

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**

10
 11 PALMTREE ACQUISITION CORPORATION,
 a Delaware corporation,

Case No. CV 08 3168 MHP

12 Plaintiff,

**STIPULATION AND ~~[PROPOSED]~~
 ORDER RE ANSWERS TO FIRST
 AMENDED COMPLAINT**

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 STARK INVESTMENT COMPANY, a
 California general partnership; GRUBB &
 24 ELLIS REALTY INCOME TRUST,
 LIQUIDATING TRUST, a California trust;
 25 Northrop Grumman Systems Corporation, a
 Delaware corporation, and DOES 1-20,
 26 inclusive,

27 Defendants.

28 AND RELATED ACTIONS

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”.

28 E. On March 17, 2008, and March 21, 2008, the California Regional Water

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

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

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

16 H. Third Party Plaintiffs The Kirrberg Corporation and Stark Investment
17 Company have asserted claims against the beneficiaries of the GERIT (Document No. 64).
18 The beneficiaries are alleged to have received improper distributions from the GERIT.

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

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

28 K. Subsequent to the filing of the Original Complaint, the parties participated in

1 meditation with Timothy Gallagher, Esq., during which the parties engaged in an in depth
2 discussion and investigation relating to the factual background, ownership and operations of
3 the parties and their conduct which may have resulted in the PCE contamination.

4 L. On July 14, 2010 plaintiff Palmtree Acquisition Corporation filed its First
5 Amended Complaint (the “Current Action” or “FAC”), adding Northrop Grumman Systems
6 Corporation (“Northrop Grumman”) as a party.

7 M. Northrop Grumman and the other parties to this stipulation reached a
8 settlement of their respective claims against one another. Northrop Grumman was named as
9 a party so that the parties could make a good faith settlement application to the Court. If the
10 Court finds that the settlement was entered into in good faith, Northrop Grumman will be
11 dismissed as a party.

12 N. The parties to this Current Action, who were defendants in the Prior Action,
13 filed answers in the Prior Action.

14 O. The responses and defenses in this Current Action should be substantially
15 similar to those raised by the parties in the Prior Action.

16 P. The responses and defenses of Northrop Grumman should be substantially
17 similar to those raised by the parties named in the Prior Action.

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

20 **STIPULATION**

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

23 2. Each of the defendants to this Current Action reserves the right to supplement
24 its response to the FAC, and may file an answer and separate crossclaims or counterclaims at
25 a later date, but no later than 60 days following the conclusion of mediation with mediator
26 Timothy Gallagher, currently underway. Mediation will be concluded at such time as: (a) a
27 settlement is reached, or (b) the mediator issues a letter concluding that a settlement has not
28 been reached and the mediation is concluded.

1 Dated: July 31, 2010 DONGELL LAWRENCE FINNEY LLP
2
3 By: /s/ Thomas F. Vandenburg
4 Thomas F. Vandenburg
5 Attorneys for Defendant
6 MULTIMATIC CORPORATION, a New
7 Jersey corporation
8
9 Dated: July 30, 2010 ROGERS JOSEPH O'DONNELL
10
11 By: /s/ Robert C. Goodman
12 Robert C. Goodman
13 Attorneys for Defendant
14 CHARLES FREDERICK HARTZ dba
15 PAUL'S SPARKLE CLEANERS;
16 CHARLES F. HARTZ, an individual
17
18 Dated: July 30, 2010 McKENNA LONG & ALDRIDGE LLP
19
20 By: /s/ Christian Volz
21 Christian Volz
22 Attorneys for Defendant
23 NORTHROP GRUMMAN SYSTEMS
24 CORPORATION
25
26 Dated: July 30, 2010 GORDON WATROUS RYAN
27 LANGLEY BRUNO & PALTENGGHI
28 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
Dated: August 2, 2010 FOLEY MCINTOSH FREY & CLAYTOR
By: /s/ Jim Claytor
Jim Claytor
Attorneys for Defendant
WESTERN STATES DESIGN, 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: August 2, 2010

THE COSTA LAW FIRM

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

IT IS SO ORDERED

Dated: 8/3/2010

