ROGERS JOSEPH O'DoNNELL 1 Robert C. Goodman (SBN 111554) Ann M. Blessing (SBN 172573) D. Kevin Shipp (SBN 245947) 2 311 California Street 3 San Francisco, California 94104 415.956.2828 Telephone: 4 Facsimile: 415.956.6457 5 E-mail: rgoodman@rjo.com; ablessing@rjo.com; kshipp@rjo.com Attorneys for Defendants 6 CHARLES FREDERICK HARTZ DBA PAUL'S SPARKLE CLEANERS AND CHARLES F. HARTZ 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF CALIFORNIA 10 PALMTREE ACQUISITION CORPORATION, Case No. CV 08 3168 EMC 11 a Delaware corporation, STIPULATION AND [PROPOSED] 12 Plaintiff, ORDER RE MCCORDUCK **DEFENDANTS' AND IMA** 13 FINANCIAL'S ANSWERS TO VS. SECOND AMENDED COMPLAINT 14 MICHAEL R. NEELY, an individual; PERRY J. NEELY, an individual; GARY NEELY, an 15 individual; MICHAEL R. NEELY, PERRY J. NEELY and GARY NEELY dba MIKE'S ONE 16 HOUR CLEANERS; CHARLES FREDERICK HARTZ dba PAUL'S SPARKLE CLEANERS; 17 CHARLES F. HARTZ, an individual; MULTIMATIC CORPORATION, a New Jersey 18 corporation; WESTERN STATES DESIGN, a California corporation; MCCORDUCK 19 PROPERTIES LIVERMORE, LLC, a Delaware 20 limited liability company individually and as the successor to JOHN MCCORDUCK. KATHLEEN MCCORDUCK, PAMELA 21 MCCORDUCK, SANDRA MCCORDUCK MARONA, and IMA FINANCIAL 22 CORPORATION, a California corporation; JOHN MCCORDUCK individually; 23 KATHLEEN MCCORDUCK individually; PAMELA MCCORDUCK individually: 24 SANDRA MCCORDUCK MARONA individually; IMA FINANCIAL 25 CORPORATION, a California corporation; STARK INVESTMENT COMPAÑY, a 26 California general partnership; GRUBB & ELLIS REALTY INCOME TRUST. 27 28 Page 1

1	LIQUIDATING TRUST, a California trust; and DOES 1-20, inclusive,	
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3	Defendants. AND RELATED ACTIONS	
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RECITALS

- Plaintiff Palmtree Acquisition Corporation filed this action ("Action") as a A. "reopener" of a prior action that was conditionally settled, which prior action was filed on February 3, 1993 in the United States District Court for the Northern District of California, entitled Grubb & Ellis Realty Trust v. Catellus Development Corp., et al., and related crossactions, Case No. C93-0383 SBA ("Prior Action").
- В. In the course of litigating the Prior Action, the parties to the Prior Action engaged in discovery relating to the factual background, ownership and operations of certain of the parties to the Prior Action and their conduct which may have resulted in the PCE contamination.
- C. On February 7, 1994, the parties to the Prior Action entered into a settlement agreement ("1994 Settlement"). On February 17, 1994, this Court entered an order approving the settlement agreement and dismissing the Prior Action.
- D. Pursuant to the 1994 Settlement, the parties agreed that the release amongst each other would not extend to:
 - ...any claims, causes of action, obligations, damages, expenses or liabilities resulting from (1) claims or cross-claims arising from actions brought by third parties after the date of this agreement relating to PCE [perchloroethylene] contamination at the properties, or (2) actions by governmental agencies requiring cleanup of PCE contamination or seeking recovery of governmental response costs for the cleanup of PCE contamination: (a) of the deeper aquifer as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form of DNAPLs, defined as PCE found in pore-water concentrations which exceed their effective soluabilities as measured using the residual DNAPL detection method of Feenstra, Mackay, and Cherry (1991). The limitations expressed in the preceding sentence on the release contained in this paragraph are referred to as "the Paragraph 9 reopeners".

- E. On March 17, 2008, and March 21, 2008, the California Regional Water Quality Control Board ("RWQCB"), a governmental agency, sent letters to certain of the defendants and the plaintiff, and/or their predecessors, requiring the further investigation and monitoring of PCE contamination which potentially impacted the deeper aquifer that may be in the form of DNAPLs, thereby triggering the "Paragraph 9 reopeners" ("RWQCB Directives"). As a result of the RWQCB Directives, certain parties to the prior 1994 Settlement, made a demand upon other parties asserting that the Paragraph 9 reopener applied and demanding that they respond to the RWQCB Directives.
- F. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to one of the 1994 Settlement parties, Catellus Development Corporation, filed a Complaint for CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and damages ("the Original Complaint") against certain of other parties to the 1994 Settlement, pursuant to the Paragraph 9 reopener.
- G. Defendant The Grubb & Ellis Realty Income Trust, Liquidating Trust ("GERIT") has not appeared, is not represented by counsel, and claims to have dissolved and to no longer exist, and thus is not a party to this stipulation.
- H. On September 15, 2008 Judge Edward M. Chen signed a stipulation and order (Document No. 13) providing that, among other things, the defendants were deemed to have denied each and every allegation in the Original Complaint, that defendants were deemed to have filed crossclaims against each other for contribution and indemnity, and deemed to have filed counterclaims for contribution and indemnity against Plaintiff.
- I. Subsequent to the filing of the Original Complaint, certain parties agreed to cooperate in jointly retaining an environmental consultant to respond to the RWQCB Directives. The environmental consultant has been engaged with the RWQCB and the parties have made substantial progress towards meeting the demands of the RWQCB.
- J. Subsequent to the filing of the Original Complaint, the parties participated in meditation with Timothy Gallagher, Esq., during which the parties engaged in an in depth

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

- K. On July 14, 2010 plaintiff Palmtree Acquisition Corporation filed its First Amended Complaint ("FAC"), adding Northrop Grumman Systems Corporation ("Northrop Grumman") as a party. Northrop Grumman has settled this matter and been dismissed with prejudice from this action and thus need not respond to the SAC.
- L. On July 14, 2011 plaintiff Palmtree Acquisition Corporation filed its Second Amended Complaint (the "Current Action" or "SAC"), clarifying plaintiff's intent to include in the original complaint and/or adding defendants John McCorduck, Kathleen McCorduck, Pamela McCorduck, Sandra McCorduck Marona, ("collectively the "Individual McCorduck Defendants") and IMA Financial Corporation ("IMA Financial").
- M. On July 28, 2011 a stipulation and proposed order was filed in which the parties who signed the stipulation agreed that the signing defendants would be deemed to have denied each and every allegation in the SAC and would be deemed to have filed cross-claims and counter-claims for contribution and indemnity.
- N. The Individual McCorduck Defendants and IMA Financial were not parties to the July 28, 2011 stipulation and proposed order because they had not yet been served with the SAC or waived service.
- O. On August 3, 2011 the Court filed an Order approving the July 28, 2011 stipulation.
- P. The Individual McCorduck Defendants and IMA Financial have now waived service of the SAC.
- Q. The responses and defenses of the Individual McCorduck Defendants and IMA Financial should be substantially similar to those raised by the parties named in the Prior Action.

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

STIPULATION

- 1. The Individual McCorduck Defendants and IMA Financial shall be deemed to have denied each and every allegation in the SAC.
- 2. The Individual McCorduck Defendants and IMA Financial shall be deemed to have filed cross-claims and/or counterclaims against each other defendant in the Current Action for contribution and indemnity and to have filed counter-claims for contribution and indemnity against the plaintiff. The Individual McCorduck Defendants and IMA Financial and/or McCorduck Properties Livermore, LLC shall not be deemed to have filed cross-claims and/or counterclaims against one another.
- 3. Each Defendant, other than the Individual McCorduck Defendants and IMA Financial and McCorduck Properties Livermore, LLC, who has signed this stipulation and proposed order shall be deemed to have filed cross-claims and/or counterclaims against the Individual McCorduck Defendants and IMA Financial for contribution and indemnity.
- 4. The Individual McCorduck Defendants and IMA Financial reserve the right to supplement their response to the SAC, and may file an answer and separate crossclaims and/or counterclaims at a later date, but no later than 60 days following the conclusion of mediation with mediator Timothy Gallagher, currently underway. Mediation will be concluded at such time as: (a) a settlement is reached, or (b) the mediator issues a letter concluding that a settlement has not been reached and the mediation is concluded. The Individual McCorduck Defendants and IMA Financial have not waived the right to assert new affirmative defenses that were not previously asserted and the right to file cross-claims and/or counterclaims.
- 5. The Individual McCorduck Defendants and IMA Financial further reserve their right to file cross-claims and/or counterclaims against third parties who are not parties to this Current Action, and reserve any and all rights against such third parties. The Individual McCorduck Defendants and IMA Financial reserve their right to file cross-claims and/or counterclaims against parties named in the Fourth Amended Third Party Complaint filed by

Page 6

third party plaintiffs Stark Investment Company and the Kirrberg Corporation. The plaintiff reserves the right to amend the complaint to add or remove allegations, to add new parties or to make any other changes consistent with the Federal Rules of Civil Procedure. Wherefore, the Parties respectfully request that the Court approve this Stipulation. By: Sy Peter M. Morrisette Stuart I. Block Peter M. Morrisette Attorneys for Plaintiff PALMTREE ACQUISTITION CORPORATION, a Delaware corporation fk/a Catellus Development Corporation fk/a Catellus Development Corporation fk/a Catellus Development Corporation Dated: October 21, 2011 By: Sy Noel Edlin Struck A. NEELY, an individual; GARY NEELY, an individual; GARY NEELY, an individual; MICHAEL R. NEELY, DERRY J. NEELY and GARY NEELY, DERRY J. NEELY AND INDIVIDUAL CLEANERS Dated: October 21, 2011 GONSALVES & KOZACHENKO By: Selena P. Ontiveros Selena P. Ontiveros Selena P. Ontiveros Selena P. Ontiveros Tark investment Company, a California limited partnership DONGELL LAWRENCE FINNEY LLP DONGELL LAWRENCE FINNEY LLP By: Sy Thomas F. Vandenburg				
to make any other changes consistent with the Federal Rules of Civil Procedure. Wherefore, the Parties respectfully request that the Court approve this Stipulation. Dated: October 20, 2011 COX, CASTLE & NICHOLSON LLP By: Start I, Block Peter M. Morrisette Stuart I, Block Peter M. Morrisette Attorneys for Plaintiff PALMTREE ACQUISITION CORPORATION, a Delaware corporation Ik/a Catellus Development Corporation Ik/a Catellus Development Corporation Ik/a Catellus Development Corporation Nocl Edlin Attorneys for Defendants MICHAEL R. NEELY, an individual; GARY NEELY, an individual; GARY NEELY, an individual; MICHAEL R. NEELY, PERRY J. NEELY and GARY NEELY dba MIKE'S ONE HOUR CLEANERS Dated: October 21, 2011 GONSALVES & KOZACHENKO By: Selena P. Ontiveros Selena P. Ontiveros Attorneys for Defendant STARK INVESTMENT COMPANY, a California limited partnership Thomas F. Vandenburg Thomas F. Vandenburg Thomas F. Vandenburg Thomas F. Vandenburg Attorneys for Defendant NULTIMATIC CORPORATION, a New	1	third party plaintiffs Stark Investment Company and the Kirrberg Corporation. The plaintiff		
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By: /s/ Thomas F. Vandenburg Thomas F. Vandenburg Attorneys for Defendant MULTIMATIC CORPORATION, a New	24	Dated: October 24, 2011	DONGELL LAWRENCE FINNEY LLP	
Thomas F. Vandenburg Attorneys for Defendant MULTIMATIC CORPORATION, a New	25			
Attorneys for Defendant MULTIMATIC CORPORATION, a New	26	By	Thomas F. Vandenburg	
n	27		Attorneys for Defendant MULTIMATIC CORPORATION, a New	
	28		Jersey corporation Page 7	

STIPULATION AND [PROPOSED] ORDER RE MCCORDUCK DEFENDANTS' AND IMA FINANCIAL'S ANSWERS TO SECOND AMENDED COMPLAINT CASE NO: CV 08 3168 EMC

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2	Dated: October 21, 2011		ROGERS JOSEPH O'DONNELL
3		By:	/s/ Robert C. Goodman
4		By.	/s/ Robert C. Goodman Robert C. Goodman Attorneys for Defendant
5			CHARLES FREDERICK HARTZ dba PAUL'S SPARKLE CLEANERS; CHARLES F. HARTZ, an individual
6			CHARLES F. HARTZ, all llidividual
7 8	Dated: October 21, 2011		GORDON WATROUS RYAN LANGLEY BRUNO & PALTENGHI
9			INC.
10		By:	/s/ Bruce Clinton Paltenghi
11		J	Bruce Clinton Paltenghi
12			Attorneys for Defendant McCORDUCK PROPERTIES LIVERMORE, LLC, a Delaware limited
13			liability company individually and as the successor to JOHN McCORDUCK,
14			KATHLEEN McCORDUCK, PAMELA McCORDUCK, and SANDRA
15			McCORDUCK MARONA and for JOHN McCORDUCK; individually; KATHLEEN
16			McCORDUCK, individually; PAMELA McCORDUCK, individually; SANDRA
17			McCORDUCK MARONA; individually
18	Dated: October 20, 2011		STANZLER LAW GROUP
19		By:	/s/ Jordan S. Stanzler
20		Dy.	Jordan S. Stanzler
21			Attorneys for Defendant IMA FINANCIAL CORPORATION, a
22			California corporation
23	Dated: October 21, 2011		FOLEY MCINTOSH FREY & CLAYTOR
24		D	/-/ Inverse D. Clauster
25		By:	
26			Attorneys for Defendant WESTERN STATES DESIGN, a
27			California corporation
28			Page 8
- 1			

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 IT IS SO ORDERED 10/27/11 Dated: Judge Edward M. Chen

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