

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2015 SEP 22 P 12:50

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

Case Nos. 15-1423
15-3648

v.

AHCA Nos. 2014003985
2014006292
2015000083

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

~~RENDITION NO.: AHCA-15-0574-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 issued the attached Administrative Complaints and Election of Rights forms to the Respondent. (Ex. 1) The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2)

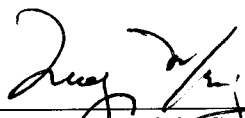
2. The Respondent shall add to its staff policies and procedures a rule prohibiting its staff from giving or receiving gifts above \$20 in value to or from any residents, and from entering into any financial arrangements with residents.

3. The Respondent shall pay the Agency \$2,000.00. 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:

Central Intake Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 61
Tallahassee, Florida 32308

4. Count IV of the Administrative Complaint is withdrawn.

ORDERED at Tallahassee, Florida, on this 22 day of September, 2015.



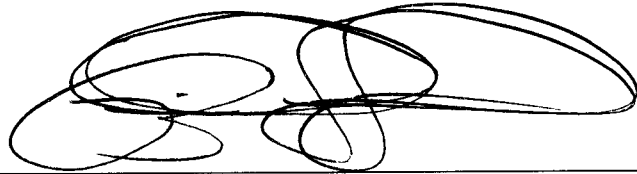
Elizabeth Dudek, Secretary
Agency for Health Care Administration

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 22nd day of September, 2015.



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

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Andrew B. Thornquest, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Elizabeth Heiman, Administrator Jest Operating, Inc. d/b/a Somerset 2450 Dora Avenue Tavares, Florida 32778 (U.S. Mail)
Kriste Mennella, Field Office Manager Local Field Office- Region 3 Agency for Health Care Administration (Electronic Mail)	Dean F. DiBartolomeo, Esquire Law Offices of DiBartolomeo & DiBartolomeo 8400 Bird Road Miami, Florida 33155 (U.S. Mail)
Anne Avery, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)	

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA No(s): 2014003985
2014006292

JEST OPERATING, INC. D/B/A
SOMERSET

Respondent.

ADMINISTRATIVE COMPLAINT

The Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”), files this Administrative Complaint against the Respondent, Jest Operating, Inc. d/b/a Somerset, (“the Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes, and alleges as follows:

NATURE OF THE ACTION

This is an action to impose an administrative fine of \$1,000.00 against an assisted living facility based upon two (2) criminal background screening violations.

PARTIES

1. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing such facilities. Ch. 408, Part II, Ch. 429, Part I, Fla. Stat. (2013); Ch. 58A-5, Fla. Admin. Code. The Agency may deny, revoke, and suspend any license issued to an assisted living facility and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing statutes or applicable rules. §§ 408.813, 408.815, 429.14, 429.19, Fla. Stat. (2013). In addition

EXHIBIT 1

to licensure denial, revocation or suspension, or any administrative fine imposed, the Agency may assess a survey fee against an assisted living facility. § 429.19(7), Fla. Stat. (2013).

2. The Respondent was issued a license by the Agency to operate an assisted living facility located at 2450 Dora Avenue, Tavares, Florida 32778, and was at all times material required to comply with the applicable statutes and rules governing assisted living facilities.

COUNT I
Criminal Background Screening

3. Under Florida law, the Agency shall require level 2 background screening for personnel as required in Section 408.809(1)(e) pursuant to Chapter 435 and Section 408.809. § 429.174, Fla. Stat. (2013).

4. Under Florida law, level 2 background screening pursuant to Chapter 435 must be conducted through the Agency on each of the following persons, who are considered employees for the purposes of conducting screening under Chapter 435: (a) The licensee, if an individual. (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider. (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider. (d) Any person who is a controlling interest if the Agency has reason to believe that such person has been convicted of any offense prohibited by Section 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the Agency a description and explanation of the conviction at the time of license application. (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or

personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee. § 408.809(1), Fla. Stat. (2013).

5. (2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person's background screening results are retained in the clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that:

(a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section; (b) **The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days;** and (c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency. § 408.809(2), Fla. Stat. (2013). (emphasis added).

6. Under Florida law, in addition to the offenses listed in Section 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the offenses listed in Section 408.809(4). § 408.809(4), Fla. Stat. (2013).

7. Under Florida law, if an employer or Agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity. § 435.06(1), Fla. Stat. (2013).

8. Under Florida law, (2)(a) an employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process

shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the Agency as provided under Section 435.07. (b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter. (c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to Section 435.07. § 435.06(2)(a)-(c), Fla. Stat. (2013).

9. Under Florida law, any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed. § 435.06(3), Fla. Stat. (2013).

Facts

10. On or about March 3, 2014, the Agency conducted an unannounced complaint survey (CCR #2014001302) of the Respondent.

11. Based upon observation, record review, and interview, the Respondent failed to ensure that the Facility had the required background screening for one individual (Staff A).

12. Staff A had responsibilities that required him to provide personal care or services directly to the Facility residents or had access to resident funds, personal property, or the Facility

living areas.

13. On or about March 3, 2014, a review of personnel files revealed Staff A was hired by the facility as a Resident Aide (who provides direct care to residents). Further review revealed Staff A had a break in employment greater than 90 days prior to being hired at this facility. Continued review revealed Staff A did not have a background screening since his date of hire with the facility.

14. On or about March 3, 2014, the Agency conducted an interview with the Respondent's Administrator. The Administrator confirmed Staff A did not have the required level II background screenings when he was hired on July 10, 2013. The Administrator stated Staff A had over a four month break in employment prior to working at this facility.

15. The Respondent's actions or inactions constituted a violation of Sections 429.174 and 408.809, Florida Statutes (2013).

Sanction

16. Under Florida law, in addition to the requirements of part II of Chapter 408, the Agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in Chapter 120 against a licensee for a violation of any provision of Part I or Chapter 429, Part II of Chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under Section 408.809, Florida Statutes, or for the actions of any facility employee: (f) failure to comply with the background screening standards of Chapter 429, Part I, Section 408.809(1), or Chapter 435, Florida Statutes. § 429.14(1)(f), Fla. Stat. (2013).

17. Under Florida law, the Agency may impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation. Unless otherwise

specified by law, the amount of the fine may not exceed \$500 for each violation. Unclassified violations include: (b) violating any provision of this part, authorizing statutes, or applicable rules. § 408.813(3)(b), Fla. Stat. (2013).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of \$500.00 against the Respondent

COUNT II
Criminal Background Screening

18. Under Florida law, the Agency shall require level 2 background screening for personnel as required in Section 408.809(1)(e) pursuant to Chapter 435 and Section 408.809. § 429.174, Fla. Stat. (2013).

19. Under Florida law, level 2 background screening pursuant to Chapter 435 must be conducted through the Agency on each of the following persons, who are considered employees for the purposes of conducting screening under Chapter 435: (a) The licensee, if an individual. (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider. (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider. (d) Any person who is a controlling interest if the Agency has reason to believe that such person has been convicted of any offense prohibited by Section 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the Agency a description and explanation of the conviction at the time of license application. (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or

personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee. § 408.809(1), Fla. Stat. (2013).

20. (2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person's background screening results are retained in the clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that:

(a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section; (b) **The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days;** and (c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency. § 408.809(2), Fla. Stat. (2013). (emphasis added).

21. Under Florida law, in addition to the offenses listed in Section 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the offenses listed in Section 408.809(4). § 408.809(4), Fla. Stat. (2013).

22. Under Florida law, if an employer or Agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity. § 435.06(1), Fla. Stat. (2013).

23. Under Florida law, (2)(a) an employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process

shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the Agency as provided under Section 435.07. (b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter. (c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to Section 435.07. § 435.06(2)(a)-(c), Fla. Stat. (2013).

24. Under Florida law, any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed. § 435.06(3), Fla. Stat. (2013).

Facts

25. On or about May 1, 2014, the Agency conducted an unannounced complaint survey (CCR #2014004224) of the Respondent.

26. Based upon observation, record review, and interview, the Respondents failed to ensure that the Facility had the required background screening for one individual (Staff D).

27. Staff D had responsibilities that required him to provide personal care or services directly to the Facility residents or had access to resident funds, personal property, or the Facility

living areas.

28. On or about May 1, 2014, the Agency conducted an interview with Staff D. Staff D stated that he has been working in the facility for 10 years, and that he is the Administrator's assistant and maintenance man. He stated he operates the wheelchair lift on the facility's bus.

29. Staff D stated on April 24, 2014 that he assisted a female resident who needed assistance getting on the facility bus.

30. On or about May 1, 2014, the Agency conducted a record review of Staff Member D concerning his background screening. The Administrator said she could not find Staff Member D's background screening from the Agency for Health Care Administration. She said Staff D had a Level I back ground screening.

31. On or about May 1, 2014, a record check was conducted with the Agency's background screening unit and it was discovered that Staff D's status has been "not eligible" since June 1, 2011.

32. The Respondent's actions or inactions constituted a violation of Sections 429.174 and 408.809, Florida Statutes (2013).

Sanction

33. Under Florida law, in addition to the requirements of part II of Chapter 408, the Agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in Chapter 120 against a licensee for a violation of any provision of Part I or Chapter 429, Part II of Chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under Section 408.809, Florida Statutes, or for the actions of any facility employee: (f) failure to comply with the background screening standards of Chapter 429, Part I, Section

408.809(1), or Chapter 435, Florida Statutes. § 429.14(1)(f), Fla. Stat. (2013).

34. Under Florida law, the Agency may impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation. Unless otherwise specified by law, the amount of the fine may not exceed \$500 for each violation. Unclassified violations include: (b) violating any provision of this part, authorizing statutes, or applicable rules. § 408.813(3)(b), Fla. Stat. (2013).

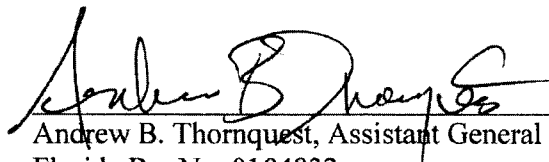
WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of \$500.00 against the Respondent.

CLAIM FOR RELIEF

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to enter a final order that:

1. Renders findings of fact and conclusions of law as set forth above.
2. Grants the relief set forth above.

Respectfully Submitted,



Andrew B. Thornquest, Assistant General Counsel
Florida Bar No. 0104832
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32303
Telephone: 850-412-3679
Facsimile: 850-921-0158
andrew.thornquest@ahca.myflorida.com

NOTICE OF RIGHTS


Pursuant to Section 120.569, F.S., any party has the right to request an administrative hearing by filing a request with the Agency Clerk. In order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), F.S., however, a party must file a request for an administrative hearing that complies with the requirements of Rule 28-106.2015, Florida Administrative Code. Specific options for administrative action are set out in the attached Election of Rights form.

The Election of Rights form or request for hearing must be filed with the Agency Clerk for the Agency for Health Care Administration within 21 days of the day the Administrative Complaint was received. If the Election of Rights form or request for hearing is not timely received by the Agency Clerk by 5:00 p.m. Eastern Time on the 21st day, the right to a hearing will be waived. A copy of the Election of Rights form or request for hearing must also be sent to the attorney who issued the Administrative Complaint at his or her address. The Election of Rights form shall be addressed to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630, Facsimile (850) 921-0158.

Any party who appears in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or other qualified representative. Mediation under Section 120.573, F.S., is available if the Agency agrees, and if available, the pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form were served to the below named persons/entities by the method designated on this 16th day of OCTOBER, 2014.



Andrew B. Thornquest, Assistant General Counsel
Florida Bar No. 0104832
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32303
Telephone: 850-412-3679
Facsimile: 850-921-0158
andrew.thornquest@ahca.myflorida.com

<p>Catherine Anne Avery, Unit Manager Licensure Unit Agency for Health Care Administration (Electronic Mail)</p>	<p>Kriste Mennella, Field Office Manager Local Field Office- Region 3 Agency for Health Care Administration (Electronic Mail)</p>
<p>Elizabeth Heiman, Administrator Jest Operating, Inc. d/b/a Somerset 2450 Dora Avenue Tavares, Florida 32778 Certified Mail: 91 7199 9991 7033 2240 6399</p>	<p>Joseph DiBartolomeo, Registered Agent Jest Operating, Inc. d/b/a Somerset 8400 Bird Road Miami, Florida 33155 Certified Mail: 91 7199 9991 7033 2240 6382</p>

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: Jest Operating, Inc., d/b/a Somerset

ACHA No. 2014003985
2014006292

ELECTION OF RIGHTS

This Election of Rights form is attached to an Administrative Complaint. It may be returned by mail or facsimile transmission, but must be received by the Agency Clerk within 21 days, by 5:00 pm, Eastern Time, of the day you received the Administrative Complaint. If your Election of Rights form or request for hearing is not received by the Agency Clerk within 21 days of the day you received the Administrative Complaint, you will have waived your right to contest the proposed agency action and a Final Order will be issued imposing the sanction alleged in the Administrative Complaint.

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

Please return your Election of Rights form to this address:

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

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) _____ I admit to the allegations of fact and conclusions of law alleged in the Administrative Complaint and waive my right to object and to have a hearing. I understand that by giving up the right to object and have a hearing, a Final Order will be issued that adopts the allegations of fact and conclusions of law alleged in the Administrative Complaint and imposes the sanction alleged in the Administrative Complaint.

OPTION TWO (2) _____ I admit to the allegations of fact alleged in the Administrative Complaint, but 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 agency action is too severe or that the sanction should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact alleged in the Administrative Complaint and request a formal hearing (pursuant to Section 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 agency 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. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

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

Licensee Name: _____

Contact Person: _____ Title: _____

Address: _____
Number and Street City Zip Code

Telephone No. _____ Fax No. _____

E-Mail (optional) _____

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

Signed: _____ Date: _____

Printed Name: _____ Title: _____

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA Nos.: 2015000083

JEST OPERATING, INC. D/B/A
SOMERSET,

Respondent.

ADMINISTRATIVE COMPLAINT

The Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”), files this Administrative Complaint against the Respondent, Jest Operating, Inc. d/b/a Somerset (“the Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes, and alleges as follows:

NATURE OF THE ACTION

This is an action to impose administrative fines totaling \$3,000.00 against the Respondent.

PARTIES

1. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing such facilities. Ch. 408, Part II, Ch. 429, Part I, Fla. Stat. (2014); Ch. 58A-5, Fla. Admin. Code. The Agency may deny, revoke, and suspend any license issued to an assisted living facility and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing statutes or applicable rules. §§ 408.813, 408.815, 429.14, 429.19, Fla. Stat. (2014). In addition

EXHIBIT 1

to licensure denial, revocation or suspension, or any administrative fine imposed, the Agency may assess a survey fee against an assisted living facility. § 429.19(7), Fla. Stat. (2014).

2. The Respondent was issued a license by the Agency to operate an assisted living facility located at 2450 Dora Avenue, Tavares, Florida 32778, and was at all times material required to comply with the applicable statutes and rules governing assisted living facilities.

COUNT I
Criminal Background Screening

3. Under Florida law, the Agency shall require level 2 background screening for personnel as required in Section 408.809(1)(e) pursuant to Chapter 435 and Section 408.809. § 429.174, Fla. Stat. (2014).

4. Under Florida law, level 2 background screening pursuant to Chapter 435 must be conducted through the Agency on each of the following persons, who are considered employees for the purposes of conducting screening under Chapter 435: (a) The licensee, if an individual. (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider. (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider. (d) Any person who is a controlling interest if the Agency has reason to believe that such person has been convicted of any offense prohibited by Section 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the Agency a description and explanation of the conviction at the time of license application. (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, **or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas;** and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide

personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee. § 408.809(1), Fla. Stat. (2014). (emphasis added).

5. Under Florida law, 2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check unless the person's fingerprints are enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h), the person must submit fingerprints electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints shall be retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h) and enrolled in the national retained print arrest notification program when the Department of Law Enforcement begins participation in the program. The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until a specified agency is fully implemented in the clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly

Affairs, the Agency for Persons with Disabilities, the Department of Children and Families, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that: (a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section; (b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and (c) Such proof is accompanied, under penalty of perjury, by an attestation of compliance with chapter 435 and this section using forms provided by the agency. § 408.809(2), Fla. Stat. (2014).

6. Under Florida law, in addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the offenses listed in Section 408.809(4). § 408.809(4), Fla. Stat. (2014).

7. Under Florida law, if an employer or agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity. § 435.06(1), Fla. Stat. (2014).

8. Under Florida law, an employer may not hire, select, or otherwise allow an

employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the agency as provided under s. 435.07. (b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter. (c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07. § 435.06(2)(a)-(c), Fla. Stat. (2014).

9. Any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed. § 435.06(3), Fla. Stat. (2014).

Facts

10. On or about December 9, 2014, the Agency conducted a survey of the Respondent's facility.

11. Based on observation, record review, and interview, the Agency determined that

the Respondent failed to ensure a Level II background screen for two sampled employees, as evidenced by lack of documentation of valid Level II background screen for Employees C and D when they were hired.

12. Employee C was hired by the Respondent on March 18, 2014, as a Certified Nursing Assistant (“CNA”).

13. Employee D was hired by the Respondent on April 19, 2013 as a Nurse’s Assistant.

14. Employee C and D have responsibilities that required the provision of personal care or services directly to the Facility residents, or have access to resident funds, personal property, or the Facility living areas.

15. On or about December 9, 2014, the Agency conducted a record review of Employee D’s personnel files. The review revealed a Level II background screen dated August 7, 2013. This was more than three months after Employee D’s hire date.

16. On or about December 9, 2014, the Agency conducted a record review of Employee C’s personnel files. The review revealed a Level II background screen dated January 23, 2014, which stated that Employee C was not eligible.

17. On or about December 9, 2014, the Agency conducted an interview with the Respondent’s Administrator. The Administrator stated that she determined Employee C’s eligibility to work at the facility because Employee C had provided her with a letter of exemption.

18. On or about December 9, 2014, the Agency conducted an interview with the Investigation Manager for the Department of Health, Division of medical Quality Assurance (“MQA Investigator”). MQA Investigator conducted an electronic records search and confirmed

that Employee C's exemption letter was forged.

19. The Respondent's actions and inactions constituted a violation of Sections 429.174 and 408.809, Florida Statutes (2014).

Sanction

20. Under Florida law, in addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under s. 408.809, or for the actions of any facility employee: (f) Failure to comply with the background screening standards of this part, s. 408.809(1), or chapter 435. § 429.14(1)(f), Fla. Stat. (2014).

21. Under Florida law, the Agency may impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation. Unless otherwise specified by law, the amount of the fine may not exceed \$500 for each violation. Unclassified violations include: (b) violating any provision of this part, authorizing statutes, or applicable rules. § 408.813(3)(b), Fla. Stat. (2014).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of \$500.00 against the Respondent.

COUNT II **Resident Rights**

1. Pursuant to Florida law:

(6) RESIDENT RIGHTS AND FACILITY PROCEDURES.

(a) A copy of the Resident Bill of Rights as described in Section 429.28, F.S., or a summary provided by the Long-Term Care Ombudsman Program must be posted in full view in a freely

accessible resident area, and included in the admission package provided pursuant to Rule 58A-5.0181, F.A.C.

(b) In accordance with Section 429.28, F.S., the facility must have a written grievance procedure for receiving and responding to resident complaints, and for residents to recommend changes to facility policies and procedures. The facility must be able to demonstrate that such procedure is implemented upon receipt of a complaint.

(c) The telephone number for lodging complaints against a facility or facility staff must be posted in full view in a common area accessible to all residents. The telephone numbers are: the Long-Term Care Ombudsman Program, 1(888)831-0404; Disability Rights Florida, 1(800)342-0823; the Agency Consumer Hotline 1(888)419-3456, and the statewide toll-free telephone number of the Florida Abuse Hotline, 1(800)96-ABUSE or 1(800)962-2873. The telephone numbers must be posted in close proximity to a telephone accessible by residents and must be a minimum of 14-point font.

(d) The facility must have a written statement of its house rules and procedures that must be included in the admission package provided pursuant to Rule 58A-5.0181, F.A.C. The rules and procedures must at a minimum address the facility's policies regarding: 1. Resident responsibilities; 2. Alcohol and tobacco; 3. Medication storage; 4. Resident elopement; 5. Reporting resident abuse, neglect, and exploitation; 6. Administrative and housekeeping schedules and requirements; 7. Infection control, sanitation, and universal precautions; and 8. The requirements for coordinating the delivery of services to residents by third party providers.

Rule 58A-5.0182(6), F.A.C., (2014). (in pertinent part).

2. Under Florida law,

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.

* * *

(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.

(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.

§ 429.28(1), Fla. Stat., (2014). (in pertinent part).

Facts

22. On or about December 9, 2014, the Agency conducted a survey of Respondent's facility.

23. Based on interview and record review the facility failed to ensure an environment free from financial exploitation for one resident (Resident #1).

24. On or about December 9, 2014, the Agency conducted an interview with the Respondent's Administrator. During the interview, the Administrator stated Employee C, somehow got a hold of Resident #1's credit card.

25. The Administrator continued to state that Employee C began to use Resident #1's debit and credit card to make purchases of gas, at restaurants, and stores. The Administrator stated that Resident #1's card was even used to buy a wedding dress.

26. The Administrator finally stated that Resident #1 also cosigned on a truck for Employee C and that the resident contacted the police because Employee C did not make any payments on the truck Resident #1 had co-signed for.

27. On or about December 9, 2014, the Agency conducted a record review of the Statement Form from the Tavares Police Department dated August 27, 2014 ("TPD Form"). The TPD Form revealed Resident #1 claimed Employee C had his debit and credit card, and in a two week period of time withdrew one thousand eight hundred and fifty dollars (\$1,850.00) in cash and made several purchases without Resident #1's knowledge or authorization. The TPD Form also revealed that Employee C retrieved a second debit card from Resident #1 and made numerous purchases, as well as tried to obtain several credit cards in Resident #1's name without my knowledge or authorization.

28. A record review of the Statement Form from Tavares Police Department revealed the original date of the report was 08/27/2014. Resident #1 wrote on August 13, 2014, I purchased a truck for Staff C with the condition that she would make the monthly payments. Staff C did not make the payments.

29. A record review of the "Standard Policies" revealed "No employee will be allowed to accept gifts/money or personal items from residents, family members, POA/Guardian unless approved by administrators."

Sanction

30. Under Florida law, in addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under s. 408.809, or for the actions of any facility employee: (c) misappropriation or conversion of the property of a resident of the facility. § 429.14(1)(c), Fla. Stat. (2014).

31. Under Florida law, violations of this part, authorizing statutes, or applicable rules shall be classified according to the nature of the violation and the gravity of its probable effect on clients. Violations shall be classified on the written notice as follows: ... Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation. § 408.813(2)(b), Fla. Stat. (2014).

32. Under Florida law, the Agency shall impose an administrative fine for a cited Class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation. § 429.19(2)(b), Fla. Stat. (2014).

33. The Agency cited the Respondent for a Class II violation in accordance with applicable statutes and authorizing rules.

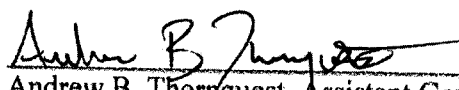
WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of \$2,500.00 against the Respondent.

CLAIM FOR RELIEF

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to enter a final order that:

1. Renders findings of fact and conclusions of law as set forth above.
2. Grants the relief set forth above.

Respectfully Submitted,


Andrew B. Thornquest, Assistant General Counsel
Florida Bar No. 0104832

Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32303
Telephone: 850-412-3679
Facsimile: 850-921-0158
andrew.thornquest@ahca.myflorida.com

NOTICE OF RIGHTS

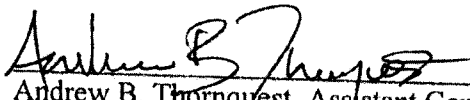
Pursuant to Section 120.569, F.S., any party has the right to request an administrative hearing by filing a request with the Agency Clerk. In order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), F.S., however, a party must file a request for an administrative hearing that complies with the requirements of Rule 28-106.2015, Florida Administrative Code. Specific options for administrative action are set out in the attached Election of Rights form.

The Election of Rights form or request for hearing must be filed with the Agency Clerk for the Agency for Health Care Administration within 21 days of the day the Administrative Complaint was received. If the Election of Rights form or request for hearing is not timely received by the Agency Clerk by 5:00 p.m. Eastern Time on the 21st day, the right to a hearing will be waived. A copy of the Election of Rights form or request for hearing must also be sent to the attorney who issued the Administrative Complaint at his or her address. The Election of Rights form shall be addressed to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630, Facsimile (850) 921-0158.

Any party who appears in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or other qualified representative. Mediation under Section 120.573, F.S., is available if the Agency agrees, and if available, the pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form were served to the below named persons/entities by the method designated on this 16th day of March, 2015.


Andrew B. Thornquest, Assistant General Counsel
Florida Bar No. 0104832
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32303
Telephone: 850-412-3679
Facsimile: 850-921-0158
andrew.thornquest@ahca.myflorida.com

<p>Kriste Mennella, Field Office Manager Local Field Office- Region 3 Agency for Health Care Administration (Electronic Mail)</p>	<p>Joseph DiBartolomeo, Registered Agent Jest Operating, Inc. d/b/a Somerset 8400 Bird Road Miami, Florida 33155 (Certified Mail, # 9171999991703241943623) 91 7199 9991 7032 4194 3623</p>
<p>Catherine Anne Avery, Unit Manager Licensure Unit Agency for Health Care Administration (Electronic Mail)</p>	<p>Elizabeth Heiman, Administrator Jest Operating, Inc. d/b/a Somerset 2450 Dora Avenue Tavares, Florida 32778 (Certified Mail # 9171999991703241943630) 91 7199 9991 7032 4194 3630</p>

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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

ACHA Nos. 2015000083

ELECTION OF RIGHTS

This Election of Rights form is attached to an Administrative Complaint. It may be returned by mail or facsimile transmission, but must be received by the Agency Clerk within 21 days, by 5:00 pm, Eastern Time, of the day you received the Administrative Complaint. If your Election of Rights form or request for hearing is not received by the Agency Clerk within 21 days of the day you received the Administrative Complaint, you will have waived your right to contest the proposed agency action and a Final Order will be issued imposing the sanction alleged in the Administrative Complaint.

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

Please return your Election of Rights form to this address:

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

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) _____ I admit to the allegations of fact and conclusions of law alleged in the Administrative Complaint and waive my right to object and to have a hearing. I understand that by giving up the right to object and have a hearing, a Final Order will be issued that adopts the allegations of fact and conclusions of law alleged in the Administrative Complaint and imposes the sanction alleged in the Administrative Complaint.

OPTION TWO (2) _____ I admit to the allegations of fact alleged in the Administrative Complaint, but 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 agency action is too severe or that the sanction should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact alleged in the Administrative Complaint and request a formal hearing (pursuant to Section 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 agency 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. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

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

Licensee Name: _____

Contact Person: _____ Title: _____

Address: _____
Number and Street City Zip Code

Telephone No. _____ Fax No. _____

E-Mail (optional) _____

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

Signed: _____ Date: _____

Printed Name: _____ Title: _____

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

JEST OPERATING, INC. d/b/a SOMERSET

Respondent.

DOAH Nos.: 15-1423

15-3648

AHCA Nos.: 2014003985

2014006292

2015000083

SETTLEMENT AGREEMENT

The Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”) and the Respondent, Jest Operating, Inc. d/b/a Somerset (“the Respondent”), by and through its undersigned representatives, and pursuant to Section 120.57(4), Florida Statutes, agree as follows:

WHEREAS the Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the state laws governing such facilities pursuant to Chapter 408, Part II, Florida Statutes, and Chapter 429, Part I, Florida Statutes, and Chapter 58A-5, Florida Administrative Code; and

WHEREAS, the Respondent was issued a license by the Agency to operate this assisted living facility in Florida; and

WHEREAS, the Agency issued two Administrative Complaints in the above-styled matter on the Respondent seeking \$4,000.00 in administrative fines; and

WHEREAS, the Agency and the Respondent, (hereinafter collectively “the Parties”) have agreed that a fair and efficient resolution of the above-captioned matters would avoid the expenditure of substantial sums to further litigate these disputes; and

EXHIBIT 2

DD
EH

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

1. The above recitals are true and correct and are expressly incorporated into the Settlement Agreement (hereinafter "the Agreement").

2. The Parties agree that the above recitals are binding findings on the Parties.

3. Upon full execution of this Agreement, the Respondent agrees to a withdrawal of any request for administrative proceeding filed for the above referenced actions, agrees to waive any and all proceedings and appeals under Chapter 120, Florida Statutes, to which they may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), a formal proceeding under Subsection 120.57(1), appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or tribunal (DOAH) of competent jurisdiction, and agree to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled as to this matter. Provided, however, that this Agreement shall not be a waiver by any party of the right to the judicial enforcement of this Agreement.

4. Upon full execution of this Agreement, the Parties stipulate as follows:

a. The Respondent, for settlement purposes, will accept Count I and Count II, the two unclassified deficiencies for criminal background screening violations, of the Administrative Complaint in AHCA No. 2014003985 and 2014006292; the Respondent will accept Count I, the one unclassified deficiency for a criminal background screening violation, of the Administrative Complaint in AHCA No. 2015000083; and Respondent shall pay two thousand dollars (\$2,000.00) in administrative fines to the Agency within 30 days of the date of a final order.

b. The Respondent's Facility shall implement facility policies and procedures that prohibit its staff members and volunteers from: giving gifts and/or property greater than twenty dollars (\$20.00) in value to any residents; receiving gifts and/or property greater than twenty dollars (\$20.00) in value from any residents; or entering into any personal financial arrangements with a resident.

c. The Agency, for settlement purposes, will voluntarily withdraw Count II of the Administrative Complaint, the Class II resident rights violation, in AHCA No. 2015000083.

DFA
EJ

5. Venue for any action brought to interpret, challenge or enforce the terms of this Agreement or the Final Order entered pursuant to this Agreement shall lie solely in the State Circuit Court of Leon County, Florida.

6. By executing this Agreement, the Respondent neither admits nor denies the allegations set forth in the Administrative Complaints, but recognize that the Agency continues to assert the validity of the allegations in good faith. The Respondent acknowledges that this Agreement does not affect in any manner any other type of action that is or may be initiated against the Respondent by any other government agency, regardless of the type of action or the forum in which the action is brought. The Respondent also acknowledges that this Agreement may not be admitted into evidence in any type of action that is or may be initiated against them.

7. 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 case(s).

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

9. This Agreement shall become effective on the date upon which it is fully executed by all of the Parties.

10. The Respondent, for herself and for any related or resulting organizations, successors or transferees, attorneys, heirs, and executors or administrators, discharge the Agency and its agents, representatives, and attorneys of 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 the above referenced actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including claims arising out of the subject of this Agreement, by or on behalf of the Respondent or related or resulting organizations.

DFD
EJ

11. This Agreement is binding upon all Parties and those persons and entities identified in the aforementioned paragraph of this Agreement.

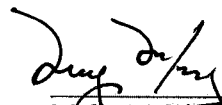
12. In the event that the Respondent was a Medicaid provider at the subject time of the occurrences alleged in the Administrative Complaints, this Agreement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues.

13. The undersigned have read and understand this Agreement and have authority to bind their respective principals. The Parties and their representatives have the legal capacity to execute this Agreement. The Parties have right to consult with their own counsel and have done so in knowingly and freely entering into this Agreement. The Respondent understands that Agency counsel represents solely the Agency and that Agency counsel has not provided any legal advice to them, or influenced them, in the decision to enter into this Agreement.

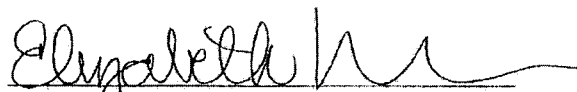
14. This Agreement contains the entire understandings and agreements of the Parties. This Agreement supersedes any prior oral or written understandings and agreements between the Parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

15. All Parties agree that an electronic signature suffices for an original signature and that this Agreement may be executed in counterpart.

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

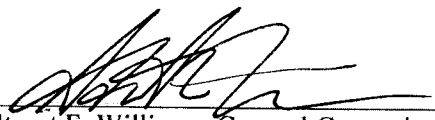

Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive MS# 3
Tallahassee, Florida 32308

DATED: 9/20/15


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

DATED: 07/29/2015

DFD



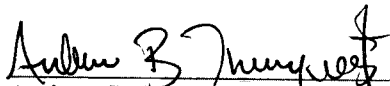
Stuart F. Williams, General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida, 32308

DATED: 9/20/15



Dean F. DiBartolomeo, Esquire
Counsel for Respondent
8400 Bird Road
Miami, Florida 33155

DATED: 07/29/2015



Andrew B. Thornquest, Senior Attorney
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 7-29-2015