



Registration of a Charge

Company Name: **PDPD2 LIMITED**

Company Number: **08469899**



Received for filing in Electronic Format on the: **29/08/2023**

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Details of Charge

Date of creation: **24/08/2023**

Charge code: **0846 9899 0002**

Persons entitled: **THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

Brief description:

Contains fixed charge(s).

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **SHOOSMITHS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8469899

Charge code: 0846 9899 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th August 2023 and created by PDPD2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th August 2023 .

Given at Companies House, Cardiff on 29th August 2023

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

EXECUTION VERSION

PDPD2 LIMITED
(as Chargor)

GARVAGH HOMES LIMITED
(as Company)

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND
(as Lender)

SUBORDINATED CREDITOR SECURITY DEED

WILLIAM FRY

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THIS DEED is dated 24 August 2023 and is made

Between:

- (1) **PDPD2 LIMITED**, a company registered in England and Wales (registration number 08469899) having its registered office at Fourth Floor, 25/26 Khiara House, Poland Street, London, W1F 8QN, United Kingdom (the "**Chargor**");
- (2) **GARVAGH HOMES LIMITED**, a company registered in Ireland (registered number 635304) having its registered office at 125 Upper Abbey Street, Dublin 1, Ireland; and
- (3) **THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND** having its registered office at Head Office, 40 Mespil Road, Dublin 4 (the "**Lender**").

RECITALS:

- (A) The Chargor enters into this Deed in connection with the Facility Agreement (as defined below).
- (B) The directors of the Chargor are satisfied that it is in the best interests of and for the corporate benefit of the Chargor to enter into this Deed.
- (C) The Company is a party to this Deed for the purposes of confirming its agreement to the provisions of Clause 27.2 (*Service of Process*) and for the purposes of accepting the notice and instructions and providing the acknowledgements and consents contained in Clause 1.5 (*Notice to the Company and acknowledgement and consent of the Company*).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"**Act**" means the Land and Conveyancing Law Reform Act 2009.

"**Companies Act**" means Companies Act 2006 of the United Kingdom.

"**Company**" means Garvagh Homes Limited (registered number 635304).

"**Deed**" means this security deed.

"**Facility Agreement**" means the €5,000,000 Facility Agreement dated on or around the date of this Deed between (among others) the Company and the Lender.

"**Party**" means a party to this Deed.

"**Receiver**" means a receiver or receiver and manager, in each case appointed under this Deed.

"**Relevant Jurisdiction**" means in relation to the Chargor:

- (a) the jurisdiction under whose laws it is incorporated as at the date of this Deed;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it under this Deed is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of this Deed.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document.

"Security" means the security constituted or intended to be constituted by this Deed.

"Security Asset" means any asset of the Chargor which is, or is expressed to be, subject to any Security created by this Deed.

"Security Interest" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having similar effect.

"Security Period" means the period beginning on the date of this Deed and ending on the date on which the Lender irrevocably confirms in writing that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

"Subordinated Debt" means all present and future obligations and liabilities (whether actual or contingent, whether principal, interest or otherwise, whether owed jointly or severally or in any other capacity whatsoever and whether due on foot of a loan or otherwise) which now are, or at any time hereafter may become, due to the Chargor by the Company.

"Subordinated Document" means any agreement, contract, note or other instrument under, or pursuant to which, any Subordinated Debt is owed to the Chargor by the Company at any time, whether before or after the date of this Deed including, without limitation, the loan agreement dated 22 June 2022 between the Chargor and the Company; and

"Subordination Agreement" means the subordination agreement entered into between, among others, the Chargor, the Company and the Lender.

1.2 Construction

- (a) Capitalised terms defined in the Facility Agreement have the same meaning in this Deed unless expressly defined in this Deed.
- (b) The provisions of clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Facility Agreement will be construed as references to this Deed.
- (c) This Deed shall be binding upon and inure to the benefit of each Party and its successors and permitted assigns and references in this Deed to any of them shall be construed accordingly.
- (d) The provisions of clause 8.4 (*Default Interest*) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Borrower will be construed as references to the Chargor.
- (e) Unless a contrary indication appears, a reference in this Deed to:
 - (i) a Finance Document or Transaction Document or any other agreement, document or instrument is a reference to that Finance Document or Transaction Document or other agreement, document or instrument as amended, novated, supplemented, extended or restated;
 - (ii) any "**rights**" in respect of an asset includes:
 - (A) all amounts and proceeds paid or payable;
 - (B) all rights to make any demand or claim; and
 - (C) all powers, remedies, causes of action, security, guarantees and indemnities;

in each case in respect of or derived from that asset;

- (iii) any reference to the terms **including, include and in particular** (or any similar term) is not to be construed as implying any restriction on the meaning of any word, description, definition, phrase or term preceding those terms and any reference to the term **other** (or any similar term) is not to be construed as implying any restriction on the meaning of any word, description, definition, phrase or term following that term;
 - (iv) the term "**this Security**" means any Security created or intended to be created by this Deed.
- (f) Any covenant of the Chargor under this Deed (other than a payment obligation which has been discharged) remains in force during the Security Period.
 - (g) If the Lender considers that an amount paid to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or examinership of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed and the Lender may decline to grant any release of the Security for so long as the risk of avoidance or invalidity continues.
 - (h) Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of any disposal of that Security Asset.
 - (i) Section 75 of the Act shall not apply to this Deed.
 - (j) This Deed shall take effect as a deed notwithstanding that the Lender may only execute this Deed under hand.

1.3 Limited recourse

- (a) The Parties acknowledge and agree that the recourse to the Chargor under this Deed and any other Finance Document shall be limited to the Security Assets.
- (b) The Lender acknowledges and agrees that if the net proceeds from realising the Security Assets are insufficient to pay and discharge all amounts owing to the Lender under the Finance Documents, the other assets of the Chargor shall not be available for payment of any shortfall arising.
- (c) For the avoidance of doubt, the Parties acknowledge that the terms of this Clause 1.3 shall survive termination of the Finance Documents.

1.4 Nature and scope of security

Notwithstanding anything to the contrary in this Deed, the obligations, liabilities and undertakings under this Deed shall be deemed not to be undertaken or incurred to the extent that the same would:

- (a) constitute unlawful financial assistance prohibited by section 678 of the Companies Act (or any analogous provision of any other applicable law); or
- (b) constitute a breach of section 197 of the Companies Act (or any analogous provision of any other applicable law).

1.5 Notice to the Company and acknowledgement and consent of the Company

- (a) The Chargor hereby notifies the Company that it has, pursuant to the terms of this Deed, charged to the Lender, by way of a first fixed charge, all of its rights in respect of, among other things, the Subordinated Debt and Subordinated Documents.
- (b) The Chargor confirms to the Company that:

- (i) it will remain liable under each Subordinated Document to perform all the obligations assumed by it under that Subordinated Document;
 - (ii) none of the Lender, its agents, any receiver or any other person will at any time be under any obligation or liability to the Company under or in respect of any Subordinated Document;
 - (iii) it will remain entitled to exercise all its rights, powers and discretions under each Subordinated Document, and the Company should continue to give notices and make payments under each Subordinated Document to the Chargor, unless and until the Company receives notice from the Lender to the contrary stating that the Security has become enforceable. In this event, all the rights, powers and discretions will be exercisable by, and notices must be given and payments must be made to, the Lender or as it directs;
 - (iv) the Company is irrevocably instructed and authorised to disclose to the Lender any information relating to each Subordinated Document requested from the Company by the Lender; and
 - (v) the instructions from the Chargor to the Company which are contained in this clause may not be revoked or amended without the prior written consent of the Lender.
- (c) By accepting the terms of this Deed, the Company hereby:
- (i) confirms that it is on notice of the Security including, without limitation, over the Subordinated Debt and Subordinated Documents;
 - (ii) accepts the instructions from the Chargor which are contained in this clause; and
 - (iii) consents to the Security including, without limitation, over the Subordinated Debt and Subordinated Documents.

2. CREATION OF SECURITY

2.1 General

- (a) The Chargor unconditionally and irrevocably covenants with the Lender that it will on demand pay, discharge or perform the Secured Liabilities when they become due.
- (b) All the security created under this Deed:
 - (i) is created in favour of the Lender;
 - (ii) is created over present and future assets of the Chargor (to the extent only that those assets comprise Subordinated Documents or Subordinated Debt); and
 - (iii) is security for the payment of all the Secured Liabilities.

2.2 Subordinated Debt

As continuing security for the payment, performance and discharge of the Secured Liabilities, the Chargor charges by way of a first fixed charge all of its rights:

- (a) under each Subordinated Document; and
- (b) in respect of all Subordinated Debt.

3. REPRESENTATIONS

The Chargor makes the representations and warranties set out in this Clause 3 to the Lender on the date of this Deed.

3.1 Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

3.2 Binding obligations

The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

3.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Transaction Security under this Deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

3.4 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- (b) No limit on its powers will be exceeded as a result of the grant of security or giving of indemnities contemplated by this Deed.

3.5 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
 - (ii) to make this Deed admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargor have been obtained or effected and are in full force and effect.

3.6 Ranking of security

Subject to the Legal Reservations and Perfection Requirements, the Security created by this Deed constitutes a first priority security interest over the Security Assets of the type described in this Deed and the Security Assets are not subject to any prior or *pari passu* Security.

3.7 Subordinated Debt

- (a) The Chargor is the sole legal and beneficial owner of the Subordinated Debt.

- (b) No payments to it by any other party to a Subordinated Document are subject to any right of set-off or similar right.
- (c) The obligations expressed to be assumed by the Chargor in each Subordinated Document are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.
- (d) Neither it nor (so far as it is aware) any other party to a Subordinated Document is in default of any of its material obligations under that Subordinated Document.
- (e) Save as expressly consented to by the Company in this Deed, there is no prohibition on assignment, or other restriction on the creation of security by the Chargor, in respect of any of the Subordinated Debt or its rights under any Subordinated Document.

3.8 **Governing law and enforcement**

- (a) Subject to the Legal Reservations, the choice of Irish law as the governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to this Deed in Ireland will be recognised and enforced in its Relevant Jurisdictions.

3.9 **No filing or stamp Taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that this Deed be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed except registration of particulars of this Deed at Companies House UK under the Companies Act and payment of associated fees, which registration and fees will be made and paid promptly after the date of this Deed.

3.10 **Repetition**

The representations and warranties set out in this Clause 3 (other than Clause 3.9 (*No filing or stamp Taxes*)) are deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of each Utilisation Request, on the Utilisation Date and the first day of each Interest Period.

4. **RESTRICTIONS ON DEALINGS**

4.1 **Security Interests**

Except as expressly allowed under the Facility Agreement or this Deed, the Chargor must not create or permit to subsist any Security Interests on any Security Asset.

4.2 **Disposals**

Except as expressly allowed under the Facility Agreement or this Deed, the Chargor must not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, assign, factor, discount, lease, grant any option over or otherwise dispose of or part possession with all or any part of any Security Asset.

4.3 **Security Assets**

The Chargor shall not do or permit to be done any act or thing which would or might depreciate, jeopardise, or otherwise prejudice the Security or materially diminish the value of any of the Security Assets or the effectiveness of this Security.

5. SUBORDINATED DOCUMENTS

- (a) If the Company has not signed this Deed, the Chargor must, at the request of the Lender:
 - (i) immediately serve a notice of charge, substantially in the form of Part I of Schedule 1 (*Forms of Letter for Subordinated Documents*), on each counterparty to a Subordinated Document; and
 - (ii) use reasonable endeavours to ensure that each such counterparty acknowledges that notice, substantially in the form of Part II of Schedule 1 (*Forms of Letter for Subordinated Documents*).
- (b) The Chargor must supply the Lender and any Receiver with copies of each Subordinated Document and any information and documentation relating to any Subordinated Document or Subordinated Debt requested by the Lender or any Receiver.
- (c) After this Security has become enforceable, the Lender may exercise, without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor, any of the Chargor's rights under any Subordinated Document.

6. WHEN SECURITY BECOMES ENFORCEABLE AND ENFORCEMENT

6.1 Event of Default

This Security will become immediately enforceable if an Event of Default occurs and is continuing.

6.2 Discretion

After this Security has become enforceable, the Lender may in its absolute discretion enforce all or any part of this Security in any manner it sees fit or as instructed in accordance with the Facility Agreement without the restrictions contained in the Act and section 96(1) of the Act shall not apply to this Deed.

6.3 Statutory powers

The power to take possession, the power of sale, the power to appoint a receiver and all other powers conferred on mortgagees and/or receivers by this Deed, and by the Act, the Companies Act and any other applicable statute, in each case as varied or extended by this Deed, will be immediately exercisable at any time after this Security has become enforceable. The Lender may exercise all such powers without the restrictions contained in the Act, in particular without the need:

- (a) to give notice to the Chargor or any other person or make demand for payment or advertisement or other formality; or
- (b) to comply with section 96(1)(c) of the Act; or
- (c) to comply with the requirements of section 99 (*Mortgagee in Possession*) of the Act; or
- (d) for the occurrence of any of the events specified in paragraphs (a) to (c) of section 100(1) of the Act or paragraphs (a) to (c) of section 108(1) of the Act; or
- (e) to give notice as specified in the final proviso to section 100(1) of the Act; or
- (f) to obtain the consent of the Chargor or a court order authorising the exercise of the power of sale under sections 100(2) or (3) of the Act; or
- (g) to give any notice to the Chargor under section 103(2) of the Act; or
- (h) to obtain the consent of the Chargor under section 112(3)(c) of the Act.

6.4 Power to conduct business

- (a) After this Security has become enforceable, the Lender may in its absolute discretion carry on the business of the Chargor in and with the Security Assets and may manage and conduct that business as it thinks fit. In conducting that business, the Lender may employ such agents, managers, Receivers, accountants and servants on such terms as to remuneration or otherwise as it thinks proper. The Lender may exercise all voting rights conferred by any of the Security Assets and otherwise deal with and exercise or permit to be exercised any powers or rights incidental to the ownership of any of the Security Assets on such terms and conditions and generally in such manner as it deems expedient. The Lender may do or cause to be done all such acts and things and may enter into such arrangements concerning any or all of the Security Assets as it could do if it was absolutely entitled to the Security Assets.
- (b) The Lender shall, out of the profits and income of the Security Assets and the money to be made by it in carrying on the Chargor's business, pay and discharge the expenses incurred in carrying on and managing that business or in the exercise of any of the powers conferred by this Deed or otherwise in respect of the Security Assets. The Lender shall pay all outgoings which it thinks fit to pay and shall pay and apply the residue of such profits, income and money as provided for under Clause 9 (*Application of Proceeds*).

6.5 No liability as mortgagee in possession

Neither the Lender nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

6.6 Privileges

The Lender and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act, the Companies Act and any other applicable statute on mortgagees and receivers duly appointed under the Act save as varied or modified by this Deed. Neither the Lender nor any Receiver shall be liable for any default or omission in relation to the Security Assets or the exercise or non-exercise of any power, right, authority or discretion conferred on the Lender or any Receiver in relation to the Security Assets by or under this Deed, the Act, the Companies Act or by law unless such loss or damage is caused by the fraud or negligence of the Lender or such Receiver (as applicable).

6.7 Protection of third parties

No person (including a purchaser) dealing with the Lender or a Receiver or its or their agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power which the Lender or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether due notice has been given to any person;
- (d) whether any money remains due under the Finance Documents; or
- (e) how any money paid to the Lender or to that Receiver is to be applied,

and all protections to purchasers contained in sections 105(1), 106 and 108(5) of the Act shall apply to any person (including a purchaser) dealing with the Lender or any Receiver in like manner as if the statutory powers under the Act had not been varied or extended by this Deed. The provisions of section 105(2) of the Act shall not apply to this Deed or any enforcement of this Security.

6.8 Redemption of prior security

- (a) At any time after this Security has become enforceable, the Lender may:
- (i) redeem any prior Security against any Security Asset; and/or
 - (ii) procure the transfer of that Security to itself; and/or
 - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.
- (b) The Chargor must pay to the Lender, immediately on demand, the costs and expenses incurred by the Lender in connection with any such redemption and/or transfer, including the payment of any principal or interest.

6.9 Suspense account

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Lender (or a Receiver) may pay the proceeds of any recoveries effected by it into a suspense account or other account selected by it.

6.10 Financial collateral

- (a) To the extent that the Security Assets constitute "financial collateral" and this Deed and the obligations of the Chargor under this Deed constitute a "security financial collateral arrangement" (in each case, for the purpose of and as defined in the European Communities (Financial Collateral Arrangements) Regulations 2010 (the **Regulations**)), the Lender will have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in such manner as it sees fit in or towards the satisfaction of the Secured Liabilities in accordance with the Regulations.
- (b) Where any financial collateral is appropriated:
- (i) if it is listed or traded on a recognised exchange, its value will be taken as being the value at which it could have been sold on the exchange on the date of appropriation; and
 - (ii) in any other case, its value will be such amount as the Lender reasonably determines having taken into account advice obtained by it from an independent commercial property adviser, investment bank or accountancy firm of national standing selected by it,

and the Lender will give credit for the proportion of the value of the financial collateral appropriated to its use. The parties further agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purpose of the Regulations.

7. RECEIVER

7.1 Appointment of Receiver

- (a) Except as provided below, the Lender may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
- (i) this Security has become enforceable; or
 - (ii) the Chargor so requests to the Lender at any time.

- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing under hand by any director, secretary, employee or agent for the time being of the Lender.
- (c) Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 108(1)(a) to (c) of the Act) does not apply to this Deed.
- (d) Any appointment under paragraph (a) above may be made either before or after the Lender shall take possession of any Security Asset.

7.2 Removal

The Lender may by deed or in writing under its hand remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

7.3 Remuneration

The Lender may fix the remuneration of any Receiver appointed by it and the provisions of section 108(7) of the Act will not apply to this Deed.

7.4 Agent of the Chargor

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed under the Act. The Chargor alone is responsible for any contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.
- (b) No Secured Party will incur any liability (either to the Chargor or to any other person) for any such acts, defaults, omissions, misconduct or negligence of any Receiver appointed under this Deed.

7.5 Relationship with Lender

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Lender in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

8. POWERS OF RECEIVER

8.1 General

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause 8 in addition to those conferred on it by any law without the restrictions contained in the Act, including all the rights, powers and discretions conferred by statute.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing such Receiver states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

8.2 Possession

A Receiver may take immediate possession of, get in and realise any Security Asset.

8.3 Carry on business

A Receiver may carry on any business of the Chargor in connection with any Security Asset in any manner the Receiver thinks fit.

8.4 **Employees**

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants and others for the purposes of this Deed upon such terms as to remuneration or otherwise as the Receiver thinks fit.
- (b) A Receiver may discharge any person appointed by the Chargor.

8.5 **Borrow money**

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which the Receiver thinks fit.

8.6 **Sale of assets**

- (a) A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which the Receiver thinks fit.
- (b) The consideration for any such transaction may consist of cash or non-cash consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which the Receiver thinks fit.

8.7 **Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

8.8 **Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which the Receiver thinks fit.

8.9 **Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

8.10 **Subsidiaries**

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary any Security Asset.

8.11 **Delegation**

A Receiver may delegate their powers in accordance with this Deed.

8.12 **Lending**

A Receiver may lend money or advance credit to any person.

8.13 **Tax**

A Receiver may run the tax affairs of the Chargor as the Receiver thinks fit.

8.14 Other powers

- (a) A Receiver may:
 - (i) do all other acts and things which he/she may consider necessary or desirable for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
 - (ii) exercise in relation to any Security Asset all the powers, authorities and things which the Receiver would be capable of exercising if the Receiver was the absolute beneficial owner of that Security Asset; and
 - (iii) use the name of the Chargor for any of the above purposes.
- (b) Unless otherwise directed by the Lender, such Receiver may also exercise all the powers and authority vested in the Lender by this Deed and in particular all powers vested in the Lender by Clause 6 (*When Security Becomes Enforceable and Enforcement*) of this Deed. Section 108(4) of the Act shall not apply to this Deed.

9. APPLICATION OF PROCEEDS

- (a) All amounts from time to time received or recovered by the Lender or any Receiver pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or part of this Security will be held by the Lender and applied in accordance with the Facility Agreement and the other Finance Documents. This Clause 9:
 - (i) is subject to the payment of any claims having priority over this Security; and
 - (ii) does not prejudice the right of any Secured Party to recover any shortfall from the Chargor.
- (b) Sections 106(3), 107 and 109 of the Act shall not apply to the application of proceeds received or recovered pursuant to the exercise of powers conferred by this Deed.

10. EXPENSES AND INDEMNITY

The Chargor must:

- (a) immediately on demand pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with this Deed including but not limited to those arising from any actual or alleged breach by any person of any law or regulation; and
- (b) keep each Secured Party indemnified against any failure or delay in paying those costs or expenses.

11. DELEGATION

11.1 Delegation

The Lender or any Receiver may, at any time with full power, delegate by power of attorney or otherwise to any person for any period all or any right, power, authority or discretion exercisable by it under this Deed or under the Act.

11.2 Terms

Any such delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Lender or that Receiver (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties. Any such delegation may be revoked by the Lender or any Receiver at any time.

11.3 Liability

Neither the Lender nor any Receiver shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

12. FURTHER ASSURANCES

- (a) The Chargor must promptly, at its own expense, take whatever action the Lender or a Receiver may require for:
 - (i) creating, perfecting or protecting any security over any Security Asset; or
 - (ii) facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Lender or any Receiver or any of their respective delegates or sub-delegates in respect of any Security Asset.
- (b) The action that may be required under paragraph (a) above includes:
 - (i) the execution of any mortgage, charge, transfer, conveyance, assignment or assurance of any asset, whether to the Lender or to its nominees; or
 - (ii) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Lender may consider necessary or desirable.

13. POWER OF ATTORNEY

- (a) The Chargor, by way of security, irrevocably appoints the Lender, each Receiver and any of their respective delegates or sub-delegates to be its attorney with the full power and authority of the Chargor to execute, deliver and perfect all deeds, instruments and other documents in its name and otherwise on its behalf and to do or cause to be done all acts and things, in each case which may be required or which any attorney may in its absolute discretion deem necessary for carrying out any obligation of the Chargor under or pursuant to this Deed or generally for enabling the Lender or any Receiver to exercise the respective powers conferred on them under this Deed or by law.
- (b) Until this Security is enforceable, the power of attorney conferred by this Clause 13 (*Power of Attorney*) shall only be exercisable to the extent that the Lender determines in its sole discretion that the Chargor has not carried out any act or deed required to be done by it in accordance with the terms of this Deed. After this Security is enforceable, the power of attorney conferred by this Clause 13 (*Power of Attorney*) shall be fully exercisable without limitation.
- (c) The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 13.

14. PRESERVATION OF SECURITY

14.1 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause 14 would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Company or other person;
- (b) the release of the Company or any other person under the terms of any composition or arrangement with any creditor;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Company or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

14.2 **Chargor intent**

Without prejudice to the generality of Clause 14.1 (*Waiver of defences*), the Chargor expressly confirms that it intends that this Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

14.3 **Immediate recourse/enforcement of other rights**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or provision of a Finance Document to the contrary.

14.4 **Appropriations**

Each Secured Party (or any trustee or agent on its behalf) may at any time during the Security Period:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of the Secured Liabilities or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest bearing suspense account any moneys received from the Chargor or on account of the liability of the Chargor under this Deed.

14.5 **Deferral of Chargor's rights**

- (a) Unless the Security Period has expired or the Lender otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising under this Clause 14:

- (i) to be indemnified by the Company;

- (ii) to claim any contribution from any other person who has provided security or a guarantee in respect of the Company's obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
 - (iv) to bring legal or other proceedings for an order requiring the Company to make any payment, or perform any obligation, in respect of which the Chargor has granted security under this Deed;
 - (v) to exercise any right of set-off against the Company; and/or
 - (vi) to claim or prove as a creditor of the Company in competition with any Secured Party.
- (b) If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Company under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with the terms of this Deed.

15. CHANGES TO THE PARTIES

15.1 The Chargor

The Chargor may not assign or transfer any of its rights or obligations under this Deed without the prior consent of the Lender.

15.2 The Lender

- (a) The Lender may assign or otherwise dispose of all or any of its rights under this Deed in accordance with the Finance Documents to which it is a party.
- (b) References to the Lender in this Deed include any successor Lender appointed under the Facility Agreement.

16. MISCELLANEOUS

16.1 Continuing Security

This Security is a continuing security and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

16.2 Additional and independent security

- (a) This Security is in addition to and is not in any way prejudiced by any other security or guarantee now or subsequently held by any Secured Party.
- (b) No prior security held by any Secured Party (in its capacity as such or otherwise) over any Security Asset will merge into this Security.

16.3 New Accounts

- (a) If any subsequent charge or other interest affects any Security Asset, a Secured Party may open a new account with the Chargor.

- (b) If that Secured Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
- (c) As from that time all payments made to that Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

16.4 Time deposits

Without prejudice to any right of set-off any Secured Party may have under any other Finance Document or otherwise, if any time deposit matures on any account the Chargor has with any Secured Party within the Security Period when:

- (a) this Security has become enforceable; and
- (b) no Secured Liability is due and payable,

that time deposit will automatically be renewed for any further maturity which that Secured Party considers appropriate.

16.5 Consolidation of mortgages

Any restriction on the right of consolidation of mortgages including the provisions of section 92 of the Act shall not apply to this Security and this Deed.

17. RELEASE AND REINSTATEMENT OF SECURITY

17.1 Release of Security

- (a) On the expiry of the Security Period and at any time thereafter, the Lender will at any time thereafter at the request and cost of the Chargor (but subject to the rights and claims of any person having prior rights to the Security Assets or any of them) execute and do all such deeds, acts and things that may be necessary to surrender, reassign, discharge or release this Security.
- (b) If the Secured Parties (or any of them) consider that an amount paid by the Chargor to the Secured Parties under any Finance Document is capable of being avoided or otherwise set aside on the liquidation or examinership of the Chargor or otherwise, then such amount shall not be considered to have been irrevocably paid for the purposes of this Deed and the Lender may decline to grant any release of this Security for such time as the risk of avoidance or invalidity continues.

17.2 Reinstatement of Security

- (a) Where any release, discharge or settlement (whether in respect of the obligations of the Company or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise, without limitation, the liability of the Chargor under this Deed shall continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (b) The Lender may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

18. PAYMENT MECHANICS

18.1 Payments to the Lender

- (a) On each date on which the Chargor is required to make a payment under this Deed, the Chargor shall make the same available to the Lender for value on the due date at

the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Lender) and with such bank as the Lender, in each case, specifies.

18.2 No set-off by Chargor

All payments to be made by the Chargor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

18.3 Business Days

Any payment under this Deed which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

18.4 Currency of account

- (a) Subject to paragraph (b), euro is the currency of account and payment for any sum due from the Chargor under this Deed.
- (b) Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

19. SET-OFF

The Lender may set off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

20. NOTICES

20.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by e-mail or letter.

20.2 Addresses

The address and e-mail address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

- (a) In the case of the Chargor:

- (i) Address: Garvagh House, 8A Garvagh Road, Donaghmore, Co. Tyrone, BT70 3LS
- (ii) Attention: Shane McCrory/Padraig Drayne
- (iii) Email address: Shane.McCrory@garvaghhouse.com; Kellyanne.Rafferty@garvaghhouse.com

- (b) in the case of the Lender:

- (i) Address: Property Finance Group, Bank of Ireland Corporate Banking, 27 – 33 Upper Baggot Street, Dublin 4

- (ii) Attention: Barry White / Thomas Buttle
- (iii) Email address: Barry.White@boi.com Thomas.Buttle@boi.com

or any substitute address or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

20.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under Clause 20.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature to the Facility Agreement (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) and (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

20.4 Electronic communication

- (a) Any communication to be made between the Parties under or in connection with this Deed may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above may only be made in that way to the extent that the Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between the Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Chargor to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Deed shall be deemed only to become effective on the following day.
- (e) Any reference in this Deed to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 20.4 (*Electronic communication*).

20.5 English language

- (a) Any notice given under or in connection with this Deed must be in English.

- (b) All other documents provided under or in connection with this Deed must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

21. CALCULATIONS AND CERTIFICATES

21.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

21.2 Certificates and determinations

Any certification or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

21.3 Day count convention

Any interest, commission or fee accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

22. PARTIAL INVALIDITY

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

23. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

24. AMENDMENTS AND WAIVERS

Any term of this Deed may be amended or waived only with the consent of the Lender and the Chargor.

25. COUNTERPARTS

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

26. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by Irish law.

27. **ENFORCEMENT**

27.1 **Jurisdiction**

- (a) The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- (b) The Parties agree that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraph (a) and (b) above, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

27.2 **Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Chargor:
 - (i) irrevocably appoints Garvagh Homes Limited as its agent for service of process in relation to any proceedings before the Irish courts in connection with this Deed; and
 - (ii) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.
- (b) The Company hereby accepts its appointment as agent for service of process under this clause.
- (c) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Chargor must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

IN WITNESS whereof the parties have executed and delivered this Deed on the date set out at the beginning of this Deed.

**SCHEDULE 1
FORMS OF LETTER FOR SUBORDINATED DOCUMENTS**

**PART I
NOTICE TO COUNTERPARTY**

To: [SUBORDINATED DOCUMENT COUNTERPARTY]

Copy: The Governor and Company of the Bank of Ireland (as Lender as defined below)

Dated: [•]

**Subordinated Creditor Security Deed dated [•] between PDPD2 Limited
and The Governor and Company of the Bank of Ireland (the "Security Deed")**

This letter constitutes notice to you that under the Security Deed we have charged by way of a first fixed charge to The Governor and Company of the Bank of Ireland (the "Lender") all our rights in respect of [insert details of subordinated document] (the "Subordinated Document").

We confirm that:

- (a) we will remain liable under the Subordinated Document to perform all the obligations assumed by us under the Subordinated Document; and
- (b) none of the Lender, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the Subordinated Document.

We will also remain entitled to exercise all our rights, powers and discretions under the Subordinated Document, and you should continue to give notices and make payments under the Subordinated Document to us, unless and until you receive notice from the Lender to the contrary stating that the security under the Security Deed has become enforceable. In this event, all the rights, powers and discretions will be exercisable by, and notices must be given and payments must be made to, the Lender or as it directs.

We irrevocably instruct and authorise you to disclose to the Lender any information relating to the Subordinated Document requested from you by the Lender.

The instructions in this letter may not be revoked or amended without the prior written consent of the Lender.

This letter and any non-contractual obligations arising out of or in connection with it are governed by Irish law.

Please acknowledge receipt of this letter by sending the attached acknowledgement to the Lender at 40 Mespil Road, Dublin 4, Ireland with a copy to us.

Yours faithfully,

.....
(Authorised signatory)

PDPD2 Limited

**PART II
ACKNOWLEDGEMENT OF COUNTERPARTY**

To: The Governor and Company of the Bank of Ireland (as Lender)

Copy: PDPD2 Limited

Dated: [●]

**Subordinated Creditor Security Deed dated [●] between PDPD2 Limited
and The Governor and Company of the Bank of Ireland (the "Security Deed")**

We confirm receipt from PDPD2 Limited (the "Chargor") of a notice dated [●] (the "Notice") of a fixed charge on the terms of the Security Deed of all the Chargor's rights in respect of *[insert details of Subordinated Document]* (the "Subordinated Document").

We confirm that we:

1. accept the instructions contained in the Notice and agree to comply with the Notice; and
2. will give notices and make payments under the Subordinated Document as directed in the Notice.

This letter and any non-contractual obligations arising out of or in connection with it are governed by Irish law.

Yours faithfully,

.....
(Authorised signatory)

[Subordinated document counterparty]

EXECUTION PAGES

THE CHARGOR

EXECUTED as a **DEED** by
PDPD2 LIMITED

(incorporated in England and Wales with company number 08469899) [REDACTED]
acting by a single director

in the presence of:

Director [REDACTED]

Witness Signature: [REDACTED]

Name: *Edel Quinn*

Address: [REDACTED]

Occupation: [REDACTED]

THE COMPANY

GIVEN under the common seal of
GARVAGH HOMES LIMITED
and delivered as a deed:



Director

SHANE MCCREERY

Print Name



Director

PADRAIG DEAYNE

Print Name



THE LENDER

SIGNED

for and on behalf of

**THE GOVERNOR AND COMPANY OF THE
BANK OF IRELAND**

by its authorised signatory:



Authorised Signatory (Signature)

Print Name