

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 07-094

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT
BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND
MOLSON CANADA (P-11-07)**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL
THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Molson Canada, 33 Carlingview Drive, Etobicoke, Ontario, to award the proposal for the exclusive advertising and pouring rights for beer sales at the Peterborough Memorial Centre in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 3rd day of July, 2007

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

EXCLUSIVE SPONSOR AGREEMENT

Peterborough Memorial Centre

This Agreement dated as of the 4th day of July, 2007.

BETWEEN:

The Corporation of the City of Peterborough

-A N D-

Molson Canada (the "Sponsor")

September 1, 2007 to August 31, 2011

This Exclusive Sponsor Agreement (the "**Agreement**") dated as of the 4th day of July, 2007.

BETWEEN:

The Corporation of the City of Peterborough
(the "**City**")

-A N D-

Molson Canada
a general partnership formed under the laws of the Province of Ontario
(the "**Sponsor**")

WHEREAS the City requires a Sponsor to assist in the marketing and promotion of the Peterborough Memorial Centre.

AND WHEREAS the Sponsor has submitted a Proposal to deliver these services, dated May 23, 2007.

AND WHEREAS the City and the Sponsor wish to enter into this Agreement through which the Sponsor shall assist the City in the marketing and promotion of the Peterborough Memorial Centre.

NOW THEREFORE in consideration of the mutual promises, covenants, warranties, provisions and conditions herein contained, the sufficiency and receipt of which is hereby acknowledged by each party, the Parties agree as follows:

1.0 DEFINITIONS

- 1.1. "**Expiry Date**" means August 31, 2011.
- 1.2. "**Fiscal Year**" means each period of twelve (12) consecutive Accounting Periods ending on the last day in August.
- 1.3. "**Parties**" means the City and the Sponsor.
- 1.4. "**Premises**" means the Peterborough Memorial Centre located at 151 Lansdowne St. W., Peterborough.
- 1.5. "**Services**" means the provision of marketing and promotion services as outlined herein in accordance with the terms of this Agreement.
- 1.6. "**Third Party**" means the party providing Food and Beverage Service on behalf of and approved by the City.

2.0 TERM

Term. This Agreement shall have a term of four (4) years (the "**Term**") commencing on September 1, 2007 (the "**Commencement Date**") and expiring on August 31, 2011 unless terminated earlier in accordance with this Agreement.

3.0 SERVICES

The Sponsor (pending availability) shall provide the City the following marketing and promotion services (subject to all applicable laws and regulations):

1. Inclusion on Molson Internet website.
2. Logo and link to Peterborough Memorial Centre to be featured on Molson website, complete with link to URL for ticket purchases for all Peterborough Petes' hockey games and all concerts held at the Peterborough Memorial Centre.
3. Direct mail marketing using the Molson database, to promote upcoming events at the Peterborough Memorial Centre

4.0 EXCLUSIVITY

- 4.1 During the Term and subject to Article 5.0, the City agrees that it shall not enter into any Sponsor Agreements with other companies engaged in the brewing and/or distribution of beer, without the prior consent of the Sponsor.
- 4.2 During the Term and subject to Article 5.0, the City agrees that it shall not sell any of its advertising inventory within the Premises to other companies engaged in the brewing and/or distribution of beer, without the prior consent of the Sponsor.
- 4.3 During the Term and subject to Article 5.0 the City shall, to the extent permitted by applicable law, provide Molson with exclusivity on draught beer served in the Peterborough Memorial Centre and shall provide Molson with the maximum pouring rights allowed by applicable law in respect of packaged products. The City shall also work closely with the Sponsor to identify additional opportunities for the Sponsor to promote and sell its products at the Peterborough Memorial Centre, to the extent permitted and in accordance with all applicable laws, regulations, by-laws and ordinances.

5.0 THIRD PARTY OPERATORS

- 5.1 The Sponsor acknowledges that the food and beverage facilities at the Peterborough Memorial Centre are operated by an independent concessionaire. The City represents and warrants that its agreement with the concessionaire gives the City the authority to enter into exclusive Sponsor agreements, and the City shall use its best efforts to ensure that the food and beverage operator(s) in the Peterborough Memorial Centre shall honour the terms of this Agreement.
- 5.2 The Sponsor acknowledges that certain events held in the Peterborough Memorial Centre will have the right to provide some or all of their own food and beverage services within the Centre and the Sponsor acknowledges these events will be granted this right. The City shall use its best efforts to ensure such events comply with the terms of this Agreement. However, the use of products not covered under this Agreement during such events shall not be considered a breach of this Agreement.
- 5.3 The Sponsor acknowledges that they have committed to support the third party food and beverage provider with annual promotional amounts of \$3,250.00.

6.0 COMPENSATION

6.1 Exclusivity Rights Payment

The Sponsor shall pay to the City the sum of \$7,500.00 on each September 1 and the sum of \$7,500.00 on each April 15th throughout the Term of the Agreement, as compensation for the rights granted herein (the "Sponsorship Fee").

- 6.2 On April 15th in each year of the Term, the parties shall enter into good faith discussions to determine whether the Sponsorship Fee should be increased or decreased. Discussions would include but not be limited to the volume of product sold, number of events and attendance at Peterborough Petes games. In the event the parties cannot agree on any increase or decrease, the Sponsorship Fee shall remain unchanged.

7.0 ADVERTISING RIGHTS

During each year of the period September 1, 2007 to August 31, 2011, the City agrees to provide to the Sponsor the following advertising space:

- two (2) rink board signs
- one (1) illuminated sign
- mutually agreed upon locations to display Molson branded signage

8.0 PRIVATE SUITE LICENSE

The Sponsor shall enter into a license agreement with the City for the use of one private suite at the Peterborough Memorial Centre for the Term of the Agreement. Compensation to the City for the suite license agreement shall be in accordance with standard suite license agreement terms and conditions.

9.0 AMENDMENTS AND ENFORCEMENT

9.1 **Amendments.** No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by the Parties.

9.2 **Enforcement.** The Parties, in addition to any remedies provided herein, shall have all legal and equitable remedies provided by law.

10.0 DEFAULT

10.1 Any of the following shall constitute a default of this Agreement:

- i. If the Sponsor fails, for any reason, to make any payment due hereunder as and when the same is due to be paid hereunder and such default continues for thirty (30) business days after such payment was due, whether or not notice is given to the Sponsor;
- ii. If either party fails, for any reason, to observe or perform any of its obligations pursuant to this Agreement other than the payment of any of the monies due hereunder and such default continues for five (5) days, after written notice thereof to the defaulting party;
- iii. If either party becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal or arrangement with creditors, or steps are taken for the winding-up or other termination of such defaulting parties' existence or liquidation of its assets, or a receiver or other similar person takes control of the assets or business of the defaulting party or a substantial portion thereof;

then in addition to any other rights or remedies to which the non-defaulting party is entitled hereunder or at law, the non-defaulting party shall have the following rights and remedies, which are cumulative and not alternative, namely:

1. To terminate this Agreement in respect of the whole or any part of the Premises;
2. To remedy the defaulting party's default, in which case the defaulting party shall pay to the non-defaulting party forthwith upon demand all reasonable costs of the non-defaulting party in so doing plus an administration fee equal to ten percent (10%) of such costs; and
3. To claim damages from the defaulting party.

Any sums due and owing hereunder shall bear interest at the rate of eighteen (18%) percent per annum from the date originally due.

11.0 MISCELLANEOUS PROVISIONS

11.1 **Validity.** The City and Sponsor each represents and warrants to the other its respective authority and power to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defence based on claim of illegality, invalidity or unenforceability of any nature. The City and Sponsor each hereby represents, warrants and covenants to the other that the undersigned officers have been duly authorized to execute this Agreement such that this Agreement has been validly entered into by the respective party, and that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof.

11.2 **Ambiguities.** The Parties agree and warrant that they have had the benefit of consultation with legal counsel prior to entering into this Agreement, such that all language herein shall be construed equally against the Parties, and such that Sponsor waives any right, claim, argument or defence that any language of this Agreement should be construed strictly against the City.

11.3 **Contingent Fees.** The Sponsor warrants that it has not employed or retained any consultant or employee of the City to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Sponsor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

- 11.4 **Compliance with Applicable Laws.** The Sponsor shall strictly comply with all federal, provincial, regional, and municipal laws and regulations applicable to providing the Services, and shall secure and maintain all necessary sales, excise, or other licenses or permits.
- 11.5 **Confidentiality.** The Sponsor acknowledges that the City is bound by the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. The Sponsor agrees that all information provided to the Sponsor by the City is being provided on a confidential basis for the purposes of administration of this contract and is protected by the provisions of this said Act. The information provided by the City to the Sponsor shall not be released to any third party under any circumstances whatsoever without the prior written consent of the City.
- The Sponsor acknowledges that it may be made aware by the City of detailed confidential information in the process of providing the Services. Disclosure of such confidential information will be highly detrimental to the interests of the City. The Sponsor further acknowledges that all such confidential information is the exclusive property of the City and that such property is held by the Sponsor in trust for the City. The Sponsor shall not willingly disclose any secret or confidential information, or information which in good faith and good conscience ought to be treated as confidential.
- 11.6 **Force Majeure.** Notwithstanding anything in this Agreement, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes or labour disputes; inability to procure materials or services; power failure; restrictive governmental laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault or within the reasonable control of the party affected, then the performance of that term, covenant or act is excused for the period of the delay and the time for performing that term, covenant or act will be extended accordingly, but this shall not apply to any non-payment of money due hereunder.
- 11.7 **Labour Disputes.** In the event the Sponsor cannot perform its obligations under this Agreement because of a labour dispute, such non-performance will not be considered a default, provided, however, that the City shall not be bound by the provisions of this Agreement and may retain other Sponsors until said labour dispute is resolved. In the event said labour dispute remains unresolved in excess of thirty (30) consecutive days, the City may terminate this Agreement upon 30 days written notice.
- 11.8 **Non-Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. Any such waiver shall be applicable only to the specified instance to which it relates and shall not be deemed a continuing or future waiver.
- 11.9 **Severability.** If any provision of this Agreement is illegal, unenforceable or invalid, it shall be considered separate and severable and all the remainder of this Agreement shall remain in full force and effect as though such provision had not been included in this Agreement but such provision shall nonetheless continue to be enforceable to the extent permitted by law.
- 11.10 **Successors.** This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, assigns and other legal representatives except only that this Agreement shall not enure to the benefit of any of such parties unless and only to the extent expressly permitted pursuant to the provisions of this Agreement.
- 11.11 **Non-Assignability.** The Sponsor shall not assign, transfer, or subcontract any of its rights or obligations hereunder without the prior approval of the City which approval may be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and assigns.
- 11.12 **Time of the essence.** Time is of the essence of all terms of this Agreement.
- 11.13 **Applicable Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario. The Parties agree that the Courts of Ontario shall have jurisdiction to determine any matters arising hereunder.

- 11.14 **Interpretation.** Whenever a word importing the singular or plural is used in this Agreement, such word shall include the plural and singular respectively. Where any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Words importing persons of either gender or firms or corporations shall include persons of the other gender and firms or corporations as applicable. Subject to the express provisions contained in this Agreement, words such as "hereof", "herein", "hereby", "hereafter", and "hereunder" and all similar words or expressions shall refer to this Agreement as a whole and not to any particular article or portion hereof.
- 11.15 **Headings.** The headings or captions of articles, sections or subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.
- 11.16 **Consents and Approvals.** Consents and approvals required under this Agreement to be obtained from the City shall only be effective if given in writing by persons so authorized.
- 11.17 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given if delivered in person or by facsimile transmission or by pre-paid registered mail:

If intended for the Sponsor at:

Molson Canada
33 Carlingview Dr
Toronto, ON
M9W 5E4
Attention: Doug Vance
Facsimile 905.751.0837

If intended for the City at:

The Peterborough Memorial Centre
151 Lansdowne St. W.
Peterborough, ON
K9J 1Y4
Attention: Manager
Facsimile: 705.743.2196

With a copy to:

The City of Peterborough
500 George St. N
Peterborough, ON
K9H 3R9
Attention: City Solicitor
Facsimile: 705.742.3947

All such notices shall be deemed to have been given and received upon the day of personal delivery or facsimile transmission or, if mailed, four (4) business days (excluding Saturdays, Sundays, holidays and days upon which regular postal service is interrupted or unavailable for any reason) after the same is mailed. Either party may at any time by notice in writing to the other change its address for service.

- 11.18 **Insurance.** Each of the parties will provide and maintain comprehensive general liability insurance coverage in an amount not less than \$5,000,000.00 per occurrence during the Term, naming the other as an additional named insured.
- 11.19 **Indemnity.**
- (a) During the Term and thereafter, the City agrees to indemnify Molson, its partners, licensed brands and affiliates and their respective directors, officers, employees, and agents from and against any and all expenses, damages, claims liabilities and costs whatsoever (including attorneys' fees and expenses) suffered or incurred by any of them and arising in connection with: (a) the breach by the City, its officers, directors, agents or employees of this Agreement; or (b) the negligent act or omission of the City, its officers, directors, agents or employees.

(b) During the Term and thereafter, Molson agrees to indemnify the City, its officers, directors, agents or employees, from and against any and all expenses, damages, claims liabilities and costs whatsoever (including attorneys' fees and expenses) suffered or incurred by any of them and arising in connection with: (a) the breach by Molson, its partners, licensed brands and affiliates and their respective directors, officers, employees, and agents of this Agreement; or (b) the negligent act or omission of Molson, its partners, licensed brands and affiliates and their respective directors, officers, employees, and agents.

The Parties shall be bound by all terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed under corporate seal by the duly authorized signing officers of each of the Parties on the day and year first above written.

The Corporation of the City of Peterborough

Per: _____
Mayor D. Paul Ayotte

Per: _____
Nancy Wright-Laking, City Clerk

I/ We have the authority to bind the City.

Molson Canada

Per: _____

Per: _____

I/ We have the authority to bind the corporation.