

DATED 16th December

2021

TENDRING FARMS LIMITED
and
SECURE TRUST BANK PLC
and
TENDRING DISTRICT COUNCIL
and
ESSEX COUNTY COUNCIL

DEED OF VARIATION

under section s106 and s106A of the Town and Country Planning Act 1990
Land on the South side of Long Road, Mistley, Essex

Planning Permission ref: 17/01181/OUT granted on Appeal (reference
APP/P1506/W/19/3220201) and 21/00213/OUT
Reserved Matters Application: 21/00197/DETAIL

DATE

16th December

2021

PARTIES

- 1) **TENDRING FARMS LIMITED** (Co. Regn. No. 04612108) of Bentfield Place, Bentfield Road, Stansted CM24 8HL ("the Owner"); and
- 2) **SECURE TRUST BANK PLC** (Co. Regn. No. 00541132) of 1 Arleston Way, Shirley, Solihull B90 4LH ("the Mortgagee")
- 3) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex C015 1 SE ("the Council")
- 4) **ESSEX COUNTY COUNCIL** of County Hall Chelmsford Essex CMI 1QH ("the County Council")

RECITALS

- A. The Council and the County Council are the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (the "1990 Act") for the area within which the Site is situated and are the authority by whom the planning obligations varied by this Deed are enforceable
- B. The County Council is also the local authority for statutory age education and pre-school age education and highway authority for the area in which the Site is situated
- C. The Owner is registered as the freehold owner of the Site under title number EX705721 and which title is subject to two registered charges dated 1st March 2018 both in favour of the Mortgagee
- D. Outline planning permission with reference 17/01181/OUT ('the Original Outline') was granted at appeal subject to a deed of undertaking made pursuant to Section 106 of the 1990 Act dated 30th October 2019 (the "Section 106 Undertaking") and is referred to in the Section 106 Undertaking as the Planning Permission.

- E. Planning permission 21/00213/OUT was granted by the Council on 11th October 2021 pursuant to an application made in respect of the Original Outline under Section 73 of the 1990 Act and is also referred to as the Planning Permission in the Section 106 Undertaking and is subject to the obligations contained therein.
- F. The Owner has made the Reserved Matters Application to the Council.
- G. The Owner and the Council and the County Council have agreed to enter into this Deed in order to vary the Section 106 Undertaking so as to secure planning obligations with regard to the delivery of a trim trail and associated signage subject to which the Council has resolved to issue the Reserved Matters Approval

1. INTERPRETATION

In this Deed expressions shall have the meanings given to them by the Section 106 Undertaking SAVE where otherwise defined below:

“Reserved Matters Application”	means the application for the approval of reserved matters with reference number 21/00197/DETAIL
“Reserved Matters Approval”	means the approval of the reserved matters the subject of the Reserved Matters Application

2. CONSTRUCTION

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner

- 2.4 Wherever there is more than one person named as a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it and "statutory requirement" shall be construed accordingly
- 2.8 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and or the County Council the successors to its statutory functions and any duly appointed employee or agent of the Council and or the County Council or such successor

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 and 106A of the 1990 Act
- 3.2 To the extent that the covenants, restrictions and requirements imposed upon the Owner under this Deed fall within the terms of Section 106 of the 1990 Act such covenants, restrictions and requirements are planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council and the County Council as planning authority against the Owner in respect of the Site.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are

entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

4. CONDITIONALITY

Save for Clause 6.1 which shall come into effect upon the date hereof this Deed is conditional upon the issue of the Reserved Matters Approval

5. VARIATION OF THE SECTION 106 UNDERTAKING

The Owner and the Council and the County Council agree that the Section 106 Undertaking shall be varied in accordance with the terms of the First Schedule to this Deed and for the avoidance of any doubt the Section 106 Undertaking shall continue to have full force and effect as amended

6. MISCELLANEOUS

- 6.1 The Owner will on completion of this Deed pay to the Council and the County Council their reasonable legal costs incurred in the negotiation, preparation and completion of this Deed
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the parties and their successors in title and assigns and any successor to the Council's and or the County Council's functions)
- 6.3 This Deed shall be registrable as a local land charge by the Council
- 6.4 Insofar as any provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality.
- 6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Reserved Matters Approval shall be quashed,

revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to implementation

- 6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest

7. WAIVER

No waiver (whether expressed or implied) by the Council and or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8. NO FETTER

Nothing in this Deed of Agreement shall prejudice or affect the rights powers duties and obligations of the Council and or the County Council in the exercise of their respective functions in any capacity.

9. MORTGAGEE CONSENT

The Mortgagee consents to the completion of this Agreement and declares that its interest in the Site shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Site Provided that the Mortgagee shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site.

10. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

11. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

FIRST SCHEDULE

Variation of the Section 106 Undertaking

The Section 106 Undertaking shall be varied as follows:

1. The following new definitions shall be inserted at Schedule 3 of the Section 106 Undertaking:

“Trim Tail” means a site-wide circular public recreation/walking route shown indicatively on the plan at Annex 2

“Trim Trail Link” means a detailed scheme for the creation of a linking section of the Trim Trail located within the commercial area of the Site substantially in accordance with the route indicated by the green line as shown on the plan at Annex 2

“Signage” means the signage associated with the use of the Open Space Land to sign post the users of the Trim Trail including the Trim Trail Link to nearby existing public footpaths be provided in the indicative locations shown on the plan at Annex 2

2. The following shall be added to the existing definition of **“Open Space Specification”** at Schedule 3 of the Section 106 Undertaking:

‘.....AND which specification shall include full details of the Signage’

3. The following shall be inserted after sub-paragraph 1.3.3 of Schedule 3 of the Undertaking:

‘Provided that this paragraph 1.3 shall not require the Owner to make the reserved matters application for the commercial area of the Site’

4. The following shall be inserted as a new paragraph 6 to Schedule 3 of the Section 106 Undertaking:

'6. The Owner shall submit to the Council the detailed Trim Trail Link scheme together with the reserved matters application for the commercial area of the Site as required by the Planning Permission which once approved by the Council will form part of the Open Space Land AND the Owner shall thereafter deliver the Trim Trail Link in accordance with the details approved by the Council and transfer its freehold interest in the Trim Trail Link to the Council for the sum of One Pound (£1) AND the terms of paragraph 4 of this Schedule 3 shall apply equally to that transfer.'

5. The plan at Appendix I to this Deed shall be inserted as a new Annex 2 to the Section 106 Undertaking

EXECUTED as a DEED when the seal)
of TENDRING DISTRICT COUNCIL)
was affixed in the presence of:)



Authorised Signatory



Executed as a deed by
TENDRING FARMS LIMITED
acting by a Director

Signature)

Director

In the presence of:

Signature of Witness

Name (in BLOCK CAPITALS)

Address

Executed and Delivered as a deed by
SECURE TRUST BANK PLC acting by two duly
appointed Attorneys under a Power of Attorney
dated 29 June 2004

THE COMMON SEAL OF
ESSEX COUNTY COUNCIL
Was hereunto affixed in the presence of:

Attesting Officer



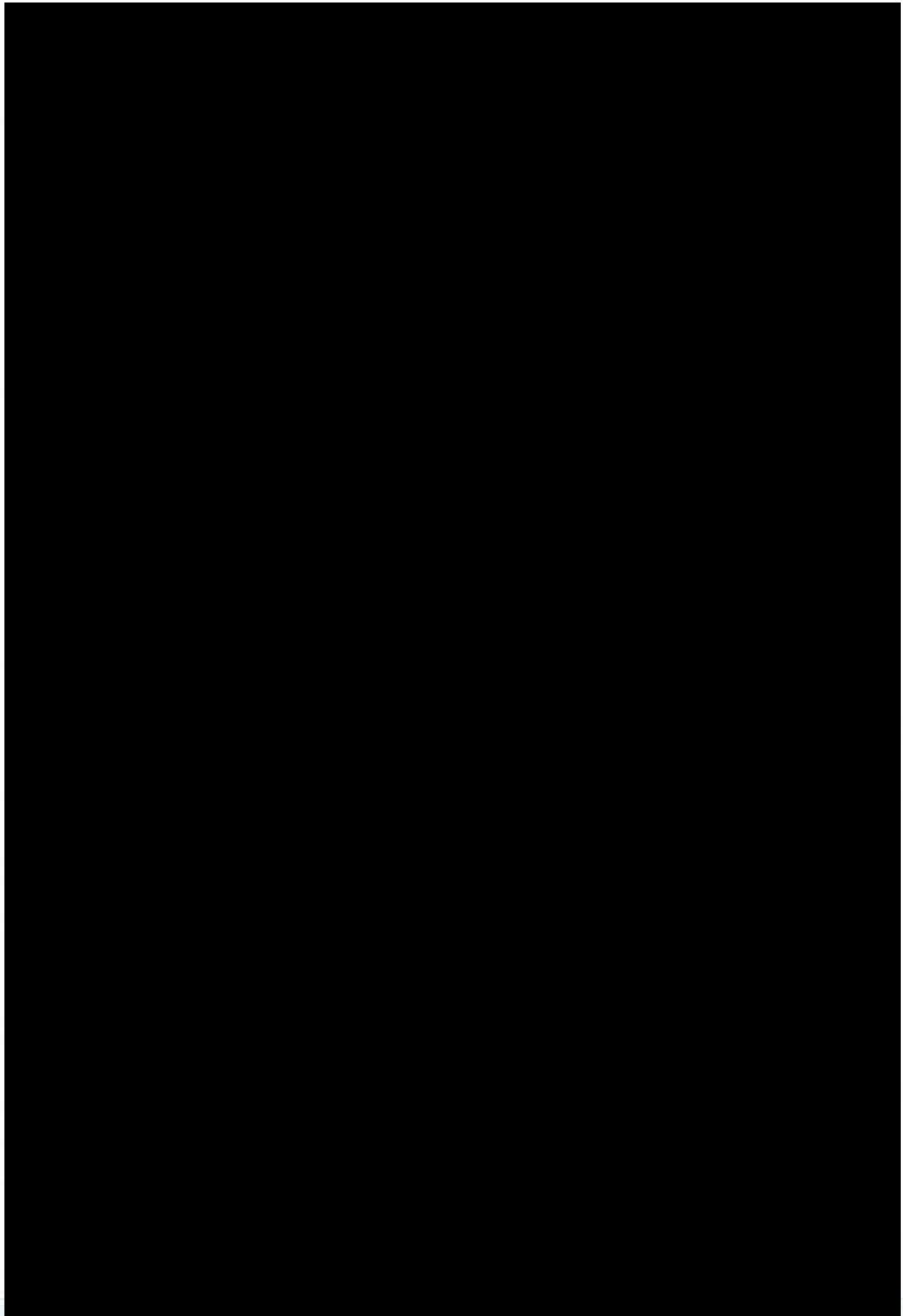
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APPENDIX I

New Annex 2 to the Section 106 Undertaking

Trim Trail Link and Signage Plan





● Illustrative signage location

↔ Trim trail link through commercial area

NTS