

00227

DATED THE 27 DAY OF March 2008

SURREY COUNTY COUNCIL

-and-

LINDEN LIMITED

-and-

NHBC

-and-

HSBC BANK PLC

AGREEMENT

pursuant to Section 111 of the Local Government Act 1972
and Section 278 of the Highways Act 1980
Section 33 Local Government (Miscellaneous Provisions) Act 1982
and Section 106 of the Town and Country Planning Act 1990
relating to the relocation of a puffin crossing at
Copthorne Road, Felbridge
Land at 46 and 56 and land at rear of 48, 50, 52, 54 Copthorne Road
in the County of Surrey



**ANN CHARLTON
HEAD OF LEGAL
SERVICES
COUNTY HALL
KINGSTON UPON THAMES
KT1 2DN**

REF: LCM/SGJC/37448

THIS AGREEMENT is made the 27 day of March
 Two thousand and eight BETWEEN SURREY COUNTY COUNCIL of
 County Hall Kingston upon Thames KT1 2DN ("the Employer") of the first
 part and LINDEN LIMITED (Company Registration Number 1108676)
 whose registered office is at Linden House, Guards' Avenue Caterham
 Surrey CR3 5XL ("the Contractor") of the second part and NHBC
 (Company Registration Number 00320784) whose registered office is
 Buildmark House Chiltern Avenue Amersham Buckinghamshire HP6
 5AP ("the Surety") of the third part and HSBC BANK PLC whose registered
 office is at 26 Broad Street Reading Berkshire RG1 2BU ("the Chargee") of
 the fourth part

WHEREAS

- (1) The Employer is the highway authority and local planning authority for the purposes of the 1980 Act and a local planning authority for the purposes of Section 106(3) of the 1990 Act for the area within which the Proposed Development is located
- (2) The Contractor is registered at HM Land Registry under Title Number SY208001 with freehold absolute title in respect of the land edged red on the Plan ("the Application Site")
- (3) By a charge dated [] and made between the Contractor of the one part and the Chargee of the other part the Application Site formed all or part of land charged by way of legal mortgage to the Chargee
- (4) An application for the Proposed Development at the Application Site described in Schedule A hereto has been submitted by the

Contractor to the local planning authority in accordance with the 1990 Act

- (5) The Employer is desirous of entering into this Agreement with the Contractor pursuant to the provisions of Section 111 of the 1972 Act Section 278 of the 1980 Act Section 33 of the 1982 Act and Section 106 of the 1990 Act to secure the Works hereinafter mentioned

NOW THIS AGREEMENT WITNESSETH as follows:

- 1.1 THIS Agreement creates planning obligations for the purposes of Section 106 of the 1990 Act which shall be enforceable by the Employer against the Contractor and the Council and their respective successors in title to and persons claiming through or under them an interest in the Application Site
- 1.2 The Chargee consents to the Contractor entering into this Agreement and creating the aforementioned planning obligations and acknowledges that this Agreement binds the Application Site
- 2 IF planning permission for the Proposed Development is not granted or if granted is not implemented this Agreement shall be of no effect (save for Clause 6.3 hereof) PROVIDED THAT the Works have not been commenced
- 3 THE provisions of Schedule C hereto shall apply to the construction and interpretation of this Agreement
- 4 THE Contractor and the Council hereby agree that they will apply within 2 weeks of completion hereof to the Chief Land Registrar to register this Agreement against the Contractor's in respect of the Application Site

and provide evidence to the Employer of this within 1 week of receipt of the same from the Chief Land Registrar

5 IN consideration of the payment by the Employer to the Contractor of the sum of FIVE PENCE (£0.05) (the receipt of which is hereby acknowledged) the Contractor hereby agrees to carry out or cause to be carried out at its own expense by a person or company to be approved by the Engineer (such approval not to be unreasonably withheld) the Work

6 THE Contractor shall pay to the Employer:

6.1 On or before the execution of this Agreement the sum of SIX THOUSAND THREE HUNDRED AND SIXTY POUNDS (£6,360.00) for the expenses (not including any sum paid or to be paid to the Employer Pursuant to the following sub-clauses of Clause 6 and Clause 21) to be incurred by the Employer in providing the services of the Engineer in relation to this Agreement and other expenses in connection with the inspection of any of the Work the total cost of which at the date hereof is estimated to be FIVE THOUSAND THREE HUNDRED AND SIXTY POUNDS (£5,360.00)

6.2 On or before the execution of this Agreement the reasonable expenses of the Employer in connection with the negotiation, preparation and completion of this Agreement

6.3 Within 14 days of demand the cost of sound insulation or other measures where the need is proved pursuant to the 1975 Regulations

6.4 Within 14 days of demand the full cost to the Employer of the cost of correspondence meeting and additional reports over and above

Stage 2 and Stage 3 Safety Audit Reports to be issued by the Engineer

- 7 THE Contractor shall submit working drawings and plans and a specification of the Works showing the detailed layout design and construction of all road and drainage works (together with longitudinal and cross sections) and landscaping for the approval of the Engineer in accordance with which the Works shall be carried out
- 7.1 THE Contractor shall not commence any works until the Engineer has given approval in writing to such working drawings and plans
- 8 The Contractor shall at its own expense carry out before the Works and after the works noise level surveys required to determine the need for sound insulation to comply with the 1975 Regulations
- 9 WHERE new road or path lighting is to be installed as part of the Works the existing road or path lighting shall not be disconnected until the new road lighting is operational
- 10 THE Contractor agrees that the Works are works for which advance notice is required pursuant to Regulation 6 of the 1992 Regulations and Section 54 of the 1991 Act and the Contractor shall therefore prior to commencement of the Works serve one month's notice in writing on the Employer at the office of the Local Transportation Service
- 11 THE Contractor shall carry out the Works in all respects in accordance with:-
- 11.1 The Specification for Highway Works
- 11.2 The summary of the Works contained in Schedule B hereto

11.3 The working drawings plans and specification of the Works submitted by the Contractor pursuant to Clause 7 hereof and approved by the Engineer

12 DURING the progress of the Works the Contractor shall give the Engineer and persons duly authorised by him/her free access to every part of the Works and the site thereof and permit them to inspect the same and all materials used or intended to be used thereon and to give effect to any requirement made or instruction given by the Engineer and persons authorised by him/her to conform to this Agreement

13 THE Contractor shall obtain and keep in force throughout the period from commencement of the Works to the issue of the Final Certificate an insurance policy to be approved by the Engineer to cover all third party risks in respect of the execution of the Works and maintenance of the Contractor's apparatus in the sum of five million pounds in respect of each claim (or such greater sum as shall be specified by the Engineer) and to produce to the Engineer prior to commencement of the Works a copy of such policy and the premium receipt (if requested)

14 DURING the carrying out of the Works the Contractor shall at all times comply with the requirements and directions contained in Chapter 8 of the Traffic Signs Manual

15 THE whole of the Works shall be completed within a period of three months from the date of commencement thereof

16 NOTHING in this Agreement shall affect the power of the Employer as Street Authority pursuant to Section 56 of the 1991 Act to give directions as to the timing of the Works

17 THE Works (or such proportion thereof as may be agreed in writing by the Engineer) shall be completed to the reasonable satisfaction of the Engineer

18 IF there is any cause for delay in the execution of the Works due to exceptional adverse weather conditions labour troubles or delays in supply of materials or other special circumstances of any kind whatsoever which may occur and be such as to reasonably entitle the Contractor to an extension of time for the completion of the Works the Contractor shall within twenty-eight days after the cause of the delay has arisen or as soon thereafter as is reasonable in all the circumstances deliver to the Engineer full and detailed particulars of any claim to an extension of time to which the Contractor may consider it is entitled in order that such claim may be investigated

18.1 The Engineer shall upon receipt of such particulars or if he/she thinks fit in the absence of any such claim consider all the circumstances known to him/her and make an assessment of the extension of time (if any) to which he/she considers the Contractor shall be entitled for completion of the Works and shall within twenty-eight days of such receipt by notice in writing grant such extension of time for completion or refuse to grant such extension as the case may be and it is hereby agreed between the parties hereto that the decision of the Engineer shall be final and binding upon the parties hereto

19 IF the Works are not completed within the period specified in Clause 15 of this Agreement (or such extended time as may be permitted

hereunder) or if the Contractor shall fail to carry out perform or observe any of the obligations on his part contained in this Agreement it shall be lawful for the Employer upon giving the Contractor fourteen days' notice of intention so to do itself to enter the site of the Works (including any other land in the ownership or under the control of the Contractor in the vicinity of the Works) and remedy any defects therein including the reinstatement of any highway damaged by the Contractor in the course of the Works or carry out the remainder of the Works as the case may be and the cost to the Employer of carrying out or remedying all or any of the Works in default shall be a debt due to the Employer from the Contractor payable on demand and recoverable by action at law

20 The Employer shall not be obliged to issue a Provisional Certificate until:

20.1 If the Engineer considers it necessary to carry out a Stage 3 Safety Audit, the Engineer has issued a satisfactory Stage 3 Safety Audit Report;

20.2 ANY items identified for remedy in the Stage 3 Safety Audit Report have been remedied to the satisfaction of the Engineer; and

20.3 All other Works are to the Engineer's satisfaction.

21 If before or during the Maintenance Period any additional works ("the Additional Works") (subject to a maximum value of 5% of the total cost of the Works excluding VAT or £10,000 excluding VAT, whichever is the greater) are reasonably required by the Employer as a result of any technical shortcoming or omission in the approved drawing due to circumstances which could not have been anticipated at the time of

approval of the working drawings and plans or any defects in the Works appearing during the Maintenance Period which in the opinion of the Engineer are due to the materials or workmanship not in accordance with the specification as referred to in Clause 7 or to neglect or failure on the part of the Contractor to comply with any obligations express or implied under the terms of this Agreement the Contractor will:

- 21.1 commence and fund the Additional Works (subject to the said maximum) within 14 days of being so notified by the Employer
- 21.2 pay to the Employer a sum equivalent to 10% of the cost of the Additional Works for the expenses to be incurred by the Employer in providing the services of the Engineer in relation to the inspection of the Additional Works; and
- 21.3 complete the Additional Works to the reasonable satisfaction of the Employer within a reasonable time scale laid down by the Employer.

22 At the expiry of the Maintenance Period (provided that any defects appearing in the Maintenance Period have been rectified to the satisfaction of the Engineer in accordance with Clause 21 and the Contractor has supplied to the Employer the safety file under The 1994 Regulations) the Engineer shall issue a Final Certificate

23 THE Contractor shall within 6 months of receiving a written request from the Engineer complete accommodation works to such residential properties in the vicinity of the proposed development that are adversely affected by the Works PROVIDED that the cost of such accommodation works shall not exceed 5% excluding VAT of the total cost of the Works or £10,000 excluding VAT whichever is the greater

24 THE Contractor HEREBY COVENANTS

24.1 To indemnify the Employer against all actions costs claims and demands which may be made against the Employer in connection with the execution of the Works together with the Employer's costs in handling any such actions costs claims and demands

24.2 Without prejudice to the generality of the foregoing to indemnify the Employer against all claims for compensation together with the Employer's costs in handling any such claims which may be made against the Employer under the 1973 Act in respect of the carrying out or use of the Works to the extent that any such claim would properly succeed against the Employer AND IT IS HEREBY AGREED AND DECLARED by the Contractor and the Employer that in connection with any such claim for compensation

24.2.1 the Employer shall consult with the Contractor and before agreeing either the validity or the amount of any such claim shall take proper account of all comments and representations made by the Contractor

24.2.2 upon receiving any such claim the Employer shall give to the Contractor full details thereof within 14 days of receiving the same

24.2.3 the Employer shall notify the Contractor in writing whether or not the claim is considered valid upon a decision as to the validity thereof being made

24.2.4 upon the amount of any valid claim being decided upon the Employer shall notify the Contractor in writing of the amount of

the claim and of any costs and disbursements in connection therewith which are properly payable to the claimant

24.2.5 within 14 days of receiving the written notification referred to in Clause 24.2.4 the Contractor will pay to the Employer the amount of the claim and all other monies properly payable to the claimant

24.2.6 if the payment to the Employer referred to in Clause 24.2.5 is not made within 14 day period specified therein then the total amount payable to the Employer shall bear interest at the rate of 1% per annum above the HSBC Plc Base Rate or rates in force during the period such interest accrues and all interest so accruing shall be paid to the Employer with the payment due to the claimant under Clause 24.2.5

24.3 To indemnify the Employer against all liabilities should it be necessary to enter into an Agreement pursuant to Section 115 of the Water Industry Act 1991 and pay the Employer's costs incurred in the drawing up and completion of that agreement

25 THE Contractor (who is referred in this connection to the 1992 Regulations) shall comply with the provisions of Sections 83 or 84 (as appropriate) of the 1991 Act (relating to street apparatus as defined by the 1991 Act) and shall indemnify the Employer in respect of all costs claims demands or other expenses relating to or arising from any failure to comply with the said provisions

26 THE Contractor, and the Surety are jointly and severally bound to the Employer in the sum of FIFTY EIGHT THOUSAND THREE

HUNDRED POUNDS (£58,300) for the payment of which said sum the Contractor and the Surety bind themselves their successors and assigns jointly and severally PROVIDED THAT the Employer will release the Contractor and the Surety from the obligation in this Clause 27 complies with all the terms of this Agreement; and

26.2 The Surety discharges any liquidated damages sustained by the Employer to the sum of FIFTY EIGHT THOUSAND THREE HUNDRED POUNDS (£58,300) (or such greater sum as may be contained in the Solicitor's Certificate)

26.3 The amount of such liquidated damages shall be that certified by the Engineer whose certificate shall be final and binding upon all parties

26.3 The Surety shall not be discharged or released from this Bond by any arrangement between the Contractor and the Employer or by any alteration in the Contractor's obligations or by any forbearance whether as to payments performance time or otherwise whether made with or without the assent of the Surety

26.4 For the avoidance of doubt any reduction or release of the Bond shall not release the Contractor from its obligations under Clauses 21, 23, 24 or 25

27 THE Contractor is the sole Client pursuant to Regulation 4(1) of the 1994 Regulations

28 THE PARTIES HERETO HEREBY DECLARE:-

28.1 That this Agreement is made under the powers conferred by Section 33 of the 1982 Act and all other powers enabling the

Employer in that behalf and is an Agreement to which Section 33 of the 1982 Act applies and

28.2 That this Agreement is executed or signed by them as a deed in accordance with Section 1 of the Law of Property (Miscellaneous Provisions) Act 1989 provided always that the provisions hereof (other than those contained in this clause) shall not have any effect until this Agreement has been dated

28.3 The Employer is the local planning authority by whom the Planning Obligations are enforceable

29 ANY Notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first-class pre-paid post or sent by facsimile transmission

29.1 The addresses for service of the Employer the Contractor and the Council shall be those stated in the Agreement or such other address in England for service as the party to be served may have previously notified in writing

30 ALL consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof

30.1 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 had 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

SCHEDULE A

The following application for planning permission has been submitted by the

Contractor:-

<u>Application Number</u>	<u>Date of Application</u>	<u>Local Planning Authority to whom submitted</u>	<u>Description of Proposed Development</u>
TA/2006/1550	19 October 2006	Tandridge	Demolition of existing dwelling and erection of 8 apartments (social) 4 semi-detached dwellings and 10 detached dwellings with associated parking and landscaping
TA/2006/1611	31 October 2006		Demolition of existing dwelling (No. 46) and construction of 3 terraced two-storey dwelling (affordable), 6 semi-detached and 4 detached two-storey dwellings (private) with associated car parking and landscaping

SCHEDULE B
(Summary of the Works)

The resiting of the puffin crossing correctly adjacent to 56 Cophthorne Road together with all associated works such works to be carried out on the land shown coloured green on the plan

SCHEDULE C

(Construction and Interpretation)

- 1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-
- "The 1972 Act" means the Local Government Act 1972
- "The 1973 Act" means the Land Compensation Act 1973
- "The 1975 Regulations" means the Noise Insulation Regulations 1975
- "The 1980 Act" means the Highways Act 1980
- "The 1982 Act" means the Local Government (Miscellaneous Provisions) Act 1982
- "The 1990 Act" means the Town & Country Planning Act 1990 as amended
- "The 1991 Act" means the New Roads and Street Works Act 1991
- "The 1992 Regulations" means The Street Works (Registers Notices Directions and Designations) Regulations 1992
- "The 1994 Regulations" means the Construction (Design and Management) Regulations 1994
- "Chapter 8 of the Traffic Signs Manual" means Chapter 8 entitled "Traffic Safety Measures and Signs for Road Works and Temporary Signs" in the "Traffic Signs Manual 1991" issued by the Department of the Environment including all amendments thereof in force during the carrying out of the Works
- "The Engineer" means the Employer's Head of Transport Development Control or the person responsible on behalf of the Employer from time to time

"The Final Certificate" means the final certificate issued by the Engineer on final completion of the Works

"The Maintenance Period" means the 12 months from the date of the issue of the Provisional Certificate

"The Plan" means the plan or drawing number ES0787-S278-05 annexed hereto

"The Planning Application" means the application for planning permission described in Schedule A to this Agreement

"The Planning Obligations" means the covenants and agreements on the part of the Contractor contained in this Agreement

"The Proposed Development" means the proposed development the subject of the Planning Application

"The Provisional Certificate" means the provisional certificate issued by the Engineer on practical completion of the Works

"The Solicitor's Certificate" means a written certificate given by the Contractor's solicitor immediately prior to the commencement of the Works confirming the amount notified to him/her of the sum paid or to be paid by the Contractor to the person or company carrying out the Works

"The Specification for Highway Works" means the Specification for Highway Works current at the date of commencement of the Works published by Her Majesty's Stationery Office

"The Works" means the highway improvement works described in Schedule B to this Agreement

2 Any reference in this Agreement to any statutory provision statutory instrument document containing Government advice or other similar document shall be construed as a reference to such provision instrument or document including any subsequent re-enactment modification or amendment thereof statutory or otherwise

IN WITNESS WHEREOF this deed has been duly executed the day and year first before written

EXECUTED AS A DEED by)
affixing THE COMMON SEAL of)
SURREY COUNTY COUNCIL)
in the presence of and attested by:)



Carol McLaughlin
Head of Legal Services/Authorised Signatory

THE COMMON SEAL of)
LINDEN LIMITED was hereunto)
affixed in the presence of:)

Director *[Signature]*

Director *[Signature]*

EXECUTED AS A DEED by)
affixing THE COMMON SEAL of)
NHBC in the presence of and attested by:)

~~Director~~

M. Sangwin

M.N. SANGWIN
AUTHORISED SIGNATORY

EXECUTED AS A DEED by)
~~affixing~~ HSBC BANK PLC in the)
presence of and attested by:)

AM

ANDREW MOORE

~~Director~~

In the presence of:

Beval

~~Secretary/Director~~

(BAGY T RUSNAC)

HSBC Bank plc
8 Canada Square
London
E14 5HQ