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STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: Petition for Variance Under Section 120.542, Florida Statutes, Filed by:

Float Rooms USA LLC
Leonardus Koene, President
1034 Golfview Ct.
Belleville, IL 62223

Petitioner.
_____/

ORDER GRANTING PETITION FOR PERMANENT VARIANCE

On August 5, 2015, pursuant to section 120.542, Florida Statutes, Mr. Leonardus Koene, President of Float Rooms USA LLC, (Petitioner), filed a Petition for a Permanent Variance from provisions of Chapter 64E-9, of the *Florida Administrative Code* to sell the Float Rooms USA model Ocean float rooms, single (180 gallons) and king size (270 gallons), a special purpose public pool for use in Florida without meeting the following requirements:

RULE SECTION	TOPIC
64E-9.004(1)(d)2.	Chlorine or bromine residual required
64E-9.004(5)	Recirculation system must operate any time pool is open
64E-9.004(15)	Lighting requirements for indoor pools
64E-9.006(1)(c)3.	3 foot minimum depth; depth and no-diving markers
64E-9.006(1)(d)	Access shall consist of ladders, stairs, recessed treads or swimouts
64E-9.006(2)(a)1.	Clear deck width, deck slope
64E-9.006(2)(e)1.	Equipment enclosure must have minimum 3' x 6' opening;
64E-9.006(2)(f)	Unisex restrooms must include a urinal
64E-9.007(1)	NSF/ANSI Std 50 certified recirculation and treatment equipment
64E-9.007(5)(a)	NSF/ANSI Std 50 certified filters with adequate capacity

64E-9.007(6)	NSF potable water (pw) piping
64E-9.007(10)(e)	Main drain must be connected to a collector tank
64E-9.007(11)	Automatic makeup water control
64E-9.007(14)	Heater must be plumbed with a bypass and influent and effluent valves
64E-9.007(16)	NSF/ANSI Std 50 certified disinfection and pH adjustment auto feeder
64E-9.007(16)(d)2.	NSF/ANSI Std 50 certified ozone system
64E-9.007(16)(d)4.	Air flow meter required for ozone system
64E-9.007(16)(f)	UV light system validation requirements by US EPA method
64E-9.008(7)	Pool rules sign

Additional information was requested by the Department on August 5, 2015. The information needed was submitted and the application was complete by August 5, 2015. Notice of the petition was published by the Department of Health (Department) on November 16, 2015, in Volume 41, Number 222, of the *Florida Administrative Register*. No comments from interested persons were received. Based on submissions by the Petitioner, they have agreed to the following, and these variance requests are removed from consideration: Rules 64E-9.007(1) and 64E-9.007(16) --- Petitioner will install an NSF International/ American National Standards Institute (NSF/ANSI) Standard 50 certified halogen feeder of sufficient capacity; Rule 64E-9.004(1)(d)(2) --- Petitioner will maintain a halogen residual; and Rules 64E-9.007(1) and 64E-9.007(5)(a) --- Petitioner will install an NSF/ANSI Standard 50 certified filter of sufficient capacity; Rule 64E-9.007(16)(f) --- Petitioner will install UV light systems where one proposed is US EPA validated, and the other is NSF/ANSI Standard 50 certified; Rule 64E-9.007(6) --- Petitioner will use NSF-pw (potable water) certified piping for the recirculation system.

Upon consideration of the Petition and supporting evidence, the Department makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Section 514.011(2), Florida Statutes, states in relevant part, "Public Swimming Pool means a watertight structure...used for bathing or swimming by humans, and filled with a filtered and disinfected water supply... Public swimming pool shall mean a ... special purpose pool...to which admission may be gained... but is not limited to, pools operated by or serving... health spas...".

2. Section 514.021, Florida Statutes, requires the Department to adopt rules prescribing minimum sanitation and safety standards for public swimming pools. The standards shall address water quality, treatment and disinfection, the safety of bathers, and the design of facilities that has impact on sanitation and safety of bathers using a public swimming pool.

3. Section 514.021, Florida Statutes and Rule 64E-9.005(1)i, of the *Florida Administrative Code*, require that each public pool must receive an operating permit from the Department, and receive construction permit approval under the Florida Building Code.

4. Petitioner states they will manufacture their Ocean float room models sensory deprivation float tanks to the allowable specifications in this final order. Petitioner states they will sell their Ocean float room models sensory deprivation float tank to Florida

facilities and these facilities will be required by law to obtain a public swimming pool operating permit from the Department.

5. Petitioner states that "Without this variance Float Rooms USA will not be able to sell the special purpose pools in the state of Florida and would miss out on an excellent opportunity. Even so potential customers will not be able to buy and use these special pools... and would miss out on an excellent business opportunity in the state of Florida too." Without the allowances in this order, Florida facilities will not be able to acquire an operating permit from the Department for the use of these pools.

6. Rule 64E-9.004(5), of the *Florida Administrative Code*, requires a pool water treatment system to operate when it is open for use. Petitioner requests they not be required to operate the recirculation system while a patron is in tank in order to achieve the special purpose goal of quiet and stillness. Based on the information provided in the petition, the two different sized float tank systems (180 and 270 gallons) will run for 30 minutes at 28 and 45 gallons per minute, respectively, with five water volume turnovers between uses, which petitioner claims is adequate to sufficiently treat the water.

7. The Department concurs that five turnovers is generally recognized in the swimming pool industry and by NSF International as the point of diminishing returns, where approximately 98% suspended solids removal has occurred and the asymptote curve flattens for the graph of turnover count vs. suspended solids removal for NSF/ANSI Standard 50 certified filters. The Department finds that five complete water volume turnovers are necessary to kill or inactivate the majority of pathogens and filter the majority of suspended solids between different patrons' use. However, the smaller

float tank requires a larger capacity filter than is proposed to achieve the 5 turnovers in 30 minutes. With the proposed filter, the necessary time is 32.14 minutes.

8. Rule 64E-9.004(15), of the *Florida Administrative Code*, specifies minimum lighting needed to clearly see pool deck edge and obstructions. Petitioner expects that the facility lighting levels will be lower than those required. The Department concurs that this is likely in float facility rooms, is practically beyond the control of the Petitioner, and that a higher luminosity is not necessary due to the anticipated single person usage, the wall height of the tank, and very shallow (less than 1 foot) water depth.

9. Rule 64E-9(1)(c)3., of the *Florida Administrative Code*, requires that the minimum depth of a pool be 3 feet, and that depth markers and no-diving markers be placed on the wet deck and in the pool. The Department concurs that the proposed special use and the obvious depth and size of this special purpose pool does not warrant the additional safety need for these requirements.

10. Rule 64E-9.006(1)(d), of the *Florida Administrative Code*, requires access to the pool be with permanent ladders or stairs. Petitioner states this cannot be feasibly accomplished in the construction of the tank, but can be accomplished with grab bars adjacent to the entry door on the inside as well as the outside of the tank entry door. The Department concurs this can be accomplished with handrails, and due to the two foot height of the entry/ exit wall, these must be provided for patrons to safely enter and exit the tank.

11. Rule 64E-9.006(2)(a)1., of the *Florida Administrative Code*, requires unobstructed space surrounding the pool and a sloped floor to drain. Petitioner states

that these will not be available at some facilities, a four foot clear space will be available at the tank's front entry point. The Department concurs sloped flooring for drainage will not be possible to retrofit easily or for a low cost, and can be mitigated in other ways, and that the safety of the patron will not be negatively impacted by an obstructed deck space that is away from the front entry point to the tank.

12. Rule 64E-9.006(2)(e)1., of the *Florida Administrative Code*, requires an equipment housing opening larger than is provided with this float tank. Petitioner states that the larger opening is not needed. The Department concurs that the housing opening is adequate due to the readily accessible manufactured assembly.

13. Rule 64E-9.006(2)(f), of the *Florida Administrative Code*, requires a urinal in unisex restroom, and Petitioner implies this is not necessary due to only one person to one float tank; resulting in special purpose float tank pools having a much lower patron count than conventional pools. The Department concurs with this exclusion of the urinal requirement.

14. Rule 64E-9.007(1) and (5)(a), of the *Florida Administrative Code*, require treatment and recirculation equipment to meet the NSF/ANSI Standard 50 for public pool equipment, specifically the skimmer. The Petitioner states that the proposed Hydro Air skimmer is VGB compliant, but not the code required NSF/ANSI Standard 50. Rule 64E-9.007(1), FAC, has incorporated by reference the NSF/ANSI Standard 50-2007 titled "Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities". The Department accepts the use of the proposed skimmer due to their successful demonstrated use in private pools. The two proposed UV light units are

either NSF/ANSI Standard 50 compliant or USEPA compliant and MAY also be installed as supplemental water treatment to the primary disinfectant halogen feeder.

15. Rule 64E-9.007(10)(e), of the *Florida Administrative Code*, requires that a main drain must be connected to a collector tank to create gravity drainage instead of direct suction, yet the 2012 statutory revision to s. 514.0315(2), Florida Statues, allows for a dual drain system or a safety vacuum release system. The Department finds the current drainage system is only by skimmer drainage, without a main floor drain such that the float tank would be drained by a portable pump, and is acceptable due to safety features provided by the very shallow depth of the tank, and the Petitioner's computer controlled cessation of pump operation during patron use.

16. Rule 64E-9.007(11), of the *Florida Administrative Code*, requires an automatic water make-up water controller and the Petitioner states this is unnecessary for this type of special purpose pool. The Department concurs and finds this equipment is not necessary for this special purpose pool.

17. Rule 64E-9.007(14), of the *Florida Administrative Code*, requires that heaters be plumbed with by-pass piping to allow for servicing, and not interfere with water treatment. The Petitioner states that the heater is an integral part of the float tank structure and is not in the water recirculation system, therefore it does not interfere with the water treatment during servicing and does not require by-pass piping.

18. Rule 64E-9.007(16), of the *Florida Administrative Code*, requires that automatic feeders be used for pH control. The Petitioner states the pH control is not of great concern given the salt solution buffering ability and a pH adjustment feeder is not

necessary. The Department concurs that for this small volume of water (180 and 270 gallons) the pH adjustment needs should be minimal, yet may be difficult to control with an automated feeder that is operated with the halogen feeder, and therefore pH adjustment should be conducted manually once per day, or more often as needed when patrons are not in the water. Thus, a pH adjustment feeder is not required to be installed.

19. Rule 64E-9.007(16)(d)2. and 4., of the *Florida Administrative Code*, requires that an ozone feeder must have an air flow meter and be NSF/ANSI 50 certified. Petitioner's application information appears to request an ozone variance, yet an ozone generator is not incorporated into the design of this float room.

20. Rule 64E-9.007(16)f., of the *Florida Administrative Code*, requires that the UV light devices be validated under a US EPA criteria. The Petitioner states that one of these proposed models is NSF/ANSI 50 certified, and one is US EPA validated. The Department has determined that the halogen feeder must be the primary water disinfection system and the UV light device may only be used as a supplemental water treatment, as stated above in paragraph 14.

21. Rule 64E-9.008(7), of the *Florida Administrative Code*, requires that there be rules for bathers posted at the pool, and Petitioner states that most code cited rules do not apply to float tanks and that patrons will be provided instructions on proper procedures. The Department concurs that some of the adopted bather rules do not apply to this special purpose pool, but disagrees that a rule sign is not needed for the remainder that do apply. The float tank facility permittee will be required to post the

appropriate rules as listed in the conclusions of law below, and this Petitioner is required to create and provide a sign with these rules to the permittee.

22. Petitioner demonstrates as identified above that the purposes of the underlying statute will be met with the proposed alternatives to the rule requirements.

23. Petitioner indicates that not being able to sell these units in Florida will present a substantial financial hardship.

CONCLUSIONS OF LAW

1. Pursuant to section 120.542, FS, state agencies are authorized to grant variances and waivers to requirements of their rules when the party subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and that application of the rule would create a substantial hardship or violate principles of fairness.

2. The primary purpose of section 514.031, FS, is to ensure that public pools have and maintain appropriate sanitary treatment of the water and safety features to reduce or eliminate patron illness and injury.

3. Petitioner's float tank is considered a public pool under statutory definition of section 514.011(2), Florida Statutes. However, the Ocean float room is considered a special purpose pool.

4. Rule 64E-9, of the *Florida Administrative Code*, was promulgated primarily to implement Chapter 514, Florida Statutes.

5. Substantial hardship means a demonstrated economic, technological, legal or other type of hardship experienced by the person requesting the variance.

6. As described in the Findings of Fact, Petitioner has demonstrated that they would sustain an economic hardship modifying certain aspects of their construction to meet the rule requirements.

7. Petitioner's request to turn off the recirculation system during patron use is acceptable only if five complete water volume turnovers are recirculated, filtered and disinfected between each patrons' use. To assure that this process is sufficient to provide for zero fecal-indicator bacteria carry-over between patron float sessions, laboratory tests for water quality microbiology are required upon initiation of operation for 6 weekly samples.

8. Petitioner's request for a variance to Rule 64E-9.008(7), is acceptable to the extent that the posted rules may be reduced to only the following special purpose applicable items: Rules 64E-9.008(7) 1., 5., & 6., and 64E-9.010(14)(a)&(c).

9. The anti-entrapment safety features required by section 514.0315, Florida Statutes, apply to all public pools. Further the section 120.542, Florida Statutes, does not allow a variance from statute. Petitioner's proposed assurances that a patron would not enter the pool when it is operational would not achieve compliance with the statute.

10. Petitioner has satisfied the underlying purposes of the above identified statutes and rules by:

a) Providing evidence that products and equipment used are certified under another satisfactory national standard;

b) Demonstrating that certain requirements for conventional swimming pools are not essential for patron safety or sanitation for this type of special purpose swimming pool; and

c) Demonstrating that equipment and products are used meet the intent in an alternative way for ease of access and maintenance specified.

WHEREFORE, based on the foregoing findings of fact and the conclusions of law, the Petition for a permanent variance filed on behalf of Float Rooms USA, LLC, is hereby GRANTED with the following conditions:

1. The Petitioner will ensure that the recirculation treatment computer operating system provides complete water treatment for at least five full water volume turnovers between each float session; and will ensure that this information is relayed to each float tank purchaser intending to use the Petitioner's product as a public pool. The public pool permittee must comply with this water treatment regimen.

2. Within 2 days of starting float sessions, the operator/permittee shall use a Department-certified water laboratory to test for and enumerate *E. coli* bacteria from one 100 mL sample collected from the float tank after numerous sessions have occurred, once per week for 6 consecutive weeks, and shall provide copies of microbiology test results and water chemistry field test kit results for halogen residual and pH to the Department's Bureau of Environmental Health Water Programs Administrator, Bob Vincent, at email Bob.Vincent@FLHealth.gov, within 2 days of receipt of lab results.

3. Petitioner must construct the public pool with an NSF/ANSI Standard 50 certified halogen feeder to assure that it maintains the appropriate halogen residual for a special purpose pool; as well as construct it with an NSF/ANSI Standard 50 certified filter of sufficient capacity.

4. The applicable standards for suction outlet drain covers and equipment area safety features provided in section 514.0315, Florida Statutes, must be met in the manufacturing of this special purpose public pool by the Petitioner, and then maintained over the life of the float tank by the operating permittee to remain in compliance with the law.

5. The Petitioner must provide entrance/ exit access on the floor adjacent to the tank wall with a support handrail. The Petitioner must create and provide a pool rules sign for the purchaser/ permittee to post that complies with paragraph 8 in conclusions of law, above.

6. Petitioner must provide a copy of this variance to all operators of a Float Rooms USA Oceans float room model for public use, so that the operator/ permittee understands the conditions under which the variance was granted and the requirements that are the duty of the permittee.

This permanent variance, as approved with the aforementioned conditions, applies only to those sections of the *Florida Administrative Code* for which the variance was requested. Additionally, this variance only applies to the Petitioner stated in this final order and to the operator of a Float Rooms USA Oceans float room model at any permitted Florida public pool location. This variance in no way exempts compliance with

other state and local regulations. Failure to comply with the conditions above shall void approval.

DONE and ORDERED this 3rd day of December, 2015, in Tallahassee, Leon County, Florida.

John H. Armstrong, MD, *FACS*
Surgeon General & Secretary

By: _____
Celeste Phillip, MD, MPH
Deputy Secretary for Health

FILED ON THIS DATE PURSUANT TO § 120.52 FLORIDA STATUTES, WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED

Shannon Revels
Clerk

12-4-15
Date

NOTICE OF RIGHTS

This order is final and effective on the dated filed with the Clerk of the Department unless a timely petition for an administrative hearing is filed. A party whose substantial interests are affected by this order may petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. Florida Administrative Code Chapter 28-106 governs such proceedings. A petition for a hearing must be in writing and must be received by the Agency Clerk for the Department within twenty-one (21) days from receipt of this order. The mailing address for the Agency Clerk is 4052 Bald Cypress Way, BIN #A02, Tallahassee, Florida 32399-1703. The physical address is 2585 Merchants Row Blvd., Tallahassee, FL 32399-1703. The Agency Clerk's facsimile number is (850) 413-8743.

Mediation is not available as an alternative remedy.

The failure of any person to file a petition for hearing within 21 days from receipt of this order will constitute a waiver of that person's right to an administrative hearing.

A party adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings may be commenced by filing a Notice of Appeal with the Clerk of the Department of Health and a copy accompanied by the filing fee with the District Court of Appeal in the appellate district where the party resides or the First District Court of Appeal. The notice must be filed within 30 days of the filing of this Final Order.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order Granting Petition for Permanent Variance sent by U.S. Mail, interoffice mail, or hand delivery to each persons listed this 4th day of December, 2015.

Shannon Revels

Shannon Revels, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin # A02
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Copies furnished to:

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