



City of Billings

## **BABCOCK THEATER LEASE AGREEMENT**

THIS BABCOCK THEATER LEASE AGREEMENT (this "Lease" or this "Agreement") is made effective the 1<sup>st</sup> day of November 2018, by and between THE CITY OF BILLINGS, MONTANA of 210 N. 27<sup>th</sup> Street, Billings, MT 59101 ("City"), and ART HOUSE MANAGEMENT LLC, A MONTANA NONPROFIT LIMITED LIABILITY COMPANY, of 109 North 30<sup>th</sup> Street, Billings, MT 59101 ("Lessee").

### **WITNESSETH**

#### **1. Description of Leased Premises and Uses.**

Effective November 1, 2018, City leases to Lessee and Lessee leases from City, for the purpose of establishing and operating a performing arts center dedicated to the presentation and development of all of the performing arts for the benefit of the public, certain land, improvements, structures, and appurtenances more particularly described as follows (the "premises"):

Real property commonly known as the Babcock Theatre, located at 2810 ½ 2nd Avenue North, in Billings, Montana, more accurately described as:

Unit 1A together with an undivided 41 percent interest in the general common elements and limited common, if any, elements of HISTORIC BABCOCK BUILDING, Billings Original Townsite, a condominium project located on all of Lots 7-12 and a fractional portion of Lot 6 all in Block 93, according to the official plat on file in the Yellowstone County, Montana, Clerk and Recorder under Document No. 16312, as the unit boundaries and general and limited common elements are established, defined and identified in the Declaration of Unit Ownership for the Historic Babcock Building recorded June 25, 2010, under document No. 3553865, and the First Amendment to Declaration of Unit Ownership for Historic Babcock Building recorded on May 29, 2018, under Document No. 3850322, in the Yellowstone County, Montana Clerk and Recorder office.

As used herein, the "premises" refers to the portion of building, and any and all improvements located, constructed or established upon the property described above, whether made prior to the commencement of the term of this Lease, during the term of this Lease, or during the renewal term thereof.

Lessee understands that the premises includes: the theater area including main level, balcony, second floor concession areas and green room. The use of the Arcade Area shall be in accordance with the Historic Babcock Property Owner's Association's (HBPOA) Condo Bylaws and any amendments made to Bylaws thereafter, which are attached to this Lease Agreement as Attachment A.



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**2. Term and Possession of Premises.**

Upon execution of this lease, the term of this lease shall be fifteen (15) years, with options to renew pursuant to Paragraph 27 of this Agreement. Notwithstanding the foregoing sentence, City and Lessee acknowledge that Lessee has been operating the Premises since August 1, 2018. It is understood that Lessee is responsible for all expenses related to the Babcock Theatre, and also retains net revenues for said property.

City acknowledges and agrees that (a) alcoholic beverages may be sold at the premises from time to time, (b) Cine Billings, a Montana nonprofit corporation doing business as Art House (“Art House”), is the sole member of Lessee, and (c) Art House owns a nonprofit arts on-premises beer and wine license and Lessee is authorized to sublease the premises to Art House solely for the purpose of alcoholic beverage sales, provided that Art House first completes the insurance requirements of Paragraph 16 of this Lease.

**3. Rent.**

The City recognizes the value to the City of Billings and its citizens of the development, continued use, and improvement of the premises as a performing arts center. In consideration of the above and the covenants and conditions of this Lease Agreement, Lessee agrees to pay the City rent for the premises in the amount of \$1.00 each year, payable on the date of this Lease Agreement and yearly on the anniversary of that date, for the full term of this Lease.

**4. Signage.**

Lessee shall have the right, at its expense, to select, install and maintain any signage so long as it fits within the original design and historic intent of the Premises and any HBPOA rules and/or policies, as well as in accordance with State or City of Billings ordinances.

**5. Covenants of Use.**

Lessee covenants and agrees to use the premises for general theater use to include, but not be limited to, movies, concerts, non-profit events, musical concerts, public speaking events and other special events mimicking the spirit of the previously listed activities. Intended use is outlined in the Proposal (Attachment B).

**6. Funding of Repairs and Renovations.**

City shall not be required to make any improvements, replacements of any kind or character to the leased premises except as provided below. Lessee shall not be obligated to make any renovations or improvements to the premises which are not authorized by the City and the HBPOA and mutually agreed to by Lessee.



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City shall provide Lessee funds as approved through the budget process by the Mayor and Council for improvements to the premises. Lessee shall make recommendations to City regarding improvements, however, City shall make final determination and approval of improvements.

Normal repairs within the Theater which do not exceed \$9,999.99, within the calendar year, in the aggregate, will be undertaken by the Lessee as soon after discovery as can reasonably be arranged. Competition for the procurement of goods and services shall be competed through the normal City process for improvements/repairs/equipment which exceed \$9,999.99. Any single expenditure exceeding \$9,999.99 must receive prior approval from the City Council. The time or date when such renovations and improvements shall be made and shall be coordinated with the City, the Lessee and the HBPOA. Lessee shall provide City with such reasonable information as Lessee has developed concerning such renovations and improvements as may be requested by City.

The Parties have created and will maintain a committee of at least five (5) interested parties as an advisory group known as the "Babcock Improvements Committee," who shall meet as needed, but at least annually, to review and approve all repairs and improvements to the Theater. To the extent possible, the Parties and Committee shall identify the desired projects for each year. The Parties acknowledge that such priorities may change on an as-needed basis.

The City's purchasing procedures shall not apply to any renovations and improvements made by Lessee at their own expense, without payment or reimbursement by the City; however, all renovations and improvements of \$500 or more shall be approved by the Babcock Improvements Committee and through the normal donation acceptance process by the City Council.

All renovations and improvements made by Lessee shall conform to applicable codes, ordinances, laws and regulations of the City of Billings and any other governmental authority or agency, and in accordance with HBPOA bylaws, and shall be owned solely by the City and remain with the property.

### **7. Warranties of Title and Quiet Possession.**

City covenants that City has a right to occupy the premises and has the full right to make this Lease and that Lessee shall have quiet possession of the premises during the term hereof.

### **8. Use Prohibited.**

Lessee shall not use, or permit the demised premises, or any part thereof, to be used, for any unlawful or illegal purpose or purposes that violate Federal, State or City of Billings ordinances or resolutions.



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**9. HBPOA Non-Compete Clause.**

No uses shall be allowed that are in direct competition with the existing businesses of the Babcock Building, as a main source of income by the Lessee. For purposes of clarification, the sale of alcoholic beverages and concessions and occasional displays of works of art shall not be considered direct competition with existing businesses of the Babcock Building.

**10. Waste and Nuisance Prohibited.**

During the term of this Lease, Lessee shall comply with all applicable laws affecting the premises, the breach of which might result in any penalty to City or forfeiture of City's title to the premises. Lessee shall not commit or suffer to be committed any waste on the premises, or any nuisance.

**11. Abandonment of Premises.**

Lessee shall not vacate or abandon the demised premises at any time during the term hereof. If Lessee shall abandon, vacate, or surrender the demised premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the demised premises shall, at the option of the City, be deemed to be abandoned unless appropriate arrangements for removal have been agreed to by City and Lessee.

**12. Notices.**

All notices, demands or other writings in this Lease provided to be given or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

To City:                   The City of Billings  
                                  ATTN: City Administrator  
                                  210 North 27th Street  
                                  Billings, MT 59101

To Lessee:                Art House Management LLC  
                                  ATTN: Matt Blakeslee  
                                  109 North 30<sup>th</sup> Street  
                                  Billings, MT 59101

With copy to:            City Attorney's Office  
                                  P.O. Box 1178  
                                  Billings, MT 59103-1178



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The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

**13. Taxes and Assessments.**

- a) From and after November 1, 2018, it is agreed that the premises shall be subject to, and Lessee shall pay and discharge as they become due, such taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, only to the extent such charges are imposed on other buildings owned by City.
- b) From and after November 1, 2018, it is agreed that the premises shall be subject to, and Lessee shall pay and discharge as they fall due during the term of this Lease, such special assessments, levies or charges, made by any municipal or political subdivision for local improvements only to the extent that such charges are imposed on other buildings owned by City.
- c) The City shall render payment for all items above and provide invoice(s) to Lessee for payment of such within 30 days of invoice date.

**14. Utilities.**

Effective November 1, 2018, Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, pro-rata share of HBPOA common expenses, and other public utilities of every kind furnished to the demised premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the demised premises and all activities conducted thereon, and City shall have no responsibility of any kind for any thereof.

The City shall render payment for all separately metered utilities and those assessed by the HBPOA and provide invoice(s) to Lessee for payment of such within 30 days of invoice date.

**15. Fees.**

Lessee shall solely be responsible for obtaining and paying for any and necessary licenses and/or royalties required by law. Lessee solely shall be responsible for making any necessary payments to any union, guild or artists associations. The City assumes no responsibility for these fees. Lessee represents and warrants to the City that nothing contained in the performances, the merchandizing or anything else connected with the Lessee's performance pursuant to this Agreement shall violate or infringe on any patent, copyright, trademark, right of privacy or other statutory or common law right of any person, firm, corporation or other entity. Lessee warrants



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that it shall obtain all licenses necessary in connection with the performances and/or sale of merchandise and agrees to supply copies thereof to the City (if requested) not less than five (5) days prior to the event date. The Lessee warrants that it has paid or will pay when due all necessary royalties due or license fees due Broadcast Music Incorporated (BMI), American Society of Composers, Authors and Publishers (ASCAP), the Society of European State Authors and Composers (SEASAC), and any other similar organization.

**16. Insurance.**

- a) Insurance Coverage of Demised Premises. Except as otherwise provided herein, Lessee shall at all times during the full term of this Lease and at Lessee's sole expense insure the demised premises with fire and extended coverage insurance in an amount equal to the replacement cost of the demised premises (which City and Lessee agree is presently \$845,000.00) with loss payable to City, Lessee, and the holder of any mortgage as their interests. City agrees that the premises may be so insured under any such insurance policy maintained by or in the name of the City, but the applicable portion of any premium paid by the City which relates to the premises shall be paid by the Lessee within thirty (30) days after notice to Lessee that City has made such payment. The City reserves the right to increase the minimum limits of coverage during the term of the agreement. The Responder shall provide a certificate of insurance in force and providing City shall be notified at least thirty (30) days before any cancellation or termination of said policy.
- b) Liability Insurance. Lessee shall maintain in effect throughout the term of this Lease liability insurance covering the demised premises, appurtenances, sidewalks, and parking lots (if applicable) abutting thereon in the minimum amount of Two Million Dollars, (\$2,000,000.00), combined single limits of liability for each occurrence for bodily injury or property damage regardless of the number of persons or organizations who sustain bodily injury or property damage or the number of claims made, or suits brought, on account of bodily injury or property damage.

Such insurance shall specifically insure Lessee against all liability assumed by them hereunder, as well as liability imposed by law and shall insure both City and Lessee. City and HBPOA shall be endorsed on any policies as a primary, additional named insured.

In addition, said policy or policies shall contain a provision that no cancellation thereof shall be effective by the insurer without thirty (30) days written notice to the City.

Lessee agrees that the premises may be so insured under any such insurance policy maintained by the City, but the applicable portion of any premium paid by the City which relates to the premises shall be paid by the Lessee within thirty (30) days after notice to Lessee that City has made such payment.



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Unless the above insurance coverages are provided under policies maintained by the City, at least twenty (20) days prior to the date of expiration of any of the insurance policies above mentioned, the Lessee shall deliver to the City a certificate of renewal of such policy indicating payment of the premiums therefore. All insurance policies carried by either party covering the property or the demised leased premises shall expressly waive any right, including subrogation, on the part of either party against the other. All policies shall require the insurance companies to notify the City in writing prior to any cancellation of the insurance.

- c) Lessee shall maintain in effect throughout the term of this Lease Liquor liability insurance in the minimum limit of \$1,000,000 each occurrence, naming the City as an additional insured.
- d) The City shall pay for and maintain property insurance and provide invoice(s) to Lessee for payment of such within 30 days of invoice date.

### **17. Indemnification of City and Lessee.**

Lessee agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all claims, demands, losses, damages, liabilities, judgments, litigation costs and expenses including reasonable attorney fees occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission by Lessee or its agents, subcontractors or employees.

City agrees to indemnify, defend and save Lessee, its agents, subcontractors and employees harmless from any and all claims, demands, losses, damages, liabilities, judgments, litigation costs and expenses including reasonable attorney fees occasioned by, growing out of or in any way arising or resulting from any intentional or negligent act or omission by City, its agents or employees.

### **18. Default.**

In the event Lessee shall be in default of any covenant, agreement or condition provided for in this Agreement, or abandon or vacate the demised premises, or become a voluntary or involuntary bankrupt, or make an assignment for the benefit of creditors, or, in the event of a receiver or trustee being appointed for Lessee, then upon the occurrence of any one or more of such defaults, and after Lessee has been given notice by certified mail of such default, Lessee shall have thirty (30) days from the mailing of such notice within which to correct such default or defaults, and if no such corrections are made, City, in addition to any other rights or remedies it may have shall have the immediate right of re-entry and may remove all persons and property from the premises and may terminate this Lease, or at the option of the City, the City may proceed against the Lessee for all rentals to accrue under this Lease, or extension thereof. Either party may seek any legal or equitable remedy.



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**19. Waiver.**

The failure of City to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that City may have regarding that specific instance only, and shall not be deemed a waiver of (1) City's right to insist on strict performance of the same or any other of the terms and conditions of this Agreement at any time subsequent thereto or (2) City's rights or remedies for any other subsequent breach or default in any terms or conditions.

**20. Mortgages.**

With the exception of the hiring of contractors who may have the right to record a notice of right to claim lien or a construction lien, Lessee shall have no right to place mortgages or have liens placed on the premises in connection with any renovations or improvement, without the written approval of City. Lessee shall promptly pay any such contractors. City shall have no right to place mortgages or have liens placed on the premises without the written approval of Lessee.

**21. Repairs and Destruction of Improvements.**

- a) Maintenance of Improvements. Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to City, keep and maintain the demised premises and all appurtenances thereto, including sidewalks, and parking lots adjacent thereto, in good, sanitary, and neat order, condition and repair, and shall, subject to the conditions described in subparagraph (b) below, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever. City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatever, to the demised premises or any building, or improvements thereon except to the extent that insurance proceeds are available in accordance with subparagraph (b) below. Lessee shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the demised premises, the improvements thereon or any activity or condition on or in such premises.
- b) Damage and Destruction of Improvements. Except as stated herein, the damage, destruction or partial destruction of any part of the premises shall not release Lessee or City from any obligation hereunder. If insurance is maintained in the name of City pursuant to paragraph 15(a), it is agreed that any proceeds covering damage or destruction of the premises shall be made available to Lessee for such repair or restoration. If the premises are partially damaged but remain usable for their intended purpose with little or no interruption to Lessee for repairs, Lessee shall use all available insurance proceeds to, so far as such proceeds allow, promptly repair and restore the same. If the premises are substantially damaged or destroyed and thereby rendered completely unusable for their intended purpose, or their repair or reconstruction would



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substantially interrupt the operations of Lessee, the parties shall mutually agree on how insurance proceeds resulting from the loss shall be used for the repair, rebuilding, new construction, and/or relocation of a performing arts center or facilities supportive of a performing arts center.

**22. Right to Sublease.**

Lessee shall not have the right to sublease or assign the demised premises in whole or in part except as allowed by Paragraph 2 or upon the express written consent of the City. Nothing in this paragraph shall limit or restrict Lessee's ability to rent, license, let, or otherwise contract the premises in whole or in part for short-term use by performance groups and other users in a manner typical of a theater or performing arts center.

**23. Surrender.**

Upon the expiration or other termination of this Lease and any renewal thereof, Lessee shall quit and surrender to City the demised premises broom clean, in good order and condition, ordinary wear and damage by elements excepted.

**24. Parties Bound.**

The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind the successors, assigns, or trustees of the parties hereto.

**25. Net Lease.**

It is the intention of the parties hereto that this should be a net lease and City shall have no obligation whatsoever, except as herein specified, to make any expenditures for any reason whatsoever in connection with the leased premises, other than what is outlined herein.

**26. All Rights and Remedies To Be Cumulative.**

In the event of a breach of this Agreement, and unless expressly limited or supplemented herein, the parties shall have all remedies normally available to them whether by terms of contract, statute, or common law. In addition to any remedies for default given to City pursuant to paragraph 18 above, or by law, City and Lessee, in the event of a breach or a threatened breach by Lessee or City of any of the terms or conditions hereof, shall have the right of injunction to restrain the other party and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided herein.

The rights and remedies given to the parties in this Lease are distinct, separate, and cumulative, and no one of them, whether or not exercised by a particular party, shall be deemed to be in exclusion of any of the others herein, or by law or equity provided. Either party may



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seek any legal or equitable relief to cure, correct or remedy any default, to recover any damages for any default or to obtain any other remedy consistent with the purpose of this Lease Agreement.

**27. Renewal of Lease.**

If Lessee is not in material default under the terms and covenants of this Agreement, then Lessee may renew this Agreement at the expiration of the term described in paragraph 2 for three (3) additional five (5) year terms on the same terms and conditions, subject to the renewal procedures described herein. Lessee shall provide City with written notice of its intent to renew at least ninety (90) days before the applicable term of the Agreement expires. Rent for all renewal terms shall be \$1.00, annually, with the same payment schedule as described for the original term.

**28. Miscellaneous.**

Notwithstanding anything to the contrary herein contained, the successful party in any litigation resulting from the dispute between the parties in connection with this Lease shall be entitled to reasonable attorney's fees.

**29. Inspection of Premises.**

City shall have free access to the demised premises at all reasonable times for the purpose of examining or inspecting the conditions thereof or in order to exercise any right or power granted by law or reserved to City under the terms and provisions of this Lease Agreement.

**30. Time of Essence.**

Time is of the essence in all provisions of this Lease.

**31. Governing Law and Venue.**

It is agreed by and between the parties hereto that this Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

**32. Relationship of Parties.**

It is understood and agreed that the relationship of the parties hereto is strictly that of landlord and tenant and that this Lease shall not be construed as a joint venture or partnership. Lessee is not and shall not be deemed to be agent or representative of City.



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**33. Amendments in Writing**

Any addenda or amendments to this Lease, including but not limited to any extensions of the initial term of this Lease shall be valid only if in writing and signed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF BILLINGS, MONTANA**

**ART HOUSE MANAGEMENT LLC,  
LESSEE**

By William A Cole  
**WILLIAM A. COLE, MAYOR**

By MAR  
**MATT BLAKESLEE  
MANAGER**

**APPROVED AS TO FORM:**

By Brent Brooks  
**BRENT BROOKS, CITY ATTORNEY**



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## **ATTACHMENT A**

# **HBPOA CONDO BYLAWS AND FIRST AMENDMENT TO DECLARATION OF UNIT OWNERSHIP**



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## **ATTACHMENT B**

# **CINE BILLINGS (DBA ART HOUSE) PROPOSAL DOCUMENT**

# CERTIFICATE OF LIABILITY INSURANCE

Date: September 5, 2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> PayneWest Insurance, Inc. - Select  PO Box 4388  Missoula, MT 59808-4388	<b>CONTACT NAME:</b> PHONE (A/C, No. Ext): _____ FAX (A/C, No.): _____ E-MAIL _____ ADDRESS: _____ <b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b> INSURER A: Admiral Insurance Company INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____
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**COVERAGES**      **CERTIFICATE NUMBER:** \_\_\_\_\_      **REVISION NUMBER:** \_\_\_\_\_  
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL NSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY  <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE  GEN AGG LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOCATION			CA-000031850-01	8/29/2018	8/29/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (a) \$100,000 (b) _____ MED EXP (any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS/COMP/AGG \$2,000,000
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE  GEN AGG LIMIT APPLIES PER:						EACH OCCURRENCE _____ DAMAGE TO RENTED PREMISES _____ MED PAY _____ GENERAL AGGREGATE _____ PRODUCTS/COMP OPS _____
A	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOCATION <input checked="" type="checkbox"/> EXCESS LIAB _____ CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			GX-000001596-01	8/29/18	8/29/19	EACH OCCURRENCE 1,000,000 GEN AGGREGATE 2,000,000  PROD/COMP OPS 2,000,000 PERSONAL & ADV INJURY \$1,000,000 <input type="checkbox"/> STATUTORY LIMITS 1,000,000 <input type="checkbox"/> OTHER _____ E.L. EACH ACCIDENT _____ E.L. DISEASE-EA EMPLOYEE _____ E.L. DISEASE-POLICY LIMIT _____
	<b>WORKER'S COMPENSATION AND EMPLOYERS LIABILITY</b>  ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> YES (Mandatory in MT) <input type="checkbox"/> NO If yes, describe under DESCRIPTION OF OPERATIONS below.	N/A					E.L. EACH ACCIDENT _____ E.L. DISEASE-EA EMPLOYEE _____ E.L. DISEASE-POLICY LIMIT _____
A	Excess-Liquor Liability			GX-000001596-01	8/29/18	8/29/19	EACH COMMON CAUSE AGGREGATE LIMIT \$1,000,000 \$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
 The certificate holder is listed as an additional insured

<b>CERTIFICATE HOLDER</b>  City of Billings 390 N 23rd St Billings MT 59101	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: COCHRANE & COMPANY, A DIVISION OF COCHRANE AGENCY INC.  
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**MOLD DISCLOSURE  
STATEMENT**

In connection with the lease of **THE BABCOCK THEATER, 2810 ½ 2<sup>nd</sup> Ave. North, Billings, Montana** (the "Building"), which space constitutes inhabitable real property under the Montana Mold Disclosure Act (the "Act"), the **City of Billings, Montana, 210 N. 27<sup>th</sup> Street, Billings, Montana 59101**, hereinafter referred to as "Landlord," hereby provides the following disclosure:

1. **Statutory Mold Disclosure.** There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease.

2. **Knowledge of Mold.** By checking the box next to the applicable statement, the Landlord makes the following disclosure:

- The Landlord has no knowledge of the presence of mold in the Building.
- The Landlord has knowledge that mold is present in the Building and hereby makes the disclosure of such mold to the Tenant.

Based on the report from ASAP Property Inspections, LLC, dated July 18, 2017, the presence of mold in the Premises has not been reported.

3. **Testing of Building.** By checking the box next to the applicable statement, the Landlord makes the following disclosure:

- The Landlord has no knowledge that the Building has been tested for mold.
- The Building has been tested for mold. The Landlord has provided the Tenant with (i) a copy of all results of the testing that are available to Landlord, and (ii) a copy of documents or evidence of any subsequent mitigation or treatment. The Tenant hereby acknowledges receipt of said copies.

It is expressly provided that the furnishing of any test results and evidence of mitigation or treatment is not and shall not be construed as a promise, warranty, or representation of any sort by the Landlord, or by Landlord's officers, employees, agents or property managers.

If the Tenant contracts for testing of the Building for mold, then Tenant agrees to provide a copy of the results of the test, if available, to Landlord.

4. **Acknowledgment of Disclosures.** The Tenant, by signing a copy of this statement, expressly acknowledges receipt of this Disclosure Statement and acknowledges the specific disclosures set forth herein. Neither the Landlord nor its officers, employees, agents or property managers shall be liable in any action based on the presence of or propensity for mold in the Building that is subject to any rental or lease agreement.

DATED this 13<sup>th</sup> day of November, 2018.

CITY OF BILLINGS

By: William A. Cole  
Its: mayor  
"Landlord"

ART HOUSE MANAGEMENT, LLC

By: [Signature]  
Its: Executive Director  
"Tenant"