

Assessor's Parcel Number: 1418-03-301-009

Recording Requested By:

Name: Casey J. Nelson, Esq.

Address: 10080 W. Alta Dr., #200

City/State/Zip Las Vegas, Nevada 89145

Real Property Transfer Tax:

\$ _____

DOUGLAS COUNTY, NV **2015-856888**
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HUTCHISON & STEFFEN, LLC
KAREN ELLISON, RECORDER

Stipulated Judgment and Dismissal with Prejudice

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

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1 CASEY J. NELSON, ESQ.
Nevada Bar No. 12259
2 HUTCHISON & STEFFEN
10080 West Alta Drive, Suite 200
3 Las Vegas, Nevada 89145
Tel: (702) 385-2500
4 Fax: (702) 385-2086
Email: cnelson@hutohlegal.com

5 CHRISTINA H. WANG, ESQ.
6 Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
7 2450 St. Rose Pkwy., Ste. 150
Henderson, Nevada 89074
8 Tel: (702) 667-3000
Fax: (702) 697-2020
9 Email: christina.wang@fnl.com

10 *Attorneys for Fidelity National Title Insurance*
Company, successor-in-interest to Lawyers Title
11 *Insurance Corporation*

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 * * *

15 FIDELITY NATIONAL TITLE INSURANCE
16 COMPANY, successor-in-interest to
LAWYERS TITLE INSURANCE
17 CORPORATION,

CASE NO. 3:11-CV-444-RCJ-WGC

18 Plaintiff,

[PROPOSED] STIPULATED
JUDGMENT AND DISMISSAL
WITH PREJUDICE

19 vs.

20 TAHOE REGIONAL PLANNING AGENCY;
CITIMORTGAGE, INC., a New York
21 corporation; CHAD SMITTKAMP and JEAN
MERKELBACH, individually and as Trustees
22 of the ROCKWELL 1997 TRUST; JEAN
MERKELBACH as Trustee of the SES TRUST;
23 ROCKWELL LOT, LLC, a Nevada limited
liability company; ACRES CORPORATION, a
24 Nevada corporation; OAKBROOK REALTY &
INVESTMENTS II, LLC, a foreign limited
25 liability company; DOES 1 through 50; ROE
CORPORATIONS 1 through 50, inclusive,

26 Defendants,
27

1 CITIMORTGAGE, INC., a New York
2 corporation,
3 Counterclaimant,

4 vs.

5 FIDELITY NATIONAL TITLE INSURANCE
6 COMPANY, successor-in-interest to
LAWYERS TITLE INSURANCE
CORPORATION,

7 Counterdefendant.

8 CITIMORTGAGE, INC., a New York
9 corporation,

10 Cross-claimant,

11 vs.

12 CHAD SMITTKAMP and JEAN
13 MERKELBACH, individually and as Trustees
of the ROCKWELL 1997 TRUST; JEAN
14 MERKELBACH as Trustee of the SES
TRUST; ROCKWELL LOT, LLC; DOES I
through X; and ROE BUSINESS ENTITIES I
15 through X, inclusive,

16 Cross-defendants.
17

18 **[PROPOSED] STIPULATED JUDGMENT AND DISMISSAL WITH PREJUDICE**

19 Plaintiff/Counterdefendant, Fidelity National Title Insurance Company, successor-in-
20 interest to Lawyers Title Insurance Corporation ("Fidelity"), by and through its counsel of
21 record, the law firm of Hutchison & Steffen LLC and Fidelity National Law Group;
22 Defendant/Counterclaimant/Cross-claimant, CitiMortgage, Inc. ("CitiMortgage"), by and
23 through its counsel of record, the law firm of Kolesar & Leatham; Defendant Tahoe Regional
24 Planning Agency ("TRPA"), by and through its counsel of record, John Marshall, Esq.;
25 Defendant/Cross-Defendant, Chad Smittkamp, individually and as Trustee of the Rockwell 1997
26 Trust ("Smittkamp"); Defendants/Cross-Defendants, Jean Merkelbach, individually and as
27 Trustee of the Rockwell 1997 Trust and the SES Trust and Rockwell Lot LLC (the "Merkelbach
28 Parties"), by and through their counsel of record, the Law Offices of Thomas J. Hall; and

1 Defendant Oakbrook Realty & Investments II, LLC, by and through its counsel of record,
2 Rollston, Henderson, Crabb & Johnson, Ltd.; hereby agree, stipulate, and authorize entry of
3 judgment as follows:

4 1. Fidelity is the current beneficiary of a deed of trust secured in a first lien position
5 by real property commonly known as 2204 Lands End Road, Glenbrook, Nevada, with the
6 following legal description:

7 ALL THAT PORTION OF SECTION 3, TOWNSHIP 14 NORTH,
8 RANGE 18 EAST M.D.M., MORE PARTICULARLY DESCRIBED
AS FOLLOWS:

9 BEGINNING AT A POINT WHICH BEARS SOUTH 36°41'48"
10 WEST 1,267.14 FROM THE CENTER ¼ CORNER OF SAID
SECTION 3, AS ESTABLISHED BY THE BUREAU OF LAND
11 MANAGEMENT IN 1990; THENCE NORTH 01°14'07" EAST
284.68 FEET; THENCE SOUTH 88°55'53" EAST 101.83 FEET;
12 THENCE SOUTH 01°45'00" WEST 44.80 FEET; THENCE
ALONG A CURVE CONCAVE TO THE EAST WITH A RADIUS
13 OF 190.00 FEET, A CENTRAL ANGLE OF 21°33'30", AND AN
ARC LENGTH OF 71.49 FEET, THE CHORD OF SAID CURVE
14 BEARS SOUTH 02°40'35" WEST 71.07 FEET; THENCE ALONG
A CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS
15 OF 180.00 FEET, A CENTRAL ANGLE OF 66°05'15", AND AN
ARC LENGTH OF 207.62 FEET, THE CHORD OF SAID CURVES
16 BEARS SOUTH 31°44'20" WEST 196.30 FEET TO THE POINT
OF BEGINNING.

17 THE BASIS OF BEARING FOR THIS DESCRIPTION IS THE
RECORD OF SURVEY FILED FOR RECORD AS DOCUMENT
18 NO. 163482.

19 NOTE (NRS 111.312): THE ABOVE METES AND BOUNDS
DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN
20 STIPULATION AND ORDER, RECORDED IN THE OFFICE OF
THE COUNTY RECORDER OF DOUGLAS COUNTY, NEVADA
21 ON DECEMBER 19, 2000, IN BOOK 1200, PAGE 3832, AS
DOCUMENT NO. 505326, OF OFFICIAL RECORDS.

22 Assessor Parcel Number: 1418-03-301-008 (hereinafter "Parcel 008").

23 2. CitiMortgage is the current beneficiary of a deed of trust secured in a first lien
24 position by real property commonly known as 2190 Lands End Road, Glenbrook, Nevada, with
25 the following legal description:

26 THAT PORTION OF SECTION 3, TOWNSHIP 14, RANGE 18,
27 MOUNT DIABLO BASE MERIDIAN, DESCRIBED AS
FOLLOWS:

28

1 ALL THAT PORTION OF SECTION 3 TOWNSHIP 14 NORTH,
2 RANGE 18 EAST, M.D.M., MORE PARTICULARLY
3 DESCRIBED AS FOLLOWS
4 BEGINNING AT THE CENTER ¼ CORNER OF SAID
5 SECTION 3 AS ESTABLISHED BY THE BUREAU OF LAND
6 MANAGEMENT IN 1990:
7 THENCE SOUTH 89°19'25" EAST 97.45 FEET TO THE
8 NORTHWEST CORNER OF LOT C GLENBROOK UNIT NO.
9 3, FILED FOR RECORD JUNE 1, 1980, DOCUMENT NO.
10 45299;
11 THENCE ALONG THE WESTERLY BOUNDARY OF SAID
12 LOT C, SOUTH 27°07'57" WEST 677.18 FEET;
13 THENCE SOUTH 14°18'38" WEST 257.15 FEET;
14 THENCE SOUTH 45°15'23" WEST 239.71 FEET;
15 THENCE LEAVING THE WESTERLY BOUNDARY, NORTH
16 16°33'21" WEST 171.40 FEET;
17 THENCE NORTH 29°43'18" WEST 43 FEET;
18 THENCE NORTH 42°43'18" WEST 100 FEET;
19 THENCE ALONG A CURVE CONCAVE TO THE SOUTH
20 WITH A RADIUS OF 45.00 FEET, A CENTRAL ANGLE OF
21 111°38'51" AND AN ARC LENGTH 87.69 FEET, THE CHORD
22 OF SAID CURVE BEARS SOUTH 64°58'33" WEST 74.46
23 FEET;
24 THENCE ALONG A CURVE CONCAVE TO THE EAST WITH
25 A RADIUS 190.00 FEET, A CENTRAL ANGLE OF 21°33'30",
26 AND AN ARC LENGTH OF 71.49 FEET, THE CHORD OF
27 SAID CURVE BEARS SOUTH 02°40'35" WEST 71.07 FEET;
28 THENCE ALONG A CURVE CONCAVE TO THE
NORTHWEST WITH A RADIUS OF 180.00 FEET, A
CENTRAL ANGLE OF 66°05'15", AND AN ARC LENGTH OF
207.62 FEET, THE CHORD OF SAID CURVES BEARS SOUTH
31°44'20" WEST 196.30 FEET;
THENCE NORTH 01°14'07" EAST 1,024.97 FEET;
THENCE SOUTH 89°19'25" EAST 735.21 FEET TO THE
POINT OF BEGINNING.
EXCEPTING THEREFROM ALL THAT PORTION
DESCRIBED IN THE "STIPULATION ORDER" RECORDED
DECEMBER 19, 2000 IN BOOK 1200, PAGE 3832, FILE NO.
505326.
THE ABOVE DESCRIBED LAND IS ALSO DESCRIBED AS
TRACT 1 ON THE RECORD OF SURVEY FILED FEBRUARY
17, 2004 AS FILE NO. 604853.
NOTE THE ABOVE METES AND BOUND DESCRIPTION
APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT
RECORDED MAY 21, 2003, IN BOOK N/A, PAGE N/A, AS
INSTRUMENT NO. 577556.

Assessor Parcel Number: 1418-03-301-009 (hereinafter "Parcel 009").

A. The division of the 12.5 acres of property

3. In 1997, Chad Smittkamp ("Smittkamp") and Jean Merkelbach ("Merkelbach") purchased a parcel of real property located in Glenbrook, Nevada. Smittkamp and Merkelbach acquired title to the property by way of Grant, Bargain and Sale Deed, recorded on July 18,

1 1997, in the Official Records of Douglas County, Nevada as Document Number 417484.

2 4. In 1999, Smittkamp and Merkelbach were involved in litigation with their
3 neighbors, William and Maureen Harvey ("the Harvey Smittkamp Litigation"). The Harvey
4 Smittkamp Litigation was filed in District Court for the Ninth Judicial District, State of Nevada.
5 As part of the settlement of the Harvey Smittkamp Litigation, the parties stipulated to divide the
6 property into multiple parcels -- including Parcel 008 and Parcel 009.

7 5. Parcel 008 is approximately one-half of an acre.

8 6. Parcel 009 is approximately twelve acres.

9 7. On December 19, 2000, the Stipulation and Order ("Harvey Smittkamp Order")
10 creating Parcel 008 and Parcel 009 was recorded with the Douglas County Recorder as
11 Document Number 505326.

12 **B. The WaMu, Rehberger and Western Highland Mortgage Company Loans**

13 8. Approximately two years after the creation of Parcel 008, Smittkamp and
14 Merkelbach borrowed \$2,000,000 from Washington Mutual Bank ("WaMu Loan"). The deed of
15 trust securing the WaMu Loan identified both Parcel 008 and Parcel 009 as security for the
16 WaMu Loan ("WaMu Deed of Trust"). The WaMu Deed of Trust was recorded in the Official
17 Records of Douglas County, Nevada on May 19, 2003, as Document Number 577377.

18 9. Thereafter, in September of 2003, Smittkamp and Merkelbach borrowed \$200,000
19 from the Rehberger Family Trust ("Rehberger Loan"). The deed of trust securing the Rehberger
20 Loan also identified both Parcel 008 and Parcel 009 as security for the Rehberger Loan.
21 ("Rehberger Deed of Trust"). The Rehberger Deed of Trust was recorded in the Official Records
22 of Douglas County, Nevada on September 11, 2003, as Document Number 589569.

23 10. In November of 2003, Smittkamp and Merkelbach, as Trustees of the Rockwell
24 1997 Trust, borrowed \$252,000 ("Western Highland Loan") from Novasel & Schwarte
25 Investments, Inc. dba Western Highland Mortgage Company ("Western Highland"). Payments
26 under the Western Highland Loan were to commence in January of 2004, in the minimum
27 amount of \$2,310.00, and were to continue until December 1, 2006, at which time the entire
28 unpaid principal amount was to become due.

1 11. Two deeds of trust were recorded in connection with the Western Highland Loan.
2 The first deed of trust identified Parcel 008 as security for the Western Highland Loan ("Western
3 Highland 008 Deed of Trust"). The Western Highland 008 Deed of Trust was recorded in the
4 Official Records of Douglas County, Nevada on November 14, 2003, as Document Number
5 596838.

6 12. The second deed of trust recorded in connection with the Western Highland Loan
7 identified Parcel 009 as security for the Western Highland Loan ("Western Highland 009 Deed
8 of Trust"). The Western Highland 009 Deed of Trust was recorded in the Official Records of
9 Douglas County, Nevada on November 14, 2003, as Document Number 596837.

10 13. At the time the Western Highland Loan was made, the WaMu Deed of Trust and
11 the Rehberger Deed of Trust were senior in priority to both the Western Highland 008 Deed of
12 Trust and the Western Highland 009 Deed of Trust.

13 **C. The reconveyance of the Western Highland 009 Deed of Trust**

14 14. Approximately five months after the Western Highland 008 and 009 Deeds of
15 Trust were recorded, Smitkamp and Merkelbach, as Trustees of the Rockwell 1997 Trust,
16 borrowed \$2,500,000 from Washington Mutual Bank ("WaMu Refinance Loan"). A deed of
17 trust securing the WaMu Refinance Loan was recorded in the Official Records of Douglas
18 County, Nevada on March 16, 2004, as Document Number 607343 ("WaMu Refinance Deed of
19 Trust").

20 15. The WaMu Refinance Deed of Trust identified Parcel 009 as security for the
21 WaMu Refinance Loan.

22 16. On March 24, 2004, a Partial Reconveyance was recorded in the Official Records
23 of Douglas County, Nevada as Document Number 608249. The Partial Reconveyance released
24 the Western Highland 009 Deed of Trust. Western Highland maintained its security interest
25 described in the Western Highland 008 Deed of Trust.

26 17. With respect to the WaMu Loan and the Rehberger Loan, the beneficiaries of the
27 deeds of trust securing both loans requested payoffs to release the deeds of trust secured by their
28 respective loans.

1 18. Because the proceeds of the WaMu Refinance Loan were used to pay-off the
2 WaMu Loan and the Rehberger Loan, reconveyances of both the WaMu Deed of Trust and the
3 Rehberger Deed of Trust were recorded following the closing of the WaMu Refinance Loan.
4 Specifically, a reconveyance of the WaMu Deed of Trust was recorded in the Official Records of
5 Douglas County, Nevada on April 2, 2004, as Document Number 609147, and a reconveyance of
6 the Rehberger Deed of Trust was recorded in the Official Records of Douglas County, Nevada
7 on April 12, 2006, as Document Number 672569.

8 **D. The CitiMortgage Replacement Loans**

9 19. Nearly one year after the Western Highland 009 Deed of Trust was reconveyed,
10 Smittkamp and Merkelbach borrowed \$2,620,000 from CitiMortgage ("CitiMortgage Loan"). A
11 deed of trust securing the CitiMortgage Loan was recorded in the Official Records of Douglas
12 County, Nevada on February 1, 2005, as Document 635775 ("CitiMortgage Deed of Trust").

13 20. The CitiMortgage Deed of Trust identified the property comprising Parcel 009 as
14 security for the CitiMortgage Loan.

15 21. The lender instructions for the CitiMortgage Loan instructed the escrow agent that
16 the CitiMortgage Deed of Trust was to be "in first lien position."

17 22. Accordingly, the proceeds from the CitiMortgage Loan were used to satisfy the
18 outstanding balance of the WaMu Refinance Loan.

19 23. Upon satisfying the WaMu Refinance Loan, a Deed of Reconveyance was
20 recorded to effectuate the release of the WaMu Deed of Trust in the Official Records of Douglas
21 County, Nevada on February 28, 2005, as Document Number 637654.

22 24. In December of 2005, Smittkamp and Merkelbach borrowed \$2,643,000 from
23 CitiMortgage ("CitiMortgage Refinance Loan") to refinance the CitiMortgage Loan.

24 25. The closing instructions related to the CitiMortgage Refinance Loan required the
25 closing agent to ensure that the CitiMortgage Refinance Deed of Trust was "in first lien position"
26 as to Parcel 009.

27

28

1 26. A deed of trust securing the CitiMortgage Refinance Loan was recorded in the
2 Official Records of Douglas County, Nevada on December 6, 2005, as Document Number
3 662359 ("CitiMortgage Refinance Deed of Trust").

4 27. The CitiMortgage Refinance Deed of Trust identified the property comprising
5 Parcel 009 as security for the CitiMortgage Refinance Loan.

6 28. Accordingly, the proceeds of the CitiMortgage Refinance Loan were used to
7 satisfy the outstanding balance of the CitiMortgage Loan encumbering the property comprising
8 Parcel 009.

9 **E. Plaintiff's Deed of Trust**

10 29. Approximately one month prior to the maturity of the Western Highland Loan,
11 Smittkamp and Merkelbach borrowed \$500,000 from Western Highland Mortgage Fund I, LLC
12 ("WHMF") ("Plaintiff's Loan").

13 30. At this point, only Parcel 008 served as security for the Western Highland Loan,
14 as the Western Highland 009 Deed of Trust had been reconveyed in March of 2004 in connection
15 with the WaMu Refinance Loan.

16 31. Plaintiff's Loan was used: (1) to satisfy the outstanding balance of the Western
17 Highland Loan secured by the Western Highland 008 Deed of Trust; (2) to provide prepaid
18 interest to WHMF; and (3) to provide cash to the borrowers.

19 32. Plaintiff's Loan was secured by a deed of trust recorded in the Official Records of
20 Douglas County, Nevada on November 2, 2006, as Document Number 687855 ("Plaintiff's Deed
21 of Trust").

22 33. Plaintiff's Deed of Trust secures Plaintiff's Loan with a first-position lien on the
23 property comprising Parcel 008. Plaintiff's Deed of Trust did not identify the property
24 comprising Parcel 009 as security for Plaintiff's Loan.

25 34. WHMF did not expect to receive a security interest in the property comprising
26 Parcel 009 in connection with Plaintiff's Loan.

27 35. Following satisfaction of the Western Highland Loan, a Full Reconveyance was
28 recorded in the Official Records of Douglas County, Nevada on August 17, 2007, as Document

1 Number 707768. The Full Reconveyance released the Western Highland 008 Deed of Trust from
2 Parcel 008 -- the only property serving as security for the Western Highland Loan at the time the
3 Full Reconveyance was recorded.

4 36. Subsequent to the recording of Plaintiff's Deed of Trust, two additional deeds of
5 trust were recorded against Parcel 008 and Parcel 009: (1) a deed of trust in favor of Acres Corp.
6 recorded against Parcel 009 on January 23, 2007, securing a loan to Merkelbach and Smittkamp,
7 as Trustees of the Rockwell 1997 Trust, in the principal amount of \$250,000.00; and (2) a deed
8 of trust in favor of Oakbrook Realty & Investments II, LLC recorded against Parcel 008 on May
9 13, 2009, securing a loan to Merkelbach in the principal amount of \$500,000.00.

10 F. WHMF's discovery of the TRPA's position with respect to Parcel 008 and Parcel
11 009 and the resulting state and federal litigation

12 37. In 2009, WHMF discovered that the Tahoe Regional Planning Agency ("TRPA")
13 did not recognize the Harvey Smittkamp Order entered by the Ninth Judicial District Court for
14 the State of Nevada which divided the property into Parcel 008 and Parcel 009.

15 38. Because the property is located in the Lake Tahoe Basin, the TRPA has the power
16 to regulate and control development of the property pursuant to an interstate compact between
17 Nevada and California.

18 39. On November 18, 2010, WHMF filed a civil complaint in District Court for the
19 Ninth Judicial District, Douglas County, Nevada against its title insurer captioned Western
20 Highland Mortgage Fund I, LLC vs. Lawyers Title Insurance Corporation, 10CV0355
21 ("WHMF's Title Insurance Litigation").

22 40. On May 17, 2011, while WHMF's Title Insurance Litigation was still pending,
23 WHMF initiated the instant action to obtain a declaration that the TRPA was obligated to
24 recognize the subdivision ordered by the Ninth Judicial District Court ("Plaintiff's Complaint").
25 Alternatively, Plaintiff sought to obtain an order declaring that Plaintiff's Deed of Trust
26 encumbers Parcel 009 in a senior priority position to the CitiMortgage Refinance Deed of Trust
27 under the principles of equitable subrogation.

28 41. CitiMortgage filed an Answer, Counterclaim and Cross-claim [Dkt. 65]. Therein,
CitiMortgage requested that the Court declare that Plaintiff's Deed of Trust created no right, title,

1 interest or estate in Parcel 009 or, alternatively, that any interest Plaintiff may have in Parcel 009
2 was and is subordinate to CitiMortgage's interest in Parcel 009.

3 42. During the pendency of this action, WHMF transferred its beneficial interest in
4 Plaintiff's Deed of Trust to Fidelity. An Assignment of Deed of Trust was recorded in the
5 Official Records of Douglas County, Nevada on February 6, 2013, as Document Number
6 817750.

7 43. The Assignment to Fidelity was made in connection with a settlement related to
8 WHMF's Title Insurance Litigation.

9 44. On April 22, 2013, Plaintiff filed a Motion for Leave to File a First Amended
10 Complaint [Dkt. 94]. Plaintiff sought leave of Court to file an amended complaint to substitute
11 Fidelity as the Plaintiff in place of WHMF. In addition, Plaintiff sought leave of Court to
12 abandon the allegation contained in Paragraph 20 of Plaintiff's Complaint because Plaintiff had
13 "learned of the inaccuracy of the allegation[]." See Dkt. 94, p.7, ll.5-13 (seeking to remove
14 the allegation that asserted that the Partial Reconveyance was recorded with the intent that, if the
15 Harvey v. Smittkamp Order did not create a legal parcel, Parcel 008 would revert back to being
16 part of Parcel 009 and the WHM 009 Deed of Trust would be reinstated as a lien on Parcel 009
17 with the same priority that it had prior to recordation of the Partial Reconveyance).

18 45. On June 26, 2013, CitiMortgage filed a Motion for Summary Judgment [Dkt.
19 102].

20 46. On September 16, 2013, the Court entered an Order [Dkt. 111] denying
21 CitiMortgage, Inc.'s Motion for Summary Judgment [Dkt. 102] and granting Plaintiff's Motion
22 to Amend [Dkt. 94]. In setting forth the factual issues involved in the case, this Court's Order
23 relied exclusively upon the allegations in Plaintiff's Complaint.

24 47. The Order denying CitiMortgage's Motion for Summary Judgment was based on
25 the Court's assumption that Paragraph 20 of Plaintiff's Complaint was true. Relying on
26 Paragraph 20 of the original Complaint, the Order provided that the "Partial Reconveyance"
27 demonstrated an intent by the parties to "(re)convey its deed of trust against Parcel 009 to the
28

1 Trust not in fee simple absolute, but in fee simple determinable, with the possibility of reverter if
2 Parcel 008 were ever determined to be invalid." See Dkt. 111.

3 48. The Court's finding that the parties intended the Partial Reconveyance to create a
4 possibility of reverter had already been proven false through deposition testimony. It was for
5 that reason that Plaintiff had sought leave of Court to abandon the allegation contained in
6 Paragraph 20 of Plaintiff's original Complaint. See Dkt. 94, p.7, 11.5-13.

7 49. On October 22, 2013, a First Amended Complaint was filed, substituting Fidelity
8 National Title Insurance Company, successor-in-interest to Lawyers Title Insurance Corporation,
9 as the Plaintiff in place of WHMF [Doc. No. 117]. In addition, Plaintiff's First Amended
10 Complaint added Aeres Corporation and Oakbrook Realty & Investments II, LLC as defendants
11 to the action.

12 50. On November 5, 2013, CitiMortgage filed its Answer to Plaintiff's First Amended
13 Complaint, Counterclaim and Cross-claim [Doc. No. 118] and the TRPA filed its Answer to
14 Plaintiff's First Amended Complaint [Doc. No. 120].

15 51. On November 8, 2013, Merkelbach filed a Motion to Dismiss [Doc. No. 125].

16 52. On November 25, 2013, Plaintiff filed an Amended Opposition to Motion to
17 Dismiss [Doc. No. 134]. Therein, Plaintiff requested that the Court deny Merkelbach's Motion
18 or, alternatively, grant Plaintiff leave to file a Second Amended Complaint.

19 53. On December 5, 2013, Merkelbach filed a Reply to Fidelity National Title
20 Insurance Company's Amended Opposition to Motion to Dismiss [Doc. No. 136].

21 54. On January 10, 2014, the Court entered its Order [Doc. No. 141] denying in part
22 and granting in part Merkelbach's Motion to Dismiss [Doc. No. 125] and granting Plaintiff leave
23 to amend.

24 55. On January 29, 2014, Plaintiff filed a Second Amended Complaint [Doc. No.
25 144], alleging the following causes of action against Defendants: (1) Declaratory
26 Judgment/Determination of Property Status against all Defendants, except CitiMortgage; (2)
27 alternatively, Declaratory Relief/Equitable Subrogation against all Defendants, except the TRPA;
28 (3) Fraud by Intentional Misrepresentation and/or Omission Against Chad Smittkamp and Jean

1 Merkolbach, individually and as Trustees of the Rockwell 1997 Trust and Jean Merkolbach, as
2 Trustee of the SES Trust, Rockwell Lot, LLC; and (4) Breach of Contract Against Jean
3 Merklebach, individually and as Trustee of the Rockwell 1997 Trust; and Jean Merkolbach, as
4 Trustee of the SES Trust, Rockwell Lot, LLC.

5 56. Plaintiff's First Cause of Action for Declaratory Judgment/Determination of
6 Property Status against all Defendants, except CitiMortgage, sought declaratory judgment
7 declaring that Parcel 008 is a legal parcel for "all purposes", including within the meaning
8 ascribed by the TRPA.

9 57. Plaintiff's Second Cause of Action for Declaratory Judgment/Equitable
10 Subrogation against all defendants, except the TRPA, was plead in the alternative should Parcel
11 008 be determined to not be a legal parcel within the meaning ascribed by the TRPA and sought
12 declaratory judgment ranking the priority of all voluntary or involuntary liens and encumbrances
13 against both Parcels 008 and 009, including those of Acres Corp. (voluntarily dismissed) and
14 Oakbrook Realty & Investments II, LLC, finding that Plaintiff's equitable lien against both
15 Parcels 008 and 009 is senior in priority to the CitiMortgage Deeds of Trust and all other liens.

16 58. On February 12, 2014, CitiMortgage filed its Answer to Plaintiff's Second
17 Amended Complaint, Counterclaim and Cross-claim [Doc. No. 151]. CitiMortgage's
18 Counterclaim and Cross-claim requested that the Court enter a judicial decree declaring that
19 CitiMortgage's lien on Parcel 009 is a first position lien and further declaring that Plaintiff's
20 Deed of Trust creates no right, title, interest or estate in Parcel 009 or, alternatively, that any
21 interest in Parcel 009 created by Plaintiff's Deed of Trust is subordinate to CitiMortgage's
22 interest in Parcel 009.

23 59. On February 18, 2014, Merkolbach filed an Answer to Plaintiff's Second
24 Amended Complaint [Doc. No. 152].

25 60. On March 4, 2014, Plaintiff filed its Reply to CitiMortgage's Counterclaim [Doc.
26 No. 155].

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1 **G. Stipulated Judgment and Dismissal of Claims**

2 61. Following the depositions of Chad Smittkamp, Jean Merkelbach, Robert Novasel
3 and Kelli Krolieki, the parties desire to fully resolve the litigation and hereby stipulate to entry of
4 judgment with respect to certain claims, counterclaims, and cross-claims and, additionally,
5 hereby stipulate to the dismissal of other claims as more fully set forth below:

6 **a. Fidelity's Claim For Declaratory Relief/Determination of the Property Status
7 Against All Defendants, Except CitiMortgage**

8 62. To fully resolve the litigation, the parties to Fidelity's Claim for Declaratory
9 Relief/Determination of the Property Status Against All Defendants, Except CitiMortgage
10 ("Property Status Claim"), hereby stipulate to entry of Judgment as follows:

11 63. The parties to the Property Status Claim hereby stipulate to entry of Judgment
12 finding that the TRPA is not required to and does not recognize the existence of Parcel 008 and
13 Parcel 009 as separate and distinct parcels for purposes of the TRPA's rules, permitting process,
14 jurisdiction, and governance. The TRPA considers Parcel 008 to be part of Parcel 009.

15 64. The parties to the Property Status Claim hereby stipulate that all parties except the
16 TRPA recognize Parcel 008 and Parcel 009 as separate legal parcels for the purposes of taxation,
17 ownership and lien encumbrance.

18 65. Without affecting the foregoing stipulations in any way, the parties to the
19 Property Status Claim hereby stipulate to entry of Judgment declaring that Plaintiff's Deed of
20 Trust is secured in a first lien position on the property described as Parcel 008.

21 **b. Fidelity's Claim for Declaratory Relief/Equitable Subrogation Against All
22 Defendants, Except TRPA; and CitiMortgage's Counterclaim and Cross-
Claim**

23 66. To fully resolve the litigation, the parties hereby stipulate to entry of Judgment to
24 resolve: (1) Fidelity's Claim for Declaratory Relief/Equitable Subrogation against all
25 Defendants, except TRPA; and (2) CitiMortgage's Counterclaim and Cross Claim ("Equitable
26 Subrogation Claims") as follows:

27

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1 67. The parties to the Equitable Subrogation Claims stipulate that a present dispute
2 and controversy has arisen and now exists between CitiMortgage and parties who claim an
3 interest in Parcel 009.

4 68. To resolve the dispute and controversy, the parties to the Equitable Subrogation
5 Claims stipulate that Smittkamp, Merkelbach, the Rockwell 1997 Trust and CitiMortgage
6 intended that the CitiMortgage Refinance Deed of Trust would encumber the Property
7 comprising Parcel 009 as a first position lien.

8 69. The parties to the Equitable Subrogation Claims stipulate that the public records
9 of Douglas County, Nevada provide actual and constructive notice of CitiMortgage's first
10 position lien on Parcel 009.

11 70. The parties to the Equitable Subrogation Claims stipulate that WHMF had actual
12 notice that the CitiMortgage Refinance Deed of Trust secured Parcel 009 in a first lien position
13 when WHMF entered into Plaintiff's Loan.

14 71. The parties to the Equitable Subrogation Claims hereby stipulate to entry of
15 Judgment declaring that CitiMortgage's interest in Parcel 009 encumbers the property
16 comprising Parcel 009 as a first position lien.

17 72. The parties to the Equitable Subrogation Claims hereby stipulate to entry of
18 Judgment declaring that Plaintiff's Deed of Trust creates no right, title, interest or estate in the
19 property comprising Parcel 009.

20 73. The parties to the Equitable Subrogation Claims hereby stipulate that the Partial
21 Reconveyance did not create a right of reverter.

22 74. The parties to the Equitable Subrogation Claims hereby stipulate that Western
23 Highland, WHMF, Fidelity and their successors and/or assigns have no basis upon which to
24 claim that Plaintiff's Deed of Trust encumbers Parcel 009 in a senior priority position to the
25 CitiMortgage Deed of Trust under the principles of equitable subrogation.

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27 ///

28 ///

1 c. Claims Against Smittkamp and the Merkelbach Parties and All Other
2 Claims

3 75. The parties hereby stipulate to entry of dismissal without prejudice of Fidelity's
4 remaining claims against Smittkamp and the Merkelbach parties.

5 76. The parties stipulate that the Court may enter an Order adopting the terms and
6 conditions of this Stipulated Judgment and, upon entry of such an Order, the parties and their
7 successors and assigns shall be bound to the Stipulated Judgment.

8 77. Each of the parties hereby stipulates and agrees that each party shall bear their
9 own attorney's fees and costs.

10 HUTCHISON & STEFFEN, LLC

KOLESAR & LEATHAM

11
12 /s/ Casey J. Nelson
13 Casey J. Nelson
14 Nevada Bar No. 12259
15 Peccole Professional Park
16 10080 W. Alta Drive, Suite 200
17 Las Vegas, NV 89145
18
19
20
21
22
23
24
25
26
27
28
Christina H. Wang, Esq.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
2450 St. Rose Pkwy., Ste. 150
Attorneys for Plaintiff

/s/ Aaron R. Maurice
Aaron R. Maurice
Nevada Bar No. 6412
Brittany Wood
Nevada Bar No. 7562
400 S. Rampart Blvd.
Ste. 400
Las Vegas, Nevada 89145
Attorneys for Defendant CitiMortgage, Inc.

/s/ Thomas J. Hall
Thomas J. Hall
Nevada Bar No. 675
305 South Arlington Avenue
P.O. Box 3948
Reno, Nevada 89505
*Attorneys for Defendant Jean Merkelbach,
individually, as Trustee of the Rockwell 1997
Trust, and as Trustee of the SES Trust,
Rockwell lot, LLC*

[Signed in Counterpart]
Chad Smittkamp
P.O. Box 191
Genoa, Nevada 89411

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HUTCHISON & STEFFEN, LLC

KOLESAR & LEATHAM

[Signed in Counterpart]

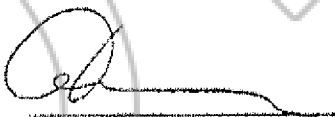
[Signed in Counterpart]

Casey J. Nelson
Nevada Bar No. 12259
Peccole Professional Park
10080 W. Alta Drive, Suite 200
Las Vegas, NV 89145

Aaron R. Maurice
Nevada Bar No. 6412
Brittany Wood
Nevada Bar No. 7562
400 S. Rampart Blvd.
Ste. 400
Las Vegas, Nevada 89145
Attorneys for Defendant CHMortgage, Inc.

Christina H. Wang, Esq.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
2450 St. Rose Pkwy., Ste. 150
Attorneys for Plaintiff

[Signed in Counterpart]



Thomas J. Hall
Nevada Bar No. 675
305 South Arlington Avenue
P.O. Box 3948
Reno, Nevada 89505
*Attorneys for Defendant Jean Merkelbach,
individually, as Trustee of the Rockwell 1997
Trust, and as Trustee of the SES Trust,
Rockwell Lot, LLC*

Chad Smittkamp
P.O. Box 191
Genoa, Nevada 89411

1 ROLLSTON, HENDERSON, CRABB &
2 JOHNSON, LTD.

OAKBROOK REALTY & INVESTMENTS
II, LLC

3
4 Robert Henderson
5 Robert Henderson
6 Nevada State Bar No. 1605
7 P.O. Box 4848
8 Stateline, NV 89449

[Signature]
By: Kim M. Plummer
Its: Managing Member

9 *Attorneys for Defendant Oakbrook Realty &*
10 *Investments II, LLC*

11 TAHOE REGIONAL PLANNING AGENCY

12 [Signed in Counterpart]

13 John Marshall
14 Nevada Bar No. 6733
15 Jessica Saure
16 Nevada Bar No. 13015
17 P.O. Box 5310
18 Stateline, Nevada 89449

19 *Attorneys for Defendant Tahoe Regional Planning Agency*

20 IT IS SO ORDERED.

21 [Signature]
22 UNITED STATES JUDGE

23 Dated: January 22, 2015

24 I hereby attest and certify on 2/5/15
25 that the foregoing document is a full, true
26 and correct copy of the original on file in my
27 legal custody.

28 Page 16 of 16

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

By [Signature] Deputy Clerk



1 ROLLSTON, HENDERSON, CRABB &
2 JOHNSON, LTD.

OAKBROOK REALTY & INVESTMENTS
II, LLC

3
4 [Signed in Counterpart]

[Signed in Counterpart]

5 Robert Henderson
6 Nevada State Bar No.
7 P.O. Box 4848
8 Stateline, NV 89449

By: _____
Its: _____

9 *Attorneys for Defendant Oakbrook Realty &
Investments II, LLC*

10 TAHOE REGIONAL PLANNING AGENCY

11 (s/ John L. Marshall)

12 John Marshall
13 Nevada Bar No. 6733
14 Jessica Sutro
15 Nevada Bar No. 13015
16 P.O. Box 5310
17 Stateline, Nevada 89449

18 *Attorneys for Defendant Tahoe Regional Planning Agency*

19 **IT IS SO ORDERED.**

20 UNITED STATES JUDGE

21 Dated: _____
22
23
24
25
26
27
28