PROPOSED DEVELOPMENT OF MAARKET & AFFORDABLE HOUSING UNITS AT GROBY ROAD, RATBY

(Planning Application Ref No 08/00269/FUL

TEMPLATE 4

FIRST

DRAFT S106 AGREEMENT

RE

AFFORDABLE HOUSING

DATE 2008

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

CAWREY LIMITED

~~- and -~~

PLANNING AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

Relating to the residential development of land
at

Groby Road, Ratby

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire LE10 1BZ

THIS AGREEMENT is made the day of 2008

BETWEEN

(1) HINCKLEY AND BOSWORTH BOROUGH COUNCIL of Council Offices Argents Mead Hinckley LE10 1BZ ("the Borough Council")

(2) CAWREY LIMITED whose registered office is situate of Kirby Grange Farm Taverner Drive Ratby Leicester LE6 0HQ~~at~~

~~("the Owner")~~

~~whose registered office is situate at~~

~~("the Mortgagee")~~

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated
2. The Owner is the owner in fee simple in possession free from encumbrances of the Land
3. The Mortgagee is mortgagee of the Land under a legal mortgage dated and made between the Owner and the Mortgagee.
4. The Owner has applied to the Council for planning permission to carry out the Development
5. To facilitate the Development the Council require the provision of affordable housing on the land.
6. The Council has resolved to grant planning permission for the Development subject to conditions and subject to the making of this Agreement without which planning permission for the development would not have been granted

NOW THIS DEED WITNESSES as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including for the avoidance of doubt the Recitals hereto) the following expressions shall have the following meanings unless the context requires otherwise:-

"Affordable Housing Development/ Dwellings" means the 10 units of Rented Accommodation, ~~and~~ the 9 units of Shared Ownership Accommodation and the 9 units of Shared Equity Accommodation to be constructed on the Affordable Housing Land

"Affordable Housing Land" [means that part of the Land upon which the Affordable Housing Development is to be constructed such part to be determined in accordance with Paragraph 1 of the Second Schedule] [means the land edged blue on the Plan upon which the Affordable Housing Development is to be constructed]

The "Affordable Price" means the open market value of an Affordable Dwelling determined in the first instance by agreement between the Owner and the Council and in default of such agreement within a period of 14 working days then being the average of two valuations provided by valuers instructed by the Owner and the Council respectively PROVIDED THAT the Owner and the Council shall each pay the reasonable and proper cost of such valuations

"Commencement of Development" shall mean the time when the development is initiated or begun by carrying out any of the operations specified in Section 56(4) (a) (b) (c) or (d) of the Town and Country Planning Act 1990 (other than works of demolition site clearance and fencing survey soil tests or archaeology tests) and "commence" or

	"commenced" shall mutatis mutandis be construed accordingly
"Development"	the residential development of the Land pursuant to the Planning Permission
"the Land"	the Land as described in the First Schedule hereto.
"Occupation"	means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include (i) daytime occupation by workmen involved in the erection of any part of the Development; or (ii) the use of any dwelling house(s) for the marketing of the Development; or (iii) the storage of plant and materials and "occupy" and "occupied" shall be constructed accordingly
"Plan"	the plan annexed hereto
"Planning Act"	the Town and Country Planning Act 1990 (as amended)
"Planning Application"	the Planning Application made by the Owner to the Borough Council on 26 March 2008 reference number 08/00299/FUL for ~~[outline]~~ [detailed] planning permission for the Development.
"Planning Permission"	the planning permission to be granted pursuant to the Planning Application for the Development subject to conditions.

"Practical Completion" means the stage when the buildings comprised in the Development have been completed and are reasonably suitable for Occupation

"Purchaser" means the purchaser of any of the Affordable Dwellings on either a Shared Ownership or a Shared Equity Lease basis

"Qualifying Person" means a person who is currently in need of affordable housing in the Borough of Hinckley and Bosworth who satisfies the Financial Qualification and who will occupy the Affordable Dwelling as his or her sole or principal home (whether or not with a spouse or partner).

"Financial Qualification" means the level of income and /or resources or such other circumstances as the Housing Association in conjunction with the Council shall determine from time to time at which a person qualifies on financial terms for the right to be a Purchaser

"Market Dwellings" means all the dwellings within the Development excluding the Affordable Dwellings

"Registered Social Landlord" means a Rregistered Ssocial Llandlord within the meaning of the Housing Act 1996 or such other body or Housing Provider whose main object is the provision of Affordable Homes as may be reasonably agreed by the Council.

"Social Rented Accommodation" means the 10 dwellings [to be determined in accordance with Paragraph 1 of the Second Schedule] ~~[shown hatched black on the Plan]~~ to be constructed as part of the Development and transferred to the Registered Social Landlord under the provisions of this Agreement

"Shared Ownership Accommodation" means the 9 dwellings [to be determined in accordance with Paragraph 1 of the Second Schedule] ~~[shown cross hatched black on the Plan]~~ to be constructed as part of the Development and transferred to a Registered Social Landlord under the provisions of this Agreement

"Shared Equity Accommodation" means the 9 dwellings [to be determined in accordance with Paragraph 1 of the Second Schedule] to be constructed as part of the Development and transferred to a Registered Social Landlord under the provisions of this Agreement

"Shared Ownership Lease" means a lease granted by the Housing Association to the Purchaser for a term of 125 years and which enables the purchaser to acquire 50% of the equity in the Affordable Dwelling

"Shared Equity Lease" means a lease granted by the Housing Association to the Purchaser for a term of 125 years and which enables the purchaser to acquire 70% of the equity in the Affordable Dwelling

1.2 In this Agreement

1.2.1 Words importing the masculine gender shall be deemed to include the feminine and the neuter and the singular the plural and vice versa and words denoting natural persons shall include corporations and vice versa unless the contrary is expressly provided or the context otherwise requires.

1.2.2 Obligations and liabilities of a party comprising more than one person are obligations and liabilities of such persons jointly and severally provided that no person shall be liable in respect of any breach (and for this purpose breach shall

include the failure to perform any positive obligation) other than in respect of land in his beneficial ownership AND further no person shall be liable for any breach of covenant first occurring after he has disposed of such interest in such land or the part thereof in respect of which such breach occurs.

1.2.3 Any reference to a numbered clause or sub-clause or to a Schedule is (except where indicated to the contrary) a reference to the corresponding clause or sub-clause or a Schedule to this Agreement.

1.2.4 Any reference to any statute or any section thereof includes any amendment modification consolidation or re-enactment thereof and any statutory instrument direction or regulation made thereunder for the time being in force.

1.2.5 The clause headings in this Agreement are for ease of reference only and shall not affect the construction thereof.

1.2.6 The expressions "the Borough Council" "the Owner" and "the Mortgagee" shall where the context so admits include their respective successors and assigns.

12.7 No failure or delay by the Borough Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right or power of the Borough Council.

2. STATUTORY BASIS

This Agreement is made pursuant to Section 106 of the Planning Act Section 111 of the Local Government Act 1972 and in pursuance of all other powers enabling the parties hereto respectively with the intention that the covenants given by the Owner in this Deed bind (so far as provided by this Agreement) its successors in title (being owners for the time being of the Owners interests or a part thereof in the Land).

3. PLANNING OBLIGATION

3.1 Each covenant by the Owner contained herein is a planning obligation for the purpose of Section 106 of the Act and enforceable by the Borough Council

4. THE OWNER'S COVENANT

4.1 The Owner hereby covenants with the Borough Council to observe and perform the obligations set out in the Second Schedule

5. GENERAL

5.1 This Agreement is a local land charge and shall be registered as such

5.2 Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

5.3 Any notice agreement consent or approval to be given under the terms of this Agreement shall be in writing and sent by ordinary post and:-

5.3.1 in the case of the Borough Council be addressed to the Planning Office, Council Offices, Argents Mead, Hinckley, Leicestershire, LE10 1BZ; and

5.3.2 in the case of the Owner shall be sent by ordinary post to its registered office or the Owner's address above or such other address as it/he shall provide in this regard.

5.4 The Owner shall notify the Borough Council within 14 days of such commencement of the Commencement of the Development.

5.5 The Mortgagee consents to the Owner entering into this Agreement and acknowledges that this Agreement binds the proposed development. The Mortgagee shall only be liable for any breach of this Agreement if it has itself caused the breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach although for the avoidance of doubt any of its successors in title shall be so liable.

5.6 If the Planning Permission expires is revoked or otherwise ceases to exist before the Commencement of Development this Agreement will cease to have effect and as from such time there shall be no further obligations on any party in relation to any matter that has occurred or may arise under this Agreement.

5.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement or their successors in title

or assigns shall have any rights under it nor shall it be enforceable by any person other than the parties to it or their successors in title.

5.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.

5.9 The Borough Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

5.10 The Owner shall pay the Borough Council's reasonable legal costs in respect of the preparation and completion of this Agreement.

IN WITNESS THE Borough Council the Owner and the Mortgagee have executed this Agreement as a Deed on the day and year first before written.

THE FIRST SCHEDULE

The Land

2.92 ~~square metres~~/hectares/~~acres~~ of land at Groby Road, Ratby and shown for identification edged red on the Plan

SECOND SCHEDULE

The Owners' Covenants

[1. No Development shall commence until the Owner shall have submitted to and obtained the written approval of the Borough Council (such approval not to be unreasonably withheld or delayed) to plan(s) indicating the location of the Affordable Housing Land and the Affordable Housing Development including the Rented Accommodation, ~~and~~ the Shared Ownership Accommodation and the Shared Equity Accommodation]

[1] [2] Subject to paragraph [3] [4] below no more than 75% of the Market dwellings authorised to be constructed pursuant to the Planning Permission shall be occupied until

(a) the Owner shall have constructed the Affordable Housing Development and

(b) the Owner shall have transferred the freehold of the Affordable Housing Land to a Registered Social Landlord along with sufficient rights and services to enable beneficial occupation at a price agreed with the Registered Social Landlord which shall enable them to let all of the Rented Accommodation and to dispose of the Shared Ownership and Shared Equity Accommodation by way of a shared ownership and shared equity lease to persons in need of affordable housing within the Borough of Hinckley and Bosworth in accordance with the terms of this Agreement

[2] [3] The Owner shall notify the Borough Council

(a) within 14 days of such occupation of the date of the occupation of the first dwelling constructed pursuant to the Planning Permission

(b) within 14 days of such transfer of the date of such transfer and the Registered Social Landlord to whom the Affordable Housing Development was transferred

[3] [4] If the Registered Social Landlord first nominated shall not confirm in writing to the Owner its willingness subject to contract to accept the Affordable Dwellings within eight weeks after the Commencement Date then the council upon receipt of notice in writing from the Owner to that effect shall within three weeks thereafter nominate an Alternative Registered Social Landlord and this provision may be repeated as often as is necessary (subject to [4] below) until such time as one of such nominated Registered Social Landlords shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings; and

If no Registered Social Landlord shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings at the Affordable Price within a period of twenty-two weeks after the Commencement Date and the Owner shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made all reasonable endeavours to secure acceptance of the Affordable Dwellings by a nominated Registered Social Landlord then the

Owner will be free to offer such dwelling for sale on the open market directly or through the agency of another person or body to Qualifying Persons

[4] If the Registered Social Landlord after confirming its willingness to purchase the Affordable Dwellings does not then contract to buy the Affordable Dwellings within eight weeks from the delivery of the complete package of contract documentation (comprising Official Copies of the registers and Title plan of the Site together with a draft contract and transfer) to the Registered Social Landlord's Solicitor then:-

Clauses [3] and [4] shall apply to the extent that any time period stated therein has not already elapsed; or

The Owner will be free to offer the Affordable Dwellings for sale on the open market to Q-ualifying Persons at the Affordable Price and will notify the Council accordingly.

~~[5] [6][3] [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 or Shared Equity 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 / shared equity 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 ~~[Parish of]~~ [Borough of Hinckley and Bosworth];

(ii) is/are residing in the ~~[Parish of]~~ [Borough of Hinckley and Bosworth];

(iii) used to live in the ~~[Parish of]~~ [Borough of Hinckley and Bosworth] but has/have been forced to move away through lack of Affordable Housing;

(iv) is/are employed in the ~~[Parish of]~~ [Borough of Hinckley and Bosworth]; or

(v) has/have local connections with the ~~[Parish of]~~ [Borough of Hinckley and Bosworth];

(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 social rented dwelling to any person or persons who satisfy their normal letting criteria or identify a Qualifying Person to purchase the Affordable Dwelling Lease to any person free from the restrictions set out in this Agreement but only with the written consent of the Council which shall not be unreasonably withheld or delayed SUBJECT TO the provisions of [7].

[7] If a person residing in the Borough of Hinckley and Bosworth is not identified within four weeks after the council has confirmed its satisfaction in accordance with [5] and [6] above then the Affordable Dwelling may be allocated or purchased by persons who will occupy the Affordable Dwelling as his/her only or principal home and who is residing within any geographical area.

AND FURTHER PROVIDED THAT

(i) nothing herein shall prevent the Owner from using the Affordable Housing Development for any purposes connected with the Development whilst the Owner 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 or the Shared Equity Accommodation such part shall be free of the covenants in this paragraph [3] [4]

[8] PROVISIONS RELATING TO MORTGAGEES OF THE AFFORDABLE DWELLINGS

Save as therein mentioned none of the obligations and restrictions referred to in this schedule will be enforceable in respect of any Affordable Dwelling against any mortgagee or chargee in possession of any of the Affordable Dwellings erected on the Site (a "chargee") or against any person or body deriving title from such Chargee.

A Chargee shall use all reasonable endeavours in exercising any power of sale of any Affordable Dwelling to procure that the Purchaser thereof shall purchase subject to and with the benefit of the obligations and restrictions contained in this Agreement but to the intent that in giving such undertaking a Chargee will not be precluded from effecting a sale free from such obligations and restrictions in the event that:

a. the sale price in respect of any such sale subject is insufficient to discharge the mortgage debt and all arrears interest and costs accrued in respect thereof; or

b. no purchaser shall have entered into a binding contract to purchase the Affordable Dwelling or the Affordable Dwellings (as the case may be) subject to such obligations and restrictions within three months after the Chargee's power of sale has become exercisable notwithstanding that the Chargee shall have allowed:

1. a period of one calander month within which the council shall have the exclusive right to nominate a Qualifying person; and
2. a period of two calendar months thereafter within which such Qualifying Person shall have been entitled to exchange contracts for the purchase of the Affordable Dwelling or Affordable Dwellings (as the case may be).

IN WITNESS WHEREOF the parties herto have caused the Agreement to be executed as a Deed

THE COMMON SEAL of HINCKLEY)
AND BOSWORTH BOROUGH COUNCIL)
was hereunto affixed in the presence of:-)

Authorised Officer

SIGNED AS A DEED by)
in the presence of)

EXECUTED AS A DEED by CAWREY LIMITED
Acting by the Managing Director~~THE COMMON SEAL of)~~
~~was hereunto affixed)~~
~~in the presence of:-)~~

Managing Director.....

Ss/legal/agreements/s106/affordablehousing