

ASX RELEASE

4 July 2011

**SENIOR COUNSEL'S OPINION**

EDT Retail Management Limited ("**ERML**") as the responsible entity of EDT Retail Trust ("**EDT**") refers to an announcement it made today which advises the conclusions of Senior Counsel in connection with the eligibility of EPN GP LLC ("**EPN GP**") and EPN EDT Holdings II LLC ("**EPN**") to vote at the unitholder meeting scheduled for 10am on Friday 8 July 2011.

Attached is a copy of the Senior Counsel opinion.

Juan Rodriguez  
Company Secretary

**About EDT Retail Trust:**

*EDT Retail Trust (ASX:EDT) is a listed real estate investment trust focused on investing predominately in US community shopping centres giving investors exposure to a premium quality portfolio of US retail real estate in the value and convenience sector. It currently holds interests in 48 assets covering approximately 10.9 million square feet in 20 states.*

*EDT Retail Management Limited, the Responsible Entity of the Trust, is jointly owned by Developers Diversified Realty Corporation (DDR) and EPN GP LLC (EPN). DDR is a self-administered and self-managed REIT operating as a fully integrated real estate company listed on the NYSE which operates and manages over 570 retail properties covering 132 million square feet. EPN is a real estate investment venture jointly formed by Elbit Plaza USA, L.P. (a subsidiary of Elbit Imaging Ltd. and Plaza Centers N.V.) and Eastgate Property LLC.*

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**EDT RETAIL MANAGEMENT LIMITED**

**AS RESPONSIBLE ENTITY OF EDT RETAIL TRUST**

**OPINION**

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## **EDT RETAIL MANAGEMENT LIMITED**

### **AS RESPONSIBLE ENTITY OF EDT RETAIL TRUST**

#### **OPINION**

##### **Introduction**

1. My instructing solicitors act for EDT Retail Management Limited (“**ERML**”). ERML is the responsible entity of EDT Retail Trust (“**EDT**”). EDT is a registered managed investment scheme listed on ASX and units in EDT are quoted on ASX. EDT invests in community shopping centres in the US.
2. ERML is wholly owned by EDT Management LLC (“**US Manager**”), which is jointly owned by EPN GP, LLC (“**EPN GP**”) and DDR MDT Holdings II Trust, a wholly owned subsidiary of Developers Diversified Realty Corporation (“**DDR**”).
3. The EPN Group is a joint venture between Elbit Plaza USA, LP and Eastgate Property, LLC, both limited liability companies organised under the laws of the State of Delaware in the United States of America. EPN GP is an entity belonging to EPN Group through which (together with EPN EDT Holdings II, LLC (“**EPN**”)) the EPN Group controls the outstanding units in EDT and which has a 50% interest in the US Manager. EPN also belongs to the EPN Group.
4. DDR is a real estate investment trust listed on the New York Stock Exchange.
5. On 3 June 2011, EPN GP and its associate, EPN, disclosed a relevant interest in 57.34% of units in EDT. EPN GP became a significant unitholder in EDT with a 47.8% unitholding as a result of a recapitalisation of EDT in 2010. It subsequently

acquired additional units in EDT in connection with an off-market takeover bid which remains on foot.

6. On 12 May 2011, ERML received a request from certain unitholders for ERML to convene a meeting of unitholders (“**Request for Meeting**”) to consider and vote on an extraordinary resolution to wind up EDT (“**Wind-up Resolution**”).
7. On 2 June 2011, ERML as responsible entity of EDT issued a notice of meeting and explanatory memorandum (“**Notice of Meeting**”) convening a meeting of unitholders to consider and vote on the Wind-up Resolution to be held on 8 July 2011 (“**Unitholder Meeting**”). The Notice of Meeting states that additional information on the Wind-up Resolution would be provided to unitholders by 17 June 2011.
8. On 14 June 2011, ERML as responsible entity of EDT issued a supplementary explanatory memorandum (including an independent expert’s report prepared by Ernst & Young Transaction Advisory Services Limited) (“**Supplementary Explanatory Memorandum**”) which provides additional information to unitholders in relation to the Wind-up Resolution.
9. On or about 13 June 2011, ERML appointed Mr Alan Cameron A.O. to act as Chairman of the Unitholder Meeting. As a condition to the appointment, Mr Cameron requested that Counsel’s advice be sought in relation to the matters which form the subject of this opinion and which could be relied upon by the Chairman for the purpose of the Unitholder Meeting.
10. Accordingly, my opinion is requested on the following question:

Is EPN GP or EPN an “associate” of ERML for the purposes of section 253E of the Corporations Act and thus not entitled to vote its interest on the Wind-up Resolution at the Unitholder Meeting?
11. In my opinion, this question should be answered “No”.
12. I set out below the salient facts, the relevant provisions of the Corporations Act, and my reasons for that conclusion.

**Salient Facts***EDT assets, corporate governance and asset management*

13. All of EDT's real estate investments are located in the US and are held indirectly through two US domiciled real estate investment trusts ("**US REIT I**" and **US REIT II**" and together, "**US REITs**"). The US REITs in turn hold their investments via three US limited liability companies ("**US LLCs**"). The individual properties are held by the US LLCs through a series of individual property owning entities.
14. The operating agreement for the US Manager ("**LLC Agreement**") sets out the governance arrangements in relation to the US Manager. In addition, the US Manager provides general administrative services to the US REITs and their controlled entities pursuant to various service or operating agreements.

*US REITs*

15. On 28 June 2011, the boards of the US REITs ("**US REIT Boards**") resolved to amend the by-laws of the US REITs, such that EDT, in its capacity as the sole voting shareholder of the REITs, was no longer required to nominate a representative of EPN GP to fill a vacancy on the US REIT Boards.
16. On 29 June 2011, the two Directors on the US REIT Boards resigned. The US REIT Boards had been comprised of two EPN GP representatives, being Alexander Berman and Gabor Lattmann ("**EPN Nominees**").
17. As at 1 July 2011, EDT in its capacity as sole voting shareholder of the US REITs, is still in the process of appointing replacement directors to fill the vacancies on the US REIT Boards left by the EPN Nominees. It is anticipated that representatives of EDT will be appointed as directors of the US REITs.
18. Through its ability to control the appointment of the directors on the US REIT Boards, EDT effectively controls the decision-making of the US REITs.

*US LLCs*

19. Under the operating agreements for each of the US LLCs (“**US LLC Agreements**”) in which the US REITs have an ownership stake, being US LLC, Mervyns LLC and PS LLC, the US Manager has been established as the sole manager and is responsible for day-to-day operations. However, all major decisions such as investments, divestments, financing and setting risk management policies must be approved by the owners of the relevant LLC, and in the case of Mervyns LLC and PS LLC also approved by ERML.
20. The joint owners of Mervyns LLC and PS LLC are US REIT II and DDR. Accordingly, EDT and DDR effectively each have a blocking vote for all significant decisions involving Mervyns LLC or PS LLC. As a result of the ownership redemption transaction approved by unitholders and undertaken in late 2009, DDR no longer has any interest in US REIT I or the US LLC and EDT effectively controls the decision-making for those entities.
21. Under the US LLC Agreements, the US Manager effectively earns base management fees (based on the fair market value of assets) and performance fees based on trust returns, and fees for providing due diligence services in connection with acquisitions, disposals, financings or refinancing by the US LLCs and their controlled entities. The right of the US Manager to receive base management fees and performance fees would continue in the event that ERML is replaced as the responsible entity of EDT. ERML’s entitlement to base management fees and performance fees is reduced by any amounts the US Manager receives from the US LLCs as the base management fees or performance fees as the case may be.
22. There are property management agreements in place between DDR (as “**Property Manager**”) and the US LLCs owning properties or groups of properties pursuant to which DDR provides property management and leasing services to all of EDT’s properties in return for various fees and commissions. The term of each of the property management agreements is 10 years (with expiry dates for these agreements ranging from 2013 to 2016, depending on the property), subject to an option for extension of the term for two additional periods of five years, which may

be exercised by written notice at the Property Manager's sole option at least 90 days prior to the expiration of the then current term.

23. The property management agreements can be terminated, among other things, with cause or if DDR no longer has an interest in the US Manager, or on a change of control of the Property Manager (which includes a change in the majority of the board of directors of DDR or DDR ceasing to be an owner of the US LLC). The property management agreements do not terminate if ERML is replaced as responsible entity of EDT.
24. I have attached to this opinion a schedule prepared by my instructing solicitors setting out the arrangements between EPN GP and DDR in connection with EDT, ERML and the US Manager. The information in the schedule is based on publicly available information and materials provided by ERML, and has been verified by management of ERML.

*Constitution of ERML until 21 June 2011*

25. The constitution of ERML ("**ERML Constitution**") governs, among other things, the powers of the board of ERML ("**ERML Board**") with respect to EDT. The following paragraphs set out key provisions of the ERML Constitution as it stood before amendments were made on 21 June 2011.
26. Under article 3.5 of the ERML Constitution, while ERML is a wholly owned subsidiary of the US Manager (as is currently the case):

*"the number of directors must not be less than 3 nor more than 11, comprised as follows:*

- (a) *for so long as [EPN GP] has voting power in [EDT] below 30%, there shall be 10 Directors, 5 of whom are appointed to represent [EPN GP], 2 of whom are appointed to represent DDR, 2 of whom are Independent Directors and one of whom is an Additional Australian Director; and*
- (b) *for so long as [EPN GP] has voting power in [EDT] of 30% or more, [EPN GP] shall have the right to require the appointment of an additional Director to represent [EPN GP], in which case there shall be 11 Directors, 6 of whom are appointed to represent [EPN GP], 2 of whom are appointed to represent DDR, 2*

*of whom are Independent Directors and one of whom is an Additional Australian Director.”*

EPN GP did have voting power in EDT of more than 30% before 21 June 2011 (and still does since that date).

27. For the purpose of the ERML Constitution:

(a) **Independent Director** means “*a Director who is not appointed to represent either [EPN GP] or DDR, who is not a director, officer or employee of either of them and who does not have a material interest in either [EPN GP] or DDR and has not in the past 2 years been substantially involved in business dealings with or acted in a professional capacity for either of them*”; and

(b) **Additional Australian Director** means “*a person selected by agreement between [EPN GP] and DDR and who:*

*(a) ordinarily resides in Australia; and*

*(b) is either:*

*(i) a person who would qualify for appointment as an Independent Director; or*

*(ii) a person who performs an executive role (as an employee, secondee or otherwise) in the management of [ERML] or the [US Manager].”*

28. As at 12 May 2011 (that is, the date of the Request for Meeting) the ERML Board comprised 10 Directors, being 5 Directors appointed by EPN GP, 2 Directors appointed by DDR, 2 Independent Directors and 1 Additional Australian Director.

29. On 1 June 2011, David Spruell and Steven Guttman resigned as “Independent Directors” of ERML effective immediately.

30. On 8 June 2011, Luke Petherbridge was appointed to the board of ERML as an “Independent Director” for the purpose of the ERML Constitution.

31. Accordingly, as at 8 June 2011, the ERML Board comprised 9 Directors, being 5 Directors appointed by EPN GP, 2 Directors appointed by DDR, 1 Independent Director and 1 Additional Australian Director.



32. Under clause 4.1 of the ERML Constitution:

*“the business of [ERML] is to be managed by the Directors, who may exercise all such powers of [ERML] as are not, by the Corporations Act or the [ERML Constitution], required to be exercised by [ERML] in general meeting.”*

*Amendments to ERML Constitution made on 21 June 2011*

33. On 21 June 2011, the ERML Constitution was amended by special resolution of its shareholder in a number of respects. Importantly for present purposes, clause 3.5 was deleted (together with the deletion of the corresponding provision in section 6.6(c) of the LLC Agreement) and replaced with the following:

*“While [ERML] is a wholly owned subsidiary of [the US Manager], there shall be*

- (a) 2 Directors appointed to represent [EPN GP];*
- (b) 2 Directors appointed to represent DDR; and*
- (c) not fewer than 2 other Directors, each of whom must be either an Independent Director or an Additional Australian Director.”*

The definition of Additional Australian Director has been amended to require that he or she ordinarily resides in Australia and would qualify for appointment as an Independent Director. The definition of Independent Director now has the additional words at the end “and is not otherwise under the legal or practical control of [EPN GP] or DDR”. Clause 5.19, dealing with the quorum for directors’ meetings now requires the presence of at least five directors including one director representing each of EPN GP and DDR, except that if the meeting is adjourned for want of an EPN GP or DDR director, the quorum for the adjourned meeting is any five directors.

*Further Instructions as to the Operation of ERML*

34. My instructing solicitors have conducted their own investigations into the relevant factual issues which arise in relation to the associate reference in section 12. In the course of those investigations, they have sought confirmation from relevant entities and directors in the following terms:

- “1. Please confirm that [EPN GP] does not have the capacity to determine the outcome of decisions about the ERML’s financial and operating policies.

In determining whether [EPN GP] has this capacity: (a) the practical influence [EPN GP] can exert (rather than the rights it can enforce) is the issue to be considered; and (b) any practice or pattern of behaviour affecting ERML’s financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust). Further, [EPN GP] does not control ERML merely because [EPN GP] and another entity jointly have the capacity to determine the outcome of decisions about ERML’s financial and operating policies.

2. Please confirm that [EPN GP] is not a person with whom ERML has, or proposes to enter into, an agreement, arrangement or understanding (whether formal or informal, written or oral, having legal or equitable force) for the purpose of controlling or influencing whether ERML remains the responsible entity of EDT.
3. Please confirm that [EPN GP] is not:
- (a) a person with whom ERML has, or proposes to enter into, an agreement, arrangement or understanding (whether formal or informal, written or oral, having legal or equitable force) for the purpose of controlling or influencing the affairs of EDT; and
  - (b) acting, or proposing to act, in concert with ERML in relation to the affairs of EDT.

EDT’s affairs include, without limitation:

- matters arising under, or otherwise relating to, the terms of EDT;
  - the removal of ERML as the trustee of EDT;
  - the business, trading, transactions and dealings of ERML as the trustee of EDT;
  - EDT’s property, including transactions and dealings in, and the income arising from, EDT’s property;
  - the management of EDT; and
  - any act done (including any contract made and any transaction entered into) by or on behalf of ERML as the trustee of EDT, or to or in relation to EDT, at a time when EDT is being wound up.
4. Please confirm that [EPN GP] is not acting, or proposing to act, in concert with ERML in relation to voting on the Wind-up Resolution.”

35. Confirmation to that effect has been provided, and not withdrawn, by the following entities, and people, noting that some of the responses are qualified (quite justifiably, in my opinion) by expressions indicating that the confirmation is given to the extent of the person’s actual knowledge or belief, or other immaterial qualifications:

- (a) the five directors of ERML appointed by EPN GP under the pre-21 June 2011 Constitution, namely Gregory Katz, Alexander Berman, Zvi Maayan, David Machloof and Karlis Cerbulis;
- (b) EPN GP itself, signed by the two joint venturers in the EPN Group;
- (c) John Martin;
- (d) Luke Petherbridge;
- (e) John Behling;
- (f) Juan Rodriguez;
- (g) the two directors of ERML appointed by DDR, namely Daniel Hurwitz and David Oakes; and
- (h) DDR itself.

### **Relevant Provisions of the Corporations Act**

36. Section 253E provides as follows:

“The responsible entity of a registered scheme and its associates are not entitled to vote their interest on a resolution at a meeting of the scheme’s members if they have an interest in the resolution or matter other than as a member. However, if the scheme is listed, the responsible entity and its associates are entitled to vote their interest on resolutions to remove the responsible entity and choose a new responsible entity.”

37. “Associate” has the meaning given by sections 10 to 17. Section 12 is of present relevance, by reason of sub-sections 12(1)(b)(i) and 12(3)(b) which provide in effect that section 12 applies if the reference to an associate occurs in a provision that relates (inter alia) to restrictions on the associate’s power to vote its interests in a managed investment scheme.

38. Sub-section 12(2) provides relevantly as follows:

“For the purposes of the application of the associate reference in relation to the designated body [defined to include a managed investment scheme], a person (the **second person**) is an associate of the primary person if, and only if, one or more of the following paragraphs applies:

- (a) the primary person is a body corporate and the second person is:

...

- (ii) a body corporate that controls the primary person; or

...

- (b) the second person is a person with whom the primary person has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the designated body's board or the conduct of the designated body's affairs;
- (c) the second person is a person with whom the primary person is acting, or proposing to act, in concert in relation to the designated body's affairs."

39. The term "relevant agreement" (used in paragraph (b) of sub-section 12(2)) is defined in section 9 to mean an agreement, arrangement or understanding:

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

40. Sub-section 12(3)(a)(i) provides that for the purposes of the application of section 12 in relation to a designated body that is a registered managed investment scheme, a reference to "controlling or influencing the composition of the designated body's board" is taken to be a reference to "controlling or influencing whether a particular company becomes or remains the scheme's responsible entity".

41. As to the meaning of "control" as used in sub-section 12(2)(a), section 50AA provides:

**"(1) [Definition of control]** For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

**(2) [Factors to consider in determining capacity]** In determining whether the first entity has this capacity:

- (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and

(b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

**(3) [Where joint capacity to determine financial and operating policies]** The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

**(4) [Legal obligations to exercise capacity]** If the first entity:

(a) has the capacity to influence decisions about the second entity's financial and operating policies; and

(b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members;

the first entity is taken not to control the second entity."

42. As to the meaning of "the designated body's affairs" in sub-section 12(2)(b) and (c), it is relevant to note that section 53AD provides that a trust's business affairs include (without limitation) a wide range of listed matters, including:

"(b) matters arising under, or otherwise relating to, the terms of the trust; and

(c) the appointment and removal of a trustee of the trust; and

(d) the business trading, transactions and dealings of the trustee of the trust; and ...

(g) the trust property, including transactions and dealings in, and the income arising from, the trust property; ...

(j) the management of the trust; and

(k) any act done (including any contract made and any transaction entered into) by or on behalf of the trustee of the trust, or to or in relation to the trust, at a time when the trust is being wound up...."

43. Further, section 53 provides that "the affairs of a body corporate" include a wide range of matters, including in paragraph (a) the business, trading, transactions, dealings and property of the body and in paragraph (c) the internal management and

proceedings of the body. That section applies to sub-sections 12(2)(b) and (c), as they are “prescribed provisions” by reason of Regulation 1.0.18.

### **Opinion**

44. In terms of the language of sub-section 12(2), ERML is the “primary person”, EPN GP (or EPN as the case may be) is the “second person”, and EDT is the “designated body”. Under that sub-section, the associate reference is established if, and only if, one or more of paragraphs (a), (b) or (c) applies. I consider each of these in turn.

#### *Paragraph 12(2)(a)*

45. Before 21 June 2011, EPN GP did control ERML because it had the capacity to appoint a majority of the board of ERML pursuant to article 3.5 of the ERML Constitution. It thereby had the capacity to determine the outcome of decisions about the ERML’s financial and operating policies within the meaning of section 50AA. However, that capacity was taken away from EPN GP by the amendments made on 21 June 2011, such that the representatives of EPN GP are necessarily less than half the members of the board, even if the minimum number of directors to constitute a quorum are in attendance. Accordingly, there is no longer any legal capacity on the part of EPN GP to control ERML.
46. The question then becomes a factual matter of whether any of the practical indicia of control referred to in sub-section 50AA(2) exist. Paragraph 1 of the requests for confirmation made by my instructing solicitors, together with the express reference to the matters set out in sub-section 50AA(2) (namely, practical influence and any practice or pattern of behaviour) was fully and appropriately framed for this purpose. The fact that the requested confirmation has been given by all addressees of the request, in my opinion, establishes a lack of any such control, at least in the absence of any contrary evidence. No such contrary evidence is apparent. Further, no such evidence arises in relation to EPN, as distinct from EPN GP, nor is there any basis for inferring control on the part of EPN. I note that although it is possible to hypothesise circumstances in which EPN GP might collaborate with DDR to exert control over ERML, any such exercise of joint capacity is specifically excluded by sub-section 50AA(3). Accordingly, paragraph 12(2)(a) has no application.

*Paragraph 12(2)(b)*

47. Paragraph (b) needs to be considered in two aspects. The first relates to whether there is any relevant agreement between EPN GP and ERML for the purpose of controlling or influencing whether ERML remains the responsible entity of EDT (applying sub-section 12(3)(a)(i) to this aspect of sub-section 12(2)(b)). Paragraphs 2 and 4 of the requests for confirmation deal fully and appropriately with this aspect, and there is no contrary evidence to cast doubt on the responses confirming those matters. In particular the amendments of 21 June 2011 do not evidence any such agreement to which ERML was a party. Rather, the amendments were made by resolution of the US Manager as sole shareholder of ERML pursuant to section 249B, without the need for, or existence of, any consensus or volitional act on the part of ERML.
48. The second aspect of paragraph (b) concerns whether there is any relevant agreement between EPN GP and ERML for the purpose of controlling or influencing the affairs of EDT. Paragraphs 3(a) and 4 of the requests for confirmation deal fully and appropriately with that matter. There is no evidence to suggest that the positive responses to those requests are in some way incorrect or incomplete. In particular, the amendments to the by-laws of the US REITs made on 28 June 2011, together with the resignations on 29 June 2011 of the two EPN GP-nominated directors on the US REIT Boards, dispel any suggestion that there is (or is proposed to be) an agreement between EPN GP and ERML for the purpose of controlling or influencing this aspect of EDT's affairs.
49. Further, there is no basis for inferring that EPN, as distinct from EPN GP, is an associate by reason of paragraph (b).
50. Accordingly, in my opinion, neither aspect of paragraph (b) applies.

*Paragraph 12(2)(c)*

51. Paragraph (c) raises the question whether EPN GP is a person with whom ERML is acting, or proposing to act, in concert in relation to EDT's affairs. Paragraphs 3(b) and 4 of the request for confirmation deal fully and appropriately with this matter. The positive responses to those requests, together with the absence of any contrary evidence which casts doubt on those responses, establish that paragraph (c) does not apply. In particular, there can be no suggestion that this paragraph is satisfied in

relation to the operation of the US REITS, in light of the amendments to the by-laws made on 28 June 2011. Further, there is no basis for inferring that EPN, as distinct from EPN GP, is an associate by reason of paragraph (c).

*Conclusion*

52. Accordingly, in my opinion, since the making of the amendments on 21 June 2011 and 28 June 2011 there is no basis for contending that EPN GP or EPN is an associate of ERML for the purposes of section 253E. It follows that EPN GP and EPN are entitled to vote their interests in EDT on the Wind-up Resolution at the Unitholder Meeting.

Chambers,

4 July 2011



I. M. Jackman SC



## EDT Retail Trust - Arrangements with EPN and DDR

Relevant arrangement	Reference/source
<p>EPN GP LLC (“EPN”) has a 50% ownership interest in the US Manager (DDR holds the other 50% interest)</p>	Articles 6.1 and 6.3 of the US Manager LLC Agreement
<p><b>Veto rights over certain decisions of the US Manager</b></p> <ul style="list-style-type: none"> <li>• DDR serves as the managing member of the US Manager and generally has all the rights and powers to manage the US Manager (at the cost and expense of the US Manager), except that “Major Decisions” require the consent of all of the members (ie EPN and DDR), so EPN has a veto right over certain “Major Decisions” of the US Manager</li> <li>• “Major Decisions” include (subject to certain provisions): <ul style="list-style-type: none"> <li>• voting the interests in ERML on behalf of the US Manager at any meeting of ERML shareholders;</li> <li>• voting the interests in Mervyns LLC on behalf of the US Manager at any meeting of Mervyns LLC members;</li> <li>• voting the interests in PS LLC on behalf of the US Manager at any meeting of PS LLC members; and</li> <li>• voting the interests in the US LLC on behalf of the US Manager at any meeting of the US LLC members.</li> </ul> </li> </ul>	
<p><b>Put/call option in respect of membership interests in the US Manager</b></p> <ul style="list-style-type: none"> <li>• DDR acts as the property manager for each of the US LLCs</li> <li>• If each of the Property Management Agreements is terminated in its entirety for any reason by the US LLCs: <ul style="list-style-type: none"> <li>• DDR shall have the right to sell, and EPN shall have the obligation to acquire; and</li> <li>• EPN has the right to acquire, and DDR has to the obligation to sell,</li> </ul> </li> </ul> <p>DDR’s entire membership interest in the US Manager.</p>	Article 9.5 of the US Manager LLC Agreement
<p><b>Other management arrangements - US Manager</b></p>	Annual Report December 2010 (page 17)

Relevant arrangement	Reference/source
<ul style="list-style-type: none"> <li>• Both EPN and DDR provide certain resources to the US Manager at their expense.</li> <li>• The members of the US Manager have agreed that EPN (or its affiliate) and DDR (or its affiliate) shall each cause ERM L to satisfy 50% of the minimum capital requirements imposed on ERM L by ASIC. DDR and Elbit Imaging Ltd have entered into an indemnification agreement in relation to these arrangements.</li> </ul>	<p>Article 6.10 of the US Manager LLC Agreement (expenses)</p> <p>Article 6.15 of the US Manager LLC Agreement</p>
<p><b>Interest in fees payable to US Manager</b></p> <ul style="list-style-type: none"> <li>• US Manager (as manager of the US LLCs) is entitled to: <ul style="list-style-type: none"> <li>• a base fee (% of the fair market value of the direct and indirect proportional interest in properties and other assets owned by the US LLCs)</li> <li>• a performance fee (calculated in a similar manner to ERM L's performance fee - see below)</li> </ul> </li> <li>• Some or all of the US Manager's fees will be distributed to DDR and EPN on a pro-rata basis in accordance with their respective membership interests in the US Manager.</li> </ul> <p><i>[Note from management: 100% of the management fees goes to the US Manager Group and the US Manager pays a dividend to EPN and DDR]</i></p>	<p>Section 9.3 of the 2010 PDS</p> <p>Section 6.4 of the US LLC Operating Agreements</p>
<p><b>Indirect interest in fees payable to ERM L as responsible entity of EDT</b></p> <ul style="list-style-type: none"> <li>• ERM L is entitled to: <ul style="list-style-type: none"> <li>• a base fee (0.45% pa of the fair market value of the direct and indirect proportional interest in properties and other assets owned by EDT); and</li> <li>• a performance fee (based on relative performance of EDT compared to S&amp;P/ASX 200 AREIT Accumulation Index)</li> </ul> </li> <li>• The above fees payable to ERM L are reduced to the extent that similar fees are paid or payable to the US Manager under the US LLC Operating Agreements.</li> <li>• Currently, the management and performance fees payable to the US Manager are the equivalent of the fees ERM L is entitled to under the constitution of EDT.</li> </ul>	<p>Article 19 of the EDT constitution</p> <p>Schedule 1 of the US LLC Operating Agreements</p>

Relevant arrangement	Reference/source
<ul style="list-style-type: none"> <li>• As a result, no fees were payable to ERMML for the financial year ended 31 December 2010.</li> </ul> <p><b>Management arrangements - US LLCs</b></p> <ul style="list-style-type: none"> <li>• The US Manager manages each of the US LLCs pursuant to a contractual arrangement reflected in each of the US LLC Operating Agreements. “Major Decisions” (as defined) require the consent of all the members (ie the relevant US REIT) and in the case of PS LLC and Mervyns LLC, ERMML.</li> <li>• The consent of DDR and EPN (as members of the US Manager) will be required to remove the US Manager as manager of the US LLCs under each US LLC Operating Agreements.</li> <li>• US LLC is controlled by US REIT because the US Manager is obligated to follow the direction of US REIT pursuant to the terms of the US LLC Agreement and the US Manager LLC Agreement. This does not apply to PS LLC and Mervyns LLC and the LLC Agreements for PS LLC and Mervyns LLC do not contain similar provisions.</li> </ul>	<p>Section 11.3 of the 2010 PDS</p> <p>Section 6.1 of the US LLC Operating Agreements</p> <p>Section 6.6 of the US LLC Agreement</p> <p>Section 6.19 of the US Manager LLC Agreement</p>
<p><b>US REITs governance arrangements</b></p> <ul style="list-style-type: none"> <li>• Following the amendments to the by-laws of the US REITs, the US REITs shall have boards comprised of two directors appointed by EDT in its capacity as the sole voting shareholder of the US REITs.</li> <li>• Decisions in respect of investments and divestments of properties are made at the US REIT level (subject to the Limits of Authority Policy).</li> </ul>	<p>EDT Annual Report December 2010 (pages 17 and 18)</p> <p>Restated by-laws of the US-REITs</p>
<p><b>Directors of ERMML</b></p> <ul style="list-style-type: none"> <li>• Directors of ERMML who are employees of the owners of ERMML (that is, EPN/DDR) or their affiliates are remunerated by their employers and not EDT.</li> <li>• Directors of ERMML who are employees of the US Manager and its subsidiaries are remunerated by the US Manager and its subsidiaries, and not EDT.</li> <li>• Directors’ fees for the Directors who are not employees of the owners of ERMML or their affiliates are paid by ERMML except where remuneration of those directors is related to activities that are specifically required by external regulators, in which case EDT pays this remuneration. This includes fees paid for compliance activities and service on the audit committee.</li> </ul>	<p>EDT Annual Report December 2010 (page 72)</p>

Relevant arrangement	Reference/source
<p>[<i>Note from management - non executive directors receive additional fees for the preparation of disclosure documents such as target's statements</i>]</p> <ul style="list-style-type: none"> <li>• None of the independent directors are entitled to options or securities issued by EDT or to retirement benefits as part of their remuneration package.</li> </ul>	
<p><b>Executives of EDT</b></p> <ul style="list-style-type: none"> <li>• EDT's management is employed by Aus Service Co and US Service Co. As noted above, these employing entities are wholly-owned by the US Manager and, apart from accounting recoveries, the staff costs are not recharged to EDT.</li> </ul> <p>[<i>Note from management - certain compliance costs are charged to EDT as per the Trust constitution</i>]</p> <ul style="list-style-type: none"> <li>• The employees of the US Manager and its subsidiaries receive a base salary that is reviewed annually and certain employees are entitled to a bonus which is not guaranteed and is based on performance. There is no entitlement to options or securities issued by EDT as part of their remuneration package.</li> </ul>	EDT Annual Report December 2010 (page 72)
<p><b>Information sharing agreement between EPN and ERML</b></p> <ul style="list-style-type: none"> <li>• ERML has agreed to provide EPN with certain financial information for the sole purpose of enabling EPN's investors to consolidate their financial statements.</li> </ul>	Information sharing agreement