

**RESOLUTION NO. 1743**

**A RESOLUTION OF THE GOLDEN CITY COUNCIL  
APPROVING A VARIANCE FROM THE PROVISIONS OF  
CHAPTER 18.36 OF THE MUNICIPAL CODE PERTAINING TO  
PARKING FOR SPECIAL EVENTS AT THE BUFFALO ROSE  
EVENTS CENTER**

WHEREAS, Leemarz Properties LLC and Marleez Incorporated (Owner) has submitted a request for a variance from the provisions of Chapter 18.36 of the Golden Municipal Code for property located at 1119 Washington Avenue; and

WHEREAS, a Special Hearing has been requested of City Council as permitted under section 18.12.010(7); and

WHEREAS, pursuant to Section 18.12.045 of the Golden Municipal Code, City Council held a Special Hearing on December 14, 2006 and considered evidence and testimony presented in favor and in opposition to the request.


THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. City Council finds that the variance request to permit special evening events at the Buffalo Rose Events Center at 1119 Washington Avenue, utilizing nearby public parking for increased building capacity, complies with the criteria in Chapter 18.12.030 of the Golden Municipal Code pertaining to a hardship in complying with the current code, said hardship being related to the unavailability of land in the downtown core to construct new private parking, and the fact that the business was purchased and initial renovations were started prior to the change in Chapter 18.52 of the Municipal Code re-instituting parking requirements for this location.

Section 2. City Council finds that such relief may be granted without substantial detriment to public good, without altering the essential character of the neighborhood, and without substantially impairing the intent and purpose of this zoning title or the growth plan of the city.

Section 3. On the basis of these findings, City Council approves the requested variance to allow ticketed evening events at the Buffalo Rose Events Center with a Building Capacity up to 778 persons, according to the terms and conditions of the Parking Variance Agreement attached as Exhibit A. The Agreement is approved substantially in the form attached, subject to approval of the format by the City Attorney. The Mayor is authorized to sign the Agreement on behalf of the City.


Adopted this 11th day of January, 2007.

  
\_\_\_\_\_  
Charles J. Baroch  
Mayor

Resolution No. 1743

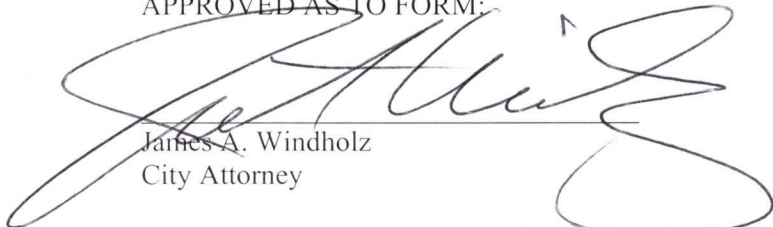
Page 2

ATTEST:



Susan M. Brooks, MMC  
City Clerk

APPROVED AS TO FORM:

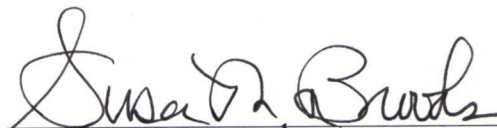


James A. Windholz  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 11th day of January, A.D., 2007.

(SEAL)

ATTEST:



Susan M. Brooks, City Clerk of the City of  
Golden, Colorado

Exhibit A

**PARKING VARIANCE AGREEMENT**

This Agreement is effective the \_\_\_ day of \_\_\_\_\_, 2007, by and between **Leemarz Properties, LLC** and **Marleez Incorporated**, (Owner) and the **City of Golden**, a Colorado home rule municipal corporation (City).

WHEREAS, Owner is the owner of property at 1119 Washington Avenue, which property has been and will continue to be used for bar and restaurant use; and

WHEREAS, the historical capacity of the property for day-to-day operations of the bar and restaurant has been 338 person, and use of the property for a greater capacity would require provisions for additional parking; and

WHEREAS, Pursuant to Chapter 18.12 and Chapter 18.36 of the Golden Municipal Code, Owner applied for and secured approval from the Golden City Council of a parking variance related to the ability to hold periodic special events with a substantially increased building capacity, which events may have necessitated the provision of additional parking spaces under Chapter 18.36 of the Golden Municipal Code; and

WHEREAS, City Council, as authorized by Section 18.12.010(7) of the Golden Municipal Code, and as a condition of granting the variance, has determined that it is necessary and desirable that Owner provide an annual financial contribution to the Golden Downtown General Improvement District for the purposes of provision and upkeep of public parking in downtown Golden; and

WHEREAS, the financial contribution set forth below is calculated based upon the estimated cost to the Golden Downtown General Improvement District of increased maintenance and upkeep costs for public parking spaces in downtown Golden; and

WHEREAS, Owner agrees that such a contribution is appropriate under the circumstances; and

WHEREAS, the parties desire to include in this Agreement certain provisions, understandings and agreements regarding the parking variance and annual financial contribution; and

THEREFORE, in consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Parking Variance. As authorized by City Council Resolution 1743, approved on January 11, 2007, Owner is authorized to hold "special ticketed entertainment events" (or "ticketed events") at 1119 Washington Avenue, with a maximum building capacity of 778 persons, or such lower number as may be required by the Golden Building Official and/or Golden Fire Marshall. For the purpose of this agreement, "special ticketed entertainment event" (or "ticketed event") shall mean any entertainment event for which an admission fee is charged or for which an admission ticket is required, and which attendance at any particular time of greater than 338 persons is reasonably anticipated, or actually occurs regardless of the number anticipated". Special ticketed entertainment events" shall not commence prior to



8:00 PM, and shall conclude no later than 6:00 AM of the following day, in recognition of the limited public parking available during standard business hours in downtown Golden .

2. Financial Contribution. In order to assist the City of Golden's effort to provide public parking in the downtown area, Owner shall make a quarterly financial contribution to the Golden Downtown General Improvement District for the period that the business occupies 1119 Washington Avenue, according to the following terms and schedule:

a. For the period including calendar years 2007 through and including 2012, the contribution will be structured as \$150 per ticketed event. City Council will review the amount of financial contribution in 2010, and determine whether or not to adjust the amount for future years.

b. Payment of the quarterly contribution shall be made to the Golden Downtown General Improvement District no later than the end of the month following each quarter (by April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup>, and January 31<sup>st</sup>). Quarterly payments shall include a listing of all ticketed events held in the quarter by date and event description.

c. Failure to make the required financial contribution for any quarter shall be grounds for revocation of the parking variance authorized by Resolution 1743, and reduction of the maximum building capacity to 338 persons or such lower number as may be required by the Golden Building Official and/or Golden Fire Marshall, in addition to any other remedy in law available to the City.

d. This agreement shall not be construed as conveying a right to Owner to have available for its exclusive use any parking spaces in the parking lots or structures owned and operated by the Golden Urban Renewal Authority or Golden Downtown General Improvement District.

3. Term. Subject to the provisions of this Agreement, this Agreement shall remain in full force and effect so long as the associated variance is required for the operation of Owner's business. Owner may terminate this Agreement by providing the City with 30 days advance written notice that the nature of their business operations at 1119 Washington Avenue, has been changed so that a variance is no longer required to operate the business. Termination of this Agreement pursuant to this paragraph shall not relieve Owner of its obligation to make financial contributions for the quarter of the date of such termination, provided however, that Owner's financial contribution will be adjusted according to the number of ticketed events in such quarter.

4. Termination for Cause. Notwithstanding the prior paragraph, this Agreement may be terminated by the City with 30 days advance written notice based upon the following:

a. Termination, non-renewal or revocation of the Owner's liquor license for the Property.

b. Suspension or loss of the Owner's municipal business license for the Property.

c. If recommended by the City of Golden Municipal Court in conjunction with conviction of the Owner of violations of municipal ordinances at the property.

d. Failure to timely correct building or fire code violations upon notice by authorized City officials.

e. Failure of the Owner to strictly comply with any of the terms and conditions of this agreement.

5. Assignment. The willingness of the City to enter into this agreement is partially predicated upon the ability of the current property owner to control attendance and parking at the ticketed events, and to account to the City with respect to obligations herein. Accordingly, the rights, duties and obligations of Owner hereunder are personal to the Owner and may not be assigned to another person or entity. In case of such proposed assignment, the new Owner will be required to make a new variance application to City Council. Notwithstanding the foregoing, the Owner may assign this agreement to a new entity where the current officers of Leemarz Properties, LLC and Marleez Incorporated retain majority control of the new entity.

6. Notices. All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager  
City of Golden  
911 - 10th Street  
Golden, CO 80401

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Severability. If any covenant, stipulation or obligation of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the Agreement. The parties hereby declare that they would have entered into this Agreement and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

8. Binding Effect of Agreement. This Agreement shall not inure to the benefit of and be binding upon the successors and the assigns of the respective parties and, unless otherwise provided herein, shall not run with the land.

9. Third Parties. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended nor shall be construed of confer upon or give any other person any rights, remedy or claim under or by reason of the Agreement.

10. Entire Agreement. This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

11. Venue/ Attorney's Fees. This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson. In the event of default of the obligations under this

Agreement, the non-defaulting party shall be entitled to recover its reasonable attorney's fees and expenses.

**LEEMARZ PROPERTIES, LLC**

\_\_\_\_\_  
Murray A. Martinez, Owner

STATE OF COLORADO     )  
  )ss.  
COUNTY OF JEFFERSON    )

The Agreement was signed and sworn to before me by Murray A. Martinez as Owner of Leemarz Properties, LLC this \_\_\_\_ day of \_\_\_\_\_, 2007.

Witness my hand and official seal.  
Notary Public: \_\_\_\_\_  
My Commission Expires:

**MARLEEZ INCORPORATED**

\_\_\_\_\_  
Murray A. Martinez, President

STATE OF COLORADO     )  
  )ss.  
COUNTY OF JEFFERSON    )

The Agreement was signed and sworn to before me by Murray A. Martinez as President of Marleez Incorporated this \_\_\_\_ day of \_\_\_\_\_, 2007.

Witness my hand and official seal.  
Notary Public: \_\_\_\_\_ My Commission Expires:

**CITY OF GOLDEN:**

**By:**  
Charles J. Baroch  
Mayor

**ATTEST:**

Susan M. Brooks, MMC  
City Clerk

## PARKING VARIANCE AGREEMENT

This Agreement is effective the 11<sup>th</sup> day of January, 2007, by and between **Leemarz Properties, LLC** and **Marleez Incorporated**, (Owner) and the **City of Golden**, a Colorado home rule municipal corporation (City).

WHEREAS, Owner is the owner of property at 1119 Washington Avenue, which property has been and will continue to be used for bar and restaurant use; and

WHEREAS, the historical capacity of the property for day-to-day operations of the bar and restaurant has been 338 person, and use of the property for a greater capacity would require provisions for additional parking; and

WHEREAS, Pursuant to Chapter 18.12 and Chapter 18.36 of the Golden Municipal Code, Owner applied for and secured approval from the Golden City Council of a parking variance related to the ability to hold periodic special events with a substantially increased building capacity, which events may have necessitated the provision of additional parking spaces under Chapter 18.36 of the Golden Municipal Code; and

WHEREAS, City Council, as authorized by Section 18.12.010(7) of the Golden Municipal Code, and as a condition of granting the variance, has determined that it is necessary and desirable that Owner provide an annual financial contribution to the Golden Downtown General Improvement District for the purposes of provision and upkeep of public parking in downtown Golden; and

WHEREAS, the financial contribution set forth below is calculated based upon the estimated cost to the Golden Downtown General Improvement District of increased maintenance and upkeep costs for public parking spaces in downtown Golden; and

WHEREAS, Owner agrees that such a contribution is appropriate under the circumstances; and

WHEREAS, the parties desire to include in this Agreement certain provisions, understandings and agreements regarding the parking variance and annual financial contribution; and

THEREFORE, in consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Parking Variance. As authorized by City Council Resolution 1743, approved on January 11, 2007, during the term of this agreement Owner is authorized to hold "special ticketed entertainment events" (or "ticketed events") at 1119 Washington Avenue, with a maximum building capacity of 778 persons, or such lower number as may be required by the Golden Building Official and/or Golden Fire Marshall. For the purpose of this agreement, "special ticketed entertainment event" (or "ticketed event") shall mean any entertainment event for which an admission fee is



charged or for which an admission ticket is required, and which attendance at any particular time of greater than 338 persons is reasonably anticipated, or actually occurs regardless of the number anticipated". Special ticketed entertainment events" shall not commence prior to 8:00 PM, and shall conclude no later than 6:00 AM of the following day, in recognition of the limited public parking available during standard business hours in downtown Golden .

2. Financial Contribution. In order to assist the City of Golden's effort to provide public parking in the downtown area, Owner shall make a quarterly financial contribution to the Golden Downtown General Improvement District for the period that the business occupies 1119 Washington Avenue, according to the following terms and schedule:

- a. For the period of this agreement, the contribution will be structured as \$150 per ticketed event.
- b. Payment of the quarterly contribution shall be made to the Golden Downtown General Improvement District no later than the end of the month following each quarter (by April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup>, and January 31<sup>st</sup>). Quarterly payments shall include a listing of all ticketed events held in the quarter by date and event description.
- c. Failure to make the required financial contribution for any quarter shall be grounds for revocation of the parking variance authorized by Resolution 1743, and reduction of the maximum building capacity to 338 persons or such lower number as may be required by the Golden Building Official and/or Golden Fire Marshall, in addition to any other remedy in law available to the City.
- d. This agreement shall not be construed as conveying a right to Owner to have available for its exclusive use any parking spaces in the parking lots or structures owned and operated by the Golden Urban Renewal Authority or Golden Downtown General Improvement District.

3. Term. Subject to the provisions of this Agreement, this Agreement shall remain in full force and effect until December 31, 2009. Owner may terminate this Agreement by providing the City with 30 days advance written notice that the nature of their business operations at 1119 Washington Avenue, has been changed so that a variance is no longer required to operate the business. Termination of this Agreement pursuant to this paragraph shall not relieve Owner of its obligation to make financial contributions for the quarter of the date of such termination, provided however, that Owner's financial contribution will be adjusted according to the number of ticketed events in such quarter. Owner may apply for an extension of this Agreement in 2009. If City Council determines that an extension is appropriate, adjustment of the financial contribution amount for the extension period shall also be considered.

4. Termination for Cause. Notwithstanding the prior paragraph, this Agreement may be terminated by the City with 30 days advance written notice based upon the following:



- a. Termination, non-renewal or revocation of the Owner's liquor license for the Property.
- b. Suspension or loss of the Owner's municipal business license for the Property.
- c. If recommended by the City of Golden Municipal Court in conjunction with conviction of the Owner of violations of municipal ordinances at the property.
- d. Failure to timely correct building or fire code violations upon notice by authorized City officials.
- e. Failure of the Owner to strictly comply with any of the terms and conditions of this agreement.

5. Assignment. The terms and provisions of this agreement are assignable to a new owner of the business or property upon notice to the City.

6. Notices. All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager  
City of Golden  
911 - 10th Street  
Golden, CO 80401

Owner: Murray A. Martinez  
Kenneth E. Lee, Jr.  
1119 Washington Avenue  
Golden, CO 80401

7. Severability. If any covenant, stipulation or obligation of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the Agreement. The parties hereby declare that they would have entered into this Agreement and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

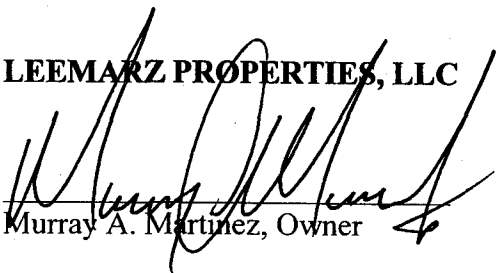
8. Binding Effect of Agreement. This Agreement shall not inure to the benefit of and be binding upon the successors and the assigns of the respective parties and, unless otherwise provided herein, shall not run with the land.

9. Third Parties. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their

respective successors and assigns, and nothing in this Agreement, express or implied, is intended nor shall be construed of confer upon or give any other person any rights, remedy or claim under or by reason of the Agreement.

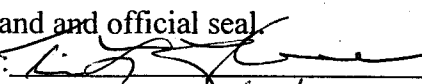
10. Entire Agreement. This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

11. Venue/ Attorney's Fees. This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson. In the event of default of the obligations under this Agreement, the non-defaulting party shall be entitled to recover its reasonable attorney's fees and expenses.

**LEEMARZ PROPERTIES, LLC**  
  
Murray A. Martinez, Owner

STATE OF COLORADO    )  
  )ss.  
COUNTY OF JEFFERSON )

The Agreement was signed and sworn to before me by Murray A. Martinez as Owner of Leemarz Properties, LLC this 20<sup>th</sup> day of March, 2007.


Witness my hand and official seal.  
Notary Public:   
My Commission Expires: 10/31/2009

**MARLEEZ INCORPORATED**

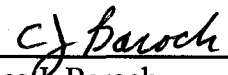
  
Murray A. Martinez, President

STATE OF COLORADO    )  
  )ss.  
COUNTY OF JEFFERSON )

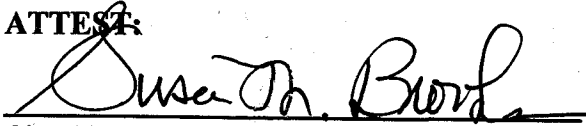
The Agreement was signed and sworn to before me by Murray A. Martinez as President of Marleez Incorporated this 28<sup>th</sup> day of March, 2007.

Witness my hand and official seal.  
Notary Public:   
My Commission Expires:

**CITY OF GOLDEN:**

By:   
Charles G. Baroch  
Mayor

**ATTEST:**

  
City Clerk