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RECORDED
AUG 01 2014
CITY RECORDER

**MASTER DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF MARMALADE BLOCK DEVELOPMENT**

July __, 2014

PROPERTY OF SALT LAKE
CITY RECORDER'S OFFICE
P.O. BOX 145515
SALT LAKE CITY, UTAH 84114-5515

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**MASTER DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF MARMALADE BLOCK DEVELOPMENT**

RECORDED

AUG 01 2014

CITY RECORDER

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF MARMALADE BLOCK DEVELOPMENT ("**Declaration**"), is made effective as of July __, 2014, by the REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency ("**Declarant**"), with respect to the following:

A. Declarant, its successors and assigns, by executing and recording this Declaration, declares that the property described on the attached **Exhibit A** constitutes the Marmalade Block Development ("**Marmalade**"). This Declaration shall run with the title to the Property (defined below), governs the development and use of the Property, and is binding upon the Declarant and the future owners of any portion of the Property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now has any legal, equitable, or beneficial interest in any portion of the Property. This Declaration is also binding on the Master Association (defined below), its successors and assigns.

B. Declarant intends that this Declaration will provide a system of standards and procedures for the development, administration, maintenance, and preservation of Marmalade. The Master Association will own, operate and maintain various community areas and community improvements and will administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

C. By taking title to property in Marmalade, all owners join in and accept the intent, purposes, and obligations of this Declaration and agree to be bound by it. Each party bound by this Declaration acknowledges the benefits received from its existence and the Declarant's actions and accepts these benefits and the burdens that accompany them.

**ARTICLE I
DEFINITIONS**

The following words, phrases, or terms used in this Declaration (including that portion headed "**Recitals**") have the following meanings:

1.1 "**Annual Assessment**" means the charge levied and assessed each year against each Assessment Parcel pursuant to Article VII.

1.2 "**Arctic Court Development**" means the Townhome Residential Development located on Lot 4 of the Marmalade District Plat pursuant to Article XIX.

1.3 "**Arctic Court Member**" means any Person holding a Membership in the Association that is attributable to the Arctic Court Development as determined pursuant to Article XIX.

1.4 “**Articles**” means the Articles of Incorporation of the Master Association as the same may from time to time be amended or supplemented.

1.5 “**Assessment Parcel(s)**” means the Parcels and Lot 4 shown on the Marmalade District Plat.

1.6 “**Assessments**” means collectively the Annual Assessment, Special Assessment and Specific Assessments imposed by the Master Association.

1.7 “**Assessment Lien**” means the lien created and imposed by Article VII.

1.8 “**Assessment Period**” means the term set forth in Section 7.8.

1.9 “**Board**” means the Board of Directors of the Master Association.

1.10 “**Building**” means any enclosed structure placed, constructed or located on a Parcel, including any appurtenant canopies, together with any columns or posts supporting that Building.

1.11 “**Building Area**” means all those areas on each Parcel shown as Building Area on Plat, which may from time to time be covered by a Building or other commercial structure.

1.12 “**Business**” has its ordinary, generally accepted meaning and includes, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: that activity is engaged in full or part time; that activity is intended to or does generate a profit; or a license is required. Business use of a Residential Unit or Parcel is limited to the restrictions listed under “**Residential Use.**” The following activities are specifically not permitted in Marmalade: any establishment which offers entertainment or service by nude or partially dressed persons; “adult entertainment uses,” which term means, for the purposes of this Declaration, any establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) which is rated “X” or higher by the movie production industry (or any related successor rating established by the movie production industry) or is otherwise of a pornographic or obscene nature; or sexually explicit games, toys, devices, or similar merchandise; commercial overnight lodging; pawn shops; payday loan or check cashing; tattoo parlor; cemetery; jail; flea market; mortuary; labor camp; junkyard or stockyard; rendering plant; landfill or garbage dump; and any use not authorized by the Municipality Authority and applicable zoning ordinances. The Owners of Commercial Units or Parcels, but not the Owners of Residential Units or Parcels, reserve the right, from time to time, to designate other activities that are not permitted.

1.13 “**By-Laws**” means the By-Laws of the Master Association, as the same may from time to time be amended or supplemented.

1.14 “**Commercial and/or Commercial Area(s) and/or Commercial Use**” means any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is

used for one or more commercial purposes, including, but not limited to the following: Retail Use, restaurants, spas and health clubs, and other areas used for non-Residential purposes. Commercial Areas do not include any Common Areas owned by the Master Association, if any, or other Common Areas owned by a Sub-Association or Common Areas owned in common by Residential Owners. Declarant specifically acknowledges and intends that certain Parcels will have a mixture of Residential Areas and Commercial Areas within the same structure. In that event, the provisions of this Declaration pertaining to Residential Areas applies to and govern the Residential Areas within that structure, and the provisions of this Declaration pertaining to Commercial Areas applies to and govern the Commercial Areas within that structure.

1.15 **“Commercial Condominium Development and/or Commercial Condominium Development Use”** means a Condominium Development intended for Commercial Use.

1.16 **“Common Area”** and **“Common Areas”** means (a) all Master Association Land, or easements in favor of the Master Association, designated from time to time by the Board for use by the Owners, Members, Residents, lessees, occupants and their guests, including entry monument areas and the entry monuments related to projects subject to Sub-Association Declarations and/or Supplemental Declarations; (b) all land within Marmalade which the Declarant, by this Declaration or other recorded instrument, makes available for use by Owners and Members of the Master Association including enhanced parkways and median strips and areas between roadways and Improvements, even if owned by a Municipal Authority or an Owner; (c) all land within Marmalade which the Declarant or an Owner, with the Declarant’s prior approval, indicates on a Plat, Sub-Association Declaration or Supplemental Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of Marmalade and/or the general public and is to be dedicated to the public or a Municipal Authority upon the expiration of a fixed period of time, but only until that land is so dedicated; (d) all land or right-of-way easements within Marmalade which are dedicated to the public or to a Municipal Authority, but which such Municipal Authority or other governmental agency requires the Master Association to maintain; (e) roadways, walkways, culinary water system components, tunnels and storm drain pipes within the existing and subsequent phases of Marmalade; (f) all those areas on each Parcel which are not Building Area, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a Building or other commercial structure or which cannot under the terms of this Declaration be used for a Building. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area. Those areas designated on the Plat as “common space” are deemed Common Area for the purpose of this Declaration. Notwithstanding the foregoing or a specific designation of “Common Area” or “Community Common Area” on the Plat, no portion of the Parcel designated on the Plat as Lot A is Common Area, even if owned by a Municipal Authority, unless and until the Municipal Authority and the Declarant, during the Period of Declarant Control, approve of Lot A being Common Area.

1.17 **“Community Common Area”** and **“Community Common Areas”** means all Common Areas that are located on land that is owned by the Municipal Authority and designated by the Municipal Authority in writing to the Declarant, during the Period of Declarant Control, and the Master Association, for use by the Owners, Members, Residents,

lessees, occupants and their guests, families, and invitees. The Community Common Areas are subject to the Community Common Area Rights and Restrictions.

1.18 **“Community Common Area Rights and Restrictions”** means certain rights, limitations, and restrictions that the Owner of Community Common Areas may grant or impose on the Community Common Areas, including that the Community Common Areas may be used by a Person other than Owners, Members, Residents, lessees, occupants and their guests, families, and invitees, including use by the general public, and may be used for public and private events and activities, including events and activities that Owners, Members, Residents, lessees, and their guests, families and invitees are prohibited from attending or participating in. Due to the “public property” nature of Community Common Areas, Community Common Areas may be used in a manner that is prohibited by this Declaration or the Rules. Community Common Areas may be subject to additional restrictions and limitations imposed by the Owner or the operator of the Community Common Areas, whether by rule, regulation, or operating procedure, including restrictions on the time, place, and manner of use of the Community Common Areas. If there is any conflict or inconsistency between the rights granted, and limitations and restrictions imposed, on Community Common Areas by this Declaration and the rights granted, and the limitations and restrictions imposed, on Community Common Areas by the Owner of such Community Common Areas, the rights granted, and the limitations and restrictions imposed, on Community Common Areas by such Owner control.

1.19 **“Community Expense Fund”** means and refers to the fund created or to be created pursuant to the provisions of Article VII and into which all monies of the Master Association will be deposited. Two separate and distinct funds will be created and maintained thereunder, one for operating expenses and one for capital or reserve expenses which together constitute the Community Expense Fund.

1.20 **“Community Expenses”** means and refers to those costs and expenses incurred by or on behalf of the Master Association arising out of or connected with the maintenance, improvement, and operation (including capital repairs and replacements) of Marmalade and the Master Association as described in Article VII and which determine the Assessments made to Members.

1.21 **“Condominium Development”** means a condominium ownership regime established under Utah Code, Annotated, Title 57, Chapter 8, as amended from time to time, and the laws of the State of Utah including both Residential and Commercial Condominium Developments.

1.22 **“Consent”** or **“Approval”** refers to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

1.23 **“Covenants”** means the covenants, conditions, restrictions, assessments, charges, rights, obligations, servitudes, liens, reservations, and easements set forth in this Declaration, as amended or supplemented from time to time.

1.24 “**Deed**” means a deed or other instrument conveying the fee simple title in a Unit or Assessment Parcel.

1.25 “**Design Guidelines**” means those design guidelines for development of all the real property subject to the Governing Documents which may be established by the Declarant and/or the Board from time to time. Declarant or the Board reserves the right to modify the Design Guidelines. The Design Guidelines may impose, without limitation, certain restrictions with respect to a building or Unit’s design, building materials used in constructing the building or Unit, architectural standards and other matters. The initial Design Guidelines are attached as **Exhibit B**.

1.26 “**Discretion**” and “**Determination**” means sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

1.27 “**Drainage Control Features**” means the term set forth in Section 3.5.

1.28 “**Dwelling Unit**” means any building or portion thereof designed for Use as the residence or sleeping place of one or more Persons or families and includes a kitchen.

1.29 “**Eligible Mortgagee**” means and refers to a Mortgagee which has requested notice of certain matters from the Master Association in accordance with Section 16.1.

1.30 “**First Mortgage**” means any Mortgage recorded after the recording of this Declaration and which is not subject to any lien or encumbrance except this Declaration, and liens for taxes or other liens which are given priority by statute.

1.31 “**First Mortgagee**” means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.32 “**Governing Documents**” means this Declaration and any amendments, Sub-Association Declaration(s), Supplemental Declaration(s), the By-Laws, the Articles, the Rules, the Design Guidelines, the Board’s resolutions, and the recorded Plats.

1.33 “**Improvement(s)**” means any site work, landscaping, structures, improvements, and other items placed on a Unit or Parcel in a manner or location visible from outside of any existing structures on the Unit or Parcel, including but not limited to any building, structure, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill having a volume exceeding ten cubic yards and any excavation, fill, ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel.

1.34 “**Land Use Classification(s)**” means the classification to be established by the Declarant pursuant to Section 4.1, which designates the type of Improvements which may be

constructed on a Unit, Assessment Parcel, or Master Association Land and the purposes for which the Improvements and surrounding land may be utilized.

1.35 “**Lease**” means a written lease or sublease for the leasing of any Residential or Commercial property. Any Residential Unit or Parcel that is leased must be leased only in its entirety; separate rooms, floors, or other areas within a Dwelling Unit may not be separately leased. All leases must be in writing and must disclose that the tenants and all occupants of the leased Unit or Parcel are bound by and obligated to comply with the Governing Documents. However, the Governing Documents apply regardless of whether that provision is specifically set forth in the Lease. Within ten days of the Lease being signed for a Parcel, the Owner of the leased Parcel will notify the Board or the Master Association’s managing agent of the Lease and provide any additional information the Board may reasonably require. Consistent with this subsection, the Master Association or the Board may adopt Rules governing leasing and subleasing of Residential Units or Parcels.

1.36 “**Library Use**” means any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is used for the operation of a public library and common ancillary uses, including Retail Use and Commercial Use.

1.37 “**Maintenance**” means maintenance, repair and replacement.

1.38 “**Master Association**” means the Utah nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in the Governing Documents and the successors and assigns of that nonprofit corporation. Declarant reserves the exclusive right to cause the Master Association to be incorporated. The Master Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

1.39 “**Master Association Land**” means that part or parts of Marmalade, together with the buildings, structures and Improvements thereon, and other real property which the Master Association now or hereafter owns in fee for as long as the Master Association is the owner of the fee, if any.

1.40 “**Master Association Use**” means those portions of Marmalade intended for the use and benefit of the Master Association including, without limitation, amenities provided by the Master Association for the use and enjoyment of the Members and Owners.

1.41 “**Member**” means any Person that is a Project Member or an Arctic Court Member pursuant to this Declaration.

1.42 “**Membership**” means membership in the Master Association and the rights granted to (a) a Project Member pursuant to Article VI, and (b) an Arctic Court Member pursuant to Article XIX.

1.43 “**Membership Interest**” or “**Membership Interests**” means the number of Membership Interests a Member holds as specified on Exhibit C.

1.44 **“Mortgage”** means any mortgage, deed of trust, or other document encumbering any portion of a Unit or Assessment Parcel or interest therein, including without limitation a leasehold interest, as security for the payment of a debt or obligation.

1.45 **“Mortgagee”** means a beneficiary of a Mortgage as well as a named Mortgagee.

1.46 **“Municipal Authority”** means Salt Lake City Corporation, a body corporate and political subdivision of the State of Utah, and any agency or instrumentality thereof.

1.47 **“Municipal Authority Property”** means all real property which is from time to time conveyed, assigned, or transferred by Deed or other written instrument to the Municipal Authority, which may include, without limitation, portions or all of the public streets including medians and enhanced parkways, retention basins and drainage facilities, and open space areas.

1.48 **“Owner”** means (a) any Person(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Unit or Assessment Parcel, but excluding others who hold an interest therein merely as security; and (b) any Person(s) entitled to occupy all of a Unit or Assessment Parcel under a Lease for an initial term of at least ten years, in which case the fee owner or sublessor of the Unit or Assessment Parcel will not be deemed the Owner thereof for purposes of this Declaration during the term of that Lease. The Owner of the Parcel designated on the Plat as Lot 1 may, by recorded written agreement, designate a tenant, property operator, or Person to serve as the Owner of that Parcel.

1.49 **“Parcel(s)”** means Lot 1, Lot 2, Lot 3, and Lot A as shown on the Marmalade District Plat. Declarant has the right, subject to the requirements of any applicable Municipal Authority, to reconfigure the boundaries of any Parcel of which Declarant is the Owner.

1.50 **“Par Value”** means a percentage allocation of the Assessments assigned to each Unit or Assessment Parcel by this Declaration. Par Value has been assigned to each Assessment Parcel based upon numerous factors evaluated and considered by Declarant and is not specifically tied to square footage on any Assessment Parcel. In addition, the Par Value for each Assessment Parcel is not specifically tied to the Membership Interests or Voting rights for that Assessment Parcel.

1.51 **“Period of Declarant Control”** means the period of time in which Declarant is exempt from certain rules and regulations of the Master Association pursuant to this Declaration. The Period of Declarant Control terminates on the earlier of: (a) ten years after the initial recordation of the Plat in the Office of the Recorder of Salt Lake County, Utah; (b) 120 days after the date 100% of the total number of Membership Interests are transferred to Owners other than Declarant; or (c) the date Declarant delivers to the Association written notice of Declarant’s election to relinquish control of the Association.

1.52 **“Person”** means a natural individual, a corporation, a limited liability company, a partnership or any other legal entity with the right to hold title to real property.

1.53 **“Plat”** means the Marmalade District Plat and any subdivision plat or condominium plat affecting Marmalade as recorded in the Office of the County Recorder of Salt Lake County, Utah, as such may be amended from time to time

1.54 **“Project Member”** means any Person holding a Membership in the Master Association that is attributable to an Assessment Parcel as determined pursuant to Article VI.

1.55 **“Property”** means the real property described on **Exhibit A**.

1.56 **“Resident”** means each Owner, lessee, or tenant actually residing on any part of a Parcel; and members of the immediate family of each Owner, lessee, or tenant actually living in the same household with such Owner, lessee or tenant.

1.57 **“Residential”** or **“Residential Areas”** includes Townhome Residential Developments, Residential Developments, multi-family developments, Dwelling Units, and all common recreational areas and facilities associated with any of the foregoing and other non-Commercial Areas. Declarant specifically acknowledges and intends that certain Parcels may contain structures that will have a mixture of Residential Areas and Commercial Areas within the same structure. In that event, the provisions of this Declaration pertaining to Residential Areas applies to and govern the Residential Areas within that structure, and the provisions of this Declaration pertaining to Commercial Areas applies to and govern the Commercial Areas within that structure.

1.58 **“Residential Development and/or Residential Development Use”** means a Development intended for Residential Use.

1.59 **“Residential Use”** means that Residential Units may be used only for residential and related purposes. A Business activity will be considered “related” to a Residential Use and thus permitted under this Section only if conducted by a person or persons residing in the Unit or Parcel and only if the Business activity: is not operated in a manner that changes the outside appearance of the Residential Unit; is not detectable or apparent by sound or smell from outside the Residential Unit; complies with applicable zoning requirements; does not involve visitation to the Unit or Parcel by employees, clients, customers, suppliers, or other business invitees, or involve door-to-door solicitation within Marmalade; and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion. The Board may prohibit previously approved Business transactions in Residential Units if that activity becomes a nuisance.

1.60 **“Retail Use”** means use of a Commercial Area for the display, marketing, and sale of merchandise, food and/or services to the general public.

1.61 **“Rules”** are a part of the Governing Documents and are those guidelines the Board has created to limit or eliminate certain actions for the benefit of Marmalade.

1.62 **“Special Assessment”** means any assessment levied and assessed pursuant to Section 7.6.

1.63 **“Specific Assessment”** means any assessment levied and assessed pursuant to Section 7.7.

1.64 **“Sub-Association”** means any Utah nonprofit corporation or unincorporated association, or its successor in interest, the membership of which is composed of the Owners of

Units or Assessment Parcels with interests other than those common to all Units or Assessment Parcels (as designated by Declarant or by the Board) and subject to one or more Sub-Association Declarations and/or Supplemental Declarations. By way of illustration and not limitation, a Residential Development, or a Commercial Area might each be designated as separate Sub-Associations. Subject to Declarant's prior approval, each Sub-Association will be required to record a Sub-Association Declaration against the Units or Assessment Parcels within its Sub-Association and organize a Sub-Association under the conditions set forth in this Declaration.

1.65 **"Sub-Association Declaration"** means a declaration recorded pursuant to Section 4.1 of this Declaration. A Sub-Association Declaration must contain restrictions on use and establish a Land Use Classification for each Assessment Parcel covered by the Sub-Association Declaration as described in Section 4.1. It is contemplated that a Sub-Association Declaration will be a comprehensive and detailed document such as a condominium declaration or restrictive covenants which specifically regulate a Sub-Association.

1.66 **"Supplemental Declaration"** means an amendment or supplement to this Declaration filed by the Declarant identified as a Supplemental Declaration and recorded pursuant to Section 4.1, which establishes a Land Use Classification. Sub-Association Declarations may or may not be recorded in addition to or as a part of a Supplemental Declaration in the Declarant's sole and exclusive discretion. A Supplemental Declaration will be, in contrast to a Sub-Association Declaration, a relatively short document, identifying Land Use Classifications and designating Sub-Associations within the Supplemental Declaration.

1.67 **"Townhome Residential Development and/or Townhome Residential Use"** means Dwelling Units intended for Residential occupancy in Units that are townhomes, together with related areas intended for the use and enjoyment of the Owners and Residents of the Dwelling Units in the townhomes.

1.68 **"Transfer"** means, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any Unit or Assessment Parcel, including but not limited to (1) the conveyance of fee simple title to any Unit or Assessment Parcel; (2) the transfer of more than 50% of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Units or Assessment Parcels; and (3) the transfer of more than 50% of the interest in net profits or net losses of any partnership, joint venture or other entity which, directly or indirectly, owns one or more Units or Assessment Parcels.

1.69 **"Unit" or "Units"** means a Building or portion of a Building located on the Property that is intended for any type of independent use or ownership. A Unit includes the land, if any, which is part of the Unit, as well as any structures or other improvements on the Unit. In a case of a Unit, Assessment Parcel, or Building within a condominium, multi-family structure, or other structure containing multiple dwellings, each dwelling shall be deemed a separate Unit. The term does not include Common Areas, common property of the Master Association, or property dedicated to the public.

1.70 “Use(s)” means one or more specific types of property development and classification as set forth in Section 4.1.

1.71 “Voting” means that each Assessment Parcel is entitled to one vote for each Membership Interest designated for that Assessment Parcel on **Exhibit C**, subject to the limitations set forth in the Governing Documents. No vote may be exercised for any property exempt from assessment. Further, during such time as there is Declarant Membership, no vote may be exercised for any Assessment Parcel that the Declarant owns, rather, the Declarant’s consent is required for various actions of the Board, the Membership, and committees, as specifically provided in the Governing Documents.

ARTICLE II PROPERTY SUBJECT TO DECLARATION

2.1 **General Declaration Creating Marmalade.** Declarant declares that the Property is and will be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended from time to time. In addition, all or portions of the Property may be subject to recorded Sub-Association Declarations and/or recorded Supplemental Declarations as applicable and as amended from time to time. Declarant intends to develop the Property by subdivision into various Units and Assessment Parcels and to sell some or all of such Units and Assessment Parcels. Nothing in this Declaration may be construed to prevent the Declarant from modifying any portions of the development of the Property as to which a Sub-Association Declaration and/or Supplemental Declaration has not been recorded. The development of the Property is not a cooperative. This Declaration may not be construed to prevent the Declarant from dedicating or conveying portions of the Property, including but not limited to streets or roadways, for uses other than as a Unit, Assessment Parcel, or Master Association Land, subject to the provisions of Section 4.1.

2.2 **Master Association Bound.** Upon filing the Articles with the Utah Department of Commerce, Division of Corporations and Commercial Code, the Covenants will be binding upon and will benefit the Master Association.

2.3 **Municipal Authority Property.** From time to time, the Declarant may, in its sole and exclusive discretion and without the vote of the Members, convey, assign, or transfer by Deed or other written instrument certain Common Areas, including all of the Parcel designated as Lot A, to the Municipal Authority. Once those Common Areas are conveyed, assigned, or transferred to a Municipal Authority, they will constitute Municipal Authority Property. Notwithstanding a conveyance, assignment, or transfer of all of the Parcel designated as Lot A to the Municipal Authority, the Parcel designated as Lot A will remain an Assessment Parcel.

2.4 **Withdrawal of Property.** During the Period of Declarant Control, the Declarant may amend the Declaration to remove any unimproved portion of Marmalade from the coverage of the Declaration. “Unimproved” means that no permanent structure has yet been completed on the property. That amendment will not require the consent of any other Person. If the property is Common Area, the Master Association must consent to the withdrawal.

2.5 Addition of Property. During the Period of Declarant Control, the Declarant may amend the Declaration to add additional property to Marmalade. That amendment will not require the consent of any other Person. If the property is Common Area, the Master Association must consent to the addition.

2.6 Transfer or Dedication of Common Area. The Master Association may dedicate portions of the Common Area to the Municipal Authority or to any other local, state or federal governmental or quasi-governmental entity, or any land trust or organization dedicated to the preservation and protection of natural resources; and may subject Common Area to a security interest; provided, however, the Master Association may not dedicate portions of the Parcels designated as Lot A and Lot 1 without the prior written consent of the Owners of those Parcels.

2.7 Marketing and Sales Activities. Notwithstanding anything in the Governing Documents to the contrary, during the Period of Declarant Control, the Declarant and its designees or assigns may construct, use, and maintain upon portions of the Common Area, but not the Community Common Areas without the consent of the Owner of the Community Common Areas, and other property it owns, such facilities and activities as, in the Declarant's opinion, may reasonably be required, convenient or incidental to the sale of Units. Examples of permitted facilities and activities include but are not limited to Business offices, signs, flags (whether hung from flag poles or attached to a structure), model Units, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient or incidental to construction and sales activities, the Declarant and its employees, agents and designees may park vehicles in designated parking areas.

2.8 Right to Approve Changes in Marmalade Standards. During the Period of Declarant Control, no amendment or modification to any Rules or Design Guidelines will be effective without prior notice to and written approval of the Declarant.

2.9 Additional Covenants and Restrictions. During the Period of Declarant Control, no one other than the Declarant may record any additional covenants or restrictions affecting any portion of Marmalade without the Declarant's prior written consent. Declarant hereby consents to the Owner of the Parcel designated as Lot 1 to record covenants or restrictions directly related to the Owner's obtaining bond financing to finance or refinance the construction of a library and related facilities on the Parcel designated as Lot 1. Any instrument recorded without the required consent will be void and of no force and effect.

2.10 Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign and correct any structure, improvement or condition that may exist on any portion of the property within Marmalade, including Units, and a perpetual non-exclusive easement of access throughout Marmalade to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto and/or into a Unit will be only after reasonable notice to the Owner, and no entry into an enclosed structure will be permitted without the Owner's consent. The person exercising the easement will promptly repair, at that person's expense, any damage he or she causes that could be reasonably foreseen to occur. Any reasonable and necessary repairs that must be paid on an emergency basis will be reimbursed to the Master Association from the

Owner. Nothing in this Section relieves an Owner of the responsibility for the maintenance and repair of his or her Unit or Assessment Parcel.

2.11 Right to Transfer or Assign the Declarant's Rights. Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons. However, a transfer will not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No transfer or assignment will be effective unless it is in a recorded instrument signed by the Declarant.

2.12 Termination of Rights. The rights contained in this Article will not terminate until the earlier of (a) a termination of the Period of Declarant Control; or (b) the Declarant's recording of a written statement that all sales activity has ceased.

ARTICLE III EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 Easements of Enjoyment. Every Owner has a right and nonexclusive easement of enjoyment in and to the Common Areas, as those areas are dedicated and designated for use by Declarant, which is appurtenant to and passes with the title to every Unit and Parcel, subject to the following provisions:

3.1.1 The right of the Master Association to suspend the Voting rights of any Member and the right to the use of the Common Areas by any Owner (not including use by the Owner of the Community Common Areas) (i) for any period during which any Assessment against such Owner's Parcel remains delinquent; (ii) for a period not to exceed 60 days for any infraction by that Owner of this Declaration, a Sub-Association Declaration, a Supplemental Declaration, Rules or applicable Design Guidelines; and (iii) for successive 60 day periods if any infraction by that Owner is not corrected during any prior 60 day suspension period.

3.1.2 The right of the Master Association to dedicate or transfer all or any part of the Master Association Land to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Master Association.

3.1.3 Subject to the Community Common Area Rights and Restrictions and to the extent allowed by law, the right of the Master Association to regulate the time, place, and manner of use of the Common Areas through Rules and to prohibit access to those Common Areas, such as maintenance buildings, landscaped rights-of-ways, and other areas not intended for use by the Owners. Rules will be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas or the safety and convenience of the users thereof, or otherwise will serve to promote the best interests of the Owners and Residents.

3.1.4 The right of the applicable Municipal Authority and any other governmental or quasi-governmental body having jurisdiction over Marmalade to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within Marmalade for purposes of providing police and fire

protection, transporting school children, and providing other governmental or municipal service.

3.1.5 Subject to the written approval of the Owner of Community Common Areas as to that portion of the Common Areas that constitute Community Common Areas, the right of the Master Association to enter into license agreements with Owners that permit an Owner to use portions of the Common Areas adjacent to a Building for seating, outdoor display, and other Business operations directly related to the Business operations within the adjacent Building. In granting such licenses, the Master Association may require that no planting or Improvements allowed within the Common Area be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight feet without the prior approval of the Board.

3.1.6 The Master Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the Declaration and the Community Common Area Rights and Restrictions. The Master Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate.

3.1.7 The Community Common Areas Rights and Restrictions.

3.2 **Relationship with Governmental and Tax-Exempt Organizations.** The Master Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, not including the Community Common Areas, to state or local governments or public utility providers for the benefit of Marmalade, the Master Association, and the Owners, provided that the agreements, contracts, and easements do not materially adversely impact the Owners, Members, and Residents rights to use the Common Areas. The Master Association may contribute money, real property (including Common Area, but not including Community Common Areas), personal property or services to that entity. Any contribution will be a Common Expense and included as a line item in the Master Association's annual budget.

3.3 **No Partition.** No Person acquiring any interest in the Property or any part thereof has a right to, nor may any person seek, any judicial partition of the Common Areas, nor may any Owner sell, convey, transfer, assign, hypothecate, or otherwise alienate all or any of that Owner's right and nonexclusive easement of enjoyment in the Common Areas or any funds or other assets of the Master Association except in connection with the sale, conveyance or hypothecation of that Owner's Unit or Parcel (and only with respect to the right and nonexclusive easement of enjoyment that is appurtenant thereto), or except as otherwise expressly permitted herein. This Section will not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property.

3.4 **Easements for Encroachments.** If any part of a Unit, Parcel, or Improvement built in substantial accord with the boundaries for that Unit, Parcel, or Improvement as depicted on a Plat (or in other approved documents depicting the location of that Unit or Parcel)

encroaches or shall encroach upon the Common Areas or upon an adjoining Unit or Parcel, an easement for that encroachment and for the maintenance of that encroachment exists. If any part of the Common Areas encroaches upon a Unit, Parcel or Improvement, an easement for that encroachment and for the maintenance of that encroachment exists. Each Owner has an unrestricted right of ingress or egress to and from its Unit or Parcel.

3.5 Easements for Drainage Maintenance and Flood Water. Various Common Areas, Units, and Parcels have or may have ditches, diversions, swales, depressions, berms, retention basins, detention basins, bulkheads, walls, dams, dewatering systems, or other structures and facilities retaining or transferring water or other similar features on, under or through the soil that are designed to carry water away from any Common Area, Unit or Parcel, as depicted upon a recorded Plat, or otherwise found on such properties ("**Drainage Control Features**"). All Owners of Units or Parcels wherein Drainage Control Features are located must (a) keep and maintain the Drainage Control Features in order to prevent flooding; and (b) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Notwithstanding the foregoing, the Declarant reserves for itself, and grants to the Master Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement, to enter upon the Drainage Control Features areas located within any Common Area, Unit or Parcel for the purpose of maintaining, repairing, cleaning, or altering drainage and water flow, and shall have an access easement over and across any Common Area, Unit or Parcel (but not the Dwelling Units or other buildings thereon) abutting or adjacent to any portion of any Drainage Control Features to the extent reasonably necessary to exercise their rights under this Section. The Declarant's rights and easements provided in this Section will be transferred automatically to the Master Association when the Declarant ceases to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument to the Master Association. All persons entitled to utilize these easements will use reasonable care in, and repair any material damage resulting from, the use of the easements. Nothing in this Declaration will be construed to make Declarant or any other Person liable for damage resulting from groundwater discharge, flooding due to heavy rainfall, excessive spring run-off, or natural disasters. Owners or Residents are strictly prohibited from disrupting the drainage pattern and will not interfere with, obstruct, rechannel, construct upon, alter, build-in, fill-in, or impair any Drainage Control Features or the drainage pattern over his or her Unit or Parcel from or to any other Unit or Parcel as that pattern may be established by Declarant, or other developer.

3.6 Easements for Utilities. There is hereby created an easement at specific locations approved by Declarant during the Period of Declarant Control and by the Master Association upon, across, over and under the Common Areas for reasonable ingress, egress, installation, replacement, repair or maintenance of all emergency access roads and all utilities, including, but not limited to, gas, water, sanitary sewer, telephone, storm drain, cable television and electricity. By virtue of this easement, it is expressly permissible for the providing utility company to install and maintain the necessary equipment at such locations on the Common Areas, but no sanitary sewers, electrical lines, water lines, storm drain lines, or other utility or service lines may be installed or located on the Common Areas, except as designed, approved and/or constructed by the Declarant or as approved by the Board.

3.7 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas at specific locations approved by Declarant during the Period of Declarant Control and by the Master Association after the Period of Declarant Control ends. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Residents of the Units and Parcels and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Areas and all private streets, private roadways, private driveways and private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all of these easements from time to time as it sees fit upon written notice to, but without the consent of, any Owners (but subject to any necessary approvals of the Municipal Authority, and any other governmental body or agency having jurisdiction including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

3.8 Easements for Construction and Sales. There are hereby created easements over all portions of Marmalade, but not including the Community Common Areas without the prior written consent of the Owner of the Community Common Areas, at specific locations approved by Declarant during the Period of Declarant Control and the Master Association for construction, maintenance, temporary storage of materials and equipment during the course of construction or maintenance, display, sales and exhibit purposes in connection with the improvement and sale or lease of Marmalade including as necessary to further develop any undeveloped portions of Marmalade, together with the right to grant and transfer same to contractors, subcontractors, sales agents and representatives and prospective purchasers; provided, however, the exercise of such easement rights shall not unreasonably interfere with the use and enjoyment by the Owners of their Parcels or Units.

3.9 Easements for Monument/Directional Sign(s). There are hereby created at specific locations approved by Declarant during the Period of Declarant Control and by the Master Association easements for the installation of monument and directional sign(s) identifying Marmalade or providing directions within Marmalade.

3.10 Easements for Repair, Maintenance and Restoration. There are hereby created easements for ingress, egress and access to and over all Common Areas for the purpose of permitting the Master Association to discharge its obligations with respect to all Common Areas and Improvements by the Master Association.

3.11 Emergency Vehicle Access. Declarant reserves to itself and the Master Association, together with the right to grant and transfer same to its successors and assigns, the Municipal Authority and/or any public or private entities, a non-exclusive easement for public emergency vehicles and personnel acting in a public emergency over all portions of Marmalade designated for vehicular or pedestrian traffic.

3.12 **Additional Easements.** There are hereby created such easements over Marmalade at specific locations approved by Declarant during the Period of Declarant Control as Declarant shall deem necessary and appropriate in its reasonable discretion in the course of developing and selling Marmalade; provided, however, the exercise of such easement rights shall not unreasonably interfere with the use and enjoyment by the Owners of their Parcels or Unit.

3.13 **Transfer of Title.** Declarant agrees that it will convey to the Master Association the Master Association Land, if any, subject to certain easements, this Declaration, and the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, within a reasonable period of time after the closing of the last sale of a Unit or Assessment Parcel, or at such earlier time as Declarant determines in its sole discretion.

**ARTICLE IV
LAND USE CLASSIFICATIONS, PERMITTED
USES AND RESTRICTIONS**

4.1 **Land Use Classifications.** As portions of the Property are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way and other matters, including new or different uses and restrictions and subclassifications will be approved and designated by Declarant through a Sub-Association Declaration and/or Supplemental Declaration which will be recorded for that portion of the Property. The Land Use Classifications affecting the Property as of the date of this Declaration are set forth on **Exhibit D**. The Land Use Classifications for Units, Assessment Parcels and Master Association Land established by a Sub-Association Declaration or Supplemental Declaration will not be changed except as specifically permitted by this Declaration. The current contemplated Land Use Classifications are as follows:

- 4.1.1 Townhome Residential Use;
- 4.1.2 Residential Use;
- 4.1.3 Commercial Use;
- 4.1.4 Retail Use;
- 4.1.5 Library Use;
- 4.1.6 Master Association Use, which may include Common Areas;
- 4.1.7 Public uses approved by the Declarant.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications and specific permitted and prohibited uses in such Land Use Classifications will be determined in the applicable Sub-Association Declaration or Supplemental Declaration and will be within the complete discretion of Declarant. All Sub-Association Declarations and Supplemental Declarations will be subject to the zoning, land use,

and development laws, ordinances, rules and regulations and policies of the applicable Municipal Authority.

4.2 Covenants Applicable to All Land Use Classifications. The following covenants, conditions, restrictions, and reservations of easements and rights, each subject to the Community Common Area Rights and Restrictions, apply to all Units and Parcels, the Owners and lessees of the Parcels, and all Residents, whether or not a Sub-Association Declaration or Supplemental Declaration has been recorded on that Parcel and regardless of the Land Use Classification of that Parcel.

4.2.1 Animals. No animal, bird, or fish, other than a reasonable number of generally recognized house or yard pets as determined solely by the Board, may be maintained on any Unit or Parcel and then only if they are kept, and raised solely as domestic pets and not for commercial purposes. All pets must be kept within a Unit or on a leash at all times. No animal or bird is allowed to make an unreasonable amount of noise or to become a nuisance. If an Owner or Resident fails to abide by the rules and regulations and/or covenants applicable to pets, the Board may bar that pet from use of or travel upon the Common Areas. Any pet which endangers the health of any Owner or Resident of a Unit or Parcel or which creates a nuisance or an unreasonable disturbance or noise or is not a common household pet, as may be determined in the sole discretion of the Board, must be permanently removed from the Property upon seven days' written notice by the Board.

4.2.2 Antennas and Satellite Dishes. To the full extent permissible under state and federal law, no television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Unit, Parcel or other part of the Property unless (i) Declarant, during the Period of Declarant control, and the Board have given written approval; and (ii) that antenna, pole, tower or dish is fully and attractively screened or concealed, which means of screening or concealment is subject to the Design Guidelines and/or the regulation and prior approval of the Board. Notwithstanding the foregoing, the Board may allow, pursuant to the Rules, the placing on a Unit or Parcel of a flag pole no greater than eight feet in length for the purpose of displaying the national flag of the United States of America, which flag shall be no greater than twenty square feet in size.

4.2.3 Architectural Control. All Improvements must comply with the Design Guidelines as approved by the Declarant (or by the Board following the expiration of the Period of Declarant Control) pursuant to the Governing Documents. No Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any portion of the Property or the Improvements from its natural or improved state existing on the date this Declaration is recorded may be made or done without the prior written approval of the Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure may be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Units or

Parcels, is subject to the prior written approval of the Board. No changes or deviations in or from the plans and specifications once approved by the Board may be made without the prior written approval of the Board.

4.2.4 **Drainage.** No Owner or Resident may interfere with or obstruct the drainage pattern over his or her Unit or Parcel from or to any other Unit or Parcel as that pattern may be established by Declarant or as described in Section 3.5 with respect to Drainage Control Features.

4.2.5 **Fences and Walls.** Except as otherwise specifically authorized and approved by Declarant (or by the Board following the expiration of the Period of Declarant Control) no perimeter fences or walls may be constructed or otherwise allowed within Marmalade.

4.2.6 **Health, Safety and Welfare.** In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Owners and Residents, the Board may make rules restricting or regulating their presence within Marmalade as part of the Design Guidelines.

4.2.7 **Leases.** Any Lease between an Owner and a tenant or lessee respecting a Unit, Parcel or any portion of the Property is subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of the Governing Documents will be a default under that Lease. All leases (not including leases or licenses for temporary events) must comply with the Governing Documents and must require that the tenant acknowledge receipt of a copy of the Governing Documents and/or reference to the location of the Governing Documents for inspection by that tenant or lessee.

4.2.8 **Machinery and Equipment.** No machinery or equipment of any kind may be placed, operated, or maintained upon or adjacent to any Unit or Parcel except machinery or equipment that (i) is usual and customary in connection with the use, maintenance, or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) Declarant or the Master Association may require for the operation and maintenance of the Property; or (iii) is used or displayed in connection with any business permitted under a Sub-Association Declaration or Supplemental Declaration.

4.2.9 **Maintenance of Landscaped Areas.** After the landscaped Improvements on any portion of a Parcel or other portion of the Property are initially completed and accepted by the Declarant (or by the Board following the expiration of the Period of Declarant Control), the Master Association will care for, maintain and repair all landscaped portions of the Parcels, and the costs and expenses to care for, maintain and repair all landscaped areas that are cared for, maintained and repaired by the Master Association shall be Community Expenses. The costs and expenses to care for, maintain, and repair all landscaped areas that are cared for, maintained and repaired by a Sub-Association will be included within the costs and expenses that are assessed by that Sub-Association to the members of that Sub-Association.

4.2.10 Motor Vehicles, Parking and Towing.

4.2.10.1 No automobile, motorcycle, motorbike, snowmobile, snow cat, personal watercraft, boat, boat trailer, motorcycle, motorbike, motor scooter, mini-bike, all-terrain vehicle, moped, off-road vehicle, recreational vehicle or other similar equipment or vehicle or other motor vehicle may be stored, constructed, reconstructed or repaired upon any Unit, Parcel or street or other Common Area in Marmalade and no inoperable vehicle may be stored or parked on any Unit, Parcel or street; provided, however, that the provisions of this Section do not apply to (i) emergency vehicle repairs; (ii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Board; (iii) the parking of vehicles during normal business hours in areas designated for parking in a non-Residential Land Use Classification; (iv) vehicles parked in garages on Units or Parcels so long as those vehicles are in good operating condition and appearance and are not under repair; (v) the storage of vehicles in an area designated for storage purposes on a Sub-Association Declaration or Supplemental Declaration or on a site plan approved by the Board; and (vi) non-commercial vehicle repair within a garage which is closed except as necessary for ingress and egress.

4.2.10.2 It is the intent of the Declarant to restrict on-street parking as much as possible. All Owners and Residents are encouraged to keep vehicles parked in the garages and residential driveways of the Owner and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Unit or Parcel; provided, however, this Section may not be construed to permit the parking in the above described areas of any vehicle whose parking on the Property is otherwise prohibited or the parking of any inoperable vehicle. The Board may designate parking requirements as part of the Rules. Recreational vehicles may not be parked in covered garages except for limited periods not to exceed 48 consecutive hours in Residential driveways or other designated parking areas as determined by the Board and promulgated as part of the Rules.

4.2.10.3 The Board has the right, without notice, to have any vehicle which is parked, kept, maintained, constructed, reconstructed, or repaired in violation of this Section towed away at the sole cost and expense of the owner of the vehicle. All parking at Marmalade must be in compliance with the laws and ordinances of the Municipal Authority. Any expense incurred by the Master Association in connection with the towing of any vehicle must be paid to the Master Association upon demand by the owner of that vehicle.

4.2.11 **Nuisances.** No weeds, dead trees or plants, rubbish or debris of any kind may be placed or permitted to accumulate upon or adjacent to any Unit or Parcel, and no odors or loud noises are be permitted to arise or emit from a Unit or Parcel, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Owners or Residents of other property, as determined on a reasonable, good faith basis. No other

nuisances are permitted to exist or operate upon any Unit or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Owners or Residents, as determined by the Board on a reasonable, good faith basis. Notwithstanding any provision in this Section to the contrary, Declarant acknowledges and intends that certain activities at the Common Areas and the Community Common Areas may incorporate exterior speakers and food preparation and service for event gatherings. However, the use and operation of any exterior speakers and food preparation and service will be subject to the Rules, Community Common Area Rights and Restrictions, and the rules and regulations that may be adopted and enforced by the applicable Sub-Association to govern the use and operation of any exterior speakers.

4.2.12 Repair of Improvements. No Improvement on any Unit or Parcel will be permitted to fall into disrepair, and all Improvements must at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by this Declaration and subject to the provisions of any Sub-Association Declaration or Supplemental Declaration, that Improvement will be immediately repaired, rebuilt, or demolished. If any Improvement is demolished, then the Owner will at all times maintain the vacant Unit or Parcel in a clean and sightly condition, and will clear and continue to clear the Unit or Parcel of any weeds, debris, garbage, tree prunings or like items.

4.2.13 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Unit or Parcel may be further subdivided or separated into smaller Units, Parcels or interests by any Owner, and no portion less than all of any such Unit or Parcel, nor any easement or other interest therein, may be conveyed or transferred by any Owner, without the prior written approval of the Declarant (or the Board following the expiration of the Period of Declarant Control), which approval must be evidenced on a Plat or other instrument creating the subdivision, easement or other interest. This provision will not, in any way, limit Declarant from subdividing or separating into Units or Parcels the Property that has not previously been platted or subdivided into Units. Except for Improvements constructed by Declarant, no buildings or other Improvements may be constructed on any Unit or Parcel until a Sub-Association Declaration or Supplemental Declaration has been recorded on that property. No Sub-Association Declaration, Supplemental Declaration or further covenants, conditions, restrictions or easements will be recorded by any Owner or other person against any Unit or Parcel without the provisions thereof having been first approved in writing by the Declarant (or the Board following the expiration of the Period of Declarant Control), and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Unit or Parcel, and no applications for variances or use permits, may be filed with a Municipal Authority unless the proposed use of the Unit or Parcel complies with this Declaration and any applicable Sub-Association Declaration or Supplemental Declaration, and the application has been approved by the Declarant, during the Period of Declarant Control, and the Board.

4.2.14 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or Resident or occupants of a Unit or Parcel, any member of the Board or any authorized representative of the Board, has the right to enter upon and inspect any Unit or

Parcel and the Improvements, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

4.2.15 **Roofs.** To the full extent permissible under state and federal law, no apparatus, structure or object may be placed on the roof of a Dwelling Unit or other Improvement without the prior written consent of the Declarant (or the Board following the expiration of the Period of Declarant Control). Any apparatus, structure or object approved by the Board for placement on the roof of a Dwelling Unit must be mounted on the rear of the roof so that the apparatus or object is below the highest ridge on the roof and is not visible from any street by a Person standing anywhere on the curb or street in front of the Dwelling Unit or other Improvement or at the rear or sides of Units backing upon any open space or public right of way.

4.2.16 **Windows.** Unless otherwise approved by the Declarant (or the Board following the expiration of the Period of Declarant Control), all windows in Units or Parcels being used for Commercial Use will be transparent and will permit unobstructed passage of light and sight.

4.2.17 **Smoking.** Because Marmalade is a LEED certified project, subject to the Community Common Area Rights and Restrictions, smoking is not allowed in any of the Common Areas.

4.2.18 **Temporary Occupancy and Temporary Buildings.** No trailer, tent, shack, garage or barn, and no temporary buildings or structures of any kind, may be used at any time for a residence, either temporary or permanent.

4.2.19 **Trash Collection.** All rubbish, trash and garbage will be removed from the Units and Parcels and will not be allowed to accumulate on Units or Parcels. No outdoor incinerators may be kept or maintained on any Unit or Parcel.

4.2.20 **Tree or Vegetation Removal.** Subject to applicable law, no trees may be removed, except: (a) diseased or dead trees; and (b) trees which must be removed to promote the growth of other trees or for safety reasons, unless approved in writing by Declarant (or by the Board following the expiration of the Period of Declarant Control).

4.2.21 **Utility Service.** No lines, wires or other devices for communication or for the transmission of electric current or power, including telephone, television and radio signals, and cable information highways, may be erected, placed or maintained anywhere in or upon any Unit or Parcel, unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Declarant (or the Board following the expiration of the Period of Declarant Control), except for:

4.2.21.1 overhead power poles and lines to perimeter areas of the Property as approved by Declarant (or the Board following the expiration of the Period of Declarant Control); and

4.2.21.2 boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices as approved by the Declarant (or the Board following the expiration of the Period of Declarant Control).

4.2.22 **Violations of Law.** Any activity which violates local, state, or federal laws or regulations is prohibited; however, the Board has no obligation to take enforcement action in the event of a violation.

4.3 **Variances.** Subject to the provisions of the Design Guidelines, the Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV or in the Design Guidelines or in any Sub-Association Declaration or in any Supplemental Declaration, if the Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner which hardship is not self-imposed by that Owner; or (ii) that a change of circumstances since the date this Declaration is recorded has rendered such restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of Marmalade and is consistent with the high quality of life intended for Owners and Residents of Marmalade.

4.4 **Business Activities Conducted Within Dwelling Units.** Business activities conducted within a Dwelling Unit shall not change the Residential Use of such Dwelling Unit into a Commercial Use.

4.5 **Lot A Uses.** The Parcel designated as Lot A will become Community Common Area as and when designated Community Common Area pursuant to Sections 1.16 and 1.17. In addition, the Owner of Lot A may, from time to time, exercise or enforce the Community Common Area Rights and Restrictions and use all or any portion of Lot A as a public open space, public square, public park, civic plaza, or other public area designated by the Municipal Authority. In addition, the Owner of Lot A may grant walkway and access easements across that Parcel. The Community Common Area Rights and Restrictions may temporarily prohibit, limit, or condition access to and use of Lot A, and that use will not be deemed to violate, diminish, or hinder use of Lot A by any Owner, Member, Resident, lessee, occupant and their guests, and will not entitle any Owner, Member or Resident to a claim it has not received full rights to use and occupy the Common Areas.

ARTICLE V ORGANIZATION OF MASTER ASSOCIATION

5.1 **Formation of Master Association.** The Master Association is a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. Neither the Articles nor the By-Laws may, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 **Board of Directors and Officers.** The affairs of the Master Association will be conducted by a Board of at least three directors and such officers as the Board may elect or appoint in accordance with the Articles and By-Laws. The initial Board will be composed of three directors appointed by Declarant, which initial Board will be controlled by Declarant until the expiration of the Period of Declarant Control. The Board may also appoint various committees and may appoint a manager (“**Manager**”) who will, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association. The Board’s responsibilities shall include, but shall not be limited to, the following:

- 5.2.1 administration;
- 5.2.2 preparing and administering an operational budget;
- 5.2.3 establishing and administering an adequate reserve fund;
- 5.2.4 scheduling and conducting the annual meeting and other meetings of the Members;
- 5.2.5 collecting and enforcing the Assessments;
- 5.2.6 accounting functions and maintaining records;
- 5.2.7 establishing, administering and enforcing the Design Guidelines of Marmalade, as authorized by this Declaration;
- 5.2.8 promulgation and enforcement of the Rules;
- 5.2.9 maintenance of the Common Areas; and
- 5.2.10 all other duties imposed upon the Board pursuant to the Governing Documents, including enforcement thereof.

5.3 **Rules.** By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as Rules. Since it is impossible to foresee all potential situations that may arise within Marmalade, the Board has the authority to adopt and modify the Rules as needed to address new or changing circumstances. The Rules may restrict and govern the use of any area of Marmalade by any Owner or Resident, by the family of that Owner or Resident, or by any invitee, licensee or tenant of that Owner or Resident; provided, however, that the Rules will not discriminate among Owners and will be consistent with the Governing Documents.

5.3.1 The Board will send notice to all Owners concerning any proposed Rule change at least ten business days prior to the meeting of the Board at which such action is to be considered. At any such meeting, Owners will have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Area, such as hours of operation of a facility, and the method of allocating or reserving use of a facility by particular individuals at particular times, notwithstanding that those

polices may be published as part of the Rules. Subject to the notice requirements and the Board's duty to exercise judgment and reasonableness on behalf of the Master Association and its members, the Board may adopt new Rules and modify or rescind Rules by a majority vote of the directors at any Board meeting.

5.3.2 No action taken under this Section will have the effect of modifying or repealing any other provision of this Declaration other than the Rules. In the event of a conflict between the Rules and any provision of this Declaration, the Declaration will control. Notwithstanding the foregoing, neither this Declaration nor the Rules may limit or lessen the application or effect of any ordinance or regulation of the Municipal Authority.

5.3.3 Except as may be set forth in the Governing Documents or required by the Community Common Area Rights and Restrictions, all Rules will comply with the following provisions: (a) similarly situated Units will be treated similarly, however the Rules may vary by location, use or other distinct characteristics of areas within Marmalade; (b) no rules will prohibit an Owner or occupant from displaying political, religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in residential Sub-Associations, nor will any Rule regulate the content of political signs. However, the Master Association may, subject to Community Common Area Rights and Restrictions, adopt time, place and manner restrictions with respect to signs, symbols and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

5.3.4 No Rule will interfere with an Owner's freedom to determine household composition, except that the Master Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair use of the Common Areas.

5.3.5 No Rule will interfere with the activities carried on within a Dwelling, except that the Master Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Master Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance. The Master Association's authority to impose such Rules will in no way lessen the effect of any ordinances or regulations of the Municipal Authority.

5.3.6 Subject to the Community Common Area Rights and Restrictions, no Rule will alter the allocation of financial burdens among the various Units or Parcels or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Master Association. Nothing in this provision will prevent the Master Association from changing the Common Area available, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents, unless otherwise provided in the Community

Common Area Rights and Restrictions. This provision does not affect the right to increase the amount of assessments.

5.3.7 No Rule will prohibit leasing or transfer of any Residential Unit or require approval prior to leasing or transferring any Unit; however, the Rules may require a minimum lease term of up to 12 months.

5.3.8 No Rule may unreasonably interfere with the exercise of any easement.

5.3.9 ALL OWNERS ARE GIVEN NOTICE THAT THE USE OF THEIR UNIT OR ASSESSMENT PARCEL AND THE COMMON AREAS IS LIMITED BY THE RULES AND THE DESIGN GUIDELINES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER UNIT OR ASSESSMENT PARCEL CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND THE DESIGN GUIDELINES MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF UNITS OR ASSESSMENT PARCELS ARE ON NOTICE THAT THE BOARD MAY ADOPT CHANGES TO THE RULES AND THE DESIGN GUIDELINES FROM TIME TO TIME. Copies of the current Rules and the Design Guidelines may be obtained from the Master Association upon request. The Master Association may charge a reasonable fee to cover its reproduction cost.

5.4 **Personal Liability.** No director of the Master Association, no member of any committee of the Master Association, no officer of the Master Association and no Manager or other employee of the Master Association will be personally liable to any Owner or to any other person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the Manager, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association; provided, however, the limitations set forth in this Section do not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 **Sub-Associations.** Prior to such time as a Sub-Association is formed, the declaration, articles of incorporation, By-Laws, and other governing documents for the Sub-Association must be approved by Declarant (until the expiration of the Period of Declarant Control) and by the Master Association. The governing documents for each Sub-Association must specify that the rights of its members are subject and subordinate to the provisions of the Governing Documents.

5.6 **Implied Rights.** On most matters the Master Association acts through the Board, however, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Members. Unless the Governing Documents or Utah law provides otherwise, the Board may exercise the Master Association's rights and powers without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas (not including the

exercise or enforcement of the Community Common Area Rights and Restrictions), enforcement of the Governing Documents, or any other civil claim or action. In any mediation, arbitration, litigation or administrative proceeding, the prevailing party is entitled to recover its attorneys' fees and expenses. However, the Governing Documents will not be construed as creating any independent legal duty of the Board to institute litigation on behalf of or in the name of the Master Association or its Members. In exercising the Master Association's rights and powers, making decisions on behalf of the Master Association, and conducting the Master Association's affairs, Board directors are subject to, and their actions will be judged in accordance with, the standards set forth in the Articles and By-Laws.

ARTICLE VI MEMBERSHIPS AND VOTING

6.1 Owners of Assessment Parcels. Every Person who is the Owner of an Assessment Parcel is a Member of the Master Association; provided, however, if an Assessment Parcel is divided into Units pursuant to a Plat and a Sub-Association Declaration or Supplemental Declaration, the Membership for that Assessment Parcel will, upon recordation of the Plat and Sub-Association Declaration or Supplemental Declaration, be held by the non-profit owners' association established to manage and operate the Units within that Assessment Parcel. Individual Owners of Units that are governed by a Sub-Association Declaration are not Members. Voting for the Membership in that Assessment Parcel will thereafter be through a process established in the Sub-Association Declaration or Supplemental Declaration. Each Member has the number of Membership Interests, and is entitled to the Voting rights, specified for its Assessment Parcel in **Exhibit C**. Membership Interests and Voting rights are not calculated in the same manner as Assessments; Assessments have been calculated using Par Value as described in Article VII.

6.1.1 There shall be no fractional Memberships, and each Member has at least one Membership.

6.1.2 Except for Lot A, which is an Assessment Parcel, no Memberships shall be allocated to Common Areas or property utilized for public uses.

6.1.3 Each Membership is appurtenant to and may not be separated from ownership of the Assessment Parcel to which the Membership is attributable. Subject to Section 6.1 with respect to Owners of Units in an Assessment Parcel after recordation of a Plat and Sub-Association Declaration or Supplemental Declaration, each Membership will be shared by any joint Owners of, or Owners of undivided interests in, an Assessment Parcel.

6.2 Tenants. Except as provided in Section 1.48, Tenants or lessees of Rental Apartments are not Members of the Master Association.

6.3 Unit Owners. Except as provided in Section 1.48, Owners or lessees of Units in an Assessment Parcel are not Members of the Master Association.

6.4 Arctic Court Member. The Arctic Court Member is a Member of the Master Association.

6.5 **Declarant.** The Declarant is a Member of the Master Association with Voting rights until the expiration of the Period of Declarant Control, pursuant to Section 6.11. Thereafter, Declarant will be a Member so long as Declarant owns any Assessment Parcels.

6.6 **Compliance.** Subject to the exercise or enforcement of the Community Common Area Rights and Restrictions, every Owner, occupant, and visitor to an Assessment Parcel or Unit must comply with the Governing Documents and is subject to sanctions for violations of the Governing Document. In addition, each Owner is responsible for, and may be sanctioned for, all violations of the Governing Documents by the Residents, occupants, tenants, guests, or invitees to their Assessment Parcels or Units and for any damage to the Common Area that such Persons may cause; provided, however, to the extent there is a conflict between the Governing Documents and the Community Common Area Rights and Restrictions, the Community Common Area Rights and Restrictions control.

6.7 **Remedies for Non-Compliance.** The Master Association, the Declarant, and every affected Owner have the right to file suit to enforce the Governing Documents except to the extent that the Governing Documents conflict with the Community Common Area Rights and Restrictions, in which case the Community Common Area Rights and Restrictions will control. In addition, the Board may impose sanctions for violations of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents. Notwithstanding the foregoing, neither the Master Association, the Declarant, nor an Owner has the right to exercise or enforce the Community Common Area Rights and Restrictions; only the Owner of the Community Common Areas may enforce the Community Common Area Rights and Restrictions.

6.7.1 **Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which will constitute a lien upon the violator's Unit or Assessment Parcel. In the event that any occupant, tenant, guest or invitee of a Residential Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend a Project Member's right to vote (except that no hearing is required if the Project Member is more than 90 days delinquent in paying any Assessment);

(iii) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(iv) require an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit or Assessment Parcel in violation of the Governing Documents and to restore the Unit or Assessment Parcel to its previous condition and, upon failure of the Owner to do so, the Board or its designee has

the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, with all charges and fees associated with that action being charged to the Owner, and any such action will not be deemed a trespass;

(v) levy Special Assessments or Specific Assessments to cover the costs the Master Association incurs in bringing a Unit into compliance with the Governing Documents, including performing any deferred maintenance on an Assessment Parcel or Unit to bring that Assessment Parcel or Unit into compliance with this Declaration;

(vi) record a notice of violation with respect to any Unit on which a violation exists.

6.7.2 Other Sanctions. In addition to exercising its rights under Section 6.7.1, the Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit or Assessment Parcel in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a Sub-Association, at its own expense, to perform maintenance or to remove any structure or improvement on that Owner's Unit, Assessment Parcel or on the Common Area, respectively, that is in violation of the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Sub-Association fails to take action as required by subsection (iii) above within ten days after receipt of written notice to do so, and that entry will not be deemed a trespass; or

(v) bringing suit for monetary damages or to stop or prevent any violation, or both.

6.7.3 Additional Powers Relating to Sub-Associations. In addition to the foregoing sanctions, the Master Association has the power to veto any action that a residential Sub-Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Master Association or its Members or inconsistent with the Governing Documents. The Master Association also has the power to require specific action to be taken by any Sub-Association in connection with its obligations and responsibilities, such as requiring specific maintenance and repairs or

aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

6.8 Attorneys' Fees and Costs. Subject to the limitations in Section 20.16, in any action to enforce the Governing Documents, the prevailing party is entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in that action.

6.9 Enforcement of Ordinances. The Master Association, by contract or other agreement with the Municipal Authority, may enforce applicable city and county ordinances. In addition, the County or the Municipal Authority may enforce ordinances within Marmalade, including, if applicable, the Community Common Area Rights and Restrictions.

6.10 Board Decision to Pursue Enforcement Action. The decision to pursue enforcement action in any particular case is left to the Board's discretion, except that the Board will not be arbitrary or capricious in taking enforcement action. A decision not to enforce a particular provision will not prevent the Master Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

6.11 Voting. Each Member is entitled to one vote for each Membership Interest held by that Member, subject to the authority of the Board to suspend the Voting rights of the Members for violations of this Declaration in accordance with the provisions of this Declaration.

6.12 Sub-Associations. Certain Units and Assessment Parcels may be located within a Sub-Association (as designated by Declarant or by the Board following the expiration of the Period of Declarant Control) and will be subject to a Sub-Association Declaration or Supplemental Declaration including any assessment provisions contained therein. In the discretion of the Owner(s) and developer(s) of each Sub-Association, the Units and Assessment Parcels within a particular Sub-Association may be subject to additional covenants and/or the Owners of Assessment Parcels or Units may all be required to be members of a Sub-Association. Declarant (or the Board following the expiration of the Period of Declarant Control) may unilaterally amend this Declaration or any amendment to this Declaration to redesignate Sub-Association boundaries.

6.13 Membership Rights. Each Member has the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time. In any situation in which a Project Member is entitled personally to exercise the votes appurtenant to his or her Assessment Parcel and there is more than one Owner of a particular Assessment Parcel, the votes for that Assessment Parcel shall be exercised as such co-Owners determine among themselves and as they then advise the Board; provided, however, once an Assessment Parcel is divided into Units pursuant to a Plat and a Sub-Association Declaration or Supplemental Declaration, the Membership for that Assessment Parcel will, upon recordation of the Plat and Sub-Association Declaration or Supplemental Declaration, be held by the non-profit owners' association established to manage and operate the Units within that Assessment Parcel and that owners' association will hold the Membership. The Membership for the Arctic Court Member will be governed by pursuant to Article XIX.

6.14 Transfer of Membership. Except for an agreement of designation by the Owner of the Parcel designated on the Plat as Lot 1 pursuant to Section 1.48, the rights and obligations of a Member may not be assigned, transferred, pledged, designated, conveyed or alienated in any way, except upon Transfer of ownership to a Member's Assessment Parcel and then only to the transferee of ownership to that Assessment Parcel; provided, however, once a Assessment Parcel is divided into Units pursuant to a Plat and a Sub-Association Declaration or Supplemental Declaration, the Membership for that Assessment Parcel will, upon recordation of the Plat and Sub-Association Declaration or Supplemental Declaration, be held by the non-profit owners' association established to operate the Units within that Assessment Parcel and that Membership may not be assigned, transferred, pledged, designated, conveyed or alienated in any way. A Transfer of ownership to an Assessment Parcel may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a Mortgage or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Subject to the first sentence of this Section with respect to Owners of Units in an Assessment Parcel after recordation of a Plat and Sub-Association Declaration or Supplemental Declaration, any Transfer of ownership to an Assessment Parcel will operate to transfer the Membership(s) appurtenant to that Assessment Parcel to the new Owner thereof. The rights and obligations of an Arctic Court Member may only be held by the non-profit owners' association established to operate the Arctic Court Development and that Membership may not be assigned, transferred, pledged, designated, conveyed or alienated in any way.

ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments. Except as otherwise provided in this Declaration, Declarant, for each Assessment Parcel hereafter established within Marmalade, hereby covenants and agrees, and each Owner, by acceptance of a Deed or other conveyance of an Assessment Parcel or any portion of an Assessment Parcel (whether or not it is specifically expressed in that Deed or conveyance) is deemed to covenant and agree, to pay to the Master Association the following assessments and charges: (1) Annual Assessments; (2) Special Assessments for capital improvements or other extraordinary expenses or costs; and (3) Specific Assessments. All Assessments are established and will be collected as provided in this Declaration. No diminution or abatement of Annual Assessments, Special Assessments, or Specific Assessments nor any decrease, offset, deduction or set-off shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or to perform some function required to be taken or performed by the Master Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken by the Master Association or the Board to comply with Utah law, ordinances, or with any order or directive of any Municipal Authority or other governmental authority. The obligation to pay Assessments is deemed to be a separate and independent covenant on the part of each Owner of a Unit or Assessment Parcel and is assessed and paid as follows:

7.1.1 Assessment Parcels without Sub-Association Declarations. For all Assessment Parcels that do not have Sub-Association Declarations recorded against them, the Annual Assessments, Special Assessments, and Specific Assessments, together

with interest, costs and reasonable attorneys' fees, are a charge on the Assessment Parcel and are a continuing servitude and lien upon the Assessment Parcel against which each Assessment or Maintenance Charge is made. Each Annual Assessment, Special Assessment, Maintenance Charge, and Specific Assessment, together with interest, costs and reasonable attorneys' fees, are also the independent obligation of the Person who was the Owner of the Assessment Parcel at the time when the Assessment or Maintenance Charge falls due. The personal obligation for delinquent Assessments will not pass to the successors in title of the Owner, unless expressly assumed by them. However, the lien upon the applicable Assessment Parcel for any unpaid Assessments existing at the time of any Transfer will continue, notwithstanding that Transfer, until the Assessments have been paid in full.

7.1.2 Assessment Parcels with Sub-Association Declarations. For all Assessment Parcels where a Sub-Association Declaration has been recorded and that Assessment Parcel has been divided into two or more Units, the Annual Assessments, Special Assessments, and Specific Assessments, together with interest, costs and reasonable attorneys' fees, are a charge on all of the Units within that Assessment Parcel and are a continuing servitude and lien upon all of the Units within the Assessment Parcel against which each Assessment or Maintenance Charge is made. The amount of the Annual Assessments, Special Assessments, and Specific Assessments allocatable to each Unit within the Assessment Parcel will be specified in the Sub-Association Declaration for that Assessment Parcel. Each Annual Assessment, Special Assessment, Maintenance Charge, and Specific Assessment, together with interest, costs and reasonable attorneys' fees, are also the personal obligation of the Person who was the Owner of the Unit at the time when the Assessment or Maintenance Charge falls due. The personal obligation for delinquent Assessments will not pass to the successors in title of the Owner, unless expressly assumed by them. However, the lien upon the applicable Unit for any unpaid Assessments existing at the time of any Transfer will continue, notwithstanding that Transfer, until the Assessments have been paid in full. Upon written request, the Master Association will furnish any Owner liable for any type of assessment a certificate signed by a Master Association officer setting forth whether that assessment has been paid. That certificate will be conclusive evidence of payment. The obligation of any Owner of a Unit to pay Assessments does not give that Owner Voting rights; only Members have Voting rights.

7.2 Lien for Assessments.

7.2.1 Existence of Lien. The Master Association has an Assessment Lien against each Assessment Parcel and each Unit to secure payment of Assessments, as well as interest, late charges (subject to the limitations of Utah law), and costs of collection (including attorneys' fees and expenses). That Assessment Lien is superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior. Although no further action is required to create or perfect the Assessment Lien, the Master Association may, as further evidence and notice of the Assessment Lien, execute and record a document setting forth as to any Unit or Assessment Parcel the amount of the delinquent sums due the Master Association at the time that document is executed and the fact that a lien exists to secure the repayment

thereof. However, the failure of the Master Association to execute and record that document does not affect the validity, enforceability or priority of the Assessment Lien.

7.2.2 Enforcement of Lien. The Master Association may bid for the Assessment Parcel or the Unit at a foreclosure sale and acquire, hold, lease, mortgage and convey the Assessment Parcel or Unit. While an Assessment Parcel or Unit is owned by the Master Association following foreclosure: (a) no right to vote may be exercised on its behalf; and (b) no assessment may be levied on it. The Master Association may sue for unpaid assessments and other charges authorized under this Declaration without foreclosing or waiving the lien securing the unpaid assessments, in addition to pursuing any and all remedies allowed by law to enforce the lien.

7.2.3 Effect of Sale or Transfer. The Transfer of any Assessment Parcel or Unit will not affect the assessment lien or relieve that Assessment Parcel or Unit from the lien for any subsequent assessments. However, the Transfer of any Assessment Parcel or Unit pursuant to foreclosure of the First Mortgage will extinguish the lien as to any installments of assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit will not be personally liable for assessments on that Assessment Parcel or Unit due prior to the acquisition of title. The unpaid assessments will be deemed to be Community Expenses collectible from Owners of all Assessment Parcels and Units.

7.2.4 Lien on Lot 1. Notwithstanding any provision of this Declaration to the contrary, during any period that bond financing is in place to finance or refinance the construction of a library and related facilities on the Parcel designated as Lot 1, this Declaration shall not create a lien on that Parcel and the Master Association shall not have the right to enforce the payment of an Annual Assessment, Special Assessment, Maintenance Charge, and Specific Assessment directly against that Parcel.

7.3 Property Assessable Upon Certificate of Occupancy. At the time an Assessment Parcel or Unit is conveyed by Declarant to a third party, that Assessment Parcel or Unit will thereupon be subject to the Assessments, and the Board will levy the Assessments upon the Owner of the Assessment Parcel or Unit within 30 days after the date of the conveyance. If applicable, the Annual Assessment and/or any Special Assessment and/or any Specific Assessment will be prorated for the remaining portion of the assessment year.

7.4 Annual Assessments. Annual Assessments will be computed and assessed against all Assessment Parcels as follows:

7.4.1 Community Expenses. Annual Assessments will be based upon advance estimates of the Master Association's cash requirements to provide for payment of all estimated Community Expenses arising out of or connected with the maintenance, improvement and operation of the Common Areas (including capital repairs and replacements), including the following items: landscaping and maintenance of the Common Areas, including the Drainage Control Areas; paying insurance premiums required by this Declaration, paying assessments and taxes, if any on Master Association Land, if any, fulfilling the Master Association's obligations under any development

agreement, and fulfilling the Master Association's obligations with respect to the operation of the Master Association as required by this Declaration. The estimated Community Expenses may include, without limitation, the following: expenses of management; complete maintenance of all Common Areas at least every two years; real property taxes and assessments (unless and until the Units and Assessment Parcels are separately assessed); premiums for all insurance that the Master Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Master Association employees; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Master Association under or by reason of this Declaration and any development agreement.

7.4.2 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin as provided in Section 7.8, and on or before November 1 of each year thereafter, the Board shall prepare and make available to each Member, or cause to be prepared and to be made available to each Member, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Master Association shall be operated during such annual period. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Area. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

7.4.3 Notice of Budget and Assessment; Right to Disapprove. The Board will send a copy of each applicable budget to each Member at least 60 days prior to the due date of the assessments to be levied pursuant to that budget. The Community Expense budget will automatically become effective unless disapproved at a meeting of Members representing at least 51% of the votes in the Master Association at a meeting called and held pursuant to the Utah Code 57-8a-215. The budget will be presented to the Members at a meeting of the Members. If any proposed budget is disapproved or the Board fails for any reason to adopt the budget for any year, the then-in-effect budget, increased by 10% will continue in effect until a new budget is adopted.

7.4.4 Budget Revisions. The Board may revise the budget any time during the year, subject to the same notice requirements and rights to disapprove.

7.4.5 Notice and Payment. Except with respect to the first fiscal year, the Board will notify each Member in writing as to the amount of the Annual Assessment

against each Owner's Assessment Parcel on or before December 1 each year for the fiscal year beginning the following January 1. Except as otherwise provided by the Board, each Annual Assessment will be payable in equal monthly, quarterly or annual installments as determined by the Board in its sole discretion; provided, however, the Annual Assessment for the first fiscal year will be based upon such portion of the first fiscal year that remains after the notice of the Annual Assessment becomes effective. Each Member will commence payment of the full installments of the Assessments against the Member's Assessment Parcel at such time as the applicable Assessment Parcel is conveyed by the Declarant to the Member. All Annual Assessments will be deposited into the Community Expense Fund. All unpaid installments of any Annual Assessment will bear interest at the rate established by the Board, not to exceed 18% per annum, from and after 15 days after the date each such installment became due until paid, and the Owner is liable for late fees as determined by the Board, and all costs, including attorneys' fees incurred by the Master Association in collecting the Annual Assessments. In addition, in the event that any installment of the Annual Assessment is not paid within 15 days of the date such installment becomes due, the Master Association may, at its option, and upon 15 days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated will be due at the expiration of the 15 day notice period, and interest will accrue on the entire sum at the rate established by the Board not to exceed 18% per annum from that date until paid in full. The failure of the Board to give timely notice of any Annual Assessment as provided herein will not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay those Assessments or any other Assessments; but the date when the payment becomes due in such case will be deferred to a date 15 days after notice of the Assessment has been given to the Owner in the manner provided in this Declaration.

7.4.6 Inadequate Funds. In the event that the Community Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Assessments, the Board may, on behalf of the Master Association, levy additional Special Assessments in accordance with the procedure set forth in Section 7.6.

7.5 Allocation of Assessments. The amount of the Annual Assessments and the Special Assessments shall be allocated by the Master Association and assessed against the Assessment Parcels, with each Assessment Parcel being liable for a percentage of the Annual Assessments and a percentage of the Special Assessments, with such percentage being calculated based upon Par Value and as set forth in **Exhibit C**. The percentage allocation of Assessments is determined on a Par Value basis and is based upon numerous factors evaluated and considered by the Declarant and is not specifically tied to square footage on, or Membership Interests or Voting rights in, any Assessment Parcel.

7.6 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Master Association may levy, on any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Association Land or Common Areas, including

fixtures and personal property related thereto, for the purposes described in Section 6.7.1(v), or for the purpose of defraying other extraordinary expenses. All Special Assessments will be deposited into the Community Expense Fund.

7.7 Specific Assessments. The Master Association may levy Specific Assessments against a particular Assessment Parcel or Unit as follows:

7.7.1 To cover the costs, including overhead and administrative costs, of providing services to the Assessment Parcel or Unit upon request of the Owner pursuant to any menu of optional services which the Master Association may offer. Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

7.7.2 To cover costs incurred in bringing the Assessment Parcel or Unit into compliance with the Governing Documents, including any action allowed under Section 6.7.1, or costs incurred as a consequence of the conduct of the Owner or occupants of the Assessment Parcel or Unit, their agents, contractors, employees, licensees, invitees, or guests, unless the non-compliance or costs arise from the exercise or enforcement of the Community Common Area Rights and Restrictions; however, the Board shall give the Owner of the Assessment Parcel or Unit prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment.

7.7.3 All Specific Assessments will be deposited into the Community Expense Fund.

7.8 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (“**Assessment Period**”) is the calendar year. If the Annual Assessment for the first year starts on a date other than January 1, the Annual Assessment for that year shall be prorated based upon the actual number of days between the start date and December 31st. Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Salt Lake County, Utah, an instrument specifying the new Assessment Period.

7.9 Rules Regarding Billing and Collection Procedures. The Board has the right to adopt Rules setting forth procedures for the purpose of making the Assessments and for the billing and collection of the Annual Assessments, Special Assessments, and Specific Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Master Association to send a bill to an Owner will not relieve any Owner of his or her liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor may not be foreclosed or otherwise enforced until the Owner has been given not less than 15 days written notice, prior to the commencement of a foreclosure or enforcement, at the address of the Owner on the records of the Master Association, that the Assessment or any installment thereof is or will be due and of the amount owing. That notice may be given at any time prior to or after the delinquency of that payment. The Master Association is under no duty to refund any payments received by it, even if Membership or ownership changes during an Assessment Period. Successor Owners of Units or Assessment Parcels will be given credit for prepayments, on a prorated basis, made by prior Owners.

7.10 Evidence of Payment. Upon receipt of a written request by an Owner, the Master Association within a reasonable period of time thereafter will issue to that Owner a written certificate stating (a) that all Annual Assessments, Special Assessments, and Specific Assessments (including interest, costs and attorneys' fees, if any) have been paid with respect to any specified Assessment Parcel as of the date of such certificate, or (b) if all Annual Assessments, Special Assessments, and Specific Assessments have not been paid, the amount of the Annual Assessments, Special Assessments, and Specific Assessments (including interest, costs and attorneys' fees, if any) due and payable as of that date. The Master Association may charge a reasonable amount for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, will be conclusive and binding as against any bona fide purchaser of, or Mortgagee on, the Unit or Assessment Parcel in question.

7.11 Use and Consumption Fees. The Master Association may offer services or facilities for which it does not recover its costs through Assessments. The Board may charge use, consumption and activity fees to any person using Master Association services or facilities or participating in Master Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

7.12 Right to Assess Sub-Associations. Notwithstanding any provision of this Declaration, the Master Association has the right to directly assess each Sub-Association for all Assessments otherwise assessable to the Owners of those Sub-Associations.

7.13 Payment Appropriations. Notwithstanding any provision in this Declaration to the contrary, Declarant and each Owner acknowledges that certain Owners may be public bodies and, as such, that Owner's ability to pay Assessments is subject to annual appropriation of funding through the normal public process. If and to the extent any Owner that is a public body does not obtain an appropriation to pay its Assessments and, as a result, is unable to pay its Assessments, that Owner will provide the Board with written notice that it did not receive its appropriation within 30 days after the non-appropriation determination is made. Upon receipt of the non-appropriation notice, the Board may elect, by providing written notice to that Owner, not to maintain all or any portion of the Common Area on that Owner's Parcel and, thereafter, until any non-funded Assessments are paid, that Owner will be solely responsible to self-maintain that portion of its Parcel the Board elects not to maintain. After receiving written notice from an Owner that is a public body has not received an appropriation to make Assessments, the Board is authorized to reestablish a budget for the remaining portion of the assessment year taking into account the inability of an Owner that is a public body to obtain an appropriation to pay Assessments.

**ARTICLE VIII
ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND MAINTENANCE
CHARGES AND ENFORCEMENT OF ASSESSMENT LIEN**

8.1 Master Association as Enforcing Body. Except as otherwise set forth in this Declaration, the Master Association, as the agent and representative of the Owners, has the exclusive right to enforce the provisions of this Declaration.

8.2 Master Association's Enforcement Remedies. If any Owner fails to pay the Assessments or installments when due, the Master Association may enforce the payment of the Assessments by taking one or more of the following actions, concurrently or separately (and by exercising any of the remedies hereinafter set forth, the Master Association does not prejudice or waive its right to exercise any other remedy):

8.2.1 Bring an action at law and recover judgment against the Owner personally obligated to pay the Assessments;

8.2.2 Foreclose the Assessment Lien against the Unit or Assessment Parcel in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code, Annotated, as amended from time to time, or any other means permitted by law, and the Unit or Assessment Parcel may be redeemed after foreclosure sale, if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, the Declarant hereby conveys and warrants pursuant to UCA Sections 57-1-20 and 57-8a-402 to the Salt Lake City Attorney with power of sale, the Property and all improvements to the Property for the purpose of securing payment of assessments under the terms of this Declaration. The Board may, at any time, designate one or more successor trustees, in the place of Trustee, in accordance with the provisions of Utah law for the substitution of trustees under deeds of trust. The Trustee, and any successors, will not have any other right, title or interest in the Property beyond those rights and interests necessary and appropriate to foreclose any liens against Units or Assessment Parcels arising pursuant hereto. In any foreclosure, the Owner of the Unit or Assessment Parcel being foreclosed will be required to pay the costs and expenses of that proceeding (including reasonable attorneys' fees), and those costs and expenses will be secured by the lien being foreclosed. The Master Association has the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units or Assessment Parcels purchased at such sale.

8.2.3 Notwithstanding the subordination of an Assessment Lien as described in Section 8.3, the delinquent Owner will remain personally liable for the Assessments and related costs until his or her ownership is terminated by foreclosure or Deed in lieu of foreclosure or otherwise.

8.3 Priority of Lien. The Assessment Lien will be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided and except as provided in Sections 7.2.4, 8.5, and 16.5, the Assessment Lien will be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit or Assessment Parcel. The Transfer of any Unit or Assessment Parcel shall not affect the Assessment Lien, except as provided in Section 16.5.

8.4 Attorneys' Fees and Costs. In any action taken pursuant to Section 8.2, the Owner shall be personally liable for, and the Assessment Lien, whether against the Owner's Assessment Parcel or the Units within an Assessment Parcel subject to a Sub-Association

Declaration, will be deemed to secure the amount of, the Annual Assessments, the Special Assessments and Specific Assessments together with the Master Association's collection costs and attorneys' fees.

8.5 Payment After Non-Appropriation. Notwithstanding any provision in this Declaration to the contrary, if an Owner fails to pay Assessments or installments when due solely as a result of the non-appropriation of funds as contemplated by Section 7.13, the Master Association may not enforce the payment of the Assessments against that Owner in any manner, including the imposition or enforcement of a lien on that Owner's Parcel or Unit. In addition, no interest will accrue on the amount of the unpaid Assessments.

ARTICLE IX USE OF FUNDS; BORROWING POWER; OTHER MASTER ASSOCIATION DUTIES

9.1 Purposes for Which Master Association's Funds May Be Used. The Master Association will apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments, Specific Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Marmalade and the Members, Owners, and Residents by devoting the funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within Marmalade which may be necessary, desirable or beneficial to the general common interests of Marmalade, the Members, Owners, and Residents. The following are some, but not all, of the areas in which the Master Association may seek to aid, promote and provide for such common benefit: social interaction among Members, Owners, and Residents; maintenance of landscaping on Common Areas and public right-of-way and drainage areas within Marmalade; fulfilling the Master Association's obligations under any development agreement; recreation; insurance; communications; ownership and operation of vehicle storage areas; transportation; health; utilities; public services; safety and indemnification of officers and directors of the Master Association and any committees created by the Master Association; and compliance with any Governing Document. The Master Association also may expend its funds as otherwise permitted under the laws of the State of Utah.

9.2 Facilities and Services Open to the Public. Certain facilities and areas within Marmalade may be open for use and enjoyment of the public as shown on the Plat and pursuant to the Community Common Area Rights and Restrictions, including plazas, walkways, sidewalks, alleys, roadways, medians, and other neighborhood spots conducive to gathering and interaction. Subject to Community Common Area Rights and Restrictions, the Declarant may designate those facilities and areas as open to the public at the time the Declarant makes them a part of the Common Area or the Board may so designate at any time thereafter.

9.3 Borrowing Power. After the Period of Declarant Control, subject to applicable law and in accordance its budgeting obligations, the Master Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board.

9.4 **Master Association's Rights in Spending Funds From Year to Year.** The Master Association will not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments, Special Assessments, or Specific Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Master Association will not be obligated to reduce the amount of Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Master Association may carry forward from year to year that surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Master Association and the accomplishment of its purposes.

**ARTICLE X
MAINTENANCE, REPAIR AND REPLACEMENT**

10.1 **Common Areas and Public Right-of-Way.** The Master Association, or its duly delegated representative, will maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, recreational facilities, and exteriors of the buildings and structural components of all buildings and structures located upon the Common Areas (but not buildings and structural components of buildings and structures located on Assessment Parcels or Units, unless specifically designated as Common Area); provided, however, the Master Association shall not be responsible for providing or maintaining the landscaping or structures which are part of Units or Assessment Parcels unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Marmalade; and (ii) the Master Association assumes in writing the responsibility as set forth in a recorded instrument as hereinafter provided. The Master Association will also maintain any landscaping and other Improvements not on Units and Parcels which are within the exterior boundaries of Marmalade, which are within areas shown on a Plat or other plat of dedication for Marmalade and which are intended for the general benefit of the Members, Owners, and Residents of Marmalade, except that the Master Association is not (except by separate recorded agreement) obligated to maintain areas which (i) are owned by a Municipal Authority (however, the Master Association will maintain Common Areas located on the Parcels designated as Lot A and Lot 1 during any period those Parcels are owned by a Municipal Authority), (ii) a Sub-Association is required under a Sub-Association Declaration or Supplemental Declaration to maintain, (iii) are to be maintained by the Owners of a Unit or Assessment Parcel pursuant to this Declaration, or (iv) are within the Arctic Court Development. Specific areas to be maintained by the Master Association may be identified on Plats recorded or approved by the Declarant, in Sub-Association Declarations, Supplemental Declarations and in Deeds from the Declarant to a transferee of a Unit or Assessment Parcel, but the failure to so identify such areas will not affect the Master Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of Marmalade. Notwithstanding anything to the contrary herein, the Board has discretion to enter into an agreement with a Municipal Authority to permit the Master Association to upgrade and/or maintain landscaping or other improvements on property owned by a Municipal Authority (however, the Master Association will maintain Common Areas located on the Parcels designated as Lot A and Lot 1 during any period those Parcels are owned by a Municipal Authority), if such property is within Marmalade and if the Board determines such agreement benefits the Master Association.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas. In this regard the Master Association may, subject to any applicable provisions on Special Assessments or Specific Assessments, in the discretion of the Board:

10.1.1 Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Master Association Land;

10.1.2 Maintain (including snow removal therefrom), construct, reconstruct, repair, replace or refinish any surface upon any portion of the Common Areas used as a walk, driveway or parking area;

10.1.3 Subject to applicable law, replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

10.1.4 Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and

10.1.5 Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration and subject to the Community Common Area Use Rights and Obligations.

10.1.6 In the event any Plat, Sub-Association Declaration, Supplemental Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Units or Assessment Parcels will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board has the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Marmalade for the Master Association or for an individual Owner or a Sub-Association to be responsible for that maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Master Association to contract with others for the performance of the maintenance and other obligations of the Master Association under this Article X, and in order to promote uniformity and harmony of appearance, the Board may also cause the Master Association to contract to provide maintenance services to Sub-Associations or to Owners of Units and Assessment Parcels having the responsibilities in exchange for the payment of fees as the Master Association, the Sub-Association or the Owner may agree upon.

10.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas, structures and other property maintained by the Master Association is caused through the willful or negligent act of any Owner or Resident of a Unit or Assessment Parcel, or any family members, guests, invitees or tenants of such Persons, the cost of such maintenance or repairs may be added to and become a part of the Assessment to which that Owner and the Owner's

Unit or Assessment Parcel is subject and will be secured by the Assessment Lien; provided, however, the Owners of the Community Common Areas are responsible to repair, but cannot be assessed for the cost of any Person using the Community Common Areas pursuant to the Community Common Area Rights and Restrictions. Any charges or fees to be paid by the Owner of a Unit or Assessment Parcel pursuant to Section 10.1 in connection with a contract entered into by the Master Association with an Owner for the performance of an Owner's maintenance responsibilities will also become a part of such Assessment and will be secured by the Assessment Lien.

10.3 Maintenance and Use of Units and Assessment Parcels. Subject to the Community Common Area Rights and Restrictions, each Owner will maintain his or her Assessment Parcel or Unit, including all Buildings, structures, landscaping, and other improvements comprising the Assessment Parcel or Unit (not including any portion of an Assessment Parcel or Unit that is maintained by the Master Association pursuant to this Declaration), so as not to detract from the appearance of Marmalade and so as not to affect adversely the value or use of any other Dwelling Unit, Improvement, Unit or Assessment Parcel. In the event any portion of any Unit or Assessment Parcel (not including any portion of an Assessment Parcel or Unit that is maintained by the Master Association pursuant to this Declaration) is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Units and Assessment Parcels or other areas of Marmalade which are substantially affected thereby or related thereto, or in the event any portion of a Unit or Assessment Parcel (not including any portion of an Assessment Parcel or Unit that is maintained by the Master Association pursuant to this Declaration) is being used in a manner which violates this Declaration or any Sub-Association Declaration or any Supplemental Declaration applicable thereto, or in the event the Owner of any Unit or Assessment Parcel fails to perform any of its obligations under the Governing Documents, the Board may by resolution make a finding to that effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within 14 days, or such longer time specified by the Board, the Board may cause such action to be taken at said Owner's cost. If at the expiration of that 14-day or longer specified period of time the requisite corrective action has not been taken, the Board is authorized and empowered to: (i) enter the Unit or Assessment Parcel and cause such action to be taken, and the cost thereof shall be added to and become a part of the Assessment (including interest at the rate of 18% per annum) to which the offending Owner and the Owner's Unit or Assessment Parcel is subject and will be secured by the Assessment Lien; (ii) record a notice of violation in the Office of the County Recorder of Salt Lake County, Utah; (iii) impose a fine commensurate with the severity of the violation; or (iv) bring an action at law and recover judgment of specific performance or damages against the Owner and including costs and attorneys' fees. In any action taken pursuant to this Section 10.3, the Owner is personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Master Association's collection costs and attorneys' fees.

10.4 Maintenance and Repair of Party Walls and Similar Structures. Each wall, fence, driveway, or similar structure built as part of the original construction of the Assessment Parcels or Units that serves or separates any two adjoining Assessment Parcels or Units will be considered a party structure. The cost of reasonable repair and maintenance of a party structure will be shared equally by the Owners who use the party structure. If a party structure is

destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. The other Owners who use the structure will contribute to the restoration cost in equal proportion. However, that contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omission. To the extent not inconsistent with the provisions of the Governing Documents, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure.

10.5 Maintenance of Irrigation Lines. The Master Association is responsible for the maintenance, repair, and replacement of any irrigation lines or equipment within the Common Areas of Marmalade.

10.6 Maintenance of Sewer Laterals. Without diminishing the Owners' responsibilities set forth in Section 10.3, the Master Association has the right but not the obligation to maintain, replace and repair sanitary sewer laterals serving any Assessment Parcel, Unit or Improvement within Marmalade and the Drainage Control Features. If the Master Association elects to perform that maintenance, replacement and repair, the cost thereof will be assessed by the Master Association at the election of the Master Association to either the applicable Sub-Association governing the Assessment Parcel, Unit or Improvement, or to the applicable Owners of the Assessment Parcel, Unit or Improvement. The Board does not need the prior approval of the Members to cause that maintenance, replacement or repairs to be accomplished, notwithstanding the cost thereof. The Master Association has a right of entry and access to, over, upon, and through all of the Property including each Assessment Parcel and Unit, each Improvement and the Common Areas, to enable the Master Association to perform maintenance, repair, and replacement of sanitary sewer laterals and Drainage Control Features. In the event of an emergency, the Master Association's right of entry to an Assessment Parcel, Unit or Improvement may be exercised without notice; otherwise, the Master Association will give the Owners or Residents of an Assessment Parcel, Unit or Improvement no less than twenty-four hours advance notice prior to entry.

ARTICLE XI DESIGN GUIDELINES AND DESIGN REVIEW BY THE BOARD

11.1 Purpose. The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within Marmalade. Subject to the Community Common Area Rights and Restrictions, the Design Guidelines describe what types of building materials and design elements are preferred and others that are discouraged. All Improvements are subject to standards for design, landscaping and aesthetics adopted pursuant to the Design Guidelines and the approval procedures set forth in the Governing Documents.

11.2 Design Guidelines and Rules. The Design Guidelines define and describe the design standards for Marmalade and the various uses therein. The Design Guidelines may be modified or amended from time to time by the Board. To the extent permitted by the Design Guidelines, the Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the design review process is not a substitute for

compliance with applicable Municipal Authority building, zoning, and subdivision regulations and requirements, and each Owner is responsible for obtaining all applicable Municipal Authority approvals, licenses, and permits as may be required in addition to obtaining final approval of any Improvements from the Board prior to commencing construction. As part of the Design Guidelines, the Board may make and publish such rules and regulations as it may deem appropriate to govern its proceedings with respect to design review.

11.3 Limitation of Liability. The Board will use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Board, nor any individual Board member, will be liable to any person for any official act of the Board in connection with submitted plans and specifications, except to the extent the Board or any individual Board member acted with gross negligence or was guilty of willful misconduct. Approval of plans and specifications by the Board does not necessarily assure approval of such plans and specifications by the appropriate Municipal Authority. Notwithstanding the approval by the Board of any plans and specifications, neither the Board nor any of its members will be responsible or liable to any Owner, developer, or contract holder with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Improvements. Neither the Board, nor any agent of the Board, nor Declarant nor any of its shareholders, members, employees, agents, or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Design Guidelines or any other Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. **THE DECLARANT, THE MASTER ASSOCIATION, ITS OFFICERS, THE BOARD, ANY COMMITTEE, AND ANY MEMBER OF ANY OF THE FOREGOING WILL NOT BE LIABLE FOR (A) SOIL CONDITIONS, DRAINAGE, OR OTHER GENERAL SITE WORK; (B) ANY DEFECTS IN PLANS REVISED OR APPROVED HEREUNDER; (C) ANY LOSS OR DAMAGE ARISING OUT OF THE ACTION, INACTION, INTEGRITY, FINANCIAL CONDITION, OR QUALITY OF WORK OF ANY CONTRACTOR OR ITS SUBCONTRACTORS, EMPLOYEES, OR AGENTS, WHETHER OR NOT THE DECLARANT HAS APPROVED OR FEATURED SUCH CONTRACTOR; (D) ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER OR QUALITY OR OTHER CIRCUMSTANCES OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY ASSESSMENT PARCEL OR UNIT; OR (E) ANY INJURY, DAMAGE, OR LOSS ARISING OUT OF AN EARTHQUAKE, ACT OF GOD, OR ANY OTHER NATURAL DISASTER.** In all events the Board will be defended and indemnified by the Master Association in any suit or proceeding which may arise by reason of the Board's decision. The Master Association, however, will not be obligated to indemnify any member of the Board to the extent any member of the Board is adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty as a member of the Board, unless and then only to the extent that the court in which that action or suit may be brought will determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as the court shall deem proper.

11.4 Inspection and Compliance. The Board has the right, but not the obligation, to inspect any Unit, Assessment Parcel or Improvement to ensure compliance with the Design Guidelines and any plans approved by the Board. If a violation of the Design Guidelines or any previously approved plans is discovered, the Board will provide written notice of non-

compliance to the Owner of the Unit, Assessment Parcel or Improvement, specifying the particular condition or conditions which exist and stating that unless corrective action is taken within 14 days or such longer time specified in the notice, the Board may: (i) withdraw any approval previously given to an Owner, whereupon such Owner will immediately cease further work; (ii) impose a fine commensurate with the severity of the violation as reasonably determined by the Board; or (iii) take such further action as the Board deems appropriate. In any action taken pursuant to this Section, the Owner will be personally liable for, and the Assessment Lien will be deemed to secure the amount of, the Board's costs and expenses together with interest at the rate of 18% per annum plus collection costs and attorneys' fees.

ARTICLE XII RIGHTS AND POWERS OF MASTER ASSOCIATION

12.1 Master Association's Rights and Powers As Set Forth in Articles and By-Laws. In addition to the rights and powers of the Master Association set forth in this Declaration, the Master Association has such rights and powers as are set forth in its Articles and By-Laws and the Utah Revised Nonprofit Corporation Act, Utah Code, Annotated, §16-6a-101, *et seq.* Those rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided the Articles and By-Laws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Master Association, a copy of the Articles and By-Laws of the Master Association will be available for inspection at the office of the Master Association during reasonable business hours by prior appointment.

12.2 Master Association's Rights of Enforcement. The Master Association, as the agent and representative of the Owners and Members, has the right to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) are executed pursuant to, or subject to, the provisions of this Declaration; or (b) otherwise indicate that the provisions of that instrument were intended to be enforced by the Master Association or by Declarant. In the event suit is brought or arbitration is instituted or an attorney is retained by the Master Association to enforce the terms of this Declaration or any other Governing Document and the Master Association prevails, the Master Association is entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including but not limited to the Master Association's administrative costs and fees. The attorneys' fees, costs and expenses will be the personal liability of the breaching Owner and will also be secured by the Assessment Lien against that Owner's Unit or Assessment Parcel.

12.3 Contracts with Others for Performance of Master Association's Duties. Subject to the restrictions and limitations contained in this Declaration, the Master Association may enter into contracts and transactions with others, and those contracts or transactions will not be invalidated or in any way affected by the fact that one or more Board members or officers of the Master Association or members of any committee are employed by or otherwise connected

with Declarant or its affiliates, provided that the fact of such interest will be disclosed or known to the other Board members acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Board member, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he or she is a member which will authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote to authorize any such contract, transaction or approval with like force and effect as if he or she were not so interested.

12.4 **Change of Use of Master Association Land.** Upon: (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Master Association Land or of the Master Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents; (b) the approval of such resolution by the Declarant during the Period of Declarant Control; and (c) the approval of such resolution by the Owner of the Parcel designated as Lot A if the proposed change in use impacts Lot A, or the Owner of the Parcel designated as Lot 1, if the proposed change in use impacts Lot 1, the Board will have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use); provided the new use: (i) will be for the benefit of the Owners and Residents; and (ii) will be consistent with any Deed restrictions (or zoning regulations) restricting or limiting the use of the Master Association Land or Common Areas.

ARTICLE XIII INSURANCE, SAFETY AND FIDELITY BONDS

13.1 **Property Insurance.** Each Owner must carry property insurance for the full replacement cost of all insurable improvements on his or her Assessment Parcel or Unit, less a reasonable deductible. Within 90 days after any damage to or destruction of any Assessment Parcel, Unit or Improvement, that Owner will promptly repair or reconstruct in such a manner consistent with the original construction, unless the Board agrees to extend that period. The Owner will pay any costs that insurance proceeds do not cover.

13.2 **Safety and Security.** Each Owner and occupant of an Assessment Parcel or Unit and their respective guests and invitees, is responsible for their own personal safety and the security of their property in Marmalade. The Master Association may, but is not obligated to, maintain or support certain activities within Marmalade designed to promote or enhance the level of safety or security, which each person provides for himself or herself and his or her property. Any Sub-Association may, but is not obligated to, maintain or support certain activities within its Assessment Parcel designed to promote or enhance the level of safety or security, which each person provides for himself or herself and his or her property. However, the Master Association or the Declarant will not in any way be considered insurers or guarantors of safety or security within Marmalade, nor will either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures taken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Marmalade, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases

prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Assessment Parcel or Unit, that the Master Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within Marmalade assumes all risks of personal injury and loss or damage to property, including Assessment Parcels, Units and their contents, resulting from acts of third parties.

13.3 Hazard Insurance. The Master Association shall at all times maintain in force insurance meeting the following requirements: A "master" or "blanket" type policy of property insurance shall be maintained, if reasonably available, covering all insurable Improvements, if any, on the Master Association Land and where appropriate on the Common Areas; fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Master Association; but excluding land, foundations, excavations, and other items normally not covered by those policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. If blanket all-risk insurance is not reasonably available, then at a minimum, such "master" or "blanket" policy will afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to Marmalade in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy will be in an amount not less than one 100% of current replacement cost of all elements of the Common Areas covered by that policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy will include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy shall be determined by the Board.

13.4 Flood Insurance. If any part of the Common Areas is or comes to be situated in a "special flood hazard area" as designated on a "flood insurance rate map," a "master" or "blanket" policy of flood insurance will be maintained by the Master Association, if reasonably available, covering the Improvements located on the Common Areas, and any machinery and equipment related thereto (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Insurable Property within any portion of the Common Areas located within a designated flood hazard area; or (2) 100% of the insurable value of all such facilities. The maximum deductible amount for such policy shall be determined by the Board.

13.5 Policy Requirements.

13.5.1 The name of the insured under each policy required to be maintained by the foregoing Sections will be the Master Association for the use and benefit of the individual Owners. Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Master Association, including any Insurance Trustee (as hereinafter defined) with whom the Master Association has entered into an agreement (referred to herein as an “**Insurance Trust Agreement**”), or any successor to such Insurance Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Master Association (or Insurance Trustee), as a trustee for each Owner and each such Owner’s First Mortgagee. Each Owner and each such Owner’s First Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request.

13.5.2 Each policy required to be maintained by the foregoing Sections will contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which Marmalade is located. In addition, the mortgage clause or another appropriate provision of each policy will provide that the policy may not be cancelled or substantially modified without at least ten days’ prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.5.3 Each policy required to be maintained by the foregoing Sections will provide, if available, for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; A WAIVER OF LIABILITY OF THE DECLARANT FOR THOSE ITEMS COVERED BY THE POLICY; a provision that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively, and a provision that the policy is primary in the event the Owner has other insurance covering the same loss.

13.5.4 Each policy required to be maintained by the foregoing Sections will also contain or provide the following: (1) “inflation guard endorsement”, if available; (2) “building ordinance or law endorsement”, if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) “steam boiler and machinery coverage endorsement” which will provide that the insurer’s minimum liability per accident at least equals the lesser of \$2,000,000.00 or the insurable value of the Improvements containing the boiler or machinery.

13.6 **Waivers of Subrogation.** The Declarant, the Master Association and each Owner waives all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by insurance. Furthermore, Declarant, the Master Association and each

Owner intend that all insurance policies purchased will protect Declarant, contractor, subcontractors, architect, architect's consultants, engineer, engineer's consultants, all other individuals or entities listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies will contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

13.7 Fidelity Bonds or Insurance. The Master Association will at all times maintain in force and pay the premiums for "blanket" fidelity bonds or insurance, including but not limited to, directors' and officers' insurance for the benefit of all members of the Board, officers and members of committees and subcommittees appointed by the Board or otherwise established pursuant to the provisions of this Declaration, for all officers, agents, and employees of the Master Association and for all other persons handling or responsible for funds of or administered by the Master Association. The total amount of fidelity coverage required will be based upon the Master Association's best business judgment and will not be less than the estimated maximum of funds, including reserve funds, in the custody of the Master Association, or the Manager, as the case may be, at any given time during the term of coverage. A lesser amount of fidelity insurance coverage is acceptable for the Master Association so long as the Master Association and the Manager adhere to the following financial controls: (1) the Master Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Master Association; (2) the Manager maintains separate records and bank accounts for each association that uses its services, and the Manager does not have authority to draw checks on or to transfer funds from the Master Association's reserve account; or (3) two directors of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such fidelity coverage be less than the sum equal to three months' aggregate Annual Assessments. The coverage required will meet the following additional requirements: (1) the fidelity coverage will name the Master Association as obligee or insured; (2) the bonds or insurance will contain waivers by the issuers of the bonds or insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds or insurance required herein for the Master Association (except for premiums on fidelity bonds or insurance maintained by the Manager for its officers, employees and agents) will be paid by the Master Association as part of the Community Expenses; and (4) the bonds or insurance will provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Master Association, to any Insurance Trustee.

13.8 Master Association Liability Insurance. The Master Association will maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Common Areas, public ways in Marmalade, if any, all other areas of Marmalade that are under the Master Association's supervision, and Commercial spaces owned by the Master Association, if any, whether or not such spaces are leased to some third party. The coverage limits under that policy will be in amounts generally required by private institutional Mortgage investors for projects similar to Marmalade in construction, location, and use. Nevertheless, that coverage shall be for at least \$2,000,000 for bodily injury, including

deaths of persons, and property damage arising out of a single occurrence. Coverage under that policy will include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Master Association. Additional coverages under that policy will include protection against such other risks as are customarily covered with respect to projects similar to Marmalade in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and commercial automobile liability insurance. If that policy does not include "severability of interest" in its terms, the policy will include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Master Association or any other Owner. That policy will provide that it may not be cancelled or substantially modified by any party without at least 30 days' prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.9 Assessment Parcel Liability Insurance. Each Owner will maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of its Assessment Parcel. The coverage limits under that policy will be in amounts generally required by private institutional Mortgage investors for projects similar to Marmalade in construction, location, and use. Nevertheless, that coverage shall be for at least \$2,000,000 for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under that policy will include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Assessment Parcel, and legal liability arising out of lawsuits related to employment contracts of the Owner. Additional coverages under that policy will include protection against such other risks as are customarily covered with respect to projects similar to Marmalade in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and commercial automobile liability insurance. If that policy does not include "severability of interest" in its terms, the policy will include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Master Association or any other Owner. That policy will provide that it may not be cancelled or substantially modified by any party without at least 30 days' prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.10 Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Master Association, the Master Association's authorized representative, including any trustee with whom the Master Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom will be referred to herein as the "**Insurance Trustee**"), who will have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Master Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Master Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining the insurance described in Section 13.8, including: the

collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Master Association, or any Insurance Trustee, will receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear. Each insurance policy maintained pursuant to this Declaration will be written by insurance carriers which are licensed to transact business in the State of Utah and which have a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which are written by Lloyd's of London or which are otherwise approved by the Board. No such policy will be maintained where: (1) under the terms of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Master Association; (2) by the terms of the carrier's charter, By-Laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Master Association, or an Owner) from collecting insurance proceeds. The provisions of this Article XIII will not be construed to limit the power or authority of the Master Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Master Association may deem appropriate from time to time.

13.11 Annual Review of Policies and Coverage. All insurance policies will be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Common Areas and Improvements which may have been damaged or destroyed. In addition, all policies will be reviewed to determine their compliance with the provisions of this Declaration. In the event any of the insurance coverage provided for in this Article XIII is not available at a reasonable cost or is not reasonably necessary to provide Marmalade with adequate insurance protection, as determined by the Board, the Board has the right to obtain different insurance coverage or insurance coverage which does not meet all of the requirements of this Article XIII so long as, at all times, the Board maintains insurance coverage on a basis which is consistent with the types and amounts of insurance coverage obtained for projects similar to Marmalade.

13.12 Self-Insurance Program. Upon written approval of the Declarant, during the Period of Declarant Control, and the Board, any insurance required to be maintained by an Owner may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for that Owner or its affiliates, or firms in the same or related businesses.

ARTICLE XIV DAMAGE OR DESTRUCTION

14.1 Master Association as Attorney in Fact. Each Owner hereby irrevocably constitutes and appoints the Master Association as that Owner's true and lawful attorney-in-fact in that Owner's name, place, and stead for the purpose of dealing with personal property owned by the Master Association on behalf of the Owners and the Improvements on the Common Areas (not including the Common Areas located on the Parcels designated as Lot 1 and Lot A)

upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XV below. Acceptance by any grantee of a Deed or other instrument of conveyance from the Declarant or from any Owner constitutes appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Master Association has full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, Deed, waiver, or other instrument with respect to the interest of any Owner (not including the Owners of the Parcels designated as Lot 1 and Lot A) which may be necessary or appropriate to exercise the powers granted to the Master Association as attorney-in-fact. All proceeds from the insurance required hereunder will be payable to the Master Association except as otherwise provided in this Declaration.

14.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the personal property owned by the Master Association and Improvements on the Common Areas and after approval of the Owners of the Parcels designated as Lot 1 and Lot A as to any personal property located on Common Area on those Parcels, the Master Association will, unless such damage or destruction is minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part thereof so damaged or destroyed. "Repair and reconstruction" as used in this Article XIV means restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

14.3 Repair and Reconstruction. As soon as practical after obtaining estimates and after approval of the Owners the Parcels designated as Lot 1 and Lot A as to any repairs to be made on Common Areas on those Parcels, the Master Association will diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners and after approval of the Owners the Parcels designated as Lot 1 and Lot A as to any action to be taken on Common Areas on those Parcels, the Master Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner is necessary. Assessments of the Master Association will not be abated during the period of insurance adjustments and repair and reconstruction.

14.4 Funds for Repair and Reconstruction. The proceeds received by the Master Association from any hazard insurance will be used for the purpose of repair, replacement, and reconstruction of the affected personal property and Improvements on the Common Areas. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Master Association may levy, assess, and collect in advance from all Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

14.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Master Association and the amounts received from the Special Assessments provided for in Section 14.4 constitute a fund for the payment of the costs of repair and reconstruction after casualty. It will be deemed that the first money disbursed in payment for the costs of repair and reconstruction will be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such

repair and reconstruction, that balance will be retained by the Master Association to pay for future Community Expenses.

ARTICLE XV CONDEMNATION

15.1 Partial Condemnation Distribution of Award; Reconstruction; Rights of Owners. Whenever all or any part of the Common Areas is taken or conveyed in lieu of and under threat of condemnation, each Owner is entitled to written notice of the taking or conveyance prior to the disbursement of any condemnation award or proceeds from such conveyance, but the Master Association will act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law. Any awards or proceeds will be payable to the Master Association to be disbursed as follows: if the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Master Association will restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, during the Period of Declarant Control, and a majority of the Board will otherwise agree. Any such construction will be in accordance with plans approved by the Board. If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any the restoration or replacement is complete, then that award or net fund will be retained by the Master Association to pay for future Community Expenses. Notwithstanding the foregoing, any taking or conveyance in lieu of and under threat of condemnation as to the Parcels designated as Lot 1 and Lot A during the period those Parcels are owned by the Municipal Authority, will be solely handled, and all proceeds will be payable to, the Owners of those Parcels.

ARTICLE XVI MORTGAGEE AND BOND REQUIREMENTS

16.1 Notice of Action. Upon written request made to the Master Association by an Eligible Mortgagee, or an insurer or governmental guarantor of a Mortgage, which written request will identify the name and address of such Mortgagee, insurer or governmental guarantor and the Unit or Assessment Parcel number or the address of the Dwelling Unit, any such Mortgagee, insurer or governmental guarantor will be entitled to timely written notice of:

16.1.1 Any condemnation loss or any casualty loss which affects a material portion of Marmalade or any Unit or Assessment Parcel on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

16.1.2 Any delinquency in the payment of Assessments owed by an Owner whose Unit or Assessment Parcel is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of 60 days;

16.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Master Association; and

16.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.2 below or elsewhere herein.

16.2 **Mortgagee Approval.** Any Mortgagee, insurer or governmental guarantor who receives a written request from the Master Association to approve additions or amendments to the Governing Documents and who fails to deliver or post to the Master Association a negative response within 60 days will be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

16.3 **Availability of Documents and Financial Statements.** The Master Association will maintain and have current copies of the Governing Documents and other Rules concerning Marmalade as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Units or Assessment Parcels. Generally, these documents will be available during normal business hours by prior appointment. Reasonable costs for reproduction will be charged for copies.

16.4 **Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard-insurance described in Section 13.3 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or obtain such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Master Association.

16.5 **Priority.** No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units, Assessment Parcels or the Common Areas.

ARTICLE XVII TERM: AMENDMENTS: TERMINATION

17.1 **Term; Method of Termination.** This Declaration will be effective upon the date of the recording and, as amended from time to time, will continue in full force and effect for a term of 50 years from the date this Declaration is recorded. From and after that date, this Declaration, as amended, shall be automatically extended for successive periods of ten years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting 67% of the total votes of all of the Members cast at an election held for such purpose (or otherwise approved for such purpose in writing) within six months prior to the expiration of the initial effective period of this Declaration or any ten year extension. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until written consent to such termination has been obtained, within a period from six months prior to such vote to six months after such vote, from Eligible Mortgagees on 51% of the Units and Assessment Parcels upon which there are such Eligible Mortgages. If the necessary votes and consents are obtained, the Board will cause to be recorded with the County Recorder of Salt

Lake County, Utah a “certificate of termination,” duly signed by the President or Vice President attested by the Secretary or Assistant Secretary of the Master Association, with their signatures acknowledged. Thereupon this Declaration will have no further force and effect, and the Master Association shall be dissolved pursuant to the terms set forth in its Articles. This Section shall not permit termination of any easement created in this Declaration without the consent of the holder of that easement.

17.2 Amendments. This Declaration may be amended, including an amendment changing a Land Classification, by recording with the County Recorder of Salt Lake County, Utah, an amendment, duly signed and acknowledged by and on behalf of the Master Association. The amendment will set forth in full the substance of the amendment adopted, and, except as provided in Section 17.3 or elsewhere in this Declaration, will certify that at a meeting duly called and held pursuant to the Articles and By-Laws or by separate written consent without a meeting, the majority of the Board voted affirmatively for the adoption of the amendment or approved such amendment by separate written consent. Except as provided in Section 17.3 or elsewhere in this Declaration, a Sub-Association Declaration or Supplemental Declaration may be amended in the same manner as this Declaration. So long as the Declarant is the Owner of any Unit or Assessment Parcel, this Declaration and any Sub-Association Declaration and any Supplemental Declaration may be amended or terminated only with the written approval of the Declarant.

17.3 Unilateral Amendments. Notwithstanding anything contained in this Declaration to the contrary, this Declaration, a Sub-Association Declaration or Supplemental Declaration may be amended unilaterally by Declarant during the Period of Declarant Control (a) if that amendment is necessary to bring any provision of this Declaration into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, to make technical corrections, to correct mistakes or to remove/clarify ambiguities; or (b) if that amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units or Assessment Parcels subject to this Declaration; provided, however, any such amendment will not adversely affect the title to any Owner’s property, unless any such Owner consents thereto in writing. Further, during the Period of Declarant Control Declarant may unilaterally amend this Declaration, a Sub-Association Declaration or Supplemental Declaration for any other purpose; provided, however, any such amendment will not materially adversely affect the substantive rights of any Owner, nor will it adversely affect title to any property without the consent of the affected Owner. Any such amendment will be effected by the recording by Declarant of an amendment to the Declaration duly signed by the Declarant.

17.4 Declarant’s Control. It is the desire and intent of Declarant to retain control of the Master Association and its activities during the anticipated period of planning and development of Marmalade. If any amendment requested pursuant to the provisions of this Article XVII deletes, diminishes or alters that control, Declarant alone has the right to amend this Declaration to restore such control.

ARTICLE XVIII DECLARANT'S RIGHTS

18.1 **Transfer of Declarant's Rights.** Any or all of the special rights and obligations of the Declarant may be assigned and transferred to other persons or entities, provided that the transfer will not reduce an obligation nor enlarge a right beyond that contained in this Declaration, and provided further, no such transfer will be effective, unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the Recorder of Salt Lake County, Utah. So long as Declarant continues to have rights under this Article XVIII, no person or entity may record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of Marmalade without Declarant's review and written consent thereto, and any attempted recording without compliance herewith will result in that instrument being void and of no force and effect, unless subsequently approved by a recorded consent signed by Declarant.

18.2 **Sales Material.** So long as Declarant continues to have rights under this Article XVIII, all sales, promotional, and advertising materials, and all forms for deeds, contracts for sale, and other closing documents for the platting, development and sale of property in Marmalade is subject to the prior approval of Declarant, which approval will not be unreasonably withheld.

18.3 **Amendment.** This Article XVIII may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Article XVIII terminate upon termination of the Period of Declarant Control.

ARTICLE XIX ARCTIC COURT DEVELOPMENT

19.1 **Arctic Court Development Not a Parcel.** The Arctic Court Development is deemed a part of the Property and is encumbered by this Declaration; provided, however, the Arctic Court Development is not a Parcel (rather, it is an Assessment Parcel), the Arctic Court Development is not governed by the Design Guidelines or the covenants specified in Section 4.2, and the Arctic Court Development does not have any rights to use the Common Areas pursuant to rights granted under this Declaration.

19.2 **Sub-Association and Sub-Association Declaration.** The Arctic Court Development will be governed by a Sub-Association pursuant to the terms of a Sub-Association Declaration and Plat that must be approved in writing by the Declarant during the Period of Declarant Control and by the Master Association. The Sub-Association Declaration will incorporate all or portions of the Design Guidelines into the Sub-Association Declaration as directed and approved by Declarant during the Period of Declarant Control and by the Master Association and, as approved, the Design Guidelines will govern the design of the Arctic Court Development. Any amendment to the Sub-Association Declaration or Plat for the Arctic Court Development must be approved in writing by the Declarant during the Period of Declarant Control and by the Master Association. The Sub-Association Declaration will specify that the Sub-Association will hold the rights of the Arctic Court Member and the owner or owners of the Arctic Court Development will not be the Arctic Court Member. Voting for the Membership of

the Arctic Court Member will be through a process established in the Sub-Association Declaration for the Arctic Court Development.

19.3 **Easements.** The Declarant during the Period of Declarant Control and the Board may require certain easements through and within the Arctic Court Development, including easements for Drainage Control Features, which easements may be granted and shown on the Plat for the Arctic Court Development or pursuant to other written agreements.

19.4 **Land Use Classification.** The Arctic Court Development is designated for Townhome Residential Use.

ARTICLE XX MISCELLANEOUS

20.1 **Interpretation of the Covenants.** Except for judicial construction, the Master Association, by its Board, has the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Master Association's construction or interpretation of the provisions of this Declaration will be final, conclusive and binding as to all Persons and property benefited or bound by the Covenants and provisions of this Declaration.

20.2 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable will not affect the validity or enforceability of any of the other provisions of this Declaration.

20.3 **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances will operate to extinguish, terminate or modify any of the provisions of this Declaration.

20.4 **Rules and Regulations.** In addition to the right to adopt Rules on the matters expressly mentioned elsewhere in this Declaration, the Master Association (through its Board) has the right to adopt rules and regulations with respect to all other aspects of the Master Association's rights, activities and duties, provided those rules and regulations are not inconsistent with the provisions of this Declaration.

20.5 **Declarant's Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Plat or other instrument recorded in the Office of the County Recorder of Salt Lake County, Utah, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Marmalade can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, that use will continue in effect. Not as a limitation of the generality of the foregoing, the Declarant expressly reserves the right at any time and from time to time to amend a Plat.

20.6 **References to the Covenants in Deeds.** Deeds or any instruments affecting any Unit or Assessment Parcel or any part of Marmalade may contain the Covenants herein set forth

by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants are binding upon the grantee-Owner of all Units and Assessment Parcels or other person claiming an interest in any Unit or Assessment Parcel through any instrument and his or her heirs, executors, administrators, successors and assigns.

20.7 List of Owners and Eligible Members. The Board shall maintain up-to-date records showing: (i) the name of each Person who is an Owner, the address of such Person, and the Unit or Assessment Parcel which is owned by him or her; (ii) the name of each Person who is an Eligible Mortgagee, the address of such person or entity and the Unit or Assessment Parcel which is encumbered by the Mortgage held by such person or entity; (iii) the name and address of each Member; and (iv) the name of each Person who is an insurer or governmental guarantor, the address of such person or entity and the Unit or Assessment Parcel that is the subject of such insurance or guarantee. In the event of any Transfer of a fee or undivided fee interest in a Unit or Assessment Parcel, the transferee must furnish the Board with evidence establishing that the Transfer has occurred and that the Deed or other instrument accomplishing the Transfer is of record in the Office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Unit or Assessment Parcel ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Assessment Parcel or Units or Assessment Parcels which is obtained from the Office of the County Recorder of Salt Lake County, Utah. The address of an Owner will be deemed to be the address of the Unit or Assessment Parcel owned by such person unless the Board is otherwise advised. The list of Owners will be made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and that Owner's payment of any copying charges and that Owner's execution of a privacy and nondisclosure statement prepared by the Board.

20.8 General Obligations. Each Owner will enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units and Assessment Parcels, the Declarant will enjoy the same rights and assumes the same duties with respect to each unsold Unit and Assessment Parcel, unless otherwise expressly provided herein.

20.9 Rights of Action. Subject to the provisions of this Declaration, including Section 20.16, the Master Association and any aggrieved Owner has a right of action against Owners who fail to comply with the provisions of this Declaration or the decisions of the Master Association. Owners have a similar right of action against the Master Association.

20.10 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant includes any successors or assigns of Declarant's rights and powers hereunder.

20.11 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender include the feminine and neuter genders; words used in the neuter gender include the masculine and feminine genders; words in the singular include the plural; and words in the plural include the singular.

20.12 Captions and Titles; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are

not to be deemed to limit, modify or otherwise affect any of the provisions of this Declaration or to be used in determining the intent or context of that provision. All exhibits attached to this Declaration are incorporated into this Declaration.

20.13 Notices. Any notice permitted or required to be delivered as provided in this Declaration may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered 72 hours after a copy of the notice has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Master Association for the purpose of service of that notice or to the address of the Unit or Assessment Parcel of that person, if no address has been given. That address may be changed from time to time by notice in writing received by the Master Association. Notice to the Board will also be delivered or mailed to Declarant or such other address as the Board may designate after the expiration of the Period of Declarant Control.

20.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or By-Laws, all days will be counted including Saturdays, Sundays, and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day which is not a Saturday, Sunday, or legal holiday.

20.15 Notice of Violation. The Master Association has the right to record a written notice of a violation by any Owner or Resident of any restriction or provision of this Declaration. The notice will be executed and acknowledged by an officer of the Master Association and will contain substantially the following information: (a) the name of the Owner or Resident; (b) the legal description of the Unit or Assessment Parcel against which the notice is being recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being recorded by the Master Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation will serve as a notice to the Owner and Resident, and to any subsequent purchaser of the Unit or Assessment Parcel, that there is a violation. A copy of the notice will also be mailed to the Owner or Resident. If, after the recordation of the notice of violation, it is determined by the Master Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Master Association will record a notice of compliance which will state the legal description of the Unit or Assessment Parcel against which the notice of violation was recorded, the recording data of the notice of violation, and will state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Master Association to record a notice of violation will not constitute a waiver of any existing violation or evidence that no violation exists.

20.16 Governmental Protections. Notwithstanding anything in this Declaration to the contrary, by executing and recording this Declaration, Declarant and the Master Association are not (i) waiving any rights or protections available to governmental entities, including protections afforded under the Utah Governmental Immunity Act; or (ii) granting any rights to the public to use the Community Common Areas.

20.17 Foreclosure of Bond Financing. The Person granted a security interest pursuant to the terms of the bond financing to finance or refinance the construction of a library and related facilities on the Parcel designated as Lot 1 may, in pursuing a foreclosure of the Collateral securing that bond financing as provided by Utah law, either (i) foreclose out this Declaration as to the Parcel designated as Lot 1 and, in that event, own and use Lot 1 without the obligations or rights provided in this Declaration; or (ii) allow this Declaration to remain in place as to Lot 1 and, in that event, this Declaration will continue to govern ownership and use of Lot 1.

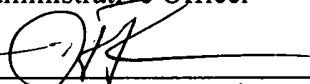
THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MARMALADE BLOCK DEVELOPMENT is executed by Declarant as of the day first above written.

DECLARANT:

Redevelopment Agency of Salt Lake City,
a public agency

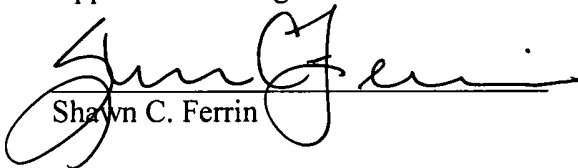


Ralph Becker
Chief Administrative Officer



~~D.J. Baxter~~ Justin Belliveau
Executive Director *Designe*

Approved as to legal form:



Shawn C. Ferrin

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CITY RECORDER'S OFFICE
P.O. BOX 145515
SALT LAKE CITY, UTAH 84114-5515

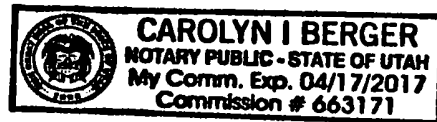
Redevelopment Agency Signature Page

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged to me this 23 day of July, 2014, by Ralph Becker, as the Chief Administrative Officer of the Redevelopment Agency of Salt Lake City, a public agency.

Carolyn I Berger
NOTARY PUBLIC
Residing at: SL County

My commission expires:
4/17/17



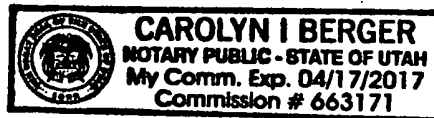
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged to me this 16 day of July, 2014, by ~~DJ Baxter~~, as the Executive Director of the Redevelopment Agency of Salt Lake City, a public agency.

Justin Belliveau as

Designee as
Carolyn I Berger
NOTARY PUBLIC
Residing at: SL County

My commission expires:
4/17/17



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SALT LAKE CITY, UTAH 84114-5515

Redevelopment Agency Signature Page

CONSENT AND JOINDER

The Local Building Authority of Salt Lake City (“**Authority**”), as the owner of Lot 1 of the Marmalade District Plat, according to the official plat recorded with the Salt Lake County Recorder’s Office (“**Lot 1**”), hereby (i) acknowledges that it has received and read a full and complete copy of the Declaration; (ii) agrees that Lot 1 is a Parcel subject to all of the provisions of this Declaration; (iii) consents to the Redevelopment Agency of Salt Lake City executing and recording this Declaration against Lot 1; and (iv) acknowledges that notwithstanding the fact that the Authority is executing this Declaration as an Owner, the Authority is not, and has none of the rights or obligations of, Declarant under this Declaration.

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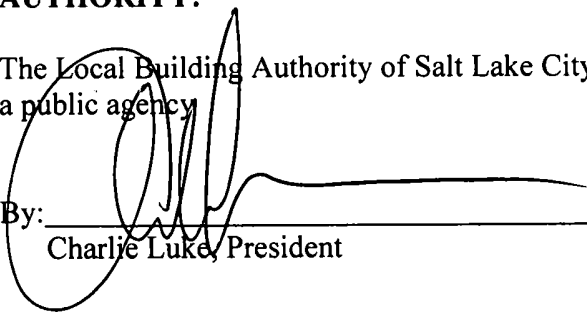
Local Building Authority Consent and Joinder

4836-8234-2933.15

BK 10250 PG 5536

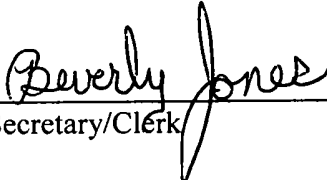
AUTHORITY:

The Local Building Authority of Salt Lake City,
a public agency

By: 
Charlie Luke, President

[Seal]

ATTEST:

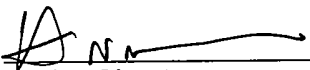
By: 
Secretary/Clerk

RECORDED

AUG 01 2014

CITY RECORDER

Approved as to form:


Senior City Attorney



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P.O. BOX 145515
SALT LAKE CITY, UTAH 84114-5515**

Local Building Authority Signature Page

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged to me this 31st day of July, 2014, by Charlie Luke, as the President of the Local Building Authority of Salt Lake City, a public agency.

Holly K Draney
NOTARY PUBLIC
Residing at: Salt Lake City

My commission expires: 6/12/2017

My commission expires:



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Local Building Authority Signature Page

**EXHIBIT A
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
MARMALADE BLOC DEVELOPMENT**

(Legal Description of the Property)

The real property referenced in the foregoing instrument is located in Salt Lake County, State of Utah, and is more particularly described as:

LOTS 1, 2, 3, 4 AND A, MARMALADE DISTRICT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND RECORDED ON JANUARY 15, 2014 AS ENTRY NO. 11789868 IN BOOK 2014P OF PLATS AT PAGE 9 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, STATE OF UTAH.

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**EXHIBIT B
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
MARMALADE BLOCK DEVELOPMENT**

[See Attached Design Guidelines]

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**EXHIBIT C
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
MARMALADE BLOCK DEVELOPMENT**

(Schedule of Membership Interests, Voting, and Par Value Assessment Allocations for
Assessment Parcels)

Assessment Parcel Number	Membership Interest and Voting Allocation	Par Value Assessment Allocation
Lot 1	14%	15%
Lot 2	15%	18%
Lot 3	19%	22%
Lot 4	1%	1%
Lot A	51%	44%

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**EXHIBIT D
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
MARMALADE BLOCK DEVELOPMENT**

(Land Use Classifications)

The Land Use Classifications for the Property are as follows:

Assessment Parcel	Land Use Classification
Lot 1	Library Use
Lot 2	Residential Use; Commercial Use; Retail Use
Lot 3	Residential Use; Commercial Use; Retail Use
Lot 4	Townhome Use
Lot A	Common Area

The Land Use Classifications established by Declarant for the Property pursuant to this Declaration will not obviate the need for compliance with: (i) the Design Guidelines and the Declaration; (ii) all codes, rules, regulations and requirements of Salt Lake City; and (iii) Salt Lake City's approvals for such property.

MEMORANDUM

To: Mayor Becker, David Everitt, Stan Penfold, Lisa Adams, Eric Shaw,
RDA Staff

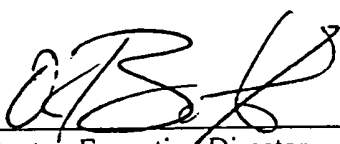
From: D.J. Baxter

RE: Executive Director Designee

Pursuant to Article IV, Section 8 of the By-Laws of the Redevelopment Agency of Salt Lake City (the "Agency"), adopted on the 14th of November 2002, and last amended on the 12th of January, 2010 (the "RDA By-Laws"), please be advised that I will be out of the city June 30, through August 1, 2014. During the period of my absence, I hereby designate, pursuant to the RDA By-laws, Matthew Dahl from June 30 through July 10, and Justin Belliveau from July 11 through August 1, 2014, Executive Director Designee, with the authority and power to execute all agreements or contracts authorized for my signature by the Board of Directors of the Agency and consistent with Utah State law, and to sign documents as "Executive Director Designee" as provided in Article IV, Section 8 of the RDA By-Laws. A signature by Matthew Dahl or Justin Belliveau as "Executive Director Designee" shall be binding on the RDA as if signed by the Executive Director.

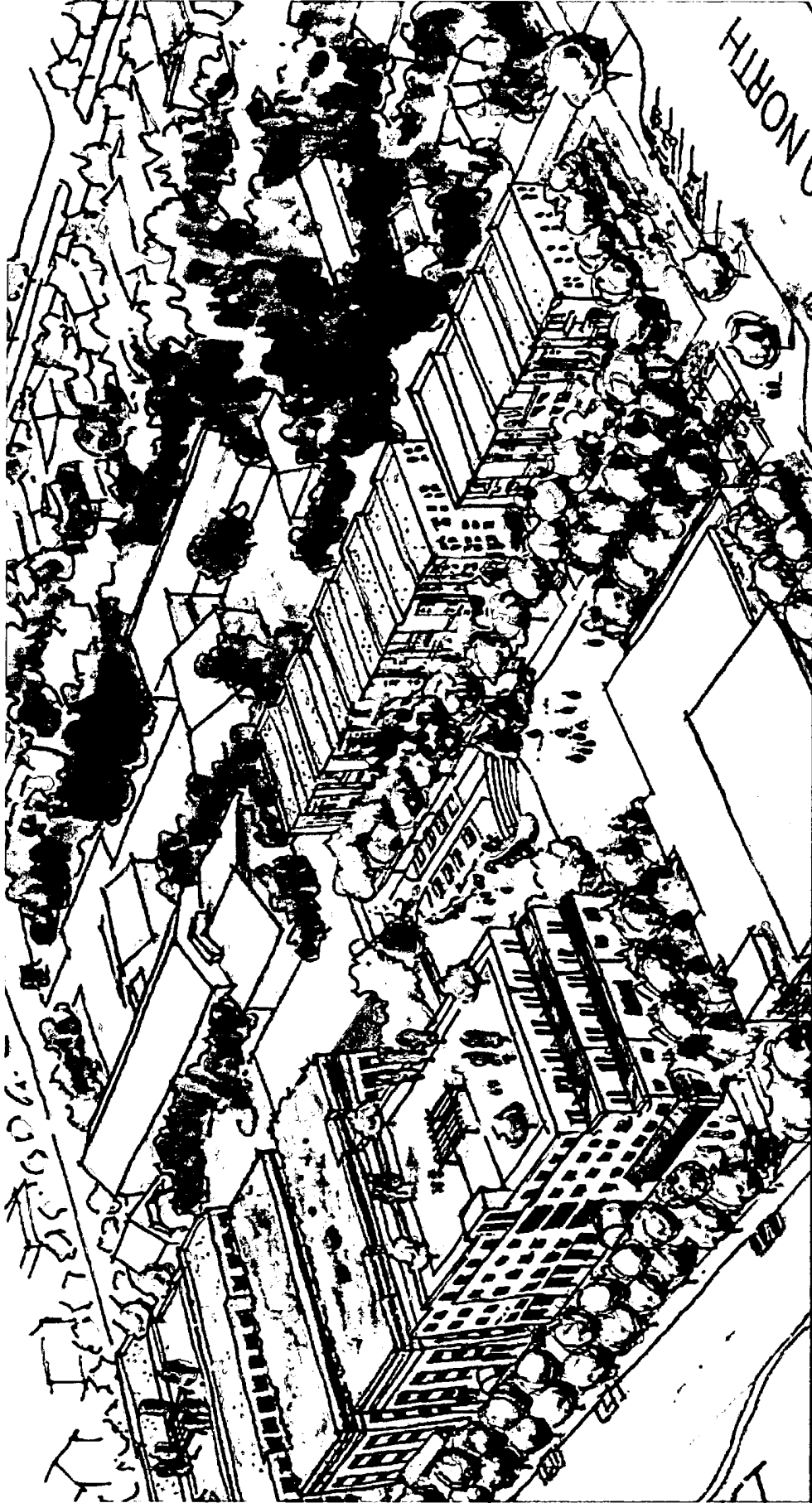
DATED this 27th day of June, 2014.

REDEVELOPMENT AGENCY OF SALT
LAKE CITY, UTAH



D.J. Baxter, Executive Director

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Marmalade Block

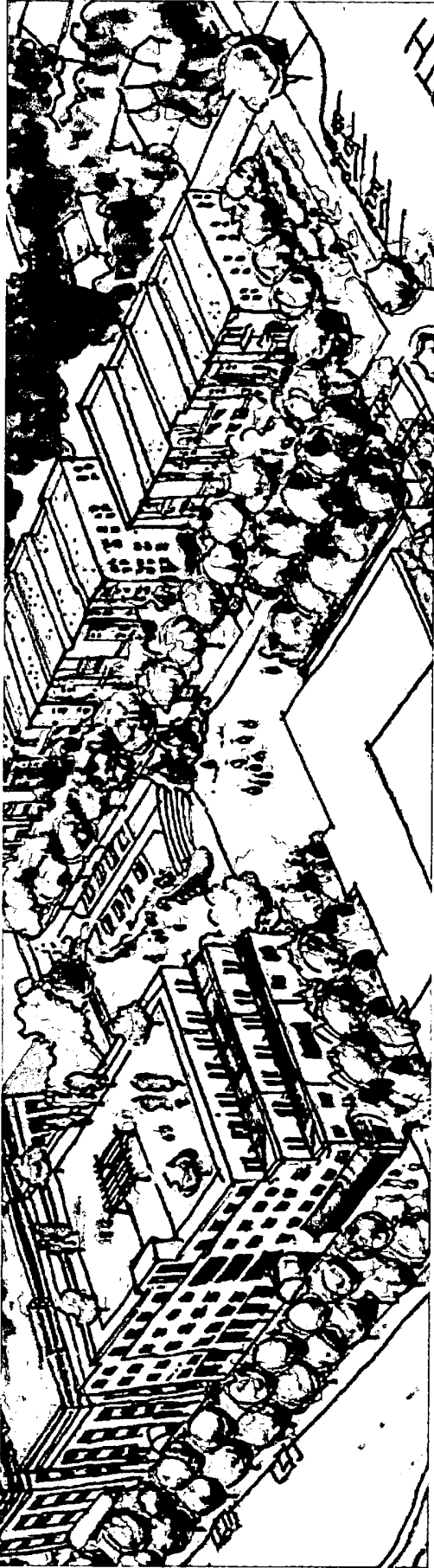
URBAN AND LANDSCAPE DESIGN GUIDELINES

PROPERTY OF SALT LAKE
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P.O. BOX 145515
SALT LAKE CITY, UTAH 84114-5515



SLCRDA THE REDEVELOPMENT AGENCY OF SALT LAKE CITY

February 2014



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3. Use of the Guidelines
4. Urban Design Guidelines:
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 - C. Building Form and Character – Entries and Fenestration
 - D. Building Form and Character – Ground Floor Guidelines
 - E. Building Form and Character – Architectural Details
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 - G. Fencing
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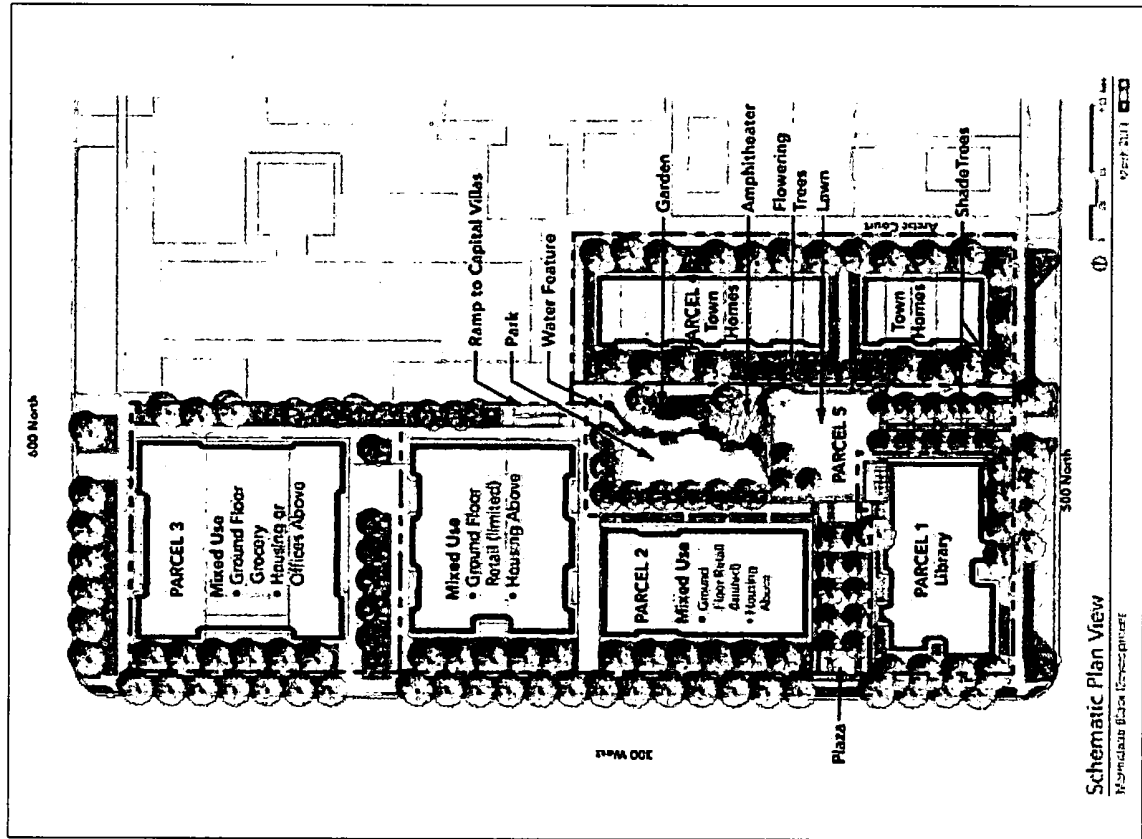
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1. INTRODUCTION

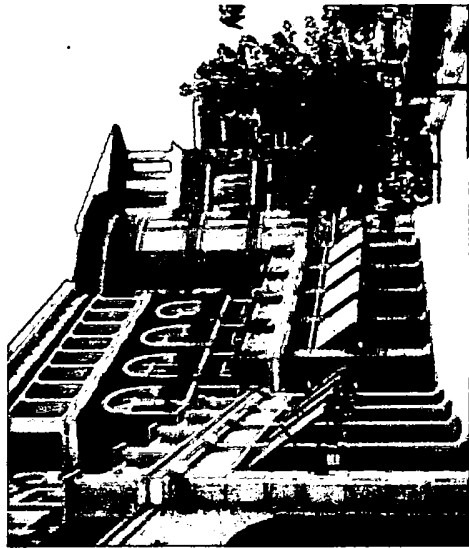
These guidelines provide a framework for public realm design for the Marmalade Block, located along 300 West between 500 North and 600 North in Salt Lake City. The guidelines, which pertain to Parcels 1 through 4 (see Schematic Plan View at right), build on existing applicable design guidelines pertinent to the site:

- *Design Guidelines for Signs in Historic Districts (2013)*
- *Design Guidelines for Historic Commercial Properties and Districts in Salt Lake City (2012)*
- *A Preservation Handbook for Historic Residential Properties and Districts in Salt Lake City (2012)*, including *Design Standards for the Capitol Hill Historic District*
- *Design Guidelines for 300 West & 500 North (IBI Group 2002)*

The guidelines that follow help to establish parameters for building development projects, with the goal of defining and branding the Marmalade Block while respecting the area's historic context. The parcels on the block may develop concurrently or in sequence, by one developer or multiple developers. Thus, consistency in design will rely on these guidelines. Although each building will have its own individual design, it should be compatible with the surrounding urban form, both modern and historic. These design guidelines are structured to accommodate the forthcoming mixture of uses on the site and guide the redevelopment of the area into a neighborhood center. They embrace traditional urban form and details while acknowledging contemporary design, which will allow the Marmalade Block to contribute to the evolution of the neighborhood's urban form.



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Example of spatial definition by articulated building facades, street trees, and fencing.



Sidewalks can be designed not only for pedestrian use, but can include seating and tables, public art, and decorative plantings.



Sidewalks can be enhanced with pavement accents and decorative planters and tree grates.



Corner bulb-out is treated as an amenity with plantings, site furnishings, and decorative lighting.

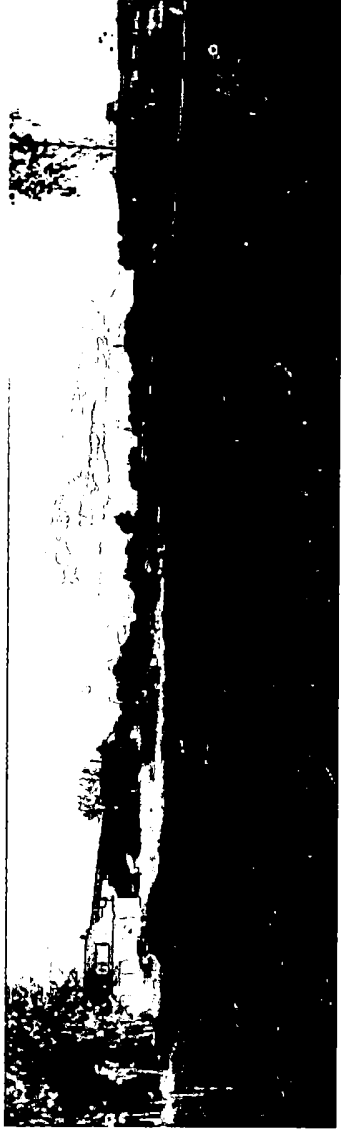
The urban outdoor environment, including architecture, streetscape, and lighting, plays a large role in establishing a district identity. The design incorporates the following major components:

- **Spatial Definition:** The spatial definition of the street frames the perspectives of people and provides human scale to the environment. In addition to buildings that can shape the street with their massing, form, and orientation, other elements can define these relationships. These include amenities that are part of a district context, such as plazas, street trees, landscaping, and public art.
- **Sidewalk Dimensions and Configuration:** Sidewalks are more than just pedestrian walkways. When strategically designed, they become outdoor living rooms, where people eat, work, play and experience the public realm. This space can include outdoor dining, street trees and planting beds, decorative planter boxes, outdoor retail space to extend store fronts, vendor kiosks, food carts, and lighting. At the corners of sidewalk space, bulb-outs extend the pedestrian space and act as buffers from street traffic.
- **Amenities and Aesthetics:** Urban design can be attractive and context-sensitive as well as functional. Building details, specialty paving, furniture, and landscaping enhance aesthetics and define a district. Good design can create a place that is inviting to all users.

2. NEIGHBORHOOD CONTEXT AND HISTORY

The character of the Marmalade neighborhood is eclectic, in both urban form and architectural style. Although originally platted with 10-acre blocks as seen in the core of Salt Lake City, the steep terrain and topography led to a settlement pattern on the slopes west of the Capitol that diverged from the 10-acre block pattern. Informal streets and paths responded to the topography; subsequently, buildings oriented to these rather than the original plat lines. The area became well-established early due to proximity to downtown/central Salt Lake City. It was platted again as Plat E in 1867, to formalize the street patterns and urban form that emerged in a vernacular manner during its early settlement.

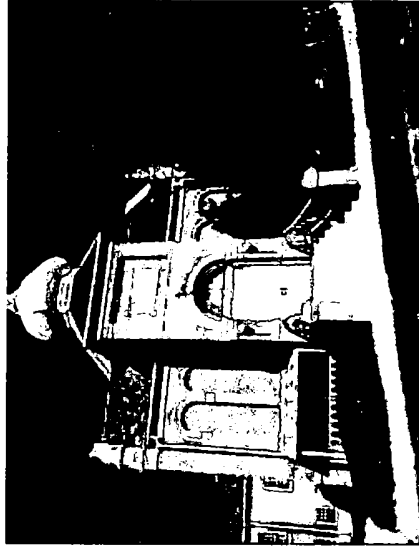
Today, the area is represented with a continuum of building styles and types that span from the early settlement period of the 1850's through the present day. Multiple redevelopment projects over time have shifted the uses to include multi-family dwellings and commercial uses interspersed among the single-family homes that remain the dominant use.



Existing conditions of the Marmalade Block site (view to the southeast), showing neighborhood context to the east and south.



The historic character of the neighborhood is primarily single-family residential.



Church buildings and other institutional structures contribute to the neighborhood's diverse architecture.

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3. USE OF THE GUIDELINES

These design guidelines are written to assist architects, engineers, design professionals, landscape architects, contractors, and Salt Lake City Redevelopment Agency (SLC RDA) staff in maintaining a cohesive public realm design in the Marmalade Block development. They have been developed with the following objectives:

- Conform to existing applicable standards and guidelines
- Provide a design framework that establishes consistent aesthetics and quality from project to project
- Visually orient residents and visitors to the Marmalade Block
- Streamline the design and approval process of projects

Where appropriate, the Guidelines provide more specificity for the four individual development parcels. It is expected that these guidelines will be monitored and updated by SLC RDA staff to reflect future developments in building code requirements, manufacturing techniques, and design trends.



The Urban and Landscape Design Guidelines are intended to identify the Marmalade Block, respect its neighborhood context, and create an inviting and active public realm.

4. URBAN DESIGN GUIDELINES

A. BUILDING FORM AND CHARACTER – HEIGHT AND MASSING

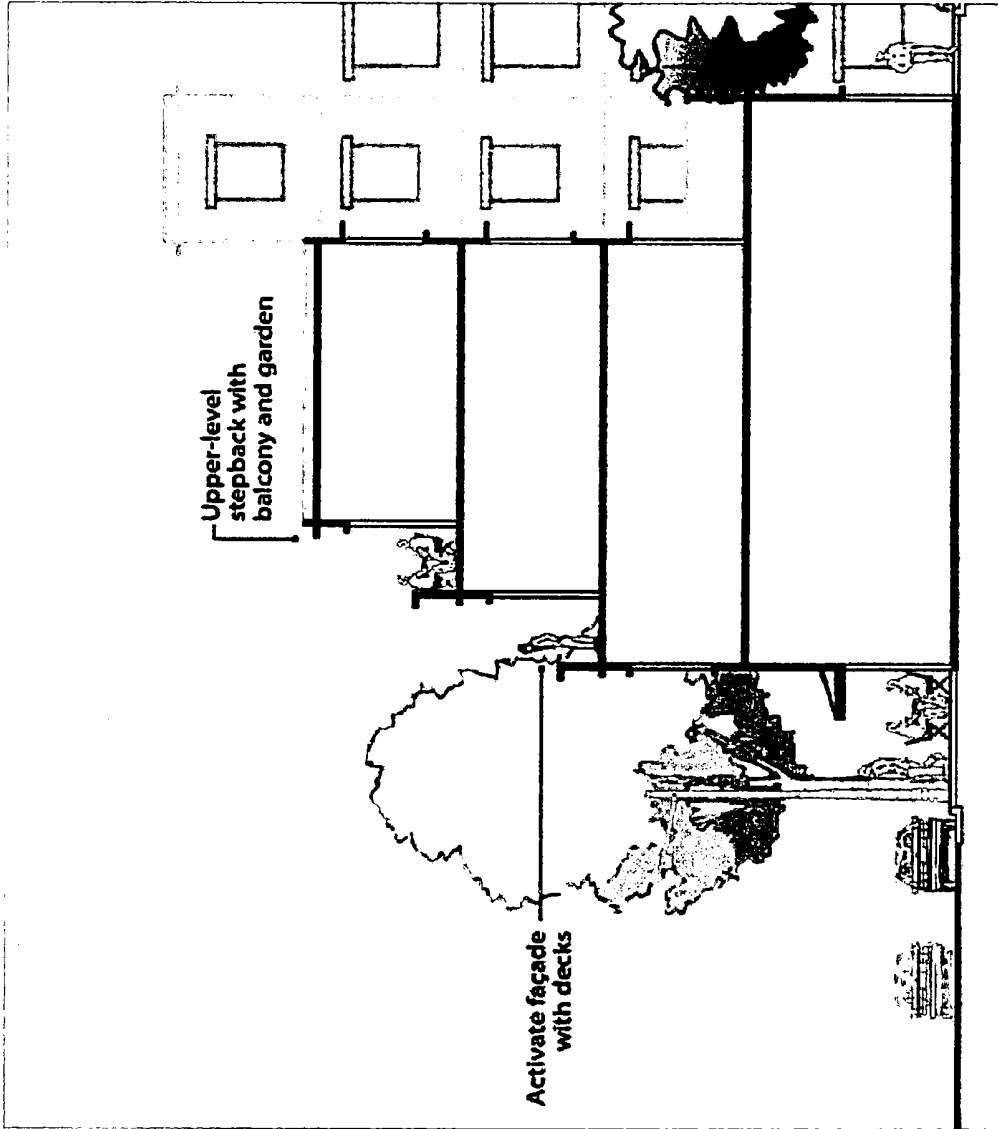
Summary of reference guidelines and overall context:

- New building height and massing should reflect the established scale of the area.
- New buildings should reinforce sense of human scale and appear similar to the established street block.
- New buildings should have a similar scale and form to those seen historically in the neighborhood.

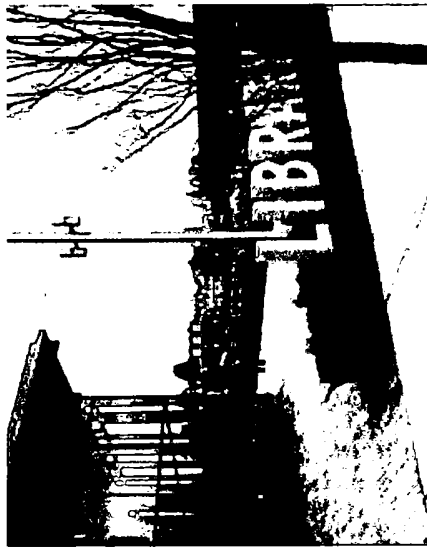
Marmalade Block Overall Guidelines:

The established scale of the area is generally one to three stories in height, for both residential and commercial structures. All redevelopment parcels on this block are currently zoned Residential/Mixed-Use (R-MU); regulatory references reflect current R-MU language.

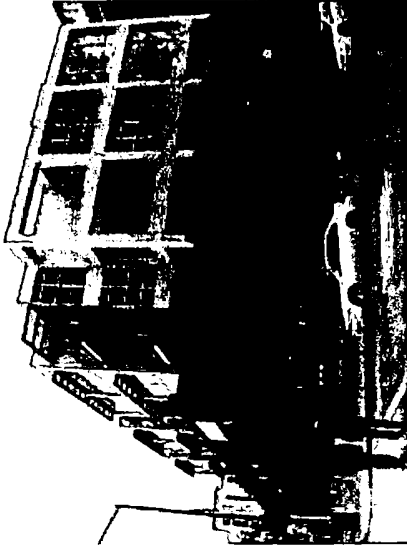
- The maximum permitted height is 75 feet for mixed-use buildings (non-residential uses may occupy a maximum floor area coverage equal to three (3) floors). A 75-foot building generally will have up to 5 or 6 stories.
- The maximum permitted height for strictly non-residential buildings is 45 feet.
- Maximum height for mixed use buildings, subject to a conditional use permit, is 125 feet.



Several design strategies can ensure that a building's height, mass and scale do not overwhelm the pedestrian experience on the street. These include upper floor setbacks and façade articulation to ensure a comfortable pedestrian scale.



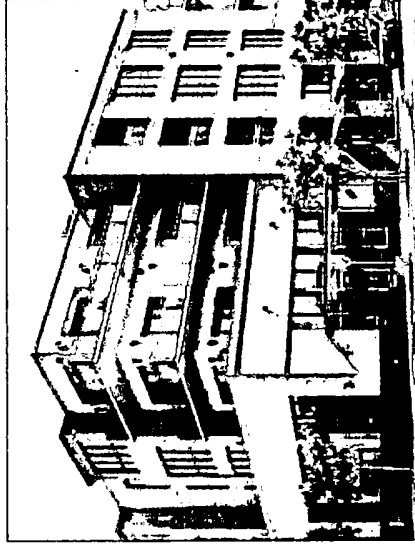
Institutional buildings, such as libraries, warrant extra attention to scale and relationship to public open space.



Example of a mixed-use building with the upper floors stepped back.



This building approximates the maximum height and number of stories allowed for mixed-use buildings.



Integrate expressive design features at upper levels, such as balconies and windows, giving mixed-use buildings a rhythm and residential scale.

Parcel 1 – Library:

- As a non-residential structure, the maximum height allowed is 45 feet. Full height is allowed on all frontages. To match the anticipated building massing along the entire block face, the structure shall have elements covering at least one third of its street frontage on 300 West and on 500 South that are no less than 35 feet high.
- Setbacks should be minimized to encourage full use of the parcel for building footprint and related outdoor spaces.
- Outdoor seating and/or public space may be used in a street-facing setback on one side, which would allow for the building to be further away from the street/sidewalk in this context.

Parcels 2 and 3 – Mixed Use:

- Unless a conditional use permit is obtained, the maximum height allowed is 75 feet. Those stories above 45 feet shall be stepped back a minimum of 20 feet on the 300 West-facing frontage (for Parcel 2) and on both the 300 West-facing frontage and the 600 North-facing frontage (for Parcel 3). Full height is permitted for the remainder of the building mass.
- For buildings higher than 45 feet high, the portion above 45 feet may be articulated, with varying setbacks, decks, rooftop courtyards, and similar strategies to break up the massing and create a smaller-scale, traditional rhythm on the street-facing frontages.
- Building massing may allow access to rooftops at setbacks to residential units at or above 25 feet and at or below the 45-foot level. Rooftop amenities may include landscaping, outdoor furniture, and human-scale exterior lighting.

Parcel 4 – Townhomes:

- To reflect a townhome style of development, a massing of 2 to 3 stories is desired. As such, the maximum height for this parcel is 45 feet if podium parking is included on the ground level.
- Building massing shall accommodate grade changes from east to west, providing vehicle access from Arctic Court and walkout access to public spaces. The slope from east to west shall not be accommodated by using general site retaining walls to create flat building pads.
- Setbacks of individual townhomes shall be consistent or shall vary in a manner consistent with the architectural style of the townhomes.
- If townhomes are divided into more than one block, design of the individual blocks of townhomes shall be complementary with each other.



The lower scale of townhomes on the east side of Marmalade Block will mediate the transition to existing adjacent residential uses.

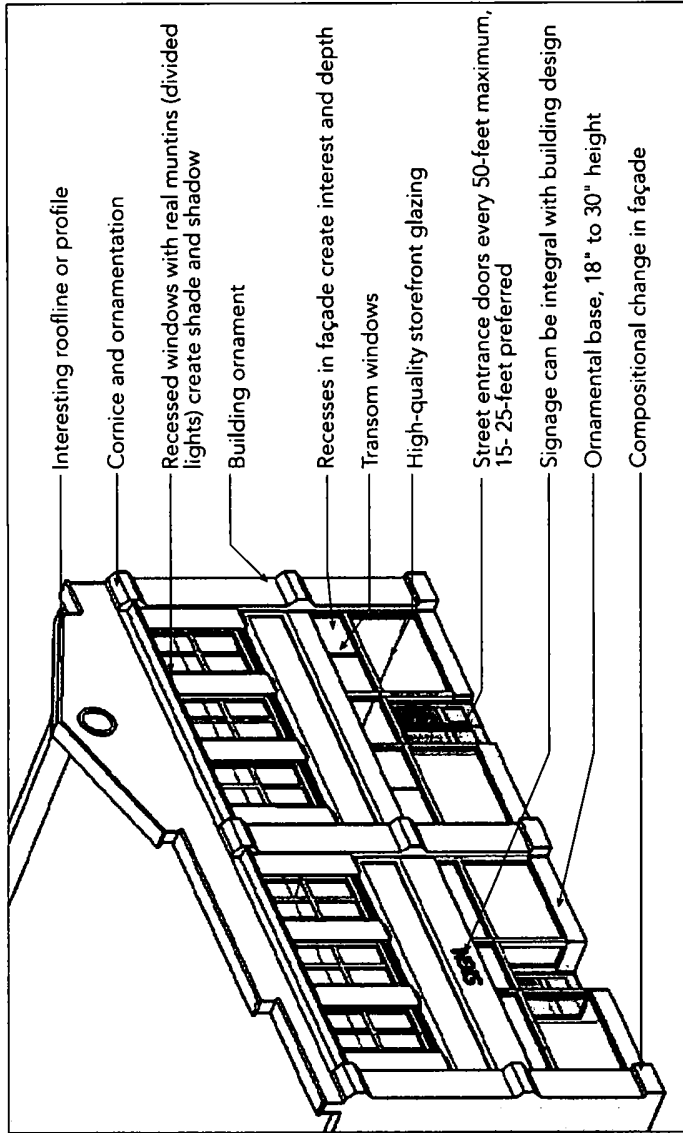
B. BUILDING FORM AND CHARACTER – STREET FAÇADES

Summary of reference guidelines and overall context:

- Street façades should be similar in scale to current and surrounding development.
- Façade elements should relate to and reinforce human scale and pedestrian activity.
- Street-front façades should be of similar height to those seen historically on and around the block.
- Façade proportions should be similar to those traditionally seen on and around the block.

Parcel 1 – Library:

- As an institutional building, the library exterior should reflect one use, rather than be artificially divided by façade treatments intended to convey separate smaller storefronts. However, portions of the building dedicated to separate uses may be distinguished using different materials, massing, and/or coloring or texture.



Façade elements help define a building's architectural character and quality of design.

- Massing shall be balanced, consistent with the historical nature of the district, and recognizable by citizens as typical of public buildings.
- Although the main entry will face only one of the two streets near the corner, the building shall have similar public-scaled massing facing each of the two street fronts.

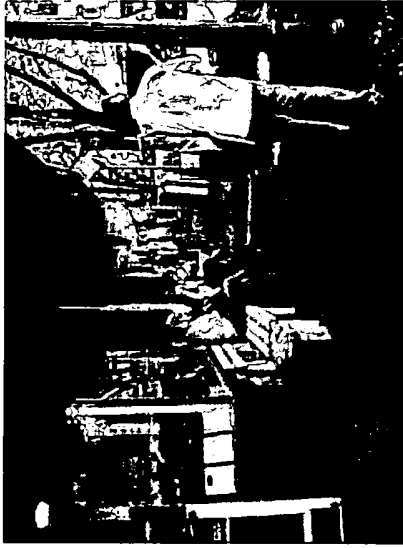
Parcels 2 and 3 – Mixed Use:

- The portion of each building that is lower than 45 feet high shall be designed to create a unified street-facing frontage, with consistent height, storefronts, and massing along the length of the street-facing frontage.

- Storefronts shall be designed so that ground-floor commercial or retail space may be subdivided to allow occupancy either by one tenant or by multiple tenants.
- Public access to commercial tenants on upper floors shall be from 300 West (for Parcels 2 and 3), from 600 North (for Parcel 3), or from the corner (for Parcel 3).

Parcel 4 – Townhomes:

- Both major townhome façades face public spaces: Arctic Court to the east and public park and plaza spaces to the west. Both east and west façades of townhomes shall be designed as street-front façades. The Arctic Court facade shall thus be designed to have pedestrian access as well as garage/parking access.



Example showing façade consistency along the street-facing frontage.



Ensure that the park- and plaza-facing sides of townhomes are attractive and comparable in level of design attention to the street façades.

C. BUILDING FORM AND CHARACTER – ENTRIES AND FENESTRATION

Summary of reference guidelines and overall context:

- Door and window spacing should be similar to those traditionally on block.
- Ratio of wall to window (solid to void) should be similar to that of historic structures in district
- Canopies and awnings can be used to emphasize entrances; these are to be non-illuminated.

Parcel 1 – Library:

- The library shall have its main public entry on either 300 West, 500 North, or on the corner. If feasible, it may have one or more secondary entries on its north and/or east sides from the library plaza/public spaces.
- Fenestration on both street-facing façades shall be of a scale and character to suggest the front rather than the back or side of a building.

Parcels 2 and 3 – Mixed Use:

- For Parcel 2, entries to all buildings shall be on the 300 West street front.



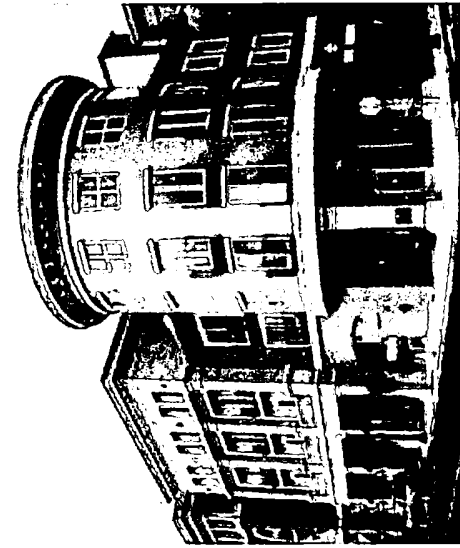
Emphasize the library entry with appropriate scale and public amenities.



Newer buildings can be designed with more traditional wall-to-window ratios.



Design each building to be oriented to the street, with the main entrance on a public street.

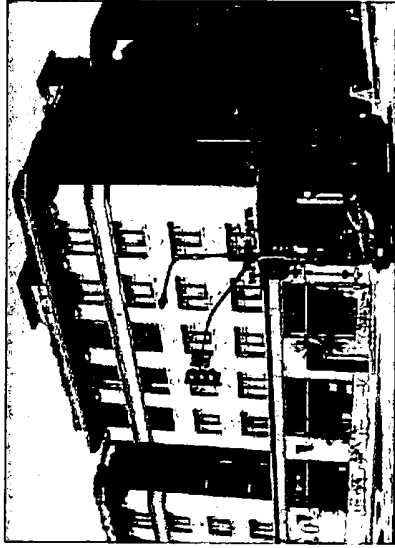


Special architectural features can enhance corner entries of mixed-use buildings.

- For Parcel 3, building entry shall be on the 300 West street front, the 600 North street front, or on the corner. One entry on 300 West and one on 600 North is also acceptable.
- The wall to window ratio on the ground floor of 300 West (Parcels 2 and 3) and 600 North (Parcel 3) street fronts may be lower than that of the historic district. However, the total non-tinted and unobstructed glazing, including entrances, shall be a minimum of 50% and maximum of 75% of the ground-floor building façade.
- Non-tinted windows shall provide views into the ground floor space and not be obstructed or designed to function as display cases.
- Buildings adjoining public open spaces as well as the street shall include additional entries and fenestration facing these public open spaces, applying design requirements consistent with street-frontage façades.
- For Parcel 3, fenestration on both street-facing façades shall be of a scale and character to suggest the front rather than the back or side of a building.

Parcel 4 – Townhomes:

- Townhomes shall have fenestration consistent with the historic district and clearly visible entries on both their major façades: facing Arctic Court to the east and public park and plaza spaces to the west.
- Townhome fenestration and entries shall be consistent with the different styles used for each townhome to complement the existing architecture of the Marmalade district.



Example of historic building fenestration.

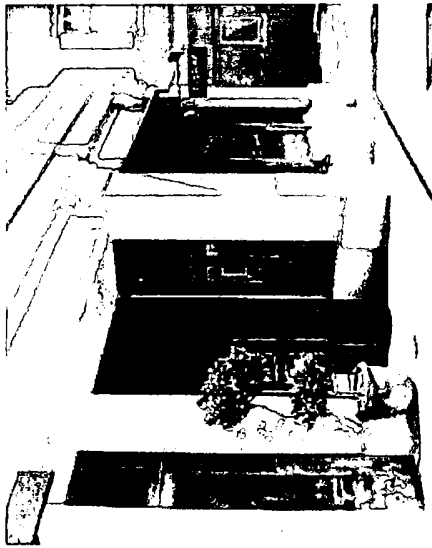
D. BUILDING FORM AND CHARACTER – GROUND FLOOR GUIDELINES

Summary of reference guidelines and overall context:

- The ground floor design should encourage pedestrian activity
- Visual interest shall be provided
- Canopies and awnings can emphasize ground floors; these are to be non-illuminated.
- Front porches are required on residential uses facing Arctic Court.



Townhomes with well-defined entries and fenestration.



Ground floor retail uses can feature display windows and interesting architectural details.



Awnings and canopies provide interest and human scale to the design of ground floor façades.

Parcel 1 – Library:

- Minimum clear height of 15 feet is required inside at least 30% of main floor.
- The ground floor shall include materials and architectural features that are associated with human scale and pedestrian activity.

Parcels 2 and 3 – Mixed Use:

- Minimum ground floor-to-floor height of 18 feet is required.
- The ground floor shall include materials and architectural features that are associated with human scale and pedestrian activity.
- Canopies and awnings are encouraged as a way of marking building entries.
- For Parcel 3, ground floor building articulation shall emphasize the corner at the intersection of 600 North and 300 West.

Parcel 4 – Townhomes:

- Minimum ground floor-to-floor height of 10 feet is required.

- Buildings shall have covered porches facing Arctic Court.
- Individual decks extending along at least 30% of the west-facing building frontage of each block of townhomes are encouraged.
- West-facing ground floors shall include connections to library and public spaces.

E. BUILDING FORM AND CHARACTER – ARCHITECTURAL DETAILS

Summary of reference guidelines and overall context:

- Contemporary designs should be compatible with the character of the surrounding area
- Roof forms should be similar to those traditionally seen on the block
- A specific style or theme should not be utilized
- Replication of historic styles is discouraged
- Ornamental elements should be of a scale compatible with similar historic elements
- Creative and contemporary interpretations of historic/traditional details are encouraged

Parcel 1 – Library:

- All sides of the building shall be treated as public façades—two sides facing 500 N and 300 W and two sides facing the library plaza and east plaza.
- Avoid a large, boxy building with flat-looking walls/façades.
- Articulate walls with setbacks, awnings, wings, and recesses to accommodate site elements.
- The architectural character and detailing of the library shall be recognizable by citizens as typical of public buildings.
- Flat roofs are acceptable.

Parcels 2 and 3 – Mixed Use:

- Give the greatest consideration in terms of design emphasis and detailing to the street-facing façades.
- Provide for depth and variation in façades through the use of different colors, materials, and other details.
- Architectural character and detailing of each building shall be consistent with the historical nature of the district. Building designs shall complement, yet be distinct from, other buildings on the block.

- Break up walls with setbacks, awnings, wings, recesses, canopies, and bay windows or other modulations.
- If the building or entry is oriented to the corner, the building design shall be generally consistent with historical precedents for similarly situated structures.
- Flat roofs are acceptable for commercial buildings. Mixed-use structures may have pitched or flat roofs.

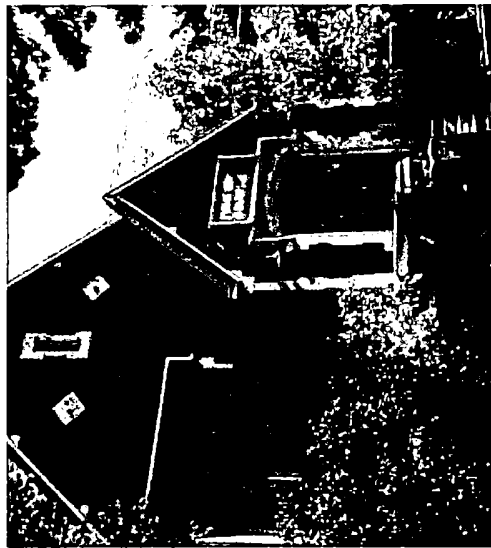
Parcel 4 – Townhomes:

- Façades of single blocks of town homes shall vary from each other, but be complementary, as well as complementing the existing architecture of the Marmalade district.
- Break up flat walls with projecting elements such as wings, porticos, bay windows, awnings, and/or alcoves. Staggered bays contribute to a greater definition of a façade.
- No more than one half of townhomes may have flat roofs.

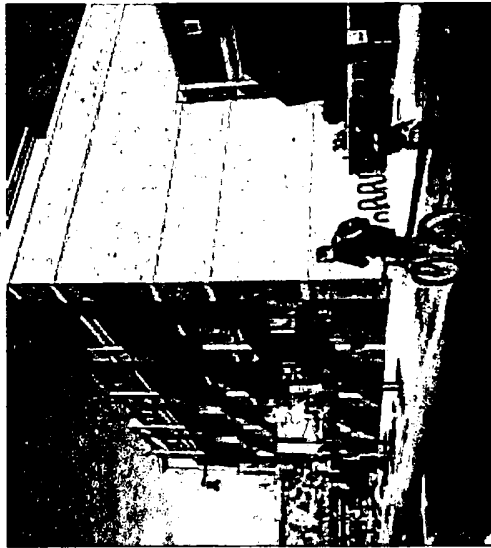
F. BUILDING MATERIALS

Summary of reference guidelines and overall context:

- New buildings should have materials similar to local historic structures (stone, brick, stucco, wood (painted), and architectural metal) and surrounding neighborhood context.
- New/modern materials should be compatible with/similar in character to historic/traditional materials and detailed to be compatible.
- New materials may include: sand blasted colored concrete, cement board, glass fiber reinforced concrete, ceramic tile, slate, synthetic cornice treatments
- Materials should be compatible with surrounding buildings
- Materials should be high quality and durable
- Materials should contribute to a sense of human scale and pedestrian activity
- Materials should be appropriate both for Salt Lake City's climate and for building exposure.



Brick and stone are traditional materials in the area.



Example of contemporary brick building.



Painted brick façades add interest to the street.



Stone cladding adds texture and color.

Parcel 1 – Library:

- Materials shall be low maintenance, high quality, and durable.
- Preferred exterior materials include brick, stone, glass, and prefinished sheet metal (as accent).
- Additional allowable exterior accent materials include sand blasted colored concrete, painted cement board, glass-fiber reinforced concrete, ceramic or porcelain tile, slate, or synthetic cornice treatments.
- Materials should complement but not be identical in character or color with other new buildings on the block.
- Vinyl, cellular or otherwise, is not acceptable.

Parcels 2 and 3 – Mixed Use:

- Materials shall be low maintenance, lasting quality, and durable.
- For Parcel 2, preferred exterior materials include brick, glass, prefinished sheet metal, or painted or pre-finished cement board.
- For Parcel 3, preferred exterior materials include brick, stone, glass, prefinished sheet metal, and ceramic or porcelain tile.

- Additional allowable exterior accent materials include sand blasted colored concrete, glass-fiber reinforced concrete, painted cement board, ceramic or porcelain tile, slate, or synthetic cornice treatments.
- Vinyl, cellular or otherwise, is not acceptable.
- Materials should complement but not be identical in character or color with other new buildings on the block.

Parcel 4 – Townhomes:

- Materials shall be cost-effective, attractive, serviceable, and durable.
- Preferred exterior materials include brick, glass, prefinished sheet metal, or painted or prefinished cement board siding.
- Additional allowable exterior accent materials include concrete, ceramic or porcelain tile, slate, or synthetic column or cornice treatments.
- Vinyl, cellular or otherwise, is not acceptable.
- Materials should complement but not be identical in character or color with other new buildings on the block.

G. EXTERNAL BUILDING LIGHTING

Summary of reference guidelines and overall context:

- Minimize visual impact except at public facilities.
- Fixture design should complement style/design of building.
- Maximize use of energy-efficient fixtures and lamps, such as LEDs.
- Use lamps with consistent CRI (Color Rendering Index) values throughout the block.

Parcel 1 – Library:

- Lighting may be used to highlight and articulate building façades.
- Use a consistent general illumination theme for all façades with added accents at public entries.
- Exterior sconce lighting should be used at appropriate locations to highlight elements or features of building façades and passageways.

Parcels 2 and 3 – Mixed Use:

- Building façades should be lit primarily at street level.
- Above the first floor, light should only be used to highlight unique building features selectively without lighting the entire structure.



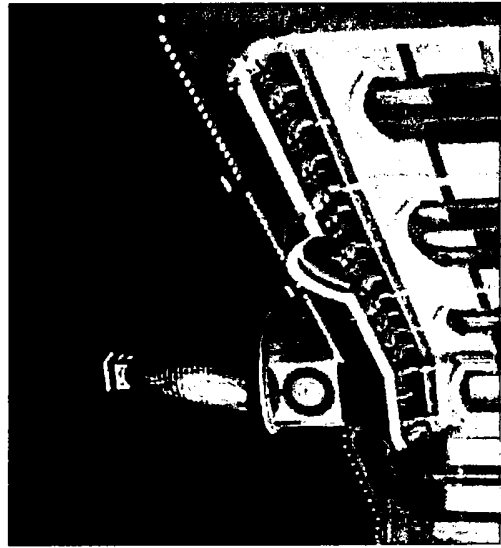
These townhomes feature brick and stone.



Example of combining brick with more contemporary building materials.



Scance lighting highlights this commercial entry.



Architectural features can be enhanced by accent lighting.

- Exterior sconce lighting should be used at appropriate locations to highlight elements or features of building façades and passageways.
- For Parcel 3, lighting should accentuate special architectural corner features.

Parcel 4 – Townhomes:

- Lighting should be limited to one motion and daylight sensing light fixture at garage or carport entries, a single light fixture near each entry door to light the entry areas selectively plus, if necessary, one additional overhead light at covered porches. See landscape lighting section below for general site lighting not attached to structure.

H. BUILDING SIGNAGE AND IDENTIFICATION

Summary of reference guidelines and overall context:

- Focus on pedestrian-oriented signs.
- A single monument sign may be provided for the development as a whole.
- Illuminated signage is discouraged.

Parcel 1 – Library:

- A single library monument sign may be installed at or near the corner of 500 North and 300 West or within 20 feet of the main street-front entry.
- No more than 2% of each building façade may be dedicated to signboards/flush mounted commercial signage. Underlying city sign standards for the R-MU zone apply.
- The building address (street number only) shall be prominently displayed on the same façade as the main entry.

Parcels 2 and 3 – Mixed Use:

- Canopies and awnings can be used for signage.
- No more than 2% of each building façade may be dedicated to signboards/flush mounted commercial signage. Typically, such signs are scaled for pedestrian wayfinding and are mounted above entry doors. Underlying city sign standards for the R-MU zone apply.
- While not currently allowed in the R-MU zone, should regulations change one blade or bracket-mounted sign (also known as a projecting sign) could be used to identify each ground floor tenant and for the ground floor building entry. Such signs should all be mounted at the same height for each individual building; however the mounting height may vary between buildings.
- The bottom of blade or bracket-mounted signs should be no less than 10 feet above grade and no more than 12 feet above grade.

- The building address (street number only) shall be prominently displayed on the same façade as the main entry.
- For Parcel 3, any special corner architectural feature provided may be allowed to exceed the 2% limit on signage (for the feature area of the façade only) with a conditional use permit.

Parcel 4 – Townhomes:

- The building address (street number only) shall be prominently displayed on the façade facing vehicle access. Numbers shall be no smaller than 4" high and no larger than 6" high.
- No other signage is permitted.

I. PARKING

Summary of reference guidelines and overall context:

- Locate parking access away from street frontage.
- Locate parking structures behind or under primary buildings.
- Parking design shall exhibit sensitivity to surrounding context of historic neighborhood and streetscape.

Parcel 1 – Library:

- No additional parking is required other than angled street parking along 500 North and parallel parking along 300 West, adjacent to Parcel 1.

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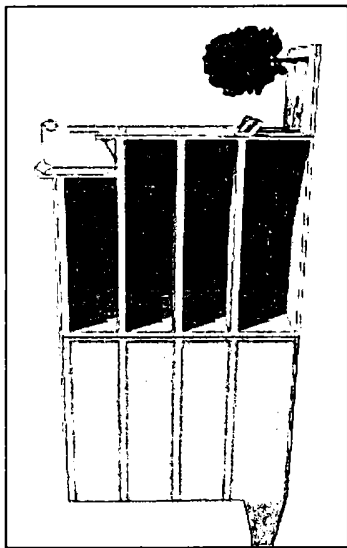


Diagram showing wrapped above-ground parking structure (in gray), recommended for Parcels 2 and 3. Non-parking uses (to the right) are integrated into the building along the entire street frontage of the parcel on all levels of the building. The parking structure is totally hidden behind a "liner building" of non-parking uses.



These townhomes incorporate off-street parking within the structure.

Parcels 2 and 3 – Mixed Use:

- For mixed-use buildings, reduce the required number of parking stalls by 30%.
- For street fronts facing 300 West, structured parking may be under, behind, or under a portion of the primary building. Parking may enfront 600 North to within 50 feet of the intersection with 300 West, but it must be fully screened with landscaping.
- For multi-level parking structures, commercial or retail spaces must wrap the street front of the ground floor parking level along 300 West.
- For Parcel 2, required parking spaces may be distributed unequally among more than one mixed-use building as long as each building includes at least three quarters of a parking stall per residence in that same building.

Parcel 4 – Townhomes:

- Each townhome must include a garage or sheltered parking for one vehicle. A shelter may include parking beneath an elevated upper level (beach house concept) or an individual roof.
- Canopies over surface parking are not acceptable.

5. LANDSCAPE DESIGN GUIDELINES

A. PAVING MATERIALS

Paving is necessary to define pedestrian routes and access to public spaces, to create large gathering areas, and to define the edges of soft landscaped zones. A mix of paving styles and textures is necessary to create variety, delineate zones, and to establish a hierarchy of spaces.

Hardscape: Standard Sidewalk Paving:

- Materials: concrete
- Color and finish: per Salt Lake City standards
- Location: Primary paving material for sidewalks in the public right-of-way

Hardscape: Enhanced Pedestrian Paving – Concrete:

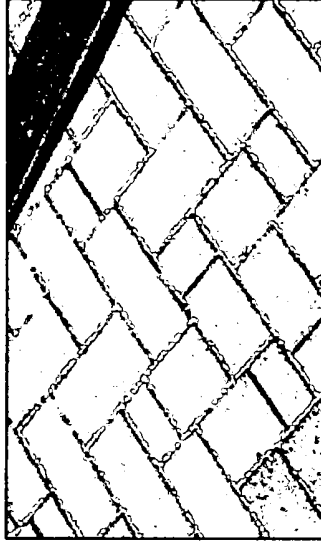
- Materials: concrete; colored and/or textured
- Color and finish: integral color concrete (enhanced gray, tan, or clay color) or exposed-aggregate concrete
- Location: Building entries and/or café zones

Hardscape: Enhanced Paving – Unit Paving:

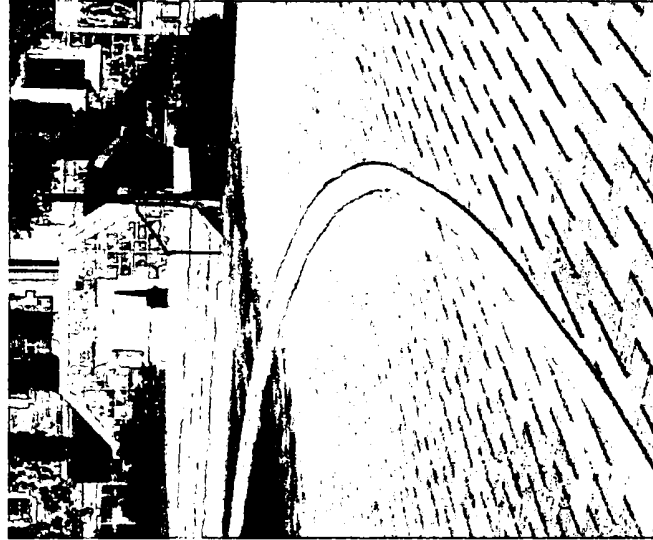
- Materials: concrete or brick unit pavers (prefer sand-set), 4" x 8" or similar dimensions; square pavers may be added for design interest
- Color and finish: enhanced gray, tan, or clay color; natural finish
- Location: Building entries and/or café zones; vehicular entries



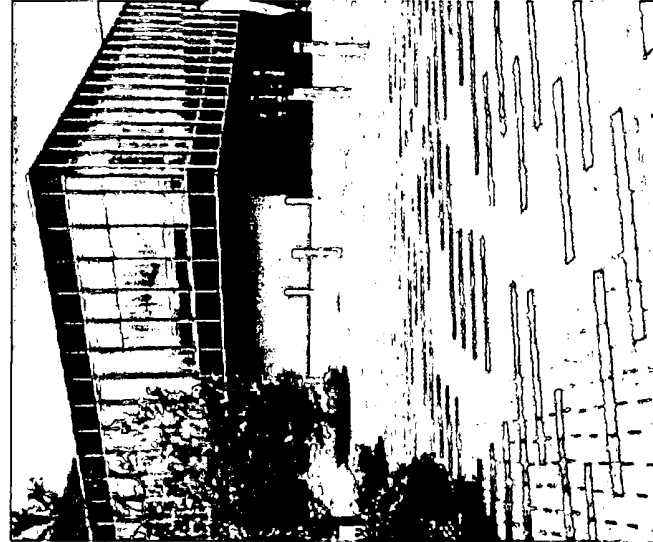
Example of exposed-aggregate concrete paving.



Example of unit pavers installed for permeability, to help with on-site stormwater management.



Unit pavers can mix several colors in an application.



This plaza has a more contemporary paver design.



Sweetgum (Liquidambar styraciflua)



Summit Ash (Fraxinus pennsylvanica 'Summit')



Silver Linden (Tilia tomentosa)

B. PLANT MATERIALS

Summary of reference guidelines and overall context:

- Maintain established plantings in residential areas, if present
- Compatibility with surrounding environment
- Use of indigenous and drought-tolerant plant materials
- Street trees are required on all vehicular ways, including alleys
- Trees are required in parking lots, with use of irrigated planter islands
- Trees are to be used in public plazas

Street Trees:

Street trees are common throughout the Marmalade area. This feature should be reinforced within the block development to tie the development's streetscape in with the rest of the

neighborhood. Table 1 below lists recommended street tree species for the Marmalade Block, which includes re-use of existing trees. See also the Site Landscape Plan for tree types and locations, done as part of the Design Development Package for the open space improvements.

Avoid where possible placing trees in locations that may exacerbate shading of north facing spaces. Select trees such that their canopies are of a height that allows unobstructed passage of different user types, including vehicles, pedestrians, and bicyclists. Spacing between trees and from buildings and other structures should be designed to allow for full canopy growth. Street trees along 300 West should be planted in a double row, with trees on either side of the sidewalk. Tree grates are to be used when the immediate surrounding surface is paved (PaverGrate for unit pavers; Urban Accessories "Fan" grate for concrete).

TABLE 1: Recommended Street Trees

STREET	TREE TYPE
300 West	Ward Sweetgum (<i>Liquidambar styraciflua</i> 'Ward')
600 North	Summit Ash (<i>Fraxinus pennsylvanica</i> 'Summit')
500 North	Silver Linden (<i>Tilia tomentosa</i>)
Entry drive from 300 West	Common Hackberry (<i>Celtis occidentalis</i>) Pink Spires Crab Apple (<i>Malus x 'Pink Spires'</i>)

Park Strips:

Wide, planted park strips separate the sidewalk from the street; these are the predominant form on the east-west streets and the rest of the block. They comprise street trees plus a planted understory. Use of a planted park strip is recommended for all street frontages. A wide park strip that continues the existing form is to be used on 500 North and 600 North. A planted park strip shall be used on 300 West to soften the pedestrian environment and provide a buffer between the sidewalk and street. Recommended understory species include:

- 600 North: Bella Blue turf (*Poa pratensis* Bluegrass mix)
- 300 West: Creeping Mazus (*Mazus reptans*)

Planting Beds:

Planting beds between the sidewalk and building, provide more opportunities to introduce color and texture with shrubs, bunchgrasses, perennials, and groundcovers. These plants should consist of native and/or drought-tolerant species. It is important to select plants that have a mature height and spread appropriate to the planting area, and that are compatible with nearby pedestrian activity. Table 2 lists recommended planting bed species for the Marmalade Block. See the Site Landscape Plan for plant types and locations, done as part of the Design Development Package for the open space improvements.



Blue Grama (Bouteloua gracilis)



Blanketflower (Gaillardia x grandiflora)



Gold Star Potentilla (Potentilla fruticosa 'Gold Star')

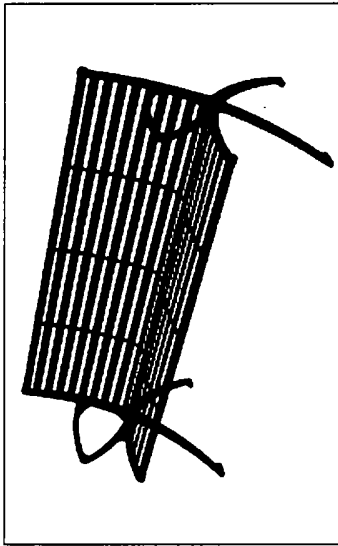
TABLE 2: Recommended Planting Bed Species

SPECIES	SPECIES
Cameo Yarrow (<i>Achillea</i> x 'Cameo')	Colorado Four O'Clock (<i>Mirabilis multiflora</i>)
Blue Grama (<i>Bouteloua gracilis</i>)	Ninebark (<i>Physocarpus opulifolius</i>)
Sedge (<i>Carex caryophylla</i> 'The Beatles')	Gold Star Potentilla (<i>Potentilla fruticosa</i> 'Gold Star')
Wood Oats (<i>Chasmanthium latifolium</i>)	Gro-Low Fragrant Sumac (<i>Rhus aromatica</i> 'Gro-Low')
Common Buckwheat (<i>Eriogonum fasciculatum</i>)	Sage (<i>Salvia</i> x 'Indigo Blue')
Blanketflower (<i>Gaillardia</i> x <i>grandiflora</i>)	Alkali Sacaton (<i>Sporobolus airoides</i>)

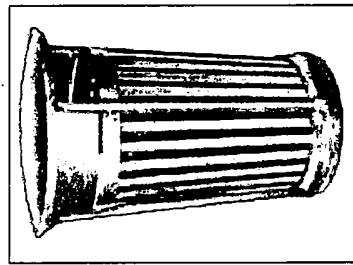
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 CITY RECORDER'S OFFICE
 P.O. BOX 145515
 SALT LAKE CITY, UTAH 84114-5515



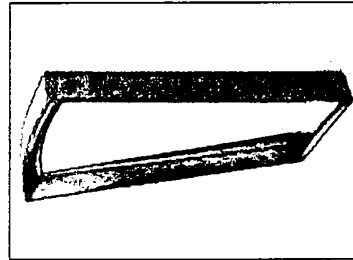
Melville bench



Parc Vue bench



Poe trash receptacle



Emerson bicycle rack

C. SITE FURNISHINGS – SEATING

Summary of reference guidelines and overall context:

- Use of benches and seating is encouraged; arrange to promote opportunities for social interaction

The following seating options are recommended for the Marmalade Block:

- Landscape Forms: Melville Bench (backed and backless; bronze color metal finish with ipe wood)
- Landscape Forms: Parc Vue Bench (backed and backless; bronze color metal finish)

D. SITE FURNISHINGS – OUTDOOR DINING

Summary of reference guidelines and overall context:

- Garden and outdoor dining areas are encouraged
- Outdoor dining areas should be compatible in design, materials, finishes, and color to the building and surrounding streetscape
- Minor grade changes or landscape planters can be used to separate from public walkways

The following outdoor dining furniture options are recommended for the Marmalade Block:

- Forms and Surfaces: Cross Table (round with optional umbrella hole) and Vista Chair (with optional armrest), in Argento Texture powdercoat finish
- Landscape Forms: Equinox Umbrella (frame in bronze powder-coated metal finish; sunbrella fabric in yellow, green, or blue)

E. SITE FURNISHINGS – TRASH RECEPTACLES

The following option is recommended for the Marmalade Block:

- Landscape Forms: Poe Receptacle (bronze color metal finish for trash receptacles; grass color metal finish for recycling receptacles)

F. SITE FURNISHINGS – BICYCLE RACKS

- The following bicycle rack model is recommended for the Marmalade Block:
Landscape Forms: Emerson Bike Rack (bronze color metal finish)
- In addition to bicycle racks, space and other provisions for a bicycle-sharing facility shall be reserved along 300 West

G. FENCING

Summary of reference guidelines and overall context:

- The material and character/design of fencing should be similar to historic examples
- Lower heights in front yards
- Transparency of fencing (vs. solid fence wall)
- Combine with landscaping elements, such as shrubbery
- Materials to consider include wrought iron, stone, and painted wood

For the Marmalade Block, fencing should not serve as a barrier to the development but rather a welcoming element that creates a transition zone. These must conform to City standards and be consistent with historic district character.

H. SITE LIGHTING

Summary of reference guidelines and overall context:

- New elements should be compatible in scale, design, and style with surrounding streetscape context
- Simplicity of design is encouraged

If existing street lights on the Marmalade Block are to be replaced, replacement lights shall comply with the Salt Lake City Street Lighting Master Plan and Policy. Street lights may be supplemented with additional specialty lighting as follows:

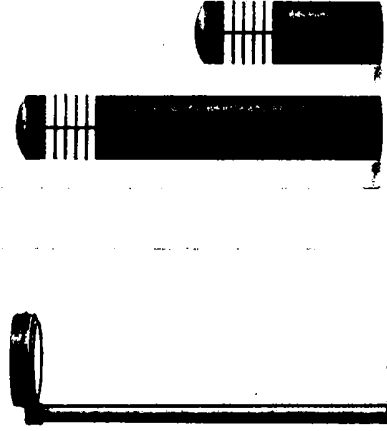
- Pedestrian lights: these lights may be needed to help create safe and uniform pedestrian lighting. Simple lighting design is recommended, such as the Bega pole-top wide beam luminaire in black or bronze finish. Pole heights of 16 feet are recommended to create the optimal amount of illumination. Luminance levels and appropriate color temperatures of light bulbs should be optimized to limit dark spots or hot spots, and to maintain color accuracy at night.
- Bollard lights: may be needed to mark secondary walkways, delineate pedestrian from vehicular areas, and illuminate landscaped areas. The bollards in the Marmalade Block shall be consistent with the design vocabulary of other light fixtures and site furnishings. A 3-foot high bollard is recommended with horizontal louvers for 360° light distribution, such as the Bega bollard with horizontal louvers.
- Spot lighting, in-ground lighting, deck and stair lighting, and accent lighting shall be used as appropriate or required within the block.



Cross table and Vista chair (armrests not shown)



Equinox umbrella



Bega pole top light (left) and bollard light (right)

6 SUSTAINABILITY

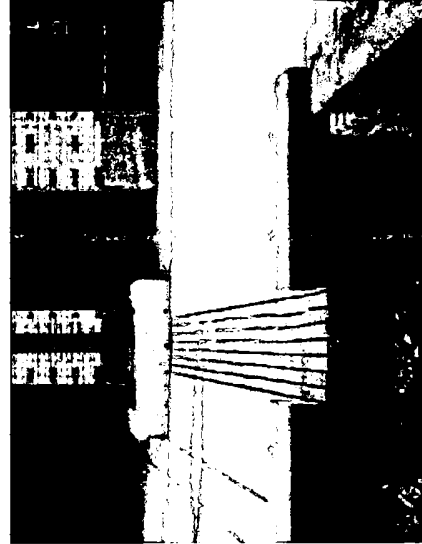
New development on the Marmalade Block can showcase more sustainable design and construction strategies. These can conserve energy, water, and other resources, reduce operating and maintenance costs, and make the site and buildings more people-friendly.

ARCHITECTURAL DESIGN

- Design new buildings to be LEED-certified or LEED-compliant
- Design new commercial and mixed-use buildings to accommodate diverse uses over time, allowing for continued re-use in the future
- Utilize durable, long-lasting materials and finishes
- Specify energy-efficient lighting fixtures and water-efficient plumbing equipment
- Maximize natural lighting with light-shelves on south-facing windows, and with skylights
- Provide operable windows wherever possible to allow for passive ventilation



Example of a light shelf, which enhances natural lighting inside a building.



Stormwater management can be integrated with building and streetscape design.



This recent mixed-use development incorporates durable materials, including brick.

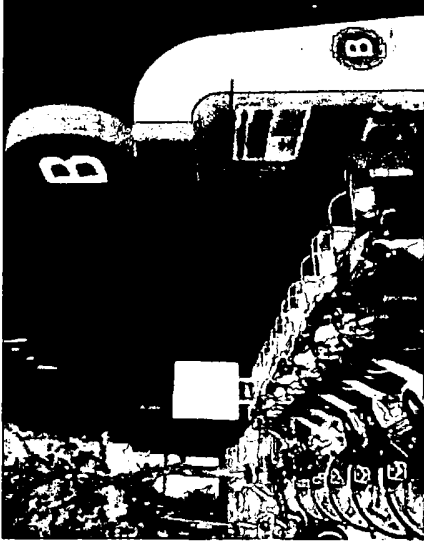


Green roofs can capture and filter run-off and provide a potential gathering space.

- Consider using photovoltaic panels for energy generation
- Encourage the use of green and/or 'cool' roofs to reduce the heat-island effect
- Consider water collection devices such as cisterns and rain barrels for collecting and re-using rooftop runoff
- Reduce waste generation by providing recycling and composting facilities

LANDSCAPE DESIGN

- Provide adequate pedestrian and bicycle facilities
- Use native and drought-tolerant plant species to minimize landscape water use
- Design the landscape for comfortable micro-climates and reducing the heat-island effect
- Utilize durable, long-lasting materials and finishes
- Minimize the use of impervious surfaces to help reduce stormwater run-off, and direct run-off to landscaped and other pervious areas



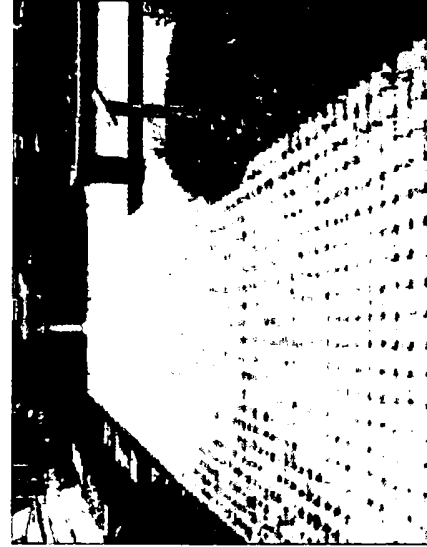
Site amenities, such as this bike-sharing station, can encourage pedestrian and bicycle use.



Carefully selected landscape plants can minimize water use and reduce maintenance needs.



Install naturally drained, landscaped stormwater planters where possible (e.g., on sidewalks, bulbouts and plazas).



Permeable paving allows stormwater to percolate into the ground.