

By-Law Number 2021-0XX

**A By-Law to Enact a Heritage Easement Agreement over Lands
Located at 223 Princess Street, Pursuant to the Provisions of the
*Ontario Heritage Act, R.S.O. 1990, c. O.18***

Passed: May 4, 2021

Whereas the Owner is the registered owner of certain lands and premises situated in the City of Kingston, in the County of Frontenac, Province of Ontario (the "Property"), being comprised of:

PIN: 36049-0458 (LT)

FIRSTLY: LOT 316 ORIGINAL SURVEY KINGSTON CITY, PART LOTS 309, 310, 317 ORIGINAL SURVEY KINGSTON CITY, PART LOT 318 ORIGINAL SURVEY KINGSTON CITY AS IN FR462372; S/T AND T/W EASEMENT AS IN FR462372

SECONDLY: PART LOT 311 ORIGINAL SURVEY KINGSTON CITY DESIGNATED AS PART 1, PLAN 13R14039; T/W EASEMENT AS IN FR739390 CITY OF KINGSTON; and

Whereas the purpose of the *Ontario Heritage Act, R.S.O. 1990, c. O.18* (the "Act") is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario; and

Whereas in accordance with Section 37(1) of the Act, the City is entitled to enter into easements or covenants with owners of real property or interests therein, for the conservation of property of cultural heritage value or interest; and

Whereas by Sections 37(2) and 37(3) of the Act, such easements and covenants entered into by the City, when registered in the proper Land Registry Office against the real property affected by them, shall run with the real property and may, whether positive or negative in nature, be enforced by the City or its assignee against any subsequent owners of the real property even where the City owns no other land which would be accommodated or benefitted by such covenants and easements; and

Whereas the Owner and the City desire to conserve the cultural heritage value and interest of the Property;

Therefore, be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

1. That staff be directed to finalize and register a Heritage Easement Agreement, in

City of Kingston By-Law Number 2021-0XX

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the form generally shown on Schedule "A" hereto, in respect of the property municipally known as 223 Princess Street and legally described as follows:

PIN: 36049-0458 (LT)

FIRSTLY: LOT 316 ORIGINAL SURVEY KINGSTON CITY, PART LOTS 309, 310, 317 ORIGINAL SURVEY KINGSTON CITY, PART LOT 318 ORIGINAL SURVEY KINGSTON CITY AS IN FR462372; S/T AND T/W EASEMENT AS IN FR462372

SECONDLY: PART LOT 311 ORIGINAL SURVEY KINGSTON CITY DESIGNATED AS PART 1, PLAN 13R14039; T/W EASEMENT AS IN FR739390 CITY OF KINGSTON.

2. That the Director of Legal Services be directed to execute any documents as may be required to give effect to the registration of the Heritage Easement Agreement against the property affected in the proper Land Registry Office.
3. This by-law shall come into force and take effect on the date of its passing.

Given All Three Readings and Passed: May 4, 2021

John Bolognone
City Clerk

Bryan Paterson
Mayor

Schedule "A"

HERITAGE CONSERVATION EASEMENT AGREEMENT

This Agreement made the ____ day of _____, 2021.

BETWEEN:

IN8 (THE CAPITOL) DEVELOPMENTS INC.
(the "Owner")

-and-

THE CORPORATION OF THE CITY OF KINGSTON
(the "City")

WHEREAS:

- A. The Owner is the registered owner of certain lands and premises municipally known as 223 Princess Street, Kingston, Ontario, as legally described in Schedule "A" attached (the "**Property**");
- B. In accordance with Section 37(1) of the *Ontario Heritage Act*, R.S.O, 1990, c.O.18 (the "**Act**"), the City is entitled to enter into easements or covenants with owners of real property or interests therein, for the conservation of property of cultural heritage value or interest;
- C. Pursuant to Sections 37(2) and 37(3) of the Act, such easements or covenants entered into by the City, when registered in the proper Land Registry Office against the real property affected by them, run with the real property and may be enforced by the City against the owner or any subsequent owners of the real property, even where the City owns no other land which would be accommodated or benefitted by such easements or covenants; and
- D. The Owner and the City desire to conserve the cultural heritage value and heritage attributes on the Property, as described in Schedule "B" attached, in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE that in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada, now paid by the City to the Owner (the receipt of which is hereby acknowledged), and for other valuable consideration, and in further consideration of the granting of the easements herein, and in further consideration of the mutual covenants and restrictions hereinafter set forth, the Owner and the City agree to abide by the following covenants, easements and restrictions which shall run with the Property in perpetuity.

1.0 Schedules

1.1 The following Schedules are attached to and form part of this Agreement:

- 1) Schedule “A” – Legal Description of the Property
- 2) Schedule “B” – Statement of Cultural Heritage Value
- 3) Schedule “C” – Conservation and Restoration Works

2.0 Purpose

2.1 It is the purpose of this Agreement to ensure that the cultural heritage value of the Property will be conserved in perpetuity as part of the heritage of the City of Kingston. To achieve this purpose, the Owner and the City agree that the heritage attributes of the Property identified in Schedule “B” attached (the “**Heritage Attributes**”) will be retained, maintained and conserved by the Owner through the application of recognized heritage conservation principles and practices, and that no change shall be made that will adversely affect the heritage value of the Property, as set out in the Statement of Cultural Heritage Value attached as Schedule “B”.

3.0 Statement of Cultural Heritage Value

3.1 The Owner and the City agree that the Statement of Cultural Heritage Value attached as Schedule “B” explains the cultural heritage value of the Property and identifies the Heritage Attributes.

4.0 Conservation Principles, Standards and Guidelines

4.1 Both the Owner and the City in carrying out their respective responsibilities and duties under this Agreement shall, where applicable, be guided by and apply recognized heritage conservation principles and practices, including, but not limited to, the Ministry of Heritage, Sport, Tourism and Culture Industries’ *Eight Guiding Principles in the Conservation of Built Heritage Properties* and Parks Canada’s *Standards and Guidelines for the Conservation of Historic Places in Canada* (the “**Heritage Conservation Principles and Practices**”).

5.0 Duties of Owner

5.1 Maintenance

The Owner shall, at all times, maintain the Property in as good and sound state of repair as a prudent owner would normally do, so that the Heritage Attributes are conserved and enhanced. The Owner’s obligation to maintain the Property shall require that the Owner undertake such preventative maintenance, repair, stabilization and replacement whenever necessary to preserve the Heritage

Attributes and to take all reasonable measures to secure and protect the Heritage Attributes from vandalism, fire, and damage from inclement weather.

5.2 Conservation and Restoration Works

The Owner shall complete the conservation and restoration works set out in Schedule “C” attached (the “**Conservation and Restoration Works**”) within 24 months following receipt of final Site Plan Control approval for the proposed development on the Property. The Owner shall complete the Conservation and Restoration Works at its sole cost, in a good and workmanlike manner, and in accordance with:

- (a) plans and specifications approved by the City in writing in advance;
- (b) the terms and conditions of the City’s Heritage Permit for the Property, if applicable;
- (c) all applicable laws and regulations, including, without limitation, all municipal by-laws;
- (d) the Heritage Conservation Principles and Practices; and
- (e) all applicable City policies and procedures, including, without limitation, the City’s Policy on Window Renovations in Heritage Buildings and the City’s Policy on Masonry Restoration on Heritage Buildings.

The City shall have the right, from time to time, upon prior notice to the Owner, to enter upon the Property to inspect completion of the Conservation and Restoration Works. If the City notifies the Owner of any deficiencies in the Conservation and Restoration Works, or that any of the Conservation and Restoration Works have not been completed in accordance with the terms of this Agreement, the Owner shall promptly rectify the deficiency or breach to the City’s satisfaction, at its sole cost.

5.3 Alterations

The Owner shall not, without the prior written approval of the City, undertake or permit any demolition, removal, construction, reconstruction, renovation, restoration, alteration, remodelling of the Property, or any other thing or act which would materially affect the condition, appearance or construction of the Heritage Attributes.

6.0 **Approvals**

6.1 Information to be Provided

In requesting any approval under this Agreement, the Owner shall, at its expense, provide to the City such information in such detail as the City may

reasonably require in order to consider and assess the Owner's request, including, without limitation, the following:

- (a) plans, specifications describing the elevations, other drawings, sections and designs for any proposed work;
- (b) materials samples;
- (c) a work schedule;
- (d) the report of a qualified conservation engineer, architect, landscape architect, archaeologist, conservator or consultant; and
- (e) such other reports, studies or tests as may in the circumstances be reasonably required for the City to appropriately assess the impact of the proposed work on the Heritage Attributes.

6.2 Matters to be Considered

Where any request for approval required under this Agreement is submitted to the City, the determination of the City may be based upon choice of materials, architectural design, historical authenticity, or any other grounds, not limited to purely aesthetic or historical grounds, but the City's approval shall not be unreasonably withheld, unless otherwise specifically provided for in this Agreement. In giving its approval, the City may specify such conditions of approval as the City considers necessary or appropriate in the circumstances to ensure the conservation of the Heritage Attributes.

6.3 Effect of Approval

Any approval given by the City under this Agreement shall have application only to the requirements of this Agreement and does not relieve the Owner from obtaining any approvals, permits or consents of any authority whether federal, provincial, municipal or otherwise that may be required by any statute, regulation, by-law, guideline or policy or by any other agreement.

7.0 Indemnity and Insurance

7.1 Indemnity

The Owner shall hold the City and its employees, officers, agents, elected officials, contractors and representatives harmless against and from any and all liabilities, suits, actions, proceedings, claims, causes, damages, judgments or costs whatsoever (including all costs of defending such claims) arising out of, incidental to, or in connection with any injury or damage to person or property of every nature and kind (including death resulting therefrom), occasioned by any act or omission of the Owner related to this Agreement, save and except for any such liabilities and claims for or in respect of any act, deed, matter or thing made or done by the City and its employees, officers, agents, contractors and representatives pursuant to Sections 8.4, 9.1 and 10.2 of this Agreement.

7.2 Insurance

- 7.2.1 The Owner agrees to put in effect and maintain or caused to be put in effect and maintained, at all times, at its own cost and expense, with insurers licensed in Ontario, property insurance to a limit commensurate to the full replacement cost of the buildings and structures on the Property on all “all risks” basis. The Owner shall ensure that the insurance policy includes confirmation, either in a letter or in the certificate of insurance, that the policies in force are appropriate for preserving the integrity of a heritage property. The Owner’s insurance policy shall name the City as an additional insured. Concurrently with execution and delivery of this Agreement, and thereafter upon the renewal of the policy, the Owner shall deliver to the City certificates of insurance in a form satisfactory to the City.
- 7.2.2 If the Owner fails to obtain the insurance required pursuant to Section 7.2.1, or if the insurance is cancelled, the City may effect such insurance and the premium and any other amount paid in so doing shall forthwith be paid by the Owner to the City, or if not, shall be a debt owing to the City and recoverable from the Owner by action in a court of law.
- 7.2.3 All proceeds receivable by the Owner under the insurance required pursuant to Section 7.2.1 shall, on the written demand and in accordance with the requirements of the City, be applied to replacement, rebuilding, restoration or repair of the Property, including the Heritage Attributes, to the fullest extent possible having regard to the particular nature of the Property and the cost of such work. The Owner's financial liability to replace, rebuild, restore or repair the Property, including the Heritage Attributes, if it has been damaged or destroyed shall not exceed the proceeds receivable by the Owner under the property insurance. In the event that the property insurance proceeds receivable by the Owner are insufficient to effect a partial or complete restoration of the Property, the City shall have the privilege, but not the obligation, of contributing additional monies towards the replacement, rebuilding, restoration, or repair costs in order to effect a partial or complete restoration of the Heritage Attributes.

8.0 Building Demolition or Rebuilding

8.1 Notice of Damage or Destruction

In the event of any significant damage to or destruction of the Property the Owner shall notify the City in writing of such damage or destruction to the Property within ten (10) clear days of such damage or destruction occurring.

8.2 Approval to Demolish

If in the opinion of the Owner the replacement, rebuilding, restoration or repair of the Property which has been damaged or destroyed is impractical because of the financial costs involved or because of the particular nature of the Property, the Owner shall, in writing within forty (40) days of giving the City notice under Section 8.1, request the City's approval to demolish the Property. In the event that the City approves the demolition of the Property, the Owner shall be entitled to retain any insurance proceeds payable to it as a result of the damage to or destruction of the Property and to demolish the Property.

8.3 Rebuilding by Owner

In the event that either the Owner does not request or the City does not give the approval referred to in Section 8.2, the Owner shall replace, rebuild, restore or repair the Property, including the Heritage Attributes, to the limit of any proceeds receivable under the aforementioned insurance policy or policies on the Property and of any additional monies contributed by the City towards the replacement, rebuilding, restoration or repair of the Property to effect a partial or complete restoration of the Heritage Attributes (in this Section 8.0, the "**Work**"). Before the commencement of the Work, the Owner shall submit all plans, designs and specifications for the Work for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Property. The Owner shall not commence or cause the Work to be commenced before receiving the written approval of the City of the plans, designs and specifications for the Work and the Work shall be performed in accordance with the approved plans, designs and specifications and upon such terms and conditions as the City may stipulate. The Owner shall cause the Work to be commenced within thirty (30) days of its approval by the City and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond its control or the scope of the Work prevent completion within nine (9) months.

8.4 Reconstruction by City

8.4.1 In the event that the Owner does not submit a request to demolish the Property or the request to demolish is refused by the City and the Owner subsequently fails to submit plans, drawings and specifications for the Work within the period stipulated in Section 8.3 which are acceptable to the City then the City may at its option prepare its own plans, drawings and specifications for the Work (herein the "**City's Plans**") and shall deliver a set of the City's Plans to the Owner. The

Owner shall have thirty (30) days from receiving the City's Plans to notify the City in writing that it intends to undertake the Work in accordance with the City's Plans. If the Owner does not so notify the City within the said thirty (30) days, the City may (but shall not be obligated to) undertake the Work up to the value of any insurance proceeds receivable by the Owner in respect of the Property and of any additional amount that the City is prepared to contribute to effect a partial or complete restoration of the Heritage Attributes. The Owner shall reimburse the City for any expenses incurred by the City in undertaking the Work, including any professional or consulting costs reasonably incurred in connection with the Work to an amount not to exceed any insurance proceeds receivable by the Owner in respect of the damage to or destruction of the Property.

8.4.2 The Owner grants to the City the right and licence to enter and occupy the Property or such part or parts thereof that the City, acting reasonably, considers necessary or convenient for the City and its forces to undertake and complete the Work (herein the "**Licence**"). The Licence shall be exercisable by the City on the commencement of any Work undertaken by the City and shall terminate when such Work has been completed.

8.4.3 In the event that the City does not submit to the Owner the City's Plans or does not proceed with the Work within sixty (60) days after it becomes so entitled, except where it is prevented from so doing by any act or omission of the Owner or any tenant or agent of the Owner, or by any other factors beyond its control, the City's right to undertake the Work shall automatically terminate and the Owner shall be entitled to retain any insurance proceeds in respect of the damage to or destruction of the Property.

9.0 Inspection

9.1 The City or its representatives shall be permitted at all reasonable times during normal business hours to enter upon and inspect the Property upon giving at least seventy-two (72) hours' prior written notice to the Owner.

10.0 Remedies of the City

10.1 Notice of Default

If the City, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of its duties or obligations set out in this Agreement, the City may, in addition to any of its other legal or equitable remedies, give the Owner written notice setting out particulars of the Owner's default and the actions required to remedy the default. The Owner shall have thirty (30) days from receipt of such notice to remedy the default in the manner specified by the City or to make other arrangements satisfactory to the City for remedying the default within such period of time as the City may specify.

10.2 City may Rectify Default

If the Owner has not remedied the default or made other arrangements satisfactory to the City for remedying the default within the time specified in Section 10.1, or if the Owner does not carry out the arrangements to remedy the default within the period of time specified by the City, the City may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the City for any expenses incurred thereby. Such expenses incurred by the City shall, until paid to it by the Owner, be a debt owed by the Owner to the City and recoverable by the City by action in a court of law. The provisions of Subsection 8.4.2 shall apply with all necessary changes required by the context to any entry by the City onto the Property to remedy the default.

10.3 Other Remedies

As damages based upon market value may not be adequate or effective to compensate for destruction of or restoration of the Heritage Attributes as they existed prior to default or breach of the Agreement, the parties agree that:

- (a) compensation to the City in the event of the Owner's default under this Agreement may be based upon market value, restoration or replacement costs whichever, in the opinion of the court, shall better compensate the City in the circumstances; and
- (b) in addition and without limiting the scope of the other enforcement rights available to the City under this Agreement, the City may bring an action or an application for injunctive relief to prohibit or prevent the Owner's default or the continuance of the Owner's default under this Agreement.

10.4 Waiver

The failure of the City at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the City of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same of any other obligation hereunder at any later time.

11.0 Notices

- 11.1 Any notices to be given or required under this Agreement shall be in writing and sent by personal delivery, electronic transmission, or by ordinary prepaid mail to the following addresses:

The Owner:

IN8 (The Capitol) Developments Inc.
44 Peter Street
St. Clements, Ontario
N0B 2M0

The City:

Director of Planning Services
The Corporation of the City of Kingston
216 Ontario Street
Kingston, Ontario
K7L 2Z3

The parties shall notify each other in writing with respect to any change to the addresses listed above.

- 11.2 Notice by mail shall be deemed to have been received on the third (3rd) business day after the date of mailing, and notice by personal delivery or electronic transmission shall be deemed to have been received at the time of the delivery or transmission. In the event of an interruption in postal service, notice shall be given by personal delivery or electronic transmission.

12.0 General

12.1 Extension of Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the written consent of both the Owner and the City, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit. Time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

12.2 Severability of Covenants

All covenants, easements and restrictions contained in this Agreement shall be severable, and should any covenant, easement or restriction in this Agreement be declared invalid or unenforceable, the validity and enforceability of the remaining covenants, easements and restrictions shall not be affected.

12.3 Costs

In the event that a dispute arises between either of the parties hereto because of this Agreement, each party shall be responsible for its own legal fees, court costs and all other similar type expenses which may result from any such dispute.

12.4 Entire Agreement

This Agreement and all of the documents and agreements referenced herein constitutes the entire agreement of the parties with regard to the matters dealt with herein, and no understandings or agreements, verbal, collateral or otherwise, exist between the parties except as herein expressly set out.

12.5 Notification of Transfer of Title or Possession

The Owner shall immediately notify the City in the event that it transfers either the fee simple title to or its possessory interest in the whole or any part of the Property, including, without limitation, any such transfer of the Owner's title or interest so as to create a joint tenancy or tenancy in common therein, provided that such notice shall not be required where the Owner, in leasing and licensing premises at the Property, retains responsibility for the alteration of any Heritage Attributes forming part of the licensed or leased premises, and the tenant or licensee has no authority to alter such Heritage Attributes.

12.6 Agreement to Run with the Property

This Agreement shall be registered on title to the Property by the City, at its expense, and the covenants, easements and restrictions set out herein shall run with the Property and enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, personal representatives, successors and assigns, as the case may be.

12.7 Unavoidable Delay

Neither party will be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the City and the Owner including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, pandemic, riot or other civil insurrection, lawful act of public authority, or delay or default caused by a common carrier which cannot be reasonably foreseen or provided against.

12.8 Headings

The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.

12.9 Counterparts

This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Each of the parties hereto agree that this Agreement may be delivered, once executed, by electronic transmission (and the executed version of this Agreement delivered by electronic transmission shall have the same force and effect as if it were originally executed and personally delivered) and that a photocopy of an electronic copy of the Agreement may be relied upon by all parties that have signed the Agreement to the same extent as if it were an original executed version addressed specifically to each of them. Notwithstanding the foregoing, at the request of a party, the parties shall exchange originally signed copies of this Agreement.

[Remainder of page intentionally left blank]

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SCHEDULE "A"
LEGAL DESCRIPTION OF PROPERTY

PIN: 36049-0458 (LT)

FIRSTLY: LOT 316 ORIGINAL SURVEY KINGSTON CITY, PART LOTS 309, 310, 317 ORIGINAL SURVEY KINGSTON CITY, PART LOT 318 ORIGINAL SURVEY KINGSTON CITY AS IN FR462372; S/T AND T/W EASEMENT AS IN FR462372

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SCHEDULE "B"
STATEMENT OF CULTURAL HERITAGE VALUE

1. Description

The Capitol Theatre is located at 223 Princess St. midblock between Sydenham and Montreal Streets in downtown Kingston. The theatre building's façade is significant in reflecting the evolution of Kingston's commercial development and maintaining the integrity of an important historic urban streetscape. It tells the story of the social and cultural importance of the entertainment industry as it evolved with new technology through the 20th Century.

The theatre building was purpose built as a modern movie theatre with stadium type seating typical of the movie palace era with a steeply raked section at the rear adjacent to the foyer. The theatre, when it opened Thursday 30 December 1920, was sold out with a capacity of 1,207 in a single auditorium comparable to a theatre in Toronto or Montreal. Sound was provided by a small orchestra.

The theatre was converted to a cineplex in 1976 when an addition was added, and the single large auditorium was split up into smaller theatres to accommodate screening more than one movie at a time.

Norman McLeod Ltd. was general contractor for the construction of the building, an engineering and building firm out of Toronto. Local masonry and specialty trades, or specialty trades from the Toronto area, would have been hired to undertake the work.

The building was commissioned by Allen Theatre Enterprises, which was one of the largest theatre chains in Canada in the 1920s, consisting of 47 operating theatres. The theatre was bought by Famous Players Canadian Corporation and renamed the Capitol Theatre in 1923. It was renamed the Odeon Theatre by 1941 and Cineplex in 1976. The theatre closed in 2012 after 92 years of operation.

The theatre was designed by the internationally renowned American architect of moving picture palaces, Charles Howard Crane (1885-1952), who designed some 250 movie theatres during his career. His theatre in London, Ontario, closely resembles the subject property's theatre building.

2. Cultural Heritage Value

The property has cultural heritage value and interest because of its physical/design values, its associative and historical values and its contextual values.

2.1 Physical/Design Values

The theatre's physical/design values are reflected in its principal façade, which must be conserved in its entirety.

The theatre façade was designed primarily in the Spanish Revival Style which reached

its apex in the 1920's and early 1930's. Stylistic elements include gentle pent roofs with red Spanish tiles, smooth stucco walls, arched fenestrations with decorated reveals extending through two floors, decorated frieze bands, and stylized brackets with heraldic figures such as medallions or lions.

There are also stylistic elements from the Mission Style, which was associated with Spanish Revival and slightly predated it in terms of popularity. This includes the cut stone stepped masonry parapets in the gables which were a feature of the building prior to a circa 1967-73 alteration.

Although a prominent feature of Spanish Revival, the use of red tile roofing was also removed in later renovations.

The theatre is a restrained or conservative expression of the escapist architecture that went hand-in-hand with the escapism of the silver screen. The entrance façade being the most visible element was adorned with eclectic elements from an assortment of architectural styles. The mixing of architectural styles with exotic or eclectic elements to create a restrained expression of architectural excess was typical of theatre design in the first quarter of the 20th Century. The well-lit marquee and canopy extending out over the street provided a visual focal point on the street and provided the theatre patron with a sense of entering another world inhabited by the glamour of the movie stars featured in the films. The entrance alcove open to the street allowed patrons to gather out of the elements prior to entering the theatre.

The theatre was described as being of 'fireproof construction' consisting of steel, reinforced concrete, stone and structural terra-cotta tiles, a suspended roof on steel trusses, and brick. Feature materials included coursed limestone in the stepped gable parapets, Spanish roof tiles, and applied appliqué ornaments which were widely available at that time from a number of architectural supply houses for the adornment of theatres. The adornment was often terracotta - a fired clay product that was easily formed and cast in intricate detail.

The circa 1967-73 alterations and additions employed fire-proof materials and construction methods which included steel, reinforced concrete, and concrete block with a brick veneer. The theatre is of a level of craftsmanship typical of the era. The architect designed the main façade to blend with limestone detailing of an adjacent building. A stepped gable formed of limestone blends with the adjacent stone building. Unfortunately, the stone parapet detailing was largely removed, and remaining portions rendered when a second storey was added to the entrance lobby circa 1967-73.

2.2 Historical/Associative Value

The property has historical/associative value with Allen Theatre Enterprises, which was one of the largest theatre chains in Canada in the 1920s, consisting of 47 operating theatres. The theatre was bought by Famous Players Canadian Corporation and

renamed the Capitol Theatre in 1923. It was renamed the Odeon Theatre by 1941 and Cineplex in 1976. The theatre closed in 2012 after 92 years of operation.

The theatre building was constructed by the engineering/building firm of Norman McLeod Ltd. of Toronto. The theatre was designed by the internationally renowned American architect of moving picture palaces, Charles Howard Crane (1885-1952), who designed some 250 movie theatres during his career. His theatre in London, Ontario, closely resembles this building.

In keeping with architectural trends for movie theatres of the 1920s, the façade of the theatre was designed to be theatrical, suggestive of both the interior splendour of the building and of its purpose. The main features of the upper storey, which sits above the marquee, are subtly suggestive of a theatrical set: a shed roof at the cornice, supported by decorative brackets, extends over the single large second-storey window opening topped by a segmental arch. More blatantly theatrical are the ornate terra cotta designs, largely featuring eclectic flower and leaf motifs, displayed in concave panels that abut the window and in the bases of the muntin bars that divide its lights.

The 1920s façade is an important example not only of the work of the designer architect, Crane, but also of the time when the motion picture experience was a common cultural activity for residents of Kingston and surrounding area who would come to the downtown in great numbers to view movies at the Capitol. Its construction in 1920 represents the evolution of the downtown from an earlier time when its focus was primarily commercial in nature to an age when mass entertainment was growing.

2.3 Contextual Value

The theatre building's contextual value is derived from its important role in defining this former entertainment district and supporting the character of the Princess Street streetscape. The presence of the well-lit marquee and canopy (while not original) makes the building a landmark on Princess Street.

The subject property's Capitol Theatre, in association with the Grand Theatre across the street and the Strand Theatre to the north, defined the evolving entertainment district along Princess Street when constructed in 1920 through to the 1970s when the industry shifted to suburban locations with ample parking.

The theatre still defines this mid-block section of Princess Street between Sydenham Street and Montreal Street with its prominent marquee and canopy extending out over the sidewalk directly across the street from the Grand Theatre.

The theatre building is an important visual contributor to the historic streetscape within the block that features mostly two and three storey, mixed commercial and residential buildings constructed of stone, brick, and concrete in a number of styles that were

successively developed between circa 1860 through to circa 1930, most of which are valuable heritage resources.

The theatre building has landmark status within the City of Kingston and within the block with its prominent marquee and canopy (although not original) along Princess Street. It forms part of a collection of buildings that are important for their reflection in architectural and historical terms of the economic, social and cultural development of Kingston from the late nineteenth through the twentieth centuries.

3.0 Heritage Attributes

The following is a comprehensive list of heritage attributes of the property:

- Spanish Revival style two storey façade, flush with the buildings on either side;
- Recessed entrance sheltered by marquee;
- Plain coursed masonry (stone) veneer applied to a back-up wall;
- Shallow arched tripartite window on the second floor level with stylized masonry (stone) mullions, decorative window reveals with arched head panels with stylized floral and vine pattern, possibly glazed architectural terra-cotta detailing in the frieze and surrounding the window (one of only two buildings with this decorative element in Kingston);
- Stylized frieze band with floral and vine pattern supported by stylized pendants terminating in lion-head masks each attached to the marquee by a decorative diagonally hung metal-link canopy chain; and
- The current marquee, though not original, is an integral element of the theatre's enduring history and use.

SCHEDULE "C"
CONSERVATION AND RESTORATION WORKS

The Owner shall complete the Conservation and Restoration Works described below in accordance with the terms of this Agreement. Prior to commencing any restoration work on the Princess Street façade, the Owner shall obtain a Heritage Permit from the City in respect of such work. In the event of any conflict between the terms of this Agreement and the Heritage Permit, the Heritage Permit will prevail to the extent of the conflict. The Conservation and Restoration Works are as follows:

- (1) The conservation objective is to retain the Princess Street façade and repurpose it as the primary entrance to the condominium tower and ground floor commercial space. The restored façade will maintain the architectural heritage value of the theatre, maintain the scale of the surrounding buildings, and the marquee will continue to be a visual reminder of the story of Kingston's Theatre District;
- (2) The existing materials and forms, including the glazed architectural terra-cotta detailing, fenestration pattern, coursed stone veneer, and other existing elements including the marquee will be conserved and restored. Specifically, the proposed conservation works include:
 - (a) The coursed stone veneer applied to the Princess Street façade will be retained (and repaired as necessary), and the upper portions of the wall, and the stepped parapet gables which have been removed will be restored to their original form and detail;
 - (b) The shallow arched triple window on the second-floor level with stylized masonry columns dividing the three panes, decorated window reveals with stylized floral and vine pattern will be retained (and repaired);
 - (c) The stylized frieze band with floral and vine pattern supported by stylized pendants terminating in a lion bust from which the canopy/marquee chains are attached will be retained (and repaired as necessary); and
 - (d) A new element will be installed at the top of the wall that is a reference to the original 1920 Spanish Revival roof and stepped parapet wall to complete the façade and to protect the original frieze band. These original elements were removed in the 1967-73 alterations;
- (3) The theatre entry will be repurposed as the primary entrance to the residential building. The lobby will be developed with a linear commercial/arcade space along the south wall or as a bar/cafe area for the proposed restaurant;
- (4) The intent of the proposed restoration of the original Spanish Revival design elements including the shallow pent roof with red tiles and the stepped parapet would be based on the design as illustrated in the original drawing set. Materials would include coursed stone cladding applied to a masonry backup wall, as well

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as the stone treatment of the parapet walls above the adjacent roof structures and the introduction of a parapet coping; and

- (5) Demolition of the historic portions of the building will be documented and provided to City staff. City staff will be given access for documentation of interior elements as needed. Documentation will be in the form of photographs and dimensioned drawings.