

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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

Petitioner,

AHCA No.: 2008003783

CASE No.: 08-269PH

v.

RENDITION NO.: AHCA-08-0772 -S-OLC

CRESTHAVEN EAST, LLC d/b/a
CRESTHAVEN EAST,

Respondent.

FINAL ORDER

Having reviewed the administrative complaint dated May 2, 2008, attached hereto and incorporated herein (Exhibit 1), and all other matters of record, the Agency for Health Care Administration ("Agency") has entered into a Settlement Agreement (Exhibit 2) with the other party to these proceedings, and being otherwise well-advised in the premises, finds and concludes as follows:

ORDERED:

1. The attached Settlement Agreement is approved and adopted as part of this Final Order, and the parties are directed to comply with the terms of the Settlement Agreement.
2. Respondent shall pay an administrative fine in the amount of \$375.00. The administrative fine is due and payable within thirty (30) days of the date of rendition of this Order.

3. A check should be made payable to the "Agency for Health Care Administration." The check, along with a reference to this case number, should be sent directly to:

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

4. Unpaid fines pursuant to this Order will be subject to statutory interest and may be collected by all methods legally available.

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

6. The above-styled case is hereby closed.

DONE and **ORDERED** this 13th day of August, 2008,
in Tallahassee, Leon County, Florida.


Holly Benson, Secretary
Agency for Health Care Administration

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.

Copies furnished to:

Morton Gelberd Administrator Cresthaven East 5100 Cresthaven Blvd. West Palm Beach, Florida 33415 (U. S. Mail)	Alba M. Rodriguez, Esq. Assistant General Counsel Agency for Health Care Administration 8350 N. W. 52 Terrace – Suite 103 Miami, Florida 33166 (Interoffice Mail)
Finance & Accounting Agency for Health Care Administration 2727 Mahan Drive, MS #14 Tallahassee, Florida 32308 (Interoffice Mail)	Elizabeth Dudek Deputy Secretary Agency for Health Care Administration 2727 Mahan Drive, Bldg #1, MS #9 Tallahassee, Florida 32308 (Interoffice Mail)
Jan Mills Agency for Health Care Administration 2727 Mahan Drive, Bldg #3, MS #3 Tallahassee, Florida 32308 (Interoffice Mail)	William Roberts, Esq. Informal Hearing Officer Agency for Health Care Administration 2727 Mahan Drive, Bldg #3, MS #3 Tallahassee, Florida 32308 (Interoffice Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the above-named person(s) and entities by U.S. Mail, or the method designated, on this the 14th day of August, 2008.


Richard J. Shoop
Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Building #3
Tallahassee, Florida 32308
(850) 922-5873

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH
CARE ADMINISTRATION,

Petitioner,

AHCA No.: 2008003783

Return Receipt Requested:

7004 2890 0000 5525 8382

7004 2890 0000 5525 8399

v.

CRESTHAVEN EAST, LLC d/b/a
CRESTHAVEN EAST,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW State of Florida, Agency for Health Care Administration ("AHCA"), by and through the undersigned counsel, and files this administrative complaint against Cresthaven East, LLC d/b/a Cresthaven East (hereinafter "Cresthaven East"), pursuant to Chapter 429, Part I, and Section 120.60, Florida Statutes (2007), and alleges:

NATURE OF THE ACTION

1. This is an action to impose an administrative fine of \$500.00 pursuant to Sections 429.14 and 429.19, Florida Statutes (2007) for the protection of public health, safety and welfare.



JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to Sections 120.569 and 120.57, Florida Statutes (2007), and Chapter 28-106, Florida Administrative Code (2007).

3. Venue lies in Palm Beach County pursuant to Section 120.57, Florida Statutes (2007), and Rule 28-106.207, Florida Administrative Code (2007).

PARTIES

4. AHCA is the regulatory authority responsible for licensure and enforcement of all applicable statutes and rules governing assisted living facilities pursuant to Chapter 429, Part I, Florida Statutes (2007), and Chapter 58A-5 Florida Administrative Code (2007).

5. Cresthaven East operates a 308-bed assisted living facility located at 5100 Cresthaven Blvd., West Palm Beach, Florida 33415. Cresthaven East is licensed as an assisted living facility under license number 4769. Cresthaven East was at all times material hereto a licensed facility under the licensing authority of AHCA and was required to comply with all applicable rules and statutes.

COUNT I

CRESTHAVEN EAST FAILED TO MAINTAIN A SAFE ENVIRONMENT FOR THE RESIDENTS.

RULE 58A-5.023(1)(a), FLORIDA ADMINISTRATIVE CODE

(PHYSICAL PLANT STANDARDS)

CLASS III VIOLATION

6. AHCA re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

7. Cresthaven East was cited with one (1) Class III deficiency as a result of complaint investigation surveys that were conducted on November 30, 2007 and February 20, 2008.

8. A complaint investigation survey was conducted on November 30, 2007. Based on observation and interviews, it was determined that the facility failed to ensure that the environment was maintained for the safe care of the residents at the facility. The findings include the following.

9. During the Physical Plant Standards portion of the survey a tour was conducted on 11/30/07 at approximately 9:30 AM accompanied by the Administrator and the facility's Risk Management Consultant, it was revealed that all eight residents (Residents #1, #2, #3, #4, #5, #6, #7 & #8) all receive assistance with self-administered medications. During a tour of the facility, it was observed that the facility did not properly ensure a safe and clean environment throughout the facility for

the Residents and Staff Members. The following hazards were observed:

a. Wing B (Apartment #100s): During the tour of Wing B (Apartment #100), it was observed that the Medication cart was left unattended and unsecured numerous times by Employee #2 during Medication Pass, in which numerous medications were in view of all that pass the cart (medication accessible to all).

b. Room B-103: 1 bottle of Aspirin; 1 jar of Vicks Vapor Rub; 1 tube of Cortizone; 1 bottle of Cepacol.

c. Room B-116: 9 small cups/containers of unknown medication (pills found in kitchen cabinet 2 pills per cup/container.); 1 pill box (with the name Lou written on it), filled with 3 unknown medications for each day of the week (three days of medication remained in the box); 1 tube of Fluocinonide; 1 bottle of Moisture Eye Drops; 1 bottle of Phillips Milk of Magnesium tablets; 1 bottle of Silver Sulfadiazine; 2 tubes of Desonide; 1 bottle of Hemorrhoid medication; 1 bottle of Guiatuss DM; 1 bottle of Nasal Spray; 1 Biofreeze; polysporin; walls had numerous unknown substance stains; bathroom vanity mirror door off track, laying against wall inside vanity mirror; furniture in common area discolored and contained unknown substance stains; kitchen contained numerous unknown substance stains and numerous pieces of unknown food (found on the cabinets, the floor, the walls and table).

d. Room A - 213: The entire room contained a strong urine smell. Large area in front of bathroom door was wet from unknown substance; soiled linen and towels were on the floor with unknown substances; piles of clothes on the couch and floor in common area/resident bedroom carpet contained unknown substance stains; furniture in common area contained unknown substance stains.

e. Room A-214: 1 bottle of clobetasol; 1 bottle of Vitamin A; 1 bottle of Vitamin E; 1 bottle of Vitamin C; 1 bottle of Beta Carotene; 1 bottle of Aleve; 1 bottle of Chest Rub; 1 tub of Nystatin; Soiled linen and towels on floor with unknown substances; bedroom contained strong urine smell; bathroom vanity mirror door off track, laying against wall inside vanity mirror.

f. Trash Area: 4 large wood pallets laying against wall unsecured; 2 portable toilets; 3 unused walkers; 4 trash bags filled with garbage.

g. Dementia Wing: Housekeeping cart left unattended and unsecured with various cleaning products; 2 large linen bins/carts unattended and unsecured, (1 empty and 1 filled with soiled linen).

10. The Administrator of the facility was interviewed on the day of the survey at approximately 3 PM, and after investigation, confirmed the findings.

11. The mandated date of correction was designated as December 30, 2007.

12. A revisit survey was conducted on February 20, 2008. Based on observation and interviews, the facility failed to ensure that the environment was maintained for the safe care of the residents at the facility. The findings include the following.

13. During the tour of the facility with the facility's consultant, during the revisit survey conducted on 2/20/08, the following hazards were observed in the Dementia Wing, specially:

a. Kitchen Area/Dinning Area (next to the Common Area - all one room); large Coffee Pot Machine left on the table (left on); Large food warmer sitting on the counter with hot water inside (left on); 3 nail polish removers (located in a vanity bucket laying on the table); 3 nail clippers (located in a vanity bucket laying on the table); numerous bottles of Nail Polish (located in a vanity bucket laying on the table).

b. Storage Closet #1 (located in the Common Area): contained various cleaning products; contained numerous personal hygiene products for the residents; contained a scissor reel with 25 pairs of scissors; 1 large bag of Miracle Grow Soil; numerous boxes with unknown items;

c. Storage Closet #2 (located in the Common Area): 1 bag of Miracle Grow Soil.

14. During the tour of the Dementia Wing conducted on 2/20/08 at approximately 11 AM, the above areas were observed opened, unattended and unsecured, with free accessibility to all. During the tour, it was observed that residents were sitting near the above areas in the Common Area (all one large room).

15. The Administrator of the facility was interviewed on the day of the survey at approximately 3 PM, and after investigation, confirmed the findings. This is an uncorrected deficiency from the November 30, 2007 survey report.

16. Based on the foregoing facts, Cresthaven East violated Rule 58A-5.023(1)(a), Florida Administrative Code, herein classified as an uncorrected Class III violation, which warrants an assessed fine of \$500.00.

CLAIM FOR RELIEF

WHEREFORE, the Agency requests the Court to order the following relief:

1. Enter a judgment in favor of the Agency for Health Care Administration against Cresthaven East on Count I.
2. Assess an administrative fine of \$500.00 against Cresthaven East on Count I for the violation cited above.

3. Assess costs related to the investigation and prosecution of this matter, if the Court finds costs applicable.

4. Grant such other relief as this Court deems is just and proper.

Respondent is notified that it has a right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes (2007). 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 the **Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, MS #3, Tallahassee, Florida 32308.**

RESPONDENT IS FURTHER NOTIFIED THAT THE FAILURE TO RECEIVE A REQUEST FOR A HEARING WITHIN TWENTY-ONE (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.

IF YOU WANT TO HIRE AN ATTORNEY, YOU HAVE THE RIGHT TO BE
REPRESENTED BY AN ATTORNEY IN THIS MATTER

Alba M. Rodriguez
Alba M. Rodriguez, Esq.
Fla. Bar No.: 0880175
Assistant General Counsel
Agency for Health Care
Administration
8350 N.W. 52 Terrace - #103
Miami, Florida 33166

Copies furnished to:

Diane Reiland
Field Office Manager
Agency for Health Care Administration
5150 Linton Blvd. - Suite 500
Delray Beach, Florida 33484
(U.S. Mail)

Finance and Accounting
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308
(Interoffice Mail)

Assisted Living Facility Unit Program
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308
(Interoffice Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail, Return Receipt Requested to Morton Gelberd, Administrator, Cresthaven East, 5100 Cresthaven Blvd., West Palm Beach, Florida 33415; C T Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324 on this 2nd day of May, 2008.

Alba M. Rodriguez
Alba M. Rodriguez, Esq.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Cresthaven East, LLC d/b/a
Cresthaven East

AHCA No.: 2008003783

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: 850-922-5873 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,

AHCA No.: 2008003783

CASE No.: 08-269PH

v.

CRESTHAVEN EAST, LLC d/b/a
CRESTHAVEN EAST,

Respondent.

_____ /

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Respondent, Cresthaven East, LLC d/b/a Cresthaven East (hereinafter "Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

WHEREAS, Respondent is an assisted living facility licensed pursuant to Chapters 408, Part II, and 429, Part I, Florida Statutes (2007), Section 20.42, Florida Statutes (2007, 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 Chapter 429, Part I, Florida

EXHIBIT

2

WHEREAS, the Agency served Respondent with an administrative complaint on or about May 6, 2008, notifying the Respondent of its intent to impose administrative fines in the amount of \$500.00; and

WHEREAS, Respondent requested an informal administrative proceeding by selecting Option Two (2) on the Election of Rights form; and

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding; 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. 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 \$375.00 in administrative fines to the Agency within thirty (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.

6. By executing this Agreement, Respondent neither admits nor denies, and the Agency asserts the validity of 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, which constitutes a "repeat" or "uncorrected" deficiency from surveys identified in the administrative complaint. The parties agree that in such a "repeat" or "uncorrected" case, the deficiencies from the surveys identified in the administrative complaint shall be deemed found without further proof.

7. 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, licensure for limited mental health, limited nursing services, extended congregate care, or a 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 shall 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.

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 case.

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 for 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 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 eleven (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 Rule 59G-9.070, Florida Administrative Code.

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 undersigned have read and understand this Agreement and have the authority to bind their respective principals to it. Respondent has the capacity to execute this Agreement. Respondent understands that it has the right to

consult with counsel and has knowingly and freely entered into this Agreement without exercising its right to consult with counsel. Respondent affirms that Respondent understands counsel for the Agency represents solely the Agency and Agency counsel has not provided legal advice to or influenced Respondent in its decision to enter into 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.

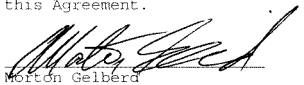
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

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

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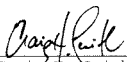
The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

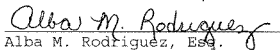

Elizabeth Dudek
Deputy Secretary
Division of Health Quality Assurance.
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308


Morton Gelberd
Administrator
Cresthaven East
5100 Cresthaven Blvd.
West Palm Beach, Florida 33415

Dated: 8/3/08

Dated: 7-23-08


Craig Smith
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308


Alba M. Rodriguez, Esq.
Assistant General Counsel
Agency for Health Care Administration
8350 N.W. 52 Terrace - #103
Miami, Florida 33166

Dated: 8-2-08

Dated: 7-30-08