

1 Christine K. Noma, Bar No. 104751
2 **WENDEL, ROSEN, BLACK & DEAN LLP**
3 1111 Broadway, 24th Floor
4 Oakland, California 94607-4036
5 Telephone: (510) 834-6600
6 Fax: (510) 834-1928
7 Email: cnoma@wendel.com

8 Attorneys for Defendants
9 Michael R. Neely, Perry J. Neely and Gary Neely

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 PALMTREE ACQUISITION
14 CORPORATION, a Delaware corporation,

15 Plaintiff,

16 vs.

17 MICHAEL R. NEELY, an individual,
18 PERRY J. NEELY, an individual; GARY
19 NEELY, an individual; MICHAEL R.
20 NEELY, PERRY J. NEELY and GARY
21 NEELY dba MIKE'S ONE HOUR
22 CLEANERS; CHARLES FREDERICK
23 HARTZ dba PAUL'S SPARKLE
24 CLEANERS; CHARLES F. HARTZ, an
25 individual; MULTIMATIC
26 CORPORATION, a New Jersey
27 corporation; WESTERN STATES
28 DESIGN, a California corporation;
MCCORDUCK PROPERTIES
LIVERMORE, LLC, a Delaware limited
liability company individually and as the
successor to JOHN MCCORMICK,
KATHLEEN MCCORDUCK, PAMELA
MCCORDUCK, SANDRA
MCCORDUCK MARONA, and IMA
FINANCIAL CORPORATION, a
California corporation; STARK
INVESTMENT COMPANY, a California
general partnership; GRUBB & ELLIS
REALTY INCOME TRUST,

Case No. CV 08 3168 EMC

**STIPULATION AND [PROPOSED]
ORDER RE CONSENT TO PROCEED
BEFORE AN UNITED STATES
MAGISTRATE JUDGE; ANSWERS,
CROSSCLAIMS, COUNTERCLAIMS AND
AMENDED PLEADINGS; MEDIATION;
SCHEDULING OF INITIAL CASE
MANAGEMENT CONFERENCE; AND
DISCOVERY STAY**

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1111 Broadway, 24th Floor
Oakland, CA 94607-4036

1 LIQUIDATING TRUST, a California trust;
2 and DOES 1-20, inclusive,
3 Defendants.

4
5 **RECITALS**

6 A. Plaintiff Palmtree Acquisition Corporation filed this action ("Action") as a "re-
7 opener" of a prior action that was conditionally settled, which prior action was filed on February
8 3, 1993 in the United States District Court for the Northern District of California, entitled *Grubb*
9 & *Ellis Realty Trust v. Catellus Development Corp., et al.*, and related cross-actions, Case No.
10 C93-0383 SBA ("Prior Action").

11 B. On February 7, 1994, the parties to the Prior Action entered into a settlement
12 agreement ("1994 Settlement"). On February 17, 1994, this Court entered an order approving the
13 settlement agreement and dismissing the Prior Action.

14 C. Pursuant to the 1994 Settlement, the parties agreed that the release amongst each
15 other would not extend to:

16 "...any claims, causes of action, obligations, damages, expenses or liabilities resulting
17 from (1) claims or cross-claims arising from actions brought by third parties after the date
18 of this agreement relating to PCE [perchloroethylene] contamination at the properties, or
19 (2) actions by governmental agencies requiring cleanup of PCE contamination or seeking
20 recovery of governmental response costs for the cleanup of PCE contamination: (a) of the
21 deeper aquifer as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form
22 of DNAPLs, defined as PCE found in pore-water concentrations which exceed their
23 effective solubilities as measured using the residual DNAPL detection method of
24 Feenstra, Mackay, and Cherry (1991). The limitations expressed in the preceding
25 sentence on the release contained in this paragraph are referred to as "the Paragraph 9
26 reopeners".

27 D. On March 17, 2008, and March 21, 2008, the California Regional Water Quality
28 Control Board ("RWQCB"), a governmental agency, sent letters to certain of the defendants and

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Oakland, CA 94607-4038

1 the plaintiff, and/or their predecessors, requiring the further investigation and monitoring of PCE
2 contamination which potentially impacted the deeper aquifer that may be in the form of
3 DNAPLS, thereby triggering the "Paragraph 9 reopeners" ("RWQCB Directives"). As a result of
4 the RWQCB Directives, certain parties to the prior 1994 Settlement, made demand upon other
5 parties asserting that the Paragraph 9 reopener applied and demanding that they respond to the
6 RWQCB Directives.

7 E. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to one
8 of the 1994 Settlement parties, Catellus Development Corporation, filed a Complaint for
9 CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and damages
10 against certain of the other parties to the 1994 Settlement, pursuant to the Paragraph 9 reopener
11 ("Current Action").

12 F. Subsequent to the filing of the Current Action, the parties to the Current Action
13 agreed to cooperate in jointly retaining an environmental consultant to respond to the RWQCB
14 Directives. The environmental consultant has been engaged and the parties to the Current Action
15 anticipate that the initial response to the RWQCB Directives will be completed by January 1,
16 2009.

17 G. In the course of the litigating the Prior Action, the parties to the Prior Action
18 engaged in discovery relating to the factual background, ownership and operations of certain of
19 the parties to the Prior Action and their conduct which may have resulted in the PCE
20 contamination.

21 H. The parties to this Current Action who were defendants in the Prior Action
22 answered, and filed various crossclaims and/or counterclaims.

23 I. The responses, defenses, crossclaims and/or counterclaims in this Current Action
24 should be substantially similar to those raised in the Prior Action.

25 J. Most of the defendants in the Current Action have entered into stipulations with
26 the plaintiff to extend the time to respond to the complaint to September 15, 2008.

27 K. The parties to the Current Action have met and conferred pursuant to the Court's
28 Order Setting Initial Case Management Conference and ADR Deadlines and submit this

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Oakland, CA 94607-4038

1 Stipulation to address scheduling, case management and ADR issues.

2 Therefore, in the interest of judicial economy, pursuant to Local Rule 6-1(b) and 7-12, the
3 parties below hereby agree and stipulate as follows:

4 **STIPULATION**

5 1. In accordance with the provisions of Title 28, U.S.C. Section 636(c), the parties
6 hereby voluntarily consent to have a United States Magistrate Judge Edward M. Chen conduct
7 any and all further proceeding in the case, including trial, and order the entry of a final judgment.
8 Appeal from the judgment shall be taken directly to the United States Court of Appeal.

9 2. Further the parties acknowledge that counsel for Michael R. Neely, Perry J. Neely
10 and Gary Neely, Christine K. Noma, has disclosed that she has known Magistrate Judge Chen for
11 over 20 years and that they belong to and support many of the same legal organizations; and each
12 of the parties do not object to Magistrate Judge Edward Chen presiding over this Action.

13 3. Each of the defendants in this Current Action shall be deemed to have denied each
14 and every allegation in the Complaint.

15 4. The defendants to this Current Action shall be deemed to have filed crossclaims
16 against each other for contribution and indemnity and to have filed counterclaims for contribution
17 and indemnity against the plaintiff.

18 5. Each of the defendants to this Current Action reserves the right to supplement its
19 response to the complaint, and may file an answer and separate crossclaims or counterclaims at a
20 later date, but no later than 60 days following the conclusion of Mediation as described below.

21 6. Each of the defendants to this Current Action further reserves the right to file
22 crossclaims against other third parties who are not parties to this Action, and the parties reserve
23 any and all rights against such third parties. The plaintiff reserves the right to amend the
24 complaint to add or remove allegations, to add new parties or to make any other changes
25 consistent with the Federal Rules of Civil Procedure.

26 7. The parties to this Current Action agree to commence settlement discussions with
27 a private mediator, to be scheduled no later than February 2, 2009 ("Mediation"). The Mediation
28 may cover multiple days and may be continued from time to time and will be deemed to have

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1111 Broadway, 24th Floor
Oakland, CA 94607-4038

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1111 Broadway, 24th Floor
Oakland, CA 94607-4835

1 concluded at such time as: (a) a settlement is reached, or (b) the mediator issues a letter
2 concluding that a settlement has not been reached and the Mediation is concluded.

3 8. In order to allow the parties to proceed with Mediation, the parties to the Current
4 Action request that the court continue the Initial Case Management Conference now scheduled
5 for October 8, 2008 to March 18, 2009, and the parties shall submit a joint case management
6 conference statement advising the Court as to the status of the Mediation no later than March 11,
7 2009 .


8 9. The parties shall meet and confer regarding the case management statement no
9 later than February 13, 2009.

10 10. The parties further agree that all discovery including, initial disclosures, shall be
11 stayed pending resolution of the Mediation or until the Court lifts the stay on discovery.

12 Wherefore, the Parties respectfully request that the Court approve this Stipulation.

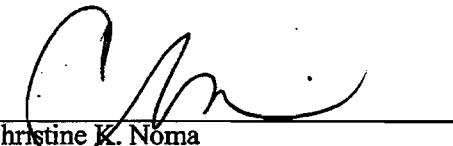
14 DATED: 9/9/2008

Cox, Castle & Nicholson LLP

16 By: 
17 Stuart I. Block
18 Peter M. Morrisette
19 Attorneys for Palmtree Acquisition
20 Corporation f/k/a Catellus Development

21 DATED: 9/8/2008

Wendel, Rosen, Black & Dean LLP

22 By: 
23 Christine K. Noma
24 Attorneys for Michael R. Neely, Perry J. Neely, and
25 Gary Neely, dba Mike's One Hour Cleaners
26
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Wenzel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4038


1 DATED: _____

Rogers Joseph O'Donnell

2

3

By: _____


Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
Sparkle Cleaners

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7 DATED: _____

Dongell Lawrence Finney, LLP

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By: _____

Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

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DATED: _____

Foley McIntosh Frey & Claytor

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By: _____

Kenneth W. Pritikin, Esq.
Attorneys for Western State Design

15

16

17 DATED: _____

Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

18

19

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By: _____

Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

21

22

23

DATED: _____

Gonsalves & Kozachenko

24

25

By: _____

Paul Kozachenko, Esq.
Attorneys for Stark Investment Company

26

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Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4088

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DATED: _____ Rogers Joseph O'Donnell

By: _____
Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
Sparkle Cleaners

DATED: _____ Dongell Lawrence Finney, LLP

By: W. Culver for
Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

DATED: _____ Foley Mcintosh Frey & Claytor

By: _____
Kenneth W. Pritikin, Esq.
Attorneys for Western State Design

DATED: _____ Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

By: _____
Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

DATED: _____ Gonsalves & Kozachenko

By: _____
Paul Kozachenko, Esq.
Attorneys for Stark Investment Company

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4038

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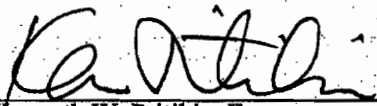
DATED: _____ Rogers Joseph O'Donnell

By: _____
Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
Sparkle Cleaners

DATED: _____ Dongell Lawrence Finney, LLP

By: _____
Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

DATED: 9/8/08 _____ Foley McIntosh Frey & Claytor

By:  _____
Kenneth W. Pritikin, Esq.
Attorneys for Western State Design

DATED: _____ Gordon, Watrous, Ryan, Langley, Bruno & Paltenghi

By: _____
Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

DATED: _____ Gonsalves & Kozachenko

By: _____
Paul Kozachenko, Esq.
Attorneys for Stark Investment Company

Wentzel, Rosen, Black & Daem LLP
111 Broadway, 24th Floor
Oakland, CA 94607-4026

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DATED: _____ Rogers Joseph O'Donnell

By: _____
Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
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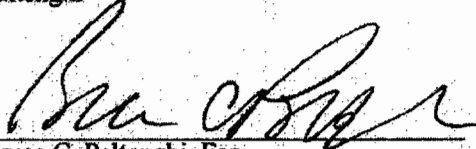
DATED: _____ Dongell Lawrence Finney, LLP

By: _____
Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

DATED: _____ Foley McIntosh Frey & Claytor

By: _____
Kenneth W. Pritikin, Esq.
Attorneys for Western State Design

DATED: Sept 9, 2008 Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

By: 
Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

DATED: _____ Gonsalves & Kozachenko

By: _____
Paul Kozachenko, Esq.
Attorneys for Stark Investment Company

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4636

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DATED: _____ Rogers Joseph O'Donnell

By: _____
Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
Sparkle Cleaners

DATED: _____ Dongell Lawrence Finney, LLP

By: _____
Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

DATED: _____ Foley Mcintosh Frey & Claytor

By: _____
Kenneth W. Pritikin, Esq.
Attorneys for Western State Design

DATED: _____ Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi


By: _____
Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

DATED: 9-9-2008 Gonsalves & Kozachenko

By: Paul Kozachenko
Paul Kozachenko, Esq.
Attorneys for Stark Investment Company

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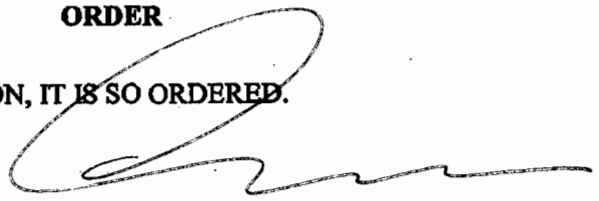
DATED: 9/10/08

By: 
Harold A. Ellis Jr., Trustee for
Grubb & Ellis Realty Income Trust, Liquidating
Trust

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/15/08



Edward M. Chen
Magistrate Judge of the United States District
Court

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036

PROOF OF SERVICE

I, Eileen M. Dunbar, declare:

I am a citizen of the United States and am employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607-4036. On September 11, 2008, I served a copy of the within document(s):

STIPULATION AND [PROPOSED] ORDER RE CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE; ANSWERS, CROSSCLAIMS, COUNTERCLAIMS AND AMENDED PLEADINGS; MEDIATION; SCHEDULING OF INITIAL CASE MANAGEMENT CONFERENCE; AND DISCOVERY STAY

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. The facsimile machine I used complied with California Rules of the Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of the Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Proof of Service.

at my business address identified above by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, and by placing the envelope, addressed as set forth below, for deposit in the United States Postal Service that same day in the ordinary course of business. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

by placing the document(s) listed above in a sealed _____ envelope with overnight delivery fees paid or provided for, addressed to the person(s) on whom it is to be served, at the address(es) set forth below, and causing the envelope to be delivered that same date to a _____ courier or driver authorized by the express service carrier to receive documents for delivery.

by personally delivering true and correct copies of the document(s) listed above in a sealed envelope, addressed to the person(s) at the address(es) set forth below, by leaving the envelope, which was clearly labeled to identify the attorney(es) being served, with the receptionist or other person apparently in charge at the address(es) set forth below.

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Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4038

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036

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Stuart I. Block
Peter M. Morrisette
Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, CA 94104

*Attorneys for Plaintiff Palmtree
Acquisition Corporation*

Robert C. Goodman, Esq.
Zachary M. Radford, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104

*Attorneys for Charles Frederick Hartz
and dba Paul's Sparkle Cleaners*

Thomas A. Vandenberg, Esq.
Dongell Lawrence Finney, LLP
707 Wilshire Blvd., 45th Floor
Los Angeles, CA 90017

Attorneys for Multimatic Corporation

Kenneth W. Pritikin, Esq.
Foley McIntosh Frey & Claytor
3675 Mt. Diablo Blvd., Suite 250
Lafayette, CA 94549

Attorneys for Western States Design

Bruce C. Paltenghi, Esq.
Gordon, Watrons, Ryan, Langley,
Bruno & Paltenghi
611 Las Juntas Street
Martinez, CA 94533-1221

*Attorneys for McCorduck Properties
Livermore, LLC*

Paul Kozachenko, Esq.
Gonsalves & Kozachenko
1133 Auburn Street
Fremont, CA 94538

*Attorneys for Stark Investment
Company*

James F. Ellis
Ellis Partners LLC
111 Sutter Street, Suite 800
San Francisco, CA 94104

*Representative for Grubb & Ellis
Realty Income Trust Liquidating Trust*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 11, 2008, at Oakland, California.


Eileen M. Dunbar

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4038

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