



Land Use

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856

Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

September 4, 2009

Chuck Palmer
Boulder Dance LLC
2270 Bluebird Ave
Boulder, CO 80302

Dear Mr. Palmer:

Boulder County staff members from the Land Use and County Attorney's offices have reviewed your draft development agreement. Corrections and changes to the agreement are included in the enclosed revision of your draft. The property at 6185 Arapahoe Road continues to be in violation of the Boulder County Land Use Code until the development agreement is recorded. In an order to resolve the zoning violation in a timely manner, the Land Use Department requests your response to this letter and the submission of a revised development agreement which incorporates the enclosed revisions so that we may record a development agreement no later than September 30th, 2009.

Please contact me at (303) 441-3930 if you have any questions or if I may be of assistance.

Sincerely,

Hannah L. Hippely
Planner II, Current Planning Division

1st Draft

DEVELOPMENT AGREEMENT

GOVERNING DEVELOPER OBLIGATIONS IN

THE AVALON BUILDING

PALMER MULTIPLE PRINCIPAL USES SU/SSDP

(Boulder County Land Use Docket #SU-08-008)

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 Member ("the Applicant").

WHEREAS, the Applicant has submitted to the County a special use application to allow recognize the Property to haveing 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 County has fully considered the Property and the use of the Property in the Docket, and has made its approval expressly contingent on the Applicant'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 as set forth in Exhibit A; and

WHEREAS, the County and the Applicant 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 Applicant and the County agree as follows:

1. Description of the Approved Development Property

The development approved in the Docket ("Development")Property consists of an existing 32,814 SF commercial building located at 6185 Arapahoe Rd with more than one principal use, on 2.4 areas of land. The Development includes the multiple principal uses described in Exhibit A, including the uses in the existing building. ~~There will be no expansion of the structure or significant modification of the exterior of the structure. There will be a future outdoor recreation space not to exceed 5,000 SF to the west of the Building, and The Professional Office use category by this Agreement (excluding des medical~~

and dental offices). 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.

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 include 5000 SF 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. Special Uses

~~The Multiple Principal Uses granted by Exhibit A and detail therein are included as part of this Agreement. The Professional Office category by this Agreement excludes medical and dental offices.~~

5. Accessory and Incidental Use

~~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.~~

46. Parking

~~The Parking Layout Plan Applicant has been approved by themet with all requirements of the Boulder County Transportation Department as indicated in Memorandum from Anita Riley, Transportation Planner attached as Exhibit CB. The Applicant will fully implement the agreed upon stripping plan in the fall of 2009 as shown in Exhibit C no later than November 31, 2009.~~

57. Building Permits

~~The County shall not issue any building or grading permits for the Development until this Agreement has been executed and recorded. Applicant shall comply with all applicable requirements of Boulder County Building Code and Boulder County Land Use Code and shall apply for all required building 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 Applicant satisfactorily demonstrate, 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 current intension is to proceed with tenant finish for the dance areas in a phased multiple building permit approach. The first permit will include a full code review for all prior changes to occupancy and building permit designed changes to~~

~~occupancy. The hope is that by mid fall the first building permit will be submitted. We will commit to submitting the first building permit no later than May 2010. 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 the building permit, approval by the Fire District will be Required and all other applicable Building Code requirements met. Prior to final approval of the permit and occupancy of the space, approval of the Fire District will be required.~~

68. Other Conditions of Approval Obligations

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

79. Vested Rights

The County agrees to grant a vested property right for the Applicant to proceed pursuant to the terms of this Agreement, ~~which right. The approval 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 Applicant 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 Applicant is not in good faith compliance with the terms of this Agreement. The Applicant prior to the Special Use Application had Multiple Principle Uses on the Property. Therefore, when County Resolution No. 2009-89 the granted right of Multiple Principle Uses, that right has, in fact, been exercised.~~

10. Transfer of Property

~~Owner of the Property or any portions of the Property who obtain title subsequent to the date of this Agreement, shall be entitled to the rights granted by this Agreement and shall also be bound by all applicable terms and obligations of this Agreement.~~

11. Subordination

8. 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.

9. 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.

10. 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.

~~This Property has no mortgagees or lienholders.~~

11.2. Notation and Recordation

The Applicant 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 ~~September~~August, 2009.

BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS

Ben Pearlman, Chair

ATTEST:

Clerk of the Board

APPLICANT:

Charles Palmer, Principal Member of Boulder Dance LLC

Exhibit A

RESOLUTION 2009-89

A RESOLUTION CONDITIONALLY APPROVING BOULDER COUNTY LAND USE DOCKET #SU-08-008 ("PALMER MULTIPLE PRINCIPAL USES SU/SSDP"): A SPECIAL USE REVIEW WITH ASSOCIATED SITE SPECIFIC DEVELOPMENT PLAN FOR MULTIPLE PRINCIPAL USES, INCLUDING INDOOR RECREATION, DAY AND NIGHT OUTDOOR RECREATION, PROFESSIONAL OFFICE, WAREHOUSE AND DISTRIBUTION CENTER, AND LIGHT INDUSTRIAL, ON PROPERTY LOCATED AT 6185 ARAPAHOE ROAD, NORTH OF AND ADJACENT TO ARAPAHOE ROAD/STATE HIGHWAY 7, AND WEST OF AND ADJACENT TO 62ND STREET, IN SECTION 27, T1N, R70W, UNINCORPORATED BOULDER COUNTY

WHEREAS, Chuck Palmer ("Applicant") has requested approval for a special use permit, with associated site specific development plan, pursuant to Article 4-600 of the Boulder County Land Use Code ("the Land Use Code"), to allow for certain multiple principal uses within (and for recreation purposes outside of) the existing building on the property which is located on as described in the caption to this Resolution, above, in the Light Industrial Zoning District in unincorporated Boulder County ("the Subject Property"); and

WHEREAS, the uses sought to be approved herein include an existing radio equipment manufacturer (considered a Light Industrial Use under Section 4-505.C. of the Land Use Code); an existing animal care equipment business (considered to be a Warehouse and Distribution Center Use under Section 4-515.B. of the Land Use Code); space for a Professional Office Use (which may include various tenants) under Section 4-509.A. of the Land Use Code; and an existing dance studio ("Avalon Ballroom") which currently occupies space within the existing building (considered to be an Indoor Recreation Use under Section 4-510.B. of the Land Use Code) and also seeks to utilize approximately 5,000 square feet of outdoor dancing space including installation of an outdoor lighting and sound system (classified as both a daytime Outdoor Recreation Use under Section 4-510.E. of the Land Use Code, and a nighttime Outdoor Recreation Use under Section 4-510.F. of the Land Use Code); and

WHEREAS, the above-described special use request was processed and reviewed as Boulder County Land Use Docket #SU-08-008 ("the Docket"), all as further described in the Boulder County Land Use Department Planning Staff's Memorandum and written recommendation to the Boulder County Board of County Commissioners ("the Board") dated July 7, 2009, with its attachments ("the Staff Recommendation"); and

WHEREAS, on May 20, 2009, the Boulder County Planning Commission ("the Planning Commission") held a duly-noticed public hearing on the Docket, and recommended conditional approval of the Docket to the Board; and

WHEREAS, on July 7, 2009, the Board held a duly-noticed public hearing on the Docket ("the Public Hearing"), at which time the Board considered the Staff Recommendation and the recommendation of the Planning Commission, and also considered the documents and testimony presented by the County Land Use Department staff, the Applicant and his representatives, and numerous users of the Avalon Ballroom and other members of the public all speaking in support of the Docket; and

WHEREAS, based on the record of the Public Hearing, the Board finds that the Docket meets the criteria for special use approval set forth in Article 4-600 of the Land Use Code, and can be approved, subject to the conditions stated below, and finds further that the Docket meets the criteria in the Land Use Code for a site-specific development plan, subject to the conditions stated below; and

WHEREAS, in reaching the foregoing conclusion to approve the Docket, the Board specifically finds that the proposed uses in the Docket do not constitute "new urban development" which must occur within the City of Boulder pursuant to the Boulder Valley Comprehensive Plan ("BVCP"), because the uses can be considered to be compatible with the BVCP's "Community Industrial" land use designation for the Subject Property: the BVCP's definition for this designation refers to "predominant uses" (and not necessarily all uses) being similar in nature to the definition's enumerated uses (i.e., smaller-scale auto-related uses, small printing operations, building contractors, building supply warehouses, small manufacturing operations, and similar uses); the definition is not clear that it would exclude the uses proposed by the Applicant and the uses may be considered Community Industrial; all of the proposed uses are taking place within an existing structure/development with no new floor area or structural development being proposed; and the proposed uses are even less intensive than uses that have previously existed on the Subject Property (such as the former Neodata company); and

WHEREAS, the Planning Commission also found that the Docket is compatible with the BVCP's Community Industrial land use designation, and hence does not constitute new urban development under the BVCP; and

WHEREAS, in issuing this approval, the Board also notes that the proposed uses in the Docket are in harmony with the character of the neighborhood and compatible with the surrounding area, which neighborhood/area is eclectic in nature and contains both an institution of higher education (Naropa University) and a variety of businesses, and, moreover, to the extent the proposed recreation uses might be considered different in nature than surrounding uses their impacts are mitigated by the fact that they will often occur

after business hours at off-peak traffic volume times; and

WHEREAS, the Staff Recommendation, as supported by the Public Hearing, demonstrates that the Docket meets the other criteria for special use review approval stated in Article 4-600 of the Land Use Code.

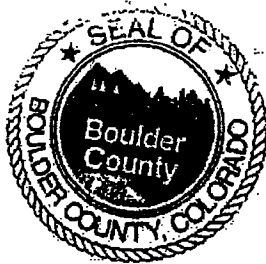
NOW, THEREFORE, BE IT RESOLVED that the Docket is hereby approved, on the basis set forth in this Resolution, above, and subject to the following conditions:

1. The Applicant shall provide a Development Agreement for review and approval by County Use staff, prior to the issuance of any permits by the County Land Use Department, commencement of the use, or recordation of any approval documents.
2. The Applicant shall comply with all applicable County Building Division/Building Code requirements, including but not limited to addressing the concerns and requirements of the Chief Building Official stated in his referral dated August 19, 2008 which is part of the official Docket file.
3. Prior to recordation of the Development Agreement, the Applicant shall comply with all requirements of the County Transportation Department, as stated in the referrals dated September 29, 2008 and February 24, 2009 which are part of the official Docket file, including but not limited to implementing the suggestions for parking area design improvements.
4. In order to allow tenants of the existing building, and the space associated with tenants of the existing building, to change over time, the Indoor Recreation, Professional Office, Warehouse and Distribution Center, and Light Industrial Uses approved herein may occupy more or less of the floor area of the existing structure than they currently do, without requiring an amendment to the Docket. New uses allowed in the Light Industrial Zone may also be added within the existing structure, without an amendment to the Docket, provided that they are reviewed and approved by the Land Use Director prior to commencement to assure that they do not have a substantially different impact than the uses approved herein, and are consistent with the Land Use Code and the BVCP.
5. Private events shall remain accessory and incidental to the Recreational Uses approved herein and shall be limited to fifteen events per calendar quarter.
6. The Applicant shall be subject to the terms, conditions and commitments of record and in the file for the Docket.
7. The vested right granted by this approval shall run for a period of three years, beginning on the date of adoption of this Resolution as set forth below. The vested right shall expire immediately upon the running of this three-year

period, unless the Board in its discretion approves an extension pursuant to the applicable provisions of the Land Use Code.

A motion to approve the Docket, as stated above, was made by Commissioner Toor, seconded by Commissioner Domenico, and passed by a 3-0 vote.

ADOPTED this 16th day of July, 2009, nunc pro tunc the 7th day of July, 2009.



BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:

Ben Pearlman

Ben Pearlman, Chair

excused

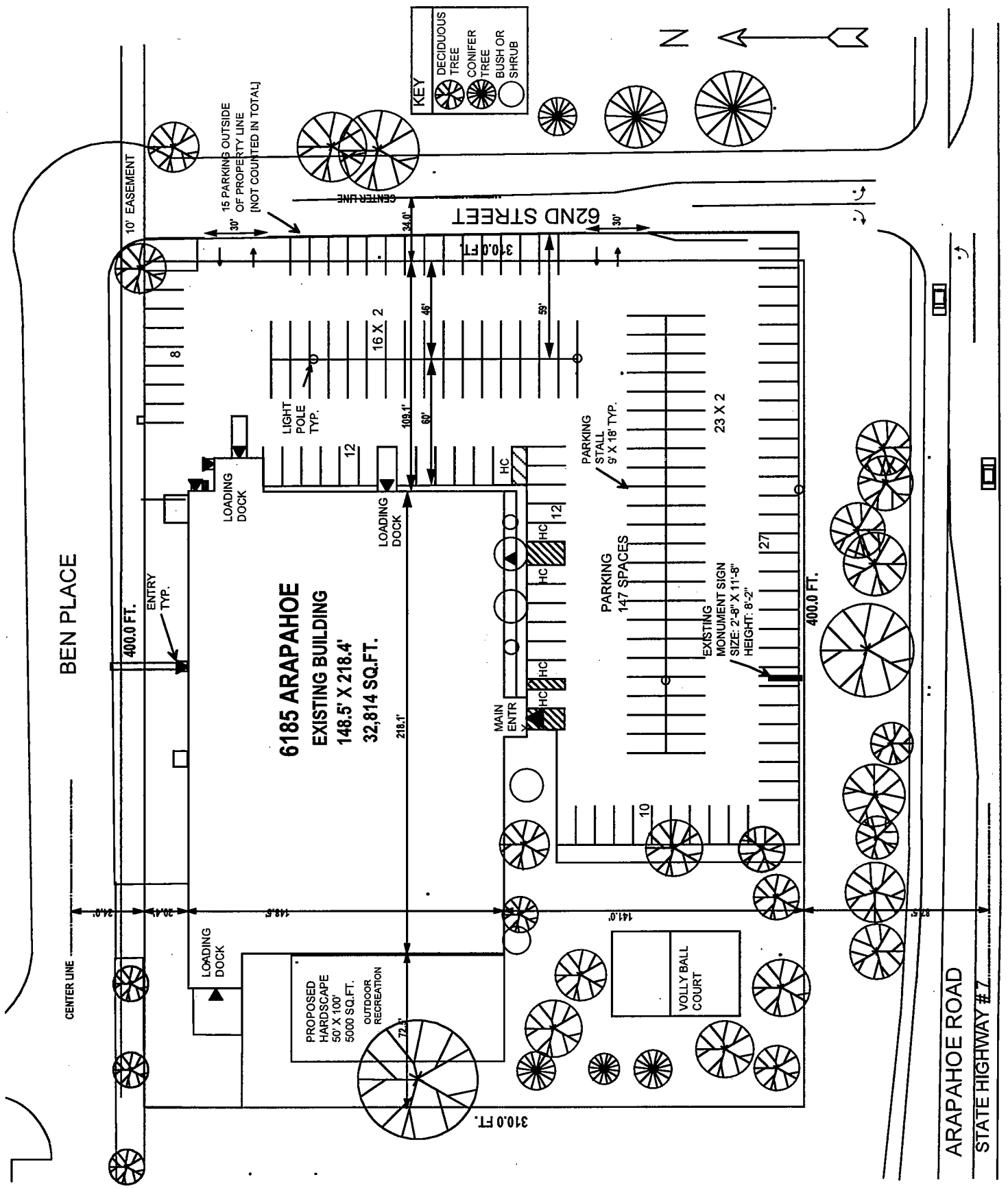
Cindy Domenico, Vice Chair

Will Toor, Commissioner

ATTEST:

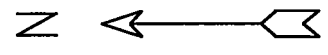
Cecilia G. Lacey
Clerk to the Board

Exhibit B



KEY

	DECIDUOUS TREE
	CONIFER TREE
	BUSH OR SHRUB



BEN PLACE

**6185 ARAPAHOE
EXISTING BUILDING
148.5' X 218.4'
32,814 SQ.FT.**

PROPOSED
HARDSCAPE
50' X 100'
5000 SQ.FT.
OUTDOOR
RECREATION

VOLLY BALL
COURT

SITE PLAN SCALE: 1" = 60 FT.

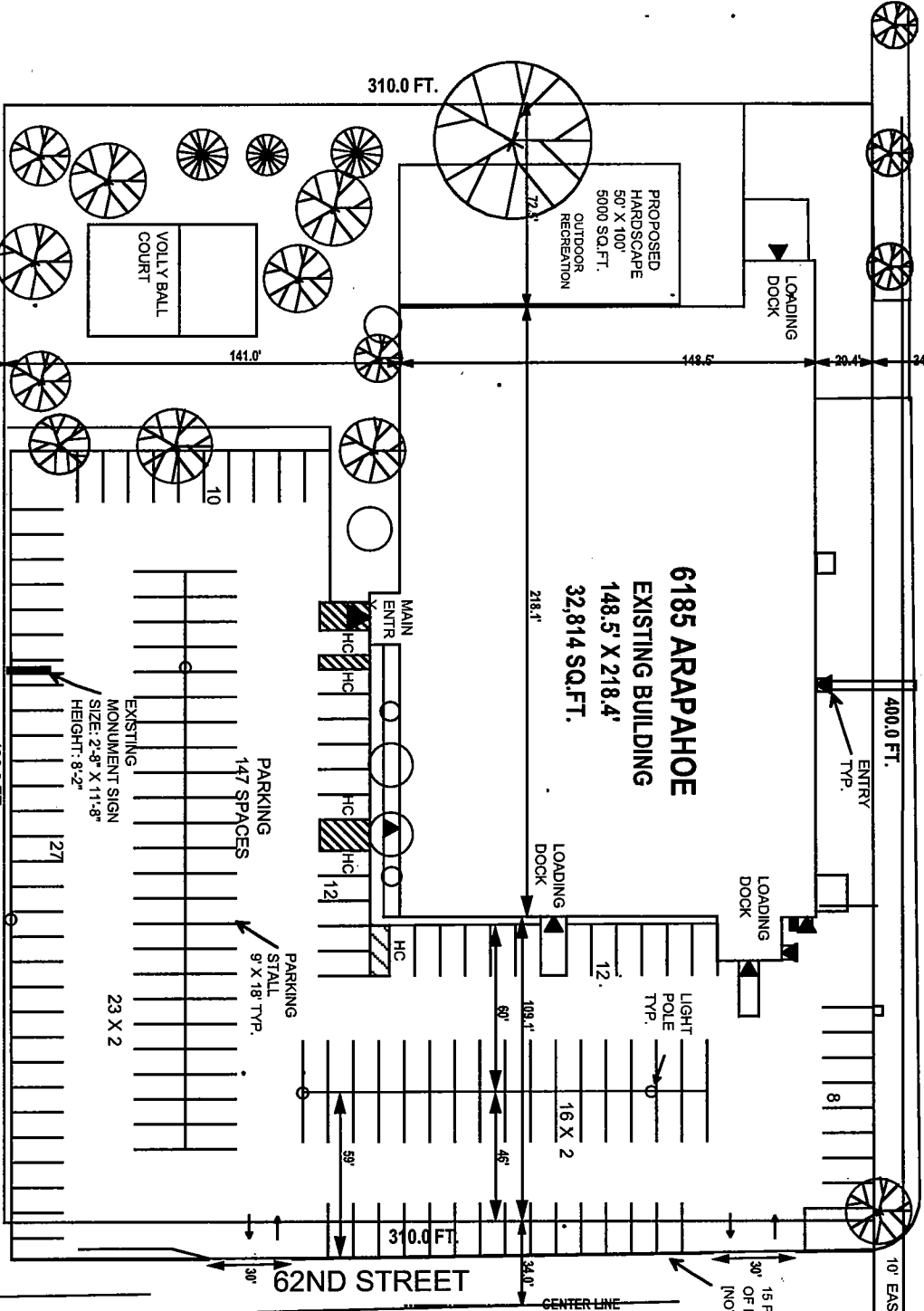
Exhibit C

CENTER LINE

BEN PLACE

10' EASEMENT

15 PARKING OUTSIDE
30' OF PROPERTY LINE
(NOT COUNTED IN TOTAL)



PROPOSED
HARDSCAPE
50' X 100'
5000 SQ. FT.
OUTDOOR
RECREATION

6185 ARAPAHOE
EXISTING BUILDING
148.5' X 218.4'
32,814 SQ. FT.

VOLLY BALL
COURT

EXISTING
MONUMENT SIGN
SIZE: 2'-9" X 11'-8"
HEIGHT: 8'-2"

PARKING
147 SPACES

PARKING
STALL
9' X 18' TYP.

23 X 2

KEY	
	DECIDUOUS TREE
	CONIFER TREE
	BUSH OR SHRUB

N



ARAPAHOE ROAD
STATE HIGHWAY #1

PARKING LAYOUT PLAN /

SCALE: 1" = 60 FT.



Transportation Department

2525 13th Street, Suite 203 • Boulder, Colorado 80304 • Tel: 303.441.3900 • Fax: 303.441.4594
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

MEMORANDUM

To: Hannah Hippely, Staff Planner, Land Use Department
From: Anita Riley, Transportation Planner
Date: August 3, 2009
Re: SU-08-009: Palmer Multiple Principal Uses SU/SSDP

The Transportation Department received a parking layout plan for the property located at 6185 Arapahoe Road on July 26, 2009. Staff has reviewed the plan and finds it fulfills the intent of condition #3 of approving resolution 2009-89. As part of the email correspondence, the applicant has committed to re-striping the parking lot after completing a crack-filling process that should extend the life of the existing asphalt. That email may be found appended to this memo.

Cc: Chuck Palmer, Applicant
Bob Perletz, Applicant's Agent
File