

Dated

2015

SAXON WEALD HOMES LIMITED (1)

and

WEALDEN DISTRICT COUNCIL (2)

And

EAST SUSSEX COUNTY COUNCIL (3)

AGREEMENT FOR NOMINATION RIGHTS

**Relating to 35 Older Persons Extra Care housing units at Bentley Grange,
situated on Land East of Battle Road Hailsham**



Legal Services Manager
Wealden District Council
Council Offices
Vicarage Lane
HAILSHAM
East Sussex BN27 2AZ
DX 38303 HAILSHAM

THIS AGREEMENT is made on the

day of

2015

BETWEEN

- (1) **SAXON WEALD HOMES LIMITED** (Company No. 03847737) whose registered office is situated at Saxon Weald House, 38/42 Worthing Road, Horsham, West Sussex, RH12 1DT (hereinafter called "**the Registered Provider**")
- (2) **WEALDEN DISTRICT COUNCIL** of the Council Offices Vicarage Lane Hailsham East Sussex BN27 2AZ (hereinafter called "**the District Council**")
- (3) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1UE ("**the County Council**")

WHEREAS:

- (A) The Registered Provider is registered pursuant to Section 80(2) of the Housing and Regeneration Act 2008 with the Homes and Communities Agency with Registered Number L4299
- (B) The Registered Provider has purchased land at the Premises (as hereinafter defined) on which dwelling units have been or are to be built comprising 35 (thirty five) older persons extra care housing dwellings.
- (C) The Registered Provider has agreed to enter into a nomination agreement on the terms hereinafter appearing pursuant to a planning agreement dated 30 June 2010 made between Wealden District Council (1) Hillreed Developments Limited (2) Middlefields Limited (3) Karin Weaver (4) Jennifer Monro Skelsey (5) Burwell Grange Limited (6) and Barclays Bank Plc (7) which required that a registered provider should enter into a nominations agreement and which was amended by a supplemental planning agreement dated 12 January 2015 and made between Wealden District Council (1) and Saxon Weald Homes Limited (2)

OPERATIVE PROVISIONS

The parties hereby agree as follows:

1 Background

- 1.1 In accordance with their statutory responsibilities, the County Council and District Councils have various duties and powers to provide accommodation for a range of client groups. Those powers and responsibilities include arrangements to facilitate the provision of housing accommodation and care/support services through third party organisations.
- 1.2 This Agreement defines the requirements for nominations to the Dwellings provided by the Registered Provider and the allocation and management of the Dwellings.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement where the context so admits, the following words and phrases shall bear the following meanings:-

“County Council’s Nominated Officer” means the officer or officers nominated from time to time by the County Council to carry out its rights and duties under this Agreement;

“District Council’s Nominated Officer” means the officer or officers nominated from time to time by the District Council to carry out its rights and duties under this Agreement;

“District” means the administrative area of the District Council;

“Dwelling” means any of the 35 (thirty five) dwelling units built on the Premises available for letting (in accordance with the terms set out herein) to a Nominee and **“Dwellings”** shall be construed accordingly;

“Local Connection” means, in relation to a person who has applied to become a Resident, that the person has a connection with the District as specified in Wealden District Council’s Allocation Policy.

“Nominated Officers” means the County Council’s Nominated Officer, the District Council’s Nominated Officer and the Registered Provider’s Nominated Officer;

“Nominations Protocol” means the nominations protocol to be agreed between the parties setting out the procedures and time scales for the selection of Nominees to a Dwelling, or such other protocol or amendments as may be agreed in writing by the parties from time to time;

“Nominee” shall mean a person who is nominated pursuant to this Agreement to a Dwelling and who has been assessed by the County Council, as meeting the Scheme Criteria;

“Partner Agency” means any care or support provider agreed in writing by the Council from time to time to provide support services to a Resident;

“Practical Completion Date” means the date on which the Dwellings are structurally complete and ready for residential occupation such date to be certified by the Registered Provider’s contracts administrator;

“Premises” means all those Dwellings forming part of title number ESX359314;

“Registered Provider’s Nominated Officer” means the employee or employees nominated from time to time by the Registered Provider to carry out its rights and duties under this Agreement;

“Rent” means the weekly cost to a tenant of a Dwelling under the Tenancy and includes Service Charge;

“Resident” means any person who signs a tenancy agreement to occupy any of the Dwellings procured by the Registered Provider which are subject to this Agreement and **“Residents”** shall be construed accordingly;

“Scheme Criteria” means the eligibility criteria agreed between the County Council and the District Council pursuant to the Nominations Protocol subject to any agreed variations thereto;

“Service Charge” means the amount payable by a Resident for provision of the Services by the Registered Provider.

"Services" means the services provided by the Registered Provider to a Resident pursuant to any tenancy agreement or pursuant to clause 3.1 of this agreement.

"Tenancy" means a tenancy agreement as prescribed in clause 6.1 hereof

"Wealden District Council's Allocation Policy" means the District Council's policy as at the point of a right of nomination arising under clause 4.2 hereof setting out the priorities and procedures for the letting of council housing and nominations to registered providers which may be found on the District Council's website at www.wealden.gov.uk/apply for housing, or such other web address as may be notified to the parties.

"Working day" shall mean a day other than Saturday and Sunday on which banks generally are open for business in England.

2.2 Words importing the singular meaning include where the context so admits the plural meaning and vice versa

2.3 Subject always to the provisions of Clause 9, reference to statutory provisions shall be deemed to include reference to any such provisions as may from time to time be amended, varied, replaced, extended or re-enacted and to any orders or regulations made there under.

2.4 References to a Clause or a Schedule shall be deemed to be references to a clause or a schedule to this Agreement and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears.

3. Management standards

3.1 The Registered Provider undertakes to provide housing management services to the Residents in accordance with the prevailing service standards (including but not limited to 'tenant involvement and empowerment', 'home', 'tenancy' and 'neighbourhood and community' standards) as from time to time required by the Homes and Communities Agency and will strive to exceed these standards. The County Council shall have the right to require evidence of performance from the Registered Provider and to make judgements in accordance with recognised and measurable benchmark information for other comparable providers of housing management services.

3.2 In the event that the County Council identifies a failure by the Registered Provider to comply with the requirements in clause 3.1 which the County Council deems to be serious or potentially serious, the County Council may issue a formal notice to the Registered Provider requiring improvements to the provision of the housing management services within a reasonable timescale.

4. Nomination Procedure

4.1 this Agreement shall come into effect on the date hereof and continue for a period of (thirty) 30 years.

4.2 The County Council and District Council shall jointly have the right to nominate people to 100% of all new lettings of the Dwellings (such nominations may be made up to 9 (nine) months in advance of Practical Completion) and the right to nominate people to all subsequent re-lets of the Dwellings.

4.3 The County Council and the District Council shall nominate people in accordance with the Scheme Criteria and where there is more than one applicant for a vacancy priority shall be given to eligible people who have a Local Connection to the District. The officers involved in deciding eligibility and priority for the specific needs group, their contact details, and the nominations process in regards to both first and subsequent lettings, are described in the Nominations Protocol. The parties to this Agreement shall comply with and diligently follow the timescales and procedures set out in the Nominations Protocol (in the event of any conflict between the terms of this Agreement and the Nominations Protocol then the former shall prevail).

4.4 In relation to any first letting of any Dwelling, in the event that any dwelling is unoccupied in accordance with the terms of this Agreement after a period of eight (8) weeks from the date of receipt of the first notice sent by the Registered Provider inviting the County Council and District Council to nominate, the Registered Provider shall be entitled to be paid a sum equal to the Rent by the County Council (save to the extent that delay is due to act omission or negligence of the Registered Provider or rejection of a Nominee in accordance with Clause 5).

4.5 In the event that on any subsequent letting or any re-let, any Dwelling is unoccupied in accordance with the terms of this Agreement after a period of eight (8) weeks from the date of receipt of the first notice sent by the Registered

Provider inviting the County Council and District Council to nominate, the Registered Provider shall be entitled to be paid a sum equal to the Rent by the County Council (save to the extent that delay is due to act omission or negligence of the Registered Provider or rejection of a Nominee in accordance with Clause 5).

- 4.6 The Registered Provider shall provide to the County Council and the District Council in writing within 10 (ten) Working Days of each anniversary of this Agreement, for the duration of this Agreement, such performance information as may be reasonable for the County Council and the District Council to ensure that the terms of this Agreement are being complied with. Examples of such information may be, but are not restricted to, the number of void Dwellings and the rate at which the Registered Provider is re-letting any such void Dwelling for the preceding quarter, the details of any Dwelling the Registered Provider considers to be hard to let and any other information the County Council and the District Council may reasonably require.

5. Rejection of Nominee by the Registered Provider

- 5.1 In the event that the Registered Provider refuses to accept a Nominee the Registered Provider must provide in writing to the County Council and / or the District Council (as appropriate) its reasons for refusing such a Nominee and such reasons must be reasonable and proportionate.

- 5.2 In the event of the Registered Provider and the County Council and / or the District Council (as appropriate) failing to agree that the reason for refusal is reasonable, the matter shall be referred to an officer at senior level of the parties for consideration and agreement. Failing agreement, the refusal shall be regarded as a dispute to be determined in accordance with Clause 11 hereof.

6. Term, type of Tenancy, and Rent

- 6.1 Subject to Clause 6.2, the tenancy to be offered to all Nominees shall be a twelve month probationary assured shorthold tenancy agreement, followed by the granting of an assured tenancy agreement, if all tenancy conditions have been met.

- 6.2 Nothing in this Clause 6 shall prevent the Registered Provider from seeking possession under a tenancy agreement granted to a tenant at any time on any

ground(s) set out in Schedule 2 to the Housing Act 1988 subject always to any relevant regulatory guidelines.

- 6.3 The Registered Provider agrees that the initial Rent (inclusive of any service charge) for each Dwelling and subsequent Rent increases will be set in accordance with the requirements of the Homes and Communities Agency

7. Review of Agreement

- 7.1 The Nominated Officers shall meet to review the operation of this Agreement as soon as reasonably practicable after the first anniversary date of this Agreement and every subsequent anniversary date thereof.

- 7.2 In addition to Clause 7.1, the Nominated Officers shall meet to review the operation of this Agreement:

7.2.1 upon written notification from one or more of the Registered Provider, the District Council, or the County Council on the basis that demand for the Dwellings is no longer sufficient to maintain viability; or

7.2.2 at such other time as the parties may agree, particularly if there is a change of user group, where nominations may revert to the District Council.

- 7.3 The County Council and the District Council shall be entitled to terminate this Agreement on giving 12 months notice to the other parties.

8 District Council, and County Council, as local authorities

- 8.1 Nothing contained or implied in this Agreement shall prejudice or affect the District Council's or the County Council's rights powers duties and obligations in the exercise of their functions as a local authority and the same may be as fully and effectually exercised in relation to the Dwellings as if this Agreement had not been executed by them.

9. Amendments to Legislation or HCA Requirements

- 9.1 If the Homes and Communities Agency should issue guidance which is binding on all classes of registered providers, the County Council, the District Council or the Registered Provider shall be entitled to request that the terms of this Agreement be varied so as to enable the County Council, the District Council or the Registered Provider as the case may be to discharge its new responsibilities and


the County Council or the District Council shall not unreasonably withhold or delay its approval to such request provided always that it shall be reasonable for the Registered Provider to withhold its consent in any case where the Registered Provider's obligations under this Agreement would become materially more onerous.

10 Disposal of the Premises

10.1 The Registered Provider agrees with the County Council and the District Council that during the period of this Agreement the Registered Provider will not dispose of the Premises or any part of it except:

10.1.1 in accordance with the provisions of this Agreement or

10.1.2 to a purchaser or transferee who is a registered provider within the meaning given in the Housing and Regeneration Act 2008 who is willing to enter into an agreement on similar terms to this Agreement in so far as such obligations remain to be observed and performed and prior to any such disposal the Registered Provider must seek the written consent of the County Council and the District Council such consent not to be unreasonably withheld or delayed or

10.1.3 by way of a mortgage charge or loan taken out by the Registered Provider and secured against the Premises AND for the avoidance of doubt it is confirmed that the terms of this Agreement shall not be binding upon a lender mortgagee or chargee of the Registered Provider exercising its power of sale nor shall it bind a receiver of the Registered Provider ~~or~~ 

11. Dispute Resolution

11.1 Save as otherwise herein expressly provided any disputes or differences arising between the relevant parties hereto as between their respective rights duties or obligations or to any other matter or thing in any way arising out of or connected with the subject matter of this Agreement shall be referred to the determination of a single independent assessor acting as an expert and not as arbitrator to be agreed upon by the relevant parties or failing agreement a person nominated by the President for the time being of the Chartered Institute of Housing. The



decision of the said assessor shall be final and binding on the relevant parties hereto

12. Notices

12.1 Unless otherwise specified elsewhere in this Agreement, any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed (as the case may be) to the County Council's Nominated Officer, the District Council's Nominated Officer and / or the Registered Provider's Nominated Officer at the address first before mentioned or to such other addresses as any party may from time to time notify to the others in accordance with the provisions of this clause.

13 Third Party Rights

13.1 It is hereby agreed and declared that nothing herein contained or implied will be construed as giving privileges powers or enforceability other than to specific parties to this Agreement and the provisions of the Contract (Rights of Third Parties Act) 1999 and any benefits or rights which could arise there from are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained.

14. Enforcement

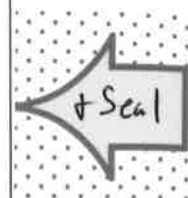
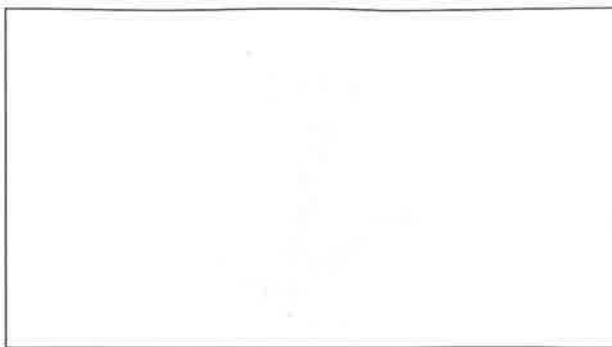
14.1 The covenants in this Agreement are covenants for the purpose of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed as a Deed the day and year first above written

EXECUTED as a Deed by affixing the Common seal of **SAXON WEALD HOMES LIMITED** in the presence of:

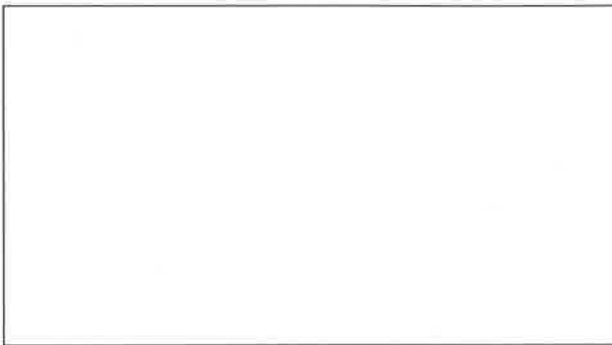
Authorised Signatory

Authorised Signatory



EXECUTED as a Deed by affixing the common seal of **WEALDEN DISTRICT COUNCIL** in the presence of:

Authorised Signatory



Executed as a Deed by affixing THE COMMON SEAL of **EAST SUSSEX COUNTY COUNCIL** hereto in the presence of:-

Authorised Signatory

