

USE PERMIT

32910

Pursuant to a minute order of the City Council of the City of Long Beach at its meeting held on May 15, 2012, the CITY OF LONG BEACH, a municipal corporation ("City"), hereby grants permission to MELINA CHRISTIDIS, an individual, doing business as MELINA FITNESS ("Permittee"), whose address is 2728 Josie Avenue, Long Beach, California 90815, for the non-exclusive use of City facilities located at Bluff Park and additional park sites upon request ("additional sites"), within the City of Long Beach, more particularly described on Exhibit "A" to this Permit and incorporated by this reference (the "Permit Area").

Permittee may use the Permit Area subject to the following terms, conditions and limitations:

1. USE. Permittee may use the Permit Area to conduct an outdoor group fitness program, and related commercial recreational activities subject to the pre-approval of the City Manager or his designee, at Bluff Park, as illustrated on Exhibit "A".

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

2. TERM. The term of this Permit shall begin on May 16, 2012 and shall end on May 17, 2014. The City Manager, or his designee shall have the option at his sole discretion to extend the term of this Permit for three (3), additional one (1) year periods, provided Permittee submits a written request no later than sixty (60) days prior to the expiration of the Permit year.

3. PERMIT FEE.

A. On November 1, 2012, and every permit year thereafter on November 1 of each Permit year, Permittee shall pay an annual minimum payment to the Department of Parks, Recreation and Marine ("Department"), of Three Hundred Dollars (\$300.00) ("Guaranteed Annual Minimum").

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1 B. Additional sites added to the Permit Area as approved by the
2 City Manager, or his designee shall increase the Guaranteed Annual Minimum
3 immediately or retroactive to the first calendar day, of the first month used, as
4 determined by an apportionment formula, calculated as follows: [$\$300 \times (A / 12)$],
5 where A = the number of calendar month(s) the additional site was used in each
6 Permit year ("Adjusted Annual Minimum"). Once adjusted, Permittee will then pay
7 the Department the sum of the Guaranteed Annual Minimum and the Adjusted
8 Annual Minimum on November 1st of each Permit year.

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

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

26 Either Party may terminate this Permit at any time by providing thirty (30)
27 days prior written notice.

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

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

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

1 Permittee hereby waives to the extent permitted by law any right to make repairs at the
2 expense of the City.

3 7. UTILITIES. The City shall pay all costs associated with the use and
4 installation of utilities of the Permit Area, provided Permittee's use thereof is deemed to
5 be in the sole opinion of the City Manager or his designee, reasonable and related to the
6 Permittee's permitted use.

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

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

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

27 11. INDEMNITY. Except for the City's gross negligence or willful
28 misconduct and to the fullest extent permitted by law, Permittee shall indemnify and hold

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

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

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

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

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

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

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

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

25 Any self-insurance program, self-insured retention, or deductible must be
26 approved separately in writing by City Risk Manager or designee and shall protect the
27 City of Long Beach, its officials, employees, and agents in the same manner and to the
28 same extent as they would have been protected had the policy or policies not contained

1 such retention or deductible provisions.

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

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

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

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

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

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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 City Manager or his designee. Permittee shall pay all costs related to such signs,
27 advertising or promotional material. If Permittee places any sign, advertising or
28 promotional material that does not have the prior approval of the City Manager or his

1 designee, then the City may remove same without penalty or claim against the City, and
2 Permittee shall immediately pay the cost of such removal on receipt of an invoice from
3 the City, as an additional 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 City in the investigation of accidents or incidents occurring in, on or at the
11 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 City Manager or his designee 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 City Manager or his designee
18 reserves the right to remove any such machine and Permittee shall pay the cost of such
19 removal on receipt of 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
4 death of persons in, on or at the Permit Areas from any cause except to the extent
5 caused by the gross negligence or willful misconduct of the City, its officials, employees,
6 boards or 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 City Manager or his designee as
15 Permittee's attorney in fact to execute and deliver such documents or instruments as may
16 be reasonably 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

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 27. RELEASE FORM. Permittee is required to have customers
14 complete and sign a release (waiver) form before participating in group exercise classes.
15 The release (waiver) form(s) used by the Permittee are subject to review and approval by
16 the City's Risk Manager and the City Attorney.


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1 Permittee consents to and agrees to perform the terms, covenants, and
2 conditions imposed on the Permittee under this Permit.

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4 ACCEPTED this September, day of 27, 2012.

5 MELINA CHRISTIDIS, dba MELINA FITNESS

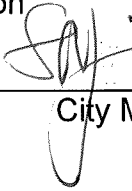
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7 Dated: 9/27, 2012

8 By: 
9 Title: owner

10 "Permittee"

11 CITY OF LONG BEACH, a municipal corporation

12 Dated: 11.20, 2012

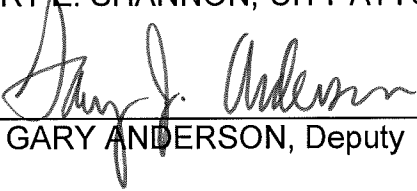
13 By:  Assistant City Manager
14 City Manager

15 "City"

16 EXECUTED PURSUANT
17 TO SECTION 301 OF
18 THE CITY CHARTER.

19 Approved as to form on Nov. 1, 2012.

20 ROBERT E. SHANNON, CITY ATTORNEY

21 BY: 
22 GARY ANDERSON, Deputy

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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

Attachment A: Permit Area

