

STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS

**PETITION FOR EMERGENCY VARIANCE FROM
AND/OR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULE 58A-5.036**

Pursuant to Section 120.542, Florida Statutes, and Rules 28-104.002 and 28-104.004, Florida Administrative Code, THE GLENRIDGE ON PALMER RANCH, INC. d/b/a THE HIGHLANDS AT THE GLENRIDGE ON PALMER RANCH (the "Petitioner"), through its counsel respectfully requests an emergency, temporary variance from and/or temporary waiver of Rule 58A-5.036, Florida Administrative Code.

In support of this request, the Petitioner states:

Identification of Petitioner

1. The name, address, telephone number, fax number and license number of the Petitioner are:

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2. The name, address, telephone number, fax number and e-mail address of the Petitioner's counsel are listed below in the signature and certificate of service. The Petitioner respectfully requests that correspondence relating to this matter be directed to the undersigned.

3. The Petitioner is a continuing care retirement community (the "CCRC Community") with a sixty (60) bed licensed assisted living facility, license # 10453, located in Sarasota, Sarasota County, Florida (the "Facility").

4. On March 26, 2018, Rule 58A-5.036 Emergency Environmental Control for Assisted Living Facilities (the "Rule") became effective. The Rule was implemented pursuant to Sections 429.19 and 429.41, Florida Statutes. The Rule requires assisted living facilities to provide the Department of Elder Affairs and the local emergency management agency a detailed written plan detailing the acquisition of generator(s) and the acquisition and safe maintenance of sufficient fuel for the generators to ensure that the generators can function in emergency situations so that temperatures in assisted living facilities are maintained at a level providing for the safety of residents residing therein, and the acquisition of services necessary to install, maintain and test the equipment and its functions to ensure the safe and sufficient operation of generators no later than June 1, 2018. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to such terms in the Rule.

5. The Petitioner has most recently filed for and received approval of a variance from the Rule providing the Petitioner with additional time, through June 30, 2019, to comply with the Rule (the "Extension"). A copy of the Final Order Granting A Conditional Variance from Rule 58A-5.036, Florida Administrative Code issued to reflect such Extension is attached as Exhibit "A" to this Petition.

6. The Petitioner has timely filed with the Department of Elder Affairs, the Agency for Health Care Administration and the applicable local emergency management agency the plans required under the Rule (the "Emergency Plans").

7. The local emergency management agency has reviewed and approved the Emergency Plans submitted by the Petitioner.

8. This Petition is being filed because, despite its best efforts, due to tremendous demand for generator installation services in the State of Florida, the significant lead time in ordering generators,

diesel fuel tanks, and other components of a compliant generator system, , including without limitation **F.S. 119.071(3)(a)2.b.** necessary for operation of compliant generator system, and shortage of licensed contractors needed for such installation, the Petitioner is unable to procure the necessary equipment to complete the installation of the generator by the extended deadline of June 30, 2019.

9. The Petitioner plans to comply with the Rule by providing emergency generator capacity to support environmental control throughout the Facility during a power outage. This plan is a significant capital project at the Facility requiring time for design, permitting, and construction including lead time on ordering a permanent generator. The Petitioner has already incurred considerable expense with respect to the steps taken to date to comply with the Rule.

10. The Petitioner has engaged an architect (GMC Network) and electrical engineer (Hunter Design & Consulting). The architect and engineer reviewed the building architectural plans and building systems and worked with the Petitioner in analyzing potential alternatives to comply with the Rule. After determining a course of action, the Petitioner directed the architect and engineer to complete drawings and finalize electrical load calculations.

12. The following is a summary of the current status of the project to comply with Rule 58A-5.036 to justify utilization of the extension requested above.

- The Petitioner signed a contract with Ring Power to purchase and install a new 1.25 k.w. **F.S. 119.071(3)(a)2.b.** generator on January 17, 2019. The agreement with Ring Power referenced above attached as Exhibit “B” to this Petition.

- Ring Power has also been contracted to supply and install a new **F.S. 119.071(3)(a)2.b.** fuel tank for the Petitioner’s current 500 k.w. generator, replacing the current fuel tank of **F.S. 119.071(3)(a)2.b.** and with a new fuel tank with a **F.S. 119.071(3)(a)2.b.** capacity. The existing 500 k.w. generator **F.S. 119.071(3)(a)2.b.**

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

• Ring Power's submittal for such project is attached as Exhibit "C" to this Petition. The Petitioner and its' consultants are finalizing discussions with Ring Power for the agreements that will facilitate this portion of the project.

• Additional work needed to complete the project will also include: (i) providing Ring Power with a concrete pad for the new 1.25 k.w. generator, (ii) installation of a new **F.S. 119.071(3)(a)2.b.** to the new generator, and (iii) installation of a raised concrete pad and concrete block enclosure to house and protect the 500 k.w. there generator. T.B.C. has been contracted to complete applicable concrete work.

• The Petitioner currently has all the necessary professionals engaged and under contract to perform necessary work, including an electrical engineer, architect, Ring Power, electrical contractor, and general contractor. Contact information for such professionals is proved in Exhibit "D" to this Petition.

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

provided a proposal which has been signed and returned by the Petitioner. The Petitioner **F.S. 119.071(3)(a)2.b.** and Ring Power are confirming details related to the amount of **F.S. 119.071(3)(a)2.b.** needed to supply the 1.25k.w. generator under full load **F.S. 119.071(3)(a)2.b.** **F.S. 119.071(3)(a)2.b.** has not yet provided a schedule for the commencement or completion of

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

• The Petitioner and its architect and electrical engineer have received submittals from Ring Power for the 1.25 k.w. generator (attached as Exhibit "E" to this Petition) and Graybar electric for electrical equipment (attached as Exhibit "F" to this Petition) that will be supplied for the project. The submittal packages are under review and negotiation by the Petitioner. As soon as these agreements are finalized and executed the production of the new 1.25 k.w. will begin.

- The Petitioner and its architect and electrical engineer have produced drawings and related calculations.

- The Petitioner has a stand-up review meeting with the Agency for Health Care Administration set for June 25, 2019 which will occur at the Tampa Office of Plans and Construction.

- After receiving approval of the final construction plans and specifications the Petitioner will submit them to the County of Sarasota for necessary permits. The Petitioner has been advised that current permitted timeframes for the County of Sarasota range from 8 to 12 weeks.

13. Accordingly, despite its best efforts to comply with the Rule prior to June 30, 2019, the Petitioner does not have the ability to do so.

14. Due to the complexity of this project, with the Facility **F.S. 119.071(3)(a)2.b.**

F.S. 119.071(3)(a)2.b. a request is being made for a one-hundred eighty (180)-day extension to allow the Petitioner sufficient time to address, without limitation, the review and approval of a building permit by Sarasota County and necessary lead time for delivery of the generator and electrical work related to installation of the generator after delivery.

15. During the extension period, the Petitioner has made arrangements pending full implementation of its plan that provides the residents of the Facility an area to congregate that meets the safe indoor air temperature requirements of subsection 58A-5.036 (1) (a), F.A.C., for a minimum of 96 hours. To comply with the Rule during the extension period, the Petitioner has in place the following:

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

F.S. 119.071(3)(a)2.b. This generator has enough fuel tank capacity to run more than the required 96 hours. **F.S. 119.071(3)(a)2.b.**

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

F.S. 119.071(3)(a)2.b. This interim plan was included in the current CEMP approved by the County of Sarasota and is attached as Exhibit “G” to this Petition.

16. As required by the Rule, the Petitioner will keep the Agency apprised of progress on a quarterly basis to ensure there are no unnecessary delays in completing the project and compliance with the Rule.

17. The Petitioner seeks an emergency temporary variance or temporary waiver under Rules 28-104.004 and 28-104.005, Florida Administrative Code, as the time period remaining until the expiration of the Extension on June 30, 2019 is shorter than the time period for review of a standard petition for variance or waiver. Unless the temporary variance or waiver is issued more expeditiously than the timeframes provided in Section 120.542, Florida Statutes, the Petitioner will be subject to potential penalties for failure to comply with the applicable portions of the Rule by January 30, 2019.

18. The Agency for Health Care Administration has recently granted the Petitioner a conditional variance from Rule 59A-4.1265(5), Florida Administrative Code extending through December 1, 2019 the time for compliance with such rule by the licensed nursing home included in the CCRC Community. A copy of the Final Order Granting A Conditional Variance from Rule 59A-4.1265(5), Florida Administrative Code issued by the Agency for Health Care Administration is attached as Exhibit “H” to this Petition.

19. For all the foregoing reasons, the Petitioner respectfully requests that the Department of Elder Affairs grant this temporary Emergency Petition for Variance from and/or Waiver of Rule 58A-5.036 extending the timeframe for implementation of the Petitioner’s Emergency Plan and the compliant generator system required by the Rule for one hundred eighty (180) days to December 27, 2019.

20. The requested emergency temporary variance or waiver will serve the statutory purposes of Chapters 429, Florida Statutes, as well as the purpose of the Rule as, if the emergency

temporary variance or waiver is granted, there will continue to be safe, accessible and quality assisted living services available to the citizens in the State of Florida in accordance with the requirements of the state and existing rules. Additionally, the requested temporary emergency variance or waiver and the avoidance of the fines otherwise resulting from non-compliance with the Rule will preserve financial resources of the Petitioner that will eventually be used to implement the applicable portions of the Rule through the procurement and installation of a compliant generator system.

21. The Petitioner asserts that based upon the facts stated herein that it is appropriate for the Department to grant the subject petition.

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

Respectfully submitted this 18th day of June, 2019.



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