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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.)

SECOND AMENDMENT TO
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 2. The purpose of this Second Amended Occupancy Agreement (“2d Amended
4 SOA”) is to amend the Stipulated Occupancy Agreement (“SOA”) filed May 8, 2009 as amended
5 on July 2, 2009 to authorize Fontaine Claimants Steven to continue to reside at defendant 6557
6 Ascot Drive from September 12, 2009 to and including October 12, 2009 on the terms set forth
7 below with an option to extend their occupancy to and including October 27, 2009. This
8 extension of the lease period is conditioned (1) on the Fontaine Claimants correcting any
9 deficiencies in failing to pay the maintenance expenses which they are required to pay as further
10 described below; (2) on the Fontaine Claimants filing their motion for a stay of execution of
11 judgment in the Ninth Circuit on or before 9:00 a.m. on August 31, 2009 and emailing a copy of
12 that motion by that date and time to government counsel; and (3) on the Fontaine Claimants
13 paying \$4000 in rent as provided below on or before September 4, 2009 to extend their
14 occupancy to and including October 12, 2009 or, at their option, pay an additional \$2000 on or
15 before September 4, 2009 to extend their occupancy to and including October 27, 2009. These
16 three conditions are material and unless they are met this 2d Amended SOA is ineffective to
17 extend the lease period.

18 3. One purpose of extending the lease period in this 2d Amended SOA is to give the
19 Ninth Circuit time to consider the Fontaine Claimants’ motion on a non-emergency basis. Thus,
20 the Fontaine Claimants agree to file their motion in the Ninth Circuit on or before 9:00 a.m. on
21 August 31, 2009, and to email a copy of that motion by that date and time to government
22 counsel.

23 4. Since the 1st Amended SOA was signed and filed, the United States has been
24 informed by the City of Oakland that the Fontaine Claimants failed to pay for garbage removal as
25 required under the SOA as amended by the 1st Amended SOA. On or before September 4, 2009,
26 the Fontaine Claimants agree to provide proof of actual payment for garbage removal, utilities
27 (water, electricity, gas), casualty and fire insurance naming the United States as an additional
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1 payee, association fees (if applicable) and any other expenses associated with maintaining
2 defendant 6557 Ascot Drive.

3 5. The Parties stipulated to an occupancy agreement which was entered by the Court
4 as an order on May 8, 2009, and the Parties filed a first amendment to that stipulated occupancy
5 agreement (“1st Amended SOA”) which the Court entered as an order on July 2, 1009. *See* SOA,
6 filed May 8, 2009; 1st Amended SOA, filed July 2, 2009. Except to the extent that the Parties
7 agree in this 2d Amended SOA to expressly amend or modify the SOA as amended by the 1st
8 Amended SOA, the Parties agree that the SOA as amended by the 1st Amended SOA is in effect.
9 To the extent that any provision in this 2d Amended SOA is inconsistent with the SOA as
10 amended by the 1st SOA, this 2d Amended SOA controls.

11 6. The 1st Amended SOA replaced the date “July 12, 2009” in paragraphs 2, 5
12 and 11 of the SOA with the date “September 12, 2009.” That date, “September 12, 2009,” is
13 now hereby changed to read “October 12, 2009” if the Fontaine Claimants pay the rental of
14 \$4000 on or before September 4, 2009, or to “October 17, 2009” if the Fontaine Claimants pay
15 an additional \$2000 on or before September 4, 2009.

16 7. The Parties agree that the Fontaine claimants shall pay \$4000 as rent for the
17 period from September 12, 2009 to and including October 12, 2009 which rent is due and
18 payable on or before September 4, 2009 or, if the Fontaine claimants choose the option of paying
19 an additional \$2000 on or before September 4, 2009, then the lease period is extended to and
20 including October 27, 2009. Either way, The payment shall be made in accordance with

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1 paragraph 7 of the 1st Amended SOA, and failure to make either a payment of \$4000 or a
2 payment of \$6000 on or before September 4, 2009 requires the Fontaine claimants to vacate the
3 premises and remove their personal property on or before September 12, 2009.

4 * * * * *

5 IT IS SO STIPULATED:

JOSEPH P. RUSSONIELLO
United States Attorney

6 Dated: August 26, 2009

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

7
8
9 Dated: August 27, 2009

COOPER, WHITE & COOPER LLP

Stephen D. Kaus / per email authz. pkenney
STEPHEN D. KAUS
Attorneys for Hereford Humanitarian Business Trust

10
11
12 Dated: August 27, 2009

DONOVAN HATEM LLP

Darrell Mook / per email authz. pkenney
DARRELL MOOK
Attorney for Claimant Hereford
Humanitarian Business Trust

13
14
15 Dated: August ____, 2009

CLARENCE & DYER LLP

KATE DYER
Attorney for Claimants Huibert Van Praag and
Longmead Properties LLP

16
17 Dated: August ____, 2009

STEVEN FONTAINE, Claimant

18
19 Dated: August ____, 2009

NILOUFER FONTAINE, Claimant

20
21 Dated: August ____, 2009

JAMES M. BRADEN
Attorney for Claimants Steven and Niloufer Fontaine

22
23
24 IT IS SO ORDERED PURSUANT TO THE FOREGOING STIPULATION ON THIS

25 ____ DAY OF _____, 2009.

26
27
28 _____
HONORABLE JEFFREY S. WHITE
United States District Court

1 paragraph 7 of the 1st Amended SOA, and failure to make either a payment of \$4000 or a
2 payment of \$6000 on or before September 4, 2009 requires the Fontaine claimants to vacate the
3 premises and remove their personal property on or before September 12, 2009.

4 * * * * *

5 IT IS SO STIPULATED: JOSEPH P. RUSSONIELLO
6 United States Attorney

7 Dated: August 26, 2009

8 PATRICIA J. KENNEY
Assistant United States Attorney
Attorneys for the United States

9 COOPER, WHITE & COOPER LLP

10 Dated: August __, 2009

11 STEPHEN D. KAUS
Attorneys for Hereford Humanitarian Business Trust

12 DONOVAN HATEM LLP

13 Dated: August __, 2009

14 DARRELL MOOK
Attorney for Claimant Hereford
Humanitarian Business Trust

15 CLARENCE & DYER LLP

16 Dated: August 26, 2009

17 KATE DYER
Attorney for Claimants Huibert Van Praag and
Longmead Properties LLP

19 Dated: August __, 2009

20 STEVEN FONTAINE, Claimant

21 Dated: August __, 2009

22 NILOUFER FONTAINE, Claimant

23 Dated: August __, 2009

JAMES M. BRADEN
Attorney for Claimants Steven and Niloufer Fontaine

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

25 ____ DAY OF _____, 2009.

26
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28 HONORABLE JEFFREY S. WHITE
United States District Court

1 paragraph 7 of the 1st Amended SOA, and failure to make either a payment of \$4000 or a
2 payment of \$6000 on or before September 4, 2009 requires the Fontaine claimants to vacate the
3 premises and remove their personal property on or before September 12, 2009.

4 * * * * *

5 IT IS SO STIPULATED:

JOSEPH P. RUSSONIELLO
United States Attorney

6 Dated: August 26, 2009

7 PATRICIA J. KENNEY
8 Assistant United States Attorney
9 Attorneys for the United States

COOPER, WHITE & COOPER LLP

10 Dated: August __, 2009

11 STEPHEN D. KAUS
12 Attorneys for Hereford Humanitarian Business Trust

DONOVAN HATEM LLP

13 Dated: August __, 2009

14 DARRELL MOOK
15 Attorney for Claimant Hereford
16 Humanitarian Business Trust

CLARENCE & DYER LLP

17 Dated: August __, 2009

18 KATE DYER
19 Attorney for Claimants Huibert Van Praag and
20 Longhead Properties, LLP

21 Dated: August 27, 2009

22 STEVEN FONTAINE, Claimant

23 Dated: August 27, 2009

24 NILOUFER FONTAINE, Claimant

25 Dated: August 27, 2009

26 JAMES M. BRADEN
27 Attorney for Claimants Steven and Niloufer Fontaine

28 IT IS SO ORDERED PURSUANT TO THE FOREGOING STIPULATION ON THIS
29 DAY OF August, 2009.

30 
31 HONORABLE JEFFREY S. WHITE
32 United States District Court

33 2d Amended Stipulated Occupancy Agreement
34 No. 02-4948 JSW