

**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, ONE HC-JENSEN BEACH, LLC D/B/A THE CABANA AT JENSEN DUNES (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 and fax number of the Petitioner are:

One HC-Jensen Beach, LLC  
d/b/a The Cabana at Jensen Dunes  
c/o Praxeis Development & Management, as manager  
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Jonathan A. Corbin  
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Cell (904) 614-6551  
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JCorbin@Praxeis.com

Facility Address:  
1537 N.E. Cedar Street  
Jensen Beach, Florida 34957  
Executive Director: Deniese Williams  
DWilliams@JensenDunes.com  
Cell (772) 353-0480  
Facility (772) 332-1000  
Fax (772) 208-5065

2. The name, address, telephone number and fax number 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 one-hundred thirty (130) bed licensed assisted living facility located in Jensen Beach, Martin 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. Pursuant to the Rule, the Agency shall allow an extension up to January 1, 2019 to providers in compliance with an interim plan in compliance with the Rule.

6. The Petitioner has filed for and received approval of the extension up to January 1, 2019 (the "Extension").

7. The Petitioner has timely filed with the Department of Elder Affairs and the applicable local emergency management agency the plans required under the Rule (the "Emergency Plans").

8. The Department of Elder Affairs and the local emergency management agency have reviewed and approved the Emergency Plans submitted by the Petitioner.

9. 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, 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 January 1, 2019.

10. 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 300 KW permanent generator. The Petitioner has already incurred considerable expense with respect to the steps taken to date to comply with the Rule.

11. 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.

- After the engagement of architects and engineers, planning and design of the project has been completed with the issuance of 100% construction drawings, which are attached as Exhibit "A" to this Petition.

- The 100% construction drawings have been submitted to and approved by Martin County. The building permit number with Martin County is BLD2018040892 and is attached as Exhibit “B” to this Petition.
- A quote for the construction plans and generator specified in the construction plans has been secured from a qualified contractor and is attached as Exhibit “C” to this Petition.
- The generator has been ordered from the manufacturer, with a projected delivery date of February 28, 2019. The purchase order is attached as Exhibit “D” to this Petition.

13. Accordingly, despite its best efforts to comply with the Rule prior to January 1, 2019, the Petitioner does not have the ability to do so.

14. Although the Petitioner currently anticipates 4-5 months to complete this project, a request is being made for a one-hundred eighty (180)-day extension as several unknown timing factors related to delivery of the generator and electrical work related to installation of the generator after delivery remain.

15. During the extension period, the Petitioner has made arrangements pending full implementation of its plan that provides the residents with 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:

- A lease agreement providing for a temporary and movable 300KW generator located on site at the Facility capable of powering the Facility in the event of a power outage.
- Fuel available to run such generator for a minimum of 96 hours.

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

- The temporary generator will support the electrical requirements of the Facility's air conditioning systems to maintain ambient air temperatures at or below 81 degrees Fahrenheit for the entire Facility.

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 January 1, 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 1, 2019.

18. 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 June 30, 2019.

19. 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.

20. 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.

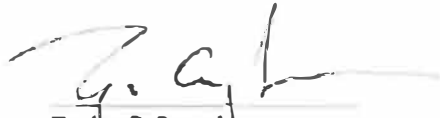
Respectfully submitted this 16<sup>th</sup> day of November 2018.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been (i) provided by hand delivery to: Francis Carbone, Agency Clerk, Florida Department of Elder Affairs; 4040 Esplanade Way, Ste. 315 Tallahassee, Florida 32399-7000 and Stefan R. Grow, General Counsel, Florida Department of Elder Affairs; 4040 Esplanade Way, Ste. 315 Tallahassee, Florida 32399-7000, and (ii) sent by U.S. Mail to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida, 32399-1400, all on this 16th day of November 2018.



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