

**STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS**

FIVE STAR CORAL OAKS, LLC
d/b/a CORAL OAKS,

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:

Thomas W. Cauffman
Quintairos, Prieto, Wood and Boyer, P.A.
1410 N. Westshore Boulevard #200
Tampa, FL 33607
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2. Petitioner is a 101 bed licensed assisted living facility located at 900 West Lake Road, Palm Harbor, Florida 34684.

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), contracts for **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 December 26, 2018 in case Number DOEA-2018-0161 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-2018-0161 except for the overall request for a permanent waiver from the Rule and the anticipated construction completion date of March 4, 2019 outlined in paragraph #21.

6. Due to circumstances beyond the control of the Petitioner a new implementation date of October 31, 2019 is requested. Please see the attached letter from Manny Rodriguez, Project Coordinator, ACF Standby Systems wherein he verified that 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. Mr. Rodriquez further explained that 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-2018-0161 was drafted or submitted is that Pinellas County approved the permit for the generator project. A purchase order for the generator, tank, enclosure and **F.S. 119.071(3)(a)2.b.** as approved was released to the vendor in December 2018. The habitat permit walkthrough was completed in January 2019 and the **F.S. 119.071(3)(a)2.b.** was completed in February 2019. The **F.S. 119.071(3)(a)2.b.** will be delivered on March 12, 2019. All related infrastructure will be completed and installed by June 1, 2019. The Petitioner's vendor informed that the generator, fuel tank and enclosure are expected to be delivered in September 2019. Thereafter, it will take 4 to 6 weeks to complete installation and obtain 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-2018-0161 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.

9. 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 (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 April 1, 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 April 1, 2019 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 electronic mail 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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