

IN THE MATTER OF  
THE CANADIAN SECURITIES LEGISLATION  
OF THE PROVINCES OF  
ALBERTA, MANITOBA, SASKATCHEWAN,  
ONTARIO, PRINCE EDWARD ISLAND,  
NOVA SCOTIA, NEWFOUNDLAND,  
NEW BRUNSWICK,  
NUNAVUT, THE NORTHWEST TERRITORIES  
AND THE YUKON TERRITORY

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR  
EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF  
SUMMIT REAL ESTATE INVESTMENT TRUST

MRRS DECISION DOCUMENT

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, Manitoba, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Newfoundland, Nunavut, the Northwest Territories, Prince Edward Island and the Yukon Territory (the "Jurisdictions") have received an application from Summit Real Estate Investment Trust ("Summit") for a decision pursuant to the securities legislation, regulations, rules and policies (collectively, the "Legislation") of the Jurisdictions that the registration and prospectus requirements contained in the Legislation shall not apply to the proposed issuance of units of Summit to Avista Real Estate Investment Trust ("Avista") and the subsequent distribution of such units to the unitholders of Avista and certain first trade relief;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for these applications;

**AND WHEREAS** Summit has represented to the Decision Maker that:

1. Summit is an unincorporated "closed-end" trust governed by the laws of the Province of Ontario and constituted pursuant to a declaration of trust most recently amended and restated as of July 31, 1999. Summit is a reporting issuer or equivalent in each of the provinces of Canada. The outstanding trust units of Summit are listed and posted on The Toronto Stock Exchange (the "TSE") under the symbol "SMU.UN".
2. As at September 22, 1999, the issued and outstanding capital of Summit consisted of 17,285,059 units and options to acquire 756,453 units have been granted pursuant to Summit's

unit option plan. Summit has also issued \$27,356,000 principal amount of convertible debentures which mature on September 30, 2002 and are convertible at the holder's option into units of Summit at any time on or after July 3, 2002.

3. Avista is an unincorporated "closed-end" trust governed by the laws of the Province of Ontario and constituted pursuant to a declaration of trust amended and restated as of July 22, 1997. Avista is a reporting issuer or equivalent in each of the provinces and territories of Canada. The outstanding trust units of Avista are listed and posted on the TSE under the symbol "AVS.UN".

4. Accordingly to publicly disclosed information, as at September 10, 1999 the issued and outstanding capital of Avista consisted of 20,035,791 units.

5. Summit has made an offer to purchase all of the issued and outstanding units of Avista (the "Offer") in exchange for, at the election of the unitholders of Avista, either: (i) 0.7572 (the "Exchange Ratio") units of Summit for each unit of Avista (the "Unit Option") or, (ii) \$9.20 in cash (subject to the maximum cash consideration of \$80 million) for each unit of Avista (the "Cash Option").

6. In order to provide the unitholders of Avista with the ability to choose the most tax efficient structure for the transaction, Summit has also proposed to concurrently proceed with a series of transactions (collectively, the "Merger Transaction") whereby (i) substantially all of the assets currently owned by Avista would be transferred to Summit in exchange for the assumption by Summit of all of Avista's liabilities and the issuance of units of Summit, such units being issued based on the Exchange Ratio and the number of trust units of Avista issued and outstanding; and (ii) the units of Summit then held by Avista would be distributed to holders of Avista Units on a pro rata basis (based on the respective numbers of units of Avista held immediately prior to the time of the Merger Transaction) upon the redemption of all of the outstanding units of Avista (other than 100 units of Avista which will be subscribed for by Summit as part of the Merger Transaction).

7. A meeting of unitholders of Avista was scheduled for October 15, 1999, to consider an alternative proposed merger of Avista and Canadian Real Estate Investment Trust (the "Alternative Merger"). The meeting has now been re-scheduled for October 20, 1999, at which time the Merger Transaction will be considered by the unitholders of Avista concurrently with the Alternative Merger.

8. In connection with the meeting, Summit had provided to each registered unitholder of Avista having an address in each of the Provinces and territories of Canada as of September 9, 1999 a copy of a take-over bid circular dated September 22, 1999 containing a detailed description of the Offer and the proposed Merger Transaction and prospectus-level disclosure regarding the business and affairs of Summit, including pro forma information of Summit after giving effect to the Merger Transaction. Summit has amended the Offer by notice of extension and variation dated October 10, 1999. The Offer has been amended to (i) increase the Cash Option to \$9.50 per unit of Avista, subject to a maximum cash consideration of \$83 million, (ii) to increase the Exchange Ratio to 0.80 units of Summit for each unit of Avista, and (iii) to extend the expiry of the Offer to midnight on October 20, 1999.

9. The exemptions from registration and prospectus requirements contained in the Legislation relating to amalgamations and arrangements would be available for the issue of units of Summit to Avista and the distribution of such units to unitholders of Avista pursuant to the Merger Transaction but for the fact that: (i) Summit and Avista are not "corporations" as that term is defined in the Legislation of certain Jurisdictions and, by extension, the Merger Transaction will be effected in accordance with the terms of the respective declarations of trust of Summit and Avista and not pursuant to any "statutory" arrangement or procedure (the affairs of Summit and Avista not being governed by any corporate governance legislation); and (ii) the Merger Transaction will not be identical (due to technical requirements for mergers of mutual fund trusts under the *Income Tax Act* (Canada)) to a statutory arrangement of two corporations as required by the Legislation of certain Jurisdictions.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the issuance of the units of Summit to Avista and the distribution of such units to unitholders of Avista pursuant to the Merger Transaction is exempt from the registration and prospectus requirements;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the first trade in any unit of Summit acquired by unitholders of Avista pursuant to this Decision shall be a distribution under the Legislation of such jurisdiction (the "Applicable Legislation") unless:

- (i) at the time of the first trade Summit is and has been a reporting issuer or equivalent for twelve months;
- (ii) Summit is not in default of any requirements under the Legislation;
- (iii) the vendor of the securities, if in a special relationship (as that term is defined in the Applicable Legislation) with Summit, has no reasonable grounds to believe that Summit is in default of any requirement of the Applicable Legislation;
- (iv) disclosure has been made to the Decision Maker of the Offer and Merger Transaction, which disclosure has been made by the filing of the Circular;
- (v) no unusual effort is made to prepare the market or to create a demand for the trust units and no extraordinary commission or consideration is paid in respect of the trade; and
- (vi) the first trade is not from the holdings of a person or company or a combination of persons or companies holding a sufficient number of any securities of Summit so as to affect materially the control of Summit or more than 20% of the outstanding voting securities of Summit, except where there is

evidence showing that the holdings of those securities does not affect materially the control of Summit.

DATED at Toronto on this day 18th of October, 1999.

*J.A. Geller*

*Morley P. Cascallen*

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements for trades made in connection with a business combination involving real estate investment trusts.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(5) and 74(1)

Rules Cited

Rule 45-501 - *Exempt Distributions*, s. 2.8.