



DAY BARE PTY LIMITED

(ACN 622 860 799)

Bare Trustee

MK DAY PTY LIMITED

(ACN 620 963 644)

ATF

MK DAY SUPERANNUATION FUND

Borrower

MATTHEW SIMON DAY AND KATE ELIZABETH DAY

Lender

**Day Bare Trust
Loan Agreement**

LOAN AGREEMENT

THIS LOAN AGREEMENT is made on the date specified in item 1 of the Schedule

BETWEEN The person specified in item 2 of the Schedule (**Borrower**)

The person specified in item 3 of the Schedule (**Lender**)

AND The person specified in item 4 of the Schedule (**Bare Trustee**)

INTRODUCTION

- A** The Borrower is the trustee of a self managed superannuation fund and enters into this Agreement in that capacity.
- B** The Borrower wishes to borrow on a limited recourse basis under sections 67A and 71(8) of the *Superannuation Industry (Supervision) Act 1993* (Cth) to facilitate the acquisition of the Asset.
- C** The Lender has agreed to lend to the Borrower and the Borrower has agreed to borrow from the Lender.
- D** The Bare Trustee has agreed to acquire legal title to the Asset and to hold it on trust for the Borrower.

AGREEMENT

1 THE LOAN

- 1.1 The Lender agrees to advance and the Borrower agrees to borrow the Loan Amount on the Commencement Date under this Agreement.
- 1.2 The Borrower agrees to apply the entire Loan Amount towards the acquisition of the Asset under this Agreement.

2 LEGAL TITLE AND BENEFICIAL INTEREST

- 2.1 The Borrower agrees to use its best endeavours to ensure that as soon as practicable on payment of the Loan Amount to the Vendor legal title to the Asset will be transferred to the Bare Trustee.

- 2.2 The Bare Trustee agrees to hold the Asset on trust for the benefit of the Borrower and acknowledges that the Borrower will hold the beneficial interest in the Asset.

3 SECURITY

- 3.1 The Borrower agrees to use its best endeavours to ensure that the Bare Trustee executes and delivers the Security, if applicable, to the Lender on the Commencement Date:

- (a) in a form that is acceptable to the Lender; and
- (b) if the Asset includes land, in registrable form.

- 3.2 The Lender agrees to release the Security, if applicable, as soon as practicable after the Borrower repays the Loan in full, including all interest due and any other amounts payable by the Borrower under this Agreement.

4 INTEREST PAYMENTS

- 4.1 The Borrower undertakes and agrees to pay interest to the Lender at the Interest Intervals and Times.
- 4.2 Interest will accrue daily and be calculated on the outstanding balance of the Loan, on the actual number of days elapsed on the basis of a 365 day year, including the Commencement Date, but not the date on which a payment is made.
- 4.3 Interest will be calculated using the Base Rate unless on the due date for payment there is an unremedied and continuing Event of Default in which case the Default Rate will be used.

5 REPAYMENT

The Borrower agrees:

- (a) to make repayments of principal to the Lender at the Repayment Intervals and Times, if applicable; and
- (b) to repay the Loan in full within the Maximum Term.

6 METHOD OF PAYMENT

The Borrower agrees to pay all amounts owing under this Agreement:

- (a) using the Agreed Payment Method;
- (b) without set-off or counterclaim; and
- (c) free and clear of any taxes, deductions or withholdings of any kind.

7 TRANSFER

On repayment of the Loan in full, including all interest due and any other amounts payable by the Borrower to the Lender under this Agreement, the Borrower may instruct the Bare Trustee to transfer legal title to the Asset to the Borrower.

8 EVENTS OF DEFAULT

8.1 An Event of Default will occur:

- (a) if the Borrower fails to pay any amount due for payment under this Agreement before, on or within five Working Days after the due date;
- (b) if, whether by omission or otherwise, the Borrower makes in this Agreement a materially false, inaccurate or misleading statement;
- (c) if the Borrower is unable to pay its debts, including its debts relating to the Fund, as and when they become due and payable;
- (d) for a Borrower that is a company, if a receiver, receiver and manager, administrator, provisional liquidator or liquidator is appointed to the Borrower, or in respect of any property of the Borrower, including property of the Fund;
- (e) if a resolution is passed or proceedings are commenced to wind up a Borrower that is a company or the Fund;
- (f) if, without the prior written consent of the Lender, any arrangement or composition is made with the creditors of the Borrower or the Fund;
- (g) for a Borrower that is a natural person, if the Borrower commits an Act of Bankruptcy;

- (h) if, without the prior written consent of the Lender, the Borrower:
 - (i) sells, transfers or agrees to sell or transfer the Asset; or
 - (ii) does or agrees to do anything in relation to the Asset that would be likely to materially impact its market value adversely;
- (i) if, without the prior written consent of the Lender, the Borrower retires, resigns or is removed or replaced as trustee of the Fund; or
- (j) if:
 - (i) the Borrower fails materially to comply with this Agreement, other than a failure referred to elsewhere in this Clause 9.1;
 - (ii) the Lender issues a notice requiring remedy of the default; and
 - (iii) the failure is not remedied within five Working Days of the notice being issued.

8.2 If an Event of Default occurs, all amounts owing under this Agreement will, at the discretion of the Lender and despite any delay or previous waiver of the right to exercise that discretion, immediately become due and payable without the necessity for any demand or notice to the Borrower.

8.3 If the Lender exercises its discretion under Clause 8.2, the Security, if applicable, will become immediately enforceable.

9 LIMITED RECOURSE

9.1 If an Event of Default occurs and the Lender does not exercise its discretion to enforce the Security, if applicable, or there is no Security, the Lender may instruct the Bare Trustee to sell the Asset and, if so instructed, the Borrower and the Bare Trustee agree that the Bare Trustee will sell the Asset as soon as practicable and apply the proceeds of sale under Clause 10.

9.2 The Lender acknowledges that if an Event of Default occurs, its rights against the Borrower and the Bare Trustee will be limited to rights relating to the Asset.

10 PROCEEDS OF SALE

10.1 All money received by the Bare Trustee by way of proceeds of sale of the Asset as a result of the enforcement of the Security, if applicable, or under

clause 9.1 will be applied by the Bare Trustee in payment of all amounts owing by the Borrower to the Lender or the Bare Trustee under this Agreement.

- 10.2 Any part of the proceeds of sale remaining after application under Clause 10.1 will be paid by the Bare Trustee to the Borrower as soon as practicable after the amount remaining, if any, has been determined.

11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Borrower

The Borrower represents and warrants to the Lender and the Bare Trustee that:

- (a) the Fund has a written investment strategy that complies in all respects with the Superannuation Laws;
- (b) the Borrower's investment in the Asset complies with the Fund's written investment strategy;
- (c) the Borrower is the sole trustee of the Fund or, if the Borrower comprises natural persons, they are the only trustees of the Fund;
- (d) the Borrower has the power and authority to enter into, and do all things necessary to perform, this Agreement; and
- (e) the Borrower has the power and authority to acquire the Asset.

11.2 Representation and Warranty of the Lender

The Lender represents and warrants to the Borrower and the Bare Trustee that it has the power and authority to enter into, and do all things necessary to perform, this Agreement.

11.3 Representation and Warranty of the Bare Trustee

The Bare Trustee represents and warrants to the Borrower and the Lender that it has the power and authority to enter into, and do all things necessary to perform, this Agreement and the Security, if applicable.

12 UNDERTAKINGS AND AGREEMENTS

12.1 Undertakings and Agreements of the Borrower

If applicable, the Borrower undertakes and agrees with the Lender and the Bare Trustee:

- (a) to ensure that the Asset is insured against such risks and in such amounts as would a prudent person owning a similar Asset;
- (b) to ensure that the Asset is kept in good order and repair;
- (c) to ensure that improvements to the Asset are not carried out without the prior written consent of the Lender;
- (d) to ensure the payment on time of all outgoings in respect of the Asset;
- (e) to use its best endeavours not, without the prior written consent of the Lender, to retire, resign or be removed or replaced as trustee of the Fund;
- (f) for a Borrower that is a company, not, without the prior written consent of the Lender and the Bare Trustee, to vary the Borrower's company constitution;
- (g) to use its best endeavours not, without the prior written consent of the Lender, to vary or otherwise permit a variation of the trust deed or governing rules of the Fund; and
- (h) otherwise, to comply with this Agreement.

12.2 Undertakings and Agreements of the Lender

The Lender undertakes and agrees with the Borrower and the Bare Trustee:

- (a) for a Lender that is a company, not, without the prior written consent of the Borrower and the Bare Trustee, to vary the Lender's company constitution; and
- (b) otherwise, to comply with this Agreement.

12.3 Undertakings and Agreements of the Bare Trustee

The Bare Trustee undertakes and agrees with the Borrower and the Lender:

- (a) if so instructed by the Borrower, to execute and deliver the Security, if applicable, to the Lender on the Commencement Date:
 - (i) in a form that is acceptable to the Lender; and
 - (ii) if the Asset includes land, in registrable form;
- (b) if so instructed by the Borrower, on repayment of the Loan in full, including all interest due and any other amounts payable by the Borrower under this Agreement and as soon as practicable, to transfer legal title to the Asset to the Borrower;
- (c) for a Bare Trustee that is a company, not, without the prior written consent of the Borrower and the Lender, to vary the Bare Trustee's company constitution; and
- (d) otherwise, to comply with this Agreement and the Security, if applicable.

13 POWER OF ATTORNEY

- (a) If the Lender exercises its discretion to enforce the Security, if applicable, under Clause 8; and
- (b) if so instructed by the Lender,

the Borrower and the Bare Trustee agree that the Bare Trustee will appoint the Lender and, for a Lender that is a company, a director or secretary of the Lender severally as its attorney with power at the Lender's expense to do all acts and things and execute and deliver all documents as may, in the Lender's opinion, be reasonably necessary, desirable or expedient to enforce the Security.

14 INDEMNITY

The Borrower indemnifies the Lender and the Bare Trustee against all costs of and incidental to the preparation, execution and stamping of and compliance with this Agreement and the Security, if applicable, including:

- (a) the acquisition, retention and maintenance of the Asset under this Agreement;
- (b) any variation of this Agreement; and

- (c) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Agreement or the Security.

15 GENERAL

15.1 Notices

A notice or other communication to be given under this Agreement:

- (a) must be in writing, signed by the party giving it or, for a party that is a company, a director or secretary of the party, and delivered in person or sent by mail or fax to the recipient at its Address for Service; and
- (b) will be treated as having been received:
 - (i) if delivered in person, on the date of delivery;
 - (ii) if sent by mail to an address within Australia, two Working Days after the date of posting;
 - (iii) if sent by mail to an address outside Australia, ten Working Days after the date of posting; and
 - (iv) if sent by fax, on the date that the sender's fax machine records that the fax has been successfully transmitted to the recipient's fax number.

15.2 Further Assurances

The parties agree to promptly execute and deliver all documents and take all other action necessary or desirable to give full effect to this Agreement.

15.3 Waiver

Any waiver or delay in the enforcement of a party's rights under this Agreement will not affect the rights and powers of that party in any way.

15.4 Severance

If any provision of this Agreement is illegal, invalid, unenforceable, void or voidable:

- (a) it will be read down to the extent necessary to ensure that it is legal, valid and enforceable; or

- (b) if it cannot be so read down, the offending words, if possible, or the provision will be severed from this Agreement,

without affecting the legality, validity and enforceability of the remaining part of that provision or the other provisions of this Agreement, which will continue in full force and effect.

15.5 Non-Merger

None of the provisions of, nor anything done under, this Agreement will merge any of the representations, warranties, undertakings or agreements of the parties under it, which will continue in full force and effect.

15.6 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together comprise one and the same agreement.

15.7 Assignment

No party may, without the prior written consent of each other party, assign or transfer their rights or benefits under this Agreement to any other person.

15.8 Variation

This Agreement may not be varied other than in writing executed by the parties.

15.9 Entire Agreement

This Agreement constitutes the entire agreement between the parties in respect of the Loan and supersedes any prior agreement or arrangement between or representation given or made by any or all of the parties, whether orally or in writing, in respect of the matters dealt with in this Agreement.

15.10 Governing Law

This Agreement is governed by and is to be construed in accordance with the laws from time to time in force in the Jurisdiction and the parties submit to the jurisdiction of the courts of the Jurisdiction and any courts competent to hear appeals from them.

16 INTERPRETATION

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to the Agreement or another document includes the Agreement or the document as varied from time to time;
- (b) Clause headings are included for convenience only and do not form part of the Agreement;
- (c) a reference to a person includes:
 - (i) a natural person, company, partnership, other organisation or legal entity; and
 - (ii) the legal personal representatives, successors and permitted assigns of that person.
- (d) if a party comprises more than one person, then the Agreement binds them jointly and each of them severally;
- (e) words indicating one gender include the other genders;
- (f) the singular includes the plural and vice versa;
- (g) monetary amounts are expressed in Australian dollars;
- (h) a reference to a statute includes the statute and any regulations made under it as varied, consolidated, replaced or re-enacted from time to time;
- (i) if an act is required to be done before or on a day which is not a Working Day, then that act must be done before or on the next Working Day;

17 DEFINITIONS

In this Agreement, unless the context clearly indicates otherwise:

Act of Bankruptcy means an act of bankruptcy under section 40 of the *Bankruptcy Act 1966* (Cth);

Address for Service means the address of a party specified in item 17 of the Schedule or such other address as the party may from time to time specify in writing to each other party as its address for service;

Agreed Payment Method means the payment method specified in item 15 of the Schedule;

Agreement means this agreement, including the introduction and the Schedule;

Asset means the asset specified in item 7 of the Schedule;

Base Rate means the interest rate specified in item 11 of the Schedule;

Clause means a clause of this Agreement;

Commencement Date means the date specified in item 6 of the Schedule;

Default Rate means the interest rate specified in item 12 of the Schedule;

Event of Default means an event specified in Clause 8.1;

Fund means the self managed superannuation fund specified in item 16 of the Schedule;

Interest Intervals and Times means the intervals and times specified in item 10 of the Schedule;

Jurisdiction means the State or Territory specified in item 18 of the Schedule;

Loan means the loan of the Loan Amount from the Lender to the Borrower under this Agreement;

Loan Amount means the amount specified in item 5 of the Schedule;

Maximum Term means the term specified in item 14 of the Schedule;

Repayment Intervals and Times means the intervals and times, if any, specified in item 13 of the Schedule;

Schedule means the schedule to this Agreement;

Security means the security, if any, specified in item 9 of the Schedule;

Superannuation Laws means the laws of the Commonwealth of Australia governing superannuation or taxation in relation to superannuation, including the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*;

Vendor means the person selling the Asset specified in item 8 of the Schedule; and

Working Day means a day other than a Saturday, Sunday or public holiday in the Jurisdiction.

EXECUTED as a deed

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

K Day
Director
Matthew Day
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:)

K Day
Director
Matthew Day
Director/Secretary

Kate Day
Full name
Matthew Day
Full name

SIGNED SEALED AND DELIVERED by)
MATTHEW SIMON DAY as Lender in the)
presence of:)




Witness

Jillian Dwyer
Witness full name

SIGNED SEALED AND DELIVERED by)
KATE ELIZABETH DAY as Lender in the)
presence of:)




Witness

Jillian Dwyer
Witness full name

SCHEDULE

- KD
1
Date of Agreement: 22 January 2018
- KY
2
Borrower:
 MK Day Pty Limited (ACN 620 963 644) as trustee for MK Day Superannuation Fund
- 3
Lender:
 Matthew Simon Day and Kate Elizabeth Day
- 4
Bare Trustee:
 Day Bare Pty Limited (ACN 622 860 799)
- 5
Loan Amount:
 \$130,000.00
- KD
6
Commencement Date: 22 January 2018
- LS
7
Asset:
 14/5-7 Channel Road Mayfield NSW 2304
- 8
Vendor:
 Mito Tomeski and Elena Tomeski
- 9
Security (if applicable):
 A first registrable mortgage to the Lender over the Asset and all improvements on the Asset, and any document or instrument required by the Lender to stamp, register or otherwise perfect such security
- 10
Interest Intervals and Times:
 Interest is to be paid monthly in arrears, or as otherwise agreed by the Borrower and Lender from time to time
- 11
Base Rate:
 A rate of interest equal to the applicable rate determined in accordance with the Australian Taxation Office's *Practical Compliance Guidelines PCG 2016/5* (as amended from time to time), to be reviewed on 1 July each year, or as otherwise agreed by the Borrower and the Lender from time to time

12 Default Rate:

A rate of interest equal to 2% per annum above the Base Rate

13 Repayment Intervals and Times (if applicable):

Principal is to be repaid in equal monthly instalments, or as otherwise agreed by the Borrower and Lender from time to time

14 Maximum Term:

5 years from the Commencement Date

15 Agreed Payment Method:

The Borrower agrees to pay all amounts owing under this Agreement into the following bank account:

Account Name: *Matthew Simon Day + Kate Elizabeth Day*
Bank Name: *ANZ*
BSB: *012 780*
Account Number: *682752655*

KB
WD

16 Fund:

MK Day Superannuation Fund

17 Address for Service

Borrower:

Level 4, 16A Bolton Street Newcastle NSW 2300

Lender:

45 Carrington Street Mayfield NSW 2304

Bare Trustee:

Level 4, 16A Bolton Street Newcastle NSW 2300

18 Jurisdiction:

New South Wales