

DEVELOPMENT AGREEMENT  
GOVERNING DEVELOPER OBLIGATIONS IN  
THE AVALON BUILDING  
PALMER MUTIPLE PRINCIPAL USES SU/SSDP  
(Boulder County Land Use Docket #SU-08-008)

THIS AGREEMENT (“this Agreement”) is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Board of County Commissioners of Boulder County, Colorado (“the County), and Boulder Dance LLC, Charles Palmer – Principal (“the Developer”).

WHEREAS, the Developer has submitted to the County a special use application to allow the Property to have more than one principal use, and which the County has approved in Land Use Docket # SU-08-008 (“the Docket”), as set forth in County Resolution No. 2009-89, adopted July 16, 2009, which is attached to and incorporated into this Agreement as Exhibit A; and

WHEREAS, the property (“the Property”) consists of an existing 32,814 SF building located at 6185 Arapahoe Road on 2.4 acres on land, with multiple principal uses described in Exhibit A; and

WHEREAS, the County has fully considered the Property and the use of the Property in the Docket, and has made its approval expressly contingent on the Developer’s agreement to the matters set forth below: and

WHEREAS, the County has determined that this Agreement is consistent with the Boulder Valley Comprehensive Plan, Boulder County Comprehensive Plan, the applicable County regulations, and the County’s approval of the Special Use for Multiple Principal Uses as set forth below; and

WHEREAS, the County and the Developer acknowledge and agree that the matters set forth herein are reasonable requirements for the County to impose as part of its approval of the Docket, and that such matters are necessary to protect and promote the public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED that in consideration of the mutual covenants herein contained and the County’s approval of the Special Use as set forth in Exhibit A, the Developer and the County agree as follows:

**1. Description of the Approved Development**

The development approved in Exhibit A (“the Development”) consists of the Property with the Multiple Principal Uses described herein, including the uses in the existing building and a future Outdoor Recreation Area described herein. Private events shall remain accessory and incidental to the Indoor and Outdoor Recreational Uses approved herein and shall be limited to fifteen events per calendar quarter. The Development does not include an expansion of the existing building. The Development shall be consistent with Exhibit A and with the site plan attached to an incorporated into this Agreement as Exhibit B. The Development includes required parking lot improvements described herein and includes Building Permit requirements described herein.

**2. Water and Sewage**

The Property’s water and sanitation services are provided by the City of Boulder.

### **3. Outdoor Recreation Area**

The proposed outdoor recreation area will not to exceed 5000 SF, be located to the west of the Building and consist of paving that allows rainwater infiltration. The outdoor recreation area will include down lighting that meets County standards for outdoor lighting and a sound system that will comply with County standards as described in Ordinance No. 92-28 as amended.

### **4. Multiple Principal Uses**

The Indoor Recreation, Professional Office, Warehouse and Distribution, and Light Industrial Uses each occupying more or less floor area of the existing building, as well as Outdoor Recreation Use described herein are part of this Development. New uses allowed in Light Industrial Zone may also be added within the existing structure and are included in this Development, provided that they are reviewed and approved by the Land Use Director prior to commencement to assure that they do not have substantially different impact than the uses approved herein, and are consistent with the Land Use Code and the BVCP. Professional Office Use excludes medical and dental offices.

### **5. Parking**

The Parking Layout Plan, attached to and incorporated into this agreement as Exhibit C, has been approved by the Boulder County Transportation Department. The Developer will fully implement the agreed upon striping plan shown in Exhibit C no later than November 31, 2009.

### **6. Building Permits**

The County shall not issue any building or grading permits for the Development until this Agreement has been executed and recorded. The Developer shall comply with all applicable requirements of Boulder County Building Code and shall apply for all required building permits (“the Required Permits”) no later than December 31, 2009. Obtaining the building permit, completing the work associated with all required building permits, and having final inspections shall occur within six months of the building permit application date. Should the Developer demonstrate to the Chief Building Official’s satisfaction, at the time of building permit submittal, that the project cannot be completed within the six month time frame the Chief Building Official may grant an extension of the six month deadline. The above referenced Required Permits will address all prior work done without a permit and a full code review for any changes of occupancy that have occurred within the building.

All future building activities, including but not limited to tenant finishes, shall obtain the necessary building permits as required by the Building Code. Prior to issuance of building permits, approval by the Fire District will be Required and all other applicable Building Code requirements met.

### **7. Other Conditions of Approval**

The Developer shall comply with all other terms, conditions and commitments of record in the file for the Docket and as set forth in Exhibit A. The Developer has made a detailed effort to explicitly include terms, conditions and commitments of records from the Docket in this Agreement and included exhibits.

### **8. Vested Rights**

The County agrees to grant a vested property right for the Developer to proceed pursuant to the terms of this Agreement, which right shall have a term of term of three years beginning on July 16th, 2009, subject to the provisions for modification and termination contained herein During the vesting period subsequent regulations enacted by the County shall be applicable to the Development if necessary to protect the health and safety of the inhabitants of Boulder County, or if general in nature and applicable to all

properties subject to County Land Use Regulation. The Developer may request an extension of the vested right approved herein, in accordance with the Boulder County Land Use Code and applicable state law. The vested property right granted herein shall be terminated if the County determines that the Developer is not in good faith compliance with the terms of this Agreement.

**9. Amendment/Waiver**

This Agreement may be canceled or amended with the mutual consent of the parties or to bring the Development into conformance with federal or state law. The County shall have the right to waive its rights to enforce this Agreement, without obtaining the consent of any other entity or person, provided that any waiver shall be made in writing to be effective. However, any cancellation, amendment, or waiver which represents a material modification of the County's approval of the Development, as set forth in Exhibit A hereto, shall require a public hearing and approval according to applicable County land use regulations.

**10. Enforcement**

The County may conduct a periodic review of the Development as necessary to assure compliance with this Agreement. This right includes the right to enter upon the Property included within the Development at any time, without prior notice, to inspect for compliance with the terms of this Agreement. The County or any purchaser of any land subject to the requirements of this Agreement shall have the authority to bring an action in the Boulder District Court to compel the enforcement of this Agreement and the restrictions and requirements herein provided for, and to seek other relief as may be authorized by law.

**11. Transfer of Property/Annexation**

This Agreement is intended to provide for the orderly development of the Property included in the Docket in accordance with the terms hereof. Those owners of the property or any portion of the property who obtain title subsequent to the date of this Agreement, or persons holding under Developer or subsequent owners, shall be entitled to construct and use the Development by complying with the terms hereof, and shall also be bound by all applicable terms and obligations of this Agreement. If the Development property becomes included within the boundaries of any city or town, the County's right to enforce this Agreement shall automatically pass to the governing body of the city or town.

**12. Notation and Recordation**

The Developer shall file this Agreement for recording with the County Clerk and Recorder, along with included Exhibits.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**BOULDER COUNTY**

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CHAIR, BOULDER COUNTY  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

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CLERK TO THE BOARD

**DEVELOPER**

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Boulder Dance LLC, Charles Palmer, Principal Member

**STATE OF COLORADO)**

)ss.

**COUNTY OF BOULDER)**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by \_\_\_\_\_.

My commission expires \_\_\_\_\_

NOTARY PUBLIC

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**ATTACHMENTS:**

Exhibit A: County Resolution

Exhibit B: Site Plan

Exhibit C: Parking Layout Plan