

AMENDMENT
TO THE
OPERATING AGREEMENT OF
BOULDER DANCE, LLC

The following Amendment to the Operating Agreement of Boulder Dance, LLC is adopted this _____ day of _____ 2005 by agreement of all Members. The purpose of the Amendment is to conform the Agreement more closely to the provisions of Section 704 (b) of the Internal Revenue Code and is intended to be retroactive to the beginning of the original Operating Agreement. The Amendment is presented in the form of additions, indicated in *bold italics*, to the entire agreement.

-----Beginning of Original Agreement-----

OPERATING AGREEMENT
OF
BOULDER DANCE, LLC
A Colorado Limited Liability Company

This agreement is made this 19th day of August, 2004, by Charles M. Palmer (“Palmer”) and the Village Arts Coalition, a Colorado non-profit corporation, tax exempt under section 501(c)(3) of the Internal Revenue Code (“VAC”) the members of Boulder Dance, LLC, a Colorado Limited Liability Company (the “Company”).

ARTICLE 1. FORMATION OF COMPANY

The Company is organized pursuant to the provisions of the Colorado Limited Liability Company Act (the "Act") and pursuant to Articles of Organization filed with the Colorado Secretary of State on August 18, 2004. In the event of any inconsistency between the Articles of Organization and this Agreement, the terms of the Articles of Organization shall control.

ARTICLE 2. PURPOSES AND POWERS

The Company is organized to purchase, own, operate, sell, trade or otherwise dispose of real property and to do any and all other things necessary, desirable, or incidental to the foregoing purpose.

ARTICLE 3. MEMBERS

3.1 **Members.** The Members of the Company, their addresses, and Membership Interests are as follows:

Charles M. Palmer
2270 Bluebell Ave.
Boulder CO 80302-8030
Initial Membership Interest: 99%

Village Arts Coalition
1550 Moss Rock Place
Boulder CO 80304
Membership Interest: 1%

3.2 **Representation of Entity Member.** All Members that are not natural persons shall appoint a natural person to be the sole representative of that Member in dealings with the Company and such appointed representative is required to have full authority to make decision and vote for such organization.

3.3 **Voting power of Members.** The voting power of each member shall be determined by the amount of his Membership Interest in the Company as compared to the total Membership Interests of all Members. All references in this Agreement to voting requirements on any specific issue shall refer to voting power as determined in this manner.

3.4 **Foreign Members.** Each Member who is a nonresident of Colorado shall execute and deliver to the other Members a Form DR 0107 - Colorado Limited Liability Company Non-Resident Member Income Tax Agreement - no later than 60 days after becoming a Member.

3.5 **Meeting of Members.**

3.5.1 Annual Meeting. An annual meeting of Members shall be held at such date, time, and place as may be agreed upon by the Members during each fiscal year.

3.5.2 Special Meetings. Special Meetings of Members shall be held upon call by any Member.

3.5.3 Notice of Meetings. Notice of meetings of the members shall be given to each member as far in advance of the meeting as circumstances reasonably permit, but this provision shall not preclude or be construed to preclude the calling of a member meeting with little or no advance notice where circumstances make it appropriate, and it is expressly understood and agreed that notice of meetings of the members need not be in writing, but every effort shall be made to assure that actual notice is given to each member.

3.5.4 Quorum. Members holding a majority of the Membership Interests represented in person or by proxy, shall constitute a quorum at all meetings.

3.5.5 Conduct of Meeting. At each meeting a Chairperson for that meeting shall be elected by the Members. The Chairperson shall preside over and conduct the meeting and shall appoint someone in attendance to make accurate minutes of the meeting. After each meeting, the minutes of the meeting shall be sent to each Member.

3.5.6 Proxies. Each Member entitled to vote at a meeting may authorize in writing another person to act for him/her by proxy, but no such proxy shall be voted or acted upon more than 3 months after the date of its execution, unless the proxy specifically provides for a longer period. A Member may revoke any proxy that is not irrevocable by attending the meeting and voting in person, by filing an instrument in writing revoking the proxy, or by filing another duly executed proxy bearing a later date with the other Members.

3.5.7 Voting. Only Members are entitled to vote on any matters concerning the Company. If a quorum is present, the affirmative vote of the Members holding a majority of the Membership Interests represented in person or by proxy at the meeting and entitled to vote on the subject shall be the act of the Members, unless the vote of a greater proportion is specifically required by the Act, the Articles of Organization, or this Agreement. When such specific proportion is required, that proportion of the Total Membership Interests is required, rather than that proportion of those attending the meeting only.

3.5.8 Voting by Telephone. Telephonic voting at any meeting by use of a speaker phone or equivalent shall be permitted.

3.6 Restrictions on Members. Except as may be provided elsewhere in this Agreement, no Member may:

3.6.1 Borrow or lend money on behalf of the Company;

3.6.2 Execute any mortgage, bond, or lease on behalf of the Company;

3.6.3 Assign, transfer, or pledge any debts due the Company or release any debts due;

3.6.4 Compromise any claim due to the Company or submit to arbitration any dispute or controversy involving the Company; or

3.6.5 Sell, assign, pledge, or otherwise dispose of his or her Membership Interest in the Company other than in accordance with Article 9 below.

3.7 Indemnification of Members. The Company will indemnify and hold harmless each Member from any loss, liability, or damage actually and reasonably incurred or suffered by any such Member by reason of any act performed or omitted to be

performed, or alleged to have been performed or omitted, by such Member in connection with the business of the Company; provided that, no Member whose action or omission to act caused the loss, liability, or damage incurred or suffered, may receive indemnification or avoid liability with respect to any claim, issue or matter as to which there is a final determination that such Member acted in bad faith, willful misconduct, or in excess of his or her authority. This right of indemnification includes any judgment, award, settlement, costs, expenses, and reasonable attorney's fees incurred in connection with the defense of any actual or threatened claim or action based on any such act or omission. Any such indemnification will only be paid from the assets of the Company, and will be made promptly after the fixing of the loss, liability, or damage incurred or suffered by final judgment of any court, arbitration, settlement, contract, or otherwise.

3.8 **Tax Matters Member.** The VAC, as represented by its appointed representative, is designated as the tax matters Member for the Company. He is required to prepare or have prepared required tax returns and tax reports to Members for the Company and to represent the Company in proceedings before taxing authorities. The Tax Matters Member may be changed by vote of the Members.

ARTICLE 4. CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

4.1 **Initial Capital Contributions.** The initial capital contributions of the Members are as follows:

Village Arts Coalition: \$1,000.00

Palmer: Approximately \$2,700,000.00, the amount to be adjusted by final purchase price, closing cost and credits from the settlement statement and expenses paid outside of closing.

4.2 **Additional Capital Contributions.** In order to obtain additional funds or for other business purposes, the Members may from time to time be required to make additional capital contributions, in proportion to their current Membership Interests, but only upon a majority vote. Such additional contributions must be made within 30 days of the authorizing vote. Any Member not making such contribution within the required time shall pay interest at 10% per annum on the unpaid amount to the Company from the date of the authorizing vote until the amount is paid. If the deficiency, including interest, is not paid by the end of the fiscal year, then the share of Company profits for that fiscal year that would have been credited to that Member will not be so credited and will be credited instead to the other Member. In such an instance, if the deficiency is cured within a later fiscal year, then profits will resume being credited in the normal manner, but no restitution for profits not credited in previous years will be made. Company losses will be allocated to all Members including those Members who have not responded to a request for additional capital.

4.3 **Capital Accounts.** An individual capital account shall be maintained for each Member, consisting of his initial capital contribution, increased by (a) additional

capital contributions made by him, and (b) his share of Company gains and profits as allocated under Article 5, and decreased by (i) distributions of profits or capital to him and (ii) his share of Company losses as allocated under Article 5. ***Upon liquidation of any Member's interest in the Company, any liquidating distribution must be made in accordance with the positive capital account balance of the Member or, if the Member has a deficit capital account balance upon liquidation, the Member is obligated to restore the amount of such deficit to the Company with 90 days of the liquidation.*** In the event of a permitted sale or exchange of a Membership Interest in the Company, the capital account of the transferor shall become the capital account of the transferee. Recognizing that the tax basis of such transferred interest may be different to the transferee than the amount of the capital account transferred, the Company shall, nevertheless, have no responsibility for determining or maintaining such tax basis of the transferee Member.

4.4 **Earnings on Capital.** No interest shall be paid on capital contributions to the Company or on capital account balances.

ARTICLE 5. ALLOCATIONS, DISTRIBUTIONS, AND LOANS

5.1 Allocations.

Profit & Loss Before Depreciation: Profits before Depreciation are allocated to VAC and Losses before Depreciation are allocated to Palmer. At Palmer's sole discretion, or at the discretion of any transferee of Palmer's economic interest and capital account, he may change this provision of this agreement to provide for allocation of Profits & Losses Before Depreciation to each Member based upon Membership Interest.

Depreciation: To each Member based upon Membership Interest.

Gains & Losses on Sale of Assets: Gains to each Member equal to the amount of cumulative depreciation previously allocated to such Member, then further gains or losses allocated based on Membership Interests at time of sale.

5.2 **Change of Membership Interest in Midyear.** If the relative Membership Interests of the Members change during the fiscal year because of the transfer of Membership Interests under Article 9, the allocations will be made according to Article 5.1 above but on the basis of the number of days in the year in which the differing Membership Interests were held. There will be no "closing of the books" of the Company in mid-year to determine profit or loss for separate parts of the year. However, any gain or loss from the sale of Company assets shall be allocated according to Article 5.1 above but based on Membership Interests at the time of the sale.

5.3 **Distribution of Assets.** Distributions of assets other than cash shall be made to the Members in proportion to their Membership Interests at the time of the distribution. Distributions of cash can be made in proportions voted upon by the

Members. The Members shall determine whether and when distributions should be made. No Member has the right to receive distributions in any form other than cash.

5.4 **Limitation Upon Distributions.** No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their capital contributions.

5.5 **Loans to Members.** Loans to individual members may be made with the permission of all members. Such loans shall bear interest at the appropriate Federal Funds Rate applicable at the time of the loan. Any repayment to the Company of such borrowed funds shall be first applied to interest and then to principal.

ARTICLE 6. MANAGEMENT OF THE COMPANY

Management. The business and affairs of the Company shall be managed by the Members.

ARTICLE 7. ACCOUNTING AND REPORTING FOR THE COMPANY

7.1 **Records and Accounting.** The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the Cash Method of accounting. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. The fiscal year of the Company for financial reporting and for federal income tax purposes shall be the calendar year.

7.2 **Access to Accounting Records.** All books, records, and minutes of meetings of the Company shall be maintained at the office of the Company, and each Member, and his authorized representative, shall have access to them at such office and the right to inspect and copy them at reasonable times.

7.3 **Reports.** The Company shall prepare financial statements at least annually and other interim reports as directed by the Members. The Company shall within 60 days after the end of each calendar year send to each Member who was a Member at any time during the year then ended such tax information as shall be necessary for inclusion in his federal income tax return and required state income and other tax information with regard to jurisdictions in which the company is formed or qualified or owns investments.

ARTICLE 8. REAL PROPERTY DISPOSITIONS AND ACQUISITIONS

8.1 Except as provided for in Article 10, the sale, encumbrance or other disposition of real property or any interest therein requires the approval of Members holding at least 2/3 of the Membership Interests.

8.2 The purchase or other acquisition of other real property, regardless of where located, requires the unanimous approval of all Members.

ARTICLE 9. SALE OF A MEMBER'S INTEREST

9.1 A Member may sell all or any portion of his interest to another Member at any time. The price of the interest to be sold will be as agreed upon by the Members but shall consider the Appraisal value, obtained by an Appraisal acceptable to both Members, of any real property in possession of the Company at the time of sale as well as the book value of all other assets and liabilities of the Company.

9.2 A Member may sell his Membership Interest to a Non-Member only with the unanimous approval of all Members existing prior to the sale and under conditions agreed to by the Members existing prior to the sale.

ARTICLE 10. DISSOLUTION OF THE COMPANY

10.1 **Dissolution.** The Company will be dissolved upon the happening of any of the following events:

- a. The unanimous written consent of all Members.
- b. The death, resignation, bankruptcy, or dissolution of a Member, or the occurrence of any other event that terminates the continued membership of a Member of the LLC.
- c. Any other event causing dissolution of a limited liability company under the Act.

10.2 **Continuation of the Company.** Notwithstanding the above provisions, if, within 90 days of the dissolution event, remaining Members holding a majority of the Membership Interests remaining after the dissolution event agree to continue the Company, then the Company will not dissolve. Under this circumstance, the following will occur:

- a. A resigned Member will immediately lose all voting rights under this agreement. The capital account of a resigned Member will be transferred to the surviving Members in proportion to their relative Membership Interests. However, if a resigned Member has debt obligations to the Company, the Company will retain the right to collect them but subject to offset by any capital account balance possessed by the resigned partner prior to the resignation. In like manner the Company will retain the right to reimbursement of a negative capital account balance possessed by a resigned Member prior to the resignation.

b. The economic interest and capital account of a deceased, bankrupt, or dissolved Member will be transferred to the estate, beneficiary, bankruptcy estate, or other recipient of the Members Interest. However, such recipient shall not be a Member unless admitted by a unanimous written consent of all remaining Members.

10.3 **Statement of Intent to Dissolve.** If a decision is not made to continue the Company under the provisions of Article 10.2, then as soon as possible after the occurrence of any event specified in Section 10.1, the remaining Members shall execute and file a statement of intent to dissolve as required by the Act. Upon the filing of a statement of intent to dissolve, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business.

10.4 **Liquidation.** If a decision is not made to continue the Company under the provisions of Article 10.2, the Company shall immediately wind up its affairs and liquidate. A reasonable time shall be allowed for the liquidation and the discharge of liabilities to creditors so as to enable the Company to minimize any losses attendant upon liquidation. Any gain or loss on disposition of any Company assets in liquidation shall be credited or charged to the capital accounts of Members in accordance with Article 5.

10.5 **Final Distribution.** After complete liquidation, all cash and other assets shall be distributed to the Members according to their *positive* capital account *balances*. The Members will retain sufficient cash to complete final tasks, such as the filing of tax returns for the final year or the payment of contingent liabilities, before completing the final distribution.

ARTICLE 11. NOTICES

11.1 **Method of Notices.** Unless provided otherwise in the Agreement, all notices required or permitted by this agreement shall be in writing and shall be hand delivered or sent by regular mail, and shall be effective when received or, if mailed, on the fifth day after mailing, whichever is earlier.

11.2 **Computation of Time.** In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

ARTICLE 12. GENERAL PROVISIONS

12.1 **Entire Agreement.** This Agreement embodies the entire understanding and agreement among the parties concerning the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.

12.2 **Amendment.** This Agreement can be amended only with the unanimous written consent of all Members.

12.3 **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

12.4 **Pronouns.** References to a Member including by use of a pronoun, shall be deemed to include masculine, feminine, singular, plural, individuals, corporations, partnerships, limited liability companies, trusts, or non-profit organizations where applicable.

12.5 **Arbitration.** If any controversy or claim arising out of this agreement cannot be settled by the Members, the controversy or claim will be settled by an individual or entity selected by the written agreement of the Members or, if they cannot agree, by arbitration through the Judicial Arbiter Group and pursuant to the Colorado Uniform Arbitration Act, as it may be amended, and judgment on such arbitration award may be entered in any court having jurisdiction. Costs of such arbitration shall be paid by the losing party.

IN WITNESS WHEREOF the parties have executed this Agreement effective as of the date first written above.

(s) Charles M. Palmer
Charles M. Palmer

(s) Stanley G. Wilkes
Stanley G. Wilkes, Board Chairperson of the Village Arts Coalition

-----End of Original Agreement-----

IN WITNESS WHEREOF the parties have executed this Amendment effective as of the date first written above.

Charles M. Palmer

Ingvar Sodal, Representative of the Village Arts Coalition to Boulder Dance, LLC