



1 as a result of the operations authorized by this Permit without any deductions  
2 whatsoever, except any sales tax payable to state or other governmental agency.

3 4. WAIVER FORM. Permittee is required to have customers complete  
4 and sign a waiver form before participating in beach exercise classes. The waiver  
5 form(s) used by the Permittee are subject to review and approval by the City's Risk  
6 Manager and the City Attorney.

7 5. FINANCIAL STATEMENT. Permittee shall, on or before the 20th  
8 day of the month following the month during which Permittee commences operation, an  
9 on or before the 20th day of each month hereafter, throughout the term of this Permit or  
10 any extension hereof, give the Director a financial report showing Permittee's income  
11 from the concession for the preceding calendar month.

12 Permittee shall, on or before January 31st of each calendar year, deliver to  
13 the Director at 2760 Studebaker Road, Long Beach, California 90815-1697, a signed  
14 statement showing gross receipts of the preceding calendar year or partial calendar year.  
15 Such statement shall be prepared and delivered to City in accordance with generally  
16 accepted accounting practices containing a statement of gross receipts and a  
17 computation of percentage of gross receipts.

18 If Permittee fails to prepare and deliver or cause to be prepared and  
19 delivered the statement as and when required above and such failure continues after  
20 thirty (30) days' notice thereof by City to Permittee, City may audit or cause an audit to be  
21 made of all books, records and accounts of business operations conducted in, on or from  
22 the Premises and may prepare the statement or statements which Permittee failed to  
23 prepare and deliver. Said audit shall be in addition to any other audit authorized by this  
24 agreement. Permittee shall pay on demand all expenses of such audit and the  
25 preparation of any such statements and all sums as may be shown by such audit to be  
26 due as payment together with interest thereon at the rate of ten percent (10%) per annum  
27 from the date of City's demand.

28 Permittee shall keep or cause to be kept during the term, including any

1 extended term and for two (2) years after the expiration or termination of this Permit,  
2 complete books of accounts and other records reflecting all business transactions  
3 conducted on or from the Premises. Such books and records shall include a daily record  
4 of gross receipts. Permittee shall maintain a method of accounting for the receipts and  
5 disbursements in connection with all business transactions conducted on or from the  
6 Premises which correctly reflects all gross receipts and disbursements. Permittee's  
7 books of account and records shall include, but not be limited to, general ledgers, cash  
8 receipts, sales and purchases journals, including any supporting and underlying  
9 documents such as vouchers, checks, tickets, and bank statements, state sales tax  
10 returns, checks and other documents proving payment of the sums shown, and such  
11 other accounting records as City, in its sole discretion, deems necessary. Permittee's  
12 records and books of account shall reflect only those transactions conducted on or from  
13 the Premises and shall not be maintained on a consolidate basis with other activities of  
14 Permittee or with any other entity, including, without limitation, any parent corporation or  
15 other wholly-owned subsidiary or affiliate of Permittee. Said records and books of  
16 account shall be kept and maintained in accordance with generally accepted accounting  
17 practices. City shall have access to said records and books of account at all reasonable  
18 times for the purpose of examining and auditing them.

19 The receipt by City of any financial information or the acceptance of  
20 payment shall not bind City to the correctness of the information or amount of payment.

21 City shall have the right once during each permit year and once within a  
22 period of nine (9) months following the expiration or termination of this Permit to  
23 undertake a special audit of Permittee's records and books of account. Permittee shall  
24 cooperate fully with City or City's agents in the special audit. The audit shall be  
25 conducted during usual business hours. If there is a deficiency in payments due to City,  
26 the deficiency shall become immediately due and payable together with interest thereon  
27 at the rate of ten percent (10%) per annum from the date of City's demand for payment of  
28 the deficiency. If the amount of any deficiency for any permit year or partial permit year

1 exceeds three percent (3%) of the payment, Permittee shall pay the cost of this audit;  
2 otherwise the cost thereof shall be paid by City.

3           6.     INDEMNITY. Permittee shall defend, indemnify and hold the City,  
4 its officials, and employees harmless from and against all claims, damages, causes of  
5 action, losses, liability, costs or expenses (including reasonable attorneys' fees), of any  
6 kind arising from or connected with the alleged acts or omissions of Permittee, its  
7 officers, employees, agents, business visitors, or invitees in connection with the picnic  
8 service concession hereunder. Permittee shall pay any settlement or satisfy any  
9 judgment that may be rendered against the City, its officials, and employees arising from  
10 this Permit.

11           7.     INSURANCE. As a condition precedent to the effectiveness of this  
12 Permit, Permittee shall procure and maintain at Permittee's expense for the duration of  
13 this Permit from an insurance company that is admitted to write insurance in California or  
14 from authorized non-admitted insurance companies that having ratings of or equivalent to  
15 A:VIII by A.M. Best Company:

16           (a)     Commercial general liability insurance (equivalent in scope to ISO  
17 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One  
18 Million Dollars (\$1,000,000) per occurrence and Two Million Dollars  
19 (\$2,000,000) general aggregate. Such coverage shall include but not be limited  
20 to broad form contractual liability, cross liability, independent contractors  
21 liability, and products and completed operations liability. The City, its officials,  
22 employees and agents shall be named as additional insureds by endorsement  
23 (on the City's endorsement form or on an endorsement equivalent in scope to  
24 ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain  
25 no special limitations on the scope of protection given to the City, its officials,  
26 employees and agents.

27           (b)     Workers' compensation insurance as required by the California  
28 Labor Code and employer's liability insurance in an amount not less than One

1 Million Dollars (\$1,000,000) per accident.

2 (c) Commercial automobile liability insurance (equivalent in scope to  
3 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount  
4 not less than Five Hundred Thousand Dollars (\$500,000) combined single limit  
5 per accident.

6 Any self-insurance program, self-insured retention, or deductible must be  
7 separately approved in writing by City's Risk Manager or designee and shall protect the  
8 City, its officials, employees and agents in the same manner and to the same extent as  
9 they would have been protected had the policy or policies not contained retention  
10 provisions. Each insurance policy shall be endorsed to state that coverage shall not be  
11 suspended, voided or canceled by either party except after thirty (30) days' prior written  
12 notice to City, and shall be primary and not contributing to any other insurance or self-  
13 insurance maintained by City, its officials, employees and agents.

14 Permittee shall require that all contractors and subcontractors which  
15 Permittee uses in the performance of services under this Permit maintain insurance in  
16 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or  
17 designee.

18 Prior to the start of performance under this Permit, Permittee shall deliver to  
19 City certificates of insurance and required endorsements, including any insurance  
20 required of Permittee's contractors and subcontractors, for approval as to sufficiency and  
21 form. The certificates and endorsements shall contain the original signature of a person  
22 authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall, at  
23 least thirty (30) days prior to expiration of the insurance required hereunder, furnish to the  
24 City certificates of insurance and endorsements evidencing renewal of such insurance.  
25 City reserves the right to require complete certified copies of all policies of Permittee or  
26 Permittee's contractors or subcontractors, at any time. Permittee shall make available to  
27 the City all books, records and other information relating to the insurance coverage  
28 required herein during normal business hours.

1           Any modification or waiver of the insurance requirements herein shall only  
2 be made with the written approval of the City's Risk Manager or designee. Not more  
3 frequently than once a year, the City's Risk Manager or designee may require that  
4 Permittee, Permittee's contractors and subcontractors change the amount, scope or  
5 types of coverages required herein if, in his or her sole opinion, the amount, scope, or  
6 types of coverages herein are not adequate.

7           The procuring or existence of insurance shall not be construed or deemed  
8 as a limitation on liability relating to Permittee's performance of services or as full  
9 performance of or compliance with the indemnification provisions herein.

10           8.     LICENSES, PERMITS AND TAXES. Permittee shall obtain and pay  
11 for all licenses and permits required for operation of the concession including, but not  
12 limited to any necessary Coastal Commission approvals. In addition, Permittee shall pay  
13 all taxes levied, including any possessory interest taxes.

14           9.     TRANSFER OR ASSIGNMENT. This Permit only grants Permittee  
15 the privilege to operate the concession on the beach. Permittee, by this Permit, acquires  
16 hereunder no right, title, or interest of any kind in the property on which the concession is  
17 located. Permittee shall not sublet the concession or the property on which the  
18 concession is conducted, or any part thereof, or allow the same to be used or occupied  
19 by any other person or for any other purpose than that herein specified, nor assign this  
20 Permit or in any manner convey or transfer any privilege herein granted. This Permit  
21 shall not be transferred by attachment, execution, proceedings in insolvency or  
22 bankruptcy, either voluntary or involuntary, or receivership proceedings (collectively  
23 "transfer"). In the event of such subletting, assignment, or transfer, said act or acts shall  
24 be null and void and have no force or effect and the City may revoke this Permit.

25           10.    STANDARDS OF SERVICE. Permittee shall conduct business in a  
26 manner acceptable to the City and shall have a sufficient number of employees  
27 necessary to furnish the best service possible. All personnel used in serving the public  
28 shall be clean, neat and orderly in appearance, and shall be uniformed and identified in a

1 manner acceptable to the Director. If Permittee violates any of the terms or conditions of  
2 this Permit, then the Director shall have the right to revoke this Permit by giving prior  
3 notice of revocation to Permittee.

4 11. LAWS AND ORDINANCES. Permittee shall comply with all  
5 applicable municipal, state and federal laws, rules, regulations, and ordinances and the  
6 directives or instructions of the Director relating to the concession. Failure to do so may  
7 result in the immediate revocation of this Permit. Permittee shall obtain and display, as  
8 required, all other permits or licenses, including but not limited to business licenses.

9 12. CONDUCT. Permittee shall at all times conduct the concession in a  
10 quiet and orderly manner to the satisfaction of the Director, and in a manner that will not  
11 create a nuisance. Permittee shall permit no intoxicated person, profane or indecent  
12 language, or boisterous or loud conduct.

13 13. EXCLUSIVITY. During the term of this Permit, no exclusivity is  
14 granted.

15 14. CONCESSION INSPECTION. City shall have the right to inspect  
16 and observe Permittee's operation at any reasonable time. Permittee shall not hinder,  
17 impede, interfere with or obstruct any such inspection or observation. During these  
18 inspections or observations, City shall have the right to utilize photographic devices or  
19 other instruments to record conditions of the operation.

20 15. INSPECTION. Permittee acknowledges that Permittee has  
21 inspected the designated sites and accepts them in their present condition. City shall  
22 have no obligation to improve or alter any site, nor to provide any utilities or services to  
23 any site.

24 16. NO SOLICITATION. Permittee shall not solicit business while  
25 operating at a designated site. However, Permittee may advertise its business by means  
26 of a single sign, not to exceed three (3) feet by three (3) feet, placed at the designated  
27 site only during those hours when Permittee is present to provide the beach exercise  
28 concession, and by no other means. Such sign must be removed after each use at a

1 designated site.

2 17. NON-DISCRIMINATION. In connection with performance of this  
3 Permit and federal laws, rules and regulations, Permittee shall not discriminate in  
4 employment or in the performance of this Permit on the basis of race, religion, national  
5 origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability.

6 18. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT.  
7 Permittee agrees that Compliance with the Americans with Disabilities Act of 1990  
8 (“ADA”) shall be their sole responsibility and shall defend, indemnify and hold harmless  
9 City for any liability arising from failure to comply therewith.

10 19. HEALTH AND SAFETY. Permittee shall correct safety deficiencies  
11 and violations of safety practices immediately and shall cooperate fully with the City in the  
12 investigation of accidents occurring at or near the concession. In the event of injury to a  
13 customer, Permittee shall ensure that the injured person receives prompt and qualified  
14 medical attention. If Permittee fails to correct hazardous conditions which have led or, in  
15 the opinion of the Director could lead to injury, the Director may immediately revoke this  
16 Permit.

17 20. USE OF AREA. Permittee, in the conduct of the concession, shall  
18 not in any manner whatsoever, interfere with regular use of the beach for its intended  
19 purpose, i.e., the enjoyment thereof by the public.

20 21. APPROVAL. Any approval, consent, or permission to be obtained  
21 by Permittee from the City or the Director shall be in writing and Permittee’s failure to  
22 obtain same shall not relieve Permittee of Permittee’s obligations to faithfully perform the  
23 provisions of this Permit. Permittee shall immediately comply with any written request or  
24 order submitted to Permittee by the Director or the City.

25 22. DEFAULT. If Permittee fails, neglects or refuses to conform to the  
26 rules, regulations, directions or instructions from the City, or the Director, or fails, neglects  
27 or refuses to pay any Permit fee or any part thereof after the same shall become due, or  
28 defaults in the performance of any of the other provisions herein, and said failure,

1 neglect, refusal, or default continues for a period of thirty (30) days after notice thereof to  
2 Permittee, then the City may immediately revoke this Permit. Revocation of this Permit  
3 shall not impair any other right or remedy of the City.

4           The occurrence of any of the following shall constitute a default by the  
5 Permittee:

6           (a) Failure to pay percentage payment when due, if the failure  
7 continues for five (5) days after written notice has been given to the Permittee.

8           (b) Failure to perform any of the provisions of this Permit if the failure  
9 to perform is not cured within thirty (30) days after written notice has been given  
10 to Permittee. If the default cannot be reasonably cured within thirty (30) days,  
11 Permittee shall not be in default if Permittee begins to cure within the thirty (30)  
12 day period and diligently and in good faith continues to cure the default.

13           Notices given under this paragraph shall specify the alleged default and the  
14 applicable permit provisions, and shall demand that Permittee perform the provisions of  
15 this Permit, or pay the percentage payment that is in arrears, as the case may be, within  
16 the applicable period of time. No such notice shall be deemed a forfeiture or a  
17 termination of this Permit unless City so elects in the notice.

18           23. NO WAIVER. The acceptance of all or part of any Permit fee by the  
19 City after the failure, neglect, refusal, or default of Permittee, shall not be deemed a  
20 waiver of any provision of this Permit or any right to indemnity or to any right to revoke  
21 this Permit. Any waiver by the City of the failure, neglect, refusal, or default of Permittee,  
22 shall be in writing and shall not constitute a waiver of any other or subsequent failure,  
23 neglect, refusal, or default of the same or any other or subsequent failure, neglect,  
24 refusal, or default.

25           24. REVOCAION. Notwithstanding anything herein to the contrary and  
26 except for provisions allowing immediate revocation, this Permit may be revoked by the  
27 City for any or no reason whatsoever on thirty (30) days' prior notice of such revocation to  
28 Permittee.

1                   25.    SPECIAL EVENTS. Permittee must receive written authorization  
2 from the Director for special events. A written request for a special event is subject to the  
3 requirements of the Long Beach Municipal Code.

4                   26.    HOLDING OVER. In the event Permittee shall continue in  
5 possession of the premises after the expiration of the Permit term, such possession shall  
6 not be considered a renewal of this Permit, but a tenancy from month-to-month and shall  
7 be governed by the conditions and covenants contained in this Permit.

8                   27.    PARTIAL TAKING. If a portion of the premises or other  
9 improvements shall be taken for any public or quasi-public use, and the remaining portion  
10 of the premises and improvements can be restored by Permittee to an economically  
11 operable facility of comparable kind and quality to the facility existing prior to the taking,  
12 then this Permit shall not be affected and Permittee shall retain the remaining portion or  
13 portions of the premises.

14                  28.    CALIFORNIA LAW. This Permit shall be construed and interpreted  
15 in accordance with the laws of the State of California.

16                  29.    NOTICES. All notices shall be in writing or personally served or  
17 deposited in the U.S. Postal Service, first class, postage prepaid, to Permittee at 4011  
18 East First Street, #5, Long Beach, California 90803, and to the City at 2760 Studebaker  
19 Road, Long Beach, California 90815-1697, Attention: Contract Management. Notice of  
20 change of address shall be given in the same manner as stated for other notices.  
21 Notices shall be deemed given on the date deposited in the mail or on the date personal  
22 service is obtained, whichever first occurs.

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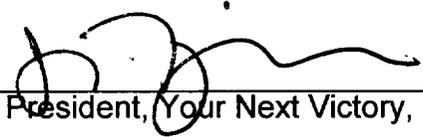
OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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Accepted this 27<sup>th</sup> day of February, 2008.

YOUR NEXT VICTORY, INC.

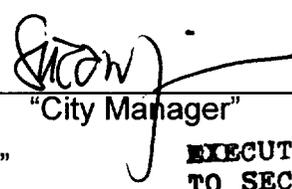
Feb. 27, 2008

By:   
President, Your Next Victory, Inc.

"Permittee"

April 8, 2008

CITY OF LONG BEACH, a municipal corporation

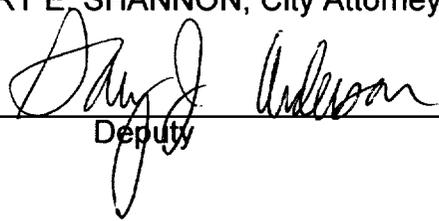
By:  ASSISTANT  
"City Manager"

"City"

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

This Permit is hereby approved as to form this 26<sup>th</sup> day of  
March, 2008.

ROBERT E. SHANNON, City Attorney

By:   
Deputy

GA:LKM 07-06103  
Permit - 1/8/08

**PERMIT FOR THE OPERATION OF A BEACH EXERCISE  
CONCESSION WITH YOUR NEXT VICTORY, INC.**

**BEACH EXERCISE CLASS SPECIAL CONDITIONS**

Permission is granted to provide beach exercise classes for individuals and groups. Classes will consist of exercises, such as stretching, running, calisthenics, and involve minimal equipment. Only small, personal exercise equipment, such as hand weights, will be permitted. Equipment such as weight machines or barbells that could create unsafe conditions or restrict access to the beach or permitted area will not be allowed.

The Permittee will conduct classes with the understanding that no exclusive use of the beach or permitted area has been granted. The Permittee will locate and operate on the beach with the safety of the general public as a priority. No permission for permanent structures has been granted, and no storage of equipment on the beach will be permitted.

Permittee will be required to have all participants sign waivers as deemed appropriate and sufficient by the City's Risk Manager and City Attorney's Office.

**PERMIT FOR THE OPERATION OF A BEACH EXERCISE  
CONCESSION WITH YOUR NEXT VICTORY, INC.**

**BEACH EXERCISE CLASS AUTHORIZED  
LOCATION, DAYS AND TIME**

Permission is granted to provide beach exercise classes at the following location:

- Bluff Park  
Ocean Blvd. Between Redondo and Lindero  
(562) 570-3232

Authorized days and times include:

- Tuesday            6:00 a.m. to 9:00 a.m.
- Thursday          6:00 a.m. to 9:00 a.m.
- Saturday           8:00 a.m. to 11:00 a.m.

Additional locations, dates and times must be pre-approved in writing by the Manager of the Marine Bureau with a copy forwarded to the Contract Management Division of the Department of Parks, Recreation and Marine.