

Return to:
The Babcock, LLC
115 N. Broadway, #515
Billings, MT 59101
File No. 37116

**BYLAWS OF HISTORIC BABCOCK
BUILDING NON-PROFIT OWNERS ASSOCIATION**

1. APPLICABILITY OF BYLAWS.

These Bylaws are applicable to the Historic Babcock Building. The Historic Babcock Building is located upon the following described real property located in Billings, Yellowstone County, Montana:

All of Lots 7, 8, 9, 10, 11 and 12 and that part of Lot 6 described as follows:

Commencing at the northwest corner of said Lot 6; Thence in a southerly direction along the west line of said Lot 60.22 feet;
Thence in a northeasterly direction to the northeast corner of said Lot 6;
Thence in a westerly direction along the north line of said Lot 6 to the point of beginning;

All in Block 93 of the Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County under Document #16312.

The Babcock, LLC is party to a Development Agreement dated September 22, 2009 (“Development Agreement”) with the City of Billings, Montana (“City”), a municipality of the State of Montana, and Downtown Billings Partnership, Inc. (“DBP”), for the redevelopment and restoration of the Historic Babcock Building and the ultimate conveyance of the Babcock Theater (Unit 1A herein) to the City or its assignee on or before April 1, 2016. City is also the beneficiary of a Deed of Trust dated October 2,

2008 recorded as a first priority mortgage lien against the Historic Babcock Building under Document No. 3482269, records of Yellowstone County, Montana (“City Deed of Trust”) securing performance of the Development Agreement. As a result, City has interests as a future owner and as an Eligible Mortgage Holder against the Historic Babcock Building. Notwithstanding any other provisions of these Bylaws, the rights and interests of the City and DBP under the Development Agreement and the City Deed of Trust and the duties and obligations of The Babcock, LLC to the City and DBP under the Development Agreement and the City Deed of Trust shall control over the provisions of these Bylaws until such time as Unit 1A is conveyed to the City; provided, however, that the floorplans attached as Exhibit A, pages 1 through 5, to the Declaration shall control over the floorplans attached to the Development Agreement.

City shall not be considered or deemed an owner of Unit 1A or of the Historic Babcock Building, until such time as title to Unit 1A is conveyed to City pursuant to the Development Agreement. As such City shall have no liability for the Historic Babcock Building or the activities of the Association, prior to taking title to Unit 1A.

The provisions of the Bylaws shall be subject to the Declaration of Unit Ownership for Historic Babcock Building and the Declaration of Unit Ownership shall control over any inconsistent provisions of these Bylaws.

All present or future owners, tenants, or any other person who might use the facilities of the property in any manner, are subject to the provisions of these Bylaws. The acquisition, rental, or occupancy of any of the units will signify that these Bylaws are accepted, ratified, and will be complied with.

2. DEFINITIONS.

The terms used herein shall have the definitions set forth in the Declaration of Unit Ownership for Historic Babcock Building.

3. BOARD OF DIRECTORS.

a) Number of Directors. The affairs of the Association shall be governed by a Board of Directors composed of three owners, each of whom shall be elected by the unit owners. MICHAEL S. MATHEW, DONALD J. OLSEN and KIMBERLY A. OLSEN, as representatives of The Babcock LLC shall serve as Directors until the first annual meeting of the Association. The Board of Directors shall have the powers and duties

necessary for the administration of the affairs of the Association and may do all acts and things as are not by law, the Declaration of Unit Ownership for Historic Babcock Building, or these Bylaws directed to be exercised by the unit owners. Notwithstanding the foregoing, immediately upon conveyance of Unit 1A to City or its assignee, City or its assignee shall have the right to nominate one of the three Directors (“City Director”), who shall be elected as set forth in Section 3 C below.

b) Term of Office . Directors shall be elected at the first annual meeting of the Association with two Directors being elected for a one year term, and one for a two year term. Upon expiration of the term of each of these Directors, new Directors shall be elected and the term of office of each Director thereafter shall expire after two years. In the case of the expiration of the term of the City Director, the City or its assignee shall appoint the successor to the City Director, which may be the same person.

c) Nomination and Election. Except for the initial Directors and the City Director, Directors shall be nominated by a Nominating Committee composed of one member of the Board of Directors and two unit owners appointed by the outgoing Board of Directors. The unit owners so appointed shall not be members of the outgoing Board of Directors. A list of persons nominated shall be distributed to all unit owners, attached to written notice of the annual meeting. Additional nominations may be made from the floor at the annual meeting. Each unit owner shall be entitled to one weighted vote for each vacancy in the Board of Directors; cumulative voting shall be permitted. The candidates receiving the largest number of votes shall serve as Directors for the coming term. Notwithstanding any other provision of these Bylaws, all present and future unit owners irrevocably agree as follows: (1) City or its assignee shall have sole discretion to nominate the City Director; (2) immediately upon conveyance of Unit 1A to City or its assignee, the unit owners shall cast a sufficient number of votes to elect the City Director; and, (3) at any subsequent election of directors in which the term of the City Director is scheduled for renewal, the unit owners shall cast a sufficient number of votes to elect the City Director.

d) Qualifications of Directors. Directors must be members of the Association, or, in the case of City, corporate members, L.L.C.s or partnerships, a designated representative of the City, corporation member, L.L.C. or partnership.

e) Resignation and Removal of Directors. Any Director may be removed from office by the majority vote of the unit owners. In the event of resignation or removal of a Director, the vacancy shall be filled at a special meeting of the unit owners or by written ballot circulated among the owners in the manner provided for the election of Directors, with the person so elected serving the balance of the unexpired term. In the event of resignation or removal of the City Director, the vacancy shall be filled at a special meeting of the unit owners or by written ballot circulated among the owners in the manner provided for the election of Directors, with the person so elected to be nominated and elected as provided in Section 3 c) above for the City Director, and to serve the balance of the unexpired term.

f) Compensation. No compensation shall be paid to Directors for their services as Directors unless salaries for Directors are approved by 75% of the unit owners. However, Directors shall be reimbursed for actual expenses incurred in the performance of their duties.

g) Meetings. The first meeting of the newly elected Board of Directors shall be held immediately following the annual meeting of the Association. No notices of this meeting shall be necessary. Additional regular and special meetings of the Board of Directors may be held at such times and places as shall be determined by the Directors. Notice of such meetings shall be given to each Director and to the Secretary and President of the Association, personally or by mail, telephone, e-mail or facsimile, at least three days prior to the day named for such meeting. A majority of Directors shall be needed for a quorum. Meetings may be held by telephone, or similar means, provided all Directors present can hear and speak to all others at the same time, or otherwise fully communicate with one another. All meetings, except those held by telephone or similar means, shall be open to all members of the Association, but Directors may limit participation by members. Information concerning major actions by the Board shall be promptly disseminated to all members of the Association in a manner to be determined by the Board.

h) City and DBP Participation. Prior to such time as City takes title to Unit 1A, City and DBP shall be given notice of all Director, unit owner and Association

meetings and shall have the right to attend all such meetings. City and DBP shall be entitled to participate and comment regarding all matters that come before such meetings.

i) Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by law, the Declaration, or these Bylaws directed to be exercised by the members. In addition, the Board of Directors shall have the following powers and duties:

1. To enforce the provisions of the Declaration of Unit Ownership and these Bylaws by appropriate action.
2. To determine the amount of all assessments for general and limited common expenses payable by the unit owners, and to allocate and assess said expenses among the unit owners in proportion to their respective interests in the general and limited common elements. Assessments shall include reserve funds for major repairs. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.
3. In its discretion, to impose special assessments for emergencies, as they are incurred.
4. To send written notice of any change in the regular assessments and written notice of any special assessment to each owner at least at least thirty 30 days before its due date.
5. To record a lien against any property for which assessments are not paid within thirty days after the dates when due.
6. To foreclose the lien against any property for unpaid assessments or to bring an action at law against the owner personally obligated to pay the same.
7. To adopt a schedule of late payment fees.
8. To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
9. To adopt a schedule of fines for violation of the Declaration, these Bylaws, or the duly adopted rules and regulations of the Association.

10. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
11. To procure and maintain adequate liability, fidelity, and hazard insurance as provided in Section 9 below.
12. To pay all taxes and assessments, if any, imposed on the common areas, and to pay all debts owed by the Association.
13. To review and approve or disapprove all plans for modification of or addition to the common elements.
14. To contract for repairs, maintenance, alterations, additions and improvements to the common elements consistent with managing the Historic Babcock Building in the best interest of the unit owners.
15. To rent or lease general or limited common elements on behalf of all owners entitled to use those elements. The net proceeds of such leases or rental agreements shall be credited to the Association's applicable general or limited common expense account.
16. Upon written request from any person, agency or corporation having an interest or prospective interest in a unit, to furnish within a reasonable time a financial statement of the owners association for the immediately preceding tax year, prepared and approved by a certified public accountant, or at the request of an owner or mortgage holder, to have an audited financial statement prepared at the requesting party's expense. The Board may require that the requesting party prepay the cost of an audit.
17. To provide any notices required by these Bylaws or the Declaration of Unit Ownership for the Historic Babcock Building.
18. To delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association, to a committee appointed by the Board, or to an independent contractor, agent or manager.
19. To employ or contract with a management agent to manage the condominium and to rent or lease units for the unit owners.
20. To supervise all officers, agents and employees of the Association, to ensure that they properly perform their duties.

j) Directors as Trustee for Unit Owners. The Board of Directors is hereby irrevocably appointed as Trustee for the unit owners of all of the units and for each of them to manage, control and deal with the interests of such unit owners in the common elements as necessary to permit the Board of Directors to fulfill all of its powers rights, functions and duties.

The Board of Directors is hereby irrevocably appointed as Trustee for each unit owner, each mortgagee, other named insureds, and their beneficiaries and any other holder of a lien or other interest in any unit to:

- 1) Insure the units and common areas, as provided in these Bylaws;
- 2) Adjust and settle all claims arising under insurance policies purchased by the Board of Directors;
- 3) execute and deliver releases upon the payment of claims.

The mortgagee and guarantor of the mortgage on any unit shall have the right to timely written notice of any casualty loss that affects a material portion of the building or the unit securing its mortgage.

4. OFFICERS.

a) Board Elects Officers. The Board of Directors shall annually elect a President, Secretary, and Treasurer. The Board, in its discretion, may also elect a Vice-President. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board, and in the event of a vacancy the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose. DONALD J. OLSEN and KIMBERLY A. OLSEN shall serve as interim President and Secretary, respectively, until the first annual meeting of the Association.

b) Qualifications of Officers. Directors may also serve as officers but are not

required to do so. Officers may be Directors, other members of the Association, or persons who are not members.

c) Duties. The President shall preside at all meetings of the Association and of the Board of Directors, and shall have general supervision over the affairs of the Association and its officers and all of the powers and duties usually vested in the office of President and shall also perform such other duties as from time to time may be imposed by the Board of Directors. The Vice-President, if any, shall act in the place of the President, in the President's absence, and shall have such other duties as may be assigned by the Board of Directors. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both, shall keep a record of all members of the Association, and shall serve all required notices. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

d) Compensation. Any officer who is not a member may be compensated in a reasonable amount as determined by the Board of Directors.

5. LIABILITY OF OFFICERS AND DIRECTORS.

a) The Officers and Directors of the Association shall not be liable to the Association or any unit owner for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. The unit owners and the Association shall indemnify and hold harmless each of the Officers and Directors from and against all contractual liability to others arising out of contracts made by the officers or the Board of Directors on behalf of the Association unless such contract shall have been in bad faith or contrary to the provisions of the Montana Unit Ownership Act or the Declaration of Unit Ownership for Historic Babcock Building or these Bylaws, except to the extent that such liability is satisfied by Directors and Officers liability insurance.

The liability of any unit owner arising out of any contract made by the officers or Board of Directors or out of the indemnification of the officers or Directors or for

damages as a result of injuries arising in connection with the common elements solely by virtue of ownership of a common element or an interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by the owner's percentage of interest in the common elements.

Every agreement made by the officers or Board of Directors on behalf of the Association shall, if obtainable, provide that the officers or the Directors, as the case may be, are acting only as agents for the Association and shall have no personal liability on the agreement.

The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that the person is or was an officer or Director of the Association against expenses, including attorney fees, judgments, fines and amounts paid in settlement incurred by the person in connection with such action, suit or proceeding if the officer or Director acted in good faith and in a manner the officer or Director reasonably believed to be in, or not opposed to, the best interest of the Association, except to the extent that such liability is covered by Directors and Officers liability insurance.

6. MEMBERSHIP, MEETINGS AND VOTING.

a) Membership. Each unit owner shall be a member of the HISTORIC BABCOCK BUILDING NON-PROFIT OWNERS ASSOCIATION herein called the "Association". If the ownership of any unit is vested in more than one person, each such owner shall be a member, but the co-owners or joint owners of the unit shall be deemed to be one unit owner for the purpose of voting and the determination of any required quorum. Each unit owner shall be entitled to one vote and the vote for any unit owned by more than one person shall be exercised as such co-owners determine.

b) Ownership. Ownership shall be determined according to the records of the Clerk and Recorder of Yellowstone County, Montana; except that a personal representative, conservator or trustee may vote in person or by proxy with respect to any unit owned or held by him or her in such capacity, whether or not the same shall have been transferred to him or her name by a duly recorded conveyance. Owners shall also include those purchasing units under purchase contracts who have an equitable interest in the unit as disclosed by the public record in the office of the Yellowstone County Clerk

and Recorder; and in such an event the equitable owner shall be considered as the only owner of such unit. Tenants shall not be deemed owners and shall not be entitled to vote, except as a proxy holder for an owner.

c) Voting. Votes shall be weighted, with the vote for a unit equal to the undivided interest for such unit set forth in paragraph 7 of the Declaration of Unit Ownership. Whenever a unit is owned by two or more persons, only one vote may be cast for the unit and any one owner may vote in the absence of protest by the other owners. Votes may be cast in person or by proxy.

d) Proxies. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated, must be in writing, and must be filed with the Secretary on or before the appointed time of the meeting.

e) Annual and Special Meetings. The annual meeting of the Association shall be held on the first Friday of March of every year at a time to be determined by the Board. Additional regular and special meetings of the Association may be held at such times and places as shall be agreed upon by the unit owners. Notice of all meetings shall be given to each member personally or by mail, telephone, e-mail or facsimile, at least ten days prior to the day named for such meeting. The presence, in person or by proxy, of a majority of the unit owners at such meetings of the Association shall be required for the transaction of any business by the Association. Members may participate in a meeting of the members by means of conference telephone or similar communication equipment so long as all persons participating in the meeting can hear each other at the same time, and such participation shall constitute presence in person at the meeting.

The agenda for the annual meeting shall include the following:

- 1) Determination of quorum;
- 2) Approval of minutes of last annual meeting;
- 3) Presentation of financial report for past year and presentation of budget for coming year;
- 4) Appointment of Arbitrator;
- 5) Report Board opinion of adequacy of limits on insurance coverage;
- 6) Election of Directors;
- 7) Old business, if any; and

8) New business.

Meetings shall be conducted in accordance with Roberts Rules of Order.

f) Manner of Obtaining Approval of Unit Owners. Whenever approval of unit owners is required, that approval may be obtained by vote at an annual or special meeting, or by written ballot or petition, circulated among the owners.

7. INSPECTION OF RECORDS.

The books, records and papers of the Association shall be open for inspection by any unit owner, and by Eligible Mortgage Holders at any reasonable time.

8. EMERGENCY ACCESS.

Directors and other persons authorized by the Board, shall have the right to enter other units in case of an emergency originating in or threatening such unit whether or not the owner or occupant is present at the time.

9. INSURANCE.

a) Except as otherwise provided in subsection j) below, the Board of Directors shall insure all of the units and all common element improvements, including every part of the building and all fixtures attached or affixed to any part of the building by screws, nails, glue, cement or other building material, against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a deductible in an amount to be determined by the Board. Such insurance shall be "all-in" coverage. Works of art, purely decorative items, and office and communication equipment normally not considered to be part of the real estate when a unit is sold are not fixtures, even though temporarily attached to a wall with nails or screws and will not be covered by the Association.

b) The Board of Directors shall purchase general commercial liability insurance, insuring the Association and the unit owners for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use or occupancy of the property, with policy limits to be determined by the Board, but no less than \$1,500,000.00 per occurrence and \$2,000,000.00 annual aggregate.

c) The Board of Directors shall purchase fidelity insurance coverage for all persons handling association monies, naming the Association as insured, in an amount equal to the maximum funds held by the Association. If the Board employs a

management agent, the agent must have its own fidelity insurance policy providing the same coverage required above.

d) The Board shall purchase Officer's and Director's liability insurance covering each member of the Board and each officer of the Association; the amount of coverage shall be determined by the Board.

e) The cost of all insurance purchased by the Association shall be a part of the general common expense.

f) Directors shall seek to obtain the best insurance value, considering the coverage, the price, the financial stability of the insurer, and the history of the insurer in promptly and properly handling claims.

g) In the event of a loss exceeding one thousand dollars (\$1,000.00), all Association insurance proceeds shall be paid to the Board of Directors as trustee for disbursement.

h) Each policy shall contain a standard mortgagee clause in favor of each mortgagee or trust indenture beneficiary, or contract of sale endorsements in favor of the contract sellers of any units naming such mortgagee, trust indenture beneficiary or contracts seller as an additional insured, and shall require the insurer to notify the Association, each unit owner, and each first mortgage holder, in writing, of any lapse, cancellation or substantial change to the policy at least ten days prior to the date on which such cancellation or change takes effect. Duplicate originals of all new insurance policies and of all policy renewals, together with proof of payment of premiums, shall be delivered to all mortgagees and contract sellers of units at least ten days prior to expiration of the then current policies.

i) The Board of Directors shall annually review the adequacy of limits of coverage of insurance policies, shall obtain an appraisal from an insurance company or other knowledgeable person or business of the full replacement value of the covered improvements, without deduction of depreciation, for the purpose of determining the amount of property insurance required under this section, and report its findings and opinion regarding insurance to the membership of the Association at its annual meeting.

j) Unit owners shall not be prohibited from carrying other insurance for their own benefit provided that the liability of the carriers issuing insurance obtained by the

Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner. Insurance purchased by the Association shall not cover personal items, such as furniture, clothing, office equipment, stock, stores or inventory inside the units. Owners must insure their personal property and obtain liability insurance to cover injury or damage occurring on or within their limit if they wish such insurance coverage. If any major improvements are made to the interior of a unit after initial purchase of the unit, or if equipment is installed, (for example, if an owner or tenant later adds a telephone system, or partition walls or shelving or a mezzanine, or wires a unit for computers and installs a computer system) those improvements (betterments) must be insured for fire or other casualty on the owner's personal insurance policy, if the owner wishes to have insurance. Insurance on such betterments will not be purchased by the Association. Replacement of worn fixtures or equipment with similar new ones shall not be deemed a betterment.

k) Insurance payments for a fire or other property loss insured by the Association shall be applied by the trustee to repair or replacement of the damaged property. In the event of loss to one or more but not all units, any amount needed to repair or replace the unit, in excess of insurance payments, shall be paid by the owner of that unit.

l) The Association shall pay, as a common expense, the deductible amount for any property loss insured by the Association if the damage is only to the common elements. In all other cases, owners of the damaged units shall pay the deductible in proportion to the amount of the loss to each damaged unit reported on the insurance claim.

10. PROPERTY LOSS.

Property damaged by fire or other casualty must be repaired or rebuilt unless there is a total loss of all units and all unit owners agree not to rebuild. Insurance payments for a property loss insured by the Association shall be applied by the Board, or its designated trustee, to repair or replacement of the damaged property except in the event of a total loss of all units and a decision not to rebuild. Units which are repaired or replaced after casualty shall conform in style, quality, and appearance to the unit as it existed prior to the casualty.

11. ASSESSMENTS FOR COMMON EXPENSES.

a) When Assessments Begin. The owner of each unit shall be obligated to pay monthly and special assessments for general and limited common expenses imposed by the Association beginning at the time of sale or transfer of the first unit by Developer.

b) Amount. Prior to the annual meeting, the Board of Directors shall prepare an Association budget for the coming year. A copy of that budget, together with a statement of the amount of each monthly assessment for the coming year, plus a reasonable reserve allowance for replacement of improvements, shall be delivered to each unit owner at least one week before the annual meeting. Each monthly assessment for a unit shall be equal to the total estimated general and limited common expenses chargeable to that unit for the coming year, including a reasonable reserve allowance for contingencies, divided by twelve, and multiplied by the percentage of undivided interest in the general or limited common elements attached to that unit. General common expenses and limited common expenses shall be separately assessed to a unit. If an annual budget is not prepared as required, the monthly assessment due shall be equal to the amount of the monthly assessment for the previous year until changed by the Board of Directors, after preparation of a new budget. Written notice of any new assessment shall be given, by mail or otherwise, to each unit owner at least 20 days in advance of the first payment due date for the assessment.

c) Special Assessments. The Board may impose special assessments or unanticipated emergency expenses without prior approval the members.

d) Due Date. Assessments shall be due and payable, in advance, on the first day of each month.

e) Interest and Late Fees. Assessments paid more than ten days after the date when due shall bear interest at the rate of fifteen percent (15%) per annum from the date when due until paid. In addition, late paying owners shall be obligated to pay a late fee in an amount to be determined by the Board of Directors. Late fees shall not be deemed to be interest payments in the amount of the late fees must either be equal for all units or proportionate to the percentage of undivided interest in the common elements attached to each of the units. All payments upon assessments shall be applied first to late fees, then to interest and then to the earliest assessment due.

f) Record Keeping. All sums collected by the Association from assessments may be commingled in a single fund but the Treasurer shall keep separate payment records for assessments for general common expenses and for limited common expenses for each unit.

g) No Exemption from Payment. No owner of a unit is exempt from liability for the owner's share of any common expense by waiver of the use or enjoyment of those items paid for or by abandonment or lease of the unit. Owners of leased units shall be responsible for paying the assessments for that unit even if the lease shifts that responsibility to the tenant.

h) Account Balance Transfers with Unit. No unit owner shall be entitled to receive the balance in that owner's assessment account upon sale of the owner's unit. The account balance shall pass with sale of the unit to the credit of the new unit owner. This provision shall not be deemed to prohibit a selling owner from collecting the balance of that owner's assessment account from a purchaser.

i) Remedies for Failure to Pay. The remedies for failure to pay assessments are set forth in the Declaration of Unit Ownership.

12. MAINTENANCE OF UNITS AND COMMON ELEMENTS.

a) Unit Owner Responsibilities. Every unit owner shall be responsible and for all maintenance of and repairs to the interior of the owner's unit, except for repairs covered by insurance purchased by the Association for all maintenance, repairs and replacement of doors and awnings windows serving the unit, and for routine maintenance of limited common elements used exclusively by the owner,. each owner shall be responsible for all damages to the other units or to the common elements resulting from the owner's failure to effect that owner's unit. All fixtures, lines, pipes and equipment serving a single Unit shall be maintained, replaced and kept in repair by the Unit Owner, except in the event of damage covered by insurance purchased by the Association.

b) Association Responsibilities. The Association shall be responsible for any maintenance, repair and replacement of all general and limited common elements, except as otherwise provided in Section 12(a) above. The Association shall also be responsible for keeping common utility lines in good repair and condition at all times. The Association -may employ personnel necessary for the maintenance, upkeep and repair of

the common elements as is deemed necessary. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the Historic Babcock Building will reflect a high pride of ownership.

13. RESTRICTIONS ON USE.

The following restrictions apply to use of all units and common areas:

a) Alterations to Building and Common Elements. Nothing shall be done in, on or to any unit or in, on or to the limited or general common elements which will impair the structural integrity of the building. No unit owner or occupant shall make any additions or alterations to any unit or common areas, nor change the architectural design of the building without the prior written consent of the Board of Directors for Historic Babcock Building. No TV antennas, satellite dishes, air-conditioning units, wiring or any other device shall be installed on the exterior of the building, or on common elements without prior written approval of the Board of Directors.

b) Maintenance and Repair. Unit owners shall promptly perform all maintenance and repair work within their own units which, if omitted, would affect any common element, and each unit owner shall be responsible for all damages and liabilities created by such failure to maintain or repair.

c) Garbage. All garbage and trash must be placed in the proper receptacles designated for refuse collection and no garbage or trash shall be placed elsewhere on any common element or outside any unit.

d) Fire Prevention. No unit owner shall perform any act or store anything within or immediately adjacent to the owner's unit, or limited common areas used by the owner, which might increase the rate of fire and other casualty insurance for the Historic Babcock Building project or increase the probability of fire as a result of such act or the storage of such items.

e) Unlawful Use. No unlawful use shall be made of any unit, the common areas, or any part thereof.

f) Signs. Permanent signs must be approved by the Board.

g) Hazardous Substances. No storage of chemicals or hazardous substances shall be permitted in any unit or the common areas, except reasonable amounts of cleaning supplies.

h) Boiler and Equipment Room. Owners and tenants shall not enter any boiler or equipment or utility room, nor shall any owner or tenant adjust or modify any boiler, pipe, line, valve, or equipment of any kind for providing heat, water, or other utilities, or elevator equipment, unless accompanied by a designee of the Board of Directors, except in an emergency threatening life or property.

i) No Smoking. No smoking shall be permitted in the Building.

j) Asbestos and Lead Based Paint. The building is old. Owners and prospective purchasers are hereby notified that the units and the common areas may contain asbestos, and the paint in any unit or the common area might contain lead.

14. RULES AND REGULATIONS.

Administrative rules and regulations concerning the use of common elements may be promulgated and amended by the Board of Directors provided however, that no restrictions on the use of common elements in addition to those established in the Declaration and these Bylaws shall be effective until such time as all units have been sold by Developer, without Developer's express written consent.

A copy of the current rules and regulations shall be provided to each unit owner by the Secretary of the Association, without cost, upon request.

15. LIABILITY OF THE ASSOCIATION

The Association shall not be liable to any unit owner for any failure of water supply or other services or liabilities to be paid for as a common expense, or for injury or damage to person or property caused by the elements, or resulting from water, snow or ice which may leak or flow over from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any unit owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. This shall not be deemed to be a waiver of any liability between unit owners. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements or the exterior of the building, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any government authority. The Association shall not be liable to any unit owner for

injury or damage to person or property caused by another unit owner. Any such liability shall be attributed solely to the responsible unit owner.

16. AMENDMENT.

a) These Bylaws may be amended by the Association with approval of the owners of at least 75% of the units and by written consent of City, so long as the City holds the City Deed of Trust; provided, however, that no amendment shall take effect without the approval of the Developer, until such time as all units have been sold by the Developer. A copy of the Bylaws, as amended, certified by the President and Secretary of the Association, must be recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. The Bylaws shall always include those particulars required to be included therein by the Montana Unit Ownership Act.

b) The consent of Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of units subject to mortgages held by eligible holders shall be required for any of the following:

- i. Changes in insurance requirements; and
- ii. Changes in any provisions which expressly benefit mortgage holders, insurers or guarantors.

17. BYLAWS ARE COVENANTS.

The provisions of these Bylaws shall be covenants running with the land and shall be binding on all owners, their tenants, families, customers and guests, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

18. ENFORCEMENT AND WAIVER.

These Bylaws may be enforced in the manner set forth in the Declaration of Unit Ownership for Historic Babcock Building and these Bylaws. In the event the Board of Directors shall refuse to enforce the provisions of these Bylaws or the Declaration of Unit Ownership or duly adopted Rules and Regulations by appropriate action, any unit owner shall have the right to do so.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these Bylaws or the Declaration of Unit Ownership of Historic Babcock

Building or any Rules and Regulations adopted by the Association shall not be deemed a waiver of the right to do so in the future.

19. HEADINGS.

The headings used in these Bylaws are for convenience only and shall not be deemed to limit the provisions of these Bylaws.

20. NOTICE.

Except where otherwise provided in these Bylaws any written notice required or provided for in these Bylaws or in the Declaration of Unit Ownership for Historic Babcock Building shall be hand-delivered or mailed by certified mail, return receipt requested, and a copy sent by regular mail, to the last address provided by the owner to the Association. A notice sent by certified mail shall be deemed delivered three days after the date when mailed, whether or not actually received by the owner to whom it was sent.

IN WITNESS WHEREOF, the undersigned, being the interim Chairman and Secretary of the Association, have executed this instrument as evidence of the adoption of the aforesaid Bylaws of the Association and hereby certify that the foregoing is a true and correct copy of the Bylaws of the said Association.

DATED this 26 day of MAY, 2010.

HISTORIC BABCOCK BUILDING
NON-PROFIT OWNERS ASSOCIATION

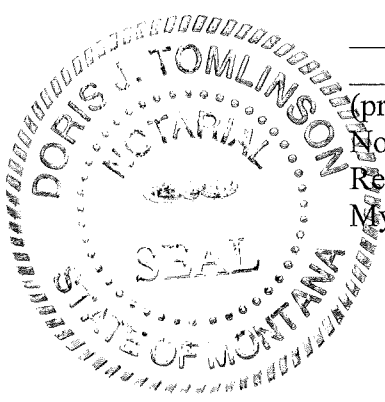
By: Donald J. Olsen
DONALD J. OLSEN, President

By: Kimberly A. Olsen
KIMBERLY A. OLSEN, Secretary

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 26th day of May, 2010, before me, the undersigned, a Notary Public for the State of Montana, personally appeared DONALD J. OLSEN known to me to be the President of the HISTORIC BABCOCK BUILDING NON-PROFIT OWNERS ASSOCIATION, and KIMBERLY A. OLSEN known to me to be the Secretary of the HISTORIC BABCOCK BUILDING NON-PROFIT OWNERS ASSOCIATION, whose names are subscribed to the foregoing Bylaws and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

(SEAL)  Doris J. Tomlinson
Doris J. Tomlinson
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires July 30, 2002012