

**STATE OF FLORIDA  
DEPARTMENT OF ELDER AFFAIRS**

BALMORAL TENANT SERVICES, LLC,  
d/b/a HARBORCHASE,

Petitioner,

v.

CASE NO. \_\_\_\_\_

STATE OF FLORIDA,  
DEPARTMENT OF ELDER AFFAIRS,

Respondent.

\_\_\_\_\_ /

**EMERGENCY PETITION FOR VARIANCE OF  
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:

Mark Scimeca, Esquire  
958 20<sup>th</sup> Place, 2<sup>nd</sup> Floor  
Vero Beach, Florida 32960  
Telephone: (772) 492-5002  
Facsimile: (772) 492-5005

2. Petitioner is a 128 bed licensed assisted living facility located at 2960 Tampa Road, Palm Harbor, Pinellas County, Florida 34684 (License No. 8728; AHCA File No. 11963919.)

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 October 3, 2018 and thereafter, filed a Petition and supporting documents for compliance with the Rule 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 15, 2019 in case Number DOEA-2018-0933, the Department granted the Petitioner’s request for a conditional temporary variance to June 1, 2019 to implement the Rule.

5. The Petitioner hereby incorporates and adopts the Petition and all supplemental materials filed in Case number DOEA-2018-0933 except for the overall request for a permanent waiver from the Rule and the anticipated construction completion date of June 1, 2019 outlined in paragraph #37.

6. Due to circumstances beyond the control of the Petitioner, a new implementation date of July 31, 2019 is requested as to its Emergency Power Plan.

7. The generator has been delivered to the Community. The registration of the storage tank through the Florida Department of Environmental Protection is being completed, then the fuel company can fuel up the tank, and the start-up/load test can be completed. Petitioner is awaiting receipt of the State of Florida Storage Tank Certificate of Insurance to prove financial responsibility for the storage tank to complete the registration process.

10. In addition to all of the measures to ensure resident comfort and safety during an extended power outage that were outlined in the DOEA-2018-0933 Petition that is adopted and incorporated by reference, and remain in place, the Petitioner has a Contingency Contract dated

December 28, 2018 (Exhibit "A" hereto) **F.S. 119.071(3)(a)2.b.**

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

**F.S. 119.071(3)(a)2.b.** will allow for the cooling of areas for residents to congregate that meet the safe indoor air temperature requirements of Rule 58A-5.036(1)(a), F.A.C., for a minimum of 96 hours. An extension of this contract is in the process of being executed.

11. Based upon the Department's adoption of the subject Rule and the above referenced Final Order in DOEA-2018-0933, the Petitioner must be in compliance with the Rule by June 1, 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 indicated above, the new generator for the community was shipped and installed prior to that deadline, but testing remains to be completed, making compliance with the Rule by June 1, 2019 impossible. The securing of required permits and securing delivery of custom built generators, tanks, switches and related equipment was beyond the control of the Petitioner and the June 1, 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 **30<sup>th</sup>** day of **May, 2019**.



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Mark Scimeca, Esquire  
Florida Bar No.: 0947814  
On behalf of Petitioner Balmoral Tenant Services,  
LLC d/b/a HarborChase  
958 20<sup>th</sup> Place, 2<sup>nd</sup> Floor  
Vero Beach, Florida 32960  
Telephone: (772) 492-5002  
Facsimile: (772) 492-5005

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been provided via e-mail to: the Agency Clerk, Florida Department of Elder Affairs, [agencyclerk@elderaffairs.org](mailto:agencyclerk@elderaffairs.org); and the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, [joint.admin.procedures@leg.state.fl.us](mailto:joint.admin.procedures@leg.state.fl.us); and via Federal Express to: Secretary Richard Prudom, Florida Department of Elder Affairs, 4040 Esplanade Way, Ste. 315, Tallahassee, Florida 32399-7000, all on this **30<sup>th</sup>** day of **May, 2019**.



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Mark Scimeca, Esquire  
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On behalf of Petitioner Balmoral Tenant Services,  
LLC d/b/a HarborChase  
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