DATED 29 DECEMBER 2009

BROADLAND DISTRICT COUNCIL

-AND-

BROADLAND HOUSING ASSOCIATION LIMITED

AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to land at Lower Green, Freethorpe, Norfolk

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 29 day of DECEMBER 2009

BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council")

2. BROADLAND HOUSING ASSOCIATION LIMITED (Industrial and Provident Society Number 16274R) whose registered office is at NCFC Jarrold Stand Carrow Road Norwich NR1 1HU ("the Owner")

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market to be owned and/or managed by a Registered Social Landlord
"Affordable Housing Units"	seven (7) Residential Units to be constructed or provided on the Site as part of the Development
"Affordable Rental Units "	five (5) Affordable Housing Units to be constructed or provided on the Site as part of

	the Development and to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding the Homes and Communities Agency target rents (or if such targets cease to be set such other measure of affordable rents as the relevant District Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord
"Application"	the detailed planning application received on the 12th June 2009 and registered on 17th June 2009 for the erection of seven (7) Affordable Housing Units consisting of five (5) Affordable Rental Units and two (2) Shared Ownership Dwellings, with planning reference number 20090708
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings, clearance or temporary fencing of the Site) and "commence" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission
"Dwelling"	any residential dwelling (comprising a bungalow, flat, maisonette or house) approved pursuant to the Planning Permission

"Director"	the Council's Strategic Director and Chief Planner or other officers of the Council acting under his hand
"Inflation Provision"	the increase (if any) in the Department for Business Enterprise and Regulator Reform (BERR) Output Price Index for Public Works between 1st July 2008 and the date upon which a payment of the Open Space Commuted Sum is made pursuant to this Agreement
"Local Lettings Policy"	the order in which the Affordable Housing Units are to be allocated and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time
"Monitoring Fee"	the total sum of six hundred pounds (£600) to be paid by way of a monitoring fee for the main contributions specified in this Agreement which fee is required for checking the implementation and compliance with the terms of this Agreement.
"Open Space Commuted Sum"	the sum of twenty-five thousand seven hundred and forty pounds (£25,740)
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total

	household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002) and ranked in accordance with the Local Lettings Policy or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register that the Registered Social Landlord owning or managing the Affordable Housing Units on the Site is entitled to house within its rules.
"Registered Social Landlord"	a registered social landlord in the register kept by the Homes and Communities Agency under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council (acting reasonably)
"Shared Ownership Dwellings"	two Affordable Housing Units each to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements

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& MONITORING OFFICER

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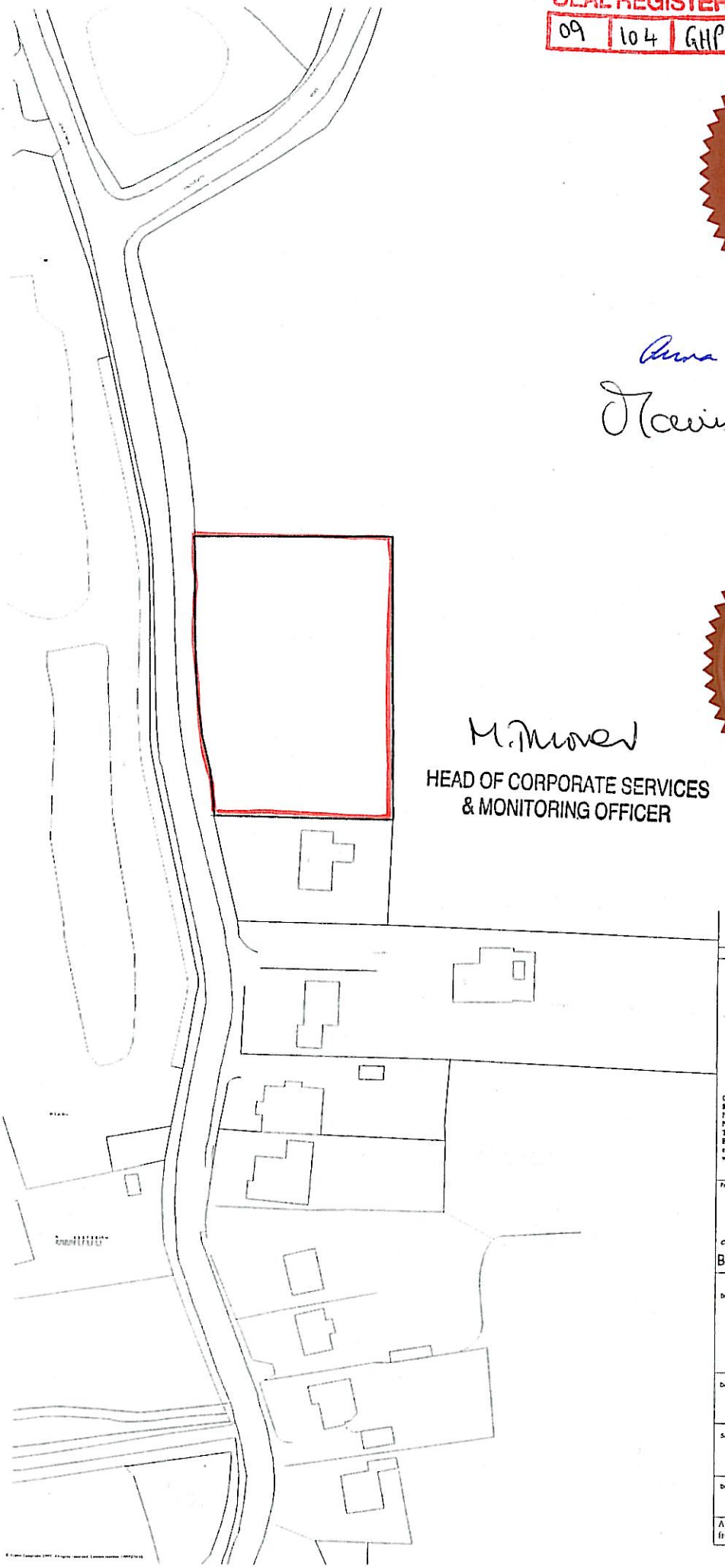

C	21/09/09	Red Line Amended
B	30/04/09	No. 62 Lower Green shown accurately
A	11/06/07	Red Line Amended
	date	revisions

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C & M
ARCHITECTS LTD

Project Details:-

Housing Scheme at Lower Green, Freethorpe

Client:-

Broadland HA

Drawing:-

Site Location Plan

Date:-

June 2009

Scales:-

1:1250 @ A4

Drawing No:-	Issue
5980/01C	Planning

All dimensions must be site checked and not scaled from this drawing

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	enabling the tenant to acquire up to and including 80% (eighty per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates
"Site"	the land at Lower Green, Freethorpe, Norfolk which is shown for the purposes of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

(i) references to any party shall include the successors in title and assigns of that party

(ii) references to clauses and schedules are references to clauses in and schedules to this Agreement except where otherwise specified

(iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument

(iv) headings in this Agreement shall not form part of or affect its construction

W H E R E A S:

A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated

B. The Owner is the freehold owner of the Site pursuant to Title number NK392513

C. The Owner has submitted the Application

D. The Council has resolved to approve the Application subject to the completion of this Agreement

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers

2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Owner and its successors in title and assigns

2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place

2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement but shall not bind any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purpose of the supply of electricity, gas, water, drainage or telecommunications or for highways purposes

2.5 This Agreement shall cease to have effect if:

2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.5.2 the Planning Permission shall expire prior to the Commencement Date

2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

4. NOTICES

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director and Chief Planner Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU
The Owner	The Chief Executive Broadland Housing Association Limited NCFC Jarrold Stand Carrow Road Norwich NR1 1HU

4.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

5. THIRD PARTIES

5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

6.1 The Owner shall on completion of this Agreement pay to the Council its proper and reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. Payment of Interest

7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank PLC's base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

10. COMPENSATION.

10.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. TITLE WARRANTY

11.1 The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter into this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Council prior to the date hereof

12. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

12.1 the Monitoring Fee shall be paid to the Council prior to the Commencement Date

12.2 to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement; and

12.3 prior to the occupation of the first Dwelling on the Site to pay to the Council the Open Space Commuted Sum as increased by the Inflation Provision.

13. THE COUNCIL'S OBLIGATIONS

13.1 The Council agrees with the Owner that the Open Space Commuted Sum shall be applied towards the provision of new open space in the Parish of Freethrope or towards the improvement and maintenance of existing open space in the Parish of Freethorpe

SCHEDULE 1

1. AFFORDABLE HOUSING

1.1 To construct or procure the construction of the Affordable Housing Units in accordance with current NHBC standards and building regulations in force at the time of building and to the Homes and Communities Agency's Scheme Development Standards and to meet the Code for Sustainable Homes Level 3 to the reasonable satisfaction of the Council and to complete the construction of the Affordable Housing Units by 31st March 2010 unless otherwise agreed in writing by the Council

1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units and/or Shared Ownership Dwellings

1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers unless the Council first agrees otherwise in writing

1.4 The Owner shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to a Registered Social Landlord unless the Council (acting reasonably) first agrees otherwise in writing

1.5 Paragraphs 1.2 1.3 and 1.4 above

(i) shall not be binding upon any mortgagee in possession of any of the Affordable Housing Units or part thereof or any mortgagee in possession of any Shared Ownership Dwelling under a charge of a Shared Ownership Lease or manager (including an administrative receiver) for such mortgagee nor any receiver; and

(ii) shall not be binding upon any person (including that person's successor in title) deriving title under such mortgagee manager receiver or administrative receiver; and

(iii) shall cease to apply to any of the Affordable Housing Units where the Owner shall be required to dispose of such Units pursuant to a right to buy under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

APPENDIX 1

Local Lettings Policy for Lower Green, Freethorpe

1. Nomination Rights Policy

1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings for the first 80 years.

1.2 The Council and the Owner are both committed to eradicating double scrutiny of nominated households for general needs accommodation. They are also agreed on the move away from a pool nomination system to a direct nomination system where a maximum of 2 households will be nominated in priority order for any letting other than those designated as hard to let where a maximum of 3 households will be nominated

2. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:

2.1 Residents of Freethorpe who have lived in the parish of Freethorpe for a total of at least 3 of the last 10 years.

2.2 Former residents of Freethorpe who have had their main home in the parish of Freethorpe for 3 of the last 10 years.

2.3 Households who need to move to the parish of Freethorpe to give/receive support from family/relatives.

2.4 Residents of the adjacent parishes of Halvergate, Beighton, Cantley, and Reedham who have lived in these parishes for the last three years.

2.5 People working in the parish of Freethorpe who have done so for a year or more.

2.6 Residents of Freethorpe who have lived in the parish of Freethorpe for less than three years.

2.7 Residents of the adjacent parishes of Halvergate, Beighton, Cantley and Reedham who have lived in these parishes for less than 3 years.

2.8 Residents of the adjacent parishes of Strumpshaw, Lingwood and Burlingham, and Acle who have lived in these parishes for the last three years.

2.9 Residents of the parishes of Strumpshaw, Lingwood and Burlingham, and Acle who have lived in these parishes for less than 3 years.

2.10 Residents of Broadland District

2.11 Any other person

3. Administrative Procedure for Nominations

3.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the Home Options Choice Based Lettings as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of)
BROADLAND DISTRICT COUNCIL)
was hereunto affixed)
in the presence of)

Head of Corporate Services
and Monitoring Officer

SEAL REGISTER
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Executed as a Deed by affixing the)
Common Seal of)
BROADLAND HOUSING)
ASSOCIATION LIMITED)
in the presence of)

Board Member

Secretary