

**SAN MARCO PUD
EXHIBIT "D"**

Document Prepared By
and Return To:
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made on _____, 2021, by Marco Island Hospital, Inc., a not-for-profit Florida corporation ("MIH").

Recitals

WHEREAS, MIH is the owner of certain properties in the City of Marco Island, County of Collier, State of Florida as listed and described as Tract A, Tract B and Tract C on Exhibit "A", which is attached hereto and by this referenced incorporated herein (the "Properties"); and

WHEREAS, MIH desires to formalize various covenants, conditions, and restrictions to ensure the protection of the value and desirability of the Properties; and

WHEREAS, MIH covenants and warrants unto the City of Marco Island (the "City") that MIH as of the date of execution hereof, is an active Florida corporation incorporated and in good standing with the office of the State of Florida, Secretary of State;

NOW, THEREFORE, MIH hereby declares that the Properties shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Properties, and which shall run with the Properties and be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner.

1. Recitals. Each and all of the recitals ("WHEREAS" clauses) are hereby incorporated herein and declared to be true and correct.

2. Definitions. The following words when used in this Declaration (unless the context shall prohibit) have the following meanings:

- a. **"City"** means and refers to the City of Marco Island, a Florida Municipal Corporation.

- b. **“Declaration”** means and refers to this instrument, as amended from time to time.
- c. **“Development”** is defined as set forth in Sections 163.3164 or 380.04, Florida Statutes.
- d. **“MIH”** means Marco Island Hospital, Inc., a Florida Not-for-Profit Corporation, and its successors and assigns.
- e. **“Owner”** means and refers to MIH, and the record owner, whether one or more persons or entities from time to time as the case may be of fee simple title to any Tract that is a part of the Properties, or to a portion of any Tract which is a part of the Properties.
- f. **“Properties”** means and refers to certain real property in the City of Marco Island, Florida, known as Tract A, Tract B, and Tract C as described more completely in Exhibit “A,” and as shown on the SM-PUD (as hereinafter defined).
- g. **“PUD”** means Planned Unit Development
- h. **“SM-PUD”** means and refers to the San Marco Planned Unit Development, as approved by City Ordinance No. ____, as amended from time to time.
- i. **“Tract”** means and refers to Tract A, Tract B, or Tract C, each of which are described in Exhibit “A”.

3. Unified Control

- a. Development of the Properties shall proceed strictly in accordance with the SM-PUD, the regulations and development standards as set forth in this document, the City’s Land Development Code, the City’s Comprehensive Plan, and all applicable state, county, and local laws, regulations, and rules as may be amended from time to time.
- b. Each Owner shall be responsible for meeting and complying with all applicable Development requirements on its respective portion of the Properties.

4. Ownership of the Properties

MIH hereby intends to subject the Properties to the conditions and restrictions of this Declaration understanding that the City intends to permit Development of the Properties in accordance with the terms of the SM-PUD Ordinance, and this Declaration.

5. Access Easement and Public Easement

- a. To the extent necessary, and consistent with the requirements of the SM-PUD Ordinance, appropriate easements will be, granted over the Tracts. MIH declares that such easements are private and that maintenance and upkeep shall be a private responsibility without recourse to the City or the public.

b. There shall be an easement in favor of the public along the waterfront, as part of Tract B, for a pedestrian walkway, as generally depicted in Exhibit "B", which is attached hereto and by this referenced incorporated herein (the "Public Waterway Easement"). There shall also be a vehicular/pedestrian access easement across Tract A for access to the Park Parcel, as provided in the SM-PUD Ordinance and the Park Agreement. The Public Waterway Easement shall provide for use by the general public, and for ingress to and egress from said walkway over a portion of Tract B by the general public. The Public Waterway Easement walkway shall be located adjacent to the western property line of Tract B. When the earlier of the following events occurs: (a) within thirty (30) days after a Certificate of Occupancy is issued for the principal structure on Tract B, or (b) thirty-six (36) months after the effective date of the Park Agreement (as hereinafter defined), the aforementioned walkway, together with accessory landscaping and any signage, over the waterfront easement shall be installed, constructed, and completed, and the easement shall be conveyed to the City. The walkway and amenities will be constructed and continuously and promptly maintained by the Owner of Tract B in accordance with the terms of the Park Agreement, consistent with the Code of Ordinances of Marco Island and the SM-PUD. The walkway and amenities will at all times be free of graffiti, peeling or faded paint, or dead landscaping. All maintenance shall be at the cost and expense of the Owner of Tract B in accordance with the terms of the Park Agreement. The Owner(s) of Tract A and C shall have no maintenance or other obligation with respect to the Public Waterway Easement.

6. PUD Infrastructure/Transportation and Easement

a. Each Owner shall build or provide for the construction of roadway connections upon its respective Tract, as well as water, sewer, and reuse waterlines to City specifications, and upon acceptance by the City, the lines shall be dedicated to the City together with all easements and licenses necessary for the City to maintain and operate the utility systems located on the Properties.

b. Stormwater drainage shall be constructed for the development within the Properties, and each Owner shall handle its own stormwater drainage on its Tract. The stormwater retention facilities shall be maintained at a level consistent with the standards and permit conditions of the South Florida Water Management District.

c. Construction of all PUD Infrastructure, including all transportation and stormwater improvements shall be done in a manner consistent with the SM-PUD Ordinance, and any site development plans approved for the Tracts included within the PUD.

7. Residential and Commercial Density Allocation

a. The residential density for all of the Properties shall be allocated entirely to Tract B in accordance with the SM-PUD.

b. The commercial intensity for the Properties shall be allocated entirely to Tract A in accordance with the SM-PUD.

8. Landscaping, Site Improvements, and Usable Open Space Standards

a. Landscaping, fencing, and landscape buffers shall be as provided pursuant to the SM-

PUD Ordinance. Any landscaping, fencing, or landscape buffer details or requirements not specified in the SM-PUD shall comply with the City's Land Development Code, as may be amended from time to time.

b. All sidewalks, landscaping, and other site improvements shall be maintained by the respective Owners.

c. There are no jointly owned structures or architectural improvements.

9. Parking Standards

a. Parking shall be as provided in the SM-PUD Ordinance. Any parking details or requirements not specified in the SM-PUD shall comply with the City's Land Development Code, as may be amended from time to time.

b. There shall be no shared parking. No Tract, or portion thereof, shall provide to, or share parking with, a Tract owned by a different Owner. Each Owner and Tract, or portion thereof, shall meet the City's parking requirements for their respective uses.

10. Duration. This Declaration and the provisions hereof shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the City or any Owner of the Properties subject to this Declaration, for a term of thirty (30) years from the date this Declaration is recorded. Pursuant to the requirements hereof, all Owners before the termination of this Declaration are required to join in the filing a notice to preserve and protect the effectiveness of this Declaration as provided by Florida Statutes. The City is appointed as an attorney-in-fact with the ability and right, but not the obligation, to do this.

11. Notice. Any notice to be sent to an Owner, or the City under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first class U.S. certified mail, return receipt requested, to the last known address of the said Owner as most currently shown on the ad valorem tax rolls of Collier County, or in the case of the City to the attention of the City Manager at the City.

12. Enforcement. Enforcement of this Declaration may be by an Owner or the City, and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any person or persons for non-enforcement.

13. Amendment. The terms and provisions of this Declaration may be amended at any time and from time to time upon the execution and recordation in the Public Records of Collier County, Florida, of an instrument executed by all Owners of the Properties. In the event that an amendment affects only one Tract, said amendment may be at any time made from time to time upon the execution and recordation in the Public Records of Collier County, Florida, of an instrument executed the Owner of the affected Tract.

14. Covenants Running With The Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) hereof, it is the intention of MIH as the current sole Owner of the Properties that this Declaration shall constitute covenants running with the land and with title to the Properties, or as an equitable servitude upon the land, as the case may be.

15. Insurance and Indemnification of the City by the Owner of Tract B.

Prior to the conveyance of the Public Waterway Easement over a portion of Tract B to the City, as provided for in this Declaration, and at all times after the conveyance to the City of said easement, the Owner of Tract B will at its sole cost and expense procure and at all times maintain commercial general liability insurance as required by the Park Agreement, which is an exhibit to the SM-PUD Ordinance (the "Park Agreement"), and which will be more particularly described in the instrument conveying the Public Waterway Easement to the City.

16. Miscellaneous. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

The parties have executed this Declaration as of the date first written above.

Witnesses:

Print Name: _____

Print Name: _____

MIH:

Marco Island Hospital, Inc., a Florida Not-for-Profit Corporation

By: _____

Name: _____

Its: _____

Dated: _____

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 20__, by _____, as _____ of Marco Island Hospital, Inc., a Florida corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

(Signature of Notary Public –State of _____)

Print, type or Stamp Commissioned Name of Notary Public)

Notary Seal:

ADD JOINDER BY CITY AND SIGNATURE BLOCK.

Exhibit A

Tract A

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE S.89°36'17"E. ON THE SOUTH LINE OF SAID TRACT "A" FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE N.00°23'43"E., DEPARTING SAID SOUTH LINE FOR 215.86 FEET;

THENCE N.02°49'45"E., FOR 173.05 FEET;

THENCE N.00°37'09"E., FOR 247.95 FEET TO AN INTERSECTION WITH THE NORTH LINE OF SAID TRACT "A";

THENCE S.89°36'17"E., ON SAID NORTH LINE FOR 344.63 FEET TO THE NORTHEAST CORNER OF SAID TRACT "A" AND A POINT ON A CURVE;

THENCE THE FOLLOWING BEARINGS AND DISTANCES ON THE EAST AND SOUTH SIDE OF SAID TRACT "A":

SOUTHERLY 21.95 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 950.00 FEET THROUGH A CENTRAL ANGLE OF 01°19'26" AND BEING SUBTENDED BY A CHORD WHICH BEARS S.00°15'07"E. FOR 21.95 FEET;

S.00°23'43"W., FOR 564.75 FEET TO A POINT OF CURVATURE;

SOUTHWESTERLY 78.54 FEET ALONG THE ARC OF A TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 90°00'00" AND BEING SUBTENDED BY A CHORD WHICH BEARS S.45°23'43"W. FOR 70.71 FEET;

N.89°36'17"W., FOR 303.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 221,761 SQUARE FEET OR 5.09 ACRES, MORE OR LESS.

Tract B

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT A, FOR 396.70 FEET;
THENCE S.89°36'17"E., FOR 339.19 FEET;
THENCE S.00°37'09"W., FOR 7.95 FEET;
THENCE S.02°49'45"W., FOR 173.05 FEET;
THENCE S.00°23'43"W., FOR 215.86 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "A";
THENCE N.89°36'17"W., ON SAID SOUTH LINE, FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 132,324 SQUARE FEET OR 3.04 ACRES, MORE OR LESS

Tract C

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A", THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 396.70 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;
THENCE CONTINUE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 240.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A";
THENCE S.89°36'17"E., ON THE NORTH LINE OF SAID TRACT "A" FOR 340.13 FEET;
THENCE S.00°37'09"W., FOR 240.00 FEET;
THENCE N.89°36'17"W., FOR 339.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 81,518 SQUARE FEET OR 1.87 ACRES, MORE OR LESS.

Exhibit B

–See attached Public Access Easement along the waterfront, adjacent to Tract B, for a pedestrian walkway (To be provided at SDP)

Exhibit C

[insert approved SM-PUD Master Plan]