

**STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS**

SNH SE TENANT TRS, INC. d/b/a FIVE STAR
PREMIER RESIDENCIES OF HOLLYWOOD,

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 from Rule 58A-5.036, Florida Administrative Code ("the Rule"). 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 200 bed licensed assisted living facility located at 2480 North Park Road, Hollywood, Florida 33021

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 a 101 page Comprehensive Emergency Plan approval packet that included a staff roster, staff organizational chart, a mutual aid agreement for support from other facilities, hurricane information and instruction forms for residents, agreements to obtain food, water, pharmacy services and property clean up in the event of a an emergency, a facility floor plan, a list of facility vehicles, evacuation maps and evacuation directions), 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), contracts for **F.S. 119.071(3)(a)2.b.** and the facility evacuation 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 December 26, 2018 in case Number DOEA-2018-0712 the Department denied the Petitioner’s request for permanent waiver but granted a conditional temporary variance to April 1, 2019 to implement the Rule.

5. The Petitioner hereby incorporates and adopts the Petition and all supplemental materials filed in Case number DOEA-2018-0712 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 June 30, 2019 is requested. New since the Petitioner's prior Petition in DOEA-2018-0712 was drafted or submitted is that the Petitioner submitted permit applications on January 10, 2019 to the City of Hollywood but is still awaiting permit approval from the City of Hollywood Fire and Zoning Departments that have imposed numerous new requests that are taking the Petitioner additional time to address. Electrical and Structural plans have been under review by the City of Hollywood since February 4 and 6, 2019 respectively. A purchase order for the generator, tank, enclosure and **F.S. 119.071(3)(a)2.b.** as approved was released to the vendor and delivery is anticipated in early April 2019. All related infrastructure will be completed by the end of May 2019 and the **F.S. 119.071(3)(a)2.b.** while permitting and construction of the permanent generator is completed. Once final permit approvals are issued by the City of Hollywood and other government agencies with jurisdiction construction, testing and inspection can be completed within 6 to 8 weeks so Petitioner anticipates being in compliance with the Rule by July 31, 2019.

7. In addition to all of the measures to ensure resident comfort and safety during an extended power outage, either by sheltering in place or relocating if necessary, that were outlined in the DOEA-2018-0712 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.** to cool the facility and residents in the event of an extended power outage. See attached contract. **F.S. 119.071(3)(a)2.b.**


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

8. Based upon the Department's adoption of the subject Rule and the above referenced Final Order in DOEA-2018-0161, the Petitioner must be in compliance with the Rule by April 1, 2019. This required Petitioner to have the plan approved by the Department, secure all other regulatory approvals, purchase new 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. Securing required permits and obtaining delivery of generators, tanks and related equipment that are in short supply due to extreme volume demand created by facilities attempting to comply with the Rule and consumers impacted by the hurricane in Puerto Rico is beyond the control of the Petitioner and makes the April 1, 2019 extension date 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 **28th day of February, 2019**.

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

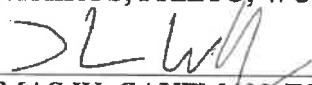


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CERTIFICATE OF SERVICE

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 **28th** day of **February, 2019.**

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



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