



Registration of a Charge

Company name: **FIXED PHAGE LIMITED**

Company number: **SC373464**

Received for Electronic Filing: **13/08/2019**



X8BS2DZV

Details of Charge

Date of creation: **07/08/2019**

Charge code: **SC37 3464 0004**

Persons entitled: **BARWELL PLC AS SECURITY TRUSTEE**

Brief description: **N/A**

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **HANNAH WARD**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 373464

Charge code: SC37 3464 0004

The Registrar of Companies for Scotland hereby certifies that a charge dated 7th August 2019 and created by FIXED PHAGE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th August 2019 .

Given at Companies House, Edinburgh on 14th August 2019

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

BOND AND FLOATING CHARGE

BY

FIXED PHAGE LIMITED

IN FAVOUR OF

BARWELL PLC

MACROBERTS

THIS **BOND AND FLOATING CHARGE** is granted by

FIXED PHAGE LIMITED (registered number SC373464) having its registered office at c/o Barwell plc, Sterling House, 20 Renfield Street, Glasgow G2 5AP (the "**Company**")

in favour of

BARWELL PLC, (registered number SC142927) having its registered office at Sterling House, 20 Renfield Street, Glasgow G2 5AP in its capacity as security trustee for itself and each of the Noteholders (the "**Security Trustee**" which expression shall include any entity for the time being appointed as Security Trustee and shall be construed so as to include any successor).

1. DEFINITIONS AND INTERPRETATION

1.1 In this Floating Charge, unless the context otherwise requires:-

"Act"	means the Insolvency Act 1986;
"Administrator"	Includes any person or persons appointed (and any additional person or persons appointed or substituted) as administrator by the Security Trustee under this Floating Charge;
"Assets"	means the whole of the property, assets and undertaking (including uncalled capital) from time to time of the Company;
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh;
"Fixed Security"	shall have the meaning given to it in section 486 of the Companies Act 1985;
"Floating Charge"	means this bond and floating charge;
"Loan Note Instrument"	means the loan note instrument issued by the Company and dated on or around the date hereof;
"Notes"	means the loan notes pursuant to the Loan Note Instrument;
"Noteholders"	means the holders of the Notes issued pursuant to the Loan Note Instrument;
"Secured Obligations"	means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due and owing by the Company to the

Noteholders.

- 1.2 Any reference in this Floating Charge to:-
- 1.2.1 the “**Company**” or the “**Security Trustee**” shall include any person deriving title from them or any permitted successor or assignee;
 - 1.2.2 any agreement or instrument is a reference to that agreement or instrument as amended, novated, replaced or restated in whole or in part;
 - 1.2.3 a provision of law is a reference to that provision as amended or re-enacted; and
 - 1.2.4 a “**Clause**” is to a clause of this Floating Charge.
- 1.3 Words in the singular shall import the plural and *vice versa*.
- 1.4 The headings in this Floating Charge are for ease of reference only.

2. UNDERTAKING TO PAY

The Company undertakes to the Security Trustee that it will on demand when due pay or discharge the Secured Obligations together with interest thereon from the date of such demand to the date of payment at the rate then payable on the Secured Obligations in respect of which such demand has been made.

3. FLOATING CHARGE

- 3.1 The Company, in security for the payment or discharge of the Secured Obligations, grants a floating charge in favour of the Security Trustee over the Assets.
- 3.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Floating Charge.

4. PRIORITY

- 4.1 This Floating Charge shall rank in priority to any Fixed Security (other than any Fixed Security granted by the Company in favour of the Security Trustee which shall rank in priority to this Floating Charge) and to any other floating charge.
- 4.2 The Company shall not, without the prior written consent of the Security Trustee, create or permit to exist any Fixed Security or floating charge over all or any part of the Assets which ranks in priority to or equally with this Floating Charge except for any Fixed Security granted by the Company in favour of the Security Trustee.

5. CONTINUING SECURITY

- 5.1 This Floating Charge shall be a continuing security irrespective of any intermediate payment or satisfaction of the Secured Obligations or any of them.
- 5.2 The obligations of the Company under this Floating Charge shall remain in full force and effect irrespective of any act, event or matter which might, as a matter of law or otherwise, discharge the security hereby created including:-
- 5.2.1 any time or other indulgence granted in respect of any of the Secured Obligations; or
 - 5.2.2 any increase in or waiver or discharge of any of the Secured Obligations or any amendment or termination of any agreement relating to the Secured Obligations; or
 - 5.2.3 the Security Trustee abstaining from perfecting or enforcing or giving up or waiving any other security, guarantee or other right or remedy for all or any of the Secured Obligations; or
 - 5.2.4 any legal limitation, disability, incapacity or other circumstance relating to, or any invalidity, unenforceability or frustration of any of the obligations of, any debtor in respect of the Secured Obligations.

6. ADDITIONAL SECURITY

- 6.1 This Floating Charge shall be without prejudice and in addition to any other security which may at any time be held by the Security Trustee from the Company or any other person in respect of the whole or any part of the Secured Obligations and may be enforced independently of any such other security.
- 6.2 The Security Trustee shall not be obliged before exercising any of the rights conferred on it by this Floating Charge or by law:-
- 6.2.1 to take any action, enforce any security, exercise any right of compensation or set-off or to obtain or enforce any judgement, decree or order in any court against the Company or any other person; or
 - 6.2.2 to make or file any claim or proof in a winding up, liquidation, administration or other insolvency proceedings of the Company or any other person.

7. UNDERTAKINGS

The Company shall:-

- 7.1 maintain such insurances of such types, in such amounts, against such risks and with such companies as required in the ordinary course of business;

- 7.2 apply any monies received from any insurances in making good the loss or damage in respect of which the monies were received or, at the option of the Security Trustee, in repayment of the Secured Obligations;
- 7.3 keep all Assets in a good state of repair;
- 7.4 comply with all obligations and conditions relating to the heritable, freehold or leasehold property owned or occupied by the Company and at all reasonable times permit the Security Trustee and their representatives access to such property;
- 7.5 promptly pay all rates, rents, taxes and other outgoings in respect of any heritable, freehold or leasehold property owned or occupied by the Company;
- 7.6 provide the Security Trustee with such information relating to the business of the Company, its financial condition and the Assets as the Security Trustee may reasonably require from time to time;
- 7.7 comply with all laws, statutes and regulations (including those relating to the environment) which are applicable to it and obtain, effect, comply with and maintain in full force and effect all registrations, licences, consents, authorisations and exemptions required for the conduct of its business and the performance, validity and enforceability of this Floating Charge and any document entered into pursuant to this Floating Charge;
- 7.8 deposit with the Security Trustee all deeds and documents of title relating to any heritable, freehold or leasehold property owned by the Company from time to time;
- 7.9 notify the Security Trustee promptly of the acquisition of any heritable, freehold or leasehold property and, if so requested by the Security Trustee, execute and deliver to the Security Trustee, at the cost of the Company, a legal mortgage or standard security in favour of the Security Trustee over any heritable, freehold or leasehold property vested in it after the date of this Floating Charge; and
- 7.10 grant the Security Trustee and its representatives all facilities within its power to enable the Security Trustee or their representatives to carry out investigations of title into any property which is or may be subject to this Floating Charge.

8. PROHIBITION ON THE DISPOSAL OF ASSETS

The Company shall not without the prior written consent of the Security Trustee:-

- 8.1 dispose of the Assets or any part thereof or interest therein other than in the ordinary course of business;
- 8.2 sell, factor, assign or otherwise deal with book or other debts forming part of the Assets otherwise than in the ordinary course of collecting and realising the same; and

- 8.3 pull down or remove the whole or any part of any buildings forming part of the Assets or sever or unfix or remove any of the fixtures thereto nor (except for the purposes of effecting necessary repairs thereto or of replacing the same) remove any of the plant and machinery belonging to or used by it;
- 8.4 grant or agree to grant any tenancy or licence affecting all or any part of the Assets or grant or agree a lease or sublease of, or accept a surrender of a lease, sublease or tenancy of all or any part of the Assets.

9. **NON-COMPLIANCE BY COMPANY**

If the Company for any reason fails to observe or punctually to perform any of its obligations under this Floating Charge, the Security Trustee shall be entitled, on behalf of or in the name of the Company or otherwise and at the cost of the Company, to perform the obligation and to take any steps which the Security Trustee (acting reasonably) may consider necessary with a view to remedying or mitigating the consequences of the failure.

10. **REPRESENTATIONS AND WARRANTIES**

The Company represents and warrants to the Security Trustee that:-

- 10.1 it is duly incorporated and validly existing under the laws of Scotland;
- 10.2 it has the power to grant this Floating Charge and to perform its obligations hereunder;
- 10.3 it has taken all necessary corporate action to authorise the execution and delivery of this Floating Charge and to authorise the performance of its obligations hereunder;
- 10.4 subject to the registration of this Floating Charge with the Registrar of Companies in Edinburgh this Floating Charge constitutes a valid, binding and enforceable obligation of the Company;
- 10.5 neither the granting of this Floating Charge by the Company nor the performance of its obligations hereunder contravene any law or regulation in force as at the date hereof or any agreement dated on or prior to the date hereof to which the Company is a party or by which it is bound nor does it, as at the date hereof, cause any limitation of any of the powers of the Company however imposed or the right or ability of the directors to exercise any of such powers to be exceeded; and
- 10.6 all authorisations required for the entry into, performance, validity and enforceability of this Floating Charge by the Company and for the conduct of its business have been obtained and are in full force and effect.

11. **ADMINISTRATOR**

Without prejudice to the provisions of the Act, the Security Trustee may, in accordance with and to the extent permitted by applicable laws, appoint such person or persons as they think fit as Administrator at any time after:-

- 11.1 payment of any of the Secured Obligations shall have been properly demanded by the Security Trustee and shall not have been made on the due date; or
- 11.2 a written request by the Company to appoint an Administrator;
- 11.3 any step is taken by the Company or by any other person to appoint an Administrator in relation to the Company.

12. **PROTECTION OF THIRD PARTIES**

- 12.1 No purchaser from, or other person dealing with, an Administrator shall be concerned to enquire whether any of the powers exercised or purported to be exercised has arisen or become exercisable, whether any of the Secured Obligations remains outstanding, whether an Administrator is authorised to act or as to the propriety or validity of the exercise or purported exercise of any power.
- 12.2 The receipt of an Administrator shall be an absolute discharge to a purchaser from, or other person dealing with, the Administrator and shall relieve that purchaser of any obligation to see to the application of any moneys paid to or at the direction of the Administrator.

13. **PROTECTION OF SECURITY TRUSTEE AND ADMINISTRATOR**

Neither of the Security Trustee nor the Administrator shall be liable to the Company in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of their respective powers or for any other loss of any nature whatsoever.

14. **EXPENSES**

The Company shall reimburse or pay to the Security Trustee or any Administrator on demand the amount of all costs and expenses (including legal and other professional fees plus disbursements) reasonably incurred by the Security Trustee and by any Administrator (together with any applicable value added tax) in connection with the exercise or the attempted exercise by or on behalf of the Security Trustee or a Administrator of any of the powers of the Security Trustee or a Administrator, and the enforcement, preservation of any rights under, or the attempted enforcement or preservation of any rights under, this Floating Charge.

15. INDEMNITY

The Company shall indemnify the Security Trustee and each Administrator from and against all losses, costs, expenses, claims, demands and liabilities whether in contract, delict, tort or otherwise (together with any applicable value added tax) reasonably and properly incurred by the Security Trustee or that Administrator or by any employee or agent of the Security Trustee or any Administrator in connection with anything done or omitted under this Floating Charge or any other document relating to it, or in the exercise or attempted or purported exercise of the powers in this Floating Charge, or occasioned by any breach by the Company of any of its undertakings or other obligations to the Security Trustee, or in consequence of any payment in respect of the Secured Obligations (whether made by the Company or a third person) being declared void or impeached for any reason.

16. PERFECTION OF SECURITY

The Company shall, on demand, execute any document or do any act or thing which the Security Trustee may reasonably specify with a view to perfecting this Floating Charge or the security created or intended to be created by this Floating Charge or (on such security becoming enforceable) which an Administrator may specify with a view to facilitating the exercise or the proposed exercise of any of its powers under this Floating Charge.

17. RELEASE OF SECURITY

17.1 When the Secured Obligations have been irrevocably paid or discharged in full to the satisfaction of the Security Trustee or, if the Security Trustee so agrees, at any other time, the Security Trustee shall, subject to the provisions of Clause 16, at the request and cost of the Company, execute such documents as may be required to release this Floating Charge and any other security created over the Assets under the terms of this Floating Charge.

17.2 If any payment or discharge of any of the Secured Obligations is, in the reasonable opinion of the Security Trustee, liable to be avoided or invalidated under any enactment relating to bankruptcy or insolvency, the Security Trustee may refuse to grant any release of the security created by this Floating Charge for such further period as the risk of such avoidance or invalidity continues.

18. AVOIDANCE OF PAYMENTS

No assurance, security or payment which may be avoided or adjusted under the law, including under any statute relating to bankruptcy or insolvency and no release, settlement or discharge given or made by the Security Trustee on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Security Trustee to recover the Secured Obligations from the Company (including any moneys which the Security Trustee may be compelled to pay or refund under the provisions of the Act and any costs incurred in connection therewith) or to

appoint an Administrator and enforce this Floating Charge to the full extent of the Secured Obligations.

19. EVIDENCE AND CALCULATIONS

Any certificate or determination by the Security Trustee as to any amount due to any of the Noteholders or as to the amount of the Secured Obligations shall, in the absence of manifest error, be conclusive and binding on the Company for all purposes.

20. CUMULATIVE REMEDIES AND WAIVERS

The rights of the Security Trustee and the Administrator may be exercised as often as necessary, are cumulative and are in addition to their respective rights under general law and may be waived only in writing and specifically. Delay in the exercise or non-exercise of any right shall not be a waiver of that right.

21. SEVERABILITY

If any provision of this Floating Charge is or becomes invalid, illegal or unenforceable, that shall not affect the validity, legality and enforceability of any other provision of this Floating Charge.

22. NOTICES

22.1 All notices or other communications under or in connection with this Floating Charge shall be given in writing by letter. Any notice shall be deemed to be given as follows:-

22.1.1 if delivered by hand, on the Business Day of actual delivery or if delivered after the normal business hours of the recipient, the following Business Day; and

22.1.2 if posted, on the second Business Day following the day on which it was properly despatched by first class mail postage prepaid.

22.2 The address for notices to the Company is the address shown on page 1 of this Floating Charge or such other address as the Company may notify to the Security Trustee by not less than five Business Days' notice.

22.3 The address for notices to each of the Security Trustee is their address shown on page 1 of this Floating Charge or such other address as any of them may notify to the Company by not less than five Business Days' notice.

23. REGISTRATION

The Company consents to the registration of this Floating Charge for preservation.

24. **GOVERNING LAW**

This Floating Charge shall be governed by, and construed in accordance with, the laws of Scotland.

IN WITNESS WHEREOF this Floating Charge is executed as follows:-

Executed for and on behalf of
FIXED PHAGE LIMITED

by JOHN CARNEY

J. E. Carney Director

at GLASGOW
on 7 AUGUST 2019

in the presence of:

A. Martin Witness
ASHLEIGH MARTIN Full Name

c/o 20 RENFIELD STREET Address
GLASGOW G2 5AP