

**CONWAY MEDICAL CENTER  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
CONWAY HOSPITAL, INC.  
AND  
HORRY COUNTY, SOUTH CAROLINA**

\_\_\_\_\_, 2021

**Prepared by:  
Franklin G. Daniels, J.D., LL.M.  
Nexsen Pruet, LLC  
1101 Johnson Avenue, Suite 300  
Myrtle Beach, SC 29577**

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
CONWAY HOSPITAL, INC.  
AND  
HORRY COUNTY, SOUTH CAROLINA**

**TABLE OF CONTENTS**

RECITALS ..... 1

1. Definitions..... 2

2. Parties..... 5

3. Relationship of the Parties. .... 5

4. Legal Description of the Real Property. .... 5

5. Intent of the Parties. .... 5

6. Consistency with the County’s Comprehensive Plan and Land Development  
Regulations. .... 6

7. Legislative Act..... 6

8. Applicable Land Use Regulations. .... 6

9. Building Codes and Laws Other Than Land Use Regulations. .... 7

10. Local Development Permits and Other Permits Needed. .... 8

11. Zoning and Land Development Regulations. .... 9

12. Facilities and Services..... 11

13. Transportation. .... 13

14. Schedule for Project Development. .... 13

15. Term of the Agreement..... 14

16. Amending or Canceling the Agreement. .... 14

17. Modifying or Suspending the Agreement..... 15

18. Periodic Review..... 15

19. Severability. .... 16

20. Merger..... 16

21. Conflicts of Law. .... 16

22. Remedies..... 16

23. Recording..... 17

24. Third Parties..... 17

25. County Approval of Agreement..... 17

26. Successors and Assigns..... 17

27. General Terms and Conditions. .... 20

## **EXHIBITS**

- Exhibit A: Legal Description
- Exhibit B: Recorded Plat & Compiled Map
- Exhibit C: Development Phasing Schedule
- Exhibit D: Development Agreement Ordinance
- Exhibit E: Horry County Zoning Ordinance
- Exhibit F: Area Map
- Exhibit G: Form of Partial Assignment and Assumption of Rights and Obligations under Development Agreement

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
CONWAY HOSPITAL, INC.  
AND  
HORRY COUNTY, SOUTH CAROLINA**

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto and incorporated by reference herein, this "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between Conway Hospital, Inc., a South Carolina non-profit corporation ("Developer"), and Horry County, a political subdivision of the State of South Carolina (the "County").

**RECITALS**

WHEREAS, the Code of Laws of South Carolina, 1976, as amended (the "S.C. Code"), Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables political subdivisions of the State of South Carolina to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act; and

WHEREAS, on \_\_\_\_\_, 2021, Horry County Council ("County Council") adopted Ordinance No. 17-21, thereby amending the zoning map for Horry County, South Carolina, to rezone PIN 39600000001 from General Residential to Inpatient Medical Services (ME1), in compliance with the Horry County Comprehensive Plan and the good of the public welfare; and

WHEREAS, pursuant to the Act, the County conducted public hearings regarding its consideration of this Agreement on \_\_\_\_\_, 2021, and \_\_\_\_\_, 2021, after publishing and announcing notice, in accordance with the Act; and

WHEREAS, The County Council adopted Ordinance Number \_\_\_\_\_ on \_\_\_\_\_, 2021, (a) determining that this Agreement is consistent with the County’s Comprehensive Plan, the Act, and the Current Regulations of the County, and (b) approving this Agreement.

NOW THEREFORE, in consideration of the premises of this Agreement, the mutual benefits to the parties, and good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Definitions. In this Agreement, unless the word or phrase is non-capitalized:

(a) “Agreement” means this Development Agreement, including the recitals and exhibits attached hereto.

(b) “Comprehensive Plan” means the Horry County Comprehensive Plan, adopted on December 10, 2019, pursuant to S.C. Code § 6-29-510, et seq., as amended through the Effective Date.

(c) “Current Regulations” mean the Comprehensive Plan; the Horry County Zoning Ordinance, adopted on \_\_\_\_\_, as amended through the Effective Date, attached hereto as Exhibit E and incorporated herein by reference; the Official Zoning Map; and all other applicable County ordinances, all as amended through the Effective Date hereof.

(d) “Developer” means Conway Hospital, Inc., a South Carolina non-profit corporation existing under the laws of South Carolina together with all subsidiaries thereof and other entities, which have an equitable interest, on the date of execution hereof in any of the Real Property described in Section 5 by way of that certain Purchase and Sale Agreement by and between Developer and Landbank Fund VII, LLC, a South Carolina limited liability company, dated August 18, 2020, as amended, and includes their successors in interest, successors in title (as to any portion of the Real Property) and/or assigns by virtue of assignment or other instrument

compliant with this Agreement. When used herein with reference to a specific property within the Property or other portion of the Property, Developer shall mean and refer to that specific person or entity that has legal title to such portion of the Property. This definition of Developer shall not be understood to impose obligations, burdens, or liabilities on any of the particular persons or entities who qualify as the Developer for portions of the Property not legally tied to them. There are no other legal or equitable owners of the Real Property.

(e) “Development” means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels, and is intended by the parties to include all uses of, activities upon or changes to the Real Property as are authorized by this Agreement.

“Development,” as designated in a land or development permit, includes the planning for, and all other activity customarily associated with it, unless otherwise specified. When appropriate to the context, “Development” refers to the planning for, or the act of developing, or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(f) “Development Agreement Ordinance” means Horry County Ordinance No. \_\_\_\_\_, adopted on the \_\_\_ day of \_\_\_\_\_, 2021, approving this Agreement and attached hereto as Exhibit D and incorporated herein by reference.

(g) “Development Parcel” means any tract of land on which Development may occur, including platted lots and unplatted parcels, but excluding street rights-of-way.

(h) “Development Permit” includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy and any other official action of the County having the effect of permitting the Development or use of property.

(i) “Development Phasing Schedule” means the schedule of proposed Development of the Real Property as shown on Exhibit C, attached hereto and incorporated by reference herein.

(j) “Development Rights” means all rights to the use and Development of the Real Property derived from this Agreement and Development Plan.

(k) “Facilities” means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water.

(l) “Land Development Regulations” means ordinances and regulations enacted by the County for the regulation of any aspect of Development and includes, but is not limited to, County zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the Development or use of property.

(m) “Law” means all statutes, ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules, custom and usage (formal and informal) adopted by the State and/or the County affecting the Development of property, and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications.

(n) “Material Breach” means a failure to meet the material obligations set forth in Sections 11(a), 12(e), 12(f) and 13(a) hereof.

(o) “Official Zoning Map” means the County’s Official Zoning Map.

(p) “Project” is the Development that will occur within and upon the Real Property described in Exhibit A and Exhibit B.

(q) “Real Property” is the real property referred to in Section 4 and includes any improvements or structures customarily regarded as part of real property.

(r) “Term” shall have the meaning set forth in Section 15 of this Agreement.

2. Parties. Parties to this Agreement are the Developer and the County.

3. Relationship of the Parties. This Agreement creates a contractual relationship between the parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Developer constitutes “state action” for any purposes.

4. Legal Description of the Real Property. The Real Property which is the subject of this Agreement is described as follows:

(a) A legal description of the Real Property is set forth in Exhibit A.

(b) A copy of the recorded plat and a compiled map of the Real Property is set forth in Exhibit B.

The Real Property currently consists of approximately one hundred forty-two and sixty-seven-hundredths (142.67) acres of highland and approximately two hundred ten and fifty-eight hundredths (210.58) acres of wetlands, with a total gross acreage of approximately three hundred fifty-four and fifty hundredths (353.25) acres.

5. Intent of the Parties. The County and the Developer agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their

successors in interest and, in the case of the Developer, its successors in title and/or assigns. The County and the Developer are entering into this Agreement in order to secure benefits and burdens referenced in the Code of Laws of South Carolina, §§ 6-31-10, et seq. To that end, the parties agree to work cooperatively and in good faith to accomplish the purposes of this Agreement during the Term of this Agreement.

6. Consistency with the County's Comprehensive Plan and Land Development Regulations.

This Agreement is consistent with the County's Comprehensive Plan and Current Regulations. Whenever expressed or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Current Regulations, the standards set forth in the Current Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered *in pari material* to give effect to both the Current Regulations and this Agreement; provided, however, that in the event of a conflict, and subject to the provisions of S.C. Code § 6-31-80, the standards set forth in the Current Regulations shall govern.

7. Legislative Act. Any change in the standards established by this Agreement or to Laws pertaining to the same shall require the approval of County Council, subject to compliance with applicable statutory procedures and consistent with Section 8(a). This Agreement constitutes a legislative act of County Council. County Council adopted this Agreement only after following procedures required by S.C. Code §§ 6-31-10, et seq. This Agreement shall not be construed to create a debt of the County as referenced in S.C. Code § 6-31-145.

8. Applicable Land Use Regulations.

(a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by S.C. Code Section 6-31-10, et seq., the Laws applicable to

Development of the Real Property, subject to this Agreement, are those in force at the time of execution of this Agreement, defined as the Current Regulations.

(b) Subsequent Regulations. Subject to the provisions of S.C. Code § 6-31-140, the laws applicable to Development of the Real Property are those in force as of the Effective Date of this Agreement. The County may enact subsequent regulations only as provided in S.C. Code § 6-31-80 or with the consent of Developer.

(c) Vested Rights. The benefits that inure to the Developer under this Agreement shall, commencing on the Effective Date of this Agreement and during the Term of this Agreement, constitute vested Development Rights for the Development of the Real Property, and the Developer shall have the vested right to undertake Development of the Real Property, or any portion thereof, in accordance with the Development Rights and consistent with the terms of this Agreement and the Current Regulations, during the Term of this Agreement. The parties acknowledge and agree that as of the Effective Date of this Agreement, the Developer has a legal interest in the Real Property and is vested with all Development Rights arising out of this Agreement.

Section 8(b) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may be available or may become available pursuant to common law and otherwise in the absence of a development agreement.

9. Building Codes and Laws Other Than Land Use Regulations. The Developer, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing, gas and energy codes subsequently adopted by the County or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or

contravene the requirements of any building, housing, electrical, mechanical, plumbing, gas and energy codes subsequently adopted by the County or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the County to exercise governmental powers and pass laws not applicable to Development of the Real Property including, but not limited to, the power of eminent domain and the power to levy and collect taxes; provided, however, that Laws applicable to the Development of the Real Property shall be subject to Section 9(b).

10. Local Development Permits and Other Permits Needed. The parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project:

- (a) Horry County Permits.
  - (i) Clearing and grading;
  - (ii) Stormwater;
  - (iii) Water and Sewer;
  - (iv) Planning and Zoning plan approval;
  - (v) Road encroachment permits;
  - (vi) Building permits; and
  - (vii) Sign permits.
  
- (b) State of South Carolina Permits and Approvals.
  - (i) SCDHEC – water and sewer;
  - (ii) OCRM – stormwater; and
  - (iii) OCRM – erosion and sediment control.
  
- (c) Federal Permit.
  - (i) EPA-NPDES – stormwater permit.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with the Law governing permit requirements, conditions, terms, or restrictions.

11. Zoning and Land Development Regulations.

(a) Densities, building intensities and heights. The Current Regulations establish the zoning and land development regulations for the Real Property, as well as the Development uses permitted on the Real Property, population densities, and building intensities and heights. Specifically, the Developer is authorized to develop a medical campus as permitted under the provisions under the Inpatient Medical Services District (ME1) zoning classification. Notwithstanding anything in the Current Regulations, Developer agrees that it will not construct a helipad as permitted under the Current Regulations and County agrees that helicopters may be utilized during declared local, state, and national emergencies, natural disasters or such similar circumstances. Unless the medical campus is moved to “Area 1” as discussed below, Developer agrees to limit the height of any buildings in “Area 1”, to eighty (80’) feet. Additionally, Developer agrees to not place any buildings on or within the twenty (20) foot easement granted to the South Carolina Public Service Authority along the southern boundary of “Area 1” almost adjacent to the property line with The Farm at Carolina Forest HOA but parking and any other allowable land uses on the Property shall or may exist on or across such easement. Developer also agrees to work with County in good faith regarding any facilities or buildings it may wish to lease with respect to its operations relating to such medical campus and within the ME1 zoning classification

Developer will use its reasonable commercial efforts to establish the medical campus in the area on the highland property designated as “Area 2” on the attached Exhibit F, which is incorporated herein by reference. In the event that that the Developer is unable to develop the medical campus on “Area 2” for reasons outside of its control, Developer has the right to develop the medical campus on “Area 1” subject only to County passing a Resolution approving such change. Should the medical campus be established on “Area 2”, Developer may utilize the eastern

portion of “Area 1” for any use permitted in the ME1 zoning district, with the exception of a hospital and with a height limit of eighty (80’) feet as previously stated above.

In the event that the Developer is unable to acquire the required Certificate of Need, defined below, or any appeal regarding the Certificate of Need does not end favorably for Developer thus resulting in it not having the necessary and required Certificate of Need for the proposed Project, the County agrees to terminate this Agreement upon written notification of same along with a properly submitted rezoning request from Developer, County also agrees to work in good faith and make reasonable efforts to rezone Areas 1 and 2 to “Multi-residential District” (MRD) or such other zoning classification(s) as reasonably requested by Developer.

That portion of the Real Property designated as “Area 3” and “Area 4” on the attached Exhibit F shall be developed in accordance with the provisions of Sections 12(e) and 12(f).

Any future amendment by the County Council of the Comprehensive Plan shall not constitute or require an amendment of this Agreement. Any and all Development authorized by this Agreement shall be deemed consistent with the Comprehensive Plan.

(b) Restrictive Covenants. The Developer may establish restrictive covenants on Areas 1 and 2 of the Real Property, which may, provide at the sole discretion of the Developer, for the dedication of portions or all of the Real Property to an association of owners or any association or sub-association of owners for maintenance and management obligations or other functions, including the payment of fees, subject to the provisions of this Agreement. The recording of a restrictive covenant, conservation easement or similar instrument against all or any portion of the Real Property shall not require or constitute an amendment of the Development Plan or this Agreement, unless it constitutes a material change under the Current Regulations, is less restrictive than this Agreement or the Current Regulations, or triggers a requirement for an amendment.

12. Facilities and Services. Although the nature of this long-term project prevents the Developer from providing exact completion dates, the general phases of Development are set forth in Section 14 and described in Exhibit C. The Developer certifies that the services and Facilities will be in place (or if not fully in place, the cost of construction fully bonded or letter of credit posted pursuant to the Current Regulations) at the times provided herein. The Developer shall comply with applicable Laws and all provisions of this Agreement, and obtain prior approval of construction plans by the County and other applicable governmental entities before installing the Facilities. Notwithstanding any provision herein to the contrary, the Developer hereby assures the County that adequate Facilities shall be available concurrent with the phases of Development.

(a) Rights-of-Way/Easement. The Developer or a third party shall at its expense develop and provide roads, streets, and other transportation and drainage related facilities and infrastructure within the Project and pursuant to and at such time required by the development plans for the Project and/or the Current Regulations. Such facilities may be transferred by the Developer, in fee or by easement, subject to proper dedication and acceptance by the County, or a property owners association. Rights-of-way and easements may also remain privately owned and maintained.

(b) Potable Water. Subject to approval by the South Carolina Department of Health and Environment Control (“DHEC”), the service and Facilities for water shall be provided by the Grand Strand Water and Sewer Authority (the “Authority”). The Developer, in its sole discretion and as permitted by DHEC, may utilize private water systems.

(c) Sanitary Sewer Facilities and Service. Subject to approval by the DHEC, the service and facilities for sanitary sewer for the Project shall be provided by the Authority. Sewer

impact fees shall be paid in the normal course of the development process. The Developer, in its sole discretion and as permitted by DHEC, may utilize private sewer systems.

(d) Stormwater. Developer will comply with all stormwater and flood control ordinances, including but not limited to the Stormwater Management and Sediment Control Ordinance for Horry County, South Carolina; the Horry County Stormwater Management Design Manual, and the Horry County Flood Damage and Control Ordinance. The site design for the project shall minimize the generation of stormwater and maximize pervious areas, and stormwater management facilities shall be designed to reduce the 25-year, 24-hour developed peak discharge rates by twenty percent (20%) from the existing peak discharge rates. In addition, the 100-year, 24-hour post-development peak discharge rates must not be greater than the pre-development peak discharge rates. Developer shall meet or exceed all County Stormwater Management and Sediment Control Ordinance requirements in effect as of the time of permitting.

(e) Conveyance of Property for County Facilities. Immediately prior to the issuance of the first building permit for the Project, Developer shall convey to County that portion of the Property designated as “Area 3” on the attached Exhibit F, for use as a lay down area, office and other ancillary uses.

(f) Conveyance of Property to County. Immediately prior to the issuance of the first building permit for the Project, Developer shall convey to the County that portion of the Property designated as “Area 4” on the attached Exhibit F. County shall limit the use of “Area 4” to parking, recreational uses and accessory uses to its mitigation bank. Developer shall have the right to name any public facility or facilities after its corporate name.

13. Transportation and Drop Gate Relocation.

(a) Primary access and main entry to the Project shall be from International Drive. The County agrees to support and work in good faith with Developer to relocate the eastern drop gate on International Drive to a location approximately 1,250 feet west of the current location and to amend its easement agreement with SCDNR and any other applicable parties prescribing the location of the gate. Developer shall pay the County for all costs associated with the relocation of the drop gate. Once the drop gate location has been agreed to be relocated as discussed above, Developer shall, at its sole cost and expense, construct an access point and frontage road connecting the Project and specifically, “Area 1” and “Area 2” to International Drive.

(b) Road Infrastructure. The Developer shall pay for and construct all road, street, thoroughfare, and other transportation and drainage related infrastructure and improvements within the Real Property and providing permanent unrestricted access to the Project. Any roads whose standards are dictated by federal, state or county standards shall be constructed according to the respective standards and pursuant to the applicable federal, state or county processes.

(c) Acceptance of Facilities. The road improvements located with the Real Property described above may be made public upon proper dedication to and acceptance by the County.

14. Schedule for Project Development.

(a) Commencement Date. The Project will be deemed to commence Development upon the receipt of the required Certificate of Need from the South Carolina Department of Health and Environmental Control (the “Certificate of Need”) for the Project.

(b) Development Phasing Schedule. The parties acknowledge that the Developer intends to develop the Real Property in phases. In accordance with the Act, the Developer shall develop the Real Property in a manner consistent with the Development Phasing Schedule as is set

forth in Exhibit C hereto. As the timing of the Development is affected by many factors, including but not limited to the receipt of the Certificate of Need, it is difficult to accurately project the timing and scope of the Project. As such and using the most reliable information as of the Effective Date, the Developer and County agree upon the Development Phasing Schedule, which shall be updated annually during the periodic review required by the Act. A delay in the Development of the Project does not constitute a Material Breach unless County Council makes a finding that the Developer is not substantially and diligently pursuing Development or the Certificate of Need.

(c) Completion Date. The Developer projects that within five (5) years of the required Certificate of Need or 2036, whichever is earlier, the Project should be substantially completed (i.e., essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses).

15. Term of the Agreement. The term of this Agreement shall be five (5) years, commencing on the day after Developer has been issued a Certificate of Need and all appeals or legal challenges to such Certificate of Need are no longer active or legally effective; provided, however, that this Agreement shall automatically extend for two (2) five-year terms pursuant to a properly approved resolution passed by County provided that Developer is making commercially reasonable efforts to develop the Project, including the diligent pursuit of the required Certificate of Need, and there is no Material Breach of this Agreement by Developer.

16. Amending or Canceling the Agreement. Subject to the provisions of S.C. Code Section 6-31-80 and Section 18 below, this Agreement may be amended or canceled in whole or in part only by mutual consent of the parties in writing or by their successors in interest. Any amendment to this Agreement shall comply with the provisions of S.C. Code Section 6-31-10, et seq. A major

modification of this Agreement shall occur only after public notice and a public hearing by the County pursuant to S.C. Code Section 6-31-60(B).

17. Modifying or Suspending the Agreement. Pursuant to S.C. Code Ann. § 6-31-130, in the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

18. Periodic Review. Pursuant to S.C. Code Ann. § 6-31-90, the County shall review the Project and this Agreement at least once every twelve (12) months, at which time the Developer shall demonstrate good-faith compliance with the terms of this Agreement.

If, as a result of its periodic review or at any other time, the County finds and determines that the Developer has committed a Material Breach of the terms or conditions of this Agreement, the County shall serve notice in writing upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable time of not less than thirty (30) days in which to cure or initiate a process or plan to cure the Material Breach. If the Developer has initiated a process or plan to cure the breach within thirty (30) days of notice of the breach, is using good faith efforts to cure the breach, and requires additional time to cure, the Developer shall request an extension in writing, and County shall not unreasonably condition or deny the request.

If the Developer fails to cure any Material Breach, then the County Council may unilaterally terminate or modify this entire Agreement. If a Developer fails to cure any non-Material Breach as to any portion of the Real Property within a commercially reasonable time, then the County Council may unilaterally terminate or modify this Agreement with respect to only that portion of the Real Property for which the non-Material Breach occurred.

19. Severability. Subject to the provisions of S.C. Code Section 6-31-150, if any word, phrase, sentence, section or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

20. Merger. This Agreement, coupled with its Exhibits which are incorporated herein by reference, shall state the final and complete expression of the parties' intentions. In return for the respective rights, benefits and burdens undertaken by the parties, the Developer shall be, and is hereby, relieved of obligations imposed by future land development laws, ordinances and regulations, except those which may be specifically provided for herein.

The parties hereto agree to cooperate with each other and work in good faith to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under this Agreement.

21. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina, and the Fifteenth Judicial Circuit shall be the proper venue for any disputes.

22. Remedies. In addition to the remedies found in Sections 16 and 18 above, each party recognizes that the other party would suffer irreparable harm from an uncured Material Breach of this Agreement and that no adequate remedy at law exists to enforce this Agreement. Consequently, the parties agree that any non-breaching party who seeks enforcement of this Agreement is entitled to all remedies available at law and equity, including, but not limited to, specific performance; however, the parties agree that neither party is entitled to punitive damages. The County will look solely to the Developer as to any claims the County may have against the Developer under this Agreement; hereby waives any right to assert any claims against the

shareholders, employees or agents of the Developer; and further agrees that no shareholder, employee, or agent of the Developer has any personal liability under this Agreement.

23. Recording. Within fourteen (14) days after execution of this Agreement by both parties, the Developer shall record this Agreement in the office of the Horry County Register of Deeds. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the parties to this Agreement.

24. Third Parties. Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities that are not parties or successors and assigns to this Agreement.

25. County Approval of Agreement. The County Council has approved the Project under the process set forth in S.C. Code § 6-31-50 of the Act on the terms and conditions set forth in this Agreement.

26. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Developer in the ownership or Development of any portion of the Real Property or the Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be solely responsible for performance of obligations hereunder as to the portion or portions of the Real Property so transferred. Assignees of development tracts shall be required to execute a written acknowledgment accepting and agreeing to perform the obligations in this Agreement, said document to be in recordable form and provided to the County at the time of the recording of any deed transferring a development tract. Following delivery of such documents, the previous Developer shall be released of any further liability or obligation with respect to the obligations.

(b) Transfer of Project. The Developer shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following exceptions:

(i) Transfer of Facility and Service Obligations. Simultaneous with the Developer conveying any portion of the Real Property to a third party, the Developer shall be required to obtain a written agreement in substantially the same form as Exhibit G, attached hereto and incorporated herein by reference, expressly assuming the obligations with regard to the parcel conveyed and the potential Development of same. The Developer shall notify the County within thirty (30) days after the conveyance of the property, provide the County the applicable documents assigning the development obligations to the transferee and record the same in the office of the Horry County Register of Deeds.

(ii) Assignment of Development Rights. Any and all conveyances of any portion of the Real Property subject to the intensities/square footage set forth in Section 11A herein to third party developers shall, by written agreement in substantially the same form as Exhibit G, designate the permitted uses and the intensities/densities being transferred. The Developer shall notify the County within thirty (30) days of the conveyance of the property, provide the County the applicable documents assigning the development rights to the transferee and record the same in the office of the Horry County Register of Deeds.

(iii) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a foreclosure; or (iii) to any third party purchaser of such mortgage

lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Real Property as set forth above. Additionally, Developer agrees to not place a mortgage on "Area 3" or "Area 4" without County written approval. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser.

(c) Release of Developer. In the event of conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, Conway Hospital Inc. shall be released from all obligations as to the portion of Real Property so transferred, and the transferee shall be substituted as the Developer under this Agreement as to the portion of the Real Property so transferred.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Developer to the County sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the County will provide a certificate (the "Certificate") in recordable form stating that solely with respect to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement of which the County has actual knowledge, except as otherwise described in the Certificate. The County will respond to such a request within thirty (30) days of the receipt of the request, and may employ such professional consultants, municipal, county and state agencies and staff as may be necessary to assure the truth and completeness of the statements in the Certificate. If the County is unable to confirm the statements in said Certificate are truthful and complete, County will notify the Developer in writing and will not be required to sign said Certificate. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The Certificate issued by the County will be binding on the County in accordance with the

facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof.

If the County does not respond to such request within thirty (30) days of the time of its receipt, the portion of the Real Property described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Developer, including a copy of the request and the notice of receipt and it shall be binding on the County as of its date. Such notice shall have the same effect as a Certificate issued by the County under this Section.

27. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit A and shown on Exhibit B attached hereto. The agreements contained herein shall be deemed to run with the Real Property. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

(b) Pre-Existing Allowed Uses. All uses existing as of the Effective Date of this Agreement, including but not limited to commercial forestry and timbering, agricultural, sand or soil mining, wildlife management, hunt clubs, and wetland mitigation bank operations, including all practices, land uses, and improvements customarily associated with such operations, shall continue to be allowed uses. Any subdivision of a portion of the Real Property used or planned to be used for any of the uses listed in the preceding sentence may be an exempt land development as provided by State law. Nothing herein shall be construed to abrogate any rights of the Developer that may have accrued or vested as of the Effective Date or at any time during the Term of this Agreement pursuant to the Act, the South Carolina Local Government Comprehensive Planning

Enabling Act of 1994, codified in Chapter 29 of Title 6 of South Carolina Code of Laws, Section 48-23-205 of South Carolina Code of Laws, or pursuant to common law.

(c) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare, including but not limited to ensuring the adequacy of Facilities and compatibility between Developed and Undeveloped Lands.

(d) Mutual Releases. At the time of, and subject to (i) the expiration of any applicable appeal period with respect to the approval of this Agreement without any appeal having been filed or (ii) the final determination of any court upholding this Agreement; whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Developer, on behalf of itself and Developer's members, officers, directors, employees, agents, attorneys, and consultants, hereby releases the County and the County's council members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County's council members, officials, employees, agents, attorneys and consultants, hereby releases Developer and Developer's members, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the Real Property or the application, processing or approval of the Project; provided, however, that each party shall not be released from its continuing obligation to comply with the law, including the Current Regulations.

(e) State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In the event state or federal laws or regulations prevent or preclude compliance with one or more

provisions of the development agreement, the provisions of this Agreement shall be modified or suspended as may be necessary to comply with state or federal laws or regulations. The parties further agree that if any provision of this Agreement is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

(f) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the County Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the County has the power to amend, modify or alter this Agreement or waive any of its conditions so as to bind the County by making any promise or representation contained herein. Any amendments are subject to the provisions of Section 16 herein.

(g) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

(h) Attorneys Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, each Party shall be responsible for its attorneys' fees and all costs and expenses.

(i) Annexation. The parties acknowledge and agree that should any part of the Property be annexed into another jurisdiction or incorporated as a new jurisdiction, the provisions of S.C. Code of Laws Ann. § 6-31-110 shall apply.

(j) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the County:

Horry County Administrator  
P.O. Box 1236  
Conway, SC 29528  
Attn: Steve Gosnell  
Telephone: 843-915-5020  
E-mail: [gosnells@HorryCounty.org](mailto:gosnells@HorryCounty.org)

With copies to:

Horry County Attorney  
P.O. Box 1236  
Conway, SC 29528  
Attn: Arrigo Carotti  
Telephone: 843-915-5270  
E-mail: [carottia@HorryCounty.org](mailto:carottia@HorryCounty.org)

To the Developer:

Conway Hospital, Inc.  
Attn: Bret Barr  
Chief Executive Officer  
300 Singleton Ridge Road  
Conway, SC 29256  
Telephone: 843-347-8114  
Email: [bbarr@cmc-sc.com](mailto:bbarr@cmc-sc.com)

With copy to:

Franklin G. Daniels, J.D., LL.M.  
Nexsen Pruet, LLC  
1101 Johnson Avenue, Suite 300  
Myrtle Beach, SC 29577  
Telephone: 843-213-5403  
Email: [fdaniels@nexsenpruet.com](mailto:fdaniels@nexsenpruet.com)

(k) Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

(l) Mutual Support and No Objection. County agrees to reasonably support and not object to Developer's application for its Certificate of Need. Developer agrees to reasonably support and not object to County's application to create a mitigation bank on its property (PIN 386-00-00-0001) adjacent to the Project and all practices, land uses, and improvements customarily associated with such operations, including but not limited to regular controlled burns.

[SEPARATE SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

Witness:

HORRY COUNTY, SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Clerk of Council

STATE OF SOUTH CAROLINA )

)

ACKNOWLEDGMENT

COUNTY OF HORRY )

I, \_\_\_\_\_, Notary of the Public of the State of South Carolina, do hereby certify that the Horry County, South Carolina, by \_\_\_\_\_, its \_\_\_\_\_ and \_\_\_\_\_, its Clerk of Council, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2021, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

Witness:

CONWAY HOSPITAL, INC.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Bret Barr

Its: Chief Executive Officer

STATE OF SOUTH CAROLINA )

)

ACKNOWLEDGMENT

COUNTY OF HORRY )

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Bret Barr, Chief Executive Officer of Conway Hospital, Inc., personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2021, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

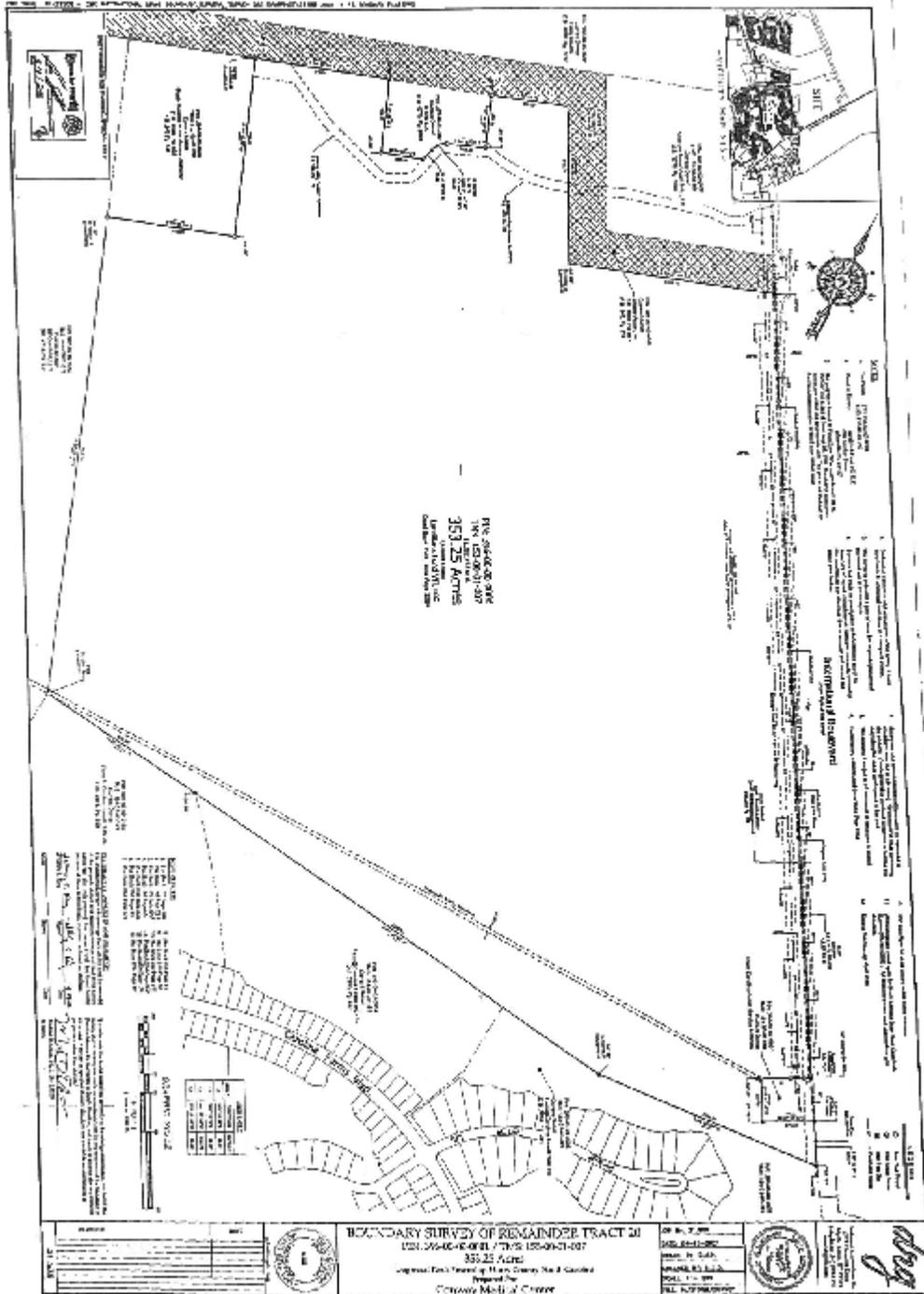
## **EXHIBIT A**

### **LEGAL DESCRIPTION**

ALL AND SINGULAR, all that certain piece, parcel or tract of land situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, consisting of 353.25 acres, 15,387,787 sq. ft., as further shown and described on that certain plat entitled "BOUNDARY SURVEY OF REMAINDER TRACT 20, PIN: 396-00-00-0001 / TMS: 153-00-01-007, 353.25 Acres, Dogwood Neck Township, Horry County, South Carolina, Prepared for CONWAY MEDICAL CENTER", said plat being prepared by Development Resource Group, LLC, on April 15, 2021, and recorded on May 7, 2021, in Plat Book 298, at page 268, records of Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

EXHIBIT B

RECORDED PLAT & COMPILED MAP





## EXHIBIT C

### DEVELOPMENT PHASING SCHEDULE

#### Projected Carolina Forest Hospital Campus Development Schedule

Activity	Expected Duration
Certificate of Need Approval	N/A
Area 2 Site Development	Approximately 6 months*
Area 1 Access Road Development	Approximately 8 months*
Hospital Completion	Approximately 30 months*
Area 1 Site Development for Future Building Construction	Approximately 5 years*
Area 1 First Building Construction Completion	Approximately 7 years*
Area 1 Final Build-Out	Approximately 20 years*

**\* All durations are from Certificate of Need final approval and all appeals have ended.**

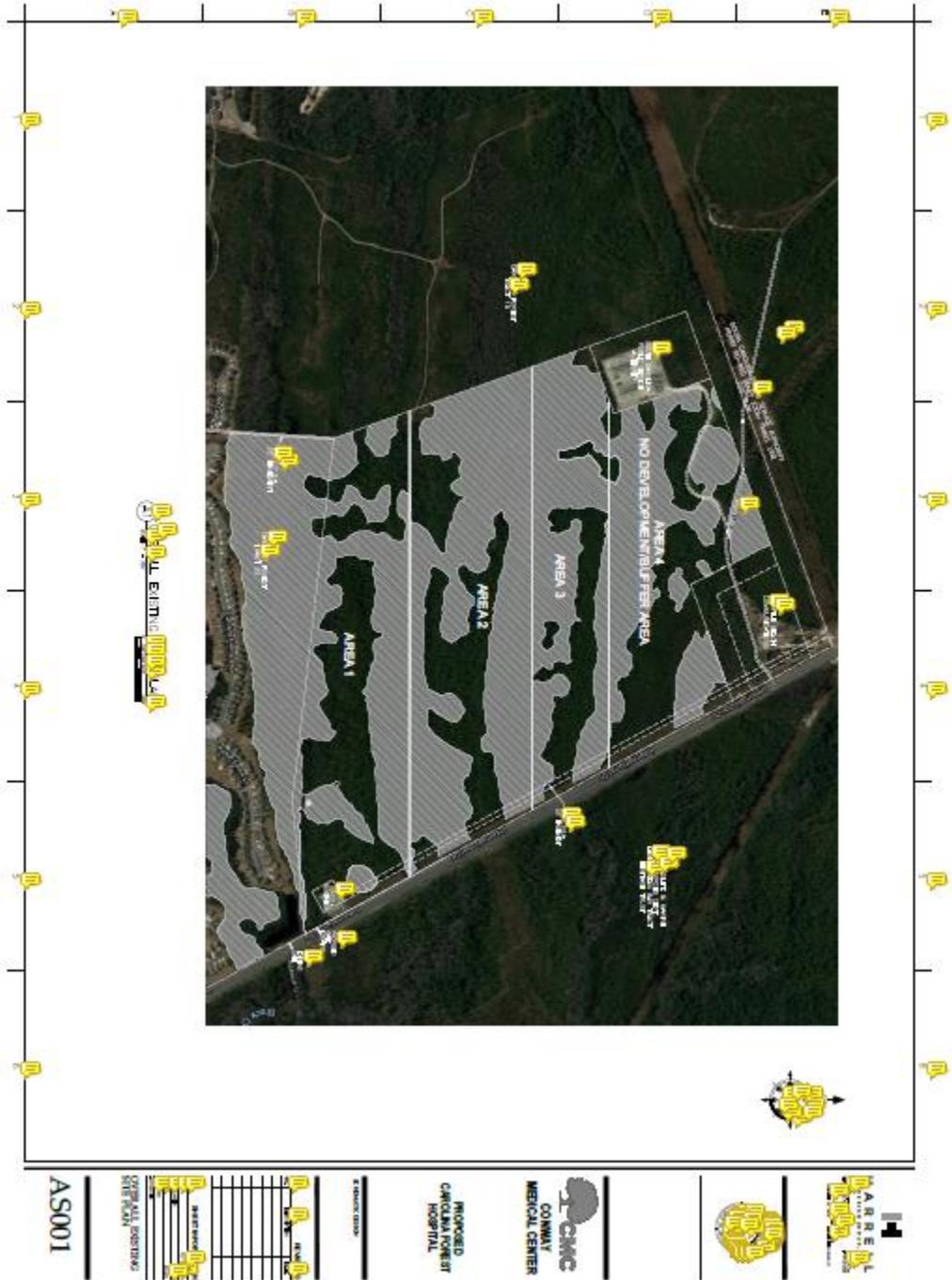
**EXHIBIT D**  
**DEVELOPMENT AGREEMENT ORDINANCE**

**[TO BE INSERTED]**

**EXHIBIT E**  
**ZONING ORDINANCE**

**[TO BE INSERTED]**

# EXHIBIT F AREA MAP





in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

2. Assumed Obligations. In connection with this Partial Assignment and Assumption, Assignee agrees to assume, and release Assignor from any liability for, the following obligations (the “Assumed Obligations”) arising under the Development Agreement:

(i) \_\_\_\_\_

(ii) \_\_\_\_\_

(iii) \_\_\_\_\_

3. Default and Enforcement of Provisions. As provided in Section 23 of the Development Agreement and as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and this Partial Assignment and Assumption incident to the Property, the non-defaulting party may pursue the remedies of injunction and specific performance, but not to any other legal or equitable remedies, including, but not limited to, damages.

4. Indemnification. Assignee agrees to indemnify, defend and hold harmless Assignor, its agents, principals, successors and assigns, and their affiliates from and against all losses, costs, damages, and reasonable attorney fees arising out of any breach by Assignee of the Development Agreement from and after the Closing Date, including without limitation the Assumed Obligations set forth in Section 2 hereof.

5. Notices. Any notice, demand, request, consent, approval or communication among any of the parties hereto shall be in writing and shall be delivered or addressed as provided under section 28(h) of the Development Agreement and shall also be addressed as follows:

As to Assignee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

e-mail: \_\_\_\_\_

With a required copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

e-mail: \_\_\_\_\_

To Assignor:

Conway Hospital, Inc.  
300 Singleton Ridge Road  
Conway, SC 29256  
Attn: Bret Barr  
Telephone: 843-347-8114  
Email: [bbarr@cmc-sc.com](mailto:bbarr@cmc-sc.com)

With a required copy to:

Franklin Daniels, Esq.  
Nexsen Pruet, LLC  
1101 Johnson Avenue, Suite 300  
Myrtle Beach, SC 29577  
Telephone: 843-213-5403  
Email: [FDaniels@nexsenpruet.com](mailto:FDaniels@nexsenpruet.com)

6. Binding Effect. This Partial Assignment and Assumption shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

7. Governing Law. The within Partial Assignment and Assumption shall be interpreted and construed and conform to the laws of the State of South Carolina.

8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties have caused this Partial Assignment and Assumption to be duly executed as of the date set forth above.

Signed, sealed and delivered  
in the presence of:

**ASSIGNEE:**

\_\_\_\_\_,  
\_\_\_\_\_

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Its: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_ )

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission expires:

Signed, sealed and delivered  
in the presence of:

**ASSIGNOR:**

Witness:

Conway Hospital, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA )

)

ACKNOWLEDGMENT

COUNTY OF BERKELEY )

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that \_\_\_\_\_, \_\_\_\_\_ of Conway Hospital Inc., personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and acknowledged the execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires:

**Exhibit A  
Property**

**Exhibit B**  
**Transferred Property**

