

11096827

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WHEN RECORDED, RETURN TO:

Corporation of the Presiding Bishop of  
The Church of Jesus Christ of Latter-day Saints  
Real Estate Services Division  
Attn: Property No. 600-0078  
50 East North Temple, 12<sup>th</sup> Floor  
Salt Lake City, Utah 84150

11096827  
12/14/2010 02:52 PM \$38.00  
Book - 9888 Pg - 9706-9717  
GARRY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: ZJM, DEPUTY - WI 12 P.

Tax Id. Nos. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**BUILDING RESTRICTION AGREEMENT**

[Sandy, Utah, DI]

THIS BUILDING RESTRICTION AGREEMENT (this "Agreement") is entered into as of this 14<sup>th</sup> day of December, 2010, by and among CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("CPB"); and ALVIN E. MALSTROM, Trustee of the ALVIN E. MALSTROM REVOCABLE TRUST, DATED APRIL 6, 1991 ("Malstrom").

**R E C I T A L S**

A. Malstrom, as seller, and CPB, as purchaser, entered into that certain Purchase Contract dated as of July 15, 2010, as the same may have been amended (collectively, the "Purchase Agreement") for the purchase and sale of certain real property located in the City of Sandy, Salt Lake County, Utah, more particularly described on Exhibit A attached hereto and made a part hereof (the "CPB Property").

B. Malstrom owns that certain real property adjacent to and west of the CPB Property (the "Malstrom Property"). The Malstrom Property is described on Exhibit B attached hereto and made a part hereof.

C. Pursuant to the Purchase Agreement, CPB and Malstrom desire to memorialize certain building restrictions on the Malstrom Property and the CPB Property for the benefit of the parties to this Agreement, their successors and assigns.

LTC  
48581

## A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CPB and Malstrom agree as follows:

1. **Incorporation of Recitals.** Each of the recitals set forth above are hereby incorporated into this Agreement by this reference and made a part hereof.

2. **Building Restrictions.** CPB and Malstrom hereby agree to restrict the construction of buildings on their respective parcels so that: (1) CPB will not construct a building or buildings on the CPB Parcel further south for the limited width of the existing building formerly occupied by Albertson's (located on the west boundary of the CPB Property near the Pep Boys location) as shown on the survey attached hereto and incorporated herein as Exhibit C (the "Survey"); and (2) Malstrom will not construct a building or buildings on the Malstrom Parcel further south for the limited width and angle of the existing buildings on the Malstrom Property shown on the Survey. The foregoing restriction shall not prevent CPB, or its successors and/or assigns, from constructing a building or buildings at any location on the CPB Property east of the existing building formerly occupied by Albertson's.

3. **Severability.** Invalidation of any of the provisions contained in this Agreement by judgment or court order, shall in no way affect any of the other covenants or provisions hereof and the same shall remain in full force and effect.

4. **Enforcement Costs; Attorneys' Fees.** If any party hereto breaches any provision of this Agreement, the breaching party shall pay to the non-breaching party all reasonable attorneys' fees and other costs and expenses incurred by the non-breaching party in enforcing this Agreement or preparing for legal or other proceedings regardless of whether suit is instituted. If it becomes necessary for any party to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the non-prevailing party, including, without limitation, reasonable attorneys' fees, reasonable expert witness' fees, costs of deposition transcripts and tapes and other pre-trial discovery costs set by the court and not a jury, at both trial and appellate levels, and if any judgment is obtained by the prevailing party, all such costs, expenses and fees shall be included in the judgment.

5. **Parties.** Nothing contained in this Agreement shall be deemed to grant or confirm unto any person, except Malstrom and CPB, and their respective successors and assigns, the right to assert or exercise a separate or independent right to enforce this Agreement, or a separate or independent right to enjoy any of the benefits or privileges or assume and/or perform any of the obligations under this Agreement, it being understood that such rights are forever expressly held, retained and shall be exercised solely by and through Malstrom and CPB or their successors and assigns, as applicable. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture between or among the parties hereto with respect to this Agreement or anything contained herein.

6. **Binding Effect.** The covenants and provisions hereof shall run with the CPB Property and the Malstrom Property (the “Properties”), shall bind every person having any fee, leasehold or other interest or estate in all or a portion of the Properties, and shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, successors and assigns. This Agreement shall not be construed to restrict the right of any present or subsequent owner of the Properties or any portion thereof to sell, convey, mortgage, pledge or otherwise freely deal with such portion of the Properties provided that, in so doing, no such owner (or any other person) shall have the power or authority to terminate, subordinate or modify this Agreement or the provisions hereof. The parties hereto and all subsequent owners of the Properties shall be bound hereby and liable with respect hereto but upon conveyance by any such party or other owner of all of such party’s or owner’s interest in such portion of the Properties subject hereto, such person thereupon shall be relieved of and from any claim or liability arising hereunder by reason of any act or occurrence arising after the date of such conveyance. This Agreement shall not be construed as creating any rights in the general public nor as dedicating for public use any portion of the Properties whatsoever, it being the intention of the parties that this Agreement strictly be limited to the private rights hereby established.

7. **Effectiveness.** This Agreement shall be effective from and after the date this instrument is recorded in the records of Salt Lake County, Utah.

8. **Miscellaneous.** The failure by a party hereto, or by any successor or assign, to insist upon strict performance of any provision hereof or to exercise any right or remedy available in connection with any breach hereof, shall not constitute a waiver of such breach or of any subsequent breach hereof, or of such party’s or subsequent owner’s right subsequently to insist upon strict performance of the provisions hereof. It is expressly agreed that no breach of this Agreement shall entitle any party hereto to cancel, rescind or otherwise to terminate this Agreement, but such limitations shall not affect in any manner any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. This Agreement may be cancelled, changed, modified or amended in whole or in part only by a written and recorded agreement executed by all of the then owners of the Malstrom Property and the CPB Property.

9. **Entire Agreement.** This Agreement and the exhibits hereto contain all of the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and the exhibits hereto.

10. **Notice.** All notices or other communications and documents required or permitted hereunder, served, or delivered by or to either party or any intended recipient under this Agreement shall be in writing and shall be either delivered by hand, sent by a nationally recognized overnight courier service, electronic mail, or prepaid certified or registered mail (airmail in the case of all international communications), return receipt requested, to the party or intended recipient at its address stated below, or sent by facsimile machine to the party or intended recipient at its facsimile number stated below or to such other address or facsimile number as either party may from time to time have notified the other party as being its address or facsimile number for purposes of this Agreement to the exclusion of all previously applicable

addresses and facsimile numbers. Such communications shall be deemed to have been given, served, or delivered: (i) if delivered by hand, upon delivery; (ii) if delivered by overnight courier, on the next business day following the date of delivery to the courier; (iii) if sent by mail, four (4) days after the date of mailing; or (iv) if sent by facsimile, upon successful transmission. The addresses and facsimile numbers of the parties are as follows:

To CPB: Corporation of the Presiding Bishop of  
The Church of Jesus Christ of Latter-day Saints  
50 E. North Temple Street, 12<sup>th</sup> Floor  
Salt Lake City, Utah 84150  
Facsimile: (801) \_\_\_\_-\_\_\_\_  
Attn: Real Estate Services Division, Prop. No. 600-0078

With a Copy to: Kirton & McConkie  
60 East South Temple Street, 18<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
Facsimile: (801) 321-4893  
Attn: Robert D. Walker, Prop. No. 600-0078

To Malstrom: Alvin E. Malstrom, Trustee of the  
Alvin E. Malstrom Revocable Trust  
dated April 6, 1991

9325 South 700 East  
Sandy, UT 84070

**11. Captions.** Section headings are herein inserted for convenience only, and shall in no way define, limit, or prescribe the scope or extent of any provision of this Agreement.

**12. Context.** Whenever the singular is used in this Agreement and when required by the context, it shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa. The use of the words "including", "such as", or words of similar import, when followed by any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation" or "but not limited to" are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

**13. Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

**14. Governing Law.** This Agreement shall be construed under and governed according to the laws of the State of Utah, and shall be binding upon and inure to the benefit of

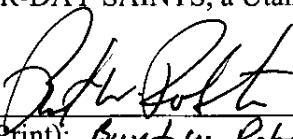
the parties hereto and their respective representatives, successors and assigns. CPB and Malstrom each submits to the jurisdiction of the state and federal courts in the State of Utah and to venue in Salt Lake County, Utah.

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



CPB:

CORPORATION OF THE PRESIDING BISHOP  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation sole

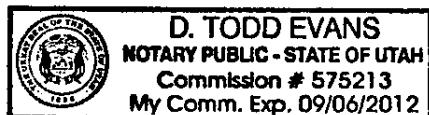
By:   
Name (Print): Brent W. Roberts

Title: Authorized Agent

STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE )

On this 13 day of December, 2010 personally appeared before me BRENT W. ROBERTS, personally known to me to be an Authorized Agent of CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and that the seal impressed on the within instrument is the seal of said corporation; and that said instrument is the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation and that said corporation executed the same.

WITNESS my hand and official seal.



  
Notary Public for the State of Utah

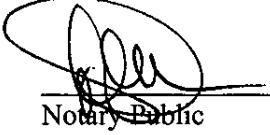
**MALSTROM:**

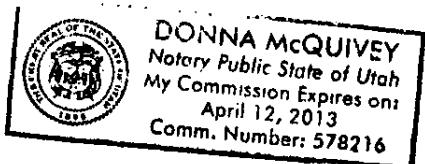
ALVIN E. MALSTROM, Trustee of the ALVIN E.  
MALSTROM REVOCABLE TRUST, DATED  
APRIL 6, 1991

By: Alvin E. Malstrom  
Alvin E. Malstrom, Trustee

STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE )

On this 14<sup>th</sup> day of December, 2010, personally appeared before me ALVIN E.  
MALSTROM, Trustee of the ALVIN E. MALSTROM REVOCABLE TRUST, DATED APRIL  
6, 1991.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**

(Legal Description of the CPB Property)

LOT 7, 9400 SOUTH COMMERCIAL SUBDIVISION, according to the official plat thereof, filed in Book "200P" of Plats, at Page 123 of the Official Records of the Salt Lake County Recorder.

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FOR INFORMATION PURPOSES:

TAX ID NOS. 28-05-351-009  
28-05-351-010  
28-05-351-011  
28-05-351-012

**EXHIBIT B**

(Legal Description of the Malstrom Property)

LOTS 1, 2, 3, 4, 5 AND 6, 9400 SOUTH COMMERCIAL SUBDIVISION, according to the official plat thereof, filed in Book "200" of Plats, at Page 185 of the Official Records of the Salt Lake County Recorder.

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FOR INFORMATION PURPOSES:

TAX ID NOS. 28-05-351-002  
28-05-351-003  
28-05-351-004  
28-05-351-005  
28-05-351-009  
28-05-351-010

**EXHIBIT C**  
[Survey]

700 EAST

## SITE DATA

<b>TOTAL</b>	<b>228,661</b>
<b>PARKING REQUIRED @ 5 / 1000</b>	<b>1125</b>
<b>PARKING SHOWN:</b>	<b>1133</b>
<b>DEVELOPED AREA:</b>	<b>23.70 ACRES</b>

TEMPORARY EGGS OF ADULT

9400 SOUTH