

Bylaw 15270

Being a Bylaw to Designate the Garneau Theatre as a Municipal Historic Resource

WHEREAS the Historical Resources Act, R.S.A. 2000, c. H-9, as amended, permits the municipal council of a municipality to designate any Historic Resource within the municipality whose preservation it considers to be in the public interest together with any specified land in or on which it is located, as a Municipal Historic Resource; and

WHEREAS it is deemed in the public interest to designate the building located at 8708 - 8728 - 109 Street NW and known as the Garneau Theatre and the land on which the building is situated as a Municipal Historic Resource; and

NOW THEREFORE the Municipal Council of the City of Edmonton, having complied with the Historical Resources Act, and duly assembled, hereby enacts as follows:

1. BUILDING AND LANDS DESIGNATED AS A MUNICIPAL HISTORIC RESOURCE
The building known as the Garneau Theatre (specifically described in Schedule "A") (the "Building") and the land on which the building is located being legally described as Plan 782AT, Block one hundred and forty eight (148), Lots (E), (F), (G) and (H), Excepting thereout:

- (A) all that portion of said lot (H) described as follows: Commencing at the south east corner of said lot (H), thence westerly along the southerly boundary thereof ten (10) feet, thence north easterly in a straight line to a point on the easterly boundary of said lot distant ten (10) feet northerly from the said south east corner; thence southerly along the said easterly boundary to the point of commencement; and
- (B) All those portions of said lots (E), (F), (G) and (H) which lies to the east of a straight line drawn from a point on the northerly boundary of said lot (E) distant fourteen and eighty eight hundredths (14.88) feet westerly from the north east corner of said lot (E) to a point on the easterly boundary of said lot (H) distant ten (10) feet northerly from the south east corner of said lot (H); and
- (C) As to portion of lot (H) for road as shown on road plan 2633RS.
Excepting thereout all mines and minerals (the "Land") are hereby designated as a Municipal Historic Resource.

2. PERMITTED REPAIRS AND REHABILITATION

Subject to Section 3 hereof, the Building and Land shall not be removed, destroyed, disturbed, altered, rehabilitated, repaired or otherwise permanently affected, other than in accordance with the terms of Schedule "A" attached, and the General Guidelines for Rehabilitation attached as Schedule "B", to this Bylaw.

3. ADMINISTRATOR

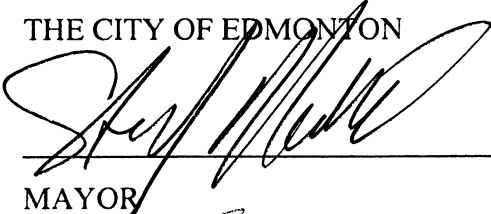
The General Manager of the Planning and Development Department is hereby appointed to administer the implementation of any matters arising from the matters set out in this


Bylaw, and the Schedules attached hereto, including, without limitation, the execution of a Rehabilitation Incentive and Maintenance Agreement as set out in Schedule "C".

4. EFFECTIVE DATE

This Bylaw shall come into effect on the date on which this Bylaw is passed by Council.

READ a first time this	28 th	day of	October	, A. D. 2009;
READ a second time this	28 th	day of	October	, A. D. 2009;
READ a third time this	28 th	day of	October	, A. D. 2009;
SIGNED and PASSED this	28 th	day of	October	, A. D. 2009.

THE CITY OF EDMONTON


MAYOR


CITY CLERK

**THE IDENTIFICATION OF REGULATED PORTIONS OF THE
THE GARNEAU THEATRE**

The purpose of this Schedule is to identify by written description and photographs, those portions of the Building known as the Garneau Theatre, which shall be regulated by the "General Guidelines for Rehabilitation" (Schedule "B") and must be preserved ("the Regulated Portion").

The Regulated Portion of the building includes the east, south and north historic exterior façades. This includes the timber façades and some interior elements and as described below under each façade section. These features of the building shall be rehabilitated in accordance with the "Rehabilitation Work" which is part of Schedule "C".

Non-regulated portions of the building, being all other portions of the building not specifically identified as a Regulated Portion, may be rehabilitated, altered, repaired or otherwise permanently affected in any manner provided that such rehabilitation, alteration or repair does not impact on the regulated historic features of the Building. Any development or alterations considered to be non-regulated portions of the Municipal Resource, however, must meet the General Guidelines for Rehabilitation of Designated Historic Resources as identified in the "Standards and Guidelines for the Conservation of Historic Places in Canada." Any development of any portion of the Land shall be undertaken in a manner that is sympathetic to the historic façades of the Garneau Theatre. New development should also make reference to this resource's Statement of Significance as identified on the Alberta Register.

The following architectural elements must be retained:

EAST FAÇADE:

- The 1940 east façade;
- The stucco stepped marquee with the neon stippled lighting and vertically stacked neon letters "GARNEAU" and ladder. projecting marquee and sign board;
- Banded brick patterns on the brick wall of the theatre block;
- The theatre lobby entrance located between two storefronts;
- Vitrolite structural glass type cladding or approved "replacement" equivalent framing the storefronts sitting on stone/plaster stallriser, with metal framed doors and windows;
- Glass block in the doorways in the retail portion fronting 109 Street,
- Stucco finished parapet with horizontal projecting speed lines;
- Flat roof above the single storey level facing 109 Street set back to the brick wall of the theatre block.

SOUTH FAÇADE:

- The 1940 south façade;
- Two tone brown brick with banding running across the wall, those at the upper level broken with the word “Garneau” in the darker brown brick;
- The overhang with lighting that lights up the words Garneau;
- Symmetrical proportions in openings and details;
- Use of glass block in some windows.

NORTH FAÇADE:

- The 1940 north façade;
- Two tone brown brick with banding running around the edges of the building and one across the length of the wall;
- The overhang with lighting that lights up the words “GARNEAU”;

INTERIOR:

- Interior period detailing and elements, in the entrance ways and commercial spaces, such as the terrazzo floor finish, where physically and economically feasible.

PHOTOGRAPHIC DETAILS

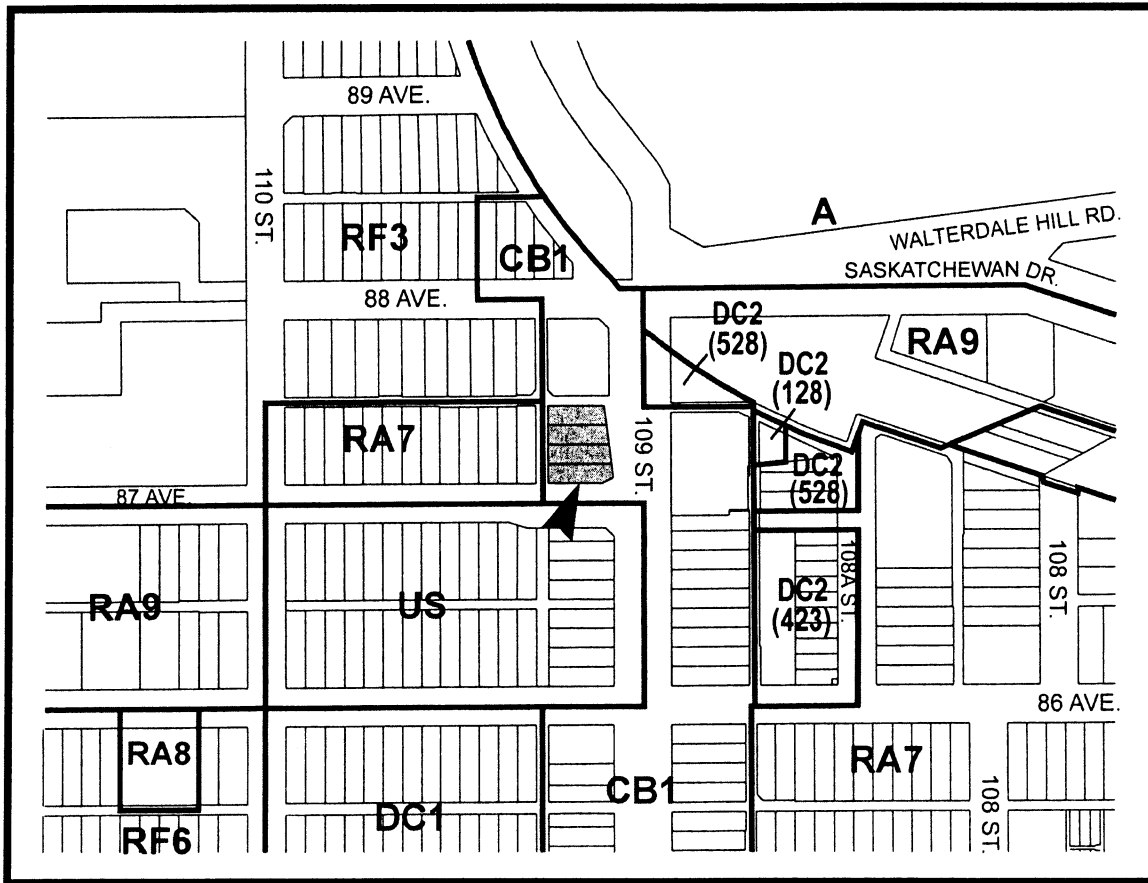
Photo #1 – Garneau Theatre in 1942



Photo #2- Rendering showing the restored Garneau Theatre



LOCATION PLAN



LOCATION OF GARNEAU THEATRE 8708-8728 - 109 Street



Site Location

PLANNING AND DEVELOPMENT DEPARTMENT

GENERAL GUIDELINES FOR REHABILITATION

The General Guidelines for Rehabilitation are intended to assist in applying accepted principles and practices to the conservation of Historic Resources. The guidelines are set out in the "Standards and Guidelines for the Conservation of Historic Places in Canada.". In a manner consistent with accepted practice, City Heritage Policy C450B requires that the standards be used in conjunction with the guidelines to ensure that the basis for a clear and consistent interpretation of the guidelines is provided to assist Owners of Historic Resources throughout any rehabilitation process. The following guidelines and the referenced standards shall apply to the Garneau Theatre (the "Municipal Historic Resource") and any rehabilitation or maintenance work undertaken with respect to the Municipal Historic Resource at any time.

1. Compatible Uses:

Wherever possible, the uses proposed for a Municipal Historic Resource shall be compatible with the existing Building such that only minimal changes are required to the Building. The use of a Municipal Historic Resource for its original purpose is desirable.

2. Original Character:

The original distinctive qualities and character of the Municipal Historic Resource shall not be destroyed. The removal or alteration of any historical materials or features shall be avoided whenever possible.

3. The Historic Period:

The Municipal Historic Resource should be recognized as a product of its own time. Alterations which are not based on historical fact or which recreate an earlier or a later appearance shall be discouraged.

4. Witness to Change:

Changes to the Municipal Historic Resource may have occurred over time. These alterations are evidence of the history and development of the Building. Because this evolution may have acquired significance in its own right, alterations to the original Building should be recognized and respected where indicated.

5. Style and Craftsmanship:

Distinctive stylistic features and examples of skilled craftsmanship of the Municipal Historic Resource shall be preserved and treated sensitively.

6. Repair and Replacement:

Deteriorated architectural features shall be repaired rather than replaced whenever possible. Where replacement is necessary, the new material should match the original as to material composition, colour, texture, design, etc. The repair or replacement of architectural features shall be based on a sound knowledge of the original characteristics of the feature. Such knowledge shall be based on historical or pictorial evidence and not upon conjecture.

7. Cleaning:

In all cases, surface cleaning shall be undertaken with the gentlest means available. Sandblasting and other cleaning methods that damage historic buildings shall not be undertaken without thorough testing prior to use on a building. Sandblasting is NOT recommended on brick, stone or wood. In all instances, it should be ascertained that a building exterior is really in need of cleaning prior to undertaking the work.

8. Reversibility of Intervention:

When the introduction of new elements or materials is necessary to stabilize or preserve the Municipal Historic Resource, alterations shall be undertaken such that the new materials, should they fail, may be removed at a later date without damage to the original fabric of the Municipal Historic Resource. Where this is not possible (i.e. use of epoxy or other permanent interventions) only those methods and materials which have been thoroughly tested and found satisfactory in situ, shall be used.

9. Recording:

Prior to undertaking any alterations, particularly in cases where alterations may threaten the building fabric (underpinning, moving structures), the applicant/owner shall provide notice to the administrator of the City Planning and Development Department's Heritage Program to enable measures to be taken to provide a complete and accurate record of the architectural features of the Municipal Historic Resource. Measured drawings and photographs of details may prove invaluable if major features are damaged or lost during the subsequent repair work. Any Historic Resource which is the subject of an application to unsympathetically alter or demolish such resource shall be professionally recorded.

10. Original Construction Details:

In some historic structures, poor construction details or inappropriate materials resulted in rapid deterioration of certain building elements. In these instances, accurate reconstruction of the original detail will inevitably result in the failure of the element. Therefore, reconstruction should be undertaken in such a fashion as to duplicate the original appearance as closely as possible while using details based on sound construction practices.

11. Codes:

At no time should the life and safety of occupants of a Municipal Historic Resource be deemed of lesser importance than the preservation of the original fabric of the Municipal Historic Resource. The required life and safety standards are those required by the current Alberta Building Code. However, notwithstanding these Code requirements, where the essential character of the structure is threatened by changes for Code reasons, every effort shall be made to achieve an equivalent safety standard by alternate means so as to minimise the impact on the historic fabric.

12. Rehabilitation:

Prior to undertaking any rehabilitation work, the scope of work and a schedule of alterations should be prepared. This schedule should include phasing of alterations where necessary due to program or budget restrictions. The type and timing of both short and long term maintenance work shall also be included.

13. Signs:

As a general rule, signs should be limited to signs which were originally present on the building. In instances where new uses or interpretive functions dictate the use of additional signs, these new elements should be integrated into the general design of the project. The size, typeface, graphics and materials should be chosen to suit the period of the Municipal Historic Resource wherever possible. Avoid installing new signs such that the repair, replacement or removal of the signs damages the original fabric of the structure.

14. Alterations and Additions to Historic Resources:

Contemporary design for alterations and additions to existing Historic Resources shall not be discouraged when such alterations and additions do not diminish the overall historic character of the resource and such design is compatible, distinguishable and subordinate to the character of the resource, neighbourhood or environment.

GUIDELINES FOR DEVELOPMENT ON THE REGULATED LANDS

1. General Purpose:

To establish guidelines on future development on the lands on which the Garneau Theatre is located to protect the heritage character of the Municipal Historic Resource and the immediate surrounding lands.

2. Area of Application:

The area of application shall apply to the portion of land located at 8708-8728 109 Street NW and legally described as Plan 782AT, Block 148, Lots (E), (F), (G) and (H), Excepting thereout:

- (A) all that portion of said lot (H) described as follows: Commencing at the south east corner of said lot (H), thence westerly along the southerly boundary thereof ten (10) feet, thence north easterly in a straight line to a point on the easterly boundary of said lot distant ten (10) feet northerly from the said south east corner; thence southerly along the said easterly boundary to the point of commencement.
- (B) All those portions of said lots (E), (F), (G) and (H) which lies to the east of a straight line drawn from a point on the northerly boundary of said lot (E) distant fourteen and eighty eight hundredths (14.88) feet westerly from the north east corner of said lot (E) to a point on the easterly boundary of said lot (H) distant ten (10) feet northerly from the south east corner of said lot (H).
- (C) As to portion of lot (H) for road as shown on road plan 2633RS.

Excepting thereout all mines and minerals, as shown in Schedule "A" of this Bylaw.

3. Development Criteria:

The Development Officer and the Heritage Planner shall have regard for the following Historic Integrity guidelines when reviewing a development permit application for any additions or alterations to the Garneau Theatre.

4. Historic Integrity:

- 4.1. Should redevelopment of the Garneau Theatre occur, such redevelopment must respect the historic character of the regulated portions of the building designated as a Municipal Historic Resource. As well, any future development within the area of application as described above in Section 2 must conform to "General Guidelines for Rehabilitation" and the "Standards and Guidelines for the Conservation of Historic Places in Canada."
- 4.2. There shall be no major building development on the front facade of the historic structure facing 109 Street.
- 4.3. Additions or additional structures must be sympathetic in either matching material or style, or both, in order that the Building continues to be read as one unit.

SCHEDULE "C"

THIS REHABILITATION INCENTIVE AND MAINTENANCE AGREEMENT

made this day of , 2009.

BETWEEN:

THE CITY OF EDMONTON
(the “City”)

OF THE FIRST PART,

-and-

1282916 ALBERTA LTD.
(the “Owner”)

OF THE SECOND PART.

WHEREAS:

1. The Owner is the registered owner of land municipally described as:

8708 - 8728 - 109 Street NW
Edmonton AB T5G 1E9

and legally described as: Plan 782AT, Block one hundred and forty eight (148), Lots (E), (F), (G) and (H), Excepting thereout:

(A) all that portion of said lot (H) described as follows: Commencing at the south east corner of said lot (H), thence westerly along the southerly boundary thereof ten (10) feet, thence north easterly in a straight line to a point on the easterly boundary of said lot distant ten (10) feet northerly from the said south east corner; thence southerly along the said easterly boundary to the point of commencement.

(B) All those portions of said lots (E), (F), (G) and (H) which lies to the east of a straight line drawn from a point on the northerly boundary of said lot (E) distant fourteen and eighty eight hundredths (14.88) feet westerly from the north east corner of said lot (E) to a point on the easterly boundary of said lot (H) distant ten (10) feet northerly from the south east corner of said lot (H).

(C) As to portion of lot (H) for road as shown on road plan 2633RS.

Excepting thereout all mines and minerals (“the Land”), and the building known as the Garneau Theatre located thereon (the “Building”);

2. On July 8, 2009, City Council authorized the service of a Notice of Intention to Designate the Land and Building as a Municipal Historic Resource in accordance with the Historical Resources Act, R.S.A. 2000, c. H-9.
3. A condition or covenant relating to the preservation or restoration of any land or building, entered into by the owner of the land and the council of a municipality, may be registered with the Registrar of Land Titles, and may be enforced whether the condition or covenant

is positive or negative in nature notwithstanding that the grantee may not have an interest in any land that would be accommodated or benefited by the condition or covenant.

4. The Owner has agreed with the City to rehabilitate and maintain the Land and Building in accordance with the covenants and conditions in this Agreement.
5. In anticipation that the Municipal Council of the City shall designate the Land and Building as a Municipal Historic Resource, the City wishes to pay the Owner money in satisfaction of the Owner's or successors right to compensation under the Act, and the Owner agrees to accept such money in lieu of compensation under the Act.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

1. CONDITION PRECEDENT:

- 1.1. This Agreement is conditional upon Council passing a Bylaw to designate the Land and the Building a Municipal Historic Resource by November 4, 2009 or such later date as the parties may agree to in writing. If the Designating Bylaw is not passed by November 4, 2009 and the parties have not agreed to extend the time for satisfaction of the condition precedent, this Agreement shall be of no force and effect.

2. DEFINITIONS:

In this Agreement:

- 2.1. "Act" means the Historical Resources Act, R.S.A. 2000, c. H-9;
- 2.2. "Certification" means the written confirmation provided by the Owner to the City in a form satisfactory to the City certifying that a Phase or Phases of the Rehabilitation Work has been completed, or a Deficiency List has been remedied, which shall include the following:
 - 2.2.1. receipts for all materials, supplies, labour and services and any other relevant documentation or other documents satisfactory to the City, and
 - 2.2.2. receipts or other documents satisfactory to the City indicating that all suppliers and contractors involved in performing that Phase of the Rehabilitation Work or remedy of the Deficiency List have been paid in full for their goods or services;
 - 2.2.3. evidence that the Owner received competitive bids or estimates before engaging any contractor or supplier.
- 2.3. "Council" means the municipal council of the City of Edmonton;

- 2.4. “Deficiency List” means a description of the particulars given by the City to the Owner that specifies how the Rehabilitation Work or the Certification is inadequate or deficient;
- 2.5. “Designating Bylaw” means a Bylaw passed by Council under the authority of Section 26 of the Act relating to the Land and Building;
- 2.6. “Maximum Incentive” means the amount set forth within Section 6.1. of this Agreement;
- 2.7. “Owner” includes the current Owner and all future registered owners of the Land at the North Alberta Land Registration District;
- 2.8. “Rehabilitation Work” means the work set out in Section 4.1. of this Agreement to be completed by the Owner.

3. OWNER’S WAIVER OF RIGHTS:

- 3.1. The Owner and successors hereby expressly agrees to waive all rights to claim additional or alternative compensation beyond the Maximum Incentive of this Agreement for any cause, whether arising in common law, equity or by statute, because of the City’s designation of the Land and Building as a Municipal Historic Resource or the City’s issuance of the Notice of Intention to Designate.
- 3.2. The Owner waives any rights the Owner may have to dispute the sufficiency of the Notice of Intention to Designate and hereby releases the City, its agents and employees from any deficiencies of the Notice of Intention to Designate or the issuance thereof .

4. REHABILITATION WORK:

- 4.1. Upon the passage of the Designating Bylaw, the Owner shall commence the Rehabilitation Work as set out in the table below:

Phase	Description of City Funded Work for Garneau Theatre	Total Estimated Cost	Amount Allocated
1	Selective Demolition: Remove front CRU Walls Remove & re-install ext. signage	\$ 31,875	\$ 15,937.50
2	Masonry: Brick restoration Paint Removal Repair brick, glass block Masonry incidentals	\$ 172,250	\$ 86,125.00
3	Carpentry: Repairs to Marquee	\$ 12,750	\$ 6,375.00

4	Exterior Restoration: Cladding –restore speed lines, entrance soffit Roofing-theatre portion Roofing CRU's/Marquee	\$ 307,625	\$153,812.50
5	Doors & Windows: Theatre/CRU Entrance doors Stainless Steel Alum. Windows Goldray carrara replica glass	\$ 200,963	\$100,481.50
6	Finishes: Repair stucco on parapet & marquee Front wall framing Repair Theatre Lobby Repair terrazzo flooring	\$ 177,188	\$ 88,594.00
7	Signage: Restoration and new replacements	\$ 37,500	\$ 18,750.00
8	Restore marquee soffit lighting	\$ 9,375	\$ 4,687.50
9	Architectural Services and fees.	\$ 77,000	\$ 25,000.00
Subtotal		\$1,026,526	\$499,763.00
	Contingency @ approx. 10% only if required		\$ 47,476.30
	Total Incentive	\$1,026,526	\$547,239.30

4.2. The Owner shall complete the Rehabilitation Work by December 31, 2011.

4.3. In undertaking the Rehabilitation Work the Owner shall follow the “General Guidelines for Rehabilitation” in the Designating Bylaw and the “Standards and Guidelines for the Conservation of Historic Places in Canada.”

5. PAYMENT OF REHABILITATION INCENTIVE:

5.1. The City and the Owner agree that the sums described in the table contained in Section 4.1. of this Agreement in the column “Allocated Amount” are estimated amounts of the Maximum Incentive allocated to each phase of the Rehabilitation Work (a “Phase”), to be paid to the Owner by the City pursuant to the provisions of Article 6 of this Agreement.

5.2. Upon completing a Phase or Phases, or remedying a Deficiency List, the Owner shall provide the City with a Certification.

5.3. Within fourteen (14) days of receiving a Certification, the City may inspect the Building and either:

5.3.1. issue a Notice of Completion, stating that:

5.3.1.1. the Phase(s) of the Rehabilitation Work has been performed to the satisfaction of the City and that a satisfactory Certification has been received, or

5.3.1.2. the Deficiency List has been remedied to the satisfaction of the City and that a satisfactory Certification has been received, or

5.3.1.3. give the Owner a Deficiency List.

5.4. If the City issues a Deficiency List, the Owner shall forthwith commence remediation of the deficiencies described in the Deficiency List.

5.5. In calculating the cost of performing the Rehabilitation Work, the Owner and the City shall only include the cost of labour and building materials specifically associated with the Rehabilitation Work. The Owner and the City shall not include other costs, including but not limited to, for example, the interruption of use of the Building or the Land or the cost of repairing damage to the Building while the Rehabilitation Work was underway.

6. PAYMENT:

6.1. The City shall not be liable to pay the Owner more than the sum of \$547,239.30 described in the table contained in Section 4.1. of this Agreement, as the total compensation payable by the City pursuant to this Agreement and the Designating Bylaw (the "Maximum Incentive"), and only upon completion of all Rehabilitation Work in accordance with the provisions of this Agreement, which sum shall be payable in yearly instalments as described below.

6.2. Notwithstanding anything else herein contained, the City shall not be obligated to pay any portion of the Maximum Incentive until the City is satisfied, in its sole discretion, as to the registration of the Designating Bylaw and this Agreement against the title to the Land.

6.3. The City will holdback up to 10% of the grant monies allocated until all the project work is completed or the General Manager of the Planning and Development Department is satisfied that the work completed is satisfactory for full or partial payment.

Payment in the First Year

6.4. On or before December 31, 2009 the City shall pay the Owner the lesser of:

6.4.1. a maximum payment of \$547,239.30, or

6.4.2. one half the value of all the Rehabilitation Work for which the City has issued Notices of Completion in 2009.

If by December 31, 2009, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the full Maximum Incentive, the difference shall be applied to payments in 2010 or 2011.

If by December 31, 2011, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the Maximum Incentive, the City shall not be obligated to pay the difference to the Owner in that year or in any future years. Notwithstanding the foregoing, the City may agree with the Owner in writing to carry forward some or all of the unpaid Maximum Incentive. The Owner expressly agrees, however, that payment of any or all of the Maximum Incentive is conditional upon completion of the Rehabilitation Work strictly in accordance with this Agreement.

6.5. The City may, in its absolute discretion, provide for partial payment of any amount up to the Maximum Incentive for any Phase(s) notwithstanding that a Notice of Completion for the Phase(s) has not yet been issued.

7. MAINTENANCE:

- 7.1. In January of the fifth (5th) year after the issuance of the Notice of Completion for the final Phase(s) of the Rehabilitation Work, and every five (5) years after that, the Owner shall allow the City's Heritage Planner or designate (the "Inspector") to conduct an inspection of all the regulated portions of the Building.
- 7.2. Within sixty (60) days of the inspection, the Inspector shall prepare a written report setting out recommendations for remedial or maintenance work on the Building, including a proposed schedule for the work and suggestions as to methods and materials to be used.
- 7.3. The Owner and the City shall meet within fourteen (14) days of the receipt of the Inspector's report and establish the remedial work that shall be carried out, the timing for the completion of such remedial work and the manner in which such remedial work shall be undertaken (the "Remedial Work Plan").
- 7.4. The Owner shall promptly carry out the Remedial Work Plan and notify the City on completion.
- 7.5. On receipt of notice that the Remedial Work Plan has been completed, the City may inspect and identify any deficiencies in writing to the Owner. The Owner shall correct the deficiencies and provide the City notice that such corrective action has been carried out, and the City may then re-inspect.
- 7.6. Notwithstanding any other provision of this Agreement, if at any time the Owner or the City become aware of any disrepair that may endanger the Building, the

Owner and the City shall meet and the Owner shall prepare and submit to the City a plan for repairs. Nothing herein shall be deemed or construed, however, to limit the City's ability to rely on or enforce laws or bylaws relating to real property which is unsafe, dangerous or unsightly.

- 7.7. In addition to inspections permitted pursuant to the Remedial Work Plan, the City may on reasonable notice to the Owner and no more than four (4) times a year, inspect the Building at the City's own expense.
- 7.8. The Owner shall be solely responsible for ensuring that the Building and Land and any improvements thereto comply with all applicable federal, provincial and municipal laws, regulations, bylaws, codes and guidelines. The Owner acknowledges and agrees that nothing in this Agreement shall be deemed or construed as an obligation on or duty of the City to ensure compliance with this section or advise the Owner of deficiencies in the Owner's compliance with this section.
- 7.9. If the Owner fails to perform any obligation under this Section or made pursuant to this Section, the City may give notice of the breach to the Owner and at the expiration of twenty-one (21) days after service of the notice, the City may without further notice, take all steps as the City may in its absolute and uncontrolled discretion deem necessary to remedy the Owner's breach. Any monies expended by the City in remedying the said breach, together with a surcharge of fifteen percent (15%), shall be paid by the Owner to the City, and until such payment shall, together with interest thereon at the rate of one percent (1%) per annum above the prime rate, be a debt owing by the Owner to the City. This amount shall be recoverable by the City from the Owner within thirty (30) days of the Owner receiving a written demand and summary of costs from the City, failing which such amount payable shall be a charge on the Land and the City is at liberty to register such charge on title to the Land. The rights of the City under this clause shall be in addition to and not substitution of any other rights of the City against the Owner whether by way of damages for breach of covenant or otherwise.
- 7.10. The failure of the City at any time to require performance by the Owner of any of the Owner's covenants shall in no way affect the City's right to enforce such covenant, nor shall the waiver by the City of the performance of any covenant be taken or be held to be a waiver of the performance of that covenant or any other covenant hereunder at any later time.
- 7.11. The Owner hereby releases the City, its agents and employees from any liability whatsoever that the City may have to the Owner arising out of or related to the City's performance of such obligations, save for any such liability as may be due to the City's negligence. The Owner hereby agrees to cooperate with the City and allows the City such necessary access to the Building and the Land as is requisite for the City to fulfil the requirements of this section.

7.12. Pursuant to and in accordance with Section 29 of the Act this Agreement shall be registered on title to the Land and the conditions and covenants herein shall run with the Land and shall bind the Owner and subsequent owners and successors in title to the Owner.

8. REZONING:

8.1. Within one (1) year of the execution of this Agreement, the Owner shall apply to the City to have the Lands rezoned to DC1 (Direct Development Control) Provision. Nothing in this Agreement fetters Council's discretion to approve or reject the Owner's rezoning application.

8.2. Notwithstanding any other provision of this Agreement the City may, in its sole and absolute discretion, hold back the Incentive grant or a portion thereof until the Planning and Development Department has received a valid application to rezone the Lands to DC1 (Direct Development Control).

9. INSTALLATION OF PLAQUES:

9.1. The Owner shall permit the placement of two (2) plaques in a visible location on or in proximity to the Building upon, or anytime after, the passing of the Designating Bylaw. One plaque shall be created and installed by the City at the City's sole expense to a design and specification solely within the City's discretion identifying the Building and the Land as a Municipal Historic Resource. A second plaque shall be created and installed by the Edmonton Historical Board as an interpretative plaque, to a design and specification solely within the Board's discretion. The location of the City's and the Board's plaques shall be mutually agreed to by the Owner and the City, both parties acting reasonably. For greater clarity, the City or the Board shall have no obligation to create and install such plaques, and the decision to do so shall be solely within each of the City's and the Board's discretion. The Owner shall not and shall not permit or cause the removal, disturbance or obscuring of such plaques.

10. CANADIAN REGISTER OF HISTORIC PLACES:

10.1. The Owner consents to having the property listed on the Canadian Register of Historic Places which will at minimum entail having the address, historic descriptions, statements of significance and photographs available for public viewing, in print or electronic format.

11. INSURANCE:

11.1. The Owner will maintain all risks broad form property insurance on the Building and Land.

11.2. The limits of such policy will insure the structure to full replacement value.

- 11.3. In the event of a loss every effort should be made to replace, repair or restore the Building to conserve the characteristics of the Building which give it its historical significance. Parts of the Building designated as being historic shall be restored, as closely as possible, to the details and characteristics of the original dwelling so designated as being historic.
- 11.4. Any exceptions to this insurance provision must be approved by the designated Heritage Planner for the City of Edmonton.

12. DISPUTE RESOLUTION:

- 12.1. If a dispute arises between the City and the Owner as to the proper interpretation or effect of any of the terms or conditions of this Agreement, such dispute shall be resolved in accordance with the following procedure:
 - 12.1.1. The party requesting that the matter in dispute be resolved in accordance with the provisions of this Dispute Resolution Article (the “Disputing Party”) shall notify the other party (the “Defending Party”) in writing of the details of the nature and extent of the dispute (the “Arbitration Notice”).
 - 12.1.2. Within seven (7) days of the receipt of the Arbitration Notice, the Defending Party shall by written notice advise the Disputing Party that it disputes all matters referred to in the Arbitration Notice except those for which the Defending Party admits responsibility and proposes to take remedial action.
 - 12.1.3. The terms of reference for arbitration shall be those areas of dispute referred to in the Arbitration Notice with respect to which the Defending Party has not admitted or proposes to take remedial action.
 - 12.1.4. The Defending Party and the Disputing Party shall within ten (10) days after the date of receipt by the Disputing Party of the Defending Party’s notice, appoint an arbitrator who shall be acceptable to both parties (the “Arbitrator”). In the event that the parties shall fail to appoint the Arbitrator, then either party may, on written notice to the other, apply to the President of the Alberta Arbitration and Mediation Society to name the Arbitrator.
 - 12.1.5. Not later than twenty (20) days after the appointment of the Arbitrator, the Arbitrator shall make his written decision, and shall give it to the parties immediately.
 - 12.1.6. Unless the Arbitrator orders otherwise, the City and the Owner shall equally bear the costs of the arbitration.

12.1.7. The decision of the Arbitrator is final and binding on the parties and there shall be no appeal of the decision to the courts.

12.1.8. Except as modified by this Agreement, the provisions of the Arbitration Act R.S.A. 2000 c. A-43, as amended, shall apply.

13. NOTICE:

13.1. Any notice given pursuant to the terms of this Agreement shall be sufficiently given:

13.1.1. in case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

General Manager, Planning and Development Department
8th Floor, 10250 – 101 Street NW
Edmonton AB T5J 3P4

and also to:

Corporate Services Department, Law Branch
9th Floor, Chancery Hall
#3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

13.1.2. in case of notice to the Owner, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

1282916 Alberta Ltd.
c/o Fraser Milner Casgrain LLP
2900 Manulife Place
10180 - 101 Street NW
Edmonton AB T5J 3V5

13.2. Notice given as aforesaid, if posted, other than during an actual or threatened postal disruption, shall conclusively be deemed to have been given on the fifth (5th) business day following the date on which the notice is mailed. Any notice personally delivered or sent by telecopier or other form of facsimile transmission shall be deemed to have been given on the date of actual delivery.

13.3. Either party may, at any time, give notice in writing to the other of any change of address of the party giving such notice and, from and after giving of such notice, the address therein specified shall be deemed to be the address of the party for the giving of notice hereunder.

14. GENERAL PROVISIONS:

- 14.1. The parties to this Agreement shall execute and deliver to the other all such further assurances and documents which may reasonably be deemed necessary by the solicitors for either of them to give full force and effect to the Agreement. The Agreement is not intended and shall not be deemed nor construed to nullify, replace, circumvent, extend or modify any existing statutes, bylaws or permit conditions, which govern development or construction within the City.
- 14.2. If any portion of this Agreement is found to be unenforceable, the remaining portions of this Agreement shall be given full force and effect.
- 14.3. The Designating Bylaw shall be registered on title to the Land by the City. Notwithstanding any other provisions of this Agreement, the Owner shall forthwith upon execution of this Agreement use reasonable efforts to have the Designating Bylaw placed as a registration prior to any security interest on the title to the Lands.
- 14.4. No amendments to this Agreement are valid unless they are in writing and signed by both parties to this Agreement.
- 14.5. Time is of the essence in this Agreement.

14.6. Everything herein contained shall inure to the benefit of and be binding upon the parties hereto, their administrators, successors and assigns respectively.

IN WITNESS WHEREOF the parties have signed this Agreement on the day and year first above written.

A P P R O V E D

THE CITY OF EDMONTON
as represented by the General
Manager of the Planning and
Development Department

As to Form _____
Corporate Services Department, Law Branch

Per: _____
R. Gary Klassen

As to Content _____
Planning and Policy Branch, Branch Manager

Witness _____

Per: _____
1282916 Alberta Ltd.
c/o Fraser Milner Casgrain LLP
2900 Manulife Place
10180 – 101 Street NW
Edmonton AB T5J 3V5

Heritage Planner's Summary of the Garneau Theatre

Description of Historic Place

Garneau Theatre is a combined theatre and commercial retail structure, identifiable for its two tone brick, stucco marquee and one storey retail portion. The building is situated on four city lots, in a prominent corner location at 109 Street and 87 Avenue and is immediately south of the historic High Level Bridge. The Garneau Theatre's name indirectly commemorates Laurent Garneau, an important pioneer, who homesteaded in Strathcona in 1874.

Heritage Value

Garneau Theatre is a local landmark that has heritage value as one of the few surviving World War II suburban theatres in Edmonton. Additionally, it is an excellent example of the Art Deco "moderne" style of theatre architecture, reflecting the work of its architect William G. Blakey, an architect of considerable importance in Edmonton. Other buildings by Blakey include Masonic Temple, Christ Church, west wing of the Glenrose Hospital, the Roxy Theatre and his own house, the William Blakey Residence.

Garneau Theatre reflects Edmonton embracing modern style of architecture and the social activity of going to the movies. Designed and built in 1940, it is valued as having been built during World War II and as an early suburban movie theatre, illustrating the demographic shift to the suburbs. The Garneau is considered to be the second of Edmonton's neighbourhood theatres after the Roxy Theatre located at 124 Street and 107 Avenue, which was built in 1938.

The Garneau was built as a cinema with integral retail stores. The theatre is contained in a rectangular brick box, 60 by 125 feet and approximately 30 feet high that is located at the rear (west) of the property and oriented north-south. The stores are entered from 109 Street, while the entrance to the theatre is inserted between two storefronts, beneath the marquee. The original black cladding of the storefront was "carrara glass", which is now considered to be a missing architectural element to be replaced. The tall sign above the marquee spells out "Garneau" in vertically stacked letters.

The modernism of the Garneau is found in its uncompromising rectilinearity, the use of colour and geometric decoration in the place of historical ornament, and the exploitation of unadorned materials. The style is usually called Art Deco, a name that originated as a shortened version of the *Exposition des Arts Decoratifs et Industriels*, a design fair held in Paris in 1925, which exhibited work of this kind. The terms Moderne, Modernistic and Streamlined Moderne are also used to describe this style. Whatever it may be called, this was an important early stage in the international evolution of modern architecture. The Garneau Theatre holds its position well when compared to any of the good Art Deco theatres built across Canada during this period, such as the Vogue

Theatre in Vancouver also built in 1940 and designed by Kaplan and Sprachman of Toronto.

Character Defining Elements

Key elements that define the heritage character of Garneau Theatre include its:

- prominent corner location, on the south end of the High Level Bridge;
- dignified form, scale and massing as expressed by its flat roof, two storey height rectilinear box 60 feet by 125 feet with a height of 30 feet containing the theatre and the one storey retail portion fronting 109 Street;
- two tone brown brick on the rectilinear rear portion of the building;
- the word "Garneau" in the darker brown brick;
- the stucco overhangs with soffit lighting or pot lighting that light up the words Garneau on the north and south elevations;
- the stucco marquee with the neon vertically stacked letters "GARNEAU" and ladder;
- marquee soffit lighting;
- the theatre lobby entrance located between two storefronts;
- fenestration, including glass block and doorways in the retail portion fronting 109 Street, with the use of commercial stainless steel framed doors and windows;
- carrara glass cladding replaced "in kind" with Goldray Carrara replica glass;
- the with stucco finished parapet above the carrara glass, containing horizontal speed lines and signage for the stores;
- two 1940's and 50's style billboards located on the north and south sides of the marquee;
- interior elements in the theatre lobby entrance such as the terrazzo floor finish.