

# Annexure B: Sterling Income Trust tenant-investor case study

Soussa v Thomas

On 1 June 2021, the Supreme Court of Western Australia published judgment in *Soussa v Thomas* [2021] WASC 172, a decision which considered the operation of a Sterling New Life Lease between Robert Soussa (as landlord) and Laurence Thomas and Luba Thomas (as tenants). Mr and Mrs Thomas's Sterling New Life Lease was in the 'Sterling Income Trust type', where Mr and Mrs Thomas entered into a residential tenancy lease with Mr Soussa, and a Payment Direction Deed with Sterling Corporate Services and Mr Soussa. Their initial lump sum payment was invested in the Sterling Income Trust.<sup>1</sup> A copy of this case is attached.

The following documents formed part of Mr and Mrs Thomas's Sterling New Life Lease:

1. A Residential Tenancy Agreement. This was in a form prescribed by the Residential Tenancies Act 1987 (WA). The method by which the rent was to be paid stated "Refer to the Payment Direction Deed".<sup>2</sup> The Residential Tenancy Agreement expressly incorporated the Payment Direction Deed and the Options and Notice to Renew Options;<sup>3</sup>
2. Payment Direction Deed, the material terms of which are described at paragraph [83] of the judgment. The parties to the Payment Direction Deed were Sterling Corporate Services, the landlord and the tenants. The Payment Direction Deed contained the following non-recourse clause:<sup>4</sup>

Despite any provision to the contrary contained in this deed or the Sterling New Life Lease (being the residential tenancy agreement in respect of the Residential Premises entered into between the Landlord as lessor and the Tenant as tenant dated on or about the date of this deed):

(a) the liability of the Tenant to pay the Rent (being the rent by the Tenant (as tenant) under the Sterling New Life Lease) under the Sterling New Life Lease is limited to the payments made pursuant to the distribution from the Tenant's Units or the redemption of the Tenant's Units under clauses 2.5(a)(i), 2.5(a)(ii) and 2.5(b)(i) (Distribution and Redemption Payments); and

(b) if there is a shortfall between the amount of the Distribution and Redemption Payments and the amount of the Rent, the Tenant is not liable to pay that shortfall.

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<sup>1</sup> The two primary types of Sterling New Life Leases are described at paragraph 61 of ASIC's written submissions.

<sup>2</sup> *Soussa v Thomas* [2021] WASC 172, [76].

<sup>3</sup> *Soussa v Thomas* [2021] WASC 172, [61].

<sup>4</sup> *Soussa v Thomas* [2021] WASC 172, [83(7)].

In addition, the judgment records two other documents which formed part of Mr and Mrs Thomas' Sterling New Life Lease:

1. An Offer document by which Mr and Mrs Thomas offered to take a five-year lease over the property, with seven options of a further five years each (totalling 40 years) on the terms of the Residential Tenancy Agreement and the Payment Direction Deed. The Offer was executed by the Mr Soussa, Sterling First Projects as the "Manager" and Mr and Mrs Thomas; and
2. Notices of Exercise of Option to Renew documents, exercising each of the options to renew for the seven five-year terms, which were signed by Mr and Mrs Thomas at the same time as executing the Residential Tenancy Agreement and the other contractual documents. A Sterling staff member executed the option documents on behalf of the Mr Soussa.<sup>5</sup>

There were also other documents relevant to Mr and Mrs Thomas's Sterling New Life Lease:

3. A Product Disclosure Statement for Sterling Income Trust income units and Sterling Income Trust growth units.
4. a Rental Subsidy Agreement which required Mr and Mrs Thomas to pay \$26 a week to Sterling Corporate Services until a capital shortfall of \$11,500 had been paid. The judgment records that the reason for this payment was that the lump sum payment to enter into the Sterling New Life Lease was \$241,500, and Mr and Mrs Thomas had only paid \$230,000, "leaving a balance of \$11,500" owing;<sup>6</sup>
5. an Exclusive Management Authority for Residential Premises agreement between Mr Soussa and Rental Management Australia Pty Ltd to manage the property;<sup>7</sup> and
6. a Deed of Covenant option agreement between Mr Soussa and Acquest Property Pty Ltd that provided an option for the landlord to sell the property to Acquest after 3 years from the commencement of the SNLL.

### Sample documents

To assist the Senate, a set of documents from a 'Sterling Income Trust type' SNLL arrangement are attached. Personal details and signatures have been redacted for confidentiality. The attached documents are:

1. A completed Residential Tenancy Agreement (pages 73 – 92 of this Annexure B) between the landlord and the tenant-investor. This was in a form prescribed by the Residential Tenancies Act 1987 (WA). The method by which the rent was to be paid stated "Refer to the Payment Direction Deed".<sup>8</sup> The Residential Tenancy Agreement expressly incorporated the Payment Direction Deed and the Options and Notice to Renew Options;<sup>9</sup>

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<sup>5</sup> Soussa v Thomas [2021] WASC 172, [79].

<sup>6</sup> Soussa v Thomas [2021] WASC 172, fn 17.

<sup>7</sup> Soussa v Thomas [2021] WASC 172, [197].

<sup>8</sup> Soussa v Thomas [2021] WASC 172, [76].

<sup>9</sup> Soussa v Thomas [2021] WASC 172, [61].

2. A Payment Direction Deed (pages 93-105 of this Annexure B) The parties to the Payment Direction Deed were Sterling Corporate Services, the landlord and the tenants. The Payment Direction Deed contained the following non-recourse clause:<sup>10</sup>

Despite any provision to the contrary contained in this deed or the Sterling New Life Lease (being the residential tenancy agreement in respect of the Residential Premises entered into between the Landlord as lessor and the Tenant as tenant dated on or about the date of this deed):

(a) the liability of the Tenant to pay the Rent (being the rent by the Tenant (as tenant) under the Sterling New Life Lease) under the Sterling New Life Lease is limited to the payments made pursuant to the distribution from the Tenant's Units or the redemption of the Tenant's Units under clauses 2.5(a)(i), 2.5(a)(ii) and 2.5(b)(i) (Distribution and Redemption Payments); and

(b) if there is a shortfall between the amount of the Distribution and Redemption Payments and the amount of the Rent, the Tenant is not liable to pay that shortfall.

3. A Product Disclosure Statement for Sterling Income Trust income units and Sterling Income Trust growth units (pages 106 – 157 of this Annexure B).
4. A completed Application Form for the Sterling Income Trust (pages 158 – 179 of this Annexure B);
5. A completed Sterling New Life Lease Settlement Summary (page 180 of this Annexure B).

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<sup>10</sup> Soussa v Thomas [2021] WASC 172, [83(7)].

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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CIVIL

**CITATION** : SOUSSA -v- THOMAS [2021] WASC 172

**CORAM** : SMITH J

**HEARD** : 8 & 9 FEBRUARY 2021

**DELIVERED** : 1 JUNE 2021

**PUBLISHED** : 1 JUNE 2021

**FILE NO/S** : CIV 1879 of 2020

**BETWEEN** : ROBERT HENRY SOUSSA  
Plaintiff

AND

LAURENCE MEIRION THOMAS  
LUBA THOMAS  
Defendants

LAURENCE MEIRION THOMAS  
LUBA THOMAS  
Plaintiffs by counterclaim

AND

ROBERT HENRY SOUSSA  
Defendant by counterclaim



*Catchwords:*

Contract - Sterling New Life Lease scheme - Offer to enter into a lease - Exclusive Management Authority for Residential Premises agreement - Residential Tenancy Agreement - Payment Direction Deed and Options to Renew lease incorporated expressly into the terms of the lease

Contract - Options validly exercised to create a lease for 40 years

Contract - Payment Direction Deed - Effect of tripartite agreement between the plaintiff, the defendants and manager of a Sterling New Life Lease scheme income trust - Sterling Income Trust

*Residential Tenancies Act 1987* (WA) - Effect of s 27A and s 82 and reg 10AA(a) of the *Residential Tenancies Regulations 1989* (WA) requiring prescribed form of lease in Form of Part A, Part B (standard terms) and Part C - Effect of standard term cl 3 prevails over the terms of the Payment Direction Deed

Estoppel by conduct or representation - Promissory estoppel - Common principles considered - Not satisfied defendants entered into Sterling New Life Lease in reliance on representations made or assumptions induced for or on behalf of the plaintiff

*Legislation:*

*Interpretation Act 1984* (WA), s 47

*Residential Tenancies Act 1987* (WA), s 27A, s 75, s 82

*Residential Tenancies Regulations 1987* (WA), reg 10AA

*Result:*

Judgment for the plaintiff  
Counterclaim dismissed

*Category:* B

**Representation:***Original Action**Counsel:*

Plaintiff : Mr J M Healy & Ms S Beri  
 Defendants : Mr I Neil SC & Ms L D Coci

*Solicitors:*

Plaintiff : Tang Law  
 Defendants : King & Wood Mallesons

*Counterclaim**Counsel:*

Plaintiffs by counterclaim : Mr I Neil SC & Ms L D Coci  
 Defendant by counterclaim : Mr J M Healy & Ms S Beri

*Solicitors:*

Plaintiffs by counterclaim : King & Wood Mallesons  
 Defendant by counterclaim : Tang Law

**Case(s) referred to in decision(s):**

Amalgamated Investment & Property Co Ltd (In liq) v Texas Commerce International Bank Ltd [1982] QB 84  
 Bell Group Ltd (In liq) v Westpac Banking Corporation [No 9] [2008] WASC 239; (2008) 39 WAR 1  
 Black Box Control Pty Ltd v TerraVision Pty Ltd [2016] WASCA 219  
 Bombardier Inc v Avwest Aircraft Pty Ltd [2020] WASCA 2  
 Crown Melbourne Ltd v Metropolitan Hotel (Vic) Pty Ltd [2016] HCA 26; (2016) 260 CLR 1  
 De Bussche v Alt (1878) 8 Ch D 286  
 George 218 Pty Ltd v Bank of Queensland Ltd [No 2] [2016] WASCA 182; (2016) 313 FLR 287  
 Gourmania Holdings Pty Ltd v Schlegel [2021] WASCA 28  
 Health Partners Incorporated v Gonos (1996) 67 SASR 338

Phillips Fox (A Firm) v Westgold Resources NL [2000] WASCA 85  
Sidhu v Van Dyke [2014] HCA 19; (2014) 251 CLR 505  
Steria Ltd v Hutchison [2007] ICR 445 at 465  
Waltons Stores (Interstate) Ltd v Maher [1988] HCA 7; (1988) 164 CLR 387  
Wilson v Arwon Finance Pty Ltd [2020] WASCA 137

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*SMITH J***SMITH J:****1.0 Introduction**

1        These proceedings concern three individuals, the plaintiff, Mr Soussa, and the defendants, Mr and Mrs Thomas, who were each misled and drawn into a scheme which ultimately failed, known as a Sterling New Life Lease, by the promises and assurances of third parties.

2        The failed Sterling New Life Lease scheme has left:

- (a)    Mr Soussa without payments of rent for the last two years for a property leased to the defendants; and
- (b)    the defendants without their life savings.

3        The outcome of this matter turns on, first, the express terms of the lease entered into by the parties, and, second, whether Mr Soussa by any conduct (including oral and written representations of agents acting for and on his behalf) is estopped from insisting on a contractual right to terminate the lease.

**2.0 The action and the parties**

4        Mr Soussa is the registered proprietor of a property located at 18 Monument Street, Harrisdale, being Lot 3018 on Deposited Plan 400616, Volume 2840, Folio 822 (Harrisdale property).

5        On 26 July 2017, the defendants entered into a Residential Tenancy Agreement to lease the Harrisdale property.

6        The parties entered into a scheme, known as a Sterling New Life Lease, in good faith whereby:

- (a)    the defendants entered into a lease of a property owned by Mr Soussa (for a term of 40 years or for five years with seven options to renew the term of the lease, each being of five years' duration) and paid an upfront sum of \$230,000 to the Sterling Income Trust ARSN 158 828 105 to produce income distributions to be used to pay rent to Mr Soussa for the term of the lease; and
- (b)    the Sterling Group companies and the scheme, known as the Sterling New Life Lease, failed in 2019, and it appears that the Sterling Income Trust ran out of funds. On 10 June 2019, joint liquidators were appointed to the Sterling Group companies.

SMITH J

7 As a result of the failure of the scheme from on or about 23 March 2019, no payments of rent were made to Mr Soussa, and the defendants have not recovered the sum invested by them into the Sterling Income Trust.

8 This action concerns whether the non-payment of rent to Mr Soussa is a breach of the terms of the lease, entitling Mr Soussa to terminate the lease, and, if so, whether the defendants are liable to pay any outstanding amounts of rent to Mr Soussa.

9 The action was commenced by proceedings brought by Mr Soussa in the Magistrates Court in Armadale, by an application under the *Residential Tenancies Act 1987* (WA), seeking orders for compensation for rent owed, termination of the Residential Tenancy Agreement for breach by the lessees pursuant to s 75 of the *Residential Tenancies Act*,<sup>1</sup> and possession of the premises.

10 On 17 August 2020, the proceedings in the Magistrates Court were remitted to the Supreme Court by an order made by Master Sanderson.<sup>2</sup> The reason why the proceedings were remitted is that the defendants raised a matter that could only be determined by this court. The matter raised that is within the exclusive jurisdiction of this court is the plea in the amended defence to substituted statement of claim and counterclaim (amended defence and counterclaim) that Mr Soussa is estopped by oral and written representations, made for and on behalf of Mr Soussa, that if the defendants paid the sum of \$230,000 to Sterling Corporate Services Pty Ltd they were not required to make any further payments of rent, fees, or any other cash contributions in respect of the property for a period of 40 years if the options to renew were so exercised.<sup>3</sup>

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<sup>1</sup> It is noted that Mr Soussa's writ of summons, dated 4 November 2019, and s 75 of the *Residential Tenancies Act 1987* (WA) both relate to breach by a lessor, not a lessee. Nothing turns on this.

<sup>2</sup> The relevant matter is civil matter 1572 of 2020.

<sup>3</sup> Amended defence to substituted statement of claim and counterclaim, filed 24 December 2020, [18] - [27] and the relief claimed in [3] - [4] of the prayer for relief.

### **3.0 Background - evidence relevant to the construction of the lease documents and the estoppel defence**

#### **3.1 The Sterling New Life Lease - the corporate identities of the Sterling Group whose dealings are relevant to the action and counterclaim**

11 The Sterling Group companies who entered into contractual agreements with the parties to the proceedings are as follows:

- (a) Rental Management Australia Pty Ltd; engaged by Mr Soussa as his agent to rent out and manage the Harrisdale property and to execute a Residential Tenancy Agreement for the Harrisdale property on behalf of Mr Soussa with Mr and Mrs Thomas;
- (b) Acquest Property Pty Ltd; Mr Soussa (after entering into an Exclusive Management Authority with Rental Management Australia for a Sterling New Life Lease) entered into an agreement with Acquest to sell the Harrisdale property after three years from the commencement of a Sterling New Life Lease, should he wish to do so;
- (c) Sterling First Projects Pty Ltd; being a party to an offer to enter into a Sterling New Life Lease (the Offer) as 'the Manager' (entered into by the defendants as tenant, Mr Soussa and Sterling First Projects as manager) and a sub-agent of Rental Management Australia (being a term of the Exclusive Management Authority for Residential Premises entered into by Mr Soussa and Rental Management Australia); and
- (d) Sterling Corporate Services Pty Ltd; the duly authorised investment manager for the Sterling Income Trust. The defendants invested their Sterling New Life Lease investment amount of \$230,000 into the Sterling Income Trust and the defendants entered into a Rental Subsidy Agreement with Sterling Corporate Services for \$26 a week until a capital shortfall of \$11,500 had been paid in full (being an investment amount of \$241,500 that the defendants agreed to pay to enter into a Sterling New Life Lease).

12 For the reasons that follow, the evidence establishes that Mr Ryan Kentore Jones was, at the material time when the relevant documents were executed by the parties to the proceedings, a sole director of Acquest and a director of Sterling First Projects. It also appears that he

may have been at the material time an alternate director of Sterling Corporate Services.

- 13 The evidence also establishes that Sterling First (Aust) Ltd is the sole owner and the ultimate holding company of Sterling First Projects Pty Ltd.<sup>4</sup>

### 3.2 The Sterling New Life Lease scheme

- 14 The Sterling New Life Lease scheme was promoted by the Sterling Group as an 'affordable option' for seniors to rent quality homes in established suburbs at a price that was well below the cost of purchasing an equivalent property. The Sterling Group ran information seminars and advertised properties for rent for a one-off sum, in exchange for a lease of 40 years (being the initial period of five years, with options to extend up to seven times). The specified sum was invested in the Sterling Income Trust to generate income to pay the rent to the owner of the property. In the information seminars, seniors were informed that after payment of the initial sum, no further fees, charges or rent would be payable by a Sterling New Life lessee.<sup>5</sup>

- 15 In this matter, the parties, or their agents, entered into a Sterling New Life Lease by executing the following documents:

- (1) On 17 July 2017, Mr Soussa appointed Rental Management Australia, to be the property manager for the Harrisdale property by entering into an 'Exclusive Management Authority for Residential Premises' agreement.<sup>6</sup>
- (2) On 26 July 2017, Mr Soussa executed a Deed of Covenant, dated 17 July 2017, which deed was also executed by Mr Ryan Jones, who was the sole director/secretary of one of the Sterling Group companies, Acquest Property Pty Ltd. The deed contained a put option between Mr Soussa and Acquest, whereby Acquest agreed to purchase the Harrisdale property at an agreed price based on the average of two independent licensed valuers' valuations, to be exercised after three years from the commencement of the first Sterling New Life Lease,

<sup>4</sup> Exhibit A, Tab 65, 777 - 778 and 783.

<sup>5</sup> Exhibit 2 [20] - [31]; exhibit 3 [13] - [25].

<sup>6</sup> Exhibit A, Tab 20, 220 - 232.



subject to a Sterling New Life Lease tenant still residing in the property.<sup>7</sup>

- (3) On 18 July 2017, the defendants executed the Offer. By cl 2(a), the defendants as tenant offered to take a five year lease, with seven options of a further five years each, totalling 40 years, of the Harrisdale property on the terms of the Residential Tenancy Agreement and the Payment Direction Deed (collectively defined as the Sterling New Life Lease in cl 2 of the Offer).<sup>8</sup> On 19 July 2017, the Offer was executed on behalf of Mr Soussa, as lessor, and Sterling First Projects Pty Ltd, by Mr Ryan Jones as the director of Sterling First Projects, and as agent of Mr Soussa.<sup>9</sup>
- (4) On 26 July 2017, the defendants, after having paid \$230,000 on 20 July 2017,<sup>10</sup> met with Mr Ryan Jones at his office and:
  - (a) executed a Residential Tenancy Agreement for the Harrisdale property as lessees.<sup>11</sup> On the same day, Ms Aimee Hope, an employee of Rental Management Australia,<sup>12</sup> executed the lease on behalf of Mr Soussa;
  - (b) executed seven Option to Renew (Special Condition) Part C Residential Property Lease documents for additional terms of five years (being from 26 July 2022 to 25 July 2027, 26 July 2027 to 25 July 2032, 26 July 2032 to 25 July 2037, 26 July 2037 to 25 July 2042, 26 July 2042 to 25 July 2047, 26 July 2047 to 25 July 2052, and 26 July 2052 to 25 July 2057), and seven Notice of Exercise of Option to Renew documents to exercise each of the options for the seven five-year terms;<sup>13</sup>
  - (c) executed the Payment Direction Deed dated 26 July 2017. On the same day, Ms Hope executed the Payment Direction Deed on behalf of Mr Soussa. Sterling

<sup>7</sup> Exhibit A, Tab 21, 233 - 252, especially 251.

<sup>8</sup> Exhibit A, Tab 23, 265 - 280, especially 267.

<sup>9</sup> Exhibit A, Tab 23, 275, 277 - 278.

<sup>10</sup> Exhibit A, Tab 60, 533 - 537 \$207,053 was paid to Theta Asset Management Ltd, as trustee for the Sterling Income Trust and two amounts were paid to Sterling Corporate Services, one amount being \$21,252 and the other \$1,695.

<sup>11</sup> Exhibit A, Tab 28; in the form prescribed by the *Residential Tenancies Act 1987* (WA).

<sup>12</sup> Statement of Agreed Facts [2] and [3(c)] and [3(d)].

<sup>13</sup> Exhibit A, Tab 29, 329 - 349.

Corporate Services was also a party to the Payment Direction Deed, and the deed contained an execution clause with Mr Ryan Jones' name on it as an alternate director of Sterling Corporate Services.<sup>14</sup> It is not clear in these proceedings whether this deed was executed on behalf of Sterling Corporate Services by Mr Ryan Jones or any other officer of Sterling Corporate Services because the copy of the deed tendered into evidence in the proceedings has not been executed on behalf of Sterling Corporate Services;<sup>15</sup>

- (d) executed a Sterling Income Trust application to invest \$82,821 in income units and \$124,232 in growth units, being a total of \$207,053 in the trust;<sup>16</sup> and
- (e) executed a Rental Subsidy Agreement requiring the defendants to pay \$26 a week to Sterling Corporate Services to assist Sterling Corporate Services as the assistor to pay the full cost of the weekly rent of \$390 until a capital shortfall of \$11,500 had been paid in full to Sterling Corporate Services.<sup>17</sup>

### 3.3 Entering into the Sterling New Life Lease agreements

16 Mr Soussa is employed as a field manager for a telecommunications company. On or around 16 October 2013, he purchased a block of land in Harrisdale on which he subsequently arranged for the construction of a three-bedroom, two-bathroom house. The construction of the house was completed in or around the middle of 2015. Mr Soussa purchased the property as an investment and obtained a mortgage from Bankwest, initially as a 100% leveraged interest only loan, which he changed to a principal and interest loan in 2020.

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<sup>14</sup> Exhibit A, Tab 27, 297.

<sup>15</sup> The execution clause in the deed was executed on behalf of Mr Soussa and by Mr and Mrs Thomas; exhibit A, Tab 27, 297 - 298. On 297 of exhibit A, Tab 27, immediately under the execution clause for the Landlord/Agent an unsigned execution clause states in type under the words 'Executed by Sterling Corporate Services Pty Ltd ACN 158 361 507 in accordance with section 127 of the *Corporations Act 2001* (Cth)' and immediately below in type the words 'Signature of Director (Alternate)' and the name 'Ryan Kentore Jones'.

<sup>16</sup> Exhibit A, Tab 15, 156 - 174.

<sup>17</sup> Exhibit A, Tab 31, 412 - 421; the reason why this agreement was entered into was that the Lump Sum Amount due to be payable to the Sterling Income Trust was \$241,500 to enter into the Sterling New Life Lease but Mr and Mrs Thomas only paid an amount of \$230,000, leaving a balance of \$11,500 owing; exhibit 3 [45] - [48].

SMITH J

17 In October 2015, Mr Soussa contacted Rental Management Australia and entered into an arrangement with them to rent out the Harrisdale property.

18 On 30 October 2015, Rental Management Australia entered into a Residential Tenancy Agreement with a tenant on behalf of Mr Soussa as lessor for a period of 12 months for a rent of \$370 a week.<sup>18</sup>

19 On 6 September 2016, Mr Soussa entered into an 'Exclusive Management Authority for Residential Premises' agreement for a period of two years, commencing on 19 October 2016, appointing Rental Management Australia to negotiate and sign leases on his behalf for rent in a range between \$370 and \$420 a week, with a minimum term of lease of six months and a maximum term of 12 months.<sup>19</sup> The first tenant subsequently entered into a new tenancy agreement for a period of two years on 29 October 2016 for the same weekly rent.

20 Towards the end of 2016, the defendants were thinking about their retirement. They had been leasing a property in Canning Vale for about 10 years. Mr Thomas was a supermarket manager for IGA and Mrs Thomas also worked for IGA as a deli manager. Mr Thomas was 69, and Mrs Thomas was 64 years of age. After speaking to a bank about obtaining a loan of \$100,000 to buy a property, they formed the opinion that they could not afford to repay a loan of that amount once they retired because the bank would require repayment of the entire amount within 10 years.

21 During 2016, Mrs Thomas heard advertisements for Sterling New Life Leases on the 6PR radio station, and read advertisements on Facebook, in *The Sunday Times* and *The West Australian*. Mrs Thomas told Mr Thomas about the advertisements.

22 In or around November 2016, Mrs Thomas asked Mr Thomas to make some enquiries about a Sterling New Life Lease. Mr Thomas spoke to someone in the Sterling Group who told him there was to be a meeting in Gosnells in a few days' time where he could find out more about Sterling New Life Leases.

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<sup>18</sup> Exhibit A, Tab 12, 66 - 81.

<sup>19</sup> Exhibit A, Tab 13 82 - 95.

*SMITH J*

23           Sometime in November 2016, the defendants went to a meeting in the city of Gosnells at a community centre. Mr Thomas recalls that the following people were present:<sup>20</sup>

- (a)       two men who gave a presentation about Sterling;
- (b)       a TV personality, Gary Carvolth;
- (c)       a sales representative for Sterling, Annabel Crowther; and
- (d)       a couple sitting in the audience, whose names Mr Thomas does not recall, who had entered into a Sterling New Life Lease.

24           Mr Thomas recalls that during a detailed presentation, in which slides with Sterling's name on them could be seen on a screen in the front of the room. Mr Thomas' evidence about that was said by one of the representatives of Sterling is set out in [166] of these reasons.

25           Both Mrs Thomas and Mr Thomas recall that Mr Carvolth also gave a presentation about the Sterling New Life Lease product. Although Mr Thomas does not recall exactly what Mr Carvolth said at the presentation, it is his evidence that one of the main reasons why he entered into a Sterling New Life Lease was because of Mr Carvolth's positive presentation about the product.

26           After the presentation finished, the defendants spoke to Ms Crowther. Ms Crowther told Mrs Thomas that she had spoken to consumer protection about the Sterling New Life Lease program before signing her father up to a Sterling New Life Lease house in Rockingham.

27           Based on what Mr Carvolth and Ms Crowther had said at the Gosnells meeting, both the defendants formed the opinion that the Sterling New Life Lease product was a really good arrangement for (their housing needs in) retirement, and that they should consider entering into a Sterling New Life Lease.

28           From early 2017, the defendants started looking at houses for rent and actively sought to find a property that could be leased through the Sterling New Life Lease scheme. Sometimes they inspected properties with Ms Crowther. Where a property was not available to be leased through the Sterling New Life Lease scheme, Ms Crowther made enquiries of the landlord to see if the landlord wished to enter into a

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<sup>20</sup> Exhibit 3 [15].

Sterling New Life Lease. Sometime in early 2017, Ms Crowther resigned and from that time onwards the defendants dealt with another Sterling representative, Mr Phil Lucks, who assisted them to obtain a suitable property for a Sterling New Life Lease.

29 Despite the fact that in October 2016 Rental Management Australia had relet the Harrisdale property for a period of two years (on behalf of Mr Soussa), the tenant terminated the lease early, and the property became vacant in about March 2017.

30 The Harrisdale property was vacant from about March 2017 and remained so until the defendants entered into the Sterling New Life Lease in July 2017.<sup>21</sup>

31 When the Harrisdale property became vacant, Rental Management Australia sought to obtain a new (short-term) tenant for the property without much success. Sometime in May 2017, a property manager for Rental Management Australia, Ms Aleisha Vester, spoke to Mr Soussa and told him that not many enquiries had been received for offers to lease the Harrisdale property.

32 From on or about the end of May 2017 to early June 2017, the business development manager of Rental Management Australia, Ms Tracy Falkingham, telephoned Mr Soussa four or five times, and engaged Mr Soussa in conversation about entering into a Sterling New Life Lease arrangement. In the course of each of those telephone calls, Ms Falkingham spoke to Mr Soussa about the Sterling New Life Lease product. The relevant content of those conversations was as follows:

- (a) Ms Falkingham told Mr Soussa that the Sterling New Life Lease product was an investment opportunity for pensioners to receive a long-term lease of about 40 years;
- (b) Mr Soussa told Ms Falkingham that:
  - (i) it was his intention to rent the property for five to seven years, then sell the property once the property market improved and he could get a better price, and, that because he wanted to sell the property, he was not interested in entering into a 40 year lease agreement; and

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<sup>21</sup> ts, 9 February 2021, 96 - 97.

- (ii) he wanted to receive regular offers to lease for shorter time periods;
- (c) Ms Falkingham told Mr Soussa she was aware that there was very little interest in the property and that it still had not been leased.

33 During this period in 2017, Mr Soussa was concerned that the property had not been rented as he was having to pay mortgage payments on the property without the monetary benefit of rent.

34 Sometime in about the middle of 2017, Mr Lucks telephoned Mr Thomas and told him that a property was available in the area that they were interested in (near Canning Vale). Mr Lucks arranged for Ms Vester to show him the Harrisdale property. The defendants liked the property and told Ms Vester that they wished to go ahead with a Sterling New Life Lease for the property.

35 In late June 2017, Ms Falkingham telephoned Mr Soussa again and told him that she wished to discuss the option of leasing the property under a Sterling New Life Lease, and that she had some documents that she could send to him. Ms Falkingham also told Mr Soussa that Mr and Mrs Thomas had viewed the property and they were very interested (in leasing the property on the terms of a Sterling New Life Lease).

36 On 29 June 2017, Ms Falkingham sent Mr Soussa an email in which she stated that they currently had a tenant interested in Harrisdale and she thought that his property would be suitable. Ms Falkingham attached to the email a document titled 'Property Investment with a Sterling New Life Tenant Summary' and a PowerPoint slide document titled 'Property Investor Information 2017'.<sup>22</sup>

37 The 'Property Investment with a Sterling New Life Tenant Summary' document stated:<sup>23</sup>

Sterling New Life provides property investors with a unique opportunity to acquire properties that are leased to seniors with the following benefits:

1. 5 year lease term with the tenant having 5 year options to renew.
2. 5.5% pa gross rental yield, growing by a fixed 2% pa.

<sup>22</sup> Exhibit A, Tab 32.

<sup>23</sup> Exhibit A, Tab 32, 424.

3. The property manager is Rental Management Australia with an all inclusive property management fee of 11.0% including GST of the gross rent.
4. The Sterling New Life tenant invests into the Sterling Income Trust, which generates the income distributions for the tenant to pay the rent.
5. The rent is paid to the landlord monthly in arrears.
6. If for any reason there is a rent shortfall from the Sterling Income Trust distributions, the tenant will not be asked to pay any top up rent directly. Any shortfall will be paid from a redemption of capital from the tenant's investment.
7. The Sterling Income Trust investment amount also acts as a security bond for any potential damages.
8. Where a Sterling New Life tenant is not ready to start the lease in the short term, or may have to sell their existing property before moving in, the landlord may choose to get a short term tenant.
9. The landlord is free to sell a property with a Sterling New Life tenant in place. The lease will move with the property, and a condition of the sale is that Rental Management Australia is engaged by the new landlord as the property manager.
10. While there is a Sterling New Life tenant, the landlord has the opportunity to sell the property to Sterling as follows:
  - a. first offer to sell the property to Sterling at a price set by the landlord,
  - b. last offer to sell the property to Sterling at a price equal to an offer being made to purchase the property from the landlord,
  - c. an option for Sterling to buy the property from the landlord if the landlord does not wish to renew the lease six months prior to the end of each lease term, with the price being determined by a licensed valuation, less sales commission.
11. The Sterling New Life lease can be terminated by the tenant with 180 days notice.
12. When the tenant has given notice to terminate the lease, the landlord can then choose to request Sterling to secure a new Sterling New Life Lease tenant, or just put in place a regular short-term tenant. If the landlord chooses to secure a short term

tenant, they are then free from their obligation to engage Rental Management Australia as the property manager, and will have no further opportunity to sell the property to Sterling.

- 38 The 'Property Investor Information 2017' PowerPoint document relevantly stated:<sup>24</sup>

#### **Who We Are**

1. **Sterling First** - Founded in 2010, Sterling First is a multi-faceted property group operating across Western Australia, Queensland and Victoria. We work across all aspects of property; covering general management, funds management, retirement housing, development, project management and sales.
2. **Sterling New Life** - addresses the key challenge that retirees and seniors face today, including paying off a mortgage, preparing for an active retirement and making sure something is left for loved ones. **Sterling New Life Leases** are a unique offering aimed at providing an affordable housing and living solution for seniors.
3. **Rental Management Australia** - is a specialist Property management company with over 2,000 properties under management in Queensland, Victoria and Western Australia

...

#### **How It Works**

1. Tenants choose their Sterling New Life Property
2. They make their initial payment to SIT fund
3. Their investment generates income to cover their rent. Surplus is reinvested.
4. Rent from SIT is transferred monthly to Rental Management Australia then to the landlord
5. Process continues until end of lease; with rent increasing by fixed 2% pa
1. Initial 5 year Lease term with 7 x 5 year options to renew.
2. SNLL price includes a once off application fee and remaining balance amount also acts as a security bond.
3. Tenant invests into the Sterling Income Trust, which generates the income distributions for the tenant to pay the rent.

<sup>24</sup> Exhibit A, Tab 32, 426, 431 - 433 and 437.



4. Rent is paid monthly in arrears / Gross rental yields of 10-20% above market rent growing by a fixed 2% per annum
5. Owner is free to sell the property. The Lease moves with the property. Rental Management Australia must be engaged by the new owner as the property manager.

#### **Deed of Covenant**

- Protects the rights of the Tenant
- Requires Rental Management Australia to Manage the Property while there is a Sterling New Life Lease in place
- If Investor sells, New owner must also enter into a DOC and appoint Rental management Australia as Property Managers
- Provides Sterling with the first and last rights to acquire the property
- Provides Sterling with a caveatable right over the property

#### **It's Win/ Win**

##### Benefits to Investors

- Long term leases with mature tenants
- Rental income 10 - 20% above market rate, plus fixed 2% pa growth
- Fixed rental management fees
- No Arrears or missed payments
- Free to sell the property along with the lease/lessee if required

##### Benefits to Tenants

- Financial security in retirement
- No exit fees
- No weekly facility fees

...

#### **We're Solid**

2000 + properties managed

850 million in total assets across all sterling first ventures

100 plus employees Australia wide

39 When Mr Soussa received the documents he briefly looked through them, and did not read them in their entirety.<sup>25</sup> However, when cross-examined he agreed he had read pars 1, 2, 4, 6 and 11 of the 'Property Investment with a Sterling New Life Tenant Summary', and pages 431 and 433 of the 'Property Investor Information 2017' PowerPoint.<sup>26</sup>

40 After receiving those documents, Mr Soussa formed the view that the contents of the documents did not apply to him as he did not consider himself to be an investor. Notwithstanding his opinion, he decided to enter into a lease under the Sterling New Life Lease scheme. Mr Soussa did not, however, want to retain ownership of the Harrisdale property long-term so he told Ms Falkingham that:

- (a) the documents that he signed with Sterling New Life would have to reflect that; and
- (b) Sterling New Life would need to purchase the Harrisdale property after three years, rather than (simply) an option to purchase the property.

41 It is Mr Soussa's evidence that (when he entered into Sterling New Life Lease agreements) although he understood that there was a risk that the tenant who entered into a Sterling New Life Lease product could lose their invested funds,<sup>27</sup> he did not understand that if the scheme went under that the tenant's investment would be his responsibility.<sup>28</sup>

42 Mr Soussa conceded when he was cross-examined that the rental value was attractive to him because it was above what he was receiving previously and, when he read what was stated in the win/win slide of the PowerPoint document, the information that there would be no arrears or missed payments was also attractive to him. In particular, it was put to him, and he conceded, that he understood from what was stated in the win/win slide that:

- (a) he would be guaranteed to receive rental payments; and

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<sup>25</sup> Exhibit 1 [25].

<sup>26</sup> ts, 9 February 2021, 100 -102, 109 - 111.

<sup>27</sup> ts, 9 February 2021, 104.

<sup>28</sup> ts, 9 February 2021, 117 - 118.

- (b) he would be free to sell the Harrisdale property in a few years' time when the property market improved.<sup>29</sup>

43 On 13 July 2017, Ms Falkingham sent an email to Mr Soussa attaching an email from Mr Ryan Jones and stated that she had 'included the documents that require signing if you do decide to proceed'.<sup>30</sup> The email from Mr Ryan Jones was sent to Ms Falkingham earlier that day and said:<sup>31</sup>

Dear Tracey,

Further to the discussion you, Ray Jones & I had yesterday with respect to the concerns the Owner of the above-mentioned property has in relation to the 'Deed of Covenant' agreement as it pertains to leasing the property under the Sterling New Life Lease (SNLL) structure, please note that as we have a very interested potential SNLL Lessee with 'cash' funds wishing to enter into a SNLL & very much liked this property, that Acquest Property Pty Ltd as trustee for the relevant 'Trust' (our group have numerous trusts that are used for property ownership purposes) is prepared to contract to purchase the property from the Owner on the following basis should they wish to sell it;

1. Contract to purchase would not take place until after a minimum of 3 x years from the SNLL commencement date with all conditions acceptable by the Buyer
2. Purchase Price agreed between Parties or via the Owner & Buyer each procuring an independent property valuation by a Licenced Valuer
3. A SNLL being in existence at the time of signing their contract to purchase agreement
4. The Owner enters into a 'Deed of Covenant'
5. The property being managed by a Real Estate Agent agreeable to the Buyer

Should the Owner wish to agree to the above proposal, the relevant legal contract would be sourced & prepared and also at the cost of the 'sterling group'.

**Please convey this email onto the Owner for their revision and response while noting that time is of the essence in securing the**

<sup>29</sup> ts, 9 February 2021, 110.

<sup>30</sup> Exhibit A, Tab 20, 217.

<sup>31</sup> Exhibit A, Tab 20, 218.

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**potential SNLL Lessee whom is currently interested in the property.**

Please note that I am the Sole Director of Acquest Property Pty Ltd and have authority to offer the above proposal.

Kind Regards,

Ryan Jones  
Director/Licensee  
0419 830 811  
E [ryan.jones@sterlingfirst.com.au](mailto:ryan.jones@sterlingfirst.com.au)

Sterling First (Aust) Ltd  
T 08 9523 5800 | F 08 9523 5811  
23-24, 397 Warnbro Sound Avenue, Port Kennedy 6172  
PO Box 7299 Secret Harbour WA 6173

44 Also attached to Ms Falkingham's email was a copy of an 'Exclusive Management Authority for Residential Premises' agreement to appoint Rental Management Australia as property manager for the Harrisdale property for a period of 40 years.<sup>32</sup> The material terms of this agreement included that:

- (a) the term of the agreement was from 17 July 2017 until 16 July 2057, which term would not apply at the owner's discretion if a Sterling New Life Lease is not procured with the Sterling New Life Lease lessee entering into a Sterling New Life Lease to occupy the property;<sup>33</sup>
- (b) the minimum term of the lease would be five years with a maximum term of 40 years;<sup>34</sup>
- (c) the range of rent would be \$390 to \$844 per week, and the management fee would be 11% of gross collections, with an initial rent of \$390 per week;<sup>35</sup> and
- (d) Sterling First Projects Pty Ltd were appointed as sub-agents to the property manager, Rental Management Australia, to advertise, market and do all things lawful in order to procure a Sterling New Life Lease lessee to reserve the premises with the

<sup>32</sup> Exhibit A, Tab 20, 220 - 232.

<sup>33</sup> Exhibit A, Tab 20, Annexure to Schedule, Item 6, Term of Management Agreement, 221 and 228.

<sup>34</sup> Exhibit A, Tab 20, Item 5, Rental, 221.

<sup>35</sup> Exhibit A, Tab 20, Item 5, Rental 221 and New Project - Terms Sheet, 232.

intention to enter into a Sterling New Life Lease to lease/occupy the premises.<sup>36</sup>

45 On 17 July 2017, Mr Soussa signed the new 'Exclusive Management Authority for Residential Premises' agreement for the Harrisdale property with Rental Management Australia for 40 years, and sent a copy of the agreement and the 'New Project - Terms Sheet' to Ms Falkingham by email.<sup>37</sup> In his email to Ms Falkingham, Mr Soussa informed Ms Falkingham that he would sign the Deed of Covenant 'once the additions/amendments have been made as per Ryan's email'.<sup>38</sup>

46 After the defendants inspected the Harrisdale property, Mr Lucks told Mr Thomas that before they could sign a lease and move into the Harrisdale property they would have to pay their lump sum investment amount upfront.

47 On 18 July 2017, Mr Lucks went to the defendants' rental home in Canning Vale with the document titled 'Offer to enter into a Sterling New Life Lease', which Mr and Mrs Thomas signed.<sup>39</sup> The Offer specified that Mr Soussa was the lessor, Mr and Mrs Thomas were 'the tenant' and the 'Manager' was Sterling First Projects Pty Ltd. On the following day, 19 July 2017, the Offer was signed on behalf of Mr Soussa by Mr Ryan Jones as agent of the lessor and also as the 'Manager' in his capacity as director of Sterling First Projects Pty Ltd.

48 The terms of the Offer were that the tenant offered to take a five year lease with seven options of a further five years each, totalling 40 years, of the Harrisdale property (defined as the 'Residential Premises') on the terms of the Residential Tenancy Agreement and the Payment Direction Deed (collectively known as the 'Sterling New Life Lease'). The Offer specified that the Sterling New Life Lease investment amount for the Harrisdale property for the purpose of a Sterling New Life Lease was '\$241,500, being cash \$230,000 plus weekly top up of \$26.00'.

49 Sometime prior to entering into the Sterling New Life Lease, Mr Thomas was given a telephone number by Mr Lucks for a lawyer who had some familiarity with Sterling New Life Leases. Mr Thomas rang the telephone number and spoke to a lawyer and was told unless

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<sup>36</sup> Exhibit A, Tab 20, 228.

<sup>37</sup> Exhibit A, Tab 20, 217.

<sup>38</sup> Exhibit A, Tab 20, 217.

<sup>39</sup> Exhibit A, Tab 23, 277; it is notable that Mr and Mrs Thomas signed the Offer one day prior to the document being executed on behalf of Mr Soussa.

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he had specific questions about the Sterling New Life Leases to discuss, there was no point in having a meeting.

50 On 20 July 2017, the defendants paid the lump sum of \$230,000 to Sterling Corporate Services.<sup>40</sup>

51 On 26 July 2017, Mr Soussa signed the Deed of Covenant and a Put Option. The Put Option enabled Mr Soussa to require Acquest Property Pty Ltd to purchase the Harrisdale property at an agreed price based on the average of two independent licensed valuers' valuations, after three years from the date of commencement of the first Sterling New Life Lessee (sic).<sup>41</sup>

52 On the same day, the defendants met with Mr Ryan Jones at his office in Port Kennedy and signed the Residential Tenancy Agreement, each of the seven Options to Renew, each of the seven accompanying Notice of Exercise of Option to Renew, the Payment Direction Deed, the Sterling Income Trust application form and the Rental Subsidy Agreement. The material terms of each of these agreements are set out below in 4.2.

53 An objection was made to the admissibility of the evidence of Mr and Mrs Thomas about what was said when they met with Mr Ryan Jones on 26 July 2017 to sign all of the documents for a Sterling New Life Lease for the Harrisdale property. For the reasons set out below in 5.3 and 5.4, I have found that this evidence is admissible. This evidence is as follows.

54 It is the evidence of both Mr and Mrs Thomas that when they signed these documents they were not provided with any opportunity to look at the lengthy documents in detail. Mr Ryan Jones simply flicked through a lot of pages and asked them to sign certain pages. It is also both their evidence that when they finished signing the documents, Mr Ryan Jones gave them a folder of documents and keys to the Harrisdale property. They took the folder home, put it away and did not read any of the documents that they had signed. It was not until they went to a meeting convened by the administrators of the Sterling Group that they became aware that one of the documents in their folder was a product disclosure statement for the Sterling Income Trust.<sup>42</sup>

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<sup>40</sup> Pursuant to cl 2.1 of the Payment Direction Deed the money was paid to Sterling Corporate Services nominated bank account; Exhibit A, Tab 27, 291; Tab 60, 533 - 534.

<sup>41</sup> Exhibit A, Tab 21, 251 - 252.

<sup>42</sup> ts, 9 February 2021, 139 - 142.

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55 Mrs Thomas could not recall exactly what was said at the meeting when they met with Mr Ryan Jones, but she did recall asking Mr Ryan Jones 'what would happen if Sterling went bust' and Mr Ryan Jones told her that 'it would never go bust, but if it did, Sterling had \$900 million in assets and there would always be another company to step in and take it over'. He also said that 'there was no chance of losing our upfront payment'. She also asked Mr Ryan Jones whether they could 'get kicked out of our property' and Mr Ryan Jones told them that 'would not happen unless we wrecked the place'.

56 In addition to the matters Mrs Thomas could recall, Mrs Thomas also recalled that when she was asked to sign the Payment Direction Deed, Mr Ryan Jones said something like, 'this is the document that says you don't need to pay any rent as Sterling will take care of all of that'. It is Mrs Thomas' evidence that until the meeting with Mr Ryan Jones she was not aware that they would sign a five year lease with seven options to renew, as she had been told prior to signing the documents that a Sterling New Life Lease was a 40 year lease.<sup>43</sup> However, when pressed on this point in cross-examination she conceded that she might have been told prior to signing the lease that the lease was a five year lease with seven options to renew.<sup>44</sup>

57 After Mrs Thomas signed the lease and the other documents, based on what she was told at the Gosnells meeting, she understood:<sup>45</sup>

- (a) our Lease would be for 40 years;
- (b) if either Laurie or I passed away, the other person could remain in the house;
- (c) our upfront payment would go into a trust fund where it could not be touched, and in return we would have our Property for the rest of our lives, with all bills paid including the rent;
- (d) no one could touch our upfront payment and when Laurie and I both died, our upfront payment would still be there for our children to inherit;
- (e) if our Property were sold, this would not affect our Lease;

...

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<sup>43</sup> ts, 9 February 2021, 130.

<sup>44</sup> ts, 9 February 2021, 131 and 152 - 153.

<sup>45</sup> Exhibit 2 [63].

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- (i) Laurie and I could not get kicked out of the house, and we could treat the house as if we were the owners;

...

58 After receiving the keys to the property, the defendants moved into the Harrisdale property, thereby taking possession of the property in accordance with the terms of the Sterling New Life Lease.

59 Both Mr and Mrs Thomas retired in about late November 2017 after Mr Thomas had a heart attack. Following their retirement, their only source of income is the old age pension because they had paid their superannuation and life savings into the Sterling Income Trust prior to entering into the lease.

60 It is Mrs Thomas' evidence that if they had known that there was any chance of losing the money they had invested, she would not have signed the Sterling New Life Lease.

#### **4.0 The construction of the express terms of the Sterling New Life Lease agreements made between the parties**

61 The contractual documents that expressly bind the parties are the Offer and the Residential Tenancy Agreement (which expressly incorporates the Payment Direction Deed and the Options and Notice to Renew Options).<sup>46</sup> The Offer does not form part of the terms of the Residential Tenancy Agreement.

62 The defendants claim that at the heart of the construction of the contractual agreements dispute is the determination of which party bore the contractual allocation of the risk of the funds invested by the defendants and others into units in the Sterling Income Trust being depleted to the point where the manager of Sterling Corporate Services was unable to make payments of rent to Mr Soussa.

63 The critical issues of construction arising from the express terms of the Residential Tenancy Agreement are whether:

- (1) the term of the lease was for a period of 40 years. In particular, whether the operation of the terms of the lease, together with the fact that each of the defendants executed the options forming part of the lease, was effective for the lease to be operative for a term of 40 years; and

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<sup>46</sup> Exhibit A, Tab 28, 311; pursuant to Part C, cl 7, each of these documents form part of the lease.



- (2) the fact that no rent has been paid to Mr Soussa since 23 March 2019 constituted a breach of the terms of the lease, and a valid ground for termination of the lease by Mr Soussa, or whether no breach arose from this fact because of the operative effect of cl 2.7 of the Payment Direction Deed. In particular, whether:
- (i) payment by the defendants of a lump sum of \$230,000 on 20 July 2017 (the Sterling New Life Lease investment amount) into the Sterling Income Trust managed by Sterling Corporate Services, and entering into the Rental Subsidy Agreement on 26 July 2017 requiring the defendants to pay \$26 a week to Sterling Corporate Services until the capital shortfall of \$11,500 had been paid in full, had the effect of discharging the defendants' obligations to pay rent to Mr Soussa (or any lessor successor in title to the Harrisdale property);
  - (ii) the obligation to pay rent was limited to the distribution of funds from the defendants' units or redemption of the defendants' units in the Sterling Income Trust only, and there was no obligation on the defendants to make up any shortfall after the funds in the Sterling Income Trust were exhausted;<sup>47</sup> and
  - (iii) the fact that Mr Soussa was not paid rent after 23 March 2019 by the defendants' attorney, Sterling Corporate Services, was a breach of the lease, entitling Mr Soussa to terminate, but the operative effect of cl 2.7 is that the defendants are not liable for any loss incurred by Mr Soussa as a result of the non-payment of rent.

#### 4.1 Construction of contracts - General principles

64 The general principles to be applied in construing commercial contracts were recently summarised by the Court of Appeal in *Bombardier Inc v Avwest Aircraft Pty Ltd* as follows:<sup>48</sup>

The construction of a contract is an objective process. The meaning of the terms of an instrument is to be determined by what a reasonable person would have understood the terms to mean. The process of construction involves determination of the meaning of the words by reference to the text, context and purpose of the contract

<sup>47</sup> Amended defence and counterclaim [9(c)].

<sup>48</sup> *Bombardier Inc v Avwest Aircraft Pty Ltd* [2020] WASCA 2 [92] - [97] (footnotes omitted).

The starting point in the construction of a contract is to look at the language used in the particular clause or clauses in issue and to identify the possible meanings that the words chosen by the parties can bear.

The instrument should be construed as a whole, and a construction that makes the various parts of the instrument harmonious is preferable.

In determining the meaning of the terms of a commercial contract, it is necessary to ask what a reasonable businessperson would have understood those terms to mean. Indeed, at each point where a constructional choice is available, it is important to consider what reasonable business people reading the relevant clause or agreement would understand it to mean. That enquiry requires a consideration of the language used by the parties in the contract, the circumstances addressed by the contract, and the commercial purpose or objects to be secured by the contract.

The court is entitled to approach the task of construction on the basis that the parties intended to produce a commercial result, and one which makes commercial sense. This requires that the construction placed upon the clause be consistent with the commercial purpose or objects of the agreement. The commercial purpose or objects sought to be secured by the contract will often be apparent from a consideration of the provisions of the contract read as a whole. An appreciation of the commercial purpose or objects of a contract is facilitated by an understanding of the genesis of the transaction, the background, the context and the market in which the parties are operating.

Further, an instrument should be construed so as to avoid it making commercial nonsense or giving rise to a commercial inconvenience, bearing in mind that business common sense may be a topic on which minds may differ.

65        Consequently, the duty of the court in construing a contract is to endeavour to discover the intention of the parties of the contractual provision or provisions. To do so, the whole of the agreement has to be considered because the meaning of any one part of it may be revealed by other parts, and the provisions of the contract are to be construed with a view to achieving harmony.

66        Although extrinsic evidence may assist in determining the proper construction where there is a constructional choice, the following principles must be applied:<sup>49</sup>

- (4)        Extrinsic evidence may also assist in determining the proper construction where there is a constructional choice, although it is not necessary in this case to determine the question of whether

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<sup>49</sup> *Black Box Control Pty Ltd v TerraVision Pty Ltd* [2016] WASC 219 [42] (footnotes omitted).

matters external to a contract can be resorted to in order to identify the existence of the constructional choice.

- (5) If an expression in a contract is unambiguous and susceptible of only one meaning, evidence of surrounding circumstances cannot be adduced to contradict its plain meaning.
- (6) To the extent that a contract, document or statutory provision is referred to, expressly or impliedly, in an instrument, that contract, document or statutory provision can be considered in construing the instrument, without any need for ambiguity or uncertainty of meaning.
- (7) There are important limits on the extent to which evidence of surrounding circumstances (when admissible) can influence the proper construction of an instrument. Reliance on surrounding circumstances must be tempered by loyalty to the text of the instrument. Reference to background facts is not a licence to ignore or rewrite the text. The search is for the meaning of what the parties said in the instrument, not what the parties meant to say.
- (8) There are also limits on the kind of evidence which is admissible as background to the construction of a contract, and the purposes for which it is admissible. Insofar as such evidence establishes objective background facts known to the parties or the genesis, purpose or objective of the relevant transaction, it is admissible. Insofar as it consists of statements and actions of the parties reflecting their actual intentions and expectations it is inadmissible. Such statements reveal the terms of the contract which the parties intended or hoped to make, and which are superseded by, or merged into, the contract.

67 Where an agreement uses definitions, the court will give effect to those definitions. Unless the context requires otherwise, the proper course is to read the words of a definition into the operative text, and then to construe the relevant clause having regard to the contract as a whole.<sup>50</sup>

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<sup>50</sup> *George 218 Pty Ltd v Bank of Queensland Ltd [No 2]* [2016] WASC 182; (2016) 313 FLR 287 [82]; *Black Box Control Pty Ltd v TerraVision Pty Ltd* [2016] WASC 219 [42(11)]; *Gourmania Holdings Pty Ltd v Schlegel* [2021] WASC 28 [68] (Buss P), [188] (Mitchell JA & Hill J).

## 4.2 The material terms of the Residential Tenancy Agreement

68 The Residential Tenancy Agreement executed by the parties is in the form prescribed by s 27A of the *Residential Tenancies Act*,<sup>51</sup> and has attached a number of annexures.

69 Section 27A of the *Residential Tenancies Act* creates an offence for a lessor to enter into a written residential tenancy agreement except in the prescribed form.<sup>52</sup> Further, s 82 of the *Residential Tenancies Act* provides that:

### 82. Contracting out

- (1) Except as provided under this Act -
  - (a) any agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect; and
  - (b) any purported waiver of a right conferred by or under this Act is void and of no effect.
- (2) A person must not enter into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act.

Penalty for this subsection: a fine of \$10 000.

70 Pursuant to reg 10AA(a) of the *Residential Tenancies Regulations 1989* (WA), the prescribed form for a written residential tenancy agreement that is not a social housing tenancy agreement is set out in sch 4 Form 1AA, and reg 18 provides that the forms set out in sch 4 are prescribed in relation to the matters specified in those forms. The prescribed form in Form 1AA contains three parts: Part A, Part B and Part C.

71 Part A of Form 1AA provides for details to be completed, including the names of the lessor and tenant, the names of the lessor's property manager, the means of giving of notices, the term of the agreement, the address of the residential premises, the maximum number of occupants, the amount of rent, the method by which the rent

<sup>51</sup> Section 27A of the *Residential Tenancies Act 1987* (WA) provides that a lessor must not enter into a written residential tenancy agreement except in the prescribed form.

<sup>52</sup> Section 3 of the *Residential Tenancies Act 1987* (WA) defines 'prescribed' to mean prescribed in the regulations.

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must be paid, the security bond, and how rent increases are to be calculated.

72 Part B of Form 1AA contains standard terms that are applicable to all residential tenancy agreements.

73 Part C of Form 1AA provides for additional terms to be included in the agreement but does not expressly prescribe any particular terms. However, the effect of Part C is that it prescribes that any additional terms may only be included if they do not conflict with the provisions of the *Residential Tenancies Act*, the *Residential Tenancies Regulations* and the standard terms of the agreement (that is, the standard terms in Part B).

74 Part C of Form 1AA provides as follows:

### **PART C**

#### **IMPORTANT INFORMATION**

Additional terms may be included in this agreement if:

- (a) both the lessor and tenant agree to the terms; and
- (b) they do not conflict with the *Residential Tenancies Act 1987*, the *Residential Tenancies Regulations 1989*, or any other law; and
- (c) they do not breach the provisions about unfair contract terms in the *Fair Trading Act 2010*; and
- (d) they do not conflict with the standard terms of this agreement.

ADDITIONAL TERMS ARE NOT REQUIRED BY THE *RESIDENTIAL TENANCIES ACT 1987*. HOWEVER, ONCE THE PARTIES SIGN THIS AGREEMENT, THE ADDITIONAL TERMS ARE BINDING UPON THE PARTIES UNLESS THE TERM IS FOUND TO BE UNLAWFUL.

ADDITIONAL TERMS: .....

THE LESSOR AND TENANT ENTER INTO THIS AGREEMENT AND AGREE TO ALL ITS TERMS.

SIGNED BY THE LESSOR/PROPERTY MANAGER

.....  
[Signature of lessor/property manager]

SMITH J

Date: .....

SIGNED BY THE TENANT

.....  
[Signature of tenant]

Date: .....

75 The Residential Tenancy Agreement as executed by the parties contains a Part A, Part B, Part C, Part D and several other annexures, which together comprise the lease. The lease executed by the parties comprising Part A, Part B and Part C is a pre-printed form that has on the top of the first page of Part A, Part B and Part C a stamp stating 'approved by the Real Estate Institute of Western Australia' and a Rental Management Australia logo.

76 The material terms of the lease executed by the parties in Part A are as follows:

- (1) The term of agreement is fixed starting on 26 July 2017 and ending on 25 July 2022.<sup>53</sup>
- (2) The rent is \$390 payable weekly in advance starting on 26 July 2017.<sup>54</sup>
- (3) The method by which the rent must be paid is specified as:<sup>55</sup>

Refer to the Payment Direction Deed

For the first month of the tenancy, from the commencement date to the last day of that month, payable on the twenty first of that month. For the second and subsequent months of the tenancy, from the first of that month to the last day of that month, payable on the twenty first of that month.

For the last month of the tenancy, from the first of that month to the termination date of the lease, payable on the twenty first of that month.

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<sup>53</sup> Exhibit A, Tab 28, 299.

<sup>54</sup> Exhibit A, Tab 28, 300.

<sup>55</sup> Exhibit A, Tab 28, 300; the words 'Refer etc' do not form part of Part A of Form 1AA, and have been added in type.

SMITH J

77 The material terms of the lease executed by the parties in Part B (the 'Standard Terms Applicable to all Residential Tenancy Agreements') are as follows:

- (1) Clause 3 provides that the tenant must pay rent on time or the lessor may issue a notice of termination, and if the rent is still not paid in full, the lessor may take action through the court to evict the tenant.<sup>56</sup>
- (2) Clause 36 provides that it is an offence to contract out of any provision of the *Residential Tenancies Act*.
- (3) Clause 37 provides that this Residential Tenancy Agreement can only be terminated in certain circumstances.<sup>57</sup>
- (4) Clauses 38 to 41 provide for termination of the agreement in circumstances that do not apply in this matter.
- (5) Clause 42 provides for other grounds for termination, which include, 'breach of this agreement by the tenant...'.<sup>58</sup>

78 The material terms of the lease executed by the parties in Part C (the 'Additional Terms') are as follows:

- (1) Clause 2.1 provides that the tenant agrees to pay the rent punctually pursuant to the provisions of Part A, on the dates for payment, without any deductions or legal or equitable set-offs.<sup>59</sup>
- (2) Clause 2.4 provides that if the lease is a fixed term tenancy agreement, then the rent will be increased annually by 2%.<sup>60</sup>
- (3) Clause 3.1(b) provides that if the tenant otherwise breaches the lease and/or does not comply with the tenant's obligations under this lease, then the tenant is liable to pay any damages and losses to the lessor that the lessor suffers or will suffer as a

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<sup>56</sup> Exhibit A, Tab 28, 303.

<sup>57</sup> Exhibit A, Tab 28, 305.

<sup>58</sup> Exhibit A, Tab 28, 306.

<sup>59</sup> Exhibit A, Tab 28, 307.

<sup>60</sup> Exhibit A, Tab 28, 307 - 308.

result of the tenant's breach.<sup>61</sup> The lessor must endeavour to reasonably mitigate the lessor's damages and losses.<sup>62</sup>

- (4) Clause 5.4 provides that where either the tenant or the lessor comprise more than one person, the obligations to be performed in this lease are binding upon such two or more persons jointly and severally.<sup>63</sup>
- (5) Clause 7 provides that the following annexures form part of this lease:<sup>64</sup>

Part D - Special Conditions

Annexure 3 - Lease Renewal - Options & Notice to Renew  
Options

Form 2 - Notice of Termination

Form 3 - Privacy Statement

Form 4 - Management Statement

Payment Direction Deed

79 Incorporated in Part C of the lease is Annexure 3, which comprises seven Option to Renew (Special Condition) Part C Residential Property Lease forms, and seven Notice of Exercise of Option to Renew Standard Residential Tenancy Agreement forms,<sup>65</sup> which were executed by the defendants and Ms Hope, on behalf of Mr Soussa, on 26 July 2017.<sup>66</sup> The terms of each Option to Renew are the same. The material terms of the first Option to Renew are as follows:<sup>67</sup>

- (1) If the tenant has not committed a breach of this lease that has resulted in the lessor or agent serving a breach notice on the tenant, and gives the agent a written notice of exercise of option

<sup>61</sup> A footnote providing examples of the types of costs that may give rise to a need to make a break lease claim include, but are not limited to, rent; Exhibit A, Tab 28, 310.

<sup>62</sup> Exhibit A, Tab 28, 310.

<sup>63</sup> Exhibit A, Tab 28, 311.

<sup>64</sup> Exhibit A, Tab 28, 311.

<sup>65</sup> The Option to Renew (Special Condition) Part C Residential Property Lease forms and the Notice of Exercise of Option to Renew Standard Residential Tenancy Agreement forms are not forms prescribed by the *Residential Tenancies Act 1987* (WA) or the *Residential Tenancies Regulations 1989* (WA). They do, however, appear to be standard forms used in residential tenancy agreements as they each bear a stamp that they have been approved by the Real Estate Institute of Western Australia in addition to Rental Management Australia's logo.

<sup>66</sup> Exhibit A, Tab 29, 329 - 349.

<sup>67</sup> Exhibit A, Tab 29, 329 - 349; other than the dates of the Option Expiry Time and the dates of the additional term of each five year period, the terms of each Option to Renew are the same.



to the agent by 4.00pm on 25 July 2022 (Option Expiry Time) then the lessor grants the tenant an additional term of a five year period being 26 July 2022 to 25 July 2027 (Additional Term) commencing immediately upon the expiry of the term stipulated in Part A of the lease (Term).

- (2) During the Additional Term the rent will be as provided by cl 2.4(C) of the original lease agreement Part C, but otherwise the conditions of the lease will apply except for this option.
- (3) If the option is not exercised by the tenant by written notice before the Option Expiry Time, the Option to Renew will not apply. Time is of the essence in this clause.

80 Incorporated in Part C of the lease is a 'Form 2 - Notice of Termination'. This annexure comprises a blank form of notice that the tenant is required to complete if they wish to terminate the Sterling New Life Lease (in accordance with special conditions 4.2(b) and (c) of Part D).<sup>68</sup>

81 Incorporated in Part C of the lease is Form 3, a *Privacy Act 1988* (Cth) Tenant Information Sheet that contains the privacy policy and privacy disclosure statement made by Sterling First Projects Pty Ltd T/A Sterling New Life, which refers to Mr Ryan Jones' email address as the Sterling New Life contact for enquiries or complaints about Sterling First Projects' activities with respect to privacy and the National Privacy Principles.<sup>69</sup>

82 Incorporated in Part C of the lease is Form 4, a Management Statement for Multi Key Properties that sets out various duties of the tenant, proprietor and occupiers in respect of the use of the residential premises.<sup>70</sup>

83 Incorporated in Part C of the lease is the Payment Direction Deed, the material terms of which, when the definitions in cl 1.1 are read in where they first appear as follows, are as follows:

- (1) The parties, Mr Soussa (as landlord), the defendants (as tenant) and Sterling Corporate Services (as Manager), agree, in

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<sup>68</sup> Exhibit A, Tab 28, 319.

<sup>69</sup> Exhibit A, Tab 28, 321.

<sup>70</sup> Exhibit A, Tab 28, 325 - 328.

consideration of, among other things, the mutual promises contained in the deed.<sup>71</sup>

- (2) Clause 2.1 provides that the deed is conditional upon:<sup>72</sup>
- (i) the tenant paying the application fee to the Sterling Corporate Services nominated bank account;
  - (ii) the tenant paying the initial rent payment to the Sterling Corporate Services nominated bank account;
  - (iii) the tenant paying the amount of the investment amount (being the amount specified in Item 4 of the Reference Schedule which is an amount of \$241,500 less \$11,500, which is \$230,000) less the application fee and the initial rent payment to the product disclosure statement nominated bank account; and
  - (iv) making an application pursuant to the product disclosure statement to invest the investment amount less the application fee and the initial rent payment in units (being the units subscribed in the Sterling Fund, being the registered managed investment scheme specified in Item 5 of the Reference Schedule as the Sterling Income Trust) by the end of the application period (being the period of 10 business days commencing on the date of the deed).
- (3) Clause 2.2 provides that the tenant acknowledges and agrees that all distributions from and the proceeds of any redemption of the tenant's units (being the units issued to the tenant as a result of the investment amount less the application fee and the initial rent payment being invested in accordance with this deed) will be paid into the Sterling Corporate Services nominated bank account, to be held in accordance with the terms of cl 2.<sup>73</sup>

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<sup>71</sup> Exhibit A, Tab 27, 288.

<sup>72</sup> Exhibit A, Tab 27, 291.

<sup>73</sup> Exhibit A, Tab 27, 291.

- (4) By cl 2.3(b)(i), (iii) and (iv) Sterling Corporate Services and its officers are jointly and severally to be appointed the attorney of the tenant to perform among other functions:<sup>74</sup>
- (i) upon the term ending, apply to redeem any of the tenant's units and to have the proceeds of redemption paid into the Sterling Corporate Services nominated bank account for the purpose of paying any rent (being the rent payable by the tenant under the Sterling New Life Lease) that is due at the end of the term that has not been paid;
  - ...
  - (iii) upon the situation where the distributions from the tenant's units have been insufficient to pay any rent that is due, apply to redeem any of the tenant's units and to have the proceeds of redemption paid into the Sterling Corporate Services nominated bank account for the purpose of paying any rent that is due and which has not been paid; and
  - (iv) do anything and to execute any document for any of the purposes set out in cl 2.3(b)(i), (ii) and (iii) as fully and effectually as the tenant could do.
- (5) By cl 2.4 the tenant authorises Sterling Corporate Services to pay the rent monthly in arrears during the term out of the money held in the Sterling Corporate Services nominated bank account in accordance with cl 2.<sup>75</sup>
- (6) By cl 2.5 the tenant irrevocably authorises and directs Sterling Corporate Services to deal with each distribution from the tenant's units received by Sterling Corporate Services into the Sterling Corporate Services nominated bank account; first, to pay any rent that is due and which has not been paid.<sup>76</sup>
- (7) Clause 2.7 provides, when the definition of 'Sterling New Life Lease' and 'rent' are read in where they first appear:<sup>77</sup>

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<sup>74</sup> Exhibit A, Tab 27, 292.

<sup>75</sup> Exhibit A, Tab 27, 293.

<sup>76</sup> Exhibit A, Tab 27, 293.

<sup>77</sup> Exhibit A, Tab 27, 294.

Despite any provision to the contrary contained in this deed or the Sterling New Life Lease (being the residential tenancy agreement in respect of the Residential Premises entered into between the Landlord as lessor and the Tenant as tenant dated on or about the date of this deed):

- (a) the liability of the Tenant to pay the Rent (being the rent by the Tenant (as tenant) under the Sterling New Life Lease) under the Sterling New Life Lease is limited to the payments made pursuant to the distribution from the Tenant's Units or the redemption of the Tenant's Units under clauses 2.5(a)(i), 2.5(a)(ii) and 2.5(b)(i) (**Distribution and Redemption Payments**); and
  - (b) if there is a shortfall between the amount of the Distribution and Redemption Payments and the amount of the Rent, the Tenant is not liable to pay that shortfall.
- (8) By cl 3.1 the tenant acknowledges that the landlord recommended to the tenant that the tenant obtain independent legal and financial advice prior to entering into the deed and the Sterling New Life Lease, and the tenant has had the opportunity to obtain that independent legal and financial advice.

84 The material terms of the lease executed by the parties in Part D - Special Conditions are as follows:

- (1) Clause 1.1 defines terms used in the special conditions.<sup>78</sup>
- (2) Clause 2(a) provides that the special conditions in this Part D are incorporated in and form part of this agreement.
- (3) Clause 2(b) provides in the event of any inconsistency between a standard term (defined in cl 1.1 as a provision of the tenancy agreement in Part A; the standard terms in Part B; and the additional terms in Part C, of this agreement) and a special condition in this Part D, the special condition will prevail to the extent of that inconsistency.
- (4) Clause 3 provides that despite any provision to the contrary in this agreement, the term (defined in cl 1.1 as the term of this agreement being a period of five years commencing on the starting date and, subject to special condition 3, ending on the

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<sup>78</sup> Exhibit A, Tab 28, 315.

end date specified in the tenancy agreement) will end on the earliest of:

...

- (b) where the tenant is more than one person, the date of death of the last survivor of the tenant; and
- (c) the date on which the Term ends upon a lawful termination of this agreement either pursuant to this agreement or the Act.

#### **4.3 The construction of the terms of the lease as construed by the legislative effect of s 27A and s 82 of the *Residential Tenancies Act***

85 Any act done under subsidiary legislation shall be deemed to be done under the written law under which the subsidiary legislation was made.<sup>79</sup>

86 Although the terms set out in Part D are defined and described as special conditions, because of the operative effect of s 27A and s 82 of the *Residential Tenancies Act*, which prohibit any written residential tenancy agreement except in the prescribed form, and Part C of Form 1AA, which prescribes, among other matters, that additional terms may be included in an agreement and expressly provides that the effect of the additional terms is to yield to any inconsistency with the provisions of the *Residential Tenancies Act*, the *Residential Tenancies Regulations* and the standard terms (in the form prescribed in Part B of Form 1AA), it necessarily follows that the special conditions set out in Part D and the Payment Direction Deed can only be properly characterised as additional terms of the lease.

87 Pursuant to s 82 of the *Residential Tenancies Act*, cl 2(b) of Part D, of the lease which provides that in the event of any inconsistency between a standard term (insofar as a standard term is defined in cl 1.1 of Part D to include, among other terms, the standard terms in Part B) and a special condition in Part D, the special condition will prevail to the extent of that inconsistency, is void and of no effect. However, the legislative consequences of the operation of s 27A and s 82 of the *Residential Tenancies Act* in respect of the special conditions in Part D are not determinative of the issues to be determined in these proceedings.

<sup>79</sup> *Interpretation Act 1984* (WA) s 47.

88 Although there is no express provision in the Payment Direction Deed that provides that the terms of the deed are to prevail to the extent of any inconsistency, the legislative consequences of the operation of s 27A and s 82 of the *Residential Tenancies Act* are to the effect that any term of the Payment Direction Deed that is inconsistent with or purports to exclude, modify or restrict the operation of, or purports to waive a right under the prescribed terms of a residential tenancy agreement in Form 1AA is void and of no effect.

89 It is clear that the Payment Direction Deed only forms part of the terms of the lease as additional terms annexed to Part C of the lease. Although the Payment Direction Deed is referred to in Part A of the lease, no terms of the Payment Direction Deed are incorporated into Part A.

90 Further, because the terms of the Payment Direction Deed can only take effect as additional terms (within the meaning of what can be agreed to as additional terms by operation of Part C of Form 1AA) because of the legislative effect of s 27A and s 82 of the *Residential Tenancies Act*, no term of the Payment Direction Deed can prevail over any standard term in the case of any inconsistency between a standard term and a term of the Payment Direction Deed.

#### **4.4 Was the execution of the options by the parties on 26 July 2017 effective to extend the term of the lease from 5 years to 40 years?**

91 Where parties expressly incorporate terms into a contract, the incorporated terms must be construed as if they had been written out in full in the contract, and accordingly must be construed in the context of the contract into which they have been incorporated.<sup>80</sup>

92 An option to extend a tenancy must be exercised in exact compliance with its terms.<sup>81</sup>

93 Each of the seven Option to Renew and Notice of Exercise of Option to Renew documents are incorporated into the lease as annexures to Part C, so consequently they each take effect as additional terms. No issue of contracting out of the provisions of the *Residential Tenancies Act* or the *Residential Tenancies Regulations* arises in respect of either the form of these documents or the exercise of these documents at the time the lease was entered into. This is because the

<sup>80</sup> Lewison K and Hughes D, *The Interpretation of Contracts* (2012), 81 [3.09].

<sup>81</sup> *Phillips Fox (A Firm) v Westgold Resources NL* [2000] WASC 85 [60] - [63] (White J; Owen & Parker JJ agreeing).

exercise of an option or options to extend the terms of a lease is not the subject matter of any provision of the *Residential Tenancies Act* or the *Residential Tenancies Regulations*.

94        The express terms of each of the options to renew the lease created two preconditions that the defendants had to meet for the exercise of each of the options to renew to be effective.

95        The first precondition to exercise the first, and each subsequent, option is, at the time of the exercise of the option, the defendants must not have committed a breach of the lease that had resulted in Mr Soussa or his agent (Rental Management Australia or its sub-agent Sterling First Projects) serving a breach notice on the defendants.

96        The second precondition to exercise the first, and each subsequent, option is that a written notice of exercise of the option must be given to Mr Soussa's agent by the time specified in each Option to Renew document (being by 4.00 pm on 25 July 2022 in respect of the first Option to Renew).

97        It is not in dispute that the defendants executed each of the options at the same time they executed all of the documents forming the lease. It is their evidence that when they executed the documents the only other person present was Mr Ryan Jones. However, on the face of each of the Option to Renew documents, together with all of the other documents forming the lease documents, is the signature of Ms Hope, an employee of Rental Management Australia, who has signed each document as an agent for Mr Soussa. The date '26 July 2017' is next to her signature, being the same date that the defendants executed all of the documents forming the lease. However, whether she signed the documents before or after the defendants is not known.

98        As senior counsel for the defendants points out, the time stipulation only applies to the second, and not the first precondition.

99        It is not in dispute that the defendants executed each of the options to renew and notices prior to taking possession of the Harrisdale property. The question that arises in light of this fact is whether the first precondition could have been met by the defendants, which required them to have not committed a breach of the lease that has resulted in service of the breach notice on them prior to the exercise of the option. Put another way, is the effect of the first precondition that no steps could be taken to exercise an Option to Renew until the defendants, as the tenant, had taken possession of the property?

100 One construction that is open is that to satisfy the first precondition it must be found only as a matter of fact that no notice of breach of the lease had been served on the defendants at the time they exercised the option. On the facts before the court, at the time of the exercise of the option no notice of breach had been served, and although the defendants had not entered into possession of the Harrisdale property, on execution of the lease by both of the parties, including the options, the precondition had been met, because the lease had commenced, and the defendants were not in breach of the lease when they exercised the options.

101 An argument is put on behalf of Mr Soussa that even if this construction is accepted, none of the options to renew could be exercised until after the initial five year term of the lease had commenced. However, the terms of the options to renew, including the giving of a written notice to renew, do not specify that each option could not be exercised at the same time the lease was entered into by the defendants. It is a term of each of the options to renew that written notice simply be given to Mr Soussa's agent by a specified date, defined in each Option to Renew as the 'Option Expiry Time'. On the facts before the court, clearly notice to exercise each of the options was given and received by Mr Soussa's agent well before each of the specified dates specified as the 'Option Expiry Time' in each of the Option to Renew documents.

102 For this reason, it is also clear that the second precondition for the exercise of each of the options to renew was satisfied, as Mr Soussa's agent, Ms Hope, signed each Option to Renew on 26 July 2017.

103 The second construction of the first precondition that is open is that even if the first precondition could not be met until the defendants entered into possession of the Harrisdale property, as senior counsel points out on behalf of the defendants, it was open for Mr Soussa as lessor to waive the condition.

104 Although the defendants have not specifically pleaded waiver of the first precondition, it is open to the defendants to raise the issue at trial because it is not pleaded by the plaintiff that the exercise of the options was not effective.

105 It is a common condition of the exercise of an option to extend the lease that the tenant has complied with the terms of the lease and has



not breached the lease. However, such a condition is capable of waiver by a lessor.<sup>82</sup>

106 On the facts before the court, on the executing of the lease by Ms Hope on behalf of Mr Soussa, including the options that expressly formed part of the additional conditions in Part C of the lease (which also had the effect of delivery of the notices by 4.00 pm on 25 July 2022 to Mr Soussa's agent, Rental Management Australia), the first precondition was waived.<sup>83</sup>

107 I do not find it necessary to decide which construction of the first precondition should be preferred because, on the facts, I am satisfied that irrespective of which construction is correct, the first precondition had been satisfied.

108 For these reasons, I find that on 26 July 2017, the parties entered into a lease for the Harrisdale property for a term of 40 years.

**4.5 Does the fact that Mr Soussa has received no payments of rent for the Harrisdale property since 23 March 2019 entitle him to issue an effective notice to terminate the lease?**

109 The defendants argue the effect of the terms of the lease, in particular the tripartite agreement comprising the Payment Direction Deed between the defendants, Mr Soussa and Sterling Corporate Services, is that once the defendants had completed their obligation to pay the investment amount into the fund managed by Sterling Corporate Services (the Sterling Investment Trust), the defendants had discharged all of their obligations in respect of the payment of rent for the whole of the 40 year term of the lease. Thereafter, the defendants say Sterling Corporate Services assumed the obligation to make the rental payments for them, and the defendants' liability was and is expressly limited to payments out of the Sterling Investment Trust, pursuant to cl 2.7(a) of the Payment Direction Deed. Further, they contend if there is no money left in the Sterling Investment Trust from which funds can be distributed, and their units in the trust redeemed, then there is no obligation on them or anyone to pay rent. In these circumstances, the defendants claim that it necessarily follows that there has been no breach of the lease.

<sup>82</sup> *Health Partners Incorporated v Gonos* (1996) 67 SASR 338 (Matheson J).

<sup>83</sup> No issue is raised in these proceedings on behalf of Mr Soussa that Rental Management Australia had not been given each of the notices of exercise of option, as required by the second precondition for the exercise of the options.

SMITH J

110 In particular, it is argued that cl 2.7 of the Payment Direction Deed expressly limits the defendants' contractual obligation under the lease to pay rent and stipulates that in the event that there is any shortfall between the amounts paid out of the Sterling Investment Fund on the one hand and the rent stipulated by the lease to be paid on the other hand, then the defendants are not liable to pay the shortfall.

111 However, the effect of the standard term in Part B in cl 3 of the lease is that the defendants, as the tenant, must pay rent on time or Mr Soussa, as the lessor, may issue a notice of termination and, if the rent is still not paid in full, Mr Soussa may take action through the court to evict the defendants.

112 Because this clause is a standard term prescribed as such by Part B of Form 1AA, the effect of s 27A and s 82(1)(b) of the *Residential Tenancies Act* is that the right conferred on Mr Soussa as the lessor of the Harrisdale property by the standard term in cl 3 of Part B of the lease cannot be waived by any other agreement or arrangement. In addition, to the extent that cl 2.7 of the Payment Direction Deed is inconsistent with this right, or purports to exclude, modify or restrict the operation of the standard term in cl 3, pursuant to s 82(1)(a) of the *Residential Tenancies Act*, cl 2.7 must be construed as void and of no effect.

113 The effect of the Payment Direction Deed cannot be construed so as to discharge the obligation on the defendants to make payments of rent to Mr Soussa.

114 Clause 2.4 and cl 2.5 of the Payment Direction Deed authorised Sterling Corporate Services to pay the rent monthly in arrears during the term of the lease out of the money held in the Sterling Corporate Services nominated bank account in accordance with cl 2, and pursuant to cl 2.3(b)(iii) and cl 2.3(b)(iv) the defendants appointed Sterling Corporate Services to be their attorney. In the context that the word 'attorney' is used in the Payment Direction Deed it can only be properly construed as an appointment as the defendants' agent to do anything as fully and effectually as the defendants could do for the purpose of paying any rent that is due and which has not been paid. In the capacity of attorney, the failure of Sterling Corporate Services to pay rent to Mr Soussa since on or about 23 March 2019 is at law a failure of the defendants to pay rent on time to Mr Soussa as required by cl 3 of the Standard Terms in Part B of the lease (and as required by s 27A and

s 82 of the *Residential Tenancies Act* and reg 10AA(a) of the *Residential Tenancies Regulations*.

115       The defendants did not pay the entire amount of rent payable under the terms of the lease upfront to Mr Soussa. The effect of the terms of the Payment Direction Deed is simply that it is a term of the lease that the investment amount would be paid by the defendants into the Sterling Investment Fund by making a payment of that amount into the bank account administered by Sterling Corporate Services and that rent payments are to be paid to Mr Soussa by Sterling Corporate Services as and when they fall due on behalf of the defendants from distributions and proceeds of any redemption of the defendants' units in the Sterling Investment Fund. This construction is consistent with cl 2.4 of the Payment Direction Deed, which requires payments of rent monthly in arrears during the term.

116       It cannot be found that the terms of the Payment Direction Deed discharged the obligation of the defendants under the terms of the lease to pay rent if there are no funds left in the Sterling Income Trust to make the monthly payments of rent. Such a construction, if accepted would raise a direct inconsistency with the obligation in the standard term in cl 3 of Part B of the lease that the defendants must pay rent on time or Mr Soussa may issue a notice of termination, and, if the rent is still not paid in full, Mr Soussa may take action through the court to evict the defendants. The effect of the direct inconsistency is that pursuant to s 27A and s 82 of the *Residential Tenancies Act* to this extent, cl 2.7 of the Payment Direction Deed is void and of no effect.

117       The standard term in cl 3 of Part B of the lease has the effect of entitling Mr Soussa to terminate the lease by issuing a notice of termination. This term of the lease, however, does not on its own entitle Mr Soussa to recover any arrears of rent, and to this extent no inconsistency arises between the standard term in cl 3 of Part B of the lease and cl 2.7 of the Payment Direction Deed. In particular, the term in cl 2.7(b) that the defendants are not liable to pay any shortfall owing in rent from distribution and redemption payments, is not inconsistent with cl 3 of Part B of the lease. Consequently, pursuant to cl 2.7 of the Payment Direction Deed, the defendants cannot be found liable to Mr Soussa for arrears of rent owing since 23 March 2019, and continuing.

118       For these reasons, I find that the notice of termination for non-payment of rent issued by Mr Soussa to the defendants requiring vacant

possession by 22 October 2019 was effective. However, despite the fact that the notice of termination is valid, the operative effect of cl 2.7 of the Payment Direction Deed continues. Consequently, Mr Soussa is not entitled to recover any outstanding rent, which includes amounts claimed as outstanding rent post 22 October 2019.

119 However, Mr Soussa is not entitled to an order terminating the lease from 22 October 2019 if the defendants' defence and counterclaim of estoppel by conduct or representation succeeds.

## **5.0 The defendants' defence and counterclaim of estoppel by conduct or representation**

### **5.1 The defendants' pleaded case of estoppel by conduct or representation**

120 The defendants' plea of estoppel by conduct or representation is set out in pars 18 to 20 of the amended defence and counterclaim as follows:

#### **Estoppel by conduct or representation**

18 If, which is denied, the Lease and the Payment Direction Deed are not binding and enforceable on the Plaintiff, then the Defendants rely on the facts, matters and circumstances pleaded in paragraphs 7(a) - (d) and 8(a) - (c) above.

19 At all material times from 17 July 2017, the Plaintiff has acted as landlord of the Property, in the premises, in accordance with the Lease and the Payment Direction Deed.

20 By reason of the matters pleaded in paragraphs 6(c), 8(a)-(c), 18 and 19 above and oral and written representations made for and on behalf of the Plaintiff, the Defendants reasonably expected, and the Plaintiff induced an assumption to be held on the part of the Defendants, which were elements of the SNL Lease scheme, that:

- (a) the Property was available to be leased by the Defendants on the terms of an SNL Lease;
- (b) the Defendants would have security of tenure over the Property as lessees under the Lease, or alternatively under the terms set out in the Lease, for a period of 40 years, if the options to renew were so exercised;
- (c) the Plaintiff was legally bound by the Lease, or alternatively under the terms set out in the Lease, and

by the Payment Direction Deed for a period of 40 years if the options to renew were so exercised;

- (d) apart from paying an initial upfront Lump Sum Amount to the Sterling Group, the Defendants would not be required to pay any further rent, fees, or any other cash contributions in respect of the Property for a period of 40 years if the options to renew were so exercised;
- (e) the initial upfront Lump Sum Amount would be paid into a registered managed investment fund to be managed by the Sterling Group;
- (f) any Rent due to the Plaintiff which was not paid out of income distributions from the Sterling Income Trust would be paid from future income distributions or from the redemption of the Defendants' initial upfront Lump Sum Amount;
- (g) in the event that SCS became insolvent or was not otherwise able to pay the Rent, the Plaintiff would bear that risk;
- (h) the Plaintiff could not unreasonably evict the Defendants and at no time could the Defendants be asked to make a cash contribution to pay any Rent shortfall to the Plaintiff;
- (i) the Defendants would receive the return of their initial upfront Lump Sum Amount in full upon 180 days' written notice from the Defendants and termination of their leasehold interest; and
- (j) the Property would be managed by RMA for a period of 40 years if the options to renew were so exercised,

**(Assumptions).**

#### **Particulars of the Assumptions**

The Assumptions were express contained in the following documents provided by the Plaintiff or his agent to the Defendants:

- (a) the Lease;
- (b) the Sterling New Life Property Investor PowerPoint;
- (c) the Sterling New Life Investor Summary; and

(d) the Sterling New Life Frequently Asked Questions document,

or alternatively, implied having regard to those documents.

## 5.2 Principles - Estoppel by conduct and promissory estoppel

121 The plea in par 18 of the amended defence and counterclaim is understood to be a plea that if the proper construction of cl 2.7 of the Payment Direction Deed is found not to operate as a bar to the right of Mr Soussa to terminate the lease on grounds of non-payment of rent, then the defendants plead in defence and make a counterclaim of estoppel by conduct or representation.

122 The defendants' estoppel case is put on the basis that Mr Soussa is estopped from denying the assumed state of affairs on which the parties have conducted themselves, being that the defendants were to pay \$241,500 to obtain a 40 year lease over the Harrisdale property, and were not required to make any further rental payments for the term of the lease, for any reason.

123 In the defendants' outline of submissions for trial, filed on 3 February 2021, the defendants' estoppel case is put on the basis of estoppel by conduct or representation. However, in oral submissions, senior counsel for the defendants made submissions to the effect that their estoppel claim is a claim of promissory estoppel.

### 5.2.1 Estoppel by conduct (representation)

124 Estoppel by conduct, also known as estoppel by representation, is the encouragement by a representation, which constitutes a promise, that has been relied on by the promisee, and which promise results in a detrimental change of position (by the promisee).

125 The elements to create an estoppel by conduct are:<sup>84</sup>

- (1) a statement or other conduct that constitutes a representation of fact;
- (2) its communication to the representee;
- (3) the representee's justifiable belief in its truth and their alteration of position in that belief;

<sup>84</sup> Handley K R, *Estoppel by Conduct and Election* (2nd ed), 3 [1-006].

- (4) an attempt by the representor to contradict their representation; and
- (5) prejudice to the representee as a result of their alteration of position if contradiction of the representation were permitted.

126 To establish estoppel by conduct it is not necessary for the representee (the person who claims that the other party, the representor, should be estopped) to prove that the conduct of the representor was the sole inducement operating on the representee's mind.<sup>85</sup>

127 The question is whether the conduct of the representee was so influenced by the encouragement or representation made by the representor that it would be unconscionable for the representor thereafter to enforce their strict legal rights. Similarly, it is sufficient to show that the representation was a significant factor which the representee took into account when deciding whether to act as they did.<sup>86</sup>

### 5.2.2 *Promissory estoppel*

128 The principles of promissory estoppel were recently set out by Quinlan CJ and Vaughan JA in *Wilson v Arwon Finance Pty Ltd* as follows:<sup>87</sup>

The doctrine of equitable promissory estoppel operates to prevent a party (who we will refer to as the 'charged party') unconscientiously departing from an assumption or expectation which it has induced another party (who we will refer to as the 'claimant') to adopt and to act in reliance on to its detriment. This court has previously approved the following summary of the principle:

'[F]or there to be an equitable estoppel there must be the creation or encouragement of an assumption that a contract will come into existence or a promise be performed, and reliance upon that promise in circumstances where departure from the assumption by the [charged party] would be unconscionable.'

Equitable estoppels (promissory and proprietary) are distinguished from common law estoppels by the circumstance that equitable estoppel is

<sup>85</sup> *Sidhu v Van Dyke* [2014] HCA 19; (2014) 251 CLR 505 [72] (French CJ, Kiefel, Bell & Keane JJ), applying *Amalgamated Investment & Property Co Ltd (In liq) v Texas Commerce International Bank Ltd* [1982] QB 84, 104 - 105 (Robert Goff J).

<sup>86</sup> *Sidhu v Van Dyke* [2014] HCA 19; (2014) 251 CLR 505 [72] - [73] (French CJ, Kiefel, Bell & Keane JJ); applying the observations of Robert Goff J in *Amalgamated Investment & Property Co Ltd (In liq) v Texas Commerce International Bank Ltd* [1982] QB 84, 104 - 105 and Neuberger LJ in *Steria Ltd v Hutchison* [2007] ICR 445 at 465 [117].

<sup>87</sup> *Wilson v Arwon Finance Pty Ltd* [2020] WASC 137 [82] - [88] (footnotes omitted).

concerned with conscience - in particular with the prevention of unconscionable insistence on strict legal rights. Thus it is said that the equitable doctrines result in new rights between the parties when it is unconscionable for a party to rely on his or her strict legal rights. Nettle J has explained that the 'foundational principle on which equitable estoppel in all its forms is grounded is that equity will not permit an unjust or unconscionable departure from an assumption or expectation of fact or law, present or future, which that party has caused another party to adopt for the purpose of their legal relations'.

Equitable estoppel has its basis in unconscionable or unconscientious conduct - and preventing the suffering of detriment occasioned thereby - rather than making good assumptions or expectations or bringing about the enforcement of promises. It is grounded in the body of equitable doctrine that prevents unconscientious assertion of claimed legal rights. The fundamental object of equitable estoppel is to protect a claimant against unjust detriment which would flow from the charged party's change of position if the charged party were permitted to depart from an assumption or expectation held by the claimant as induced by the charged party's representation or conduct. It is the action or inaction of the claimant as induced by the charged party which is the foundation for equitable intervention as '[i]t is not the breach of promise, but the promisor's responsibility for the detrimental reliance by the promisee, which makes it unconscionable for the promisor to resile from his or her promise'. So understood, detriment is relevant both in establishing the basis for the estoppel and in determining the appropriate relief. It also demonstrates that, while distinct concepts, there is a relationship between detriment and unconscionability.

More is required than simply a representation or conduct on the part of the charged party that induces the claimant to hold an assumption or expectation. A mere broken promise will not suffice. In *Waltons Stores (Interstate) Ltd v Maher* Mason CJ and Wilson J stated:

'[T]he doctrine of promissory estoppel ... extends to the enforcement of voluntary promises on the footing that a departure from the basic assumptions underlying the transaction between the parties must be unconscionable. As failure to fulfil a promise does not of itself amount to unconscionable conduct, mere reliance on an executory promise to do something, resulting in the promisee [ie the claimant] changing his position or suffering detriment, does not bring promissory estoppel into play. Something more would be required ... this may be found ... in the creation or encouragement by the party estopped [ie the charged party] in the other party of an assumption that a contract will come into existence or a promise will be performed and that the other party relied on that assumption to his detriment to the knowledge of the first party.'



In *Waltons Stores (Interstate) Ltd v Maher* four members of the High Court accepted that the elements of reliance and detriment may attract equitable intervention if it is unconscionable for a charged party to depart from an assumption or expectation he or she induced in the claimant. More recently, Keane J has explained that, as the charged party is responsible for creating the assumption or expectation on which the claimant acted, an estoppel arises to prevent the claimant suffering a detriment. So too Nettle J has emphasised the criticality of whether the charged party has played such a part in creating the assumption or expectation, in reliance on which the claimant has acted to his or her detriment, that it would be unconscionable for the charged party to depart from the assumption or expectation.

The determination of whether it is unconscionable for the charged party to depart from an assumption or expectation created in the mind of the claimant depends on the facts and circumstances of the case.

In Western Australia it has been fashionable to identify the requirements for the doctrine of promissory estoppel by reference to a re-formulated paraphrasing of the criteria enunciated by Brennan J in *Waltons Stores (Interstate) Ltd v Maher*. They are:

1. The plaintiff [ie the claimant] has assumed that a particular legal relationship then existed between the plaintiff and the defendant [ie the charged party] or has expected that a particular relationship would exist between them and, in the latter case, that the defendant would not be free to withdraw from the expected legal relationship.
2. The defendant has induced the plaintiff to adopt that assumption or expectation.
3. The plaintiff has acted or abstained from acting in reliance on the assumption or expectation.
4. The defendant knew or intended him to do so.
5. The plaintiff's action or inaction will occasion detriment if the assumption or expectation is not fulfilled.
6. The defendant has failed to act to avoid that detriment whether by fulfilling the assumption or expectation or otherwise.

129 Nettle J in *Crown Melbourne Ltd v Metropolitan Hotel (Vic) Pty Ltd* pointed out that it is established that what is determinative in cases of promissory estoppel is whether the party sought to be estopped has played such a part in creating an assumption or expectation in the mind of a claimant, in reliance on which the claimant has acted to the

claimant's detriment, that it would be unconscionable for the estopped party to be left free to ignore that assumption or understanding.<sup>88</sup>

### 5.2.3 *Common and distinguishing features of estoppel by conduct and promissory estoppel*

130 Promissory estoppel and estoppel by conduct are each separate and distinct, but they do share common features. Relevantly, promissory estoppel and estoppel by conduct share the feature that it must be found that a representation has been made by a representor to a representee that they rely on or that the representor makes a representation that a given state of facts exists, in respect of which the representee relies.

131 Estoppel by conduct is a species of estoppel that arises at common law and in equity. The distinction is that, at common law, estoppel by conduct operates upon a representation of existing fact, whereas equitable estoppel operates upon representations or promises as to future conduct, including promises about legal relations.<sup>89</sup> The remedies also differ. The consequence that flows from a finding of common law estoppel is that the establishment of the estoppel entitles the successful party to relief, the effect of which is to hold the representor to the representation or promise. The relief following the establishment of an equitable estoppel is directed at avoiding the detriment, so that the representor may be required to make good the promise, but the relief is to be proportionate to the detriment and may therefore be less than would be the case were it aimed at enforcing the promise.<sup>90</sup>

132 Counsel for Mr Soussa argues that estoppel can only be used as a 'shield and not as a sword'. However, the metaphor does not have the effect that the operation of any of these species of estoppel cannot restrain the enforcement of contractual rights by a representor.<sup>91</sup>

133 Responsibility for the representee's adoption of an assumption is the threshold issue for each of these species of estoppel, to be determined by reference to the causative effect of the representor's conduct that is claimed to have induced the adoption of the assumption.

<sup>88</sup> *Crown Melbourne Ltd v Metropolitan Hotel (Vic) Pty Ltd* [2016] HCA 26; (2016) 260 CLR 1 [217] and [221]; see also the authorities cited therein.

<sup>89</sup> *Waltons Stores (Interstate) Ltd v Maher* [1988] HCA 7; (1988) 164 CLR 387, 458 (Gaudron J)

<sup>90</sup> *Bell Group Ltd (In liq) v Westpac Banking Corporation [No 9]* [2008] WASC 239; (2008) 39 WAR 1 [3542] - [3543], [3551] - [3552] (Owen J); and the authorities cited therein.

<sup>91</sup> Heydon JD, Leeming MJ and P G Turner, *Meagher, Gummow and Lehane's Equity Doctrines & Remedies* (6th ed) [17-270] - [17-275].

The threshold issue is a factual enquiry, requiring the representee to prove that the representor caused the representee to adopt the assumption, upon which the representee relied to their detriment. In this respect, unconscionability must be found to arise from the representor's conduct for equitable estoppel to be found.

134 In *Waltons Stores (Interstate) Ltd v Maher*, Gaudron J said:<sup>92</sup>

Because common law or evidentiary estoppel operates by precluding the assertion of facts inconsistent with an assumed fact, the assumption must necessarily be as to an existing fact and not as to a future event.

However, the assumption that contracts would be exchanged is also an assumption as to future rights. An assumption as to a future right may provide the basis for the operation of an equitable estoppel, as is clear from *Ramsden v Dyson*; *Salvation Army Trustee Co Ltd v West Yorkshire Metropolitan County Council* and *Bank Negara Indonesia v Philip Hoalim*.

Whether an assumption as to a future contractual right will found an equitable estoppel may depend on whether proprietary estoppel and promissory estoppel are discrete categories of equitable estoppel based on definitional differences as to the circumstances in which they operate or are merely illustrative of different assumptions as to rights (eg, an assumption as to a right possessed or to be possessed as distinct from an assumption as to the manner in which a right possessed or to be possessed by another will be exercised) and the different ways in which adherence to those different assumptions will be compelled. In *Crabb*, Scarman LJ appears to have favoured the latter view saying:

'If the plaintiff has any right, it is an equity arising out of the conduct and relationship of the parties. In such a case I think it is now well settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?'

...

In *Grundt v Great Boulder Pty Gold Mines Ltd*, Dixon J explained that the justice of an estoppel depends not only on 'the fact ... that a state of affairs has been assumed as the basis of action or inaction and that a departure from the assumption would turn the action or inaction into a detrimental change of position' but also 'on the manner in which the assumption has been occasioned or induced'. His Honour observed:

<sup>92</sup> *Waltons Stores (Interstate) Ltd v Maher* [1988] HCA 7; (1988) 164 CLR 387, 459 - 460 (footnotes omitted).

'Before anyone can be estopped, he must have played such a part in the adoption of the assumption that it would be unfair or unjust if he were left free to ignore it.'

135 Consequently, for unconscionable conduct to be made out, the existence of a mere assumption alone is not sufficient, nor will merely showing that a promise has been, or will be, departed from satisfy the requirement of unconscionability. There must be something more to bring promissory estoppel into play.<sup>93</sup>

136 In these proceedings, the defendants' claim of estoppel by conduct is a claim that they were induced by Mr Soussa, acting through his agents, to adopt and act upon assumptions going to the consequences of non-payment of rent to Mr Soussa for the whole of the term of the 40 year lease, which encompasses assumptions of holding parties to the facts promised and as to future conduct, which for the claim they make in estoppel must necessarily arise from the principles that apply to equitable estoppel.

137 Before considering the application of the relevant type of estoppel to the evidence, the objections to the admissibility of particular evidence going to representations made to the defendants by Mr Ryan Jones and the matters pleaded in these proceedings must first be considered and determined.

### **5.3 Objections to the admissibility of evidence relevant to the amended defence and counterclaim that relies upon estoppel by conduct or promissory estoppel**

138 Objections are made to the evidence of Mr and Mrs Thomas in respect of their evidence of the representations made to them by Mr Ryan Jones, and the admissibility of the ASIC Current & Historical Organisation Extract of Company Officers for Sterling First Projects Pty Ltd (ASIC Extract), which records that Mr Ryan Jones was, at the time the representations were made to them, a director of Sterling First Projects.

139 The core issue relating to the objections to this evidence is whether when Mr Ryan Jones met with the defendants on 26 July 2017 at his office he made representations to them that were binding on Mr Soussa because he made those representations in his capacity as an agent of Mr Soussa.

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<sup>93</sup> *Waltons Stores (Interstate) Ltd v Maher* [1988] HCA 7; (1988) 164 CLR 387, 406 (Mason CJ & Wilson J).

*SMITH J*

140 The defendants claim that the representations made by Mr Ryan Jones at the meeting must at law bind Mr Soussa because he was at that time a director of Sterling First Projects Pty Ltd, who had been appointed as a sub-agent of Rental Management Australia, pursuant to the terms of the Exclusive Management Authority for Residential Premises entered into by Mr Soussa on 17 July 2017, 'to procure a Sterling New Life Lease Lessee'.<sup>94</sup>

141 Prior to Mr and Mrs Thomas giving evidence, objections were made on grounds of relevance to the parts of their witness statements that set out the content of a conversation they had with Mr Ryan Jones at his office on 26 July 2017 when they met with him and signed all of the documents comprising the Sterling New Life Lease, the Sterling Income Trust application and the Rental Subsidy Agreement. In particular, it is argued that any representations made by Mr Ryan Jones at that meeting are not relevant to the pleaded representations and assumptions in par 20 of the amended defence and counterclaim. A submission was also made that even if it is found that this evidence is relevant to the matters pleaded in par 20 that the evidence should not be admitted, as to do so at this late stage would be prejudicial to Mr Soussa.

142 Mr Soussa objects to the admission of the evidence of the conversation that Mr Ryan Jones had with the defendants on 26 July 2017, on grounds that it is inadmissible and that even if it is admissible it should not be admitted together with the ASIC Extract on grounds that he would suffer irremediable prejudice, because:

- (a) in respect of the ASIC Extract, the parties conferred and agreed the documents that would be before the court in the trial bundle, and this was not a document included in the bundle;
- (b) it is not pleaded that any representations were made to Mr and Mrs Thomas, on behalf of Mr Soussa, by a sub-agent to Rental Management Australia;
- (c) the defendants should not have an opportunity to improve their case that representations were made to Mr and Mrs Thomas by an agent of Mr Soussa; and
- (d) the ASIC Extract was sought to be tendered into evidence after the close of Mr Soussa's case and, in these circumstances,

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<sup>94</sup> Exhibit A, Tab 20, 228.

Mr Soussa has been precluded from making enquiries of Mr Ryan Jones about whether he made any representations to Mr and Mrs Thomas and, if so, in what capacity did he do so.

143 After hearing submissions by counsel, the ASIC Extract was marked for identification,<sup>95</sup> pending determination regarding whether the document should be admitted into evidence.

**5.4 The evidence of the oral representations is admissible, and the defendants' evidence about the oral representations, and the ASIC Extract should be admitted into evidence**

144 The evidence of Mr and Mrs Thomas about what Mr Ryan Jones said to them, in particular the oral representations made to each of them at the meeting on 26 July 2017, is admissible evidence insofar as that evidence is relevant to the defendants' plea in the defence and counterclaim of estoppel by conduct or promissory estoppel. It should be noted, however, that their evidence about what was said is not admissible in respect of the breach of contract claim made by Mr Soussa, as it is evidence going to the subjective intention of the parties and cannot be admissible for the purpose of construction of the terms of the agreements entered into by the parties.

145 Counsel for Mr Soussa made a submission that it is not part of the pleaded case of the defendants that Mr Ryan Jones was in any way involved in procuring the defendants to enter into the Sterling New Life Lease in the capacity as an agent of Mr Soussa, or that he made any representations on behalf of Mr Soussa. Clearly, an analysis of the defendants' plea of estoppel and the evidence of the contractual documents executed for, and on behalf of, the parties does not support this submission.

146 First, having executed the Exclusive Management Authority for Residential Premises agreement on 17 July 2017, appointing Rental Management Australia the property manager for the Harrisdale property for a term from 17 July 2017 to 16 July 2057, it cannot be disputed that Mr Soussa was bound by the condition in item 13 authorising Sterling First Projects as sub-agent to Rental Management Australia.

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<sup>95</sup> MFI 1.

SMITH J

147 The effect of expressly appointing Sterling First Projects as a  
sub-agent to Rental Management Australia is at law long established  
and uncontroversial.<sup>96</sup>

148 The effect of Mr Soussa executing the Exclusive Management  
Authority for Residential Premises agreement on 17 July 2017 is that  
the legal relationship of privity of agency between the principal,  
Mr Soussa, and the sub-agent, Sterling First Projects, was created. This  
is because Mr Soussa authorised Sterling First Projects to act as the  
sub-agent of Rental Management Australia, which then, in turn,  
provided Sterling First Projects the authority to bind Mr Soussa to the  
acts within the scope of the express terms of the Exclusive Management  
Authority for Residential Premises agreement, as if the acts of Sterling  
First Projects were the acts of Rental Management Australia.

149 Second, the reason why the evidence of the representations is  
admissible is that the evidence given by each of the defendants as to the  
representations is plainly relevant to the matters pleaded in par 20 of  
the amended defence and counterclaim.

150 In par 20 of the amended defence and counterclaim, it is pleaded  
that oral and written representations were made for and on behalf of  
Mr Soussa, and by reason of these representations the defendants  
reasonably expected, and Mr Soussa induced, an assumption to be held  
on behalf of the defendants of the matters pleaded in subparagraphs (a)  
to (j) of par 20. In particular, it is pleaded that the oral and written  
representations induced the assumptions (which were elements of the  
Sterling New Life Lease scheme) in:

- (a) paragraph 20(b), the defendants would have security of tenure  
over the Harrisdale property as lessees, under the lease;
- (b) paragraph 20(d), that apart from paying an initial upfront lump  
sum amount to the Sterling Group, the defendants would not be  
required to pay any further rent, fees, or any other cash  
contributions in respect of the property for a period of 40 years  
if the options to renew were so exercised;
- (c) paragraph 20(f), any rent due to Mr Soussa which was not paid  
out of income distributions from the Sterling Income Trust  
would be paid from future income distributions or redemption  
from their initial lump sum amount;

<sup>96</sup> *De Bussche v Alt* (1878) 8 Ch D 286, 311.

- (d) paragraph 20(g), that in the event that Sterling Corporate Services became insolvent or was not otherwise able to pay the rent, Mr Soussa would bear that risk;
- (e) paragraph 20(h), that Mr Soussa could not unreasonably evict the defendants and at no time could they be asked to make a cash contribution to pay any rent shortfall to Mr Soussa; and
- (f) paragraph 20(i), the defendants would receive the return of their lump sum amount in full upon giving 180 days' notice and termination of their leasehold interest.

151       The particulars to par 20 of the amended defence and counterclaim state that the assumptions were express, and contained in the 'Lease',<sup>97</sup> the Sterling New Life Property Investor PowerPoint, the Sterling New Life Investor Summary and the Sterling New Life Frequently Asked Questions document provided by Mr Soussa or his agent to the defendants or, alternatively, implied having regard to those documents.

152       In Mr Soussa's amended reply and defence to counterclaim he pleads in:

- (a) paragraph 4(a), at all material times he had no knowledge of the Sterling New Life investment structure;
- (b) paragraph 4(b), at no material time was he aware that the defendants had been provided with the documents referred to in the particulars to par 20 of the amended defence and counterclaim;
- (c) paragraph 4(c), there was no representation by him giving rise to an assumption of fact about any of the matters pleaded in par 20 of the amended defence and counterclaim;
- (d) paragraph 4(d), he never provided his leasing manager with authority to enter into a long-term lease on terms and conditions that would mean that he would receive no rental income from the defendants if the Sterling New Life Group failed to make rental payments to him on the defendants' behalf;

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<sup>97</sup> The word 'Lease' appears to be confined to one document, defined in par 7(c) of the amended defence and counterclaim as the written Residential Tenancy Agreement dated 26 July 2017.



## (e) paragraph 4(f):

the representations inducing the Assumptions pleaded in paragraph 20 of the Defence, which in any event are denied, could not have been reasonably relied upon by the Defendants because it was at all material times obvious to the Defendants that those Assumptions would give rise to a commercial nonsense and commercial absurdity...; and

## (f) paragraph 4(h), the court ought not to exercise its discretion to find that any estoppel by conduct or by representation has arisen because:

- A. the Plaintiff was unaware at all material times of the Assumptions allegedly adopted by the Defendants;
- B. the Plaintiff had no actual, or inferred, knowledge that the Assumptions were either made or adopted by the Defendants and there was no intention of the Plaintiff that the Defendants would act upon the pleaded Assumptions;
- C. even if there were Assumptions adopted by the Defendants, the Plaintiff played no part in those assumptions being adopted by the Defendants;
- D. the commercial risk for loss arising from the Defendants' investment in the Sterling New Life business was solely to the Defendants' account and should not be borne by the Plaintiff because there has been no unconscientious departure from any assumption adopted by Defendants;
- E. it is not unfair, unjust or unconscionable if the pleaded Assumptions are not given effect to by way of an estoppel, because the Defendants have a remedy against the entities or individuals which made the alleged representations contained in the documents pleaded in paragraph 4(b) above which gave rise to the pleaded Assumptions.

### Particulars

To the extent the Defendants contend they have suffered loss arising from its investment in the Sterling New Life business it can pursue its cause of action against the Sterling New Life entities or other individuals.

153           Counsel for Mr Soussa put an argument that because the particulars to par 20 plead that the assumptions were in writing, it must necessarily follow that the effect of the plea in the opening words of par 20 of the amended defence and counterclaim is that any oral representations made to the defendants are irrelevant to the plea of estoppel.

154           This contention is not correct. Whilst the drafting of par 20 of the amended defence and counterclaim is somewhat obtuse, properly understood it is a plea that by reason of the Sterling New Life Lease scheme (pleaded in par 6(c)) and the terms of the Payment Direction Deed (pleaded in par 8), written and oral representations were made for and on behalf of Mr Soussa (his agent), which caused the defendants to induce the assumptions enumerated in pars 20(a) to 20(a)(j) and those assumptions were contained in the written documents listed in the particulars to par 20.

155           In par 21 it is pleaded that Mr Soussa adopted the assumptions by his participation in the Sterling New Life Lease scheme, and in par 23 the defendants plead their acts of reliance on the assumptions.

156           Importantly, the defendants do not plead that Mr Soussa was entirely responsible for the inducement of the assumptions by the defendants. This point is dealt with below in 5.5.

157           Although, Mr Soussa complains that it is not pleaded that Sterling First Projects were a sub-agent of Rental Management Australia, it was open to Mr Soussa prior to trial to seek particulars of who it was alleged in par 20 had made oral representations or had provided written representations, for and on behalf of Mr Soussa, which induced the assumptions. In the absence of any request, and the fact that the express terms of the authority executed by Mr Soussa appointing Rental Management Australia as an agent authorised Sterling First Projects as a sub-agent to Rental Management Australia, it is now not open to resist admission into evidence in the proceedings the ASIC Extract and the witness statement evidence about the representations Mr Ryan Jones made to the defendants.

158           Consequently, because the defendants have by their pleading directly put in issue both oral and written representations made to them by agents of Mr Soussa, and because I am not persuaded this point has taken Mr Soussa by surprise, the ASIC Extract and the evidence in the witness statements of each defendant that sets out the contents of the

conversation they had with Mr Ryan Jones at his office on 26 July 2017 is to be admitted into evidence in the proceedings. Clearly, this evidence is admissible as it is relevant to the issue of whether it can be found that oral representations were made for and on behalf of Mr Soussa, which representations induced the assumptions to be held by the defendants.

159 Whether the representations made by Mr Ryan Jones can be found to be representations made for and on behalf of Mr Soussa is considered below in 5.5.

### **5.5 Is Mr Soussa estopped from acting on the notice to terminate the lease?**

160 One of the common elements of estoppel by conduct and promissory estoppel is that the party against which estoppel is claimed must have by their conduct 'so influenced' the representee in acting as they did on the assumptions that were induced by that conduct.

161 Consequently, to prove each of these species of estoppel it must be found that objectively the conduct of the representor, in this matter those who acted for and on behalf of Mr Soussa, engaged in conduct which induced the pleaded assumptions to be held by the defendants in respect of which the defendants relied and acted to their detriment.

162 It is important to consider the timeline of the dates of important events, the dates upon which documents were provided to the parties, and the dates upon which the material documents were executed. This timeline is as follows:

- (1) On 6 September 2016, Mr Soussa entered into an Exclusive Management Authority for Rental Management Australia to act as his property manager for a period of two years, to rent the Harrisdale property for a minimum term of six months and a maximum term of 12 months.
- (2) In November 2016, the defendants attended a meeting at Gosnells at which oral representations were made by representatives of the Sterling Group about the Sterling New Life Lease scheme.
- (3) In early 2017, the defendants began inspecting properties for rent with a representative of the Sterling Group with the intention of entering into the Sterling New Life Lease scheme.

- (4) In or about the middle of 2017, the defendants inspected the Harrisdale property with an employee of Rental Management Australia, Ms Vester.
- (5) Shortly after the defendants viewed the property, another employee of Rental Management Australia, Ms Falkingham, spoke to Mr Soussa and told him that the defendants had viewed his property and were very interested. Mr Soussa asked Ms Falkingham to send him some information. On 29 June 2017, Ms Falkingham sent an email to Mr Soussa attaching brochures and information regarding the Sterling New Life Lease scheme. These documents were a Property Investment with a Sterling New Life Tenant Summary and a Property Investor Information 2017 document. Ms Falkingham stated in the email that 'We currently have a tenant interested in Harrisdale & I thought your property would be suitable. Please let me know your thoughts as soon as possible'.
- (6) On 17 July 2017, Mr Soussa executed the Exclusive Management Authority for Residential Premises appointing Rental Management Australia his agent and Sterling First Projects as sub-agent to enter into a Sterling New Life Lease on his behalf.
- (7) On 18 July 2017, the defendants executed the Offer.
- (8) On 19 July 2017, Mr Ryan Jones executed the Offer to enter into a Sterling New Life Lease on behalf of Sterling First Projects and separately as an authorised representative of Mr Soussa.
- (9) On 20 July 2017, the defendants paid their contribution to the Sterling New Life Lease investment amount, being an amount of \$230,000 to Rental Management Australia for investment in the Sterling Income Trust.<sup>98</sup>
- (10) On 26 July 2017, Mr Soussa executed the Deed of Covenant and Put Option (to require Acquest to purchase the Harrisdale property).<sup>99</sup>
- (11) On 26 July 2017, the parties executed the lease.

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<sup>98</sup> Exhibit A, Tab 27, 291; Tab 60, 533.

<sup>99</sup> Exhibit A, Tab 21, 233 - 252.

SMITH J

163 What clearly emerges from this factual timeline is that Rental  
 Management Australia and Sterling First Projects had no authority to  
 act on behalf of Mr Soussa or to engage in conduct on his behalf,  
 including to make any representations on his behalf in respect of a  
 Sterling New Life Lease until 17 July 2017. It is also clear that prior to  
 this date the defendants had inspected the Harrisdale property and had  
 both formed an intention to enter into a Sterling New Life Lease, and  
 had both expressed an interest in leasing the Harrisdale property on the  
 terms of a Sterling New Life Lease.

164 Consequently, the acts and conduct of the parties prior to 17 July  
 2017 cannot form part of any of the oral or written representations  
 inducing the assumptions pleaded in par 20 of the amended defence and  
 counterclaim.

165 Mrs Thomas' evidence is to the effect that that the assumptions in  
 par 20(b) and par 20(d) of the amended defence and counterclaim were  
 held by her after hearing what was said by Mr Carvolth at the meeting  
 in Gosnells in November 2016. Her evidence on this point is:<sup>100</sup>

26. To the best of my recollection, Gary Carvolth did most of the  
 talking at the meeting. I do not recall the actual words used by  
 Gary, but he was talking about the Sterling New Life leases and  
 saying that you pay your money upfront and then you would  
 have a 40 year lease, meaning you would have a house for the  
 rest of your life, and you don't have to pay any rent, any  
 expenses, rates or anything.

...

31. Based on what Gary Carvolth and Annabel Crowther told me at  
 the Gosnells meeting, I thought the idea of a Sterling New Life  
 lease sounded really good. Laurie and I discussed Sterling New  
 Life leases and agreed that we thought it was a really good  
 option for our retirement and wanted to go ahead with signing  
 up to a Sterling New Life leases. However, we didn't want to  
 start looking for a house over the Christmas period, so we  
 waited until after Christmas before contacting Annabel  
 Crowther.

...

32. In January 2017, Laurie and I contacted Annabel Crowther.

...

<sup>100</sup> Exhibit 2 [26], [31] - [32], [35].

35. Laurie and I inspected houses that we were interested. Sometimes we inspected properties with Annabel. Some of the properties that we inspected were not already part of the Sterling New Life lease scheme. In those circumstances, Annabel would speak with the landlord to see if they wanted to sign up to a Sterling New Life lease.

166 Mr Thomas' evidence is to the effect that the assumptions in pars 20(b), 20(d), 20(e), 20(f), 20(h) and 20(i) of the amended defence and counterclaim were held by him after hearing what was said at the meeting in Gosnells in November 2016. His evidence on this point is:<sup>101</sup>

16 ...

- (a) you could get a lease for up to 40 years, or as long as you needed for your lifetime, by paying an upfront amount of rent in advance;
- (b) you never had to pay any rent during the term of the lease, as this was taken care of by the upfront amount paid in advance;
- (c) the landlord or Sterling could not ask you to pay any money for the house after the payment of the upfront amount of rent, except that you had to pay for contents insurance, water usage, electricity, gas and the home phone line;
- (d) to get into a Sterling New Life lease, you needed an upfront amount of about 60% of the value of the house to pay rent in advance;
- (e) the upfront amount would be held in the Sterling Income Trust, which was a trust fund that would generate the money for Sterling to pay the landlord rent;
- (f) you did not need to pay for any rates or insurance for the house;
- (g) the landlord could not evict you for anything unless you did irreparable damage to the house;
- (h) if the property you were living in got sold, it would be sold with your lease as part of it and your lease would continue on after the sale;
- (i) if you wanted to pull out of the Sterling New Life lease, you would have to give 180 days' notice and then the

<sup>101</sup> Exhibit 3 [16], [19], [23], [26] - [32].

upfront amount you paid which was held in the Sterling Income Trust account would be returned to you; and

...

- 19 I do not recall exactly what Gary said in the presentation, but he was very positive about Sterling New Life leases and this was a big confidence builder for me and one of the main reasons why Lou and I got into a Sterling New Life lease.

...

- 23 Annabel, who I understood to be a sales representative for Sterling from what she had said and how she introduced herself, was the first available representative, so Lou and I spoke to her.

...

- 26 From what I saw and heard at this meeting, I believed that the Sterling New Life lease was a really good arrangement and I thought that Lou and I should consider getting into a Sterling New Life lease. I was quite sure at this time that a Sterling New Life lease was right for us but just wanted to ask a few more questions to Annabel in the new year.

- 27 I liked the idea of Sterling New Life leases because you could pay rent in advance and did not have to pay anything after that upfront amount, you could treat the house like your own, we could afford it if we found a house that was worth less than \$400,000 and you had a long term lease so if something happened to either Lou or me the other one would have continuity of living.

### **Meetings with people from Sterling**

- 28 In or around mid-January 2017, Lou and I arranged to meet with Annabel to speak about Sterling New Life leases and suitable properties.
- 29 Either at the Gosnells meeting or at a meeting with Annabel in early to mid-2017, Annabel told us that her own father, sold his house and used the money from the sale to get into a Sterling New Life lease, and that she had helped him get into the Sterling New Life lease.
- 30 In early to mid-2017, Lou and I met with Annabel several times to discuss the type of property Lou and I were looking for and to look at properties that were available for a Sterling New Life lease.

31 During this time, we viewed properties in Harrisdale, Thornlie and others south of the river but these properties were not suitable to Lou and me.

32 Typically, Annabel would call me when she found a potentially suitable property for us and she would make arrangements for Lou and me to view those properties.

167 The particulars of the assumptions are pleaded in par 20 of the amended defence and counterclaim as expressly contained, or alternatively implied, in the following documents provided by Mr Soussa or his agent to the defendants: the lease; the Sterling New Life Property Investor PowerPoint; the Sterling New Life Investor Summary and the Sterling New Life Frequently Asked Questions document. However, except for a copy of the lease which was provided to them when it was executed by each of them, neither of the defendants were able to say that they had seen or read any of the other documents pleaded in par 20 prior to or at the time they executed the lease.

168 Consequently, other than the lease (which includes all of the documents that are annexed and incorporated as terms of the lease), the defendants' claim of estoppel against Mr Soussa can only arise out of the representations made to them by persons who can be found to have made oral representations for and on behalf of Mr Soussa, on and after 17 July 2017, being the date that Rental Management Australia, and Sterling First Projects as a sub-agent of Rental Management Australia, were authorised by Mr Soussa to enter into a Sterling New Life Lease.

169 Senior counsel on behalf of the defendants made a submission that all that is necessary for the defendants to demonstrate is that both parties shared the same assumption or expectation about the Sterling New Life Lease scheme, and it does not matter that the sources of each party's assumption or expectation is different. Further, that all that matters is that the assumption or expectation be aligned, such that it is common.

170 As to the element of inducement (conduct of Mr Soussa) to rely upon the assumptions, it is contended that the defendants were induced to enter into the lease by the Offer to enter into a Sterling New Life Lease, which Offer was made to the defendants for and on behalf of Mr Soussa. This submission cannot be accepted.

171 The Offer to enter into a Sterling New Life Lease is not pleaded in par 20 as a document containing the assumptions. However, it is a



document that contains written representations from which the defendants claim they were induced to form the assumptions, which they relied upon to their detriment.

172        However, the evidence does not support a finding that the defendants relied upon any written representations contained in the Offer. Further and more importantly, the Offer was not an offer made for and on behalf of Mr Soussa to the defendants; it was an offer from the defendants to Mr Soussa.

173        There is nothing in the terms of the Offer upon which it can be construed as an offer made by Mr Soussa as a lessor to enter into a Sterling New Life Lease. To the contrary, the Offer to enter into a Sterling New Life Lease was an offer the defendants made to Mr Soussa. This finding is the only inference that can properly be drawn from the following:

- (a)     the defendants executed the Offer the day before it was executed on behalf of Mr Soussa by a representative of Rental Management Australia;
- (b)     prior to the defendants executing the Offer, the defendants inspected the Harrisdale property and informed a representative of Rental Management Australia that they wished to enter into a Sterling New Life Lease to lease the Harrisdale property, and this information was conveyed to Mr Soussa prior to him entering into an Exclusive Management Authority on 17 July 2017 to appoint Rental Management Australia to lease the Harrisdale property on the terms of a Sterling New Life Lease; and
- (c)     clause 2(a) of the Offer is expressly an offer by the defendants as the tenant to Mr Soussa as the lessor to take a five year lease, with seven options of a further five years each, totalling 40 years, of the residential premises (the Harrisdale property) on the terms of the Residential Tenancy Agreement and the Payment Direction Deed (collectively known as the Sterling New Life Lease) provided to the defendants.

174        The Offer after execution by all parties was a tripartite agreement between Mr Soussa, the defendants and Sterling First Projects (as Manager).

175        Although the express terms of the Exclusive Management Authority executed by Mr Soussa on 17 July 2017 appointed Sterling First Projects as a sub-agent of Rental Management Australia, the express terms of the Offer, together with the fact that the Offer was executed by the defendants prior to being executed by Rental Management Australia for and on behalf of Mr Soussa, are not consistent with a finding of fact that Sterling First Projects was acting as a sub-agent of Rental Management Australia in the execution of the Offer by the defendants. This is because the obligations of Sterling First Projects created by the express terms of the Offer as the 'Manager' are not entirely consistent with it being an agent of Mr Soussa. For example, pursuant to cl 5(b) the Manager or the Manager's agent must hold the defendants' deposit as stakeholder, and by cl 2(c) the defendants authorise the Manager to complete the Residential Tenancy Agreement with the 'Date of Commencement of Sterling New Life Lease' within the time specified in cl 2(b), and, in particular, where cl 2(b)(i) applies, where no date of commencement of the Sterling New Life Lease is stated, 14 days after Mr Soussa accepts 'this offer'.

176        Although the evidence establishes that the defendants paid the cash component of the Sterling New Life investment amount the day after the Offer was executed by Rental Management Australia on behalf of Mr Soussa, there is no evidence before the court that they did so in reliance on any oral or written representations made to them, or were induced to do so by any oral or written representations made to them for and on behalf of Mr Soussa.

177        In par 23 of the amended defence and counterclaim it is pleaded that the defendants, in reliance on the assumptions, acted to their detriment by taking the following steps:

- (a)    paid their life savings of \$230,000 to the Sterling Group as pleaded in paragraph 8(c)(i) above;
- (b)    entered into the 40 year Lease;
- (c)    permitted SCS to pay the Rent payable under the Lease to the Plaintiff in accordance with clauses 2.4 and 2.5 of the Payment Direction Deed;
- (d)    conducted their affairs on the basis that they had a residential lease for the Property for up to 40 years upon exercising the options to renew; and

SMITH J

- (e) did not withdraw from the SNL Lease and seek return of the Lump Sum Amount.

178 For the reasons set out above, it cannot be found that the defendants in reliance on the assumptions induced by conduct for and on behalf of Mr Soussa paid their life savings of \$230,000 to the Sterling Group, in particular to Sterling Corporate Services.

179 As to whether it can be found that Mr Soussa is responsible for the other pleaded assumptions, and thus the pleaded acts of detriment, this turns on whether the defendants relied on the representations made to them by Mr Ryan Jones at the meeting on 26 July 2017, and whether the representations were made to the defendants by Mr Ryan Jones in his capacity as an agent of Mr Soussa.

180 Leaving aside for a moment the first issue, in determining the second issue it is relevant to have regard to the fact that when the defendants met Mr Ryan Jones on 26 July 2017, they executed not only all of the documents forming the lease but also executed the Sterling Income Trust application, and a Rental Subsidy Agreement. Also of importance is the fact that one of the documents forming the lease that was executed was the Payment Direction Deed.

181 The Payment Direction Deed was a tripartite agreement between Mr Soussa, the defendants, and Sterling Corporate Services, the authorised investment manager for the Sterling Income Trust. The Rental Subsidy Agreement was an agreement entered into by Sterling Corporate Services and the defendants. Mr Soussa was not a party to this agreement, nor was this agreement incorporated into the lease.

182 The Rental Subsidy Agreement was an agreement made between Sterling Corporate Services as assistor and the defendants as tenant whereby Sterling Corporate Services agreed to assist the defendants to pay the full cost of weekly rent of \$390 until the Sterling New Life Lease capital shortfall of \$11,500 had been paid in full by the defendants to the assistor by periodic payments of \$26 a week by the defendants to Sterling Corporate Services.<sup>102</sup>

183 The evidence before the court establishes that Mr Ryan Jones had the capacity to direct the mind and will of more than one corporate

---

<sup>102</sup> The copy of the Rental Subsidy Agreement tendered into evidence contains an execution clause for each of the parties that states in type that the agreement is executed by Sterling Corporate Services by alternate director Ryan Kentore Jones, however it appears that the copy of the document does not contain the signature of Mr Ryan Jones.

entity in the Sterling Group. He was the sole director of Acquest (the corporate entity that had entered into the Deed of Covenant to purchase the Harrisdale property). He was also a director of Sterling First Projects, and it appears that he may have been an alternate director of Sterling Corporate Services. However, I make no finding about whether he was at the material time an alternate director of Sterling Corporate Services.

184        Consequently, when Mr Ryan Jones met with the defendants, it is clear on the evidence it cannot be found that he did so only in his capacity as an agent of Mr Soussa, as a director of Sterling First Projects, having been appointed as a sub-agent of Rental Management Australia to do all things lawful to procure a Sterling New Life lessee. This is because at the same meeting he provided to the defendants the application form for each of them to sign to invest the cash component of the investment amount paid by the defendants to the Sterling Income Trust and asked them to each execute the Rental Subsidy Agreement. The execution of these two documents was part of the suite of documents that formed part of the Sterling New Life Lease scheme, but these documents did not form part of the contractual documents forming the lease.

185        Consequently, from this evidence it can be inferred that when Mr Ryan Jones met with the defendants he did so in two capacities. Firstly, as an agent of Mr Soussa to arrange for the execution of each of the documents comprising the lease and, secondly, as an agent of Sterling Corporate Services, as the authorised fund manager for the Sterling Income Trust, as it is clear that he had the authority to act for Sterling Corporate Services to procure the defendants to execute the Sterling Income Trust application.

186        It is not suggested by the defendants that Sterling Corporate Services were authorised to act on behalf of Mr Soussa. In any event, no submission could be put that any of the acts by Sterling Corporate Services, or persons authorised to act on its behalf, could be attributed as conduct made on behalf of Mr Soussa as there is no evidence that Sterling Corporate Services had any authority for any purpose to act as an agent for Mr Soussa.

187        In circumstances where the defendants paid their lump sum amount of \$230,000 to Sterling Corporate Services, pursuant to the terms of the Offer, prior to executing the lease and by completing the application form to invest that sum in the Sterling Investment Trust,

and where Sterling Corporate Services were the duly authorised investment manager for the trust, I am not satisfied that the representations Mr Ryan Jones made to the defendants (that there was no chance of losing their upfront lump sum payment and that Sterling would never go bust, but if it did it had \$900 million in assets and there would always be another company to step in and take it over), which induced an assumption by each of them that the money that they had invested in the Sterling Investment Trust was 'safe', can be found to be oral representations made for and on behalf of Mr Soussa.

188        Although Mr Soussa is a party to the Payment Direction Deed, the defendants' evidence is that they did not read this document or any of the other documents that they signed when they met with Mr Ryan Jones on 26 July 2017. Further, although they took a copy of this document and all of the other documents they executed on that day home in a folder, they put the folder away, and did not look at it until after the Sterling Group entities went into administration.

189        The defendants bear the onus of proof of establishing estoppel. In particular, they bear the onus of establishing that it was the conduct of those who acted for and on behalf of Mr Soussa that induced them to adopt the assumptions upon which they relied to their detriment. From their evidence, the only assumptions made by them they say were induced by representations made to them were representations made at the Gosnells meeting in November 2016, and the oral representations made by Mr Ryan Jones on 26 July 2017.

190        The Sterling New Life Lease entered into by the parties was a tripartite agreement. The three parties to the tripartite agreement were Mr Soussa, the defendants and Sterling Corporate Services. Sterling Corporate Services is an entity in its own right and part of the corporate structure of the Sterling Group that created and promoted the Sterling New Life Lease scheme. In circumstances where Sterling Corporate Services was not at any material time an agent of Mr Soussa, no estoppel can arise against him by any representations or any conduct of Sterling Corporate Services.

191        Insofar as representations were made to the defendants about the financial viability of the Sterling Income Trust, this cannot be found to be conduct of Mr Soussa that induced a belief in the defendants that their life savings were safe. It is clear that from this assumption the defendants acted in reliance by conducting their affairs on the basis that they had a residential lease for the Harrisdale property for up to

40 years without any requirement to make any payments of rent, other than the payment of \$26 a week, until they had repaid the capital sum of \$11,500, and that they did not withdraw from the Sterling New Life Lease and seek return of their life savings. However, the defendants have not proved that this assumption was induced by, or on behalf of, Mr Soussa.

192 Put simply, I am not satisfied that when any oral representations were made to the defendants by Mr Ryan Jones at the meeting he made those representations in his capacity as a director of Sterling First Projects, a sub-agent of Rental Management Australia, as an agent for Mr Soussa.

193 Consequently, the defendants' defence and counterclaim of estoppel must fail because the defendants have not proved that any oral or written conduct or representations made by, or for and on behalf of, Mr Soussa caused them to make any of the pleaded assumptions.

194 In any event, even if it could be found that Mr Ryan Jones was acting as the agent of Mr Soussa when he made the representations, a failure to fulfil a promise does not, of itself, amount to unconscionable conduct without something that points to the conduct of Mr Soussa being unconscionable. In this context, there must be something that Mr Soussa had done towards the creation of the assumptions. In this matter, as counsel for Mr Soussa points out, the fact that the Sterling New Life Lease scheme failed is not only unfair to the defendants but also to Mr Soussa and they have all been left in a position that is less than what they had assumed they had bargained for in entering into the lease.

195 The court is not in a position to right any unconscionable conduct in these proceedings, because these proceedings are between the victims of a failed scheme who are not responsible for the failure of the scheme.

196 In circumstances where the Sterling New Life Lease scheme was not a scheme of Mr Soussa's making, and in circumstances where he had no control of the funds the defendants invested in the Sterling Investment Trust, the part that Mr Soussa played in entering into the lease cannot be found to have causally induced the assumptions made by the defendants so as to raise any issue of unconscionability by the departure from the assumptions, which were, in fact, induced by those who promoted the Sterling New Life Lease scheme.

*SMITH J*

197           When all the circumstances of this matter are considered, it is clear  
that all parties to these proceedings are innocent persons who have all  
suffered a loss by the actions of third parties.

### **5.6   Disposition - Estoppel claim**

198           The defendants' defence to the action cannot succeed, and their  
counterclaim should be dismissed.

### **5.7   Orders**

199           I will hear the parties as to the specific orders that should be made  
to reflect these reasons, and as to costs.

I certify that the preceding paragraph(s) comprise the reasons for decision of  
the Supreme Court of Western Australia.

VV

Associate to the Honourable Justice Smith

1 JUNE 2021

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FORM 1AA - Residential Tenancies Act 1987 - Section 27A

APPROVED BY  
THE REAL ESTATE INSTITUTE  
OF WESTERN AUSTRALIA (RICA)  
FOR USE BY REIWA MEMBERS**RESIDENTIAL TENANCY AGREEMENT PART A**

This agreement is made between

|  |  |
|--|--|
| <b>Lessor 1</b> [Insert name of lessor(s) and contact details] | Is this lessor an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |
| <b>Lessor 2</b> [Insert name of lessor(s) and contact details] | Is this lessor an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |
| <b>Lessor 3</b> [Insert name of lessor(s) and contact details] | Is this lessor an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |

and

|  |  |
|--|--|
| <b>Tenant 1</b> [Insert name of tenant(s) and contact details] | Is this tenant an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |
| Mobile   |  |
| Email  |  |
| <b>Tenant 2</b> [Insert name of tenant(s) and contact details] | Is this tenant an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |
| Mobile   |  |
| Email  |  |
| <b>Tenant 3</b> [Insert name of tenant(s) and contact details] | Is this tenant an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |
| Mobile   |  |
| Email  |  |
| <b>Tenant 4</b> [Insert name of tenant(s) and contact details] | Is this tenant an organisation? <input type="checkbox"/> Yes |
| Given name(s) or Organisation Name                             |  |
| Family name  |  |
| Mobile   |  |
| Email  |  |

|  |           |
|--|-----------|
| <b>Lessor's property manager</b> [Insert name of lessor's property manager (if any) and contact details] |           |
| Trading Name   |           |
| Address  |           |
| Telephone  | Facsimile |
| Email  |           |

**TERM OF AGREEMENT** [\*delete as appropriate]

|  |                      |
|--|----------------------|
| * [redacted]   | insert date          |
|  |                      |
| *This residential tenancy agreement is fixed starting on | insert date          |
|  | Date: 26 / 07 / 2017 |
| and ending on  | insert date          |
|  | Date: 25 / 07 / 2022 |

The agreement should not be a date prior to the date on which the tenant is entitled to enter into occupation of the premises.



**GIVING OF NOTICES AND INFORMATION BY ELECTRONIC MEANS**

Indicate below for each of the following persons whether the person agrees to notices and information being given by email or facsimile under the Electronic Transactions Act 2011

|  |                          |                          |   |  |
|--|--------------------------|--------------------------|---|--|
| <b>Lessor 1</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input checked="" type="checkbox"/> /No <input type="checkbox"/> | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <b>Lessor 2</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input type="checkbox"/> /No <input type="checkbox"/>            | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <b>Lessor 3</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input type="checkbox"/> /No <input type="checkbox"/>            | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <i>[insert email or facsimile if different from contact details above]</i> |                          |                          |   |  |
| <b>Tenant 1</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input checked="" type="checkbox"/> /No <input type="checkbox"/> | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <b>Tenant 2</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input checked="" type="checkbox"/> /No <input type="checkbox"/> | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <b>Tenant 3</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input type="checkbox"/> /No <input type="checkbox"/>            | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <b>Tenant 4</b>  | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input type="checkbox"/> /No <input type="checkbox"/>            | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <i>[insert email or facsimile if different from contact details above]</i> |                          |                          |   |  |
| <b>Lessor's property manager</b>   | <input type="checkbox"/> | <input type="checkbox"/> | Email: Yes <input checked="" type="checkbox"/> /No <input type="checkbox"/> | Facsimile: Yes <input type="checkbox"/> /No <input type="checkbox"/> |
| <i>[insert email or facsimile if different from contact details above]</i> |                          |                          |   |  |

**RESIDENTIAL PREMISES**

|  |                      |           |                      |                               |
|--|----------------------|-----------|----------------------|-------------------------------|
| The residential premises are <i>[insert address]</i> |                      |           |                      |                               |
| Address 1 <input type="text"/>                       |                      |           |                      |                               |
| Address 2 <input type="text"/>                       |                      |           |                      |                               |
| Suburb   | <input type="text"/> | State     | WA                   | Postcode 6112                 |
| Postal Address <i>[if different from above]</i>      |                      |           |                      |                               |
| PO Box   | <input type="text"/> | Town/City | <input type="text"/> | Postcode <input type="text"/> |
| Address 1 <input type="text"/>                       |                      |           |                      |                               |
| Address 2 <input type="text"/>                       |                      |           |                      |                               |

and

The residential premises ~~include/exclude~~\* *[(\*delete as appropriate)]* Include any additional matters, such as parking space or furniture provided, or any exclusions, such as sheds

NOT APPLICABLE

**MAXIMUM NUMBER OF OCCUPANTS**

|              |                             |  |
|--------------|-----------------------------|--|
| No more than | insert number<br><b>TWO</b> | persons may ordinarily live at the premises at any one time. |
|--------------|-----------------------------|--|

**RENT**

|             |   |  |
|-------------|---|--|
| The rent is | insert amount<br><input type="text"/>   | <del>per week</del> /calculated by reference to tenants income <i>[insert calculation]</i><br>payable weekly*/ <del>fortnightly</del> * in advance <i>[*delete as appropriate]</i> |
| starting on | insert date<br>Date: <input type="text"/> / <input type="text"/> / <input type="text"/> |  |

The method by which the rent must be paid: *[strikeout where applicable]*

- ~~(a) by cash or cheque, or~~  
~~(b) into the following account, or any other account nominated by the lessor:~~

|               |                    |
|---------------|--------------------|
| BSB number:   | account number:    |
| account name: | payment reference: |

or

~~(c) as follows:~~

Refer to the Payment Direction Deed

For the first month of the tenancy, from the commencement date to the last day of that month, payable on the twenty first of that month. For the months of the tenancy, from the first of that month to the last day of that month, payable on the twenty first of that month.  
For the last month of the tenancy, from the first of that month to the termination date of the lease, payable on the twenty first of that month.

|   |  |                   |  |
|---|--|-------------------|--|
| SECURITY BOND   |  |                   |  |
| A security bond of  | <div>insert amount<div>\$ 0.00</div></div> | and a pet bond of | <div>insert amount<div>\$ 0.00</div></div> |
| must be paid by the tenant on signing this agreement.   |  |                   |  |
| <i>Note: Unless the rent for the premises exceeds \$1,200 per week, the security bond must not exceed the sum of 4 weeks rent plus a pet bond not exceeding \$260 (if a pet is permitted to be kept at the premises). The pet bond is to be used to meet costs of fumigation of the premises.</i> |  |                   |  |

|   |  |
|---|--|
| RENT INCREASE   |  |
| In the case of a periodic tenancy (see "TERM OF AGREEMENT") any rent increase will be no sooner than 6 months after the commencement of this tenancy agreement and the date of the last increase. The lessor must give at least 60 days notice of the increase. |  |
| <i>Note: If rent is calculated by reference to income, the requirement to provide a notice of rent increase only applies if the method of calculating the rent is changed.</i>  |  |
| In the case of a fixed term tenancy (see "TERM OF AGREEMENT") the rent increase will be   |  |
| <div>See Part C - 24</div>  |  |
| <div>[insert maximum increase or method of calculating increase, e.g. CPI or percentage]</div>  |  |
| and take effect no sooner than 6 months after the commencement of this tenancy agreement and the date of the last increase. The lessor must give at least 60 days' notice of the increase.  |  |
| <i>Note: For fixed term lease agreements exceeding 12 months, refer to Part C for details of subsequent rent increases.</i>   |  |

|   |  |
|---|--|
| WATER SERVICES  |  |
| Is scheme water connected to the premises?  | <div><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</div> |
| <i>Note: If the property is not connected to scheme water, the tenant may have to purchase water at his or her own expense.</i> |  |

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| WATER USAGE COSTS (SCHEME WATER) |   |                             |
| The tenant is required to pay    | <div><div>[insert number]</div><div>100</div><div>%</div></div> | of water consumption costs. |

|  |  |
|--|--|
| PERMISSION TO CONTACT THE WATER SERVICES PROVIDER  |  |
| Does the tenant have the lessor's permission to contact the water services provider for the premises to access accounts for water consumption at the premises and to communicate with the water services provider in relation to concessions available to the tenant or supply faults at the premises? |  |
| <div><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</div>   |  |

|  |   |                             |                |
|--|---|-----------------------------|----------------|
| ELECTRICITY, GAS AND OTHER UTILITIES   |   |                             |                |
| Indicate for the utilities below whether or not the premises are separately metered:   |   |                             |                |
| Electricity:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |                |
| Gas:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |                |
| Water:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |                |
| Other:   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <div>N/A</div> |
| (please specify):  | <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <div>N/A</div> |
|  | <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <div>N/A</div> |
|  | <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <div>N/A</div> |
| Where the premises are separately metered to measure consumption of a specific utility, the tenant must pay for the connection and consumption costs as per the relevant account for the premises. |   |                             |                |

Where the premises are not separately metered to measure the consumption of a specific utility, the tenant must pay the consumption costs for that utility which will be calculated as follows:

|              |   |
|--------------|---|
| Electricity: | N/A<br>[insert method of calculation]                     |
| Gas:         | N/A<br>[insert method of calculation]                     |
| Water:       | N/A<br>[insert method of calculation]                     |
| Other:       | (please specify)<br>N/A<br>[insert method of calculation] |

### STRATA BY-LAWS

Strata by-laws ~~ARE~~ ARE NOT\* [\*delete as appropriate] applicable to the residential premises  
A copy of the by-laws are attached: ☐ Yes ☐ No

### PETS

The pets listed below can be kept at the premises:  
See Form 4 - Management Statement

### RIGHT OF TENANT TO ASSIGN OR SUB-LET [\*delete as appropriate]

~~\*The tenant may assign the tenant's interest under this agreement or sub-let the premises.~~  
~~\*The tenant may not assign the tenant's interest under this agreement or sub-let the premises.~~  
~~\*The tenant may assign the tenant's interest under this agreement or sub-let the premises only with the written consent of the lessor.~~

### RIGHT OF TENANT TO AFFIX AND REMOVE FIXTURES [\*delete as appropriate]

~~\*The tenant must not affix any fixture or make any renovation, alteration or addition to the premises.~~  
\*The tenant may only affix any fixture or make any renovation, alteration or addition to the premises with the lessor's written permission.

### PROPERTY CONDITION REPORTS

A property condition report detailing the condition of the premises must be completed by or on behalf of the lessor and 2 copies provided to the tenant within 7 days of the tenant moving into the premises.

If the tenant disagrees with any information contained in the property condition report, the tenant must note his or her disagreement on a copy of the property condition report and return this to the lessor or property manager within 7 days of receipt of the property condition report from the lessor. If the tenant does not give a copy of the property condition report back to the lessor, the tenant is to be taken to accept the property condition report as a true and accurate description of the condition of the premises.

A final property condition report must be completed by or on behalf of the lessor and provided to the tenant as soon as practicable but in any event within 14 days of the termination of the tenancy. The tenant must be given a reasonable opportunity to be present at the final inspection.



FORM 1AA - *Residential Tenancies Act 1987* - Section 27A**RESIDENTIAL TENANCY AGREEMENT PART B**
**STANDARD TERMS APPLICABLE TO ALL RESIDENTIAL  
TENANCY AGREEMENTS**

The *Residential Tenancies Act 1987* and the *Residential Tenancies Regulations 1989* apply to this agreement.

Both the lessor and the tenant must comply with these laws.

Some of the rights and obligations in that legislation are outlined below.

**RIGHT TO OCCUPY THE PREMISES**

1. The tenant has the right to exclusive occupation and quiet enjoyment of the residential premises during the tenancy. The residential premises include the additional items but do not include the exclusions noted under "RESIDENTIAL PREMISES" in Part A.

**COPY OF AGREEMENT**

2. The lessor or the property manager must give the tenant:
  - 2.1 a copy of this agreement when this agreement is signed by the tenant; and
  - 2.2 a copy of this agreement signed by both the lessor or the property manager and the tenant within 14 days after it has been signed and delivered by the tenant.

**RENT**

3. The tenant must pay rent on time or the lessor may issue a notice of termination and, if the rent is still not paid in full, the lessor may take action through the court to evict the tenant.
4. The tenant must not withhold rent because the tenant is of the view that the lessor is in breach of the agreement.
5. The lessor or property manager must not:
  - 5.1 require the tenant to pay more than 2 weeks rent in advance; or
  - 5.2 require the tenant to pay rent by post-dated cheque; or
  - 5.3 use rent paid by the tenant for the purpose of any amount payable by the tenant other than rent; or
  - 5.4 require the tenant to pay any monetary amount other than rent, security bond and pet bond.
6. The lessor or property manager must give a rent receipt to the tenant within 3 days of the rent being paid unless the rent is paid into an authorised bank or credit union account nominated by the lessor.
7. A tenancy agreement cannot contain a provision for a penalty, damages or extra payment if the tenant fails to keep to the agreement or breaches any law. If an agreement allows a reduced rent or a rebate, refund or other benefit if the tenant does not breach the agreement, the tenant is entitled to the reduction, rebate, refund or other benefit in any event.
8. **Warning:** it is an offence for a tenant to fail or refuse to pay any rent due under a residential tenancy agreement with the intention that the amount of such rent be recovered by the lessor from the tenant's security bond.

**PAYMENT OF COUNCIL RATES, LAND TAX, WATER AND OTHER CHARGES**

9. The lessor must pay all rates, taxes or charges imposed in respect of the premises under the *Local Government Act 1995*, the *Land Tax Act 2002* or any written law under which a rate, tax or charge is imposed for water supply or sewerage services under the *Water Agencies (Powers) Act 1984* (other than a charge for water consumed). The lessor is responsible for any contribution levied under the *Strata Titles Act 1985* and any contribution levied on a proprietor under the *Strata Titles Act 1985*.

**PUBLIC UTILITY SERVICES**

10. **Public utility services** has the meaning given in the *Land Administration Act 1997* and refers to services such as gas, electricity and water.
11. If the premises are not separately metered to measure the tenant's consumption of a public utility service at the premises and the tenant is expected to pay for his or her consumption of the public utility service, the lessor and tenant must agree in writing to an alternative method of calculating the charge to be paid by the tenant for the consumption of that public utility service.
12. The tenant must not be required to pay a charge in relation to a public utility service provided to the premises unless the charge is calculated by reference to the tenant's actual consumption of the public utility service at the premises and the tenant is given written notice of the charge.
13. If the premises are separately metered, the notice of the charge must specify –
  - 13.1 the relevant meter reading or readings; and
  - 13.2 the charge per metered unit; and
  - 13.3 the amount of GST payable in respect of the provision of the public utility service to the residential premises.
14. If the premises are not separately metered, the notice of the charge must specify –
  - 14.1 the calculation as per the agreed method; and
  - 14.2 the amount of GST payable in respect of the provision of the public utility service to the residential premises.

**POSSESSION OF THE PREMISES**

15. The lessor must:
  - 15.1 give the tenant vacant possession of the premises on the day on which the tenant is entitled to enter into occupation of the premises under the agreement; and
  - 15.2 take all steps to ensure that, at the time of signing this agreement, there is no legal reason why the tenant cannot occupy the premises for the term of this agreement.



## TENANT'S RIGHT TO QUIET ENJOYMENT

16. The tenant is entitled to quiet enjoyment of the premises without interruption by the lessor or any person claiming by, through or under the lessor or having superior title to that of the lessor.
17. The lessor or the property manager will not interfere with, or cause or permit any interference with, the reasonable peace, comfort or privacy of the tenant in the use of the premises. The lessor or the property manager must also take all reasonable steps to ensure that the lessor's other neighbouring tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in the use of the premises.

## USE OF THE PREMISES BY TENANT

18. The tenant must:
  - 18.1 use the premises as a place of residence; and
  - 18.2 not use or allow the premises to be used for any illegal purpose; and
  - 18.3 not cause or permit a nuisance; and
  - 18.4 not intentionally or negligently cause or permit damage to the residential premises; and
  - 18.5 advise the lessor or property manager as soon as practicable if any damage occurs; and
  - 18.6 keep the premises in a reasonable state of cleanliness; and
  - 18.7 not cause or allow to be caused injury to the lessor, property manager or any person lawfully on adjacent premises; and
  - 18.8 not allow anyone who is lawfully at the premises to breach the terms of this agreement.
19. The tenant is responsible for the conduct or omission of any person lawfully on the premises that results in a breach of the agreement.

## LESSOR'S GENERAL OBLIGATIONS FOR RESIDENTIAL PREMISES

20. In this clause, **premises** includes fixtures and chattels provided with the premises but does not include:
  - 20.1 any fixture or chattel disclosed by the lessor to the tenant as not functioning before the agreement was entered into; or
  - 20.2 any other fixture or chattel that the tenant could not reasonably have expected to be functioning at the time the agreement was entered into.
21. The lessor must:
  - 21.1 provide vacant possession of the premises and in a reasonable state of cleanliness and repair; and
  - 21.2 maintain and repair the premises in a timely manner; and
  - 21.3 comply with all laws affecting the premises including building, health and safety laws.

## URGENT REPAIRS

22. **Urgent repairs** are defined by the *Residential Tenancies Act 1987* and fall into 2 categories: repairs that are necessary for the supply or restoration of an essential service and other urgent repairs.  
Essential services are listed in the *Residential Tenancies Regulations 1989* as electricity, gas, a functioning refrigerator (if one is provided with the premises), waste water management treatment and water (including the supply of hot water).  
Arrangements for repairs that are necessary to supply or restore an essential service must be made with a suitable repairer within 24 hours.  
Other urgent repairs are those that are not necessary for the supply or restoration of an essential service, but may nevertheless cause damage to the premises, injure a person or cause undue hardship or inconvenience to the tenant.  
Arrangements for these repairs must be made within 48 hours.
23. In every tenancy, if the need for urgent repair arises other than as a result of a breach of the agreement by the tenant:
  - 23.1 the tenant is to notify the lessor or the property manager of the need for urgent repairs as soon as practicable; and
  - 23.2 the lessor is to ensure that the repairs are carried out by a suitable repairer as soon as practicable after that notification; and
  - 23.3 if, within 24 hours (in the case of repairs to essential services) or 48 hours (in the case of other urgent repairs), the lessor or property manager cannot be contacted, or, having notified the lessor or property manager of the need for the repairs, the lessor fails to ensure that the repairs will be carried out by a suitable repairer as soon as practicable after that notification, the tenant may arrange for the repairs to be carried out by a suitable repairer to the minimum extent necessary to effect those repairs; and
  - 23.4 if a tenant arranges for repairs to be carried out under clause 23.3, the lessor must, as soon as practicable after the repairs are carried out, reimburse the tenant for any reasonable expense incurred by the tenant in arranging for those repairs to be carried out and paying for those repairs.

## LESSOR'S ACCESS TO THE PREMISES

24. The lessor, property manager or person acting on behalf of the lessor, can only enter the premises in the following circumstances:
  - 24.1 in any case of emergency;
  - 24.2 to conduct up to 4 routine inspections in a 12 month period after giving the tenant at least 7 days, but not more than 14 days, written notice;
  - 24.3 where the agreement allows the rent to be collected at the premises where rent is payable not more frequently than once every week;
  - 24.4 to inspect and secure the premises if there are reasonable grounds to believe that the premises have been abandoned and the tenant has not responded to a notice from the lessor;
  - 24.5 carrying out or inspecting necessary repairs to or maintenance of the premises, at any reasonable time, after giving the tenant not less than 72 hours notice in writing before the proposed entry;
  - 24.6 showing the premises to prospective tenants, at any reasonable time and on a reasonable number of occasions during the period of 21 days preceding the termination of the agreement, after giving the tenant reasonable notice in writing;
  - 24.7 showing the premises to prospective purchasers, at any reasonable time and on a reasonable number of occasions, after giving the tenant reasonable notice in writing; or
  - 24.8 if the tenant agrees at, or immediately before, the time of entry.
25. There are directions within the *Residential Tenancies Act 1987* which guide tenants, lessors and property managers on appropriate behaviour in relation to gaining or granting access to the premises. The following summary may assist.

## REASONABLE TIME

26. **Reasonable time** means –
  - 26.1 [REDACTED] m and 6.00pm on a weekday; or
  - 26.2 [REDACTED] m and 5.00pm on a Saturday; or
  - 26.3 [REDACTED] time agreed between the lessor and each tenant.



**REQUIREMENT TO NEGOTIATE A DAY AND TIME FOR A PROPOSED ENTRY BY THE LESSOR**

27. If it would unduly inconvenience the tenant for the lessor or property manager to enter the premises as specified in a notice of an intention to enter premises on a particular day, the lessor or property manager must make a reasonable attempt to negotiate a day and time that does not unduly inconvenience the tenant.

**REQUIREMENT TO GIVE TENANT NOTICE OF PROPOSED ENTRY**

28. Where a lessor or property manager gives a tenant notice of an intention to enter premises on a particular day, the notice must specify the day and whether it will be before or after 12.00 p.m.

**TENANT ENTITLED TO BE PRESENT**

29. The tenant is entitled to be on the premises during the entry by the lessor, the property manager or any other agent acting on behalf of the lessor.

**ENTRY MUST BE REASONABLE AND NO LONGER THAN NECESSARY**

30. The lessor or property manager exercising a right of entry:
- 30.1 must do so in a reasonable manner; and
  - 30.2 must not, without the tenant's consent, stay or permit others to stay on the premises longer than is necessary to achieve the purpose of the entry.

**LESSOR'S OBLIGATION TO COMPENSATE TENANT IF DAMAGE TO TENANT'S GOODS**

31. If the lessor or property manager (or any person accompanying the lessor or property manager) causes damage to the tenant's goods when exercising a right of entry, the lessor is obliged to compensate the tenant.

**ALTERATIONS AND ADDITIONS TO THE PREMISES**

32. If the tenancy agreement allows the tenant to affix a fixture or make a renovation, alteration or addition to the premises, then:
- 32.1 the tenant must obtain permission from the lessor prior to affixing any fixture or making any renovation, alteration or addition to the premises; and
  - 32.2 the tenant must obtain permission from the lessor to remove any fixture attached by the tenant and make good any damage; and
  - 32.3 notify the lessor of any damage caused by removing any fixture and, at the option of the lessor, repair the damage or compensate the lessor for any reasonable expenses incurred by the lessor in repairing the damage; and
  - 32.4 the lessor must not unreasonably refuse permission for the installation of a fixture or an alteration, addition or renovation by the tenant.
33. If the lessor wants to make an alteration or addition or affix a fixture to the premises, then:
- 33.1 the lessor must obtain the tenant's permission prior to affixing any fixture or making any renovation, alteration or addition to the premises; and
  - 33.2 the tenant must not unreasonably refuse permission for the lessor to affix any fixture or make any renovation, alteration or addition to the premises.

**LOCKS AND SECURITY DEVICES**

34. The prescribed means of securing the premises are defined in the *Residential Tenancies Regulations 1989*. In every tenancy:
- 34.1 the lessor must provide and maintain such means to ensure the premises are reasonably secure as prescribed in the regulations; and
  - 34.2 any lock or security device at the premises must not be altered, removed or added by a lessor or tenant without the consent of the other; and
  - 34.3 the lessor or the tenant must not unreasonably withhold that consent.

**TRANSFER OF TENANCY OR SUB-LETTING BY TENANT**

35. If the tenancy agreement allows the tenant to assign his or her interest or sub-let the premises with the lessor's consent:
- 35.1 the tenant cannot assign his or her interest or sub-let the premises without the written consent of the lessor; and
  - 35.2 the lessor must not unreasonably withhold such consent; and
  - 35.3 the lessor must not make any charge for giving such consent other than the lessor's reasonable incidental expenses.

**CONTRACTING OUT**

36. It is an offence to contract out of any provision of the *Residential Tenancies Act 1987*.

**ENDING THE RESIDENTIAL TENANCY AGREEMENT**

37. This residential tenancy agreement can only be terminated in certain circumstances.
38. The tenant agrees, when this agreement ends, to give vacant possession of the premises to the lessor. Before giving vacant possession to the lessor the tenant must:
- 38.1 remove all the tenant's goods from the residential premises; and
  - 38.2 leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, as at the commencement of the tenancy; and
  - 38.3 return to the lessor all keys, and other opening devices or similar devices, provided by the lessor.
39. The tenant may be liable for losses incurred by the lessor if the above requirements are not met.

**ENDING A FIXED TERM AGREEMENT**

40. If this agreement is a fixed term agreement it may be ended:
- 40.1 by agreement in writing between the lessor and the tenant; or
  - 40.2 if either the lessor or tenant does not want to renew the agreement, by giving written notice of termination. The notice must be given to the other party at least 30 days prior to the date on which vacant possession of the premises is to be delivered to the lessor. The notice may be given any time up until the end of the fixed term but cannot take effect until the term ends.



## ENDING A PERIODIC AGREEMENT

41. If this agreement is a periodic agreement it may be ended:

- 41.1 by agreement in writing between the lessor and the tenant; or
- 41.2 by either the lessor or the tenant by giving written notice of termination to the other party. The notice may be given at any time. The lessor must give at least 60 days notice and the tenant must give at least 21 days notice.

## OTHER GROUNDS FOR ENDING AGREEMENT

- 42. The *Residential Tenancies Act 1987* also authorises the lessor and tenant to end this agreement on other grounds. The grounds for the lessor include sale of the residential premises, breach of this agreement by the tenant, where the agreement is frustrated (e.g. where the premises are destroyed or become uninhabitable) and hardship. The grounds for the tenant include breach of this agreement by the lessor, where the agreement is frustrated (e.g. where the premises are destroyed or become uninhabitable) and hardship.
- 43. For more information, refer to the *Residential Tenancies Act 1987* or contact the Department of Commerce on 1300 30 40 54 or visit [www.commerce.wa.gov.au/ConsumerProtection](http://www.commerce.wa.gov.au/ConsumerProtection).

## 44. Warning:

- 44.1 It is an offence for any person to obtain possession of the residential premises without an order of the Magistrates Court if the tenant does not willingly move out (a termination notice issued by the lessor or property manager is not a court order). The court may order fines and compensation to be paid for such an offence.
- 44.2 It is an offence for a tenant to fail to provide the lessor with a forwarding address when vacating the premises.

## SECURITY BOND

- 45. The security bond is held by the Bond Administrator.
- 46. The lessor agrees that if the lessor or the property manager applies to the Bond Administrator for all or part of the security bond to be released to the lessor, the lessor or property manager will provide the tenant with evidence to support the amount that the lessor is claiming.
- 47. The Bond Administrator can only release the security bond when it receives either:
  - 47.1 a Joint Application for Disposal of Security Bond form signed by all the parties to the tenancy agreement; or
  - 47.2 an order of the court.
- 48. If the parties cannot agree on how the security bond is to be dispersed, either party can apply to the Magistrates Court to have the dispute decided.
- 49. **Warning:** It is an offence for a lessor or a property manager to require a tenant to sign a Joint Application for Disposal of Security Bond form unless the residential tenancy agreement has terminated, the rent to be paid under the tenancy agreement is decreased or a pet is no longer kept at the premises, and the amount of the security bond to be paid to the tenant or lessor is stipulated on the form.

## TENANCY DATABASES

- 50. A lessor or property manager can only list a person on a residential tenancy database if:
  - 50.1 the person is a named tenant on the residential tenancy agreement; and
  - 50.2 the residential tenancy agreement has been terminated; and
  - 50.3 the person owes the lessor a debt that is greater than the security bond or a court has made an order terminating the tenancy agreement.

## NOTICES

- 51A. A notice under this agreement must be given:
  - 51A.1 in the prescribed form; or
  - 51A.2 if there is no prescribed form but there is an approved form - in the approved form; or
  - 51A.3 if there is no prescribed form or approved form - in writing.
- 51B. A notice from the tenant to the lessor may be given to the property manager or the lessor's agent.
- 51C. A notice under this agreement may be given to a person:
  - 51C.1 by giving it to the person directly; or
  - 51C.2 if an address for service for the person is given in the agreement - by posting it to, or leaving it at, the address for service; or
  - 51C.3 if the person has agreed under Part A to the electronic service of notices - by sending the notice to the email address or facsimile number given in Part A.
- 51D. A person may withdraw his or her consent to a notice being given to the person by email or facsimile by giving a notice to that effect to each other party to the agreement.

## ADVICE, COMPLAINTS AND DISPUTES

### DEPARTMENT OF COMMERCE

- 51. The *Residential Tenancies Act 1987* allows the Commissioner for Consumer Protection to give advice to parties to a residential tenancy agreement, to look into complaints and, wherever possible, help to settle them. The Department of Commerce may be contacted by telephone on 1300 30 40 54 or by visiting one of the Department's offices.
- 52. The tenant should generally approach the lessor or property manager to solve any problem before approaching the Department of Commerce. The Department's role is one of mediation and conciliation, it cannot issue orders or make determinations in respect of disputes.

## IF A DISPUTE CANNOT BE RESOLVED

- 53. If a dispute arises between the lessor and the tenant and the dispute cannot be resolved, either party may apply to the Magistrates Court to have the dispute decided by the court. The court can make a range of orders, including:
  - 53.1 restraining any action in breach of the agreement; and
  - 53.2 requiring a party to the agreement to perform a certain action under the agreement; and
  - 53.3 payment of any amount owing under the agreement; and
  - 53.4 payment of compensation for loss or injury.

## FORM 1AA - Residential Tenancies Act 1987- Section 27A

## RESIDENTIAL TENANCY AGREEMENT PART C

## IMPORTANT INFORMATION

**Additional terms may be included in this agreement if:**

- (a) both the lessor and tenant agree to the terms; and  
(b) they do not conflict with the *Residential Tenancies Act 1987*, the *Residential Tenancies Regulations 1989*, or any other law; and  
(c) they do not breach the provisions about unfair contract terms in the *Fair Trading Act 2010*; and  
(d) they do not conflict with the standard terms of this agreement.

ADDITIONAL TERMS ARE NOT REQUIRED BY THE *RESIDENTIAL TENANCIES ACT 1987*.

HOWEVER, ONCE THE PARTIES SIGN THIS AGREEMENT, THE ADDITIONAL TERMS ARE BINDING UPON THE PARTIES UNLESS THE TERM IS FOUND TO BE UNLAWFUL.

additional terms:

## 1. REQUIREMENTS FOR EXISTENCE OF LEASE

- 1.1. The parties agree that there will be no binding agreement to lease the Premises and no residential tenancy agreement will have come into existence, under the *Residential Tenancies Act, 1987* (Act) or otherwise, unless and until the following pre-requisites have been met:
- (a) By no later than 4.00 pm on 26/07/2017, or such later time as agreed to by the lessor's property manager:  
[~~\*strike out whatever subparagraphs do not apply~~]
- (i)\* this residential tenancy agreement is signed by the tenant(s) and returned by the tenant to the lessor's property manager at the physical address or email address appearing in this lease;
- (ii)\* ~~any security bond and any pet bond required to be paid by the tenant pursuant to Part A of this residential tenancy agreement on the signing of the residential tenancy agreement are paid to the lessor's property manager; and~~
- (iii)\* ~~any first payment of rent required to be paid by the tenant pursuant to Part A of this residential tenancy agreement on or before the signing of the residential tenancy agreement is paid in accordance with Part A;~~
- and
- (b) The residential tenancy agreement is signed by the lessor or the property manager (PROVIDED THAT if the tenant has been granted an option to enter the lease and paid an option fee, there shall be no need for the agreement to be signed by the lessor or property manager in order for a binding agreement to exist and this pre-requisite (b) shall not apply).

Note: Under the Residential Tenancy Act 1987 agreement to lease do not have to be in writing and may be entered verbally or by conduct. This clause 1 does not purport to remove the right of the parties to reach non-written agreements. However, if the parties wish to enter into an agreement on the terms set out in this form, the pre-requisites set out above must be met in order for the lease to exist.

## 2. THE TENANT'S OBLIGATIONS

- |             |  |
|-------------|--|
| <b>Rent</b> | 2.1. The tenant agrees to pay the Rent punctually pursuant to the provisions of Part A, on the dates for payment, without any deductions or legal or equitable set-offs.   |
|             | 2.2. The tenant must not fail or refuse to pay any rent due under this lease with the intention that the amount of the rent may be recovered by the lessor from the security bond. (This is an offence against Section 52 of the Act and is subject to a maximum penalty of \$5,000.00). |

**Renegotiated Fixed  
Term Lease (section  
31B of the Act)**

[Delete if inapplicable - to be used when a new lease is entered into (the **new agreement**) that has been the subject of a previous fixed term lease between the same parties in relation to the same premises (the **former agreement**)].

2.3. ~~Rent~~ under this lease will be the amount stipulated under the heading "Rent" in Part A of this lease. ~~However, in order to comply with section 31B of the Act and to provide 30 days' notice of the increase in the rental previously paid under the former agreement, until [ ] (insert date) (being the first 30 days of the term of this new agreement), the tenant is only required to pay rental of \$ [ ] per week (insert the amount that is the equivalent of the rental paid under the former agreement).~~

- Rent Reviews** 2.4. If this lease is a periodic tenancy, then the rent will be increased every [insert frequency of rent review]  
 [N/A] months using the following Method of Rent Review [insert method A, B, C, or D as defined below]  
 If this lease is a fixed term tenancy agreement, then the rent will be increased on the following dates in the following manner:

The Parties agree that on the relevant rent review date(s) referred to below the rent per week during the term of this fixed term lease will be increased by the method referred to below.

Note: Any increase in rent must be no sooner than 6 months after the commencement date of this tenancy and the date of the last increase. The lessor must give to the tenant at least 60 days' notice of the increase.

Redacted for confidentiality



The reviewed rental cannot be less than the rental payable in the immediately preceding period.

|                       |                                |             |   |
|-----------------------|--------------------------------|-------------|---|
| Method of Rent Review | <input type="text" value="C"/> | Review Date | <input type="text" value="ANNUALLY - 1st year after lease start date"/> |
| Method of Rent Review | <input type="text" value="C"/> | Review Date | <input type="text" value="ANNUALLY - 2nd year after lease start date"/> |
| Method of Rent Review | <input type="text" value="C"/> | Review Date | <input type="text" value="ANNUALLY - 3rd year after lease start date"/> |
| Method of Rent Review | <input type="text" value="C"/> | Review Date | <input type="text" value="ANNUALLY - 4th year after lease start date"/> |

Insert **A, B, C** or **D** for the Method of Rent Review.

A. fixed increase of  per week

B. Consumer Price Index (Perth All Groups) ("CPI")

C.  % increase of the rent payable on the day immediately prior to the Review Date

D. Other Method:

For the purposes of this rent review clause, the following terms have the following meanings:

**CPI** means the rent will be determined in accordance with the following formula:  
CPI Rent = R x (C/P)  
Where R = the Rent payable immediately prior to the relevant Rent Review Date  
C = the Current CPI (for the most recent quarter prior to the Rent Review Date with respect to which the CPI has been published)  
P = the Previous CPI (for the quarter immediately before the last Rent Review Date or, if there has been no previous rent review, the date of the commencement of the tenancy).

**Percentage Increase** means the reviewed rental will be the rent applicable immediately before the rent review date increased by the percentage specified above on that rent review date.

**Other Method** means the Rent applicable immediately before the rent review date will be increased by that method on that rent review date.

2.5. If this tenancy agreement is for a fixed term and the tenancy reverts to a periodic tenancy pursuant to section 76C of the Act, then the periodic rent upon expiry of the fixed term will be, for the first 30 days after the commencement of the periodic tenancy, the same rent that was payable at the end of the fixed term and, after that 30 day period, a sum being

[or insert a method of calculating the rent] (**Increased Rent**).

PROVIDED THAT, in order for the Increased Rent to apply, the lessor must give the tenant at least 60 days' notice of the Increased Rent and the commencement date for the Increased Rent must be no sooner than 6 months after the last rent increase.

**Pets** 2.6. The tenant must not keep any animal, bird or fish in or about the premises, unless that pet is listed in Part A of this residential tenancy agreement or without the prior written permission of the Lessor.

2.7. The tenant must not keep any restricted breed dogs as defined under the Dog (Restricted Breeds) Regulations 2002- Dogo Argentine (Argentinian Fighting Dog), Fila Brasileiro (Brazilian Fighting Dog), Japanese Tosa, American Pit Bull Terrier, Pit Bull Terrier or any dog of a mixed breed which visibly contains any of these breeds, without the prior written consent of the Lessor.

**Pet Security Bond** 2.8. If the lessor permits the tenant to keep pets at the premises as specified in Part A, or as agreed in writing after the commencement of the residential tenancy agreement, and if any of those pets are capable of carrying parasites that can affect humans, then the tenant shall deposit with the property manager a Pet Security Bond of the amount referred to in Part A. At the end of the tenancy that Pet Bond may be applied to the cost of fumigation of the premises. In this clause, the term "pet" does not include a guide dog as defined in section 3(1 of the *Dog Act, 1976*).

**Smoking** 2.9. Unless otherwise agreed to by the lessor in writing, smoking is not permitted inside the residential buildings on the premises.

**Services** 2.10. The tenant must notify the electricity and gas utilities (if applicable) of the tenant's occupation of the premises.

**Telephone** 2.11. The lessor makes no representations about the availability of telephone lines, internet lines or any other communications services to the premises. The tenant must make his or her own enquiries regarding the availability, cost and/or installation of those services. The tenant is allowed to install and/or attach cabling, telephone lines and/or communications lines to the premises provided no damage is done to the premises in installing, attaching and/or removing them and the tenant pays all costs associated with that installation, attachment and/or removal.

If at the end of the residential tenancy the lessor requests the cabling and/or communications lines to be removed, the tenant must remove them and make good any damage caused by that removal. If any cabling, telephone lines and/or communications lines installed or attached by the tenant are left remaining at the premises or attached to the premises at the end of the tenancy, with the lessor's consent, those items become the property of the lessor.

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|                                      |  |
|--------------------------------------|--|
| <b>Strata Company</b>                | 2.12. The Tenant agrees to comply with all the rules and by-laws governing the use of the Premises and the common areas issued by the Strata Company or Strata Council.  |
| <b>Tenant to Keep Premises Clean</b> | <p>2.13. In accordance with the tenant's obligation to keep the premises in a reasonable state of cleanliness pursuant to section 38(1)(a) of the Act, the tenant must keep the premises in a clean and sanitary condition and free from dirt, oils, grease, insects, and vermin.</p> <p>2.14. The tenant is responsible for the eradication of insect and vermin infestations caused by the tenant's activities or lack of cleanliness.</p>   |
| <b>Chattels</b>                      | 2.15. Except for matters required to be attended to by the lessor as part of its obligations to maintain the premises in a reasonable state of repair (having regard to its age and character), the tenant agrees to keep the premises, including all floors, floor coverings, skirting boards, walls, ceilings, windows (including glass), window treatments, doors (including glass if any), light fittings, fixtures and fittings, and chattels included in the tenancy agreement (as set out in any attached Inventory) in the same condition as they were in at the commencement of this lease and in accordance with the Property Condition Report (fair wear and tear excepted).  |
| <b>Smoke Alarms and RCDs</b>         | 2.16. The tenant must take reasonable steps to regularly check and test whether all smoke alarms and residual current devices on the premises are in good working order. If any smoke alarm or residual current device is not at any time in good working order, the tenant must give the lessor immediate notice in writing of that fact. Note: Nothing in this clause lessens the obligations upon lessors in relation to smoke alarms under the Building Regulations 2012 and/or in relation to residual current devices under the Electricity Regulations, 1947.   |
| <b>Light Globes</b>                  | 2.17. The tenant agrees to replace all broken light globes and fluorescent light tubes and save for matters required to be attended to by the lessor as part of its obligations to maintain the premises in a reasonable state of repair (having regard to its age and character), ensure all light globes and fluorescent light tubes are kept in good working order.   |
| <b>Gardens</b>                       | 2.18. The tenant must attend to the garden, lawns, lawn edges, hedges, shrubs and trees so that they are kept in the same condition as at the commencement of this lease as described in the Property Condition Report, to water and fertilise them regularly and adequately, to keep all the grounds clean and tidy and free from rubbish, to keep the flower beds and lawns free of weeds, and not to remove or cut down any plants, trees or shrubs.  |
| <b>Swimming Pool Spa</b>             | <p>2.19. If the premises includes a swimming pool or spa, the tenant must keep the pool or spa and any associated equipment in a properly treated and clean condition and observe all legal requirements relating to pools and/or spas during the period of this lease. The tenant must not drain the pool without the lessor's written consent.</p> <p><b>If a tenant becomes aware of any matters that may render any swimming pool or spa on the premises unsafe, the tenant must report those matters to the lessor as soon as practicable. Further, tenants should note that they are entitled to notify local governments about matters relating to the safety of swimming pools or spas.</b></p>  |
| <b>Damage and Disrepair</b>          | <p>2.20. The parties' rights and obligations with respect to urgent repairs are set out in section 43 of the Act and clauses 22 and 23 of Part B of the Residential Tenancy Agreement. Obligations upon the tenant to advise the lessor or property manager as soon as practicable if any damage occurs to the premises are set out in section 38 of the Act and clause 18.5 of the Residential Tenancy Agreement. The tenant agrees to make all reasonable efforts to report to the Lessor all damage and any state of disrepair to the premises, as soon as practical after the same occurs. Failure to do so will render the tenant liable for all costs and/or losses incurred by the lessor as a result of such failure to report (examples of the types of incidents that might give rise to a need to make a report as soon as practical include, but are not limited to, a broken window, a kitchen cupboard door falling off, a cracked shower screen or a burst water pipe on the leased premises or a machine, such as a pool pump, that forms part of the leased premises, being in need of repair). The tenant may be liable to pay the lessor damages if the lessor suffers loss as a consequence of the tenant failing or delaying to make a report.</p> <p>2.21. The tenant must pay for any damages caused by the tenant's breach of the residential tenancy agreement including, but not limited to, the cost of repairing any damage that is caused by, or is attributable to, an act or omission by the tenant or anyone who is lawfully at the premises, contrary to clause 18 and/or 19 or Part B.</p> |
| <b>Excess on Insurance</b>           | <p>2.22.</p> <p>2.22.1 If the lessor elects to claim on the lessor's insurance for any loss or damage that arises or is attributable to an act or omission by the tenant or the tenant's visitors, or people associated with the tenant, that amounts to a breach of this residential tenancy agreement or would otherwise leave the tenant liable to the lessor for damages and the lessor is successful in relation to recovering any money for such damage, then the tenant will be liable to the lessor to pay any "excess" on any such insurance claim.</p> <p>2.22.2 The tenant acknowledges that any damage caused to the premises or any chattels on the premises by a water bed is not normally covered by insurance.</p> <p>2.22.3 This clause does not limit the liability of the tenant for acts of negligence, other torts or breaches of this residential tenancy agreement and this clause does not require the lessor to make any claim under any insurance policy held by the lessor.</p>   |
| <b>Alterations to the Premises</b>   | 2.23. Notwithstanding which election is selected with respect to the right of the tenant to affix and remove fixtures in Part A, the tenant must not place any sign on, or paint the premises, use blue tack or any other adhesive material, or drive any nails or screws into or deface any part of the Premises.   |

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|  |   |
|--|---|
| Objectionable Behaviour                  | 2.24. The tenant must not interfere with or cause or permit interference with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises.   |
| Water beds, Aquarium, Swimming Pool, Spa | 2.25. The tenant must not without the lessor's consent install any water bed, aquarium, swimming pool, or spa on the premises. The tenant is liable to the lessor for any costs or losses resulting from any damage caused to the premises (including any of the lessor's chattels, fixtures, fittings and/or furniture) by the escape of water from any waterbed, aquarium, swimming pool, or spa if the escape of the water is caused by the tenant breaching this Residential Tenancy Agreement or breaching the terms of the Act.   |
| Laundry                                  | 2.26. The tenant must not hang or display any laundry or other articles on any balcony or verandah.   |
| Indemnify the Lessor                     | 2.27. The tenant agrees to indemnify the lessor against any loss sustained by the lessor or any sum the lessor might at any time be liable to pay, as a result of:<br>2.27.1 any damage to the premises or any furniture or chattels belonging to the lessor;<br>2.27.2 any claim made against the lessor, whether in relation to property damage or personal injury; or<br>2.27.3 any other matter whatsoever, arising from any breach of clauses 18 and/or 19 of Part B of this residential tenancy agreement.<br>arising from any breach of clauses 18 and/or 19 of Part B of this residential tenancy agreement.  |
| Inspections                              | 2.28. Provided that the lessor has complied with clauses 24 to 28 of Part B of this residential tenancy agreement, if the tenant is not present at the time specified in any notice for the inspection provided by the lessor, the tenant agrees that the lessor or the lessor's Property Manager or their employees may enter the premises.  |
| Keys and Electronic Keys                 | 2.29. Subject to the provisions of section 45 of the Act and clause 34 of Part B of this residential tenancy agreement, the lessor will supply to the tenant one set of Keys that enable access to the premises.<br>2.30. Should the tenant require an additional set(s) of the Keys or the existing set to be recoded (due to the fault of the tenant), then any cost associated with an additional set(s) or recoding will be borne by the tenant and must be paid for by the tenant prior to receiving the additional set(s) of the Keys.<br>2.31. Should the tenant lose possession of the Keys, then the tenant will be responsible for all costs and expenses associated with replacing the Keys, or gaining access to the premises.<br>2.32. The lessor will replace Keys and arrange for access to the premises arising from lost Keys only during normal business hours. |
| Granting of a Licence (Airbnb)           | 2.33. The tenant must not:<br>(a) grant any licence or right to reside or stay at the premises or any part of it to any person or entity as part of a commercial arrangement; or<br>(b) advertise or list the premises on any internet or other site for a licence or right to reside or stay at the premises   |

3. DEFAULT, INCLUDING WRONGFUL TERMINATION OF LEASE (i.e. "BREAK LEASE")

- 3.1 If the tenant:

(a) terminates this lease, otherwise than in accordance with clause 37 of Part B of this residential tenancy agreement or the provisions of the Act, before the end of the tenancy period referred to in Part A (commonly known as a "break lease"); or

(b) the tenant otherwise breaches the lease and/or does not comply with the tenant's obligations under this lease,
- then the tenant is liable to pay any damages and losses to the lessor that the lessor suffers or will suffer as a result of the tenant's breach.<sup>1</sup> The lessor must endeavour to reasonably mitigate the lessor's damages and losses.

4. END OF TENANCY

|   |   |
|---|---|
| Swimming Pool and Spa Equipment at the end of tenancy | 4.1 If at the commencement of the lease the lessor provided pool chemicals to the tenant, then a comparable quantity of the same chemicals are to be provided by the tenant to the lessor at the end of the lease.<br>4.2 The tenant must secure all portable pool cleaning equipment in a locked area on the premises at the end of the tenancy. |
| Movement of Chattels                                  | 4.3 The tenant must return all fixtures, furniture, chattels, household effects and all other items described in either the Property Condition Report or the attached Inventory to the original positions described in those documents.   |
| Cleaning of Carpets                                   | 4.4 As part of the tenant's obligations under clause 18.6 of Part B of this Residential Tenancy Agreement, the tenant agrees upon vacation of the premises to have all carpets professionally cleaned (at the tenant's expense) and to supply to the Property Manager a receipt as evidence that the carpets have been cleaned.                   |

<sup>1</sup> Examples of the types of costs that might give rise to a need to make a break lease claim include, but are not limited to rent, advertising expenses associated with finding a new tenant and the unexpired portion of any leasing fee charged by the property manager to the lessor and also property maintenance such as lawn mowing and watering. These costs may be charged until a new tenant moves in or the original tenancy period expires). The lessor must endeavour to reasonably mitigate the lessor's damages and losses.

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5. DEFINITIONS AND INTERPRETATION

- 5.1 If any provision of this lease is invalid, unenforceable or illegal, then that provision may be severed and the remainder of this lease will continue to be effective.
- 5.2 In this lease, unless otherwise required by the context or subject matter:  
"Keys" means all keys and electronic keys that permit access to the premises, to common property associated with a strata lot, or to car bays associated with the premises.  
"Inventory" means a list of the lessor's furniture contained in the premises at the commencement of the lease.
- 5.3 Any reference in this lease to the "lessor" doing anything shall mean and include it being done by the lessor's Property Manager.
- 5.4 Where either the tenant or the lessor comprise more than one person, the obligations to be performed in this lease are binding upon such two or more persons jointly and severally.

6. INFORMATION COLLECTION NOTICE PRIVACY ACT, 1988  
AUSTRALIAN PRIVACY PRINCIPLE 5

The Lessor's property manager (whose contact details appear in Part A of this form) collects the personal information provided in this form in compliance with the provisions of the *Privacy Act, 1988* and the Australian Privacy Principles. Personal information collected by the property manager through the management of the tenancy including, but not limited to the Property Condition Report is necessary to manage the tenancy. The personal information collected by the property manager in this residential tenancy agreement, in the Property Condition Report and during the period of the management of the tenancy is collected to be used in managing the tenancy, to enable the property manager to provide the services and benefits the subject of this agreement and to enable the property manager to conduct its business. The tenant, by signing this agreement, consents to that collection and use. Further details regarding the purposes for which the information is collected, the disclosures that are usually made of personal information collected by the property manager, the situations where the property manager is required to collect information by law, and any disclosure of information that may be made by the property manager overseas, can be obtained from the more detailed collection notice on the property manager's website. The property manager's privacy policy may also be accessed on that website. If the information collected in this form is not provided, the property manager may not be able to provide its services as effectively. Individuals who wish to access or correct information held about them or who wish to make any complaint regarding privacy should contact the property manager's privacy officer.

7. ANNEXURES

The attached annexures:

Part D - Special Conditions  
Annexure 3 - Lease Renewal - Options & Notice to Renew Options  
Form 2 - Notice of Termination  
Form 3 - Privacy Statement  
Form 4 - Management Statement  
Payment Direction Deed

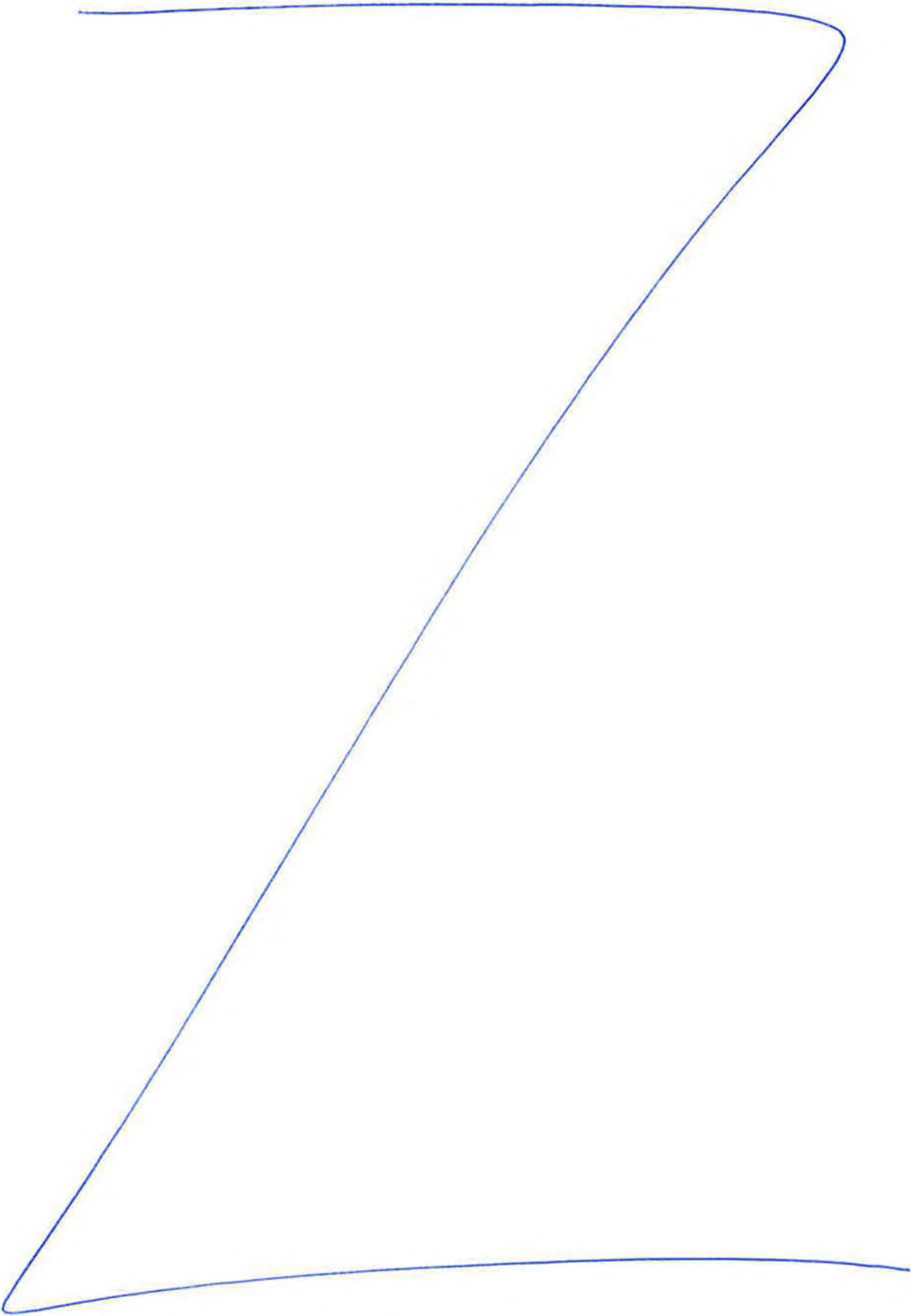
form part of this Lease.

Initials

Redacted for confidentiality

This page is intentionally left blank but additional terms between tenant and lessor may be inserted and included in Part C by agreement between the parties. REIWA has not endorsed or approved the further additional terms.

NOT APPLICABLE



Initials

Redacted for confidentiality

Redacted for confidentiality

This page is intentionally left blank but additional terms between tenant and lessor may be inserted and included in Part C by agreement between the parties. REIWA has not endorsed or approved the further additional terms.

NOT APPLICABLE

Initials

Redacted for confidentiality

Redacted for confidentiality



**THE LESSOR AND TENANT ENTER INTO THIS AGREEMENT AND AGREE TO ALL ITS TERMS.**

Executed by the Tenant (if a corporation, the Tenant executes this document pursuant to its constitution and the Corporations Act)

**Tenant's Signature**

Redacted for confidentiality

Date

26 / 07 / 2017

Redacted for confidentiality

26 / 07 / 2017

Luba Thomas

/ /

/ /

CORPORATION:

Name of Corporation

ACN / ABN

Director

Director / Secretary

Executed by the Lessor (if a corporation, the Lessor executes this document pursuant to its constitution and the Corporations Act)

**Lessor / Lessor's Agent Signature**

Redacted for confidentiality

Date

26 / 07 / 2017

Aimee Hope

/ /

CORPORATION:

Name of Corporation

ACN / ABN

Director

Director / Secretary

A true copy of:

(1) The Residential Tenancy Agreement Parts A, B &amp; C

(2) Relevant By-Laws pertaining to the strata complex, and

(3) Form 1AC - Information for Tenant

have been received by the Tenant:

Redacted for confidentiality

Date 26 / 07 / 2017

Date / /

Date 26 / 07 / 2017

Date / /

(Signed by Tenants)

For information about your rights and obligations as a lessor or tenant, contact the Department of Commerce on 1300 30 40 54  
or visit [www.commerce.wa.gov.au/ConsumerProtection](http://www.commerce.wa.gov.au/ConsumerProtection)

## Part D – Special Conditions

### 1. Definitions

---

#### 1.1 Definitions

In these special conditions:

**Act** means the *Residential Tenancies Act 1987* (WA).

**Land** means the land on which the residential premises are situated.

**Standard Term** means a provision of:

- (a) the tenancy agreement in Part A;
  - (b) the standard terms in Part B;
  - (c) the additional terms in Part C,
- of this agreement.

**Starting Date** means the date specified in the tenancy agreement as being the date on which the Term commences.

**Strata Plan** means a 'strata plan' or a 'survey-strata plan' as defined in the *Strata Titles Act 1985* (WA).

**Term** means the term of this agreement being a period of 5 years commencing on the Starting Date and, subject to special condition 3, ending on the end date specified in the tenancy agreement.

### 2. Incorporation of Special Conditions

---

- (a) The special conditions in this Part D are incorporated in and form part of this agreement.



- (b) In the event of any inconsistency between:
- (i) a Standard Term; and
  - (ii) a special condition in this Part D,
- the special condition will prevail to the extent of that inconsistency.

### 3. Term

---

Despite any provision to the contrary in this agreement, the Term will end on the earliest of:

- (a) where the tenant is one person, the date of death of that person;
- (b) where the tenant is more than one person, the date of death of the last survivor of the tenant; and
- (c) the date on which the Term ends upon a lawful termination of this agreement either pursuant to this agreement or the Act.

### 4. Modification and supplementation of Standard Terms

---

#### 4.1 Routine inspections

For the purpose of clause 24.2 in Part B, the number of routine inspections in a 12 month period is limited to two.

#### 4.2 Termination by Tenant

- (a) In addition to the grounds on which the tenant may terminate the Term under this agreement and pursuant to the Act, the tenant may terminate this agreement by giving written notice to the lessor without specifying any ground for the notice.
- (b) The period of notice for termination of this agreement under special condition 4.2(a) must not be less than 180 days.
- (c) A notice of termination under special condition 4.2(a) must:
  - (i) be signed by the tenant and identify the residential premises; and
  - (ii) specify the day on which the tenant will deliver up possession of the residential premises.

## 5. Common Areas

---

### 5.1 Definition

In this special condition 5:

**Common Area** means the area or areas so depicted on the plan attached to this agreement.

**Other User** means each other person which occupies premises depicted on the plan annexed to this agreement and to which the lessor has granted rights similar to those conferred by this special condition 5.

### 5.2 Tenant right to use the Common Area

The lessor grants to the tenant for the Term the non-exclusive right to use the Common Area:

- (a) in common with each Other User; and
- (b) for the purpose for which the Common Area is intended by the lessor to be used.

### 5.3 Tenant's obligation

The tenant must:

- (a) not intentionally or negligently cause or permit damage to the Common Area;
- (b) in conjunction with each Other User, keep the Common Area in a reasonable state of cleanliness;
- (c) co-operate with each Other User in the performance of the tenant's obligation under special condition 5.3(b); and
- (d) must not cause or allow to be caused injury to any person lawfully on the Common Area.

### 5.4 Lessor's rights and obligations

- (a) Subject to special condition 5.4(b), the lessor's obligations under this agreement concerning the maintenance and repair of the residential premises extend to the Common Area.

- (b) The lessor is not required to:
  - (i) negotiate with the tenant or any Other User a day and a time for a proposed entry by the lessor onto the Common Area; and
  - (ii) give to the tenant or any Other User notice of the lessor's intention to enter onto the Common Area.
- (c) The lessor's right under this agreement to enter and remain on the residential premises extend to the Common Area.

## 6. Subdivision

---

### 6.1 Strata subdivision

- (a) This special condition 7.1 applies if, at the date of this agreement, the Land has not been subdivided by a Strata Plan.
- (b) The lessor may subdivide the Land by Strata Plan so long as in doing so the lessor does not substantially and permanently reduce the tenant's enjoyment of the residential premises.
- (c) The tenant must promptly and at the lessor's cost co-operate with the lessor and do anything that the lessor reasonably requires (for example, execute documents) in connection with the lessor's exercise of the lessor's rights under this special condition 7.1. Without limiting the previous provisions of this special condition, the lessor may require the tenant to:
  - (i) sign a consent to a subdivision; or
  - (ii) vary this agreement to give effect to a subdivision.
- (d) The tenant appoints the lessor and its officers jointly and severally to be the attorney of the tenant to do anything and to execute any document to give effect to special condition 6.1(c). For these purposes, the lessor may do, execute and perform all things relative to the proposed subdivision as fully and effectually as the tenant could do. The tenant must ratify and confirm all actions the attorney lawfully does.

I/We acknowledge that I/we have been given the opportunity to take independent legal and financial advice on this agreement and the risks associated with entering into it.

## Payment Direction Deed

### Sterling New Life

**The person whose name and address is specified in the Reference  
Schedule as the Landlord**

and

**The person whose name and address is specified in the Reference  
Schedule as the Resident**

and

**Sterling Corporate Services Pty Ltd as Manager**

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Payment Direction Deed

|         |   |                  |
|---------|---|------------------|
| Date    | /   | /                |
| Parties | <b>The person specified in Item 1 of the Reference Schedule</b> |                  |
|         | <b>(Landlord)</b>   |                  |
|         | <b>The person specified in Item 2 of the Reference Schedule</b> |                  |
|         | <b>(Resident)</b>   |                  |
|         | <b>Sterling Corporate Services Pty Ltd</b>                      |                  |
|         | ACN 158 361 507 of Level 1, 19 Lyall St South Perth             |                  |
|         | <b>(SCS)</b>  | <b>(Manager)</b> |

The parties agree, in consideration of, among other things, the mutual promises contained in this deed as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

|                                |   |
|--------------------------------|---|
| <b>Application Fee</b>         | means a fee payable to SCS equal to 8.8% inclusive of GST of the Investment Amount  |
| <b>Application Period</b>      | means the period of 10 Business Days commencing on the date of this deed.   |
| <b>Business Day</b>            | means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.                                      |
| <b>Constitution</b>            | means the Constitution of the Trust in which the Investment Amount is invested from time to time.                             |
| <b>Current RE</b>              | means the current Responsible Entity for the Sterling Fund.   |
| <b>Distribution Date</b>       | means the dates following the end of a Distribution Period on which a distribution is made in accordance with a Constitution. |
| <b>Distribution Period</b>     | has the same meaning as 'Distribution Period' in the Constitution.  |
| <b>First Distribution Date</b> | means the first Distribution Date to occur after the Starting Date.   |

|                                   |  |
|-----------------------------------|--|
| <b>Initial Rent Payment</b>       | means an amount equal to two or four weeks rent as elected by the Resident.  |
| <b>Investment Allocation</b>      | means the percentage split specified in Item 6 of the Reference Schedule, of the Investment Amount to be invested in specific classes of units in the Sterling Fund.                                 |
| <b>Investment Amount</b>          | means the dollar amount specified in Item 4 of the Reference Schedule.   |
| <b>PDS</b>                        | means a product disclosure statement for the Sterling Fund.  |
| <b>PDS Nominated Bank Account</b> | means the application bank account nominated in the PDS.   |
| <b>Rent</b>                       | means the rent payable by the Resident (as tenant) under the Sterling New Life.  |
| <b>Residential Premises</b>       | means the premises situated at the address specified in Item 3 of the Reference Schedule.  |
| <b>RMA</b>                        | means Rental Management Australia Pty Ltd ACN 160 167 108.   |
| <b>SCS Nominated Bank Account</b> | means the bank account nominated and operated by SCS.  |
| <b>Starting Date</b>              | means the date of commencement of the Term as specified in Part A of the Sterling New Life.  |
| <b>Sterling Fund</b>              | means the registered managed investment scheme specified in Item 5 of the Reference Schedule.  |
| <b>Sterling New Life</b>          | means the residential tenancy agreement in respect of the Residential Premises entered into between the Landlord as lessor and the Resident (as tenant) dated on or about the date of this deed.     |
| <b>Resident's Units</b>           | means the Units issued to the Resident as a result of the Investment Amount less the Application Fee and the Initial Rent payment being invested in accordance with this deed.                       |
| <b>Term</b>                       | means the term of the Sterling New Life commencing on the Starting Date and, subject to the terms of the Sterling New Life, ending on the end date specified in the Part A of the Sterling New Life. |
| <b>Units</b>                      | means the units subscribed in the Sterling Fund specified in Item 5 of the Reference Schedule.   |

## 1.2 Interpretation

In this deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this deed;
- (b) a gender includes all other genders;
- (c) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any government agency (whether or not having a separate legal personality);
- (d) a reference to a party to any document includes that party's successors and permitted assigns;
- (e) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) a provision of this deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or the preparation or proposal of that provision;
- (g) specifying anything in this deed after the words 'include', 'including', 'for example', 'such as' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (h) a reference to time is to Perth time;
- (i) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day, it is taken to have occurred or been done on the next day; and
- (j) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

## 1.3 Business Day

If anything under this deed is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

## 1.4 Precedence

In the event of any inconsistency between a provision of the Sterling New Life and a provision of this deed, the provision of this deed will prevail to the extent of that inconsistency.



## 2. Resident's Units

---

### 2.1 Application for Units

- (a) This deed is conditional upon;
  - (i) the Resident paying the Application Fee to the SCS Nominated Bank Account; and
  - (ii) the Resident paying the Initial Rent Payment to the SCS Nominated Bank Account; and
  - (iii) the Resident paying the amount of the Investment Amount less the Application Fee and the Initial Rent Payment to the PDS Nominated Bank Account; and
  - (iv) making an application pursuant to the PDS to invest the Investment Amount less the Application Fee and the Initial Rent Payment in Units by the end of the Application Period.
- (b) The application referred to in clause 2.1(a) must:
  - (i) be in the form of the application form accompanying the then current PDS; and
  - (ii) specify the SCS Nominated Bank Account as the bank account into which all distributions will be paid in accordance with the clause 2.2.
- (c) The condition specified in clause 2.1(a) is for the mutual benefit of the parties and cannot be waived.
- (d) SCS may, in its absolute discretion extend the Application Period by giving written notice to the Resident specifying the new last day of the Application Period.
- (e) Upon issue of the Resident's units, SCS will retain the Application Fee.
- (f) If the condition specified in clause 2.1(a) is not satisfied by the end of the Application Period (as may be extended by SCS under clause 2.1(d)):
  - (i) this deed will terminate automatically at the moment in time after the end of the Application Period; and
  - (ii) upon termination, this deed has no further effect and no party is liable to any other party, other than:
    - (A) under a provision of this deed which is expressed to come into effect on, or to survive, termination; or
    - (B) in respect of any breach of this deed occurring before termination.

## 2.2 **Distributions from the Resident's Units**

The Resident acknowledges and agrees that all distributions from and the proceeds of any redemption of the Resident's Units will be paid into the SCS Nominated Bank Account and to be held in accordance with the terms of this clause 2.

## 2.3 **Redemption of Units**

- (a) The Resident must not make any application to redeem any of the Resident's Units during the Term or whilst there is any money owing by the Resident under the Sterling New Life, except where:
  - (i) the Resident provides SCS with written evidence that the Resident has incurred an income tax liability from income distributions from the Resident's Units; and
  - (ii) the Resident elects to redeem sufficient Resident's Units to pay for the income tax liability evidenced as set out in clause 2.3 (a) (i); and
  - (iii) the Resident's Units that have been or are to be redeemed as set out in clause 2.3 (a) (ii) are no greater than the total funds reinvested into the same Units as the Resident's Units as set out in clause 2.5 (b) (iii).
- (b) The Resident appoints SCS and its officers jointly and severally to be the attorney of the Resident to:
  - (i) upon the Term ending, apply to redeem any of the Resident's Units and to have the proceeds of redemption paid into the SCS Nominated Bank Account for the purpose of:
    - (A) paying any Rent that is due at the end of the Term and which has not been paid; or
    - (B) pay any money payable by the Resident under the Sterling New Life including any loss suffered or incurred by the Landlord arising out of the failure by the Resident to comply with its obligations under the Sterling New Life including the obligations to be performed and observed under the Sterling New Life upon the Term ending; and
  - (ii) prior to the Term ending, and the Units for the Resident's Units being closed to further subscriptions, apply to redeem any of the Resident's Units and to have the proceeds of redemption, or reinvested amounts of income, paid into other Units in an alternate fund as directed by SCS; and
  - (iii) upon the situation where the Distributions from the Resident's Units have been insufficient to pay any Rent that is due, apply to redeem any of the Resident's Units and to have the proceeds of redemption paid into the SCS

Nominated Bank Account for the purpose of paying any Rent that is due and which has not been paid.

- (iv) do anything and to execute any document for any of the purposes set out in clause 2.3(b)(i), 2.3 (b) (ii) and 2.3 (b) (iii) as fully and effectually as the Tenant could do.
- (c) The Resident must ratify and confirm all actions the attorney lawfully does in the exercise of its power under clause 2.3(b).

## 2.4 **Rent payment**

The Resident authorises SCS to pay the Rent monthly in arrears during the Term out of the money held in the SCS Nominated Bank Account in accordance with this clause 2.

## 2.5 **Money held in SCS Nominated Bank Account**

The Resident irrevocably authorises and directs:

- (a) SCS to deal with each distribution from the Resident's Units received by SCS into the SCS Nominated Bank Account in the following manner:
  - (i) First, to pay any Rent that is due and which has not been paid; and
  - (ii) Second, to reimburse SCS for any Rent paid to the Lessor by SCS on behalf of the Resident during the period prior to the first Distribution;
  - (iii) Finally, reinvest on behalf of the Resident, the balance of any surplus remaining after payment under 2.5(b) (i) and (ii) into the same units as the current Resident's Units.
- (b) SCS to deal with the redemption of the Resident's Units received by SCS into the SCS Nominated Bank Account in the following manner:
  - (i) First, to pay any Rent that is due and which has not been paid;
  - (ii) Second, upon the Term ending, to pay any money payable by the Resident under the Sterling New Life including any loss suffered or incurred by the Landlord arising out of the failure by the Resident to comply with its obligations under the Sterling New Life during the Term including the obligations to be performed and observed under the Sterling New Life upon the Term ending; and
  - (iii) Finally, to the extent of any surplus, to pay to the Resident.

## 2.6 **Privacy and release of personal information**

The Resident consents to:

- (a) SCS releasing to RMA details of the Resident's obligations under this deed and the Sterling New Life; and

- (b) the Current RE releasing to RMA details of the Resident's Units and the Resident's entitlements in respect of the Resident's Units.

## 2.7 **Limit of recourse for the Rent**

Despite any provision to the contrary contained in this deed or the Sterling New Life:

- (a) the liability of the Resident to pay the Rent under the Sterling New Life is limited to the payments made pursuant to the distribution from the Resident 's Units or the redemption of the Resident's Units under clauses 2.5(a)(i), 2.5(a)(ii) and 2.5 (b) (i) (**Distribution and Redemption Payments**); and
- (b) if there is a shortfall between the amount of the Distribution and Redemption Payments and the amount of the Rent, the Resident is not liable to pay that shortfall.

## 3. **General**

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### 3.1 **Legal and financial advice**

The Resident acknowledges that:

- (a) The Landlord recommended to the Resident that the Resident obtain independent legal and financial advice prior to entering into this deed and the Sterling New Life; and
- (b) the Resident has had the opportunity to obtain that independent legal and financial advice.

### 3.2 **Variations**

The parties may agree to vary this deed by any form of written correspondence or other document between the parties.

### 3.3 **Governing law and jurisdiction**

This deed is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

### 3.4 **Waivers**

No party to this deed may rely on the words or conduct (including delay in the exercise of a right) of any other party as a waiver of any right arising under or in connection with this deed unless the waiver is in writing and signed by the party granting the waiver.

### 3.5 **Severance**

If any part of this deed is, or becomes, void or unenforceable, that part is, or will be, severed from this deed so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

3.6 **Further assurances**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

3.7 **Entire agreement**

This deed states all the express terms of this deed between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

3.8 **Counterparts**

- (a) This deed may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this deed may exchange that counterpart with another party by faxing or emailing it to the other party or the other party's legal representative and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party or the other party's legal representative. However, the validity of this deed is not affected if the party who has faxed or emailed the counterpart delays in delivering or does not deliver it by hand or by post.

Reference Schedule

|        |                       |  |  |
|--------|-----------------------|--|--|
| Item 1 | Landlord              | Name:  | [insert]   |
|        |                       | Address:   | c/- Rental Management Australia P/L<br>23/397 Warnbro Sound Avenue<br>PORT KENNEDY WA 6172 |
|        |                       | Phone:   | 08 9523 5800   |
|        |                       | Mobile:  | [insert]   |
|        |                       | Email:   | [insert]   |
| Item 2 | Resident              | Name:  | [insert]   |
|        |                       | Address:   | [insert]   |
|        |                       | Phone:   | [insert]   |
|        |                       | Mobile:  | [insert]   |
|        |                       | Email:   | [insert]   |
| Item 3 | Residential Premises  | [insert]   |  |
| Item 4 | Investment Amount     | [\$[insert]]   |  |
| Item 5 | Sterling Fund         | Sterling Income Trust  |  |
| Item 6 | Investment Allocation | _____ % [insert unit class]<br>_____ % [insert unit class]<br>_____ % [insert unit class]<br>_____ % [insert unit class] |  |

Signing page

Executed as a deed

Landlord execution

**Signed, sealed and delivered**  
by the **Landlord / Agent** in the  
presence of:

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

\_\_\_\_\_  
Signature of Landlord / Agent

Full name of witness (print)

C/- 23/397 Warnbro Sound Avenue, PORT KENNEDY WA 6172

Address of witness (print)

SCS execution

**Executed by Sterling Corporate  
Services Pty Ltd ACN 158 361 507**  
in accordance with section 127 of  
the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director (Alternate)

Ryan Kentore Jones

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Signature of Director/Company  
Secretary

\_\_\_\_\_  
Full name (print)

**Resident execution**

I/We acknowledge that I/we have had the opportunity to take independent legal and financial advice on this deed and the risks associated with entering into it.

**Signed, sealed and delivered**  
by the **Resident** in the presence  
of:

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

\_\_\_\_\_  
Signature of Resident

\_\_\_\_\_  
Full name of witness (print)

C/- 23/397 Warnbro Sound Avenue, PORT KENNEDY WA 6172

Address of witness (print)

**Signed, sealed and delivered**  
by the **Resident** in the presence  
of:

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

\_\_\_\_\_  
Signature of Resident

\_\_\_\_\_  
Full name of witness (print)

C/- 23/397 Warnbro Sound Avenue, PORT KENNEDY WA 6172

Address of witness (print)





**STERLING**  
INCOME TRUST

# *INCOME UNITS & GROWTH UNITS*

## *Product Disclosure Statement*

### **Theta Asset Management Limited**

ABN 37 071 807 684 AFSL 230920

As responsible entity of the

Sterling Income Trust ARSN 158 828 105



**STERLING**  
CORPORATE  
SERVICES

This product disclosure statement is dated 31 January 2017

Key contact details are as follows:

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**Sterling Income Trust**

19 Lyall Street  
South Perth WA 6151

Tel: +61 8 9523 5800  
Fax: +61 8 9523 5811

**Mailing Address:**

PO Box 7299  
Secret Harbour WA 6173

Email: [offer@sitfund.com.au](mailto:offer@sitfund.com.au)  
Web: [www.sitfund.com.au](http://www.sitfund.com.au)

---

**Responsible Entity**

Theta Asset Management Limited  
Suite 501, Level 5, 210 Clarence Street  
Sydney NSW 2000

Tel: +61 2 8012 0638

**Mailing Address:**

PO Box Q423  
QVB Sydney NSW 1230

Email: [invest@thetaasset.com.au](mailto:invest@thetaasset.com.au)  
Web: [www.thetaasset.com.au](http://www.thetaasset.com.au)

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**Investment Manager**

Sterling Corporate Services Pty Ltd  
19 Lyall Street  
South Perth WA 6151

Tel: +61 8 9523 5800  
Fax: +61 8 9523 5811

**Mailing Address:**

PO Box 7299  
Secret Harbour WA 6173

Email: [investors@sterlingfirst.com.au](mailto:investors@sterlingfirst.com.au)

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**Unit Registry**

Registry Direct  
Level 6, 2 Russell Street  
Melbourne VIC 3000  
Tel: 1300 556 635 (Aust) +61 3 9020 7935 (Int)  
Fax: +61 3 9111 5652

**Mailing Address:**

PO Box 18366  
Collins Street East, VIC 8003

Email: [registry@registrydirect.com.au](mailto:registry@registrydirect.com.au)  
Web: [www.registrydirect.com.au](http://www.registrydirect.com.au)

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## Important Notice and Disclaimer

### Product disclosure statement

This product disclosure statement is dated 31 January 2017 ("PDS") and relates to the offer of Income Units and Growth Units in the Sterling Income Trust ARSN 158 828 105 ("SIT")(the "Offer"). Theta Asset Management Ltd (ABN 37 071 807 684, AFSL 230920) ("Theta", "Responsible Entity", "we" or "us") is the responsible entity of the SIT and issuer of the Units forming part of the Offer. Theta takes full responsibility for the whole of this PDS. Theta has appointed Sterling Corporate Services Pty Ltd ("SCS" or "Investment Manager") to assist in preparing this PDS. SCS is a Corporate Authorised Representative (number 444776) of Theta.

### Not investment advice

The information provided in this PDS is not financial product advice. It is general information only, and has been prepared without taking into account investment objectives, financial circumstances or particular needs. You should consider whether the information in this PDS is appropriate for you in light of your objectives, financial situation and needs. In particular, you should consider the risk factors (see pages 7, 18 to 20) that could affect the financial performance of the SIT before deciding what course you should follow. You should consider these factors in light of your personal circumstances. To obtain advice or more information about the information described in this PDS, you should speak to an appropriately licensed financial planner or licensed advisor.

Please carefully read the instructions on the accompanying Application Form in connection with the Offer.

### No cooling-off rights

Cooling-off rights do not apply to an investment in Units pursuant to the Offer. This means that you cannot withdraw your Application once it has been accepted.

### Electronic PDS

This PDS may be viewed online on Theta's website at [www.thetaasset.com.au](http://www.thetaasset.com.au) or on the SIT website [www.sitfund.com.au](http://www.sitfund.com.au). It is not available to persons in the United States. If you access the electronic version of this PDS you should ensure that you download and read the entire PDS.

A paper copy of this PDS can be obtained, free of charge by calling the SIT Offer Information Line: 08 9523 5800 at any time from 9.00am to 5.00pm (Perth time) Monday to Friday or Theta on +61(0)2 8012 0638 at any time from 9.00am to 5.00pm (Sydney time) Monday to Friday.

You will only be entitled to accept the Offer by completing an Application Form attached to or which accompanies this PDS (refer to the "How to apply" section for further information).

### Updated information

Information about the SIT may need to be updated by Theta. Any updated information about the SIT which is not materially adverse to Unitholders will be made available on Theta's website at [www.thetaasset.com.au](http://www.thetaasset.com.au) and the SIT website [www.sitfund.com.au](http://www.sitfund.com.au). Theta will provide a copy of the updated information free of charge to any person who requests a copy by calling the SIT Information Line: 1300 665 890 at any time from 9.00am to 5.00pm (Perth time) Monday to Friday, or Theta on +61(0)2 8012 0638 at any time from 9.00am to 5.00pm (Sydney time) Monday to Friday.

### Foreign jurisdictions

This PDS does not constitute an offer in any place in which, or to any person to whom, it would not be lawful to make such an offer. No action has been taken to register the Units or otherwise permit an offering of Units in any jurisdiction outside of Australia.

The distribution of this PDS (whether electronically or otherwise) outside Australia may be restricted by law. If you come into possession of this PDS (electronically or otherwise), you should observe any such restrictions and should seek your own advice on such restrictions. Any failure to comply with such restrictions may contravene applicable securities laws.

### Disclaimer

No person is authorised to give any information or make any representation in connection with the information described in this PDS, which is not contained in this PDS. Any information or

representation not contained in this PDS may not be relied on as having been authorised by the SIT or Theta in connection with the SIT.

This PDS may contain forecast financial information along with forward looking statements which are identified by words such as "may", "could", "believes", "estimates", "expects", "intends", and other similar words that involve risks and uncertainties. These forecasts and forward looking statements are subject to various risk factors that could cause the SIT's actual results to differ materially from the results expressed or anticipated in these forecasts or statements. These risk factors are set out on pages 7, 18, 19 and 20. These and other factors could cause actual results to differ materially from those expressed in any forecast or forward looking statement made by, or on behalf of, the SIT or Theta.

As part of operating the SIT, Theta must ensure compliance with applicable occupational, health and safety standards and statutory environmental requirements. Except as indicated above, Theta does not take account of labour standards, environmental, social or ethical considerations in selecting, retaining or realising investments for the SIT.

Neither Theta nor the SIT promises that you will earn any return on your investment or that your investment will gain or retain its value. No company other than Theta makes any statement or representation in this PDS. It is impossible in a document of this type to take into account the investment objectives, financial situation and particular needs of each reader. Accordingly, nothing in this PDS should be construed as a recommendation by Theta, or any associate of Theta, or any other person concerning an investment in the SIT.

Readers should not rely on this PDS as the sole basis of a decision to invest in the SIT. Readers should seek their own financial, legal and taxation advice as appropriate before making a decision to invest in the SIT.

### Financial amounts

Money as expressed in this PDS is in Australian dollars unless otherwise indicated.

### Definitions and abbreviations

Defined terms and abbreviations used in this PDS are explained in the Glossary at the end of this PDS.

### Photographs

The photographs appearing in this PDS are for illustration purposes only and unless otherwise stated do not represent assets of the SIT.

### ASIC

A copy of this PDS has not been, and is not required to be, lodged with ASIC. ASIC takes no responsibility for any part of this PDS.

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Please read this PDS in its entirety before you make any investment decision.

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## HIGHLIGHTS

## • Established Fund

- Various investment options, including Income Units, Growth Units, Development Units and Management Company Units
- Established in 2012
- Total units on Issue 20,736,187

## • Income Units

- Historically pays distributions of 9.25% pa\*
- Distributions now paid monthly
- 100% tax deferred
- 4 year track record
- Share of rental management fees

## • Growth Units

- Target distributions of 12.00% pa\*\*
- Distributions paid monthly
- Income share from established business
- Share of revenue from sale of Rental Management Agreements

\* Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance.

\*\* Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreement for the rental management growth rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments.

Refer to page 6 and 7 for further details. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.

Please read the Key Risks section on page 7 and Section 6 "Risks" on pages 18, 19 and 20.

## Introduction

### OFFER AT A GLANCE

|   | Income Units  | Growth Units   |
|---|---|--|
| <b>Current Unit Price</b>               | <p><b>\$1.00 per unit</b>, for January 2017 refer to <a href="http://www.sitfund.com.au">www.sitfund.com.au</a> for the <b>Current Unit Price</b></p> <p>The issue price is determined with reference to the net asset value of the relevant class of units and the number of Units in that class on issue. The Current Unit Price is determined at 5.00pm (WST) at the end of each month and published on <a href="http://www.sitfund.com.au">www.sitfund.com.au</a>. Refer to page 21 for further details.</p>  | <p><b>\$1.00 per unit</b>, for January 2017 refer to <a href="http://www.sitfund.com.au">www.sitfund.com.au</a> for the <b>Current Unit Price</b></p> <p>The issue price is determined with reference to the net asset value of the relevant class of units and the number of Units in that class on issue. The Current Unit Price is determined at 5.00pm (WST) at the end of each month and published on <a href="http://www.sitfund.com.au">www.sitfund.com.au</a>. Refer to page 21 for further details.</p> |
| <b>Asset Type</b>                       | Rental Management Income Rights - 1st right to income from rental management fees   | Rental Management Growth Rights - right to share of income from the sale of rental management agreements   |
| <b>Current Units on Issue</b>           | 12,861,838  | Nil - new offering   |
| <b>Historical Annual Distributions*</b> | 9.25% pa<br>Average since 2012  | N/A - new offering   |
| <b>Target Distributions*</b>            | 9.25% pa  | 12% pa   |
| <b>Tax</b>                              | 100% Tax Deferred   | 0% Tax Deferred  |
| <b>Net Tangible Assets</b>              | \$12.86 million   | N/A - new offering   |
| <b>Security</b>                         | Ownership of Rental Management Income Rights  | Ownership of Rental Management Growth Rights   |
| <b>Minimum Investment</b>               | \$2,000 with additional investments to be made in \$500 increments.   |  |
| <b>Distribution Payment</b>             | <p><b>Monthly</b> - Distributions will be paid not later than the 15<sup>th</sup> business day of each month.</p> <p><b>Income on Daily Balance</b> - for investment during a month, distribution entitlement calculated based on days invested during that month.</p>  |  |
| <b>Redemption</b>                       | <p>The SIT is not listed on any securities exchange, and is considered an illiquid investment. There is no guaranteed redemption of Units, however Unitholders may be able to redeem their Units via a Conditional Redemption Offer, which will be made to Unitholders in a particular class at the discretion of the SIT. The intention is to make Conditional Redemption Offers available to Unitholders in a class who have held their Units for at least 12 months and for those offers to be made monthly. Unitholders can choose to redeem for cash, or for another class of unit or a combination of both.</p> <p>A Unitholder who has held their units for at least 12 months can indicate their desire to redeem their units by completing the Redemption Application Form attached.</p> |  |
| <b>Use of Funds</b>                     |   |  |
| • <b>Income Units</b>                   | Funds raised through the issue of Income Units will be utilised to acquire further Rental Management Income Rights and/or to meet redemption requests of Income Unitholders.  |  |
| • <b>Growth Units</b>                   | Funds raised through the issue of Growth Units will be utilised to pay for the Rental Management Growth Rights and/or meet redemption requests of Growth Unitholders.   |  |

5 Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreements for the rental management growth rights or income rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. Refer to page 6 for further details. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.

Please read the Key Risks section on page 7 and Section 6 "Risks" on pages 18, 19 and 20.

## Introduction

### STERLING INCOME TRUST

The Sterling Income Trust ("SIT" or "Trust") was established in 2013.

The SIT currently has four unit classes as follows:

- **Income Units (to which this PDS relates)** - invests in residential Rental Management Income Rights, which gives the trust the first right to income generated from rental management fees earned under rental management agreements. As at the date of this PDS there were 12,861,838 Income Units on issue. Distributions have averaged 9.25% pa\* since September 2013;
- **Growth Units (to which this PDS relates)** - invests in residential Rental Management Growth Rights, which gives the trust the first right to income generated from the sale of rental management agreements. This is a new class of Units offered in the SIT and has a Target Distributions rate of 12% pa\*;
- **Development Units** - invests in subordinated mortgage secured loans. As at the date of this PDS there were 7,113,251 Development Units on issue;
- **Management Company Units** - invests in the shares in Sterling First (Aust) Limited ("Sterling First"). As at the date of this PDS there are 761,098 Management Company Units on issue;

Further unit classes may be added in the future.

**Redemption** - The SIT is not listed on any securities exchange, and is considered an illiquid investment. There is no guaranteed redemption of Units, however Unitholders may be able to redeem their Units via a Conditional Redemption Offer. The intention is to make Conditional Redemption Offers available to Unitholders in a class who have held their Units for at least 12 months and for those offers to be made monthly. Unitholders can choose to redeem for cash, or for another class of unit or a combination of both.

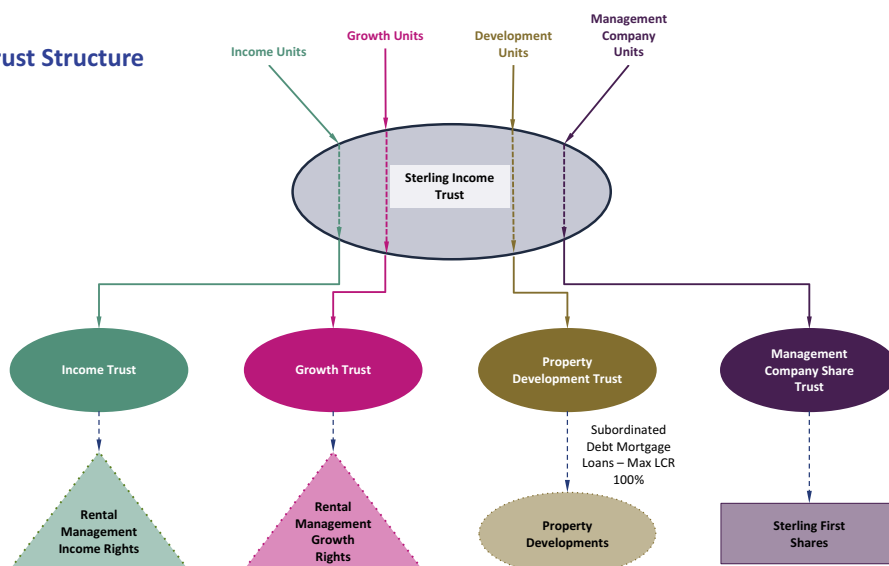
The Conditional Redemption Offers are expected to be funded out of new equity raised. There is no guarantee however, that there will be sufficient funds available to meet the redemption requests in full or in part. Conditional Redemption Offers are not guaranteed.

The Conditional Redemption Offer price will normally be the price determined by the SIT, in accordance with the Constitution, at the time a Conditional Redemption Offer is made. The price will be determined with reference to the net asset value of the SIT divided by the number of respective Units on issue.

A Unitholder who has held their units for at least 12 months can indicate their desire to redeem their units by completing the Redemption Application Form.

*This PDS relates only to investment in Income Units and Growth Units. To invest in other classes of units in the SIT, please refer to the specific product disclosure statement issued for those classes.*

### Sterling Income Trust Structure



\* Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreements for the rental management growth rights or income rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. Refer to page 6 for further details. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.

Please read the Key Risks section on page 7 and Section 6 "Risks" on pages 18, 19 and 20.

## Introduction

### INCOME UNITS OVERVIEW

|  |   |  |
|--|---|--|
| <b>Asset Type</b>  | <b>Rental Management Income Rights</b><br>Rights to income over rental management agreements held by Rental Management Australia Pty Ltd ("Rental Management Australia") for residential and commercial property in Western Australia, Queensland, and Victoria commencing in 2017. All tenants' rent is paid to Rental Management Australia's real estate trust account. All fees payable under the rental management agreements are then paid to the Income Trust. The Income Trust then pays Rental Management Australia, retaining 52% of the base commissions. Rental Management Australia must perform all the services required under the respective rental management agreements, and meet all operating costs. |  |
| <b>Distribution History</b>  | <b>Highest</b> individual distribution <b>10.03%pa</b><br><b>Lowest</b> individual distribution <b>9.25%pa</b><br><b>Average</b> distribution from September 2013 to December 2016 <b>9.25%pa, 100% Tax Deferred</b>  |  |
| <b>Income Units on Issue as at the date of the PDS</b>               | 12,861,838  |  |
| <b>Current Unit Price Calculation Summary</b>                        |   | <b>as at<br/>31 December 2016<br/>\$'m</b> |
|  | Cash and Receivables  | 1.60                                       |
|  | Financial Assets (Rental Management Income Rights)  | 13.61                                      |
|  | Other Investments   | 1.24                                       |
|  | Creditors   | (1.26)                                     |
|  | Distribution Payable  | -  |
|  | Borrowings (Macquarie Bank facility)  | (2.86)                                     |
|  | <b>Net Assets</b>   | 12.32                                      |
|  | Units issued at \$1.00  | 12.37                                      |
|  |   |  |
|  | <b>Unit Holders Equity</b>  | 12.32                                      |
| <b>Net Tangible Assets per Income Unit as at the date of the PDS</b> | \$1.00  |  |



## GROWTH UNITS OVERVIEW

|   |   |
|---|---|
| <b>Asset Type</b>   | <b>Rental Management Growth Rights</b><br>Right to a share of the income derived by Rental Management Australia Developments Pty Ltd ("RMAD") from the sale of Residential RMAs and Sterling New Life Lease ("SNLL") RMAs net of any rebate payable to Rental Management Australia each month. For more information please refer to page 16.  |
| <b>Distribution History</b>                                   | Nil - new offering  |
| <b>Target Distributions</b>                                   | 12.0% per annum*<br>The Target Distribution is based on the Income Limit set in the Master Deed of Assignment divided by the cost of acquisition of the Income Rights (being 13.5% per annum) less the estimated operating costs of the SIT and the sub trusts (estimated to be an amount of 1.38% per annum (for more information, please refer to page 23)) and allowing for some contingencies (0.12%). No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated. |
| <b>Growth Units on Issue as at the date of the PDS</b>        | Nil   |
| <b>Net Tangible Assets per unit as at the date of the PDS</b> | N/A   |

*\* Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreement for the rental management growth rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. Refer to page 6 for further details. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.*

*Please read the Key Risks section on page 7 and Section 6 "Risks" on pages 18, 19 and 20.*

#### KEY RISKS OF INVESTING IN INCOME AND GROWTH UNITS (further details can be found on pages 18, 19 and 20)

All investments involve some degree of risk. An investment in the Income Units involves all the usual risks of business ownership as well as risks particular to this investment structure. Many risks cannot be controlled by the SIT, and may affect the future performance of the SIT.

**Income Risk** - The Income and Growth Unitholders will receive income by way of distributions from the Income Trust and Growth Trust respectively. The distributions are therefore reliant on the financial performance of the Income Trust's assets and the Growth Trust's assets respectively, which in turn are largely dependent on the success of the business operated by Rental Management Australia. The ability of the Income Trust's assets and the Growth Trust's assets to pay distributions is dependent on their financial performance and is not guaranteed. A Unitholder will receive any distributions from the SIT after the costs of operating the SIT have been deducted.

**Liquidity Risk** - The SIT Units are not listed on any securities exchange, and are considered an illiquid investment. Whilst the SIT intends to make Conditional Redemption Offers, there is no guarantee of redemption of Units. The Conditional Redemption Offers are expected to be funded out of new equity raised but no one promises that there will be sufficient funds available to meet the redemption requests in full or in part. Conditional Redemption Offers are not guaranteed.

**RMA Termination Risks** - The RMAs may be terminated by owners within varying periods, depending on the state jurisdiction they are located in and a varying number of RMAs are terminated each year for a variety of reasons. If the number of RMAs exceeds the number of RMAs that Rental Management Australia can source to replace the lost RMAs this may adversely impact on the financial performance of the Income Trust. The ability of the Income Trust and the Growth Trust to pay distributions to the SIT is dependent on the financial performance of the Income Trust and Growth Trust respectively, which in turn are largely dependent on the success of the business operated by Rental Management Australia. Success is not guaranteed.

**Reliance Risk** - The SIT relies on Rental Management Australia to perform services under the rental management agreements and other agreements. The SIT therefore relies heavily on the success and performance of Rental Management Australia's business. If Rental Management Australia is not able to perform these services, or performs the services poorly, or the agreements are terminated, the Income Trust and the Growth Trust would need to find alternative service providers which may not be as efficient as using Rental Management Australia or may not be possible at all.

Refer to pages 18, 19 and 20 for further details on risks associated with investment in the SIT and in Income Units and Growth Units in particular.

## SIT Summary

| Feature                           | Details   |
|-----------------------------------|---|
| <b>Minimum Subscription</b>       | There is no minimum subscription.   |
| <b>Maximum Subscription</b>       | There is no maximum subscription. The level of subscription will only be limited if the Investment Manager determines it cannot utilise capital raised above a certain level.   |
| <b>Issue of Units</b>             | Applications for Units will usually be processed on the day of receipt and applicants will receive a Holding Statement within ten business days of the allotment of Units.  |
| <b>Minimum Investment</b>         | \$2,000 with additional investments to be made in \$500 increments.   |
| <b>Application Price</b>          | \$1.00 per Unit currently for January 2017 - <b>Refer to <a href="http://www.sitfund.com.au">www.sitfund.com.au</a> for the Current Unit Price</b><br>The issue price is determined with reference to the net asset value of the relevant class of units and the number of Units in that class on issue. Refer to page 21 for further details.  |
| <b>Objective</b>                  | <b>Income Units</b> - To give Unitholders an exposure to Australian residential property through Rental Management Agreements in a structure designed for wide scale investment.<br><b>Growth Units</b> - To give Unitholders an exposure to the income created through the sourcing and sale of Rental Management Agreements in a structure designed for wide scale investment.<br>The Income and Growth Unitholders will receive income by way of distributions from the Income Trust and Growth Trust respectively. The distributions are therefore reliant on the financial performance of the Income Trust's assets and the Growth Trust's assets respectively, which in turn are largely dependent on the success of the business operated by Rental Management Australia and RMAD.   |
| <b>Structure</b>                  | The SIT is a unit trust registered as a managed investment scheme with four wholly owned sub trusts, the Income Trust, the Growth Trust, the Development Trust and the Management Company Share Trust.  |
| <b>Liquidity/Redemption</b>       | <p>The Units are not listed on any securities exchange, and is considered an illiquid investment. There is no guaranteed redemption of Units, however Unitholders may be able to redeem their Units via Conditional Redemption Offers, which will be made to Unitholders at the discretion of the SIT.</p> <p>The Conditional Redemption Offers are expected to be funded out of new equity raised. There is no guarantee however, that there will be sufficient funds available to meet the redemption requests in full or in part. There are currently 11,007,000 Income Units on issue which are eligible to be redeemed should a Conditional Redemption Offer be made available. There are currently no Growth Units eligible to be redeemed.</p> <p>The intention is to make Conditional Redemption Offers available to Unitholders in a class who have held their Units for at least 12 months and for those offers to be made monthly. The Conditional Redemption Offer price will normally be the price determined by the SIT, in accordance with the Constitution, at the time a Conditional Redemption Offer is made. The price will be determined with reference to the net asset value of the Income Trust (in the case of Income Units) or the Growth Trust (in the case of Growth Units) divided by the number of respective Units on issue.</p> <p>Further details will be provided to Unitholders at the time that a Conditional Redemption Offer is made. Redemption can be applied for by completing the Redemption Application Form attached to this PDS. Please note, Conditional Redemption Offers are not guaranteed.</p> |
| <b>Investment</b>                 | <b>Income Units</b> - Invest in Rental Management Income Rights and some cash.<br><b>Growth Units</b> - Invest in Rental Management Growth Rights and some cash.  |
| <b>Offer Opened</b>               | 2 May 2013 for the Income Units<br>31 January 2017 for Growth Units   |
| <b>Offer Closing Date</b>         | At the discretion of the SIT.   |
| <b>Term of Investment</b>         | The SIT is an open-ended investment.  |
| <b>Acceptance of Applications</b> | Acceptance of an application is at the discretion of the Responsible Entity.  |
| <b>Use of Funds</b>               | Any funds raised pursuant to this Offer will be used to invest in the Income Trust (which ultimately invests in property management income rights).   |
| <b>Cooling-Off Rights</b>         | Cooling-off rights do not apply to an investment in Units pursuant to the Offer. This means that you cannot withdraw your Application once it has been accepted.  |

|                              |   |
|------------------------------|---|
| <b>Distributions</b>         | <p><b>Monthly</b> - Distributions will be paid not later than the 15th business day of each month.</p> <p><b>Daily Balance</b> - For an investment allotted part way through a month, the distribution entitlement will be calculated based on the number of days from the day of allotment to the end of the month. For example, where a Unitholder's allotment is on 26 May, and a full month's distribution would have been \$100, their distribution entitlement would be calculated as follows:</p> <p style="padding-left: 40px;">Distribution = Full months Distribution x Days Invested/Total days in month</p> <p style="padding-left: 40px;">Distribution = 100 x 5/31 = \$16.12</p> <p>The ability of the SIT to pay a distribution is dependent on the financial performance of the SIT and the various underlying sub trusts and is not guaranteed.</p>  |
| <b>Return on Investment*</b> | <p><b>Income Units</b> receive income directly derived from the deduction of rental management fees from rents collected on residential property managed by Rental Management Australia, less the relative share of costs of the SIT. The net distributions to Income Unit holders since the commencement of the Trust has been 9.25% pa or above and the income has been 100% tax deferred.</p> <p><b>Growth Units</b> receive income directly from the sale of Rental Management Agreements sold to the Income Trust by Rental Management Australia Developments, less the relative share of costs of the SIT. The net distributions to Growth Unit holders is targeted to be 12% pa.</p> <p>No one promises that you will earn any return on your investment or that your investment will gain or retain its value.</p> <p><i>* Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreements for the rental management growth rights or income rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. Refer to page 6 for further details. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.</i></p> <p><i>Please read the Key Risks section on page 7 and Section 6 "Risks" on pages 18, 19 and 20.</i></p> |
| <b>Taxation</b>              | Distributions from the SIT may be taxable. Unitholders will receive a year-end statement advising them of the taxability of the distributions from the SIT.   |
| <b>Risks</b>                 | There are risks associated with an investment in the SIT that should be considered prior to acquiring Units. A detailed explanation of these risks are set out on pages 18, 19 and 20.  |
| <b>Fees</b>                  | Fees and management costs are payable to the Responsible Entity and Custodian for the ongoing operation of the SIT as well as to the Investment Manager for managing the assets of the SIT. Details of these fees and costs are set out on pages 24 and 25.   |
| <b>Borrowings</b>            | <p>The SIT will not borrow.</p> <p>The Income Trust may borrow from banks at commercial arms length terms to assist in the acquisition of Rental Management Income Rights. The Income Trust currently has a Real Estate Line of Credit currently drawn to \$2.88 million with Macquarie Bank. A summary of the terms of the Macquarie Bank facility can be found on page 26.</p> <p>See Section 6 "Risks" for information on borrowing risks.</p>   |
| <b>Responsible Entity</b>    | The Responsible Entity of the SIT is Theta Asset Management Limited (ABN 37 071 807 684, AFSL No. 230920). Theta is the holder of an AFSL issued by ASIC that allows it to act as the Responsible Entity of the SIT.  |
| <b>Custodian</b>             | The Custodian of the SIT is Australian Executor Trustees Limited (ABN 84 007 869 794, AFSL 240023) ("Custodian"). The Custodian is the holder of an AFSL issued by ASIC that allows it to act as the Custodian of the SIT.  |
| <b>Corporate Governance</b>  | The Responsible Entity maintains a related party transactions policy and a conflict of interest policy. Refer to pages 29 for further details on Conflicts of Interest and Related Party Transactions.  |



## RESPONSIBLE ENTITY

Theta, as Responsible Entity, is responsible for all compliance and regulatory aspects of operating the SIT. Theta holds an AFSL (AFSL No. 230920), which authorises it to act as the responsible entity of the SIT. Theta is a provider of responsible entity and trustee services and the issuer of units in managed investment schemes in the Australian market.

The powers and duties of Theta are set out in the SIT's Constitution, the Corporations Act, and general trust law.

The duties of Theta under the Corporations Act include:

- acting in the best interests of Unitholders and, if there is a conflict between Unitholders' interests and Theta's interests, giving priority to Unitholders' interests;
- ensuring that SIT property is clearly identified as SIT property and held separately from property of Theta and property of any other fund, and is valued at regular intervals;
- ensuring that payments out of SIT property are made in accordance with the Corporations Act; and
- reporting to ASIC any significant breach of the Corporations Act in relation to the SIT which has had, or is likely to have, a materially adverse effect on the interests of Unitholders as well as any significant breach of Theta's general obligations as an AFSL holder.

Subject always to any liability which the Corporations Act might impose on the Responsible Entity, so long as it acts without gross negligence, fraud or breach of trust it is not liable to Unitholders for any loss suffered in any way relating to the SIT. The liability of the Responsible Entity to any person other than a Unitholder in respect of the SIT is limited to the Responsible Entity's actual indemnification from the SIT's assets for that liability.

Theta is the issuer of all Units in the SIT and is the issuer of this PDS. SCS has been contracted by Theta to carry out all investment management functions in relation to the SIT.

Refer to page 26 for a summary of the Investment Management Agreement. Subject to the requirements of the Corporations Act, the role of Theta does not include making an assessment as to whether the Income Trust has the capacity to pay distributions. Theta provides no assurance that distributions will be paid to, or by, the SIT. The ability of the Income Trust to pay distributions to the SIT will be dependent on the financial performance of the Income Trust and is not guaranteed.

## Executive Directors of the Responsible Entity

### Robert Marie, Managing Director, appointed 31 July 2009

Robert has over 20 years experience in the financial services sector. Robert has specialised in financial services marketing working with a range of leading companies, including Macquarie Bank, Australian Wealth Management and BankWest.

Since 2006 Robert has provided responsible entity and trustee services via both Theta and Valuestream Investment Management Ltd, a company of which he is also a director.

## SIT CONSTITUTION

Theta's responsibilities and obligations as Responsible Entity, as well as the rights and obligations of Unitholders and the rights and liabilities attaching to the Units, are governed by the SIT's Constitution, the Corporations Act, general trust law and this PDS. Under the SIT's Constitution, Theta has all the powers of a natural person in respect of the SIT. The SIT's Constitution contains a number of provisions relating to the rights of Unitholders and the obligations of Theta, as Responsible Entity. This PDS outlines some of the more important provisions of the SIT's Constitution.

The SIT's Constitution gives the Responsible Entity the right to be paid fees and expenses from the SIT, and governs matters such as Unitholder meetings, the issue and withdrawal of Units (where permitted) and Unit pricing, as well as what happens when the SIT is terminated.

Theta will provide Unitholders with a copy of the SIT's Constitution upon request at no cost.

## AMENDMENTS TO THE SIT CONSTITUTION

Theta may amend the Constitution of the SIT from time to time, subject to the provisions of the Constitution and the Corporations Act. Generally, Theta can only amend the SIT's Constitution where Theta reasonably believes that the change will not adversely affect your rights as a Unitholder. Otherwise the Constitution can only be amended if approved by special resolution at a meeting of Unitholders.

## CUSTODIAN

Theta has appointed a separate custodian to hold the assets of the SIT.

The Custodian of the SIT is Australian Executor Trustees Limited ABN 84 007 869 794. Australian Executor Trustees Limited is one of Australia's largest and oldest trustee companies, having been established in 1880. Australian Executor Trustees Limited is a member of the IOOF Holdings Limited ("IOOF") Group, a leading provider of wealth management products and services in Australia. IOOF is listed on the ASX.



## The SIT

The Responsible Entity has appointed Australian Executor Trustees Limited under a custodian services agreement. The Custodian's role is to hold the assets in its name and act on the direction of the Responsible Entity to effect cash and investment transactions. Australian Executor Trustees Limited has no supervisory role in relation to the operation of the SIT and has no liability or responsibility to a Unitholder for any act done or omission made in accordance with the custodian agreement.

Australian Executor Trustees Limited's role as Custodian is limited to holding the assets of the Fund.

### DISCLAIMER

Australian Executor Trustees Limited has not withdrawn its consent to be named in this PDS as Custodian of the SIT in the form and context in which it is named. Australian Executor Trustees Limited does not make, or purport to make, any statement that is included in this PDS and there is no statement in this PDS which is based on any statement by Australian Executor Trustees Limited.

To the maximum extent permitted by law, Australian Executor Trustees Limited expressly disclaims and takes no responsibility for any part of this PDS other than the references to its name. Australian Executor Trustees Limited does not guarantee the repayment of capital or any particular rate of capital or income return.

### INVESTMENT MANAGER

Theta has appointed SCS to act as Investment Manager to manage the SIT assets and to provide all back office fund administration processes including Unitholder interface, registry, investment reporting and accounting. Theta maintains strict controls over these matters, including detailed and regular reporting processes. SCS earns management fees for the provision of this service the details of which can be found in section 9 "Fees and other Costs".

SCS will value the assets of the SIT consistent with the valuation principles set out in the Constitution of the SIT.

SCS is part of the Sterling First group and is an experienced investment manager. The Sterling First group comprises three divisions, the Funds Management Division, incorporating SCS, a Property Services Division, which manages the sales of Sterling New Life Leases and the sourcing of new Rental Management Agreements and a Property Management Division which provides the ongoing property management services for the Income Trust.

### PROPERTY MANAGER

The following information is relevant to Income Units.

Rental Management Australia is a specialist provider of property management services currently operating in Western Australia, Queensland and Victoria managing approximately 2,100 properties out of 5 offices with approximately 50 staff.

Rental Management Australia has the requisite real estate licenses in Western Australia, Queensland and Victoria to operate as property management businesses.

### Why do landlords choose Rental Management Australia

- Landlords are provided with the MYproperty portal which allows them to log in and view their property 24 hours a day, 7 days a week, no matter where they are in the world
- Guaranteed professionalism, politeness and a can do attitude from all Rental Management Australia's property managers
- Excellence is the goal of Rental Management Australia's property managers – they understand the job and know exactly what to do as they are home owners and investors themselves
- Rental Management Australia has multiple office locations throughout Western Australia and now in Queensland
- A low vacancy rate is Rental Management Australia's utmost priority
- Fantastic communication – our property managers stay in touch with landlords on a regular basis so that they remain up to date on the latest developments about their property
- A Rental Management Australia account team that is dedicated to ensuring that rental property ownership is hassle free for the owner.

### MYproperty

To complement Rental Management Australia's traditional services, they have introduced MYproperty, a unique secure website and iOS/Android App system that provides owners with free online access to view individual and combined property data 24 hours a day, 7 days a week, no matter where they are in the world.



The MYproperty system provides instant access to invoices and statements, comprehensive tenancy details and all documentation, including photographs and inspection reports. Much like online banking, clients receive a secure username and password for secure access.

MYproperty also performs daily 'health' checks on each individual property, alerting the management team to calendar events such as routine inspections, rental increases, arrears management, and insurance policy expiry etc. This data system ensures efficient and timely management of each individual property.



## STRUCTURE

The SIT is a unit trust, registered as a managed investment scheme. Theta is the Responsible Entity, AET is the independent Custodian and SCS is the investment manager.

The SIT has four wholly owned sub trusts, the Income Trust, the Growth Trust, the Property Development Trust and the Management Company Share Trust. The trustee of each of the Income Trust, Growth Trust, the Property Development Trust, and the Management Company Share Trust is SCS. SCS is a wholly owned subsidiary of Sterling First.

The SIT offers four classes of Units - Income Units, Growth Units, Development Units and Management Company Units.

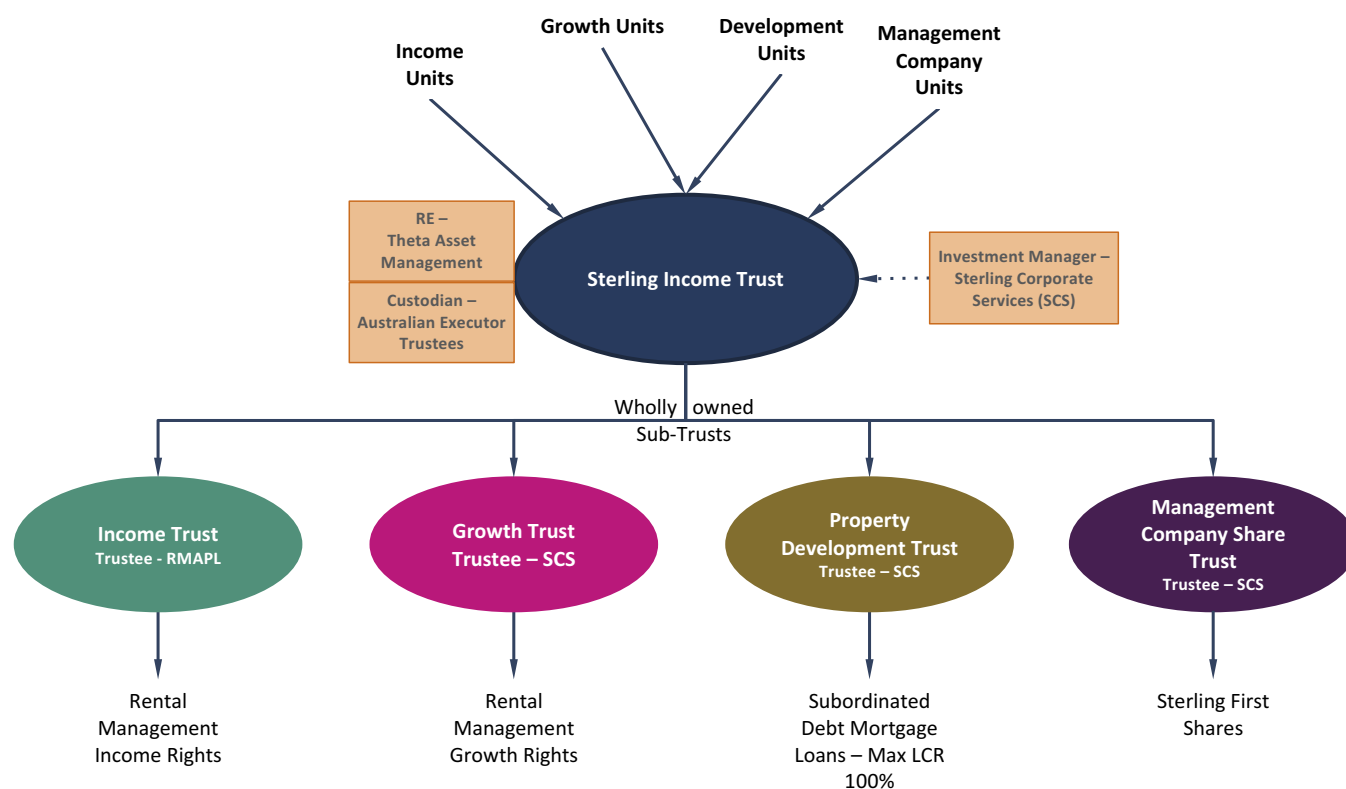
**Income Units** - this class invests in the Income Trust the assets of which comprise predominantly of Rental Management Income Rights, which gives the trust the first right to income generated from rental management fees earned under rental management agreements.

**Growth Units** - this class invests in the Growth Trust the assets of which comprise predominantly of rental management growth rights, which gives the trust the first right to income generated from the sale of rental management agreements.

**Development Units** - this class invests in the Property Development Trust which in turn invests in first and subordinated mortgage loans.

**Management Company Units** - this class invests in the Management Company Share Trust which in turn invests in shares in Sterling First.

### Detailed SIT Structure diagram



## FINANCIAL INFORMATION

Audited accounts have been prepared for the periods ending 30 June 2013, 30 June 2014, and 30 June 2015 together with a set of audit reviewed accounts for the six month period ending 31 December 2015, all of which can all be downloaded at [www.sitfund.com.au](http://www.sitfund.com.au). Audited Accounts for the period ended 30 June 2016 will be able to be downloaded in March 2017. Audit reviewed accounts for the six month period ending 31 December 2016 and the next set of audited accounts for the year ending 30 June 2017 will be able to be downloaded from the website in due course.

## Income Units

### DISTRIBUTION HISTORY

The Income Units commenced on 2 May 2013 and paid quarterly distributions. In July 2016 Income Units changed to paying monthly distributions. The distribution history is as follows:

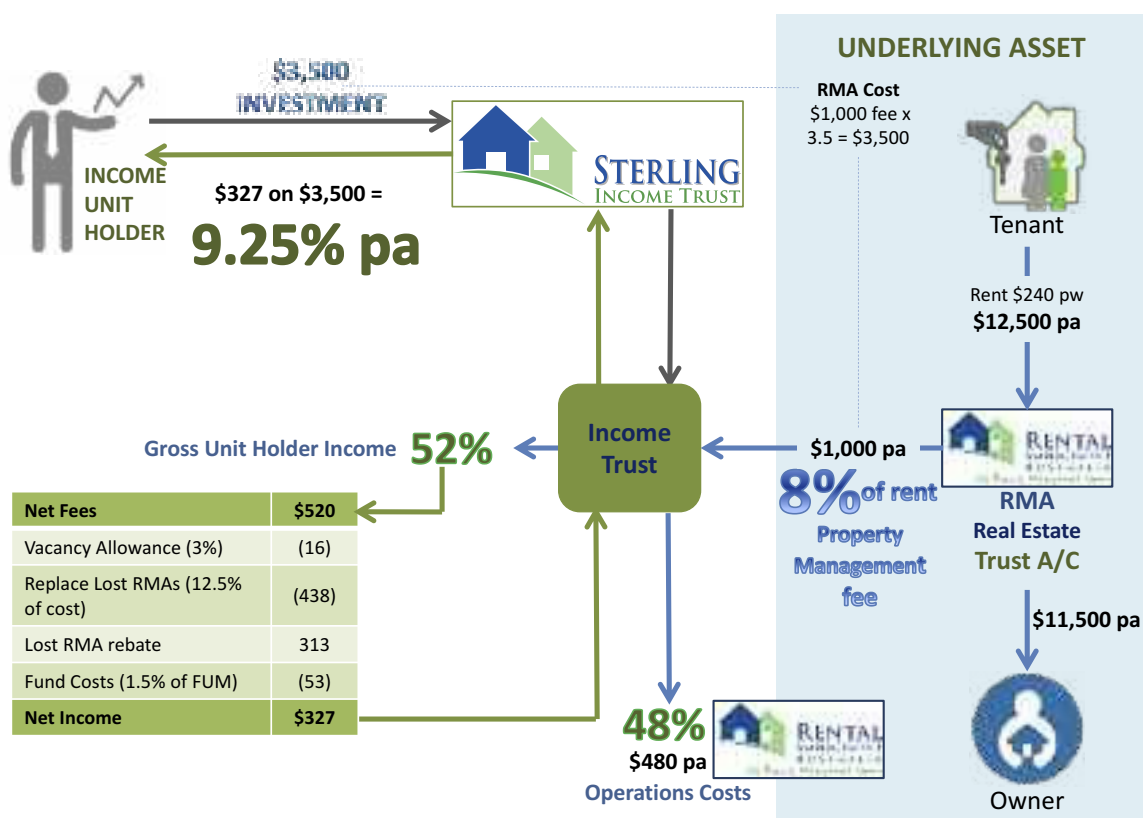
| Financial Year ("FY")<br>2013 | FY 2014                       | FY 2015                       | FY 2016                       | 6 months to December<br>2016  |
|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| 9.25% pa<br>100% tax deferred | 9.25% pa<br>100% tax deferred | 9.25% pa<br>100% tax deferred | 9.25% pa<br>100% tax deferred | 9.25% pa<br>100% tax deferred |

Unitholders should note that any references in this PDS to past performance is not a reliable guide to future performance.

### INCOME

The Income Trust owns Rental Management Income Rights, which gives the Income Trust the right to 100% of the income derived on the underlying Rental Management Agreement. Under the Master Deed of Assignment Agreement between the Income Trust and Rental Management Australia, the Income Trust remits an agreed percentage of these fees to Rental Management Australia, who employs all the staff and facilities to carry out the required services under the rental management agreements.

After paying the operating costs of the SIT, the balance of funds are distributed to the Income Unitholders. The income flow can be summarised in the example diagram below:



*Example for illustrative purposes only. Rents may higher or lower and the management fee may be higher or lower. When reviewing historical rates of distribution, remember they are not a reliable guide to future rates of distribution. Distributions may be higher or lower or even nil. Distributions and capital are not guaranteed.*



## RMA INCOME RIGHTS

The table below identifies the rental management agreements held by Rental Management Australia over which the Income Trust has Rental Management Income Rights. The figures are based on the holding as at 30 November 2016.

| Office Location        | Property Type           | Number of Rental Management Agreements <sup>1</sup> | Average Weekly Rent <sup>2</sup> | Average base Management Fee <sup>3</sup> |
|------------------------|-------------------------|---|----------------------------------|--|
| East Victoria Park, WA | Residential             | 705   | \$408                            | 8.26%                                    |
|                        | Sterling New Life Lease | 4   | \$569                            | 10.00%                                   |
| Port Kennedy, WA       | Residential             | 476   | \$386                            | 8.51%                                    |
|                        | Sterling New Life Lease | 25  | \$390                            | 10.08%                                   |
|                        | Storage Units           | 69  | \$50                             | 11.00%                                   |
| Bunbury, WA            | Residential             | 519   | \$344                            | 9.51%                                    |
|                        | Commercial              | 46  | \$839                            | 7.75%                                    |
|                        | Storage Units           | 75  | \$63                             | 9.62%                                    |
| Riverhills, Qld        | Residential             | 131   | \$330                            | 7.49%                                    |
| <b>Total</b>           |                         | <b>2,050</b>  |                                  |  |

1. The number of RMAs in respect of properties that were tenanted (and therefore in respect of which management fees were received) as at 30 November 2016. The actual number of RMAs varies on a daily basis, with new agreements being signed and owners withdrawing their properties from the rental market for a variety of reasons. The natural attrition rate of RMAs is approximately 12.5% pa. Under a Master Deed of Assignment between Rental Management Australia and the Income Trust, Rental Management Australia has been engaged to secure new RMAs to both replace the RMAs that have been lost and also to grow the base of RMAs. Under the agreement the Income Trust will fund the replacement of lost

RMAs for a net cost of 1.0 x the base management fees. For new additional RMAs, Rental Management Australia gets paid 3.5 x the base management fees and for Sterling New life Lease ("SNLL") RMA 4.5 x base management fees, which are secured on a long term basis. Refer to pages 15 and 25 for further details.

2. The Average Weekly Rent figures are derived from averaging the rent received in November 2016.
3. The Average Base Management Fees are derived from the management fee charged to landlords in November 2016.

The Income Trust acquires new Rental Management Income Rights through organic growth of the existing rent roll and the acquisition of residential (and some commercial) property management businesses where consolidation and aggregation of operations can lead to enhanced profitability.

Investments are made according to the following strategies and investment criteria:

- Generate growth by acquiring quality RMAs that meet the Income Trust's return criteria.
- Acquire property management businesses in areas of high rental property demand.

Rental Management Australia has a Business Development Agreement with RMAD. Under the Master Deed of Assignment, the Income Trust has agreed to pay the costs payable by Rental Management Australia under the Business Development Agreement.

Under the agreement, Rental Management Australia acquires all Residential RMAs from RMAD for 3.5 x the Base Management Fee and all SNLL RMAs for 4.5 x the Base Management Fee. Where the RMA being acquired, replaces a lost RMA, RMAD will rebate Rental Management Australia 2.5 x the Base Management Fee in respect of Residential RMAs and 3.5 x the base management fee in respect of SNLL RMAs.

Where an RMA has an "All In Fee" the Base Fee Equivalent will be 75% of the All In Fee.

Under the Rental Management Income Rights, the Income Trust is entitled to 100% of the management fees and ancillary fees earned on a RMA.

Out of this revenue, the Income Trust pays the following to Rental Management Australia:

|  | Residential RMA                                    | SNLL RMA   |
|--|--|--|
| <b>Base Management Fee and Ancillary RMA</b> | 48% of base fee & 100% of Ancillary Fees           | 48% of base fee & 100% of Ancillary Fees           |
| <b>All in Fee RMA</b>                        | 48% of All In Fee x 75% & 100% of All in Fee x 25% | 48% of All In Fee x 75% & 100% of All in Fee x 25% |

A distribution from the Income Trust will equal the free cash flow of the Income Trust. The free cash flow of the Income Trust is calculated as follows:

Gross income, less costs of managing the Income Trust, less funds retained to replace lost RMAs, less bank interest.

A distribution to the Income Unitholders is then calculated as follows:

**Distribution** = Distribution received from Income Trust less the Relative Costs of managing the SIT, where

**Relative Costs of managing the SIT** = the Responsible Entity fees, Custodian fees, Investment Manager fees, accounting, audit and tax fees and any other fees associated with running the SIT divided by the total number of SIT units on issue multiplied by the number of Income Units on issue.

## Growth Units

### DISTRIBUTION HISTORY

The Growth Units are new class of unit and have not made any distributions. It is intended that distributions will be made monthly and the target distribution rate is 12% pa.

*Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreements for the rental management growth rights or income rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. Refer to page 6 for further details. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.*

### INCOME

The Growth Trust owns Rental Management Growth Rights, which gives the Growth Trust the right to a share of the income derived by RMAD from the sale of Residential RMAs and SNLL RMAs net of any RMA Rebate to Rental Management Australia each month.

Under the Master Deed of Assignment, the Growth Trust can acquire Rental Management Growth Rights based on the following formula:

$$\text{Growth Rights Price} = \frac{\text{Monthly Income Limit Assigned} \times 12}{13.5\%}$$

The sale of RMAs to Rental Management Australia since 2013 can be summarised as follows:

| Residential RMAs | RMAD Income | RMAD Rebate | Net Income |
|------------------|-------------|-------------|------------|
| FY 2014          | 2,604,370   | 1,125,269   | 1,479,101  |
| FY 2015          | 2,358,915   | 1,173,989   | 1,214,927  |
| FY 2016          | 2,654,572   | 1,326,182   | 1,328,392  |

If the Growth Trust were to acquire the Rental Management Growth Rights with a monthly Income Limit of \$20,025, the Growth Rights Price would be calculated as follows:

$$\text{Growth Rights Price} = \frac{\text{Growth Monthly Income Assigned} \times 12}{13.5\%}$$

$$\text{Growth Rights Price} = \frac{20,025 \times 12}{13.5\%}$$

$$\text{Growth Rights Price} = \frac{240,300}{13.5\%}$$

$$\text{Growth Rights Price} = \$1,780,000$$

For the purchase price of \$1,780,000, the Growth Trust will be entitled to the income from the RMAD from the sale of RMAs of \$240,300 annually which after allowing for the costs of managing the SIT, will generate a target distribution to Growth Unitholders of approximately 12% pa\*.

*Example for illustrative purposes only. Rents may higher or lower and the management fee may be higher or lower. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreements for the rental management growth rights or income rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. When reviewing historical rates of distribution, remember they are not a reliable guide to future rates of distribution. Distributions may be higher or lower or even nil. Distributions and capital are not guaranteed.*

**STERLING INCOME SUPPORT AGREEMENT**

Sterling has entered into an Income Support Agreement with the SIT to provide income support in the event that in a particular month the Unitholder distribution would fall below any stated Target Distribution amount. For example this may occur if the month is a four week month as apposed to a five week month, or if vacancy or rental arrears are higher than anticipated. In these situations, Sterling will make an advance to the respective SIT so that the actual distribution will equal the Target Distribution.

The amount advanced by Sterling can be recouped by Sterling in future months within a single financial year if the free cash flow for Distributions is higher than any stated Target Distribution. If at the end of a financial year there are still unrecovered advances, Sterling must write the advance off, and the advance will be included as income of the SIT.

In addition under the Income Support Agreement, Sterling must establish and maintain a fund that holds not less than 150% of the annual distributable amount of the Income Units and the Growth Units in cash and other assets. If Sterling does not meet its obligation under the Income Support Agreement, the SIT can draw the required funds from this fund. The SIT benefits from a General Security Agreement in respect of this fund.

## Risks

### YOUR INVESTMENT AND RISKS

#### About risk and return

All investments are subject to varying risks and the value of an investment can decrease as well as increase (i.e. you can experience investment gains or investment losses). Changes in value can be significant and they can happen quickly. Different types of investments perform differently at different times and have different risk characteristics and volatility.

These are some of the reasons why you should consider investing in different types of investments (often called diversification).

The significant risks for the SIT generally, as well as the Income Units and Growth Units, are discussed below. Theta and SCS cannot eliminate all risks and cannot promise that the way they manage them will always be successful.

If these risks happen, Unitholders' distributions may be lower than expected or there may be none, and the value of an investment could fall.

#### Income Distribution Risk

##### - Income Units

The SIT receives its Income Unit income by way of distributions from the Income Trust.

The Income Trust derives its income from a share of the management fees earned on the collection of rent pursuant to which it has an RMA (the Base Management Fee).

The level of rent collected can be affected by a number of factors including non-payment of rent by a tenant, vacancies, loss of RMAs. The replacement of lost RMAs may be higher or lower than budgeted, the number of sales will vary from period to period and these factors will impact on the financial performance of the Income Trust.

The distributable income for the Income Units is determined as detailed on page 15. If the respective sub trust or the SIT's expenses are less than anticipated, the income distributed to Unitholders may be higher than the target distribution rates (and conversely, if the expenses are more than anticipated, the income distributed to Unitholders may be less than the target distribution rates). To help mitigate this, the SIT has entered into an Income Support Agreement with Sterling to provide income support in the event that in a particular month the Unitholder distribution would fall below ant stated Target Distribution. The SIT also benefits from a general security agreement in respect of these arrangements. However, income support is not guaranteed.

##### - Growth Units

The SIT receives its Growth Unit income by way of distributions from the Growth Trust.

The Growth Trust derives its income from the sale of RMAs to Rental Management Australia.

The number of RMAs sold to Rental Management Australia depends on the performance of RMAD which may vary from period to period and may impact on the financial performance of the Growth Trust.

The distributable income for the Growth Units is determined as detailed on page 16. If the respective sub trust or the SIT's expenses are less than anticipated, the income distributed to Unitholders may be higher than the target distribution rates (and conversely, if the expenses are more than anticipated, the income distributed to Unitholders may be less than the target distribution rates). To help mitigate this, the SIT has entered into an Income Support Agreement with Sterling to provide income support in the event that in a particular month the Unitholder distribution would fall below ant stated Target Distribution. The SIT also benefits from a general security agreement in respect of these arrangements. However, income support is not guaranteed.

A Unitholder will receive any distributions from the SIT after the costs of managing the SIT have been deducted. Refer to pages 24 and 25 for information on the cost of managing the SIT.

Unitholders should note that any reference in this PDS to past performance is not a reliable guide to future performance. Any reference to target distribution rates are based on the return payable under the Master Deed of Assignment Agreements for the rental management growth rights or income rights, the estimated operating costs of the SIT and its investments and the historical performance of the underlying investments. No distribution rate is guaranteed. Returns may be more or less than historical returns and the target returns stated.

#### Market Risk

Economic, technological, political or legal conditions, changes in interest rates and even market sentiment, can (and do) change, and these all affect the value of the investments in the SIT.

#### Investment Manager Risk

SCS may fail to perform under the Investment Management Agreement, in which case Theta will take all necessary action to safeguard Unitholders' funds.

#### Key Person Risk

Only a small number of investment professionals are responsible for managing the SIT and their personal circumstances can change.

SCS aims to reduce this risk by having additional investment resources available, by increasing the size of the investment team over time and by systematising the investment decision making.

#### SIT Risk

Risks particular to the SIT include that it could be terminated at a date the Responsible Entity decides, the fees and expenses could change (although the Responsible Entity would always give you at least 30

days' notice if fees were to increase), Theta could be replaced as Responsible Entity and its management and staff could change. However the Responsible Entity has duties under the Corporations Act to act in the best interest of Unitholders.

### Liquidity Risk

The SIT is an illiquid fund, and as such, a limited redemption facility may be offered to Unitholders and no secondary market exists. Therefore Unitholders may be unable to liquidate their investments as and when they require. However, it is expected Unitholders may be made a Conditional Redemption Offer periodically (refer to pages 4, 5, 8 and 22).

The Conditional Redemption Offers will be funded out of new equity, surplus working capital or the sale of assets of the various sub trusts. There is a risk that the SIT will not be able to access sufficient capital during this period to meet all Conditional Redemption Offers. If this occurs, Unitholders may not be able to redeem their Units.

### Taxation Risks

Any change in taxation laws or rates (including any duties and imposts) in jurisdictions in which the SIT operates may impact on:

- the SIT's financial performance and cash flows; and
- the SIT's ability to pay distributions and dividends.

Any changes in the current rates of taxation, duties or imposts applying to individuals and trusts will similarly impact on Unitholder returns.

Whilst all care has been taken to determine the accounting treatment of the income and capital growth associated with this investment, each Unitholder should seek their own tax advice in relation to their Unitholding.

### Multi class risk

The SIT will issue multiple classes of units. As at the date of this PDS, the SIT intends to issue four classes of units, being the Income Unit class, Growth Unit class, Development Unit class and the Management Company Unit class of units. The SIT may offer more classes of units in the future.

Each class is referable to a particular pool of assets and liabilities held within the SIT. When you invest in a particular class of Units, you acquire an interest in, and therefore exposure to, the assets relevant to that class. The assets and liabilities of the SIT are attributed to the relevant classes and are administered separately so the Unit price and performance of each class is independent of each other.

However, legally the assets and liabilities of a particular class are the assets and liabilities of the SIT as a whole. As such, if the SIT becomes insolvent, all classes of units will be affected, and if a particular class of units becomes insolvent then creditors may make a claim for all of the assets in the SIT and not just the assets of the insolvent class of units.

### Borrowings

The SIT will not borrow, however the Income Trust may borrow from banks at commercial arms length terms to assist in the acquisition of RMAs. The Growth Trust will not borrow.

If interest rates rise, the SIT will be exposed to higher interest costs on borrowings undertaken by the Income Trust to acquire new RMAs. Higher borrowing costs incurred by the Income Trust could ultimately reduce returns to Unitholders. The Income Trust fixing the rate on borrowings can reduce this risk and the trustee of the Income Trust will do this where it considers it reasonable and practicable to do so as part of the Income Trust's interest rate hedging policy.

### Stamp Duty

The SIT seeks legal advice as to the impact of stamp duty on all acquisitions. Such opinions may however be subject to challenge by the relevant state government revenue office.

### Covenant Breach

The Income Trusts bank loan facilities contain financial covenants such as LVRs and interest coverage ratios. Should these covenants be breached, the Income Trust may be forced to renegotiate its bank facilities which could result in increased borrowing costs and reduced returns to Unitholders. Failure to renegotiate the facilities could result in the need to sell assets. As at the date of this PDS, no lender has issued a breach notice or indicated that they are concerned with any potential breaches of any financial covenants.

### Specific Risks for the Income Unit Class

#### Business Model

There would be a material adverse effect on the Income Unit Class and its operating and financial performance if it were not able to achieve the expected cost and revenue synergies and integration benefits of combining the RMAs that the SIT acquires.

#### Asset Risk

The principal assets of the Income Unit Class are units in the Income Trust, which in turn invests in RMAs. The RMAs may be terminated by owners within varying periods, depending on the state jurisdiction they are located in. Owners of properties may elect to sell the property being subject to an RMA or remove that property from the Rent Roll for a number of other reasons. In this respect the Income Trust has budgeted an attrition rate (namely the rate relating to the removal of properties from the Rent Roll). There is a risk that the attrition rate will be higher or lower than the attrition rate budgeted by the Income Trust and this will have an impact on the Income Trust's financial performance.

#### Growth Risk

The Income Trust is budgeting growth in the number of RMAs. The Income Trust expects additional income to come from the acquisition of RMAs and through organic growth. The Income Trust may not experience the



## Risk

budgeted growth in the number of properties it seeks to manage which will have a negative impact on the SIT's financial performance.

Similarly, the Income Trust has budgeted the costs it anticipates it will incur in operating the business. There is a risk that the costs of operating the business will be higher than those budgeted.

The Income Trust intends to acquire further RMAs in the future. There is no guarantee that the Income Trust will be able to identify suitable acquisitions or alternatively that the Income Trust will be able to agree with the potential vendors on terms relating to the acquisitions having regard to available capital and debt funding to undertake such acquisitions. If the Income Trust encounters such difficulties or is unable to complete further acquisitions as currently contemplated in the Income Trust's budgets, this would adversely impact on the Income Trust's financial performance.

### **RMAD Contract Risk**

The Income Trust relies on RMAD and its subsidiaries to perform services under the Business Development Agreement with Rental Management Australia.

The business development consists of researching, negotiating and arranging for the acquisition of additional RMAs to be owned by the Income Trust. The Business Development Agreement does not have a fixed term, but may be terminated on the happening of certain events, such as a breach of its respective terms which is not rectified, or insolvency.

If RMAD is not able to perform these services or the agreements are terminated, the Income Trust would need to perform these services itself, or engage other parties to perform them. There may be an adverse effect on the Income Trust's financial performance if the services could not be performed to the same level as by RMAD, or the costs increased compared to engaging RMAD. Also, if the Income Trust performed the business development itself, this would undermine its strategy to separate the business development function from ownership of the Rent Roll.

### **Competition**

Increased competition in the property management industry may result in, amongst other things, lower industry accepted commission rates and fees. Downward pressure on industry rates and fees would have an adverse financial impact and limit the Income Trust's ability to attract and retain owners and customers.

### **Vacancy Levels and Rental Income**

Vacancy levels and rental income can have a direct impact on fees and commissions earned by the Fund. High vacancy rates, or decreases in rental income for properties managed by the Fund could have an adverse financial impact on the Fund.

### **Regulatory Risk**

The Income Trust operates in a regulated industry. Amongst other things, participants in that industry must be licensed. The Income Trust's operating subsidiaries have existing licenses. If the Income Trust was to lose its licence to operate in any of the relevant jurisdictions this would have an adverse impact on the Income Trust's ability to maintain operations. Further changes in the regulatory environment in which the Income Trust operates may adversely impact the Income Trust. The legislation that regulates the terms on which owners and agencies must contract with each other under the managing agency authority is very prescriptive. Failure to strictly adhere to prescribed terms or to follow prescribed practices may disentitle the managing agency to commissions and/or fees previously paid by the owner or may expose the agency to penalties under the relevant legislation in the states that they operate.

### **Accounting Standards**

Changes in accounting standards may impact on the SIT's financial performance and its capacity to pay distributions.

### **Litigation Risk**

The SIT is exposed to potential litigation from customers and third parties with whom it engages or in relation to agencies/entities that the SIT is acquiring. This would include litigation risk relating to regulatory matters including disputes as to the form of rental management agreements.

### **Specific Risks for the Growth Unit class**

#### **Business Model**

There would be a material adverse effect on the Growth Unit Class and its operating and financial performance if RMAD were unable to maintain its business operations at least 50% of its current level.

#### **Asset Risk**

The principal assets of the Growth Unit Class are units in the Income Trust, which in turn invests in RMA Growth Rights. The income generated under the RMA Growth Rights is reliant on the performance of RMAD. There is a risk that RMAD will have a reduction in performance and consequently the Growth Unit Class may underperform.

#### **Competition**

Increased competition in the property management industry may result in, amongst other things, lower industry accepted commission rates and fees. Downward pressure on industry rates and fees would have an adverse financial impact and limit the RMAD's ability to attract owners and in turn impact on the performance of the Growth Unit Class.

**HOW TO INVEST**

You can invest from \$2,000 and thereafter in \$500 increments. Complete a current Application Form and send it to the Investment Manager's office (the Application Form is attached to this PDS):

Registry Direct  
PO Box 18366  
Collins Street East, VIC 8003

Cheques should be made payable to Sterling Income Trust – Application Account.

If paying by Electronic Funds Transfer the banking details of the Application Account is as follow:

Account Name: Theta Asset Mgt Ltd atf SIT Application Account  
Bank: NAB  
BSB: 082-080  
Account: 14-595-6791

Any interest earned on application monies is credited to the benefit of the SIT.

**COOLING-OFF RIGHTS**

Cooling-off rights do not apply to an investment in Units pursuant to the Offer. This means that you cannot withdraw your Application once it has been accepted.

**APPLICATION PRICE**

The Application Price for the Income Units and Growth Units are determined by the Responsible Entity, in accordance with the Constitution, at the time an application is processed. The issue price of Units under this offer ("Current Unit Price") is determined with reference to the net asset value of the relevant class of units and the number of Units in that class on issue.

The net asset value will be calculated by determining the gross assets value being the sum of:

- 1 the value of the assets of the relevant class; and
- 2 any other amounts which, in the opinion of the Responsible Entity should be included for the purpose of making a fair and reasonable determination of the value of the assets of the relevant class on an undiscounted basis, having regard to generally accepted accounting principles.

Less the following:

- 1 all amounts required to meet liabilities and to meet all costs (including the amount of any provisions, including contingent liabilities, the Responsible Entity determines, in consultation with the auditor, should be made) but excluding liabilities (if any) to Unitholders in respect of Units; and
- 2 following any distribution calculation date, the amount of any distributable amount payable but not paid to Unitholders on the day on which the net asset value is determined.

The Current Unit Price will be determined on each month end at 5.00pm (WST) and published on [www.sitfund.com.au](http://www.sitfund.com.au). Applications will be processed each Monday based on the previously published Current Unit Price.

**Income Units**

The asset value calculation for the RMA Income Rights will be made on the following basis:

- 1 the total Base Management Fees will be obtained from the rent roll as at the end of the given period
- 2 the value multiple will be obtained from the most recent issue of the Macquarie Bank Residential Real Estate Benchmark Report
- 3 The amount will be adjusted by the difference between the market average profit margin of 30% and the Income Trust margin of 45% discounted by 8%

The calculation to be made as follows:

$$\text{Base Management Fees} \times \text{Macquarie Bank Multiple} \times (45\% / 30\%) \times (100\% - 8\%)$$

**Growth Units**

The asset value calculation for the RMA Growth Rights will be made on the following basis:

$$\text{Annualised Income Limit} / 13.5\%$$

The Responsible Entity has a documented policy in relation to the guidelines and relevant factors taken into account when calculating Unit prices (called the Unit Pricing Policy). The Responsible Entity keeps records of any decisions that are outside the scope of the Unit Pricing Policy, or are inconsistent with it. A copy of the Unit Pricing Policy and records is available free on request.

## Your Investment

### REDEMPTION OF UNITS

The SIT is not listed on any securities exchange, and is considered an illiquid investment. There is no guaranteed redemption of Units, however Unitholders may be able to redeem their Units via a Conditional Redemption Offer, which will be made to Unitholders at the discretion of the SIT.

The Income Unit and Growth Unit Redemption Offers are expected to be funded out of new equity raised. There is no guarantee however, that there will be sufficient funds available to meet the redemption requests in full or in part.

There are currently no Growth Units eligible to be redeemed.

Being an illiquid investment, the Responsible Entity must comply with the Corporations Act when making any Conditional Redemption Offer (including duties around how such offers are made, to whom, how payments are to be dealt with and how offers may be cancelled).

Further details will be provided to Unitholders at the time that a Conditional Redemption Offer is made.

Application for redemption of units can be made when a Conditional Redemption Offer is available and by completing the "Redemption Application Form" attached to this PDS.

### DISTRIBUTION PAYMENT

If distributions are payable the SIT will make the distribution not later than the 15<sup>th</sup> business day of each month.

Distributions are not guaranteed.

### CHANGES OF DETAILS

If you change any of your details, including contact details, distribution instructions, bank account details or account operating instructions, please advise us by contacting Registry Direct on 1300 55 6635.

Alternatively, you can update your details online at [www.registrydirect.com.au/investor](http://www.registrydirect.com.au/investor), or in writing.

Please send all correspondence to:

Registry Direct  
PO Box 18366  
Collins Street East, VIC 8003



In all likelihood you will need to pay tax in relation to your investment in the SIT, generally income or capital gains tax, but you might be able to claim some tax credits or have the benefits of some concessions.

Your tax liability ultimately depends on your circumstances, for example, whether you are an Australian resident or whether you are investing via a superannuation fund. Therefore, it is important that you seek professional advice before you invest or deal with your investment.

Theta will send you the information you need each year to help you to complete your tax return.

**Will I be liable to pay tax on money I receive from the SIT?**

Probably yes, whether the money is actually paid to you or reinvested.

The tax impact for you depends on what makes up the distributions. Distributions could comprise:

- income (like dividends and interest);
- net taxable capital gains (from the sale of the SIT's investments); and
- tax credits (like franking credits attached to dividend income).

**Do I need to give you my tax file number (TFN) or Australian business number (ABN)?**

It is up to you, but we recommend it strongly.

If you choose not to provide us with your TFN or ABN and you do not have an exemption, we must deduct tax at the highest personal rate, plus the Medicare levy, before passing on any distribution to you. The law is very strict on how we can use these details. It is not compulsory to provide a TFN or ABN and it is not an offence to decline to provide them. To avoid withholding tax being applied to your account, applicants may include a TFN or ABN, as applicable, when completing the Application Form.

**Does the SIT have to distribute taxable income?**

The terms of the Constitution provide that the taxable income of the SIT must be distributed to Unitholders. This means the SIT should not be liable for income tax on its income. Any income distributed to Unitholders must be included in the taxable income of the Unitholder.

**Does the SIT pay tax?**

The SIT is not expected to be taxed as a company.

## Fees and Other Costs

The following is a general disclosure required pursuant to the Corporations Act in relation to the SIT.

### DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period.

(for example, reduce it from \$100,000 to \$80,000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower contribution fees and management costs where applicable. Ask the SIT or your financial adviser.

### TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission (ASIC)** website ([www.moneysmart.asic.gov.au](http://www.moneysmart.asic.gov.au)) has a managed investment fee calculator to help you check out different fee options.

This document shows fees and other costs that you may be charged. These fees and costs may be deducted from your money or from the returns on your investment or from the assets of the SIT as a whole.

Taxes are set out in another part of this document.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

| Sterling Income Trust   |  |  |
|---|--|--|
| Type of fee or cost   | Amount   | How and when paid  |
| <b>Fees when your money moves in or out of the SIT</b>                            |  |  |
| <b>Establishment fee:</b><br>The fee to open your investment                      | Nil  | Not applicable   |
| <b>Contribution fee:</b><br>The fee on each amount contributed to your investment | Nil  | Not applicable   |
| <b>Withdrawal fee:</b><br>The fee on each amount you take out of your investment  | Nil  | Not applicable   |
| <b>Exit fee:</b><br>The fee to close your investment                              | Nil  | Not applicable   |
| <b>Management costs</b><br>The fees and costs for managing your investment        |  |  |
| <b>Administration and investment costs</b>  | <p>An Investment Manager's Fee being 1% per annum of the FUM.</p> <p>A Responsible Entity fee being the greater of \$50,000 or 0.15%* per annum of the FUM.</p> <p>An annual audit management fee up to \$7,500.</p> <p><i>For a worked dollar example of the fees, see "Example of annual fees and costs" on page 25.</i></p> | <p>Payable quarterly in arrears from the SIT assets.</p> <p>Payable quarterly in arrears from the SIT assets.</p> <p>Payable annually in the December quarter from the SIT assets.</p> |
| <b>Recoverable expenses</b>   | <p>SIT expenses, other than Administrative and investment cost, are estimated to be approximately \$65,000.</p> <p><i>For a worked dollar example of the fees, see "Example of annual fees and costs" on page 25.</i></p>  | <p>Paid as incurred. This amount is paid from the SIT assets. Please refer to 'Additional explanation of fees and costs' on page 25 for more information.</p>                          |
| <b>Service Fees</b>   |  |  |
| <b>Switching fee:</b><br>The fee for changing investment options                  | Nil  | Not applicable   |

\* \$1,500 per \$1,000,000 gross value of the SIT

**Additional explanation of fees and costs****Recoverable expenses**

There is no limit on the total amount of expenses that can be recovered provided such expenses are properly incurred. The actual operations expenses for the financial year ended 30 June 2016 were \$286,672, made up of administrative and investment costs of approximately \$213,875, and recoverable expenses of \$72,797. These expenses include, but are not limited to audit fees, insurance, accounting fees and ASIC fees.

**Can fees be different for different investors?**

No, all Unitholders are subject to the same fee structure.

**Can the fees change?**

Yes, all fees can change. Reasons might include changing economic conditions and changes in regulation. The Constitution for the SIT sets the maximum amount Theta can charge for all fees. If Theta wished to raise fees above the amounts allowed for in the SIT Constitution, Theta would need the approval of Unitholders. Theta will give you 30 days written notice of any proposed increase to the fees (but not expenses) as stated in the PDS.

The Responsible Entity Fee and audit management fee are subject to annual review and CPI adjustment.

**Government charges and taxation**

Government taxes such as GST will be applied to your account as appropriate. In addition to the fees and costs

described in this section, standard government fees, duties and bank charges may also apply such as stamp duties. Some of these charges may include additional GST and will apply to your investments and withdrawals as appropriate.

These fees are included in the fees outlined in the tables. Please note the fees in the tables do take into account any reduced input tax credits that may be available so the fees may be overstated in some cases.

**Buy/Sell spread**

No buy/sell spread is payable on acquisition or disposal of Units.

**Alternative Remuneration**

The SIT does not pay commissions to financial advisers. Subject to the law, Theta may make product marketing payments out of the administration and investment costs. These are not additional amounts borne by Unitholders. They are paid entirely by us, either as a cash payment or in the form of additional Units that we purchase.

**Example of annual fees and costs**

This table gives an example of how the fees and costs for this managed investment product can affect your investment over a one year period. You should use this table to compare this product with other managed investment products.

| <b>EXAMPLE</b>               |        | <b>Balance of \$50,000 with total contributions of \$5,000 during the year</b>  |
|------------------------------|--------|---|
| <b>Contribution Fees</b>     | 0%     | For every additional \$5,000 you put in, you will be charged \$0.   |
| <b>PLUS Management Costs</b> | 1.38%* | <b>And</b> , for every \$50,000 you have invested in the SIT you will be charged \$690 each year**.   |
| <b>EQUALS Cost of SIT</b>    | 1.38%* | If you had an investment of \$50,000 at the beginning of the year and you put in an additional \$5,000 during that year, you would be charged fees of <b>\$690***</b> . |

\* Based on FUM of \$20,736,187.

\*\*These fees are paid directly by the SIT. Any distributions paid by the SIT are paid after payment of all Management Costs.

\*\*\*The Corporations Act requires that when calculating management costs in this table, Theta must not include contributions made during the year or allow for any positive performance that may occur (e.g. Theta must assume that the value of the investment remains at \$50,000 and the Unit price does not fluctuate). Please be aware that management costs actually incurred will depend on the market value of the investment and the timing of any contributions (including any reinvestment of distributions) during any 12 month period.

**SUMMARY OF MATERIAL AGREEMENTS****Investment Management Agreement between Theta and SCS**

Key provisions include:

1. Parties: Theta in its capacity as Responsible Entity of SIT and SCS.
2. The agreement is for a term of 5 years commencing on 6 November 2012. If at the end of this period the agreement is not extended (or replaced by a new agreement between the parties), Theta can perform itself the functions it previously appointed SCS to perform, or engage another party to act on its behalf. Alternatively, a new responsible entity may be appointed by Unitholders pursuant to an extraordinary resolution, in accordance with the procedure outlined in paragraphs (3)(d) and (6)(d) below.
3. Theta:
  - (a) Appoints SCS to act as Investment Manager and manage the SIT's assets and prepare any PDS and promotional material for the SIT on behalf of Theta.
  - (b) Has various duties and obligations with respect to the SIT and its assets and liabilities, preparing the SIT's compliance plan, establishing the SIT's compliance committee, maintaining an AFSL and reviewing, commenting, approving and issuing any PDS or promotional material.
  - (c) May be requested by SCS to resign as responsible entity of the SIT. This will result in Theta calling a meeting of Unitholders, so the Unitholders can decide whether or not to give effect to the request. Unitholders must vote on an extraordinary resolution to choose a new responsible entity before Theta can be replaced. The notice of meeting materials provided to Unitholders will explain the reasons for the proposed change of responsible entity. The extraordinary resolution must be passed by at least 50% of the total votes that may be cast by Unitholders entitled to vote (including Unitholders who are not present in person or by proxy), in order to change the responsible entity.
  - (d) Can vary decisions of SCS (as Investment Manager) that in the opinion of Theta would contravene or be likely to contravene, or breach duties and obligations under, the law, the SIT's Constitution, Compliance Plan or PDS, or Theta's AFSL, or would not be in the best interests of Unitholders.
  - (e) Holds through the Custodian all property and rights attached to the SIT.
4. SCS (as Investment Manager, acting on behalf of Theta) has certain functions, duties and obligations with respect to managing the SIT assets and any SIT PDS and promotional material. When a distribution is paid by the Income Trust to the SIT, SCS will perform necessary reconciliations and liaise with the Custodian to enable distributions to be made to Unitholders. SCS will also prepare any SIT PDS or promotional material, and obtain legal sign-off, on behalf of Theta, and must also provide specified reports for Theta.
5. SCS is entitled to be reimbursed for all out of pocket expenses, and will be paid a fee per annum equal to 1% of FUM.
6. SCS is required to provide regular reports to Theta in relation to the SIT, its assets, any conflicts of interest (actual or perceived) and other compliance matters on a monthly, quarterly and annual basis.
7. Termination:
  - (a) Either party may terminate the agreement by giving three months notice.
  - (b) Either party may terminate the agreement immediately upon the occurrence of a termination event (such events

being broadly in line with industry standard termination events) or if Theta ceases to be the Responsible Entity of the SIT.

- (c) If SCS terminates the agreement without giving notice where Theta is not in breach, SCS must pay Theta a fee (this fee is not payable out of SIT Assets).
- (d) Theta may terminate the agreement if it is required to do so by law.
- (e) If Theta terminates the agreement when it is not required to do so by law, or SCS terminates the agreement, then Theta will call a meeting of Unitholders to vote on a resolution to remove Theta as Responsible Entity, so the Unitholders can decide whether or not to give effect to the request. Unitholders must vote on an extraordinary resolution to choose a new responsible entity before Theta can be replaced. The notice of meeting materials provided to Unitholders will explain the reasons for the proposed change of responsible entity. The extraordinary resolution must be passed by at least 50% of the total votes that may be cast by Unitholders entitled to vote (including Unitholders who are not present in person or by proxy), in order to change the responsible entity.
- (f) If SCS does not consent to its removal as Investment Manager, a fee equivalent to 3% of FUM must be paid to SCS (this fee is not payable out of SIT Assets).
- (g) If Theta does not consent to its removal as Responsible Entity, a fee equivalent to 0.15% of FUM must be paid to Theta (this fee is not payable out of SIT Assets).
8. The Investment Management Agreement contains standard provisions including those relating to confidentiality, warranties and indemnities and insurance.

**Debt Facility - Income Trust****Macquarie Bank Limited - Real Estate Revolving Line of Credit**

Key provisions include:

1. Borrower - Rental Management Australia Pty Ltd as trustee for Income Trust
2. Facility Limit: \$2,860,000.
3. Purpose: To assist with refinancing previous debt from Bankwest and provide additional funds for future rent roll acquisitions.
4. Type: interest only at the Macquarie Bank Reference Rate.
5. Expiry: 5 years from date of initial draw down being 16 December 2019.
6. Security: General Security Interest - RMAPL and the Income Trust.
7. Guarantors - Westbold Investments Pty Ltd, SCS, Sterling First, Rental Management Australia (Qld) Pty Ltd.

**KEY AGREEMENTS****Master Deed of Assignment between RMAPL and Income Trust**

RMAPL agrees to exclusively assign Income Rights on RMAs to the Income Trust on the following terms:

1. Income Trust will fund RMAPL for the acquisition of RMAs and assignment of the attaching Income Rights. RMAPL has agreed to acquire RMAs from RMAD on the following basis:
  - a. for Income Rights attaching to Residential RMAs, 3.50 times the Base Management Fee; and
  - b. for Income Rights attaching to new SNLL RMAs, 4.50 times the Base Management Fee; and
2. RMAD has agreed to rebate RMAPL, and RMAPL will in turn rebate Income Trust 2.5 x the Base Management Fee on Income Rights that are replacing lost Residential RMAs and 3.5 the Base Management Fee on Income Rights that are replacing lost SNLL RMAs.
3. Income Trust will pay to RMAPL 48% of the Base Management Fees earned under the RMAs and 100% of the remaining fees earned under the RMAs.
4. Where an RMA is an "All In Fee" RMA, the Base Management Fee equivalent will be 75% of the All In Fee amount.
5. RMAPL must not sell, or seek to sell, any RMA, for which the Income Trust has the income Rights, to any person without the prior written consent of the Income Trust.
6. RMAPL must sell an RMA, for which the Income Trust has the Income Rights, when directed to do so by the Income Trust.
7. When RMAPL sells an RMA with the requisite consent from, or at the direction of, the Income Trust, the sale proceeds form part of the Income Rights and are payable to the Income Trust.
8. RMAPL must take all reasonable action against third parties for infringement of the Income Rights whether or not the infringement took place before the Effective Date.
9. The Master Deed of Assignment contains other standard provisions, including those relating to dispute resolution, GST and confidentiality.
10. Security: General Security Interest - RMAPL.

**Master Deed of Assignment between RMAD and Growth Trust**

RMAD agrees to assign to the Growth Trust all its rights, title and interest in the Income Rights up to the Income Limit on the following terms:

1. RMAD may assign Income Rights to the Growth Trust with the price determined by the following formula:  

$$\text{Income Limit} \times 12 / 0.135$$
2. The Income Limit may be raised or lowered by agreement between RMAD and the Growth Trust.
3. When the Income Limit is raised or lowered the Price will be adjusted using the formula above with a payment due from the Growth Trust to RMAD (raised), or from RMAD to the Growth Trust (lowered).

4. If any payments of the Price remain outstanding, interest will accrue at 13.5% per annum.
5. RMAD must pay the Growth Trust the Income Limit no later than the 15th day of the month following receipt.
6. If the actual amount of income received by RMAD is less than the Income Limit then the Growth Trust will only receive the actual amount of income.
7. RMAD can only increase the Income Limit to a maximum of 50% of the annual income in the previous 12 month period.
8. RMAD undertakes to use reasonable endeavours to perform its obligations.
9. The Master Deed of Assignment contains other standard provisions, including those relating to dispute resolution, GST and confidentiality.
10. Security: General Security Interest - RMAD.

**Income Support Agreement between SIT, SCS and SCS as trustee for the Sterling Capital Reserve Fund**

SCS agrees to provide the SIT income support if the distributions to the Income Unit Holders or the Growth Unit Holders in a calendar month falls below the Target Distributions on the following terms:

1. If for a calendar month the actual distributions are less than the Target Distributions, SCS will pay SIT the shortfall amount.
2. If in a calendar month the actual distribution are more than the Target Distributions, then the SIT may reimburse SCS any shortfall amounts it has previously paid.
3. If at 30 June each year, there are is a balance of shortfall amounts that SCS has not recouped, these amounts must be written off by SCS.
4. SCS must establish the Sterling Capital Reserve Fund (Reserve Fund), which must within 12 months of the date of the deed (31 January 2017) hold a balance equal to 1.5 times the amount required to pay the Target Distributions for the income Trust and the Growth Trust.
5. The Reserve Fund provides a guarantee in support of this agreement, and can be drawn upon if SCS fails to meet its obligations under the agreement.
6. If the Reserve Fund is drawn upon, SCS must replenish the Reserve Fund within in 90 Days.
7. Security: General Security Interest - Reserve Fund.



## Additional Information

**DISCLOSURE OF INTERESTS**

Other than as stated in this Section 8 and elsewhere in this PDS:

- Theta is entitled to receive the fees set out on page 24.
- SCS is the Investment Manager of the SIT. SCS is a wholly owned subsidiary of Sterling First, which currently holds 400,000 Income Units.
- Ray Jones, a director of SCS, currently holds directly and beneficially 1,118,285 Income Units.
- There are no Growth Units on issue at the date of this PDS.
- The top 20 Income Unitholders as at the date of this PDS are:

| No. | Unitholder                                       | Unitholding       | %             |
|-----|--|-------------------|---------------|
| 1   | RMA Consolidations Pty Ltd                       | 1,118,285         | 8.7%          |
| 2   | Wintersweet Nominees Pty Ltd                     | 675,000           | 5.3%          |
| 3   | Paul Webb  | 633,362           | 4.9%          |
| 4   | Yih Ling Hoon                                    | 581,704           | 4.5%          |
| 5   | Glenhope Pty Ltd                                 | 536,900           | 4.2%          |
| 6   | Mr Timothy John Ellis + Mrs Suzanne Marie Ellis  | 459,292           | 3.6%          |
| 7   | Sterling First (Aust) Limited                    | 400,000           | 3.1%          |
| 8   | Carole Hawkins                                   | 300,000           | 2.3%          |
| 9   | Mr Neville Frank East + Mrs Pamela East          | 295,010           | 2.3%          |
| 10  | Paul Luzi  | 294,509           | 2.3%          |
| 11  | Elsio Pty Ltd                                    | 293,309           | 2.3%          |
| 12  | Bougainvillea Holdings Pty Ltd                   | 250,000           | 1.9%          |
| 13  | Mr Allan Edward Barrett + Mrs Diana Joan Barrett | 216,504           | 1.7%          |
| 14  | Barmera Management Pty Ltd                       | 200,000           | 1.6%          |
| 15  | Blackwolf Corporation Pty Ltd                    | 200,000           | 1.6%          |
| 16  | Bernard Vallenge                                 | 200,000           | 1.6%          |
| 17  | Mr Kevin Harry Duckworth                         | 195,955           | 1.5%          |
| 18  | Ms Lorraine Patricia Fitzgerald                  | 177,504           | 1.4%          |
| 19  | Mr Timothy John Ellis                            | 174,071           | 1.4%          |
| 20  | Qtft Pty Ltd                                     | 168,440           | 1.3%          |
|     | Others   | 5,491,993         | 42.7%         |
|     | <b>Units on Issue</b>                            | <b>12,861,838</b> | <b>100.0%</b> |

**SIT Constitution**

In addition to the information set out at page 11 of this PDS, key provisions of the Constitution include:

- holding of assets on trust for Unitholders;
- application price for any securities to be issued;
- application procedures for Unitholders;
- valuation of assets;
- income and distributions payable to Unitholders;
- powers of the Responsible Entity;
- issuing of notices to Unitholders;
- meeting of Unitholders;
- rights and liabilities of the Responsible Entity;
- remuneration and expenses of the Responsible Entity;
- duration of the SIT;
- compliance committee;
- complaints procedure; and

- an ability (but not obligation) to list the SIT on the ASX.

**Disclosure of Directors' Interests - Responsible Entity**

Other than as stated below and elsewhere in this PDS:

- No amount has been paid or agreed to be paid and no benefit has been given or agreed to be given to a director, or proposed director of the Responsible Entity to induce them to become, or qualify as, a director;
- None of the following persons:
  - a director or proposed director of the Responsible Entity;
  - each person named in this PDS as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this PDS; or
  - a promoter of the SIT;

holds or has held at any time in the two years before issue of this PDS, an interest in the formation or promotion of the SIT, business acquired or proposed to be acquired by the SIT in connection with its formation or promotion, or was paid or given or agreed to be paid or given, any amount or benefit for services provided by such persons in connection with the formation or promotion of the SIT, except as set out elsewhere in this PDS and below.

The directors of the Responsible Entity currently receive remuneration in their capacity as directors of Theta and none of the directors are remunerated directly by the SIT.

None of the directors of the Responsible Entity currently have an interest held either directly or indirectly in Units in the SIT.

Directors may purchase Units through subsequent offers made by the SIT.

No director received or became entitled to receive any benefit because of a contract made by the SIT with a director or with a firm of which a director is a member, or with an entity in which the director has a substantial interest.

**OTHER COMPLIANCE INFORMATION****The Compliance Plan and Compliance Committee**

As required by law, Theta has prepared and lodged with ASIC, a Compliance Plan for the SIT which sets out measures that Theta shall apply in operating the SIT to ensure compliance with the Corporations Act, and the SIT's Constitution.

The Compliance Plan identifies the personnel or service providers structure of Theta and the duties of Theta as a whole, as well as the duties and the procedures and systems for Theta to implement concerning various aspects of the management function, including:

- the meetings and reports of the Compliance Committee;
- the engagement of external service providers;
- the safe keeping and inspection of records;
- the maintenance and audit of books of accounts;
- the valuation of the property;
- reporting to Unitholders;
- the borrowings of the SIT;
- managing conflicts of interest; and
- handling, collecting and dealing with money received for the SIT.

The Compliance Committee has been established to monitor compliance by Theta with the Compliance Plan and Constitution and report to Theta on a regular basis regarding its adherence to the Compliance Plan, the Corporations Act and the SIT's Constitution.

The Compliance Committee is to report to ASIC if Theta does not address any issues raised in an adverse report issued to Theta. The Compliance Committee is currently comprised of 3 members, with at least two thirds of the Committee being 'external' in accordance with s601JB of the Corporations Act.

### The Responsible Entity's Financial Capacity

There are strict financial obligations to which a Responsible Entity must adhere under its AFSL issued by ASIC. Theta must maintain a minimum level of net tangible assets ("NTA") to meet this criteria. In accordance with the Compliance Plan, Theta's financial capacity is monitored at least monthly.

Theta has engaged an external Custodian who must maintain minimum NTA of \$10 million at all times.

### Professional Indemnity and Fraud Insurance

As at the date of this PDS, Theta has an insurance policy covering professional indemnity, to an amount of \$2,000,000 per claim with an aggregate cap of \$5,000,000 per annum.

### Conflicts of Interest and Related Party Transactions

It is not intended that the Responsible Entity (on behalf of the SIT), will invest in, or provide any loans or guarantees to, its related parties apart from its investment in the Income Trust, Growth Trust, Property Development Trust, and the Management Company Share Trust (each being wholly owned trusts of the SIT). Theta has a policy for dealing with related party transactions. This policy is designed to meet its obligations under the Corporations Act.

The Compliance Committee of Theta oversees the management of any conflicts regarding related party transactions.

A conflict of interest policy has been adopted by Theta. It seeks to address potential conflicts of interest between schemes managed by Theta and any conflicts within the SIT generally.

Theta keeps a register of all potential conflicts of interest.

Sterling First is the holding company of the shares in SCS, the Investment Manager of the SIT.

### Consents and Disclaimers

Sterling Corporate Services Pty Ltd has given and not before the date of this PDS withdrawn its consent to being named in this PDS in its paper and electronic form in the form and context in which the statements referring to it appear. Sterling Corporate Services Pty Ltd has not caused the issue of or in any way authorised this PDS and takes no responsibility for the issue of this PDS.

Sterling First has given and not before the date of this PDS withdrawn its consent to being named or any of its wholly owned subsidiaries to be named in this PDS in its paper and electronic form in the form and context in which the statements referring to it appear. Sterling First has not caused the issue of or in any way authorised this PDS and takes no responsibility for the issue of this PDS.

### Disclosing Entity Reporting Requirements

Whilst not all of the Unit classes of the SIT has 100 Unitholders or more, management are treating it as a "disclosing entity" for the purposes of the Corporations Act. This means the SIT will become subject to regular reporting and disclosure obligations. Copies of any documents lodged with ASIC in relation to the SIT may be obtained from, or can be inspected at, an ASIC office or on SIT's website, [www.sitfund.com.au](http://www.sitfund.com.au). Unitholders have a right to obtain a copy, free of charge, in respect of the SIT, of the most recent annual financial report and any half-yearly financial report lodged with ASIC after that most recent annual financial report and any continuous disclosure notices given by the Responsible Entity. Any continuous disclosure obligations the Responsible Entity has will be met by following ASIC's good practice guidance via website notices rather than lodging copies of those notices with ASIC. Accordingly if the SIT becomes a disclosing entity and the Responsible Entity becomes aware of material information that would otherwise be required to be lodged with ASIC as part of its continuous disclosure obligations, the Responsible Entity will ensure that such material information will be made available as soon as practicable on [www.sitfund.com.au](http://www.sitfund.com.au).

If you would like hard copies of this information, call Theta on +61 2 8012 0638 and it will send to you free of charge.

### Privacy and Personal Information

Information provided by applicants on the Application Form is collected for the primary purpose of issuing Units in the SIT.

The information will also be used to forward to you periodic information relating to your investment in the SIT and from time to time provide to you information of a generic or marketing nature relating to the SIT. Your personal information will not be made available to any third party, other than as required by law and to service providers for permitted related purposes (for example, auditors, consultants and advisers) for the purpose of administering the investment.

By executing the Application Form, you provide your consent to the SIT to disclose your information to such service providers and to use your information for the purposes referred to above. If you wish to request access to your information or if you have any complaint in relation to the manner in which the SIT has handled your information, please contact Theta.

For more information relating to the SIT privacy policy please contact Theta on +61 2 8012 0638.

AET collects your personal information for primarily purpose of providing custodial services to the SIT responsible entity and for ancillary purposes detailed in the Privacy Policy. AET may disclose your personal information, such as, your name and contact details, along with your account information to its related bodies corporate, the responsible entity, professional advisers, the land titles office and/or as otherwise instructed by the responsible entity. We are also permitted to collect and disclose your personal information when required or authorised to do so by law. AET is not likely to disclose your personal information to overseas recipients. Your personal information will be used in accordance with AET's Privacy Policy. The Privacy Policy contains information about how you may access or correct your personal information held by AET and how you may complain about a breach of the Australian Privacy Principles. You may obtain a copy of the Privacy Policy at [www.aetlimited.com.au/privacy](http://www.aetlimited.com.au/privacy).

### Complaints Handling

Theta has procedures in place to properly consider and deal with any complaints received from Unitholders. Where a Unitholder has a complaint, at first instance, you should contact the Compliance Manager at Theta on 02 8012 0638 or write to Theta at PO Box Q423 QVB Sydney NSW 1230.

The Compliance Manager will generally acknowledge receipt of the complaint within two working days and make every effort to resolve the complaint within one month.

If your complaint is not resolved to your satisfaction you can contact the following independent external complaints resolution scheme of which Theta is a member:

#### Financial Ombudsman Service Ltd ("FOS")

GPO Box 3, Melbourne VIC 3001

Hours: 9am to 5pm AEST weekdays

Phone: 1300 780 808 or (03) 9613 7366

Fax: (03) 9613 6399

Email: [info@fos.org.au](mailto:info@fos.org.au) - Website: [www.fos.org.au](http://www.fos.org.au)

FOS can consider claims of up to \$500,000 (or higher if Unitholders and Theta agree in writing). FOS is only able to make a determination of up to \$280,000 per managed investment claim (excluding compensation for costs and interest payments). These monetary limits and FOS terms of reference do change from time to time. Visit the FOS website for further details.

## Glossary

In this PDS, the following definitions apply unless the context requires otherwise.

|  |  |
|--|--|
| <b>\$</b>                              | Australian dollars   |
| <b>AFSL</b>                            | Australian Financial Services Licence  |
| <b>Application</b>                     | The application for Units pursuant to this PDS   |
| <b>Application Form</b>                | The application form attached to or accompanying this PDS  |
| <b>ASIC</b>                            | Australian Securities and Investments Commission   |
| <b>ASX</b>                             | Australian Securities Exchange Limited   |
| <b>Base Management Fee</b>             | The agreed management fee deducted from rent collected from a tenant and paid to Income Trust  |
| <b>Business Development Agreement</b>  | Agreement between RMAD and Rental Management Australia for the sourcing of all new RMAs  |
| <b>Compliance Plan</b>                 | The compliance plan of the SIT as amended from time to time  |
| <b>Constitution</b>                    | The Constitution of the SIT as amended from time to time   |
| <b>Corporations Act</b>                | The <i>Corporations Act 2001</i> (Cth)   |
| <b>Custodian or AET</b>                | Australian Executor Trustees Limited ABN 84 007 869 794 AFSL 240023  |
| <b>FUM</b>                             | Funds under management   |
| <b>Growth Trust</b>                    | Sterling Corporate Services Pty Ltd ACN 158 361 507 as trustee for the Growth Trust  |
| <b>Holding Statement</b>               | Holding Statement for the SIT  |
| <b>Income Trust</b>                    | Rental Management Australia Pty Ltd ACN 160 167 108 as trustee for the Income Trust  |
| <b>Investment Manager or SCS</b>       | Sterling Corporate Services Pty Ltd ACN 158 361 507  |
| <b>Investment Management Agreement</b> | The agreement between Theta and SCS appointing SCS to manage the assets of the SIT.  |
| <b>LCR</b>                             | Loan to Cost Ratio. This is a ratio used in real estate construction to compare the amount of the loan used to finance a project to the cost to build the project. If the project cost \$1 million to complete and the borrower was asking for \$800,000, the LCR would be 80%. The costs included in the \$1 million cost figure would be land, construction materials, construction labor, professional fees, permits and so on. |
| <b>LVR</b>                             | Loan to Value Ratio  |
| <b>Management Company Share Trust</b>  | Sterling Corporate Services Pty Ltd ACN 158 361 507 as trustee for the Management Company Share Trust  |
| <b>Master Deed of Assignment</b>       | The agreement between the Income Trust and RMAPL   |
| <b>Offer</b>                           | The offer of Income Units in the SIT pursuant to this PDS  |
| <b>Property Development Trust</b>      | Sterling Corporate Services Pty Ltd ACN 158 361 507 as trustee for the Property Development Trust  |
| <b>Property Management Services</b>    | The services to be provided by Rental Management Australia   |
| <b>PDS</b>                             | product disclosure statement   |
| <b>Rent Roll</b>                       | A collection of RMAs operated as a property management business  |
| <b>Rental Management Australia</b>     | property management group comprising Rental Management Australia Pty Ltd, Rental Management Australia (Qld) Pty Ltd and Rental Management Australia (Vic) Pty Ltd  |



|  |  |
|--|--|
| <b>Reserve Fund</b>                            | SCS as trustee for the Sterling Capital Reserve Fund   |
| <b>Residential RMA</b>                         | A rental management agreement for a residential property that does not have a SNLL tenant  |
| <b>Responsible Entity or Theta or we or us</b> | Theta Asset Management Limited ABN 37 071 807 684, AFSL 230920   |
| <b>RMA</b>                                     | A rental management agreement  |
| <b>RMAD</b>                                    | Rental Management Australia Developments Pty Ltd ACN 146 806 662   |
| <b>RMAPL</b>                                   | Rental Management Australia Pty Ltd ACN 160 167 108  |
| <b>SIT</b>                                     | The Sterling Income Trust ARSN 158 828 105 or Theta as Responsible Entity for the Sterling Income Trust  |
| <b>SNLL</b>                                    | Sterling New Life Lease  |
| <b>SNLL RMA</b>                                | A rental management agreement for a property that has a SNLL tenant  |
| <b>Sterling First</b>                          | Sterling First (Aust) Limited ACN 610 352 826  |
| <b>Sterling First group</b>                    | The group of companies for which Sterling First (Aust) Limited is the holding company and includes, RMAD, Rental Management Australia, and SCS |
| <b>Unit</b>                                    | A fully paid Unit in the SIT (e.g. a Income Unit issued pursuant to this PDS)  |
| <b>Unitholder</b>                              | A holder of a Unit in the SIT  |

Applications must be made on the Application Form attached to this PDS. An Application Form must not be handed to another person unless attached to, or accompanied by, the PDS.

Please complete all sections of the relevant Application Form. The following is a guide to completing the Application Form. If you have any questions, please phone Registry Direct on 1300 556 635 (Aust) or +61 3 9020 7935 (Int).

## Instructions for Completing the Application Form

### Amount Subscribed

Please insert the AMOUNT you wish to subscribe. Your application must be for a minimum of \$2,000 and thereafter in \$500 increments.

### Investor Details

This must be either your own name/s or the name of a company. Trustees of a superannuation fund, trust, partnership or minor should also write their name/s in this area and put an account designation at Section C. Refer to the table entitled 'Correct Forms of Registrable Names' at page 33.

### Account Designation

Registrations on behalf of a superannuation fund, trust, partnership or minor should indicate an account designation as per the examples in the table entitled 'Correct Form of Registrable Names' at page 33.

### Tax File Number/s (TFN), Australian Business Number/s (ABN), Australian Company Number/s (ACN) or Exemptions

Please enter your TFN, ABN or ACN if a business account, or EXEMPTION CODE/S.

Where applicable, please enter the TFN and ABN/ACN for each joint applicant. Collection of tax file numbers is authorised by tax law and the Privacy Act 1988. It is not compulsory to provide your TFN. However, if you do not do so, tax will be deducted from your distributions at the top personal rate plus the Medicare levy. For more information about tax file numbers or available exemptions please contact your nearest the Australian Taxation Office.

### Contact Details

Enter your MAILING ADDRESS for all future correspondence from the SIT in relation to your holding in the SIT. Please provide your TELEPHONE NUMBER/S, CONTACT NAME/S and EMAIL ADDRESS in case we need to contact you in relation to your Application.

### Payment Details

If paying by cheque: Cheques must be crossed 'not negotiable' and made payable to "Sterling Income Trust Application Account".

Payment must be made in Australian currency. Cheques not properly drawn may be rejected. Please attach your

cheque securely to the Application Form.

If paying by Electronic Funds Transfer the banking details of the Application Account is as follow:

**Account Name:** Theta Asset Mgt Ltd atf SIT Application Account  
**Bank:** NAB  
**BSB:** 082-080  
**Account:** 14-595-6791






### Details of Bank Account to receive Income Distribution

Provide full details of the account, bank and branch in the spaces provided on the form.

Please note, distributions cannot be paid in the form of a cheque.

Note: Please read the declaration on the reverse of the Application Form before submitting.

### Guide to colour coding on Application Form

|   |   |
|---|---|
|  | To be read by <b>all</b> subscribers  |
|  | To be completed by <b>all</b> subscribers                                       |
|  | To be completed for <b>individual</b> and <b>individual trustee</b> subscribers |
|  | To be completed by <b>companies</b> and <b>company trustee</b> subscribers      |
|  | To be completed by <b>trust</b> subscribers                                     |

If a trust has an **individual trustee** - both the gold and purple sections will need to be completed.

If a trust has a **corporate trustee** - both the red and purple sections will need to be completed.

## Application Details

### Correct Form of Registerable Names

Only legal entities are allowed to hold Units in the SIT. Applications must be in the name(s) of natural persons, companies or other entities acceptable to the SIT. At least one full given name and the surname is required for each natural person. The name of the beneficiary or any other non-registerable name may be included by way of an account designation if requested. Use the symbols < > as shown below to indicate an account designation.

| Type of Investor   | Application Form Ref. | Correct Form of Application   | Incorrect Form of Application     |
|--|-----------------------|---|-----------------------------------|
| <b>Individuals</b><br>Use given names in full, do not use initials   | A                     | Mr John David Smith   | J D Smith                         |
| <b>Companies</b><br>Use company name, do not use abbreviations   | B                     | ABC Pty Ltd   | ABC P/L or ABC Co                 |
| <b>Trusts</b><br>Use trustees personal names or corporate names, do not use name of trust                  | A/B<br>C              | Smith Co. Pty Ltd<br><Joan Susan Smith Family A/C>                    | Joan Susan Smith Family Trust     |
| <b>Superannuation Funds</b><br>Use trustees personal names or corporate names, do not use name of the fund | A/B<br>A<br>C         | Mr John David Smith<br>Mrs Joan Susan Smith<br><Smith Super Fund A/C> | John and Joan Superannuation Fund |
| <b>Partnerships</b><br>Use partners full names, do not use the partnership name                            | A<br>A<br>C           | Mr John David Smith<br>Mrs Joan Susan Smith<br><Smith and Co A/C>     | Smith and Co.                     |
| <b>Minors (persons under 18)</b><br>Use name of parent or guardian, do not use the name of the minor       | A<br>C                | Mr John David Smith<br><John Smith Jnr A/C>                           | John Smith Jnr                    |
| <b>Clubs/Incorporated Bodies/ Business Names</b><br>Use office bearer names, do not use name of club etc   | A<br>C                | Mr John David Smith<br><ABC Investors Club A/C>                       | ABC Investors Club                |

## Anti-Money Laundering and Counter Terrorism Financing

Applications to invest in the SIT are subject to the requirements of applicable anti-money laundering and counter terrorism financing laws and Theta's requirements.

Investors must provide verification of their identity. Please refer to the table on pages 32 and 33 to determine which documents you will need to provide. Applications will not be accepted into the SIT until this has been completed. In some instances, such as the case of determining the beneficial owner of the investor, Theta may request additional information. This must also be provided to proceed with the application.

Application monies must be given by cheque or electronic funds transfer originating from an Australian bank. If applicants wish to pay for their investment with a cheque drawn on a bank in another country or to transfer funds from a foreign bank, additional documentation may be requested and the application will not be processed until satisfactory documentation has been provided to us. Theta reserves the right to reject an application.

If you apply through a financial planner or other advisor, they may assist you to obtain the necessary documentation and provide it to us. If you apply directly and need assistance with the form or understanding the documentation requirements, you should contact the Registry Direct on

1300 556 635 (Aust) or +61 3 9020 7935 (Int) or check our website [www.sitfund.com.au](http://www.sitfund.com.au) for details on what you need to provide.

## Foreign Account Tax Compliance Act (FATCA)

FATCA is a US regulatory requirement that aims to deter tax evasion by US taxpayers. The Australian Government has entered into an Inter-Governmental Agreement (IGA) with the US Government for the exchange of US tax payer information. Under the IGA, financial institutions (including managed investment schemes) must report US tax payer information via the Australian Tax Office to the US IRS.

To meet these obligations, each investor must complete the FATCA Self-certification Declaration form included in the PDS at page 43.

Neither Theta nor the Manager are able to provide you with any tax or professional advice in respect of FATCA or the IGA and we encourage you to seek the advice of a tax or professional advisor in relation to completing the form.

## New Direct Investors only

If you are not investing through a dealer, IDPS or other financial adviser, then you must provide the following documentation to the SIT along with the completed Application Form. This table contains a list of acceptable identification materials.

### Individual

Please provide the documentation from either A or B:

#### A. A current original or certified copy of one of the following:

- an Australian driver's licence containing a photograph of the person
- an Australian passport
- an identification card issued by a state or territory of Australia that contains the date of birth and a photograph of the card holder, or
- a foreign government, the United Nations or a United Nations agency issued passport or similar travel document containing a photograph and signature of the person.

#### B. A current original or certified copy of one of the following:

- an Australian birth certificate or birth extract
- an Australian citizenship certificate
- a pension card issued by Centrelink
- a foreign driver's licence that contains a photograph of the person\*
- a citizenship certificate issued by a foreign government\*, or
- a birth certificate issued by a foreign government, the United Nations or a United Nations agency.

#### Plus

One of the following:

An original or certified copy of a notice that contains the name and residential address of the person, and is:

- issued by the Commonwealth or a state or territory of Australia within the preceding 12 months that records the provision of financial benefits to the person
- issued by the Australian Taxation Office within the preceding 12 months, and records a debt payable to or by the person by or to the Commonwealth, or
- issued by a local government or utilities provider in Australia within the preceding 3 months that records the provision of services to that address or to that person.

\* This form of identification may need to be accompanied by an English translation prepared by an accredited translator.

|  |
|--|
| <b>Individual acting in the capacity of a sole trader</b>  |
| Please provide the documentation for verification of individuals (listed above) and a business name search.  |
| <b>Company</b>   |
| <p>Please provide the following:</p> <p>A search of the ASIC databases showing:</p> <ul style="list-style-type: none"> <li>the full name of the company</li> <li>whether the company is registered as a proprietary or public company</li> <li>the ACN</li> <li>the address of the company's registered office</li> <li>the address of the company's principal place of business</li> <li>the names of each director (only provide if a proprietary company)</li> <li>the names and addresses of each beneficial owner (only provide if a proprietary company that is not licensed and is not subject to regulation).</li> </ul>   |
| <b>Trust (including Self-Managed Super Funds and other Superannuation Funds)</b>   |
| <p>Please provide the following:</p> <ul style="list-style-type: none"> <li>for a registered managed investment scheme, regulated trust or a government superannuation fund:             <ul style="list-style-type: none"> <li>- an ASIC search confirming the registration of the managed investment scheme, or</li> <li>- an extract from relevant legislation confirming registration of the government superannuation fund.</li> </ul> </li> <li>for all other trusts (including wrap trusts/master trusts/IDPS, SMSF) please provide the original trust deed or a certified copy or certified extract of the trust deed confirming the following:             <ul style="list-style-type: none"> <li>- the full name of the trust</li> <li>- the type of trust</li> <li>- the country where the trust was established</li> </ul> </li> <li>For trusts other than an Australian registered managed investment scheme, regulated trust (e.g. SMSF or complying superannuation fund) or government superannuation trust, please provide             <ul style="list-style-type: none"> <li>- the name of each beneficiary or details of the class of beneficiary</li> <li>- the name of the settlor of the trust (being the person(s) who settles the initial sum or assets to create the Trust</li> </ul> </li> </ul> <p>Note: if the trust is a unit trust (other than a registered managed investment scheme or regulated trust) then you will need to provide a certified extract of the trust register to confirm the name of each beneficiary.</p> <p>If the trustee is an individual, please also provide documentation required for individuals (listed on page 34).</p> <p>If the trustee is a company, please also provide documentation required for companies (listed above).</p> |
| <b>Partnership</b>   |
| <p>Please provide the following:</p> <ul style="list-style-type: none"> <li>a partnership agreement, certified copy or certified extract of the partnership agreement, or</li> <li>a certified copy or certified extract of minutes of a partnership meeting showing:             <ul style="list-style-type: none"> <li>- the full name of the partnership</li> <li>- the full business name of the partnership, as registered under any state or territory of Australia business names legislation</li> <li>- the country in which the partnership was established, and</li> <li>- the full name and residential address of each partner.</li> </ul> </li> </ul> <p>Please also provide the documentation required for individuals (listed on page 34) for one partner.</p>  |
| <b>Beneficial Ownership</b>  |
| <p>For each beneficial owner please provide documentation required for individuals</p> <p>Note: A beneficial owner is an individual who ultimately owns 25 per cent or more or controls (directly or indirectly) the company. "Control" includes exercising control through the capacity to determine decisions about financial or operating policies; or by means of trusts, agreements, arrangements, understanding &amp; practices; voting rights of 25% or more; or power of veto. If no such person can be identified then the most senior managing official/s of the company (such as the managing director or directors who are authorised to sign on the company's behalf) must be noted and identified. In the case of a trust, a beneficial owner includes the appointor of the trust (i.e. the person who appoints or removes the trustee(s)), the settlor of the trust, and beneficiaries with at least a 25% interest in the trust.</p>   |

## Application Details

### Lodging the Application Form

The completed Application Form, FATCA Form and supporting identification documents should be forwarded to:

#### Registry Direct

Level 6, 2 Russell Street, Melbourne VIC 3000  
PO Box 18366, Collins Street East, VIC 8003  
Email: [registry@registrydirect.com.au](mailto:registry@registrydirect.com.au)

#### Enquiries

FreeCall: 1300 556 635  
Telephone: +61 3 9020 7935  
Facsimile: +61 3 9111 5652  
Web: [www.registrydirect.com.au](http://www.registrydirect.com.au)

### Certified Copy of an Original Document

**Certified copy** means a document that has been certified as a true copy of an original document.

**Certified extract** means an extract that has been certified as a true copy of some of the information contained in a complete original document by one of the persons described in the sub-paragraphs below.

People who can certify documents or extracts are:

- a **lawyer** - a person who is enrolled on the roll of the Supreme Court of a State or Territory, or High Court of Australia, as a legal practitioner (however described);
- a **judge** of a court;
- a **magistrate**;
- a **chief executive officer** of a Commonwealth court;
- a **registrar** or **deputy registrar** of a court;
- a **Justice of Peace**;
- a **notary public** (for the purposes of the Statutory Declaration Regulations 1993);
- a **police officer**;
- a **postal agent** - an agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public;
- the **post office** - an **permanent employee** of The Australian Postal Corporation with 2 or more years of continuous service who is employed in an office supplying postal services to the public;
- an **Australian consular officer** or an **Australian diplomatic officer** (within the meaning of the Consular Fees Act 1955);
- an **officer** with 2 or more continuous years of service with one or more **financial institutions** (for the purposes of the Statutory Declaration Regulations 1993);
- a **finance company officer** with 2 or more continuous years of service with one or more financial companies (for the purposes of the Statutory Declaration Regulations 1993);
- an **officer** with, or **authorised representative** of, a **holder of an Australian financial services licence**, having 2 or more continuous years of service with one or more licensees; and
- an **accountant** - a member of the institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants with 2 or more years of continuous membership.

The eligible certifier must include the following information:

- Their full name
- Address
- Telephone number
- The date of certifying
- Capacity in which they are eligible to certify, and
- An official stamp/seal if applicable

The certified copy must include the statement, **"I certify this is a true copy of the original document"**.

For photographic documents, the certified copy must include the statement, **"I certify this is a true copy of the original document and the photograph is a true likeness"**.

**Documents that are written in a language that is not English** must be accompanied by an English translation prepared by an accredited translator.

# Sterling Income Trust

(ARSN 158 828 105)

## PLEASE READ CAREFULLY ALL INSTRUCTIONS ON PAGE 33

This Application Form should be read in conjunction with the product disclosure statement dated 31 January 2017 ("PDS") prior to making an Application for Units as the PDS contains important information about the Sterling Income Trust and should not be passed on separately from the PDS. A person who gives another person access to the Application Form must give that person access to the PDS (and any Supplementary or Replacement PDS documents) at the same time and by the same means. Paper copies of the PDS (and any Supplementary or Replacement PDS document) and the Application Form will be provided free on request.

The offer relates to the offer of units in the Sterling Income Trust pursuant to the PDS dated 31 January 2017 issued by Theta Asset Management Ltd ABN 37 071 807 684 AFSL 230920. Unless otherwise specified, terms defined in the PDS have the same meaning in this Application Form.

If you are a new investor, please complete PART A: Investor & Investment Details section (being the first three pages), applicable sections of PART B: Investor Identification, applicable sections of PART C: FATCA Self-declaration and sign at PART D: Declaration and Signature.

Please send your completed Application Form and Identification Documents to:

**Registry Direct**  
PO Box 18366  
Collins Street East, VIC 8003

or

**Registry Direct**  
Level 6, 2 Russell Street  
Melbourne VIC 3000

## PART A: INVESTOR & INVESTMENT DETAILS

### SIT Investor Number (for existing unitholders)

If you are an existing investor, have there been any significant changes in your circumstances or Identification Documents since your last application?

Significant Changes – **No** – please complete your SIT Investor Number and the amount you wish to apply for on this page and PART D only.

Significant Changes – **Yes** – please complete each section of the Application Form as applicable to changes and complete PART D.

**I/We apply for-** Please note the minimum initial investment amount is \$2,000 and thereafter in \$500 increments

A\$

Income Units

A\$

Growth Units

### Full Name of Applicant / Company

Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name

### Joint Applicant #2

Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name

### Joint Applicant #3

Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name

### Account Designation (e.g.: THE SMITH SUPER FUND A/C)

NEW APPLICANTS OR EXISTING UNITHOLDERS WHOSE DETAILS HAVE CHANGED, PLEASE ENTER YOUR ADDRESS DETAILS HERE:

Postal Address

|               |               |                          |           |
|---------------|---------------|--------------------------|-----------|
| Unit          | Street Number | Street Name or PO Box    |           |
| Suburb/Town   |               | State                    | Post Code |
| Country       |               |                          |           |
| Contact Name  |               | Contact Number<br>(    ) |           |
| Email Address |               |                          |           |

# 145 Application Form (Cont.)

## PAYMENT DETAILS

Electronic Funds Transfer (EFT) to:

Bank: NAB  
BSB: 082-080  
Account: 14-595-6791  
Account Name: Theta Asset Mgt Ltd atf SIT Application Account

All EFT payments must be accompanied by a notification email to offer@sitfund.com.au in order to ensure that the investor account is properly credited.

## TAX DETAILS

You are not obliged to provide either your TFN or ABN but if you do not provide either your TFN or ABN and unless you claim a TFN exemption, you should be aware that the Responsible Entity will be required to deduct tax at the highest marginal tax rate (plus Medicare levy). By inserting the ABN and signing this Application Form, you declare that this investment is made in the course or furtherance of your enterprise. Collection of TFN information is authorised and its use and disclosure are strictly regulated by the tax laws and the Privacy Act 1988 (Cth).

Where the investment in the Fund is held jointly by 2 or more unitholders taxation details for each unitholder need to be provided. If there are more than 2 investors provide details on a separate sheet of paper and attach it to your Application Form. If you do not wish to disclose your TFN to a joint applicant, a separate form obtained from the Australian Tax Office to be used by you to provide this information to us or you may copy the section below including your investor number.

### Joint Applicant #1

Are you a resident of Australia for taxation purposes? (Select one of the following options)

☐ Yes - please complete the below

☐ No – please provide country of tax residence:

Tax File Number (TFN) or Australian Business Number (ABN):

Please indicate to whom this TFN or ABN belongs:

☐ Company ☐ Trust or Superannuation Fund ☐ Individual

☐ Other – please specify:

Exemption Number (if applicable):

### Joint Applicant #2

Are you a resident of Australia for taxation purposes? (Select one of the following options)

☐ No – please provide country of tax residence:

☐ Yes - please complete the below

Tax File Number (TFN) or Australian Business Number (ABN):

Please indicate to whom this TFN or ABN belongs:

☐ Company ☐ Trust or Superannuation Fund ☐ Individual

☐ Other – please specify:

Exemption Number (if applicable):

*If there are more than 2 joint applicants, provide details on a separate sheet of paper and attached it to your Application Form.*



## DISTRIBUTIONS AND WITHDRAWAL PROCEEDS

Distributions and withdrawal proceeds are generally only paid to an Australian bank account and cannot be paid by cheque. By completing this section you confirm that any distributions and withdrawal proceeds sent by EFT to a designated bank account are sent at your risk insofar as the onus to provide bank account details rests solely on you.

Please pay distributions and withdrawal proceeds to the following bank account:

|                     |                       |
|---------------------|-----------------------|
| <b>Bank</b>         |                       |
| <b>Bank Branch</b>  |                       |
| <b>BSB</b>          | <b>Account Number</b> |
| <b>Account Name</b> |                       |

If you would like distributions and/or redemption proceeds to be paid into a bank account outside Australia please provide the following additional details (note that payment into such an account is entirely at the Responsible Entity's discretion):

|  |                                    |
|--|------------------------------------|
| <b>Beneficiary Bank Address</b>                                |                                    |
| <b>National Beneficiary Bank Clearing Code (if applicable)</b> | <b>Beneficiary Bank SWIFT Code</b> |
| <b>Intermediary Bank details (if applicable)</b>               |                                    |

**NB: All payments will be remitted in AUD. You, the beneficiary will bear all currency exchange risk and any costs by overseas or intermediary banks.**

## PART B: INVESTOR IDENTIFICATION

If your investor type does not fall into any of the three investor categories in sections 1 - 3 below of this form, please contact SCS to enquire about what information and documentation is required for identification purposes under Anti-Money Laundering/Counter Terrorism Financing legislation.

Our verification procedure and requirements (including certified identification evidence) is included for your reference. If you are an existing investor making an additional investment, you may email your instruction to offer@sitfund.com.au. Existing investors whose details have changed must also complete the Identification Documentation section and send all documents to the SCS at the address below.

### SECTION 1 - INVESTOR TYPE: INDIVIDUAL

**Individual Joint Applicant 1** - Applicants name must match investors ID exactly

|  |                      |                      |
|--|----------------------|----------------------|
| <b>Full given name(s)</b>                          | <b>Surname</b>       | <b>Date of Birth</b> |
| <b>Residential Address (PO Box NOT acceptable)</b> |                      |                      |
| <b>Unit</b>  | <b>Street Number</b> | <b>Street Name</b>   |
| <b>Suburb/Town</b>                                 | <b>State</b>         | <b>Post Code</b>     |
| <b>Country</b>                                     |                      |                      |

**Individual Joint Applicant 2** - Applicants name must match investors ID exactly

|  |                      |                      |
|--|----------------------|----------------------|
| <b>Full given name(s)</b>                          | <b>Surname</b>       | <b>Date of Birth</b> |
| <b>Residential Address (PO Box NOT acceptable)</b> |                      |                      |
| <b>Unit</b>  | <b>Street Number</b> | <b>Street Name</b>   |
| <b>Suburb/Town</b>                                 | <b>State</b>         | <b>Post Code</b>     |
| <b>Country</b>                                     |                      |                      |

If there are more than 2 joint individual applicants, provide details on a separate sheet of paper and attached it to your Application Form.

# Application Form (Cont.)

## SECTION 2 - INVESTOR TYPE: AUSTRALIAN & FOREIGN COMPANY

Please note, if you are an Australian Company acting as trustee of a fund, please also complete Section 3.

### SECTION 2.1 - General Information

Full Name (as registered by ASIC or foreign registration body)

Registration Number - complete as appropriate

ACN

ARBN

Foreign body registration number

If foreign registration - Country

Name of foreign registration body

Registered Office Address (PO Box NOT acceptable)

Unit

Street Number

Street Name

Suburb/Town

State

Post Code

Country

Principal Place of Business (if any) (PO Box NOT acceptable)

Unit

Street Number

Street Name

Suburb/Town

State

Post Code

Country

SECTION 2.2 - Regulatory/Listing Details (select from the following categories which apply to the company and provide the information requested)

Tick

**Regulated company** (licensed by an Australian Commonwealth, State or Territory statutory regulator, such as Australian Financial Services Licensees, Australian Credit Licensees or Registrable Superannuation Entity Licensees)

Regulator Name

Licence Number

Tick

**Australian listed company or Foreign listed company as defined in the FSC Guidelines**

Name of market/exchange

Tick

**Majority-owned subsidiary of a listed company**

Listed Company Name

Name of market/exchange

SECTION 2.3 - Company Type (select only one of the following categories)

Tick

**Public - Regulated/listed-**  
Section 2 now complete

Tick

**Public - Other** - Go to Section  
2.4 and 2.5 below

Tick

**Proprietary/Private** - Go to  
Section 2.4 and 2.5 below

Tick

**Other** - Go to Section 2.4 and  
2.5 below

SECTION 2.4 - Directors (for public - other, proprietary/private and foreign companies only)

Please provide the full name of each director

Director 1 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname

Director 2 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname

Director 3 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname

If there are more directors, provide details on a separate sheet of paper and attached it to your Application Form.

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## Application Form (Cont.)

### SECTION 2.5 - Shareholders (for public - other, proprietary/private and foreign companies only)

Provide details of ALL individuals who are beneficial owners through one or more shareholdings of more than 25% of the company's issued capital.

#### Shareholder 1

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |           |         |
|-------------|---------------|-------------|-----------|---------|
| Unit        | Street Number | Street Name |           |         |
| Suburb/Town |               | State       | Post Code | Country |

#### Shareholder 2

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |           |         |
|-------------|---------------|-------------|-----------|---------|
| Unit        | Street Number | Street Name |           |         |
| Suburb/Town |               | State       | Post Code | Country |

#### Shareholder 3

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |           |         |
|-------------|---------------|-------------|-----------|---------|
| Unit        | Street Number | Street Name |           |         |
| Suburb/Town |               | State       | Post Code | Country |

#### Shareholder 4

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |           |         |
|-------------|---------------|-------------|-----------|---------|
| Unit        | Street Number | Street Name |           |         |
| Suburb/Town |               | State       | Post Code | Country |

If there are more beneficial owners, provide details on a separate sheet of paper and attached it to your Application Form. For each beneficial owner please provide documentation required for individuals.

If the company is an Australian company or Foreign **company registered with ASIC** the form is now **COMPLETE**.

If the company is a **Foreign company not registered with ASIC** please also attach certified copy of the certification of registration issued by the relevant foreign registration body. - For the definition of certified copy and list of people that can certify documents refer to page 36.

### SECTION 3 - INVESTOR TYPE: ALL TRUSTS (INCLUDING SUPERANNUATION FUNDS)

#### SECTION 3.1 - General Information

|   |
|---|
| Full Name of Trust  |
| Trustee 1 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name |
| Trustee 2 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name |
| Country where Trust established   |

If there are more trustees, provide details on a separate sheet of paper and attached it to your Application Form.

## Application Form (Cont.)

### SECTION 3.2 - Type of Trust (select only one of the following trust types and provide the information requested)

☐ **Registered managed investment scheme**

ARSN

☐ **Regulated trust (e.g. Self Managed Superfund)**

Name of regulator (ASIC, APRA or ATO)

ABN or registration/licence details

☐ **Government superannuation fund**

Name of Legislation establishing fund

☐ **Other types of trust**

Trust description (e.g. discretionary, family, unit)

For **other types of Trust**, please also provide the following documentation:

- Certified copy (see page 36) or certified extract of the trust deed; or
- Notice of assessment or certified copy of assessment issued by the ATO in the last 12 months.

For all trust types please complete the following additional sections:

- If you are completing this form as an Individual Trustee please complete 'Section 1 - Investor Type: Individual' for at least ONE of the trustees in addition to completing applicable sections 3.1 and 3.3.
- If you are completing this form as a Corporate Trustee please complete 'Section 2 - Investor Type: Company' in addition to completing applicable sections 3.1 and 3.3.
- If you are completing this form both as Individual and Corporate Trustee please complete 'Section 1 - Investor Type: Individual' and 'Section 2 - Investor Type: Company' in addition to completing applicable sections 3.1 and 3.3.

### SECTION 3.3 - Beneficiaries (only complete if "Other type of Trust" is selected in 3.2 above)

Do the terms of the trust identify the beneficiaries by reference to membership of a class?

☐ **Yes** Provide details of the membership class(es)  
(e.g. unit holders, family members of named person, charitable purpose)

Membership Class(es)

☐ **No** How many beneficiaries are there

Number

Provide full name of beneficiary below

1 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)

2 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)

3 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)

4 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)

If there are more beneficiaries, provide details on a separate sheet of paper and attach it to your Application Form.

For each beneficial owner please provide documentation required for individuals.

Note that if a settlor of a trust did not settle AU\$10,000 or more on establishment of the trust (refer to the trust deed), you do not need to provide the certified documents in respect of the settlor.

# 150 Application Form (Cont.)

## PART C: FATCA SELF DECLARATION

### ALL investors must complete this section

The Foreign Account Tax Compliance Act (FATCA) is a United States (US) regulatory requirement that aims to deter tax evasion by US taxpayers. The Australian and US Governments (through their tax offices) have an agreement that means we must ask you, and you must answer, these questions. Information we gather is reported to the ATO and in turn to US tax authorities. For more information visit the ATO Website: <https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/International/Foreign-Account-Tax-Compliance-Act/>.

If you are unsure of any of the answers please seek professional advice. Not enough room? Write their details clearly and attach them.

#### SECTION 1 - Investor Type

Please tick the box indicating which type of investor you are and proceed to the next section as indicated.

- ☐ **Individual** or Joint Individual Investors one or more of which is a **US citizen** or a resident of the US for tax purposes - **Go to Section 2**
- ☐ **Individual** or Joint Individual Investors, **NONE** of which are a US citizen or a resident of the US for tax purposes - **Form Complete proceed to Part D**
- ☐ **Company** or **Trust** which is **NOT** registered in the US and **DOES NOT** have a controlling shareholder is a US citizen or a resident of the US for tax purposes - **Form Complete proceed to Part D**
- ☐ **Company** or **Trust** (or entity) which is registered in the US - **Complete to Section 3**
- ☐ **Company** or **Trust** (or entity) for which a **controlling shareholder** is a **US citizen** or a resident of the US for tax purposes - **Complete to Section 4**
- ☐ **Superannuation Fund** registered in Australia - **Form Complete proceed to Part D**
- ☐ **Financial Institution** - **Complete to Section 5**
- ☐ Australian, State and local **governments** and **local authorities** and their wholly owned agencies or instrumentalities - **Form Complete proceed to Part D**

#### HELP!

##### US citizen or resident of the US for tax purposes:

- anyone born in the US who hasn't renounced their US citizenship
- a US citizen including persons with dual or multiple citizenships
- US lawful permanent residents e.g. green card holders

##### US company or trust:

- a company created in the US, established under the laws of the US or which is a US taxpayer
- a trust subject to the laws of the US and controlled by one or more persons that are citizens or residents of the US

##### Superannuation Fund:

A complying self-managed super fund, a complying APRA regulated super fund, any government super fund and any pooled superannuation trust.

##### Financial Institution:

- a depository institution - you accept deposits in the ordinary course of a banking or similar business e.g. a bank
- a custodial institution - a substantial portion of your business (20 % of gross income) is held in financial assets for the account of others e.g. a custodian or broker
- an investment entity - this includes entities that trade in financial assets or that are investing, administering, managing funds, money, or certain financial assets on behalf of other persons e.g. investment companies. Note: if you are a professional trustee, custodian or investment company, you will usually fall within this category.
- certain prescribed entities - e.g. types of insurance companies that have cash value products or annuities.

#### SECTION 2 - Individual or Joint Individual Investors who are US Citizens

Please provide your US Taxpayer Identification Number ("TIN")

|                       |     |
|-----------------------|-----|
| Individual Investor 1 | TIN |
| Individual Investor 2 | TIN |

**TIN:** This is not your tax file number (or TFN). It stands for **US Taxpayer Identification Number**, one of a number of identification numbers issued by US authorities.

#### SECTION 3 - Company, Trust or other Entity considered a US resident for Tax purposes

Please confirm the entity's US federal tax classification

- |  |  |
|--|--|
| <input type="checkbox"/> Single-member LLC | <input type="checkbox"/> Trust/estate                              |
| <input type="checkbox"/> C Corporation     | <input type="checkbox"/> Limited Liability Company - C Corporation |
| <input type="checkbox"/> S Corporation     | <input type="checkbox"/> Limited Liability Company - S Corporation |
| <input type="checkbox"/> Partnership       | <input type="checkbox"/> Limited Liability Company - Partnership   |

☐ **Other - Please detail**

Please provide either your FATCA exemption code or you TIN

FATCA exemption code

TIN

## Application Form (Cont.)

### SECTION 4 - Controlling US persons

If there are more than 3 controlling US persons, please provide their details on a separate page

|      |         |     |
|------|---------|-----|
| Name | Address | TIN |
| Name | Address | TIN |
| Name | Address | TIN |

### SECTION 5 - Financial Institution

#### HELP!

#### GIIN:

**Global Intermediary Identification Number**, a unique ID number issued by US tax authorities to non-US financial institutions when they register for FATCA

|  |                                      |
|--|--------------------------------------|
| <input type="checkbox"/> Reporting IGA Financial Institution or Participating Financial Institution  | GIIN                                 |
| <input type="checkbox"/> Sponsored Financial Institution or Trustee Documented Trust   |                                      |
| Name of Sponsor  | GIIN of sponsoring entity or Trustee |
| <input type="checkbox"/> Financial Institution that does not need to register (e.g. Non-Reporting IGA Financial Institution)                     |                                      |
| FATCA Status   | GIIN (if applicable)                 |
| <input type="checkbox"/> Non-participating Financial Institution. <i>Note that information about you will be reported to the ATO and the IRS</i> |                                      |

FATCA declaration is complete, proceed to Part D of this Application Form.

## PRIVACY NOTICE

AET collects your personal information primarily for the purpose of providing custodial services to the SIT responsible entity and for ancillary purposes detailed in the Privacy Policy. AET may disclose your personal information, such as, your name and contact details, along with your account information to its related bodies corporate, the responsible entity, professional advisers, the land titles office and/or as otherwise instructed by the responsible entity. We are also permitted to collect and disclose your personal information when required or authorised to do so by law. AET is not likely to disclose your personal information to overseas recipients. Your personal information will be used in accordance with AET's Privacy Policy. The Privacy Policy contains information about how you may access or correct your personal information held by AET and how you may complain about a breach of the Australian Privacy Principles. You may obtain a copy of the Privacy Policy at [www.aetlimited.com.au/privacy](http://www.aetlimited.com.au/privacy)

Australian Executor Trustees Limited ABN 84 007 869 794 AFSL 240023

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## Application Form (Cont.)

### PART D: DECLARATION AND SIGNATURE

I/We acknowledge declare and agree that by signing this Application Form:

- I/We have personally received (or accessed an electronic copy) and read and understood the PDS to which this Application Form applies and have agreed to be bound by the terms and conditions of the current PDS and of the Constitution of the Sterling Income Trust, as amended, reissued or replaced from time to time.
- I/We am/are at least 18 years of age.
- All details provided and statements made by me/us in this Application Form are complete and accurate.
- None of the Responsible Entity, the Investment Manager or any other person guarantees the repayment of capital invested in the Sterling Income Trust, the performance of nor any particular return from the Sterling Income Trust and I/we understand the risks involved in investing in the Sterling Income Trust.
- If investing as a trustee, on behalf of a superannuation fund or trust I/we confirm that I/we am/are acting in accordance with my/our designated powers and authority under the trust deed. In the case of a superannuation fund, I/we also confirm that it is a complying fund under the Superannuation Industry (Supervision) Act.
- An investment in the Sterling Income Trust is illiquid in nature and my/our units may not be able to be redeemed.
- I/we have had the opportunity to seek independent professional advice regarding legal, tax and financial implications of subscribing to the Sterling Income Trust, and acknowledge that the information contained in the PDS is not investment advice or a recommendation that the Units are suitable having regard to my/our investment objectives, financial situation or particular needs. No one promises me/us that I/we will earn any return on my/our investment or that my/our investment will retain its value.
- Once the Application Form has been received by Theta, it cannot be withdrawn. No cooling off rights apply.
- I/We authorise Theta to complete and execute any documentation necessary to effect the issue of Units to me/us.
- That the Responsible Entity is authorised to apply the TFN or ABN provided above to all future applications for units, including reinvestments, unless I/we notify the Responsible Entity otherwise.
- Theta reserves the right to reject any application.
- Theta may accept or reject the Application in whole or in part, and the Sterling Income Trust has the discretion to issue or transfer Units as it sees fit under the terms of the Offer.
- I/We acknowledge that returning the Application Form will constitute my/our offer to subscribe for Units in the Sterling Income Trust and that no notice of acceptance of the Application will be provided.
- I/We acknowledge that the Responsible Entity may be required to pass on information about me/us or my/our investment to the relevant regulatory authority in compliance with the AML laws (AML Act). I/We will provide such information and assistance that may be requested by the Responsible Entity to comply with its obligations under the AML Act and I/we indemnify it against any loss caused by my/our failure to provide such information or assistance.
- The monies used to fund my/our investment in the Sterling Income Trust are not derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention ('illegal activity') and the proceeds of my/our investment in the Sterling Income Trust will not be used to finance any illegal activities.
- I/We am/are not a 'politically exposed' person or organisation for the purpose of any AML law.
- I/We confirm that I/we have read and understood the privacy section contained in the PDS.
- I/We consent to details about my/our application and holdings being disclosed in accordance with the Privacy section of the PDS.
- I/We confirm that the Responsible Entity and Administrator are authorised to accept and act upon any instructions in respect of this application and the units to which it relates given by me/us by facsimile. If instructions are given by facsimile, the onus is on me/us to ensure that such instructions are received in legible form and I/we undertake to confirm them in writing. I/We indemnify the Responsible Entity and Administrator against any loss arising as a result of any of them acting on facsimile instructions. The Responsible Entity and Administrator may rely conclusively upon and shall incur no liability in respect of any action taken upon any notice, consent, request, instruction or other instrument believed, in good faith, to be genuine or to be signed by properly authorised persons.
- I/We acknowledge that Theta will send me/us a paper copy of the PDS and any Supplementary or Replacement PDS (if applicable) free of charge of I/we request so during the currency of the PDS.

**Account operating instructions** (if no selection is made, all individuals to sign will be assumed)

|                               |  |
|-------------------------------|--|
| <input type="checkbox"/> Tick | Any individual to sign                       |
| <input type="checkbox"/> Tick | Any two individuals to sign                  |
| <input type="checkbox"/> Tick | All individuals to sign                      |
| <input type="checkbox"/> Tick | Other (please specify): <input type="text"/> |

|                             |  |                      |
|-----------------------------|--|----------------------|
| <b>Authorised Signature</b> | <b>Name and title (block letters please)</b> | <b>Date</b>          |
| <input type="text"/>        | <input type="text"/>                         | <input type="text"/> |

|                             |  |                      |
|-----------------------------|--|----------------------|
| <b>Authorised Signature</b> | <b>Name and title (block letters please)</b> | <b>Date</b>          |
| <input type="text"/>        | <input type="text"/>                         | <input type="text"/> |





# Income Unit and Growth Unit Redemption Application Form

## Sterling Income Trust

(ARSN 158 828 105).

Please print in BLOCK LETTERS using BLACK ink.

SIT Investor Number

Investor Name

I/We wish to redeem Units as follows:

|  |                 |
|--|-----------------|
|  | Income<br>Units |
|--|-----------------|

|  |                 |
|--|-----------------|
|  | Growth<br>Units |
|--|-----------------|

Please Redeem my/our units for:

Cash

|  |   |
|--|---|
|  | % |
|--|---|

Income Units

|  |   |
|--|---|
|  | % |
|--|---|

Development Units

|  |   |
|--|---|
|  | % |
|--|---|

Growth Units

|  |   |
|--|---|
|  | % |
|--|---|

Management Company Units

|  |   |
|--|---|
|  | % |
|--|---|

By signing this Redemption Application Form, I/we acknowledge and understand that Conditional Redemption Offers, when made, are expected to be funded out of either new equity raised and are available to Unitholders who have held their Units for at least 12 months. There is no guarantee that there will be sufficient funds available to meet the redemption requests in full or in part.

Authorised Signature

Authorised Signature

Date



|  |   |
|--|---|
| <b>Sterling Income Trust:</b>  | <b>ARSN 158 828 105</b>   |
| <b>Responsible Entity:</b>   | <b>Theta Asset Management Limited</b><br>ABN 37 071 807 684 AFSL 230920<br>Suite 501, Level 5, 210 Clarence Street, Sydney NSW 2000<br><br>Tel: +61 2 8012 0638<br>Email: invest@thetaasset.com.au  |
| <b>Investment Manager:</b>   | <b>Sterling Corporate Services Pty Ltd</b><br><b>Principal office</b> - 19 Lyall Street, South Perth WA 6151<br><b>Administration</b> - Unit 23, 397 Warnbro Sound Avenue, Port Kennedy WA 6172<br><b>Mail</b> - PO Box 7299, Secret Harbour WA 6173<br><br>Tel: +61 8 9523 5800<br>Fax: +61 8 9523 5811<br>Email: investors@sterlingfirst.com.au   |
| <b>Custodian:</b>  | <b>Australian Executor Trustees Limited</b><br>ABN 84 007 869 794 AFSL 240023<br>Level 22, 207 Kent Street, Sydney NSW 2000   |
| <b>Unit Registry:</b>  | <b>Registry Direct</b><br>Level 6, 2 Russell Street, Melbourne VIC 3000<br>PO Box 18366, Collins Street East, VIC 8003<br><br>Tel: 1300 556 635 (Aust) +61 3 9020 7935 (Int)<br>Fax: +61 3 9111 5652<br><br>Email: registry@registrydirect.com.au<br>Web: www.registrydirect.com.au   |
| <b>State Branch Offices:</b><br><br><b>Perth, WA</b><br>Level 2, 19 Lyall Street,<br>South Perth WA 6151<br><br>Tel: 1300 440 166 or +61 8 9523 5800<br>Email: investors@sterlingfirst.com.au<br><br><b>Melbourne, Vic</b><br>Office 110, 370 St Kilda Road<br>Royal Domain Corporate<br>Melbourne Vic 3004<br>Tel: 03 99982 2800<br>Email: melbourne@sterlingfirst.com.au<br><br><b>Brisbane, Qld</b><br>20 Bogong Street<br>Riverhills, Qld 4074 | <b>Property Management and Sales Offices:</b><br><br><b>Port Kennedy, WA</b><br>Unit 23, 397 Warnbro Sound Avenue<br>Port Kennedy WA 6172<br><br>Tel: 1300 440 166 or +61 8 9523 5800<br>Email: portkenedy@rmaproperty.com.au<br><br><b>South Perth, WA</b><br>Level 1, 19 Lyall Street,<br>South Perth WA 6151<br><br>Tel: +61 8 9269 6100<br>Email: eastvictoriapark@rmaproperty.com.au<br><br><b>Bunbury, WA</b><br>Lighthouse Bunbury<br>149 Victoria Street<br>Bunbury, WA 6230<br><br>Tel: +61 8 9792 7400<br>Email: lighthouse@lighthouse rentals.com.au<br><br><b>Riverhills, Qld</b><br>20 Bogong Street<br>Riverhills, Qld 4074<br><br>Tel: 0477 477 237<br>Email: mtommaney@rmaproperty.com.au |



# Application Form

## Sterling Income Trust

(ARSN 158 828 105)

### PLEASE READ CAREFULLY ALL INSTRUCTIONS ON PAGE 33

This Application Form should be read in conjunction with the product disclosure statement dated 31 January 2017 ("PDS") prior to making an Application for Units as the PDS contains important information about the Sterling Income Trust and should not be passed on separately from the PDS. A person who gives another person access to the Application Form must give that person access to the PDS (and any Supplementary or Replacement PDS documents) at the same time and by the same means. Paper copies of the PDS (and any Supplementary or Replacement PDS document) and the Application Form will be provided free on request.

The offer relates to the offer of units in the Sterling Income Trust pursuant to the PDS dated 31 January 2017 issued by Theta Asset Management Ltd ABN 37 071 807 684 AFSL 230920. Unless otherwise specified, terms defined in the PDS have the same meaning in this Application Form.

If you are a new investor, please complete PART A: Investor & Investment Details section (being the first three pages), applicable sections of PART B: Investor Identification, applicable sections of PART C: FATCA Self-declaration and sign at PART D: Declaration and Signature.

Please send your completed Application Form and Identification Documents to:

**Registry Direct**  
PO Box 18366  
Collins Street East, VIC 8003

or

**Registry Direct**  
Level 6, 2 Russell Street  
Melbourne VIC 3000

### PART A: INVESTOR & INVESTMENT DETAILS

**SIT Investor Number** (for existing unitholders)

If you are an existing investor, have there been any significant changes in your circumstances or Identification Documents since your last application?

Significant Changes – **No** – please complete your SIT Investor Number and the amount you wish to apply for on this page and PART D only.

Significant Changes – **Yes** – please complete each section of the Application Form as applicable to changes and complete PART D.

**I/We apply for-** Please note the minimum initial investment amount is \$2,000 and thereafter in \$500 increments

A\$

Income Units

**Full Name of Applicant / Company**

Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name

**Joint Applicant #2**

Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name

**Joint Applicant #3**

Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name

**Account Designation** (e.g.: THE SMITH SUPER FUND A/C)

NEW APPLICANTS OR EXISTING UNITHOLDERS WHOSE DETAILS HAVE CHANGED, PLEASE ENTER YOUR ADDRESS DETAILS HERE:

Postal Address

|               |                |                       |           |  |
|---------------|----------------|-----------------------|-----------|--|
| Unit          | Street Number  | Street Name or PO Box |           |  |
|               |                |                       |           |  |
| Suburb/Town   |                | State                 | Post Code |  |
|               |                |                       |           |  |
| Country       |                |                       |           |  |
|               |                |                       |           |  |
| Contact Name  | Contact Number |                       |           |  |
|               | ( )            |                       |           |  |
| Email Address |                |                       |           |  |
|               |                |                       |           |  |

## Application Form (Cont.)

### PAYMENT DETAILS

Electronic Funds Transfer (EFT) to:

Bank: NAB  
 BSB: 082-080  
 Account: 14-595-6791  
 Account Name: Theta Asset Mgt Ltd atf SIT Application Account

All EFT payments must be accompanied by a notification email to offer@sitfund.com.au in order to ensure that the investor account is properly credited.

### TAX DETAILS

You are not obliged to provide either your TFN or ABN but if you do not provide either your TFN or ABN and unless you claim a TFN exemption, you should be aware that the Responsible Entity will be required to deduct tax at the highest marginal tax rate (plus Medicare levy). By inserting the ABN and signing this Application Form, you declare that this investment is made in the course or furtherance of your enterprise. Collection of TFN information is authorised and its use and disclosure are strictly regulated by the tax laws and the Privacy Act 1988 (Cth).

Where the investment in the Fund is held jointly by 2 or more unitholders taxation details for each unitholder need to be provided. If there are more than 2 investors provide details on a separate sheet of paper and attach it to your Application Form. If you do not wish to disclose your TFN to a joint applicant, a separate form obtained from the Australian Tax Office to be used by you to provide this information to us or you may copy the section below including your investor number.

#### Joint Applicant #1

Are you a resident of Australia for taxation purposes? (Select one of the following options)

☒ Yes - please complete the below

☐ No – please provide country of tax residence:

Tax File Number (TFN) or Australian Business Number (ABN):

Please indicate to whom this TFN or ABN belongs:

☐ Company

☐ Trust or Superannuation Fund

☒ Individual

☐ Other – please specify:

Exemption Number (if applicable):

#### Joint Applicant #2

Are you a resident of Australia for taxation purposes? (Select one of the following options)

☐ No – please provide country of tax residence:

☒ Yes - please complete the below

Tax File Number (TFN) or Australian Business Number (ABN):

Please indicate to whom this TFN or ABN belongs:

☐ Company

☐ Trust or Superannuation Fund

☒ Individual

☐ Other – please specify:

Exemption Number (if applicable):

*If there are more than 2 joint applicants, provide details on a separate sheet of paper and attached it to your Application Form.*



## Application Form (cont.)

### DISTRIBUTIONS AND WITHDRAWAL PROCEEDS

Distributions and withdrawal proceeds are generally only paid to an Australian bank account and cannot be paid by cheque. By completing this section you confirm that any distributions and withdrawal proceeds sent by EFT to a designated bank account are sent at your risk insofar as the onus to provide bank account details rests solely on you.

Please pay distributions and withdrawal proceeds to the following bank account:

|  |                              |
|--|------------------------------|
| Bank<br><b>C.B.A</b>                               |                              |
| Bank Branch<br><b>SOUTH PERTH</b>                  |                              |
| BSB<br>[REDACTED]                                  | Account Number<br>[REDACTED] |
| Account Name<br><b>STERLING CORPORATE SERVICES</b> |                              |

If you would like distributions and/or redemption proceeds to be paid into a bank account outside Australia please provide the following additional details (note that payment into such an account is entirely at the Responsible Entity's discretion):

|   |                             |
|---|-----------------------------|
| Beneficiary Bank Address                                |                             |
| National Beneficiary Bank Clearing Code (if applicable) | Beneficiary Bank SWIFT Code |
| Intermediary Bank details (if applicable)               |                             |

NB: All payments will be remitted in AUD. You, the beneficiary will bear all currency exchange risk and any costs by overseas or intermediary banks.

## PART B: INVESTOR IDENTIFICATION

If your investor type does not fall into any of the three investor categories in sections 1 - 3 below of this form, please contact SCS to enquire about what information and documentation is required for identification purposes under Anti-Money Laundering/Counter Terrorism Financing legislation.

Our verification procedure and requirements (including certified identification evidence) is included for your reference. If you are an existing investor making an additional investment, you may email your instruction to offer@sitfund.com.au. Existing investors whose details have changed must also complete the Identification Documentation section and send all documents to the SCS at the address below.

### SECTION 1 - INVESTOR TYPE: INDIVIDUAL

Individual Joint Applicant 1 - Applicants name must match investors ID exactly

|                                  |                       |                             |
|----------------------------------|-----------------------|-----------------------------|
| Full given name(s)<br>[REDACTED] | Surname<br>[REDACTED] | Date of Birth<br>[REDACTED] |
|----------------------------------|-----------------------|-----------------------------|

Residential Address (PO Box NOT acceptable)

|            |            |
|------------|------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

Individual Joint Applicant 2 - Applicants name must match investors ID exactly

|                                  |                       |                             |
|----------------------------------|-----------------------|-----------------------------|
| Full given name(s)<br>[REDACTED] | Surname<br>[REDACTED] | Date of Birth<br>[REDACTED] |
|----------------------------------|-----------------------|-----------------------------|

Residential Address (PO Box NOT acceptable)

|            |            |
|------------|------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

If there are more than 2 joint individual applicants, provide details on a separate sheet of paper and attached it to your Application Form.

## Application Form (Cont.)

### SECTION 2 - INVESTOR TYPE: AUSTRALIAN & FOREIGN COMPANY

Please note, if you are an Australian Company acting as trustee of a fund, please also complete Section 3.

#### SECTION 2.1 - General Information

Full Name (as registered by ASIC or foreign registration body)

Registration Number - complete as appropriate

ACN

ARBN

Foreign body registration number

If foreign registration - Country

Name of foreign registration body

Registered Office Address (PO Box NOT acceptable)

Unit

Street Number

Street Name

Suburb/Town

State

Post Code

Country

Principal Place of Business (if any) (PO Box NOT acceptable)

Unit

Street Number

Street Name

Suburb/Town

State

Post Code

Country

#### SECTION 2.2 - Regulatory/Listing Details (select from the following categories which apply to the company and provide the information requested)

Tick

**Regulated company** (licensed by an Australian Commonwealth, State or Territory statutory regulator, such as Australian Financial Services Licensees, Australian Credit Licensees or Registrable Superannuation Entity Licensees)

Regulator Name

Licence Number

Tick

**Australian listed company or Foreign listed company as defined in the FSC Guidelines**

Name of market/exchange

Tick

**Majority-owned subsidiary of a listed company**

Listed Company Name

Name of market/exchange

#### SECTION 2.3 - Company Type (select only one of the following categories)

Tick

**Public - Regulated/listed-**  
Section 2 now complete

Tick

**Public - Other** - Go to Section  
2.4 and 2.5 below

Tick

**Proprietary/Private** - Go to  
Section 2.4 and 2.5 below

Tick

**Other** - Go to Section 2.4 and  
2.5 below

#### SECTION 2.4 - Directors (for public - other, proprietary/private and foreign companies only)

Please provide the full name of each director

Director 1 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname

Director 2 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname

Director 3 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname

If there are more directors, provide details on a separate sheet of paper and attached it to your Application Form.



## Application Form (Cont.)

### SECTION 2.5 - Shareholders (for public - other, proprietary/private and foreign companies only)

Provide details of ALL individuals who are beneficial owners through one or more shareholdings of more than 25% of the company's issued capital.

#### Shareholder 1

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |
|-------------|---------------|-------------|
| Unit        | Street Number | Street Name |
| Suburb/Town | State         | Post Code   |
| Country     |               |             |

#### Shareholder 2

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |
|-------------|---------------|-------------|
| Unit        | Street Number | Street Name |
| Suburb/Town | State         | Post Code   |
| Country     |               |             |

#### Shareholder 3

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |
|-------------|---------------|-------------|
| Unit        | Street Number | Street Name |
| Suburb/Town | State         | Post Code   |
| Country     |               |             |

#### Shareholder 4

|                    |         |
|--------------------|---------|
| Full given name(s) | Surname |
|--------------------|---------|

#### Residential Address (PO Box NOT acceptable)

|             |               |             |
|-------------|---------------|-------------|
| Unit        | Street Number | Street Name |
| Suburb/Town | State         | Post Code   |
| Country     |               |             |

If there are more beneficial owners, provide details on a separate sheet of paper and attached it to your Application Form. For each beneficial owner please provide documentation required for individuals.

If the company is an Australian company or Foreign company registered with ASIC the form is now COMPLETE.

If the company is a Foreign company not registered with ASIC please also attach certified copy of the certification of registration issued by the relevant foreign registration body. - For the definition of certified copy and list of people that can certify documents refer to page 36.

### SECTION 3 - INVESTOR TYPE: ALL TRUSTS (INCLUDING SUPERANNUATION FUNDS)

#### SECTION 3.1 - General Information

|   |
|---|
| Full Name of Trust  |
| Trustee 1 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name |
| Trustee 2 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname or Company Name |
| Country where Trust established   |

If there are more trustees, provide details on a separate sheet of paper and attached it to your Application Form.

## Application Form (Cont.)

### SECTION 3.2 - Type of Trust (select only one of the following trust types and provide the information requested)

☐
**Registered managed investment scheme**

 ARSN
 ☐
**Regulated trust (e.g. Self Managed Superfund)**

 Name of regulator (ASIC, APRA or ATO)
 

 ABN or registration/licence details
 ☐
**Government superannuation fund**

 Name of Legislation establishing fund
 ☐
**Other types of trust**

 Trust description (e.g. discretionary, family, unit)
 

 For **other types of Trust**, please also provide the following documentation:

- Certified copy (see page 36) or certified extract of the trust deed; or
- Notice of assessment or certified copy of assessment issued by the ATO in the last 12 months

For all trust types please complete the following additional sections:

- If you are completing this form as an Individual Trustee please complete 'Section 1 - Investor Type: Individual' for at least ONE of the trustees in addition to completing applicable sections 3.1 and 3.3
- If you are completing this form as a Corporate Trustee please complete 'Section 2 - Investor Type: Company' in addition to completing applicable sections 3.1 and 3.3
- If you are completing this form both as Individual and Corporate Trustee please complete 'Section 1 - Investor Type: Individual' and 'Section 2 - Investor Type: Company' in addition to completing applicable sections 3.1 and 3.3.

### SECTION 3.3 - Beneficiaries (only complete if "Other type of Trust" is selected in 3.2 above)

Do the terms of the trust identify the beneficiaries by reference to membership of a class?

☐

 Provide details of the membership class(es)  
(e.g. unit holders, family members of named person, charitable purpose)

 Membership Class(es)
 ☐

How many beneficiaries are there

 Number
 

Provide full name of beneficiary below

 1 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)
 

 2 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)
 

 3 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)
 

 4 - Title (e.g.: Dr, Mrs) Given Name(s) and Surname and Residential Address (PO Box NOT acceptable)
 

If there are more beneficiaries, provide details on a separate sheet of paper and attach it to your Application Form.

For each beneficial owner please provide documentation required for individuals.

Note that if a settlor of a trust did not settle AU\$10,000 or more on establishment of the trust (refer to the trust deed), you do not need to provide the certified documents in respect of the settlor.

**SECTION I - INDIVIDUALS**

Please fill this Section I only if you are an individual. If you are an entity, please fill Section II.

**1. Are you a US citizen or resident of the US for tax purposes?**

☐ Yes: Provide your Taxpayer Identification Number (TIN) below. Continue to question 2

|     |  |
|-----|--|
| TIN |  |
|-----|--|

☒ No: Continue to question 2

**2. Are you a tax resident of any other country outside of Australia?**

☐ Yes: Provide the details below and skip to question 12. If resident in more than one jurisdiction please include details for all jurisdictions

|   | Country of Tax Residence | Tax Identification Number (TIN) or equivalent | Reason Code if no TIN provided |
|---|--------------------------|---|--------------------------------|
| 1 |                          |   |                                |
| 2 |                          |   |                                |
| 3 |                          |   |                                |

If TIN or equivalent is not provided, please provide reason from the following options:

- ☐ **Reason A:** The country/jurisdiction where the entity is resident does not issue TINs to its residents
- ☐ **Reason B:** The entity is otherwise unable to obtain a TIN or equivalent number (Please explain why the entity is unable to obtain a TIN in the below table if you have selected this reason)
- ☐ **Reason C:** No TIN is required. (Note. Only select this reason if the domestic law of the relevant jurisdiction does not require the collection of the TIN issued by such jurisdiction)

|   |
|---|
| If Reason B has been selected above, explain why you are not required to obtain a TIN |
|   |

☒ No: Skip to question 12

**SECTION II – ENTITIES**

Please fill this Section II only if you are an entity. If you are an individual, please fill Section I.

**3. Are you an Australian Retirement Fund?**

☐ Yes: Skip to question 12

☐ No: Continue to question 4

**A. FATCA**

**4. Are you a US Person?**

☐ Yes: Continue to question 5

☐ No: Skip to question 6

**5. Are you a Specified US Person?**

☐ Yes: Provide your Taxpayer Identification Number (TIN) below and skip to question 7

|     |  |
|-----|--|
| TIN |  |
|-----|--|

☐ No: Please indicate exemption type and skip to question 7

Type: \_\_\_\_\_

**6. Are you a Financial Institution for the purposes of FATCA?**

☐ Yes: Provide your GIIN below and continue to question 7

|             |  |
|-------------|--|
| <b>GIIN</b> |  |
|-------------|--|

If you do not have a GIIN, please provide your FATCA status below and continue to question 7

- ☐ Exempt Beneficial Owner  
Type: \_\_\_\_\_
- ☐ Deemed-Compliant FFI (other than a Sponsored FI or a Trustee Documented Trust)  
Type: \_\_\_\_\_
- ☐ Non-Participating FFI  
Type: \_\_\_\_\_
- ☐ Sponsored Financial Institution. Please provide the Sponsoring Entity's name and GIIN.  
Sponsoring Entity's Name: \_\_\_\_\_ Sponsoring Entity's GIIN: \_\_\_\_\_
- ☐ Trustee Documented Trust. Please provide your Trustee's name and GIIN.  
Trustee's Name: \_\_\_\_\_ Trustee's GIIN: \_\_\_\_\_
- ☐ Other  
Details: \_\_\_\_\_

☐ No: continue to question 7

**B. CRS****7. Are you a tax resident of any country outside of Australia?**

☐ Yes: Provide the details below and continue to question 8. If resident in more than one jurisdiction please include details for all jurisdictions

|   | Country of Tax Residence | Tax Identification Number (TIN) or equivalent | Reason Code if no TIN provided |
|---|--------------------------|---|--------------------------------|
| 1 |                          |   |                                |
| 2 |                          |   |                                |
| 3 |                          |   |                                |

If TIN or equivalent is not provided, please provide reason from the following options:

- ☐ **Reason A:** The country/jurisdiction where the entity is resident does not issue TINs to its residents
- ☐ **Reason B:** The entity is otherwise unable to obtain a TIN or equivalent number (Please explain why the entity is unable to obtain a TIN in the below table if you have selected this reason)
- ☐ **Reason C:** No TIN is required. (Note. Only select this reason if the domestic law of the relevant jurisdiction does not require the collection of the TIN issued by such jurisdiction)

If Reason B has been selected above, explain why you are not required to obtain a TIN

☐ No: Continue to question 8

**8. Are you a Financial Institution for the purposes of CRS?**

☐ Yes: Specify the type of Financial Institution below and continue to question 9

- ☐ Reporting Financial Institution
- ☐ Non-Reporting Financial Institution: Specify the type of Non-Reporting Financial Institution below
- ☐ Trustee Documented Trust
- ☐ Other: Please Specify \_\_\_\_\_

☐ No: Skip to question 10



9. Are you an Investment Entity resident in a Non-Participating Jurisdiction for CRS purposes and managed by another Financial Institution?

☐ Yes: Skip to question 11

☐ No: Skip to question 12

### C. NON-FINANCIAL ENTITIES

10. Are you an Active Non-Financial Entity (Active NFE)?

☐ Yes: Specify the type of Active NFE below and skip to question 12

- ☐ Less than 50% of the Active NFE's gross income from the preceding calendar year is passive income and less than 50% of its assets during the preceding calendar year are assets held for the production of passive income
- ☐ Corporation that is regularly traded or a related entity of a regularly traded corporation
- ☐ Governmental Entity, International Organisation or Central Bank
- ☐ Other: Please Specify \_\_\_\_\_

☐ No: You are a Passive Non-Financial Entity (Passive NFE). Continue to question 11

### D. CONTROLLING PERSONS

11. Does one or more of the following apply to you:

- ☐ Is any natural person that exercises control over you (for corporations, this would include directors or beneficial owners who ultimately own 25% or more of the share capital) a tax resident of any country outside of Australia?
- ☐ If you are a trust, is any natural person including trustee, protector, beneficiary, settlor or any other natural person exercising ultimate effective control over the trust a tax resident of any country outside of Australia?

☐ Yes: Complete details below and continue to question 12

|   | Name | Date of Birth | Residential Address | Country of Tax Residence | TIN or equivalent | Reason Code if no TIN provided |
|---|------|---------------|---------------------|--------------------------|-------------------|--------------------------------|
| 1 |      |               |                     |                          |                   |                                |
| 2 |      |               |                     |                          |                   |                                |
| 3 |      |               |                     |                          |                   |                                |

If there are more than 3 controlling persons, please list them on a separate piece of paper.

If TIN or equivalent is not provided, please provide reason from the following options:

- ☐ **Reason A:** The country/jurisdiction where the entity is resident does not issue TINs to its residents
- ☐ **Reason B:** The entity is otherwise unable to obtain a TIN or equivalent number (Please explain why the entity is unable to obtain a TIN in the below table if you have selected this reason)
- ☐ **Reason C:** No TIN is required. (Note. Only select this reason if the domestic law of the relevant jurisdiction does not require the collection of the TIN issued by such jurisdiction)

|   |
|---|
| If Reason B has been selected above, explain why you are not required to obtain a TIN |
|   |

☐ No: Continue to question 12

### E. DECLARATION

12. Signature

I undertake to provide a suitably updated self-certification within 30 days of any change in circumstances which causes the information contained herein to become incorrect.

I declare the information above to be true and correct.

|        |   |                                   |  |
|--------|---|-----------------------------------|--|
| Signed |  | Name of authorised representative | STERLING CORPORATE SERVICES  |
| Date   | 26.07.2017  | Name of entity/Individual         |  |



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**Foreign Account Tax Compliance Act (FATCA) & Common Reporting Standard (CRS)** SIT.0004.0032.5886  
**Self-Certification Form - Australia**

**SECTION I - INDIVIDUALS**

*Please fill this Section I only if you are an individual. If you are an entity, please fill Section II.*

**1. Are you a US citizen or resident of the US for tax purposes?**

☐ Yes: Provide your Taxpayer Identification Number (TIN) below. Continue to question 2

TIN

☒ No: Continue to question 2

**2. Are you a tax resident of any other country outside of Australia?**

☐ Yes: Provide the details below and skip to question 12. If resident in more than one jurisdiction please include details for all jurisdictions

|   | Country of Tax Residence | Tax Identification Number (TIN) or equivalent | Reason Code if no TIN provided |
|---|--------------------------|---|--------------------------------|
| 1 |                          |   |                                |
| 2 |                          |   |                                |
| 3 |                          |   |                                |

If TIN or equivalent is not provided, please provide reason from the following options:

- ☐ **Reason A:** The country/jurisdiction where the entity is resident does not issue TINs to its residents
- ☐ **Reason B:** The entity is otherwise unable to obtain a TIN or equivalent number (Please explain why the entity is unable to obtain a TIN in the below table if you have selected this reason)
- ☐ **Reason C:** No TIN is required. (Note. Only select this reason if the domestic law of the relevant jurisdiction does not require the collection of the TIN issued by such jurisdiction)

If Reason B has been selected above, explain why you are not required to obtain a TIN

☒ No: Skip to question 12

**SECTION II – ENTITIES**

*Please fill this Section II only if you are an entity. If you are an individual, please fill Section I.*

**3. Are you an Australian Retirement Fund?**

☐ Yes: Skip to question 12

☐ No: Continue to question 4

**A. FATCA**

**4. Are you a US Person?**

☐ Yes: Continue to question 5

☐ No: Skip to question 6

**5. Are you a Specified US Person?**

☐ Yes: Provide your Taxpayer Identification Number (TIN) below and skip to question 7

TIN

☐ No: Please indicate exemption type and skip to question 7

Type: \_\_\_\_\_



**6. Are you a Financial Institution for the purposes of FATCA?**

☐ Yes: Provide your GIIN below and continue to question 7

|             |  |
|-------------|--|
| <b>GIIN</b> |  |
|-------------|--|

If you do not have a GIIN, please provide your FATCA status below and continue to question 7

- ☐ Exempt Beneficial Owner  
Type: \_\_\_\_\_
- ☐ Deemed-Compliant FFI (other than a Sponsored FI or a Trustee Documented Trust)  
Type: \_\_\_\_\_
- ☐ Non-Participating FFI  
Type: \_\_\_\_\_
- ☐ Sponsored Financial Institution. Please provide the Sponsoring Entity's name and GIIN.  
Sponsoring Entity's Name: \_\_\_\_\_ Sponsoring Entity's GIIN: \_\_\_\_\_
- ☐ Trustee Documented Trust. Please provide your Trustee's name and GIIN.  
Trustee's Name: \_\_\_\_\_ Trustee's GIIN: \_\_\_\_\_
- ☐ Other  
Details: \_\_\_\_\_

☐ No: continue to question 7

**B. CRS****7. Are you a tax resident of any country outside of Australia?**

☐ Yes: Provide the details below and continue to question 8. If resident in more than one jurisdiction please include details for all jurisdictions

|   | Country of Tax Residence | Tax Identification Number (TIN) or equivalent | Reason Code if no TIN provided |
|---|--------------------------|---|--------------------------------|
| 1 |                          |   |                                |
| 2 |                          |   |                                |
| 3 |                          |   |                                |

If TIN or equivalent is not provided, please provide reason from the following options:

- ☐ **Reason A:** The country/jurisdiction where the entity is resident does not issue TINs to its residents
- ☐ **Reason B:** The entity is otherwise unable to obtain a TIN or equivalent number (Please explain why the entity is unable to obtain a TIN in the below table if you have selected this reason)
- ☐ **Reason C:** No TIN is required. (Note. Only select this reason if the domestic law of the relevant jurisdiction does not require the collection of the TIN issued by such jurisdiction)

If Reason B has been selected above, explain why you are not required to obtain a TIN

☐ No: Continue to question 8

**8. Are you a Financial Institution for the purposes of CRS?**

☐ Yes: Specify the type of Financial Institution below and continue to question 9

- ☐ Reporting Financial Institution
- ☐ Non-Reporting Financial Institution: Specify the type of Non-Reporting Financial Institution below
- ☐ Trustee Documented Trust
- ☐ Other: Please Specify \_\_\_\_\_

☐ No: Skip to question 10

9. Are you an Investment Entity resident in a Non-Participating Jurisdiction for CRS purposes and managed by another Financial Institution?

☐ Yes: Skip to question 11

☐ No: Skip to question 12

### C. NON-FINANCIAL ENTITIES

10. Are you an Active Non-Financial Entity (Active NFE)?

☐ Yes: Specify the type of Active NFE below and skip to question 12

- ☐ Less than 50% of the Active NFE's gross income from the preceding calendar year is passive income and less than 50% of its assets during the preceding calendar year are assets held for the production of passive income
- ☐ Corporation that is regularly traded or a related entity of a regularly traded corporation
- ☐ Governmental Entity, International Organisation or Central Bank
- ☐ Other: Please Specify \_\_\_\_\_

☐ No: You are a Passive Non-Financial Entity (Passive NFE). Continue to question 11

### D. CONTROLLING PERSONS

11. Does one or more of the following apply to you:

- ☐ Is any natural person that exercises control over you (for corporations, this would include directors or beneficial owners who ultimately own 25% or more of the share capital) a tax resident of any country outside of Australia?
- ☐ If you are a trust, is any natural person including trustee, protector, beneficiary, settlor or any other natural person exercising ultimate effective control over the trust a tax resident of any country outside of Australia?

☐ Yes: Complete details below and continue to question 12

|   | Name | Date of Birth | Residential Address | Country of Tax Residence | TIN or equivalent | Reason Code if no TIN provided |
|---|------|---------------|---------------------|--------------------------|-------------------|--------------------------------|
| 1 |      |               |                     |                          |                   |                                |
| 2 |      |               |                     |                          |                   |                                |
| 3 |      |               |                     |                          |                   |                                |

If there are more than 3 controlling persons, please list them on a separate piece of paper.

If TIN or equivalent is not provided, please provide reason from the following options:

- ☐ **Reason A:** The country/jurisdiction where the entity is resident does not issue TINs to its residents
- ☐ **Reason B:** The entity is otherwise unable to obtain a TIN or equivalent number (Please explain why the entity is unable to obtain a TIN in the below table if you have selected this reason)
- ☐ **Reason C:** No TIN is required. (Note. Only select this reason if the domestic law of the relevant jurisdiction does not require the collection of the TIN issued by such jurisdiction)

|   |
|---|
| If Reason B has been selected above, explain why you are not required to obtain a TIN |
|   |

☐ No: Continue to question 12

### E. DECLARATION

12. Signature

I undertake to provide a suitably updated self-certification within 30 days of any change in circumstances which causes the information contained herein to become incorrect.

I declare the information above to be true and correct.

|        |            |                                   |                             |
|--------|------------|-----------------------------------|-----------------------------|
| Signed |            | Name of authorised representative | STERLING CORPORATE SERVICES |
| Date   | 26.07.2017 | Name of entity/Individual         |                             |



## Application Form (Cont.)

### PART C: FATCA SELF DECLARATION

#### ALL investors must complete this section

The Foreign Account Tax Compliance Act (FATCA) is a United States (US) regulatory requirement that aims to deter tax evasion by US taxpayers. The Australian and US Governments (through their tax offices) have an agreement that means we must ask you, and you must answer, these questions. Information we gather is reported to the ATO and in turn to US tax authorities. For more information visit the ATO Website: <https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/International/Foreign-Account-Tax-Compliance-Act/>

If you are unsure of any of the answers please seek professional advice. Not enough room? Write their details clearly and attach them.

#### SECTION 1 - Investor Type

Please tick the box indicating which type of investor you are and proceed to the next section as indicated.

- ☐ **Individual** or Joint Individual Investors one or more of which is a **US citizen** or a resident of the US for tax purposes - **Go to Section 2**
- ☐ **Individual** or Joint Individual Investors, **NONE** of which are a US citizen or a resident of the US for tax purposes - **Form Complete proceed to Part D**
- ☐ **Company** or **Trust** which is **NOT** registered in the US and **DOES NOT** have a controlling shareholder is a US citizen or a resident of the US for tax purposes - **Form Complete proceed to Part D**
- ☐ **Company** or **Trust** (or entity) which is registered in the US - **Complete to Section 3**
- ☐ **Company** or **Trust** (or entity) for which a **controlling shareholder** is a **US citizen** or a resident of the US for tax purposes - **Complete to Section 4**
- ☐ **Superannuation Fund** registered in Australia - **Form Complete proceed to Part D**
- ☐ **Financial Institution** - **Complete to Section 5**
- ☐ Australian, State and local **governments** and **local authorities** and their wholly owned agencies or instrumentalities - **Form Complete proceed to Part D**

#### HELP!

##### US citizen or resident of the US for tax purposes:

- anyone born in the US who hasn't renounced their US citizenship
- a US citizen including persons with dual or multiple citizenships
- US lawful permanent residents e.g. green card holders

##### US company or trust:

- a company created in the US, established under the laws of the US or which is a US taxpayer
- a trust subject to the laws of the US and controlled by one or more persons that are citizens or residents of the US

##### Superannuation Fund:

A complying self-managed super fund, a complying APRA regulated super fund, any government super fund and any pooled superannuation trust.

##### Financial Institution:

- a depository institution - you accept deposits in the ordinary course of a banking or similar business e.g. a bank
- a custodial institution - a substantial portion of your business (20 % of gross income) is held in financial assets for the account of others e.g. a custodian or broker
- an investment entity - this includes entities that trade in financial assets or that are investing, administering, managing funds, money, or certain financial assets on behalf of other persons e.g. investment companies. Note: if you are a professional trustee, custodian or investment company, you will usually fall within this category
- certain prescribed entities - e.g. types of insurance companies that have cash value products or annuities

#### SECTION 2 - Individual or Joint Individual Investors who are US Citizens

Please provide your US Taxpayer Identification Number ("TIN")

|                       |     |
|-----------------------|-----|
| Individual Investor 1 | TIN |
| Individual Investor 2 | TIN |

**TIN:** This is not your tax file number (or TFN). It stands for **US Taxpayer Identification Number**, one of a number of identification numbers issued by US authorities.

#### SECTION 3 - Company, Trust or other Entity considered a US resident for Tax purposes

Please confirm the entity's US federal tax classification

|  |  |
|--|--|
| <input type="checkbox"/> Single-member LLC     | <input type="checkbox"/> Trust/estate                              |
| <input type="checkbox"/> C Corporation         | <input type="checkbox"/> Limited Liability Company - C Corporation |
| <input type="checkbox"/> S Corporation         | <input type="checkbox"/> Limited Liability Company - S Corporation |
| <input type="checkbox"/> Partnership           | <input type="checkbox"/> Limited Liability Company - Partnership   |
| <input type="checkbox"/> Other - Please detail |  |

Please provide either your FATCA exemption code or you TIN

FATCA exemption code

TIN

## Application Form (Cont.)

### SECTION 4 - Controlling US persons

If there are more than 3 controlling US persons, please provide their details on a separate page

|      |         |     |
|------|---------|-----|
| Name | Address | TIN |
| Name | Address | TIN |
| Name | Address | TIN |

### SECTION 5 - Financial Institution

#### HELP!

#### GIIN:

**Global Intermediary Identification Number**, a unique ID number issued by US tax authorities to non-US financial institutions when they register for FATCA

|  |                                      |
|--|--------------------------------------|
| <input type="checkbox"/> Reporting IGA Financial Institution or Participating Financial Institution  | GIIN                                 |
| <input type="checkbox"/> Sponsored Financial Institution or Trustee Documented Trust   |                                      |
| Name of Sponsor  | GIIN of sponsoring entity or Trustee |
| <input type="checkbox"/> Financial Institution that does not need to register (e.g. Non-Reporting IGA Financial Institution)                     |                                      |
| FATCA Status   | GIIN (if applicable)                 |
| <input type="checkbox"/> Non-participating Financial Institution. <i>Note that information about you will be reported to the ATO and the IRS</i> |                                      |

**FATCA declaration is complete, proceed to Part D of this Application Form.**

## PRIVACY NOTICE

AET collects your personal information primarily for the purpose of providing custodial services to the SIT responsible entity and for ancillary purposes detailed in the Privacy Policy. AET may disclose your personal information, such as, your name and contact details, along with your account information to its related bodies corporate, the responsible entity, professional advisers, the land titles office and/or as otherwise instructed by the responsible entity. We are also permitted to collect and disclose your personal information when required or authorised to do so by law. AET is not likely to disclose your personal information to overseas recipients. Your personal information will be used in accordance with AET's Privacy Policy. The Privacy Policy contains information about how you may access or correct your personal information held by AET and how you may complain about a breach of the Australian Privacy Principles. You may obtain a copy of the Privacy Policy at [www.aetlimited.com.au/privacy](http://www.aetlimited.com.au/privacy)

Australian Executor Trustees Limited ABN 84 007 869 794 AFSL 240023



## Application Form (Cont.)

### PART D: DECLARATION AND SIGNATURE

I/We acknowledge declare and agree that by signing this Application Form:

- I/We have personally received (or accessed an electronic copy) and read and understood the PDS to which this Application Form applies and have agreed to be bound by the terms and conditions of the current PDS and of the Constitution of the Sterling Income Trust, as amended, reissued or replaced from time to time.
- I/We am/are at least 18 years of age.
- All details provided and statements made by me/us in this Application Form are complete and accurate.
- None of the Responsible Entity, the Investment Manager or any other person guarantees the repayment of capital invested in the Sterling Income Trust, the performance of nor any particular return from the Sterling Income Trust and I/we understand the risks involved in investing in the Sterling Income Trust.
- If investing as a trustee, on behalf of a superannuation fund or trust I/we confirm that I/we am/are acting in accordance with my/our designated powers and authority under the trust deed. In the case of a superannuation fund, I/we also confirm that it is a complying fund under the Superannuation Industry (Supervision) Act.
- An investment in the Sterling Income Trust is illiquid in nature and my/our units may not be able to be redeemed.
- I/we have had the opportunity to seek independent professional advice regarding legal, tax and financial implications of subscribing to the Sterling Income Trust, and acknowledge that the information contained in the PDS is not investment advice or a recommendation that the Units are suitable having regard to my/our investment objectives, financial situation or particular needs. No one promises me/us that I/we will earn any return on my/our investment or that my/our investment will retain its value.
- Once the Application Form has been received by Theta, it cannot be withdrawn. No cooling off rights apply.
- I/We authorise Theta to complete and execute any documentation necessary to effect the issue of Units to me/us.
- That the Responsible Entity is authorised to apply the TFN or ABN provided above to all future applications for units, including reinvestments, unless I/we notify the Responsible Entity otherwise.
- Theta reserves the right to reject any application.
- Theta may accept or reject the Application in whole or in part, and the Sterling Income Trust has the discretion to issue or transfer Units as it sees fit under the terms of the Offer.
- I/We acknowledge that returning the Application Form will constitute my/our offer to subscribe for Units in the Sterling Income Trust and that no notice of acceptance of the Application will be provided.
- I/We acknowledge that the Responsible Entity may be required to pass on information about me/us or my/our investment to the relevant regulatory authority in compliance with the AML laws (AML Act). I/We will provide such information and assistance that may be requested by the Responsible Entity to comply with its obligations under the AML Act and I/we indemnify it against any loss caused by my/our failure to provide such information or assistance.
- The monies used to fund my/our investment in the Sterling Income Trust are not derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention ('illegal activity') and the proceeds of my/our investment in the Sterling Income Trust will not be used to finance any illegal activities.
- I/We am/are not a 'politically exposed' person or organisation for the purpose of any AML law.
- I/We confirm that I/we have read and understood the privacy section contained in the PDS.
- I/We consent to details about my/our application and holdings being disclosed in accordance with the Privacy section of the PDS.
- I/We confirm that the Responsible Entity and Administrator are authorised to accept and act upon any instructions in respect of this application and the units to which it relates given by me/us by facsimile. If instructions are given by facsimile, the onus is on me/us to ensure that such instructions are received in legible form and I/we undertake to confirm them in writing. I/We indemnify the Responsible Entity and Administrator against any loss arising as a result of any of them acting on facsimile instructions. The Responsible Entity and Administrator may rely conclusively upon and shall incur no liability in respect of any action taken upon any notice, consent, request, instruction or other instrument believed, in good faith, to be genuine or to be signed by properly authorised persons.
- I/We acknowledge that Theta will send me/us a paper copy of the PDS and any Supplementary or Replacement PDS (if applicable) free of charge of I/we request so during the currency of the PDS.

**Account operating instructions** (if no selection is made, all individuals to sign will be assumed)



☒ Any individual to sign

☐ Any two individuals to sign

☐ All individuals to sign

☐ Other (please specify):

|  |  |                           |
|--|--|---------------------------|
| <b>Authorised Signature</b><br> | <b>Name and title (block letters please)</b><br> | <b>Date</b><br>26.07.2017 |
|--|--|---------------------------|

|  |  |                           |
|--|--|---------------------------|
| <b>Authorised Signature</b><br> | <b>Name and title (block letters please)</b><br> | <b>Date</b><br>26.07.2017 |
|--|--|---------------------------|





# Income Unit and Growth Unit Redemption Application Form

## Sterling Income Trust

(ARSN 158 828 105).

Please print in BLOCK LETTERS using BLACK ink.

SIT Investor Number

Investor Name

I/We wish to redeem Units as follows:

|  |                 |
|--|-----------------|
|  | Income<br>Units |
|--|-----------------|

|  |                 |
|--|-----------------|
|  | Growth<br>Units |
|--|-----------------|

Please Redeem my/our units for:

|      |  |   |
|------|--|---|
| Cash |  | % |
|------|--|---|

|              |  |   |
|--------------|--|---|
| Income Units |  | % |
|--------------|--|---|

|                   |  |   |
|-------------------|--|---|
| Development Units |  | % |
|-------------------|--|---|

|              |  |   |
|--------------|--|---|
| Growth Units |  | % |
|--------------|--|---|

Management Company Units

|  |   |
|--|---|
|  | % |
|--|---|

By signing this Redemption Application Form, I/we acknowledge and understand that Conditional Redemption Offers, when made, are expected to be funded out of either new equity raised and are available to Unitholders who have held their Units for at least 12 months. There is no guarantee that there will be sufficient funds available to meet the redemption requests in full or in part.

Authorised Signature

Authorised Signature

Date



## Corporate Directory

|  |  |
|--|--|
| <b>Sterling Income Trust:</b>  | <b>ARSN 158 828 105</b>  |
| <b>Responsible Entity:</b>   | <b>Theta Asset Management Limited</b><br>ABN 37 071 807 684 AFSL 230920<br>Suite 501, Level 5, 210 Clarence Street, Sydney NSW 2000<br>Tel: +61 2 8012 0638<br>Email: invest@thetaasset.com.au   |
| <b>Investment Manager:</b>   | <b>Sterling Corporate Services Pty Ltd</b><br><b>Principal office</b> - 19 Lyall Street, South Perth WA 6151<br><b>Administration</b> - Unit 23, 397 Warnbro Sound Avenue, Port Kennedy WA 6172<br><b>Mail</b> - PO Box 7299, Secret Harbour WA 6173<br>Tel: +61 8 9523 5800<br>Fax: +61 8 9523 5811<br>Email: investors@sterlingfirst.com.au  |
| <b>Custodian:</b>  | <b>Australian Executor Trustees Limited</b><br>ABN 84 007 869 794 AFSL 240023<br>Level 22, 207 Kent Street, Sydney NSW 2000  |
| <b>Unit Registry:</b>  | <b>Registry Direct</b><br>Level 6, 2 Russell Street, Melbourne VIC 3000<br>PO Box 18366, Collins Street East, VIC 8003<br>Tel: 1300 556 635 (Aust) +61 3 9020 7935 (Int)<br>Fax: +61 3 9111 5652<br>Email: registry@registrydirect.com.au<br>Web: www.registrydirect.com.au  |
| <b>State Branch Offices:</b><br><br><b>Perth, WA</b><br>Level 2, 19 Lyall Street,<br>South Perth WA 6151<br>Tel: 1300 440 166 or +61 8 9523 5800<br>Email: investors@sterlingfirst.com.au<br><br><b>Melbourne, Vic</b><br>Office 110, 370 St Kilda Road<br>Royal Domain Corporate<br>Melbourne Vic 3004<br>Tel: 03 99982 2800<br>Email: melbourne@sterlingfirst.com.au<br><br><b>Brisbane, Qld</b><br>20 Bogong Street<br>Riverhills, Qld 4074 | <b>Property Management and Sales Offices:</b><br><br><b>Port Kennedy, WA</b><br>Unit 23, 397 Warnbro Sound Avenue<br>Port Kennedy WA 6172<br>Tel: 1300 440 166 or +61 8 9523 5800<br>Email: portkennedy@rmaproperty.com.au<br><br><b>South Perth, WA</b><br>Level 1, 19 Lyall Street,<br>South Perth WA 6151<br>Tel: +61 8 9269 6100<br>Email: eastvictoriapark@rmaproperty.com.au<br><br><b>Bunbury, WA</b><br>Lighthouse Bunbury<br>149 Victoria Street<br>Bunbury, WA 6230<br>Tel: +61 8 9792 7400<br>Email: lighthouse@lighthouse rentals.com.au<br><br><b>Riverhills, Qld</b><br>20 Bogong Street<br>Riverhills, Qld 4074<br>Tel: 0477 477 237<br>Email: mtommaney@rmaproperty.com.au |







## Sterling New Life Lease - Settlement Summary

|   |   |               |
|---|---|---------------|
| <b><u>Investment Amount Breakdown</u></b>                   |   |               |
| SNLL - Weekly Rent  |   | \$ [REDACTED] |
| SNLL - Commencement Date                                    |   | 26/07/2017    |
| SNLL - Investment Amount                                    |   | \$ [REDACTED] |
| 1st Month Rent  |   | \$ [REDACTED] |
| SNLL Application Fee  | 8.80%   | \$ [REDACTED] |
| Sterling Income Trust Investment Amount Allocation          |   | \$ [REDACTED] |
| Income Units  | 40% \$  | 87,421        |
| Growth Units  | 60% \$  | 131,132       |
| Sterling Income Trust - Total Investment Amount             | ok  | \$ [REDACTED] |
| Less; SIT Investment (Shortfall)                            |   | \$ [REDACTED] |
| Sterling Income Trust - Investment Amount (Net)             |   | \$ [REDACTED] |
| Initial Sterling Income Trust Investment Breakdown          |   | \$ [REDACTED] |
| Income Units  | 40% \$  | 82,821        |
| Growth Units  | 60% \$  | 124,232       |
| Sterling Income Trust - "Initial" Total Investment Amount   |   | \$ [REDACTED] |
| <b><u>Sterling New Life Lease - Settlement Payments</u></b> |   |               |
| Sterling Income Trust                                       | <b><u>(Investment Sum)</u></b>                  | \$ [REDACTED] |
| Bank Account details;                                       |   |               |
| Name:   | Theta Asset Mgt Ltd atf SIT Application Account |               |
| Bank:   | NAB   |               |
| Branch:   | Redacted for confidentiality                    |               |
| BSB:  | [REDACTED]                                      |               |
| Account Number:   | Redacted for confidentiality                    |               |
| Sterling Corporate Service Pty Ltd                          | <b><u>(Application Fee)</u></b>                 | \$ [REDACTED] |
| Bank Account details;                                       |   |               |
| Name:   | Sterling Corporate Services No 2 Acc.           |               |
| Bank:   | CBA   |               |
| Branch:   | Redacted for confidentiality                    |               |
| BSB:  | [REDACTED]                                      |               |
| Account Number:   | [REDACTED]                                      |               |
| Sterling Corporate Service Pty Ltd                          | <b><u>(1st Month Rent)</u></b>                  | \$ [REDACTED] |
| Bank Account details;                                       |   |               |
| Name:   | Sterling Corporate Services                     |               |
| Bank:   | CBA   |               |
| Branch:   | Redacted for confidentiality                    |               |
| BSB:  | [REDACTED]                                      |               |
| Account Number:   | [REDACTED]                                      |               |