

NEEDHAM PLANNING BOARD

Monday April 25, 2022

9:00 a.m.

Virtual Meeting using Zoom

Meeting ID: **880 4672 5264**

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Direct Link to meeting: <https://us02web.zoom.us/j/88046725264>

1. Decision: Amendment to Major Project Site Plan Special Permit No. 2005-07: Carbon Health Medical Group of Florida, PA, 300 California St (Suite 700), San Francisco, CA and Needham Gateway LLC, 66 Cranberry Lane, Needham, Massachusetts, Petitioners. (Property located at 100 and 120 Highland Avenue, Needham, Massachusetts). Regarding request for a new principal use in the subject property, described as a medical professional office providing primary and walk-in medical care.
2. Minutes.
3. Report from Planning Director and Board members.
4. Correspondence.

(Items for which a specific time has not been assigned may be taken out of order.)

AMENDMENT TO DECISION

April 25, 2022

Major Project Site Plan Special Permit

SPMP No. 2005-07

Needham Gateway, LLC

100, 120 Highland Avenue

Application 2005-07

(Original Decision dated January 24, 2006,
amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011,
March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021 and March 28, 2022)

DECISION of the Planning Board (hereinafter referred to as the “Board”) on the petition of Carbon Health Medical Group of Florida, PA, 300 California St (Suite 700), San Francisco CA and Needham Gateway LLC, 66 Cranberry Lane, Needham, MA (hereinafter the “Petitioner”), for property located at 100 and 120 Highland Avenue, Needham, Massachusetts, shown on Assessor’s Map No. 73 as Parcel 18 containing 82,582 square feet and partially located in the New England Business Center Zoning District and partially located in the Highland-Commercial 128 Zoning District (both buildings, together with all other improvements on the Land are herein collectively referred to as the “Shopping Center”).

This decision is in response to an application submitted to the Board on January 25, 2022, by the Petitioner for: (1) an amendment to Major Project Site Plan Review Special Permit No. 2005-07 issued by the Needham Planning Board under Section 7.4 of the Needham Zoning By-Law (hereinafter the “By-Law”) and Further Site Plan Review under Section 4.2 of Major Project Site Plan Special Permit No. 2005-07 dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021 and March 28, 2022; and (2) a Special Permit Amendment under Section 5.1.1.5 of the By-Law, to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 of the By-Law (required parking and parking plan and design requirements, respectively).

The requested Major Project Site Plan Review Special Permit amendment (herein sometimes referred to as the “Amendment”) would, if granted, allow a new principal use in the subject property, described as a medical professional office providing primary and walk-in medical care and uses accessory thereto, which use is allowed as a matter of right in the Highland-Commercial 128 Zoning District.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order by the Chairperson, Paul S. Alpert on Tuesday, March 15, 2022 at 7:40 p.m. by Zoom Web ID Number 826-5899-3198. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight, Martin Jacobs and Natasha Espada were present throughout the March 15, 2022 proceedings. The hearing was continued to Tuesday, April 5, 2022 at 7:45 p.m. by Zoom ID Number 826-5899-3198. Board members Paul S. Alpert, Adam Block, Jeanne S. McKnight, Martin Jacobs and Natasha Espada were present throughout the April 5, 2022 proceedings. The record of the proceedings and the submission upon which this Decision is based may be referred to in the office of the Town Clerk or the office of the Board.

Submitted for the Board's deliberation prior to the close of the public hearing were the following exhibits:

- Exhibit 1 - Transmittal letter from Attorney Rick Mann, dated January 24, 2022.
- Exhibit 2 - Application Form for Further Site Plan Review completed by the applicant dated January 25, 2022. (with supplemental application signed by Carbon Health, dated February 24, 2022).
- Exhibit 3 - Rider A to application.
- Exhibit 4 - Physician Profile of Sujal S. Mandavia, MD.
- Exhibit 5 - Memorandum to Mike Moskowitz Needham Gateway LLC, from Michael A. Santos, BSC, Group, re: Parking Evaluation, dated November 19, 2021.
- Exhibit 6 - Letter to Board Members from David Roche, Needham Building Commissioner, dated December 29, 2021.
- Exhibit 7 - Floor Plan entitled “Needham MA Gateway Shops,” prepared by Environments for Health Architecture, dated January 12, 2022 (the “Floor Plan”).
- Exhibit 8 - Legal memorandum to Carbon Health, from Foley & Lardner LLP, dated January 19, 2022.
- Exhibit 9 - Emails from Elizabeth Kaponya, dated January 4, 2022 and March 14, 2022.
- Exhibit 10 - Letters to Board Members from Attorney Rick Mann, dated February 18, 2022 and February 28, 2022.
- Exhibit 11 - Parking evaluation letter from the BSC Group to Richard Mann, Esq., dated February 28, 2022 and attached satellite photo of site.
- Exhibit 12 - Letters to Lee Newman from Attorney Rick Mann, dated March 14, 2022 and March 25, 2022.
- Exhibit 13 - Parking Memorandum to Mike Moskowitz Needham Gateway LLC, from the BSC Group to Mike Moskowitz, Eclipse Management, dated March 24, 2022.
- Exhibit 14 - Email from Derek Wade, 41 Riverside Street, dated March 15, 2022.
- Exhibit 15 - Interdepartmental Communication (IDC) to the Board from Chief John Schlittler, Needham Police Department, dated February 10, 2022; IDC from Thomas Ryder, Assistant Town Engineer, dated March 10, 2022; IDC to the Board from Chief Dennis Condon, Needham Fire Department, dated February 11, 2022; and IDC to the Planning Department from Tara Gurge, Needham Health Department, dated February 10, 2022.

Exhibits 2, 3, 5, 7, 10, and 11 are hereby referred to as the Project Plan.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board confirmed its findings and conclusions as contained in its Decision dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021 and March 28, 2022 except as modified herein.

- 1.1 The Petitioner is seeking the modification of Major Project Site Plan Special Permit No. 2005-07, dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021 and March 28, 2022 (herein the “Decision”), to allow a new principal use in the subject property, described as a medical professional office providing primary and walk-in medical care and uses accessory thereto, which use is allowed as a matter of right in the Highland-Commercial 128 Zoning District.
- 1.2 The Decision issued by the Board approved the construction of two buildings on the land, one located at 100 Highland Avenue containing 10,628 square feet of floor area and the other located at 120 Highland Avenue containing 12,820 square feet of floor area.
- 1.3 Section 3.2 of the Decision, allows the use of 10,628 square feet of the building at 100 Highland Avenue and 8,020 square feet of the building at 120 Highland Avenue for general retail purposes and craft, consumer, professional or commercial service establishments dealing directly with the general public and 4,800 square feet of said building for a fast food restaurant. Further, although otherwise allowed as of right or by special permit in the underlying Highland Commercial-128 Zoning District, Section 3.3 of the Special Permit as amended expressly prohibits the following uses in the Shopping Center: (1) all sit down food and beverage restaurants; (2) all fast food pick up and/or delivery restaurants, excepting Panera Bread; (3) all sports clubs; and (4) all convenience markets.
- 1.4 The Petitioner proposes to amend the Decision to allow a new principal use in the subject property, described as a medical professional office providing primary and walk-in medical care and uses accessory thereto, which use is allowed as a matter of right in the Highland-Commercial 128 Zoning District. The proposal consists of leasing approximately 3,275 gross square feet of floor area in the building at 120 Highland Avenue (the “Premises”) to Carbon Health Medical Group of Florida, PA, a Florida professional corporation d/b/a “Carbon Health” (“Carbon Health”), duly registered as a foreign corporation in the Commonwealth of Massachusetts, which is wholly owned by a single physician licensed in the Commonwealth of Massachusetts. Based on its ownership, Carbon Health asserts that it will not be required to be licensed as a clinic under GL Chapter 111, Section 51.
- 1.5 Carbon Health proposes to use the Premises principally for the provision of primary and walk-in medical care and will have a maximum aggregate of eight (8) medical and non-medical staff on the Premises at any one time (typically 4-6). No more than two (2) of any combination of physician, physician’s assistant, or nurse practitioner shall be present on the Premises at any one time for the purpose of administering medical treatment. Hours of operation are expected to be 8 AM - 8 PM, seven days a week.
- 1.6 By letter dated December 29, 2021 (Exhibit 6), a copy of which has been submitted with this application, the Building Commissioner has determined that the proposed use constitutes a “professional office” which is allowed as a matter of right in the Highland Commercial-128 District in which the Premises are located. The Commissioner concluded that Carbon Health’s proposed use fits the definition of a “Professional Office” allowed as a matter of right in the Highland Commercial - 128 District and is not a Group Practice, Medical Clinic or a Medical Services Building, nor is it an alternative medicine practice, physical therapy or wellness treatment facility as defined.

The Petitioner requests that the Planning Board adopt a finding that Carbon Health’s proposed use fits the generic use category of a professional or commercial service establishment dealing directly with the general public that is more specifically categorized under the By-Law as a “professional office” as determined by the Building Commissioner and that the proposed use as a “professional

- office" is allowed as a matter of right in the Highland Commercial - 128 District based on the foregoing analysis.
- 1.7 No changes are proposed to the parking area.
 - 1.8 The total number of parking spaces on-site is currently 97. With the installation of a dumpster on one parking spaces, as approved by Amendment dated March 28, 2022, there will be one fewer space, for a total of 96.
 - 1.9 The Petitioner has requested a Special Permit pursuant to Section 5.1.1.5 of the By-Law to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) to enable full occupancy of the building located at 120 Highland Avenue. The parking requirement for the existing uses in the building located at 120 Highland Avenue is calculated as follows. Pursuant to the By-Law, the total parking requirement for the fast-food use namely, Panera Bread is calculated as 64 spaces (130 seats divided by 3 = 43.33 spaces, plus 20 spaces for two take-out stations = 63.33 spaces). For this parking requirement each cash register is considered a take-out station. Pursuant to the By-Law, the parking requirement for the Carbon Health facility is calculated as 17 spaces (3,275 square feet divided by 200 = 16.375) and for the Geico Insurance facility is calculated as 16 spaces (4,745 square feet divided by 300 = 15.81). Accordingly, pursuant to the By-Law, the parking requirement for the building located at 120 Highland Avenue is 97 spaces (64+17+16 = 97) and only 96 parking spaces are provided. A waiver of 1 parking space is required to allow full occupancy of the building located at 120 Highland Avenue as noted above.
 - 1.10 No parking waivers are currently being sought by the Petitioner under Section 5.1.2 to enable occupancy of the now vacant former Frank Webb's Bath Center building at 100 Highland Avenue whose use is yet to be determined. The Petitioner has acknowledged that the former Frank Webb's Bath Center building at 100 Highland Avenue shall remain empty and untenanted until further Planning Board approval is obtained following submittal of a further parking waiver request and an updated parking study demonstrating an adequate parking supply at the Shopping Center.
 - 1.11 A Parking Study dated March 24, 2022 (Exhibit 5) was prepared by the BSC Group, Inc. The study evaluated changes in parking demand at the Shopping Center under the following assumptions: (1) Omaha Steaks, SuperCuts, and Hamra are replaced with a Carbon Health urgent care facility consisting of approximately 3,275 sf of space at 120 Highland Avenue; (2) Panera Bread and Geico Insurance remain as tenants at 120 Highland Avenue; and (3) The former Frank Webb's Bath Center building at 100 Highland Avenue remains empty and untenanted until further Planning Board approval is obtained, as set forth in Sections 1.9 and 1.10 above. The parking evaluation consisted of 48-hour traffic counts at the driveways that serve the site, parking occupancy observations on the site, parking demand estimates related to the changes in use, and an analysis of the impacts of the changes in use. The evaluation demonstrated that the existing parking supply will accommodate the proposed changes in use under the above noted assumptions.
 - 1.12 The Petitioner has requested a Special Permit pursuant to Section 5.1.1.5 of the By-Law to waive strict adherence with the requirements of Section 5.1.3 (Parking Plan and Design Requirements). More particularly, the Petitioner seeks a waiver from Section 5.1.3 (j) to waive the ten (10) foot parking setback requirement from the front lot line along Second Avenue to seven (7) feet and in Section 5.1.3 (k) to waive the associated ten (10) foot wide landscape requirement as it pertains to said (10) foot front setback along Second Avenue.
 - 1.13 No exterior changes are proposed to the building or site by this Amendment. The site is fully developed. The completed improvements protect adjoining premises against seriously detrimental

uses on the site by provision of surface water drainage, sound and sight buffers and preservation of views, light and air. The site includes a surface water drainage system connecting to the municipal system that accommodates surface water runoff.

- 1.14 The Shopping Center, as constructed, insures the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets. The existing design for vehicular and pedestrian movement within the property stresses the safety and convenience of both types of movement and no modifications to the parking area are proposed. Access is provided by way of the existing driveways. No inconvenience or safety hazard either on site or on adjacent streets will be created. The parking area is ADA compliant.
- 1.15 An adequate arrangement of parking and loading spaces in relation to the already approved uses of the Shopping Center for general retail/fast food use, has been provided and noted in Major Project Site Plan Special Permit Nos. 2005-7, January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021, and March 28, 2022. No changes to the parking area are proposed by this Amendment and therefore, an adequate arrangement of parking and loading spaces in relation to the already approved uses of the building located at 120 Highland Avenue and the new use allowed by this Amendment at 120 Highland Avenue will continue to be provided. (A recent and independent amendment, dated March 28, 2022, permitted a new dumpster enclosure in the parking lot and the consequent reduction of one parking space.)
- 1.16 Adequate methods for disposal of refuse and waste will be provided. The site is already fully developed with adequate infrastructure in place. All waste and refuse will be disposed of in conformance with all applicable regulations. The entire site is connected to the municipal sanitary sewerage system. The site is presently fully developed, and the footprint of the building will not change. Only minor façade changes are contemplated, which are necessary to combine the prior tenant spaces into one new space (the subject proposed Carbon Health facility).
- 1.17 Neither the Shopping Center nor the proposed Carbon Heath facility will have any adverse impact upon the Town's resources, including water supply and distribution system, sewer collection and treatment, fire protection, and streets. The municipal system has adequate capacity to service the Shopping Center, including the proposed Carbon Heath Facility.
- 1.18 Under Section 7.4 of the By-Law, a Major Project Site Plan Special Permit may be granted in the New England Business Center Zoning District and the Highland-Commercial 128 Zoning District, if the Board finds that the proposed Project complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and criteria, the Board finds that the Project Plan, as conditioned and limited herein, for Site Plan Review, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable by-law requirements, to have minimal adverse impact and to have proposed a development which is harmonious with the surrounding area.
- 1.19 Under Section 5.1.1.5 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 of the By-Law (Off-Street Parking Requirements) may be granted provided the Board finds that owing to special circumstances, the particular use, structure or lot does not warrant the application of certain design requirements, but that a reduction in the number of spaces and certain design requirements is warranted. On the basis of the above findings and conclusions, the Board finds that there are special circumstances for a reduction in the number of required parking spaces and design requirements, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment

to the Town's and neighborhood's inherent use.

DECISION

THEREFORE, at its meeting of April 14, 2022, the Board voted 5-0 to GRANT: (1) an amendment to Major Project Site Plan Review Special Permit No. 2005-07 issued by the Needham Planning Board under Section 7.4 of the Needham Zoning By-Law and Further Site Plan Review under Section 4.2 of Major Project Site Plan Special Permit No. 2005-07 dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021 and March 28, 2022; and (2) a Special Permit Amendment under Section 5.1.1.5 of the By-Law, to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 of the By-Law (required parking and parking plan and design requirements, respectively); subject to the following plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the site, the Petitioner shall cause the Project Plan to be revised to show the following additional, corrected, or modified information. The Building Commissioner shall not issue any building permit, nor shall he permit any of such construction activity on the site to begin on the site until and unless he finds that the Project Plan is revised to include the following additional corrected or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Commissioner. Where approvals are required from persons other than the Building Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any building permit or permit for any construction on the site. The Petitioner shall submit nine copies of the final Project Plans as approved for construction by the Building Commissioner to the Board prior to the issuance of a Building Permit.

- 2.0 The Project Plan shall be modified to include the requirements and recommendations of the Board as set forth below. The modified plans shall be submitted to the Board for approval and endorsement. All requirements and recommendations of the Board, set forth below, shall be met by the Petitioner.

- a. No Project Plan Modifications are required.

CONDITIONS

The conditions contained in Major Project Site Plan Special Permit No. 2005-07, dated January 24, 2006, amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011, March 6, 2012, July 10, 2012, August 13, 2012, July 20, 2021 and March 28, 2022, are ratified and confirmed except as modified herein. The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.25 hereof.

- 3.1 The Carbon Health facility shall have a licensed physician, physician's assistant or nurse practitioner on site at all times.
- 3.2 The use of the Premises shall be limited to the Carbon Health facility where primary medical care and walk-in medical care is provided.
- 3.3 People who present to the Carbon Health facility with life threatening situations shall be stabilized and then immediately transferred to the Hospital Emergency Department or referred to the 911 EMS

- system. The Carbon Health facility may also provide a full range of testing services including Department of Transportation exams and pre-placement drug tests.
- 3.4 Authorization for the Carbon Health facility to operate under this decision is solely as a “Professional Office”, allowed as a matter of right in the Highland Commercial - 128 District, under Section 3.2.5.1 (f), of the By-law and not as a Group Practice, Medical Clinic or a Medical Services Building, nor as an alternative medicine practice, physical therapy or wellness treatment facility as those terms are further defined in the By-Law.
 - 3.5 The Carbon Health facility shall include an X-ray department for basic radiology covering fracture care, chest exams, etc., a laboratory department for routine blood test and other diagnostic procedures and a procedure room for lacerations and fractures, all as shown on the Project Plan.
 - 3.6 The Carbon Health facility shall be limited to no more than seven (7) exam rooms (between “urgent care” and “primary care”) and one (1) room for x-rays and phlebotomy, as shown on the Project Plan.
 - 3.7 The waiting room as shown on the Project Plan shall be limited to four (4) seats and shall include all non-office or staff chairs excepting those located in the exam rooms. The patients shall not be permitted to wait in staff areas (break room). If a complaint is registered with the Building Commissioner, the Building Commissioner shall request that Carbon Health submit a certified census of the number of patients in the Premises at a designated time; and Carbon Health shall return the results of the census to the Building Commissioner within a reasonable time, not to exceed thirty (30) days.
 - 3.8 Staffing at the Carbon Health facility may include physicians, physician’s assistants, nurses, nurse practitioners and other medical staff comprised of Medical Assistants, Lab Technologists, x-ray Technologists and other medical support personnel. All Carbon Health facility physicians shall be Board Certified to practice medicine.
 - 3.9 The Carbon Health facility shall not have more than eight (8) medical and non-medical staff on the Premises at any one time. No more than two (2) of any combination of physicians, physician’s assistant, or nurse practitioner shall be present on the Premises at any one time for the purpose of administering medical treatment.
 - 3.10 The Carbon Health facility may be open and operated seven (7) days a week from 8:00 a.m. to 8:00 p.m. No care sessions may be conducted outside the above-stated operating hours. A maximum of 40 patients may be seen at the Carbon Health facility per day.
 - 3.11 The proposed Floor Plans and use therein shall contain the dimensions and shall be located on that portion of the locus exactly as shown on the Floor Plan and in accordance with applicable dimension requirements of the By-Law. Any changes, revisions or modifications to the Floor Plan shall require approval by the Board. A maximum of 40 patients may be seen at the Urgent Care Center per day.
 - 3.12 The site is not licensed to receive ambulances. Ambulances will, on rare occasion, pick up at the Carbon Health facility, in the case of an emergency.
 - 3.13 No signs shall be permitted on the inside of windows or transparent doors except as allowed under Needham’s Sign By-law.
 - 3.14 After operating hours, any illuminated sign located on the parking lot side of the building controlled by Carbon Health shall be turned off.

- 3.15 The Carbon Health shall share the same dumpsters and dumpster enclosure as other users on the site already use. All biological waste shall stay in the Carbon Health facility until it is picked up by the appropriate licensed entity. Such biological waste pickups shall only be during normal office hours.
- 3.16 The future occupancy of the former Frank Webb's Bath Center building located at 100 Highland Avenue shall require further Planning Board approval including submittal of a further parking waiver request and an updated parking study demonstrating an adequate parking supply at the Shopping Center for the then proposed use
- 3.17 All construction staging shall be on-site. No construction parking will be on public streets. Construction parking shall be all on site or a combination of on-site and off-site parking at locations in which the Petitioner can make suitable arrangements. Construction staging plans shall be included in the final construction documents to be filed with the application for a Building Permit and shall be subject to the review and approval of the Building Commissioner.
- 3.18 The following interim safeguards shall be implemented during construction:
- a. The hours of construction shall be 7:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery or removal of construction material or debris shall only occur between the hours of 7:45 a.m. and 8:15 p.m. Monday through Saturday. Notwithstanding the above, interior construction work at night or on Sundays is permissible provided that the Petitioner does not make, cause, or permit to be made any noise which is audible at the perimeter of the site.
 - b. The Petitioner's contractor shall designate a person who shall be responsible for the construction process. That person shall be identified to the Police Department, the Department of Public Works, the Building Inspector, and the abutters and shall be contacted if problems arise during the construction process. The designee shall also be responsible for assuring that truck traffic and the delivery of construction material does not interfere with or endanger traffic flow on Highland Avenue.
- 3.19 No building permit shall be issued in pursuant to this Amendment until:
- a) The final plans shall be in conformity with those previously approved by the Board and a statement certifying such approval shall have been filed by this Board with the Building Inspector.
 - b) The Petitioner shall have recorded with the Norfolk Registry of Deeds a certified copy of this Decision granting this Special Permit and Site Plan Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.
- 3.20 The portion of the building or structure, or portion thereof, subject to this Special Permit and Site Plan Approval shall not be occupied until:
- a. An as-built plan and Final Affidavit, supplied by the architect of record certifying that the Carbon Health facility was built according to the approved documents, has been submitted to the Board.
 - b. That there shall be filed, with the Building Inspector, a statement by the Board approving the as-built plan and Final Affidavit for the Carbon Heath facility, in accordance with this Decision and the approved Project Plan.
- 3.21 In addition to the provisions of this Amendment approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commission, or other agencies, including, but not

limited to the Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.

- 3.22 The portion of the building or structure authorized for construction by this Amendment shall not be occupied or used, and no activity except the construction activity authorized by this Amendment shall be conducted within said area until a Certificate of Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Commissioner.
- 3.23 The Petitioner, by accepting this Amendment, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, and that this information is true and valid to the best of the Petitioner's knowledge.
- 3.24 This Special Permit to operate a Carbon Health facility at 100 Highland Avenue is issued to Carbon Health Medical Group of Florida, PA, 300 California St (Suite 700), San Francisco CA, prospective lessee, only and may not be transferred, set over, or assigned by Carbon Health Medical Group of Florida, PA, except to another party for the same use as allowed hereby only after prior written notice to the Board of such intended transfer and together with a written acknowledgment by the proposed transferee confirming that: (a) its intended use of the Premises as described in such notice is included in the uses permitted by this Amendment; (b) it and its employees possess all the required licenses to engage in such use; and (c) it will be subject to and shall abide by all of the terms of this Amendment.
- 3.25 Violation of any of the conditions of this Amendment shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this Amendment, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this Amendment including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Amendment if the Town prevails in such enforcement action.

LIMITATIONS

The authority granted to the Petitioner by this Amendment is limited as follows:

- 4.1 This Amendment applies only to the improvements and the use which are the subject of this petition. All construction to be conducted within the 3,275 gross square feet of floor area of leased space shall be conducted in accordance with the terms of this Amendment and shall be limited to the improvements on the Project Plan.
- 4.2 There shall be no further development of this site without further site plan approvals as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend, or supplement, this Amendment and to take other action necessary to determine and ensure compliance with the Amendment.

- 4.3 This Amendment applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental board, agencies, or bodies having jurisdiction shall not be assumed or implied by this Amendment.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Amendment.
- 4.5 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the By-Law.
- 4.6 This Amendment to Major Project Site Plan Special Permit shall lapse on April 12, 2024, if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least 30 days prior to April 12, 2024. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided unless it finds that the use of the property in question or the construction of the site has not begun, except for good cause.
- 4.7 This Amendment shall be recorded in the Norfolk District Registry of Deeds. This Amendment to Special Permit shall not take effect until a copy of this Amendment bearing the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied is recorded with Norfolk District Registry of deeds and until the Petitioner has delivered a certified copy of the recorded document to the Board.

The provisions of this Amendment shall be binding upon every owner or owners of the lots and the executors, administrator, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown on the Plan, as modified by this Amendment in full force and effect for the benefit of and enforceable by the Town of Needham.

Any person aggrieved by this Amendment may appeal pursuant to the General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this Decision with the Needham Town Clerk.

Witness our hands this 25th day of April, 2022.

NEEDHAM PLANNING BOARD

Paul S. Alpert, Chairman

Adam Block

Natasha Espada

Martin Jacobs

Jeanne S. McKnight

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss _____ 2022

On this _____ day of _____, 2022, before me, the undersigned notary public, personally appeared _____, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged the foregoing to be the free act and deed of said Board before me.

Notary Public name:

My Commission Expires: _____

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by Carbon Health Medical Group of Florida, PA, 300 California St (Suite 700), San Francisco CA and Needham Gateway LLC, 66 Cranberry Lane, Needham, MA , for Property located at 100 and 120 Highland Avenue, has passed,

____ and there have been no appeals filed in the Office of the Town Clerk or
____ there has been an appeal filed.

Date

Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____
Town Clerk
Building Inspector
Conservation Commission
Parties in Interest

Board of Selectmen
Engineering
Fire Department
Police Department

Board of Health
Director, PWD
Design Review Board
Rick Mann, Attorney