

Dated

15 DECEMBER

2020

WILTSHIRE COUNCIL (1)
and
PERSIMMON HOMES LIMITED (2)
and
CHARLES CHURCH DEVELOPMENTS LIMITED (3)
and
HANNICK HOMES & DEVELOPMENTS LIMITED (4)
and
JULIE KATHLEEN HOCKEN and BRIAN JOHN HOCKEN (5)
and
MARTYN KENNETH BRAKE and KATHLEEN MARY BRAKE (6)
and
ANDREW JAMES BRAKE (7)
and
CHRISTOPHER MARTYN BRAKE (8)
and
RICHARD JOHN BALLAM (9)
and
ANDREW CHARLES BALLAM (10)

Deed under Section 106 of the Town and Country Planning Act 1990 as amended
and all other enabling powers relating to Land at the West Warminster Urban Extension
Site to the North of Victoria Road and to the West of Bath Road

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	permission granted pursuant to one or both of the Primary School Application and or the Secondary School Application being modified or found never to have been valid
"Planning Permission"	means the planning permission for the Development that may be granted pursuant to the Planning Application in the form generally in accordance with Appendix 14
"Practical Completion"	means the issue of a certificate of practical completion by the Owners' architect or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by the other party's architect and "Practically Complete" shall be construed accordingly.
"Play Areas"	means the areas containing the LEAP and NEAP
"Premises"	means each of the following: • Primary School Site • Secondary School Site • Sports Pitches
"Preserved Right to Buy"	has the same meaning as in the Housing Act 1985
"Primary School Education Balancing Sum"	means the sum calculated in accordance with paragraph 2.6 of Schedule 4 representing the increase or decrease in the amount to be paid under the provisions of the Primary School Education Contribution,
"Primary School Education Contribution"	means the total sum of £4,220,550 (four million two hundred and twenty two thousand five hundred and fifty pounds) (calculated at £18,758 (eighteen thousand seven hundred and fifty eight pounds) per place) Index Linked as a contribution towards the cost of construction of the Primary School under the terms of paragraphs 2 of Schedule 4 Part 1 and unless varied by the terms of paragraph 3.7 of Schedule 4 Part 1

"Primary School"

means a minimum 225 (two hundred and twenty five) place primary school to be located on the Primary School Site

"Primary School Site"

means the part of the Land in the position indicated as such on Plan 9 (unless otherwise agreed by the Council in writing) which shall be fully serviced up to its boundaries and linking in each case to Services, Estate Sewers and Spine Road Works built to adoptable standards and proposed to be maintained at public expense with sufficient capacity/ gradient to serve the Primary School

"Protected Tenant"

means any tenant who:

(a) has exercised the Right to Acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(b) has exercised any statutory Right to Buy (or any equivalent contractual right in respect of a particular Affordable Housing Unit

(c) has been granted a shared Ownership lease by a Transferee (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Transferee) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Transferee all the remaining shares so that the tenant owns the entire Affordable Housing Unit

"Qualifying Person"

means an individual who meets the requirements of the Allocations Policy and

	the obligations of the Management Scheme in accordance with Schedule 1 of this Deed
"Reserved Matters Application"	means a reserved matters application submitted for the Development pursuant to the Planning Permission
"Reserved Matters Consent"	means a consent resulting from a Reserved Matters Application
"Residential Development"	means that part of the Development consisting of Dwellings
"Residential Travel Plan"	means the travel plan relating to the residential aspects of the Development and which is appended to this Deed at Appendix 8
"RICS"	means the Royal Institution of Chartered Surveyors
"Right to Acquire"	has the same meaning as in the Housing Act 1996
"Right to Buy"	has the same meaning as in the Housing Act 1985
"S106 Monitoring Fee"	means the sum £5,000 (five thousand pounds) towards the cost of the Council monitoring the terms of this Deed
"S278 of the 1980 Act"	means section 278 of the Highways Act 1980 and any other statutory provisions to authorise the carrying out of works within the highway
"Secondary School Facilities "	means the facilities to be provided either on the Land or elsewhere within Warminster to provide an additional 198 secondary school places and/ or sports facilities and/ or ancillary uses for Kingdown School (or such other secondary school as may be established to serve the Development) for the secondary school pupils resulting from the Development
"Secondary School Education Contribution"	means £4,542,120 (four million five hundred and forty two thousand one hundred and twenty pounds) (calculated at £22,940 (twenty two thousand nine hundred and

forty pounds) per place) Index Linked payable by the Owners to the Council as a contribution towards the cost of construction of the Secondary School Facilities under the terms of paragraph 4 of Schedule 4

“Secondary School Site”

means the part of the Land shown on Plan 9 (unless otherwise agreed by the Council in writing) upon which the Council shall make provision for the Secondary School Facilities and is to be provided fully serviced up to its boundaries and linking in each case to Services Estate Sewers and Spine Road Works built to adoptable standards and proposed to be maintainable at public expense with sufficient capacity/ gradient to serve the Secondary School Facilities

“School Site Transfer”

means the Transfer of the Primary School Site and or the Secondary School Site in accordance with Schedule 4 and on the terms set out in Part 2 of Schedule 4

“Senior Football Pitches”

means 2 (two) full size football pitch measuring 54.9m x 42m each and conforming to specification provided in the Sports England guidance current at the date of this Deed

“Serviced Site”

means land to the boundary of which there is a suitable highway together with service media capable of being completed to an adoptable standard (where relevant) for electricity water supply and drainage (surface and foul) gas telecommunications and internet high bandwidth broadband communication service all of which to be of sufficient capacity to service the use for which the site is to be transferred

"Serviced"

In relation to the Employment Land means land which has been cleared; which has drainage infrastructure and all other incoming and outgoing services constructed up to the boundary of the Employment Land

	the Access Works roundabouts to include a shared footway cycleway of 3.2m in width and a bus route including up to 6 (six) bus stops consisting of a shelter and real time information boards all to a specification to be agreed by the Council and as shown generally on Plan 6
"Sports Pitches"	means the part(s) of the Land as shown on Plan 7 (or as may be otherwise agreed in writing between the Council and the Owner) measuring in aggregate 5.05 Ha (five point zero five hectares) to include 2 (two) Senior Football Pitches and 2 (two) Youth Football Pitches and agreed by the Council to include the Changing Rooms and car parking
"Standards"	means the size standards promoted by HE as at the date of this Deed being at least 85% (eight five percent) of NDSS as set out in Appendix 9
"Stiles Upgrade Contribution"	means £850 (eight hundred and fifty pounds) to be paid by the Owners to the Council as a contribution towards the cost of upgrading the stiles on WARM 13 to kissing gates within the vicinity of the Land
"SDS"	means the 'sustainable drainage systems' features and flood attenuation features required as part of the development and shown indicatively on Plan 6
"Third Party Education Contributions"	means any monetary contributions paid to the Council for the purpose of providing primary school places where such primary school places are to be located on the Land and whether such payments were (or are to be) made under agreements or deeds under section 106 of the Act or otherwise
"Third Party Highways Contribution"	means any monetary contributions paid to the Council for the purpose of facilitating the Copheap Lane Roundabout Works and the Victoria Road Pedestrian Crossing Works

Schedule 3

Affordable Housing Mix Table

1. The Affordable Housing Mix shall be in accordance with the table set out below or such alternative Affordable Housing Mix that the Council may agree with the Owners at the time details are to be confirmed at each Reserved Matters Application for residential development (to ensure that the proposed Affordable Housing Mix is still in line with current demonstrable need)

Table of Indicative Affordable Housing Mix

Affordable Rent* (60%)	1 bed 2 person Flat	2 bed 3 person Flat	2 bed 3 person Bungalow	2 bed 4 person House	3 bed 5 person House	4 bed 7 person House	5 bed 8 person House
%	25%	3%	5%	35%	25%	5%	2%

Shared Ownership (40%)	1 bed 2 person Flat	2 bed 4 person Flat	2 bed 4 person Bungalow	2 bed 4 person House	3 bed 5 person House	4 bed 6 person House	5 bed 8 person House
%	0%	0%	0%	65%	35%	0%	0%

* Mix to include 10% (ten percent) of the Affordable Housing Units as Adapted Units and provided as Affordable Rented Dwellings the details of which are to be confirmed at each Reserved Matters Application (to reflect current demonstrable need) but for the avoidance of doubt no more than 10% of the Adapted Units shall be houses

Schedule 4

Education

Primary Schools Provision

Part 1

Primary School

1. The Primary School Site shall be:
 - 1.1 located in accordance with Plan 9 or as otherwise agreed in writing between the Owners and the Director
 - 1.2 have an unburdened access onto Victoria Road
2. The Owners shall pay the Primary Education Contribution to the Council as follows:

- 2.1 5% (five percent) of the Primary Education Contribution prior to the Commencement of Residential Development and not to permit the Commencement of Residential Development until the Owners shall have paid to the Council 5% (five percent) of the Primary Education Contribution and
- 2.2 A further 30% (thirty percent) of the Primary Education Contribution prior to the Practical Completion of the 100th (one hundredth) Dwelling and not to permit the Practical Completion of the 101st (hundred and first) Dwelling until the Owners shall have paid to the Council the further 30% (thirty percent) of the Primary Education Contribution and
- 2.3 A further 30% (thirty percent) of the Primary Education Contribution prior to the Practical Completion of the 200th (two hundredth) Dwelling and not to permit the Practical Completion of the 201st (two hundred and first) Dwelling Unit until the Owners shall have paid to the Council the further 30% (thirty percent) of the Primary Education Contribution and
- 2.4 The final 35% (thirty five percent) of the Primary Education Contribution prior to the Practical Completion of the 500th (five hundredth) Dwelling and not to permit the Practical Completion of the 501st (five hundred and first) Dwelling until the Owners shall have paid to the Council the final 35% (thirty five percent) of the Primary Education Contribution and
- 2.5 if the final Reserved Matters Application containing Dwellings has not been determined by the Completion of the 500th (five hundredth) Dwelling the remainder of the Primary Education Contribution shall be calculated in accordance with paragraph 3. 7 on the basis of 1000 (one thousand) Dwellings
- 2.6 upon the submission of the final Reserved Matters Application containing Dwellings the Primary Education Contribution shall be recalculated in accordance with paragraph 3.7 using the actual number of Dwellings to be constructed in order to arrive at the Primary Education Balancing Sum as follows:
 - 2.6.1 where the Primary School Balancing Sum is greater than £0 (zero pounds) it shall be paid to the Council prior to Practical Completion of the 900th (nine hundredth) Dwelling and not to permit the Practical Completion of the 901st (nine hundred and first) Dwelling until the Owners shall have paid to the Council the Primary School Balancing Sum unless the final Reserved Matters Application has not been determined prior to the Practical Completion of the 900th (nine hundredth) Dwelling in which event the Primary School Balancing Sum shall be calculated and paid prior to the Practical Completion of the first Dwelling within the part of the Land covered by the final Reserved Matters Application or
 - 2.6.2 where the Primary School Balancing Sum is less than £0 (zero pounds) the Council shall repay to the Owners a sum equivalent to the Primary School Balancing Sum prior to the Practical Completion of the 1st (first) Dwelling within the part of the Land covered by the final Reserved Matters Application

3 The Owners shall:

- 3.1 lay out the Primary School Site as a Serviced Site
- 3.2 following the satisfactory servicing of the Primary School Site required by paragraph 3.1 to Offer to Transfer the Primary School Site to the Council for the sum of £1 (one pound) within 12 (twelve) months of the Commencement of Development or such other specified time as may be agreed by the Owners
- 3.3 (upon the Council giving the Owners 48 (forty eight) hours written notice (save in respect of emergency) and at the risk of the Council) allow access to the Primary School Site for the purposes of site survey and investigations and sinking trial boreholes
- 3.4 covenant that there are no service media on under or over the Primary School Site that would prohibit prevent or restrict its use as a primary school
- 3.5 The Primary School Site shall be transferred to the Council subject to a restrictive covenant that it shall not be used other than as an educational establishment (together with community use of such establishment's facilities and nursery) and ancillary uses thereto and a requirement that if the contract for the construction of the Primary School has not been let within 10 (ten) years of the date of the Offer to Transfer the Primary School Site shall be offered back to the Owners for a nominal value subject only to the restrictions on title under which the Primary School Site was originally transferred to the Council (save for the restriction on its use as an educational establishment which shall cease) and in such instance the Primary School Site shall be free of any restrictions in this Schedule and the Council shall also return any unexpended part of the Primary School Contribution at the same time as the said transfer
- 3.6 If the Council do not accept the Offer to Transfer within the said period of 60 (sixty) days the obligations upon the Owners in relation to the Primary School Site shall cease and determine absolutely Provided That the said Offer to Transfer has been made fully in accordance with the terms of this Deed
- 3.7 The Primary Education Contribution shall be calculated upon the submission of the final Reserved Matters Application containing Dwellings as follows:

$$A - B - (30\% \text{ of } C) = D \times 0.31 \text{ (being the Council's primary pupil product)} = E \text{ (places needed)} \\ \times 18,758 \text{ (being the Council's (current cost at the date of this Agreement) primary school} \\ \text{places capital cost multiplier)} = F$$

Where:

A = the total number of Dwellings (both Market Units and Affordable Dwellings) built pursuant to the Planning Permission

B = the number of one bed Dwellings within A

C = the number of Affordable Housing Units within A excluding those within B

D = the number of "qualifying Dwellings"

E = the number of places generated by the Development

F = the revised Primary School Education Contribution

Secondary Education

- 4 The Owners shall pay the Secondary Education Contribution as follows:
- 4.1 5% (five percent) of the Secondary Education Contribution prior to the Commencement of Residential Development and not to permit the Commencement of Residential Development until the Owners shall have paid to the Council 5% (five percent) of the Secondary Education Contribution and
 - 4.2 a further 35% (thirty five percent) of the Secondary Education Contribution prior to the Practical Completion of the 100th (one hundredth) Dwelling and not to permit the Practical Completion of the 101st (hundred and first) Dwelling until the Owners shall have paid to the Council the further 35% (thirty five percent) of the Secondary Education Contribution and
 - 4.3 30% (thirty percent) of the Secondary Education Contribution prior to the Practical Completion of the 200th (two hundredth) Dwelling and not to permit the Practical Completion of the 201st (two hundred and first) Dwelling until the Owners shall have paid to the Council 30% (thirty percent) of the Secondary Education Contribution
 - 4.4 30% (thirty percent) of the Secondary Education Contribution prior to the Practical Completion of the 500th (five hundredth) Dwelling and not to permit the Practical Completion of the 501st (five hundred and first) Dwelling until the Owners shall have paid to the Council 30% (thirty percent) of the Secondary Education Contribution
 - 4.5 if the final Reserved Matters Application containing Dwellings has not been determined by the Completion of the 500th (five hundredth) Dwelling the remainder of the Secondary Education Contribution shall be calculated in accordance with Paragraph 5.9 on the basis of 1000 (one thousand) Dwellings
 - 4.6 upon the submission of the final Reserved Matters Application containing Dwellings the Secondary Education Contribution shall be recalculated in accordance with paragraph 5.9 using the actual number of Dwellings to be constructed in order to arrive at the Secondary Education Balancing Sum as follows:
 - 4.7 where the Secondary Education Balancing Sum is greater than £0 (zero pounds) it shall be paid to the Council prior to Practical Completion of the 900th (nine hundredth) Dwelling and not to permit the Practical Completion of the 901st (nine hundred and first) Dwelling until the Owners shall have paid to the Council the Secondary Education Balancing Sum unless the final Reserved Matters Application has not been determined prior to the Practical Completion of the 900th (nine hundredth) Dwelling in which event the Secondary Education Balancing Sum shall be calculated and paid

prior to the Practical Completion of the first Dwelling within the part of the Land covered by the final Reserved Matters Application or

- 4.8 where the Secondary Education Balancing Sum is less than £0 (zero pounds) the Council shall repay to the Owners a sum equivalent to the Secondary Education Balancing Sum prior to the Practical Completion of the first Dwelling within the part of the Land covered by the final Reserved Matters Application

5 The Owners shall:

- 5.1 provide the Secondary School Site which shall :

- 5.1.1 have an unburdened right of access to Victoria Road

- 5.1.2 be located in accordance with Plan 9 or as otherwise agreed in writing between the Owners and the Director

- 5.2 lay out the Secondary School Site as a Serviced Site

- 5.3 following the satisfactory servicing of the Secondary School Site as required by paragraph 5.1 above to Offer to Transfer the Secondary School Site to the Council for the sum of £1 (one pound) within 12 (twelve) months of the Commencement of Development or such other date as may be agreed by the Owners

- 5.4 (upon the Council giving the Owners 48 (forty eight) hours written notice (save in respect of emergency) and at the risk of the Council) allow access to the Secondary School Site for the purposes of site survey and investigations and sinking trial boreholes

- 5.5 covenant that there are no service media on under or over the Secondary School Site that would prohibit prevent or restrict its use as a secondary school and the Secondary School Facilities

- 5.6 The Secondary School Site shall be transferred to the Council subject to a restrictive covenant that it shall not be used other than as an educational establishment for the Secondary School Facilities (together with community use of such establishment's facilities and nursery) permitting ancillary use thereto and a requirement that if the contract for the construction of the Secondary School Facilities has not been let within 5 (five) years of the date of the Offer to Transfer the Secondary School Site shall be offered back to the Owners for a nominal value subject only to the restrictions on title under which the Secondary School Site was originally transferred to the Council (save for the restriction on its use as an educational establishment for the Secondary School Facilities which shall cease) and in such instance the Secondary School Site shall be free of any restrictions in this Schedule and the Council shall also return any unexpended part of the Secondary School Contribution at the same time as the said transfer

- 5.7 The Offer to Transfer the Secondary School Site made under paragraph 5.3 above shall remain open for 60 (sixty) consecutive days from the date it is received by the Council
- 5.8 If the Council do not accept the Offer to Transfer within the said period of 60 (sixty) days the obligations upon the Owners in relation to the Secondary School Site shall cease and determine absolutely Provided That the said Offer to Transfer has been made fully in accordance with the terms of this Agreement
- 5.9 The Secondary Education Contribution shall be calculated upon the submission of the final Reserved Matters Application containing Dwellings as follows:

$$A - B - (30\% \text{ of } C) = D \times 0.22 \text{ (being the Council's secondary pupil product)} = E$$

(places needed) $\times$ 22,940 (being the Council's current cost at the date of this Agreement) secondary school places capital cost multiplier) = F

Where:

A = the total number of Dwellings (both Market Units and Affordable Dwellings) built pursuant to the Planning Permission

B = the number of one bed Dwellings within A

C = the number of Affordable Housing Units within A excluding those within B

D = the number of "qualifying Dwellings"

E = the number of places generated by the Development

F = the revised Secondary School Education Contribution

Part 2

Provisions relating to the Transfer of the Primary School Site and or the Secondary School Site

- 1 The Transfer of Primary School Site and or the Secondary School Site to the Council shall:
 - 1.1 be a transfer of the entire freehold (or leasehold as the case may be) interest of the relevant site
 - 1.2 be free from any pre-emption or option agreement
 - 1.3 be free from any mortgage charge lien or other such encumbrance
 - 1.4 be free from any lease licence or any such other third party interests,
 - 1.5 be subject to a restrictive covenant in favour of the Owners of the relevant land at the date of the transfer which prohibits the use of the site for any purpose other than for the provision of educational services and for community fundraising and recreational purposes which are ancillary to that use
 - 1.6 include all necessary rights and easements (including but not by way of limitation the right of access to and from a public highway) to enable the proper construction and use on the site of a school and the maintenance and use thereof for the benefit of the site
 - 1.7 reserve in favour of the Owners all necessary rights and easements (including but not by way of limitation the right of access to and from a public highway) to enable the proper construction maintenance and use of the Development and any other retained land of the Owners and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the site provided that the Transfer shall contain a proviso in respect of the exercise of the rights by the Owners as follows:

“AND PROVIDED ALWAYS that the exercise of the rights (other than on an emergency basis) shall take into consideration the use of the Property as a school or nursery as appropriate and the need to protect the health and safety of the pupils attending the school or nursery as appropriate and if in the reasonable opinion of the Transferee as the case may be the exercise of the rights would at a particular time adversely interfere with the use of the Property as a school or nursery as appropriate the Transferee as the case may be may specify that the exercise of the rights should take place outside of school/nursery opening hours and/or outside of school/nursery term times”.
 - 1.8 reserve in favour of the Owners the right to lay and use new services on the site subject to the prior written agreement of the Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same provided that the Transfer shall contain a proviso in respect of the exercise of the rights by the Owners as follows:

"AND PROVIDED ALWAYS that the exercise of the rights (other than on an emergency basis) shall take into consideration the use of the Property as a school or nursery as appropriate and the need to protect the health and safety of the pupils attending the school or nursery as appropriate and if in the reasonable opinion of the Transferee as the case may be the exercise of the rights would at a particular time adversely interfere with the use of the Property as a school or nursery as appropriate the Transferee as the case may be may specify that the exercise of the rights should take place outside of school/nursery opening hours and/or outside of school/nursery term times".

- 1.9 declare that boundary structures constructed on the site shall belong to and be maintained by the Owners of the site
 - 1.10 not require consideration in excess of one pound (£1)
 - 1.11 include a covenant by the Council to enter into at the cost of the Owners any statutory agreement with any relevant statutory undertaker reasonably necessary to procure the provision and adoption of any services providing electricity telephone gas water and drainage to the Development
- 2 If no school or school facilities have been constructed and opened on the Primary School Site and or the Secondary School Site within 10 (ten) years of the date on which such part(s) of the Land was Transferred to the Council (and Provided That the requirements of this Deed have been complied with in making such Offer(s) to Transfer) then the Owners may by notice require the Council to transfer such part of the Land back to the original transferor on the same terms mutatis mutandis that the land was originally transferred to the Council (save that there shall be no requirement to restrict the use of the land) and the Council shall make such transfer back to the original transferor within 6 (six) weeks of the above notice
- 3 If the circumstances described in paragraph 2 above apply the Owners will be free to apply for planning permission for such development as is appropriate on the Primary School Site and or the Secondary School Site land (and there shall be no assumption that such land must be retained for educational purposes)
- 4 If the Primary School Site and or the Secondary School Site is not transferred to the Council despite an Offer to Transfer having been made as required by this Deed and the circumstances in Paragraph 2 otherwise apply then the Owners shall be free to make such application for planning permission to develop the relevant part(s) of the Land as set out in paragraph 3 above