

DATED TWENTY THIRD OF OCTOBER

2003

BROADLAND DISTRICT COUNCIL

- AND -

EBONY HOLDINGS LIMITED

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AGREEMENT

Made pursuant to Section 106 of the Town  
and Country Planning Act (as amended) 1990  
and any other enabling power relating to  
Jennis Wood Field Road Ringland

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steeles  
2 The Norwich Business Park  
Whiting Road  
Norwich NR4 6DJ  
4349-1226-2



**THIS AGREEMENT** is made the 23<sup>rd</sup> day of October 2003

**BETWEEN**

**BROADLAND DISTRICT COUNCIL** of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter called "The Council") of the first part and EBONY HOLDINGS LIMITED (Co. Regn.No. 4276603) of Ebony House Sporle Kings Lynn Norfolk PE32 2DS (hereinafter called "The Owner") of the second part

**RECITALS**

(A) (1) In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"Application"	means the application for planning permission submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference no 20010815
"Director"	means the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"Effective Date"	The date on which a material operation as defined in Section 56(4) of the Town and Country Planning Act 1990 is undertaken not including any Preliminary Works pursuant to the Permission



“Permission”	means the planning permission granted pursuant to the Application together with any renewal or modification thereof
“Preliminary Works”	means any archaeological investigations or works, works of excavation, demolition, diversion of services, site or soil investigations or site clearance works or the erection of hoardings and fences
“the Dwelling”	means the dwelling erected pursuant to the Permission on the Estate
“the Estate”	the land shown edged red for the purpose of identification only on the Plan
“the Plan”	means the plan annexed hereto
“1990 Act”	means the Town and Country Planning Act 1990 (as amended)

(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) “party” or “parties” means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party

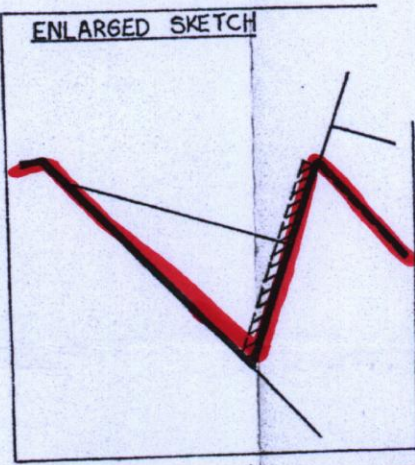
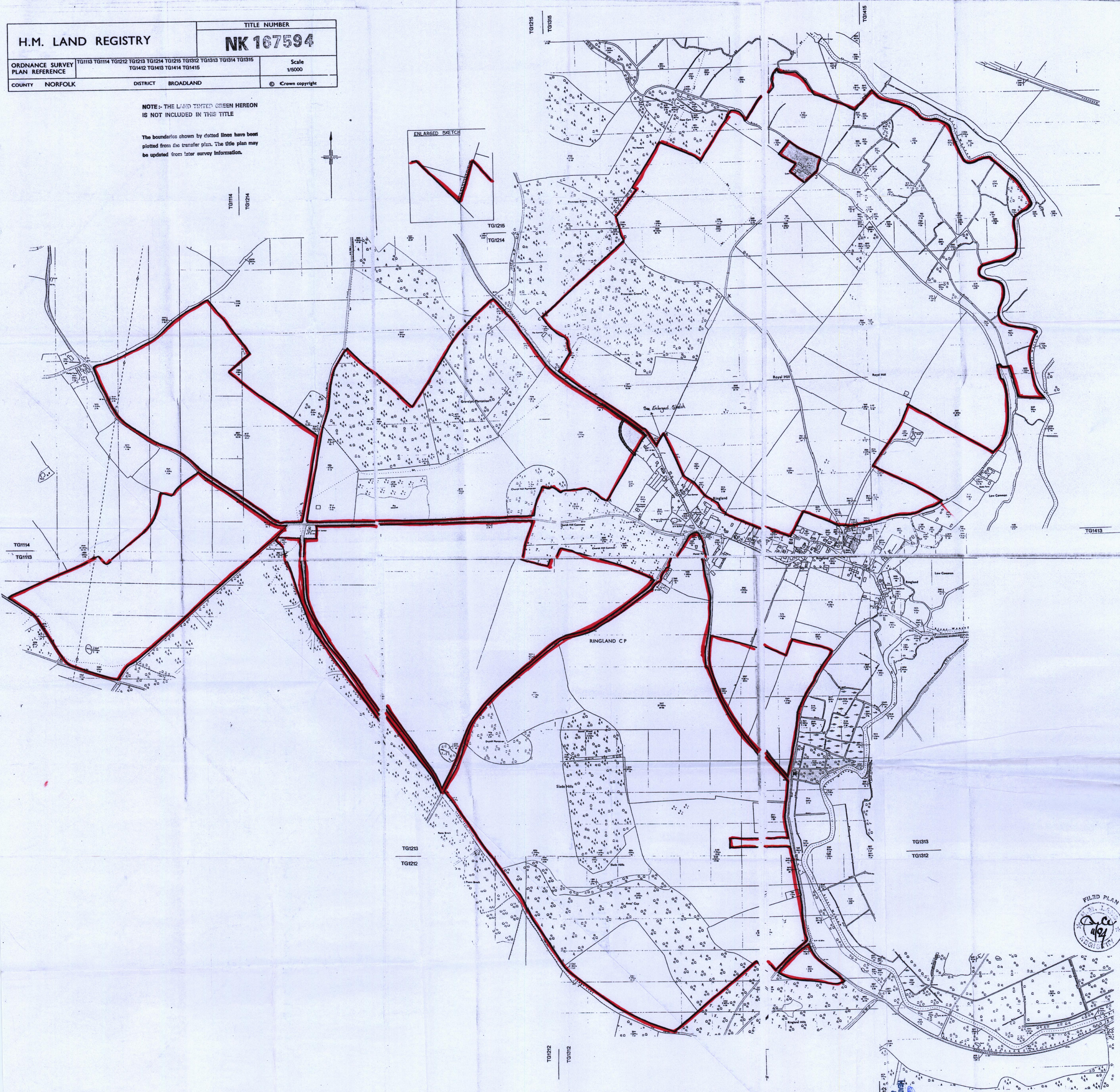


This title plan shows the general position of the boundaries. It does not show the exact line of the boundaries. Measurements taken on the ground. For more information see Land Registry Explanatory Leaflet 24. This office copy shows the state of the title plan on 7 JULY 2003. It may be subject to distortions in scale. Under s.113 of the Land Registration Act 1925, this copy is admissible in evidence to the same extent as the original. Issued on 2 JULY 2003. This title is dealt with by the Kingston-Upon-Hull District Land Registry.

H.M. LAND REGISTRY		TITLE NUMBER
		NK 167594
ORDNANCE SURVEY PLAN REFERENCE	TG1113 TG1114 TG1212 TG1213 TG1214 TG1215 TG1312 TG1313 TG1314 TG1315 TG1412 TG1413 TG1414 TG1415	Scale 1/5000
COUNTY NORFOLK	DISTRICT BROADLAND	© Crown copyright

NOTE:- THE LAND TINTED GREEN HEREON IS NOT INCLUDED IN THIS TITLE

The boundaries shown by dotted lines have been plotted from the transfer plan. The title plan may be updated from later survey information.



HEAD OF CORPORATE SERVICES  
& MONITORING OFFICER



NK 167594



- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in this Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed
- (viii) 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
- (B) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Estate is situated
- (C) The Owner is registered as Proprietor with absolute title of the Estate under Title Number **NK167594** subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances
- (D) Having regard to the development plan and other material considerations the Council considers it expedient in the interests of



the proper planning of their area that provision should be made for regulating or facilitating the development of the Estate in the manner hereinafter appearing and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 2 of the Local Government Act 2000 and any other enabling power
- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and shall only take effect on the Effective Date
- 1.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 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
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or



unenforceability be deemed severable and shall not affect any other provision of this Agreement

- 1.7 This Agreement shall cease to have effect if the Permission expires prior to the Effective Date is quashed revoked or otherwise withdrawn whereupon the Council will forthwith arrange for all relevant entries relating to this Agreement in the Local Land Charges Register to be removed
- 1.8 The Owner (or its successor in title) shall not be liable for any breach of the covenants restrictions obligations in this Agreement occurring whilst it has no interest in the Estate or that part of the Estate in respect of which such breach occurs prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants or restrictions on the Estate in any transfer shall not constitute an interest for the purposes of this Clause
- 1.9 Nothing in this Agreement shall prevent or otherwise restrict the Owner from developing any part of the Estate in accordance with any planning permission granted after the date herewith

## 2. NOTICES

- 2.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by first class post to the party upon whom it is to be served or to whom it is to be given provided that the notice or other written communication is addressed and delivered or sent by facsimile to the address of the party concerned as given at the beginning of this Agreement



2.2 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

3. **GENERAL**

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

3.2 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council

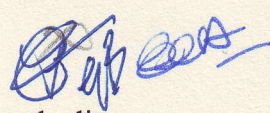
4. **ARBITRATION**

4.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of The Law Society for the time being

4.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-

- (a) the seat of the arbitration shall be at the Council's offices in Norwich
- (b) where appropriate the Arbitrator may consolidate arbitral proceedings;
- (c) with the parties agreement the Arbitrator may appoint experts or legal advisers



4.1 

4.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay

4.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert

4.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator

## 5. RIGHTS OF 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. COVENANTS

### The Owner

6.1 The Owner covenants declares and undertakes with the Council so as to bind the Estate and each and every part thereof to carry out and comply with the obligations set out in Schedule One to this Agreement

## 7. OCCUPATION OF THE DWELLING

7.1 The Dwelling shall not be used for any purposes other than those set out in Schedule One hereof

7.2 The occupation of the Dwelling shall be limited to a director and/or employee of the Owner being a person solely or mainly occupied in the day to day



management of the Estate together with (if applicable) the partner/spouse of such person or a widow or widower of any such person and to any resident dependants

IN WITNESS whereof this Agreement has been executed and delivered as a Deed the date first written above

#### **SCHEDULE ONE**

- 1 The Dwelling is not to be used for any purpose other than ancillary to the Estate
- 2 The Dwelling shall not be sold other than in conjunction with a sale of the Estate SAVE THAT part or parts of the Estate may be sold separate from the Dwelling PROVIDED THAT the prior written consent of the Council has been obtained
- 3 To provide suitable evidence when reasonably required by the Director of continuing compliance by the Owner with the covenants and obligations in this Agreement



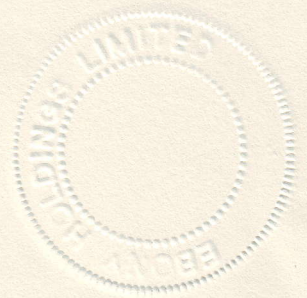
THE COMMON SEAL of )  
BROADLAND DISTRICT COUNCIL )  
was hereunto affixed in the presence of )



*E. C. Burgess*

Head of Corporate Services and Monitoring Officer

THE COMMON SEAL of )  
EBONY HOLDINGS LIMITED )  
was hereunto affixed in the presence of )



DIRECTOR

*George Blair*  
*GP Blair*

DIRECTOR/SECRETARY