

10874705  
 1/7/2010 2:12:00 PM \$77.00  
 Book - 9795 Pg - 1629-1655  
 Gary W. Ott  
 Recorder, Salt Lake County, UT  
 INWEST TITLE SERVICES  
 BY: eCASH, DEPUTY - EF 27 P.

After Recording Return To:

Jones Waldo Holbrook & McDonough, P.C.  
 170 S. Main Street, Suite 1500  
 Salt Lake City, Utah 84101  
 Attention: Keven Rowe

*INWEST TITLE FILE 144696*  
*15-33-251-012, -002 (-013, -014), -008, -011, -007*  
*15-33-201-009-2000, -2001, 15-33-201-005, -006*  
*15-33-276-003*

### RECIPROCAL EASEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the 7<sup>th</sup> day of January, 2010, by and among (i) **COVENTRY III/SATTERFIELD HELM VALLEY FAIR, LLC**, a Delaware limited liability company ("**VFM**"), with an address at Satterfield-Helm Management, Inc., Valley Fair Mall Management Office, Suite G-128, 3601 South 2700 West, West Valley City, Utah 84119, (ii) **IN-N-OUT BURGERS**, a California corporation, with an address at In-N-Out Burgers, 13502 Hamburger Lane, Baldwin Park, California 91706-5885, Attention: Real Estate Department ("**INO**"), and (iii) **REAL ESTATE INVESTMENT PARTNERS, LLC**, a Utah limited liability company ("**REIP**"), with an address at c/o Mountain High Properties, 360 East 4500 South, Salt Lake City, Utah 84107. VFM, INO and REIP are sometimes hereafter referred individually to as a "party" or collectively as the "parties".

#### RECITALS:

- A. VFM is the fee owner of that certain shopping center commonly known as The Valley Fair Mall, as shown on the plan attached hereto as Exhibit A (the "Site Plan"), and described on Exhibit B attached hereto (the "VFM Tract").
- B. REIP is the fee owner of that certain tract of land, as shown on the Site Plan, and described in Exhibit C attached hereto (the "REIP Tract").
- C. INO is the fee owner of that certain tract of land located adjacent to the VFM Tract and adjacent to the REIP Tract, as shown on the Site Plan and on Exhibit E attached hereto, and described in Exhibit D attached hereto (the "INO Tract").
- D. The purpose of this Agreement is to set forth certain understandings of the parties in respect to the use of certain improvements on the VFM Tract, the INO Tract and the REIP Tract and the operation thereof.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. **Definitions.** As used in this Agreement, each of the following terms shall have the indicated meaning:

a. **“Access Drive”** means that common access drive located partially upon the VFM Tract, and partially upon the REIP Tract, as such drive is depicted on Exhibit E attached hereto, and described in Exhibit F attached hereto.

b. **“Mortgage”** means a mortgage or a deed of trust recorded in the Official Records.

c. **“Mortgagee”** means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the Official Records.

d. **“Official Records”** means the official records of the Salt Lake County Recorder, state of Utah.

e. **“Owner”** means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in any portion of any Tract. If there is more than one Owner of a Tract at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Tract concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

f. **“REIP Tract Common Parking Facilities”** means (a) the parking areas located on the REIP Tract from time to time, (b) all drive aisles, access and other roads located within the REIP Tract from time to time (other than the Access Drive), and (c) all exterior sidewalks and walkways located within the REIP Tract from time to time.

g. **“Tracts”** means the VFM Tract, the INO Tract and the REIP Tract, collectively, and **“Tract”** means the VFM Tract, the INO Tract or the REIP Tract, individually, where no distinction is required by the context in which such term is used.

h. **“VFM Tract Common Parking Facilities”** means (a) the parking areas located on the VFM Tract from time to time, (b) all drive aisles, access and other roads located within the VFM Tract from time to time (other than the Access Drive), and (c) all exterior sidewalks and walkways located within the VFM Tract from time to time.

2. **Grant of Rights-of-Way and Easements.**

2.1. **Access Right-of-Way and Easement—Access Drive.** The Tracts shall have appurtenant thereto and shall be benefited by, and the Access Drive shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress on, over and across the Access Drive, without payment of any fee or

other charge being made therefor. Such right-of-way and easement shall be limited to use for such purposes and to such extent as may be customary to the use of the Tracts for general retail and other commercial purposes, which shall include reasonable and customary deliveries.

2.2. **Utilities Right-of-Way and Easement—Access Drive.**

2.2.1. **Grant of Right-of-Way and Easement.** Subject to Section 4, the Tracts shall have appurtenant thereto and shall be benefited by, and the Access Drive shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, use, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewer, storm drainage and all types of water) under, through and across the Access Drive, which shall include the right to connect to existing underground utility pipes, lines, wires, conduits and related facilities, so long as such connection can be made without interference with, or additional cost to, other then-existing users.

2.2.2. **Exercise of Right-of-Way and Easement.** Subject to Section 4, any Owner may (a) enter on any portion of the Access Drive as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the underground utilities and facilities referred to in Section 2.2.1, and (b) in connection with such underground utilities and facilities, excavate or conduct construction activities on the Access Drive, so long as such excavation or construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion and in compliance with Section 4 and all other provisions of this Agreement. On completion of such excavation or construction activities, the Owner conducting such activities shall, at such Owner's sole cost and expense, promptly restore any portion of the Access Drive affected to the same condition as existed prior to the commencement of such activities, using the same type and quality of materials previously used.

2.3. **Access and Parking Right-of-Way and Easement—Common Parking Facilities.** The VFM Tract and the INO Tract shall have appurtenant thereto and shall be benefited by, and the REIP Tract Common Parking Facilities shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular (excluding commercial delivery trucks) ingress and egress and temporary vehicular parking (without charge) on, over and across the REIP Tract Common Parking Facilities. The REIP Tract shall have appurtenant thereto and shall be benefited by, and the VFM Tract Common Parking Facilities shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular (excluding commercial delivery trucks) ingress and egress and temporary vehicular parking (without charge) on, over and across the VFM Tract Common Parking Facilities. Such right-of-way and easement shall be limited to use for such purposes and to such extent as may be customary to the use of the Tracts for general retail and other commercial purposes. This Section 2.3 shall not be deemed to permit ingress and egress by commercial delivery trucks.

Ingress and egress over and across certain portions of the VFM Tract Common Parking Facilities is provided for separately in Section 2.4.

2.4. **Truck Access Right-of-Way and Easement—Easterly Tract.** The REIP Tract shall have appurtenant thereto and shall be benefited by, and those specific and limited portions of the currently undeveloped parcel of land (the "**Easterly Tract**") currently owned by VFM, located adjacent to the east of the REIP Tract and described on Exhibit G attached hereto, as such portions are designated or relocated from time to time by the Easterly Tract Owner in accordance with this Section 2.4, shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for ingress and egress (without charge) by delivery trucks (including, without limitation, all sizes of trucks, including semi-trailer trucks) to and from 3800 South Street and the easterly side of the buildings located on the REIP Tract on, over and across those drive aisles or roads located within the Easterly Tract, as such delivery truck access route is reasonably designated or relocated by the Easterly Tract Owner from time to time. (Such delivery truck access route, as the same may be designated or relocated from time to time by the Easterly Tract Owner, is hereafter referred to as the "**REIP Delivery Truck Access Route**." ) Concurrently with the development of the Easterly Tract, the Easterly Tract Owner shall, by written notice to the REIP Tract Owner, acting in good faith and in a commercially reasonable manner, designate the REIP Delivery Truck Access Route. Thereafter, the Easterly Tract Owner may from time to time, in its discretion and at its sole cost and expense, on at least thirty (30) days' advance written notice to the REIP Tract Owner, relocate in a commercially reasonable manner the REIP Delivery Truck Access Route in order to accommodate redevelopment plans. As such, the REIP Delivery Truck Access Route, as designated by the Easterly Tract Owner from time to time, may not be the most direct or convenient manner of traveling to and from 3800 South Street and the REIP Tract, although it nevertheless will be commercially reasonable. The sole limitations on the Easterly Tract Owner in designating and relocating the REIP Delivery Truck Access Route shall be that the REIP Delivery Truck Access Route must be reasonably sufficient to allow the ingress and egress in a commercially reasonable manner of delivery trucks to and from 3800 South and the easterly side of the buildings located on the REIP Tract, and that at least thirty (30) days' advance written notice of such relocation must be given to the REIP Tract Owner.

3. **No Interference.** Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Section 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

4. **Modifications to the Access Drive.** Except for the maintenance, repair and resurfacing obligations of VFM as set forth in Section 5, which VFM shall perform without the prior consent of any party, no party shall be entitled to relocate or alter, in any material fashion, any portion of the Access Drive without the prior written consent of all other parties to this Agreement, which consent shall not be unreasonably withheld, conditioned or delayed. Any such consent may reasonably limit the location, timing and methods or manner of any such activities or work, in order

to avoid unreasonable interference with any party's use of, or access to, such party's Tract. All such work or activities shall be performed in such a manner as to reasonably minimize interference with the normal operation of the Tracts and the businesses located thereon. Prior to that date which is sixty (60) days after the completion of the new deceleration lane to be located along the westerly property line of the REIP Tract, VFM shall, at its sole cost and in a good and workmanlike manner, improve that portion of the Access Drive from 2700 West to the easterly boundary line of the INO Tract, with either a new layer of asphalt or asphalt seal coating.

5. **Maintenance.**

5.1. **Maintenance.** The VFM Tract Owner shall, at its sole cost and expense, maintain, repair, replace and resurface the Access Drive and, once designated, the REIP Delivery Truck Access Route (as the REIP Delivery Truck Access Route may be relocated from time to time by the Easterly Tract Owner in accordance with Section 2.4), and keep the Access Drive and the REIP Delivery Truck Access Route in a reasonably good, clean and safe condition and repair, including trash, debris, snow and ice removal (such obligations of VFM, hereafter, the "**Drive Maintenance**"). The actual costs incurred by VFM in performing the Drive Maintenance are hereafter referred to as the "**Drive Maintenance Costs**". The obligations of VFM regarding the Drive Maintenance shall inure to the benefit of, and be enforceable by, the REIP Tract Owner and the INO Tract Owner and their respective Mortgagees, but shall not inure to the benefit of any other third party or confer upon any other third party any rights or remedies in the event of VFM's failure to perform such obligations. VFM shall not be liable to the REIP Tract Owner or the INO Tract Owner for any damage done to the REIP Tract or the INO Tract in connection with the performance of the Drive Maintenance other than as a result of VFM's negligence or intentional misconduct; provided, however, the Drive Maintenance shall be performed in such a manner as to reasonably minimize interference with the normal operation of the Tracts and the businesses located thereon. Neither the INO Tract Owner nor the REIP Tract Owner shall be required to contribute to the Drive Maintenance Costs pursuant to this Agreement, except that INO or REIP, as the case may be, shall be financially responsible for the cost to repair any damage to the Access Drive or the REIP Delivery Truck Access Route caused by its negligence or the negligence of its employees or agents.

5.2. **Inspection.** The REIP Tract Owner shall have the right to inspect and approve any repair, replacement or resurfacing of the Access Drive and the REIP Delivery Truck Access Route performed by VFM, which approval shall not be unreasonably withheld, conditioned or delayed. VFM shall promptly notify REIP following the completion of any such repair, replacement or resurfacing work with respect to the Access Drive or the REIP Delivery Truck Access Route performed by VFM (the "**Work Completion Notice**"). REIP shall have a period of thirty (30) days following its receipt of the Work Completion Notice (the "**Inspection Period**") to inspect and provide to VFM written notice of its reasonable approval or disapproval of such work. In the event REIP shall fail to provide written notice to VFM of its approval or disapproval of such work within the Inspection Period, REIP shall be deemed to have provided its approval of such work. In the event REIP shall provide to VFM written notice of its reasonable disapproval of such work within the Inspection Period, then VFM and REIP agree to promptly cooperate in good faith in resolving and correcting such items of work reasonably disapproved by REIP, to the reasonable

satisfaction of REIP. The initial contact person at REIP to which the Work Completion Notice shall be sent is Rob Galanis at c/o Mountain High Properties, 360 East 4500 South, Salt Lake City, Utah 84107 (the "**REIP Contact**"). REIP may designate such other contact persons from time to time by delivery of written notice to VFM. Drive Maintenance is limited to the Access Road and the REIP Delivery Truck Access Route, and does not include repairs to buildings or other improvements located on any Tract. The provisions of this Section 5.2 shall not apply to minor maintenance items performed by VFM for the Drive Maintenance, including, by way of example, but without limitation, debris or trash removal, or snow or ice removal.

6. **Taxes.** Each party agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes or assessments which are levied against its Tract.

7. **Duration.** This Agreement and each right-of-way, easement, covenant and restriction set forth in this Agreement shall be perpetual.

8. **Not a Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Tracts for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement be strictly limited to the purposes expressed in this Agreement.

9. **Appurtenances to Tracts; Covenants Run with Land; Various Events.**

9.1. **Appurtenances to Tracts.** Each right-of-way, easement, covenant and restriction created by this Agreement is an appurtenance to the Tract benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to such Tract. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Tract shall constitute the dominant estate and the burdened Tract shall constitute the subservient estate.

9.2. **Covenants Run with Land; Various Events.**

9.2.1. **Covenants Run with Land.** Each right-of-way, easement, covenant and restriction contained in this Agreement (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Tract in favor of the benefited Tract (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Tract concerned, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

9.2.2. **Transfer of Tract.** If any Owner transfers all or any portion of the Tract owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Agreement, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Tract, such transferring Owner shall be released and discharged from all obligations under this

Agreement with respect to such Tract that accrue after (but not before) the date of recordation in the Official Records of the instrument effecting such transfer.

9.2.3. **Effect of Breach.** No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Agreement by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Tract.

9.2.4. **Identical Ownership.** The ownership of two or more Tracts by the same person shall not result in the termination of this Agreement.

9.2.5. **Priority of Agreement.** The interests in and rights concerning any portion of the Tracts held by or vested in the parties or any other person on or after the date of this Agreement (including, without limitation, any Mortgage lien) shall be subject and subordinate to this Agreement, and this Agreement shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Agreement. As of the date of this Agreement, the parties are the sole Owners of the Tracts.

10. **Division of Tracts.** The rights-of-way and easements granted under this Agreement are not confined to the present uses of the Tracts or the present buildings thereon. If any Tract is hereafter divided into additional or multiple parts by separation of ownership or by lease, all parts thereof shall enjoy the benefits of the rights and easements created under this Agreement.

11. **Default; Remedies.** In the event of a default by the Owner of any Tract of any of its obligations under this Agreement, any non-defaulting party or parties, following delivery of its written notice to the defaulting party, and a failure by the defaulting party to cure such default within thirty (30) days following receipt of such notice, shall be entitled to all rights and remedies available at law or in equity, including without limitation the bringing of legal proceedings for full and adequate relief against the defaulting party in law or in equity, including without limitation the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities or uses or otherwise enforce compliance with the requirements of this Agreement, and also including without limitation, the right to perform such obligation(s) on behalf of the defaulting party, in which event the defaulting party shall reimburse the party or parties performing on its behalf for the cost of performing such work within thirty (30) days after receipt of demand therefor. In the event the defaulting party does not so reimburse the performing party or parties within such thirty (30) day period, the performing party or parties shall have: (i) the right to exercise any and all rights it may have at law or in equity to collect the same; and (ii) the right to a lien against the Tract of the defaulting party to the extent of the amount paid or costs incurred by the performing party or parties but not reimbursed by the defaulting party, which amount shall bear interest at a rate equal to the then "Prime Rate" published in the Money Section of the Wall Street Journal (or comparable replacement publication), plus one percent (1%) per annum (the parties acknowledging that such rate may not be the lowest or "best" rate), or the highest legal rate of interest, whichever is less, from the date of billing until the date paid. A notice of such lien may be filed of record by the performing party

or parties, giving notice of a claim against the Tract of the defaulting party, in the form required by law, in the office wherein such liens are recorded. Such notice of lien shall set forth the unpaid amount, the date such amount was due and a description of the property subject to such lien, and shall be signed by the non-defaulting Owner. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of Mortgages, but shall be subject and subordinate to (a) each Mortgage affecting the defaulting Owner's Tract at the time such notice of lien is recorded, (b) this Agreement, (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the defaulting Owner's Tract at the time such notice of lien is recorded, (d) the interest of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the defaulting Owner's Tract at the time such notice of lien is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests or estates (whether recorded or unrecorded at the time such notice of lien is recorded) in or respecting the defaulting Owner's Tract. The various rights and remedies herein contained and reserved to the non-defaulting parties shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy, or be construed as a waiver of any default or non-performance or as acquiescence therein.

12. **Mortgagee Protection.**

12.1. **Obligations of Mortgagee.** Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee under any Mortgage affecting any part of the Tracts shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.

12.2. **Performance.** Each Mortgagee shall have the right to act for and in the place of the Owner of the Tract covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Mortgagee as if the same had been performed by any other Owner. Such acceptance shall not create any additional rights as against such Owner in such Mortgagee, nor shall such Mortgagee be subrogated to any interest or right of such Owner. Each Mortgagee shall have the right, to the extent the Owner of the Tract covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with the Tract.

12.3. **Right to Collaterally Assign.** Any party may collaterally assign its rights and obligations under this Agreement to any first position Mortgagee without the consent of any other party.

13. **Estoppel.** Each Owner agrees that, within thirty (30) days following receipt of a request by any other Owner, it will issue to the requesting Owner in favor of the requesting Owner and such other persons as the requesting Owner shall request, an estoppel certificate stating:



(a) whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof;

(b) whether this Agreement has been modified or amended in any way (and if it has, then so stating);

(c) that, to the Owner's actual knowledge, this Agreement as of the applicable date is in full force and effect; and

(d) such other information as the requesting Owner may reasonably request.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a *bona fide* encumbrancer, tenant or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; provided, no Owner shall incur any liability for any misstatement or wrong information unless the same is the result of the gross negligence or willful act of the Owner furnishing such information.

14. **Attorneys' Fees.** In the event it becomes necessary for any party hereto to employ an attorney in order for such party to enforce its rights hereunder, either with or without litigation, the non-prevailing party of such controversy shall pay to the prevailing party reasonable attorneys' fees and, in addition, such reasonable costs and expenses as are incurred by the prevailing party in enforcing its rights hereunder.

15. **Governing Law.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Utah.

16. **Modification.** This Agreement may be modified or cancelled only by the written agreement of all of the foregoing: (a) the Owner(s) of not less than seventy percent (70%) of the land area of the VFM Tract, (b) the Owner(s) of not less than seventy percent (70%) of the land area of the INO Tract, and (c) the Owner(s) of not less than seventy percent (70%) of the land area of the REIP Tract. No consent or authorization by or from any tenant or other occupant of the Tracts shall be required to so modify or alter this Agreement. If there shall be more than one record fee owner of any Tract, then each such fee owner shall, upon written demand made by any party hereto, appoint an agent who shall be responsible for obtaining from all said fee owners of such Tract their consent to or denial of any proposed modification to or cancellation of this Agreement, such consent or denial to be obtained by said agent without undue delay.

17. **Binding Effect.** The easements, restrictions, rights, benefits and obligations under this Agreement shall create mutual benefits and servitudes upon the Tracts that shall run with the land, and this Agreement shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

18. **Notices**. Whenever any notice or consent is required hereunder, the same shall be sent by certified mail, return receipt requested, postage prepaid, to the parties at their addresses first above stated, or at such other address as the parties may designate by notice given as above required.

19. **Counterparts**. This Agreement may be signed in any number of counterparts, which, when taken together shall constitute one complete agreement.

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

[Signature Pages Follow]

**VFM:**

**COVENTRY III/SATTERFIELD HELM VALLEY FAIR, LLC,**  
a Delaware limited liability company

By: Coventry Valley Fair, L.L.C.,  
a Delaware limited liability company,  
Its Managing Member

By: Coventry Fund III REIT, L.L.C.,  
a Delaware limited liability company,  
Its sole member

By: Coventry Real Estate Fund III-A, L.P.,  
a Delaware limited partnership,  
Its Sole Member

By: Coventry Fund III Partners, L.P.,  
a Delaware limited partnership,  
Its general partner

By: Coventry Fund III Partners,  
L.L.C., a Delaware limited  
liability company,  
Its general partner

By: \_\_\_\_\_  
Loren F. Henry, Vice President

STATE OF OHIO            )  
                                      : ss.  
COUNTY OF GEAUGA    )

The foregoing instrument was acknowledged before me this 24th day of July, 2009 by Loren F. Henry in his capacity as the Vice President of Coventry Fund III Partners, L.L.C., in its capacity as the general partner of Coventry Fund III Partners, L.P., in its capacity as the general partner of Coventry Real Estate Fund III-A, L.P., in its capacity as the sole member of Coventry Fund III REIT, L.L.C., in its capacity as the sole member of Coventry Valley Fair, L.L.C., in its capacity as the managing member of COVENTRY III/SATTERFIELD HELM VALLEY FAIR, LLC, a Delaware limited liability company.

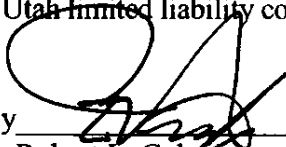
My Commission Expires: 2-22-2010

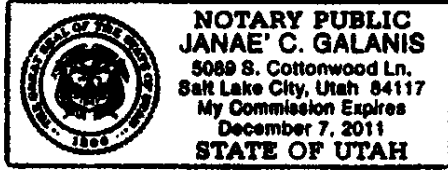


Mary J. Mizner  
NOTARY PUBLIC

**REIP:**

**REAL ESTATE INVESTMENT PARTNERS, LLC,**  
a Utah limited liability company

By   
Robert L. Galanis  
Manager




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

On this 27<sup>th</sup> day of July, 2009 before me personally appeared Robert L. Galanis, who being by me duly sworn, acknowledged to me that he is the Manager of Real Estate Investment Partners, LLC, and that he signed and was duly authorized to sign the foregoing instrument.

Janae C. Galanis  
Notary Public  
My Commission Expires on: December 7, 2011

**INO:**

**IN-N-OUT BURGERS, a California corporation**

By   
Print Name Carl G. Van Fleet  
Title Executive Vice President of  
Planning and Development

STATE OF CALIFORNIA            )  
  )  
COUNTY OF Los Angeles    )        ss.

On January 5, 2010 before me, Lori Brazzill, Notary Public, personally appeared Carl G. Van Fleet who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

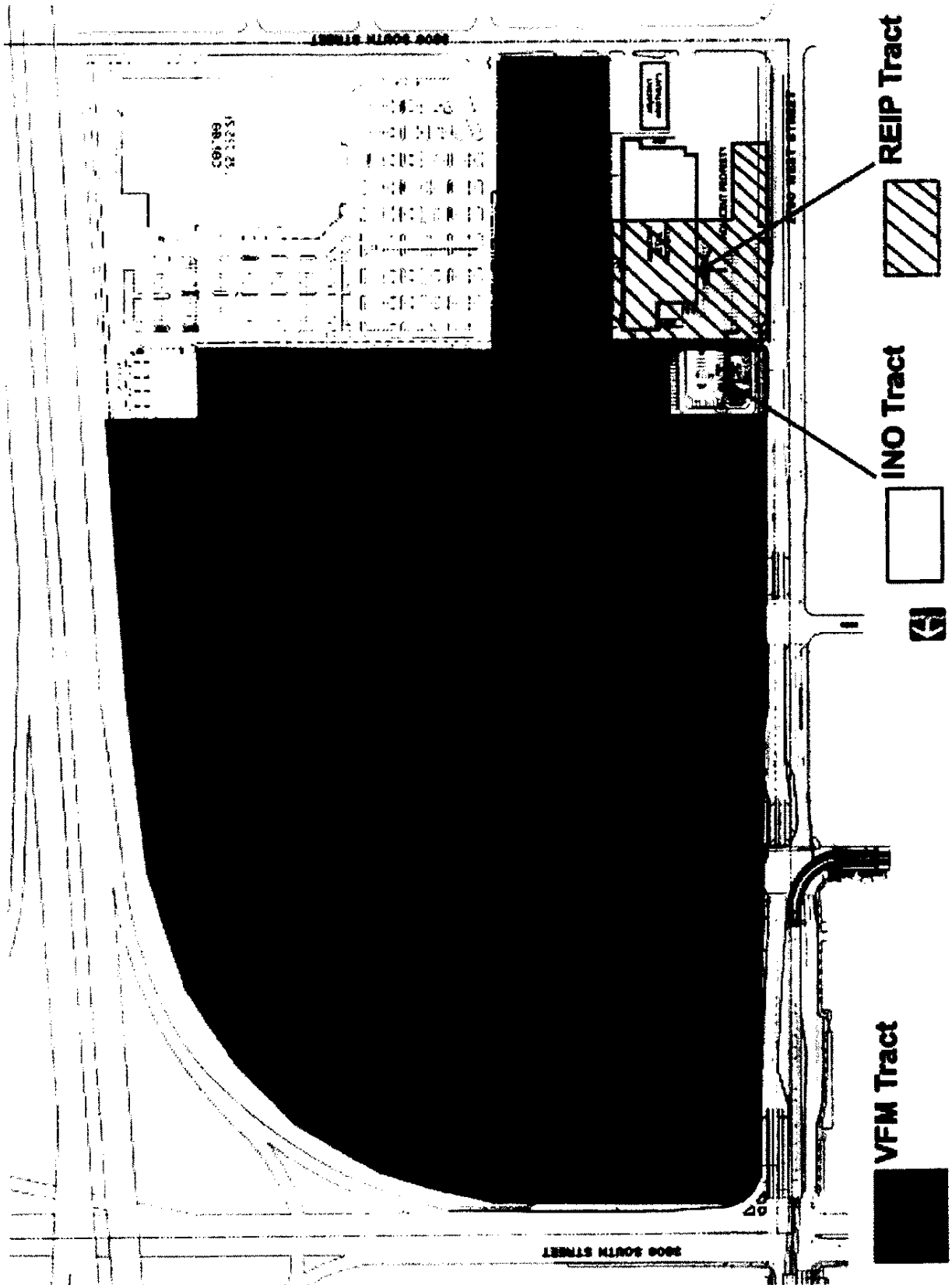


(Seal)

**EXHIBIT "A"**

**Site Plan**

**[See Attached]**



**Exhibit A - Site Plan**

**EXHIBIT "B"**

**Legal Description of VFM Tract**

All that certain real property located in West Valley City, Salt Lake County, State of Utah, described as follows:

**PARCEL 1:**

Beginning at a point on the East right-of-way of 2700 West street, said point being South 89° 58' 40" East along the Section line 33.00 feet; and South 0° 00' 44" West along said East right-of-way line 154.91 feet, from the North quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 89° 59' 21" East 39.00 feet to a point of a curve to the right, the radius point of which is South 89° 59' 21" East 75.00 feet; thence Northeasterly along the arc of said curve 117.83 feet to a point of tangency, said point being 80.00 feet perpendicularly distant Southerly from the center line of 3500 South Street at Engineer Station 5+97.53 of State Freeway Project I-215; thence South 89° 58' 40" East 505.72 feet to a point of curve to the right, the radius point of which is South 5° 08' 45" West 848.83 feet, said point also being 80.00 feet perpendicularly distant Southerly from the center line of said 3500 South Street at Engineer Station 11+03.24; thence Southeasterly along the arc of said curve 683.09 feet; thence South 0° 01' 17" West 19.30 feet; thence South 89° 58' 40" East 15.68 feet to a point on a curve to the right, the radius point of which is South 52° 55' 58" West 848.83 feet; thence Southeasterly along the arc of said curve 33.77 feet to a point of intersection with a curve to the right, the radius point of which is South 54° 01' 22" West 768.83 feet, said point of intersection being 80.00 feet radially distant Southwesterly from the centerline of J-6 ramp at Engineer Station 18+00; thence Southeasterly along the arc of said curve 88.48 feet to a point on the East line of the West one-half of the Northeast quarter of said Section 33; thence South along said East line 1469.58 feet to the Southeast corner of the Northeast quarter of the Southwest quarter of the Northeast quarter of said Section 33; thence South 89° 57' 20" West along the South line of the North one-half of the Southwest quarter of the Northeast quarter of said Section 33, 1288.88 feet to the East right-of-way line of 2700 West Street; thence North 0° 00' 44" East along said East right-of-way line 1831.35 feet to the point of beginning.

**LESS AND EXCEPTING THEREFROM following:**

Beginning at a point which is South 89° 56' West along the quarter Section line 1322.02 feet and North 1483.67 feet and South 89° 57' West 121.85 feet from the East quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 89° 57' West 216.0 feet; thence North 0° 03' West 258.0 feet; thence North 89° 57' East 216.0 feet to a point of a 24.0 foot radius curve to the right; thence Southeasterly along the arc of said curve 37.70 feet to a point of tangency; thence South 0° 03' East 210.0 feet to a point of a 24.0 foot radius curve to the right; thence Southwesterly along the arc of said curve 37.70 feet to the point of beginning.



ALSO LESS AND EXCEPTING THEREFROM the following:

Beginning at a point which is South 0° 00' 44" West along the center Section line 1548.84 feet, and South 89° 59' 18" East 601.21 feet from the North quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being the Northwest corner of the building; and running thence North 89° 59' 30" East 477.40 feet; thence South 00° 00' 30" East 29.69 feet; thence South 89° 59' 30" West 5.40 feet; thence South 0° 00' 30" East 40.20 feet; thence North 89° 59' 30" East 5.40 feet; thence South 0° 00' 30" East 71.80 feet; thence South 89° 59' 30" West 56.00 feet; thence South 00° 00' 30" East 84.00 feet; thence South 89° 59' 30" West 85.00 feet; thence North 00° 00' 30" West 28.00 feet; thence South 89° 59' 30" West 126.20 feet; thence North 00° 00' 30" West 5.40 feet; thence South 89° 59' 30" West 82.20 feet; thence South 00° 00' 30" East 5.40 feet; thence South 89° 59' 30" West 128.00 feet; thence North 00° 00' 30" West 57.85 feet; thence North 89° 59' 30" East 8.40 feet; thence North 00° 00' 30" West 26.20 feet; thence South 89° 59' 30" West 2.80 feet; thence North 00° 00' 30" East 29.75 feet; thence North 89° 59' 30" East 2.80 feet; thence North 00° 00' 30" West 26.20 feet; thence South 89° 59' 30" West 8.40 feet; thence North 00° 00' 30" West 57.69 feet to the point of beginning.

ALSO LESS AND EXCEPTING THEREFROM the following:

Beginning at a point which is South 0° 00' 44" West along the center section line 342.74 feet, and South 89° 59' 18" East 604.30 feet from the North quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said also being the Northwest corner of the building; and running thence North 89° 56' 73" East 323.40 feet; thence North 00° 03' 23" West 37.00 feet; thence North 89° 56' 37" East 22.70 feet; thence South 00° 03' 23" East 37.00 feet; thence North 89° 56' 37" East 67.90 feet; thence South 00° 03' 23" East 226.06 feet; thence South 89° 56' 37" West 414.00 feet; thence North 00° 03' 23" West 226.06 feet to the point of beginning.

(For reference purposes only: Tax Parcel No. 15-33-201-007-2000, and 15-33-201-007-2001).

PARCEL 2:

Beginning at a point which is South 89° 56' West along the quarter section line 1,322.02 feet and North 1,483.67 feet and South 89° 57' West 121.85 feet from the East quarter corner of Section 33, Township 1 South, Range 1 West Salt Lake Base and Meridian; and running thence South 89° 57' West 216.0 feet; thence North 0° 03' West 258.0 feet; thence North 89° 57' East 216.0 feet to a point of a 24.0 foot radius curve to the right; thence Southeasterly along the arc of said curve 37.70 feet to a point of tangency; thence South 0° 03' East 210.0 feet to a point of a 24.0 foot radius curve to the right; thence Southwesterly along the arc of said curve 37.70 feet to the point of beginning.

(For reference purposes only: Tax Parcel No. 15-33-201-005).

**PARCEL 3:**

Beginning at a point which is South 0° 00' 44" West along the center section line 1,548.84 feet, and South 89° 59' 18" East 601.21 feet from the North quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being the Northwest corner of the building; and running thence North 89° 59' 30" East 477.40 feet; thence South 00° 00' 30" East 29.69 feet; thence South 89° 59' 30" West 5.40 feet; thence South 00° 00' 30" East 40.20 feet; thence North 89° 59' 30" East 5.40 feet; thence South 0° 00' 30" East 71.80 feet; thence South 89° 59' 30" West 56.00 feet; thence South 00° 00' 30" East 84.00 feet; thence South 89° 59' 30" West 85.00 feet; thence North 00° 00' 30" West 28.00 feet; thence South 89° 59' 30" West 126.20 feet; thence North 00° 00' 30" West 5.40 feet; thence South 89° 59' 30" West 82.20 feet; thence South 00° 00' 30" East 5.40 feet; thence South 89° 59' 30" West 128.00 feet; thence North 00° 00' 30" West 57.85 feet; thence North 89° 59' 30" East 8.40 feet; thence North 00° 00' 30" West 26.20 feet; thence South 89° 59' 30" West 2.80 feet; thence North 00° 00' 30" East 29.75 feet; thence North 89° 59' 30" East 2.80 feet; thence North 00° 00' 30" West 26.20 feet; thence South 89° 59' 30" West 8.40 feet; thence North 00° 00' 30" West 57.69 feet to the point of beginning.

(For reference purposes only: Tax Parcel No. 15-33-251-007).

**PARCEL 4:**

Beginning at a point which is South 0° 00' 44" West along the center section line 342.74 feet, and South 89° 59' 18" East 604.30 feet from the North quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said also being the Northwest corner of the building; and running thence North 89° 56' 37" East 323.40 feet; thence North 00° 03' 23" West 37.00 feet; thence North 89° 56' 37" East 22.70 feet; thence South 00° 03' 23" East 37.00 feet; thence North 89° 56' 37" East 67.90 feet; thence South 00° 03' 23" East 226.06 feet; thence South 89° 56' 37" West 414.00 feet; thence North 00° 03' 23" West 226.06 feet to the point of beginning.

(For reference purposes only: Tax Parcel No. 15-33-201-006).

**PARCEL 5:**

Beginning on the West right-of-way and non-access line of State Freeway Project I-215 at a point which is South 89° 56' West along the quarter section line 1,076.295 feet and North 0° 04' West 33.00 feet and North 3° 35' 13" West 805.29 feet from the East quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 3° 35' 13" West along said right-of-way and non-access line 553.785 feet; thence North 6° 34' 37" West along said right-of-way and non-access line 431.80 feet; thence North 17° 08' 58" West along said right-of-way and non-access line 239.87 feet to a point on a 768.83 foot radius curve to the left, the center of which bears South 67° 31' 22" West from said point; thence Northwesterly along said right-of-way and non-access line and the arc of said curve 92.67 feet to point on the

West line of the East half of the Northeast quarter of said Section 33; thence South along said West line 1,294.16 feet; thence East 195.31 feet to the point of beginning.

(For reference purposes only: Tax Parcel No. 15-33-276-003).

Parcel 13:

Beginning at a point on the North line of 3800 South Street which is 396 feet North 89°56'00" East along the quarter Section line and North 30.00 feet from the Center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 630.31 feet; thence East 253.08 feet; thence South 0°04'00" East 630.01 feet along an existing fence to the North right-of-way line of 3800 South Street; thence South 89°56'00" West 253.81 feet along the North line of 3800 South Street to the point of beginning.

Also Described as:

Beginning at a point on the North line of 3800 South Street which is 396 feet North 89°56'00" East along the Quarter Section Line and North 30.00 feet from the Center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 630.31 feet (measured North 0°00'44" East 630.36 feet to a point on the South Line of that property defined by a Special Warranty Deed found in Book 9555, Page 7461); thence East 253.08 feet (measured North 89°57'20" East 252.93 feet along said line to a point on the West property line as defined by said Special Warranty Deed); thence South 0°04'00" East 630.01 feet along an existing fence to the North right of way line of 3800 South Street (measured the following three calls as defined by said Special Warranty Deed, South 0°04'00" East 330.16 feet; thence East 1.11 feet; thence South 0°04'00" East 300.83 feet); thence South 89°56'00" West 253.81 feet (measured 254.10 feet) along the North line of 3800 South Street to the point of beginning.

(For reference purposes only: Tax Parcel No.'s 15-33-251-008 & 15-33-251-011)

LESS AND EXCEPTING THEREFROM:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LOCATED IN WEST VALLEY CITY, SALT LAKE COUNTY, STATE OF UTAH, SAID PARCEL BEING A PORTION OF THE VALLEY FAIR MALL PROPERTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTH QUARTER CORNER OF SAID SECTION 33, AND RUNNING THENCE SOUTH 0°00'44" WEST, ALONG THE NORTH-SOUTH CENTER QUARTER LINE, A DISTANCE OF 1819.89 FEET AND NORTH 89°57'20" EAST 69.04 FEET AND RUNNING THENCE NORTH 89°57'20" EAST, PARALLEL WITH THE SOUTH LINE OF THE COVENTRY III/SATTERFIELD HELM VALLEY FAIR, LLC PROPERTY, A DISTANCE OF 201.53 FEET; THENCE SOUTH 00°00'44" WEST 151.50 FEET; THENCE SOUTH 89°57'20" WEST, PARALLEL WITH SAID SOUTH LINE OF THE COVENTRY

894547.5

III/SATTERFIELD HELM VALLEY FAIR, LLC PROPERTY, A DISTANCE OF 201.50 FEET; THENCE NORTH, ALONG THE EAST LINE OF CONSTITUTION BOULEVARD (2700 WEST) AS REFERENCED IN THAT SPECIAL WARRANTY DEED RECORDED AS ENTRY NO. 10557625, IN BOOK 9657, AT PAGE 3059, IN THE SALT LAKE COUNTY RECORDER'S OFFICE, A DISTANCE OF 151.50 FEET TO THE POINT OF BEGINNING.

CONTAINS: 30,530 SQ. FT., OR 0.700 ACRES AND 1 LOT.

THE AFORESAID DESCRIBED PROPERTY NOW KNOWN OF RECORD AS: ALL OF LOT 1, IN N OUT SUBDIVISION AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED ON NOVEMBER 23, 2009, AS ENTRY NO. 10844005, IN BOOK 2009P, AT PAGE 169, IN THE SALT LAKE COUNTY RECORDER'S OFFICE, STATE OF UTAH. TAX SERIAL NO. 15-33-251-012.

**EXHIBIT "C"**

**Legal Description of the REIP Tract**

BEGINNING on the East line of 2700 West Street, said point being North 89°56' East 50.0 feet and North 0°00'44" East 227.33 feet from the center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°56' East 78.65 feet; thence North 0°00'44" East 169.38 feet; thence South 89°59'16" East 267.35 feet; thence North 0°00'44" East 265.60 feet (to a point on the North line of the South 1/2 of the Southwest 1/4 of the Northeast 1/4 of said Section 33); thence South 89°57'20" West 346.00 feet along said North line to the East line of 2700 West Street; thence South 0°00'44" West 434.76 feet to the point of beginning.

TOGETHER WITH the easement rights in favor of Winmar Company, Inc., their successors and assigns, over the property abutting said parcel to the North, created by that certain document dated June 30, 1972 and recorded June 30, 1972 as Entry No. 2467253 in Book 3099 at Page 131 of Official Records.

The property first described above also being together with the easement rights and benefitting restrictions in favor of Winmar Company, Inc., over the property described below, created by the easements with covenants and restrictions affecting land, dated February 24, 1976 and recorded March 18, 1976 as Entry No. 2795779 in Book 4139 at Page 88 of Official Records, said property being described as follows:

BEGINNING on the East line of 2700 West Street and the North line of 3800 South Street at a point which is North 89°56' East 50.00 feet and North 0°00'44" East 25.00 feet from the center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 0°00'44" East along the East line of 2700 West Street 202.33 feet; thence North 89°56' East 78.65 feet; thence North 0°00'44" East 169.38 feet; thence South 89°59'16" East 267.35 feet; thence South 0°00'44" West 191.34 feet; thence South 89°56' West 130.00 feet; thence South 0°00'44" West 180.00 feet to the North line of 3800 South Street; thence South 89°56' West along the North line of 3800 South Street 216.00 feet to the point of beginning.

**EXHIBIT "D"**

**Legal Description of the INO Tract**

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LOCATED IN WEST VALLEY CITY, SALT LAKE COUNTY, STATE OF UTAH, SAID PARCEL BEING A PORTION OF THE VALLEY FAIR MALL PROPERTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTH QUARTER CORNER OF SAID SECTION 33, AND RUNNING THENCE SOUTH 0°00'44" WEST, ALONG THE NORTH-SOUTH CENTER QUARTER LINE, A DISTANCE OF 1819.89 FEET AND NORTH 89°57'20" EAST 69.04 FEET AND RUNNING THENCE NORTH 89°57'20" EAST, PARALLEL WITH THE SOUTH LINE OF THE COVENTRY III/SATTERFIELD HELM VALLEY FAIR, LLC PROPERTY, A DISTANCE OF 201.53 FEET; THENCE SOUTH 00°00'44" WEST 151.50 FEET; THENCE SOUTH 89°57'20" WEST, PARALLEL WITH SAID SOUTH LINE OF THE COVENTRY III/SATTERFIELD HELM VALLEY FAIR, LLC PROPERTY, A DISTANCE OF 201.50 FEET; THENCE NORTH, ALONG THE EAST LINE OF CONSTITUTION BOULEVARD (2700 WEST) AS REFERENCED IN THAT SPECIAL WARRANTY DEED RECORDED AS ENTRY NO. 10557625, IN BOOK 9657, AT PAGE 3059, IN THE SALT LAKE COUNTY RECORDER'S OFFICE, A DISTANCE OF 151.50 FEET TO THE POINT OF BEGINNING.

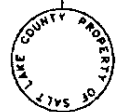
THE AFORESAID DESCRIBED PROPERTY NOW KNOWN OF RECORD AS: ALL OF LOT 1, IN N OUT SUBDIVISION AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED ON NOVEMBER 23, 2009, AS ENTRY NO. 10844005, IN BOOK 2009P, AT PAGE 169, IN THE SALT LAKE COUNTY RECORDER'S OFFICE, STATE OF UTAH.

TAX SERIAL NO. 15-33-251-012

**EXHIBIT "E"**

**Depiction of the INO Tract and Access Drive**

**[See Attached]**

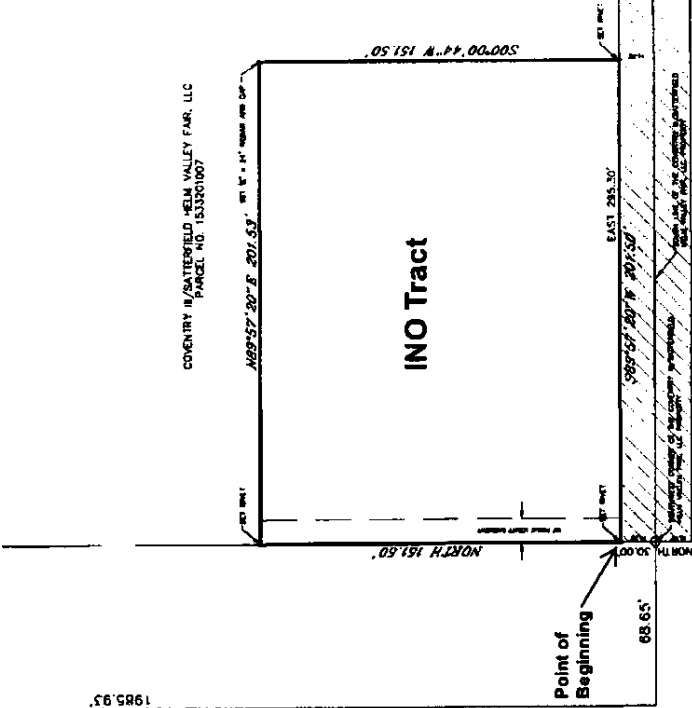
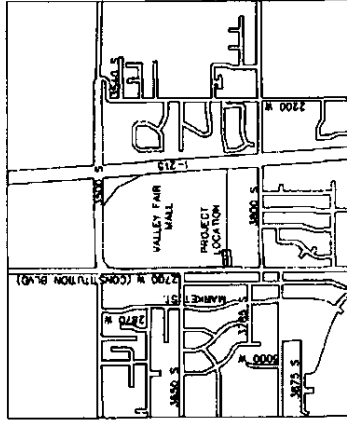


NORTH QUARTER CORNER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, FOUND SALT LAKE COUNTY BRASS CAP MONUMENT IN IRON AND LEAD

GRAPHIC SCALE



VICINITY MAP



COUNTRY W/SATTERFIELD HELM VALLEY FAR, LLC  
PARCEL NO. 1533201007

COUNTRY W/SATTERFIELD HELM VALLEY FAR, LLC  
PARCEL NO. 1533201007

REAL ESTATE INVESTMENT PARTNERS, LLC  
PARCEL NO. 153321002

COUNTRY W/SATTERFIELD HELM  
PARCEL NO. 153325100R

# Exhibit E Depiction of the INO Tract and the Access Drive



BUSH & GUDGELL, INC.  
Engineers - Planners - Surveyors  
625 South 900 East  
Salt Lake City, Utah 84111  
Phone (801) 964-1212 / Fax (801) 384-1225  
www.bushandgudgell.com



**EXHIBIT "F"**

**Legal Description of the Access Drive**

Beginning at a point which is South 1971.41 Feet, and East 68.65 feet from the North Quarter Corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence East 295.30 feet; thence along a 39.82 foot radius curve to the right 62.99 feet (Chord bears South 44°56'46'' East 56.62 feet); thence South 135.47 feet; thence West 30.00 feet; thence North 145.02 feet; thence West 304.93' feet; thence North 30.00 feet to the place of beginning.

**EXHIBIT "G"**

**Legal Description of the Easterly Tract**

Parcel 13:

Beginning at a point on the North line of 3800 South Street which is 396 feet North 89°56'00" East along the quarter Section line and North 30.00 feet from the Center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 630.31 feet; thence East 253.08 feet; thence South 0°04'00" East 630.01 feet along an existing fence to the North right-of-way line of 3800 South Street; thence South 89°56'00" West 253.81 feet along the North line of 3800 South Street to the point of beginning.

Also Described as:

Beginning at a point on the North line of 3800 South Street which is 396 feet North 89°56'00" East along the Quarter Section Line and North 30.00 feet from the Center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 630.31 feet (measured North 0°00'44" East 630.36 feet to a point on the South Line of that property defined by a Special Warranty Deed found in Book 9555, Page 7461); thence East 253.08 feet (measured North 89°57'20" East 252.93 feet along said line to a point on the West property line as defined by said Special Warranty Deed); thence South 0°04'00" East 630.01 feet along an existing fence to the North right of way line of 3800 South Street (measured the following three calls as defined by said Special Warranty Deed, South 0°04'00" East 330.16 feet; thence East 1.11 feet; thence South 0°04'00" East 300.83 feet); thence South 89°56'00" West 253.81 feet (measured 254.10 feet) along the North line of 3800 South Street to the point of beginning.

(For reference purposes only: Tax Parcel No.'s 15-33-251-008 & 15-33-251-011)

