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### DOCUMENT INFORMATION

<b>Agency Name:</b>	Clerk of the Circuit Court & Comptroller, Palm Beach County
<b>Clerk of the Circuit Court:</b>	The Honorable Joseph Abruzzo
<b>Date Issued:</b>	5/18/2022 7:48:15 AM
<b>Unique Reference Number:</b>	CAA-FBH-BCAJJ-BJGEJIGGH-DJAEJH-F
<b>Case Number:</b>	502022CA004353XXXXMB
<b>Case Docket:</b>	COMPLAINT
<b>Requesting Party Code:</b>	517

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### CERTIFICATION

Pursuant to Sections 90.955(1) and 90.902(1), Florida Statutes, and Federal Rules of Evidence 901(a), 901(b)(7), and 902(1), the attached document is electronically certified by The Honorable Joseph Abruzzo, Clerk of the Circuit Court & Comptroller, Palm Beach County, to be a true and correct copy of an official record or document authorized by law to be recorded or filed and actually recorded or filed in the office of the Clerk of the Circuit Court & Comptroller, Palm Beach County. The document may have redactions as required by law.

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.:

AMERICAN WAVE MACHINES, INC.  
a California Corporation,

*Plaintiff,*

v.

80 ACRES SURE, LLC f/k/a AW  
PROPERTY OPERATIONS, LLC, a  
Florida Limited Liability Company, AW  
Asset Management, LLC, a Florida Limited  
Liability Company, and SR II, LLC f/k/a  
Surf Ranch Florida, LLC, a Delaware  
Limited Liability Company,

*Defendants.*

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, American Wave Machines, Inc. ("AWM"), through its undersigned counsel, sues Defendants, 80 ACRES SURE, LLC f/k/a AW Property Operations, LLC ("AWPO"), AW Asset Management, LLC ("AW Asset"), and SR II, LLC f/k/a Surf Ranch Florida, LLC ("Surf Ranch"), and alleges as follows:

**INTRODUCTION**

1. This is an action arising from a multi-million dollar development project involving Plaintiff's patented surf generating technology. Plaintiff seeks damages and injunctive relief due to Defendants' failure to perform their obligations pursuant to express agreements and the improper disclosure of Plaintiff's confidential and proprietary information to unauthorized third parties. In fact, multiple companies and individuals cooperated with the unified goal of using the



Unique Code : CAA-FBH-BCAJJ-BJGEJGGH-DJAEJH-F Page 1 of 88

prospects of a development project as a pretext to conduct corporate espionage in gross and flagrant violation of express confidentiality provisions.

**JURISDICTION, PARTIES, AND VENUE**

2. This is an action for damages in excess of \$30,000.00, exclusive of interest, costs, and attorney's fees, and is within this Court's subject matter jurisdiction.

3. At all times material, Plaintiff, AWM, was and is a California corporation with its principal place of business in San Diego County, California and is authorized to conduct business in Florida.

4. At all times material, Defendant, AWPO, was and is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

5. At all times material, Defendant AW Asset, was and is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

6. Brian Waxman is listed as the President of Defendants AWPO, and AW Asset, and is listed as an officer or "authorized person" for several affiliate companies: 80 Acres, LLC, 80 Acres Manager, LLC and 80 Acres Holdings, LLC.

7. At all times material, Defendant Surf Ranch, was and is a Delaware limited liability company with its principal place of business in New York County, New York, c/o Ziff Capital Partners, LLC, and is authorized to conduct business in Florida.

8. This Court has personal jurisdiction over Surf Ranch pursuant to Florida Stat. § 48.193(1) because Surf Ranch owns real property in the state of Florida and has breached a contract to be performed in the state of Florida. Moreover, Surf Ranch consented to personal jurisdiction in Florida in the NDA (as defined below).

9. Venue is proper in Palm Beach County, Florida, because it is the location where

the causes of action accrued, the location of real property that is related to the causes of action, the principal place of business of the Defendants, and is the venue chosen by the parties in the NDA (as defined below).

### **FACTUAL BACKGROUND**

#### **A. American Wave Machines and their PerfectSwell® Technology**

10. AWM designs, engineers, manufacturers, develops, and builds world class pools, wave systems and surf venues, providing premier ocean-like surfing experiences for recreational and professional users.

11. AWM holds a world-wide portfolio of over 50 patents and proprietary technologies, including PerfectSwell®.

12. Since 2007, AWM has delivered more than 20 surf systems operating under AWM technology licenses worldwide.

13. One such facility that opened in May 2018 is PerfectSwell® Waco at Waco Surf (formerly named BSR Surf Resort) located outside of Waco, Texas that attracts substantial attention from surfing enthusiasts.

14. Another notable facility is PerfectSwell® Shizunami located in Makinohara, Japan, which was used as the training center for both the US and Japanese Olympic teams during the 2021 Summer Olympics.

15. AWM grants licenses to use AWM's PerfectSwell® and other technology pursuant to license agreements, which include strict confidentiality provisions to prohibit disclosure of AWM's proprietary and patented technology to unauthorized third parties and competitors.

#### **B. The Failed Surf Ranch Florida Project**

16. In or around 2016, WSL Holdings, the parent company of the World Surf League

(“WSL”), acquired a majority stake in Kelly Slater Wave Company (“KSWC”), a competitor wave technology company.

17. KSWC developed its first wave pool in Lenore, California in or around 2015, called Surf Ranch.

18. In or around March 2017, KSWC and WSL announced that they would be developing a second surf park using KSWC’s wave-making technology in Palm Beach County, called Surf Ranch Florida. The project was announced publicly and received considerable media coverage.

19. Brian Waxman was the self-described “project lead” for the Surf Ranch Florida project.

20. In or around October 2017, WSL received zoning approval from the Palm Beach County commission to build the Surf Ranch Florida facility, which was again highly publicized.

21. After receiving zoning approval, in or around November 2017, a WSL affiliate company, Defendant Surf Ranch, purchased the 80-acre property located at 15990 Pratt Whitney Road, Jupiter, Florida 33478 for \$6,500,000 (the “Subject Property”).

22. In or around May 2019, WSL announced to news outlets and social media that the Surf Park Florida project was cancelled, citing unforeseen challenges related to a high groundwater table on the Subject Property.

23. Without a wave-making technology, Surf Ranch, WSL, and KSWC (and their respective stakeholders) essentially sat dormant on the \$6,500,000.00 Subject Property without other feasible development prospects.

**C. AWM Approached to Revive the Project with PerfectSwell® – the Non-Disclosure Agreement**

24. In or around January 2020, Brian Waxman approached AWM in an effort to revive

the former project as PerfectSwell® Palm Beach (the "PerfectSwell® Project").

25. Throughout initial discussions and thereafter, Waxman made repeated statements that WSI would not be involved in the Project. Unlike the previous failed Surf Ranch project that had significant media coverage, Waxman insisted that PerfectSwell® Palm Beach not be announced publicly. Project announcements are typical and in the best interest of projects as long as proprietary information is not revealed. AWM considered Waxman's insistence unusual.

26. On or about January 30, 2020, AWM signed a Non-Disclosure Agreement with AW Asset and Surf Ranch ("NDA"). Waxman signed the NDA as the "President" of AW Asset and as the "Vice President" of Surf Ranch. See Exhibit A, NDA.

27. Pursuant to the NDA, Waxman, AW Asset and Surf Ranch were not permitted to "disclose to any third party Confidential Information of [AWM], except as approved in writing by [AWM], and will use the Confidential Information for no purpose other than evaluating or pursuing a business relationship with [AWM]." *Id.* ¶ 3.

28. Pursuant to the NDA, Waxman, AW Asset and Surf Ranch were obligated to immediately notify AWM upon discovery of an unauthorized disclosure of AWM's Confidential Information. *Id.* ¶ 3.

29. Pursuant to the NDA, Waxman, AW Asset and Surf Ranch were not permitted to "make, have made, use or sell for any purpose any product or other item using, incorporating, or derived from any Confidential Information of [AWM]." *Id.* ¶ 7.

30. Pursuant to the NDA, Waxman, AW Asset and Surf Ranch acknowledges that their breach of the NDA would "cause irreparable damage and hereby agree[] that [AWM] shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction." *Id.* ¶ 11.

**D. The Purchase & License Agreement**

31. On or about June 1, 2020, AWM and AWPO signed the Purchase & License Agreement for the construction and installation of PerfectSwell® on the subject property site in Jupiter, Florida for \$7,640,000.00 (the "Purchase Agreement"). Waxman signed the Purchase Agreement as the "President" of AWPO. See Exhibit B, Purchase Agreement excerpt.

32. The Purchase Agreement set forth a payment schedule, with the initial amount due of \$1,146,000.00, 15% of the purchase price, due at signing. *Id.* ¶ 2.

33. However, Waxman negotiated an Amendment that reduced the initial payment to only \$250,000.00, 3.27% of the purchase price ("First Amendment"). *Id.* at Amendment.

34. The First Amendment indicated that the second milestone payment, in the amount of \$2,042,000.00 would be due no later than 120 days after signature of the Purchase Agreement, which would be September 29, 2020. *Id.*

35. During this 120-day period, the First Amendment permitted AWPO to terminate the Agreement, with a sliding scale of the portions of the initial payment that would be forfeited and the remainder that would be refunded. *Id.* Waxman, who drafted the First Amendment, described it as a "staged cancellation plan for the initial \$250,000 payment." See Exhibit C, Email dated May 24, 2020 (emphasis added).

36. The First Amendment provided that if there was a termination invoked during the 120-day cancellation period, then AWPO would have no further liability for additional payments or performance. See Exhibit B, Purchase Agreement excerpt at Amendment ¶ 1.

37. Waxman, who drafted the First Amendment, stated that this cancellation plan was designed to "allow [AWPO] to commit to you now in a somewhat significant manner while we spend the next 60 days working with you, learning and getting better organized on this new concept

without putting too much at risk.” See Exhibit C, Email dated May 24, 2020.

38. The First Amendment also afforded AWPO exclusive territory rights, which prohibited AWM from selling another PerfectSwell® technology within the expansive territory of Central and South Florida, including the Tampa and Orlando markets. See Exhibit B, Purchase Agreement excerpt at Amendment ¶ 3 and Exh. A thereto.

39. In addition to the payment terms, the Purchase Agreement had extensive provisions concerning AWM’s proprietary rights, including AWPO’s obligation to keep AWM’s proprietary information confidential from unauthorized third-parties:

AWM will supply certain design documentation, drawings, schematics, and specifications for [AWPO]’s construction and installation of the Pool/Vessel Facility as set forth herein, and AWM will supply certain manuals (including the Manual) and materials for the proper installation, test, operation maintenance and use of the PerfectSwell Attraction (the “Proprietary Information”). [AWPO] acknowledges and agrees that these materials are proprietary to AWM. [AWPO] agrees not to misuse, print, copy, provide or otherwise make available to third-parties, in whole or in part, any portion of the Proprietary Information. [AWPO] understands and agrees that, because of the unique nature of the Proprietary Information, AWM will suffer irreparable harm in the event that [AWPO] fails to comply with any of its confidentiality obligations under this section and monetary damages will be inadequate to compensate AWM for such breach. Accordingly, [AWPO] agrees that AWM shall, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of this section.

*Id.* at 11 ¶ 10(b).

**E. AWM Expressly and Repeatedly Prohibit Blake Hess Access to AWM’s Confidential and Proprietary Information**

40. In or around May 2020, AWPO retained Blake Hess, a WSI employee, as a “consultant” for the PerfectSwell® Project, although not authorized to receive any AWM proprietary information. See Exhibit D, Hess LinkedIn profile.

41. Waxman mentioned to AWM that he would be bringing on a third-party consultant



to his team for the PerfectSwell® Project, but did not mention the individual by name.

42. On or about May 24, 2020, Waxman drafted a non-disclosure document, based on the NDA Waxman already signed in January 2020, had Hess sign the document, and presented the unilaterally signed document to AWM. See Exhibit C, Email dated May 24, 2020.

43. AWM never signed the document drafted by Waxman and did not authorize disclosure of any confidential or proprietary information to Mr. Hess.

44. Following the execution of the Purchase Agreement on June 1, 2020, the parties held a series of in-person meetings in Florida that week.

45. On or about June 5, 2020, Waxman sent an email requesting extensive proprietary information of AWM and copied third-party Hess on the email. See Exhibit E, Email dated June 5, 2020.

46. On or about June 10, 2020, AWM, through its Senior Vice President, Michael Lopez, stated that AWM agreed to collaborate with AWPO's "appointed operations consultant" only with regards to "general operations and marketing methods." See Exhibit F, Email dated June 10, 2020. Otherwise, AWM requested that "communications in the coming months be limited to direct partners, stakeholders and accredited professionals," and that "any technical drawings and specifications should be shared with professional technical staff only." *Id.*

47. Waxman responded the same day, "Mike, confirmed and understood. No problem at all." *Id.*

48. The following year, in or around March 2021, Blake Hess left his position as General Manager at WSL's Surf Ranch to join Beach Street Development ("Beach Street"), a real estate development company, as its Chief Operating Officer. See Exhibit D, Hess LinkedIn profile.

49. With Hess now as the COO of Beach Street, in or around April 2021, AWPO

formally retained Beach Street for the PerfectSwell® Project on the Subject Property. See Exhibit G, Beach Street Letter at 2.

50. In an email dated April 8, 2021, Mr. Hess was again copied on an email where he was asked “BH [Blake Hess] – are you available by video to attend (assuming you don’t want to fly here and attend the meeting)?” See Exhibit H, Email dated April 8, 2022.

51. On April 19, 2021, AWM, through its Founder and President, Bruce McFarland, expressed AWM’s unwillingness to work with a “company [Beach Street] that actively tried to undermine us [AWM], are attempting to falsely equate PerfectSwell® in the marketplace, and is licensed to exclusively sell another wave generating system.” See Exhibit I, Email dated April 19, 2022.

**F. AWPO’s Campaign to Amass AWM’s Confidential Information While Stalling Payment**

52. Throughout while AWPO continued to request, and AWM continued to provide, confidential and proprietary information, AWPO repeatedly delayed making any further payment beyond the initial 3% deposit.

53. Despite AWPO’s delay in payment, AWM was still subject to AWPO’s exclusive territorial rights and AWM was still obligated to provide confidential and proprietary information to move the PerfectSwell® Project forward.

54. At the request of AWPO, from August 31, 2020 through November 17, 2020 three additional amendments were executed, each one effectively delaying the Milestone 2 payment. The last of which extended the payment and cancellation period until January 8, 2021. See Exhibits J–L, Second Amendment Letter, Third Amendment Letter, Fourth Amendment Letter, respectively.

55. AWPO failed to make the second milestone payment, or terminate the Purchase Agreement, by the expiration of the cancellation period on January 3, 2021.

56. After the Fourth Amendment, AWM and AWPO made no further amendments to the Purchase Agreement that afforded AWPO any new termination rights.

57. On or about March 2, 2021, AWM and AWPO agreed that the \$250,000 deposit had been forfeited by AWPO, and that the deadline for the second milestone payment would be extended to June 1, 2021 (the "March Extension"). See Exhibit M, March Extension Email.

58. The March Extension did not grant AWPO any new termination rights. *Id.* AWPO either had to make the second milestone payment, or be in default of the Purchase Agreement.

59. On or about May 31, 2021, AWPO requested yet another extension, stating that "[t]he upcoming payment to AWM is our highest priority in the project." On or about June 1, 2021, AWM agreed to extend the deadline for the second milestone payment to August 1, 2021 (the "June Extension"). See Exhibit N, June Extension Email.

60. The June Extension did not grant AWPO any new termination rights. *Id.* AWPO either had to make the second milestone payment, or be in default of the Purchase Agreement.

**G. AWPO's Anticipatory Repudiation of the Purchase Agreement**

61. On or about July 15, 2021, Waxman abruptly called AWM's Mike Lopez and indicated that AWPO would not be moving forward with the PerfectSwell® Project.

62. Specifically, Waxman indicated that the investors for the PerfectSwell® Project had lost confidence in AWM based on certain representations made during various discussions with unauthorized third-parties, including Blake Hess.

63. On or about July 19, 2021, AWM directly addressed the rumors in an effort to regain the confidence of the investors and move forward with the PerfectSwell® Project. See

Exhibit O, Email dated July 19, 2021.

64. In the same email, AWM again addressed the issue of AWPO apparently having discussions regarding AWM confidential and proprietary information with unauthorized third-parties:

Can AWM have confidence that the originators of these rumors, who had what appears to be unfettered access to your investors (when AWM did not), will be dealt with? As with all of our projects, we have strict levels of confidentiality and very limited access to third parties, if any. You can be assured AWM speaks to no one and provides zero information to so called consultants.

*Id.*

65. With no response to the e-mail, on or about July 28, 2021, AWM requested a call with Waxman, which took place the following day. See Exhibit P, Email dated July 28, 2021.

66. During the call on July 29, 2021, Waxman again confirmed that AWPO's investors would not be moving forward with the PerfectSwells Project. See Exhibit Q, Email dated August 1, 2021.

67. Due to, and subsequent to, AWPO's anticipatory repudiation, AWM terminated the agreement on July 29, 2021. See Exhibit R, Email dated July 29, 2021.

68. Separate and apart from AWPO's termination rights that had expired on January 8, 2021, AWM exercised its express termination rights as set forth in the Purchase Agreement. See Exhibit B, Purchase Agreement excerpt at 14 ¶ 16(d).

**II. The Defendants' Breach of Confidentiality**

69. In violation of the confidentiality provisions in the NDA, Defendants AW Asset and Surf Ranch, by and through their agent, Waxman, have shared AWM's confidential and proprietary information with unauthorized third-parties, including, but not limited to, Blake Hess

and Beach Street.

70. In violation of the confidentiality provisions in the Purchase Agreement, Defendant AWPO, by and through its agent, Waxman, has shared AWM's confidential and proprietary information with unauthorized third parties, including, but not limited to, Blake Hess and Beach Street.

71. Beach Street's own counsel confirms the breach of confidentiality. Beach Street's counsel confirms that:

- a. Blake Hess had been involved with the PerfectSwell® Project since May 2020;
- b. Beach Street had been involved with the PerfectSwell® Project since April 2021;
- c. Blake Hess made representations to AWPO regarding a purported "reputation within the industry for seeking to aggressively pursue its purported rights;" and
- d. Blake Hess made representations to AWPO regarding his "personal experiences with operational problems at the [BSR] Waco facility."

See Exhibit G, Beach Street Letter.

72. Blake Hess and Beach Street were never authorized third parties to receive AWM's confidential and proprietary information and, in fact, AWM expressly prohibited such disclosures.

**I. AWPO Restarts Project with Infringing WhiteWater**

73. In February of 2022 AWM was informed that the Project was moving forward with AWPO contracting Beach Street, who in turn was subcontracting to WhiteWater, a company in the waterpark business that manufactures waterlides and hump and splash pools currently defending multiple infringement and antitrust lawsuits.

74. By way of background, in or around November 2019, an AWM engineer, Clément Ginestel, quit AWM and began working for WhiteWater. See Exhibit S, Ginestel LinkedIn profile.

75. After hiring Ginestel, WhiteWater embarked on a marketing campaign to introduce a never before built infringing offering called Endless Surf and made a public announcement in May 2020.

76. John Luff, a partner in Beach Street, was a former employee of AWM and worked concurrently with Ginestel at AWM for 2 ¼ years. See Exhibit T, Luff LinkedIn profile.

77. WhiteWater’s Endless Surf marketing falsely represents that Ginestel “invented” AWM’s PerfectSwell® technologies, thereby embarking on a marketing approach that attempts to assimilate their infringing new product as PerfectSwell®. See Exhibit U, Endless Surf webpage; see also <https://endlessurf.com/about-us-sample/>.

78. Luff and Ginestel are currently under existing non-compete agreements with AWM and are not permitted to share any of AWM’s proprietary information with a third-party, including and especially WhiteWater.

**COUNT 1: BREACH OF CONTRACT – PURCHASE AGREEMENT**  
**(Against AWPO)**

79. Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 78 above, as if fully set forth herein.

80. Plaintiff and Defendant AWPO entered into a valid and enforceable contract, the Purchase Agreement. See Exhibit B, Purchase Agreement excerpt.

81. Plaintiff fully performed its obligations under the Purchase Agreement.

82. Plaintiff has only disclosed information to the extent necessary to enforce the provisions of the Purchase Agreement and/or the NDA.

83. Defendant AWPO materially breached the Purchase Agreement, by and through its agent, Waxman, by:

- a. Notifying AWM that it would not make the next milestone payment due under the Purchase Agreement, constituting anticipatory repudiation thereof;
- b. Notifying AWM that it would not proceed with any further performance under the Purchase Agreement, constituting anticipatory repudiation thereof;
- c. Disclosing AWM's confidential and proprietary information to Blake Hess, who was not an authorized third party to receive such information;
- d. Disclosing AWM's confidential and proprietary information to Beach Street, which was not an authorized third party to receive such information; and
- e. Disclosing AWM's confidential and proprietary information to other unauthorized third parties.

84. As a direct and proximate result of AWPO's material breach of the Purchase Agreement, AWM has suffered damages, in an amount to be determined at trial.

85. Plaintiff is entitled to its attorney's fees incurred in collecting late payments from AWPO. *Id.* at 9 ¶ 3.

WHEREFORE, Plaintiff AWM demands judgment against Defendant AWPO for damages interests, costs, attorney's fees, and such other and further relief as this Court deems just and appropriate.

**COUNT II - BREACH OF CONTRACT - NDA**  
**(Against AW Asset and Surf Ranch)**

86. Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 78 above, as if fully set forth herein.

87. Plaintiff and Defendants AW Asset and Surf Ranch entered into a valid and enforceable contract, the NDA. *See Exhibit A, NDA.*

88. Plaintiff fully performed its obligations under the NDA.

89. Plaintiff has only disclosed information to the extent necessary to enforce the provisions of the NDA and/or the Purchase Agreement.

90. Defendants AW Asset and Surf Ranch materially breached the NDA, by and through their agent, Waxman, by

- a. Disclosing AWM's confidential and proprietary information to Blake Hess, who was not an authorized third-party to receive such information;
- b. Disclosing AWM's confidential and proprietary information to Beach Street, which was not an authorized third-party to receive such information; and
- c. Disclosing AWM's confidential and proprietary information to other unauthorized third-parties.

91. As a direct and proximate result of AW Asset and Surf Ranch's material breach of the NDA, AWM has suffered damages, in an amount to be determined at trial.

WHEREFORE, Plaintiff AWM demands judgment against Defendants AW Asset and Surf Ranch for damages interests, costs and such other and further relief as this Court deems just and appropriate.

**COUNT III INJUNCTIVE RELIEF**  
**(Against AWPO)**

92. Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 78 above, as if fully set forth herein.

93. AWM seeks a permanent injunction that enjoins AWPO from disclosing any AWM confidential or proprietary information acquired during the PerfectSwell® Project to any third-parties.



94. AWM seeks a permanent injunction that requires AWPO to fully account for all disclosures to unauthorized third-parties, including, but not limited to:

- a. The date, time, and location of each disclosure;
- b. All senders and recipients of each disclosure;
- c. The detailed substance of each disclosure; and
- d. All documents that were provided, enclosed, attached, or otherwise included in each disclosure.

95. The Purchase Agreement expressly provides that AWM is entitled to injunctive relief, in addition to any other remedies available to it at law or in equity, in order to enforce the confidentiality terms in the Purchase Agreement. Exhibit B, Purchase Agreement excerpt at ¶ 10(h).

96. AWM has no adequate remedy at law and will continue to suffer irreparable injury unless AWPO is enjoined from disclosing AWM's confidential and proprietary information and accounts for all prior unauthorized disclosures.

WHEREFORE, Plaintiff demands the entry of a permanent injunction against Defendant AWPO, and such other and further relief as this Court deems just and appropriate.

**COUNT IV: INJUNCTIVE RELIEF**  
**(Against AW Asset and Surf Ranch)**

97. Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 78 above, as if fully set forth herein.

98. AWM seeks a permanent injunction that enjoins AW Asset and Surf Ranch from disclosing any AWM confidential or proprietary information acquired during the PerfectSwel® Project to any third-parties.

99. AWM seeks a permanent injunction that requires AW Asset and Surf Ranch to fully account for all disclosures to unauthorized third-parties, including, but not limited to:

- a. The date, time, and location of each disclosure;
- b. All senders and recipients of each disclosure;
- c. The detailed substance of each disclosure; and
- d. All documents that were provided, enclosed, attached, or otherwise included in each disclosure.

100. The NDA expressly provides that AWM is entitled to injunctive relief, as well as such further relief as may be granted by a court, in order to enforce the confidentiality terms in the NDA. Exhibit A, NDA ¶ 11.

101. AWM has no adequate remedy at law and will continue to suffer irreparable injury unless AW Asset and Surf Ranch are enjoined from disclosing AWM's confidential and proprietary information and account for all prior unauthorized disclosures.

WHEREFORE, Plaintiff demands the entry of a permanent injunction against Defendants AW Asset and Surf Ranch, and such other and further relief as this Court deems just and appropriate.

**JURY DEMAND**

Plaintiff American Wave Machines, Inc. hereby requests a trial by jury on all claims and issues so triable.

Dated: May 5, 2022

Respectfully submitted,

*/s/ Serena A. Witter*

Serena A. Witter, Esq.

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*Counsel for Plaintiff*

# Exhibit A

## MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT governs the disclosure of information by and between American Wave Machines, Inc. and AW Asset Management, LLC and SR II, LLC as of January 30, 2020.

1. As used herein, "Confidential Information" shall mean any and all technical and non-technical information provided by either party to the other relating to the 80 Acre Site in Jupiter, Florida and the American Wave Machines products and services proposed for the site, including but not limited to patent and patent applications, trade secret, proprietary information-ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, knowhow, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the disclosing party provides regarding third parties.
2. The Confidential Information shall be embodied in tangible material (including without limitation, software, hardware, drawings, graphs, charts, disks, tapes, prototypes and samples).
3. Each party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party Confidential Information of the other, except as approved in writing by the other party to this Agreement, and will use the Confidential Information for no purpose other than evaluating or pursuing a business relationship with the other party to this Agreement. Notwithstanding the above, the party to whom Confidential Information was disclosed (the "Recipient") shall not be in violation of this Section 3 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides the other party with prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information. Each party shall only permit access to Confidential Information of the other party to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.
4. Each party shall immediately notify the other upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other party.
5. Each party's obligations under this Agreement with respect to any portion of the other party's Confidential Information shall terminate when the Recipient can document that:
  - (a) It was in the public domain at the time it was communicated to the Recipient by the other party;
  - (b) It entered the public domain subsequent to the time it was communicated to the Recipient by the other party through no fault of the Recipient;

- (c) It was in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient by the other party; or
- (d) It was rightfully communicated to the Recipient free of any obligation of confidence subsequent to the time it was communicated to the Recipient by the other party.

6. Upon termination or expiration of the Agreement, or upon written request of the other party, each party shall promptly return to the other all documents and other tangible materials representing the other's Confidential Information and all copies thereof.

7. The parties recognize and agree that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Confidential Information of the other party disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither party shall make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the other party.

8. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party by either party shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by the other party.

9. This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party. The Recipient's obligations under this Agreement shall survive termination of the Agreement between the parties and shall be binding upon the Recipient's heirs, successors and assigns. The Recipient's obligations hereunder shall continue in full force and effect with respect to non-technical sales, marketing, and financial Confidential Information for five (5) year(s) from the date of disclosure of such Confidential Information. The Recipient's obligations with respect to all technical Confidential Information shall be terminated only pursuant to Section 5.

10. This Agreement shall be governed by and construed in accordance with the laws of Florida without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Palm Beach County, Florida, and the parties hereby consent to the personal jurisdiction and venue of these courts. This Agreement may not be amended except by a writing signed by both parties hereto.

11. Each party acknowledges that its breach of the Agreement will cause irreparable damage and hereby agrees that the other party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

12. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to

best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

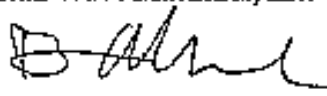
13. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

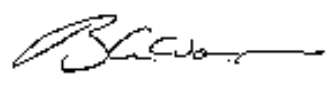
14. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.

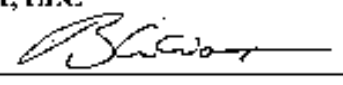
15. Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

16. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

American Wave Machines, Inc.  
By:   
Title: President  
Date: January 30, 2019  
Address: 224C South Cedros Ave  
Solana Beach, California 92075

AW Asset Management, LLC  
By:   
Title: President  
Date: January 30, 2020  
Address: 11780 US Highway One, Suite 305  
North Palm Beach, Florida 33408

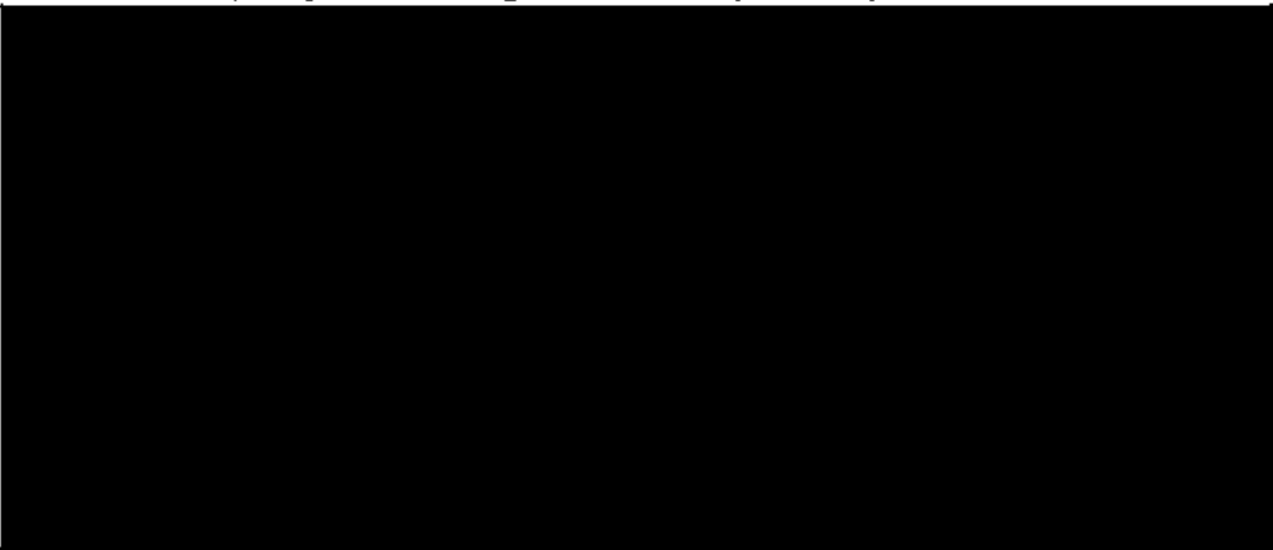
SR II, LLC  
By:   
Title: Vice-President  
Date: January 30, 2020  
Address: 11780 US Highway One, Suite 305  
North Palm Beach, Florida 33408

# Exhibit B



**AMERICAN WAVE MACHINES, INC.  
PURCHASE & LICENSE AGREEMENT**

THIS PURCHASE AGREEMENT ("Agreement") is made and entered into on June 1, 2020 (the "Effective Date"), by and between American Wave Machines, Inc., a California corporation ("AWM"), and the entity named below ("Licensee"), and consists of this Agreement together with the following appendices which are hereby incorporated into this Agreement and made a part hereof by reference:



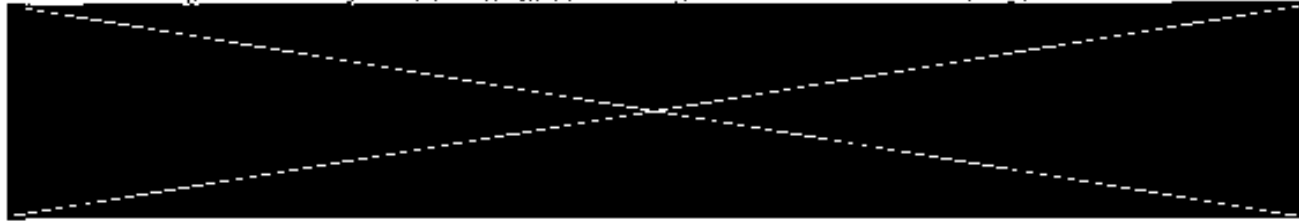
2. **Purchase Price and Payment Terms.** The price for the Product Deliverables is Seven Million Six Hundred Forty Thousand (\$7,640,000) (the "Purchase Price"); exclusive of (a) freight, handling, shipping, delivery and related insurance; and (b) import, export and any customs duties, levies, taxes, costs and charges, all of which are to be paid by Licensee. The Purchase Price shall be paid in accordance with the following "Payment Schedule" (each a "Payment" and, collectively, the "Payments"):

	Milestone	Percent of Purchase Price	Payment USD
1	Upon Signature and Commencement of Schematic Development	15%	\$ 1,146,000
2	Upon Order of Structural Stainless	15%	\$ 1,146,000
3	Upon Order of Power Machinery	30%	\$ 2,292,000
4	Upon Transfer of Parts to Carrier	30%	\$ 2,292,000
5	Upon Commissioning	10%	\$ 764,000
	<b>TOTAL</b>	<b>100%</b>	<b>\$ 7,640,000</b>

*[Signature]* 1  
*[Signature]*



- 3. **Price and Payment Terms under a License Plan.** The License Plan is set forth on Appendix 6 hereto. The "Purchase Price" shall include the payments made by Licensee pursuant to Appendix 6, each such payment shall also be a "Payment" hereunder, and the additional Payment dates set forth in said Appendix shall become part of the Payment Schedule.
- 4. **Pool/Water Vessel Work and Equipment.** Licensee acknowledges and agrees that the Product Deliverables do not include, and Licensee is solely responsible for, constructing, paying and/or contracting for, the Pool/Water Vessel Work and Equipment, as defined and more particularly described in Appendix 2.
- 5. **Limited Warranty.** In connection with Licensee's purchase of the Product Deliverables, upon the later of shipment of the same to Licensee and payment by Licensee for the Product Deliverables in accordance with the terms hereof, AWM provides the Limited Warranty to Licensee set forth on Appendix 3.
- 6. **Standard Terms and Conditions of Sale.** By signing below, the parties hereby acknowledge and agree to all of the terms and conditions of this Agreement, including the AWM Standard Terms and Conditions of Sale set forth in Appendix 4 (the "T&C's"). This Agreement constitutes an offer to Licensee that expressly limits Licensee's acceptance to the terms and conditions of this Agreement, and any different or additional terms contained in any related purchase order, confirmation, or similar form submitted by Licensee shall have no force or effect. Each party represents and warrants that it has the requisite power and authority to sign and deliver this Agreement, and to perform its obligations hereunder, and that the person whose signature appears on this Agreement is duly authorized to enter into this Agreement on behalf of such party.

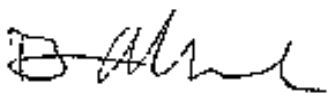


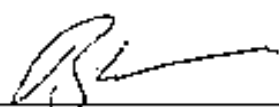
IN WITNESS WHEREOF, the parties have duly executed this Agreement on the Effective Date.

AMERICAN WAVE MACHINES, INC.

LICENSEE:

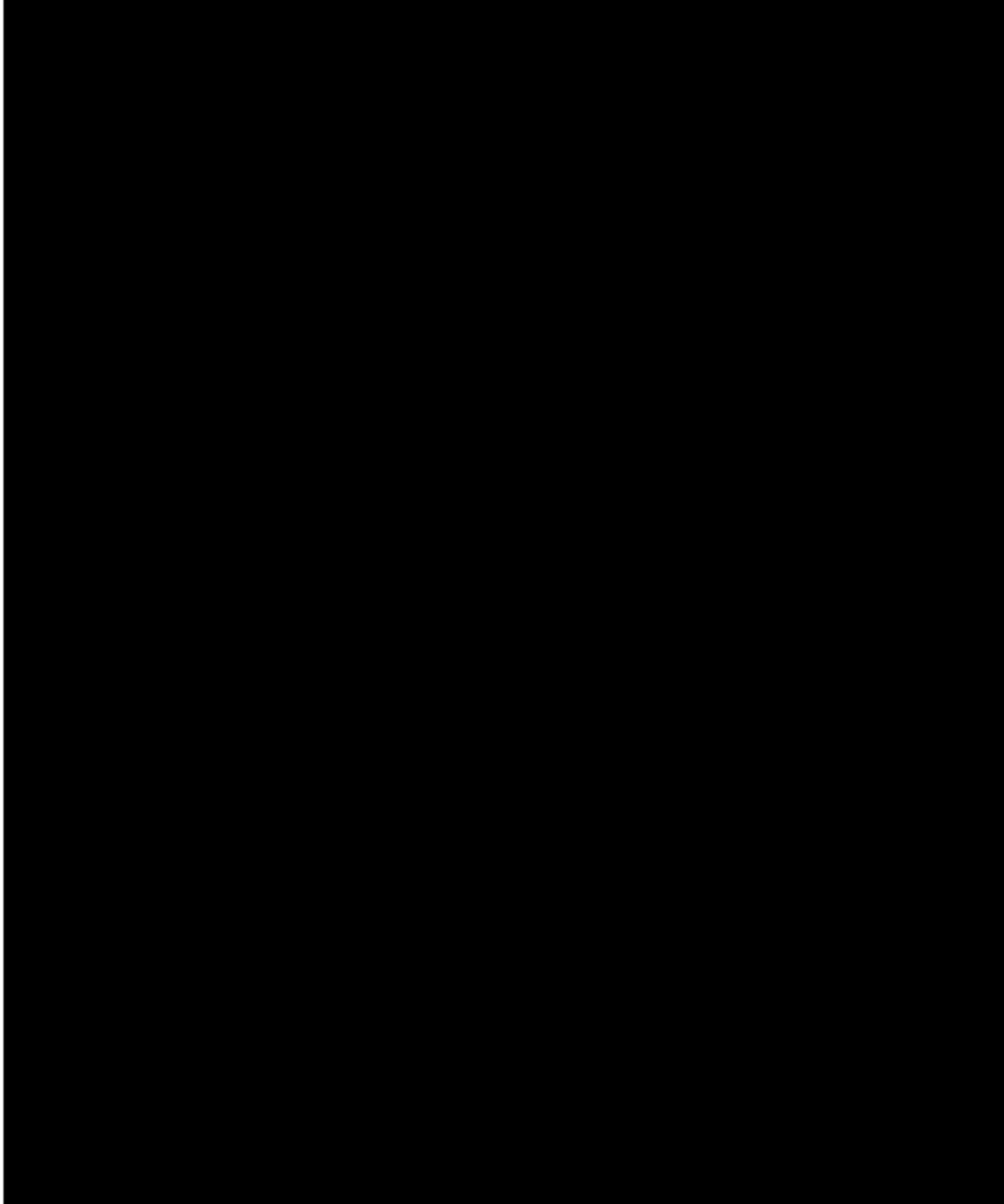
AW PROPERTY OPERATIONS, L.L.C

By:   
 Bruce McFarland, President

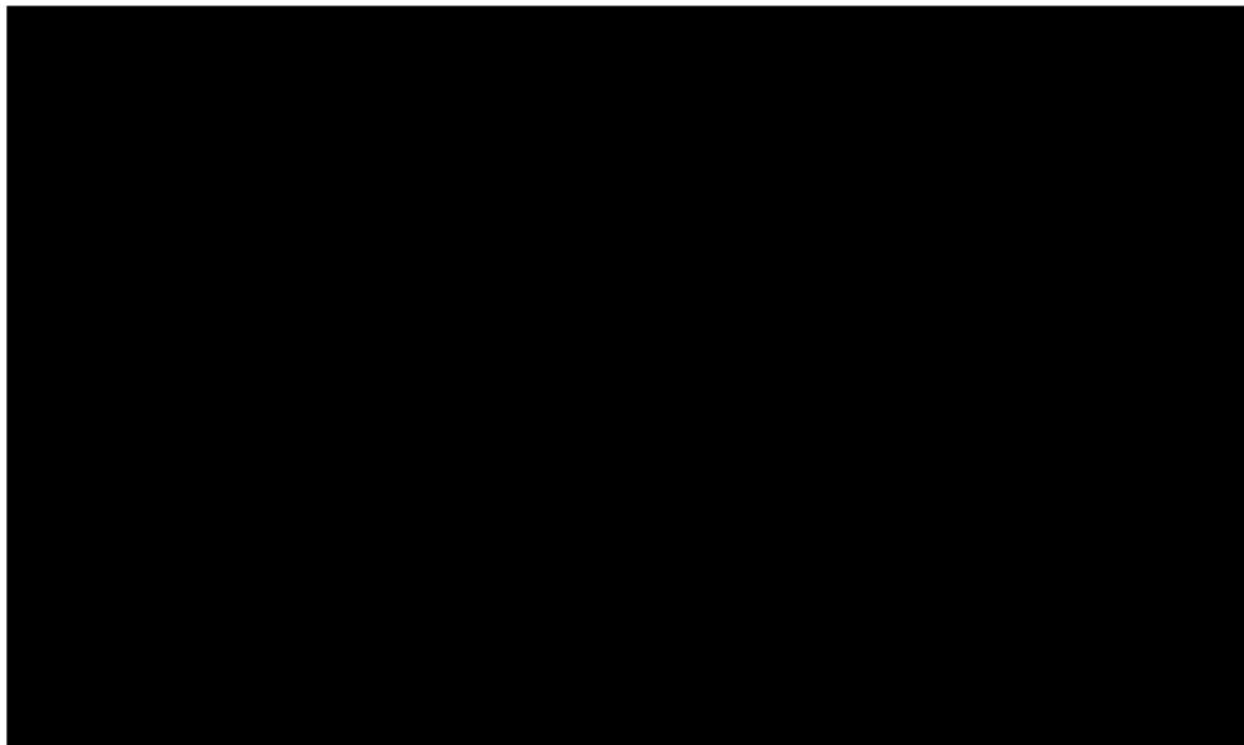
By:   
 Print Name: Brian K. Waxman  
 Title: President

APPENDIX 4

AWM STANDARD TERMS AND CONDITIONS OF SALE

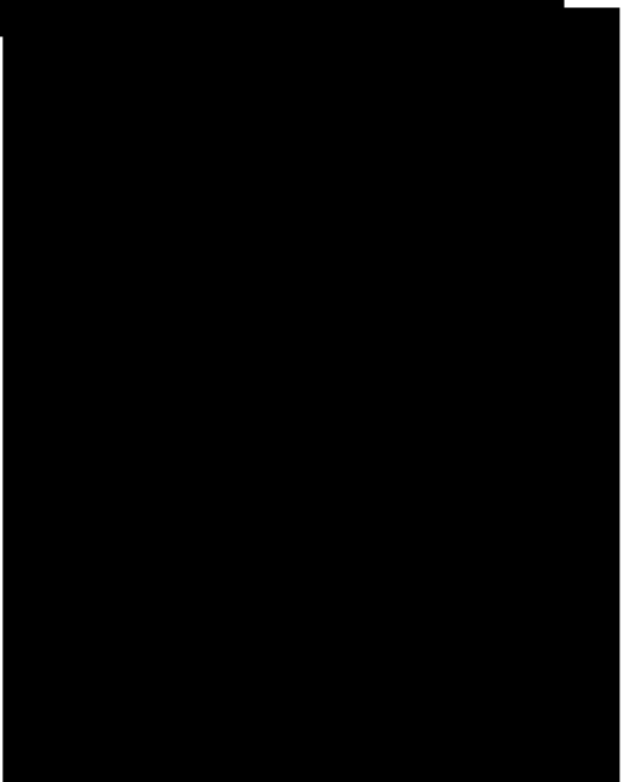


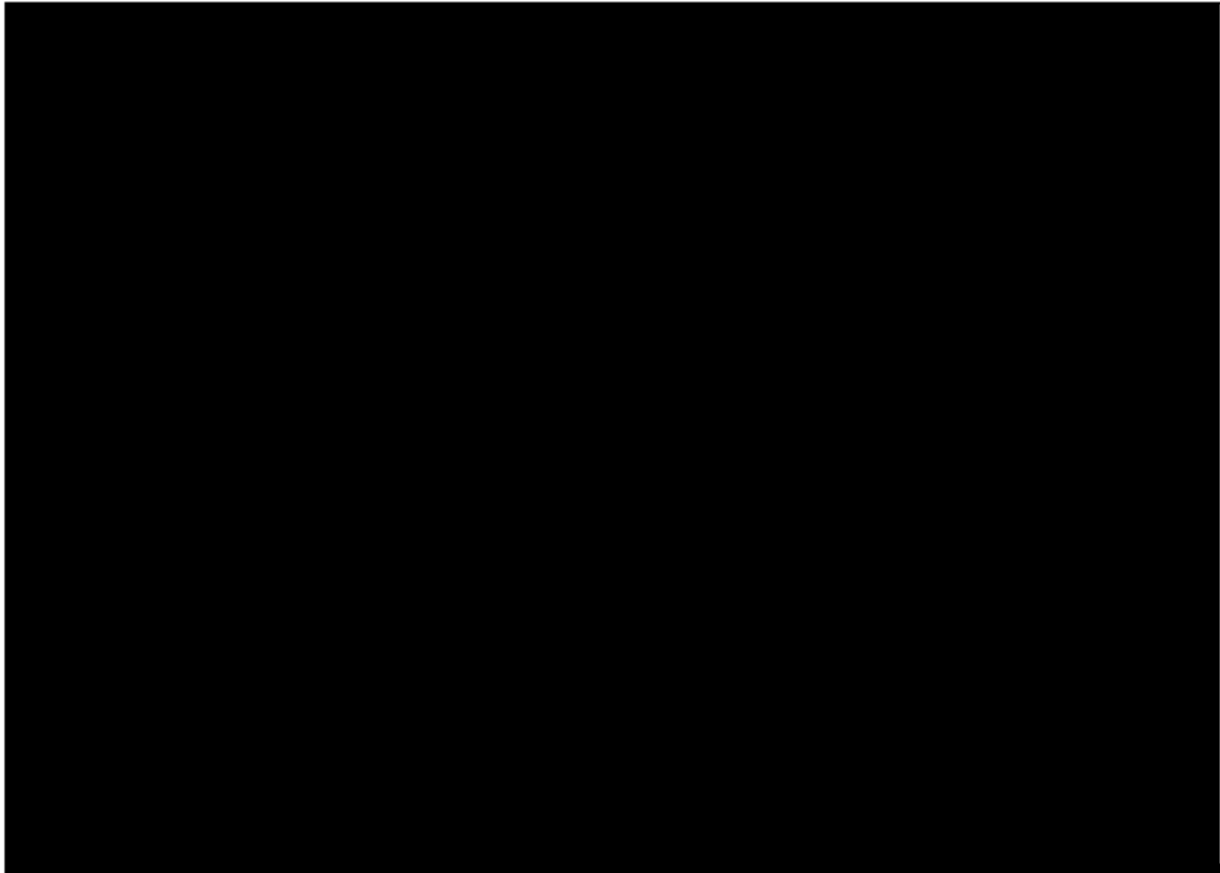
*[Handwritten signature]*



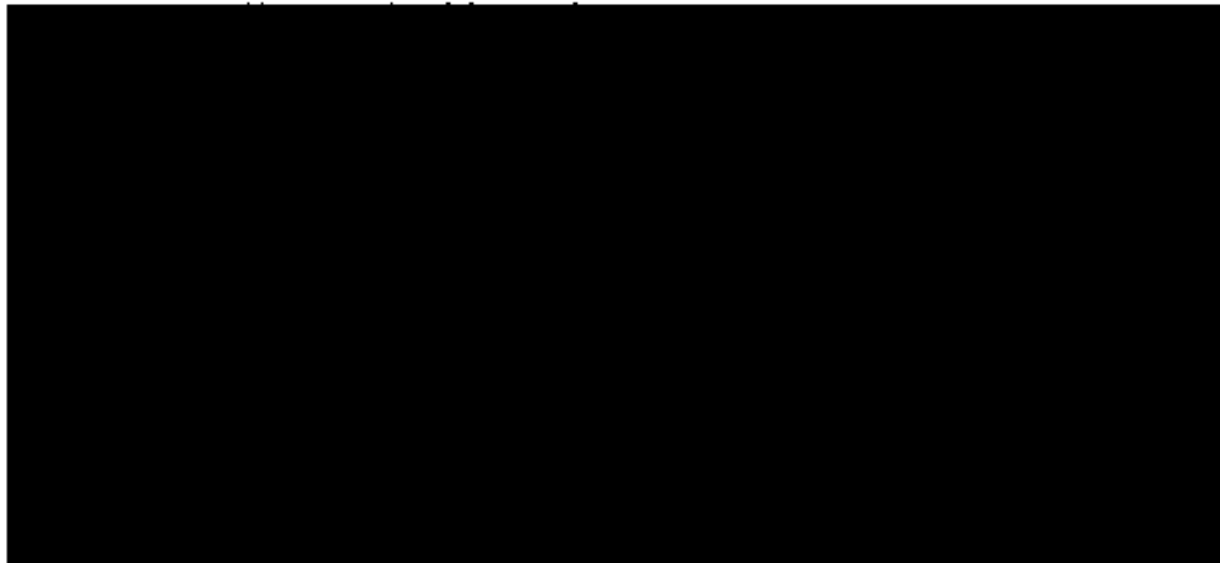
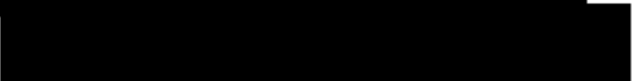
**3. Payment Terms**

AWM will invoice Licensee in accordance with the Payment Schedule as set forth in the Agreement. Balances remaining unpaid after thirty (30) days from the date of invoice will accrue interest calculated daily and compounded monthly at the lesser of one percent (1%) per month or the maximum rate allowed by applicable law. Licensee shall also reimburse AWM for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. All Payments are non-refundable and shall be made in U.S. dollars. Notwithstanding anything set forth in the Payment Schedule to the contrary, any invoice due on transfer of Product Deliverables to carrier for shipment under the Payment Schedule shall require payment by Licensee to AWM prior to transfer of Product Deliverables to carrier, which transfer shall be conditioned upon AWM's prior receipt of such payment due thereon. Licensee shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to AWM, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by AWM.





10. Proprietary Rights.



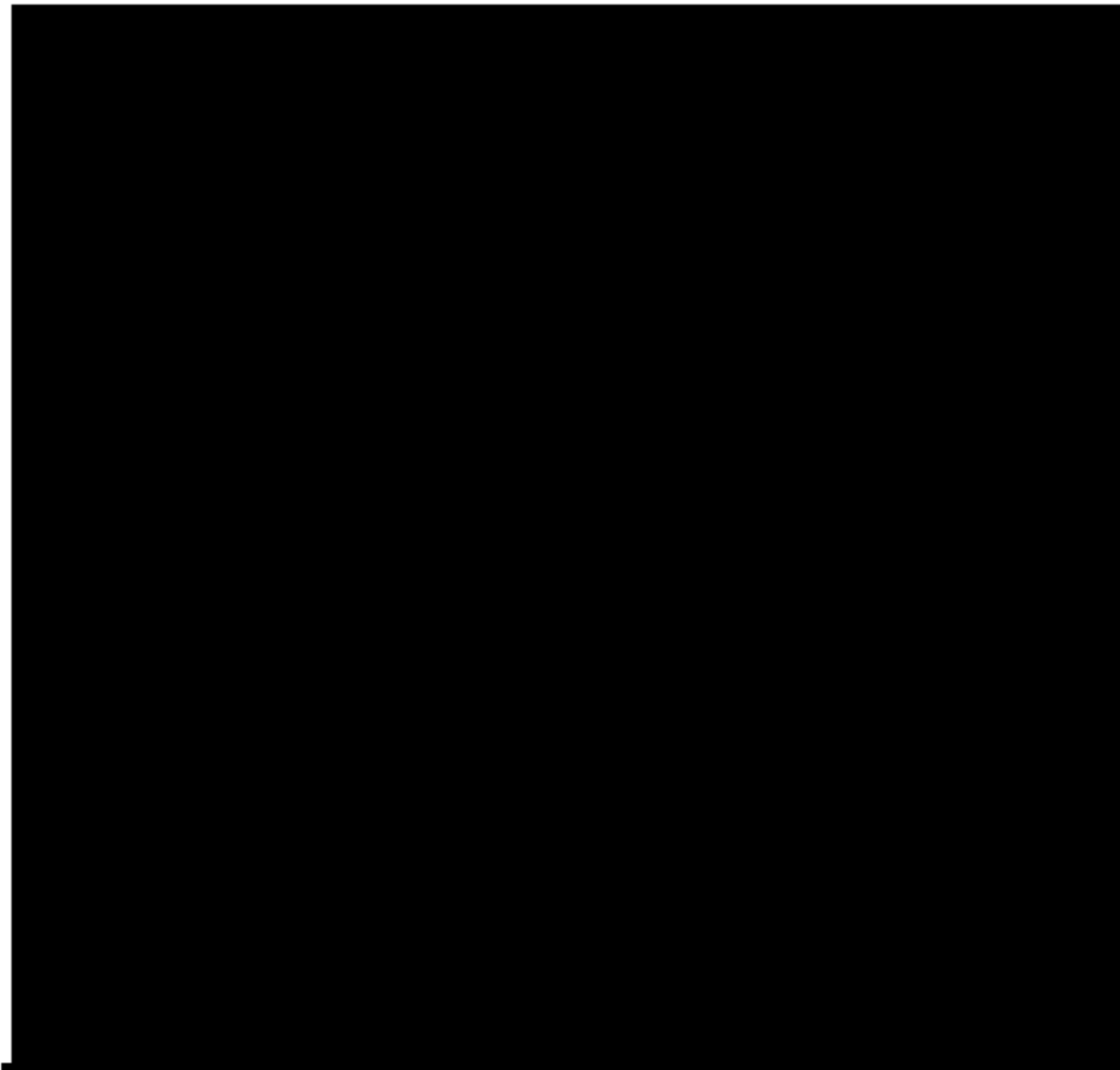
10/17/22



h. AWM will supply certain design documentation, drawings, schematics, and specifications for Licensee's construction and installation of the Pool/Vessel Facility as set forth herein, and AWM will supply certain manuals (including the Manual) and materials for the proper installation, test, operation maintenance and use of the PerfectSwell Attraction (the "Proprietary Information"). Licensee acknowledges and agrees that these materials are proprietary to AWM. Licensee agrees not to misuse, print, copy, provide or otherwise make available to third-parties, in whole or in part, any portion of the Proprietary Information. Licensee understands and agrees that, because of the unique nature of the Proprietary Information, AWM will suffer irreparable harm in the event that Licensee fails to comply with any of its confidentiality obligations under this section and monetary damages will be inadequate to compensate AWM for such breach. Accordingly, Licensee agrees that AWM shall, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of this section.

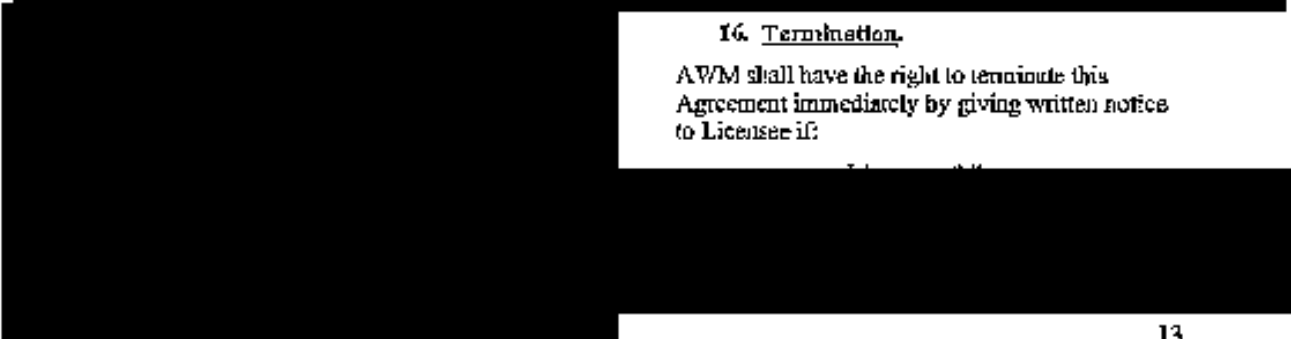


3 72 -



**16. Termination.**

AWM shall have the right to terminate this Agreement immediately by giving written notice to Licensee if:

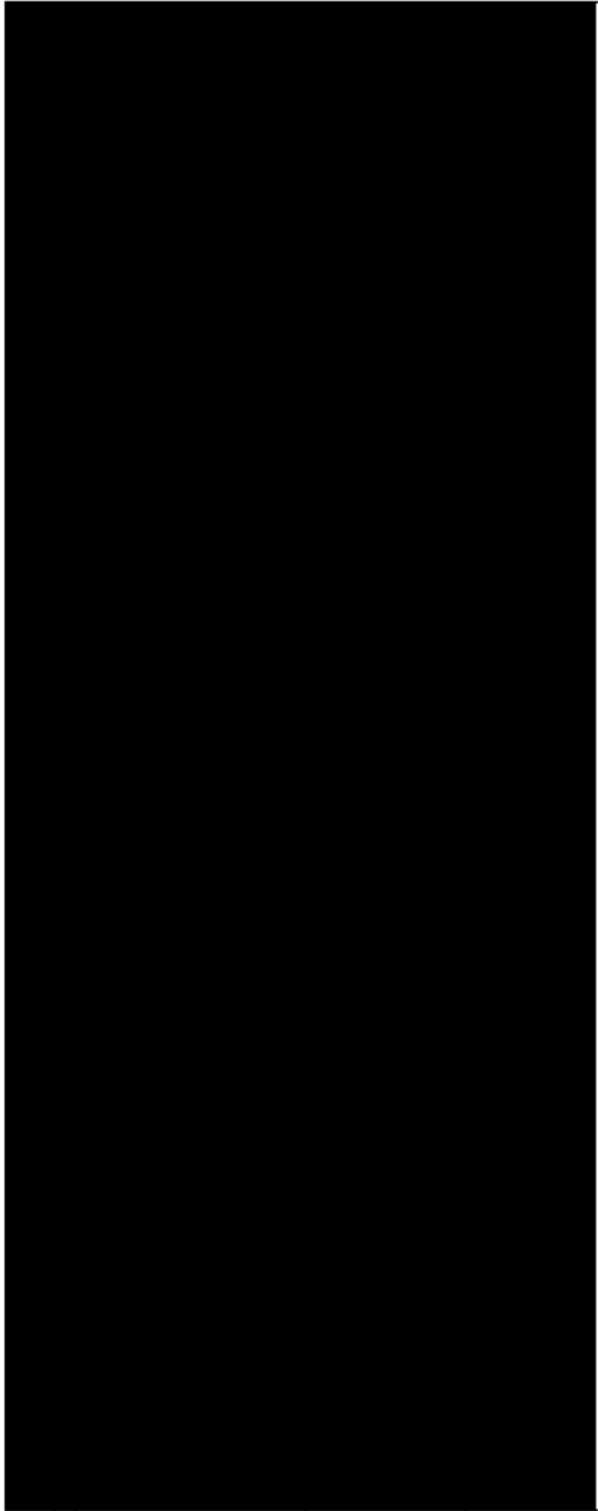
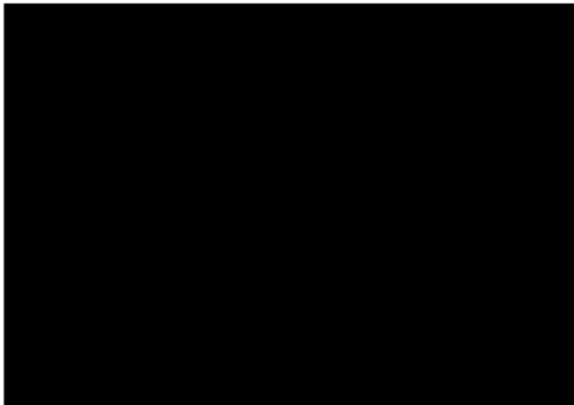




d. Licensee challenges the validity or AWM's ownership of any Mark.

On expiration or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement: (i) all outstanding amounts payable by Licensee to AWM shall immediately become due and payable; (ii) all rights and licenses and Exclusivity, if any, granted pursuant to this Agreement shall cease; and Licensee shall cease all use of all Marks.

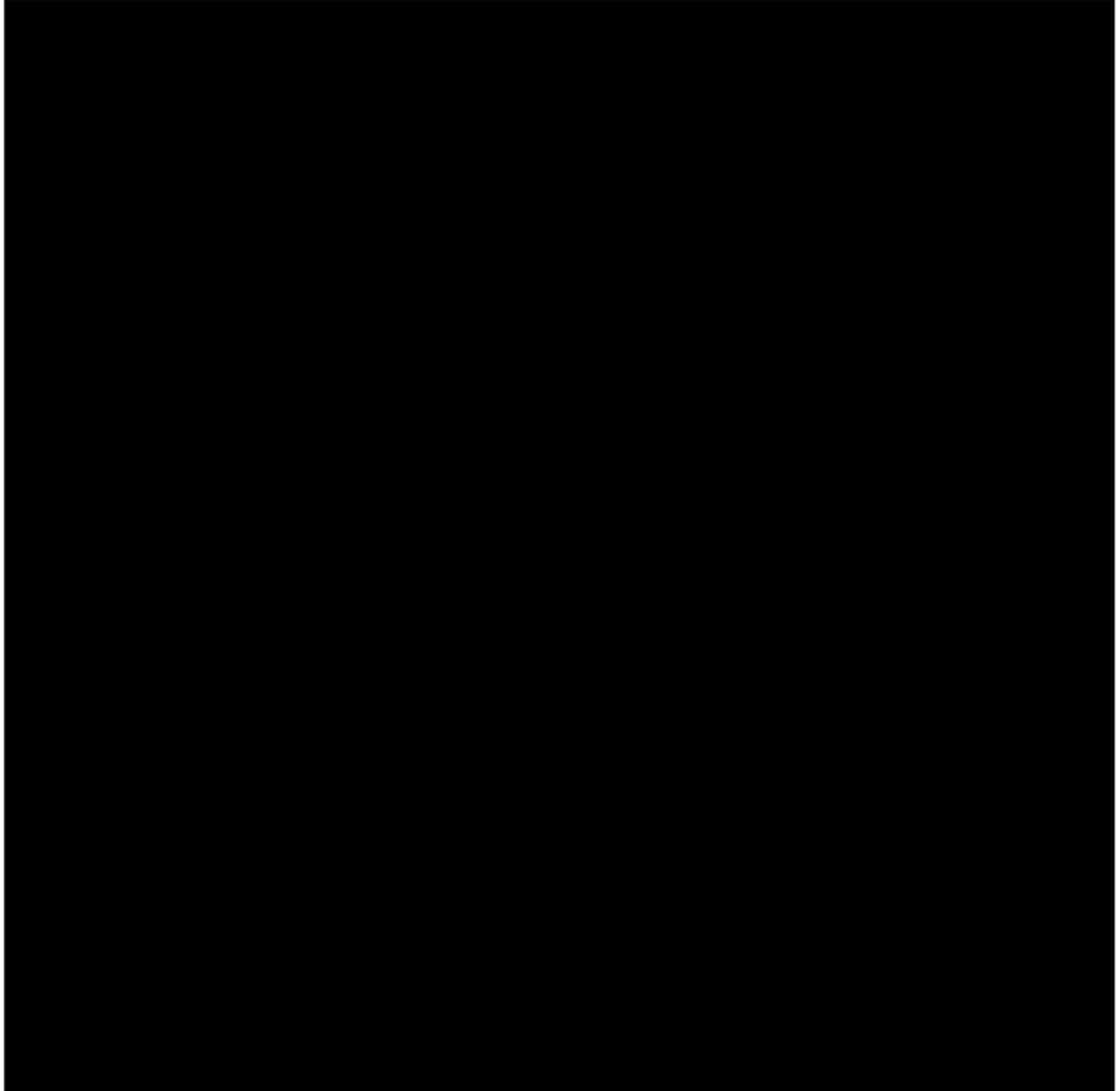
Any rights or obligations of the parties in this Agreement which, by their nature, should survive termination or expiration of this Agreement will survive any such termination or expiration, including the rights and obligation set forth in Sections 9 (but not including any grant of licenses hereint, such as 9.b. or 9.d.), 10, 11, 13, 14 and 15 of these T&C's.



15 11  
[Signature]



APPENDIX 6



*[Handwritten signature]*

May 27, 2020

Bruce McFarland  
Marie McFarland  
Mike Lopez  
American Wave Machines  
2240 South Cedros  
Solana Beach, CA 92075

RE: 80 Acres West Palm Beach, FL – Wave Pool Project

Dear Bruce, Marie and Mike:

The purpose of this letter agreement (this "Amendment") is to amend the terms of the Purchase & License Agreement, the Maintenance Agreement and the Co-Marketing Term Sheet by and between AW Property Operations, LLC ("AW Property") and American Wave Machines, Inc. ("AWM") (collectively, the "Agreements"), as follows:

1. Purchase Price and Payment Terms. The Payment Schedule contained in Section 2 of the Purchase & License Agreement is hereby deleted and replaced in its entirety by the following:

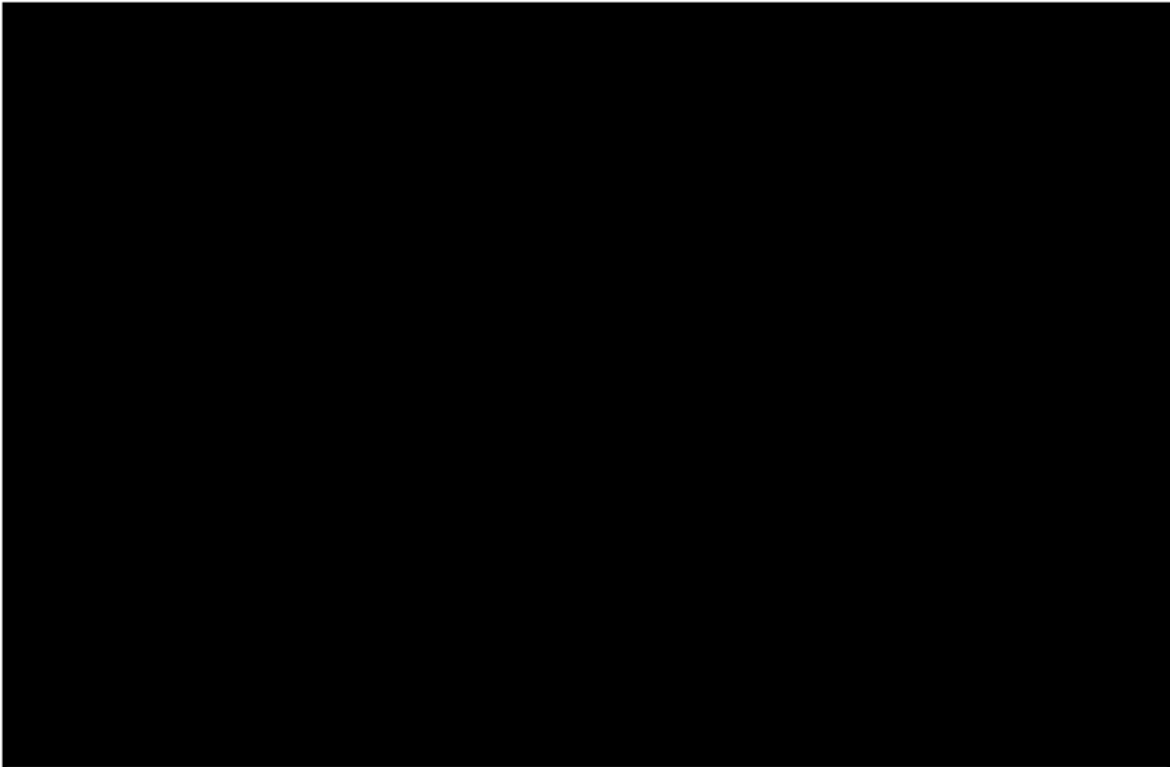
Milestone	Percent of Purchase Price	Payment USD
Upon Signature and Commencement of Schematic Development	3.27%	\$ 250,000
Upon Order of Structural Stainless	26.73%	\$ 2,042,000
Upon Order of Power Machinery	30%	\$ 2,292,000
Upon Transfer of Parts to Carrier	30%	\$ 2,292,000
Upon Commissioning	10%	\$ 764,000
<b>TOTAL</b>	<b>100%</b>	<b>\$ 7,640,000</b>

Metrics and criteria for determining project go ahead shall be identified as soon as reasonably practical. Proforma set of plans will be provided by AWM upon signature for analysis and from which to form basis of go-ahead decision. The second Milestone payment shall occur no later than 120 days after signature.

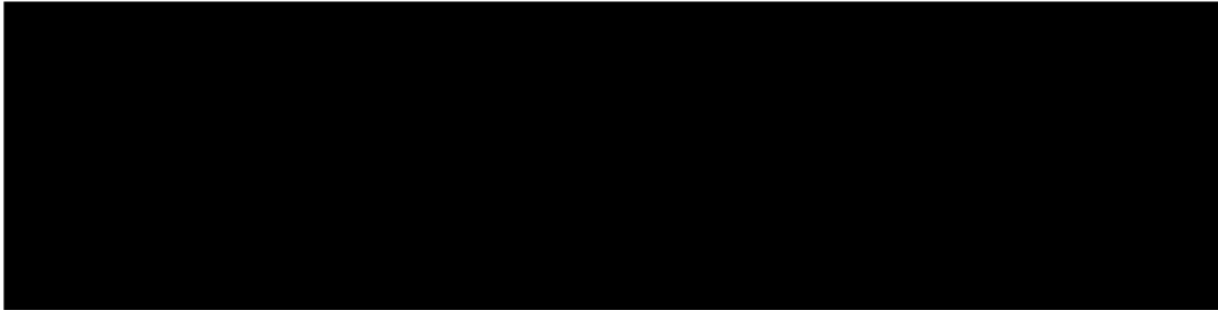
Notwithstanding anything to the contrary set forth in the Agreements, Licensee shall have the right to terminate the Agreements prior to payment for the second Milestone - Order of Structural Stainless. If terminated within 30 days of the effective date, Licensee shall forfeit \$25,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$225,000). If terminated within 60 days of the effective date, Licensee shall forfeit a total of \$50,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$200,000). If terminated within 90 days of the effective date, Licensee shall forfeit a total of \$100,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$150,000). If terminated within 120 days of the effective date, Licensee shall forfeit a total of \$200,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$50,000). If terminated, Licensee shall have no further liability to AWM for additional payments or performance under the Agreements except those items which specifically survive termination of the Agreements.

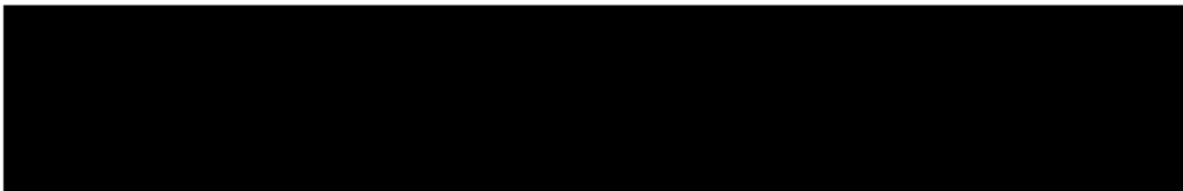
2. Product Deliverables – Specifications and Services. Appendix 1 of the Purchase & License Agreement is hereby supplemented with the following additional specifications and the additional services to be provided by AWM:

11 112-



3. Territory Rights. For so long as the Agreements are in effect, AWM and its affiliates shall not, directly or indirectly, license, franchise, establish, own, advertise, promote, operate, or permit the operation of a wave pool using any of the Intellectual Property of AWM or its affiliates, including the PerfectSwell technology and related trade names, trademarks, service marks, designs, logos, slogans and copyrights within the geographic area depicted on the map attached as Exhibit A to this Amendment. Notwithstanding the foregoing, the territory restriction shall not apply to smaller PerfectSwell Attractions or affiliated wave pools that are ancillary to a development project but not the main attraction and have a single wave pool less than 2.0 acres in size. For any third-party inquiries concerning development and ownership of a PerfectSwell Attraction or affiliated wave pool within the Orlando and Tampa markets, Licensee will be given proper notice and the first right of refusal to participate as contractually structured accordingly to each opportunity. Licensee shall receive notice at the start of negotiations and be provided a signed agreement or term sheet containing all final material terms when complete. Upon receipt of the signed agreement or term sheet, Licensee shall have 60 days to accept to proceed under the terms offered or decline the opportunity. If declined, AWM may proceed with the third party as contractually structured.





7. No Intellectual Property Infringement. AWM hereby represents and warrants to AW Property that the Intellectual Property licensed or provided to AW Property does not infringe or misappropriate or otherwise violate the intellectual property rights of any third party nor are there any claims threatened or pending against such Intellectual Property licensed or provided to AW Property. Notwithstanding anything to the contrary set forth in the Agreements and without limitation by Section 13 of AWM's Standard Terms and Conditions of Sale, AWM shall indemnify, defend and hold harmless AW Property and its affiliates, and their respective employees, officers, directors, partners, shareholders, agents, attorneys, advisors, successors and assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Amendment related to or arising out of the alleged or actual breach of AWM's representation or warranty in the immediately preceding sentence.

8. PerfectSwell Software. For so long as the Agreements are in effect, AWM shall, from time to time, at no additional cost to AW Property (a) grant a limited, non-exclusive license to the most current version of the PerfectSwell Software (and any prior version of the PerfectSwell Software, requested by AW Property), including all software updates, maintenance releases, and application programming interfaces and (b) deposit the most current version of the PerfectSwell Software (and any prior version of the PerfectSwell Software, requested by AW Property) and the related documents and other critical materials with a mutually agreed upon, independent escrow agent pursuant to a mutually acceptable escrow agreement.

9. Choice of Law. Venue. Notwithstanding anything to the contrary set forth in the Agreements, the parties agree that the Agreements shall be governed by and construed in accordance with the laws of the State of Florida and all disputes, controversies, actions or proceedings arising in connection with the Agreements shall exclusively be tried in the State and Federal courts located in Palm Beach County, Florida.

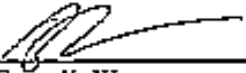
10. Effect of this Amendment. Except as expressly set forth in this Amendment, the terms and conditions of the Agreements shall remain unaffected by this Amendment and shall remain in full force and effect. The Agreements, as amended by this Amendment and the attached Exhibit A, represent the entire agreement between AW Property and AWM with regard to their subject matter and supersede all other previous agreements, understandings and/or representations regarding the same.

*[Handwritten signature]*

Please confirm that this Amendment accurately sets forth our agreement regarding the foregoing matters by signing this Amendment in the space provided below.

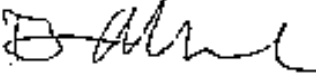
AGREED ON THIS 1 DAY OF June, 2020

AW Property Operations, LLC



By: Brian K. Waxman  
Its: President

American Wave Machines, Inc.



By: Bruce McFarland  
Its: Founder and President

EXHIBIT A  
TERRITORY RIGHTS  
(Depicted in Green)



*[Handwritten signature]*

# Exhibit C

**Bruce McFarland**

---

**From:** Brian Waxman <bwxman@awproperty.com>  
**Sent:** Sunday, May 24, 2020 12:01 PM  
**To:** Bruce McFarland; Mike Lopez; 'oceangateMI@yahoo.com'  
**Subject:** Florida Project  
**Attachments:** AW - AWM Amendment to License Agreement (rev. 5.23.20).docx; Doc - May 22 2020 - 3-10 PM.pdf

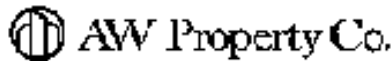
Bruce and Mike:

Good afternoon from a wet and soggy South Florida.

Per your request, I have attached Blake's NDA. If you could please sign and send back to me that would be great. It is the same AWM form used for AW Property Co. I appreciate you allowing him to dig in now, he will be very important for our success.

I have also attached a redraft of the Contract Amendment. Same document with your prior comments in red, we only made a few changes to the text in red. Notably, we cleared up a few terms on the ROFR and added a staged cancellation plan for the initial \$250,000 payment. The penalty is not pro-rated per day, but lighter on the first 60 days and much heavier past that. This allows us to commit to you now in a somewhat significant manner while we spend the next 60 days working with you, learning and getting better organized on this new concept without putting too much at risk.

I hope this works, we have held June 2 or 3 for the trip to Waco.



**Brian K. Waxman, Managing Director**  
11780 US Highway One, Suite 305 • North Palm Beach, Florida 33408  
OTax: (561) 687-3800 • Business: (561) 689-1255  
bwxman@awproperty.com • awproperty.com



## MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT governs the disclosure of information by and between American Wave Machines, Inc. and BLAKE HESS as of 5/22, 2020.

1. As used herein, "Confidential Information" shall mean any and all technical and non-technical information provided by either party to the other relating to the 80 Acre Site in Jupiter, Florida and the American Wave Machines products and services proposed for the site, including but not limited to patent and patent applications, trade secret, proprietary information-ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, knowhow, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the disclosing party provides regarding third parties.
2. The Confidential Information shall be embodied in tangible material (including without limitation, software, hardware, drawings, graphs, charts, disks, tapes, prototypes and samples).
3. Each party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party Confidential Information of the other, except as approved in writing by the other party to this Agreement, and will use the Confidential Information for no purpose other than evaluating or pursuing a business relationship with the other party to this Agreement. Notwithstanding the above, the party to whom Confidential Information was disclosed (the "Recipient") shall not be in violation of this Section 3 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides the other party with prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information. Each party shall only permit access to Confidential Information of the other party to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.
4. Each party shall immediately notify the other upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other party.
5. Each party's obligations under this Agreement with respect to any portion of the other party's Confidential Information shall terminate when the Recipient can document that:
  - (a) It was in the public domain at the time it was communicated to the Recipient by the other party;
  - (b) It entered the public domain subsequent to the time it was communicated to the Recipient by the other party through no fault of the Recipient;

- (c) It was in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient by the other party; or
- (d) It was rightfully communicated to the Recipient free of any obligation of confidence subsequent to the time it was communicated to the Recipient by the other party.

6. Upon termination or expiration of the Agreement, or upon written request of the other party, each party shall promptly return to the other all documents and other tangible materials representing the other's Confidential Information and all copies thereof.

7. The parties recognize and agree that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Confidential Information of the other party disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither party shall make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the other party.

8. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party by either party shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by the other party.

9. This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party. The Recipient's obligations under this Agreement shall survive termination of the Agreement between the parties and shall be binding upon the Recipient's heirs, successors and assigns. The Recipient's obligations hereunder shall continue in full force and effect with respect to non-technical sales, marketing, and financial Confidential Information for five (5) year(s) from the date of disclosure of such Confidential Information. The Recipient's obligations with respect to all technical Confidential Information shall be terminated only pursuant to Section 5.

10. This Agreement shall be governed by and construed in accordance with the laws of Florida without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Palm Beach County, Florida, and the parties hereby consent to the personal jurisdiction and venue of these courts. This Agreement may not be amended except by a writing signed by both parties hereto.

11. Each party acknowledges that its breach of the Agreement will cause irreparable damage and hereby agrees that the other party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

12. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to

best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

- 13. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.
- 14. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.
- 15. Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
- 16. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

American Wave Machines, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

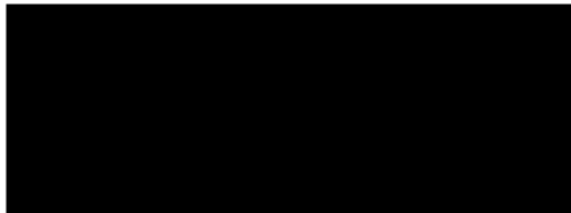
\_\_\_\_\_



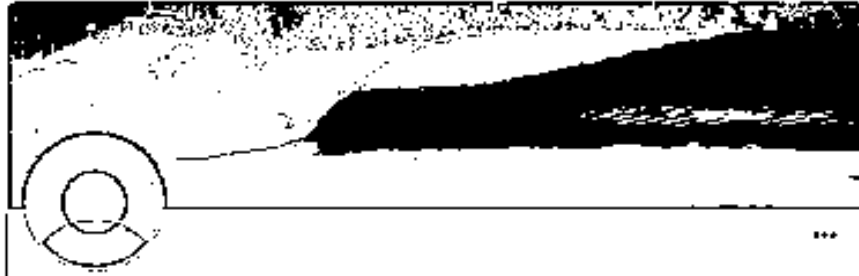
By: BLAKE HESS

Title: CONSULTANT

Date: 5/22/20



# Exhibit D



**Blake Hess**

Chief Operating Officer at Beach Street Development  
Austin, Texas Metropolitan Area - 600+ connections

Sign In to connect

Beach Street Development

University of Illinois Urbana-Champaign

Resume / Experience

**About**

Blake Hess has 30 years of experience as an athlete, founder, and innovator in the action sports industry. While attending the University of Illinois, Blake traveled the world as a professional water skier and wakeboarder. After settling down in Texas, he worked as an art director for a local advertising agency. It did not take long before Blake began missing the excitement of watersports. Blending his business acumen, advertising experience, and his love of watersports, Blake co-founded Texas Six Ranch (TSR) in 2004. TSR is an action sports complex that includes a wake park, skate park, Burton LTR snowboard park, trampolines park and much more. During this time Blake and team was recognized by the Water Sports Industry Association (WSIA) for numerous awards and achievements.

Fifteen years later, Doug Coors & NLand chose Austin for the world's largest inland surf lagoon. Blake joined NLand in August of 2016. Less than a year later Blake was named NLand's General Manager and oversaw operations, facilities, and marketing for the park. In December of 2018 the WSL purchased the Austin site and Blake was retained as the property's General Manager. It did not take long before Blake was promoted and overseeing two sites, including the world-famous Kelly Slater Surf Ranch. Blake was tasked with transforming this RSD facility into a full blown profitable guest oriented business. Despite a world wide pandemic, Blake led Surf Ranch to its best season ever, setting new benchmarks in dance and guest survey metrics in 2020.

Today Blake is a partner at Beach Street Development and works as the Chief Operating Officer building projects worldwide focusing on development and operations. Blake has an abundance of unmatched operational experience in action sports industry. The lessons learned from these opportunities, make Blake one of the most experienced individuals in the young surf park industry.

**Activity**



Our partners at Sun Valley Construction, Inc. and Shasta Pools getting 'er done at Cannon Beach Surf Park. Bleuwave UNIT Surf Pool level Surf...

Liked by Blake Hess



We brought TROJENA to Times Square. Our head-turning 3D visuals stunned New Yorkers and tourists alike with just a taste of things to come. #NEOM...

Liked by Blake Hess

The Australian Grand Prix Corporation has closed its track after an epic weekend of racing and stellar weather. After two years of cancelled events...

Sign in to see all activity

Experience



Beach Street Development COO

Beach Street Development

Mar 2021 - Present · 1 year 2 months

Austin, Texas Metropolitan Area

BSD is pioneering a new segment - barefoot lifestyle destinations and resorts anchored by man-made surfing lagoons. These lagoons provide ocean-like waves and a surfing experience that often rivals the ocean. There are three forces coming together to create this opportunity.

- Revolutionary wave-generating technology is finally making a man-made wave that replicates and improves on the ocean experience for both beginner and experienced surfers.

+ Beach Street has brought together a team...

Show more



WSL/WaveCo. Surf Ranch General Manager

World Surf League

Dec 2018 - Mar 2021 · 2 years 4 months

Austin & Lemoore

The Surf Ranch General Manager is the site wide management representation at Surf Ranch. The General Manager provides leadership and direction to ensure overall guest satisfaction and financial success of the location. The GM is responsible for short and long-term planning, strategic direction and successful operation of the Surf Ranch and related areas. As Surf Ranch GM I am responsible for understanding of the Wave System, Water Safety, Hospitality, Maintenance and Administration...

Show more



NLand Surf Park

2 years 7 months

General Manager

Oct 2017 - Jan 2019 · 1 year 4 months

Austin, Texas

As General Manager, I am responsible for all aspects of operations at the park, from day-to-day staff management to guests. Manages NLand's executive team and overall park values to deliver an excellent guest experience. Directs and coordinates all Department Heads/Directors: Marketing, Operations, Food & Beverage, Facilities, Guest Services, HR & Accounting.

- In 2018 led NLand to record the company's largest total revenue, while simultaneously cutting labor by over 10%.

...

Show more

Assistant General Manager

Jul 2016 - Oct 2017 · 1 year 4 months

Austin, Texas

NLand is a surf destination and brewery in southeast Austin, just 11 miles from the airport. NLand's 10-acre surf lagoon is the largest of its kind in the world, producing waves for surfers of all levels, from beginners to pros. A 1,000-foot pier spans the lagoon and provides access to a sand beach at the north end of the lagoon. NLand Brewing Company overlooks the lagoon, offering craft beer brewed on site and a farm-fresh menu featuring locally sourced ingredients. NLand offers surf...

Show more

# Exhibit E

---

**From:** Brian Waxman <[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com)>  
**Sent:** Friday, June 5, 2020 12:34 PM  
**To:** Bruce McFarland <[bruce@americanwavemachines.com](mailto:bruce@americanwavemachines.com)>; Marie McFarland <[marie@americanwavemachines.com](mailto:marie@americanwavemachines.com)>; Mike Lopez <[Mike@americanwavemachines.com](mailto:Mike@americanwavemachines.com)>; 'oceangateML@yahoo.com' <[oceangateML@yahoo.com](mailto:oceangateML@yahoo.com)>; Willy McFarland <[willy@americanwavemachines.com](mailto:willy@americanwavemachines.com)>  
**Cc:** Blake Hess <[blake@blakchess.com](mailto:blake@blakchess.com)>; 'Raymond L. Graziotto (Raymond@SKHOLDINGS.com)' <[Raymond@SKHOLDINGS.com](mailto:Raymond@SKHOLDINGS.com)>; 'Ken@SKHOLDINGS.com' <[Ken@SKHOLDINGS.com](mailto:Ken@SKHOLDINGS.com)>  
**Subject:** AWM - Florida Project

Bruce, Marie, Mike, Will (Ray, Ken, Blake cc'd):

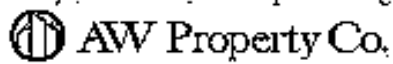
On behalf of our team, we would like to thank you for making the trip to Florida, spending the time with us and helping launch this exciting project. We feel the meetings were very productive and are anxious to continue the progress.

I have listed below several key follow up items that we would like to confirm will be in progress over the next few weeks. Please feel free to edit if you have anything to add or clarify.

- AWM - continue to develop schematic design based upon input from meetings. Special focus on end bays and shape of reform/beginner waves. Also, avoiding a steep slope in middle of wave basin for safety.
- AWM - send PPT we reviewed on different type of waves to AW team
- AWM - prepare excel spreadsheet on different waves (A frame, point, reform/beginner), length of waves, spacing of waves/sets, and potential rider counts
- AWM - obtain proposal from WTS on water quality management services
- AWM - Mike contact Blake to review ancillary revenue sources
- AWM - try to arrange Waco trip at end of June
- AW - obtain proposal from Kimley Horn on water quality management services
- AW - obtain topo on existing site

As far as communication, we would ask to keep this email chain open and everyone copied on it so each key team member can monitor progress and respond to inquiries when requested.

Many thanks for your help. Have a great weekend.



**Brian K. Waxman, Managing Director**  
 11780 US Highway One, Suite 305 — North Palm Beach, Florida 33408  
 Office: (561) 687-5800 — Facsimile: (561) 689-1255  
[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com) — [awproperty.com](http://awproperty.com)



# Exhibit F

**Marie McFarland**

---

**From:** Mike Lopez  
**Sent:** Wednesday, June 10, 2020 8:16 PM  
**To:** Marie McFarland; Bruce McFarland  
**Subject:** Fw: Procedural Matter

---

**From:** Brian Waxman <bwxman@awproperty.com>  
**Sent:** Wednesday, June 10, 2020 6:37 PM  
**To:** Mike Lopez <Mike@americanwavemachines.com>; 'Raymond E. Graziotto (Raymond@SKHOLDINGS.com)' <Raymond@SKHOLDINGS.com>  
**Subject:** RE: Procedural Matter

Mike, confirmed and understood. No problem at all. We will stand by.



Brian K. Waxman, Managing Director  
11780 US Highway One, Suite 305 • North Palm Beach, Florida 33408  
Office: (561) 687-5800 • Facsimile: (561) 689-1255  
bwxman@awproperty.com • awproperty.com

---

**From:** Mike Lopez <Mike@americanwavemachines.com>  
**Sent:** Wednesday, June 10, 2020 2:27 PM  
**To:** Brian Waxman <bwxman@awproperty.com>; 'Raymond E. Graziotto (Raymond@SKHOLDINGS.com)' <Raymond@SKHOLDINGS.com>  
**Subject:** Procedural Matter

Brian & Ray

Hope all is well... The following represents AWM's response to your email dated June 5<sup>th</sup>. The AWM team is making good progress on all fronts. Due to the heightened interest around the space and the proprietary nature of AWM's business and experience I wanted to bring up a very important procedural matter. AWM has patents pending in areas of wave generation and water filtration. Given the above and for liability reasons, we are requesting communications in the coming months to be limited to direct partners, stakeholders and accredited professionals who will have general liability policies in place. More specifically, any and all technical drawings and specifications should be shared with professional technical staff only. As to general operations and marketing methods we agree to collaborate with your appointed operations consultant on those specific matters. With that said we are ready to send information your way with a secured data bank, served by granted access.

Thank you for your understanding... Talk soon...

M. Lopez  
SVP/AWM

Sent from Mail for Windows 10

# Exhibit G



1140 South Coast  
Highway 101  
Encinitas, CA 92024

Tel 760-942-6505  
Fax 760-942-5515  
www.CoastLawGroup.com

March 11, 2022

**Via Electronic and US Mail**  
sw:iten@robertallenlaw.com

Ms. Serena A. Witter  
Robert Allen Law  
1441 Brickell Ave. Ste. 1400  
Miami, FL 33131

**Re: AWM's Notice of Tortious Interference Claim and Demand for Payment**  
Response of Beach Street Development, LLC

Dear Ms. Witter:

Coast Law Group LLP represents the interests of Beach Street Development, LLC (Beach Street) regarding your *Notice of Tortious Interference Claim and Demand for Payment* dated March 4, 2022. Beach Street strongly disagrees with characterizations contained in your correspondence, denies that it tortiously interfered in American Wave Machine's (AWM's) business relationship with AW Property Co. (AWPO) and rejects the demand for payment of damages related thereto.

First, you allege the decision of AWPO not to make a second milestone payment was because "its investors had lost confidence in AWM based on certain statements made by [Beach Street COO, Blake Hess]." Beach Street and Mr. Hess deny that any statements made to AWPO's management materially impacted the decision to end its relationship with AWM.

Second, you allege five specific statements were "made with the intention of disrupting and interfering with AWM's contractual relationship with AWPO" and that Mr. Hess admitted in a phone call that these statements were made by him or another individual. Mr. Hess acknowledges that he discussed with Mr. Lopez the fact that AWM has a reputation within the industry for seeking to aggressively pursue its purported rights, whether through litigation or threats of litigation – just as you have done with your demand letter. In this regard we would also note the threatening letter sent March 7, 2022, to Beach Street by AWM's patent attorney Manuel de la Cerra. This characterization is accurate and therefore cannot be deemed defamatory. Mr. Hess denies the claim that his discussions with AWPO regarding this aspect of AWM's reputation materially impacted AWPO's decision to cancel its contract with AWM or that it was intended to disrupt the parties' relationship.

Mr. Hess further acknowledges that he discussed with AWPO his personal experiences with operational problems at the Waco facility. However, these problems are not a secret within the industry. As AWM is aware, Mr. Hess was retained by AWPO to assist with implementation of the AWM project, and it was certainly within his scope of work to ensure issues experienced in

**Notice of Claim of Tortious Interference**  
**Beach Street Development LLC**  
March 11, 2022  
Page 2 of 2

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Waco would be avoided in Florida. Discussions regarding operation of the AWM facility in Waco were never intended to interfere with AWPO's and AWM's relationship; rather, they were intended to facilitate a successful project by AWPO.

Regarding the three remaining statements raised by Mr. Lopez, Mr. Hess denies that he made such statements, that he attributed any such statement to Mr. Tony Finn, or that he ever intended to disrupt AWPO's relationship with AWM. Indeed, Mr. Hess made clear to Mr. Lopez he had no knowledge of AWM's issues with Japan, its shareholders, or contract price changes.

Third, you claim Beach Street is liable for damages of \$7,390,000 due to the alleged statements made and make demand for this sum within seven days. Beach Street disagrees with your characterizations and conclusion, and therefore rejects the demand.

Finally, your correspondence presumes Mr. Hess or Beach Street have improperly received AWM's confidential and proprietary information and demands an accounting of the same. As AWM is aware, Mr. Hess and Beach Street were retained by AWPO in April 2021 to consult regarding various development issues related to the AWM project. Prior to that, and continuing, Mr. Hess provided consultation services to AWPO subject to a Mutual Non-Disclosure Agreement (NDA) dated May 22, 2020. The NDA executed by Mr. Hess was conveyed to AWM representatives by AWPO's Brian Waxman via electronic mail on May 24, 2020 and remains in effect until terminated. Mr. Hess has not violated the NDA and no confidential or proprietary information of AWM has been improperly disclosed to him or to Beach Street.

If you have evidence supporting your claim that Mr. Hess or Beach Street have improperly received confidential or proprietary information, please provide such evidence and we will gladly respond. Otherwise, no accounting will be forthcoming.

Please feel free to contact me should you have further questions or concerns.

Sincerely,  
**Coast Law Group LLP**

  
Marco A. Gonzalez

cc: Beach Street, AWPO



Unique Code : CAA-FBH-BCAJJ-BJGEJIGGH-DJAEJH-F Page 52 of 88

# Exhibit H

**From:** Kenneth A. Blair <Ken@SKHOLDINGS.com>  
**Sent:** Thursday, April 8, 2021 10:02 AM  
**To:** Raymond E. Graziotto <Raymond@SKHOLDINGS.com>; Brian Waxman <BWaxman@awproperly.com>; david@acknepd.com; Ken Cates <ken.cates@northstarmgmt.com>; Blake Hess <blake@beachstreetdev.com>; Schwartz, Mike <Mike.Schwartz@kimley-horn.com>; Mulholland, Kara <kara.mulholland@kimley-horn.com>  
**Cc:** Bruce McFarland <bruce@americanwavemachines.com>; Mike Lopez <Mike@americanwavemachines.com>  
**Subject:** Surf Ranch team meeting  
**Importance:** High

All –

A part of our team is going to be in town from CA, and we'd like to take advantage of it to have an all-hands, in-person team meeting at our offices next **Thursday (04-15-21) at 1:00 p.m. EDT**, w/ us planning on the meeting likely being a 2-hour+ event.

Could you all confirm your availability, after which I'll send out invites to all concerned.

Look forward to hearing from everyone, and any calendar adjustments you can do if needed to make this happen.

**KC** – if you could have someone from your team from yesterday's meeting attend that would be very appropriate.

**BH** – are you available by video to attend (assuming you don't want to fly here to attend the meeting)?

**MS** – could also have someone from your electrical & structural team attend? Let me know their names / emails and I'll add them to the list.

Thanks to all.

**Kenneth A. Blair**  
**Seven Kings Holdings, Inc.**

---

630 Maplewood Drive, Suite 100 | Jupiter, Florida 33458  
P. 561.625.9443 | F. 561.625.5689  
C. 561.379.3124

# Exhibit I



**From:** Bruce McFarland  
**To:** Brian Waxman (bwaxman@wvcproperty.com); Raymond Greloto (Raymond@5NKHOLDINGS.com)  
**Cc:** Mike Lopez (mike@americanwavemachines.com); Marie McFarland (marie@americanwavemachines.com)  
**Subject:** Follow Up  
**Date:** Monday, April 19, 2021 11:40:00 AM

---

Dear Brian and Ray,

Thank you for the frank discussion last week. Our time in Florida was well utilized. Following are reasons for our position relative to third parties. As it relates to our partnership the greatest path for success is mutual trust. Without trust we end up with rogue operations that can lead to legal issues. Fortunately AWM recently prevailed in over a yearlong case where a Federal Judge affirmed AWM IP and trade secrets. Peripherally, a third party was involved in aspects of this case.

It's a tall ask for AWM to work with someone affiliated with a company that actively tried to undermine us, are attempting to falsely equate PerfectWave IP in the marketplace, and is licensed to exclusively sell another wave technology. Any position at this project is a coveted job given the team, you guys individually, and the IP that's behind it. There are plenty of capable candidates in Florida. AWM would be happy to send job descriptions and a recommendation for a recruiter we work with. The project will undoubtedly attract the best and brightest, someone who will become a loyalist, part of the team, a PerfectWave IP expert, not a wave pool generalist. In this particular case, an arm's length relationship with a team member is not conducive to success.

On the subject of filtration I think it's a good juncture for your team travel to a WTS facility. The closest is Whitewater center in Charlotte and next is BSR. I have talked to WTS, they have good info on the status of many facilities from various engineers and log records of performance at their facilities that is not matched anywhere else in the world. They are going to reach out directly to Ken.

Let me know if you'd like to get on a call.

Sincerely,  
Bruce

**Bruce McFarland** | Founder

**AMERICANWAVEMACHINES**  
*"World class surf, outside the ocean."*

2240 South Cedice  
Solana Beach, CA 92075  
Office: 604.785.1497  
[perfectswell.com](http://perfectswell.com)

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# Exhibit J

August 31, 2020

Bruce McFarland  
Marie McFarland  
Mike Lopez  
American Wave Machines  
224C South Coctros  
Solana Beach, CA 92075

RE: 80 Acres West Palm Beach, FL Wave Pool Project

Dear Bruce, Marie and Mike:

The purpose of this second letter agreement is to amend the terms of the Agreements dated June 1, 2020 between AW Property Operations, LLC and American Wave Machines, Inc. as follows:

1. Purchase Price and Payment Terms. The Payment Schedule contained in Section 2 of the Purchase & License Agreement is hereby amended follows:

The parties acknowledge that the first two termination periods have lapsed and \$50,000 has been forfeited to date by AW Property. Going forward, if the Agreements are terminated within 135 days of the effective date, Licensee shall forfeit a total of \$100,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$150,000). If terminated within 165 days of the effective date, Licensee shall forfeit a total of \$200,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$50,000). If terminated, Licensee shall have no further liability to AWM for additional payments or performance under the Agreements except those items which specifically survive termination of the Agreements.

The second Milestone payment shall occur no later than 165 days after signature.

2. Effect of this Amendment. Except as expressly set forth in this Second Amendment, the terms and conditions of the Agreements shall remain unaffected by this Second Amendment and shall remain in full force and effect. The Agreements, as amended by this Second Amendment, represent the entire agreement between AW Property and AWM with regard to their subject matter and supersede all other previous agreements, understandings and/or representations regarding the same.

Please confirm that this Amendment accurately sets forth our agreement regarding the foregoing matters by signing this Second Amendment in the space provided below.

AGREED ON THIS 31 DAY OF AUGUST, 2020

AW Property Operations, LLC

American Wave Machines, Inc.



By: Brian K. Waxman  
Its: President

By: Bruce McFarland  
Its: President

# Exhibit K

October 13, 2020

Bruce McFarland  
Marie McFarland  
Mike Lopez  
American Wave Machines  
224C South Coast  
Solana Beach, CA 92075

RE: 80 Acres West Palm Beach, FL Wave Pool Project

Dear Bruce, Marie and Mike:

The purpose of this third letter agreement is to amend the terms of the Agreements dated June 1, 2020 between AW Property Operations, LLC and American Wave Machines, Inc. as follows:

1. Purchase Price and Payment Terms. The Payment Schedule contained in Section 2 of the Purchase & License Agreement is hereby amended follows:

The parties acknowledge that the first two termination periods have lapsed and \$50,000 has been forfeited to date by AW Property. Going forward, if the Agreements are terminated within 165 days of the effective date, Licensee shall forfeit a total of \$100,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$150,000). If terminated, Licensee shall have no further liability to AWM for additional payments or performance under the Agreements except those items which specifically survive termination of the Agreements. The second Milestone payment shall occur no later than 165 days after signature.

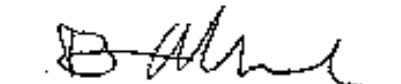
2. Effect of this Amendment. Except as expressly set forth in this Amendment, the terms and conditions of the Agreements shall remain unaffected by this Amendment and shall remain in full force and effect. The Agreements, as amended by this Amendment, represent the entire agreement between AW Property and AWM with regard to their subject matter and supersede all other previous agreements, understandings and/or representations regarding the same.

Please confirm that this Amendment accurately sets forth our agreement regarding the foregoing matters by signing this Amendment in the space provided below.

AGREED ON THIS 12 DAY OF October, 2020

AW Property Operations, LLC

American Wave Machines, Inc.



By: Brian K. Waxman  
Its: President

By: Bruce McFarland  
Its: President

# Exhibit L

November 17, 2020

Bruce McFarland  
Marie McFarland  
Mike Lopez  
American Wave Machines  
2240 South Cedros  
Solana Beach, CA 92075

RE: 80 Acres West Palm Beach, FL - Wave Pool Project

Dear Bruce, Marie and Mike:

The purpose of this fourth letter agreement is to reinstate and amend the terms of the Agreements dated June 1, 2020 between AW Property Operations, LLC and American Wave Machines, Inc. as follows:

1. Reinstatement. The parties acknowledge that the Agreements were terminated on Friday, November 13, 2020 as a precaution during contract extension negotiations. This amendment shall serve to reinstate the Agreements in full force and effect.

2. Purchase Price and Payment Terms. The Payment Schedule contained in Section 2 of the Purchase & License Agreement is hereby deleted and replaced in its entirety by the following:

Milestone	Percent of Purchase Price	Payment USD
Upon Signature and Commencement of Schematic Development	3.27%	\$ 250,000
Upon Order of Structural Stainless	26.73%	\$ 2,042,000
Upon Order of Power Machinery	30%	\$ 2,292,000
Upon Transfer of Parts to Carrier	30%	\$ 2,292,000
Upon Commissioning	10%	\$ 764,000
<b>TOTAL</b>	<b>100%</b>	<b>\$ 7,640,000</b>

Metrics and criteria for determining project go ahead shall be identified as soon as reasonably practical. Proforma set of plans will be provided by AWM upon signature for analysis and from which to form basis of go-ahead decision. The second Milestone payment shall occur no later than January 8, 2021.

Notwithstanding anything to the contrary set forth in the Agreements, Licensee shall have the right to terminate the Agreements prior to payment for the second Milestone - Order of Structural Stainless. If terminated within 30 days of the effective date, Licensee shall forfeit \$25,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$225,000). If terminated within 60 days of the effective date, Licensee shall forfeit a total of \$50,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$200,000). If terminated by January 8, 2021, Licensee shall forfeit a total of \$100,000 and receive a refund for the remainder of the initial \$250,000 submitted (i.e. \$150,000). If terminated, Licensee shall have no further liability to AWM for additional payments or performance under the Agreements except those items which specifically survive termination of the Agreements.

3. Effect of this Amendment. Except as expressly set forth in this Amendment, the terms and conditions of the Agreements shall remain unaffected by this Amendment and shall remain in full force and effect. The Agreements, as amended by this Amendment, represent the entire agreement between AW



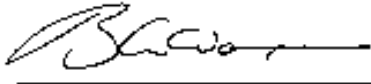
Property and AWM with regard to their subject matter and supersede all other previous agreements, understandings and/or representations regarding the same.

Please confirm that this Amendment accurately sets forth our agreement regarding the foregoing matters by signing this Amendment in the space provided below.

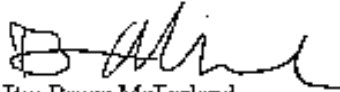
AGREED ON THIS 17 DAY OF November, 2020

AW Property Operations, LLC

American Wave Machines, Inc.



By: Brian K. Waxman  
Its: President



By: Bruce McFarland  
Its: President

# Exhibit M

**From:** Mike Lopez  
**To:** Mark McFarland; Bruce McFarland  
**Subject:** Fw: AW-AWM  
**Date:** Tuesday, March 2, 2021 4:35:01 PM

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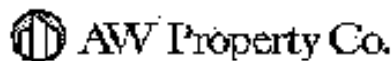
**From:** Mike Lopez <Mike@americanwavemachines.com>  
**Sent:** Tuesday, March 2, 2021 7:34 PM  
**To:** Brian Waxman <bwaxman@awproperty.com>  
**Subject:** Re: AW-AWM

Brian  
All good and confirmed as to both emails submitted.  
Let's get together next week and coordinate the engagement of Kinley Firm's planning and filtration design.  
Thanks  
Mike Lopez  
SVP/AWM

---

**From:** Brian Waxman <bwaxman@awproperty.com>  
**Sent:** Tuesday, March 2, 2021 2:12 PM  
**To:** Mike Lopez <Mike@americanwavemachines.com>; 'oceangateML@yahoo.com' <oceangateML@yahoo.com>  
**Subject:** Re: AW-AWM

Mike, apologies, slight oversight from last night. Add to the below that AWM will be able to talk and negotiate with others for projects within our South Florida territory if/until we make the second milestone payment below, at which time, our exclusive territory restriction shall remain intact.



**Brian K. Waxman, Managing Director**  
11780 US Highway One, Suite 305 North Palm Beach, Florida 33408  
Office: (561) 687-5800 Facsimile: (561) 689-1255  
bwaxman@awproperty.com awproperty.com

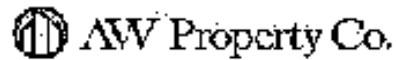
---

**From:** Brian Waxman  
**Sent:** Monday, March 1, 2021 5:58 PM  
**To:** 'mike@americanwavemachines.com' <mike@americanwavemachines.com>; 'oceangateML@yahoo.com' <oceangateML@yahoo.com>  
**Subject:** AW AWM

Mike:

Thanks for the help today. Confirming we are good with allowing our \$250,000 deposit to be hard and non-refundable as of today. Confirming we will have until June 1 to proceed with the Second Milestone Payment (\$2,042,000 - Order of Structural Steel) and we will agree to start with Kinley Horn on filtration design work in the next two weeks.

Please confirm. Thanks again.



**Brian K. Waxman, Managing Director**  
11780 US Highway One, Suite 305 — North Palm Beach, Florida 33408  
Office: (561) 687-5500 — Facsimile: (561) 689-1255  
[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com) — [awproperty.com](http://awproperty.com)

# Exhibit N

**From:** [Marie McFarland](#)  
**To:** [Brian Waxman](#); [Mike Lopez](#)  
**Cc:** [Bruce McFarland](#)  
**Subject:** RE: AWM Florida  
**Date:** Tuesday, June 1, 2021 1:38:00 PM

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Hi Brian,

Apologies for delayed response, went off grid sort of, for the weekend. I hope you had a good one. Yes, terms below agreed to. Further, agreed during our discussion were price increases. We have a 10% price increase, expected and a so driven by supply chain impacts due to pandemic, particularly affecting raw materials. We will distribute the increase over the 4 remaining milestone payments.

Thanks for working so closely with us and keeping lines of communication open. Future bright!

Sincerely,

Marie

**Marie McFarland**  
Principal  
American Wave Machines, Inc. [Americanwavemachines.com](mailto:Americanwavemachines.com)  
2242 South Cedice Ave. [Jusli](#)  
Solana Beach, CA 92075  
O: +186 756 1487  
M: +155 554 7861

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**From:** Brian Waxman <[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com)>  
**Sent:** Tuesday, June 1, 2021 12:11 PM  
**To:** Mike Lopez <[Mike@americanwavemachines.com](mailto:Mike@americanwavemachines.com)>  
**Cc:** Marie McFarland <[marie@americanwavemachines.com](mailto:marie@americanwavemachines.com)>; Bruce McFarland <[bruce@americanwavemachines.com](mailto:bruce@americanwavemachines.com)>  
**Subject:** RE: AWM Florida

I understand you were not able to address this email by our deadline last evening and discussed it this morning. Please confirm that this email shall serve to reinstate the Purchase & License Agreement dated June 7, 2020 and all amendments thereto and shall serve to extend the milestone payments due under our agreements so that the second milestone payment is now due on August 1, 2021. Also, confirming that we will accelerate the second milestone payment due to you in the event we are able to close our last remaining investor prior to August 1.

Thank you for the understanding.

Brian



**Brian K. Waxman, Managing Director**  
11780 US Highway One, Suite 305 | North Palm Beach, Florida 33408  
Office: (561) 687-5800 | Facsimile: (561) 689-1255  
[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com) | [awproperty.com](http://awproperty.com)

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**From:** Brian Waxman <[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com)>  
**Sent:** Monday, May 31, 2021 8:50 PM

**To:** Mike Lopez <[Mike@americanwavemachines.com](mailto:Mike@americanwavemachines.com)>  
**Cc:** Marie McFarland <[marie@americanwavemachines.com](mailto:marie@americanwavemachines.com)>; Bruce McFarland <[bruce@americanwavemachines.com](mailto:bruce@americanwavemachines.com)>  
**Subject:** AWM Florida

All: We are on a June 1 deadline to submit the second milestone payment and verbally agreed to extend 60 days on Thursday. I do not want to be in breach of our agreements if this get past tonight without addressing. On Friday I sent you the below language to confirm and have not received anything back.

Will you please confirm we will extend the milestone payments due under our agreements so that the second payment is now due on August 1, 2021. This 60-day extension from June 1 is much appreciated by Ray, me and our partners.

Also, confirming that we will accelerate the second milestone payment due to you in the event we are able to close our last remaining investor prior to August 1. The upcoming payment to AWM is our highest priority in the project.

Please understand I have to preserve our rights not to be in breach to the agreements, therefore if I do not get a confirmation on the extension by the end of today, please consider this our termination of the Purchase & License Agreement, dated June 1, 2020 and all amendments hereto.

Thanks for the understanding,  
Brian



**Brian K. Waxman, Managing Director**  
11780 US Highway One, Suite 305 | North Palm Beach, Florida 33408  
Office: (561) 687-5800 | Facsimile: (561) 689-1253  
[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com) | [awproperty.com](http://awproperty.com)

# Exhibit O



**From:** [Marie McFarland](#)  
**To:** [Brian Waxman](#); [Raymond E. Ciszewski](#)  
**Cc:** [Mike Lopez](#); [Bruce McFarland - American Wave Machines, Inc.](#)  
**Subject:** Info  
**Date:** Monday, July 19, 2021 4:51:00 PM  
**Attachments:** [AWM SSI E-Mail.pdf](#)  
[19JULY2021\\_AW\\_PROPERTIES\\_Milestone 2 Invoice.pdf](#)  
[AWM Cost Increase.pdf](#)  
[AWM-AW FTA Amendment to License Agreement.docx](#)

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Brian and Ray,

We understand from Mike that there have been 11<sup>th</sup> hour "issues" brought up by your investors that you were unable to refute and that Mike has had a few phone calls with you to enlighten. Bruce and I are sending this e-mail to address concerns as follows:

1. SSI Dissatisfaction. Please see attached e-mails from Owner/Investor Yasuo Hoshi and SSI General Manager Toshitiko Adachi. Bruce and I began our forays into Japan beginning in Oct. 2016. The result of the efforts of AWM and our licensee are nothing short of miraculous. On a personal note, it is one of our biggest accomplishments along with the entire team. Our hearts are full of gratitude and respect for all involved. The characterization communicated is beyond the pale, something unworthy of any of us.
2. WACO Dissatisfaction. AWM and Lemur Island Holdings concluded a lawsuit with a private settlement on Jan. 22, 2021. It comes as no surprise that confidentiality of the settlement is being breached and false characterizations are being made. AWM is adhering to the settlement as directed by the court.
3. Concerns that Marco Thompson and Jennifer Krach are demanding full payoff and Marie is out there seeking funds for this purpose. This is another characterization that is so far beyond the pale, we are absolutely stunned and incredulous. We have an idea where the rumor may have started and have already made our concerns known to you regarding this person.
4. 10% price increase did not come with explanation. As is typical in our business, price increases are often voiced in conversations with suppliers when prospective orders are discussed prior to quotation issuance. Price increases have been verbalized, but no AWM orders have been placed. There is nothing untoward, this is standard business practice, prices go up. Attached is information you may find useful. Upon receipt of milestone 2 no later than August 1, we will issue PO's to set pricing. Timing is of essence.

Can AWM have confidence that the originators of these rumors, who had what appears to be unfettered access to your investors (when AWM did not), will be dealt with? As with a lot of our projects, we have strict levels of confidentiality and very limited access to third parties, if any. You can be assured AWM speaks to no one and provides zero information to so-called consultants.

The second milestone invoice is attached along with the amendment. Can you kindly advise on status? We're available for a call anytime.

Sincerely,  
Bruce and Marie

**Marie McFarland**

Principal  
American Wave Machines, Inc. [AmericanWaveMachines.com](mailto:AmericanWaveMachines.com)  
2740 South Contra Ave  
Salina Beach, CA 92075  
O: (858) 758-1978  
M: (619) 334-7881

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# Exhibit P

**Marie McFarland**

---

**From:** Brian Waxman <bwaxman@awproperty.com>  
**Sent:** Wednesday, July 28, 2021 5:48 PM  
**To:** Bruce McFarland  
**Cc:** Raymond Graziotto (Raymond@SKHOLDINGS.com); Willy McFarland; Mane McFarland; Mike Lopez  
**Subject:** Re: Update Request

Thanks for the follow up Bruce. Ray and I caught up yesterday on this. I'll reach out in the morning for a time to speak. Have a nice evening. Brian

Brian K. Waxman, Managing Director  
AW Property Co.  
11780 US Highway One, Suite 305  
North Palm Beach, Florida 33408  
Office: (561) 687-5800  
bwaxman@awproperty.com

On Jul 28, 2021, at 2:44 PM, Bruce McFarland <bruce@americanwavemachines.com> wrote:

Hi Brian,  
Hope all is well. Our Japan start-up team just returned. It could not have gone better. Olympic athletes and the gold medalist were trained. PerfectSwell Shizunami garnered coverage on CNN and NBC Olympics. The licensee is generating revenue and stoke. We have a lifelong business partner and friendship in Japan. PerfectSwell\* has been accepted by the deepest core of Japanese surf including the brands, magazines, and social media.

We have been expecting to hear from you regarding our last e-mail sent July 19 and our phone call last Friday. Can you please update? Milestone payment is due no later than Monday August 2. In running our business, this level of uncertainty at the 11<sup>th</sup> hour is challenging. Please advise urgently. I will follow up immediately or we can get on a call if you prefer.

Sincerely,

--  
**Bruce McFarland** | Founder

<image003.jpg>  
*"World class surf, outside the ocean."*

2240 South Centras  
Solana Beach, CA 92075  
Office: 858 755-1497  
[perfectswell.com](http://perfectswell.com)

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# Exhibit Q

**From:** Bruce McFarland  
**To:** Brian Waxman ([bwaxman@vvcproperty.com](mailto:bwaxman@vvcproperty.com)); Raymond Grelato ([raymond@5KHOLDINGS.com](mailto:raymond@5KHOLDINGS.com))  
**Cc:** Mike Lopez ([mike@americanswemachines.com](mailto:mike@americanswemachines.com)); Marie McFarland ([marie@americanswemachines.com](mailto:marie@americanswemachines.com))  
**Subject:** Call Request  
**Date:** Sunday, August 1, 2021 10:58:03 AM

---

Dear Brian and Ray,

On the call requested by AWM last Wednesday, Brian indicated he doesn't know who to believe, AWM or the third party rumor mongers, and that investors are not going forward with the project. With that clear understanding AWM had an emergency investor meeting to discuss the situation. We are exploring our legal options related to contract interference and other potential issues. It is in our mutual best interest to discuss this on the phone prior to your upcoming investor meeting. Please advise on availability as soon as possible.

Sincerely,  
Bruce

--

**Bruce McFarland** | Founder

**AMERICANWAVEMACHINES**  
*"World class surf, outside the ocean."*

2210 South Cedree  
Seaside Beach, CA 92075  
Office: 856.755.1497  
[americanswellsurf.com](http://americanswellsurf.com)

\*\*\*\*\*  
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\*\*\*\*\*

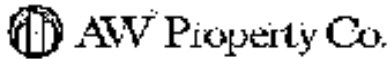
# Exhibit R



**From:** [Brian Waxman](#)  
**To:** [Marie McFarland](#); [Raymond E. Graziotto](#)  
**Cc:** [Bruce McFarland](#); [Mike Lopez](#)  
**Subject:** RE: AW Contract - Terminated Version  
**Date:** Thursday, July 29, 2021 12:33:53 PM

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Understood and thank you. Will keep in touch.



**Brian K. Waxman, Managing Director**  
11780 US Highway One, Suite 505 — North Palm Beach, Florida 33408  
Office: (561) 687-5800 — Facsimile: (561) 689-1255  
[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com) — [awproperty.com](http://awproperty.com)

---

**From:** Marie McFarland <[marie@americanwavemachines.com](mailto:marie@americanwavemachines.com)>  
**Sent:** Thursday, July 29, 2021 3:27 PM  
**To:** Brian Waxman <[bwaxman@awproperty.com](mailto:bwaxman@awproperty.com)>; Raymond E. Graziotto <[Raymond@SKHOLDINGS.com](mailto:Raymond@SKHOLDINGS.com)>  
**Cc:** Bruce McFarland <[bruce@americanwavemachines.com](mailto:bruce@americanwavemachines.com)>; Mike Lopez <[Mike@americanwavemachines.com](mailto:Mike@americanwavemachines.com)>  
**Subject:** AW Contract - Terminated Version

Brian and Ray,  
Attached please find contract termination. We will maintain confidentiality.  
Sincerely,  
Marie and Bruce

**Marie McFarland**  
Principal  
American Wave Machines, Inc. [AmericanWavemachines.com](http://AmericanWavemachines.com)  
2242 South Collins Ave [Inca](http://Inca)  
Selina Beach, GA 32075  
O: 1858 755 1197  
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# Exhibit S



## Clément Ginestet · 3rd

Product Engineer, Endless Surf at WhiteWater

- WhiteWater
- Institut Supérieur de Mécanique de Paris (ISMEP Supmaca Paris)  
Paris, Île-de-France, France · [Contact info](#)

368 connections

[Message](#)

[More](#)

### Activity

273 followers

Clément hasn't posted lately

Clément's recent posts and comments will be displayed here.

[Show all activity →](#)

### Experience



Product Engineer, Endless Surf

WhiteWater

Dec 2018 - Present · 2 yrs 5 mos

Paris, Île-de-France, France



American Wave Machines, Inc.

Engineer

Salina Beach, California

Engineer

Oct 2016 - Nov 2018 · 8 yrs 2 mos

Engineering Intern

Mar 2011 - Sep 2011 · 7 mos

Improvement of Surf pools design with a innovative CFD model

Engineering Intern

MADEAconcept

Apr 2010 - Aug 2010 · 5 mos

Région de Paris, France

Design and structural analysis of a new simulator extension

# Exhibit T



**John Luff**

Co-Founder & Partner at DSRT Surf & Beach Street Development // Founder at Surf Park Central  
Encinitas, California, United States - 500+ connections

Sign In to connect

- Beach Street Development & Operations
- Harvard University Graduate School of Design
- Websites

**About**

Accelerating the development of surfing beyond the ocean. Development, investment, management and marketing of world class surf parks, surf lagoons, surf pools, surf venues and human-made surf destinations both domestic (U.S.) and International.

Human-made surf destinations, surf parks and surf venues are one of the primary drivers enabling surfing to become a mainstream commercially sustainable sport and to promoting surfing as an iconic lifestyle that transcends geographical boundaries and all nationalities and cultures.

Specialties: Human-Made Surf Destination Development, Hospitality, Sports Tourism, Marketing & Sales, Consulting, Business Development, Digital / Social Media, Sponsorships and Activation, Strategic Partnerships, Business Strategy, Negotiation, Media, Surf Park & Surf Destination Conceptualization, Design, Planning, Development, Investment, Management & Operations.

Environmentally & Socially Responsible Development & Operations are an absolute priority and core value in our organizations.

Founder of Surf Park Central (www.SurfParkCentral.com)

Co-Founder of Surf Park Summit

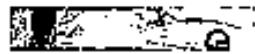
- ◆ Surf Parks
- ◆ Human-Made Surf Destinations, Surf Lagoons, Surf Pools and Surfing Features / Attractions
- ◆ Wave Parks
- ◆ Wave Technology
- ◆ Surf Park Events
- ◆ Potential Developers of Surf Parks, Surf Pools and Surf Venues
- ◆ Surf Park Suppliers

◆ What is a Surf Park? -- A recreational action and adventure water sports destination for enthusiasts of all ages who have an interest in an ocean-like surfing experience. Surf Parks have the potential to be world class surf destinations that feature surf lagoons and surf pools offering high quality waves and encompass the best of beach culture and the surf lifestyle. Unlike your typical day at the beach, Surf Park experiences can guarantee ideal conditions for surfing in a safe and controlled environment.

**Articles by John**



Surf Park Central July 2018 Newsletter  
By John Luff  
Aug 2, 2018



May 31, 2018



Surf Park Central News - September 2017  
By John Luff  
Sep 9, 2017

Activity



ACTIVITY  
Activity

Hearty Congrats to the DSRT Surf team for finalizing approvals. This is going to be amazing.  
Liked by John Luff



Improving company culture is vital to your organisation's success — but company culture is one of those things many talk about without putting it in...  
Liked by John Luff



In late 2020, I took on the role of President at what was then Mornington Peninsula Bodyboard Club. One of the first things the committee and I...  
Liked by John Luff

Sign In to see all activity

Experience



Co-Founder & Partner

Beach Street Development & Operations

Jul 2019 - Present - 2 years 10 months

Del Mar, California, United States

Beach Street Development & Operations is pioneering a new segment – barafat lifestyle destinations and resorts anchored by human-made surfing lagoons. These surf lagoons provide ocean-like waves and a surfing experience that often rivals the ocean. Creating an entirely new asset class requires experience, vision and authenticity.

The Beach Street Development & Operations Team has over 90 years of combined experience in surf technology, real estate development, investments, private...

Show more



Co-Founder & Partner

DSRT Surf

Jan 2017 - Present - 5 years 4 months

Palm Desert, California

Working alongside an amazing team to develop a world class surf destination in Palm Desert, California. Making Waves and Sharing the Sticks.



Surf Park Central

10 years 4 months

...with a focus on the development of surf parks and the development of surf destinations beyond the ocean.

At Surf Park Central we're focused upon accelerating the development of surfing beyond the ocean and the man-made surf destinations that make it all possible.

We serve a variety of roles in the development, advisory, consulting, marketing and promotion of world class surf parks, surf venues and man-made surf destinations for authentic...

Show more

Co-Founder of Surf Park Summit

May 2012 - Present · 10 years

Greater San Diego Area

Surf Park Central produces and hosts the annual Surf Park Summit event series.

As we see it, the vision is clear: build authentic, sustainable and profitable surf experiences to grow the surf industry and provide the mental, physical and emotional stoke of surfing to those that do not have access to the ocean. To do this, the Summit gathers the industry's top minds including surf park and surf pool developers, investors, operators, suppliers, academics, experts and athletes to discuss...

Show more



President & Owner

Coastal Transactions

Apr 2010 - Dec 2015 · 6 years 8 months

San Diego, CA, Ocean City, MD, Delaware Beaches, & Salisbury, MD

Premium ATM Management & Placement services. Developing and sustaining mutually beneficial business relationships each and every day. We service and support hotels, restaurants, convenience stores, retail shops, and outdoor venues.

- ◆ Business to business sales
- ◆ Negotiating
- ◆ Customer relationship management
- ◆ Inventory & logistics
- ◆ Budgeting, sales forecasting, and financial modeling



Business Development

American Wave Machines, Inc.

Apr 2013 - Sep 2015 · 2 years 5 months

Greater San Diego Area

American Wave Machines, Inc. designs, engineers, manufactures and sells world class wave pools, wave systems and surf centers.

Founded in 2001 by California surfer and engineer Bruce McFarland, the company is committed to delivering world class waves and authentic surfing experiences in a safe and controlled environment.

SurfStream® is a standing wave machine that delivers a stationary surfing experience scalable to various spaces.

PerfectSwell® is an air-powered system...

Show more



Hospitality & Marketing Consultant

OCSurfer LLC

Jun 2009 - Oct 2013 · 4 years 5 months

Ocean City, MD

Specialized in increasing ADR's, annual occupancy, guest service, marketing, staff training, creative operating systems, customer loyalty, hotel operations and reservations management software.

# Exhibit U





### THE ENDLESS SURF TEAM

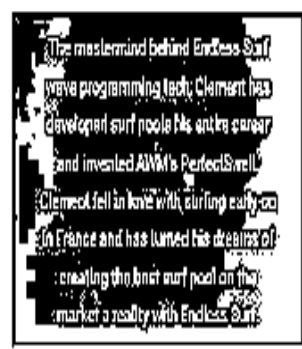
Creating a surf venue is a huge development project. It takes a special mix of experienced suppliers and a dedicated team of surfers, wave pool builders, industry leaders, landscape architects, engineers, and business minds to make your project successful. This is Endless Surf. Nice to meet you.



**GEOFF CHUTTER**  
Business Development



**PAUL CHUTTER**  
Commercial Operations



**CLEMENT GINESTET**  
Wave Design



**MARSHALL MYRMAN**  
Product Management



**ANDREW THATCHER**  
Client Management



**ANDER WYNNE-EDWARDS**  
Engineering