

**STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS**

SNH SE BARRINGTON BOYNTON
TENANT LLC d/b/a BARRINGTON
TERRACE OF BOYNTON BEACH,

/

Petitioner,

v.

CASE NO. _____

STATE OF FLORIDA,
DEPARTMENT OF ELDER AFFAIRS,

Respondent.

_____ /

**EMERGENCY PETITION FOR VARIANCE FROM
RULE 58A-5.036, FLORIDA ADMINISTRATIVE CODE**

Pursuant to Section 120.542, Florida Statutes, and Rules 28-104.002 and 28-104.004, Florida Administrative Code, Petitioner (also referred to as "facility"), respectfully requests an emergency variance of Rule 58A-5.036, Florida Administrative Code. In support of this request, Petitioner states:

Identification of Petitioner

1. The name, address, telephone number and fax number of the Petitioner's counsel are:

Thomas W. Cauffman
Quintairos, Prieto, Wood and Boyer, P.A.
1410 N. Westshore Boulevard #200
Tampa, FL 33607
Phone 813-286-8818
Fax: 813-286-8818

2. Petitioner is a 125 bed licensed assisted living facility located at 1425 Congress Avenue, Boynton Beach, Florida 33426.

Identification of the Agency

3. The name and address of the agency affected by this Petition is:

Department of Elder Affairs
4040 Esplanade Way, Ste. 315
Tallahassee, Florida 32399-7000
850.414.2000

Variance History of Petitioner

4. Petitioner on September 28, 2018 filed a Petition and supporting documents (including the AECOM “detailed plan” for compliance with the Rule with attachments including an operation plan, site plans, generator sizing calculations, fuel tank calculations, generator and tank location drawings, engineering and electrical diagrams, proof of local Emergency Power Plan Approval, updates to the Agency for Health Care Administration (AHCA), **F.S. 119.071(3)(a)2.b.** **F.S. 119.071(3)(a)2.b.** the facility evacuation plan and the comprehensive facility emergency plan) with the Department of Elder Affairs (“Department”) seeking either a permanent waiver or temporary variance from Rule 58A-5.036, Florida Administrative Code. At the request of the Department the Petitioner on December 5, 2018 and December 18, 2018 submitted supplemental documentation and information. Pursuant to a Final Order issued on December 28, 2018 in case Number DOEA-2018-1556 the Department denied the Petitioner’s request for permanent waiver but granted a conditional temporary variance to April 4, 2019 to implement the Rule.

5. The Petitioner hereby incorporates and adopts the Petition and all supplemental materials filed in Case number DOEA-2018-1556 except for the overall request for a permanent waiver from the Rule and the anticipated construction completion date of March 4, 2019 outlined in paragraph #21.

6. Due to circumstances beyond the control of the Petitioner a new implementation date of June 1, 2019 is requested. Generator sets with custom tanks have extended lead times due to

the extreme high volume of orders for tanks and enclosures resulting from the need for all Florida assisted living facilities and nursing homes to comply with Rules 58A-5.036 and 59A-4.1265, Florida Administrative Code, at the same time. There are limited manufacturers that can build these specialized tanks and enclosures to comply with the Florida rules.

7. New since the Petitioner's prior Petition in DOEA-2018-1556 was drafted or submitted is that the Petitioner received comments from plans and construction personnel at the Agency for Health Care Administration (AHCA) and responded to those comments in January 2019. The **F.S. 119.071(3)(a)2.b.** was installed an operable in March 2019. The Petitioner's vendor informed that the generator, fuel tank and enclosure will be delivered on April 1, 2019. Thereafter, it will take 4 to 6 weeks to complete installation and obtain final approvals from all government bodies with jurisdiction.

8. In addition to all of the measures to ensure resident comfort and safety during an extended power outage that were outlined in the DOEA-2018-1556 Petition and attachments that are adopted and incorporated by reference, and remain in place, the Petitioner's parent company

F.S. 119.071(3)(a)2.b.

F.S. 119.071(3)(a)2.b. See attached contract. **F.S. 119.071(3)(a)2.b.**

F.S. 119.071(3)(a)2.b.

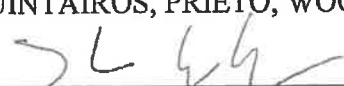
9. Based upon the Department's adoption of the subject Rule and the above referenced Final Order in DOEA-2018-1556, the Petitioner must be in compliance with the Rule by April 4, 2019. This required Petitioner to have the plan approved by the Department, secure all other

regulatory approvals, purchase new (or modify existing) generators, construct and install the generators, ensure it has fuel capacity to support the generator and develop written policies and procedures to ensure that the facility can effectively and immediately activate, operate and maintain the generators. The extremely high demand and limited supply of qualified manufacturers makes compliance with the Rule by April 4, 2019 impossible. Securing required permits and securing delivery of custom built generators, tanks, switches and related equipment is beyond the control of the Petitioner and the April 4, 2019 is impossible to meet despite Petitioner's best efforts to achieve compliance since the Department adopted the Rule. If Petitioner fails to comply with the Rule, it is subject to fines, suspension of its license and revocation of its license thereby creating an emergency circumstance for the Petitioner.

WHEREFORE, Petitioner respectfully requests the entry of a final order granting a temporary conditional variance from Rule 58A-5.036, Florida Administrative Code, as set forth herein.

Respectfully submitted this **22nd day of March, 2019**.

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.



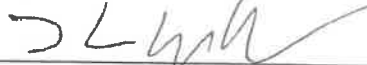
THOMAS W. CAUFMAN, ESQUIRE
FBN: 831107
1410 N. Westshore Blvd. - Suite 200
Tampa, Florida 33607
(813) 286-8818 telephone
(813) 286-9998 facsimile
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been provided via Facsimile to: the Agency Clerk, Florida Department of Elder Affairs; via Federal Express to: Secretary

Jeffrey Bragg, Florida Department of Elder Affairs, 4040 Esplanade Way, Ste. 315, Tallahassee, Florida 32399-7000; and the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida, 32399-1400 all on this **22nd day of March 2019.**

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.



THOMAS W. CAUFMAN, ESQUIRE

FBN: 831107

1410 N. Westshore Blvd. - Suite 200

Tampa, Florida 33607

(813) 286-8818 telephone

(813) 286-9998 facsimile

Attorneys for Petitioner