

Sam Solomon

From: Sandy Poklar
Sent: September 14, 2020 1:06 PM
To: amartens@artisreit.com; elw@artisreit.com; rbayes@mltaikins.com; Mr. Justin J. Bosa (Justin.Bosa@scotiabank.com); jpeynado@astfinancial.com; nnathoo@astfinancial.com
Cc: Eli Dadouch; D. J. Miller; Fraser Hughes; Sam Solomon
Subject: Letter to Artis REIT
Attachments: Letter to Artis re Spinoff - September 14 2020.pdf

Armin, Edward, Richmond and Justin,

Please see attached our formal letter regarding the Spinoff of Artis' retail assets. Please note that we have copied not only our legal counsel, but also representatives of AST Financial as we take the view that the board of trustees are in a conflict of interest recommending the same transaction to preferred unitholders as they are to trust unitholders. As such, a special committee of preferred unitholders should be struck by AST Financial so that preferred unitholders concerns can be heard. Separate correspondence to that effect will be sent to them in due course.

Please provide a formal response to this letter no later than September 17, 2020.

Regards
Sandy

Sandy Poklar
COO & Managing Director, Capital Markets & Strategic Developments
Firm Capital Corporation
Tel: (416) 635-0221 x 235 | Fax: (416) 635-1713
163 Cartwright Avenue, Toronto, Ontario M6A 1V5

Email: spoklar@firmcapital.com | Website: www.FirmCapital.com



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Issued by & reply to:
FC PRIVATE EQUITY REALTY MANAGEMENT CORP.

September 14, 2020

ATTENTION: MR. EDWARD WARKENTIN

Chairman of The Board of Trustees
Artis Real Estate Investment Trust
Suite 600 – 220 Portage Avenue
Winnipeg, MB
R3C 0A5

ATTENTION: MR. ARMIN MARTENS

President & CEO
Artis Real Estate Investment Trust
Suite 600 – 220 Portage Avenue
Winnipeg, MB
R3C 0A5

Dear Mr. Warkentin and Martens:

OPEN LETTER TO THE BOARD OF TRUSTEES OF ARTIS REIT

RE: PROPOSED RETAIL PORTFOLIO SPINOFF AND DEBT REDUCTION

FC Private Equity Realty Management Corp. ("**Firm Capital**"), through affiliated entities is an owner of Artis Real Estate Investment Trust ("**Artis**" or the "**REIT**") Trust Units (Common Units) and Preferred Units.

We are writing this open letter as a Preferred Unitholder.

As per our discussion via conference call that took place on September 9, 2020 and our email exchange, we have concerns regarding the Proposed Retail Portfolio Spinoff and Debt Reduction (the "**Transaction**") announced on September 8, 2020. As holders of both the Trust and Preferred Units, we plan to vote against the Transaction if our concerns are not properly addressed. Specifically, we have the following concerns as Preferred Unitholders:

- **EROSION OF \$235 MILLION OF UNDERLYING EQUITY:** The Transaction moves approximately \$779 million of assets to Artis Retail REIT (TSX : AXX.UN), which will have an estimated Net Asset Value of approximately \$360 million. All series of the Preferred Units have a face value of approximately \$303 million. Given that the Preferred Units rank ahead of the Common Trust Units, an erosion of the underlying equity has taken place without any consideration being provided to Preferred

Unitholders. To put this in context, Common Trust Unitholders will receive consideration for the spinoff in the form of AXX.UN Trust Units, but Preferred Unitholders will receive zero. Further, with approximately \$125 million of cash coming back from the sale of assets, the erosion of equity is approximately \$235 million.

We cannot understand why Preferred Unitholders would vote for something that has nothing coming to them, and at the same time effectively losing approximately \$235 million of underlying equity below them?

When the Preferred Units were issued, investors bought them on the basis of being investors in a diversified REIT. The current retail portfolio has unencumbered assets that act as a safety buffer for Preferred Unitholders. This transaction has those retail assets equity being transferred to AXX.UN without any consideration being paid to Preferred Unitholders and further sees the erosion of approximately \$235 million in equity that acted as protection for Preferred Unitholders.

On this point alone, Preferred Unitholders should vote against the Transaction, and the Board of Trustees cannot make a positive recommendation to Preferred Unitholders to vote in favor of the Transaction.

We are requesting that the Board of Trustees retain an independent advisor strictly for the interest of the Preferred Unitholders to provide a fairness opinion as it relates to the Preferred Unitholders' equity and retain an independent law firm to review if the steps being taken for the Transaction triggers a requirement to redeem the Preferred Units at par.

- **THE ISSUANCE OF A NEW CERTIFICATE TRIGGERS A REDEMPTION:** As described in Slide 5 of the REITs investor presentation entitled: "***Artis Retail Portfolio Spin-Off September 8, 2020***", you describe the issuance of a new Preferred Unit being issued to existing Preferred Unitholders. Our questions and comments around this concept are as follows:

1. If the Preferred Units are not leaving the existing REIT, why issue new Preferred Unit certificates to existing unitholders? You mentioned on our conference call that it was for income tax reasons, but if that were the case, then why aren't new certificates being issued to unsecured debenture holders, whose debentures are also held in certificate form and are also remaining in the existing REIT?
2. In terms of the actual mechanics to the Transaction for the purposes of Income Tax, the actual steps as part of the issuance of a new certificate (as your legal counsel outlined on the conference call) require that (and as we understand): (i) Preferred Unitholders units being redeemed, (ii) a Promissory Note is issued temporarily pending approval of the Plan of Arrangement; then (iii) the issuance of new Preferred Units. This results in a Transaction that has the Preferred

Units being redeemed and such redemption should be at par. Preferred Unitholders should not be required to accept a Promissory Note, rather they should have the right to reject that step and be redeemed at par.

3. Preferred Unitholders are also not receiving any consideration from the new retail REIT. If so, why issue a new Preferred Unit? You are selling assets to a new retail REIT and paying Common Trust Units to existing Common Trust Unitholders along with some cash, but not the Preferred Unitholders. **THE PREFERRED ARE GETTING NOTHING BUT ARE BEING ASKED TO VOTE ON THIS?**
4. Is the issuance of these new Preferred Units not a redemption trigger that would require the Preferred Units to be redeemed at par? It is our opinion that by cancelling and then reissuing Preferred Unit certificates to unitholders, a redemption of existing Preferred Unitholders will occur unless said unitholders agree to the exchange.

We are putting you on notice that we are not accepting a promissory note as substitute security for our Preferred Units. We require a cash redemption!

- **PREFERRED UNITS ARE A FORM OF DEBENTURES:** The Preferred Units are a form of debenture. For all intents and purposes, the Preferred Units are a form of credit instrument. That is why, in part, they are rated by a bond rating agency. As you are aware, the ranking of the Preferred Units is behind the current Debentures and ahead of Common Trust Units. The removal of 1/3 of the assets of the REIT, assets that form security for the Preferred Unitholders, has a negative impact on the risk profile of the Preferred Units. This alone is a material security “stripping” event that should trigger a redemption of the Preferred Units. We are requesting that the Board of Trustees address this matter.
- **EXISTING PREFERRED UNIT INDENTURE STATES THIS A REDEMPTION:** Under the terms of your existing preferred units, specifically the “*Certificate of Preferred Unit Terms Approved by the Trustees effective August 2, 2012*” under Section 3 (“*Rights on Termination or Liquidation*”), it states the following:

“In the event of the termination, liquidation, dissolution or winding-up of the Trust, whether voluntary or involuntary, or any other distribution of assets of the Trust among its unitholders for the purpose of winding-up its affairs, the Holders shall be entitled to receive \$25.00 per Series A Preferred Unit, together with all Series A Distributions accrued and unpaid up to but excluding the date of payment or distribution (less any tax required to be deducted or withheld by the Trust), before any amounts shall be paid or any assets of the Trust distributed to the holders of any Equity Interests ranking junior as to capital to the Series A Preferred Units. Upon payment of such amounts, the Holders shall not be entitled to share in any further distribution of the assets of the Trust.”

With the spinoff of the retail real estate to AXX.UN, it is our view that a liquidation event has occurred as the REIT no longer is in the business of retail, rather just office and industrial assets. Therefore, did the REIT actually receive a legal opinion that the spinoff of retail assets and the erosion of \$235 million equity value under the Preferred Units could be not deemed to be a partial 'winding up' of Artis REIT and trigger a redemption at par of the Preferred Units?

Further, Preferred Unitholders should not remain investors in an office and industrial REIT when they were promised the diversification of retail as well. In our opinion, a redemption has occurred, and Preferred Unitholders should receive \$25.00 per Preferred Unit as outlined above.

- **OUR RESPONSE TO THE SEPTEMBER 10TH LETTER FROM LEGAL COUNSEL:**
We are in receipt of the letter sent by your legal counsel, MLT Atkins, dated September 10, 2020 as signed by Richmond J. Bayes. For starters, all comments that we have ever made regarding the Transaction are strictly our opinion and are based on both fact and collectively well over 60 years of experience in real estate, capital markets and finance. Furthermore, your comments suggesting that anything we say or publish against the Transaction as Preferred Unitholders ***“would be a contravention of applicable securities laws”*** and that you ***“demand that you refrain from making any such statements”*** is offensive and contravenes any and all free speech laws. The opinion provided by your legal counsel regarding the Transaction is just that...an opinion! Preferred Unitholders have a right to hear our opinion and form from our views, plus other information, their own views on the Transaction and how it impacts them. But do not worry...we will make sure all investors are aware of your views as we will not silence you or your legal counsels' opinion. We will gladly publish your legal counsels' letter as an attachment to an eventual press release to the market as we ourselves are not censorial.

We will be contacting the transfer agent for the Preferred Unit to request the following:

1. An independent committee be established of the Preferred Unitholders to review this transaction, and;
2. The Committee shall retain independent legal counsel to provide an opinion and obtain an independent fairness opinion on the Transaction with respect to how this benefits Preferred Unitholders.

In addition, the Board of Trustees have a fiduciary duty to make a recommendation to Preferred Unitholders on the Transaction as it relates to the interest of the Preferred Unitholders, not just Trust Unitholders. In order for the Board of Trustees to make such a recommendation, as stated, they should retain separate and distinct legal counsel and advisors for the Preferred Unitholders, otherwise there is an inherent conflict of interest. In light of the fact that the Preferred Unitholders are being asked to vote on a transaction that has: (i) nothing being provided to them in the form of consideration; (ii) losing

approximately \$235 million in the form of eroded equity; and (iii) seeing a restructured Artis REIT having no retail real estate that produced income to protect Preferred Unitholders distributions, we cannot see how the Board of Trustees can recommend this transaction as being in the best interests of Preferred Unitholders.

Independent legal counsel is required for the Preferred Unitholders, as it is apparent that Artist REIT legal counsel is conflicted in providing an overall opinion that impacts different stakeholders such as Common Equity holders; Preferred Equity holders, Management and the Board of Trustees.

Please ensure that all members of your board of trustees receive a copy of this letter. May we please get a written response by September 17, 2020. If you feel your response should be in a public form for all unitholders to see, then issue a press release, as you should expect all our correspondence to be publicly released, including your replies.

Yours truly,
FC PRIVATE EQUITY REALTY MANAGEMENT CORP.

PER:



Eli Dadouch
ASO

ED/sp

CC:
Mr. Justin Bosa
Managing Director, Head of Investment Banking
Scotiabank
40 King Street West
Box 4085, Station A
Toronto, ON
M5W 2X6

Ms. Jackie Peynado / Nazim Nathoo
AST Trust Company (Canada)
1 Toronto Street, Suite 1200
PO Box 4202, Station A
Toronto, ON
M5V 2V6