

1 USE PERMIT

2 **31794**

3 Pursuant to a minute order of the City Council of the City of Long Beach at
4 its July 6, 2010 meeting, the City of Long Beach, a municipal corporation ("City") , hereby
5 grants permission to BAC MANAGEMENT, LLC, doing business as BELMONT
6 ATHLETIC CLUB ("Permittee"), whose address is 4918 East Second Street, Long Beach,
7 California 90803, for the non-exclusive use of City facilities located at Livingston Drive
8 Park and a portion of the Beach adjacent to Granada Avenue, more particularly
9 described on Exhibits "A" and "B" attached to this Permit and additional park sites upon
10 request ("additional sites"), at least thirty (30) days prior to use, subject to the approval of
11 the Director of the City's Department of Parks, Recreation and Marine ("Director") or his
12 designee, incorporated by this reference (the "permit area").

13 Permittee may use the permit area subject to the following terms, conditions
14 and limitations:

15 1. USE. Permittee may use the permit area to conduct an outdoor
16 fitness program, and related activities subject to the pre-approval of the Director or his
17 designee.

18 All uses of the permitted use site(s) by the Permittee, its employees and
19 invitees shall be at their sole risk, cost and expense.

20 2. TERM. The term of this Permit shall begin on June 1, 2010 and shall
21 end on May 31, 2012. The Director shall have the option at his sole discretion to extend
22 the term of this Permit for three (3), additional one (1) year periods, provided Permittee
23 submits a written request no later than sixty (60) days prior to the expiration of the Permit
24 year.

25 3. PERMIT FEE.

26 A. On July 1, 2011, and every permit year thereafter on July 1 of
27 each Permit year, Permittee shall pay an annual minimum payment to the
28 Department of Parks, Recreation and Marine ("Department"), of Eight Hundred

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Dollars (\$800.00) ("Guaranteed Annual Minimum").

2 B. Additional sites added to the permit area as approved by the
3 Director or his designee shall increase the Guaranteed Annual Minimum
4 immediately or retroactive to the first calendar day, of the first month used, as
5 determined by an apportionment formula, calculated as follows: [$\$400 \times (A / 12)$],
6 where A = the number of calendar month(s) the additional site was used in each
7 Permit year ("Adjusted Annual Minimum"). Once adjusted, Permittee will then pay
8 the Department the sum of the Guaranteed Annual Minimum and the Adjusted
9 Annual Minimum on July 1st of each Permit year.

10 C. Permittee shall, within twenty (20) days following the
11 expiration, termination or revocation of this Permit, pay to the Department any and
12 all sums due to the Department. Gross receipts shall mean all monies received by
13 or due the Permittee as a result of the operations authorized by this Permit without
14 any deductions whatsoever, except any sales tax payable to the State or other
15 governmental agency.

16 4. SCHEDULE. Permittee shall submit, on an annual basis on or
17 before February 1st of each Permit year in advance, and/or as requested by the Director,
18 a comprehensive schedule of use of the permit area for approval by the Director or his
19 designee. The submission shall be in writing and shall include all of the dates, times and
20 locations of use of the permit area and additional sites. Permittee shall not deviate from
21 the submitted schedule of use, or add additional dates, times or locations of use of the
22 permit area, without the written consent of the Director or his designee. Any deviation
23 from the submitted schedule of use shall be submitted in writing no later than thirty (30)
24 days prior to the anticipated deviation. This Permit may be revoked if Permittee is found
25 to have deviated from the submitted schedule of use, without the approval of the Director
26 of his designee.

27 Permittee may terminate this Permit by giving to the City thirty (30) days
28 prior notice. The City may revoke this permit at anytime, upon providing Permittee with

1 thirty (30) days written notice.

2 On termination or revocation of this Permit, Permittee shall quit and
3 surrender possession of the permit area and remove its personal property from the permit
4 area.

5 5. IMPROVEMENTS. Permittee shall not erect, construct, alter or
6 maintain any improvements on the permit area without the prior written approval of the
7 Director. Permittee shall pay the cost of any approved improvements. Title to all such
8 improvements shall remain vested in Permittee while this Permit is in effect. Upon
9 termination or revocation of this Permit, Permittee shall, at their sole cost, remove all
10 improvements placed by them on the permit area and restore the permit area to a
11 condition acceptable to the Director so instructed by the City. Such removal and
12 restoration shall be made and accomplished within thirty (30) days after the termination
13 or revocation date. If any improvement has not been removed and the permit area not
14 restored to an acceptable condition within said thirty (30) day period, the City shall have
15 the right, but not the obligation, to remove, demolish and dispose of any improvement
16 and to restore the permit area at Permittee's sole expense. Permittee shall pay to the
17 City on demand all costs incurred by the City in accomplishing the removal of
18 improvements and the restoration of the permit area, together with interest at the
19 maximum rate allowed by law. The Director, at his option, may waive the requirements
20 that Permittee remove all or a portion of improvements placed on the permit area and
21 that Permittee restore the same, in which event title to all improvements which are to
22 remain on the permit area shall vest in the City without any obligation that the City
23 reimburse Permittee for them.

24 6. MAINTENANCE. Permittee shall place all waste of any kind in
25 containers provided by the City and restore the permit area to its original state after each
26 use. If the Permittee fails to maintain the permit area as required, the City will notify
27 Permittee of such failure and, if Permittee fails to correct the situation within thirty (30)
28 days after notice, then the City may make the necessary correction and Permittee shall

1 pay the cost of correction within thirty (30) days after receipt of an invoice from the City.
2 Permittee hereby waives to the extent permitted by law any right to make repairs at the
3 expense of the City.

4 7. UTILITIES. The City shall pay all costs associated with the use and
5 installation of utilities of the permit area, provided Permittee's use thereof is deemed to
6 be in the sole opinion of the Director, reasonable and related to the Permittee's permitted
7 use.

8 8. COMPLIANCE WITH LAWS. Permittee during their use of the
9 permit area shall at all times comply with all laws, ordinances, rules and regulations of
10 and obtain permits from all federal, state or local government authorities having
11 jurisdiction over the permit area and Permittee's activities on the permit area.

12 9. NO ASSIGNMENT. Permittee shall not assign this Permit or any
13 interest in it or allow the transfer of the Permit, whether by operation of law or otherwise,
14 nor delegate its duties hereunder. Any attempted assignment, transfer, or delegation
15 shall be void and confer no rights whatsoever upon an assignee, transferee or delegate.
16 If Permittee is adjudicated a bankrupt or becomes insolvent or any interest in this Permit
17 is taken by virtue of attachment, execution, or receivership, the City may terminate this
18 Permit on five (5) days notice to Permittee.

19 10. CONTROL OF PERMIT AREAS. The Director shall have absolute
20 and full control of the permit areas. If necessary for the health, welfare or safety of the
21 public or as a result of the termination or revocation of this Permit, the Director shall have
22 the right to enter the permit areas and take possession thereof immediately. The City
23 reserves the right to enter the permit areas at any and all reasonable times including the
24 times and days of Permittee's use. City reserves the right to do any work at the permit
25 areas for the preservation, operation and maintenance of the permit areas that it deems
26 necessary. The Director or designee will inform Permittee when such work will be done if
27 it impacts Permittee's use.

28 11. INDEMNITY. Except for the City's gross negligence or willful

1 misconduct and to the fullest extent permitted by law, Permittee shall indemnify and hold
2 harmless the City, its boards, commissions, and their officials, employees and agents
3 (collectively in this Section "City") from and against any and all liability, claims, demands,
4 damage, loss, causes of action, proceedings, penalties, costs and expenses (including
5 reasonable attorney's fees, court costs, and expert and witness fees)(collectively
6 "Claims" or individually "Claim"). Claims include by way of example but are not limited to:
7 Claims for property damage, personal injury or death arising in whole or in part from any
8 negligent act or omission of Permittee, its officers, employees or anyone under
9 Permittee's control (collectively "Indemnitor"); Permittee's breach of this Permit;
10 misrepresentation, willful misconduct; and Claims by any employee of Indemnitor relating
11 to workers' compensation. Independent of the duty to indemnify and as a free-standing
12 duty on the part of Permittee, Permittee shall defend City and shall continue such
13 defense until the Claim (including allegations in a Claim) is resolved, whether by
14 settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach,
15 or the like on the part of Indemnitor shall be required for the duty to defend to arise. Each
16 party shall promptly notify the other party of any Claim.

17 12. INSURANCE. Concurrent with the execution of this Permit and in
18 partial performance of Permittee's obligations hereunder, Permittee shall procure and
19 maintain the following insurance at Permittee's sole expense for the duration of this
20 Permit, including any extensions or renewals thereof, from insurance companies that are
21 authorized to write insurance in the State of California or from insurers listed on the CDI's
22 List of Eligible Surplus Lines' Insurers (LESLI) that have a current rating of or equivalent
23 to A:VIII by A.M. Best Company:

24 A. Commercial general liability insurance equivalent in coverage
25 scope to ISO form CG 00 01 11 85 or 11 88 in an amount not less than One
26 Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars
27 (\$2,000,000.00) general aggregate. Such insurance shall include but is not limited
28 to broad form contractual liability, personal and bodily injury, independent

1 contractors liability, sexual molestation liability, and products and completed
2 operations liability. The City of Long Beach, its officials, employees, and agents
3 shall be added as additional insureds by endorsement equivalent in coverage
4 scope to ISO form CG 20 26 11 85 and this insurance shall contain no special
5 limitations on the scope of protection afforded to the City, its officials, employees,
6 and agents.

7 B. Personal accident insurance covering all participants in an
8 amount not less than Ten Thousand Dollars (\$10,000.00) per person.

9 C. "All Risk" property insurance in an amount sufficient to cover
10 the full replacement value of Permittee's personal property and equipment on the
11 premises. Such insurance shall be endorsed with a waiver of subrogation of any
12 claims against the City, its officials, employees, and agents.

13 D. Workers' Compensation insurance as required by the State of
14 California and Employer's Liability insurance in an amount not less than One
15 Million Dollars (\$1,000,000.00) per occurrence.

16 In addition to the endorsements specified above, each insurance policy
17 required herein shall provide by endorsement or by policy form: (i) that the insurance
18 shall not be canceled, nonrenewed, or reduced in coverage or limits except after thirty
19 (30) days prior written notice to City, (ii) that the insurance shall be primary and not
20 contributing to any other insurance or self-insurance maintained by City, its official,
21 employees, or agents, (iii) that the insurance shall apply separately to each insured
22 against whom claim is made or suit is brought, except with respect to the limits of the
23 insurer's liability; and (iv) that the naming of more than one insured shall not, for that
24 reason alone, extinguish any rights of one insured against another, subject to the
25 Company's limits of liability.

26 Any self-insurance program, self-insured retention, or deductible must be
27 approved separately in writing by City Risk Manager or designee and shall protect the
28 City of Long Beach, its officials, employees, and agents in the same manner and to the

1 same extent as they would have been protected had the policy or policies not contained
2 such retention or deductible provisions.

3 Permittee shall deliver to City certificates of insurance and the required
4 endorsements for approval as to sufficiency and form prior to commencement of this
5 Permit. The certificates and endorsements for each insurance policy shall contain the
6 original signature of a person authorized by that insurer to bind coverage on its behalf.
7 City reserves the right to require complete certified copies of all said policies at any time.

8 Such insurance as required herein shall not be deemed to limit Permittee's
9 liability relating to performance under this Permit. The procuring of insurance shall not be
10 construed as a limitation on liability or as full performance of the indemnification and hold
11 harmless provisions of this Permit.

12 Any modification or waiver of the insurance requirements herein shall be
13 made only with the written approval of the City's Risk Manager or designee.

14 13. POSSESSORY INTEREST. This Permit may create a possessory
15 interest subject to property taxation and Permittee may be liable for the payment of
16 property taxes levied on such possessory interest. Permittee shall pay or cause to be
17 paid, prior to delinquency, all taxes, assessments and other governmental and district
18 charges that may be levied or assessed for buildings, improvements or property located
19 on the permit areas and upon possessory interests created by this Permit. Satisfactory
20 evidence of such payments shall be delivered by Permittee upon demand therefore.

21 14. NOTICE. Any notice, demand, request, consent, or communication
22 that either party desires or is required to give to the other party or any other person shall
23 be in writing and either personally delivered or deposited in the U.S. Postal Service, first
24 class, postage prepaid, addressed to Permittee at the address first stated above and to
25 the City at 2760 Studebaker Road, Long Beach, CA 90815 Attn: Director. Notice of
26 change of address shall be given in the same manner as stated herein for other notices.
27 Notice shall be deemed given on the date personal delivery is made or forty-eight (48)
28 hours after deposit in the mail.

1 15. NO HAZARDOUS MATERIAL. Permittee shall not keep or store any
2 goods, merchandise, supplies, personal property, materials, or items of any kind in, on or
3 at the permit areas which are in any way explosive or hazardous. Permittee shall comply
4 with California Health and Safety Code Section 25359.7 or its successor statute
5 regarding notice to the City on discovery by Permittee of the presence or suspected
6 presence of any hazardous substance in, on or at the permit areas.

7 16. DEFAULT. Except where this Permit expressly states that the City
8 may immediately revoke this Permit, the City may revoke this Permit if Permittee fails or
9 refuses to comply with any term, condition or provision of this Permit after notice of such
10 failure or refusal from the Director or designee. The acceptance of all or part of the
11 payment of any permit fee after default shall not be deemed a waiver of any right to
12 revoke this Permit on account of such default. Any waiver by the City or Director of a
13 default shall be in writing and shall not be construed as or constitute a waiver of any
14 subsequent default of the same or any other term, condition or provision of this Permit.

15 If this Permit is deemed a lease by a court of competent jurisdiction, then
16 Permittee hereby waives any right of redemption under any existing or future laws in the
17 event of removal from the permit areas. Permittee agrees that if the manner or method
18 used by the City in revoking this Permit and removing Permittee from the permit areas
19 gives to Permittee a cause of action for damages or in forcible entry and detainer, then
20 the total amount of damages to which Permittee shall be entitled in any such action shall
21 be One Dollar (\$1.00). Permittee agrees that this Section may be filed in any such action
22 and that when filed it shall be a stipulation by Permittee fixing the total damages to which
23 Permittee is entitled in such action.

24 17. SIGNS AND ADVERTISING. All signs, advertising or promotional
25 material placed in, on or at the permit areas shall be approved, in advance, in writing by
26 the Director or designee. Permittee shall pay all costs related to such signs, advertising
27 or promotional material. If Permittee places any sign, advertising or promotional material
28 that does not have the prior approval of the Director or designee, then the City may

1 remove same without penalty or claim against the City, and Permittee shall immediately
2 pay the cost of such removal on receipt of an invoice from the City, as an additional
3 permit fee.

4 18. NONDISCRIMINATION. During its use of the permit areas and
5 operations, Permittee and its employees shall not discriminate on the basis of race,
6 religion, color, ancestry, sex, sexual orientation, sexual identity, gender identity, AIDS,
7 AIDS relation condition, HIV status, age, national origin, handicap or disability.

8 19. HEALTH AND SAFETY. Permittee shall correct health and safety
9 deficiencies and violations of health and safety practices immediately and shall cooperate
10 fully with the Director in the investigation of accidents or incidents occurring in, on or at
11 the permit areas. In the event of injury to an invitee, Permittee shall see that the injured
12 person receives prompt and qualified medical attention. If Permittee fails to correct
13 unsafe or unhealthy conditions which have led or, in the opinion of the City, could lead to
14 injury, then the Director may immediately revoke this Permit.

15 20. NO VENDING MACHINES. Permittee shall not install nor allow the
16 installation of any vending machines of any kind, including but not limited to food and
17 beverage machines and amusement machines. The Director reserves the right to
18 remove any such machine and Permittee shall pay the cost of such removal on receipt of
19 an invoice from the City, as an additional permit fee.

20 21. NO WAIVER. The failure or delay by the City to insist on strict
21 compliance with any term, condition or provision of this Permit shall not be deemed a
22 waiver of any right or remedy that the City may have and shall not be deemed a waiver of
23 any subsequent or other failure to comply with any term, condition, or provision of this
24 Permit. The receipt and acceptance of all or a part of the payment of a delinquent permit
25 fee shall constitute only a waiver of timely payment for the particular payment involved
26 and shall not constitute waiver of any other failure to comply.

27 22. CLAIMS. The City, its officials, employees, boards, and
28 commissions shall not be liable for and Permittee hereby waives all claims against the

1 City, its officials, employees, boards, and commissions for loss, theft, or damage to
2 equipment, furniture, trade fixtures, furnishings, records, and other personal property in,
3 on or at the permit areas, for loss or damage to Permittee's business, or injury to or death
4 of persons in, on or at the permit areas from any cause except to the extent caused by
5 the gross negligence or willful misconduct of the City, its officials, employees, boards or
6 commissions.

7 23. ABANDONMENT. If Permittee abandons the permit areas or
8 discontinues use thereof by operation of law or otherwise, title to any equipment,
9 furniture, trade fixtures, furnishings, and other personal property belonging to Permittee
10 or others under its control and left in, on or at the permit areas sixty (60) days after
11 abandonment or discontinuance of use shall be deemed to have been transferred to the
12 City. The City shall thereafter have the right to remove and to dispose of said property
13 without liability to Permittee or to any person claiming under Permittee, and shall have no
14 duty to account therefore. Permittee hereby names the Director as Permittee's attorney
15 in fact to execute and deliver such documents or instruments as may be reasonably
16 required to dispose of such property and transfer title thereto.

17 24. NO RELOCATION. Permittee agrees that nothing contained in this
18 Permit shall create any right in Permittee for any relocation assistance or payment
19 pursuant to the provisions of Title 1, Division 7, Chapter 16 of the California Government
20 Code from the City on the expiration or revocation of this Permit.

21 25. RESTORATION. Permittee shall promptly notify the City of damage
22 or destruction to the permit areas and the date of same. Permittee shall promptly make
23 proof of loss and proceed to collect all valid claims that Permittee may have against
24 insurers or others based on such damage or destruction. All amounts recovered as a
25 result of said claims shall be used first for the restoration of the permit areas. If existing
26 laws do not permit restoration, then the City may revoke this Permit.

27 26. MISCELLANEOUS. This Permit shall be governed by and construed
28 in accordance with the laws of the State of California. This Permit constitutes the entire

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1 understanding between the City and Permittee and supersedes all other agreements, oral
2 or written, with respect to the subject matter herein. Revocation or termination of this
3 Permit shall not affect rights or liability that accrued hereunder prior to such revocation or
4 termination. This Permit shall not be construed or interpreted against either party as the
5 drafter. This Permit is not intended or entered for the purpose of creating any benefit or
6 right for any person or entity that is not a signatory to this Permit. If any term, condition
7 or provision of this Permit is held by a court of competent jurisdiction to be invalid, void or
8 unenforceable, the remainder of the Permit shall remain in full force and effect and shall
9 in no way be affected, impaired, or invalidated. The various headings and numbers
10 herein and the grouping of the provisions of this Permit into separate sections,
11 paragraphs and clauses are for convenience only and shall not be considered a party
12 hereof, and shall have no effect on the construction or interpretation of this Permit.

13 ACCEPTED this 2nd, day of August, 2010.

14 BAC MANAGEMENT, LLC DBA BELMONT
15 ATHLETIC CLUB

16 Dated: 8/2, 2010 By: Jeff S. Coyat
17 Title: General Manager

18 "Permittee"

19 CITY OF LONG BEACH, a municipal
20 corporation

21 Dated: 8.30, 2010 By [Signature] Assistant City Manager
22 City Manager **EXECUTED PURSUANT
23 TO SECTION 301 OF
24 THE CITY CHARTER.**

25 "City"

26 Approved as to form on August 17, 2010.

27 ROBERT E. SHANNON, CITY ATTORNEY

28 BY: [Signature]
GARY ANDERSON, Deputy



EXHIBIT A

Livingston Drive Park





EXHIBIT B

Beach (Granada Avenue)



0 50 100 200 300 400 500 Feet