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6 Attorneys for Defendants  
 CHARLES FREDERICK HARTZ DBA PAUL'S  
 7 SPARKLE CLEANERS AND CHARLES F. HARTZ

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

10  
 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  
 individual; MICHAEL R. NEELY, PERRY J.  
 16 NEELY and GARY NEELY dba MIKE'S ONE  
 HOUR CLEANERS; CHARLES FREDERICK  
 17 HARTZ dba PAUL'S SPARKLE CLEANERS;  
 CHARLES F. HARTZ, an individual;  
 18 MULTIMATIC CORPORATION, a New Jersey  
 corporation; WESTERN STATES DESIGN, a  
 19 California corporation; MCCORDUCK  
 PROPERTIES LIVERMORE, LLC, a Delaware  
 20 limited liability company individually and as the  
 successor to JOHN MCCORDUCK ,  
 21 KATHLEEN MCCORDUCK, PAMELA  
 MCCORDUCK, SANDRA MCCORDUCK  
 22 MARONA, and IMA FINANCIAL  
 CORPORATION, a California corporation;  
 23 JOHN MCCORDUCK individually;  
 KATHLEEN MCCORDUCK individually;  
 24 PAMELA MCCORDUCK individually;  
 SANDRA MCCORDUCK MARONA  
 25 individually; IMA FINANCIAL  
 CORPORATION, a California corporation;  
 26 STARK INVESTMENT COMPANY, a  
 California general partnership; GRUBB &  
 27 ELLIS REALTY INCOME TRUST,

Case No. CV 08 3168 EMC

**STIPULATION AND [PROPOSED]  
 ORDER RE MCCORDUCK  
 DEFENDANTS' AND IMA  
 FINANCIAL'S ANSWERS TO  
 SECOND AMENDED COMPLAINT**

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LIQUIDATING TRUST, a California trust; and DOES 1-20, inclusive,  Defendants.
<b>AND RELATED ACTIONS</b>

1 **RECITALS**

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

7 B. In the course of litigating the Prior Action, the parties to the Prior Action  
8 engaged in discovery relating to the factual background, ownership and operations of certain  
9 of the parties to the Prior Action and their conduct which may have resulted in the PCE  
10 contamination.

11 C. 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  
13 the settlement agreement and dismissing the Prior Action.

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

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

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

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

14 G. Defendant The Grubb & Ellis Realty Income Trust, Liquidating Trust  
15 (“GERIT”) has not appeared, is not represented by counsel, and claims to have dissolved and  
16 to no longer exist, and thus is not a party to this stipulation.

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

22 I. Subsequent to the filing of the Original Complaint, certain parties agreed to  
23 cooperate in jointly retaining an environmental consultant to respond to the RWQCB  
24 Directives. The environmental consultant has been engaged with the RWQCB and the parties  
25 have made substantial progress towards meeting the demands of the RWQCB.

26 J. Subsequent to the filing of the Original Complaint, the parties participated in  
27 meditation with Timothy Gallagher, Esq., during which the parties engaged in an in depth  
28

1 discussion and investigation relating to the factual background, ownership and operations of  
2 the parties and their conduct which may have resulted in the PCE contamination.

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

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

12 M. On July 28, 2011 a stipulation and proposed order was filed in which the  
13 parties who signed the stipulation agreed that the signing defendants would be deemed to  
14 have denied each and every allegation in the SAC and would be deemed to have filed cross-  
15 claims and counter-claims for contribution and indemnity.

16 N. The Individual McCorduck Defendants and IMA Financial were not parties to  
17 the July 28, 2011 stipulation and proposed order because they had not yet been served with  
18 the SAC or waived service.

19 O. On August 3, 2011 the Court filed an Order approving the July 28, 2011  
20 stipulation.

21 P. The Individual McCorduck Defendants and IMA Financial have now waived  
22 service of the SAC.

23 Q. The responses and defenses of the Individual McCorduck Defendants and IMA  
24 Financial should be substantially similar to those raised by the parties named in the Prior  
25 Action.

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

28



1 third party plaintiffs Stark Investment Company and the Kirrberg Corporation. The plaintiff  
2 reserves the right to amend the complaint to add or remove allegations, to add new parties or  
3 to make any other changes consistent with the Federal Rules of Civil Procedure.

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

5  
6 Dated: October 20, 2011 COX, CASTLE & NICHOLSON LLP

7  
8 By: /s/ Peter M. Morrisette  
9 Stuart I. Block  
10 Peter M. Morrisette  
11 Attorneys for Plaintiff  
12 PALMTREE ACQUISITION  
13 CORPORATION, a Delaware corporation  
14 f/k/a Catellus Development Corporation

15  
16 Dated: October 21, 2011 BASSI EDLIN HUIE & BLUM LLP

17  
18 By: /s/ Noel Edlin  
19 Noel Edlin  
20 Attorneys for Defendants  
21 MICHAEL R. NEELY, an individual;  
22 PERRY J. NEELY, an individual; GARY  
23 NEELY, an individual; MICHAEL R.  
24 NEELY, PERRY J. NEELY and GARY  
25 NEELY dba MIKE'S ONE HOUR  
26 CLEANERS

27  
28 Dated: October 21, 2011 GONSALVES & KOZACHENKO

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

Dated: October 24, 2011 DONGELL LAWRENCE FINNEY LLP

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

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Dated: October 21, 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: October 21, 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, and SANDRA  
McCORDUCK MARONA and for JOHN  
McCORDUCK; individually; KATHLEEN  
McCORDUCK, individually; PAMELA  
McCORDUCK, individually; SANDRA  
McCORDUCK MARONA; individually

Dated: October 20, 2011

STANZLER LAW GROUP

By:  /s/ Jordan S. Stanzler  
Jordan S. Stanzler  
Attorneys for Defendant  
IMA FINANCIAL CORPORATION, a  
California corporation

Dated: October 21, 2011

FOLEY MCINTOSH FREY & CLAYTOR

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



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Dated: October 23, 2011

THE COSTA LAW FIRM

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

IT IS SO ORDERED

Dated:       10/27/11      

