

3. The definition of Acceptable Operator under Section 1.2.1 of the Lease is hereby amended and restated in its entirety to read as follows:

It is understood and agreed that the definition of “Acceptable Operator” set forth in this Second Amendment to Lease shall apply only in situations where a Lender or Leasehold Mortgagee, pursuant to rights granted to it in any loan agreement, Leasehold Mortgage or other security instrument by which Developer is bound, after a default, is retaining or has retained any person, corporation or other entity to act as operator of the Project and where a Lender or Leasehold Mortgagee becomes the tenant under the Lease pursuant to its terms in the event of an uncured Event of Default by Developer and during the period of such Lender’s or Leasehold Mortgagee’s tenancy under the Lease it is obligated to enter into an Acceptable Operator Agreement (the “Lender Special Situation”). It is further understood and agreed that under any other situations, the definition of Acceptable Operator as set forth under Section 1.2.1 of the main body of the Lease shall continue to apply without amendment, qualifications, or modification.

“Acceptable Operator” means any corporation or other entity which has, at a minimum, the following qualifications:

1. The Acceptable Operator must be a manager ~~of~~in the business of managing both ~~a~~high quality market rate Congregate Living and Assisted Living (as those terms are hereinafter defined) senior rental housing units (“Senior Rental Housing Units”) facilities licensed to do business as required by the State of Florida and the City of Coral Gables, which license must be and remain in good standing; provided, however, that the determination as to whether a manager is a manager in the business of managing high quality market rate Congregate Living and Assisted Living Senior Rental Housing Units facilities with regards to this clause 1 shall be made by the Lender or Leasehold Mortgagee, as the case may be, in its sole discretion, only in the event of a Lender Special Situation.

2. The Acceptable Operator must possess the experience, qualifications, good reputation, financial resources and adequate personnel necessary for the proper management of the Overall Project (excluding the Parking Component ~~as~~ defined in the Parking Garage Lease) as required under this Agreement (including, without limitation, compliance with the Operational Standards for Residential Building set forth on **Exhibit “E”** attached hereto), undertaken pursuant to an Acceptable Operator Agreement, in a manner consistent with the quality, reputation and economic viability of the Project; provided, however, that the determination of compliance with the requirements, qualifications and criteria set forth in this clause 2 shall be made by the Lender or Leasehold Mortgagee, as the case may be, in its sole discretion, only in the event of a Lender Special Situation.

3. The Acceptable Operator must presently own or manage at least four hundred (400) Senior Rental Housing Units, at least two hundred fifty (250) of which must be in a single project; provided, however, the requirements, qualifications and criteria set forth in this clause 3 shall not apply only in the event of a Lender Special Situation.

4. The Acceptable Operator must establish and maintain an on site management and/or administrative office within a portion of the Overall Project staffed with qualified employees responsible for day-to-day operations of the Overall Project (excluding the Parking Component); provided, however, only in the event of a Lender Special Situation (i) the determination as to whether employees are qualified with regard to this clause 4 shall be made by the Lender or Leasehold Mortgagee, as the case may be, in its sole discretion, and (ii) the phrase “management and/or” in this clause 4 shall be deemed deleted.

5. a. The Acceptable Operator shall have no outstanding building code violations against any Senior Rental Housing Units or other property owned or managed by such Acceptable Operator within Miami-Dade County or Broward County, Florida; provided, however, only in the event of a Lender Special Situation the requirements, qualifications and criteria set forth in this clause 5a shall not apply.

b. The Acceptable Operator shall have no outstanding material violations of any applicable federal, state or local law, rule, regulation, code or ordinance against the Acceptable Operator, any Senior Rental Housing Units or other property owned or managed by such Acceptable Operator within Miami-Dade County or Broward County, Florida; provided, however, only in the event of a Lender Special Situation the requirements, qualifications and criteria set forth in this clause 5b shall not apply to any person, corporation, or other entity retained by a Lender or Leasehold Mortgagee to act as operator of the Project as long as that person, corporation or other entity is in compliance with clause (8) below.

c. The Acceptable Operator must manage a minimum of three (3) facilities of Senior Rental Housing Units similar in size, scope, market and program to the Residential Building (hereinafter defined), irrespective of location, which have no outstanding building code violations; provided, however, only in the event of a Lender Special Situation the requirements, qualifications and criteria set forth in this clause 5c shall not apply.

6. The Acceptable Operator must have ~~been~~ in the ~~business of managing Senior Rental Housing Units for~~ aggregate at least ten (10) years experience managing senior housing and/or senior care (or have ~~sufficient~~ senior management personnel who have ~~been~~ in the ~~business of managing Senior Rental Housing Units for~~ aggregate at least ten (10) years) experience managing senior housing and/or senior care).

7. The Acceptable Operator must not (nor any of the individuals or entities who own at least a five (5%) equity interest in the Acceptable Operator or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the Acceptable Operator) have been, within the five (5) years preceding the date of submission by Acceptable Operator of its application for approval to the City, in an adversarial relationship in litigation or are in an adversarial relation in litigation currently pending with the City, in both cases including but not limited to, litigation with respect to ordinances, charter provisions or resolutions of the City, including building codes or tax code violations (but excluding zoning appeals and appeals of property tax assessments).

8. The Acceptable Operator must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or domestic U.S. jurisdiction; provided, however, that the foregoing shall not apply to individuals or entities owning less than a five (5%) percent equity interest in the Acceptable Operator other than officers, directors, managers or others who have the power to direct and control the business and affairs of the Acceptable Operator.

9. The Acceptable Operator must not (nor any of the individuals or entities who own at least a five (5%) equity interest in the Acceptable Operator or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the Acceptable Operator) have filed or been discharged from bankruptcy, reorganization or insolvency proceedings within the past five (5) years (bankruptcy filings by affiliates shall not disqualify an Acceptable Operator, unless such affiliates are any of the individuals or entities described in the parenthetical immediately above).

10. The Acceptable Operator must not in its charter or organizations documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (i) the violent overthrow of or armed resistance against, the U.S. government; or (ii) genocide, violence, hatred or animosity toward persons based solely on their race, creed, color, sex or national origin.

~~(The~~ The foregoing are hereinafter collectively defined as the “Acceptable Operator Criteria”~~);~~
provided, however, with respect to any person, corporation, or other entity retained by any Lender or Leasehold Mortgagee to act as operator of the Project only in the event of a Lender Special Situation, the term “Acceptable Operator Criteria” as used in this Lease shall be deemed in all instances:

- (i) to exclude clauses 3, and 5a, b and c, above;
- (ii) to exclude the phrase “management and/or” from clause 4 above and include the right of Lender or Leasehold Mortgagee, as the case may be, to determine whether or not employees are qualified with regard to clause 4;
- (iii) to include clauses 1, 2, and 6 as modified herein; and
- (iv) to include clauses 7, 8, 9 and 10 without modification)

Specifically, with respect to the issue of Acceptable Operator for all purposes under this Agreement, the parties hereby agree to the following:

- ~~(i)~~ (i) It is understood and agreed that an entity shall not be automatically deemed to be an Acceptable Operator if it meets all of the Acceptable Operator Criteria, but that these factors shall be given substantial weight by the City in approving a Transfer of the Project to such an entity, either by sale or just for operational purposes;
except that, this clause (i) shall not apply only in a Lender Special Situation in

which case the Lender or its retained entity shall be automatically deemed to be an Acceptable Operator as long as it meets with all of the Acceptable Operator Criteria as modified above for situations in which a Lender or Leasehold Mortgagee is retaining an entity to manage the Project or entering into an Acceptable Operator Agreement itself.

- ~~(ii)~~ (ii) In the event that the Developer desires to change the identity of the Acceptable Operator, Developer shall deliver written notice to the City which shall confirm the identity of the proposed Acceptable Operator, and shall include with such notice (i) copies of any applicable operating licenses, (ii) the identification of the Senior Rental Housing Units owned or managed by the Acceptable Operator (iii) the resume of the Acceptable Operator or employees thereof, including identification of and duration, of Congregate Living and Assisted Living facilities management experience and (iv) such other evidence as is reasonably necessary to establish that the new entity proposed to be the Acceptable Operator, meets the Acceptable Operator Criteria.

The City shall have thirty (30) days after the delivery of such written notice and the information required under subparagraphs (i) ~~—~~ (ii) immediately above, to determine whether or not to approve, as the case may be, the Acceptable Operator, provided, however, that if the City notifies the Developer, in writing, within such thirty (30) day period that the information submitted is incomplete or insufficient (and specifies in what ways it is incomplete or insufficient) then the Developer shall supplement such ~~information~~ info illation, as requested, and the City shall have fifteen (15) days after such supplemental information is provided to make its determination as to whether or not to approve the Acceptable Operator. In the event the City disapproves the Acceptable Operator, the City shall provide to the Developer specific reasons for such disapproval. The failure to object to the designation of an Acceptable Operator, within such thirty (30) day period, or if applicable, such fifteen (15) day period, shall be deemed to be the approval of the City of the identity of the proposed Acceptable Operator.

- ~~(iii)~~ (iii) Any entity submitted to the City for approval as an Acceptable Operator, which does not meet the qualifications set forth in the Acceptable Operator Criteria may be rejected by the City in its sole discretion just because of the failure to meet said qualifications and Developer and any requesting party hereby waives the right to claim that said entity is competent even though said qualifications are not met.

- ~~(iv)~~ (iv) Any entity approved as an Acceptable Operator must continue to meet the Acceptable Operator Criteria throughout its service as an Acceptable Operator hereunder unless certain of said qualifications were waived by the City, in writing, at the time of original approval. If, after being accepted or approved as an Acceptable Operator, a violation of paragraph 5a. of the Acceptable Operator Criteria occurs, the Acceptable Operator shall have the greater of the following periods to cure same:

(x) 90 days after receipt of notice from the City or the governmental enforcement agency of such building code violation, or (y) the period permitted by the building code in question (including appeal of such claimed building code violation if allowed).

~~(v)~~ (v) No approval by the City of an Acceptable Operator or its meeting of the Acceptable Operator Criteria shall have the effect of waiving or estopping the City from asserting and claiming that said Acceptable Operator is not in fact operating or maintaining the Overall Project (excluding the Parking Component) in accordance with the terms of this Agreement, thereby creating an Event of Default (subject to the applicable notice and cure periods provided in this Agreement).

~~(vi)~~ (vi) Subject to the provisions of subparagraph (v) immediately above: (a) the Palace and any Affiliate entity owned and controlled by or a principal officer of which is either Jacob Shaham or Helen Shaham and (b) any Acceptable Operator, which meets the Acceptable Operator Criteria set forth above (except to the extent such qualifications ~~w~~ Were waived by the City at the time of original approval) and has been acting as an Acceptable Operator for the Overall Project (excluding the Parking Component) for at least two (2) years before a Transfer shall be deemed an Acceptable Operator for such Transfer. The foregoing situations are the only exceptions intended to the application of the Acceptable Operator Criteria set forth above.

Notwithstanding anything in this Lease to the contrary and only in the event of a Lender Special Situation, any person, corporation, or other entity retained by Lender or any Leasehold Mortgagee that meets the Acceptable Operator Criteria set forth above shall be automatically deemed to be an Acceptable Operator.

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Document 2	file://M:/300/383020/Acceptable Operator v2 (AIM latest).DOC
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Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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