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April 21, 2014

**VIA HAND DELIVERY**

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18064-A
EXHIBIT NO. 41

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: *Request for Second Extension of Order No. 18064, 1820-1822 Jefferson Place, N.W. (Square 139, Lot 75)*

Dear Members of the Board:

This is a request for a second, two-year extension of the Board Order in BZA Application No. 18064 ("Order"). A copy of the previous extension order, which will expire on May 21, 2014, is Attachment A to this letter. A copy of the original order is attached as Attachment B.

This extension is requested pursuant to Board of Zoning Adjustment Rules §3130.1, *et seq.*, which allows the Board to grant an extension of the time periods set forth in §3130.1.

Compliance with Section 3130.6

Pursuant to §3130.6, the Board may grant an extension of the time periods in §3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval, provided that the Board determines that the following requirements are met:

(a) "The extension request is served on all parties to the application by the applicant and all parties are allowed 30 days to respond;"

> On today's date, April 21, 2014, a copy of the extension request has been served on the Office of Planning and Advisory Neighborhood Commission 2B, the only party to the application.

(b) "There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application."

The applicant's plans for development of the site are unchanged from those approved by the Board in its Order dated May 21, 2010. Further, there have been no changes to the zone district classification applicable to this property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

(c) "The applicant demonstrates that there is good cause for such extension with substantial evidence of one or more of the following criteria:

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;

(2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control."

As indicated and documented in the previous extension request, the Applicant had determined that, preleasing the project office space was a perquisite to securing financing but adverse office market conditions have made that effort extremely difficult. As a result, the Applicant revised its strategy and initiated efforts to bring in an equity partner to help develop the property or to sell it to a more established developer who might have more success in preleasing the property and obtaining financing. A letter from Fraser Forbes, who had been retained to market the property for this purpose, was submitted previously and is attached hereto as Attachment C.

Since the last extension, the Applicant has finally met with success in securing a purchaser for the property. The purchaser, Human Touch Home Health, Inc. ("Human Touch") is an affiliate of Human Touch Home Health Care Agency, Inc. which is a five-star rated, CMS Certified, and Joint Commission Accredited home health care agency that provides comprehensive skilled and non skilled services to home bound clients under the direction of their respective attending physicians. Human Touch will develop and occupy the property. They are currently leasing the property (the lease is attached hereto as Attachment D) and they are in the process of obtaining a Small Business Administration loan but that process is a lengthy one requiring much documentation. A copy of their Ninth Amendment (Attachment E) to the purchase contract for the property reflects the lengthy process. The amendment extends the financing contingency of the contract until July 31, 2014 to enable completion of the processing of the SBA loan. The amendment also sets the closing date for August 31, 2014. The requested extension is needed to allow them to complete the process and then finalize and submit the required building permit plans for the project.

Based on all of the foregoing facts, we assert that there is sufficient basis under §§3100.5 and 3130.6, *et seq*., for the Board to grant the requested extension.

Sincerely,

Cynthia A Giordano

Cynthia A. Giordano

cc: Advisory Neighborhood Commission 2B
D.C. Office of Planning

**EXHIBIT A**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

**Order No. 18064-A of HAI Real Estate Holdings LLC, Motion for a Two-Year Extension of BZA Order No. 18064 and Waiver of 30-Day Filing Requirement, pursuant to 11 DCMR § 3130.**

The original application was pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under subsection 774.5, and a special exception from the parking requirements under subsection 2120.6, to allow an addition to an existing office building in the DC/C-3-C District at premises 1820-1822 Jefferson Place, N.W. (Square 139, Lot 75).

| | |
|---|---|
| **HEARING DATE (Orig. Application):** | May 18, 2010 |
| **DECISION DATE (Orig. Application):** | May 18, 2010 |
| **FINAL ORDER ISSUANCE DATE (No. 18064):** | May 21, 2010 |
| **DECISION ON MOTION TO EXTEND ORDER:** | July 10, 2012, July 31, 2012, and September 25, 2012 |

**ORDER ON MOTION TO EXTEND THE VALIDITY OF BZA ORDER NO. 18064**

The Underlying BZA Order

On May 18, 2010, the Board of Zoning Adjustment (the "Board" or "BZA") approved the Applicant's request for special exceptions from the rear yard requirements under § 774.5 and the parking requirements under § 2120.6, to allow an addition to an existing office building in the DC/C-3-C District. Thus, pursuant to 11 DCMR § 3104.1, the Board granted special exceptions under §§ 774.5 and 2120.6 to permit the construction of an addition to an existing office building in the DC/C-3-C District at premises 1820-1822 Jefferson Place, N.W. (Square 139, Lot 75). Order No. 18064 (the "Order") was issued May 21, 2010. (Exhibit 29.)

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until May 21, 2012.

Section 3130.1[1] states:

> No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility(EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1.)

Motion to Extend

On May 21, 2012, the Board received a letter from the Applicant's attorney, which requested, pursuant to 11 DCMR § 3130.6,[2] a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on May 21, 2012. The Applicant's letter also contained a request to waive § 3130.9 of the Zoning Regulations to accept the Applicant's time extension motion, which was filed less than 30 days prior to the expiration of the underlying Order so as to toll that Order's expiration.

*Waiver of 30-Day Filing Requirement Pursuant to 11 DCMR § 3130.9*

As stated, the Applicant's request for an extension of the Order was submitted on May 21, 2012, less than 30 days prior to its expiration date. The Applicant also requested a waiver of § 3130.9 of the Zoning Regulations to accept the time extension motion despite that it was filed less than 30 days prior to the expiration of the underlying Order, and to toll that Order's expiration. The Applicant submitted a statement that explained the difficulties the Applicant had in obtaining financing and moving the project forward as well as described several personal hardships he suffered, all of which has caused delay in the project. Additionally, the Applicant indicated that no one would be prejudiced by the delay in filing. (Exhibit 31.)

Subsection 3130.9 says: "A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request." (11 DCMR § 3130.9.) The request was submitted the day the Order was due to expire on May 21, 2012, thereby requiring a waiver of the requirements of § 3130.9.

Subsection 3100.5 provides:

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[1] Section 3130.1 was amended by the addition of the phrase "except as permitted in § 3130.6" by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

[2] Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

> Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

As §§ 3100 through 3105, 3121.5, and 3125.4 do not apply to extension requests, the Board has concluded that it is authorized, for good cause shown, pursuant to 11 DCMR § 3100.5, to waive the 30-day provision and toll the expiration date of the Order for the purpose of allowing the Board to consider the request. At its July 10, 2012 meeting, finding sufficient good cause shown and that no party would be prejudiced, the Board, by consensus, approved the waiver of the 30-day filing requirement and tolled the expiration of the Order.

*The Merits of the Motion to Extend*

As noted above, the Board received the Applicant's request, dated May 21, 2012, for a two-year extension in the authority granted in the underlying BZA Order, which was due to expire May 21, 2012. Thereafter, the Applicant filed supplemental information on July 26, 2012 (Exhibit 34) and also on September 14, 2012 (Exhibit 37), to meet the good cause requirements of 11 DCMR § 3130.6.

The Applicant served its extension request and supplemental information to the Chair of the Advisory Neighborhood Commission ("ANC") 2B, which is the affected ANC and the only other party to the case, and to the Office of Planning ("OP"), notifying them of the Applicant's motion for a two-year time extension and sharing all the documentation in support of that motion with them. (Exhibits 31, 34, and 37.)

The project is within the boundaries of ANC 2B. ANC 2B filed a letter report on June 18, 2012, in support of the request for an extension. The ANC's report stated that at a regularly scheduled, duly noticed meeting on June 13, 2012, at which a quorum of the members was present, ANC 2B voted 5:3:1 to support the application for an extension of time. (Exhibit 32.)

OP filed a report recommending that the Board grant the Applicant's request for a two-year extension of Order No. 18064. (Exhibit 33.)

The Applicant's May 21st letter stated that Applicant had endured a number of personal hardships since the Board's approval which exacerbated his ability to move the project forward. These hardships included two extensive back surgeries and two untimely deaths in his family, including that of his wife and step-sister. Also, the Applicant's letter indicated that an adverse office market and financing conditions had made getting the project developed extremely difficult. As a result, after first unsuccessfully attempting to prelease the project, the Applicant revised his strategy in order to try to bring in an equity partner to help develop the property or to sell it to a more established developer who could have more success in obtaining financing. (Exhibit 31.)

The Applicant's submission included a letter from the real estate services company retained by the Applicant to market the property for the purposes of preleasing the property and bringing in an equity partner or selling it. The real estate firm's letter indicated that the property had been listed for approximately 12 months and that, to date, the Applicant had received three offers, two of which were in negotiations. The real estate firm's letter noted that in both negotiations, keeping intact the already-granted zoning relief was crucial. According to the real estate services firm, if the approval were to expire, the property's value would be negatively impacted; thus, the Applicant required extension of the Board's original approval. (Exhibit 31, Tab B.)

The Applicant's time extension motion was put on the Board's July 10, 2012 decision meeting agenda. On July 10, 2012, the Applicant submitted a letter to the Board and requested that the Board defer consideration of the extension request until the Board's July 31st special meeting to allow the Applicant sufficient time to file additional documentation to supplement the record. (Exhibit 34.) At the decision meeting on July 10, 2012, the Board granted the request for postponement of the extension decision to July 31, 2012 and allowed the Applicant to file supporting documentation related to the requirements of § 3130.6.

The Applicant provided supplemental information for the record by letter dated July 26, 2012. The Applicant's July 26th letter outlined the project that the Board had approved in the Order, noting that in addition to having received BZA approval, the Applicant had completed a lengthy Historic Preservation approval process as well. He described the further difficulties that he had undergone after obtaining the Board's and Historic Preservation's approvals; first, he tried unsuccessfully to prelease the office building through the real estate services firm he had retained and subsequently, he was in the process of seeking but had not yet found an equity partner or sold the project to a more experienced developer. The Applicant indicated that several personal issues, including undergoing two serious back surgeries and two family deaths, had exacerbated the difficulty for him to shoulder sole responsibility for completing the project. He stated that he had invested substantial time and savings in the project to date and recently had received several serious expressions of interest in response to the latest listing with the real estate services firm he had retained, demonstrating the feasibility of the project. The submission also contained a listing agreement and marketing materials. (Exhibit 36.)

On July 31, 2012, the Board convened the case for deliberation at its public decision meeting. Having reviewing the Applicant's latest filing, the Board rescheduled its decision for September 25, 2012, and allowed the Applicant to submit additional supplemental information focused on the Applicant's attempts to secure financing to meet the "good cause" requirements of § 3130.6.

Thereafter, on September 14, 2012, the Applicant, through its attorney, submitted additional supplemental information documenting the Applicant's difficulties in securing leases and financing for the project to demonstrate good cause for granting the two-year extension of the Board's prior approval. The September 14th filing also included a letter from the financial services firm the Applicant had retained that had been unable to obtain financing for the Applicant despite soliciting financing proposals on the Applicant's behalf from a number of local and regional lenders. The financial services firm stated that prospective lenders had declined to provide financing due to the failure of the project to meet a preleasing requirement of 70% - 80% of the project's leasable space. The Applicant's September 14th submission indicated that the Applicant also had retained a real estate services firm to lease the property, but that the firm had been unsuccessful in that endeavor. The September submission also included a copy of the Leasing Brokerage Agreement and the real estate services firm's marketing materials. (Exhibit 37.)

At its decision meeting on September 25, 2012, the Board found that the requirements of 11 DCMR § 3130.6 had been met and granted the Applicant the two-year extension of BZA Order No. 18064 until May 21, 2014.

According to the Applicant, the reasons for its request to the Board to extend Order No. 18064 for another two years are because of its inability to finance the construction of the project in view of the deterioration the real estate market. The Applicant also stated that he has had several personal hardships, including two serious back surgeries and two untimely deaths in his family – that of his wife and a step-sister – which made it difficult to have sole responsibility for pursuing the project. In the affidavits and letters submitted by the Applicant, he indicated that over the last two years, there has been a downturn in the real estate market and the economy has fallen into recession, leading to economic conditions beyond the Applicant's control.

To show good cause for a time extension of the Order, the Applicant's September 14th filing included a letter from a financial services firm the Applicant had retained that indicated it had been unable to obtain financing for the Applicant despite soliciting financing proposals on the Applicant's behalf from a number of local and regional lenders. The financial services firm's letter stated that the prospective lenders had declined to provide financing due to the failure of the project to meet a preleasing requirement of 70% - 80% of the project's leasable space. (Exhibit 37.)

Also, the Applicant's submissions stated that the Applicant had retained a real estate services firm to lease the property, but that the firm had been unsuccessful in preleasing the property. The Applicant's July 26th filing included a letter from the real estate services company retained to market the property for the purposes of preleasing and bringing in an equity partner or selling the property. The real estate firm indicated that the property had been listed for approximately 12 months and the Applicant had received three offers, two of which were in negotiations. The real estate firm's letter emphasized that both negotiations depended on keeping intact the already-granted zoning relief and noted that if the approval were to expire, the property's value would be negatively impacted, thus necessitating extension of the Board's approval. (Exhibit 31, Tab B.)

Therefore, due to the personal difficulties thus stated and market conditions, the Applicant is unable to proceed with the development at this time. Nonetheless, the Applicant believes the project remains feasible and will facilitate the renovation of turn-of-the-century row houses and enhance the block on which the property is sited. Thus, the Applicant requests the two-year extension to allow time for the Applicant to secure financing. (Exhibit 37.)

In addition, the Applicant stated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on May 21, 2010. Also, there have been no changes to the Zone District classification or the Comprehensive Plan applicable to the property. The extension would allow the Applicant the necessary additional time in which to secure financing. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Subsection became effective on June 5, 2009.

Subsection 3130.6 of the Zoning Regulations states in full:

> 3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:
>
> (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
>
> (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
>
> (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
>
> (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
>
> (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

(11 DCMR § 3130.6.)

As discussed herein, pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. Although the Applicant filed its request on May 21, 2012, which was less than the required 30-day period for tolling, the Applicant presented reasons, as described above, for its delay in filing its motion and the supporting documents. Pursuant to § 3100.5, the Board voted to grant the Applicant's request for flexibility and tolled the effect of the underlying Order.

The Board also found that the Applicant has met the criteria set forth in § 3130.6. The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure the necessary financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated May 21, 2010 (Exhibit No. 25 in the record). There have been no changes to the Zone District classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's original Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18064-A for a two-year time extension of Order No. 18064, which Order shall be valid until **May 21, 2014**, within which time the Applicant must file plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 3-0-2 (Nicole C. Sorg, Lloyd J. Jordan, and Jeffrey L. Hinkle, to Approve; Rashida Y. V. MacMurray and Zoning Commission member, neither participating, nor voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**ATTESTED BY:** ______________________
**SARA A. BARDIN**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** October 10, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
**Board of Zoning Adjustment**

BZA APPLICATION NO. 18064-A

As Director of the Office of Zoning, I hereby certify and attest that on October 10, 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Cynthia A. Giordano, Esq.
Saul Ewing LLP
1919 Pennsylvania Avenue, N.W., Suite 550
Washington, D.C. 20006-3434

John R. Houston, III
HAI Real Estate Holdings, LLC
P.O. Box 43
Ashton, MD 20861

Chairperson
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Single Member District Commissioner 2B06
Advisory Neighborhood Commission 2B
1301 20th Street, N.W.
Washington, D.C. 20036

Jack Evans, Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

Melinda Bolling, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W.
Washington, D.C. 20024

ATTESTED BY: ______________________
SARA A. BARDIN
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
**Board of Zoning Adjustment**

**Application No. 18064 of HAI Real Estate Holdings, LLC**, pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under subsection 774.5, and a special exception from the parking requirement under subsection 2120.6, to allow an addition to an existing office building in the DC/C-3-C District at premises 1820-1822 Jefferson Place, N.W. (Square 139, Lot 75).

**HEARING DATE:** May 18, 2010
**DECISION DATE:** May 18, 2010 (Bench Decision)

## SUMMARY ORDER

### SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5).

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. At its duly-noticed, May 12, 2010 meeting, with a quorum present, ANC 2B heard from the Applicant and voted unanimously to support the application, as revised. The ANC submitted a report for the record dated May 17, 2010. (Exhibit 26). OP submitted a timely report recommending approval of the application. (Exhibit 23). Two letters of opposition from neighboring property owners were received. (Exhibits 20 and 22).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions from the rear yard requirements under § 774.5 and from the parking requirement under § 2120.6. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 774.5, and 2120.6, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 25 – Revised Plans) be **GRANTED.**

**VOTE:** **4-0-1** (Meridith H. Moldenhauer, Konrad W. Schlater, Nicole C. Sorg, Shane L. Dettman, to APPROVE; one other Board member (vacant) not participating or voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
The majority of the Board members approved the issuance of this order.

**ATTESTED BY:** Jamison L. Weinbaum
**JAMISON L. WEINBAUM**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** MAY 21 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND

Melinda Bolling, Esq.
Acting General Counsel
Department of Consumer and Regulatory Affairs
1180 4th Street, S.W., 5th Floor
Washington, D.C. 20024

**ATTESTED BY:** Jamison L. Weinbaum
**JAMISON L. WEINBAUM**
**Director, Office of Zoning**

EXHI C

FRASER FORBES
REAL ESTATE SERVICES
All Your Land and Investment Needs

LAND AND INVESTMENT SALES
FINANCING
MANAGEMENT
ADVISORY

May 18, 2012

Government of the District of Columbia
Board of Zoning Adjustment
441 4th Street, NW
Suite 200/210-S
Washington, DC 20001

Re: 1820-1822 Jefferson Place, NW, Washington, DC 20036

To Whom It May Concern:

Due to the difficult market conditions and strict lender requirements, HAI Real Estate Holdings, LLC ("Owner") has determined that they would have an improved probability of success if they were to either partner with or sell to a more established developer. As a result, they have retained Fraser Forbes Real Estate Services to list and market the property accordingly.

The property has been listed on the market for approximately twelve months. To date, the Owner has received 3 offers from developers, 2 of which are currently being negotiated. However, in both cases, the variances are key to the transaction and to the subsequent re-development projects contemplated by the prospective purchasers. If the variances expire, the property value will be negatively impacted and will be detrimental to the salability and re-development potential.

We, on behalf of HAI Real Estate Holdings, LLC would appreciate your consideration for a two-year extension with respect to Application No. 18064 Final Order Dated May 21, 2010.

Sincerely,

Richard O. Samit
Chief Executive Officer and Co-Founder

cc: Cynthia Giordana, Esq., Saul Ewing, LLP
John Houston, Principal, HAI Real Estate Holdings, LLC
Randall J Creaser, AIA, President, Creaser/O'Brien Architects

## COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT ("LEASE") dated for reference purposes **October 30, 2013** by and between **HAI Real Estate Holdings, LLC** ("LANDLORD") and **Human Touch Home Health, Inc.**, hereinafter called ("TENANT")

**WITNESSETH**

The LANDLORD does hereby lease to the TENANT and the TENANT does hereby take and lease from the LANDLORD the following described real property situated in the District of Columbia, to wit

**1820-1822 Jefferson Place, NW, Washington, DC 20036 , consisting of approximately 8,950 gross square feet** ("LEASED PREMISES") upon the following terms and conditions:

1. The term of this LEASE shall commence on **December 1, 2013** and shall terminate on **August 31, 2014.**

2. TENANT agrees to pay LANDLORD the total sum of **Thirty Thousand Dollars ($30,000.00) plus NNN's for the term of the lease.** Upon the acceptance of this lease, Tenant will pay first month's rent in the amount of of **$30,000.00.** The monthly rents due hereunder shall be due in equal monthly installments and shall be due in advance on or before the first day of each month of the LEASE payable to the LANDLORD at HAI Real Estate Holdings, c/o Tilmon Properties, 99 Commerce Place Suite 350 Largo, MD 20774 or other such place as directed by LANDLORD

3. TENANT shall pay a late charge of **$500.00 per day** for any payment not received by LANDLORD by the 10th day of the month in which such payment is due TENANT will pay this late charge promptly In addition to any late charge, there shall be a $75.00 fee for any check submitted to LANDLORD for any payment which is returned unpaid to LANDLORD'S financial institution due to insufficient funds or for any reason is not honored when submitted for payment

4. TENANT expressly covenants and agrees to use the LEASED PREMISES for the following purpose

   **General Office Use**

and for no other purpose whatsoever without the prior written consent of the LANDLORD

5. TENANT shall pay all real property taxes for the LEASED PREMISES. TENANT shall pay all personal property taxes accruing for personal property owned by the TENANT and kept on the LEASED PREMISES

6. TENANT shall carry sufficient fire and extended coverage insurance on the LEASED PREMISES to cover the cost of rebuilding or repairing the LEASED PREMISES in the event of total or partial destruction thereof TENANT shall maintain a general Business Owner's Insurance Policy to include general liability in the minimum amount of $1,000,000 at all times Such policy of insurance shall name LANDLORD as additional insured TENANT shall provide LANDLORD with a certificate of insurance evidencing said policy before moving into the LEASED PREMISES LANDLORD shall not insure any of the TENANT's personal property or contents LANDLORD shall not insure or otherwise protect the TENANT from liability claims made by TENANT, TENANT's employees, invitees or guests

7. Tenant shall be responsible for replacement or repairs to the plumbing, heating or electrical systems within the LEASED PREMISES Tenant shall not be responsible for any pre-existing damages.

8. LANDLORD shall provide the LEASED PREMISES in its "as is-all faults" condition unless otherwise noted herein All maintenance, repairs, alterations or additions to the interior of the LEASED PREMISES shall be made by TENANT at the expense of the TENANT Maintenance, repairs, alterations, additions and improvements to the LEASED PREMISES made by TENANT may only be

performed after TENANT receives LANDLORD S prior written approval All improvements made by TENANT must conform to all applicable building codes in a good. workmanlike manner by a contractor approved by LANDLORD and shall be paid promptly and shall not cause any liens on the LEASED PREMISES

9. TENANT shall pay all costs of repairs to the structure. plumbing. heating and electrical systems of the LEASED PREMISES which are necessitated by the negligence or actions of TENANT and shall make such repairs or cause such repairs to be made in a workmanlike manner using proper materials and in compliance with appropriate codes TENANT shall make, or cause such repairs to be made in a timely manner and shall be responsible for other repairs and costs which are proximately caused as a result TENANT shall immediately reimburse LANDLORD for all such costs incurred plus a management fee of $ **250.00** for any such repairs not made in a timely manner by the TENANT

10. TENANT is responsible to determine the availability and adequacy of phone and data service for TENANT'S needs in the LEASED PREMISES. Unavailability or inadequacy of phone and data service shall not be considered cause for a delay in the commencement date of the Lease or for non-payment of rent. Adequate phone and data service shall be provided by TENANT at TENANT'S sole expense including but not limited to providing service to the LEASED PREMISES and installation of necessary hardware and equipment

11. All signage must be approved by LANDLORD in writing prior to installation and shall be at TENANT'S sole expense

12. TENANT is required to determine the requirements for disposal of all of its waste and to comply with applicable federal, state and local law and rules regarding disposal of any waste that requires special handling including but not limited to medical waste. restaurant waste, certain contaminated water hazardous materials, privacy protected information. mandatory recyclables. dangerous objects and material oversize objects and obnoxious waste ("SPECIAL WASTE") SPECIAL WASTE shall be disposed of by TENANT at TENANT's expense in accordance with all applicable federal. state and local laws and rules If TENANT is producing or disposing of any such special waste. TENANT shall notify LANDLORD in writing of the existence and disposal of such SPECIAL WASTE including the name of the waste hauler immediately

13. TENANT shall not store. use or dispose of any hazardous substances in or around the LEASED PREMISES in violation of any federal. state and local law. rule or regulations In the event that TENANT uses any substance that is construed as hazardous. TENANT agrees to properly dispose of said item in accordance with applicable laws. rules and regulations

14. If TENANT fails to properly handle and dispose of hazardous substances or SPECIAL WASTE. LANDLORD may dispose of said items at TENANT'S expense and TENANT shall reimburse LANDLORD for any costs incurred plus a reasonable management fee and handling charge immediately upon demand

15. It is TENANT's sole responsibility to confirm compliance of the LEASED PREMISES for TENANT's proposed use including but not limited to zoning. fire. health department regulations, building permits. business licenses parking regulations and all other applicable laws and regulations By signing this LEASE, TENANT confirms to its satisfaction the acceptability of the LEASED PREMISES as it conforms to the provisions of this paragraph Failure of TENANT to comply with all applicable building and fire codes shall be cause for LANDLORD to cancel this LEASE and retain all deposits tendered herewith and seek any additional default damages. LANDLORD shall provide TENANT with a 30-day notice to cure any violations prior to cancellation of the LEASE. LANDLORD, its agents and employees do not represent or warrant suitability of the LEASED PREMISES for any purpose

16. Any fine. cost fee. expense. lien. encumbrance or other obligation levied against LANDLORD incident to LANDLORD'S ownership of the LEASED PREMISE or the LEASED PREMISES

which are a result of action or inaction by the TENANT shall be immediately reimbursed to the LANDLORD by the TENANT immediately upon demand and such expenses shall become an obligation of TENANT under this LEASE

17. LANDLORD may enter upon and inspect the LEASED PREMISES with proper prior notification at all reasonable times Tenant shall not change the locks on the LEASED PREMISES without Landlord's prior written consent

18. All improvements placed upon the LEASED PREMISES of a permanent nature by TENANT shall be and become the property of LANDLORD at the expiration of this LEASE and LANDLORD shall be under no obligation to reimburse TENANT for permanent improvements on the LEASED PREMISES

19. Should the LEASED PREMISES be destroyed or rendered uninhabitable through no act or fault of TENANT, this LEASE may be forthwith terminated by the TENANT at TENANT'S option unless LANDLORD at LANDLORD'S expense, shall reconstruct the LEASED PREMISES and render them substantially similar to the condition of the LEASED PREMISES on the date of the commencement of this LEASE within a period of ninety days from the date the LEASED PREMISES were destroyed or rendered uninhabitable. Rents shall be suspended during the period of time that the LEASED PREMISES are rendered uninhabitable and unusable for TENANT S business

20. Due to prior and current uses of the property and age of the property, the property may have hazardous, toxic or undesirable material in the soil, water or building components, or elsewhere in areas that may or may not be accessible or noticeable that may leak or otherwise be released These materials or building components may contain such items that have been or may be determined to be hazardous, toxic or undesirable and may need to be specially treated or removed. LANDLORD has no expertise in the detection or correction of such material It is TENANT'S responsibility to determine whether or not any special inspections should be conducted along with the signing of the LEASE Tenant shall not be responsible for any pre-existing hazardous, toxic or undesirable material in soil, water or building components

21. TENANT agrees that in occupying and using the LEASED PREMISES TENANT will not create, permit or allow any public or private nuisance, will not allow waste, and will comply fully with every applicable law, statute, ordinance, rule and regulation TENANT acknowledges that all interior areas on the ENTIRE FACILITY are non-smoking unless otherwise designated Smoking on the ENTIRE FACILITY is subject to applicable laws as those laws are enacted and amended from time to time Tenant will comply with all District of Columbia law, statute, ordinance, rule and regulations

22. In the event of a default by TENANT which requires LANDLORD to serve TENANT a notice of default, notice to quit or notice to pay rent or surrender the LEASED PREMISES, TENANT shall pay the sum of **$250.00** in addition to LANDLORD's costs of service for each service of notice in addition to any other remedies contained herein In the event it should become necessary for the LANDLORD to commence a legal proceeding to enforce this LEASE, LANDLORD shall be entitled to recover all costs incurred including reasonable attorney fees and interest on all unpaid amounts at a rate of 18% per annum. Notwithstanding anything contained in this LEASE to the contrary, should TENANT default on any of the terms of the LEASE, at the time of default, LANDLORD shall have a lien upon all of TENANT's personal property located in the LEASED PREMISES whether acquired by TENANT before or after the date hereof to secure the payment of rent and the performance of each and every covenant herein to be performed by TENANT TENANT shall execute and deliver to LANDLORD for recording all required financing statements and other documents necessary to perfect the record of the lien herein granted Upon default by TENANT, LANDLORD may, without notice, demand or legal process take possession of and sell such personal property at public or private sale after one publication of a notice thereof in a daily newspaper published in the District of Columbia not less than 7 days before such sale. The proceeds of any such sale shall be applied first to the payment of expenses and attorney fees incurred by LANDLORD, second to any accrued late payment fees and interest and third to the discharge of other liabilities hereunder not paid The balance, if any, shall be held for the account of the TENANT.

23. TENANT agrees that if default is made in the payment of rents or in the performance of any other conditions of this LEASE, this LEASE may be forthwith terminated at the election of LANDLORD and that TENANT will immediately surrender and deliver up possession of the LEASED PREMISES to LANDLORD upon receiving written notice from LANDLORD of the breach of conditions of this LEASE and the election of the LANDLORD to terminate the LEASE. In the event of such default by TENANT, besides other rights or remedies, LANDLORD shall have the immediate right of re-entry and the right to remove all persons and property from the LEASED PREMISES at the expense of TENANT. Should the LANDLORD elect to re-enter as herein provided or should LANDLORD take possession pursuant to legal proceedings or pursuant to any notice provided for by law, LANDLORD may either terminate this LEASE or may re-let or re-lease the LEASED PREMISES or any part thereof upon such terms and conditions as LANDLORD may deem acceptable without terminating this LEASE. LANDLORD may make such alterations, improvements and repairs to the LEASED PREMISES as it may deem advisable. No such re-letting or re-leasing of the LEASED PREMISES by LANDLORD under the circumstances set forth in this paragraph shall be construed as an election on the LANDLORD'S part to terminate this LEASE unless a written notice of such termination is mailed by LANDLORD to TENANT at the address of the LEASED PREMISES. No such re-letting or re-leasing shall relieve TENANT from liability to LANDLORD for any damages which LANDLORD may have suffered or will suffer as a result of TENANT'S breach of this LEASE.

24. If this LEASE is terminated as a result of default by TENANT, LANDLORD shall be entitled to retain all deposits and overages to partially compensate LANDLORD for damages suffered as a result of such default. Nothing herein contained shall be construed to preclude LANDLORD from recovering from TENANT any further or additional damages which LANDLORD may have suffered or will suffer as a result of such default by the TENANT.

25. If TENANT abandons the LEASED PREMISES prior to the full term of this LEASE, such abandonment shall be a default on the part of TENANT.

26. No dispute between LANDLORD and TENANT regarding either party's obligations under this LEASE shall excuse the payment of rent or the faithful performance of the other conditions of said LEASE by either party.

27. Upon expiration of the term of this LEASE or any extension thereof TENANT shall surrender and deliver up possession of the LEASED PREMISES to LANDLORD in as good condition and repair as the same are at this time, ordinary wear and tear accepted. In the event the LEASED PREMISES are damaged beyond reasonable wear and tear, TENANT shall immediately pay LANDLORD such amounts as are reasonably expended and necessary to restore the LEASED PREMISES to its former condition.

28. Should TENANT continue in possession of the LEASED PREMISES after the expiration of the LEASE without a written extension or renewal hereof, such possession shall be on a month-to-month basis at a monthly rate of **Forty Thousand Dollars ($40,000.00)**.

29. The failure of LANDLORD to insist in any one or more instances to exercise any option, privilege or right herein contained shall not be construed to constitute a waiver, relinquishment or release of such obligations, covenants or agreements and no forbearance by the LANDLORD of any default hereunder shall constitute a waiver or continuing waiver of such default.

30. If TENANT is declared insolvent or bankrupt; or if any assignment of TENANT'S property is made for the benefit of TENANT'S creditors or others; or if the TENANT'S leasehold interest herein shall be levied upon under execution or taken by virtue of a writ of a Court of Law; or if a Trustee in Bankruptcy or a receiver is appointed for the property of TENANT, LANDLORD may at its option immediately terminate and cancel this LEASE and immediately retake possession of the LEASED PREMISES with or without notice. Any such termination, cancellation and retaking shall not occasion any forfeiture of the obligations of TENANT previously accrued under this LEASE.

31. In the event all or any of the LEASED PREMISES is taken by right of eminent domain, or if the LANDLORD makes a conveyance of all or any part of the LEASED PREMISES in lieu of taking by right of eminent domain, this LEASE may be terminated by the LANDLORD. In such event, TENANT shall not be required to make any further rental payments to LANDLORD after the date of termination. TENANT shall have the right to remove all of TENANT'S furniture, machinery and fixtures from the LEASED PREMISES. In the event of a taking of all or part of the LEASED PREMISES by right of eminent domain or a conveyance in lieu of such taking, LANDLORD shall receive the entire award or price which the condemning or taking governmental authority will pay for the LEASED PREMISES. Any such termination, cancellation and retaking shall not occasion any forfeiture of the obligations of TENANT previously accrued under this LEASE

32. No less than **Ninety (90)** days prior to the end of the term of the LEASE or City/State restrictions forcing Tenant to vacate the premise , TENANT shall provide to LANDLORD written notice of TENANT'S intent to either vacate or remain in the LEASED PREMISES upon the expiration of the term of the LEASE. TENANT'S failure to give such notice shall be deemed as TENANT'S intent to vacate the LEASED PREMISES at the expiration of the LEASE term and LANDLORD may thereafter place appropriate signage on-site, show the LEASED PREMISES to prospective tenants and generally work to re-let same

33. Within 5 days of receipt a written request by the LANDLORD, TENANT agrees to deliver to the LANDLORD, a signed Estoppel Certificate certifying.

- a. That the LEASE is in full force and effect and has not been modified in any way;
- b. The date on which rent was last paid and the amount thereof.
- c. The amount of any security deposit held by the LANDLORD:
- d. That the LANDLORD is not in default on any of the LEASE terms;
- e. If TENANT claims any such LANDLORD default, the nature of such default;
- f. The commencement date and expiration date of the LEASE
- g. If there is any option to renew the LEASE, the terms of said option

If TENANT fails to provide the Estoppel Certificate within the allotted time, TENANT hereby consents that the LANDLORD shall execute said document on TENANT's behalf

34. This LEASE and any special conditions attached hereto are the entire agreement between the parties. There are no oral agreements, warranties, terms, conditions, or covenants not set forth in this LEASE or in any modifications, amendments, supplements, renewals or assignments of this LEASE. It is understood and agreed that both LANDLORD and TENANT have equally negotiated the provisions of this LEASE and contributed substantially and materially to the preparation of this LEASE. Therefore, this LEASE shall not be construed more strictly against either party by virtue of the fact that a contract may be more strictly construed against the party preparing the contract.

35. This LEASE shall bind and benefit the heirs, successors and assigns of the parties hereto

36. For the purpose of this LEASE, any action or inaction by TENANT's employees, agents, guests and invitees shall be deemed to have committed or omitted by TENANT

37. ADDITIONAL PROVISIONS.

38. Assignment & Subletting: Tenant shall under no circumstance, directly or indirectly, assign, mortgage, pledge or encumber this Agreement or any interest therein (whether by operation of law or otherwise) With the exception of subleasing a portion of the Premises to Capital Medical Supply and Capital View Home Health, Tenant shall not sublet the Premises or any part thereof without the prior written consent of Landlord. All subleases shall terminate at or prior to August 31, 2014. Tenant fully understands that any sublease does not relieve any obligation under this Agreement on Tenant's behalf

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals on the day and year first above written.

| TENANT | LANDLORD |
|---|---|
| HUMAN TOUCH HOME HEALTH, Inc. | HAI REAL ESTATE HOLDINGS, LLC |
| By: Steve Kalifa | By: John Houston |
| Its: | Its: Manager |
| Phone: 202-299-0092 | Phone: 202-345-5250 |
| Fax: 204-446-0868 | Fax: 301-388-0795 |
| Email: capitamd@yahoo.com | Email: jhouston594@comcast.net |

**END OF LEASE**

## EXHIBIT E

NINTH AMENDMENT

This Ninth Amendment ("Ninth Amendment") is entered this 30th day of October, 2013 to the Purchase and Sale Agreement (the "Agreement") dated April 30, 2013 for the purchase of 1820-1822 Jefferson Place, NW, Washington, DC (the "Property") between **HAI Real Estate Holdings, LLC** (Seller) and **HUMAN TOUCH HOME HEALTH, INC.** (Purchaser) (and collectively referred to as the "Parties"):

**WHEREAS**, the Purchaser elects to cancel the Agreement immediately unless the terms of this Ninth Amendment are acceptable to the Seller in which case the Parties wish to amend certain provisions in the Agreement as set forth below with all provisions not specifically amended herein to remain in full force and effect.

**NOW THEREFORE**, the Parties hereby make the following amendments to the Agreement:

1. Referring to Article III INSPECTION PERIOD, the Parties agree that the Right of Inspection and Financing Contingency is extended to July 31, 2014, with respect to Purchaser receiving written approval for the participation of the CDC in conjunction with the SBA 504 Loan Program being processed by the Purchaser's Lender. Purchaser also intends on working diligently to obtain conventional financing.

2. Referring to Section 4.1 of the Agreement, the Parties agree to a Closing Date on or before August 31, 2014.

3. Purchaser and Seller agrees to enter into the attached Lease Agreement for the Property, under the following terms:

    a. Lease commences on December 1, 2013 and shall be for up to Nine (9) months

    b. The rent shall be Thirty Thousand Dollars ($30,000.00) per month NNN (Purchaser pays all property expenses during the term of the lease). Fifty percent (50%) of the rent shall be applied towards the purchase price, provided closing occurs on or before August 31, 2014.

    c. With the execution of the Lease Agreement, Purchaser shall instruct Chicago Title Insurance Company to release the One Hundred Thousand Dollars ($100,000) deposit to Seller and Purchase shall also provide Seller with an additional non-refundable deposit of One Hundred Fifty Thousand Dollars ($150,000.00) for a total non-refundable deposit of Two Hundred Fifty Thousand Dollars ($250,000.00). The non-refundable deposit shall be credited to Purchaser at closing, provided closing occurs on or before August 31, 2014.

4. All other terms are to remain the same.

SIGNATURE PAGE TO FOLLOW

AGREED:

PURCHASER:
HUMAN TOUCH HOME HEALTH, INC

By: ______________________
Name: [illegible]
Title: 10-30-2013

SELLER
HAI Real Estate Holdings, LLC

By: ______________________
John R. Houston III, Manager