

**STATE OF FLORIDA  
DEPARTMENT OF ELDER AFFAIRS**

SNH BRFL TENANT, LLC d/b/a FVE PR FIVE  
STAR PREMIER RESIDENCES OF BOCA RATON,

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 a variance from 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 75 bed licensed assisted living facility located at 22601 Camino Del Mar, Boca Raton, Florida 33433-6516.

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. Pursuant to a Final Order issued on January 9, 2019 in case Number DOEA-2018-0711 the Department denied the Petitioner’s request for permanent waiver but granted a conditional temporary variance to May 31, 2019 to implement the Rule.

5. The Petitioner hereby incorporates and adopts the Petition and all supplemental materials filed in Case number DOEA-2018-0711 except for the overall request for a permanent waiver from the Rule and the anticipated construction completion date of May 1, 2019 outlined in paragraph #21.

6. Due to circumstances beyond the control of the Petitioner a new implementation date of August 15, 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-2018-0711 was drafted or submitted is that the Petitioner's contractor determined the existing generator would comply with the Rule but a new tank and slab improvements were needed. Palm Beach County conducted an additional site survey to ensure compliance with zoning requirements in November 2018. Palm Beach County approved the Petitioner's permit in February 2018. A purchase order for the fuel tank was released to the Petitioner's vendor in April 2019 and is expected to be delivered in June 2019 as confirmed by the Petitioner's supplier. The project is expected to be completed by August 15, 2019 including obtaining 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-2018-0711 Petition that is adopted and incorporated by reference, and remain in place, the Petitioner's parent company contracted with

**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.**

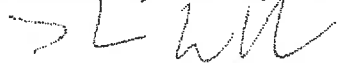
9. Based upon the Department's adoption of the subject Rule and the above referenced Final Order in DOEA-2018-0711, the Petitioner must be in compliance with the Rule by May 31, 2019. This required Petitioner to have the plan approved by the Department, secure all other

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. As confirmed by the Petitioner's vendor ACF Standby Systems on February 14, 2019 the extremely high demand and limited supply of qualified manufacturers makes compliance with the Rule by May 31, 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 May 31, 2019 deadline is impossible to meet despite Petitioner's best efforts 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 8th day of May, 2019.

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



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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 8th day of May, 2019.

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



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