

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

- (3) The Developer shall pay to the Council all the Council's reasonable costs associated with the preparation and submission of data to satisfy the criteria for 20 mph speed limit zone Order(s) and the preparation advertising and implementation of 20 mph speed limit zone Order(s) within 28 days of the date of a written request from the Council and in the event that the Developer defaults on payment the Council's costs shall become a proper charge recoverable under the obligations of the Surety as provided for in Clause 19 hereunder

17. DETERMINATION BY THE COUNCIL

If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations of their part contained herein or if a receiving order in bankruptcy is made against them 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 amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non performance or non observance determine this Agreement (except for the clauses 18 19 and 20 hereof) by notice in writing signed by the Proper Officer and delivered to the Developer or sent by post to the addresses stated in this Agreement

18. POWER TO EXECUTE WORKS IN DEFAULT

Without prejudice to clauses 2 and 17 hereof if the Developer fails to execute

or complete the Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty eight days notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer

19. SURETY'S OBLIGATIONS

- (1) If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Developer's estate 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 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 Road or Roads 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 six hundred and forty one thousand and eight hundred and twenty nine pounds (£641,829) being the Estimated Cost
 - (ii) shall not exceed the sum of three hundred and twenty thousand nine hundred and fifteen pounds (£320,915) on and after the issue of the Part 1 Certificate
 - (iii) shall not exceed the sum of one hundred and twenty eight thousand three hundred and sixty six pounds (£128,366) on and after the issue of the Part 2 Certificate
- (2) 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 "Surety's Counter Notice") of the intention of the Surety to carry out the Default Work
- (3) If the Surety having sent the Surety's Counter Notice to the Council 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 2% per cent per annum above the base rate from time to time of HSBC Bank plc calculated from the date on which the Surety received the Default Notice
- (4) If the Surety having sent the Surety's Counter Notice to the Council starts the Default Work and the said work is not completed within four

months after the Surety's Counter Notice was received by the Council or within such further period as may be agreed by the Council the Surety shall subject to sub-clause (5) 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 Road or Roads 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

- (5) The sum payable under sub-clause (4) shall not exceed the Default Cost and the covenant in clause 20(1)(c) shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability hereunder
- (6) 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 19(2)(b)above

20. COUNCIL'S COVENANTS

- (1) The Council HEREBY COVENANTS with the Developer and the Surety for the benefit of all building plots fronting adjoining or abutting the Road or Roads and for each and every one of them:

- (a) to use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the Council shall think fit
- (b) to apply all monies received from the Surety as hereinbefore mentioned towards the expenditure involved in executing or completing the Works and maintaining and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the Road or Roads under the provisions of the Highways Act 1980 or any other act for the time being in force replacing or amending the same
- (c) in the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the Works and maintaining and making good all defects as aforesaid together with the amount of the Council's usual establishment charges to repay to the Surety within twenty eight days after the Road or Roads become maintainable at the public expense the amount of such excess with interest calculated at half yearly rests on the unexpended balance for the time being of the sum paid by the Surety to the Council at the rate of interest prevailing from time to time on monies held in a deposit account with the Council's bankers
- (d) to use its reasonable endeavours to make the 20mph speed

limit zone Order within 12 months of the issue of the Part 2 Certificate under Clause 10

- (2) The Council HEREBY FURTHER COVENANTS that the Final Certificate will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement

21. PART OR PARTS

Notwithstanding anything hereinbefore contained the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for the Part 1 Certificate or the Part 2 Certificate in respect of any part of the Road or Roads (being the whole width of the Road or Roads between points to be defined in the application) by means of a suitable plan and if the Proper Officer shall be satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purposes of construction and adoption in accordance with the several provisions contained in this Agreement then he shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that Part and thereafter the same proceedings may be taken in respect of the said Part of the Road or Roads as if the said Part were the subject of a separate Agreement under which the terms of this Agreement applied to the said Part separately from the remainder of the Road or Roads but without prejudice to the application of this Agreement to the remainder of the Road or Roads and the liability of the Surety shall be reduced as may be agreed by the Proper Officer with the Developer

22. This Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld

23. This Agreement does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999

24. In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing Agreement to be appointed by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1996 or any statutory re-enactment or modification order

25. **GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof this Agreement has been executed as a Deed by the parties hereto but not delivered until the day and year first before written

SCHEDULE 1

The Works

Part 1

1. All highway drainage
2. All other drainage contained within the highway
3. All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
4. Street name plates
5. Carriageway sub-base road base and any supporting structures thereto
6. Carriageway base course surfacing where appropriate
7. Demarcation of sight lines and clearance of vision splays
8. Initial Traffic Calming Measures

Part 2

9. All outstanding kerbing not completed in Part 1
10. All footway/footpath works including wearing course
11. Carriageway wearing course and/or carriageway base course
12. Vision splays and verges
13. Street lighting and street furniture
14. Road markings
15. All other works described in the Specification and shown in the Drawings
16. Secondary Traffic Calming Measures

SCHEDULE 2
Section Drawings

C485/601 Revision H	C485/621 Revision E
C485/602 Revision F	C485/622 Revision D
C485/603 Revision G	C485/623 Revision D
C485/604 Revision E	C485/624 Revision C
C485/605 Revision H	C485/625 Revision D
C485/606 Revision I	C485/626 Revision D
C485/607 Revision D	C485/627 Revision A
C485/608 Revision F	C485/628 Revision B
C485/609 Revision C	C485/629 Revision A
C485/610 Revision D	C485/630 Revision B
C485/611 Revision A	C485/631 Revision C
C485/612 Revision E	C485/632 Revision C
C485/616 Revision B	C485/634
C485/617	C485/641

EXECUTED as a DEED by
PERSIMMON HOMES LIMITED
Acting by its Attorneys

Speech
Uxue

S.J. Leech
GA mare

and

in the presence of:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

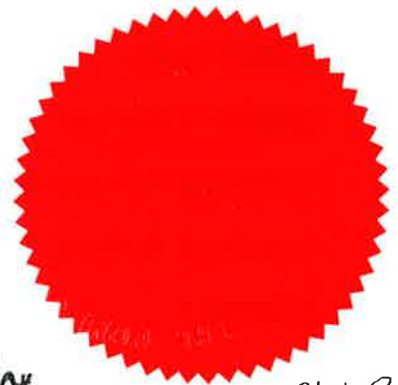
W. Jones

WAYNE JONES
VERONA HOUSE
TETBURY HILL
MALMESBURY
WILTS
SN16 9JR

EXECUTED as a DEED by affixing
THE COMMON SEAL of
WILTSHIRE COUNCIL
in the presence of:

Grant Lee

Principal Solicitor



18448

Authorised officer

EXECUTED as a DEED by affixing
THE COMMON SEAL of
NATIONAL HOME-BUILDING COUNCIL
in the presence of:

David S Kirkwood

DAVID S KIRKWOOD
AUTHORISED SIGNATORY

00518/12

DATED

2012

PERSIMMON HOMES LIMITED

and

WILTSHIRE COUNCIL

and

NATIONAL HOUSE-BUILDING COUNCIL

AGREEMENT

Under Section 38 of the Highways Act 1980
in connection with the making up
and adoption of highways at Old Sarum
(Phases 2A, 2B & 2C), The Portway,
Salisbury, Wiltshire

Solicitor to the Council
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire

