (**SIS Act**).
- B** The Beneficial Owner has purchased, or wishes to purchase, the property outlined in the Schedule (**Property**) via a complying borrowing arrangement pursuant to section 67A of the SIS Act.
- C** The Bare Trustee holds, or will hold, the Property upon trust for the Beneficial Owner until such time as the Beneficial Owner instructs the Bare Trustee in writing to transfer legal title to the Property to the Beneficial Owner.

PROVISIONS:

1. The Beneficial Owner has purchased, or wishes to purchase, the Property.
2. The Beneficial Owner is, or will be, the real purchaser in respect of the Property. The Beneficial Owner has procured, or will procure, the total moneys relating to the purchase of the Property, including the proceeds of any loans from a lender in respect of the purchase of the Property.
3. The Bare Trustee has not, and will not, provide any of the moneys relating to the purchase of the Property.
4. The Bare Trustee will hold the Property upon trust for the Beneficial Owner. The Bare Trustee will hold on trust for the Beneficial Owner any benefits (including but not limited to all rents and profits) that accrue from the Property and will promptly remit any moneys accruing from the Property to the Beneficial Owner.
5. The Beneficial Owner will at all times be absolutely beneficially entitled to the Property.
6. The Beneficial Owner authorises the Bare Trustee to execute all such documents as are necessary and desirable to grant legal title to the Property to the Bare Trustee, including but not limited to a contract of sale and transfer of land instrument.

7. The Bare Trustee must exercise all rights, powers and remedies in respect of the Property in accordance with the directions of the Beneficial Owner and the Bare Trustee must not exercise any discretion under this deed other than at the direction of the Beneficial Owner.
8. The provisions of this deed must not be altered or varied other than in writing executed by the Beneficial Owner and the Bare Trustee.
9. At any time, by notice in writing to the Beneficial Owner, the Bare Trustee may resign as trustee of the trust and at any time, by notice in writing to the Bare Trustee, the Beneficial Owner may remove or replace the Bare Trustee or appoint a new trustee of the trust.
10. Should the Bare Trustee be removed or resign as trustee of the trust, the Bare Trustee must, at the direction of the Beneficial Owner, do all things necessary and desirable to transfer legal title to the Property to the replacement trustee.
11. The Beneficial Owner indemnifies the Bare Trustee against all costs of and incidental to the holding of the Property upon trust for the Beneficial Owner including but not limited to the acquisition, maintenance and retention of the Property and the Bare Trustee's trusteeship of the trust.

EXECUTED as a deed

EXECUTED BY MK DAY PTY LIMITED)
(ACN 620 963 644) ATF MK DAY)
SUPERANNUATION FUND as Beneficial)
Owner in accordance with the)
Corporations Act:

K Day

Director

[Signature]

Director/Secretary

Kate Day

Full name

Matthew Day

Full name

EXECUTED BY DAY BARE PTY)
LIMITED (ACN 622 860 799) as Bare)
Trustee in accordance with the)
Corporations Act:)

Kate Day
Director

[Signature]
Director/Secretary

Kate Day
Full name

Matthew Day
Full name

I
Schedule

- 1 **Property**
14/5-7 Channel Road Mayfield NSW 2304

**MK DAY SUPERANNUATION FUND
(FUND)**

**MK DAY PTY LIMITED
(ACN 620 963 644)
(COMPANY)**

**RESOLUTION OF THE DIRECTORS
MADE UNDER THE CONSTITUTION OF THE COMPANY**

We, the undersigned:

Matthew Simon Day

Kate Elizabeth Day

being all of the directors of the Company, in the Company's capacity as trustee of the Fund (**Fund Trustee**), do hereby resolve as follows:

PROPOSED INVESTMENT
IN PROPERTY VIA A
BORROWING IN THE
FUND:

It was noted that under section 67A of the Superannuation Industry (Supervision) Act 1993 (**SIS Act**) trustees of Self Managed Superannuation Funds may borrow money to fund the acquisition of an asset in certain circumstances.

It was noted that in order to comply with section 67A of the SIS Act, the acquisition of an asset by a regulated superannuation fund via a borrowing must comply with the following criteria:

- The loan proceeds must be applied for the acquisition of an asset by the fund;
- the asset acquired must not be an asset that the trustee is prohibited from acquiring normally under the SIS Act or any other law;
- the acquired asset must be held on trust for the fund by a separate entity, so that the trustee holds the beneficial entitlement to the asset;
- the trustee must have the right to acquire legal ownership of the asset from the separate entity by making one or more payments after obtaining a beneficial entitlement to the asset; and
- the loan to the fund must be limited recourse in nature, so that the lender's rights to recourse on default of the loan are limited to rights to the asset being acquired.

TERMS OF THE

A proposal that the Fund Trustee acquire 14/5-7 Channel Road Mayfield NSW 2304 (**Property**) from Mito Tomeski and Elena Tomeski

PROPOSAL:

(**Vendors**) for a purchase price of \$350,000.00 via a borrowing arrangement between the Fund Trustee and a lender was noted.

It was noted that the Fund Trustee will accept a loan of \$130,000.00 (**Loan**) from Matthew Simon Day and Kate Elizabeth Day (**Lenders**) to facilitate the acquisition of the Property, and pay the balance of the purchase price of the Property from the accounts of the Fund.

It was noted that, in order to comply with section 67A of the SIS Act, title to the Property, once acquired, will be held on trust for the Fund by Day Bare Pty Limited (ACN 622 860 799) (**Bare Trustee**). A draft bare trust deed (**Bare Trust Deed**) was tabled, to be executed by the Fund Trustee and the Bare Trustee, setting out the terms on which the Bare Trustee will hold legal title to the Property once the Property is acquired (**Custodial Arrangement**).

A draft loan agreement (**Loan Agreement**) was tabled, to be executed by the Fund Trustee, the Bare Trustee and the Lenders, outlining the terms of the Loan.

It was noted that the Fund Trustee, the Bare Trustee and the Lenders are related parties.

Matthew Simon Day made the following declarations of interest:

- i. I am a Member of the Fund
- ii. I am a Director of the Fund Trustee
- iii. I am a Shareholder of the Fund Trustee
- iv. I am a Director of the Bare Trustee
- v. I am a Shareholder of the Bare Trustee
- vi. I am one of the Lenders

Kate Elizabeth Day made the following declarations of interest:

- i. I am a Member of the Fund
- ii. I am a Director of the Fund Trustee
- iii. I am a Shareholder of the Fund Trustee
- iv. I am a Director of the Bare Trustee
- v. I am a Shareholder of the Bare Trustee
- vi. I am one of the Lenders

It was noted that the Bare Trustee will hold legal title to the Property under the Custodial Arrangement, but that the Fund Trustee will hold the full beneficial entitlement to the Property and will be the real purchaser in respect of the Property. It was further noted that the Bare Trustee must, upon receiving a direction from the Fund Trustee, transfer legal title to the Property to the Fund Trustee for nil consideration.

It was noted that the Bare Trustee will, if it has not already done so, be required to execute all necessary documents including a contract of sale in respect of the Property (**Contract of Sale**) to acquire legal title

to the Property.

It was noted that in order to comply with section 67A of the SIS Act, the Property must not be a property that the Fund would otherwise be prohibited from purchasing under the SIS Act or other law.

It was noted that the Vendor is not a related party of the Fund for the purposes of the related party acquisition prohibition in section 66 of the SIS Act.

It was noted that the acquisition of the Property would not therefore infringe the rule against related party transactions.

It was noted that the Custodial Arrangement will not be considered a breach of the in-house asset rules of the SIS Act despite the Bare Trust being a related trust, pursuant to the exemption granted by section 71(8) of the SIS Act.

It was noted that the acquisition of the Property would not therefore breach the in-house asset rules of the SIS Act.

It was noted that under the terms of the Bare Trust Deed, the Fund Trustee will indemnify the Bare Trustee against all costs of and incidental to the holding of the Property upon trust for the Fund Trustee including but not limited to the acquisition, maintenance and retention of the Property and the Bare Trustee's trusteeship of the Bare Trust.

It was noted that the Loan will be limited recourse in nature, and that the Lenders will require the Bare Trustee to execute a mortgage (**Security**) over the Property to secure repayment of the Loan.

It was noted that under the terms of the Bare Trust Deed, the Bare Trustee must exercise all rights, powers and remedies in respect of the Property in accordance with the directions of the Fund Trustee and the Bare Trustee must not exercise any discretion under this deed other than at the direction of the Fund Trustee.

It was noted that under the terms of the Bare Trust Deed, the Fund Trustee has the power to instruct the Bare Trustee to execute the Security by delivering to the Bare Trustee a written notice of instruction (**Notice of Instruction**) instructing the Bare Trustee to execute the Security.

The material terms of the Loan Agreement and Security were discussed including default arrangements and payment terms, and the requirements of the SIS Act.

It was noted that in the event of a default on the Loan, the Lenders' rights will be limited to rights against the Property as set out in the Loan Agreement and Security. It was noted that in the event of a default, the Property will be sold and the Lenders will be entitled to receive payment of the outstanding interest and principal of the Loan out of the proceeds of the sale. It was noted that if the proceeds of the sale are

not sufficient to cover the outstanding interest and principal payable under the Loan Agreement, the shortfall will be to the Lenders' account and the Fund Trustee will not be liable to make any further payments from the accounts of the Fund.

It was noted that having made enquiries relating to the terms of the Loan Agreement, the terms of the Loan Agreement were found to be consistent with the terms the Fund Trustee would be offered had it determined to borrow from a commercial lender.

The Contract of Sale was tabled, and it was noted that the Bare Trustee, if it has not already done so, will be required to execute the Contract of Sale to give effect to the Bare Trust Deed.

It was noted that under the trust deed for the Fund, the Fund Trustee has the power to acquire the Property on the terms and conditions outlined in the Bare Trust Deed, the Loan Agreement, the Security and the SIS Act.

Material terms of the Bare Trust Deed were discussed in relation to the requirements of the SIS Act.

A letter of advice from Topdocs Legal Pty Ltd was tabled, in which Topdocs Legal Pty Ltd expressed the opinion, having reviewed the Bare Trust Deed that:

- A loan on the terms and conditions of the Loan Agreement will, in our view, meet the requirements of section 67A of the SIS Act (and therefore not constitute a prohibited borrowing for the purposes of the SIS Act), provided the Property to be acquired by the Borrower is a *single acquirable asset* for the purposes of section 67A of the SIS Act and is not an asset that the Borrower is otherwise prohibited from acquiring by the SIS Act or any other law.
- The Bare Trust Deed will meet the requirements of section 67A of the SIS Act as regards the manner in which the Property to be acquired with the proceeds of borrowing by the trustee/s of the Fund is to be held, provided the Property is a *single acquirable asset* for the purposes of Section 67A of the SIS Act and is not an asset that the Borrower is otherwise prohibited from acquiring by the SIS Act or any other law.
- The exception to the in-house asset rules conferred by section 71(8) of the SIS Act will apply to the Bare Trust (and therefore the interest of the trustee/s of the Fund in the Bare Trust will not constitute an "in-house asset" of the Fund for the purposes of the SIS Act) provided that the Property would not constitute an "in-house asset" of the Fund (if it were an asset of the Fund acquired directly).
- The Prepared Documents have been completed in line with

your instructions as contained in the Application Form.

The merits of the investment in the Property were discussed and it was resolved that the investment in the Property was consistent with the Fund's investment strategy.

It was resolved that:

- The acquisition of the Property on the terms of the Bare Trust Deed is an appropriate investment of the Fund.
- Entering into the Loan Agreement and Security is in the best interests of the beneficiaries of the Fund.
- The Fund Trustee execute the Bare Trust Deed, and all other documents required to effect the Bare Trust Deed.
- The Fund Trustee execute the Loan Agreement, and all other documents required to effect the Loan Agreement.
- The Fund Trustee instruct the Bare Trustee, if the Bare Trustee has not already done so, to execute the Contact of Sale and all other documents the Bare Trustee is required to execute to effect the Bare Trust Deed.
- The Fund Trustee execute the Notice of Instruction and deliver it to the Bare Trustee.

DATED 22 January 2018


MATTHEW SIMON DAY


KATE ELIZABETH DAY

DAY BARE PTY LIMITED
(ACN 622 860 799)
(COMPANY)

RESOLUTION OF THE DIRECTORS
MADE UNDER THE CONSTITUTION OF THE COMPANY

We, the undersigned:

Matthew Simon Day

Kate Elizabeth Day

being all of the directors of the Company, in the Company's capacity as trustee of the Day Bare Trust (**Bare Trustee**), do hereby resolve as follows:

PROPOSED CUSTODIAL
ARRANGEMENT:

A proposal that the Bare Trustee hold 14/5-7 Channel Road Mayfield NSW 2304 (**Property**) on trust for MK Day Pty Limited (ACN 620 963 644) (**Fund Trustee**) as trustee for MK Day Superannuation Fund (**Fund**) in relation to a borrowing arrangement between the Fund Trustee and Matthew Simon Day and Kate Elizabeth Day (**Lenders**) was noted.

A draft bare trust deed (**Bare Trust Deed**) was tabled, to be executed by the Fund Trustee and the Bare Trustee, setting out the terms on which the Bare Trustee will hold legal title to the Property once the Property is acquired (**Custodial Arrangement**).

A draft loan agreement (**Loan Agreement**) was tabled, to be executed by the Fund Trustee, the Bare Trustee and the Lenders, outlining the terms of the loan.

It was noted that the Fund Trustee, the Bare Trustee and the Lenders are related parties.

Matthew Simon Day made the following declarations of interest:

- i. I am a Member of the Fund
- ii. I am a Director of the Fund Trustee
- iii. I am a Shareholder of the Fund Trustee
- iv. I am a Director of the Bare Trustee
- v. I am a Shareholder of the Bare Trustee
- vi. I am one of the Lenders

Kate Elizabeth Day made the following declarations of interest:

- i. I am a Member of the Fund
- ii. I am a Director of the Fund Trustee
- iii. I am a Shareholder of the Fund Trustee
- iv. I am a Director of the Bare Trustee

- v. I am a Shareholder of the Bare Trustee
- vi. I am one of the Lenders

It was noted that the Bare Trustee will hold legal title to the Property under the Custodial Arrangement, but that the Fund Trustee will hold the full beneficial entitlement to the Property and will be the real purchaser in respect of the Property. It was further noted that the Fund Trustee will have the right to instruct the Bare Trustee to transfer legal title to the Property to the Fund Trustee at any time for nil consideration.

It was noted that under the terms of the Bare Trust Deed, the Bare Trustee is required to execute all such documents as are necessary and desirable to grant legal title to the Property to the Bare Trustee, including but not limited to a contract of sale in respect of the Property (**Contract of Sale**).

It was noted that under the terms of the Bare Trust Deed, the Fund Trustee will indemnify the Bare Trustee against all costs of and incidental to the holding of the Property upon trust for the Fund Trustee including but not limited to the acquisition, maintenance and retention of the Property and the Bare Trustee's trusteeship of the Bare Trust.

It was noted that the loan will be limited recourse in nature, and that the Lenders will require the Bare Trustee to execute a mortgage (**Security**) over the Property to secure repayment of the loan.

It was noted that under the terms of the Bare Trust Deed, the Bare Trustee must exercise all rights, powers and remedies in respect of the Property in accordance with the directions of the Fund Trustee and the Bare Trustee must not exercise any discretion under this deed other than at the direction of the Fund Trustee.

It was noted that under the terms of the Bare Trust Deed, the Fund Trustee has the power to instruct the Bare Trustee to enter into the Security. It was further noted that the Fund Trustee will instruct the Bare Trustee, via a notice of instruction (**Notice of Instruction**), to execute the Security.

It was noted that in the event of a default on the loan, the Lenders' rights will be limited to rights against the Property as set out in the Loan Agreement and Security. It was noted that in the event of a default, the Property will be sold and the Lenders will be entitled to receive payment of the outstanding interest and principal of the loan out of the proceeds of the sale. It was noted that if the proceeds of the sale are not sufficient to cover the outstanding interest and principal payable under the Loan Agreement, the shortfall will be to the Lenders' account and the Fund Trustee will not be liable to make any further payments from the accounts of the Fund.

It was noted that the Bare Trustee would not be entitled to be remunerated for carrying out its obligations under the Bare Trust Deed.

The Contract of Sale was tabled, and it was noted that the Bare Trustee, if it has not already done so, will be required to execute the contract of sale to give effect to the Bare Trust Deed.

The Notice of Instruction was tabled, and it was noted that the Bare Trustee will be required to execute all necessary documents to effect the mortgage.

It was resolved to:

- Execute the Bare Trust Deed and all other documents necessary to effect the Bare Trust Deed.
- Execute the Contract of Sale and all other documents required to obtain legal title to the Property.
- Execute the Loan Agreement, and all other documents required to effect the Loan Agreement.
- Execute the Security and all other documents necessary to effect the Security.

DATED 22 January 2018


MATTHEW SIMON DAY


KATE ELIZABETH DAY

RESOLUTIONS OF THE LENDERS

We, the undersigned:

Matthew Simon Day

Kate Elizabeth Day

in our capacity as lenders under the terms of the Day Bare Trust Loan Agreement (**Lenders**), do hereby resolve as follows:

PROPOSED CUSTODIAL ARRANGEMENT:

A proposal that the Lenders lend the amount of \$130,000.00 (**Loan**) to MK Day Pty Limited (ACN 620 963 644) (**Fund Trustee**) as trustee for MK Day Superannuation Fund (**Fund**) to assist in the funding of the acquisition of 14/5-7 Channel Road Mayfield NSW 2304 (**Property**) by the Fund was noted.

A draft bare trust deed was tabled, to be executed by the Fund Trustee and Day Bare Pty Limited (ACN 622 860 799) (**Bare Trustee**), setting out the terms on which the Bare Trustee will hold legal title to the Property once the Property is acquired (**Custodial Arrangement**).

A draft loan agreement (**Loan Agreement**) was tabled, to be executed by the Fund Trustee, the Bare Trustee and the Lenders, outlining the terms of the Loan.

It was noted that the Fund Trustee, the Bare Trustee and the Lenders are related parties.

Matthew Simon Day made the following declarations of interest:

- i. I am a Member of the Fund
- ii. I am a Director of the Fund Trustee
- iii. I am a Shareholder of the Fund Trustee
- iv. I am a Director of the Bare Trustee
- v. I am a Shareholder of the Bare Trustee
- vi. I am one of the Lenders

Kate Elizabeth Day made the following declarations of interest:

- i. I am a Member of the Fund
- ii. I am a Director of the Fund Trustee
- iii. I am a Shareholder of the Fund Trustee
- iv. I am a Director of the Bare Trustee
- v. I am a Shareholder of the Bare Trustee
- vi. I am one of the Lenders

It was noted that the Bare Trustee will hold legal title to the Property under the Custodial Arrangement, but that the Fund Trustee will hold the full beneficial entitlement to the Property and will be the real purchaser in respect of the Property. It was further noted that the Fund Trustee will have the right to instruct the Bare Trustee to transfer legal

title to the Property to the Fund Trustee at any time for nil consideration.

It was noted that the Loan will be limited recourse in nature, and that the Lenders will require the Bare Trustee to execute a mortgage (**Security**) over the Property to secure repayment of the Loan.

It was noted that in the event of a default on the Loan, the Lenders' rights will be limited to rights against the Property as set out in the Loan Agreement and Security. It was noted that in the event of a default, the Property will be sold and the Lenders will be entitled to receive payment of the outstanding interest and principal of the Loan out of the proceeds of the sale. It was noted that if the proceeds of the sale are not sufficient to cover the outstanding interest and principal payable under the Loan Agreement, the shortfall will be to the Lenders' account and the Fund Trustee will not be liable to make any further payments from the accounts of the Fund.

The material terms of the Loan Agreement and Security were discussed including default arrangements and payment terms, and it was determined that providing the Loan under the terms of the Loan Agreement is an appropriate investment for the Lenders.

It was noted that having made enquiries relating to the terms of the Loan Agreement, the terms of the Loan Agreement were found to be consistent with the terms the Fund Trustee would be offered had it determined to borrow from a commercial lender.

It was resolved:

- That entering into the Loan Agreement is in the best interests of the Lenders and to therefore execute the Loan Agreement and Security and all other documents required to effect the Loan Agreement and Security.

DATED 22 January 2018



MATTHEW SIMON DAY



KATE ELIZABETH DAY

NOTICE OF INSTRUCTION

FROM:

MK Day Pty Limited (ACN 620 963 644) ATF MK Day Superannuation Fund (**Fund Trustee**)

TO:

Day Bare Pty Limited (ACN 622 860 799) (**Bare Trustee**)

The Fund Trustee instructs the Bare Trustee to provide security over 14/5-7 Channel Road Mayfield NSW 2304 in the form of a first registrable limited recourse mortgage as attached to this notice of instruction.



Signed for on behalf of the Fund Trustee by **Matthew Simon Day**

DATED: 22 January 2018