

DATED 21<sup>st</sup> December 2005

BROADLAND DISTRICT COUNCIL

- AND -

TLT LEISURE LIMITED

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

Relating to the development of land at  
former Aylsham Livestock Market, Norwich Road,  
Aylsham, Norfolk

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THIS AGREEMENT is made the 21st day of December 2005

BETWEEN:

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

TLT LEISURE LIMITED (Co.Regn. No. 2795296) of 29 cattle Market Street Norwich Norfolk NR1 3DY ("the Owner") of the second part

# 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)  |
| "Application"       | the application registered on the 27 <sup>th</sup> July 2005 for planning permission for demolition of existing buildings and erection of 16 dwellings and 3 shop units in accordance with the plans deposited with the Council bearing reference no. 20051110 |
| "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 and "commence" shall be interpreted in accordance with this definition           |
| "Development"       | the development permitted by the Planning Permission   |



|                                    |   |
|------------------------------------|---|
| "Director"                         | the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand  |
| "Inflation Provision"              | the increase (if any) in the RICS All In Tender Price Index between August 2003 and the date upon which a payment of money is made pursuant to this Agreement                                     |
| "Off-Site Open Space Contribution" | the sum of forty five thousand eight hundred and fifteen pounds (£45,815)   |
| "Plan"                             | the plan annexed to this Agreement  |
| "Planning Permission"              | the planning permission to be granted pursuant to the Application   |
| "Site"                             | the land at former Aylsham Livestock Market, Norwich Road, Aylsham, Norfolk, shown for the purposes of identification only edged red on the Plan  |
| "Substantial Completion"           | complete save in minor respects so that the Development (or if appropriate the part of the Development concerned) can be used for the purpose and operate in the manner for which it was designed |

In this Agreement unless the context otherwise requires:

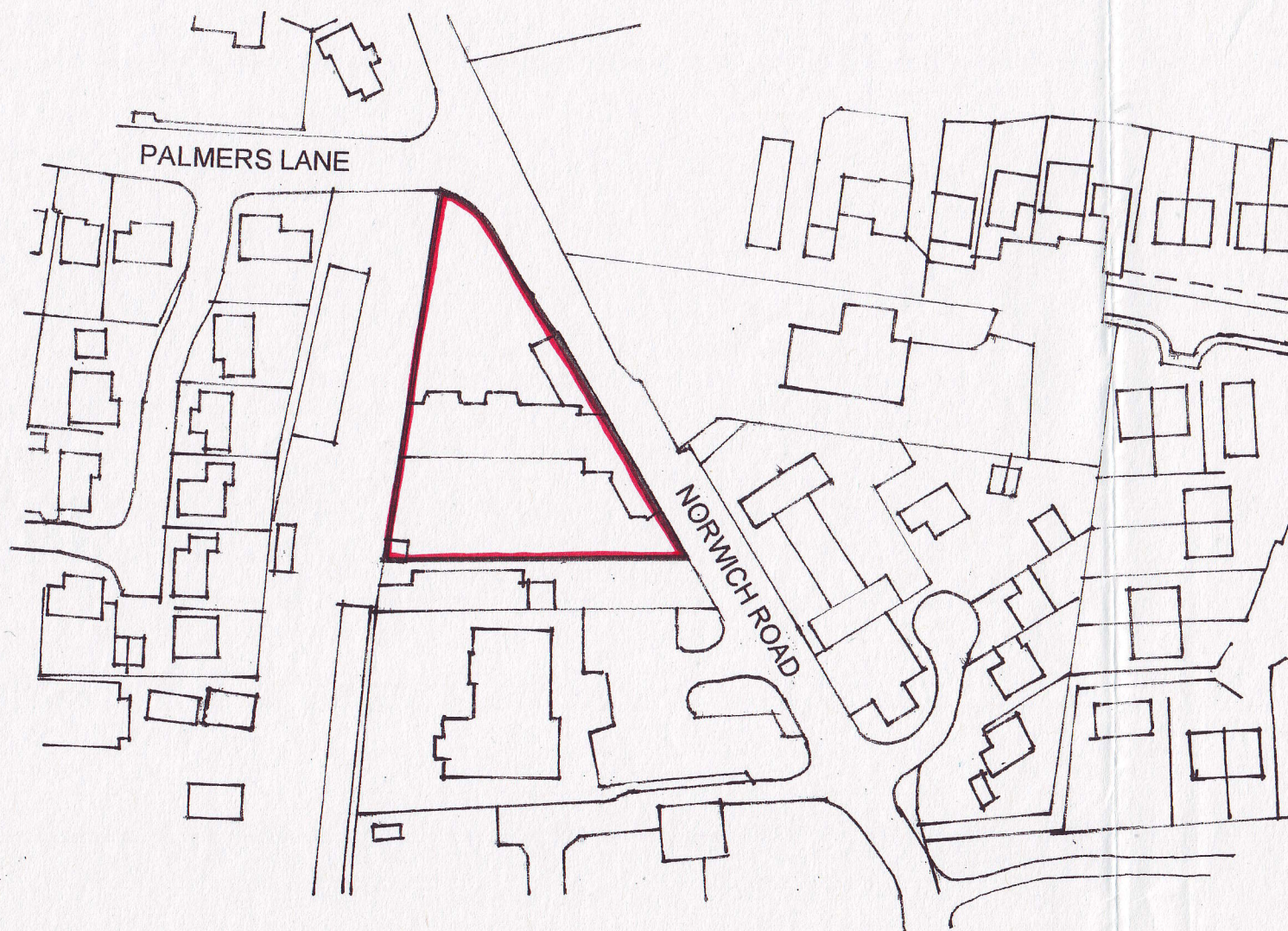
- (i) references to any party shall include the successors in title and assigns of that party





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- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (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

#### WHEREAS:

- 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 with title absolute registered at Kingston upon Hull District Land Registry with title number NK130637
- 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 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 Land or the part of the Land 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 Land 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

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 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 by<sup>e</sup>laws 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 of other written communication in the case of each party to this Agreement shall be as follows:-

The Council

The Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich

The Owner

29 Cattle Market Street Norwich NR1 3DY



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 the Council's 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 bank 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. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site or the Property under the terms of this Agreement are hereby waived

11. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council to pay to the Council fifty per cent (50%) of the Off-Site Open Space Contribution as increased by the Inflation Provision within fourteen days of the Commencement Date and the remaining fifty per cent (50%) of the Off-Site Open Space Contribution as increased by the Inflation Provision within six months of the Commencement Date or prior to Substantial Completion of the Development whichever is the sooner

12. The Council's Obligations

12.1 The Council agrees with the Owner that the Off-Site Open Space Contribution shall be applied towards the provision of new open space in the Parish of Aylsham or towards the improvement and maintenance of existing open space in the Parish of Aylsham

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 )



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*CHB*

Chief Executive  
Head of Corporate Services  
and Monitoring Officer

THE COMMON SEAL of )  
TLT LEISURE LIMITED )  
was hereunto affixed in the presence of )

*[Signature]*

*Sara Thomas*

