

EXHIBIT 4
AREA DEVELOPMENT AGREEMENT

PERSONAL TRAINING INSTITUTE FRANCHISE, LLC

AREA DEVELOPMENT AGREEMENT

AREA DEVELOPER

DATE

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EXHIBITS

A – DEVELOPMENT AREA

B – DEVELOPMENT FEE AND DEVELOPMENT PERIOD

AREA DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between Personal Training Institute Franchise, LLC, a New York limited liability company, with its principal office at 1C Miller Place, Smithtown, New York 11787 (the "Franchisor") and _____, a _____ corporation whose principal address is ("Area Developer").

WITNESSETH:

WHEREAS, the Franchisor has developed a system of uniform standards, methods, procedures, specifications, merchandising and advertising (hereinafter referred to as the "System") for the operation of Fitness Centers (hereinafter referred to as "Fitness Center" or "Franchised Business") which offer individualized personal fitness training classes and other approved services and health and fitness related products, as are approved from time to time by Franchisor ("Approved Services and Products") all under the trade name, trademark and service mark of "Personal Training Institute" (collectively, the "Proprietary Marks"); and

WHEREAS, the Franchisor is the sub-licensee of the Proprietary Marks, as are now specified in Schedule "A" attached hereto or as may be hereafter designated as a part of the System and not thereafter withdrawn, by virtue of a continuous license obtained from Personal Training Institute, LLC, Franchisor's affiliate; and

WHEREAS, the Area Developer wishes to obtain the rights and license from the Franchisor for the use of the Franchisor's System and Proprietary Marks and, in association therewith, to own and operate additional Fitness Centers in the area described in Schedule "A" attached hereto (hereinafter referred to as the "Exclusive Area") and understands and accepts the terms, conditions and covenants set forth herein as those which are reasonably necessary to maintain the Franchisor's high and uniform standards of quality and service in order to protect the goodwill and enhance the public image of the System and the Proprietary Marks; and

WHEREAS, the Franchisor has the sole and exclusive right to the goodwill associated with the System and the Proprietary Marks and is willing to grant the use and license to the Area Developer on the terms and conditions herein contained to use the System and the Proprietary Marks; and

WHEREAS, Area Developer acknowledges that it has read this Agreement and the Franchisor's Uniform Franchise Offering Circular and that it understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain the Franchisor's high standards of quality and service and the uniformity of those standards at all Fitness Centers in order to protect and preserve the goodwill of the Marks; and

WHEREAS, Franchisor expressly disclaims the making of, and Area Developer acknowledges that it has not received or relied upon, any warranty or guarantee, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement. Area Developer acknowledges that it has not received or relied on any representations, written or oral, about the franchise by the Franchisor, or its officers, directors, employees or agents, that are contrary to the statements made in the Franchisor's Uniform Franchise Offering Circular or to the terms herein, and further represents to the Franchisor, as an inducement to its entry into this Agreement, that Area Developer has made no

misrepresentations, written or oral, to the Franchisor in the application for the multi-unit development rights granted hereunder.

ARTICLE I
DEVELOPMENT RIGHTS AND OBLIGATIONS

1.1 Subject to the provisions contained herein, this Agreement shall be for a term commencing on the date hereof and expiring on the last day of the last development period as defined in Exhibit B, attached hereto and incorporated herein by reference (“Development Period”).

1.2 The Franchisor retains the right, in its sole discretion and without granting any rights to Area Developer: (a) to itself own and operate, or to grant other persons the right to own and operate, Fitness Centers at such locations outside the Area Developer’s area of development as described in Exhibit A, attached hereto and incorporated herein by reference (“Development Area”), and on such terms and conditions as the Franchisor deems appropriate in its sole discretion; and (b) to sell outside the Development Area the services and products authorized for Fitness Centers under the Proprietary Marks or other trademarks, service marks and commercial symbols through dissimilar channels of distribution and pursuant to such terms and conditions as the Franchisor deems appropriate.

1.3 Provided Area Developer: (i) is in full compliance with the terms and conditions contained in this Agreement, including, without limitation, the development obligations contained in Section 1.4; and (ii) is in full compliance with all obligations under all Franchise Agreements heretofore or hereafter entered into with the Franchisor; then during the Development Periods, the Franchisor: (1) will grant to Area Developer, in accordance with the provisions of Article II hereof, franchises for the ownership and operation of Fitness Centers located within the Development Area; and (2) will not operate (directly or through an affiliate), nor grant a franchise for the operation of, any Fitness Center to be located within the Development Area, except such franchises as are granted to Area Developer.

1.4 Area Developer agrees, during the term of this Agreement, that it will at all times faithfully, honestly and diligently perform its obligations hereunder and that it will continuously exert its best efforts to promote and enhance the development of Fitness Centers within the Development Area. Without limiting the foregoing obligation, Area Developer agrees to have signed leases within the Development Area for the cumulative number of Fitness Centers at the end of each Development Period set forth in Section 2 of Exhibit B hereof (“Minimum Development Quota”) and to have each such Fitness Center open and operating within ninety (90) days from the signing of its respective lease. If Area Developer fails at any time to meet any Minimum Development Quota, the Franchisor shall have the right to terminate this Agreement by delivering a notice to Area Developer stating that the Franchisor elects to terminate this Agreement as a result of such failure. Such termination shall be effective upon delivery of such notice of termination. The Franchisor’s right to terminate this Agreement shall be the sole and exclusive remedy of the Franchisor for Area Developer’s failure to meet a Minimum Development Quota.

ARTICLE II
GRANT OF FRANCHISES TO AREA DEVELOPER

2.1 Subject to the provisions of Article I hereof, the Franchisor agrees to grant franchises to Area Developer for the operation of Fitness Centers located within the Development Area, subject to the following:

Area Developer shall submit to the Franchisor a complete site report (containing such demographic, commercial, and other information and photographs as Franchisor may reasonably require) for each site at which Area Developer proposes to establish and operate an Fitness Center and which Area Developer reasonably believes to conform to site selection criteria established by the Franchisor from time to time. Such proposed site shall be subject to the Franchisor's prior written approval, which will not be unreasonably withheld. In approving or disapproving any proposed site, the Franchisor will consider such matters as it deems material, including, without limitation, demographic characteristics of the proposed site, traffic patterns, density of population, and other commercial characteristics (including the purchase price or rental obligations and other lease terms for the proposed site) and the size of premises, appearance, and other physical characteristics.

2.2 By delivery of written notice to Area Developer, the Franchisor will approve or disapprove sites proposed by Area Developer for the operation of a Fitness Center. The Franchisor agrees to exert its best efforts to deliver such notification to Area Developer within thirty (30) days of receipt by the Franchisor of the complete site reports and other materials requested by the Franchisor, containing all information reasonably required by the Franchisor. If Area Developer shall have failed to obtain lawful possession of any approved site (through acquisition, lease, or sublease) within thirty (30) days after delivery of the Franchisor's approval thereof, the Franchisor may, at its sole discretion, withdraw approval of such site.

2.3 Provided Area Developer shall have obtained lawful possession of any approved site, the Franchisor shall offer to Area Developer a franchise to operate a Fitness Center at such approved site by delivering to Area Developer a Franchise Agreement in form for execution by Area Developer. Such Franchise Agreement shall be executed by an officer of the Area Developer and returned to the Franchisor within fifteen (15) days of the Franchisor's delivery thereof, with payment of the balance of the initial franchise fee required thereunder. If Area Developer fails to execute such Franchise Agreement and tender payment of the balance of the initial franchise fee as above provided, the Franchisor may, at its sole discretion, terminate its offer to grant to Area Developer a franchise to operate a Fitness Center at such approved site and withdraw its approval of such site.

ARTICLE III **DEVELOPMENT FEE**

Concurrently with the execution of this Agreement, unless otherwise indicated on Exhibit B hereof, Area Developer shall pay to the Franchisor the sum set forth in Section 1 of Exhibit B hereof as a non-refundable Development Fee, which shall be deemed fully earned by the Franchisor upon execution of this Agreement.

ARTICLE IV **TERMINATION BY FRANCHISOR**

In addition to Franchisor's right to terminate under Section 1.4 hereof, the Franchisor shall have the right to terminate this Agreement by delivering a notice to Area Developer stating that the Franchisor elects to terminate this Agreement as a result of any of the breaches set forth below. Such termination shall be effective upon delivery of such notice of termination or, if applicable, upon failure to cure (to the Franchisor's satisfaction) any such breach by the expiration of any period of time within which such breach may be cured in accordance with the provisions set forth below. It shall be a material breach of this Agreement if:

(a) Area Developer, or any of its shareholders, makes an unauthorized assignment or transfer of this Agreement or an ownership interest in Area Developer;

(b) a general partnership interest in Area Developer (if Area Developer is a limited partnership) is terminated for whatever reason;

(c) Area Developer, or any of its shareholders, has made any material misrepresentation or omission in its application for the development rights conferred by this Agreement or is convicted of or pleads no contest to a felony or other crime or offense that may adversely affect the goodwill associated with the Proprietary Marks;

(d) Area Developer fails to comply with any other provision of this Agreement;

(e) Area Developer fails on three (3) or more separate occasions within any twelve (12) consecutive month period to comply with this Agreement, whether or not such failures to comply are corrected after notice thereof is delivered to Area Developer; or

(f) the Franchisor has delivered a notice of termination of a Franchise Agreement in accordance with its terms and conditions as defined in such agreement.

Area Developer shall have the right to cure a breach under Paragraph (d) within thirty (30) days after delivery of the Franchisor's notice of termination.

ARTICLE V

EFFECT OF TERMINATION AND EXPIRATION

5.1 All obligations of the Franchisor and Area Developer under this Agreement which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement and until they are satisfied in full or by their nature expire.

5.2 Upon termination or expiration of this Agreement, Area Developer agrees that for a period of two (2) years, commencing on the effective date of expiration or termination of this Agreement, Area Developer (and its shareholders or partners) will not have any interest as an owner, partner, director, officer, employee, consultant, representative or agent, or in any other capacity, in any fitness center that offers products or services similar to those offered at the Fitness Center located or operating within the Development Area, except for Fitness Centers operated under Franchise Agreements granted by the Franchisor and the ownership of securities listed on a stock exchange or traded on the over-the-counter market that represent five percent (5%) or more of that class of securities.

ARTICLE VI

ASSIGNMENT

6.1 This Agreement is fully assignable by the Franchisor and shall inure to the benefit of any assignee or other legal successor to the interests of the Franchisor herein.

6.2 Area Developer understands and acknowledges that the rights and duties created by this Agreement are personal to Area Developer and that the Franchisor has granted this Agreement in reliance upon the individual or collective character, skill, aptitude, attitude, business ability, and financial capacity of Area Developer's shareholders. Therefore, neither this Agreement (or any interest therein)

nor any part or all of the ownership of Area Developer may be voluntarily, involuntarily, directly or indirectly, assigned, sold, subdivided, subfranchised, or otherwise transferred by Area Developer or its owners (including, without limitation, by consolidation or merger, by issuance of securities representing an ownership interest in Area Developer, by conversion of a general partnership to a limited partnership, by transfer or creation of an interest as a general partner of a limited partnership, by transfer of an interest in Area Developer, or in the event of death of Area Developer or an owner of Area Developer, by will, declaration of or transfer in trust or the laws of intestate succession), without the prior written approval of the Franchisor. Any such assignment or transfer without such approval shall constitute a breach hereof and shall convey no rights to or interest in this Agreement to such assignee.

6.3 In the event Area Developer (or any of its owners) shall, subject to the restrictions and conditions of transfer contained in Section 6.2 of this Agreement, attempt to raise or secure funds by the sale of securities (including, without limitation, common or preferred stock, bonds, debentures or general or limited partnership interests) in Area Developer or any affiliate of Area Developer, Area Developer, recognizing that the written information used with respect thereto may reflect upon the Franchisor, agrees to submit any such written information to the Franchisor prior to its inclusion in any registration statement, prospectus or similar offering circular or memorandum and must obtain the written consent of the Franchisor to the method of financing prior to any offering or sale of such securities. The written consent of the Franchisor shall not imply or constitute the approval of the Franchisor with respect to the method of financing, the offering literature submitted to the Franchisor or any other aspect of the offering. No information respecting the Franchisor or any of its affiliates shall be included in any securities disclosure document, unless such information has been furnished by the Franchisor in writing pursuant to the written request of the Area Developer, in which the Franchisor, in its sole discretion, objects to any reference to the Franchisor or any of its affiliates or to any of their licensees in such offering literature or prospectus, such literature or prospectus shall not be used unless and until the objections of the Franchisor are withdrawn. The Franchisor assumes no responsibility for the offering whatsoever.

6.4 Area Developer and each of its owners must indemnify, defend and hold harmless the Franchisor and its affiliates, and their respective officers, directors, employees and agents, from any and all claims, demands, liabilities, and all costs and expense (including, without limitation, reasonable attorneys' fees) incurred in the defense of such claims, demands or liabilities arising from the offering or sale of such securities, whether asserted by a purchaser of any such security or by a governmental agency. The Franchisor shall have the right (but not the obligation) to defend any such claims, demands or liabilities and/or to participate in the defense of any action to which the Franchisor or any of its affiliates or any of their respective officers, directors, employees or agents is named as a party.

ARTICLE VII **ENFORCEMENT**

7.1 To the extent that Section 5.2 is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, or length of time, but may be made enforceable by reductions of any or all thereof, Area Developer and the Franchisor agree that same shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought.

7.2 If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder, or the taking of some other action not required hereunder, or if under any applicable and binding law or rule of any jurisdiction any provision of this Agreement or any specification, standard or operating procedure prescribed by the Franchisor is invalid or unenforceable, the prior notice and/or other action required by such law or rule

shall be substituted for the comparable provisions hereof, and the Franchisor shall have the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Area Developer agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof as though it were separately articulated in and made a part of this Agreement that may result from striking from any of the provisions hereof, or any specification, standard or operating procedure prescribed by the Franchisor, any portion or portions which a court may hold to be unenforceable in a final decision to which the Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such court order. Such modifications to this Agreement shall be effective only in such jurisdiction unless the Franchisor elects to give them greater applicability and this Agreement shall be enforced as originally made and entered into in all other jurisdictions.

7.3 The Franchisor and Area Developer may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice thereof to the other or such other effective date stated in the notice of waiver. Whenever this Agreement requires the Franchisor's prior approval or consent, Area Developer shall make a timely written request therefor, and such approval shall be obtained in writing.

7.4 The Franchisor makes no warranties or guarantees upon which Area Developer may rely, and assumes no liability or obligation to Area Developer by granting any waiver, approval, or consent to Area Developer, or by reason of any neglect, delay, or denial of any request therefor. Any waiver granted by the Franchisor shall be without prejudice to any other rights the Franchisor may have, will be subject to continuing review by the Franchisor, and may be revoked, in the Franchisor's sole discretion, at any time and for any reason, effective upon delivery to Area Developer of ten (10) days' prior written notice.

7.5 The Franchisor and Area Developer shall not be deemed to have waived or impaired any right, power or option reserved by this Agreement (including, without limitation, the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach thereof to be a default and to determine this Agreement prior to the expiration of its term) by virtue of any custom or practice of the parties at variance with the terms hereof; any failure, refusal, or neglect of the Franchisor or Area Developer to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure, or omission by the Franchisor to exercise any right, power, or option, whether of the same, similar or different nature, with respect to any Fitness Center or any development or franchise agreements therefor; any grant of a Franchise Agreement to Area Developer; or the acceptance by the Franchisor of any payment from Area Developer after any breach of this Agreement.

7.6 Neither the Franchisor nor Area Developer shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (1) compliance with any law, ruling, order, regulation, requirement, or instruction of any federal, state, or municipal government or any department or agency thereof; (2) acts of God; (3) acts or omissions of the other party; (4) fires, strikes, embargoes, war, or riot; or (5) any other similar event or cause. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

7.7 Nothing herein contained shall bar the Franchisor's right to obtain specific performance of the provisions of this Agreement and injunctive relief against threatened conduct that will cause it loss or damages under customary equity rules, including applicable rules for obtaining restraining orders and

preliminary injunctions. Area Developer agrees that the Franchisor may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law.

7.8 The rights of the Franchisor and Area Developer hereunder are cumulative and no exercise or enforcement by the Franchisor or Area Developer of any right or remedy hereunder shall preclude the exercise or enforcement by the Franchisor or Area Developer of any other right or remedy hereunder or which the Franchisor or Area Developer is entitled by law or equity to enforce.

7.9 To the extent not inconsistent with applicable law, this Agreement and the offer or sale of this Agreement shall be governed by the substantive laws (and expressly excluding the choice of law) of the State of New York.

7.10 Area Developer and the Franchisor agree that any action arising out of or relating to this Agreement (including, without limitation, the offer and sale of this Agreement) shall be instituted and maintained only in a state or federal court of general jurisdiction in the State of New York and Area Developer irrevocably submits to the jurisdiction of such court and waives any objection it may have to either the jurisdiction or venue of such court.

7.11 This Agreement is binding upon the parties hereto and their respective executors, administrators, heirs, assigns, and successors in interest, and shall not be modified except by written agreement signed by both Area Developer and the Franchisor.

7.12 The preambles and exhibit(s) are a part of this Agreement, which constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between the Franchisor and Area Developer relating to the subject matter of this Agreement.

7.13 Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

7.14 The headings of the several sections and paragraphs hereof are for convenience only and do not define, limit or construe the contents of such sections or paragraphs.

7.15 The term "Area Developer" as used herein is applicable to one (1) or more persons, a corporation or a partnership, as the case may be, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two (2) or more persons are at any time Area Developer hereunder, their obligations and liabilities to the Franchisor shall be joint and several. References to "Area Developer" and "assignee" which are applicable to an individual or individuals shall mean the owner(s) of the equity or operating control of Area Developer or the assignee, if Area Developer or the assignee is a corporation or partnership.

7.16 This Agreement shall be executed in multiple copies, each of which shall be deemed an original.

7.17 Time is of the essence of this Agreement.

7.18 This Agreement may not be modified in any way except in a writing signed by the parties hereto.

ARTICLE VIII
DISPUTE RESOLUTION

8.1 **Mandatory Binding Arbitration.** In order to reduce instances of possible dispute and to make the resolution of any disputes which do arise less expensive, quicker, less subject to public notoriety and to resolve disputes in a less formal and antagonistic means than litigation, as well as to increase the opportunities for Area Developer and Franchisor to maintain a mutually beneficial business relationship, Area Developer and Franchisor agree as follows:

8.1.1 ANY LITIGATION, CLAIM, DISPUTE, SUIT, ACTION, CONTROVERSY, PROCEEDING OR OTHERWISE ("CLAIM") BETWEEN OR INVOLVING AREA DEVELOPER (AND/OR ANY PRINCIPAL OF AREA DEVELOPER OR WHICH COULD BE BROUGHT BY AREA DEVELOPER OR ON ITS BEHALF) AND FRANCHISOR (AND/OR ANY CLAIM AGAINST OR INVOLVING ANY OF THE FRANCHISOR-RELATED ENTITIES OR OTHERWISE), EXCEPT AS EXPRESSLY PROVIDED BELOW, WHETHER ARISING OUT OF OR RELATING IN ANY WAY TO THIS AND/OR ANY OTHER AGREEMENT AND/OR ANY OTHER DOCUMENT, ANY ALLEGED BREACH OF ANY DUTY OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, THE UNDERLYING LEGALITY OF THE OFFER AND/OR SALE OF THE FRANCHISE, ANY ACTION FOR RESCISSION OR OTHER SETTING ASIDE OF SUCH SALE OR ANY TRANSACTION, AGREEMENT OR DOCUMENT AND ANY CLAIM THAT THIS AGREEMENT OR ANY PORTION THEREOF IS INVALID, ILLEGAL, VOID, VOIDABLE OR OTHERWISE AND ANY CLAIM OF FRAUD) AND ON WHATEVER THEORY AND/OR FACTS BASED, WILL BE:

(a) RESOLVED BY BINDING ARBITRATION BEFORE AND IN ACCORDANCE WITH THE ARBITRATION RULES OF FAM (OR ANY SUCCESSOR ORGANIZATION); PROVIDED THAT IF SUCH ARBITRATION IS UNABLE TO BE HEARD BY FAM FOR ANY REASON, THE ARBITRATION WILL BE CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION PURSUANT TO ITS COMMERCIAL ARBITRATION RULES. THE FEES AND EXPENSES OF THE ARBITRATOR(S) AND/OR ARBITRATION ORGANIZATION SHALL BE SHARED EQUALLY BY THE DISPUTANTS. IN EACH CASE, THE PARTIES TO ANY MEDIATION/ ARBITRATION WILL EXECUTE APPROPRIATE CONFIDENTIALITY AGREEMENTS, EXCEPTING ONLY SUCH PUBLIC DISCLOSURES AND FILINGS AS ARE REQUIRED BY LAW.

8.1.2 ANY ARBITRATION (AND ANY APPEAL OF ARBITRATION) WILL BE CONDUCTED AT THE OFFICE OF THE ARBITRATING ORGANIZATION (OR ITS REPRESENTATIVES) WHICH IS LOCATED CLOSEST TO FRANCHISOR'S HEADQUARTERS. EXCEPT AS EXPRESSLY PROVIDED BELOW, THE PARTIES TO ANY ARBITRATION WILL BEAR THEIR OWN COSTS, INCLUDING ATTORNEYS' FEES. ANY CLAIM, AND ANY SUCH ARBITRATION, WILL BE CONDUCTED AND RESOLVED ON AN INDIVIDUAL BASIS ONLY AND NOT ON A CLASS-WIDE, MULTIPLE PLAINTIFF OR SIMILAR BASIS. UPON REQUEST OF ANY PARTY TO A CLAIM, THE ARBITRATOR MAY BE REQUIRED TO ISSUE A WRITTEN AWARD, SPECIFYING THE FACTS FOUND AND THE LAW APPLIED, BUT THE PARTY SO REQUESTING WILL BEAR THE FEES AND CHARGES INCURRED IN CONNECTION THEREWITH. THE ARBITRATOR MAY ISSUE TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, INJUNCTIONS AND OTHER EQUITABLE AND/OR INTERIM RELIEF TO THE EXTENT REASONABLY NECESSARY TO PRESERVE THE STATUS QUO (OR PREVENT IRREPARABLE INJURY) PENDING FINAL RESOLUTION BY BINDING ARBITRATION OF A CLAIM, AS WELL AS IN CONNECTION WITH ANY SUCH FINAL

RESOLUTION, AND MAY ISSUE SUMMARY ORDERS DISPOSING OF ALL OR PART OF A CLAIM AT ANY POINT. EACH PARTY CONSENTS TO THE ENFORCEMENT OF SUCH ORDERS, INJUNCTIONS, ETC. BY ANY COURT HAVING JURISDICTION. THE PARTIES AGREE THAT THE ARBITRATOR (RATHER THAN A COURT) SHALL DECIDE ANY QUESTIONS RELATING IN ANY WAY TO THE PARTIES' AGREEMENT (OR CLAIMED AGREEMENT) TO ARBITRATE, INCLUDING, BUT NOT LIMITED TO, APPLICABILITY, SUBJECT MATTER, TIMELINESS, SCOPE, REMEDIES AND ALLEGED FRAUD IN THE INDUCEMENT, OR OTHERWISE. EACH PARTICIPANT MUST SUBMIT OR FILE ANY CLAIM WHICH WOULD CONSTITUTE A COMPULSORY COUNTERCLAIM (AS DEFINED BY RULE 13 OF THE FEDERAL RULES OF CIVIL PROCEDURE) WITHIN THE SAME PROCEEDING AS THE CLAIM TO WHICH IT RELATES. ANY SUCH CLAIM WHICH IS NOT SUBMITTED OR FILED IN SUCH PROCEEDING WILL BE FOREVER BARRED.

8.1.3 IN THE EVENT THAT ANY PARTY TO AN ARBITRATION WISHES TO APPEAL ANY FINAL AWARD BY AN ARBITRATOR (THERE WILL BE NO APPEAL OF INTERIM AWARDS OR OTHER INTERIM RELIEF), SUCH PARTY MAY APPEAL, WITHIN THIRTY (30) DAYS OF SUCH FINAL AWARD, TO A THREE (3) ARBITRATOR PANEL TO BE APPOINTED BY THE SAME ORGANIZATION AS CONDUCTED THE ARBITRATION. THE ISSUES ON SUCH APPEAL WILL BE LIMITED TO THE PROPER APPLICATION OF THE LAW TO THE FACTS FOUND AT THE ARBITRATION AND WILL NOT INCLUDE ANY TRIAL DE NOVO OR OTHER FACT- FINDING FUNCTION. THE PARTY REQUESTING SUCH APPEAL MUST PAY ALL COSTS AND FEES CHARGED BY SUCH ARBITRATION APPEAL PANEL AND/OR ARBITRATION ORGANIZATION IN CONNECTION WITH SUCH APPEAL, AS WELL AS POSTING ANY BOND DEEMED APPROPRIATE BY SUCH ARBITRATION ORGANIZATION OR ARBITRATION APPEAL PANEL. IN ADDITION, A PARTY REQUESTING APPEAL AND WHO DOES NOT PREVAIL ON SUCH APPEAL WILL PAY THE OTHER PARTY'S (OR PARTIES') ATTORNEYS' FEES AND OTHER COSTS OF RESPONDING TO SUCH APPEAL.

8.1.4 JUDGMENT UPON ANY PRELIMINARY OR FINAL ARBITRATION AWARD SUBJECT TO THE OPPORTUNITY FOR APPEAL AS CONTEMPLATED IN (c) ABOVE MAY BE ENTERED IN ANY COURT HAVING JURISDICTION AND WILL BE BINDING, FINAL AND NON- APPEALABLE.

8.1.5 THE OBLIGATION HEREIN TO ARBITRATE WILL NOT BE BINDING UPON FRANCHISOR WITH RESPECT TO CLAIMS OR ISSUES RELATING PRIMARILY TO (i) THE VALIDITY OF ANY TRADEMARKS OR SERVICE MARKS OWNED BY FRANCHISOR, (ii) FRANCHISOR'S RIGHTS TO OBTAIN POSSESSION OF ANY REAL AND/OR PERSONAL PROPERTY (INCLUDING ANY ACTION IN UNLAWFUL DETAINER, EJECTMENT OR OTHERWISE) AND/OR (iii) FRANCHISOR'S RIGHTS TO RECEIVE AND ENFORCE A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION OR OTHER EQUITABLE RELIEF.

8.1.6 THE PROVISIONS OF THIS ARTICLE VIII WILL BE DEEMED TO BE SELF- EXECUTING AND WILL SURVIVE THE TERM OF THIS AGREEMENT AND REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING ITS EXPIRATION, RESCISSION, TERMINATION OR OTHERWISE FOR ANY REASON. THE PROVISIONS OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO MANDATORY ARBITRATION, WAIVER OF JURY TRIAL, LIMITATION OF DAMAGES, PRIOR NOTICE OF CLAIMS, SHORTENED PERIODS IN WHICH TO BRING CLAIMS, COSTS AND ATTORNEYS' FEES, OR OTHERWISE) WILL BE CONSTRUED AS INDEPENDENT OF EACH OTHER

PROVISION OF THIS AGREEMENT AND IF ANY PROVISIONS ARE DEEMED TO BE UNENFORCEABLE IN ANY WAY, SUCH PROVISIONS WILL BE MODIFIED OR INTERPRETED TO THE MINIMUM EXTENT NECESSARY TO HAVE THEM COMPLY WITH THE LAW AND THE REMAINING PROVISIONS OF THIS AGREEMENT, INCLUDING THE PARTIES TO THIS AGREEMENT TO SUBMIT CLAIMS TO BINDING ARBITRATION, WILL REMAIN IN FULL FORCE AND EFFECT, THE PARTIES AGREEING, IN CONSIDERATION OF THEIR MUTUAL JUDGMENT THAT MEDIATION AND ARBITRATION ARE GENERALLY SUPERIOR METHODS OF RESOLVING DISPUTES, THAT THE UNENFORCEABILITY OF ANY PROVISIONS OF THIS ARTICLE VIII OR OTHERWISE SHALL NOT AFFECT THE REMAINDER OF THIS ARTICLE VIII OR OTHERWISE, NOTWITHSTANDING ANY STATUTORY OR DECISIONAL LAW TO THE CONTRARY. NOTWITHSTANDING ANY PROVISIONS OF THIS AGREEMENT OR OTHERWISE RELATING TO WHICH STATE OR PROVINCIAL LAWS THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED UNDER, ALL ISSUES RELATING TO ARBITRABILITY AND/OR THE ENFORCEMENT OF THE AGREEMENT TO ARBITRATE CONTAINED HEREIN WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, ET SEQ.) AND THE FEDERAL COMMON LAW OF ARBITRATION. NOTWITHSTANDING ANY PROVISIONS OF STATE LAW TO THE CONTRARY, FRANCHISOR INTENDS TO FULLY ENFORCE THE PROVISIONS OF THIS FRANCHISE AGREEMENT AND OTHER DOCUMENTS, INCLUDING ALL VENUE, CHOICE-OF-LAWS AND MEDIATION/ARBITRATION PROVISIONS, AND TO RELY ON FEDERAL PREEMPTION UNDER THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, ET SEQ.).

8.2 Litigation, Waiver of Jury Trial; Limitation of Damages, etc. Without in any way limiting or otherwise affecting the parties' obligations regarding mediation/binding arbitration, the parties agree that any litigation between Area Developer and Franchisor (and/or involving any principal of Area Developer or which could be brought by Area Developer or on its behalf and including matters involving any of the Franchisor-related entities or otherwise), whether to enforce an arbitration award or involving any litigation, dispute, controversy, claim, proceeding or otherwise between or involving Area Developer and Franchisor which is not subject to the foregoing agreement regarding mediation/arbitration (or in the event that a court having jurisdiction should hold that the foregoing agreement regarding mediation and/or arbitration is not enforceable) or otherwise, will be held exclusively before a court in the most immediate state judicial district and court encompassing Franchisor's headquarters and having subject matter jurisdiction or (if a basis for Federal jurisdiction is present) the United States District Court for Suffolk County, New York, the parties consenting to the exclusive jurisdiction of such court(s) and WAIVING ALL RIGHTS TO TRIAL BY JURY.

8.2.1 So as to achieve many of the advantages which would normally be associated with arbitration (such as lower expense, more rapid resolution of controversies, fewer protracted and complex proceedings, reduced instances of costly and time-consuming appeal, use of a more sophisticated and experienced trier of fact and law, etc.) and for the parties' mutual benefit, THE PARTIES AGREE THAT IN ANY LITIGATION BETWEEN FRANCHISOR AND AREA DEVELOPER (AND/OR ANY PRINCIPAL OF AREA DEVELOPER OR WHICH COULD BE BROUGHT BY AREA DEVELOPER OR ON AREA DEVELOPER'S BEHALF) THE PARTIES KNOWINGLY WAIVE ALL RIGHTS TO TRIAL BY JURY. IN ANY ARBITRATION, LITIGATION OR OTHERWISE, THE PARTIES WAIVE ALL RIGHTS TO PUNITIVE, EXEMPLARY, MULTIPLE, PAIN-AND-SUFFERING, MENTAL DISTRESS OR SIMILAR DAMAGES AND AGREE THAT THE PARTIES MAY ONLY RECOVER ACTUAL FINANCIAL LOSSES.

8.3 Prior Notice of Claims by Area Developer. Prior to Area Developer taking any legal or other action against Franchisor, whether for arbitration, damages, injunctive, equitable or other relief (including but not limited to rescission) and whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense or otherwise, based on any alleged act or omission of Franchisor, Area Developer will first give Franchisor sixty (60) days' prior written notice and opportunity to cure such alleged act or omission.

8.4 Periods In Which to Make Claims.

8.4.1 The parties agree that, except as provided below, no arbitration proceeding, action or suit (whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense or otherwise) by either party will lie against the other (nor will any action or suit by Area Developer against any person and/or entity affiliated with Franchisor), whether for damages, rescission, injunctive or any other legal and/or equitable relief, in respect of any alleged breach of this Agreement, or any other claim of any type, unless such party will have commenced such arbitration proceeding, action or suit before the expiration of the earlier of:

(a) One hundred eighty (180) days after the date upon which the state of facts giving rise to the cause of action comes to the attention of, or should reasonably have come to the attention of, such party; or

(b) One (1) year after the initial occurrence of any act or omission giving rise to the cause of action, whenever discovered.

8.4.2 Notwithstanding the foregoing limitations, where any federal, state or provincial law provides for a shorter limitation period than above described, whether upon notice or otherwise, such shorter period will govern.

8.4.3 The foregoing limitations may, where brought into effect by Franchisor's failure to commence an action within the time periods specified, operate to exclude Franchisor's right to sue for damages but will in no case, even upon expiration or lapse of the periods specified or referenced above, operate to prevent us from terminating Area Developer's rights and Franchisor's obligations under this Agreement as provided herein and under applicable law nor prevent Franchisor from obtaining any appropriate court judgment, order or otherwise which enforces and/or is otherwise consistent with such termination.

8.5 Withholding Consent. In no event will Area Developer make any claim, whether directly, by way of setoff, counter-claim, defense or otherwise, for money damages or otherwise, by reason of any withholding or delaying of any consent or approval by Franchisor. Area Developer's sole remedy for any such claim is to submit it to an executive meeting, mediation and arbitration as described in this Agreement and, if executive meeting and mediation fails to resolve such matter, for the arbitrator to order Franchisor to grant such consent.

8.6 Survival and Construction. Each provision of this Article VIII will be deemed to be self-executing and continue in full force and effect subsequent to and notwithstanding the expiration, termination, setting aside, cancellation, rescission, unenforceability or otherwise of this Agreement (or any part of it) for any reason, will survive and will govern any claim for rescission or otherwise. Each provision of this Agreement will be construed as independent of, and severable from, every other provision; provided that if any part of this Agreement is deemed unlawful in any way, the parties agree

that such provision will be deemed interpreted and/or modified to the minimum extent necessary to make such provision lawful or, if such construction is not permitted or available, the remainder of this Agreement will continue in full force and effect. Each party reserves the right to challenge any law, rule or judicial or other construction which would have the effect of varying or rendering ineffective any provision of this Agreement.

8.7 Costs and Attorneys' Fees. Except as expressly provided otherwise in this Agreement with respect to appeal of an arbitration award, each party will each bear their respective costs of enforcement and/or defense (including but not limited to attorneys' fees) in any claim or dispute between the parties (including Area Developer's and/or Franchisor's affiliates, related persons/entities, etc.) and will make no claim against the other with regard thereto.

8.8 Validity and Execution. This Agreement will become valid when executed and accepted by Franchisor at its headquarters.

8.9 Binding Effect. This Agreement is binding upon the parties hereto and their respective executors, administrators, heirs, assigns, and successors in interest, and will not be modified except by written agreement signed by both parties.

8.10 Construction. Nothing in this Agreement is intended, nor will be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto. Except where this Agreement expressly provides otherwise, Franchisor has the right to condition, withhold and/or refuse, in its sole and absolute discretion, any request by Area Developer and Franchisor's approval of, or consent to, any action or omission by Area Developer. The headings of the several articles and sections hereof are for convenience only and do not define, limit, or construe the contents of such articles or sections. The term "attorneys' fees" will include, without limitation, legal fees, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand or claim, action, hearing or proceeding to enforce the obligations of this Agreement. References to a "controlling interest" in the Area Developer will mean more than fifty percent (50%) of the voting control of the Area Developer, if the Area Developer is a corporation, and any general partnership interest, if the Area Developer is a partnership. The term "Area Developer" as used herein is applicable to one (1) or more persons, a corporation or a partnership, as the case may be. The singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two (2) or more persons are at any time the Area Developer hereunder, whether or not as partners or joint venturers, their obligations and liabilities to Franchisor will be joint and several. This Agreement will be executed in multiple copies, each of which will be deemed an original. Each of the provisions of this Article VIII shall apply to any claim brought (or which could be brought) by any principal of Area Developer or by or on Area Developer's behalf.

8.11 Choice of Laws. Except as provided elsewhere in this Agreement (for example, with regard to the applicability of the Federal Arbitration Act, 9 U.S.C. §1 et seq. and the effect of federal preemption of state law by such Act) and except to the extent governed by the United States Trademark Act and other federal laws, the parties agree that this Agreement (including any claims, counter-claims or otherwise by you) and all other matters concerning the parties will be governed by, and construed and enforced in accordance with, the laws of the State of New York.

ARTICLE IX
INDEPENDENT CONTRACTORS/INDEMNIFICATION

The Franchisor and Area Developer are independent contractors. Neither the Franchisor nor Area Developer shall be obligated by or have any liability under any agreements, representations, or warranties made by the other that are not expressly authorized hereunder, nor shall the Franchisor be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Area Developer's business conducted pursuant to this Agreement, whether or not caused by Area Developer's negligent or willful action or failure to act. The Franchisor shall have no liability for any sales, use, excise, income, gross receipts, property, or other taxes levied upon Area Developer or its assets or upon the Franchisor in connection with the business conducted by Area Developer, or any payments made by Area Developer to the Franchisor pursuant to this Agreement or any Franchise Agreement. Area Developer agrees to indemnify the Franchisor and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents and assignees against and to reimburse them for all such obligations, damages, and taxes for which they are held liable and for all costs reasonably incurred by them in the defense of any such claim brought against them or in any action in which they are named as a party, including, without limitation, reasonable attorneys' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses. The Franchisor shall have the right to defend any such claim against it. The indemnities and assumptions of liabilities and obligations herein shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

ARTICLE X
NOTICES AND PAYMENTS

All notices and reports to Franchisor or Area Developer, if not personally served, shall be deemed so delivered one (1) business day after sending by telegraph or comparable electronic system or two (2) business days after deposit with Federal Express or a comparable overnight courier company or three (3) business days after being placed in the U.S. mail by Registered or Certified Mail, return receipt requested. All notices shall be sent postage prepaid and addressed to the respective party as follows, or as either party may from time to time designate in writing:

To Franchisor: Personal Training Institute Franchise, LLC
 1C Miller Place
 Smithtown, NY 11787

with a copy to: Harold L. Kestenbaum, Esq.
 EAB Plaza, West Tower-14th Floor
 Uniondale, New York 11556

To Area Developer: _____

IN WITNESS WHEREOF, the parties hereto have executed, sealed and delivered this Agreement in _____ counterparts on the day and year first above written.

PERSONAL TRAINING INSTITUTE
FRANCHISE, LLC

By: _____
Name: _____
Title: _____

AREA DEVELOPER

By: _____
Name: _____
Title: _____

EXHIBIT "A"

The Development Area referred to in Article I of the captioned agreement shall be:

**PERSONAL TRAINING INSTITUTE
FRANCHISE, LLC**

By: _____
Name: _____
Title: _____

AREA DEVELOPER

By: _____
Name: _____
Title: _____

EXHIBIT "B"

SECTION I

The Development Fee referred to in Article III of the captioned agreement shall be _____ Dollars (\$_____).

[Optional Language: Notwithstanding anything to the contrary in the captioned agreement, the Development Fee shall be paid by Area Developer to Franchisor in accordance with the following schedule:

- (a) \$_____ payable upon execution of this Agreement; and
- (b) \$_____ payable within ____ days following the execution of this Agreement.

In the event that the captioned agreement is terminated for any reason, Area Developer shall pay to Franchisor any outstanding balance immediately upon such termination.]

Notwithstanding anything to the contrary contained in the captioned agreement or in any Franchise Agreement: (a) with respect to the first _____ () Franchise Agreements executed by Area Developer pursuant to the captioned agreement, the initial franchise fee shall be _____ Dollars (\$_____); and (b) with respect to any additional Franchise Agreements executed by Area Developer pursuant to the captioned agreement, on or before the last day of the last Development Period for _____ Fitness Centers in the Development Area, the initial franchise fee shall be _____ Dollars (\$_____), provided Area Developer has also executed a lease for each such additional Fitness Center before the end of the last Development Period.

SECTION II

Area Developer agrees to have signed leases for the following cumulative number of Fitness Centers at the end of each Development Period and to have each Fitness Center open and operating within one (1) year from the date of execution of its respective lease:

Number of Fitness Centers	Last Day of Development Period
, 20__	(First Development Period)
, 20__	(Second Development Period)
, 20__	(Third Development Period)
, 20__	(Fourth Development Period)
, 20__	(Fifth Development Period)
, 20__	(Sixth Development Period)

The first Development Period commences on the date of the captioned agreement and expires on the date shown; each subsequent Development Period commences on the date succeeding the last day on the preceding Development Period and expires on the date shown.

PERSONAL TRAINING INSTITUTE
FRANCHISE, LLC

AREA DEVELOPER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____