

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, MANITOBA,
SASKATCHEWAN, ONTARIO, QUEBEC,
NOVA SCOTIA AND NEWFOUNDLAND**

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 British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland (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 exempting Summit from:

- (a) the restriction under the Legislation that prohibits an offeror from extending a take-over bid where all the terms and conditions thereof have been complied with except those waived by the offeror, unless the offeror first takes up and pays for all securities deposited thereunder and not withdrawn; and
- (b) the requirement under the Legislation that any securities that are taken up by an offeror under a take-over bid shall be paid for by the offeror as soon as possible, and in any event not more than three days, after the taking up of the securities;

in connection with the Offer (as defined herein) by Summit to the unitholders of Avista Real Estate Investment Trust ("Avista") to purchase all of the units of Avista.;

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

AND WHEREAS Summit has represented to the Decision Makers as follows:

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 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". The head office of Summit is located in Toronto, Ontario, and the principal place of business of Summit is located in Halifax, Nova Scotia.

2. As at September 22, 1999, the issued capital of Summit consisted of 17,285,059 units. In addition, options to acquire 756,453 units were outstanding as at September 22, 1999 pursuant to Summit's unit option plan. Summit has also issued \$27,356,000 principal amount of convertible debentures (the "Convertible Debentures") under a trust indenture (the "Trust Indenture") dated as of October 8, 1998. The Convertible Debentures 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 and prior to the close of business on September 30, 2002, at a conversion price of \$15.7035 per Unit. So long as no event of default has occurred under the Trust Indenture, Summit has the option, subject to regulatory approval, to elect to satisfy its obligations to pay the principal amount of the Convertible Debentures at maturity by issuing units to the holders thereof. Summit may also, at its option and subject to regulatory approval, elect from time to time to fund its obligation to pay interest on the Convertible Debentures by issuing units of Summit.

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 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. According to publicly available documents filed with the Commission, as of September 10, 1999 the issued capital of Avista consisted of 20,035,791 units.

5. Summit has assets of over \$500 million. As of the date hereof, Summit owns and operates a portfolio of over 77 retail, industrial and office properties in Canada and the southeastern United States containing an aggregate of approximately 6.1 million square feet of gross leaseable area and two multi-family residential properties in Canada containing an aggregate of 618 units.

6. According to publicly available documents filed with the Commission, as of March 31, 1999 Avista owned 32 properties comprised of retail, office and industrial properties located across Canada.

7. Summit has made an offer (the "Offer") to purchase all of the issued and outstanding units of Avista in exchange for, at the election of the unitholder of Avista, either: (i) 0.80 (the "Exchange Ratio") units of Summit for each unit of Avista, or \$9.50 in cash (subject to the maximum cash consideration of \$83,000,000 (the "Maximum Cash Consideration")) for each unit of Avista (the "Cash Option").

8. 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 which would give the unitholders of Avista the ability to receive units of Summit on a tax deferred "rollover" basis (collectively, the "Merger Transaction").

9. The Offer is conditional upon, among other things, (i) unitholders of Avista having elected the Cash Option in respect of an aggregate of at least 5,789,474 units of Avista (representing \$55 million in cash consideration) and such units of Avista having been validly deposited under the Offer and not withdrawn; and either (a) there being validly deposited under the Offer and not withdrawn more than 50% of the outstanding units of Avista (determined on a fully-diluted basis), or (b) the resolution approving the Merger Transaction being approved by the requisite majority of unitholders of Avista at a meeting of Avista unitholders of Avista (the "Avista Special Meeting"); (ii) Summit being satisfied, in its sole judgment, that all of the unit rights of Avista under the rights plan of Avista (the "Avista Rights Plan") have been redeemed, that the application of the Avista Rights Plan to the Offer and/or the Merger Transaction has been waived or that the Avista Rights Plan will not adversely affect the Offer or the Merger Transaction, if applicable, and (iii) the receipt of all necessary regulatory and stock exchange approvals prior to the expiry of the Offer. On October 7, 1999 the Board of Trustees of Avista announced that they have waived the application of the Avista Rights Plan to both the Summit Offer and Merger Transaction as well as the Alternative Merger (as defined below).

10. The Offer originally expired at 11:59 p.m. (Toronto Time) on October 15, 1999, however, in accordance with a notice of extension and variation dated October 10, 1999 (the "Notice of Extension and Variation"), the Offer has been extended and will now expire at 12:00 midnight (Toronto Time) on October 20, 1999 (the "Expiry Time").

11. The Avista Special Meeting 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.

12. The details of both the Offer and the proposed Merger Transaction are set forth in a take-over bid and information circular (the "Circular") of Summit dated September 22, 1999 as amended by the Notice of Extension and Variation sent to all unitholders of Avista.

13. The Offer provides that, in the event that a number of Avista Unitholders elect the Cash Option such that more than the Maximum Cash Consideration would otherwise be payable, the Maximum Cash Consideration will be pro-rated among those Avista Unitholders electing the Cash Option at the time that the Avista Units are taken up under the Offer in proportion to the number of Avista Units tendered and that no cash will be reserved for Avista Unitholders who do not deposit Avista Units under the Offer (the "Pro-Ration Formula").

14. At the Expiry Time, in the event that the conditions of the Offer have been satisfied, Summit desires to make a one-time extension of the Offer for period of 10 days (the "Extended Offer") in order to permit unitholders of Avista who have not deposited their units under the Offer, an additional opportunity to deposit their units under the Extended Offer. However, pursuant to the Legislation, Summit may not extend the Offer without Summit first taking up and paying for all of the units of Avista deposited under the Offer.

15. Accordingly, in the absence of the decision requested hereby, Summit would effectively be precluded from making the Extended Offer on identical terms if a sufficient number of Avista Unitholders elect the Cash Option. If the relief requested herein is granted and all of the conditions to the Offer have been satisfied, Summit will (i) take up all units of Avista deposited pursuant to the Offer and irrevocably deposit with the depository under the Offer the cash and units necessary to make payment for such units prior to making the Extended Offer, but not effect payment for such units until after the expiry of the Extended Offer, (ii) make the Extended Offer, (iii) take up units under the Extended Offer, (iv) pay for all units deposited under the Offer and the Extended Offer within three days of the expiry of the Extended Offer, and (v) calculate the Pro-Ration Formula based on all of the unitholders of Avista who have elected the Cash Option in respect of units deposited under both the Offer and the Extended Offer.

16. Furthermore, in the absence of the decision hereby requested, Summit would be required to pay for all Avista units taken up by Summit within three days after such Avista units are taken up by Summit.

17. The Notice of Extension and Variation discloses that Summit will seek orders from the Canadian Securities Administrators to allow it to extend the Offer and pro-rate the cash consideration available under the Cash Option among all Avista unitholders who tender to the Offer.

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

AND WHEREAS each of the Decision Makers 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 Summit shall be exempt, in connection with an Extended Offer, from: (i) the provisions of the Legislation requiring Summit to pay for all of the units of Avista deposited under the Offer prior to extending the Offer; and (ii) the provisions of the Legislation requiring Summit to pay for Avista units taken up within 3 days after taking up such Avista units, in order that unitholders of Avista who elect to deposit their units under an Extended Offer may also participate in the pro-rata distribution of the Maximum Cash Consideration provided that:

(a) Summit takes up all of the Avista Units deposited under the Offer prior to making the Extended Offer; and

(b) Summit pays for all of the Avista Units deposited under the Offer and the Extended Offer within three days of the expiry of the Extended Offer.

DATED at Toronto, Ontario, on October "20th", 1999.

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Offeror has made a take-over bid concurrent with a proposed merger transaction, pursuant to which target security holders may elect securities or cash, subject to a maximum amount of cash consideration - If the minimum conditions of the offer are met, offeror intends to extend the offer for an additional 10 days without paying for securities deposited in order to permit all target security holders to tender to the offer and share in the maximum amount of cash consideration, if so desired - Relief granted from requirement to take up and pay for securities tendered to a take-over bid where conditions of the bid are met or waived, and relief granted from requirement to pay for securities taken up pursuant to a take-over bid within three days of the taking up of the securities.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 95.10, 95.12 and 104(2)(c).