

September 4, 2017 Draft

## TRANSFER AGREEMENT

This Transfer Agreement (“Agreement”) is entered into as of September \_\_, 2017, by and between City of Billings, a municipality of the State of Montana (“City”), the Downtown Billings Partnership, Inc., an I.R.C. §501(c)(4) Montana non-profit corporation, (“DBP”), and The Babcock, LLC, a Montana limited liability company, with its principal place of business at 115 North Broadway, #515, Billings, Montana (“Developer”).

**WHEREAS**, City, DBP, and Developer entered into a Development Agreement dated September 22, 2008 (“Development Agreement”) to set forth the terms and conditions for an urban renewal project whereby City and DBP would grant tax increment financing funds to Developer for the purchase and rehabilitation of the Babcock Building in downtown Billings.

**WHEREAS**, pursuant to the terms of the Development Agreement, City would receive title to the portion of the Babcock Building constituting the Babcock Theater following certain stabilization, restoration, and improvements to the Theater.

**WHEREAS**, Developer’s performance of the Development Agreement and transfer of the Theater was secured by a Deed of Trust in favor of City dated October 2, 2008 and recorded in the records of Yellowstone County, Montana on October 3, 2008 as Instrument No. 3482269 (“City Deed of Trust”).

**WHEREAS**, Developer’s performance of the Development Agreement was also guaranteed by Developer’s individual limited liability company members, namely Donald Olsen, Kimberly A. Olsen, Katherine G. Foster, and Michael S. Mathew by execution of a member guarantee (“Member Guarantee”).

**WHEREAS**, effective January 25, 2010, City, DBP and Developer entered into a First Amendment to the Development Agreement to extend the time and construction schedule for Developer to complete the improvements required under Phase 1 of the Development Agreement, including completion of unit ownership documents for the Babcock Building.

**WHEREAS**, the Historic Babcock Building Non-Profit Owners Association was formed as a Montana non-profit corporation on \_\_\_\_\_, 2010. Bylaws of The Historic Babcock Building Non-Profit Owners Association dated May 26, 2010 were executed by officer of the Owners Association, upon approval by City and DBP.

**WHEREAS**, a Declaration of Unit Ownership for Historic Babcock Building dated May 26, 2010 was executed by Developer and recorded on \_\_\_\_\_, 2010 under Document No. \_\_\_\_\_ in the records of Yellowstone County, Montana (“Declaration of Unit Ownership”), upon approval of City and DBP. Pursuant to the Declaration of Unit Ownership, Unit 1A of the Historic Babcock Building is the Theater Unit, Unit 1B is the retail and apartments, and Unit 1C is the Montague’s Jewelry retail space unit.

**WHEREAS**, by letter dated May 25, 2012 DBP provided Developer with a Certificate

of Completion of work and improvements set forth in Phases 1, 2 and 3 of the Development Agreement.

**WHEREAS**, on \_\_\_\_\_, 2016, City approved an extension of time for Developer to convey the Theater to City until March 15, 2017.

**WHEREAS**, City, DBP and Developer have engaged in negotiations since early 2017 to resolve issues related to the transfer of the Theater Unit to City, including conveyance of additional space in the Babcock Building consisting of a green room constructed in the basement of Unit 1B, sale of items of personal property purchased by Developer for the theater and the green room, identification of certain utility improvements, amendment of the Declaration of Unit Ownership, additional work and improvements provided by Developer not anticipated in the Development Agreement, and related matters.

**WHEREAS**, City, DBP and Developer have reached an agreement, subject to approval of the City Council for resolution of the remaining issues regarding transfer of Unit 1A to the City.

**WHEREAS**, DBP, City, and Developer wish to enter into this Agreement to set forth the terms and conditions of Developer's transfer of Unit 1A to City.

**NOW, THEREFORE**, City, DBP, and Developer agree as follows:

1. The Declaration of Unit Ownership shall be amended by a First Amendment to Declaration of Unit Ownership in the approximate form attached hereto as Exhibit A, to include the green room space as part of Unit 1A, amend the percentages of square foot ownership and responsibility for general common expenses accordingly, and to amend the floor plan exhibits to reflect the current utility and HVAC locations, responsibilities and access provisions ("First Amendment to Declaration of Unit Ownership"). Developer shall prepare and provide City with the First Amendment to Declaration of Unit Ownership and any other documents necessary to approve and record the First Amendment to Declaration of Unit Ownership. The final form of the First Amendment to Declaration of Unit Ownership shall be subject to City's approval and City's consent prior to execution and recording. The final approved First Amendment to Declaration of Unit Ownership shall be recorded within five (5) days after City's approval and execution of this Agreement.

2. At Closing, Developer shall transfer and convey Unit 1A as described in the First Amendment to Declaration of Unit Ownership to City by Warranty Deed in the form attached hereto as Exhibit B, free and clear of all liens and encumbrances, subject only to title exceptions acceptable to City.

3. Developer shall sell and City shall purchase from Developer the personal property associated with Unit 1A, the Theater Unit and the green room as set forth in the exhibit(s) to the Bill of Sale ("Personal Property"). At Closing, Developer shall deliver to City a Bill of Sale in the form attached hereto as Exhibit C to transfer ownership of the Personal

Property to City, free and clear of all liens and encumbrances.

4. At Closing, City shall pay to Developer the sum of One Hundred Twenty Seven Thousand Nine Hundred Seventy Seven Dollars (\$127,977.00) as consideration for the purchase of the green room space and the Personal Property.

5. At Closing, City shall deliver for recording an executed Deed of Reconveyance of the City Deed of Trust in the form attached hereto as Exhibit D (“City Deed of Reconveyance”) and shall provide Developer with a release of the member guarantees in the form attached hereto as Exhibit E (“Release of Member Guarantees”).

6. Closing of the transactions provided for in this Agreement and the Development Agreement shall take place at American Title and Escrow in Billings, Montana (“Closing Agent”) on or before October \_\_, 2017 (“Closing”). Developer and City shall share the closing costs equally. City shall be responsible for the cost of an owner’s policy of title insurance for Unit 1A. City shall take possession of Unit 1A effective upon Closing.

At Closing, Developer shall deliver the following:

- a. Executed Warranty Deed
- b. Executed Bill of Sale
- c. Any other executed documents required by Closing Agent.

At Closing, City shall deliver the following:

- a. Executed City Deed of Reconveyance
- b. Executed Release of Member Guarantees
- c. Funds for purchase price for green room and Personal Property.

8. At or prior to Closing, City shall reimburse Developer for the amounts of utilities, insurance and other expenses for which City is obligated since March \_\_, 2017. In addition, City shall pay its share of property taxes attributable to the Theater Unit for the period between March \_\_, 2017 and Closing.

9. Promptly following Closing, Developer shall cause the Historic Babcock Non-Profit Owners Association to convene a meeting of the members of the Association to elect or appoint Directors, conduct all necessary business, and commence operation pursuant to the terms of the Bylaws and First Amendment to Declaration of Unit Ownership.

10. Promptly following Closing, Developer shall design and provide a proposal for construction of a door adjacent to the entrance to the green room to limit access to the basement hallway connecting Unit 1A and Unit 1B. The final plan and budget for the door shall be subject to City’s approval. The cost of construction of the new door shall be paid equally by City and Developer.



Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_  
Downtown Billings Partnership ("DBP")

By: \_\_\_\_\_  
Its: President

STATE OF MONTANA     )  
  :SS  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ as President of Downtown Billings Partnership, Inc.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_

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The Babcock, LLC (“Developer”)

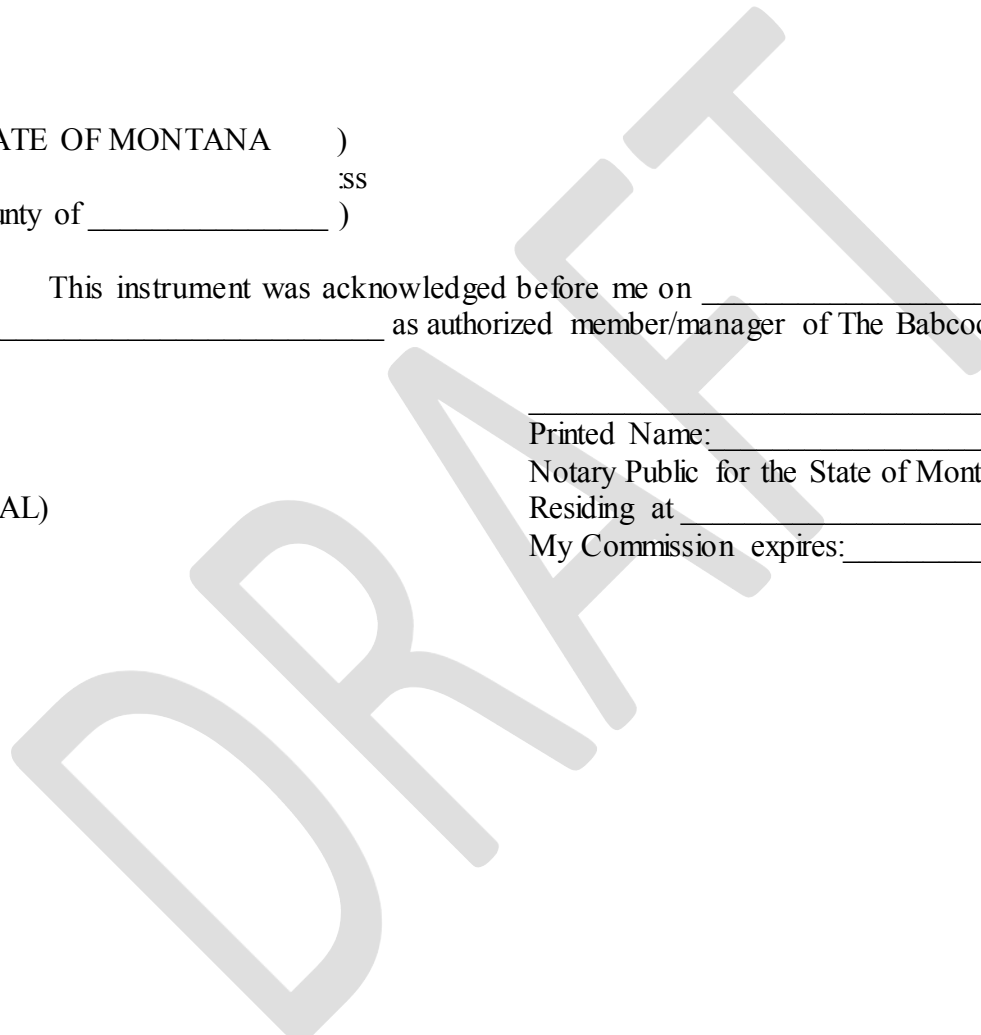
By: \_\_\_\_\_  
Its: Authorized Member/Manager

STATE OF MONTANA     )  
  :SS  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ as authorized member/manager of The Babcock, LLC.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_



Exhibits

**Exhibit A**     **First Amendment to Declaration of Unit Ownership**

**Exhibit B**     **Form of Warranty Deed for Unit 1A**

**Exhibit C**     **Bill of Sale for Personal Property**

**Exhibit D**     **Deed of Reconveyance**

**Exhibit E**     **Release of Member Guarantees**

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