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| Report to: | Estates Committee |
| Date of Meeting: | 31 May 2005 |
| Report by: | Executive Director (Enterprise Resources) |

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| Subject: | Creation of Standard Securities Over the Centre West Shopping Development, East Kilbride and Land at Churchill Avenue/Cornwall Way, East Kilbride and Discharge of Existing Securities over Princes and Rothesay Street Car Parks, East Kilbride |
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1 Purpose of Report

1.1 The purpose of the report is to:-

- ◆ seek Committee authority to
 - (1) the consent of the Council as Head Landlord for the creation of standard securities over
 - (a) Centre West shopping development, East Kilbride, and,
 - (b) land at Churchill Avenue/Cornwall Way, East Kilbride
 - (2) the discharge of existing securities over Princes Car Park and Rothesay Street Car Park, both East Kilbride.
- ◆ note the action taken in terms of Standing Order No 36(c) to authorise conclusion of negotiations.

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) grant consent of the Council as Head Landlord for the creation of standard securities in favour of Eurohypo AG over
 - (a) Centre West shopping development, East Kilbride, and,
 - (b) land at Churchill Avenue/Cornwall Way, East Kilbride
- (2) grant discharge of existing securities over Princes Car Park and Rothesay Street Car Park, both East Kilbride.
- (3) authorise the Executive Director (Enterprise Resources) to conclude in consultation with the Head of Legal Services, if appropriate, the necessary legal agreements on behalf of the Council.
- (4) that in view of the requirement to progress this matter as soon as possible, and in terms of Standing Order No 36(c), the action taken by the Executive Director (Enterprise Resources) in consultation with the Chair and an ex-officio Member be noted.

3 Background

3.1 The Council has a number of legal interests at East Kilbride Town Centre as described below and shown on the accompanying plan.

3.2 Centre West

The Centre West Shopping Development in East Kilbride is built on land extending to 3.69 hectares (9.12 acres) or thereby, (Area 1) at Rothesay Street/Cornwall Street in East Kilbride, leased to Vyson Limited and the British Land Company PLC by the Council for a period of 99 years from 13 February 2003. The Ground Lease includes the following terms:-

- ◆ a premium of £1,500,000 paid at entry to the Council;
- ◆ a minimum annual rental of £600,000 per annum paid in advance in four quarterly instalments of £150,000;
- ◆ a top-up rental payable in arrears based on 12% of the net rents etc received by the Head tenant from the occupational sub tenants, (minus the initial rental of £600,000);
- ◆ an option for the Head tenant to extend the lease for a further 99 years on the same terms and conditions;
- ◆ further detailed provisions regarding contributions by the Council to future refurbishment or redevelopment of the centre.

3.3 Two parcels of land – Churchill Avenue and Cornwall Way

The land at Churchill Avenue/Cornwall Way, East Kilbride comprises two small parcels of land extending respectively to 615 square metres and 187 square metres or thereby (Area 2). This land forms part of a tri-partite agreement for redevelopment of the East Kilbride Town Centre Bus Station, involving South Lanarkshire Council, Ravensett Properties Limited (a wholly owned subsidiary of Land Securities) and Strathclyde Passenger Transport Executive, the subjects contained within missives dated 30 January 2004, whereby the subjects will be used to facilitate the redevelopment. The term of the Lease is for a period of 99 years at a rental of £1.00 per annum if asked. The Lease from the Council in favour of the two areas of land at Churchill Avenue/Cornwall Way has yet to be signed, but is in the name of Tartan Nominee Limited.

3.4 Princes and Rothesay Street Car Parks

The land comprising the Princes Car Park and Rothesay Street Car Parks was sold to Ravensett Properties Limited and Murrayfield Real Estate (Second Dundee) Limited as part of the development of East Kilbride Shopping Centre, by East Kilbride Development Corporation, of whom South Lanarkshire Council are successors (Area 3). The sale terms provided that EKDC/SLC would be entitled to a share of any uplift in value of the land in the event that planning permission is obtained prior to 29 December 2005 for a change of use from the current use as a car park.

Standard securities were granted in favour of SLC in respect of the car park areas at Rothesay Street and Princes Car Park which restrict redevelopment of the car park areas prior to 29 December 2005.

4 Current Proposals

- 4.1 The various properties mentioned above form part of a larger grouping of assets recently transferred by British Land (Vyson) and Land Securities respectively to a joint venture vehicle (Property Unit Trust) set up by those companies, namely The Scottish Retail Property Limited Partnership.
- 4.2 SRPL are represented by Tartan Nominee Limited, a company registered under the laws of Jersey, registration no 87238 and having its registered office at 22 Grenville Street, St Helier, Jersey, JE4 8PX. The SRPL Partnership is a limited partnership also registered under the laws of Jersey, registration no LP477, and having its principle or registered office also at 22 Grenville Street as above.
- 4.3 SRPL is now negotiating a new funding package with Eurohypo AG, a substantial German based bank. As part of this arrangement SRPL are now seeking the Council's consent to the grant of new standard securities over the leased areas, and also wish to obtain the Council's approval to the early discharge of the standard securities over the car park areas to facilitate their new lending arrangements.
- 4.4 Centre West, Cornwall Way and Churchill Avenue - New Standard Securities

Consent was granted by the Estates Committee on 4 May 2004 to an assignation of the Centre West Ground Lease in favour of Tartan Nominee.

In terms of the areas held under Lease, both Leases contain clauses requiring the Council's consent to the creation of any charges or standard securities, such consent not to be unreasonably withheld or delayed. In the case of the Centre West Lease, there is no specific qualification as to the covenant of any proposed lender under the standard security, while in the case of the lease at Churchill Way/Cornwall Avenue, the assignation restrictions require that the assignee or chargee is demonstrably able to fulfil the whole of the tenants' obligations under the lease.

The Council requires to be satisfied as to the lender's ability to fulfil the tenant's obligations in the event that the lender calls up the standard security and are thus required to perform the tenant's obligations in terms of the leases. Therefore full investigations have been carried out on the proposed lending institution by Finance and IT Resources, including the Facility Agreement between Eurohypo, SRPL and Tartan Nominee. The financial appraisal confirms that Eurohypo is a substantial interest and are considered capable of fully meeting the obligations of the lease.

It should be noted that the Council's right to refuse consent to the granting of securities in terms of the two ground leases is limited. There is no perceived disadvantage to the Council in granting the securities subject to the full details of the security document, Facility Agreement and the financial standing of the lender all being acceptable to the Council

- 4.5 Princes and Rothesay Street Car Parks – Discharge of Standard Securities

With regards to the proposed discharge of the standard securities over the Rothesay Street Car Park and Princes Car Park, SRPL will grant a further undertaking to the Council that they will not submit, nor will they instruct the submission of, any planning applications for redevelopment of the car park areas prior to 29 December 2005, as originally agreed with EKDC. This Undertaking will be registered in the Books of Council and Session. These arrangements were originally put in place to ensure that

the Development Corporation and their successors benefited from any uplift in value caused by redevelopment of the car parks. SRPL require early discharge of the Standard Securities to enable the grant of a new Standard Security.

The existing standard securities over the Rothesay Street Car Park and Princes Car Park are due to expire in approximately 9 months time, when the Council would no longer have any control over the developer's intention relevant to the car park areas.

5 Employee Implications

- 5.1 There are no employee implications regarding the proposal.

6 Financial Implications

- 6.1 The overall value of the Council's property interests will not be adversely affected as a consequence of agreeing to the proposals.

7 Other Implications

- 7.1 There are no other implications associated with the proposal.

8 Consultation

- 8.1 Advice has been taken on all legal aspects of this transaction from external legal advisers.

Iain Urquhart

Executive Director (Enterprise Resources)

19 April 2005

Link(s) to Council Objectives

- ◆ Creating Successful Communities - Progressing Key Town Centre Improvements and Sustaining Development

Previous References

- ◆ Estates Committee - 4 May 2004

List of Background Papers

- ◆ Information Plan

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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