DATED 16

16th January

2014

THE COUNCIL OF THE BOROUGH OF TORBAY

- and -

LINDEN SOUTH WEST LIMITED

- and -

THE NATIONAL HOUSE-BUILDING COUNCIL

AGREEMENT

under Section 278 of the Highways Act 1980
in connection with
Street Works at Cockington Lane & Old Paignton Road
Hollicombe, Torquay
in the Borough of Torbay

of

Two Thousand and

BETWEEN

THE COUNCIL OF THE BOROUGH OF TORBAY of the Town Hall Castle Circus

Torquay TQ1 3DR ("the Council") (1)

LINDEN SOUTH WEST LIMITED a company registered in England and Wales under Company Number 02714200 and whose registered office is at Cowley Business Park, Cowley Uxbridge, Middlesex UB8 2AL ("the Developer") (2) and

NATIONAL HOUSE BUILDING COUNCIL registered in England and Wales as a company limited by guarantee under company number 320784 and whose registered office at NHBC House, Davy Avenue, Knowlhill, Milton Keynes MK5 8FP ("the Surety") (3)

WHEREAS:

- (1) THE Council is the highway authority for the area within which the Works described in clause 2.1(o) ("the Works") are situated
- (2) THE Council and the Developer have agreed to enter into this Agreement pursuant to section 278 of the Highways Act 1980 to secure the execution of and payment for the Works which will be of benefit to the Developer and of benefit to the general public at large

NOW THIS DEED WITNESSES as follows:

1. ENABLING POWERS

This Agreement is made pursuant to section 278 of the Highways Act 1980 and all other powers enabling

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following terms in this Agreement shall have the following meanings:-

1-1	[(i)	
(a)	"the Communication Policy"	means the document titled Street Works
		and Works for Road Purposes.
		Communications Policy annexed hereto
(b)	"the Certificate of	means the Certificate issued by the Proper
	Satisfactory Completion"	Officer to the Developer upon satisfactory
		completion of the Works in accordance with
		the Drawing
(c)	"the Council" and "the	includes their respective successors in title
	Developer"	and assigns
(d)	"the Drawings"	means the drawings numbered:-
		12.409-100 Rev A
		12.409-101 Rev A
		12.409-102 Rev B
		12.409-103 Rev A
		12.409-110 Rev A
		12.409-111 Rev A
		12.409-112 Rev B
		12.409-113 Rev A
		12.409-120 Rev B
		12.409-121 Rev A
		12.409-122 Rev A and
		12.409-123 Rev A
		(and any amended or additional drawing
		signed by the Proper Officer) which shall

		accord with the technical requirements of the
	1	Proper Officer and shall be approved by the
		Proper Officer prior to commencement of the
		Works
(e)	"the Estimated Cost"	means the sum of £125,000.00
		being the amount which is in the opinion of
		the Proper Officer the cost of carrying out
		the Works within the period specified in this
		Agreement
(f)	"the Final Certificate"	means the Certificate issued by the Proper
		Officer on the satisfactory completion of the
		Works
(g)	"the Maintenance Period"	means the period of 12 months immediately
		following the date of the issue of the
		Certificate of Satisfactory Completion
(h)	"the Notice of	means 14 days' prior notice in writing served
	Commencement"	by the Developer upon the Proper Officer of
		its intention to proceed with the Works
(i)	"Occupied"	means occupied for residential purposes
		and does not include occupation by
		personnel engaged in construction, fitting
		out or decoration or occupation for
		marketing or display or occupation in relation
		to security operations
		to security operations

(i)	"the Proper Officer"	means the officer of the Council for the time being appointed for the purposes of this Agreement or of any provision contained
		herein
(k)	"Satisfactory Completion"	means the satisfactory completion of the Works in accordance with the Drawing
(1)	"the Specification"	means the specification for Highway Works 1991 produced by Her Majesty's Stationery Office as amended from time to time
(m)	"the Start Date"	means 17 January 2014
(n)	"Statutory Undertaker"	Means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and other undertakers and public utility suppliers deemed to be statutory undertakers for the purposes of that Act.
(o)	"Traffic Manager"	means the officer appointed by the Council to act as Traffic Manager for the purposes of the Traffic Management Act 2004;
(p)	"the Works "	means the works set out in the Schedule
(q)	"the 1991 Act"	means the New Roads and Street Works Act 1991

2.2 Interpretation

In this Agreement:-

- (a) the clause, paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation.
- (b) any reference in this document to a clause, paragraph or schedule without further designation is to be construed as a reference to the clause, paragraph or schedule of this document so numbered.

3. PRECONDITIONS

This Agreement is conditional upon and shall not take effect (save for payment to the Council of the amounts set out in clause 5.16.(a)) unless or until the Developer has served the Notice of Commencement and complied with the obligations set out in the Communication Policy

4. GRANT OF RIGHT TO EXECUTE WORKS

The Council as the highway authority hereby grants to the Developer and its servants and agents or any contractor of the Developer with all necessary plant and equipment a licence to enter upon the public highways so far as is necessary for the purpose of executing the Works (including breaking open the surface) and inspecting replacing and maintaining the same

5. DEVELOPER'S COVENANTS

The Developer hereby covenants with the Council that it will observe and perform the requirements of this clause 5:-

5.1 Approval of Works

Before carrying out the Works the Developer shall obtain:-

- (a) the approval of the Proper Officer to the specification plans and Drawings of the Works
- (b) all necessary planning consents
- (c) all necessary consents of Statutory Undertakers who have or may have apparatus that may be affected by the Works

5.2 The Works

The Developer shall at its own expense

- (a) carry out and complete the Works in a good and workmanlike manner and with proper materials, in accordance in all respects with the Specification and the Drawing, to the satisfaction of the Proper Officer and in accordance with any permits, permissions, consents and approvals granted by the Council (or any other statutory or public authorities),
- (b) advise all Statutory Undertakers who may or do have apparatus or any part of their services affected by the Works, and
- (c) execute all works or pay any costs that may become due and payable in respect of any further works that are required by any Statutory Undertaker as a result of the Developer undertaking the Works

5.3 Contractors

The Developer shall:-

(a) before contracting for the construction of the Works inform the Proper

Officer of the name and address of the proposed contractor and obtain
the consent of the Proper Officer to that contractor being employed in
writing before commencement of the Works and it shall be a requirement
of this agreement that the contractor shall at all times maintain a public
liability insurance policy with a member of the Association of British

Insurers in a minimum sum of £5,000,000 for a single claim (and in the event of the Developer carrying out the Highway Works itself it shall provide the insurance cover required by this clause)

- (b) include in the conditions of contract of the contractors (or any sub contractors) engaged to carry out the Works obligations to:-
 - (i) give the Traffic Manager appropriate notice such form of notice to
 be obtained from the Traffic Manager to comply with the
 requirements of the Traffic Management Act 2004 of the
 Developer's intention to commence the Works and
 - (ii) comply with the requirements of the Communication Policy
 - (iii) comply with any obligations imposed herein upon the Developer in so far as they relate to the carrying out of the Works
- (c) guarantee compliance with the matters set out in clause 5.3(b)

5.4 Notice of Commencement

The Developer shall send to the Proper Officer the Notice of Commencement for the purpose of exercising its functions under the terms of this agreement

5.5 Programme of Works

The Developer shall:-

- (a) give the Proper Officer a programme of works for the purpose of exercising its functions under the terms of this agreement for approval 28 days prior to commencement of the Works and
- (b) carry out the Works in accordance with the approved programme of works

5.6 Health and Safety

Throughout the progress of the Works the Developer shall have full regard for

the safety of the public and, without prejudice to the generality of the foregoing, shall:-

- (a) comply with the Communication Policy and
- (b) provide and maintain such precautionary works (including fencing) and signs as may be required by the Proper Officer or any other body having statutory authority

5.7 1991 Act

The Developer shall comply in all respects with the 1991 Act.

5.8 General Indemnity

The Developer shall indemnify the Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works other than those arising out of in consequence of any act neglect default or liability of the Council or any failure by the Council to comply with its obligations hereunder

5.9 Developer's Further Indemnity

Without prejudice to the generality of the indemnity given by the Developer to the Council at clause 5.8 the Developer shall

- (a) be responsible for all reasonable and proper costs and expenses incurred by the Council or its duly appointed agents in dealing with settling or disposing of claims for noise insulation or injurious affection arising from the execution of the Works during or after completion of the Works
- (b) indemnify the Council against any lawful claim under the Land

 Compensation Act 1973 (and any statutory modification or re-enactment
 thereof) arising out of the use of the Works

5.10 Access to the Works

During the carrying out of the Works the Developer shall give the Proper Officer and any other officer of the Council access to every part of the Works and all materials used or intended to be used therein

5.11 Duty to Allow Inspection of the Works

The Developer shall not cover up any part of the Works without the approval of the Proper Officer who shall be given the opportunity to examine and measure any work which is about to be covered up and to examine foundations before permanent work is placed thereon. The Proper Officer shall be given at least two working days written notice whenever any such work is ready for examination

5.12 Obligations During Maintenance Period

The Developer shall at its own expense during the Maintenance Period (or as soon as practicable thereafter) reinstate and make good any damage or defect in the Works which in the reasonable and proper opinion of the Proper Officer shall have arisen out of any defect in the design or construction of the Works or the use of defective workmanship or of materials not in accordance with the Drawings during the construction of the Works or otherwise shall have been caused by the person carrying out the Works which shall have become apparent during the Maintenance Period

5.13 As Built Drawings

Before the issue of the Final Certificate the Developer shall furnish the Council with a full set of drawings of the Works as built

5.14 Defective Design

If during the execution of the Works any defect error or omission shall be found either in the Drawing plans or specification or in any survey undertaken by the Developer or if the highway shall be found to be unsuitable for the Works all defects errors omissions or wants of repair or making good shall be undertaken at the sole expense of the Developer

5.15 Timing of Works

- (a) The Developer shall begin carrying out the Works on the Start Date
- (b) The Developer shall carry out and complete the Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the specification and the Drawing to the satisfaction of the Proper Officer by 14 June 2014 and shall during the Maintenance Period at its own expense maintain the Works and shall carry out such routine maintenance and repairs as may be necessary to facilitate use by vehicles and pedestrians
- (c) Should the Works not be completed within the time set out in clause then the Developer agrees to pay to the Council such sum as would be payable under regulation 9(1) of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 on the basis that:
 - (i) the duration of the Works have exceeded the period set out in clause 74(1)(a) of the 1991 Act, and
 - (ii) the time for the completion of the Works set out in clause is agreed by the parties hereto to be a reasonable period for the purposes of clause 74(1)(b) of the 1991 Act

5.16 Inspection fee

- (a) On completion of this Agreement the Developer shall pay to the Council the sum of £7,500 in respect of the costs incurred by the Council in inspecting the works being six per cent of the Estimated Cost TOGETHER with the proper legal costs of the Council in connection with the preparation and completion of this Agreement and the necessary duplicates thereof
- (b) RECEIPT by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works by the Council

6. COUNCIL COVENANTS

The Council hereby covenants that it will observe and perform the requirements of this clause 6:-

6.1 The Certificate of Satisfactory Completion

Upon notification in writing to the Proper Officer that the Developer considers that the Works are completed the Proper Officer shall inspect the Works within a reasonable time and if they have been completed to his satisfaction the Proper Officer shall issue to the Developer the Certificate of Satisfactory Completion

6.2 The Final Certificate

Upon completion to the Proper Officer's satisfaction of any works for which the Developer is responsible under this Agreement following the expiry of the

Maintenance Period and upon notification in writing to the Proper Officer that the Developer considers that the Works are finally completed the Proper Officer shall carry out a safety audit and issue a Final Certificate and give written authorisation for the discharge of the Bond PROVIDED THAT no such certificate or authorisation need be given until:-

- (a) the Developer has paid to the Council all amounts due to the Council under this Agreement and
- (b) any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer and
- (c) the Developer has delivered to the Proper Officer drawings showing the

 Works as built

6.3 Release from Liability

The Council covenants that the Final Certificate shall be issued in accordance with this Agreement and that the Developer shall be released from all liability under this Agreement (save for the indemnities set out in clauses 5.8 and 5.9) and that upon the issue of the Final Certificate the Works shall become maintainable at the public expense

7. AGREEMENTS AND DECLARATIONS

It is hereby agreed between the parties hereto and declared as follows:-

7.1 Works in Default

If the Works or any part or parts thereof or any works required within the Maintenance Period are not carried out or completed to the satisfaction of the Proper Officer in accordance with the terms of this Agreement, the Council after giving twenty eight days written notice of its intention to the Developer may enter onto the site of the Works and execute or complete the relevant works in

accordance with the provisions of this Agreement by its own employees or by contractors and recover its costs from the Developer up to the maximum of the Estimated Cost

7.2 Compliance with Communication Policy

- (a) if in the opinion of the Proper Officer the Developer fails to comply with the Communication Policy the Proper Officer may serve notice upon the Developer that the licence granted by this Agreement to carry out the Works on the public highway is suspended with immediate effect
- (b) should notice be served pursuant to clause 7.2(a) the Developer will immediately cease carrying out works on the public highway until the Communication Policy has been complied with and the Proper Officer gives notice to the Developer that it may continue carrying out the Works.

7.3 Third Parties

A person who is not a party to this Agreement has no right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999 and the parties to this Agreement do not intend that any third parties are created by this Agreement

7.4 Council as a Public Authority

Nothing contained in this Agreement shall in any way prejudice or be construed to prejudice the statutory rights powers duties and authority conferred upon the Council as local authority and by entering into this Agreement the Council does not warrant or guarantee that any Traffic Orders as referred to on the Drawings will be made or confirmed.

8. SURETY'S OBLIGATIONS:

The Surety hereby covenants with the Council that it will observe and perform the requirements of this clause 8:-

8.1 Council's Rights in Default

If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on his part contained in this Agreement or if the Developer is adjudged bankrupt or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation) the Proper Officer may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement (and in particular but without prejudice to the generality of this clause the rights of the Council pursuant to Clause 6 hereof) send to the Surety notice in writing (hereinafter referred to as the "Default Notice"):-

- (a) specifying the work (hereinafter referred to as the "Default Work") to be carried out in order that the Works may be executed or completed as the case may be in accordance with this Agreement and
- (b) containing an estimate by the Proper Officer of the cost of carrying out the default work and of the cost of maintaining the Works for a period of twelve months prior to the Works becoming maintainable at the public expense and also a statement of the amount of the usual establishment charges of the Council (together hereinafter referred to as the "Default Cost") which cost -
 - (i) shall not exceed the sum of £125,000 (being the Estimated Cost)

 AND
 - (ii) shall not exceed the sum of £12,500 on and after the issue of the Certificate of Satisfactory Completion

8.2 Surety's Counter Notice

Within twenty-eight days after the Surety has received the Default Notice the Surety shall –

- (a) pay the Default Cost to the Council or
- (b) send to the Council notice in writing (hereinafter referred to as the "Counter Notice") of the intention of the Surety to carry out the Default Work

8.3 Surety in Default following service of Counter Notice

If the Surety having sent the Counter Notice to the Council:-

- (a) fails to start the Default Work within fifty-six days after the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with simple interest thereon at the rate of 5 per cent per annum above the base lending rate from time to time in force of the National Westminster Bank PLC calculated from the date on which the Surety received the Default Notice to the date of payment
- (b) starts the Default Work and the said work is not completed within four months after the Counter Notice was received by the Council or within such further period as may be agreed between the Council and the Surety the Surety shall subject to clause 8.4 forthwith on demand by the Proper Officer pay to the Council such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the Works for the period of twelve months prior to the Works becoming maintainable at the public expense as may be the case (or as being the cost of both) and also pay to the Council the amount determined by the Proper Officer as being the amount

of the appropriate usual establishment charges of the Council

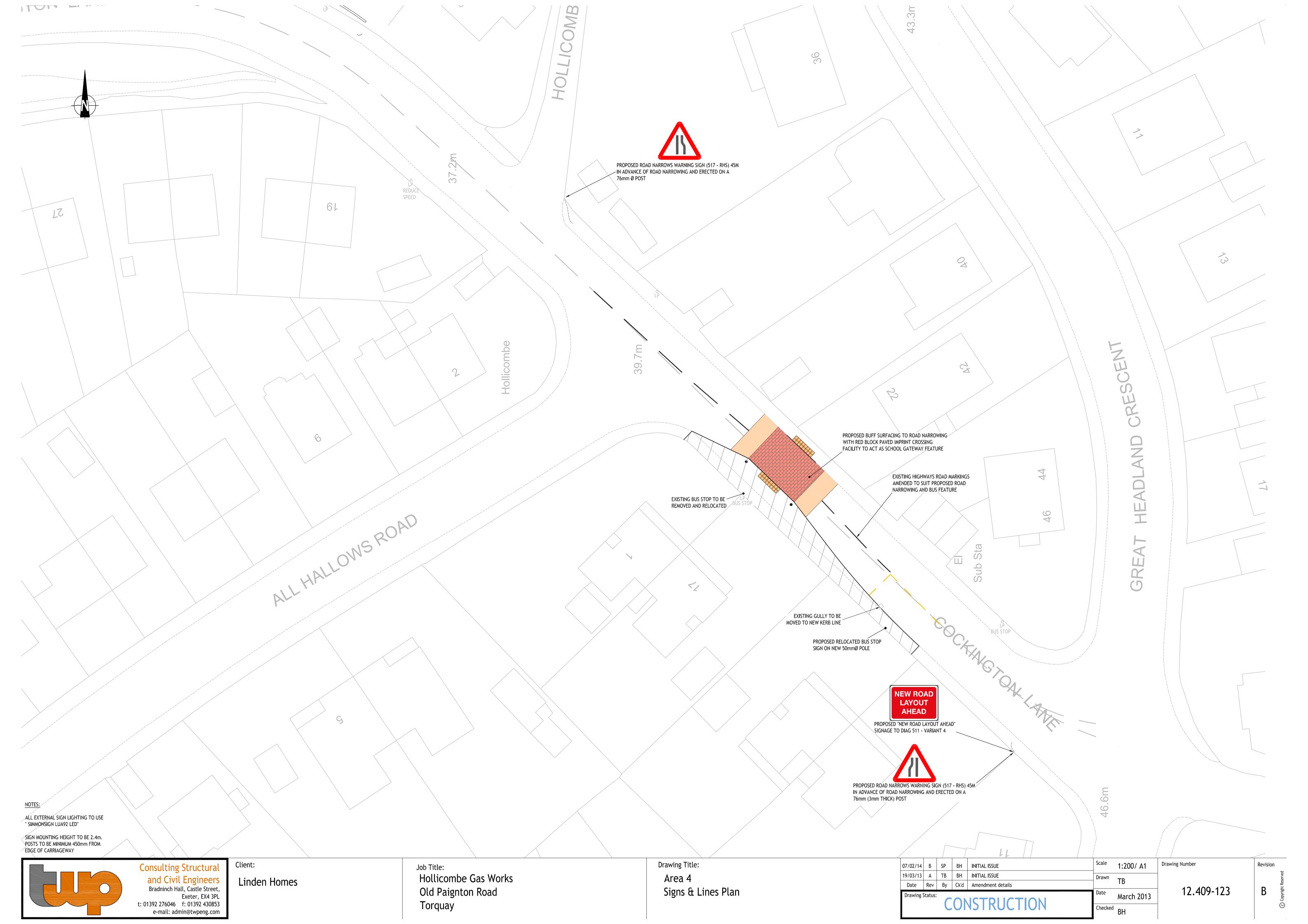
8.4 Liability of Surety

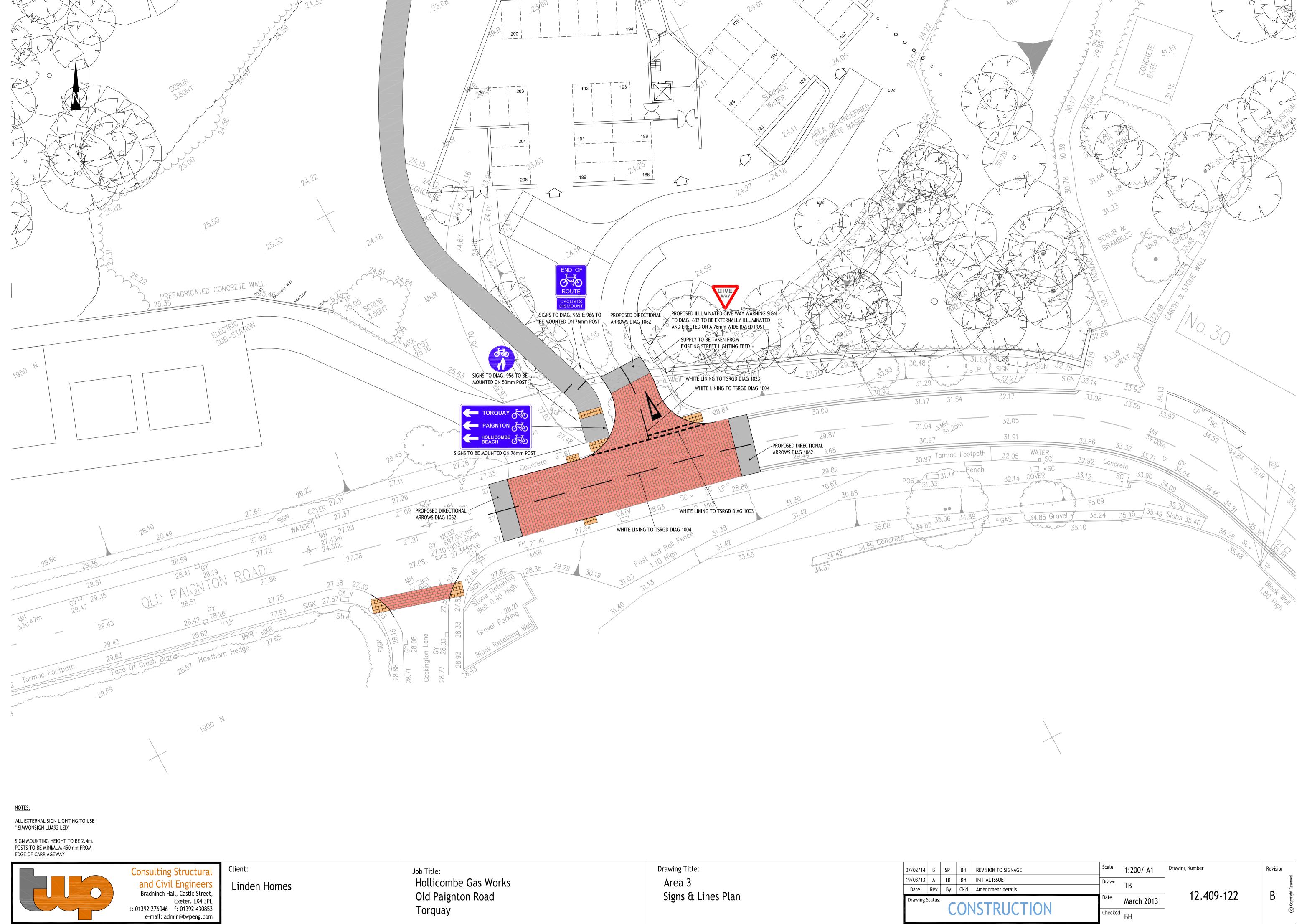
- (a) the sum payable under clause 8.3(b) shall not exceed the Default Cost and on the issue of the Final Certificate the Surety shall be released from all liability hereunder
- (b) for the purposes of this Agreement a demand stated to be made hereunder and signed or purportedly signed on behalf of the Council shall be conclusive as to the Surety's obligation to pay the amount demanded and there shall be no obligation or duty whatsoever on the Surety to consider the alternative set out in clause 8.2(b)

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

THE SCHEDULE before referred to :-

The Works comprise works to the carriageway, footways and kerbs and the provision of signage and road lining at Cockington Lane & Old Paignton Road Hollicombe, Torquay in the Borough of Torbay as more particularly described in the Drawings





Linden Homes

Hollicombe Gas Works Old Paignton Road Torquay

Area 3 Signs & Lines Plan 19/03/13 A TB BH INITIAL ISSUE Drawn TB Date Rev By Ck'd Amendment details March 2013 CONSTRUCTION Checked BH

12.409-122

