

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2014 APR 16 P 1:48

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA Case No. 2012012905

DOAH Case No. 13-2255

JEST OPERATING, INC. d/b/a SOMERSET,

RENDITION NO.: AHCA- 14 - 0324 -S-OLC

Respondent.

FINAL ORDER

Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency has jurisdiction over the above-named Respondent pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.

2. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent (Ex. 1). The Election of Rights form advised of the right to an administrative hearing. The Respondent initially chose a formal hearing but, during the pendency of discovery, agreed to settle.

3. The parties entered into the attached Settlement Agreement. (Ex. 2)

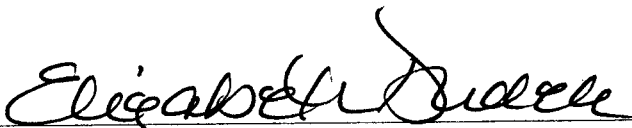
Based upon the foregoing, it is **ORDERED**:

1. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement.

2. The Respondent shall pay the Agency \$3,000.00. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Office of Finance and Accounting
Revenue Management Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 14
Tallahassee, Florida 32308

ORDERED at Tallahassee, Florida, on this 16 day of April, 2014.

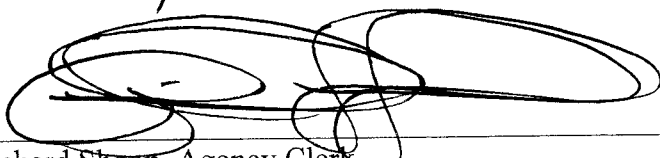

Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 16th day of April, 2014.


Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308-5403
Telephone: (850) 412-3630

Jan Mills Facilities Intake Unit (Electronic Mail)	Finance & Accounting Revenue Management Unit (Electronic Mail)
Dean F. DiBartolomeo, Esq. Law Offices of DiBartolomeo & DiBartolomeo 8400 Bird Road Miami, FL 33115 (U.S. Mail)	Andrew R. McCumber, Esq. E. Patrick Buntz, Esq. McCumber, Daniels, Buntz, Hartig & Puig, P.A. 204 South Hoover Boulevard, Suite 130 Tampa, FL 33609 (U.S. Mail)
Elizabeth Heiman, Administrator Jest Operating, Inc. d/b/a Somerset 2450 Dora Avenue Tavares, FL 32778 (U.S. Mail)	F. Scott Boyd Administrative Law Judge Division of Administrative Hearings (Electronic Mail)

Suzanne Suarez Hurley Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	
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**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

**STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,**

Petitioner,

vs.

Case No.: 2012012905

JEST OPERATING, INC. d/b/a SOMERSET,

Respondent.

ADMINISTRATIVE COMPLAINT

The State of Florida Agency for Health Care Administration (hereinafter "Petitioner" or "Agency"), by and through the undersigned counsel, files this Administrative Complaint against Jest Operating, Inc. d/b/a Somerset (hereinafter "Respondent"), pursuant to Section § 120.569 and Section § 120.57, Fla. Stat. (2012), and alleges:

NATURE OF THE ACTION

This is an action to impose an administrative fine in the amount of \$2,500.00 based upon one State Class II deficiency pursuant to Section § 429.19(2)(b), Fla. Stat. (2012) and the imposition of a survey fee of \$500.00 pursuant to the provisions of Section § 429.19(7), Fla. Stat. (2012) for a total assessment of three thousand dollars (\$3,000.00).

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to Section § 20.42, Section § 120.60 and Chapters 408, Part II, and 429, Part I, Fla. Stat. (2012).
2. Venue lies pursuant to Florida Administrative Code Rule 28-106.207.

EXHIBIT 1

PARTIES

3. The Agency is the regulatory authority responsible for licensure of assisted living facilities and enforcement of all applicable regulations, state statutes and rules governing assisted living facilities pursuant to the Chapters 408, Part II, and 429, Part I, Florida Statutes, and Chapter 58A-5, Florida Administrative Code.

4. Respondent operates a 60-bed assisted living facility (hereafter "ALF") located at 2450 Dora Avenue, Tavares, FL 32778, and is licensed as an ALF, license number 7472 (hereafter "Facility").

5. Respondent was at all times material hereto a licensed facility under the licensing authority of the Agency, and was required to comply with all applicable rules and statutes.

COUNT I – tag A0025

6. The Agency re-alleges and incorporates paragraphs one (1) through five (5) as if fully set forth herein.

7. Pursuant to Florida law:

Resident Care Standards: An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

SUPERVISION. Facilities shall offer personal supervision, as appropriate for each resident, including the following:

(a) Monitor the quantity and quality of resident diets in accordance with Rule 58A-5.020, F.A.C.

(b) Daily observation by designated staff of the activities of the resident while on the premises, and awareness of the general health, safety, and physical and emotional well-being of the individual.

(c) General awareness of the resident's whereabouts. The resident may travel independently in the community.

(d) Contacting the resident's health care provider and other appropriate party such as the resident's family, guardian, health care surrogate, or

case manager if the resident exhibits a significant change; contacting the resident's family, guardian, health care surrogate, or case manager if the resident is discharged or moves out.

(e) A written record, updated as needed, of any significant changes as defined in subsection 58A-5.0131(33), F.A.C., any illnesses which resulted in medical attention, major incidents, changes in the method of medication administration, or other changes which resulted in the provision of additional services.

Fla. Admin. Code R. 58A-5.0182(1)

Resident bill of rights

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27.

- (g) Share a room with his or her spouse if both are residents of the facility.
- (h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.
- (i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.
- (j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.
- (k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.
- (l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

Section 429.28, Fla. Stat. (2012)

Violations; imposition of administrative fines; grounds

- (3) For purposes of this section, in determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:
 - (a) *The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity*

of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated (emphasis supplied).

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the facility of committing or continuing the violation.

(e) The licensed capacity of the facility.

(4) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

(5) Any action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.

Section 429.19, Fla. Stat. (2012)

8. On September 12, 2012, the Agency conducted a complaint inspection, CCR #2012009914, of Respondent's assisted living facility, and found it out of compliance with the above statutes and rule.

9. Based on observation, record review and an interview, the facility did not provide care, services or supervision appropriate to the needs of all of its residents. Findings included:

Facility records showed that Resident #1 had been diagnosed with dementia, Vitamin B12 deficiency; hyperlipidemia and chronic kidney disease (Stage III), renal insufficiency and incontinence. He was a fall risk and had a history of falling in the facility. An elderly gentleman, more than 90 years old, his May 15, 2009, Health Assessment Form 1823 indicated that he needed assistance with ambulation, bathing, dressing, toileting, transferring, grooming and eating. He needed "daily oversight."

A second Form 1823, dated April 8, 2010, noted a few changes: His diagnoses were listed as 1) altered mental status – "confused;" 2) acute

chronic renal failure; 3) hyperchloremia;¹ 4) leukocytosis;² and 5) dehydration. The physician filling out the form required 24-hour nursing or psychiatric care.

Resident #1's nurses notes included:

- 03/14/12 ARNP S Pressley saw the resident regarding slow respirations. Same orders, same meds to be continued.
- 04/05/12 10:30 PM. Resident found next to his bed lying on R side. He had a small skin tear on R knee and R hand and small abrasion on forehead. Areas cleaned and bandaged. B/P: 121/64.
- 04/07/12 Had Chest Xray for congestion and cough.
- 04/10/12 ARNP follow up visit re abnormal Chest Xray. Resident taking Levaquin antibiotic.
- 04/22/12 Pitting edema at lower legs. Skin warm, dry.
- 04/24/12 ARNP saw resident re pedal edema. Meds ordered.
- 04/27/12 1:30 AM. Resident got up out of bed and fell over recliner in his room. Has three abrasions – one on each knee; one on R knuckle. All abrasions cleansed and bandaged. B/P: 85/67.
- 05/05/12 Seen by ARNP re bilat edema. Doppler ordered. Lasix & potassium ordered for 7 days, then PRN.
- 07/10/12 Resident straightened up while being put to bed and hit his head on wall.

NO DOCUMENTATION WAS IN THE NURSES NOTES FOR AUGUST, 2012.

- 08/30/12 **[Resident exhibited signs and symptoms of a fall (see below interview with CNA). Had large bruise 3 x12 inches across R chest, extending through armpit to back. This was not reported and not documented.]**
- 09/01/12 LPN (facility nurse) wrote “CNA advised that resident had bruising under R arm & R upper chest. Etiology unknown.” 3:00 PM. Chest X-rays were done. Mobile X came to facility.

¹ Hyperchloremia is an electrolyte imbalance caused by a high level of chloride in the blood. It can cause agitation, tachycardia, hypertension, pitting edema and dyspnea. It is associated with metabolic acidosis and induces deep, rapid breathing; weakness, diminished cognitive ability, and, ultimately, coma. *Professional Guide to Diseases*, Lippincott Williams & Wilkins, (2012).

² Leukocytosis can be caused by infections or inflammatory processes but can also be caused by bone marrow disorders. Nov. 1, 2000, *Journal of the American Academy of Family Physicians*.

09/02/12 3:30 PM. The resident was “gurgling” and short of breath. EMS was called, the resident was transferred to hospital.

EMS Report showed that he was found in respiratory distress, suctioned, given a sedative, intubated, placed on oxygen and transferred.

09/04/12 Resident expired.

Facility records showed that, on August 30, 2012, while changing Resident #1’s diaper, a certified nursing assistant (“CNA”) found a large bruise, 3 x 12 inches long running horizontally from Resident #1’s chest to his back, at chest level. During an interview, the CNA (“D”) said that Resident #1 does not talk and could not tell him how he got the bruise. CNA “D” told the “lead CNA” (“C”) about the bruise as it was her responsibility to notify the nurse.

“Lead” CNA “C” said that, when any resident is found with an unexplained injury, the facility policy requires that the injury be reported immediately to the nurse on duty. However, despite the resident’s large bruised area, his age, his condition and his history of falling, *neither she nor CNA “D” reported the bruise to the facility nurse.*

CNA #C admitted that CNA #D told her about Resident 1’s bruise on August 30 but said “she told *him* to report it.” “None of the staff saw or knew if [Resident #1] had fallen,” but “if he did fall, he had the strength to get back up by himself,” she said.

The bruising, a clear indication of a fall with injuries, was finally reported by another CNA two days later on September 1, 2012, during the 11:00 PM – 7:00 AM shift (see above nursing notes for 09/01/12).

10. The Respondent’s failure to assure the resident’s safety by notifying the nurse of the resident’s bruises in accord with facility policy is unacceptable and placed the resident at risk of harm associated with internal bleeding and other risks. The facility’s failure to immediately report such a large bruise when the affected resident had a history of falls amounts to inadequate care and inadequate supervision to meet the residents’ needs.

11. The Agency determined that this deficient practice was related to the operation and maintenance of the Facility, or to the personal care of Facility residents, and directly threatened the physical or emotional health, safety, or security of the Facility residents.

12. The Agency cited the Respondent for a Class II violation in accordance with Section 429.19(2)(b), Florida Statutes (2012).

13. The failures cited in #10 above establish grounds for aggravation and support an increase in the penalty imposed by the Agency. *See* Section § 429.19(3)(a), Fla. Stat. (2012).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of two thousand five hundred dollars (\$2,500.00), against Respondent, an ALF in the State of Florida, pursuant to Section 429.19(2)(b), Florida Statutes (2012).

COUNT II

14. The Agency re-alleges and incorporates the entirety of this complaint as if fully set forth herein.

15. Pursuant to Section § 429.19(7), Florida Statutes: “[i]n addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial license and bed fee or \$500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under s. 429.28(3)(c) to verify the correction of the violations.”

16. On September 12, 2012, the Agency conducted a complaint inspection, CCR #2012009914, of Respondent's facility that resulted in violations found that are the subject of the complaint to the Agency.

17. Pursuant to Section § 429.19(7), Fla. Stat. (2012), such a finding subjects the Respondent to a survey fee equal to the lesser of one half of the Respondent's biennial license and bed fee or five hundred dollars (\$500.00).

18. Respondent is therefore subject to a complaint survey fee of five hundred dollars (\$500.00), pursuant to Section § 429.19(7), Fla. Stat. (2012).

WHEREFORE, the Agency intends to impose an additional survey fee of five hundred dollars (\$500.00) against Respondent, an ALF in the State of Florida, pursuant to Section § 429.19(7), Florida Statutes (2012).

NOTICE OF RIGHTS

Respondent is notified of its right to request an administrative hearing pursuant to §120.569, Florida Statutes. Respondent has the right to retain, and be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights.

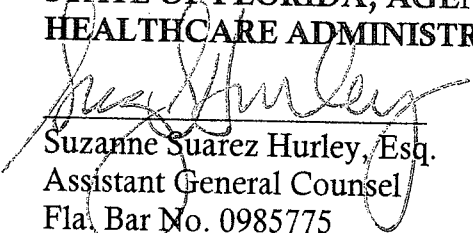
All requests for hearing shall be made to the Agency for Health Care Administration, and delivered to Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Bldg. #3, MS #3, Tallahassee, FL 32308; Telephone (850) 412-3630.

RESPONDENT IS FURTHER NOTIFIED THAT THE FAILURE TO REQUEST A HEARING WITHIN 21 DAYS OF RECEIPT OF THIS COMPLAINT WILL RESULT IN AN ADMISSION OF THE FACTS ALLEGED IN THE COMPLAINT AND THE ENTRY OF A FINAL ORDER BY THE AGENCY.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Administrative Complaint has been served by U.S. Certified Mail, Return Receipt No. 7011 0470 0000 7951 3098, to Joseph Dibartolomeo, Registered Agent, 8400 Bird Road, Miami, FL 33155, and by regular U.S. Mail to Elizabeth Heiman, Administrator, Somerset, 2450 Dora Avenue, Tavares, FL 32778, this 26th day of March, 2013.

STATE OF FLORIDA, AGENCY FOR HEALTHCARE ADMINISTRATION


Suzanne Suarez Hurley, Esq.

Assistant General Counsel

Fla. Bar No. 0985775

525 Mirror Lake Dr. N., Suite 330H

St. Petersburg, Florida 33701

(727) 552-1945; Fax: (727) 552-1440

suzanne.hurley@ahca.myflorida.com

Copy to Kris Mennella, FOM

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: JEST OPERATING, INC. d/b/a SOMERSET

CASE No.:2012012905

ELECTION OF RIGHTS

This Election of Rights form is attached to a proposed action by the Agency for Health Care Administration (AHCA). The title may be **Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint**.

Your Election of Rights must be returned by mail or by fax within 21 days of the day you receive the attached Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.

If your Election of Rights with your selected option is not received by AHCA within twenty-one (21) days from the date you received this notice of proposed action by AHCA, you will have given up your right to contest the Agency's proposed action and a final order will be issued.

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes (2006) and Rule 28, Florida Administrative Code.)

PLEASE RETURN YOUR *ELECTION OF RIGHTS* TO THIS ADDRESS:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308.
Phone: 850-412-3630 Fax: 850-921-0158.

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS:

OPTION ONE (1) _____ I admit to the allegations of facts and law contained in the **Notice of Intent to Impose a Late Fee or Fee, or Administrative Complaint and I waive my right to object and to have a hearing.** I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) _____ I admit to the allegations of facts contained in the **Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, but I wish to be heard at an informal proceeding** (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact contained in the **Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing** (pursuant to Subsection 120.57(1), Florida

Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing OPTION THREE (3), by itself, is NOT sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. Your name, address, and telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

License type: _____ (ALF? nursing home? medical equipment? Other type?)

Licensee Name: _____ License number: _____

Contact person: _____

Name		Title
Address: _____		_____
Street and number	City	Zip Code

Telephone No. _____ Fax No. _____ Email(optional) _____

I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ Date: _____

Print Name: _____ Title: _____

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

**STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,**

Petitioner,

vs.

**DOAH Case No. 13-2255
AHCA Case No. 2012012905**

**JEST OPERATING, INC. d/b/a
SOMERSET,**

Respondent.

SETTLEMENT AGREEMENT

The Florida Agency for Health Care Administration (here, "the Agency"), by and through the undersigned representatives, and the Respondent, Jest Operating, Inc. d/b/a Somerset (here, "Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually a "party," and collectively as "parties," enter into this Settlement Agreement ("Agreement") as follows:

WHEREAS, Respondent is an assisted living facility licensed pursuant to Chapters 429, Part I, and 408, Part II, Florida Statutes, Section 20.42, Florida Statutes and Chapter 58A-5, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent, pursuant to Chapters 429, Part I, and 408, Part II, Florida Statutes; and

WHEREAS, the Agency served Respondent with an administrative complaint on March 28, 2013, notifying the Respondent of its intent to impose an administrative fine in the amount of \$2,500.00 and a survey fee of \$500.00, for a total assessment of \$3,000.00; and

EXHIBIT 2

EH
LFD
STB

WHEREAS, the parties have negotiated in good faith and the best interests of all the parties will be served by a settlement of the issues presented in the referenced amended administrative complaint and notice of intent to deny; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals herein are true and correct and are expressly incorporated herein.
2. Both parties agree that the "whereas" clauses incorporated herein are binding findings of the parties.
3. Conditioned upon paragraph #6 below, upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, Respondent agrees to pay an administrative fine of \$2,500.00 and survey fee of \$500.00, a total of \$3,000.00 to the Agency within 30 days of the entry of the Final Order.
5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.

EA
DED
[Handwritten signatures and initials]

6. By executing this Agreement, Respondent denies the allegations of fact and law related to the Class II deficiency, including but not limited to the Agency's determination of the gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated, which Respondent believes is a Class III deficiency at most.¹ The Agency asserts the validity of the classification and the allegations raised in the administrative complaint referenced herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule identified in a future survey of Respondent, pursuant to the provisions of Chapters 429, Part I, 408, Part II, Florida Statutes, and Chapter 58A-5, Florida Administrative Code, which constitutes a "uncorrected" deficiency of the survey identified in the administrative complaint. Furthermore, the Respondent retains the right to administratively challenge the factual allegations related to the deficient practice and/or the violations alleged in the instant cause should the same be asserted to support future administrative action. Notwithstanding anything contrary contained herein, the parties agree (i) that the facts alleged in the instant case and the alleged deficient practice shall not constitute the sole grounds for subsequent action by the Agency; and (ii) that the subject resident's entire residencies at Somerset shall not be a sole basis for further regulatory or other action by the Agency against the Respondent..

7. Conditioned upon paragraph (6) above, no agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent, including, but not limited to, a

¹ Both deficient practices cited at the September 9, 2012, survey – tags A025 and A076 – were deemed "corrected" by the Agency at the subsequent survey on November 6, 2012.

EH
DFO
[Handwritten signatures]

demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement may not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the administrative complaint. This agreement does not prohibit the Agency from taking action regarding Respondent's Medicaid provider status, conditions, requirements or contract. Notwithstanding anything contrary contained herein, the parties agree (i) that the facts alleged in the instant case and the alleged deficient practice shall not constitute the sole grounds for subsequent action by the Agency; and (ii) that the subject resident's entire residencies at Somerset shall not be a sole basis for further regulatory or other action by the Agency against the Respondent.

8. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled cases.

9. Each party shall bear its own costs and attorney's fees.

10. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any

EA
DJD
[Handwritten initials and signatures]

federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related facilities.

12. This Agreement is binding upon all parties herein and those identified in paragraph 11 of this Agreement.

13. In the event that Respondent was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Florida Administrative Code Rule 59G-9.070.

14. Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

15. The Respondent has read and understands this Agreement and has voluntarily chosen to execute this agreement.

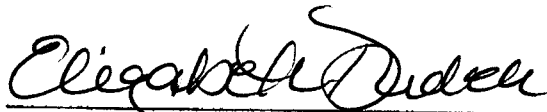
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

17. This Agreement supersedes any prior oral or written agreements between the parties; it resolves and settles the matters raised by both cases identified with the case numbers noted above.

18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

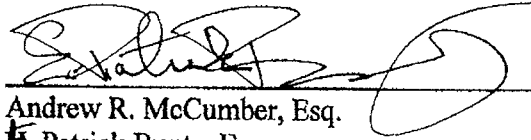
19. All parties agree that a facsimile signature suffices for an original signature.

The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.



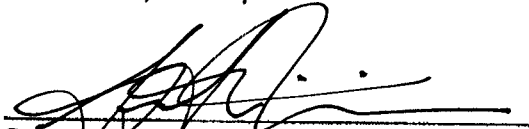
Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Building #1
Tallahassee, FL 32308

DATED: 4/16/14



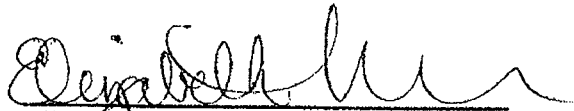
Andrew R. McCumber, Esq.
Patrick Buntz, Esq.
Counsel for Jest Operating, Inc. d/b/a Somerset
McCumber, Daniels, Buntz, Hartig & Puig, P.A.
204 South Hoover Boulevard, Suite 130
Tampa, FL 33609

DATED: 3-11-14



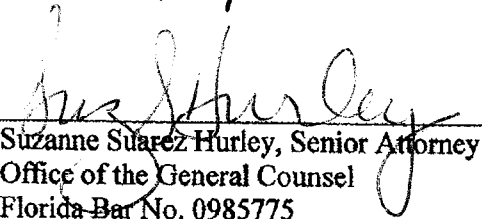
Stuart F. Williams, General Counsel
Office of the General Counsel
Florida Bar No. 0670731
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

DATED: 3/30/14



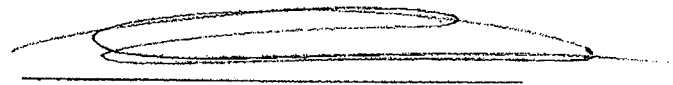
Elizabeth Heiman, Administrator
Jest Operating, Inc. d/b/a Somerset
2450 Dora Avenue
Tavares, FL 32778

DATED: 03-07-2014



Suzanne Suarez Hurley, Senior Attorney
Office of the General Counsel
Florida Bar No. 0985775
Agency for Health Care Administration
525 Mirror Lake Drive North, Suite 330H
St. Petersburg, FL 33701

DATED: 03-11-2014



Dean F. DiBartolomeo, Esq.
Jest Operating, Inc. d/b/a Somerset
Law Offices of DiBartolomeo & DiBartolomeo
8400 Bird Road
Miami, FL 33115

DATED: 03-11-2014