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5 Attorneys for Plaintiff
 PALMTREE ACQUISITION CORPORATION, a Delaware
 6 corporation f/k/a Catellus Development Corporation

7
 8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 PALMTREE ACQUISITION CORPORATION, a
 Delaware corporation,

11 Plaintiff,

12 vs.

13
 14 MICHAEL R. NEELY, an individual; PERRY J.
 NEELY, an individual; GARY NEELY, an
 individual; MICHAEL R. NEELY, PERRY J.
 15 NEELY and GARY NEELY dba MIKE'S ONE
 HOUR CLEANERS; CHARLES FREDERICK
 16 HARTZ dba PAUL'S SPARKLE CLEANERS;
 CHARLES F. HARTZ, an individual;
 17 MULTIMATIC CORPORATION, a New Jersey
 corporation; WESTERN STATES DESIGN, a
 18 California corporation; MCCORDUCK
 PROPERTIES LIVERMORE, LLC, a Delaware
 19 limited liability company individually and as the
 successor to JOHN MCCORDUCK, KATHLEEN
 20 MCCORDUCK, PAMELA MCCORDUCK,
 SANDRA MCCORDUCK MARONA, and IMA
 21 FINANCIAL CORPORATION, a California
 corporation; JOHN MCCORDUCK, individually;
 22 KATHLEEN MCCORDUCK, individually;
 PAMELA MCCORDUCK, individually; SANDRA
 23 MCCORDUCK MARONA, individually; IMA
 FINANCIAL CORPORATION, a California
 24 corporation; STARK INVESTMENT COMPANY,
 a California general partnership; GRUBB & ELLIS
 25 REALTY INCOME TRUST, LIQUIDATING
 TRUST, a California trust; and DOES 1-20,
 26 inclusive,

27 Defendants.

CASE NO. CV 08 3168 EMC

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

ORDER RESETTING CMC

HON. EDWARD M. CHEN

DATE: DECEMBER 19, 2013

TIME: 9:00 A.M.

COURTROOM: 5, 17TH FLOOR

1 The parties who have appeared in the above-captioned environmental action have met and
2 conferred and jointly submit the following Joint Case Management Conference Statement.

3 The parties have reached a settlement, which is currently circulating among the parties for
4 signature. Once the settlement is signed, the parties will submit the settlement to this Court for
5 approval as a good faith settlement under California Code of Civil Procedure sections 877 and 877.6.
6 The parties anticipate this will happen within the next several weeks.

7
8 1. **Date case was filed:** This case was filed on July 1, 2008. The Second
9 Amended Complaint was filed on July 14, 2011 and the Fourth Amended Third Party Complaint was
10 filed on August 24, 2011.

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

12 a. Plaintiff Palmtree Acquisition Corporation, successor to a former owner
13 of the Livermore Arcade Shopping Center ("LASC"), one of two shopping centers
14 comprising the subject property;

15 b. Defendant and Third Party Plaintiff Stark Investment Company, former
16 owner of the LASC and Miller's Outpost Shopping Center ("MOSC"), the second
17 shopping center comprising the subject property;

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

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

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

25 f. Defendant Western States Design, distributor of the dry cleaning
26 machine at the LASC;

27 g. Defendant McCorduck Properties Livermore, LLC, current owner of the
28

1 MOSC;

2 h. Defendants John McCorduck, Kathleen McCorduck, Pamela
3 McCorduck and Sandra McCorduck Marona, former owners of the MOSC;

4 i. Defendant IMA Financial Corporation, former owner of the MOSC; and

5 j. Third Party Defendant Dorothy Anderson, Trustee of The Anderson
6 Marital Trust, dated February 28, 1979, as amended and restated August 31, 1994 and
7 The Anderson Tax Deferral Trust, dated February 28, 1979, as amended and restated
8 August 31, 1994, current owners of the LASC.

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

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

16 b. Third Party Plaintiffs claim (1) costs under CERCLA Sections 107(a)
17 and (e)(2), 42 U.S.C. §§ 9607(a) and (e)(2); (2) Declaratory Relief under CERCLA; (3)
18 Equitable Indemnity; and (4) Declaratory Relief under state law against all Third Party
19 Defendants.
20

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

1 (“RWQCB”) had issued an Order to the potentially responsible parties consisting of dry cleaning
2 operators and property owners to remediate the soil and groundwater impacted by PCE contamination
3 from the centers. Following settlement of the Prior Action, certain parties requested, and the RWQCB
4 granted, the establishment of a Containment Zone with a Contingency Plan and the RWQCB issued a
5 new order in 1996 to that effect. However, on March 17, 2008 and March 21, 2008, the RWQCB
6 issued Directives requiring further investigation and monitoring of the PCE contamination, which also
7 potentially impacted the deeper aquifer, thereby allegedly triggering the “re-opener” provision in the
8 settlement agreement. Plaintiff Palmtree Acquisition Corporation filed this action on July 1, 2008,
9 seeking contribution under CERCLA and damages pursuant to the “re-opener” provision, among other
10 claims.
11

12 5. **Description of relief sought and damages claimed with an explanation as to**
13 **how damages are computed:** The parties seek both declaratory and monetary relief through the
14 Second Amended Complaint, the Fourth Amended Third Party Complaint and various cross-claims
15 and counter-claims which were deemed filed pursuant to Stipulations and Orders filed on August 3,
16 2011, October 27, 2011 and November 14, 2011. The parties seek reimbursement and contribution of
17 the amounts spent thus far on investigative costs (over \$1,000,000) as well as an allocation of future
18 investigative costs and remedial measures (to be determined) under CERCLA. The parties also seek
19 monetary damages for nuisance and negligence.
20
21

22 6. **Status of discovery (including any limits or cutoff dates):** Since September
23 2008, discovery has been stayed, including initial disclosures, so that the parties could engage in
24 mediation. These parties have been mediating this matter with Timothy Gallagher, Esq., along with
25 other potentially responsible parties, and are continuing to do so, while simultaneously working
26 cooperatively as a group to respond to the RWQCB’s directives and requirements. Indeed, Plaintiff
27 and Defendants, with the exception of Grubb & Ellis Realty Income Trust, Liquidating Trust, have
28

1 thus far spent over \$1,000,000 since March 2008 in their response efforts: including jointly hiring a
2 project manager and technical consultant; directing investigative measures and submitting a final
3 technical investigative report; submitting a work plan, directing work thereunder and submitting a
4 remedial investigation report with technical findings and proposed remedial alternatives; submitting a
5 remedial action plan; and coordinating among the various regulatory agencies. The responding parties
6 submitted a revised final remedial action plan to the RWQCB for approval on September 30, 2013.
7
8 The parties have also finalized a settlement among them, which is contingent upon a settlement in
9 another state court case involving one of the defendants in this action. A settlement in the state court
10 has also been reached. Both settlements are in the process of being signed. Both settlements are also
11 contingent on being approved by their respective courts as good faith settlements under California
12 law. Motions seeking court approval of these two settlements will be filed in the coming weeks.

13
14 **7. Procedural history of the case including previous motions decided and/or**
15 **submitted, ADR proceedings or settlement conferences scheduled or concluded, appellate**
16 **proceedings pending or concluded, and any previous referral to a magistrate judge:** As
17 described above, the parties have been mediating among themselves before Timothy Gallagher, Esq.
18 This case was initially referred to Magistrate Judge Chen but then transferred to Judge Patel on April
19 2, 2010 and then reassigned to Judge Chen on June 6, 2011. Motions previously decided in this case
20 consist of:
21

22 a. Application for good faith settlement determination by Plaintiff
23 Palmtree Acquisition Corporation and Defendant Northrop Grumman Systems
24 Corporation, granted October 4, 2010.

25 b. Motion to dismiss the First Amended Third Party Complaint by Third
26 Party Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr.
27 Revocable Inter Vivos Trust, granted without prejudice on October 4, 2010.
28

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

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

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

9 f. Stipulation and order of good faith settlement determination as to the
10 Neely parties, signed January 1, 2013.

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

13 **9. Any requested modification of these dates and reason for the request:**
14 None.

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

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

21 **12. If there exists an immediate need for a case management conference to be**
22 **scheduled in the action:** As noted above, the parties have reached a settlement and plan to file a
23 motion shortly seeking this Court's approval of the settlement as one having been made in good faith
24 under California Code of Civil Procedure sections 877 and 877.6. Under the terms of the settlement,
25 once it is final, this action will be dismissed. That could happen as early as January or February 2014.
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1 Therefore, there is no immediate need for a case management conference to be scheduled. The parties
2 propose the scheduling of a further case management conference in June 2014 in the event the action
3 has not been dismissed by that time.
4

5 Dated: December 12, 2013

Cox, Castle & Nicholson, LLP

6
7 By: /s/ Peter Morrisette
Peter Morrisette
8 Attorneys for Plaintiff Palmtree
Acquisition Corporation, a Delaware
9 corporation f/k/a Catellus Development
Corporation
10

11 Dated: December 12, 2013

GONSALVES & KOZACHENKO

12 By: /s/ Paul Kozachenko
Paul Kozachenko
13 Attorneys for Defendant & Third Party
14 Plaintiff Stark Investment Company, a
California limited partnership

15 Dated: December 12, 2013

The Costa Law Firm

16 By: /s/ Daniel P. Costa
Daniel P. Costa
17 Attorneys for Defendant & Third Party
18 Plaintiff Stark Investment Company, a
19 California limited partnership

20 Dated: December 12, 2013

Claytor Law Group

21 By: /s/ James D. Claytor
James D. Claytor
22 Attorneys for Defendant Western State
23 Design, a California corporation
24
25
26
27
28

1 Dated: December 12, 2013

BASSI, EDLIN, HUIE & BLUM LLP

2
3 By: /s/ Farheena Habib
Farheena Habib
4 Attorneys for Defendants Michael R.
Neely, Perry J. Neely, and Gary Neely,
5 dba Mike's One Hour Cleaners

6 Dated: December 12, 2013

Dongell Lawrence Finney, LLP

7
8 By: /s/ Thomas A. Vandenberg
Thomas A. Vandenberg
9 Attorneys for Defendant & Third Party
Plaintiff The Kirrberg Corporation f/k/a
10 Multimatic Corporation

11 Dated: December 12, 2013

Rogers Joseph O'Donnell

12
13 By: /s/ D. Kevin Shipp
D. Kevin Shipp
14 Attorneys for Defendant Charles
Frederick Hartz, dba Paul's Sparkle
15 Cleaners

16 Dated: December 12, 2013

Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

17
18 By: /s/ Bruce C. Paltenghi
Bruce C. Paltenghi
19 Attorneys for Defendant McCorduck
Properties Livermore, LLC, a Delaware
20 limited liability company; John
McCorduck; Kathleen McCorduck;
21 Pamela McCorduck; and Sandra
McCorduck Marona
22

23 Dated: December 12, 2013

Stanzler Law Group

24
25 By: /s/ Jordan S. Stanzler
Jordan S. Stanzler
26 Attorneys for Defendant IMA Financial
Corporation, a California corporation
27
28

1 Dated: December 12, 2013

Paladin Law Group LLP

2
3 By: /s/ John Till
4 John Till
5 Attorneys for Third Party Defendant
6 Dorothy Anderson, Trustee of the
7 Anderson Marital Trust and The Anderson
8 Tax Deferral Trust

9 Filer's Attestation: Pursuant to Local Rule 5-1(i), I attest under penalty of perjury that concurrence in
10 the filing of this document has been obtained from its signatories.

11 DATED: December 12, 2013

Respectfully submitted,

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13
14 /s/ Peter Morrisette

15 Peter Morrisette

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18 It is so ordered that the CMC is reset from 12/19/13 to 3/27/14
19 at 9:00 a.m. A joint CMC Statement shall be filed by 3/20/14.

20 Edward M. Chen
21 U.S. District Judge

