

DATE:

2022

- (1) JAMES JONES & SONS (PALLETS AND PACKAGING) LIMITED**
- (2) WREXHAM COUNTY BOROUGH COUNCIL**

UNILATERAL UNDERTAKING

relating to

Land at Wrexham Industrial Estate, Oak Road, Wrexham LL13 9RG

Anderson Strathern LLP
1 Rutland Court
Edinburgh
EH3 8EY
Ref: GWG/JAM131.4



THIS UNDERTAKING IS GIVEN ON THE

DAY OF

2022

By:

- (1) **James Jones & Sons (Pallets and Packaging) Limited** a company incorporated in England and Wales with company registration number SC537342, whose registered office is at Broomage Avenue, Larbert, United Kingdom, FK5 4NQ (the "**Owner**") in favour of
- (2) **Wrexham County Borough Council** (the "**Council**").

RECITALS:

- (A) The Owner is the registered proprietor of the Property, including the Development Site and the Ecology Area.
- (B) The Council is the Local Planning Authority for the purposes of this deed and the Town and Country Planning Act 1990 (as amended) for the area within which the Development Site and the Ecology Area are situated.
- (C) The Owner submitted an application to the Council for the Planning Permission and the parties have agreed to enter into this Deed in order to secure the planning obligations contained herein..

OPERATIVE PROVISIONS:

The parties agree as follows:

1 DEFINITIONS

1.1 In this Undertaking, unless the context otherwise requires, the following definitions apply:

Act	the Town and Country Planning Act 1990 (as amended).
Acquirer	a person to whom a Disposal is made;
Deed of Covenant	a deed of covenant in the form set out in Schedule 1;
Commencement of Development	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Undertaking and for no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and

"Commence Development" shall be construed accordingly.

Development	The development of the Development Site as set out in the Planning Permission
Development Site	The land shown edged by a dashed blue line on the plan attached at Schedule 3, forming part of the Property
Disposal	a disposition of any kind, by whatever means, whether to a Connected Person or a third party, whether directly or indirectly and whether by one or more transactions, of any interest of the Original Owner in the Property or of the capital value of its interest in the Property including: (a) a conveyance or transfer (whether by sale or otherwise and including an exchange of the Property for other property with or without equality money and a Disposal by a chargee or mortgagee in exercise of a power of sale); or (b) a lease or tenancy; (c) an assignment of a lease, tenancy or right to occupy; (d) a grant, release or surrender of any interest; (e) any mortgage or charge; (f) any assignment of any interest in any rents or other income arising from the Property, whether at law or equity, and whether by way of absolute assignment or by way of security only;
Ecology Area	The area shown edged green on the plan attached at Schedule 3, forming part of the Property;
Ecological Management Plan	means the overarching ecological management plan produced by Marches Ecology LLP Ecological Management Plan C442/EMP/1.0 dated 30 June 2022 insofar as the same is applicable to the Development Site and the Ecology Area.
Ecological Management Plan	means a scheme to be submitted by the Owner to the Council and agreed between the Owner and the Council in writing detailing the proposed measures to be implemented by the Owner to ensure the viability, management and protection of the Ecology Area in order to mitigate for residual biodiversity impacts arising from the Development (including detail as to how and when such measures will be implemented).

Planning Permission	the planning permission for Construction of New Biomass Boiler house and fuel store, erection of new kilns, construction of New dry pallet store, associated ground works. pursuant to the Owner's application ref: P/2021/0217
Property	the freehold property known as James Jones & Sons, Oak Road, Wrexham Industrial Estate, Wrexham LL13 9RG (being the Property formally referred to as Larch Ltd) shown edged red on the title plan attached at Schedule 2 and forming the whole of the land registered at HM Land Registry with title absolute under title number CYM289539;
Restriction	the restriction set out in clause 3 of this Undertaking;
Service Media	all/any media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.
Owner's Solicitor	Anderson Strathern of 1 Rutland Court, Edinburgh EH3 8EY (reference GWG/JAM131.4) or any other solicitor whose details may be notified in writing from time to time by the Owner to the Council;
Working Day	Any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday.

2 INTERPRETATION

2.1 In this Undertaking, unless the context requires otherwise:

- 2.1.1 references to clauses, Schedules and Appendices are to the clauses, Schedules and Appendices of this Undertaking and references to this Undertaking include its Schedules and Appendices;
- 2.1.2 reference to a paragraph is to the paragraph of the Schedule in which the reference is made;
- 2.1.3 references to this Undertaking or any other document are to this Undertaking or that document as amended from time to time;
- 2.1.4 reference to any legislation (whether specifically named or to legislation in general) shall include:
 - (a) any modification, extension, amendment or re-enactment of that legislation for the time being in force;

- (b) where applicable all instruments, orders, regulations or other subordinate legislation for the time being made, issued or given under that legislation or deriving validity from it; and
 - (c) where applicable all local / national and directly applicable supra-national laws for the time being in force.
- 2.2 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.3 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.4 The clause headings in this Undertaking are for reference only and shall not affect its construction or interpretation.
- 2.5 Where any party to this Undertaking comprises more than one person, the obligations and liabilities of that party under this Undertaking shall be joint and several obligations and liabilities of those persons.
- 2.6 Unless the context requires otherwise, the words "**include**", "**including**", "**in particular**" or any similar expression will be construed as illustrative and shall be deemed to be followed by the words "**without limitation**".
- 2.7 Unless otherwise specified, "**writing**" or "**written**" does not include email, fax or any other form of electronic communication.
- 2.8 Unless otherwise specified, the "**Owner**" includes the Owner's successors in title and the "**Owner**" includes anyone in whom the Owner's interest in this Undertaking vests by operation of law.
- 2.9 A reference to the "**Owner**" includes a reference to each person comprising it and an obligation owed by more than one person is owed by them jointly and severally.

3 RESTRICTION

- 3.1 The Owner covenants with the Council not to make any Disposal of the whole or any part or parts of the Property without first procuring that the Acquirer has executed the Deed of Covenant.
- 3.2 The Original Owner shall apply for the entry of the following restriction against the Original Owner's title to the Property at HM Land Registry within ten (10) Working Days from the date hereof and shall procure that the restriction has priority to any mortgage or charge

entered in to by the Original Owner:

"No disposition of the registered estate (other than a charge by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction), is to be registered without a written consent signed by or on behalf of Wrexham County Borough Council or its conveyancer that the provisions of clause 3.1 of an Undertaking dated 2022 and made between (1) James Jones & Sons (Pallets and Packaging) Limited and (2) Wrexham County Borough Council have been complied with."

- 3.3 The Original Owner covenants with the Council to deliver to the Council official copy entries relating to the Property within ten (10) Working Days after receipt from HM Land Registry of confirmation of registration of the Restriction.
- 3.4 The Council covenants with the Original Owner to deliver to the Acquirer a written consent signed by the Council or its conveyancer to satisfy the restriction on title referred to at **clause 3.2** within ten (10) Working Days of the Council receiving the Deed of Covenant.
- 3.5 In the event that the Acquirer does not receive a written consent signed by the Council or its conveyancer to satisfy the restriction on title referred to at **clause 3.2** within ten (10) Working Days of the Council receiving the Deed of Covenant the Council authorises the Owner's Solicitor to provide a written consent as the Council's conveyancer to satisfy the restriction on title referred to at **clause 3.2**.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:

- 4.1.1 the grant of the Planning Permission; and

- 4.1.2 the Commencement of Development on the Development Site;

save for the provisions of **clause 8** and **clause 9** (jurisdiction and delivery clauses) which shall come into effect immediately upon completion of this Deed

5 OWNER'S COVENANTS

- 5.1 The Owner covenants that it shall:

- 5.1.1 Notify the Council with a minimum period of thirty (30) days prior notice of the Commencement of Development in respect of the Development Site.

- 5.1.2 Prior to Commencement of Development of the Development Site to submit a Habitat Management Plan to the Council for approval.

- 5.1.3 Not to Commence Development of the Development Site until the Ecological Management Plan for the Development Site has been approved by the Council in writing.
- 5.1.4 To provide and thereafter maintain and manage the Ecology Area in accordance with the Ecological Management Plan which shall include procuring that a suitably qualified and independent third party (such third party or any replacement of them to be appointed with the written approval of the Council) to manage the Ecology Area and implement the Ecology Management Plan.
- 5.1.5 Not to carry out any development (within the meaning of section 55 of the Act) of the whole or any part of the Ecology Area PROVIDED THAT this shall not prevent:
- (a) the retention, use, inspection, reconstruction, replacement, relaying, alteration, maintenance, cleaning, repairing, removal, conducting and management of Service Media in, through, under, over or upon the Ecology Area together with the free flow and passage of all services and utilities through any part of the Service Media; or
 - (b) any actions taken to comply with all laws relating to the Ecology Area, the use of the Ecology Area and the use or operation of all Service Media in, through, under, over or upon the Ecology Area.

6 MISCELLANEOUS PROVISIONS

- 6.1 Nothing in this Undertaking will be deemed to constitute the relationship of a partnership or joint venture between the Owner and the Council.
- 6.2 It is not intended that any person will be entitled to enforce any provisions of this Undertaking (including approvals and consents) who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Undertaking shall be registrable as a local land charge by the Council.
- 6.4 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission 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 the Commencement of Development;
- 6.5 or the Development Site is developed under a new planning permission (other than one issued under Section 73 of the Act for variation or discharge of a condition of Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.

- 6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Development Site or the Ecology Area or the parts of the Development Site or the Ecology Area in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.7 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Development Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 6.8 For the avoidance of doubt, this Deed shall not be enforceable against any occupiers or tenants of any units constructed pursuant to the Planning Permission nor against those deriving title from them.

7 WAIVER

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

8 JURISDICTION

- 8.1 This Undertaking and any claim or matter arising under, 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.
- 8.2 The parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising under, out of or in connection with this Undertaking or its subject matter or formation (including non-contractual disputes or claims).
- 8.3 Each party irrevocably consents to any process in any proceedings under **clause 8.2** being served on it in accordance with the provisions of this contract relating to service of notices. Nothing contained in this contract will affect the right to serve process in any other manner permitted by law.
- 8.4 A person who is not a party to this Undertaking shall not have any right under the 1999 Act to enforce any term of this Undertaking.

9 DELIVERY

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

IN WITNESS of which the Owner has signed this undertaking as a deed on the date stated at the beginning of it.

SCHEDULE 1

Form of Deed of Covenant

This Deed of Covenant is made

2022

BETWEEN

Covenantor: [] [whose registered office is at] [of]
[] (Company Registration number []
)); and

Council: **Wrexham County Borough Council** of 16 Lord St, Wrexham LL11 1LG.

BACKGROUND

- (A) The Covenantor is a disponent for the purposes of the Original Undertaking.
- (B) The Covenantor has agreed to comply with the terms of the Original Undertaking insofar as they relate to the Disposal Property as if it were the Original Owner named in that Original Undertaking and to enter into this Deed of Covenant.

OPERATIVE PROVISIONS

1. Interpretation

1.1 In this Undertaking, the following words and expressions have the following meanings:

Original Owner	James Jones & Sons (Pallets and Packaging) Limited a company incorporated in England and Wales with company registration number SC537342, whose registered office is at Broomage Avenue, Larbert, United Kingdom, FK5 4NQ;
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Original Owner's Obligations	means the obligations and restrictions on the Original Owner contained in the Original Undertaking;
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Disposal Property means [the Property] OR [the part of the Property shown edged in red on the attached plan];

Original Undertaking means a unilateral undertaking relating to the Property dated [] 2022 made between (1) the Original Owner and (2) the Council.

1.2 Words and expressions defined in the Original Undertaking have the same meanings in this Deed of Covenant unless an alternative meaning is given in this Deed of Covenant when the alternative meaning will apply.

1.3 The parties to this Deed of Covenant do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. **Covenantor's Obligations**

2.1 Subject to the provisions of clause 2.2, the Covenantor covenants with the Council to comply with the Original Owner's Obligations insofar as they relate to the Disposal Property as if the Original Owner's Obligations were set out in full in this Deed of Covenant and references to the Original Owner in the Original Owner's Obligations were references to the Covenantor; and

2.2 [Sale of Part][The Covenantor covenants with the Council that it will take such steps as are necessary to procure the registration of a restriction on the proprietorship register of [the title to the Property] [title number []] in the form set out in clause 3 of the Original Undertaking.]

3. **Execution**

The Covenantor and the Council have executed this Deed of Covenant as a deed and it is delivered on the date set out above

EXECUTED as a DEED by []
for and on behalf of the []

] and []:
:

Director

Director

SCHEDULE 2

Title Plan

SCHEDULE 3

Ecology Area and Development Site

EXECUTION PAGE

Executed as a Deed by _____, a
director on behalf of **JAMES JONES & SONS (PALLETS
AND PACKAGING) LIMITED** in the presence of:

} _____
Director

Witness signature _____

Name
(in block capitals) _____

Address

Occupation

Acknowledged for and on behalf of **WREXHAM COUNTY BOROUGH COUNCIL**
