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8 Attorneys for the United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,)
13 Plaintiff,)

14 v.)

No. 02-4948 JSW

15 REAL PROPERTY LOCATED)
AT 6557 ASCOT DRIVE,)
16 OAKLAND, CALIFORNIA,)
17 Defendant.)

STIPULATION RE: REVISED
BRIEFING SCHEDULE
AND
FIRST AMENDMENT TO THE
THE MAY 8, 2009 STIPULATED
OCCUPANCY AGREEMENT

18 _____)
19 HEREFORD HUMANITARIAN)
BUSINESS TRUST,)
20 HUIBERT JOHANNES VAN PRAAG,)
LONGMEAD PROPERTIES LIMITED,)
21 STEVEN FONTAINE AND)
NILOUFER FONTAINE,)
22 Claimants.)
23 _____)

24 The parties stipulate and agree as follows:

- 25 1. Plaintiff is the United States of America. Defendant is the Real Property Located
26 at 6557 Ascot Drive, Oakland, California ("defendant 6557 Ascot Drive"). Appearing as
27 Claimants after filing a claim and answer are (1) Steven Fontaine and Niloufer Fontaine, his wife
28 ("Fontaine Claimants"); and (2) Hereford Humanitarian Business Trust, Huibert Johannes Van

1 Praag and Longmead Properties Limited (“Investor Claimants”). The United States and
2 Claimants are hereinafter referred to as the “parties” in this document.

3 **Stipulation Re: Revised Briefing Schedule**

4 2. With regard to the motion of the Fontaine Claimants to stay the enforcement of
5 judgment, the parties agree to the following schedule: (1) the opposition of the United States
6 shall be due on or before July 17, 2009; (2) the reply of the Fontaine Claimants shall be due on or
7 before July 24, 2009; (3) the parties agree, subject to the Court’s approval, that the hearing date
8 scheduled by counsel for the Fontaine Claimants for August 7, 2009 be taken off calendar and
9 that the Court take the motion under submission without a hearing once all briefs are on file.¹

10 **First Amendment to May 8, 2009 Stipulated Occupancy Agreement**

11 3. The purpose of this First Amendment is to amend the Stipulated Occupancy
12 Agreement (“SOA”) to authorize claimants Steven Fontaine and Niloufer Fontaine, his wife, to
13 continue to reside at defendant 6557 Ascot Drive as lessees, on terms set forth below, for an
14 additional two months, from July 12, 2009 to and including September 12, 2009, so that the
15 parties can complete submission of the Fontaine Claimants’ motion and provide the Court with
16 time to consider their motion on a non-emergency basis.

17 4. The parties stipulated to an occupancy agreement which was entered by the
18 Court as an order on May 8, 2009. *See* SOA, filed May 8, 2009. Except to the extent that the
19 parties agree in this “First Amendment to the May 8, 2009 Stipulated Occupancy Agreement” (or
20 “First Amendment”) expressly to amend or modify the SOA, the parties agree that the SOA
21 remains in effect. To the extent that any provision in this First Amendment is inconsistent with
22 the SOA, this First Amendment controls.

23 5. The date “July 12, 2009” in paragraphs 2, 5 and 11 of the SOA is modified and
24 amended to read “September 12, 2009.”

25 _____
26 ¹ The undersigned AUSA has had prepaid vacation plans for the week of August 3-7,
27 2009 since last winter, and had previously informed counsel for the Fontaine Claimants of those
28 plans, but counsel was unable to obtain any other hearing date in August from the Courtroom
Clerk.

1 6. The parties agree that the Fontaine Claimants shall pay \$4000/month in rent for a total
2 of \$8000 which is due and payable on or before July 6, 2009 for the rental period of July 12, 2009
3 to September 12, 2009.

4 7. The Fontaine Claimants agree to make the \$8000 rent payment either in cash or by
5 a bank cashiers check drawn on the account of a bank made out to the "United States Department
6 of the Treasury," and to deliver the cash or the check on or before the July 6, 2009 due date to
7 Special Agent Juan Saavedra, IRS-Criminal Investigations at 1301 Clay Street, Oakland, CA 94612.
8 This provision is material. Failure of the Fontaine Claimants to comply with this provision
9 terminates the lease agreement and requires the Fontaine Claimants to vacate the premises and
10 remove their personal property on or before July 12, 2009. Thereafter, the United States will
11 immediately take steps to sell defendant 6557 Ascot Drive, and place the net proceeds of the sale
12 after deduction of customary costs of the sale in an appropriate forfeiture account until the appeal
13 is resolved.

14 8. When the Fontaine Claimants vacate defendant 6557 Ascot Drive, the United States
15 will conduct an inspection to determine whether any damage has occurred to defendant 6557 Ascot
16 Drive occurred since the date of forfeiture, and provide an invoice to the Fontaine Claimants for the
17 amount reasonably necessary to repair such damage which the Fontaine Claimants agree to pay in
18 full within 14 days, regardless of whether they disagree with the damages assessed.

19 9. In the event that the Fontaine Claimants fail to vacate and remove their personal
20 property for non-payment of rent or at the end of the lease period, then the Fontaine Claimants
21 consent to have the United States evict them on or after the date the lease terminates and remove
22 their personal property to storage from defendant 6557 Ascot Drive at the Fontaine Claimants'
23 expense. In the event that the United States has to remove and store the Fontaine Claimants'
24 personal property, it will store the property removed for no more than 30 days unless the Fontaine
25 Claimants pay storage fees in advance and, after 30 days of storage when no advance storage fees

26 ///

27 ///

28 ///

1 have been paid, the United States shall take steps immediately to dispose of or sell, at its discretion,
2 the personal property which shall be considered as abandoned personal property.

3 10. If the forfeiture of defendant 6557 Ascot Drive is upheld on appeal, then the United
4 States is entitled to keep the rental payments of defendant 6557 Ascot Drive. If the forfeiture of
5 defendant 6557 Ascot Drive is not upheld on appeal, then defendant 6557 Ascot Drive and the rental
6 payment will be returned to the Fontaine Claimants.

7 IT IS SO STIPULATED:

8 Dated: June 30, 2009

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United States Attorney

Patricia J. Kenney
PATRICIA J. KENNEY
Assistant United States Attorney
Attorneys for the United States

11 Dated: June ____, 2009

COOPER, WHITE & COOPER LLP

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Longmead Properties LLP

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Claimant

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NILOUFER FONTAINE
Claimant

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Attorney for Claimants Steven Fontaine and Niloufer Fontaine

25 IT IS SO ORDERED PURSUANT TO THE FOREGOING STIPULATION ON THIS

26 ____ DAY OF _____, 2009.

27 HONORABLE JEFFREY S. WHITE
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FAX TO: 1 415 788 5605

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Jeffrey S. White
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United States District Court

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