

# MLT AIKINS

WESTERN CANADA'S LAW FIRM

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September 10, 2020

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**Attention: Mr. Eli Dadouch, President & CEO**

**Re: Artis Real Estate Investment Trust  
Proposed Retail Spin-Off**

We are writing in furtherance of the conference call on September 9, 2020 with representatives of Artis Real Estate Investment Trust ("Artis REIT"), its financial advisor Scotia Capital and its legal advisor MLT Aikins LLP expressing your concerns regarding the treatment of preferred unitholders under the proposed spin-off (the "Retail Spin-Off") of Artis REIT's Canadian retail portfolio into a new real estate investment trust, and your subsequent correspondence with Scotia Capital.

You indicated on the conference call that you were concerned about the treatment of the preferred unitholders and that the Retail Spin-Off would create a right for the preferred units of Artis REIT to be redeemed at par. You also implied that the rights of preferred unitholders would somehow prevent Artis REIT from making a special distribution to its common unitholders from the net proceeds from the sale of its retail portfolio (without making a special distribution to preferred unitholders).

As indicated on the conference call, the treatment of the preferred units in the Retail Spin-Off is to ensure that the transaction is a non-taxable "qualified disposition" to Artis REIT under section 107.4 of the *Income Tax Act* (Canada). We also indicated on the conference call that Artis REIT's declaration of trust and the preferred unit terms incorporated therein (the "Declaration of Trust") very clearly **do not** provide for the right of preferred unitholders to be redeemed at par as a result of or in connection with the Retail Spin-Off. We understand that Scotia Capital re-iterated that to you in a follow up telephone conversation.

Notwithstanding this information having been provided to you, Artis is concerned that you may make statements that mislead other preferred unitholders that they have or may have a legal right to be redeemed at par. The purpose of this letter is to confirm that we have reviewed the Declaration of Trust and provided our opinion to Artis REIT that: (i) the preferred unitholders do not have (and would not otherwise have) a right to be redeemed at par in connection with the Spin-Off Transaction; and (ii) in the event of a sale of the retail portfolio by Artis REIT, the rights attaching to the preferred units would not prevent Artis REIT from making a special distribution of the net proceeds to the common unitholders of Artis.

There is also no basis for interpreting the Declaration of Trust in a manner which concludes that preferred unitholders have a redemption right at par in connection with the Retail Spin-Off or that

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preferred unitholders are entitled to participate in a special distribution by Artis from the net proceeds of asset sales.

If preferred unitholders, or the market generally, are misled in believing that preferred unitholders have these redemption or participation rights, it could reasonably be expected to have a significant impact on the market price or value of Artis REIT securities and cause significant damage to Artis REIT. Accordingly, if there continues to be any confusion on these points, we would be pleased to speak with your legal counsel about this and believe that they would very quickly come to the same conclusion as we have.

Artis REIT's position is therefore that you know or reasonably ought to know that a statement (including a statement about your opinion, without disclosing that there is no factual basis to support it) that preferred unitholders have, or may have, a right of redemption at par as a result of the Retail Spin-Off and/or the right to participate in the net proceeds of asset sales:

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of one or more of the securities of Artis REIT.

Accordingly, making any such statement would be a contravention of applicable securities laws, in addition to causing significant damage to Artis REIT.

On behalf of Artis REIT, we demand that you refrain from making any such statements. Further, Artis REIT reserves the right to take all actions as it deems necessary or appropriate at law to address the situation.

Please do not hesitate to contact the undersigned should you have any questions regarding the foregoing.

Yours truly,

MLT AIKINS LLP

Per:

  
RICHMOND J. BAYES

cc Artis Real Estate Investment Trust  
Attn: Mr. Edward Warkentin, Chair and Mr. Armin Martens, Chief Executive Officer

Scotia Capital  
Attn: Mr. Justin Bosa, Managing Director