

DATED 11 DECEMBER 2012

BROADLAND DISTRICT COUNCIL

-AND-

EBONY HOLDINGS LIMITED

---

**AGREEMENT UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990  
Relating to the Farm Buildings, Ringland Estate,  
Honingham Lane, Ringland**

---

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



**THIS AGREEMENT is made the 11<sup>th</sup> day of December 2012**

**BETWEEN:**

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Norwich NR7 0DU ("the Council")
- (2) EBONY HOLDINGS LIMITED (company number 4276603) whose registered office is at Ringland Estate, Honningham Lane Ringland, Norwich NR8 6RJ ("the Owner")

**WHEREAS:**

- A. The Council is a local planning authority for the purposes of the Act for the area within which the Commercial Site is situated
- B. The Owner is the freehold owner of the Commercial Site as registered as at the Land Registry with title number NK 167594
- C. The Council has resolved to approve the Planning Application for the Paintball Site subject to the completion of this Agreement

**1. INTERPRETATION AND DEFINITIONS**

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

<b>"Act"</b>	the Town and Country Planning Act 1990 (as amended)
<b>"Council's Monitoring Fee"</b>	the sum of £332
<b>"Commercial Permission"</b>	the planning permission granted in respect of the Farm Buildings, Ringland Estate, Honningham Lane, Ringland for the demolition of pig buildings and erection of B1 business units and change of use of agricultural buildings to B2/B8 units and given the reference 20081375.

<b>"Commercial Site"</b>	the Farm Buildings, Ringland Estate, Honingham Lane, Ringland which is shown for the purposes of identification only edged red on Plan A
<b>"Implementation"</b>	the period of 3 years beginning with the date of Implementation of the Planning Permission or such shorter period as may either be agreed between the parties PROVIDED THAT such period shall come to an end immediately on the cessation of use of the Paintball Site pursuant to the Planning Permission
<b>"Paintball Site"</b>	the land off Ringland Lane, Morton On The Hill which is shown for the purposes of identification only edged red on Plan B
<b>"Planning Application"</b>	the application for planning permission to change the use of plantation woodland for use as organised paintballing site & erection of ancillary structures at the Paintball Site and given reference number 20121246 .
<b>"Planning Permission"</b>	the planning permission to be granted pursuant to the Planning Application
<b>"Plan A"</b>	the plan annexed to this Agreement and marked Plan A
<b>"Plan B"</b>	The plan annexed to this Agreement and marked Plan B
<b>"Temporary Period"</b>	the period of 3 years beginning with the date of Implementation of the Planning Permission or such shorter period as may either be agreed between the parties or when the use of the site for paintballing ceases

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) the headings in this Agreement are for ease of reference only and cannot be taken into account in its interpretation
- (v) one gender includes all others

## **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, Section 1 of the Localism Act 2011 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 Commercial Site or the part of the Commercial 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 Commercial 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

2.5 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn

2.6 This Agreement shall be registered by the Council 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 was 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 Chief Executive  
Thorpe Lodge  
Yarmouth Road  
Thorpe St Andrew  
Norwich  
NR7 0DU

The Owner

Ebony Holdings Limited  
Ebony Hall  
Ringland Estate, Honningham Lane  
Ringland,  
Norwich  
NR8 6RJ

4.3 Any notice or other written communication to be given by the Council or the 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**

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 legal and administrative costs reasonably incurred in the preparation negotiation and completion of this Agreement (not to exceed £500).

## **7. JURISDICTION**

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

## **8. DISPUTE RESOLUTION**

- 8.1 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 8.2 If the matter is not resolved through negotiations the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Effective Dispute Resolution
- 8.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 8.4 Nothing in Clause 8.1, 8.2 and 8.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings



## **9. TITLE WARRANTY**

The Owner hereby warrants that it is the freehold owner of the Commercial Site which is registered at the Land Registry under title number NK 167594 and has full power to enter into this Agreement and that the Commercial Site is free from all mortgages charges or other encumbrances

## **10. PLANNING OBLIGATIONS**

The Owner covenants with the Council that during the Temporary Period:

- 10.1. With the exception of four B8 storage/distribution units as shown on Plan A, (and the existing agricultural use), no further work or development shall take place on the Commercial Site including the B1 units.

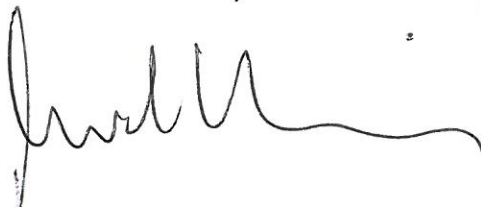
EXECUTED by the parties hereto as a deed on the date written above

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

)  
)  
)  
)  
)


Authorised Officer

CHIEF EXECUTIVE



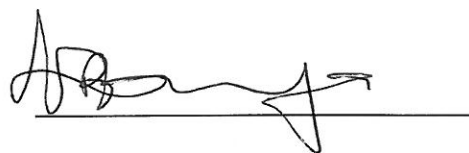
EXECUTED as a deed by  
EBONY HOLDING LIMITED  
acting by a director in the presence of

)  
)  
)

  
Director  
Name Roder Black

Witness's Signature

)



Name

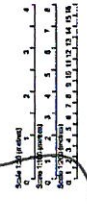
)

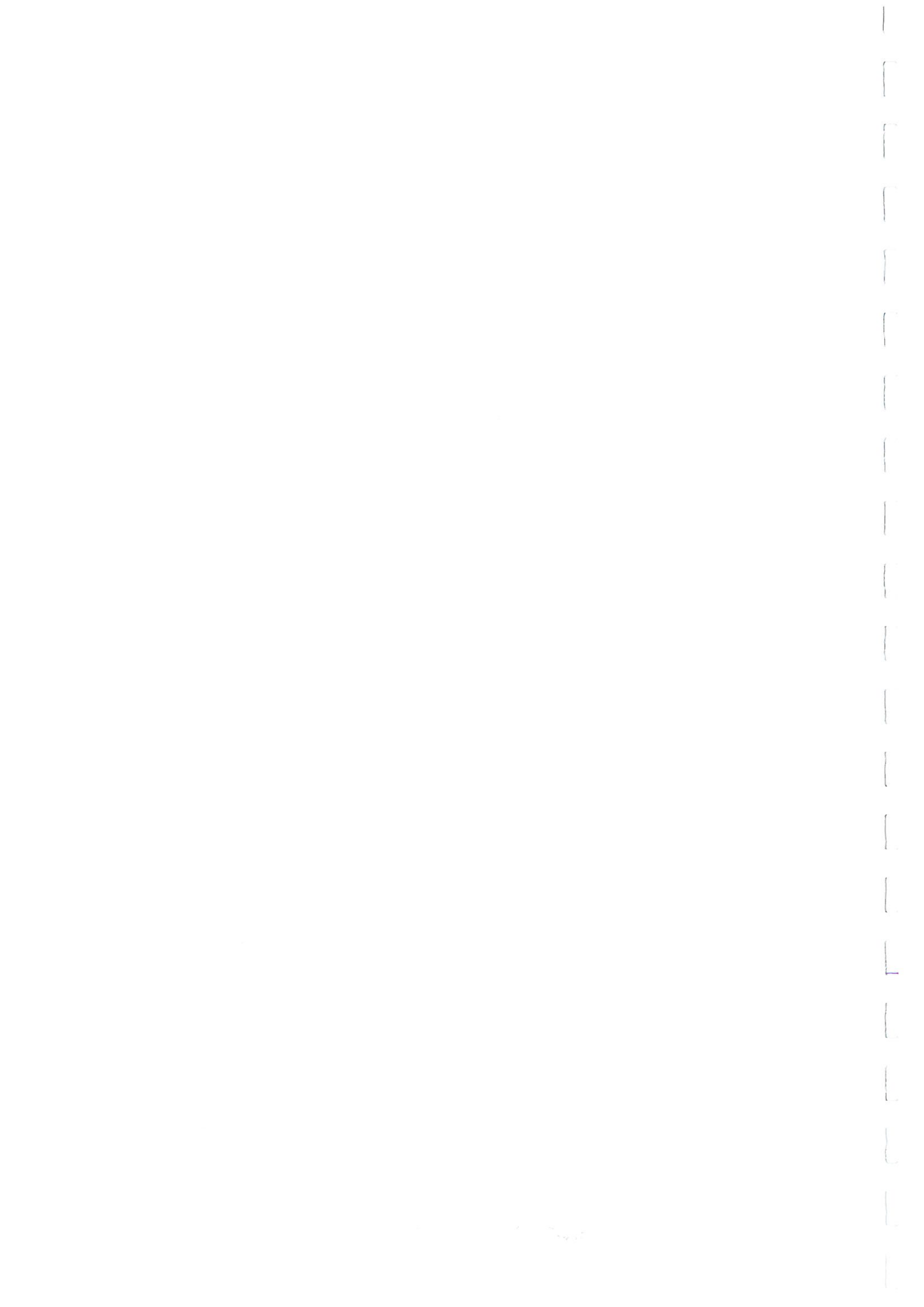
Blessing Enejo

Address

)

Nplaw  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH







[illegible]



