MEMORANDUM OF AGREEMENT

made as of the 25th day of May, 2004.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter referred to as the "City")

OF THE FIRST PART

– and –

COMPASS GROUP CANADA LTD.
A company incorporated under the laws of Canada, operating as
SPORTS, LEISURE AND TRAVEL DIVISION (hereinafter referred to as
"SLT")

OF THE SECOND PART

WHEREAS the City issued a Request for Proposals, dated May 20, 2003, for the
operation of food services at the Peterborough Memorial Centre (the “PMC”).

AND WHEREAS SLT carries on the business of providing food service management
and submitted a proposal, dated June 20, 2003, amended June 30, 2003, and further
clarified by letter dated April 30, 2004, to the City for the operation and management of
food services at the PMC;

AND WHEREAS the City wishes to accept the said proposal and to appoint SLT to
operate such food services and SLT has agreed to accept such appointment all on the
terms and conditions herein contained,

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants
contained herein, the parties hereto covenant and agree as follows:

1. Definitions

1.1. “Accounting Period” means one of twelve periods of either four or five
weeks utilized by SLT in making up its fiscal year.

1.2. “Annual Statement” is defined in Paragraph 10.1.
1.3. "Bank Transfer Account" means a bank transfer account opened by SLT at a chartered bank in Peterborough, Ontario to be used exclusively by SLT for deposit of all Gross Revenue receipts.

1.4. "Catering Services" means food and beverage services provided at the PMC for a reception, meeting, buffet or sit-down meal setting on a catered, non-retail basis and does not include Concession Services or Restaurant Services.

1.5. "Client" means any person or entity that, from time to time, licenses space within the PMC for an event or meeting.

1.6. "Concession Services" means over-the-counter sales at all fixed and mobile food and beverage areas, kiosks, stands and carts in the PMC.

1.7. "Equipment" means the City’s inventory of furniture, fixtures and equipment as shown on the attached Schedule “A”, as may be amended from time to time.

1.8. "Fiscal Year" means each period of twelve (12) consecutive Accounting Periods ending on the closest to the last day in May.

1.9. "Gross Revenue" is defined in Paragraph 9.5.

1.10. "Other Persons" means any and all persons, excluding Clients, including but not limited to visitors, patrons, attendees, tenants, contractors, and employees of the PMC.

1.11. "Premises" means such areas designated by the City from time to time to be used by SLT in providing the services set out in this Agreement, and includes SLT’s offices, concessions, bars, kitchens, preparation areas, refrigerator/freezers areas, receiving areas, restaurant, temporary food service and temporary seating areas, and storage areas. The Premises, except for temporary food service and temporary seating areas, are identified in the attached Schedule “A”.

1.12. "Reporting Period" means one of the twelve accounting periods utilized by SLT in each fiscal year, comprising either four or five weeks.

1.13. "Restaurant Services" means table service, buffet service or counter service food and beverage retail sales in the restaurant facilities shown on Schedule A.

1.14. "Services" means the Catering Services, Concession Services, Restaurant Services, and all other food and beverage service as outlined herein in accordance with the terms of this Agreement.

1.15. "Sub-contractor Concession Income" means commissions and/or other
amounts paid or payable by third parties relating to compensation to SLT for the right of third parties to locate specialty food carts or other concessions in the PMC.

2. **Effective Date and Terms**

   This Agreement shall be effective as of the 25th day of May, 2004, and shall continue in full force until the 31st day of May, 2007 (the "Initial Term"), unless earlier terminated as hereinafter provided. Following the Initial Term, the City shall have the option to renew this Agreement for an additional three (3) years.

3. **Services to be provided by SLT**

   3.1. The City grants to SLT a license to provide the Services at the Premises, and at adjacent lands and premises owned by the City, in connection with events which are based at the Premises.

   3.2. The license shall include the exclusive right, except as otherwise provided herein, to provide Services at the Premises.

   3.3. SLT’s rights to provide the Services, on an exclusive or non-exclusive basis as the case may be, shall not restrict the City from allowing the following:

      3.3.1. **Free Samples.** Notwithstanding anything herein to the contrary, free samples of food and beverages or other items may be given away at selective events by or on behalf of any Client or Other Persons at the discretion of the City.

      3.3.2. **Sales of Food and Beverage Products.** SLT acknowledges and agrees that certain Clients shall be permitted to sell food and beverage products at their event, provided such items are either sold in bulk or packaged with the intent that such products are not to be consumed on the premises during the event. Products shall be considered to be intended for off-premise consumption if they are sold in packages of not less than 500 grams if by weight or two litres if by volume.

      3.3.3. **Subcontracting of Services.** Services or functions to which SLT has a right under this Agreement may be assigned to subcontractors in accordance with this Agreement, subject to the City’s prior approval of the subcontractor, and the form and content of the proposed contract between SLT and the subcontractor, which approval may not be unreasonably withheld. No such assignment or subcontract shall relieve SLT of its obligation to provide any service or perform any function in accordance with this Agreement.
3.4. SLT recognizes and agrees that the quality of the food and beverage services provided at the Peterborough Memorial Centre is a matter of highest concern and is the essence of this Agreement. SLT shall provide first class Catering Services, Concession Services, Restaurant Services, and all other food and beverage services to meet the needs of the City, Clients and Other Persons.

3.4.1. **Menus and Pricing.** SLT shall regularly and at the City’s request throughout the Term, plan, prepare and implement new menus for restaurants, catering, permanent concessions and other foodservices areas, subject to approval by the City. After agreeing on menu prices prior to the start of operation, SLT shall not increase the prices for the first year of operation. Future menu price increases will be based on market pricing for comparable venues. National Brand menu prices, if applicable, will be based on “street pricing” and shall be mutually agreed by the City and SLT, provided that approval of price adjustment shall not be unreasonably withheld by the City.

3.4.2. **Products.** All food and beverages and other items sold or kept for sale at the Peterborough Memorial Centre shall be fresh and high quality. The City reserves the right, from time to time, to prohibit the sale of any product.

3.4.3. **Compliance with Applicable Laws and Regulations.** All food and beverages served by Operator shall conform in all respects to all applicable federal, provincial, regional and municipal legislation, by-laws, ordinances and regulations.

3.5. The Services shall include the following:

3.5.1. the planning of menu patterns and the development of all formulae combining high standards of food quality and presentation;

3.5.2. the purchasing of all food and other supplies, maintenance of adequate inventories and the production and processing of all goods, utilizing proven formulae and exacting food preparation controls;

3.5.3. the cash flow to maintain an adequate inventory of food and other supplies necessary for the operation of the Food Services Facilities;

3.5.4. the hiring, training, supervision and discipline of the personnel necessary to the efficient operation of the Food Services Facilities;

3.5.5. the provision and maintenance at all times of an adequate amount of trained staff on duty for efficient operation of the food and beverage services;
3.5.6. the cash flow to pay the salaries, wages and benefits of the food service personnel employed in the operation of the Food Service Facilities;

3.5.7. the application of sanitary procedures and controls in keeping with public health regulations and the Medical Officer of Health for the City of Peterborough;

3.5.8. the cleaning of kitchen and servery equipment;

3.5.9. the cleaning of kitchen, concession and pantry floors;

3.5.10. the collection of grease, including removal of grease from grease traps. SLT shall not discharge any grease into the City's sewer system, and shall place grease in proper containers for disposal;

3.5.11. the taking of all reasonable measures to prevent waste or damage to supplies, material and premises, and the safe operation of tools, equipment and other operating facilities at the Premises, and informing the City of all required repairs and replacements;

3.5.12. the removal of pre-consumer waste and coordination of disposal in conjunction with the City;

3.5.13. the provision, maintenance and replacement of smallwares;

3.5.14. the provision of single-serve containers for all venues other than luxury suites and the restaurant;

3.5.15. the provision of POS system and computers;

3.5.16. the provision of mobile food and beverage equipment additional to the existing inventory;

3.5.17. the provision of hospitality services, including being responsible for all billings;

3.5.18. complying with the City of Peterborough's Municipal Alcohol Policy and other relevant regulations;

3.5.19. complying with all applicable municipal, provincial and federal by-laws, statutes and regulations regarding the use and storage of hazardous materials, including but not limited to propane, cleaning supplies and chemicals of all sorts. A list of all such materials will be provided to the City upon commencement of the Agreement and will be updated as required;

3.5.20. repairing any damage to the Premises or the property of the City, any Client or Other Person if such damage was caused by SLT or its
employees, agents, sub-contractors or contractors.

4. **Facilities and Services to be provided by the City**

4.1. The City shall provide the following:

4.1.1. the Equipment, for the exclusive use of SLT;

4.1.2. adequate means of garbage storage;

4.1.3. heat, light, power, natural gas, hot and cold water, sanitary sewer and storm sewer sufficient to meet sanitary standards for dish and pot washing, food preparation and service, permanent or temporary, together with outlets and connections (collectively “Utilities”);

4.1.4. maintenance, decoration and repair of the Premises as the City considers reasonably necessary, all at times and in a manner that will not unreasonably interfere with the operation of the Food Service Facilities;

4.1.5. maintenance of ceilings, walls, light fixtures; plumbing, drainage and sewage systems; filters, hoods, canopies, and fire suppression systems in the Premises;

4.1.6. washroom facilities including the provision of paper towels, hand soap and garbage bags;

4.1.7. telephone service, excluding long distance calls;

4.1.8. rodent and pest control services;

4.1.9. adequate storage facilities to permit the maintenance of appropriate product inventory;

4.1.10. adequate access to the Premises;

4.1.11. security for the Premises;

4.1.12. an annual event schedule; and

4.1.13. its best attendance estimate for each event.

5. **Hours of Operation**

Services shall be provided to various events as mutually agreed by both Parties. SLT shall determine the point of sale cash points based on the average anticipated attendance for each event.

6. **Exclusivity**
6.1. While this Agreement is in force and effect, SLT shall have the exclusive right to provide all food and beverage services, except vending, to the patrons of the Peterborough Memorial Centre. The number of machines (9) currently in place shall not be expanded and prices must not be less than those charged in the concession for the same or similar products.

6.2. The City reserves the right to permit certain events held in the PMC to provide some or all of their own food and beverage services, and SLT acknowledges these events will be granted this right. No compensation shall be paid to SLT where outside organizations are allowed to provide services within the PMC. SLT agrees to cooperate with the City and event organizers to ensure the effective staging of such events. Such events shall not be entitled to the use of the food service facilities under the control of SLT. The Parties agree that these events by their specific nature justify provision of services by others.

6.3. SLT shall be identified as the Caterer for the PMC in all relevant promotional material.

7. Suiteholder Agreements

The City acknowledges that SLT may enter into agreements with Suiteholders respecting the provision of and payment for the Services, so long as such agreements are not inconsistent with the City's Suiteholder agreements.

8. Product Exclusivity

SLT agrees to stock and sell on an exclusive basis on the Premises products that are supplied by the City’s exclusive sponsors or suppliers, when applicable, provided that such products are of a quality which SLT would otherwise sell from the Premises. City and SLT will meet to determine the impact on SLT’s gross margins per unit of such products over a product of the same category, which SLT would have otherwise sold from the Premises. The cost of City’s exclusive sponsor’s products shall (a) match SLT similar location costs for like or similar products or (b) in the event that product costs are higher the selling prices shall be adjusted to protect SLT’s standard margins, providing that product pricing remains generally competitive with pricing at alike or similar venues. (c) in the event that neither (a) nor (b) can be achieved SLT shall be entitled to offset the difference against commissions payable.

9. Financial Arrangements

9.1. Bank Transfer Account. All Gross Revenue receipts shall be deposited in the Bank Transfer Account. SLT shall provide sufficient levels of working capital to perform under this Agreement.
9.2. **Collection and Remittance of Sales Tax.** SLT shall be responsible for the collection and remittance of the Goods and Services Tax, the Provincial Sales Tax, all employee withholdings and any other taxes that are levied on the operation of the business. Proof of such collection and remittance will be furnished to the City if requested;

9.3. **Recording of Transactions.** All sales transactions in the concessions, kiosks, restaurant, Club Lounge and Suites shall be recorded in a point of sale system approved by the City and provided by SLT. POS systems will have, as an absolute minimum, sufficient PLUs for all menu items offered in the outlet and a sealed cumulative total. The City and SLT may agree on an inventory control system, in lieu of POS, for certain mobile applications.

9.4. **Basis of Agreement.** SLT agrees to provide the Services on a profit and loss basis.

9.5. **Gross Revenue.** For the purposes hereof, “Gross Revenue” means the aggregate of the actual selling price of all products and services sold, whether by SLT or subcontractor(s) and whether or not such sales are made or such services are performed in the PMC or from the PMC.

a) Without limiting the generality of the foregoing, Gross Revenue includes:

i) the amounts received or receivable for the sale of products and services;

ii) all deposits not refunded for orders for products and services;

iii) sub-contractor Concession Income;

iv) service charges including service charges on bar sales;

v) any tips collected by SLT not remitted to SLT’s hostesses, servers and/or kitchen staff; and

vi) all other receipts and receivables whatsoever.

b) Gross Revenue excludes:

i) sales of products and services for which cash has been refunded, but only to the extent of such refund, provided that the selling price of such products and services was previously included in Gross Revenue;

ii) third party charges such as equipment rental or entertainment that are paid by SLT on behalf of the Client, where such charges are not generally included in the price for food and beverage service and where such charges are passed on to the Client without mark up;
sales of products and services by SLT at other venues, where such sales are in no way connected with the operations at Peterborough Memorial Centre;

iv) the amount of any provincial sales tax, goods and services tax, and any other applicable tax shown separately from the selling price, imposed directly on sales and collected on behalf of taxing authorities;

v) tips and gratuities actually remitted to SLT’s hostesses, servers, and/or kitchen staff; and

vi) service charges which are applied directly to labour costs.

9.6. **Minimum Annual Commission.** SLT shall pay to the City, on or before September 1st in each year, commencing September 1, 2004, a minimum commission of Forty Thousand Dollars ($40,000.00).

9.7. **Additional Commission.** SLT shall pay to the City the following additional commissions, on or before the 30th day following the end of each fiscal year:

a) the amount by which 6% of Gross Revenues up to $725,000.00 exceeds the Minimum Annual Commission, and

b) 20% on Gross Revenues in excess of $725,000.00.

9.8. **Share of Profit.** SLT shall pay to the City, on or before the 30th day following the end of each fiscal year, the amount which is 80% of the amount by which the net profit, as shown on the Annual Statement, exceeds the sum of 4.5% of the said net profit plus Fifteen Thousand, Five Hundred Dollars ($15,500).

9.9. **Utilities.** SLT will pay to the City, on the last day of each accounting period, commencing with period 10 (June) of 2004, a fixed amount of $1,250.00 ($15,000.00 annually) towards the cost of heat, hydro, gas, water and sewage.

9.10. **Marketing.** SLT will commit $2,000.00 annually during the Agreement term for marketing and promotions, and will meet with the City to discuss utilization of the said funds.

9.11. **Capital Investment.** SLT will make a Capital Investment of up to $155,000.00 for cash registers, smallwares, computer, and other incidental items. The annual cost of such capital and finance expense will be charged to the Annual Statement. The City and SLT agree that title to the equipment purchased by SLT shall be vested with SLT. SLT will depreciate the cost of the equipment on a straight-line basis over ten (10) years. Should the Agreement be terminated for any reason by either party prior to completion of the term, or on expiry of the term, the City shall purchase the equipment from SLT for the undepreciated value of the equipment as at the date of
termination, plus applicable taxes.

9.12. **Purchase of Suite.** SLT agrees to purchase a Suite in each year of the Agreement and will charge the expense of the Suite and the tickets to the Annual Statement. Suite prices will be firm for the term of this Agreement, and total Suite and ticket charge shall not exceed $12,000.00 annually. The parties shall enter into a Suiteholder agreement which reflects this paragraph, and also deals with revenue sharing arrangements.

10. **Reporting**

10.1. **Reporting.** SLT shall report, in such form and detail satisfactory to the City, the following reports:

10.1.1. **Weekly statement of estimated Gross Revenues in respect of each and every event and the following revenue categories:**

- 10.1.1.1 Concessions
- 10.1.1.2 Restaurant
- 10.1.1.3 Suite Sales
- 10.1.1.4 Skybox (group lounge) Sales
- 10.1.1.5 Banquet Sales
- 10.1.1.6 Sub-contractor Sales

And divided by food (including non-alcoholic beverages) and alcoholic beverages, within seven (7) days of the end of the previous week.

10.1.2. Within 45 days of the end of each Accounting Period, a statement of Gross Revenues itemized as in 9.1.1, together with a Fiscal Year-to-date statement identifying total Gross Revenue and all Operating Expenses associated with the operation of the Premises and provision of services.

10.1.3. Within 60 days of end of each Fiscal Year, SLT shall provide the City with a Statement of Gross Revenues and Expenses (the “Annual Statement”) prepared in accordance with generally accepted accounting principles (and permitting an expense for administration of no more than 3.0% of Gross Revenue, signed by an officer of SLT attesting to its accuracy and compliance with the terms of this Agreement. The Annual Statement shall be set out in such form and detail satisfactory to the City (acting reasonably) the Gross Revenues and Expenses for each Accounting Period.

10.2. **Annual Plans.** SLT shall provide to the City at the commencement of the first Fiscal Year, and thereafter no later than thirty (30) days prior to the end of each Fiscal Year, an estimate by Accounting Period of the Gross Revenue, operating expenses and capital expenditures for the following Fiscal Year, in such detail as is satisfactory to the City.
10.3. **Records and Right to Audit.** SLT shall prepare and maintain, and shall preserve for at least six (6) years from the date of their preparation, full, complete, true and accurate books, records, and financial statements in accordance with generally accepted accounting principles. SLT shall maintain such accounting records on a Fiscal Year basis. SLT and all other persons conducting business in or from the Premises or the PMC pursuant to this Agreement, will record at the time of the sale, in the presence of the customer, all receipts from sales, charges, services or other transactions whether for cash or credit, in a cash register or registers having a sealed cumulative total and any other control features that are required by the City relating to the sale of products and services and Gross Revenue. SLT warrants the accuracy of its financial settlements, reports and billings such that the City may rely upon for any purpose as being complete and accurate.

10.4. **Right to Audit.** The City and its designated agents shall have the right at all reasonable times to examine and copy, at its expense, all of the books and records of SLT relating to the Services, and at any time upon reasonable notice to SLT, conduct or have conducted an independent audit of the books of SLT relating to providing the Services, and such right shall survive the expiry or earlier termination of this Agreement.

10.4.1. If an inspection or audit, including reasonable reconstruction of the books and records of SLT to reflect Gross Revenue, should reveal that any Gross Revenue hereunder has been understated, then the City shall immediately adjust the amounts due to be based on the restated Gross Revenues, and such obligation shall survive the expiry or earlier termination of this Agreement.

10.4.2. Further, if an inspection or audit discloses an understatement of Gross Revenue of three percent (3%) or more, SLT shall, in addition, reimburse the City for all costs and expenses connected with such inspection or audit, and such right shall survive the expiry or earlier termination of this Agreement.

The foregoing remedies shall be in addition to any other remedies the City may have, and shall survive the expiry or earlier termination of this Agreement.

11. **Compliance with Governmental and Other Regulations**

11.1. SLT shall comply with all applicable health, W.H.I.M.S., sanitary and other laws, regulations and directions of any competent governmental authority relating to the actual operation of the Premises and of the personnel employed by it (including the Workplace Safety and Insurance Act); and agree to medical examinations of any or all persons employed by SLT in the provision of the Services, if and when required at the expense of the City.
11.2. The City acknowledges that it is responsible for compliance with all Federal, Provincial and Municipal Health and Safety regulations with respect to the Premises.

12. Insurance

SLT will maintain a policy of insurance indemnifying SLT and the City against all sums that they and either of them shall become obliged to pay by reason of liability imposed by law upon SLT and the City and either of them for:

(a) Loss or damage for bodily injury including damages for care and loss of services resulting from such bodily injury and any sickness or disease or death at any time resulting therefrom sustained by any person by reason of the operation of the said food service under this Agreement or arising out of the consumption, handling, or use of goods or products manufactured, sold, handled or distributed by SLT.

(b) Damage to or destruction of property resulting from the operation of the said food service under this Agreement, subject however to the conditions, limitations and exclusions forming part of the policy, which shall not be inconsistent with this Agreement.

The aggregate limits of such policy shall be $5,000,000 (Five million dollars) inclusive coverage for loss or damage resulting from bodily injury, sickness and disease or death sustained by any one or more persons and for damage to or destruction of property from any one accident. In the case of product liability such limits shall be for all occurrences in any one policy year.

This clause shall not be construed as imposing any liability upon SLT herein other than its obligation to maintain a policy of insurance containing agreements to the same or like effect as aforesaid or as a waiver by City of any rights it may have against SLT. City shall obtain and maintain insurance for the Premises, Food Service Equipment, and Utilities against risks covered by standard forms of fire, theft, and extended coverage in such amounts under such policies as appropriate.

The City shall be included as an additional insured on all policies, and SLT shall provide a certificate confirming such insurance policies upon the execution of this agreement, and annually thereafter.

SLT shall not do or permit to be done any act or thing upon the Premises that may make void or voidable any insurance on the Premises or the PMC.

The above insurance requirements shall not be read to limit the liability of SLT and shall not be deemed a waiver by the City of its right to damages and indemnity from SLT for default under this Agreement or for any loss arising out of or related to the performance or non-performance by SLT of its services under this Agreement.
13. **Mutual Indemnification**

Each party shall indemnify, defend and hold harmless the other and each of their respective servants, employees and agents from and against all actions, suits, claims, demands, losses, costs, charges, damages and expenses incurred, sustained or claimed, including reasonable legal fees, arising out of or resulting from any negligent or willful act or omissions of such party or persons for whom it is in law responsible in connection with the subject matter of this agreement, except to the extent caused by the negligent act or omission of the other party, or its employees or agents. Notwithstanding the foregoing, SLT shall not be required to indemnify the City for any claim or action brought by an employee of SLT against the City.

Notification of an event giving rise to an indemnification claim ("Notice") must be received by the indemnifying party within 30 days following receipt of such claim and shall include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to and conditioned upon compliance with the Notice provisions hereunder.

This clause shall survive termination of the Agreement.

14. **Termination**

14.1. **Termination without Cause**

Either party may terminate this Agreement on ninety (90) days prior written notice to the other party.

14.2. **Termination for Cause**

Should either party hereto make default in any of its obligations or contravene any provision in this Agreement, the other party may serve written notice of such default or contravention on the party in default. If within ten (10) days of the date of receipt of such notification the party so notified does not make good the default or cease the contravention, the party not in default may at its option:

(i) Remedy such default or contravention at the expense of the other party; or

(ii) Terminate this Agreement by giving ten (10) days’ written notice of termination to the other party.

14.3. **Default**

The occurrence of one or more of the following events shall constitute a default under this Agreement ("Default"): 
(i) Each and every occurrence of a Payment Default (No waiver, deferral, or compromise of any payment obligations or prior Payment Default shall extend to, or constitute a waiver of, any subsequent or other Payment Defaults or impair any SLT termination rights or remedies at law or in equity);

(ii) A party’s breach of any warranty, representation, or covenant under this Agreement.

14.4. **Immediate Termination**

Either party may terminate this Agreement immediately in the event that the other party:

(i) becomes insolvent or unable to pay its debts as they become due;

(ii) ceases to do business as a going concern; or

(iii) makes an assignment for the benefit of creditors, applies to or petitions any tribunal for the appointment of a custodian, receiver or trustee for itself or any substantial part of its assets, or commences any proceeding with respect to itself under any bankruptcy, reorganization, readjustment of debt, insolvency, receivership, dissolution or liquidation law or statute of any jurisdiction, or if it files any such application or petition, or if such proceeding is commenced against a party. Upon this instance of default, non-defaulting party may terminate Agreement effective immediately.

14.5. **Consequences of Termination**

In the event of the termination of this Agreement, SLT shall furnish the City with the usual statements and other documents as at the date of termination and any monies owing by one party to the other shall be paid within ten (10) business days. Failure of either party to pay any outstanding monies will result in interest charged on the sum, calculated at 5% per annum above the prime rate of the Canadian Imperial Bank of Commerce. In taking such accounts, all credits accruing one to the other shall be included. Neither the City nor SLT shall have any claim against the other for salaries, wages, employee compensation or allowances arising out of the termination of this Agreement, except that, in the event of termination of this contract by the City without cause or completion of the contract, the City shall reimburse SLT for the cost of severance and termination pay incurred. All payments between the parties hereto shall be subject to adjustment after such inspection, verification and audit of SLT’s books of account as the City shall wish to make on its behalf upon termination of this Agreement. Any such inspection, verification and audit shall be made without expense to SLT.

Upon termination of this Agreement, SLT agrees to peaceably surrender the premises, fixtures and equipment in good substantial repair and condition provided, however, that SLT shall not be responsible for Reasonable Wear and
Tear, damage by fire not caused by negligence of SLT or its employees, lightning, tempests, riots, insurrection, civil commotion, Acts of God or enemies of the state.

15. Survival of Obligations

Termination of this Agreement shall not operate to limit, reduce, cancel, or otherwise modify any Obligations then accrued or unpaid.

16. Independent Contractor

SLT agrees not to hold itself out as a servant or employee of the City or to pledge the credit of the City in any way whatsoever, it being understood that SLT is an independent contractor providing only the food service management on behalf of the City. Neither party intends, and nothing contained in this Agreement shall be construed, to establish a partnership or joint venture between parties. Neither party shall, by reason of any provision herein contained, be deemed to be the partner, agent or legal representative of the other nor to otherwise have the ability, right or authority to assume or create, in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of the other party.

17. SLT Vendors

Subject to Section 7, SLT shall purchase inventory, equipment and services from various sellers and vendors selected by SLT at its sole discretion (each a “Vendor”). Purchases from Vendors shall be made under such terms SLT deems in its sole discretion as acceptable (“Vendor Terms”). All Vendor Terms are the exclusive obligation and property of SLT. City does not have any right to any Vendor Terms and no Vendor Terms will operate to reduce or otherwise affect the amount or performance of City’s Obligations.

18. Right to Inspect

SLT agrees to permit an authorized representative of the City to have the right to inspect the premises at reasonable times. The inspection will be conducted in a manner to avoid disruption to the Services.

19. Licenses and Permits

SLT shall arrange to acquire all licenses and permits of whatsoever nature required for the operation and maintenance of the food service, except the liquor license which shall be provided by the City and name SLT as the operator of the license. The City shall have the right to prohibit the sale of alcoholic beverages at certain events, or in certain areas of the PMC.
20. **Force Majeure**

In case performance of any terms or provisions hereof (other than the payment of moneys) shall be delayed or prevented, without limitation, because of compliance with any law, decree, or order of any governmental agency or authority, or because of riots, war, public disturbances, power interruptions, fuel shortages, strikes, lockouts, differences with workmen, fires, floods, Acts of God, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend, without liability, the performance of its obligations hereunder (other than the payment of moneys) during the period such cause continues, and extend the term of this Agreement for the period of such suspension of the performance of duties hereunder. The party so prevented, delayed or interrupted shall give notice to the other party of such events as soon as reasonably possible and both parties shall use their reasonable best efforts to comply with the terms of this Agreement notwithstanding such prevention, delay, or interruption. Minimum commission shall be pro rated in the event of a Force Majeure by the number that is equal to $40,000.00 multiplied by a fraction, the numerator of which is the number of days during the Fiscal Year on which the SLT was unable to provide services, and the denominator of which is 364.

21. **City Consent**

Whenever pursuant to the terms of the Agreement the consent, approval or decision of the City is required, SLT shall be entitled to rely on a letter from an authorized representative stating that such consent, approval or decision has been given by the City and such letter shall not be unreasonably withheld or delayed. Any such consent, approval or decision given by the City shall not, in any way, amend the terms of this Agreement.

22. **Removal of Personnel**

The City may request removal of any SLT personnel and SLT shall comply, provided such request is lawful, reasonably justified in writing, and SLT is given an opportunity to respond and address such issues consistent with this Agreement and its obligations under the law.

23. **Non-solicitation of Employees**

The City shall not, during the term of this Agreement nor for a period of twelve (12) months after the termination of this Agreement, employ or allow to be employed or retained, either directly or indirectly, in its food service operations any person who was employed by SLT during the term of this Agreement in a managerial or supervisory capacity unless it has obtained the prior written consent of SLT. If the City violates this section, then the City agrees to pay an amount equal to two (2) years salary of such personnel, as liquidated damages and not as a penalty. Acceptance of such payment does not constitute a waiver
of any other remedies or rights SLT may have either at law or in equity, including temporary restraining orders or injunctive relief.

24. Dispute Resolution

**Good Faith Negotiation.** In the event of any dispute, controversy, claim, or disagreement arising out of or relating to this Agreement, or the breach, termination, validity, or enforceability of any provision of this Agreement (each a Dispute), the parties shall use their best efforts to resolve and settle any Dispute by consulting and negotiating with each other in good faith and attempting to reach a just and equitable solution satisfactory to both parties.

**Binding Arbitration.** If the parties fail to reach a solution under this Section within 30 days, then, upon notice by either party to the other, all Disputes shall be settled finally by binding arbitration.

**Arbitrators.** Each party shall select an arbitrator from a panel of arbitrators submitted to the parties. The two arbitrators so chosen shall, within 10 days of their appointment, select a third neutral arbitrator with similar experience and knowledge. Prior to the commencement of any hearing, each of the arbitrators shall provide an oath or undertaking of impartiality.

**Proceedings.** The first arbitration hearing shall commence within 120 days of a party’s notice to require arbitration. The arbitration shall be conducted in Toronto, Ontario. The arbitration shall be governed by the substantive laws of Ontario applicable to contracts made and to be performed therein, without regard to conflicts of law rules. The parties expressly agree that this Agreement shall confer no power or authority upon the arbitrators to render any judgment or award that is erroneous in its application of substantive law. Discovery as permitted by the Rules of Civil Procedure for the Province of Ontario will be allowed to the extent consistent with the purpose of arbitration and as allowed by the arbitrators. This Section will not impair the exercise of any termination rights under this Agreement or rights to seek injunctive or other equitable relief.

**Awards.** The arbitration award to the prevailing party shall include the cost of administering the arbitration and the cost of the arbitrators. The arbitrators are not empowered to award damages in excess of compensatory damages, and each party hereby irrevocably waives any right to recover punitive damages with respect to any Dispute. Judgment upon any award rendered in any arbitration may be entered into a court of competent jurisdiction for judicial acceptance of the award and an enforcement as the law of such jurisdiction may require or allow.

**Confidentiality.** The arbitration proceedings conducted pursuant hereto shall be confidential. Neither party shall disclose or permit the disclosure of any
information about the evidence adduced or the documents produced by any party in the arbitration proceedings or about the existence, contents, or results of the arbitration award without the prior written consent of such other party except as required by order during the course of a judicial or regulatory proceeding or as required by a governmental authority, so long as the party intending to make such disclosure shall give the other party prompt notice of the disclosure request to afford the other party opportunity to protect its interests.

25. Representations, Warranties, and Covenants

The following representations, warranties, and covenants are made by the parties at the time and from the Effective Date hereof and shall survive the termination of this Agreement:

(a) The execution, delivery, and performance by the parties of this Agreement are within their respective powers, have been duly authorized by all necessary action, and do not and will not contravene their respective charters, agreement of partnership, or by-laws. This Agreement constitutes the valid and legally binding obligations of the parties, enforceable in accordance with its terms. The parties’ respective chief executive offices, principal places of business, and the places of record retention are located at the address set forth on the signature page.

(b) The City has no right, title, or interest in, and shall not assert or disturb rights, title, or interest to, any equipment, inventory, or other property furnished or installed by SLT on the premises. The City shall not operate, remove, or tamper with such equipment, inventory or other property.

26. Notice

All notices to be given under this Agreement shall be in writing and shall be served either personally, by facsimile, by deposit with an overnight courier with charges prepaid, or by prepaid registered post addressed to the City at:

500 George St. N.
Peterborough, ON K9H 3R9

Attention: City Clerk

to SLT at:

General Counsel
COMPASS GROUP CANADA LTD.
5560 Explorer Drive, Suite 400
Mississauga, ON L4W 5M3
or such other address as either party may give the other by written notice.

Any such notices shall be deemed to have been given (a) upon delivery in the case of personal delivery, (b) upon the first business day following facsimile receipt, (c) one business day after deposit with an overnight courier, or (d) three business days after deposit in the mail, provided that if such mail service shall be interrupted by strike or other irregularity before the deemed receipt of such notice as aforesaid, then such notice shall not be effective unless delivered or transmitted via facsimile.

27. Entire Agreement

This agreement constitutes the whole and entire agreement between SLT and the City in connection with the subject matter hereof and supersedes the Proposal and any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof, and there are no express or implied terms, conditions, agreements, undertakings, declarations, commitments, representations, or warranties between the parties not expressly provided herein. In the event of any conflict between the terms of this Agreement and the said proposal, then the terms of this Agreement shall prevail and the said proposal shall be construed as having been altered to conform with the provisions of this Agreement. It is agreed that if there is any significant variation desired by either party in any of the terms or factors set forth in SLT’s proposal to the City, such variations shall be effected only by the consent of both parties.

28. No Modification

No modification or change to this Agreement shall be binding upon any party unless contained in writing signed by the other party. No course of dealing, course of performance, or trade usage, and no parol evidence of any nature, shall be used to supplement or modify such agreement and understanding.

29. No Waiver

No waiver or course of dealing between the parties shall extend to, or constitute a waiver of, any subsequent or other Defaults or impair any right consequent thereon. No failure or delay on the part of any party in exercising any right, power, or privilege hereunder and no course of dealing between the parties shall operate as a waiver of any Default or any such right, power, or privilege. No waiver to this Agreement shall be binding unless contained in a writing signed by the waiving party.

30. Severability

Any provisions of this Agreement found upon judicial interpretation or construction to be prohibited by law shall be ineffective to the extent of such prohibition, without invalidating the remaining provisions hereof; so long as the economic and legal substance of the subject matter of this agreement is not affected thereby in any manner materially adverse to any party.
31. **Set-Off**

Either party may deduct, set-off, or apply all or part of any such party’s payment obligations against any sums due to such party from the other party.

32. **Assignment**

No party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, SLT may assign this Agreement to a subsidiary or affiliate as such terms are defined in the *Canada Business Corporations Act* without the consent of the City. This Agreement shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the parties have hereunto attested by the hands of their proper officers duly authorized in that behalf.

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THE CORPORATION OF THE CITY OF PETERBOROUGH

Date:

Mayor

Clerk

COMPASS GROUP CANADA LTD.

Date: 3/64

Jack Macdonald  CEO