

# 1969 Logan Road Trust Deed

**KPD Holdings Pty Ltd (Property Trustee)**

**N. Defteros Dental Pty. Ltd. (Beneficial Owner)**

**Nicholas Valassakis (Settlor)**

**GADENS LAWYERS**  
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Ref 31609627/GKS

## Dated

## Parties

1. **KPD Holdings Pty Ltd** ACN 136 055 073 of Suite 10, 205 Montague Road, West End Qld 4101 (**Property Trustee**).
2. **N. Defteros Dental Pty. Ltd.** ACN 010 658 527 as trustee for the N Defteros Dental Pty Ltd Superannuation Fund of Suite 10, 205 Montague Road, West End Qld 4101 (**Beneficial Owner**).
3. **Nicholas Valassakis** of Suite 10, 205 Montague Road, West End Qld 4101 (**Settlor**).

## Background

- A. The Settlor wishes to establish a trust and for that purpose has or is about to transfer to the Property Trustee \$10.00 (**Settled Sum**).
- B. The Property Trustee has consented to accept the Settled Sum and to become the trustee of the Trust Fund (as defined in this document) subject to the powers and provisions expressed in this document.

## Operative provisions

### 1. Defined meanings

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

### 2. Establishment of Trust

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#### 2.1 Name of Trust

The Trust is called the 1969 Logan Road Trust.

#### 2.2 Trust of the settled sum

The Property Trustee establishes a sub-trust and declares that it holds \$10.00 on trust for the Beneficial Owner.

### **3. Appointment of Property Trustee**

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- 3.1 The Beneficial Owners may, from time to time, request the Property Trustee to purchase, on behalf of the Beneficial Owners, any item property which the Beneficial Owner would have been capable of acquiring in its own name (**Property**).
- 3.2 The Beneficial Owners appoint the Property Trustee as trustee to hold the Property in a sub trust established for that purpose on the terms and conditions of this agreement.
- 3.3 The Property Trustee accepts that appointment.
- 3.4 The Beneficial Owners undertake, represent and warrant that the Property will not include assets other than real property and any other property acquired as part of the purchase of the real property.

### **4. Purchase of Property**

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- (a) Upon receipt of any Purchase Money or any Property, the Property Trustee must hold that property on trust for the Beneficial Owner who provided that Purchase Money or paid for the Property (whether from the Beneficial Owner's own funds or a combination of the Beneficial Owner's own funds and money lent by a mortgagee to the Beneficial Owner).
- (b) No Beneficial Owner has any interest whatever in respect of:
- (i) any Purchase Money except the Purchase Money provided by that Beneficial Owner; or
  - (ii) any Property except the Property for which the Beneficial Owner provided the Purchase Money.
- (c) Each Beneficial Owner has a beneficial interest in the Property for which that Beneficial Owner provided the Purchase Money.

### **5. Declaration**

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#### **5.1 Declaration of Trust in respect of Property**

The Property Trustee declares that it holds or will hold the Property and any income from the Property upon trust for the Beneficial Owners.

### **6. No beneficial interest**

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The Property Trustee declares that other than as disclosed in this document it has or will have no beneficial interest in the Property.

## **7. Dealings with property**

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### **7.1 Comply with directions of the Beneficial Owner**

The Property Trustee must deal with the Property as the Beneficial Owners direct from time to time.

### **7.2 Possession**

Subject to clause 7.1, the Property Trustee may from time to time cause or permit any person to have possession or control of the Property.

### **7.3 Mortgaging or charging the Property**

The Property Trustee may mortgage or charge the Property to secure repayment a loan or other financial accommodation provided to the Beneficial Owners. Despite any implied right to the contrary, the Property Trustee has no recourse against the Beneficial Owners in respect of any payment the Property Trustee has to make in respect of the loan or other financial accommodation, except recourse against the Property.

## **8. Income and Distribution**

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**8.1** The Beneficial Owners may collect and retain all and any entitlements arising out of ownership of the Property including dividends, interest, rent, licence fees, hire fees and similar entitlements (Income) in respect of the Property, and shall if requested by the Property Trustee, provide to the Property Trustee reasonable details of the transactions.

**8.2** The Property Trustee must, if requested by the Beneficial Owners, provide such directions or authorities as are necessary to cause any Income or other payments in respect of the Property to be paid to the Beneficial Owners, or as the Beneficial Owners direct.

**8.3** The Property Trustee must, if it receives any Income or other payments in respect of the Property, on an accurate and timely basis, and account to the Beneficial Owners in respect of such Income and payments, and/or apply such Income and payments at the direction of the Beneficial Owners.

## **9. Insurance**

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Upon request by the Beneficial Owners and upon payment of the necessary premiums by the Beneficial Owners, the Property Trustee must insure the Property for such amounts and against such risks as the Beneficial Owners require.

## **10. Property Trustee duties**

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Except as provided in this document, the Property Trustee will have no duties to perform in respect of the Property and will incur no liability to the Beneficial Owners or any other person for the non-performance of any duty which might otherwise be implied or imposed upon trustees.

## **11. Limited indemnity by, and liability of, Beneficial Owners**

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### **11.1 Indemnity**

Subject to clause 11.3, the Beneficial Owners indemnify, and must keep indemnified, the Property Trustee, its officers, employees, agents and representatives against all proceedings, claims, demands, damages, actions, reasonable amounts paid in settlement, reasonable costs and expenses, losses and liabilities of whatever nature (whether actual or contingent) suffered or incurred by or sustained or threatened against, the Property Trustee (including interest and legal fees and expenses on a full indemnity basis) arising out of, or in connection with:

- (a) the Property Trustee's proper observance of this agreement, and out of the Property Trustee holding the Property in its name;
- (b) any transaction in relation to the Property or the ownership or holding of the Property;
- (c) there being insufficient funds available to the Property Trustee to meet the acquisition price of the Property and all calls and demands for the payment of unpaid capital or portions in respect of them
- (d) any tax, brokerage, commissions, acquisition price and costs, penalties and other expenses arising out of any acquisition, holding or disposal of the Property under this agreement or the performance of its obligations under this agreement and all costs and expenses incidental to any of the foregoing;
- (e) the Property Trustee acting or omitting to act in accordance with a proper instruction;
- (f) certification and reporting requirements, claims for exemption or refund, additions for late payment, interest, penalties and other expenses (including legal expenses) that may be assessed against the Property Trustee on account of the Beneficial Owners or the Property;
- (g) any breach of this agreement by the Beneficial Owners or its officers, agents, employees, including without limitation any breach of a warranty, covenant, or obligation under this agreement;
- (h) penalties, fines, compensation, penalties claims, rehabilitation or restoration, orders under any environmental issues or risks, environmental, heritage, planning or other law strictly or personally imposed on the Property Trustee as a result of it being the holder, legal owner, lessee or lessor of land or otherwise having an interest in land; or
- (i) the existence or suspected existence of any contamination or the actual or potential occurrence of pollution in, on, from or in connection with, the Property at any time.

### **11.2 Enforcing right of indemnity**

The Property Trustee need not incur expenses or make payment before enforcing a right of indemnity under this agreement.

### **11.3 Limit of liability of Beneficial Owners**

Despite any other provision in this agreement or any principle of law:

- (a) the liability of the Beneficial Owners, in so far as it relates to any borrowing, will be limited to rights against the Property, and the Property Trustee will not be entitled to exercise its rights against any other asset or assets of the Beneficial Owners; and
- (b) the Beneficial Owners will not be liable to the Property Trustee to the extent to which damage or loss results from or is caused by any breach of this agreement by the Property Trustee.

#### **11.4 Liability of Property Trustee**

The Property Trustee indemnifies the Beneficial Owners for any claim, damage, expense, loss or liability arising in any way out of or in connection with this agreement to the extent that it directly results from a breach of this agreement, any misrepresentation, fraud, misconduct, willful default or negligence of the Property Trustee and its agents, officers and employees.

#### **11.5 No liability for indirect loss**

In no event is the Property Trustee liable to the Beneficial Owners or any other person for indirect, special or consequential damages.

#### **11.6 No liability to agents**

The Property Trustee is not liable to an agent of the Beneficial Owners in any circumstances.

#### **11.7 Property Trustee not responsible for validity of title**

The Property Trustee is not liable to the Beneficial Owners for the title, validity, genuineness, good deliverable form, or freedom from mortgage, charge or lien, of the Property, information or title to the Property Trustee received, acquired or delivered by the Property Trustee under this agreement and is not required to undertake enquiries or searches in respect of such matters.

#### **11.8 No liability if acting on notices believed to be genuine**

The Property Trustee will not be liable to the Beneficial Owners and will be held harmless by the Beneficial Owners in acting upon any notice, request, consent, certificate or instrument believed by the Property Trustee to be genuine and to be signed or otherwise given by the Beneficial Owners.

#### **11.9 Audit**

The Beneficial Owner can, at all reasonable times and upon reasonable notice, inspect and audit the Property Trustee's records relating to the Beneficial Owners and the Property. The Property Trustee must provide all reasonable access and assistance to any registered auditor engaged to conduct an audit in relation to the Beneficial Owners.

### **12. Taxes**

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The Beneficial Owners agree to bear any taxes payable or assessed in connection with this agreement including the delivery or transfer of the Property to the Property Trustee to form part of the Property or from the Property Trustee to any other person in accordance with this agreement.

## 13. Third parties

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Except in case of fraud, no person dealing with or contracting with the Property Trustee will be required to enquire or ascertain the terms of this document or whether any contract or dealing with the Property Trustee is proper or has been authorised or to see to the application of any money paid to the Property Trustee.

## 14. General provisions

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### 14.1 Governing law

This document is governed by and construed in accordance with the law for the time being in force in the place where the Property is located.

### 14.2 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

### 14.3 Assignment

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

### 14.4 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile or email.
- (c) Any notice is effective for the purposes of this document 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 9.00am on the next day following delivery or receipt. A notice sent by e-mail is effective when the electronic communication enters the information system of the addressee.

#### **14.5 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

#### **14.6 Continuing performance**

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of this document.

#### **14.7 Waivers**

Any failure by any party to exercise any right under this document 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.

#### **14.8 Remedies**

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

#### **14.9 Severability**

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

#### **14.10 Counterparts**

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

### **15. Definitions and interpretation**

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#### **15.1 Definitions**

**Property** means any real estate or other property the title to which is transferred to, or will be acquired by, the Property Trustee in which the Beneficial Owners acquire a beneficial interest, and includes any improvements or other rights or property acquired with or affixed to that property or any money derived in respect of the Property or derived from the Property.

**Purchase Money** means money paid by the Beneficial Owner to fund the whole or part of the price paid for the Property including money paid for deposit, stamp duty, legal costs or otherwise relating to the Purchase of the Property.

## 15.2 Interpretation

In this document unless the context otherwise requires:

- (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 all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) any reference to a party to this document includes its successors and permitted assigns;
- (f) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally; and
- (g) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (h) a reference to an Item is a reference to an Item in the schedule to this document.

Executed as a Deed.

Signed sealed and delivered on behalf of N. Defteros Dental Pty. Ltd.:

*N. Defteros*  
Secretary/Director  
NICHOLAS DEFTEROS  
Print name

*Katrina Defteros*  
Director  
KATRINA DEFTEROS  
Print name

Signed sealed and delivered on behalf of KPD Holdings Pty Ltd by:

*Katrina Defteros*  
Sole director and sole secretary  
KATRINA DEFTEROS  
Print name

Signed sealed and delivered by Nicholas Valassakis in the presence of:

*Heidi Rucht*  
Witness

*Nicholas Valassakis*  
Nicholas Valassakis

HEIDI RUCHT  
Print name

10/205 MONTAGUE RD, SOUTH BRISBANE  
Print address