

DCL

3850322

05/30/2018 11:37 AM Pages: 1 of 11 Fees: 87.00

Jeff Martin Clerk & Recorder, Yellowstone MT



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City Clerk

City of Billings

PO Box 1178

Billings, MT 59103

**FIRST AMENDMENT TO DECLARATION OF UNIT OWNERSHIP
FOR HISTORIC BABCOCK BUILDING**

THE BABCOCK, LLC and CJM LLC, both Montana limited liability companies, being the owners of all units and common areas of the Historic Babcock Building, hereby make and submit for filing the following First Amendment to Declaration of Unit Ownership for Historic Babcock Building ("First Amendment") in accordance with the Montana Unit Ownership Act, Montana Code Annotated, Section 70-23-101 et seq.

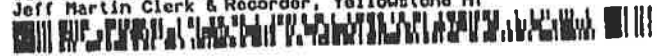
The Declaration of Unit Ownership for Historic Babcock Building, dated May 26, 2010 and recorded in the office of the Clerk and Recorder of Yellowstone County, Montana on June 25, 2010 as Document No. 3553865 ("Declaration"), is hereby amended pursuant to Section 12 (Amendment) of the Declaration as follows:

1. Section 2 (Grant of Additional Easements) is hereby amended to include a revised subsection (b) and new subsection (c), which shall read as follows:

b) It is the intent of The Babcock, LLC and City that the lobby area adjacent to the Theater, described as the Arcade in Unit 1B, shall always be available for use by the owner, operator and patrons of the theater for theater-related activities, as described below.

The undersigned hereby grants unto the City and to its successors and assigns that own, operate or occupy Unit 1A, and to their servants, agents, employees, guests, assigns and invitees, a nonexclusive, irrevocable and permanent easement, at no cost, for unhindered use as described herein of the Arcade in Unit 1B and the restrooms therein, as described on the attached Exhibit A, page 2 (Arcade). This easement shall be for the benefit of Unit 1A to provide access, additional lobby space, and Arcade restrooms for use by persons participating in or attending theater-related events. The Babcock, LLC and the Association shall ensure unhindered use of the easement for the purposes described herein such that there is no conflict or interference with the easement granted herein. The City and its successors and assigns shall not make any physical changes to the Arcade including attaching anything to the walls except by use of a wall hanging system approved by the owner of Unit 1B, however the City, and its successors, lessees or assigns shall be allowed to temporarily place kiosks, tables, chairs, signage and related items within the Arcade to facilitate concessions or sale of merchandise during theater related events. City shall not make any other physical changes to the Arcade or use the Arcade for events or activities unrelated to the Theater unless the owner of Unit 1B grants written permission to do so, which may be granted or withheld in the sole discretion of the Unit 1B owner.

This easement shall become effective upon conveyance of Unit 1A to City or its assignee. The Babcock, LLC and the Association shall execute any further documents, now or in the future, necessary to carry into effect the grant of and intent of this easement. Upon completion of construction of the Arcade, but prior to conveyance of Unit 1A to City, The Babcock, LLC and the Association shall make the Arcade available for Theater-related events, consistent with the terms of this easement.



The owner of Unit 1A shall pay a reasonable fee for cleaning, maintenance and restroom supplies attributable to its use of the Arcade and the restrooms in Unit 1B. If responsibility for paying such fee is assigned to an operator, the owner shall guarantee prompt payment in the event of a default. This fee shall be agreed to annually by the Owners of Units 1A and 1B by an agreed upon process and formula. The owner of Unit 1A shall promptly repair any damage to the Arcade area attributable to its use. If the owner of Unit 1A fails to make such repairs it will reimburse the owner of Unit 1B for any damage to the Arcade area done by the Unit 1A owner, operator, or any agent, employee, or invitee of the same. This easement shall run with the land for the benefit of Unit 1A and shall be binding upon the owner of Unit 1B and its successors and assigns.

c) It is the intent of the parties to this Declaration and City that the Unit 1B stairway area marked "Use Easement" shown on Exhibit A, Page 1 (Basement) and Page 2 (First Floor), which is located adjacent to the Unit 1A Theater and green room, shall always be available for non-exclusive use by the owner, operators and patrons of the theater in order to permit access between the green room and the stage area of the theater for theater-related activities. The undersigned hereby grant to the City and to its successors and assigns that own, operate, or occupy Unit 1A, and to their servants, agents, employees, guests, assigns and invitees, a non-exclusive, irrevocable and permanent easement to use the subject easement area for the previously-described purpose. The Babcock, LLC and the Association shall ensure use of the easement such that there is no unreasonable conflict or interference with the easement granted herein. This easement shall become effective upon conveyance of Unit 1A to City and shall run with the land for the benefit of Unit 1A and be binding upon the owner of Unit 1B and its successors and assigns. The undersigned and the Association shall execute any further documents, now or in the future, necessary to carry into effect the grant of and intent of this easement. The owner of Unit 1A shall be responsible for the cleaning, maintenance, or repair of the easement area.

2. The final paragraph on page 2 and the first paragraph of Section 4 (Description of Project) of the Declaration, which both reference "Exhibit A, pages 1 through 5," are hereby amended to instead read "Exhibit A, pages 1 through 6."

3. The following paragraph is added at the end of Section 5 (Description of Unit):

Notwithstanding any provision to the contrary in this Declaration, the boundary line between the south end of the Unit 1B basement utility room and north end of the Unit 1A green room shall be as generally shown on Exhibit A, Page 1 (Basement). There is a double-thick wall separating the units in this area, and existing electrical panels, wiring and associated equipment located in or near the wall service only Unit 1B. Therefore, the parties and City acknowledge and agree that the boundary line between the units in this area shall be the middle of the double-thick shared wall or any line south of that point that would allow the electrical panels, wiring, and other associated equipment to be included within the boundary of Unit 1B.

4. The percentages of undivided interest for each unit described in Section 7, which shall otherwise remain unchanged, are deleted and in their place the following are substituted:

Unit 1A	41%
Unit 1B	57%
Unit 1C	2%

5. Exhibit A (floor plans – Page 1 through Page 5, dated 4/30/2010) is hereby deleted and in its place the attached Exhibit A (floor plans and schedule -- Page 1 through Page 6, dated 9/5/2017) is hereby substituted. In addition to other changes, the new Exhibit A, Page 1 (Basement) has been revised to modify the boundary line between Unit 1A and Unit 1B to reflect the transfer of the so-called "green room" from Unit 1B to Unit 1A and the respective reallocation of floor area between those units. Page 6 is a schedule of condominium equipment that also clarifies ownership, maintenance responsibilities, and the method of access to the same.

DATED this 24 day of May, 2018.

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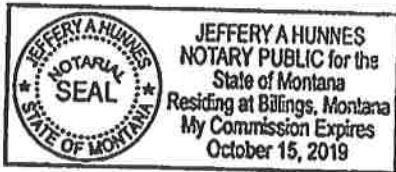


BABCOCK, LLC
a Montana limited liability company

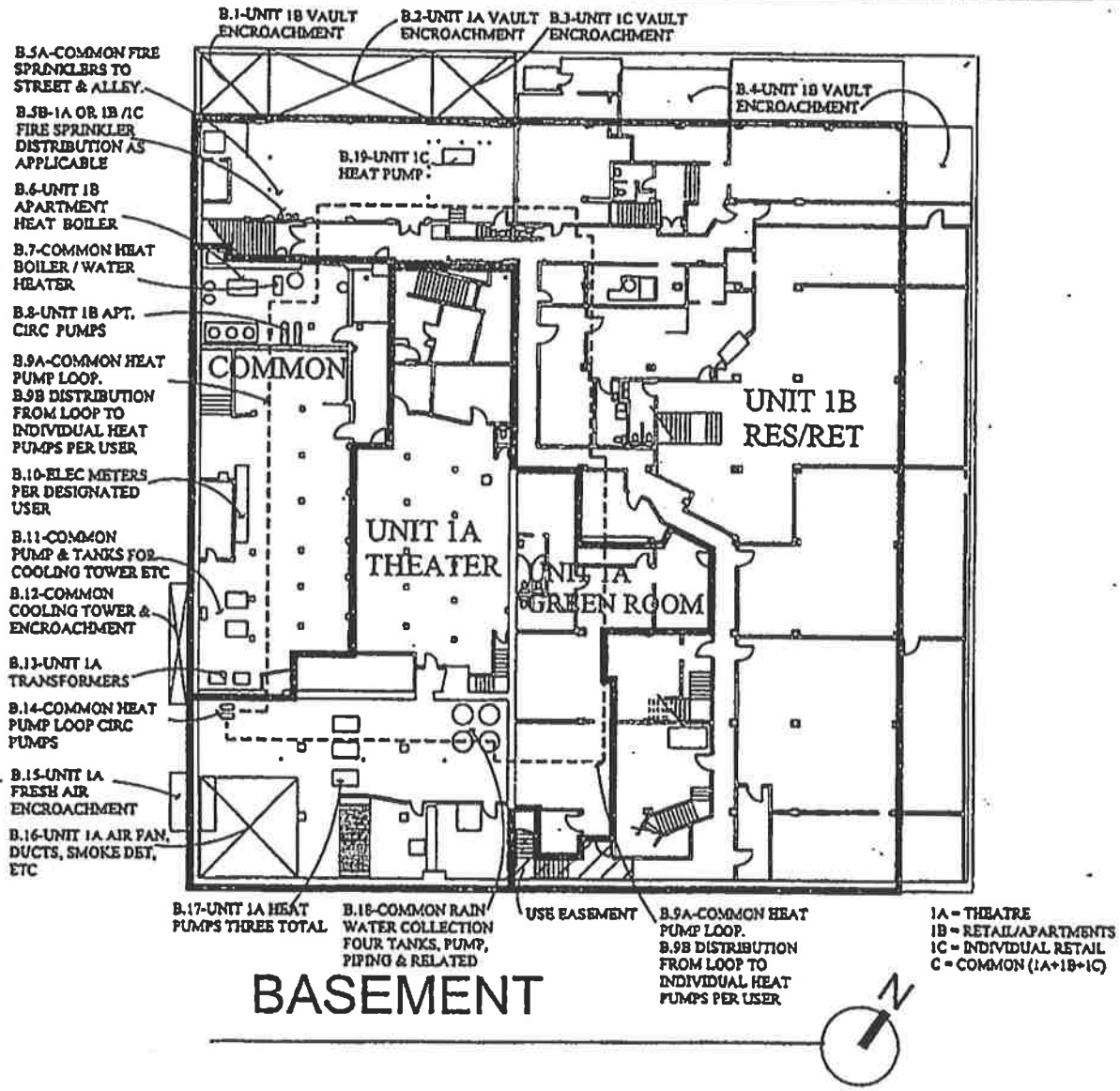
By: Don Olsen
Its: Don Olsen
President

STATE OF MONTANA)
 ss.
County of Yellowstone)

This record was acknowledged before me on the 24 day of May, 2018, by Don Olsen, President of Babcock, LLC.



Jeffery A. Hunnes



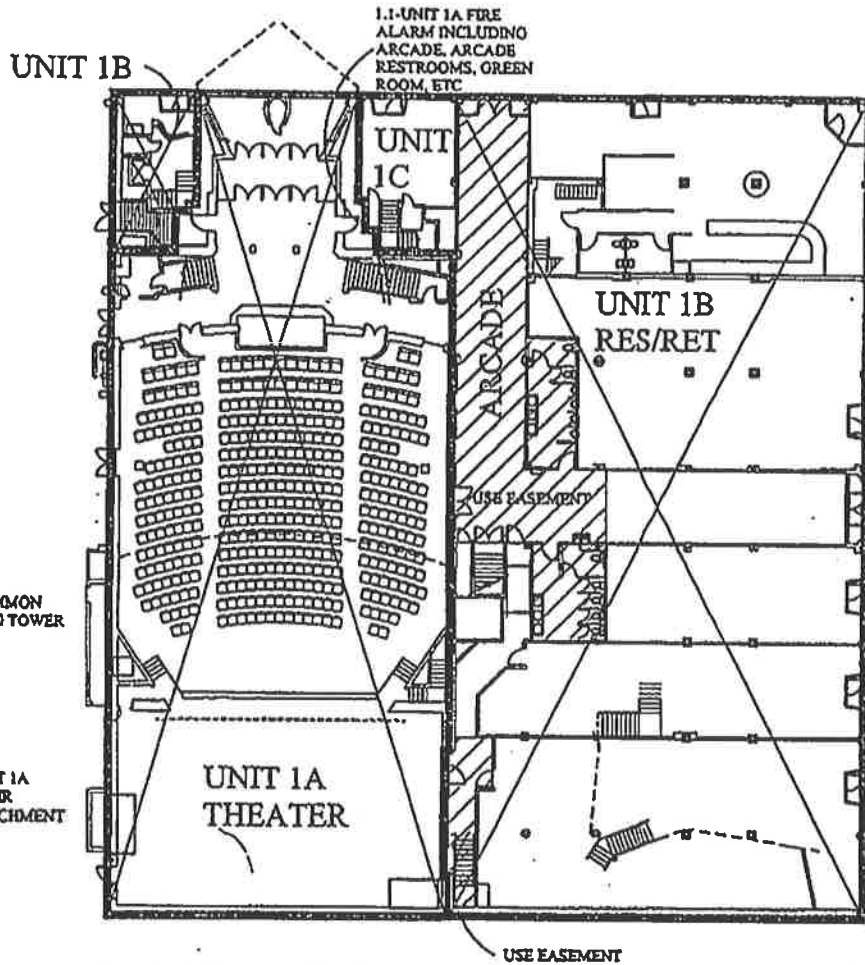
FLOOR AREA	20,960 SF
UNIT 1A-THEATER	6,535 SF
UNIT 1B	11,575 SF
UNIT 1C	0 SF
COMMON	2,850 SF

DCL **3850322**
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O2A
O2 ARCHITECTS
 208 N. BROADWAY #350
 BILLINGS, MONTANA 59101
 FAX 406-256-7123
 PHONE 406-259-7123

BASEMENT FLOOR PLAN
 BABCOCK THEATRE BUILDING 2ND & 28TH St BILLINGS, MONTANA

AMENDED_5-31-18
 EXHIBIT A
 PAGE 1 of 6



1ST FLOOR

1A - THEATRE
 1B - RETAIL/APARTMENTS
 1C - INDIVIDUAL RETAIL
 C - COMMON (1A+1B+1C)

FLOOR AREA	20,960 SF
UNIT 1A-THEATER	8,495 SF
UNIT 1B	11,965 SF
UNIT 1C	500 SF
COMMON	0 SF

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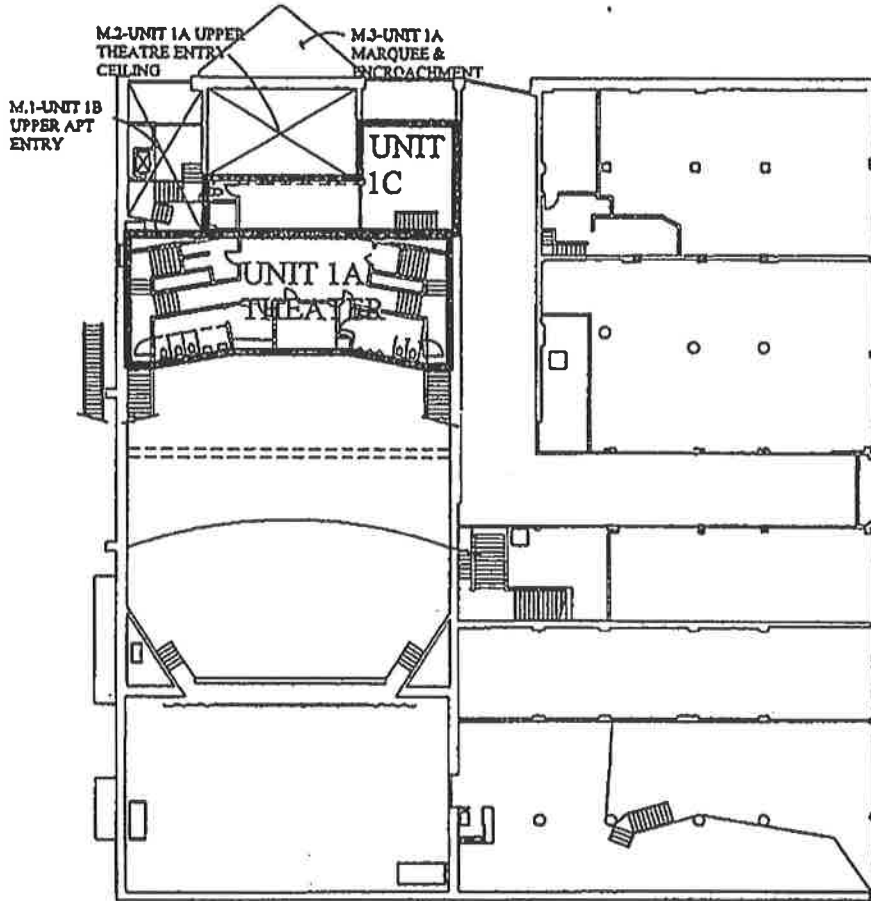
O²A
 O2 ARCHITECTS
 208 N. BROADWAY #350
 BILLINGS, MONTANA 59101
 FAX 406-256-7123
 PHONE 406-259-7123

1ST FLOOR PLAN

BABCOCK THEATRE BUILDING 2ND & 28TH ST BILLINGS, MONTANA

AMENDED_5-31-18

EXHIBIT A
 PAGE 2 of 6



MEZZANINE



1A - THEATRE
 1B - RETAIL/APARTMENTS
 1C - INDIVIDUAL RETAIL
 C - COMMON (1A+1B+1C)

FLOOR AREA	2,015 SF
UNIT 1A-THEATER	1,355 SF
UNIT 1B	0 SF
UNIT 1C	660 SF
COMMON	0 SF

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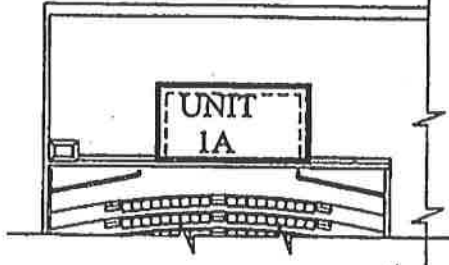
O²A
O2 ARCHITECTS
 208 N. BROADWAY #350
 BILLINGS, MONTANA 69101
 FAX 406-256-7123
 PHONE 406-259-7123

MEZZANINE FLOOR PLAN

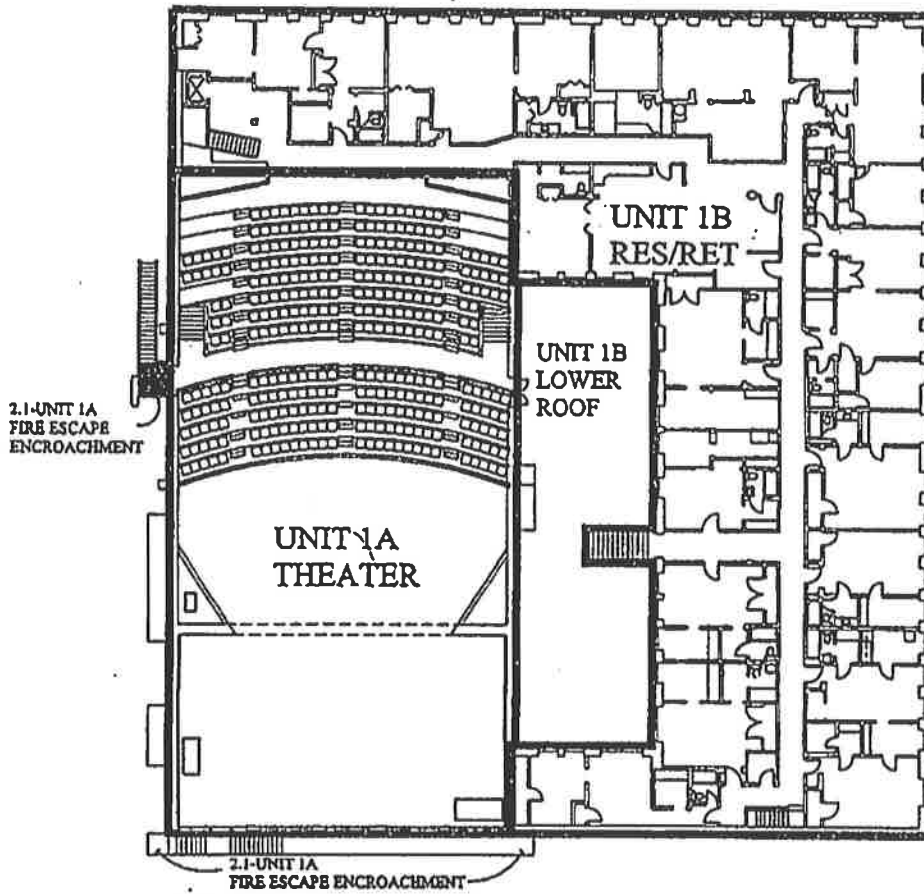
BABCOCK THEATRE BUILDING 2ND & 28TH ST BILLINGS, MONTANA

AMENDED_5-31-18

EXHIBIT A
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PARTIAL 2ND FLOOR (PROJECTION BOOTH)



2ND FLOOR

1A - THEATRE
1B - RETAIL/APARTMENTS
1C - INDIVIDUAL RETAIL
C - COMMON (1A+1B+1C)



FLOOR AREA	19,675 SF
UNIT 1A-THEATER	8,455 SF
UNIT 1B	11,220 SF
UNIT 1C	0 SF
COMMON	0 SF



OA
O2 ARCHITECTS
208 N. BROADWAY #350
BILLINGS, MONTANA 59101
FAX 406-256-7123
PHONE 406-259-7123

2ND FLOOR PLAN

BABCOCK THEATRE BUILDING 2ND & 28TH ST BILLINGS, MONTANA

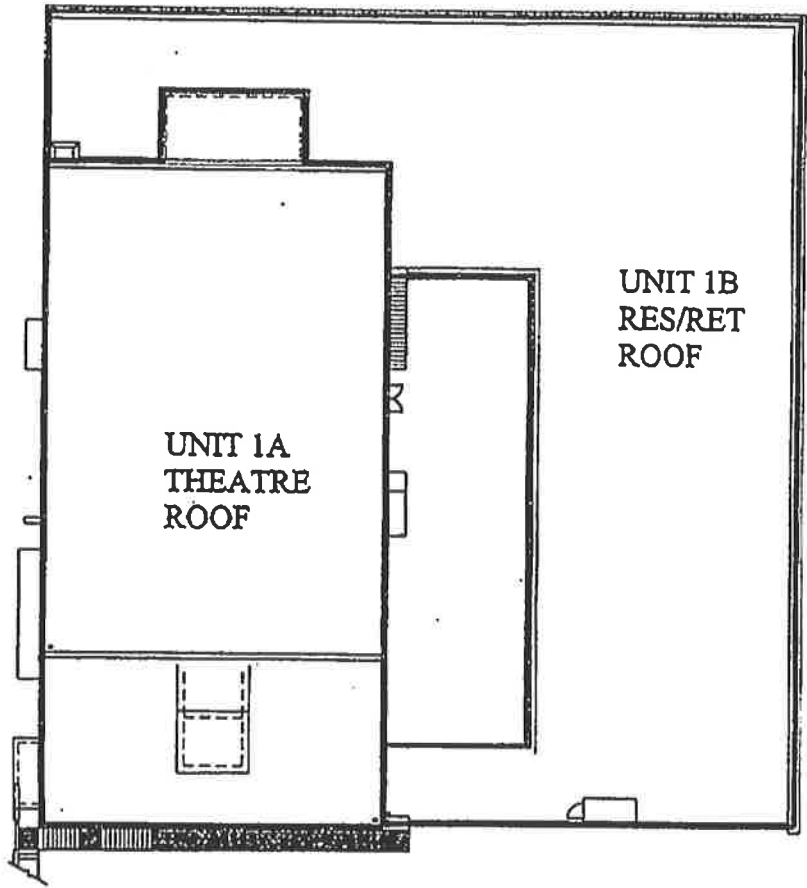
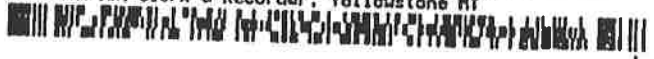
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EXHIBIT A
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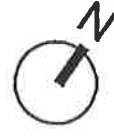


UNIT 1B
RES/RET
ROOF

UNIT 1A
THEATRE
ROOF

1A - THEATRE
1B - RETAIL/APARTMENTS
1C - INDIVIDUAL RETAIL
C - COMMON (1A+1B+1C)

ROOF



O2 ARCHITECTS
208 N. BROADWAY #350
BILLINGS, MONTANA 59101
FAX 406-256-7123
PHONE 406-259-7123

ROOF PLAN

BABCOCK THEATRE BUILDING 2ND & 28TH ST BILLINGS, MONTANA

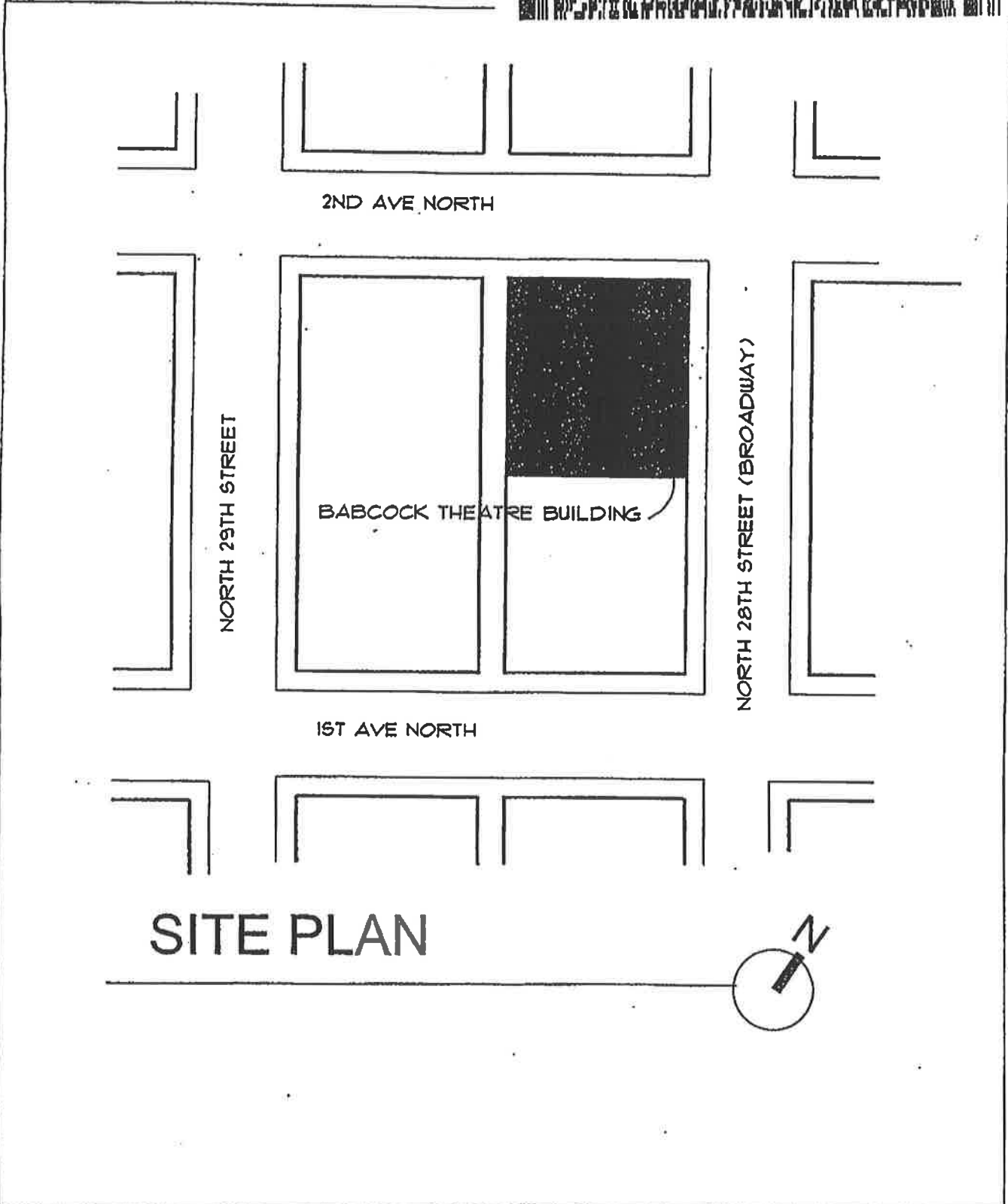
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SITE PLAN



O²A
O2 ARCHITECTS
 208 N. BROADWAY #350
 BILLINGS, MONTANA 59101
 FAX 406-256-7123
 PHONE 406-259-7123

SITE..PLAN

BABCOCK THEATRE BUILDING 2ND & 28TH ST BILLINGS, MONTANA

AMENDED_5-31-18

EXHIBIT B
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