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8 Attorneys for Defendant
 9 and Third Party Plaintiff
 10 Stark Investment Company

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, PERRY
 18 J. NEELY, an individual; GARY NEELY, an
 19 individual; MICHAEL R. NEELY, PERRY J.
 20 NEELY and GARY NEELY dba MIKE'S ONE
 21 HOUR CLEANERS; CHARLES FREDERICK
 22 HARTZ dba PAUL'S SPARKLE CLEANERS;
 23 CHARLES F. HARTZ, an individual;
 24 MULTIMATIC CORPORATION, a New
 25 Jersey corporation; WESTERN STATES
 26 DESIGN, a California corporation;
 27 MCCORDUCK PROPERTIES LIVERMORE,
 28 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; STARK INVESTMENT
 COMPANY, a California general partnership;
 GRUBB & ELLIS REALTY INCOME
 TRUST, LIQUIDATING TRUST, a California
 trust; and DOES 1-20, inclusive,

Defendants.

Case No. 08-CV-3168-EMC

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT ; ORDER**

Hon. Edward M. Chen

Date: July 20, 2012
 Time: 9:00 a.m.
 Courtroom: 5, 17th floor

1 THE KIRRBURG CORPORATION, formerly
2 known as MULTIMATIC CORPORATION, a
3 New Jersey corporation; and STARK
4 INVESTMENT COMPANY, L.P., a California
5 limited partnership,

6 Third Party Plaintiffs,

7 v.

8 DOROTHY ANDERSON, Trustee of The
9 Anderson Marital Trust, dated February 28,
10 1979, as amended and restated August 31, 1994;
11 and DOROTHY ANDERSON, Trustee of The
12 Anderson Tax Deferral Trust, dated February
13 28, 1979, as amended and restated August 31,
14 1994,

15 Third Party Defendants.

16 The parties who have appeared in the above-captioned environmental action have met and
17 conferred and except for Western States Design, jointly submit the following Joint Case
18 Management Conference Statement.

19 1. Date case was filed: This case was filed on July 1, 2008. The Second Amended
20 Complaint was filed on July 14, 2011 and the Fourth Amended Third Party Complaint was filed on
21 August 24, 2011.

22 2. List or description of all parties: The parties to this case are as follows:

23 a. Plaintiff Palmtree Acquisition Corporation, former owner of the Livermore
24 Arcade Shopping Center (“LASC”), one of two shopping centers comprising the subject property;

25 b. Defendant and Third Party Plaintiff Stark Investment Company, former owner
26 of the LASC and Miller’s Outpost Shopping Center (“MOSC”), the second shopping center
27 comprising the subject property;

28 c. Defendant and Third Party Plaintiff The Kirrberg Corporation fka Multimatic
Corporation, manufacturer of the dry cleaning machine at the LASC;

d. Defendants Michael R. Neely, Perry J. Neely and Gary Neely, individually and
dba Mike’s One Hour Cleaners, the dry cleaning operator at the LASC;

e. Defendant Charles Hartz, individually and dba Paul’s Sparkle Cleaners, the dry
cleaning operator at the MOSC;

1 f. Defendant Western States Design, distributor of the dry cleaning machine at the
2 LASC;
3 g. Defendant McCorduck Properties Livermore, LLC, current owner of the MOSC;
4 h. Defendants John McCorduck, Kathleen McCorduck, Pamela McCorduck and
5 Sandra McCorduck Marona are former owners of the MOSC;
6 i. Defendant IMA Financial Corporation, former owner of the MOSC; and
7 j. Third Party Defendant Dorothy Anderson, Trustee of The Anderson Marital
8 Trust, dated February 28, 1979, as amended and restated August 31, 1994 and The Anderson Tax
9 Deferral Trust, dated February 28, 1979, as amended and restated August 31, 1994, current owners
10 of the LASC.

11 3. Summary of all claims, counter-claims, cross-claims, third party claims:

12 a. Plaintiff claims (1) contribution under CERCLA Sections 107(a) and (e)(2), 42
13 U.S.C. §§ 9607(a) and (e)(2), against all Defendants; (2) Declaratory Relief under CERCLA
14 against all Defendants; (3) Continuing Public Nuisance against all Defendants; (4) Negligence
15 against Defendants Neelys, Multimatic and Western States Design; (5) Equitable Indemnity against
16 all Defendants; and (6) Declaratory Relief under state law against all Defendants.

17 b. Third Party Plaintiffs claim (1) costs under CERCLA Sections 107(a) and (e)(2),
18 42 U.S.C. §§ 9607(a) and (e)(2); (2) Declaratory Relief under CERCLA; (3) Equitable Indemnity;
19 and (4) Declaratory Relief under state law against all Third Party Defendants.

20 4. Brief description of the event underlying the action: This action is a “re-opener” of a
21 prior action that was conditionally settled. The prior action was filed on February 3, 1993 in the
22 United States District Court for the Northern District of California and entitled *Grubb & Ellis*
23 *Realty Income Trust, Liquidating Trust v. Catellus Development Corp., et al.*, and related cross-
24 actions, Case No. C93-0383 SBA (“Prior Action”). The Prior Action concerned the alleged release
25 of dry cleaning solvent perchloroethylene (“PCE”) from the dry cleaning establishments at the
26 LASC and MOSC in Livermore, California. The California Regional Water Quality Control Board
27 (“RWQCB”) had issued an Order to the potentially responsible parties consisting of dry cleaning
28 operators and property owners to remediate the soil and groundwater impacted by PCE

1 contamination from the centers. Following settlement of the Prior Action, certain parties
2 requested, and the RWQCB granted, the establishment of a Containment Zone with a Contingency
3 Plan and the RWQCB issued a new order in 1996 to that effect. However, on March 17, 2008 and
4 March 21, 2008, the RWQCB issued Directives requiring further investigation and monitoring of
5 the PCE contamination, which also potentially impacted the deeper aquifer, thereby allegedly
6 triggering the “re-opener” provision in the settlement agreement. Plaintiff Palmtree Acquisition
7 Corporation thereafter filed this action on July 1, 2008, seeking contribution under CERCLA and
8 damages pursuant to the “re-opener” provision, among other claims.

9 5. Description of relief sought and damages claimed with an explanation as to how
10 damages are computed: The parties seek both declaratory and monetary relief through the Second
11 Amended Complaint, the Fourth Amended Third Party Complaint and various cross-claims and
12 counter-claims which were deemed filed pursuant to Stipulations and Orders filed on August 3,
13 2011, October 27, 2011 and November 14, 2011. The parties seek reimbursement and contribution
14 of the amounts spent thus far on investigative costs (over \$1,000,000) as well as an allocation of
15 future investigative costs and remedial measures (to be determined) under CERCLA. The parties
16 also seek monetary damages for nuisance and negligence.

17 6. Status of discovery (including any limits or cutoff dates): Since September 2008,
18 discovery has been stayed, including initial disclosures, so that the parties could engage in
19 mediation. These parties have been mediating this matter with Timothy Gallagher, Esq., along
20 with other potentially responsible parties, and are continuing to do so, while simultaneously
21 working cooperatively as a group to respond to the RWQCB’s directives and requirements.
22 Indeed, Plaintiff and Defendants, with the exception of Grubb & Ellis Realty Income Trust,
23 Liquidating Trust, have thus far spent over \$1,000,000 since March 2008 in their response efforts,
24 including jointly hiring a project manager and technical consultant; directing investigative
25 measures and submitting a final technical investigative report; submitting a work plan, directing
26 work thereunder and submitting a remedial investigation report with technical findings and
27 proposed remedial alternatives; and coordinating among the various regulatory agencies. The
28 RWQCB has reviewed the remedial investigation report and the responding parties have hired a

1 contractor to prepare and submit the remedial action plan. Negotiations are under way between the
2 responding parties and contractor for the implementation of the remedial action plan. The parties
3 are very close to finalizing a settlement among them and are hopeful that a settlement can be
4 finalized during the third quarter of this year. The parties would like to continue working
5 cooperatively towards resolution of this matter and thus propose that the discovery stay be
6 continued.

7 7. Procedural history of the case including previous motions decided and/or submitted,
8 ADR proceedings or settlement conferences scheduled or concluded, appellate proceedings
9 pending or concluded, and any previous referral to a magistrate judge: As described above, the
10 parties have been mediating among themselves before Timothy Gallagher, Esq. This case was
11 initially referred to Magistrate Judge Chen but then transferred to Judge Patel on April 2, 2010 and
12 then reassigned to Judge Chen on June 6, 2011. Motions previously decided in this case consist
13 of:

14 a. Application for good faith settlement determination by Plaintiff Palmtree
15 Acquisition Corporation and Defendant Northrop Grumman Systems Corporation, granted October
16 4, 2010.

17 b. Motion to dismiss the First Amended Third Party Complaint by Third Party
18 Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos
19 Trust, granted without prejudice on October 4, 2010.

20 c. Motion to dismiss the Second Amended Third Party by Third Party
21 Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos
22 Trust, granted with prejudice on February 11, 2011.

23 d. Motion to dismiss one cause of action from the Third Amended Third Party
24 Complaint, or in the alternative, for a more definite statement by Third Party Defendant Dorothy
25 Anderson, granted without prejudice on August 4, 2011.

26 e. Motion to dismiss the Fourth Amended Third Party Complaint by Third
27 Party Defendant Dorothy Anderson, denied on October 24, 2011.

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1 8. Other deadlines in place (before reassignment), including those for dispositive
2 motions, pretrial conferences, and trials: None.

3 9. Any requested modification of these dates and reason for the request: None.

4 10. Whether the parties will consent to a magistrate judge for trial: The parties to this
5 Joint Case Management Conference Statement do not consent to a magistrate judge for trial.

6 11. Whether Judge Chen has previously conducted a settlement conference in this case,
7 and if so, whether the parties stipulate to him handling this case for trial pursuant to ADR Local
8 Rule 7-2 or request his recusal: Judge Chen has not previously conducted a settlement conference
9 in this case.

10 12. If there exists an immediate need for a case management conference to be scheduled
11 in the action: The parties believe that substantial progress has been made and is still being made to
12 amicably resolve this matter through mediation. The parties hope to finalize the settlement by the
13 third quarter of this year and the parties will apply to the Court for a good faith settlement
14 determination.

15 There is no immediate need for a case management conference to be scheduled. The parties
16 propose the scheduling of a further case management conference in six months, in December 2012,
17 so that they may continue with mediation efforts and finalize a settlement.

18
19 DATED: July 13, 2012

GONSALVES & KOZACHENKO

20 By: /s/ Selena P. Ontiveros
21 Selena P. Ontiveros

22 Attorneys for Defendant & Third Party
23 Plaintiff Stark Investment Company, a
California limited partnership

24
25 DATED: July 13, 2012

The Costa Law Firm

26 By: /s/ Daniel P. Costa
27 Daniel P. Costa

28 Attorneys for Defendant & Third Party
Plaintiff Stark Investment Company, a
California limited partnership

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DATED: July 13, 2012

Cox, Castle & Nicholson, LLP

By: /s/ Stuart I. Block
Stuart I. Block

Attorneys for Plaintiff Palmtree Acquisition Corporation, a Delaware corporation f/k/a Catellus Development Corporation

DATED: July 13, 2012

BASSI, EDLIN, HUIE & BLUM LLP

By: /s/ Noel Edlin
Noel Edlin

Attorneys for Defendants Michael R. Neely, Perry J. Neely, and Gary Neely, dba Mike's One Hour Cleaners

DATED: July 13, 2012

Dongell Lawrence Finney, LLP

By: /s/ Thomas A. Vandenberg
Thomas A. Vandenberg

Attorneys for Defendant & Third Party Plaintiff The Kirrberg Corporation f/k/a Multimatic Corporation

DATED: July 13, 2012

Rogers Joseph O'Donnell

By: /s/ D. Kevin Shipp
D. Kevin Shipp

Attorneys for Defendant Charles Frederick Hartz, dba Paul's Sparkle Cleaners

DATED: July 13, 2012

Gordon, Watrous, Ryan, Langley, Bruno & Paltenghi

By: /s/ Bruce C. Paltenghi
Bruce C. Paltenghi

Attorneys for Defendant McCorduck Properties Livermore, LLC, a Delaware limited liability company; John McCorduck; Kathleen McCorduck; Pamela McCorduck; and Sandra McCorduck Marona

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DATED: July 13, 2012

Castellon & Funderburk LLP

By: /s/ Ruben A. Castellon
Ruben A. Castellon

Attorneys for Defendant McCorduck
Properties Livermore, LLC, a Delaware
limited liability company

DATED: July 13, 2012

Stanzler Law Group

By: /s/ Jordan S. Stanzler
Jordan S. Stanzler

Attorneys for Defendant IMA Financial
Corporation, a California corporation

DATED: July 13, 2012

Paladin Law Group LLP

By: /s/ Brian R. Paget
Brian R. Paget

Attorneys for Third Party Defendant Dorothy
Anderson, Trustee of the Anderson Marital
Trust and The Anderson Tax Deferral Trust

IT IS SO ORDERED that the CMC is reset from 7/20/12 to 12/14/12 at 9:00 a.m. A joint
CMC Statement shall be filed by 12/7/12.

Edward M. Chen
U.S. District Judge

