

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**Civil Division**

VALERIE ABBOTT, Individually, and on behalf  
of those similarly situated,

Civil Action No.:

Plaintiff,

vs.

CORNERSTONE FITNESS WATERFRONT,  
LLC d/b/a CRUNCH WATERFRONT; NEW  
EVOLUTION VENTURES, LLC; CRUNCH,  
LLC; and CRUNCH FITNESS  
INTERNATIONAL, INC.,

Defendants.

**CLASS ACTION COMPLAINT**

AND NOW, comes the Plaintiff, Valerie Abbott, Individually and on behalf of those similarly situated, by and through her undersigned counsel, D. Aaron Rihn, Esquire, Robert F. Daley, Esquire, and the law firm of Robert Peirce & Associates, P.C., and claims damages of the Defendants, Cornerstone Fitness Waterfront, LLC d/b/a Crunch Waterfront, New Evolution Ventures, LLC, Crunch, LLC, and Crunch Fitness International, Inc., and in support thereof, avers as follows:

**INTRODUCTION**

1. This is a class action on behalf of Members of the fitness center operated under the name of Crunch Waterfront and owned, managed and controlled by Cornerstone Fitness Waterfront, LLC to recover damages and other relief arising from Defendants' violations of the Pennsylvania Health Club Act ("HCA"), 73 Pa. Cons. Stat. 2162, *et seq.*, and the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Cons. Stat. 201-2, *et seq.*

2. This is also a class action on behalf of members of the fitness centers operated under the name of Crunch and/or Crunch Fitness owned, managed, and controlled by New Evolution Ventures, LLC, Crunch, LLC, and Crunch Fitness International, Inc. to recover damages and other relief arising from Defendants' violations of the other states' Health Club Act and Consumer Fraud Acts covering the conduct of Crunch Fitness within their territorial boundaries.

3. Defendants have violated the Health Club Act and Consumer Fraud Acts by using Membership Agreements that unlawfully purport to renew automatically and perpetually in the absence of any contemporaneous affirmative election by the Member. Defendants have further violated the Health Club Act and Consumer Fraud Acts by unilaterally changing the membership type in the absence of any contemporaneous affirmative election by the Member. Such provisions and conduct violate the Health Club Act and Consumer Fraud Acts.

### **JURISDICTION AND VENUE**

4. Jurisdiction of this Court arises under 28 U.S.C. § 1332.

5. Venue lies in this district pursuant to 28 U.S.C. § 1391(a).

### **PARTIES**

6. Plaintiff Valerie Abbott is an adult individual residing at 608 Greer Street, Pittsburgh, Allegheny County, Pennsylvania 15217. Plaintiff purchased a Base Membership at Crunch Waterfront on or about January 30, 2014.

7. Defendant Cornerstone Fitness Waterfront, LLC is a limited liability corporation organized and existing under the laws of the Commonwealth of Pennsylvania, located at 340 East Waterfront Drive, Homestead, Allegheny County, Pennsylvania 15120.

8. Defendant Cornerstone Fitness Waterfront, LLC owns and operates Crunch Waterfront health club, offering a wide range of physical fitness services, including the use of exercise and weight training equipment and recreational space, as well as training and assistance in many different forms of fitness.

9. Defendant Cornerstone Fitness Waterfront, LLC and its business entity Crunch Waterfront will collectively be referred to as “Crunch Waterfront” throughout the remainder of this Complaint.

10. Defendant New Evolution Ventures, LLC is a limited liability corporation organized and existing under the laws of Delaware with a principal place of business located at 3595 Mt. Diablo Boulevard, #300, Lafayette, Contra Costa County, California 94549.

11. Defendant New Evolution Ventures, LLC is a private equity firm focused on the acquisition, development and operations management of fitness, health and wellness interests both domestically and internationally.

12. Defendant New Evolution Ventures, LLC purchased Crunch Fitness in 2009 following a voluntary Chapter 11 Bankruptcy filing by Crunch Fitness.

13. Defendant Crunch, LLC is a limited liability corporation organized and existing under the laws of Delaware with a principal place of business located at 22 West 19<sup>th</sup> Street, New York, New York County, New York 10011.

14. Defendant Crunch, LLC owns and operates a number of health clubs throughout the United States, Canada, and Australia, offering a wide range of physical fitness services,

including the use of exercise and weight training equipment and recreational space, as well as training and assistance in many different forms of fitness.

15. Defendant Crunch Fitness International, Inc. is a corporation organized and existing under the laws of Delaware with a principal place of business located at 88 University Place, New York, New York County, New York 10003.

16. Defendant Crunch Fitness International, Inc. owns and operates a number of health clubs throughout the United States offering a wide range of physical fitness services, including the use of exercise and weight training equipment and recreational space, as well as training and assistance in many different forms of fitness.

17. Defendants New Evolution Ventures, LLC, Crunch, LLC, and Crunch Fitness International, Inc. will collectively be referred to as “Crunch Fitness” hereinafter.

### **CLASS ACTION ALLEGATIONS**

18. This action is brought as a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of the following classes:

- a. All Pennsylvania citizens who entered into Membership Agreements with Defendant Crunch Waterfront containing the terms described herein; and,
- b. All persons in the United States of America who entered into a Membership Agreement with Defendants substantially similar to Plaintiff Abbott’s Agreement.

19. The Membership Agreement is a preprinted form agreement that Defendants use in standard form, without substantial or material alteration, with all of their customers. As such, the material terms relevant to this action are, upon information and belief, substantially identical in the contracts signed by the named Plaintiff and by all members of the Plaintiff Class.

20. The Plaintiff Class is believed to include thousands of members and is, therefore, so numerous that joinder of all members would be impracticable. The precise number of class members and the identity of each member, can be readily determined from Defendants' own records.

21. There are questions of law and fact common to all members of the Plaintiff Class and such common questions will predominate in the disposition of this action. Among the common questions of law and/or facts are whether Defendants violated the Health Club Act and Consumer Fraud Acts by using contracts with an ostensible automatic renewal clause that purport to effect perpetual contract renewals without any affirmative acceptance of renewal by the buyer at the expiration of each contract term, and if so, whether Plaintiff and Plaintiff Class are entitled to recover damages and other remedies.

22. The claims of the Plaintiff Class Representative are identical to, or at least typical of, the claims of the remaining Plaintiff Class members.

23. The Plaintiff Class Representative will fairly and adequately assert and protect the interests of the Plaintiff Class. In particular: (1) the undersigned attorneys will vigorously and adequately represent the interests of the Plaintiff Class, (2) the Class Representative has no conflict of interest in maintaining a class action, and (3) the Class Representative has adequate financial resources to assure that the interests of the Plaintiff Class will not be harmed.

24. A class action will provide a fair and efficient method for adjudication of the controversy set forth herein. In particular, with respect to Plaintiff's claims for monetary recovery: (1) common questions of law and fact will predominate over particular questions affecting only individual Plaintiff Class Members, (2) management of the action as a class action will not create any special difficulties, whereas the filing of multiple individual claims would

dramatically and needlessly overburden the court system, (3) the prosecution of separate actions by individual Class Members would create a risk of either inconsistent adjudications or the disposition or impairment of the interests of others similarly situated, (4) the Representative Plaintiff is unaware of any similar litigation against these Defendants raising the claims to be adjudicated in this action, (5) this forum is appropriate and well-equipped to handle the claims of the entire class, and (6) the amounts likely to be recovered by individual Class Members are adequate to justify the expense and effort of administering the claims as a class action. Further, to the extent this Court determines that equitable relief is warranted, Defendants have acted on grounds applicable generally to the class as a whole, thereby making final equitable relief appropriate with respect to the class as a whole.

### **GENERAL ALLEGATIONS**

#### **A. Defendants' Membership Agreement Contracts**

25. Defendants require individuals who seek membership to enter into a contract that is embodied within a document entitled "Membership Agreement" (hereinafter "Agreement").

26. The Agreement is a standard form document that Defendants drafted and the same document is used for every Health Club Member.

27. Plaintiff, and the Plaintiff Class, purchased health club memberships from Defendants pursuant to Defendants' preprinted form Agreement.

28. Specifically, in their Agreement, Defendants represented, warranted and agreed that the Member's monthly dues will not be increased without 30-days prior notice to the Member.

29. Defendants also represented, warranted, and agreed that the Members' membership type only could be changed by the Members by way of buying a new membership at the standard price and cancelling the previous membership.

30. Defendants enter into Membership Agreements such as the Agreement that Defendant Crunch Waterfront entered into with Plaintiff Abbott with hundreds, and probably thousands, of individuals.

**B. Plaintiff Abbott's Membership Agreement**

31. On or about January 30, 2014, Ms. Abbott signed a Membership Agreement with Cornerstone Fitness Waterfront, LLC d/b/a Crunch Waterfront (hereinafter "Crunch Waterfront"). (Abbott Agreement attached hereto as Exhibit A).

32. Ms. Abbott's Membership Agreement had no expiration date.

33. In approximately March 2018, Ms. Abbott became aware that the Defendant Crunch Waterfront unilaterally upgraded the Member's Base Plus membership to the All-Inclusive Peak Plus membership without prior notice or consent.

34. Defendant Crunch Waterfront was automatically charging new membership fees at the rate of \$19.95 for the All-Inclusive Peak Plus, as opposed to the \$9.95 monthly base membership fee.

35. As a result of the above practices, Plaintiff and Class Members were improperly charged membership fees greater than the contractually agreed-upon membership fee.

**COUNT I**

**Plaintiff v. All Defendants**

**VIOLATION OF THE HEALTH CLUB ACT**

36. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

**A. 73 Pa. Cons. Stat. 2162 et seq.**

37. Plaintiff and all those similarly situated in the Commonwealth of Pennsylvania are "buyers" as defined by the Pennsylvania Health Club Act ("HCA").

38. Defendants operate "health clubs" as defined by the HCA.

39. The Membership Agreements used by Defendants are "health club contracts" as defined by the HCA.

40. Section 2164(b) of the HCA ("Duration of Contract") provides, in relevant part, as follows:

- (a) TERM. The maximum term of a health club contract shall be 36 months.
- (b) RENEWAL. No health club contract may contain an automatic renewal clause, unless the contract provides for a renewal option for continued membership which ***must be affirmatively accepted by the buyer at the expiration of each contract term.***

73 Pa. Cons. Stat. § 2164(b) (emphasis added).

41. Defendants' Membership Agreements contain ostensible automatic renewal provisions that purport to renew in the absence of affirmative acceptance by the Health Club Member at the expiration of each contract term, in violation of § 2164(b) of the HCA.

42. Although Ms. Abbott's Membership Agreement had no expiration date, Defendants continued to collect monthly fees from Plaintiff for years well after the thirty-six-month maximum term and despite never obtaining affirmative acceptance of the continuation by the Plaintiff at the expiration of the original thirty-six-month period.



43. Section 2175 of the HCA ("Offenses defined") provides that a violation of the HCA "shall constitute" a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Laws ("UTPCPL") and "and shall be subject to the enforcement provisions and private rights of action contained in that act."

44. Plaintiff and those similarly situated have suffered an ascertainable loss of money or property as a result of Defendants' use or employment of Membership Agreements and practices in violation of the HCA and the UTPCPL.

45. Plaintiff and those similarly situated have suffered damages as a direct and proximate result of Defendants' conduct.

46. Plaintiff and those similarly situated are entitled to recover all actual damages proximately caused by Defendants' conduct, together with treble damages calculated thereon. 73 Pa. Cons. Stat. § 201-9.2

47. Plaintiff is entitled to recover her costs and attorneys' fees incurred herein. 73 Pa. Cons. Stat. § 201-9.2.

48. Plaintiff and those similarly situated are further entitled to permanent injunctive relief to enjoin Defendants from using any contract in violation of the HCA and collecting any further fees under a purported automatic renewal.

**B. The Other States**

49. The experience of Crunch Fitness members in Pennsylvania is consistent with, and reflective of, the experience of Crunch Fitness members in other states, and such other states maintain substantially similar Health Club Act covering the conduct of Crunch Fitness within their territorial boundaries.

50. At all relevant times, Crunch Fitness members were protected under the state Health Club Act of the various states, and the variations thereof, which established a statutory health club consumer protective scheme to enforce contracts and prevent unfair and unlawful consumer practices aimed at health club members and prospective members.

51. These statutes include, but are not limited to, the Pennsylvania Health Club Services Act, 73 P.S. 2162, *et seq.*; the New Jersey Health Club Services Act, N.J.S.A. 56:8-39; the Florida Buying Services Act of 1991, Fla. Stat. § 559.3901, *et seq.*; the New York Health Club Services Act; McKinney's General Business Law § 620; and the Illinois Physical Fitness Services Act, 815 ILCS 645/1, *el. seq.*

52. As a direct result of the Defendants' conduct, Plaintiff and Members of the Plaintiff Class have suffered in violation of the various Health Club Acts.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests this Honorable Court to enter judgment in her favor and each Member of the Class and against Defendants and to award damages in an amount to be determined at trial, together with treble damages calculated thereon, all in excess of the jurisdictional amount, plus interest thereon, costs, interest, and attorneys' fees herein.

## **COUNT II**

### **Plaintiff v. All Defendants**

#### **UNFAIR TRADE PRACTICES and CONSUMER PROTECTION LAW**

##### **A. 73 Pa. Cons. Stat. 201-2 *et seq.***

53. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

54. Plaintiff and the Defendants are “persons,” as defined by §201-2(2) of the Unfair Trade Law.

55. The Unfair Trade Law declares unlawful and prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce ... directly or indirectly affecting the people of this Commonwealth.” 73 Pa. Cons. Stat. §§ 201-2(3), 201-3.

56. Section 201-2(4) of the Unfair Trade Law defines “unfair or deceptive acts or practices” to include the following conduct:

(xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

57. As described herein, the Defendants are engaged in a “trade or commerce ... directly or indirectly affecting the people of this Commonwealth.” 73 Pa. Cons. Stat. §§ 201-2(3), 201-3.

58. As described herein, the Defendants’ conduct falls within the aforementioned definitions of “unfair or deceptive acts or practices.” 73 Pa. Cons. Stat. § 201-2(4).

59. As described herein, the Defendants’ conduct was “unfair.”

60. As described herein, the Defendants’ conduct was “deceptive.”

61. As described herein, the actions of the Defendants violate the applicable provisions of the Health Club Act.

62. Specifically, the Defendants’ contracts did not conform to the requirements of the Health Club Act and are voidable.

63. Despite the fact that the contracts are voidable, and despite attempts by Plaintiff and Members of the Class to seek refunds for the increased membership fees, Defendants continue to collect the upgraded membership fees from Plaintiff and Members of the Class.

64. Plaintiff avers that the Defendants violated the applicable provisions of the Health Club Act and, therefore, violated the relevant provisions of the Unfair Trade Law.

65. Section 15 of the Health Club Act states that “[a] violation of [the Health Club Act] shall constitute a violation of the act ... known as the [Unfair Trade Law] and shall be subject to the enforcement provisions and private right of actions contained in that act.” 73 Pa. Cons. Stat. § 2175(a).

66. Section 201-9.2(a) of the Unfair Trade Law authorizes a private cause of action for any person “who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by [the Unfair Trade Law].”

67. Plaintiff, on behalf of the members of the Class, is entitled to recover the membership fees.

68. Defendants continue to collect from members after they notified the Defendants of their request for refund of membership dues.

#### **B. The Other States**

69. The experience of Crunch Fitness and Crunch Waterfront Members in Pennsylvania is consistent with, and reflective of, the experience of Crunch Fitness members in other states, and such other states maintain substantially similar Unfair Trade Practices and Consumer Protection Laws covering the conduct of Crunch Fitness within their territorial boundaries.

70. The unfair and deceptive trade acts and practices of the Defendants have directly, foreseeably, and proximately caused damages and injury to the Plaintiff herein and to the other Members of the Class in amounts yet to be determined.

71. The actions and failures of the Defendants, including the intentional failure to recognize and observe the terms and rights of the Crunch Fitness and Crunch Waterfront membership contracts and requiring members to pay additional money without notice and consent, constitutes acts, uses or the employment by the Defendants of unconscionable commercial practices, deception, fraud, misrepresentations, or the knowing, concealment, suppression or omission of material facts with the intent that other rely upon such concealment, suppression or omission, in violation of the various state consumer protection, consumer fraud and unfair and deceptive practices laws.

72. In fact, Defendants' acts, actions, activities, representations and omissions constitute violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1; the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.* (encompassing the unlawful practices prohibited under N.J.S.A. 56:8-46); the Texas Deceptive Trade Practices and Consumer Protection Act, V.T.C.A. Bus. & C. § 17.50; the District of Columbia Unlawful Trade Practices Law, D.C. Stat. § 28-3904; the Michigan Consumer Protection Act, M.C.L.A. § 445.911, *et seq.*; the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 01.204, *et seq.*; the New York Deceptive Practices Act; McKinney's General Business Law, § 349, *et seq.*; the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*; and similar such consumer protection and trade practices acts throughout the United States.

73. By reason of the Defendants' unlawful conduct in violation of the various state consumer protection statutes, the Plaintiff and the other Members of the Class have suffered ascertainable losses of money in amounts yet to be determined.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests this Honorable Court to enter judgment in her favor and each Member of the Class and against Defendants and to award damages in an amount to be determined at trial, together with treble damages calculated thereon, all in excess of the jurisdictional amount, plus interest thereon, costs, interest, and attorneys' fees herein.

**COUNT III**

**Plaintiff v. All Defendants**

**BREACH OF CONTRACT**

74. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

75. In entering into Membership Agreements with their members, Defendants agreed to provide various rights, benefits, and privileges of membership.

76. Plaintiff, and other members of the Class, agreed, in return, to pay the required membership fees and to abide by the rules and policies of Crunch Waterfront and Crunch Fitness.

77. Plaintiff, and other members of the Class, performed their promises under the Membership Agreements, but the Defendants have failed to do so.

78. Defendants specifically breached their Membership Agreements by increasing membership dues without notice and consent of the members by unilaterally changing members' membership type.

79. As a direct and proximate result thereof, Plaintiff and other Members of the Class have been damaged and continue to be damaged to this day.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests this Honorable Court to enter judgment in her favor and each Member of the Class and against Defendants and to award damages in an amount to be determined at trial, all in excess of the jurisdictional amount, plus interest thereon, costs, interest, and attorneys' fees herein.

**COUNT IV**

**Plaintiff v. All Defendants**

**UNJUST ENRICHMENT**

80. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

81. The unfair and deceptive trade acts and practices of the Defendants and their breaches of the Membership Agreement, have directly, foreseeably, and proximately caused damages and injuries to the Plaintiff and to other Members of the Class in amounts yet to be determined.

82. By failing to perform under the Membership Agreements, to extend those contracts, and by failing to pay reimbursements and refunds as required by law, Defendants have retained Plaintiff's and Class Members' money and/or have otherwise profited under the contracts.

83. Specifically, Defendants have been unjustly enriched through the unilateral upgrading of membership contracts and by the receipt of such profits from money rightfully belonging to the Plaintiff and other Members of the Class, and Members of the Class have been deprived of the use of those funds.

84. Accordingly, a constructive trust should be imposed on all monies wrongfully retained by the Defendants, received and held by it, paid to it or otherwise credited to the Plaintiff and other Class Members, for whom contract rights and privileges have been breached.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests this Honorable Court to enter judgment in her favor and each Member of the Class and against Defendants and to award damages in an amount to be determined at trial, all in excess of the jurisdictional amount, plus interest thereon, costs, interest, and attorneys' fees herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the other Members of the Class, prays for judgment as follows:

- a. A Declaration that Defendants have violated the applicable provisions of the Health Club Act and the Unfair Trade Laws;
- b. An Order designating this action as a class action pursuant to Federal Rules of Civil Procedure 23(c).;
- c. An Order appointing Plaintiff and her counsel to represent the Class;
- d. An Order enjoining Defendants from any further violations of the Health Club Act sand the Unfair Trade Laws;
- e. An Order granting injunctive relief, including (but not limited to) changes to Defendants' unlawful and unfair business practices;
- f. Actual damages;
- g. Statutory damages;
- h. Treble damages;
- i. All attorneys' fees and costs; and,
- j. Such other relief as the Honorable Court shall deem just and appropriate.



**JURY TRIAL IS DEMANDED.**

Respectfully submitted,

By: /s/ D. Aaron Rihn

D. AARON RIHN, ESQUIRE

Pa. ID No.: 85752

ROBERT F. DALEY, ESQUIRE

Pa. ID No.: 81992

ROBERT PEIRCE & ASSOCIATES, P.C.

707 Grant Street

Suite 2500

Pittsburgh, PA 15219

Tel: (412) 281-7229

Fax: (412) 281-4229\

Email: [arihn@peircelaw.com](mailto:arihn@peircelaw.com)

[bdaley@peircelaw.com](mailto:bdaley@peircelaw.com)

*Counsel for Plaintiff*

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) \_\_\_\_\_

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**    ☐ Yes    ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44A REVISED June, 2009  
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the ( Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1. This case is related to Number \_\_\_\_\_. Short Caption \_\_\_\_\_.
2. This case is not related to a pending or terminated case.

**DEFINITIONS OF RELATED CASES:**

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit  
**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

**I. CIVIL CATEGORY** (Select the applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeas corpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

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

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SHEETS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race or marital status. The agency that administers compliance with the law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

## Membership Agreement

First Name 608 Greer St\$	Last Pittsburgh	Middle Initial	Social Security # PA 15217
Street Address (412) 860-4821	City	State 03/28/1951	Zip Code Female
Primary Phone Number Paul Jack	Work Phone (724) 274-7324	Birth Date	Gender
In Case of Emergency, Call (Name) 14931090	Emergency Phone		
Drivers License #	Employer	Occupation vjabbott@verizon.net	
Flyers Source	Cell Phone	E-Mail Address	

## MEMBERSHIP TYPE: BASEPL

☐ **NONRENEWABLE MEMBERSHIP:**

**This membership will expire:**

An annual fee of \$ 29.00 will be billed on TBD

**and on the same date each year thereafter.**

**Member's Initials**

Notwithstanding any other provisions of this Agreement, you understand and agree that the amount of your monthly membership dues is based on current sales tax rates and to the extent such rates should increase during your membership, the club has the right to increase your monthly membership dues by the amount of such increase. If you have requested the privilege of paying your monthly dues by pre-authorized electronic funds transfer, the monthly amount so transferred will be adjusted to reflect any increase in the sales tax rate.

- |                             |         |
|-----------------------------|---------|
| 1. Your Membership begins:  | TBD     |
| 2. Your Membership expires: | OPEN    |
| 3. Enrollment Fee:          | \$ 0.00 |
| 4. First Month Dues:        | \$ 9.95 |
| 5. Prorated Annual Fee:     | \$ 0.00 |
| 6. Amount Paid Today:       | \$ 9.95 |

**DEFAULT AND LATE PAYMENTS:** Should you default on any payment obligation as called for in this agreement, the club will have the right to declare the entire remaining balance due and payable and you agree to pay allowable interest, and all costs of collection, including but not limited to collection agency fees, court costs, and attorney fees. A default occurs when any payment due under this agreement is more than ten days late. **SHOULD ANY MONTHLY PAYMENT BECOME MORE THAN TEN DAYS PAST DUE, YOU WILL BE CHARGED A LATE FEE, AN ADDITIONAL SERVICE FEE WILL BE CHARGED FOR ANY CHECK, DRAFT, CREDIT CARD, OR ORDER RETURNED FOR INSUFFICIENT FUNDS OR ANY OTHER REASON.** If the Member is paying monthly dues by electronic funds transfer (EFT), the club's billing company, ABC Financial Services, Inc., reserves the right to draft via EFT all amounts owed by the member including any and all late fees and service fees. Subject to appropriate State and Federal Law.

Pay. Schedule :		DUES	Monthly	Open
Number of Payments	Monthly Payment Amount		Payment Due Date	
Open	\$ 9.95		TBD	

## NOTICE OF CONSUMER RIGHTS

1. The buyer may cancel the contract without penalty within three business days of its signing and the buyer receiving a full completed copy thereof. Upon receipt of notice of cancellation under this paragraph, the health club shall refund to the buyer all monies, including any initiation fee, paid under the contract.
2. If a health club is to stop temporarily for 30 days or less, the buyer shall receive an extension of the membership term equal to the period during which the facility is closed. The buyer may cancel the contract if the health club facility closes for more than 30 days and the health club fails to provide a comparable facility within ten miles of the location designated in its health club contract. Upon receipt of notice of cancellation under this paragraph, the health club shall refund to the buyer all monies paid in excess of an amount computed by dividing the full contract price, including any initiation fee, by the number of weeks in the contract term and multiplying the result by the number of weeks elapsed in the contract term.
3. The buyer may extend the membership term of the contract at no additional cost for a period of time equal to the duration of a disability when the buyer has a disability which precludes the buyer from using one-third or more of the health club facilities for a period of less than six months and the disability is verified by a physician.
4. The buyer or his legal representative may cancel the contract if the buyer or his permanent or permanent disability is disabled. A permanent disability means a condition which precludes the buyer from using one-third or more of the facilities for six months or more and the condition is verified by a physician. Upon receipt of notice of cancellation under this paragraph, the health club shall refund to the buyer all monies paid in excess of an amount computed by dividing the full contract price, including any initiation fee, by the number of weeks elapsed in the contract term and multiplying the result by the number of weeks elapsed in the contract term. If a permanent disability is not exceeding \$100, or if more than half the life of the contract has expired, a pro rata refund of not exceeding \$50. In the case of permanent disability may require the buyer to submit to a physical examination by a physician agreed to by the buyer and the health club. The additional cost of the examination shall be borne by the health club.
5. The buyer may cancel the contract if the buyer moves more than 25 adult miles from the health club and is unable to transfer the contract to a comparably facility located within five miles of his new residence. Upon receipt of notice of cancellation under this paragraph, the health club shall refund to the buyer all monies paid in excess of an amount computed as of the date of relocation by dividing the full contract price, including any initiation fee, by the number of weeks in the contract term and multiplying the result by the number of weeks elapsed in the contract term, less a pro rata refund of not exceeding \$100, or if more than half the life of the contract has expired, a pro rata refund of not exceeding \$50.
6. If the buyer cancels the contract within the first 45 days of the contract term, the health club shall notify the health club of cancellation in writing, by a letter mailed by registered mail, return receipt requested, to the health club within 10 days of the date of cancellation. If the buyer fails to do so, the health club shall be deemed to have accepted the cancellation and the health club shall refund to the buyer all monies to be returned upon cancellation in the health club contract shall be paid within 45 days of receipt. If the notice of cancellation and that if the buyer has executed a written, free and voluntary transfer agreement with the health club to pay for health club services, any negotiable instrument or credit or an agreement as outlined by the buyer shall not be returned and any automatic transfer shall be canceled within 40 days after the cancellation.
7. The buyer may cancel the contract without penalty and receive a full refund, including any initiation fee, if the facility is not completed and opened prior to 1/25/14. The buyer may cancel the contract without penalty and receive a full refund, including any initiation fee, within three business days of the facility opening, if the buyer receives notice of its opening, whether or not advertised.
8. All claims for cancellation of this contract shall be subject to the jurisdiction of the Arbitration and Dispute Resolution Insurance Company, 475 N. Maple Road, Suite 555, Schaumburg, IL 60197. The procedure to obtain a refund under such law is set forth in the full compliance with the Health Club Act. The buyer may cancel the contract at any time.

**BUYER'S RIGHT TO CANCEL:** If you wish to cancel this contract, you may cancel by delivering or mailing by certified mail, return receipt requested, written notice to this health club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before 12 midnight of the third business day after you sign and receive a copy of this contract. The notice must be delivered or mailed to 340 East Waterfront Drive, Homestead, PA 15120. In some cases you may also cancel this contract if you signed it before the health club facility was completed, if the club moves or goes out of business, if you become permanently disabled or if you move from the area. If you cancel, the health club may be entitled to a certain portion of the contract price. If the health club goes out of business or refuses to give you a refund, there may be a bond or letter of credit under which you are entitled to collect. For details, read your contract carefully. Enforcement of the Health Club Act is by the Attorney General of the Commonwealth of Pennsylvania or the district attorney of the county in which the health club is located. You may also bring a private cause of action. If your rights are violated, you may contact the State Bureau of Consumer Protection or your local district attorney.

**NOTICE:** Any holder of this contract or note is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

 Parent or Guardian Signature:

**CLUB REPRESENTATIVE**

**MEMBER**

**PARENT OR GUARDIAN**



PLEASE ATTACH A VOID OR BLANK CHECK  
REQUEST FOR PREAUTHORIZED PAYMENT

We hereby request the proceeds of paying to ABC Financial Services, Inc. ("The Company"), Sherwood, AR 72154, and further authorize the Company to draw drafts (checks, direct fund transfers, charges card) for the purpose of paying said payments, including any late fees or service fees, on the account of

**Payment Method:** ☒ Credit Card

**REQUIRED FOR ALL  
EFT AND CREDIT CARD  
DRAFT ACCOUNTS**

<b>BANK NAME</b>	<b>ROUTED TO NUMBER (IN CREDIT)</b>	<b>ACCOUNT NUMBER</b>	<b>ACCOUNT TYPE</b>	<b>ACCOUNT OWNER</b>
Visa	XXXX-XXXX-XXXX-9028		03 2016	Valerie Abbott
<b>CARD TYPE</b>	<b>ACCOUNT NUMBER</b>	<b>EXPIRATION MM /</b>	<b>CARD OWNER</b>	

CREDIT TYPE	ACCOUNT NUMBER	EXPIRATION DATE	DATE OF CHECK
<p>Subject to the following conditions:</p> <p>(1) The terms shall be drawn on or about the date or dates of the Payment Schedule. The company will pay on your bank card amount will provide a receipt for payment on your account.</p> <p>(2) The regular payments set forth on the Payment Schedule shall only be amount you are obligated to pay at least 10 days before each payment of when it will be made and as much as it will be. However, by extending this preauthorization, you agree to extend each of these only when the payment would have been more than \$50.00 from the next regular payment.</p> <p>(3) By accepting this agreement, you acknowledge your agreement that certain documents required by the Electronic Funds Transfer Act and its regulations are available for your review at the Company's website: <a href="http://www.chevy.com">www.chevy.com</a> under terms and conditions.</p> <p>(4) The principle of making payments under this agreement may be revoked by the Company if any card is not paid upon expiration.</p> <p>(5) If the preauthorization payment agreement is revoked and/or any reason, the card will return to you from the company's Payment Schedule.</p> <p>(6) The card will be drafted for any card, and will card or other related or automatic funds or any other reason.</p> <p>(7) The preauthorization agreement shall terminate upon the card is fully paid.</p>			

01/30/2014

### Account Policy Statement

724 E-2 2-5784

CORNERSTONE FITNESS WATERFRONT, LLC (FITNESS WATERFRONT) IS THE OWNER OF THIS FACILITY AND FITNESS CENTER OPERATION AND HAS BEEN LICENSED BY AN AFFILIATE OF CRUNCH, LLC TO USE THE CRUNCH MARKS IN CONNECTION WITH ITS OPERATION. NEITHER CRUNCH, LLC NOR ANY RELATED ENTITY IS THE OWNER OF THIS CRUNCH FACILITY AND FITNESS CENTER OPERATION. NEITHER CRUNCH, LLC NOR ANY RELATED ENTITY IS CONTRACTUALLY OR OTHERWISE LIABLE TO YOU AS FITNESS WATERFRONT IS SOLELY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THIS FACILITY AND FITNESS CENTER OPERATION.

#### (1) MEMBERSHIP PAYMENT AND TERMS

**(1.1) Description of Services.** This is a club membership agreement and not an optional services agreement such as personal training which is a separate agreement. This club membership agreement entitles Member to access the facility designated above during business hours. This club membership agreement provides Member access to cardiovascular, strength and conditioning machines. It also provides certain Member access to certain exercise classes if available at the facility.

**(1.2) Rules, Regulations and Schedules.** Member agrees to abide by the rules, regulations and schedules of Cornerstone Fitness Waterfront, LLC "Fitness Waterfront", which may be posted at a facility or issued orally, and which may be amended from time to time at Fitness Holding's sole discretion. Upon joining, Member and/or Buyer must pay the appropriate initial charges. At the sole discretion of FITNESS WATERFRONT, a Member's membership may be revoked or suspended at any time if in the judgment of FITNESS WATERFRONT: (a) Member consistently fails to observe the Rules and Regulations, (b) has otherwise behaved in a manner contrary to the best interests of FITNESS WATERFRONT or any of FITNESS WATERFRONT Members, (c) Member has instituted any type of legal action against FITNESS WATERFRONT, including but not limited to civil actions, arbitrations and/or mediations, and/or (d) FITNESS WATERFRONT has instituted any type of legal action including but not limited to civil actions, arbitrations and/or mediations against Member.

**(1.3) Member's Obligation.** Member and/or Buyer shall not be relieved of the obligation to make payments agreed to and no deduction from any payment shall be made because of Member's failure to use the FITNESS WATERFRONT facilities. Dues are for the period stated in the Agreement.

**(1.4) Initiation Fee.** There may be a one-time initiation fee which Member and/or Buyer shall be required to pay upon execution of the agreement and acceptance of these Terms and Conditions with FITNESS WATERFRONT or as otherwise agreed to by the Member. This fee will change from time to time at FITNESS WATERFRONT's discretion. This fee is nonrefundable. Resignation from FITNESS WATERFRONT shall not terminate the obligation to pay the initiation fee in full. There will be no further initiation fee as long as the Membership has not terminated or expired.

**(1.5) Monthly Dues, Annual Fee, and other Fees.** Member or Buyer shall pay, in advance, monthly Membership dues as set forth in the agreement. FITNESS WATERFRONT may increase the monthly Membership dues once per calendar year upon giving Members thirty (30) days prior notice, posted in a FITNESS WATERFRONT facility and/or sent by mail to Member or Buyer. FITNESS WATERFRONT may adjust any fees other than monthly dues at any time at its sole discretion.

**(1.6) Default and Late Payments.** Should you default on any payment obligation as called for in this agreement, the club will have the right to declare the entire remaining balance due and payable and you agree to pay allowable interest, and all costs of collection, including but not limited to collection agency fees, court costs, and attorney fees. A default occurs when any payment due under this agreement is more than ten days late. **SHOULD ANY MONTHLY PAYMENT BECOME MORE THAN TEN DAYS PAST DUE, YOU WILL BE CHARGED A LATE FEE. AN ADDITIONAL SERVICE FEE WILL BE CHARGED FOR ANY CHECK, DRAFT, CREDIT CARD, OR ORDER RETURNED FOR INSUFFICIENT FUNDS OR ANY OTHER REASON.** If the Member is paying monthly dues by electronic funds transfer (EFT), the club's billing company, ABC Financial Services, Inc., reserves the right to draft via EFT all amounts owed by the member including any and all late fees and service fees. Subject to appropriate State and Federal Law.

**(1.7) Limited Memberships.** Memberships may be limited so that Members may have reasonable access to FITNESS WATERFRONT facilities. It is to be expected that there may be occasional delays, especially during peak hours, in using the fitness equipment; or that Members may not always be able to attend preferred exercise classes. The availability of classes and equipment are subject to demand and are available on a first-come first-served basis.

**(1.8) Unpaid Balances.** All balances owed by Member and/or Buyer that are 30, 60 and 90 days in arrears are subject to monthly service charges per month in arrears. These fees may be adjusted from time to time. Any unpaid balances for membership fees, goods or services past thirty (30) days may result in suspension of membership privileges. Members and/or Buyer shall be obligated to pay any cost incurred by FITNESS WATERFRONT for collection. The renewal fee for paid in full annual memberships must be paid by 12:00 midnight 30 days after the expiration of the annual membership or Member's privilege to use FITNESS WATERFRONT facilities may be suspended and a new initiation fee will be required.

**(1.9) Membership Term.** The period covered by the first month's dues, as well as any additional days of Membership for which payment is received by FITNESS WATERFRONT, are the "Paid Period" for the Dues Membership. The "Paid Period" is the term of this Membership Agreement.

**(1.10) Cancellation of Membership.** (1.10.1) Member has three (3) business days to cancel the Agreement from date of purchase. To cancel, mail a letter by certified or registered US mail to the following address: FITNESS WATERFRONT at 340 East Waterfront Drive, Homestead, PA 15120. It is recommended that (you) Member send (your) Member's cancellation notice by registered or certified mail or overnight delivery, return receipt requested, in order to prove that (you) Member did cancel. If Member hand delivers Member's cancellation to a FITNESS WATERFRONT facility, Member should be sure to receive a signed statement from a FITNESS WATERFRONT employee acknowledging Member's cancellation.

**(1.10.2) Death or Disability.** If, by reason of death or disability, you are unable to receive all of the services for which you contracted under this Agreement, you and your estate shall be relieved from the obligation of making payment for services other than those received prior to your death or the onset of your disability. If you prepaid any sum for services, so much of the sum as allocable to services not taken prior to your death or disability shall be promptly refunded to you or your representative. For purposes of this provision "disability" means a condition, which precludes you from physically using the facilities. A physician must confirm your disability in writing. Member may cancel his or her contract and FITNESS WATERFRONT is entitled to a reasonable predetermined fee in such event in addition to an amount equal to the value of services made available for use by Members. This amount shall be computed by dividing the months expired under the membership term. Member or Member's estate must provide reasonable evidence of disability or death.

**(1.10.3) Close of Facility and/or Move.** Under this contract, no further payments shall be due to anyone, including any purchaser of any note associated with or contained in this contract, in the event the FITNESS WATERFRONT facility at which the Agreement in entered into ceases operation and fails to offer an alternate location, substantially similar, within ten (10) miles.

**(1.10.4) New Facility.** You may cancel the contract and receive a pro rata refund if the health club fails to provide the specific facilities advertised or offered in writing by the time indicated. Performance of the agreed upon services will begin within six months after the date of this Agreement.

**(1.10.5) Opening of Club.** If the facility first identified above has not opened as of the date of this Agreement, Member and/or Buyer may cancel this Membership Agreement at any time prior to midnight of the third (3rd) business day after the date such facility opens for business, excluding Sundays and holidays. To cancel this Membership Agreement, mail or deliver a signed and dated notice stating that Member and/or Obligor, as applicable, is canceling this Membership Agreement, or words of similar effect. Such notice shall be sent to FITNESS WATERFRONT at 340 East Waterfront Drive, Homestead, PA 15120, or delivered to the FITNESS WATERFRONT facility. Member or Obligor, as applicable, is entitled to receive a refund within fifteen (15) days of receipt of the notice of cancellation, less payment for any services rendered prior to such cancellation.

**(1.10.6) Relocation.** Member may cancel this Agreement if they can provide proof that Member is permanently moving more than twenty five (25) miles away from any FITNESS WATERFRONT facility. Proof such as utility bill, lease agreement, driver's license, military orders or any other document that could validate such proof will be accepted. Should you move further than 25 miles from the club and be unable to transfer this membership to a comparable facility, you shall be relieved from your obligation of making payment for services other than those received prior to your move, and if you prepaid any sum for services other than those received prior to your move, so much of such sum as is allocable to services you have not received shall be promptly refunded. Notwithstanding the above you will be charged an administrative fee of \$25 if you cancel this Agreement.

**(1.10.7) Material Changes in Services.** Member may cancel this Agreement if the health club materially changes the services promised as part of the initial contract.

**(1.10.8) Written Requests.** Memberships cannot be cancelled by phone or verbal conversation. Cancellation requests will only be honored if sent in writing or filled out at a FITNESS WATERFRONT facility. All paperwork is deemed a request until a FITNESS WATERFRONT employee can validate paperwork and approve such cancellation. A cancellation that has been denied will be sent in writing back to Member along with reason of denial or instructions for acceptance and refund.

**(1.10.9) Cancellation of Monthly Membership.** If you have a monthly payment membership, you may terminate this Membership Agreement by providing at least ten (10) days notice prior to the next bill date to FITNESS WATERFRONT delivered (a) by U.S. mail to FITNESS WATERFRONT at 340 East Waterfront Drive, Homestead, PA 15120 or (b) by hand to the manager at your FITNESS WATERFRONT facility. The termination will be effective at the end of the Paid Period, and you may continue to use the facility during the Paid Period. FITNESS WATERFRONT shall not charge your credit card or initiate any EFT payments, which are scheduled to occur more than ten (10) days after the termination notice is received by FITNESS WATERFRONT. If the termination cannot be processed prior to the scheduled date of the charge or transfer, FITNESS WATERFRONT shall refund the debited amount.

**(1.10.10) Cancellation of Prepaid Membership.** If you have a Prepaid Membership, you may not terminate it during the Paid Period (or receive a refund), unless specifically stated above. If you do not renew your Prepaid Membership by the renewal date, your Prepaid Membership automatically expires.

**(1.11) Refunds.** Refunds, if applicable, shall be made within fifteen (15) days of receipt of notice of cancellation.

**(1.12) Change of Membership Type.** Any membership can be changed by buying a new membership at the standard price and cancelling the previous membership.

**(1.13) Freeze Policy.** (a) Medical. If Member is medically unable to use the FITNESS WATERFRONT facilities, Member may request a freeze of his or her membership in monthly increments for a minimum of 1 month and a maximum of 6 months per year. Members must provide a doctor's note at the time of requesting a freeze. FITNESS WATERFRONT reserves the right to verify the note with the doctor and Member agrees to waive any Doctor/Patient privilege and execute any release required by such doctor solely with regards to the medical reasons stated in the doctor's note for the medical freeze. (b) Non-medical. If a Member desires to freeze his or her account for a non-medical reason, Member should consult with Member's FITNESS WATERFRONT facility. FITNESS WATERFRONT reserves the right to adjust this freeze policy from time to time at its sole discretion. All requests must be received at least fourteen (14) days prior to Member's next billing date period. Retroactive freezes will not be accepted. Certain fees may apply to any freeze of a Member's membership.

**(1.14) Buyer's Indemnity.** Buyer assumes full responsibility for any person who becomes a Member under the Agreement and these Terms and Conditions and shall indemnify FITNESS WATERFRONT, its affiliates, agents and employees against any and all liability incurred by such Member during his or her use of any and all FITNESS WATERFRONT facilities.

**(2) MEMBER RISK.** To the fullest extent permissible by applicable law, Member and Member's guests shall hold FITNESS WATERFRONT harmless from any loss,



theft, cost, claim, injury, damage or liability ("Damages") incurred as a result of the use of a FITNESS WATERFRONT facility and any other membership activities, except such Damages which result from the negligence of FITNESS WATERFRONT, its affiliates, agents or employees.

**(2.1) Member's Health Warranty.** Member and Buyer represent that Member is in good health and has no disability, impairment, injury, disease, or ailment, preventing him or her from engaging in active or passive exercise or which could cause increased risk of injury or adverse health consequences as a result of exercise. Member assumes full responsibility for his or her use of a FITNESS WATERFRONT facility and shall indemnify FITNESS WATERFRONT, its affiliates, agents and employees, against any and all Damages arising out of Member's use of the facilities except as otherwise set forth in these Terms and Conditions or to the extent permissible by applicable law. Physical examinations by Member's physician are recommended for members before commencing any exercise program, and especially for Members who are at risk, including but not limited to elderly or pregnant Members, or Members unaccustomed to physical exertion, or who have physical limitations, a history of high blood pressure, heart problems or other chronic illnesses, or members who have a history of heart disease.

**(2.2) Medical Disclaimer.** Member has been informed and acknowledges that FITNESS WATERFRONT has made no claims as to medical results that can or may be obtained through use of any FITNESS WATERFRONT facility. FITNESS WATERFRONT has neither suggested nor will it suggest any medical treatment to Members. Only licensed medical professionals are qualified to give medical advice. Member represents that there is no medical or physical conditions that would preclude the use of FITNESS WATERFRONT facilities and each Member further represents that he or she has not been instructed by any physician not to use FITNESS WATERFRONT facility or any similar facility.

**(2.3) Orientation.** Member is strongly encouraged to take advantage of the complimentary initial orientation and ongoing support available to ensure the proper safe and use of all equipment.

**(2.4) Activity Risk.** Any strenuous athletic or physical activity involves certain risks. Member and Member's guests assume the risk of any all accidents or injuries of any kind that may be sustained by, or in connection with, use of the facilities and release, hold FITNESS WATERFRONT harmless, discharge and absolve FITNESS WATERFRONT, its agents and employees to the fullest extent permissible by applicable law from any and all Damages or responsibility except if such accident or injury is the result of negligence of FITNESS WATERFRONT, its affiliates, agents or employees.

**(2.5) Loss of Property.** Members and Member's guests are urged not to bring valuables onto the premises of a FITNESS WATERFRONT facility. FITNESS WATERFRONT shall not be liable for the disappearance, loss, theft, or damage to personal property, including money, negotiable securities or jewelry of Member or Member's guests.

### **(3) GENERAL PROVISIONS**

**(3.1) Members and Guests Rules.** Members and Member's guests shall abide by FITNESS WATERFRONT's rules and regulations and any amendments and/or modifications thereto which may be made from time to time by FITNESS WATERFRONT at FITNESS WATERFRONT's sole discretion.

**(3.2) Proof of Membership.** Member shall receive one membership card (included with Member's membership) (the "Membership Card") from FITNESS WATERFRONT and must present it to the reception desk personnel each time Member enters a FITNESS WATERFRONT facility. Lost membership cards will be replaced for a fee of five dollars (\$5), which may be adjusted from time to time. The card must be replaced if lost. Member is required to notify FITNESS WATERFRONT immediately of the loss of his or her Membership Card, and the Membership Card must be replaced by Member. Membership privileges are limited to the person in whose name the membership is issued. Improper use of the membership will result in confiscation of the Membership Card and can result in immediate cancellation of Member's membership. A Member wishing to use FITNESS WATERFRONT facilities without his or her Membership Card will be required to provide proof of identity. (e.g. valid driver's license, etc.)

**(3.3) Day Lockers.** Lockers may be provided solely for the benefit and convenience of FITNESS WATERFRONT members. FITNESS WATERFRONT will remove any articles left in a locker overnight. Member must provide his or her own lock and should not leave any valuables in his or her locker.

**(3.4) Pets.** Pets (not including service animals) and bicycles are not permitted in or around a FITNESS WATERFRONT facility.

**(3.5) Dress Code.** Proper athletic attire is required. FITNESS WATERFRONT reserves the right to make the final determination in its sole discretion with regard to appropriate attire.

**(3.6) Independent Contractors.** From time to time, FITNESS WATERFRONT may make the services of independent contractors available to Member or Member's guests. FITNESS WATERFRONT does not warrant or guarantee the quality of these services and does not guarantee that these services will remain available to Member or Member's guests for a period of time.

**(3.7) Member Guests.** Member's guests are permitted in FITNESS WATERFRONT, but only pursuant to such rules, regulations, fees, and schedules for guests as then may be in effect. FITNESS WATERFRONT reserves the right to limit the number of times any one guest can use a FITNESS WATERFRONT facility and reserves the right to exclude any Member's guests whose use of the facility, in the sole opinion of FITNESS WATERFRONT, would be detrimental to FITNESS WATERFRONT or any of its members. All Members' guests must register at the front desk with valid identification.

**(3.8) Reciprocity and Use Privileges.** "PEAK" memberships allow access to other designated franchised Crunch clubs.

**(3.9) Spotting.** FITNESS WATERFRONT recommends to all Members and to all Member's guests, spotting by another member or FITNESS WATERFRONT trainer when using any free weights.

**(3.10) Change in Membership Information.** Member must promptly notify FITNESS WATERFRONT in writing of any changes in his or her billing information, address or telephone number. Notwithstanding anything else contained herein, all communications from FITNESS WATERFRONT to Member shall be presumed to have been received by Member within five (5) business days after mailing to Member's address on file with FITNESS WATERFRONT at the time of the mailing.

**(3.11) Change in Facilities and Operating Hours.** As a result of repair, maintenance or special occasions, FITNESS WATERFRONT may be required to restrict the use or temporarily close one or more FITNESS WATERFRONT facilities or halt a FITNESS WATERFRONT activity from time to time. There will be no reduction, suspension, abatement, or apportionment of membership fees or other charges during such time when the above-mentioned occurs. FITNESS WATERFRONT hours of operation may be modified from time to time without prior notice to Member. FITNESS WATERFRONT reserves the right to change the facility from time to time, to eliminate some facilities and services, to add others, to add, modify and/or eliminate programs, activities, classes or equipment at FITNESS WATERFRONT's sole discretion.

**(3.12) Special Events.** FITNESS WATERFRONT may from time to time reserve the use of its facilities for special events, competitions and private functions.

**(3.13) Closing of a FITNESS WATERFRONT Facility.** It is anticipated that a part of a part of the facility or the entire facility will be temporarily unavailable from time to time while repairs or renovations take place. Management will make every effort to minimize any disruption to members during these periods, and if possible, to schedule any work during off-hours or summer months. The facility may be closed for holidays, and may be closed periodically for renovations. FITNESS WATERFRONT may also offer members the use of other conveniently located Crunch facilities during the period of unavailability.

**(3.14) Interruption of Services.** In case of a long term interruption of service (e.g. fire), FITNESS WATERFRONT reserves the right to: (a) freeze memberships and add the lost time once service resumes; (b) transfer the member to another similar facility within a five-mile radius. In the event that an act of God (hurricane, earthquake, national emergency, etc.) causes more than a temporary closing of this facility, Member's obligations under the Agreement and these Terms and Conditions will be suspended until such time as use of the facility can be resumed. Obligation for contractual dues will otherwise not be affected unless this facility cannot reopen within one year of the interruption of service.

**(3.15) Non-Discrimination.** FITNESS WATERFRONT represents that it will not discriminate against any person because of sex, race, creed, age, color, national origin, sexual orientation, or ancestry in considering applications for memberships. The minimum age for membership is eighteen (18), unless parental permission and FITNESS WATERFRONT's consent is given and approved by FITNESS WATERFRONT at FITNESS WATERFRONT's sole discretion.

**(3.16) Children's Use.** All children under eighteen (18) years of age must be accompanied by such child's parent at all times within a FITNESS WATERFRONT facility unless they are in a supervised activity. Some children's programs require fees to be paid in advance. FITNESS WATERFRONT reserves the right to discontinue use by any child who is unsupervised, or whose behavior is offensive or disruptive.

**(3.17) Group Exercise Policies.** Each class is limited to a set number of participants. Members should not enter a class late without the instructor's consent. No one will be admitted ten (10) minutes after the scheduled class time. If Member is just starting a group fitness program or has an injury, prenatal conditions or problem that may prevent full participation, please discuss this with the group fitness instructor at least five (5) minutes before class. Proper clothing and footwear must be worn in all group fitness classes. FITNESS WATERFRONT reserves the right to change the group fitness schedule at any time including the addition or deletion of classes, as well as changes in instructors, class times and length of classes. FITNESS WATERFRONT reserves the right to change group fitness policies when necessary and require advanced reservations for heavily attended classes. Reservations may be released within five (5) minutes prior to the scheduled class time and Member may enter on a walk-in basis provided there are openings in the class. Member's attending a class shall, in addition to the Terms and Conditions, follow any rules promulgated by such class' instructors.

**(3.18) Personal Training.** In addition to these Terms and Conditions, any and all personal training provided by FITNESS WATERFRONT shall be pursuant to any additional terms and conditions set forth in a separate personal training contract entered into by a Member and FITNESS WATERFRONT. Use of personal trainers not approved by FITNESS WATERFRONT is prohibited at all FITNESS WATERFRONT facilities. Member may not train other members or guests, conduct business activity or solicit any business at any FITNESS WATERFRONT facility. Any violation of this policy may result in legal action as well as forfeiture of any remuneration received by a Member or guest for such services.

**(3.19) Changing the Rules and Regulations.** FITNESS WATERFRONT may at its sole discretion change these Terms and Conditions at any time.

**(3.20) Entire Agreement.** The Agreement, these Terms and Conditions, and all rules and regulations of FITNESS WATERFRONT, as revised from time to time, constitute the entire and exclusive agreement between FITNESS WATERFRONT and Member, and supercedes all prior promises, representations, understandings and/or agreements relating to this membership purchase. The Agreement may be modified only by an instrument in writing, however, FITNESS WATERFRONT or any assignee of the Agreement is authorized to correct patent errors in the Agreement (and in other related documents) and Member and/or Buyer may verbally authorize payment of the outstanding balance of the membership fee by the automatic payment plan. FITNESS WATERFRONT may void the Agreement if it is not completed by a FITNESS WATERFRONT employee in accordance with the current pricing and payment programs, or if there has been any misrepresentation by Member. No written alterations or amendments to the Agreement and/or these Terms and Conditions shall be valid and FITNESS WATERFRONT employees are not authorized to make any changes written and/or verbal, additions or modifications to this Agreement. If you have any questions regarding this Agreement or these Terms and Conditions please contact FITNESS WATERFRONT at 340 East Waterfront Drive, Homestead, PA 15120.

**(3.21) Governing Law.** This Membership Agreement shall be interpreted under the laws of the State of Pennsylvania. Any litigation under this Membership Agreement shall be resolved in the courts of the State of Pennsylvania.