18 January 2008

Our Ref: PDK/SA/EM23

Your Ref: 01455-255831

Attn: Mr S Payne
Hinckley & Bosworth
Borough Council
MDX: 716429

By Email and DX

Dear Mr Payne

RE: LAND AT BRODICK ROAD HINCKLEY

Further to the above matter, I understand that both your Council and the County Council are insistent that the Section 106 Contributions are to be made at the commencement of development and will not accept these paid on first occupation. Whilst my Company does not agree with this in order to progress the matter, I have revised the draft Unilateral Undertaking by deleting reference to first occupation and substituting Commencement Date. I have also corrected Schedule 2 by deleting the double reference to Hinckley Town and amended the beginning of clause 5 so that this reads better. I have also added a new clause 8 to Schedule 1 required in the circumstances.

I therefore, enclose a further copy which I trust you can now confirm is agreed so that I can produce engrossment copies and arrange for these to be executed in order that these can be completed and sent to you with a copy for the County Council so that the planning permission can then be issued.

Yours sincerely

P.D. Kendall
Solicitor

Enc.

THIS DEED is made the day of 2008

BY: MORRIS HOMES (EAST MIDLANDS) LIMITED (Company Registration Number 0084652) whose registered office is at Morland House Altrincham Road, Wilmslow Cheshire SK9 5NW ("the Developer")

WHEREAS:

1. Hinckley and Bosworth Borough Council ("the Council") is the Local Planning Authority for the purposes of the Planning Act and for the area within which the Land is situate
2. Leicestershire County Council ("the County Council") is a Local Planning Authority and the Local Education Authority for the area within which the Land is situate
3. A written application number 07/01030/FUL has been made to the Council by the Developer ("the Application") for planning permission to develop the Land in the manner and for the uses set out and comprised in the Application
4. The Council is the freehold owner of the Land
5. The Developer has contracted to purchase the Land
6. In the event that planning permission is granted in accordance with the Application then the Developer agrees and undertakes with the Council and the County Council in the manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. In this Deed the following words and expressions shall have the meaning ascribed to them below:-
   1.1 "the Land" means the land situate at and known as Brodick Road, Hinckley and shown edged red on the attached plan

1.2 "Commencement Date" means the date upon which a material operation in relation to development (as defined by Section 56(2) of the Planning Act but not including operations in connection with site clearance demolition infrastructure and investigation for the purposes of assessing contamination or remedial action in respect of contamination or the erection of means of enclosure for the purposes of site security) is carried out upon the Land

1.3 "Development" means the residential development of the Land pursuant to the Planning Permission

1.4 "Open Market Dwellings" means dwellings to be constructed on the Land for sale on the open market

1.5 "Planning Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)

1.6 "the Education Contribution" means the sum of £65,282.00

1.7 "the Library Contribution" means the sum of £2,900.00

1.8 "the Civic Amenity Contribution" means the sum of £2,094.00

1.9 "the Off-Site Open Space Contribution" means the sum of £93,100.00

1.10 "the Health Contribution" means the sum of £23,892.00

1.11 "the Monitoring Costs Contribution" means the sum of £250.00 or 0.5% of the value of the total contribution (whichever is the greater) for the County Council's costs of monitoring compliance with the obligations contained in the Schedule

1.12 "the Planning Obligation" means the obligation as set out in the Schedule 1 hereto and is a planning obligation for the purposes of Section 106 of the Planning Act

2. This Deed is made pursuant to Section 106 of the Planning Act and the Planning Obligation contained in the Schedule hereto shall be enforceable against the Developer and all persons deriving title by through or under it in respect of its interest in the Land or in any part thereof as a planning obligation as if the same were the original covenanting party to this Deed

3. The Planning Obligation contained within this Deed will not take effect until the Commencement Date

4. No party shall have any liability under this Deed once it shall have parted with all its legal interest in the Land

5. The Affordable Housing shall be delivered in accordance with Schedule 2 and the following Definitions shall apply:-

a) "Affordable Housing Development" means the four units of Rented Accommodation and the six units of Shared Ownership Accommodation to be constructed on the Affordable Housing Land

b) "Affordable Housing Land" means that part of the Land upon which the Affordable Housing Development will be constructed

c) "Registered Social Landlord" means a registered social landlord within the meaning of the Housing Act 1996

d) "Rented Accommodation" means the four dwellings to be constructed as part of the Development and transferred to the Registered Social Landlord

e) "Shared Ownership Accommodation" means the six dwellings to be constructed as part of the Development and transferred to a Registered Social Landlord

6. The Education Contribution the Library Contribution the Civic Amenity Contribution the Health Contribution and the Off-Site Open Space Contribution shall be increased in accordance with the following provisions:-

a) Definitions:-

"Index" means

(i) in respect of the Off-Site Open Space Contribution the All Items Retail Prices Index published by the Office of National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore or if for any reason the Index shall be abolished there shall be substituted for the purposes of this Schedule such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

(ii) in the case of the Education Contribution the Library Facilities Contribution the Health Contribution and the Civic Amenity Contribution the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs

"Base Index Date" means the date of the grant of planning permission

"Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the Education Contribution the Library Contribution the Civic Amenity Contribution the Health Contribution and the Off-Site Open Space Contribution are paid

b) The Education Contribution the Library Facilities Contribution the Civic Amenity Contribution the Health Contribution and the Off-Site Open Space Contribution shall be increased by such sum if any in pounds

sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the Education Contribution the Library Facilities Contribution the Civic Amenity the Health Contribution and the Off-Site Open Space Contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

c) If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

d) If any substitution for the said All Items Retail Prices Index or the BCIS or any index previously substituted therefore shall occur the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the BCIS or any index previously substituted therefore on the other hand

SCHEDULE 1

1. The Developer undertakes to give the Council notice in writing of the Commencement Date
2. The Developer undertakes to pay to the County Council on the Commencement Date the Education Contribution for the use and benefit of John Cleveland College
3. The Developer undertakes to pay to the County Council on the Commencement Date the Library Contribution towards the cost of books and other materials and Library facilities
4. The Developer undertakes to pay to the County Council on the Commencement Date the Civic Amenity Contribution to extend and improve the existing Civic Amenity Site at Barwell
5. The Developer undertakes to pay to the Council on the Commencement Date the Health Contribution towards the improvement of the local health economy and to assist the Rutland Primary Care Trust
6. The Developer undertakes to pay to the Council on the Commencement Date the Off-Site Open Space Contribution towards the provision and/or improvement and maintenance of open space off site in lieu of the provision of open space within the Development
7. The Developer undertakes to pay to the County Council on the Commencement Date the Monitoring Costs Contribution

8. In the event that any of the Contributions or part thereof remain unspent at the date of the fifth anniversary of the date when the payment of each such contribution is paid then on written demand from the payer such unspent contribution shall be repaid to the payer within twenty eight days of such demand

SCHEDULE 2

Affordable Housing

1. The Developer covenants to develop the Affordable Housing Development as indicated on the Affordable Housing Land

2a. No more than 50% of the Open Market Dwellings to be constructed pursuant to the Planning Permission shall be occupied until the Developer shall have constructed 6 units of the Affordable Housing Development and shall have transferred the freehold of the Affordable Housing Land to a Registered Social Landlord which shall enable them to let all of the Rented Accommodation and to dispose of the Shared Ownership Accommodation by way of a shared ownership lease to persons in need of affordable housing within the Borough of Hinckley and Bosworth in accordance with the terms of this Agreement

2b. No more than 90% of the Open Market Dwellings to be constructed pursuant to the Planning Permission shall be occupied until the Owner shall have constructed the remaining four units of the Affordable Housing Development and shall have transferred the freehold of the Affordable Housing Land to a Registered Social Landlord which shall enable them to let all of the Rented Accommodation and to dispose of the Shared Ownership Accommodation by way of a shared ownership lease to persons in need of affordable housing within the Borough of Hinckley and Bosworth in accordance with the terms of this Agreement

3. The Developershall notify the Borough Council within 14 days of the date of such transfer and the Registered Social Landlord to whom the Affordable Housing Development was transferred

4. No part of the Rented Accommodation shall be used for any purpose other than for the provision of Affordable Housing for rent and no part of the Shared Ownership Accommodation shall be used for any other purpose than the provision of Affordable Housing for disposal of by way of a grant or assignment of a shared ownership lease in both cases to persons in need of affordable housing within the Borough of Hinckley and Bosworth and being such person(s) as shall be agreed between the relevant Registered Social Landlord and the Borough Council as being persons who satisfy one of the following:

(i) was/were born in the Town of Hinckley

(ii) is/are residing in the Town of Hinckley

(iii) used to live in the Town of Hinckley but has/have been forced to move away through lack of Affordable Housing;

(iv) is/are employed in the Town of Hinckley ; or

(v) has/have local connections with the Town of Hinckley

(vi) such other person(s) in the absence of (i) to (v) above as shall be agreed between the relevant Registered Social Landlord and the Borough Council as being persons who satisfy any one of the conditions set out in (i) to (v) above within the Borough of Hinckley and Bosworth

PROVIDED THAT if within 28 days of the Registered Social Landlord notifying the Housing Manager of the Borough Council in writing of a dwelling becoming vacant no such qualifying person or persons can be found to occupy the dwelling the relevant Registered Social Landlord may let the dwelling to any person or persons who satisfy their normal letting criteria

AND FURTHER PROVIDED THAT

(i) nothing herein shall prevent the Developer from using the Affordable Housing Development for any purposes connected with the Development whilst the Developer is carrying out residential development thereof; and

(ii) nothing shall prevent the Registered Social Landlord to whom the Affordable Housing Development is transferred from disposing of the Affordable Housing Development or any part thereof under Section 16 of the Housing Act 1996 and following such disposal of the freehold of any part of the Rented Accommodation or the Shared Ownership Accommodation such part shall be free of the covenants in this paragraph four

(iii) this clause shall not bind any mortgagee in possession of any of the individual Affordable Housing Development units nor people who have staircased to 100% ownership nor people exercising their right to acquire the Affordable Housing Units nor people who have acquired an Affordable Housing Unit through a sale through any form of home ownership scheme

Executed as a Deed by
MORRIS HOMES (EAST MIDLANDS) LIMITED

Director

Director/Secretary