

DATED 19th December 2001

- (1) J & W M MOODY
- (2) SOUTH KESTIVEN DISTRICT COUNCIL
- (3) LINCOLNSHIRE COUNTY COUNCIL
- (4) DAVID WILSON HOMES LIMITED

**AGREEMENT UNDER
SECTION 106 TOWN & COUNTRY PLANNING ACT 1990**

relating to

LAND AT EXETER STREET, BOURNE

freethcartwright solicitors

Express Buildings

29 Upper Parliament Street

Nottingham

NG1 2AQ

DX 10017 Nottingham

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KM /0705/99992B-2107 11 December 2001

THIS AGREEMENT is made
BETWEEN

19th December

2001

(1) the Owner:

JAMES IVAN MOODY and WENDY MARGARET MOODY

"The Woodlands", Exeter Street, Bourne, Lincolnshire

(2) the Council:

SOUTH KESTEVEN DISTRICT COUNCIL

St Peters Hill, Grantham, NG31 6PZ

(3) the County Council:

LINCOLNSHIRE COUNTY COUNCIL

County Offices, Newland, Lincoln LN1 1YP

(4) the Company:

DAVID WILSON HOMES LIMITED

Company Registration Number 830271

Wilson Bowden House, Leicester Road,

Ibstock LE67 6WB

BACKGROUND

- (A) The Council and the County Council are local planning authorities for the purposes of the Town and Country Planning Act 1990 for the area where the Land is located and the County Council is the Education Authority.
- (B) The Owner owns the freehold of the Land free from encumbrances and the Company has agreed (subject to conditions) to acquire the freehold interest.
- (C) An application has been made to the Council by the Company under the Council's application reference number SO1/0773/12 for full planning permission for development of the Land by the erection of 139 dwellings, roads and open space.
- (D) The Council has resolved to grant planning permission for the development applied for subject to the prior completion of this Agreement to ensure that (and it is the purpose of this Agreement)
 - (D.1) 30 dwellings to be constructed are available long term to those in need of the accommodation but not able to afford to acquire an interest in the accommodation on the open market;
 - (D.2) equipped open space is provided and properly maintained for the use of occupiers of the proposed development.
- (E) The County Council makes no objection to the Development subject to provision being made for a contribution to the cost of education facilities likely to be required as a result of the Development.

IT IS AGREED AS FOLLOWS:-

1. DEFINITIONS

In this Agreement (including the background) the following words and phrases have the meanings shown opposite :-

the Act

The Town and Country Planning Act 1990

the Affordable House(s)

each of 30 dwellings comprising 9 x two bedroom houses, 19 x three bedroom houses and 2 x 4 bedroom houses (and their garden curtilages) erected pursuant to the Planning Permission on the plots shown outlined blue on the Plan or other houses or substitute plots agreed between the Owner and the Council from time to time

the Application

the planning application described in Background clause (C) above

Commencement of the Development

the initiation of the Development in accordance with Section 56 of the Act but so as not to include (for the purposes only of this Agreement), site clearance and demolition of existing buildings, investigation of ground conditions, archaeological investigation, site preparation (including remediation of contamination) erection of sign boards and compounds, tree protection works, diversion of services and construction of building construction access roads

the Development

the development the subject of the Application as described in Background clause (C) above

Education Contribution

£195,000 payable in two instalments as provided for in Schedule 1 paragraph 4

HLCS

the Council's Head of Leisure and Cultural Services or other officer for the time being undertaking those functions

Housing Association

means

(1) a housing association within the meaning of Section 1 of the Housing Associations Act 1985 or any amendment or re-enactment thereof or

(2) a body which is registered or eligible for registration as a social landlord within the meaning

	of Section 2 of the Housing Act 1996 or (3) a housing trust, charitable organisation or other similar body
Interest Rate	the average of interest rates earned by the County Council on its own cash balances calculated and compounded quarterly
the Land	The land shown outlined red on the Plan
LEAP	a local equipped area for play to be provided by the Council in accordance with details to be submitted to and approved by the Company pursuant to clause 3.4
Nomination Agreement	an agreement between the Owner or a Housing Association and the Council in respect of the Affordable House(s) and substantially in the relevant form (relating to shared ownership or assured shorthold tenancy) annexed to this Agreement or in another form approved by the Council from time to time
the Open Space	the areas of land within the Development intended to be laid out as recreation space, local areas for play and amenity space not forming part of the highway and not within the curtilage of any dwelling, all in the approximate position indicated in green on the plan attached or such other position or positions as might be agreed with the Council from time to time in writing for the purposes of this Agreement
Open Space Contribution	sixty thousand pounds (£60,000)
the Plan	The plan attached
the Planning Permission	the planning permission for the Development in the form annexed to this Agreement

2. FORMAL REQUIREMENTS

The covenants on the part of the Owner in clause 5 are obligations for the purposes of Section 106 of the Town and Country Planning Act 1990; those in clause 5.1 and 5.3 are intended to be enforceable by the Council and those in 5.2 and 5.3 are intended to be enforceable by the County Council without limit of time, not only against the Owners but against the Owner's successors in title ; the covenants on the part of the Council and the

County Council are pursuant to section 106 of the Act, section 120 of the Local Government Act 1972, the Education Act 1996 and all other relevant enabling powers.

COUNCIL COVENANTS

The Council covenants that:

- 3.1. it will forthwith issue the Planning Permission;
- 3.2. upon the written request of the Owner from time to time it will give written confirmation that (if that be the case) the Owner has complied with the terms of this Agreement as far as is required to the date of confirmation;
- 3.3. upon the completion of the performance of the obligations in Schedule 1 of this Agreement or they ceasing to have effect for the reasons set out in clause 6.2 below or the obligations on the part of the Owner and the restrictions are otherwise discharged, to arrange the deletion of any reference to this Agreement from the local land charges register;
- 3.4. not later than 56 days after the date of this Agreement (or later time agreed with the Company) it will submit for the approval of the Company (the Company's approval not to be unreasonably withheld or delayed) details of the proposed location of, surfacing of and equipment for the LEAP
- 3.5. following receipt of the Open Space Contribution to be paid to it pursuant to Schedule 1 paragraph 2.3.1 it will
 - 3.5.1. pay it into a separate interest bearing account and credit interest to the account at the Interest Rate
 - 3.5.2. it will not use the Open Space Contribution and accrued interest except for the purposes of providing and installing equipment on the LEAP and maintaining the Open Space and the LEAP and for no other purpose;
 - 3.5.3. it will maintain detailed records and accounts of all expenditure made from the Open Space Contribution account including any interest accruing to it;
- 3.6. for the purposes of this Agreement, not to unreasonably withhold or delay any approval, consent, certificate or expression of satisfaction sought from the Council;
- 3.7. if at anytime after the expiration of twelve months from the date of the relevant HCLS Certificate referred to in Schedule 1 paragraph 2.4 but no later than 10 years from the date of this Agreement, the Owner offers one or more areas of Open Space on one or more occasions to the Council on the terms and conditions set out in Schedule 2 then subject to the HCLS being satisfied that any such area is, at the date of the transfer, maintained in accordance with Schedule 1 paragraph 2.4.2, the Council will accept a transfer of the relevant area to the Council on those terms and conditions.

COUNTY COUNCIL COVENANTS

The County Council covenants with the Owner that

- 4.1. following receipt of the Education Contribution it will pay it into a separate interest bearing account and credit interest to the account at the Interest Rate;
- 4.2. it will not apply the Education Contribution and any interest accruing to any purpose except towards the cost of provision of education facilities which may include the provision of a new permanent class room or the improvement of any existing class rooms or use for an other education provision or combination thereof as the County Council shall decide (but for the avoidance of doubt not for decoration or the provision of furniture and furnishings) at any school within a 3 miles radius of the Land or (subject to the prior agreement of the Company which shall not be unreasonably withheld or delayed) otherwise in discharge of its functions under Section 14 Education Act 1996;
- 4.3. if so required in writing by the Company no earlier than five years from the date of occupation of the last dwelling as a residence constructed on the Development pursuant to the Planning Permission, the County Council will inform the Company in writing of how much of the Education Contribution has been expended or contracted to be expended and for what purpose;
- 4.4. if the County Council fails to provide the information required pursuant to clause 4.3 within 5 months of the written requirement or if all or any part of the Education Contribution has not been expended for the purposes set out in clause 4.2 within five years of the date of occupation referred to in sub-clause 4.3 then, if so required by the Company in writing, the County Council will repay the Company that part not so expended as soon as is reasonably practicable after the requirement is made;
- 4.5. to maintain detailed records and accounts of all expenditure made from the Education Contribution and any interest accruing to it.

5. THE OWNERS COVENANTS

The Owner covenants

- 5.1. with the Council (subject to the declaration in clause 6.1) to observe and perform the restrictions and obligations set out in paragraphs 1 to 3 of Schedule 1;
- 5.2. with the County Council (subject to the declaration in Clause 6.1) to observe and perform the obligations set out in paragraphs 1 and 4 of Schedule 1;
- 5.3. on the completion of this Agreement to reimburse the Council its reasonable legal costs incurred in the preparation and completion of this Agreement but not exceeding £750.
- 5.4. on the completion of this Agreement to contribute towards the County Council's costs incurred in connection with this Agreement in the sum of £550.

6. AGREEMENTS AND DECLARATIONS

- 6.1. Notwithstanding anything to the contrary contained in this Agreement the restrictions and covenants on the part of the Owner contained in Schedule 1 will not take effect until both
 - 6.1.1. the Planning Permission referred to in clause 3.1 has been issued in the form of the draft annexed or subject to such other conditions notified by the Owner to the Council as being accepted for the purposes of this Agreement and
 - 6.1.2. the Commencement of the Development.
- 6.2. If the Planning Permission is revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires before the Development has been begun within the meaning of Section 56 of the Act then the obligations of the Owner under this Agreement will from then on cease to have effect and the Council and the County Council will, if so requested by the Company, forthwith repay any money paid to them pursuant to Schedule 1 insofar as that money has not been expended in accordance with this Agreement at the date of the Company's request.
- 6.3. No person is to be liable for a breach of the restrictions and obligations contained in Schedule 1 after that person has parted with all interest (and for the avoidance of doubt including the freehold interest) in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to that parting.
- 6.4. No owner of an interest in any part of the Land who occupies that part as a dwelling is to be treated as a person deriving title from the Owner for the purposes of Section 106 (3) of the Act.
- 6.5. Nothing in this Agreement is to prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 6.6. Notwithstanding clause 6.5 above, the Company, the Council and the County Council may agree by exchange of correspondence referring to this clause that a planning permission (other than the Planning Permission) for development of the Land (or the part of the Land in the ownership of the Company at the date of the exchange of the correspondence) in substantially the same manner as authorised by the Planning Permission can be substituted for the Planning Permission in the interpretation of this Agreement from the date of the exchange of the correspondence.
- 6.7. Any reference in this Agreement to "the Company" is to be interpreted as a reference to David Wilson Homes Limited or a person notified to the Council or the

County Council as its nominee and is not to be interpreted as meaning successors in title to the Company's interest in the Land.

- 6.8. If any provision of this Agreement is held to be invalid, illegal or unenforceable then the validity, legality and enforceability of the remaining provisions is not in any way to be deemed affected or impaired.
- 6.9. All sums paid in accordance with the terms of this Agreement is to be interpreted as inclusive of any VAT properly payable.
- 6.10. No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Agreement is to be treated as constituting a continuing waiver and no such waiver will prevent the Council or the County Council from enforcing any of the terms or conditions or from acting upon any subsequent breach
- 6.11. The parties to this Agreement declare for the purposes of the Contracts (Rights of Third Parties) Act 1999 that it is not the intention of all or any of them that any of the terms of this Agreement be enforceable by a third party as defined in Section 1 (1) of that Act.
- 6.12. Any person acquiring an interest in an Affordable House from a mortgagee exercising its power of sale and the successors in title to that person shall not be bound by the terms of this obligation and shall be free to dispose of their interest without further restriction.

7. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning.

SCHEDULE 1
Covenants by the Owner

1. Notice

Forthwith upon the occupation as a residence of the 65th and separately the 95th and separately the last dwelling on the Land constructed pursuant to the Planning Permission, to give written notice of that fact to the Council and the County Council.

2. Open Space

2.1. Except with the written consent of the Council, the Owner will not cause or permit the Commencement of the Development unless there has been submitted to (whether as part of an application for approval of further details required by the Planning Permission or otherwise) and approved by the Council a programme for the provision on the Development of the Open Space as the Development proceeds together with its specification and details of levelling and seeding.

2.2. Notwithstanding the Council's approval of a scheme submitted to it pursuant to paragraph 2.1 above the Owner may from time to time submit different schemes for the approval of the Council for the purposes of that paragraph.

2.3. Except with the written consent of the Council not to cause or permit the occupation of

2.3.1. more than 70 dwellings on the Development (other than as show houses or sales offices) unless the central area of the Open Space (other than the LEAP) the approximate boundaries of which is shown on the Plan, has been provided and payment made to the Council of the Open Space Contribution

2.3.2. any dwelling with a part of its residential curtilage immediately adjacent to any other area of Open Space (other than as show house or sales offices) unless the immediately adjacent Open Space has been provided and in each case unless the Council's HLCS has issued a certificate to the effect that the relevant area of Open Space has been provided and where appropriate equipped in accordance with a scheme submitted and approved under paragraphs 2.1 and 2.2 above and has been completed to the Council's reasonable satisfaction.

2.4. From the date of the relevant HLCS certificate issued pursuant to paragraph 2.3 above, the relevant area or areas of Open Space

2.4.1. will not be used except as open space for public recreation or amenity land for the benefit of the public (whether or not the public has access to it) and / or as a temporary storm water storage area and in any event with no buildings or structures erected upon it except children's play

equipment and structures ancillary to the open uses permitted by this paragraph

- 2.4.2. until such time as it is transferred to the Council, will be maintained (and any play equipment maintained) in a condition suitable for the purposes for which it was laid out in accordance with relevant British and European Standards in respect of safety in play grounds, safety surfacing and maintenance of amenity planting.

3. Affordable Houses

3.1. Not to cause or permit

- 3.1.1. the first occupation of any Affordable House (except as a show house or sales office) unless the Nomination Agreement has been entered into;
- 3.1.2. the occupation of more than 70 dwellings (except as show houses, sales offices or Affordable Houses) unless not less than 14 of the Affordable Houses (inclusive of those dwellings on plots 5 to 10 inclusive on the Plan) have been constructed and are available for occupation or are already occupied as Affordable Houses and
- 3.1.3. the occupation of more than 100 dwellings (except as show houses, sales offices or Affordable Houses) unless all the Affordable Houses have been constructed and are available for occupation or are already occupied as Affordable Houses.

3.2. Not to dispose of the freehold of any Affordable House except

- 3.2.1. to a Housing Association or
- 3.2.2. as required by law or by the terms of a shared ownership lease as defined in Section 106 Housing Associations Act 1985.

3.3. To let not less than 15 of the Affordable Houses (comprising 2 x four bedroomed houses, 6 x three bedroomed houses and 7 x two bedroomed houses and inclusive of those dwellings on plots 5 to 10 inclusive on the Plan) at a rent not exceeding Housing Corporation maximum rent levels and without the payment of a premium

3.4. Not to dispose of a term of years in any Affordable House other than those let pursuant to paragraph 3.3 of this Schedule except to a Housing Association or by way of a shared ownership lease as defined in Section 106 Housing Associations Act 1985.

4. Education Contribution

Except with the written consent of the County Council not to cause or permit the occupation of more than

- 4.1. seventy dwellings on the Development (other than as show houses or sales offices) unless payment of an instalment of £95,000 of the Education Contribution has been made to the County Council.

4.2.

one hundred dwellings on the Development (other than as show houses or sales offices) or the last dwelling constructed on the Development pursuant to the Planning Permission, whichever is the first to occur, unless payment of the whole of the Education Contribution (less any paid pursuant to paragraph 4.1) has been made to the County Council

SCHEDULE 2

Terms and conditions for the transfer of the Open Space

1. Nil consideration
2. Payment by the Owner of the Open Space Contribution unless already paid pursuant to Schedule 1 paragraph 2.3.1
3. Subject only to the covenants and restrictions on title at the date of this Agreement and the covenant at paragraph 4 below
4. A covenant by the Council to use the land only as open space for public recreation or amenity land for the benefit of the public (whether or not the public have access to it) and as a temporary storm water storage area and not to construct any buildings or structures except children's play equipment or ancillary to those open uses.
5. Each party to bear its own costs and expenses of transfer
6. Full right and liberty for the Owner to lay construct or install or enlarge on over under or through the relevant land within the perpetuity period (which will be the period of 80 years commencing with the date of the transfer) any service media as shall be from time to time reasonably required for the benefit of the Development provided that all such service media shall be laid constructed or installed in a good and workmanlike manner at the cost of the Owner.
7. A right for the Owner and its successors in title to use the service media now or hereafter within the perpetuity period laid constructed or installed in over or under the land and to connect into the same provided that all such connections shall be made in a good and workmanlike manner at such points as the Council may reasonably specify and which shall be agreed with the Owner prior to work commencing and such rights not being exercised so as to overload the service media.
8. The right for the Owner to inspect, repair, maintain, cleanse and renew the service media used by any building within the Development provided that such works are carried out in a good and workmanlike manner.
9. A right of way for the Owner and the occupiers for the time being of any land or buildings within the Development in common with all others having the like right and all others authorised by the Owner at all times with or without vehicles over and along any road now laid or at anytime within the perpetuity period laid on the land transferred provided that any person or persons entering upon the land in exercise of those rights shall enter at times previously agreed with the Council (except in emergency) and carry out any works in accordance with the programme of work previously agreed with the Council (such agreement in either case not to be unreasonably withheld or delayed), make good any damage caused to the land as soon as reasonably practicable and cause as little inconvenience as possible to the owners and occupiers of the land.

ANNEXE 1

Draft Planning Permission

ANNEXE 2

Nomination Agreements

Assured Shorthold Tenancy nominations

Shared Ownership nominations

ANNEXE 3

The Plan

PLANNING PERMISSION

DRAFT

Submitted by
David Wilson Homes Ltd
161 Glaisdale Drive West
NOTTINGHAM
NG8 4GY

Part I - Particulars of application

Date of application
26th June 2001

Application No.
S01/0773/12

Applicant: David Wilson Homes Ltd
Proposal: Erection of 139 dwellings
Location: Woodland Nurseries Site Off Exeter Street Bourne

Part II - Particulars of decision

The South Kesteven District Council hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1990 that permission has been granted for the carrying out of the development referred to in Part I hereof in accordance with the application and plans submitted subject to the following condition(s):

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
- 2 This consent relates to the application as amended by revised layout plan no. B/01 Rev H.
- 3 Before the development hereby permitted is commenced, final details of the materials to be used in the construction of external walls and roofs shall be submitted to and approved in writing by the District Planning Authority. Only such materials as may be agreed shall be used in the development.
- 4 Before any development is commenced the approval of the District Planning Authority is required to a scheme of landscaping and tree planting for the site (indicating inter alia, the number, species, heights on planting and positions of all the trees). Such scheme as may be approved by the District Planning Authority shall be undertaken in the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority gives written consent to any variation.

Planning Authority a plan showing the exact location, species and spread of all trees and hedges on the site and those proposed to be felled or uprooted during building operations together with measures for their protection in the course of development.

The screen walls shown on the submitted plan shall be erected at the same time as associated dwellings.

Before any development is commenced, details including location and means of disposal of surface water and foul drainage shall be submitted to and approved by the District Planning Authority, and no building shall be occupied until the drainage works have been provided.

The roads and footways shall be laid out and made up in accordance with the specification, programme and details to be approved and in any event shall be so constructed that, by not later than the time any dwelling erected on the land is occupied, there shall be direct connection from it (completed to the approved specification less the carriageway and footway wearing courses) to an existing highway; and the carriageway and footway wearing courses shall be completed within three months from the date upon which the erection is commenced of the penultimate dwelling to which this permission relates.

The roads and footways shall be laid out and made up in accordance with the specification, programme and details to be approved and in any event shall be so constructed that, by not later than the time any dwelling erected on the land is occupied, there shall be direct connection from it (completed to the approved specification less the carriageway and footway wearing courses) to an existing highway.

No dwelling to which this permission relates shall be commenced unless or until the carriageway basecourse and kerb foundation of the new estate road onto which it fronts, is adjacent to or gains access has been constructed.

Before any development is commenced the approval of the District Planning Authority is required to the detailed design of the scheme to provide for the satisfactory disposal of surface water run-off from the development; and such scheme as may be approved shall be carried out before (the) (any) building is occupied.

Before any part of the development hereby permitted is commenced the junction of the estate road with the existing public highway shall be constructed and the estate road shall also be constructed for at least 60 metres into the site to the satisfaction of the District Planning Authority.

Prior to any building works commencing on site, any roads and footways to be constructed from concrete blocks shall be laid out and constructed in accordance with a specification, programme and details which have been submitted to and approved by the district planning authority.

way) on any road or footway constructed from concrete blocks. They shall be off-loaded and stored within the individual plots.

No works shall commence on site until the highway improvement works to realign the kerb line and form the new junction arrangements as shown and BWB drawing No. TRT00026/1 Rev. P.2 have been constructed and completed to the Local Highway Authority (LCC) standards.

Before the development hereby permitted is commenced details of the means of defining the plot boundaries shall be submitted to the District Planning Authority. Such boundary treatments as may be agreed in writing shall be erected at the same time as the dwellings to which they relate.

Demolition of existing buildings on the site shall be undertaken in accordance with a timetable of works to be submitted and approved in writing by the District Planning Authority, in consultation with English Nature, in order to ensure that any protected species which may be present are appropriately dealt with.

The developer shall arrange for an Ecologist recognised by the District Planning Authority to monitor the demolition of all buildings on the site and, if protected species are found, English Nature shall be consulted for any licensing and mitigation measures to be agreed.

The reason(s) for the condition(s) are:

- 1 Required to be imposed pursuant to section 91 of the Town and Country Planning Act 1990.
- 2 For the avoidance of doubt.
- 3 These details have not been submitted and the District Planning Authority wish to ensure that the colour and type of materials to be used harmonise with the surrounding development in the interests of visual amenity.
- 4 Landscaping and tree planting contributes to the appearance of a development and assists in its assimilation with its surroundings. A scheme is required to enable the visual impact of the development to be assessed and to create and maintain a pleasant environment.
- 5 These features make an important contribution to the appearance of the area. Their retention will maintain the appearance of the area and help assimilate the development with its surroundings.
- 6 To provide a satisfactory appearance to this residential estate by screening rear gardens from public view and in the interests of the privacy and amenity of the occupants of the proposed dwellings.
- 7 To ensure satisfactory provision is made for the disposal of foul and surface water drainage from the site.

satisfactory access to the interests of residential amenity and convenience.

9 The local Highway Authority so requests to ensure satisfactory access to each dwelling/building in the interests of residential amenity and convenience.

10 The local Highway Authority so requests to ensure that satisfactory access is provided to each building plot at all times that the development is in progress, in the interests of the proper development of the site.

11 To ensure that surface water run-off from the development will not adversely affect, by reason of flooding, the amenity of nearby land.

12 To ensure that the land required for the access including the visibility splays is not used or developed for purposes that could prejudice the development of the backland and to ensure that vehicles can park clear of the public highway in the interests of amenity and road safety whilst the development is being carried out.

13 The local Highway Authority so requests to ensure satisfactory access to each dwelling in the interests of residential amenity and convenience.

14 The local Highway Authority so requests as this form of construction would be permanently damaged, particularly from an appearance point of view.

15 The local Highway Authority so requests to ensure an adequate standard of access to the estate in the interests of local amenity and convenience.

16 To provide a satisfactory appearance to this residential estate by screening rear gardens from public view and in the interests of the privacy and amenity of the occupants of the proposed and existing dwellings.

17 To safeguard any protected species or their habitat which may be present on the site.

18 To safeguard any protected species of their habitat which may be present on the site.

Note(s) to Applicant:-

This consent applies only to that required by the Town and Country Planning Acts and does not include any permission or approval under any other enactment, bylaw order or regulation.

No works shall commence on site until a Section 278 Agreement, Highways Act 1980 has been entered into with the Local Highway Authority (LCC) to realise the kerb line and form a new junction arrangements together with any necessary ancillary works.

M J Sibthorp
Head of Land Use Planning Services
Date:

SIGNED as a DEED by
JAMES IVAN MOODY
in the presence of:

J. J. Moody

Witness' signature:

Name:

Address:

J Sharpe
Jeanette L. Sharpe
10 Pinchbeck Road
Spalding Lincs

SIGNED as a DEED by
WENDY MARGARET MOODY
in the presence of:

Wendy M. Moody

Witness' signature:

Name:

Address:

J Sharpe

THE COMMON SEAL of
SOUTH KESEVEN DISTRICT COUNCIL
was affixed in the presence of:

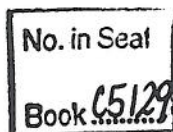


A. James

Chief Executive

THE COMMON SEAL of
LINCOLNSHIRE COUNTY COUNCIL
was affixed in the presence of:

RA Little



Authorised Signatory

THE COMMON SEAL of
DAVID WILSON HOMES LIMITED
was affixed in the presence of:

D. Wilson

DATED

2001

[] **DISTRICT COUNCIL**

- and -

**MERLION HOUSING ASSOCIATION
TWO THOUSAND LIMITED**

NOMINATION AGREEMENT

Relating to affordable housing at []

**Merlion Housing Group
Orchard Court
Whaddon Lane
Owslebury
Nr Winchester
Hampshire SO21 1JJ
Ref. NDT/MHATT/Nom Agt/Prec/UPO/SO
Rev 211101**

THIS AGREEMENT made the

day of

Two thousand and []

BETWEEN [] **DISTRICT COUNCIL** of [] ("the Council") of the one part and Merlion Housing Association Two Thousand Ltd whose registered office is at Grove House Milburn Road Westbourne Bournemouth BH4 9HJ ("the Association") of the other part

NOW IT IS AGREED as follows:-

1. **DEFINITIONS**

In this Agreement the following words shall have the following meanings:-

"Affordable Units" : Plots [] at []

"Nomination Notice" : notice served by the Council pursuant to clauses 3 and/or 4 specifying the name and address of the person or persons nominated by the Council to purchase the Affordable Units

"Non-acceptance Notice" : notice served by the Association pursuant to clause 4 and/or of clause 8 where a person nominated by the Council has failed to proceed with the purchase of an Affordable Unit

"Shared Ownership Lease" : a lease of an Affordable Unit substantially in the terms of the annexed draft

2. DEVELOPMENT

The Association is in the process of acquiring and developing the Affordable Units

3. NOMINATION PROCEDURE

The Council shall within 30 working days of the receipt of written notice setting out or referring to the property particulars and the proposed terms of the relevant Shared Ownership Lease be entitled to nominate persons for the Affordable Units by service of a Nomination Notice **PROVIDED THAT** the Association may decline to accept the nomination of a person specified in the Nomination Notice such non-acceptance not to be unreasonable in the circumstances whereupon the Association shall notify the Council in writing giving reasons for its decision ("Non-Acceptance Notice")

4. NOMINATION PROCEDURE / CONTINUED

In the event that there are insufficient accepted nominees (whether because of

- 4.1 the Council's failure to nominate sufficient nominees or
- 4.2 the nominees indicating that they are unwilling to receive a draft contract or failing to enter into a contract with the Association to purchase a Unit within 25 working days of the Association's solicitor issuing a draft contract to the nominee or the nominee's solicitor or
- 4.3 the Association otherwise being entitled to decline to accept the nomination under clause 3

The Association shall serve a Non-Acceptance Notice.

The Council shall within 15 working days of service of a Non-Acceptance Notice be entitled to serve a further Nomination Notice

5. NOMINATION PROCEDURE / CONTINUED

In the event of the Council not serving a Nomination Notice:

- 5.1 pursuant to clause 3; or
- 5.2 following the service of a Non-Acceptance Notice by the Association, pursuant to clause 4; or
- 5.3 on a resale in accordance with clause 8

the Association shall be entitled to proceed with its own applicants for the Affordable Units PROVIDED THAT the Association shall give preference to persons with a local connection within the Council's area by virtue of residence family connection or employment and who would otherwise be unable to purchase a suitable property on the open market

- 6. The Association shall in every case inform the Council in writing as soon as may be of the name of the nominated person selected

7. AFFORDABLE UNITS

The Association shall develop and sell the Affordable Units on a Shared-Ownership Lease basis or in such other manner as may be agreed between the Association and the Council from time to time.

8. ASSIGNMENT OF SHARED OWNERSHIP LEASES

8.1 The Association will procure that the terms of each Shared Ownership Lease shall include appropriate restrictions on assignment as set out in clause [] of the Shared Ownership Lease to the intent that an intending assignor shall notify the Association prior to an assignment of the Shared Ownership Lease

8.2 Within 10 working days of notification of a proposed assignment by an intending assignor the Association shall notify the Council of the proposed assignment

8.3 Within 10 working days of notification under clause 8.2 the Council may serve a Nomination Notice on the Association. On receipt of a Nomination Notice, the Association shall:-

8.3.1 (subject to 8.3.2 below) be entitled to serve a Non-Acceptance Notice in accordance with clause 3 in which case the Council shall within 10 working days from the service of the Non-Acceptance Notice be entitled to serve a further Nomination Notice

8.3.2 if the Council's proposed Nominee does not proceed with the purchase within 30 working days of the date of service of the

Nomination Notice the Association may permit the re-sale of the relevant Affordable Unit without further recourse to the Council PROVIDED THAT the Association shall give preference to persons with a local connection within the Council's area by virtue of residence family connection or employment and who would otherwise be unable to purchase a suitable property on the open market

- 8.4 The procedure set out in the clause 8 shall apply on the first and any subsequent re-sales

9. DURATION

The terms of this Agreement shall continue to apply until

- 9.1 determined by the Council by one month's notice in writing served on the Association; or
- 9.2 determined by the Association in respect of an Affordable Unit by one month's notice in writing such notice to be served if (and only if) the Council has failed to nominate proposed purchasers for the relevant Affordable Unit on at least two occasions or (where the Council has made such nomination) two or more of such Nominees have failed to proceed with their purchase of the relevant Affordable Unit
- 9.3 determined by the Association as to the Nomination Agreement in its entirety by one month's notice in writing such notice to be served if (and only if) the Nomination Agreement has been discharged in respect of at

least three Affordable Units pursuant to notices served by the Association under Clause 9.2 during any consecutive period of 12 months

and upon the expiry of notice under Clause 9.1 9.2 or 9.3 (as the case may be) this Agreement shall absolutely cease and determine

10. NOTICES

10.1 Any notice certificate schedule requisition or notification required to be served and any document required to be supplied under the terms of this Agreement shall be sufficiently served or supplied (as the case may be) if it is left or delivered

10.1.1 in the case of the Association at its registered office

10.1.2 in the case of the Council addressed to the Council's Head of Housing at []

10.2 If sent by registered post or through the recorded delivery service any such notice certificate schedule requisition notification or document shall be deemed to have been sufficiently served or supplied forty-eight hours after the time of posting (unless returned through the Post Office undelivered)

11. DISPUTES

Any dispute arising out of this Agreement shall be referred upon the application of either party to the decision of a single Arbitrator under the Arbitration Act 1996

to be appointed in default of agreement by the President of the Institute of Arbitrators

In witness whereof the parties have executed this agreement as a deed the day and year first above referred to

THE COMMON SEAL of

[] DISTRICT COUNCIL

was hereunto affixed in the

presence of:-

Authorised Officer

**EXECUTED AS A DEED BY MERLION
HOUSING ASSOCIATION TWO THOUSAND
LIMITED in the presence of:-**

Board Member

Board Member

DATED

2001

[] DISTRICT COUNCIL

- and -

**MERLION HOUSING ASSOCIATION
TWO THOUSAND LIMITED**

N O M I N A T I O N A G R E E M E N T

Relating to affordable housing at []

**Merlion Housing Group
Orchard Court
Whaddon Lane
Owslebury
Nr Winchester
Hampshire SO21 1JJ
Ref. NDT/MHATT/Nom Agt/Prec/UPO/Rent
Rev 211101**

THIS AGREEMENT made the

day of

Two thousand and []

BETWEEN [] **DISTRICT COUNCIL** of [] ("the Council") of the one part and Merlion Housing Association Two Thousand Ltd whose registered office is at Grove House Milburn Road Westbourne Bournemouth BH4 9HJ ("the Association") of the other part

NOW IT IS AGREED as follows:-

1. **DEFINITIONS**

In this Agreement the following words shall have the following meanings:-

"Affordable Units" : Plots [] at []

"Nomination Notice" : notice served by the Council pursuant to clauses 3 and/or 4 specifying the name and address of the person or persons nominated by the Council to occupy the Affordable Units

"Non-acceptance Notice" : notice served by the Association pursuant to clause 4 and/or of clause 8 where a person nominated by the Council has failed to proceed with the occupation of an Affordable Unit

["Assured Shorthold Tenancy" : a tenancy of an Affordable Unit substantially in the terms of the annexed draft]

2. DEVELOPMENT

The Association is in the process of acquiring and developing the Affordable Units

3. NOMINATION PROCEDURE

The Council shall within 30 working days of the receipt of written notice setting out or referring to the property particulars and the proposed terms of the relevant Assured Shorthold Tenancy be entitled to nominate persons for the Affordable Units by service of a Nomination Notice **PROVIDED THAT** the Association may decline to accept the nomination of a person specified in the Nomination Notice such non-acceptance not to be unreasonable in the circumstances whereupon the Association shall notify the Council in writing giving reasons for its decision ("Non-Acceptance Notice")

4. NOMINATION PROCEDURE / CONTINUED

In the event that there are insufficient accepted nominees (whether because of

- 4.1 the Council's failure to nominate sufficient nominees or
- 4.2 the nominees indicating that they are unwilling to enter into or failing to enter into an Assured Shorthold Tenancy within 10 working days of the Association's solicitor issuing documentation to the nominee or the nominee's solicitor or
- 4.3 the Association otherwise being entitled to decline to accept the nomination under clause 3

The Association shall serve a Non-Acceptance Notice.

The Council shall within 10 working days of service of a Non-Acceptance Notice be entitled to serve a further Nomination Notice

5. NOMINATION PROCEDURE / CONTINUED

In the event of the Council not serving a Nomination Notice:

5.1 pursuant to clause 3; or

5.2 following the service of a Non-Acceptance Notice by the Association, pursuant to clause 4; the Association shall be entitled to proceed with its own applicants for the Affordable Units PROVIDED THAT the Association shall give preference to persons with a local connection within the Council's area by virtue of residence family connection or employment and who would otherwise be unable to rent a suitable property on the open market

6. The Association shall in every case inform the Council in writing as soon as may be of the name of the nominated person selected

7. AFFORDABLE UNITS

- 7.1 The Association shall develop the Affordable Units for rental or in such other manner as may be agreed between the Association and the Council from time to time.
- 7.2 The Association shall procure that the Affordable units are managed by a Housing Association which is a Registered Social Landlord for the purposes of the Housing Act 1996.

8. DURATION

The terms of this Agreement shall continue to apply until

- 8.1 determined by the Council by one month's notice in writing served on the Association; or
- 8.2 determined by the Association in respect of an Affordable Unit by one month's notice in writing such notice to be served if (and only if) the Council has failed to nominate proposed occupiers for the relevant Affordable Unit on at least two occasions or (where the Council has made such nomination) two or more of such Nominees have failed to proceed with their occupation of the relevant Affordable Unit
- 8.3 determined by the Association as to the Nomination Agreement in its entirety by one month's notice in writing such notice to be served if (and only if) the Nomination Agreement has been discharged in respect of at least three Affordable Units pursuant to notices served by the Association under Clause 8.2 during any consecutive period of 12 months

and upon the expiry of notice under Clause 8.1 8.2 or 8.3 (as the case may be) this Agreement shall absolutely cease and determine

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and year first above referred to

THE COMMON SEAL of

[] DISTRICT COUNCIL

was hereunto affixed in the
presence of:-

Authorised Officer

**EXECUTED AS A DEED BY MERLION
HOUSING ASSOCIATION TWO THOUSAND
LIMITED in the presence of:-**

Board Member

Board Member

DAVID WILSON HOMIES

DAVID WILSON NORTH MIDLANDS LTD

WILSON HOUSE

161 GLAISDALE DRIVE WEST, NOTTINGHAM

NG6 4GY

Tel: Nottingham(0115) 928 1271

DRIVING

NO. 1

P/O

DATE 17/09/01

DEVELOPMENT

EXETER STREET, BOURNE

DATE 17/09/01

CHECKED BY

TRACED BY

DRAWN BY

NR

REV G: Layout amended to accommodate highway requirements. 30.0.01
REV H: Road access to be used in accordance with the requirements of the
accommodate. See by Design comments. 4.9.01

