

1 ROGERS JOSEPH O'DONNELL
 2 ROBERT C. GOODMAN (SBN 111554)
 3 ANN M. BLESSING (SBN 172573)
 4 D. KEVIN SHIPP (SBN 245947)
 5 311 California Street
 San Francisco, California 94104
 Telephone: 415.956.2828
 Facsimile: 415.956.6457
 E-mail: *rgoodman@rjo.com; ablessing@rjo.com; kshipp@rjo.com*

6 Attorneys for Defendants
 7 CHARLES FREDERICK HARTZ dba PAUL'S
 SPARKLE CLEANERS and CHARLES F. HARTZ

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

11 PALMTREE ACQUISITION CORPORATION,
 a Delaware corporation,

12 Plaintiff,

13 vs.

14 MICHAEL R. NEELY, an individual; PERRY J.
 15 NEELY, an individual; GARY NEELY, an
 16 individual; MICHAEL R. NEELY, PERRY J.
 17 NEELY and GARY NEELY dba MIKE'S ONE
 HOUR CLEANERS; CHARLES FREDERICK
 18 HARTZ dba PAUL'S SPARKLE CLEANERS;
 CHARLES F. HARTZ, an individual;
 19 MULTIMATIC CORPORATION, a New Jersey
 corporation; WESTERN STATES DESIGN, a
 20 California corporation; MCCORDUCK
 21 PROPERTIES LIVERMORE, LLC, a Delaware
 limited liability company individually and as the
 22 successor to JOHN MCCORDUCK ,
 23 KATHLEEN MCCORDUCK, PAMELA
 MCCORDUCK, SANDRA MCCORDUCK
 24 MARONA, and IMA FINANCIAL
 CORPORATION, a California corporation;
 25 JOHN MCCORDUCK individually;
 KATHLEEN MCCORDUCK individually;
 26 PAMELA MCCORDUCK individually;
 SANDRA MCCORDUCK MARONA
 27 individually; 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 ANSWERS TO SECOND
 AMENDED COMPLAINT**

28

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

3 Defendants.

4 AND RELATED ACTIONS

5 **RECITALS**

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

11 B. In the course of litigating the Prior Action, the parties to the Prior Action
12 engaged in discovery relating to the factual background, ownership and operations of certain
13 of the parties to the Prior Action and their conduct which may have resulted in the PCE
14 contamination.

15 C. On February 7, 1994, the parties to the Prior Action entered into a settlement
16 agreement (“1994 Settlement”). On February 17, 1994, this Court entered an order approving
17 the settlement agreement and dismissing the Prior Action.

18 D. Pursuant to the 1994 Settlement, the parties agreed that the release amongst
19 each other would not extend to:

20 ...any claims, causes of action, obligations, damages, expenses or liabilities
21 resulting from (1) claims or cross-claims arising from actions brought by third
22 parties after the date of this agreement relating to PCE [perchloroethylene]
23 contamination at the properties, or (2) actions by governmental agencies
24 requiring cleanup of PCE contamination or seeking recovery of governmental
25 response costs for the cleanup of PCE contamination: (a) of the deeper aquifer
26 as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form of
27 DNAPLs, defined as PCE found in pore-water concentrations which exceed
28

1 their effective solubilities as measured using the residual DNAPL detection
2 method of Feenstra, Mackay, and Cherry (1991). The limitations expressed in
3 the preceding sentence on the release contained in this paragraph are referred to
4 as “the Paragraph 9 reopeners”.

5 E. On March 17, 2008, and March 21, 2008, the California Regional Water
6 Quality Control Board (“RWQCB”), a governmental agency, sent letters to certain of the
7 defendants and the plaintiff, and/or their predecessors, requiring the further investigation and
8 monitoring of PCE contamination which potentially impacted the deeper aquifer that may be
9 in the form of DNAPLs, thereby triggering the “Paragraph 9 reopeners” (“RWQCB
10 Directives”). As a result of the RWQCB Directives, certain parties to the prior 1994
11 Settlement, made a demand upon other parties asserting that the Paragraph 9 reopener applied
12 and demanding that they respond to the RWQCB Directives.

13 F. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to
14 one of the 1994 Settlement parties, Catellus Development Corporation, filed a Complaint for
15 CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and
16 damages (“the Original Complaint”) against certain of other parties to the 1994 Settlement,
17 pursuant to the Paragraph 9 reopener.

18 G. Defendant The Grubb & Ellis Realty Income Trust, Liquidating Trust
19 (“GERIT”) has not appeared and claims to have dissolved and to no longer exist, and thus is
20 not a party to this stipulation.

21 H. On September 15, 2008 Judge Edward M. Chen signed a stipulation and order
22 (Document No. 13) providing that, among other things, the defendants were deemed to have
23 denied each and every allegation in the Original Complaint, that defendants were deemed to
24 have filed crossclaims against each other for contribution and indemnity, and deemed to have
25 filed counterclaims for contribution and indemnity against Plaintiff.

26 I. Subsequent to the filing of the Original Complaint, certain parties agreed to
27 cooperate in jointly retaining an environmental consultant to respond to the RWQCB
28 Directives. The environmental consultant has been engaged with the RWQCB and the parties

1 have made substantial progress towards meeting the demands of the RWQCB.

2 J. Subsequent to the filing of the Original Complaint, the parties participated in
3 meditation with Timothy Gallagher, Esq., during which the parties engaged in an in depth
4 discussion and investigation relating to the factual background, ownership and operations of
5 the parties and their conduct which may have resulted in the PCE contamination. The parties
6 are still participating in mediation.

7 K. On July 14, 2010, plaintiff Palmtree Acquisition Corporation filed its First
8 Amended Complaint (“FAC”), adding Northrop Grumman Systems Corporation (“Northrop
9 Grumman”) as a party. Northrop Grumman has settled this matter and been dismissed with
10 prejudice from this action; therefore, Northrop Grumman need not respond to the SAC.

11 L. On July 14, 2011 plaintiff Palmtree Acquisition Corporation filed its Second
12 Amended Complaint (the “Current Action” or “SAC”), clarifying plaintiff’s intent to include
13 in the original complaint and/or adding defendants John McCorduck, Kathleen McCorduck,
14 Pamela McCorduck, Sandra McCorduck Marona, (“collectively the “McCorduck
15 Defendants”) and IMA Financial Corporation.

16 M. The parties to this Current Action, who were defendants in the Prior Action,
17 filed answers in the Prior Action. Some parties also filed cross-claims in the Prior Action.

18 N. The responses and defenses in this Current Action should be substantially
19 similar to those raised by the parties in the Prior Action.

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

22 **STIPULATION**

23 1. Each of the defendants in this Current Action, who have signed this stipulation
24 and proposed order, shall be deemed to have denied each and every allegation in the SAC.

25 2. The defendants to this Current Action, who have signed this stipulation and
26 proposed order, shall be deemed to have filed cross-claims against each other for contribution
27 and indemnity and to have filed counter-claims for contribution and indemnity against the
28 plaintiff.

1 3. Each of the defendants to this Current Action reserves the right to supplement
2 its response to the SAC, and may file an answer and separate crossclaims or counterclaims at
3 a later date, but no later than 60 days following the conclusion of mediation with mediator
4 Timothy Gallagher, currently underway. Mediation will be concluded at such time as: (a) a
5 settlement is reached, or (b) the mediator issues a letter concluding that a settlement has not
6 been reached and the mediation is concluded. Each defendant has not waived the right to
7 assert new affirmative defenses that were not asserted in the Prior Action.

8 4. Each of the defendants to this Current Action further reserves the right to file
9 crossclaims against other third parties who are not parties to this Current Action, and the
10 parties reserve any and all rights against such third parties. Each party reserves its right to
11 file crossclaims against parties named in the Third Amended Third Party Complaint filed by
12 third party plaintiffs Stark Investment Company and the Kirrberg Corporation. The plaintiff
13 reserves the right to amend the complaint to add or remove allegations, to add new parties or
14 to make any other changes consistent with the Federal Rules of Civil Procedure.

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

16 Dated: July 26, 2011

COX, CASTLE & NICHOLSON LLP

17
18 By: /s/ Peter M. Morrisette

19 Stuart I. Block
20 Peter M. Morrisette
21 Attorneys for Plaintiff
PALMTREE ACQUISITION
CORPORATION, a Delaware corporation
f/k/a Catellus Development Corporation

22 Dated: July 26, 2011

BASSI EDLIN HUIE & BLUM LLP

23
24 By: /s/ Farheena A. Habib

25 Farheena A. Habibi
26 Attorneys for Defendants
27 MICHAEL R. NEELY, an individual;
28 PERRY J. NEELY, an individual; GARY
NEELY, an individual; MICHAEL R.
NEELY, PERRY J. NEELY and GARY
NEELY dba MIKE'S ONE HOUR
CLEANERS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 26, 2011

GONSALVES & KOZACHENKO

By: /s/ Selena P. Ontiveros
Selena P. Ontiveros
Attorneys for Defendant
STARK INVESTMENT COMPANY, a
California general partnership

Dated: July 27, 2011

DONGELL LAWRENCE FINNEY LLP

By: /s/ Thomas F. Vandenburg
Thomas F. Vandenburg
Attorneys for Defendant
MULTIMATIC CORPORATION, a New
Jersey corporation

Dated: July 28, 2011

ROGERS JOSEPH O'DONNELL

By: /s/ Robert C. Goodman
Robert C. Goodman
Attorneys for Defendant
CHARLES FREDERICK HARTZ dba
PAUL'S SPARKLE CLEANERS;
CHARLES F. HARTZ, an individual

Dated: July 26, 2011

GORDON WATROUS RYAN
LANGLEY BRUNO & PALTENGI
INC.

By: /s/ Bruce Clinton Paltenghi
Bruce Clinton Paltenghi
Attorneys for Defendant
McCORDUCK PROPERTIES
LIVERMORE, LLC, a Delaware limited
liability company individually and as the
successor to JOHN McCORDUCK,
KATHLEEN McCORDUCK, PAMELA
McCORDUCK, SANDRA McCORDUCK
MARONA, and IMA FINANCIAL
CORPORATION, a California corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 26, 2011

FOLEY MCINTOSH FREY & CLAYTOR

By: /s/ James D. Claytor
James D. Claytor
Attorneys for Defendant
WESTERN STATES DESIGN, a
California corporation

Dated: July 26, 2011

THE COSTA LAW FIRM

By: /s/ Daniel P. Costa
Daniel P. Costa
Attorneys for Defendant
STARK INVESTMENT COMPANY

IT IS SO ORDERED

Dated: August 3, 2011

