City of Marathon Planning Commission
Monday August 18, 2025
9805 Overseas Hwy
City Hall Council Chambers
5:30 PM

1. **Call To Order**
2. **Pledge Of Allegiance**
3. **Roll Call**
4. **Chair/Vice Chair Nominations**
5. **Approval Of Minutes**
6. **Quasi-Judicial Statement**
7. **Items For Public Hearing**
8. **Adjournment**

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6. Please be advised that some items on the agenda may are quasi-judicial in nature. If you wish to give testimony on any item, please inform the Boards clerk by filling out an available sign-up form. An opportunity to speak will be made available after the applicant and staff have made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, all persons giving testimony may be subject to cross examination. If you refuse either to be cross-examined or to be sworn your testimony will not be considered. The public will not be allowed to cross-examine witnesses, but they can ask the Commission to ask questions on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization.

7. **Items For Public Hearing**

Item 1. An Ordinance Of The City Of Marathon, Florida, Amending The City's Land Development Regulations, Chapter 104, "Specific Use Regulations," Article 1, "General Provisions," Section 104.64, "Waterfront Walkways And Docks:"; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Commerce After Final Adoption By The City Council; And Providing For An Effective Date.

Item 2. Consideration Of A Request For A Development Agreement, For QOF Inc., Pursuant To Chapter 102, Articles 8 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Development Agreement" For The Development Of Four (4) Single Family Affordable Residences; Located At And Around 701 91st Street; Which Is Legally Described As Lots 13 And 14 Sea Crest Heights Subdivision, Marathon, Monroe County, Florida; Having Real Estate Numbers 00350630-000000 & 00350640-000000, Nearest Mile Marker 52.

City of Marathon Planning Commission
Monday April 21, 2025
9805 Overseas Hwy
City Hall Council Chambers

MINUTES

Royse called the meeting of the Planning Commission to order on Monday April 21, 2025, at 5:30 pm.

In attendance: Planning Director Brian Shea, Attorney Steve Williams, Planner Erin Dafoe, Admin Assistant Lorie Mullins, Fire Chief James Muro, and members of the public.

The Pledge of Allegiance was recited.

The roll was called. Hiram Machado-present; Mary Ann Royse-present; Mike Cinque-present; Andrew George-absent; Matt Sexton-absent.

With only 3 commissioners in attendance, Cinque moved to table the restructuring until the next meeting. Machado seconded. Motion was approved.

Royse called for an approval of the Minutes from the last meeting. Cinque moved to approve. Royse seconded. The motion was approved 3-0.

The quasi-judicial statement was read into the record.

Item 1 was read into the record. An Ordinance Of The City Of Marathon, Florida; Amending Chapter 15 Fire Prevention Article 1 In General, Amending Section 15-6 Entitled Chickees And Tikis, Amending Section 15-7 Entitled Penalty, Amending Sections 15-8 Through 15-26 Entitled Reserved; Of The City Of Marathon Code Of Ordinances; Amending Chapter 110 Definitions Article 3 Entitled Defined Terms; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The Department Of Commerce After Final Adoption By The City Council; And Providing For An Effective Date.

Shea presented the item. The difference is chickees are made with natural materials by the Seminole Miccosukee Indians and tikis are made with non-native materials and can include electric, pavers, etc.

Cinque stated that there are already too many regulations. The code already allows the building official to order a tear down for a building without a permit.

Steve Williams added that hypothetically if a tiki was built without a permit the applicant does not sign or acknowledge the rules and regulations.

Muro explained the fire hazards and gap of understanding with the public between chickee/tiki and the need for a permit. Cinque responded that no matter how many regulations are in place it still does not stop tragedy.

Chickee and tikis both require permits. This item is an exact cut and paste from the State Statute which would be an exemption for the chickee from a building permit, but not from a planning permit due to setbacks.

There was discussion on definitions: improved structure vs. occupied dwelling.

Royse moved to approve the item. Machado seconded. The roll was called. The motion passed 2-1, Cinque dissenting.

Item 2 was read into the record. An Ordinance Of The City Of Marathon, Florida, Amending Chapter 104, Article 1, Section 104.51.1 "Single-Family Dwellings (7 Bedrooms Or More)" As Defined Therein; Amending Chapter 110 Article 3 Entitled Defined Terms; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The Department Of Commerce After Final Adoption By The City Council; And Providing For An Effective Date.

Shea presented the item.
Plans come in for 6 bedrooms and 1 office and that requires a deed restriction to not change to a 7th bedroom.
Flow calculations are still required and coordinated with the Dept. of Health.
Items to be considered in the amendment:
*bedroom count + one or average up or down, or to the nearest whole.
*community character

Royse would pick the bedroom count and scale it, i.e. community average plus one.

Cinque stated it will be hard to enforce. He suggested going by the square footage of the house and/or the bathroom count, which would make enforcement easier during permitting.

Machado agreed with Cinque to make it simple and enforceable.

Brian discussed the EDUs and calculations required. If the development continues to go over, a 3 year average will be generated and the assessment would be adjusted according to that calculation.

Cinque suggested to make a list of the suggestions tonight for council to review.

Royse moved to let council know that Planning Commission is in agreement, city council needs to consider using the smaller allowance in the count and obtain a large enough pool to be able to compare community character. Cinque amended the motion to include using the square footage of the house or using the number of bathrooms, then seconded the motion. The roll was called. The motion passed 3-0.

Item 3 was read into the record. Consideration Of A Request By Marathon LLC For An Amendment To A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Conditional Use Permits", Authorizing The Development Of A Climate Controlled Storage Facility And Twenty-Four (24) Single Family Residential Units Consisting Of Five (5) Parcels Located At 765 107th Street Ocean; Which Is Legally Described As Township 66 Range 33 Key Vaccas Part Government Lot 1 And Part Government Lot 2

Part Parcel 3 And Adjacent Bay Bottom South Of And Adjacent Part Government Lot 1 And Lots 1, 2, 3, & 4 Of Seaglass Flats A Plat Of Lands Located In A Part Of Government Lot 1 Section 6 Township 66S Range 33E On Key Vaca City Of Marathon As Recorded In Plat Book And Page 7-97, Monroe County, Florida, Having Real Estate Numbers 00104260-000000, 00104251-000100, 00104251-000200, 00104251-000300 And 00104251-000400. Nearest Mile Marker 53.

Dafoe presented the item with the use of visual aids. 16 units have already been approved for the development.

Royse asked about 107th Street, which Brian said is an easement. Shea also added that the Seaglass plat will be abandoned once approved by council.

Jim Saunders presented the item on behalf of the applicant, Marathon LLC.

Cinque was concerned with interior roads not being asphalt. Saunders agreed to do pervious pavers.

Royse clarified it will be a Condo plat, which will be done after the project is complete, then they will sell the units.

Machado recommended revising the parking plan as there are many vehicle parking spaces but only 12 boat trailer parking spaces.

There have been discussions with FDOT on the ingress/egress at 107th.

Royse opened the meeting to public speakers:

*Roger Johnson was sworn in and spoke against the item. His concerns included dust, noise, lighting, a revolving door of tenants with no security on site, water consumption, and the strain on community services.

Royse closed the meeting to public speakers.

There was a discussion regarding community character, the number of units in this development, no sidewalk on the plans, density, and the fact that a plat/replat must be approved, as it is not a right.

Royse made a motion to approve with the recommendation to add pervious paver roads. Machado seconded. The roll was called. The motion passed 2-1, Cinque dissenting.

Motion and second to adjourn at 6:50pm.

ATTEST:

_____

MaryAnn Royse-Planning Commissioner Chair

ATTEST:

_____

Lorie Mullins-Admin Assistant
Planning Department

Audio-Video is available upon request.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.
ADA Assistance: Anyone needing special assistance at the Planning Commission Meeting due to disability should contact the City of Marathon at (305-) 743-0033 at least two days prior thereto.

(Please note that one or more Marathon City Council members may participate in the meeting.)

PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: August 18th, 2025

To: Planning Commission

From: Brian Shea, Planning Director

Agenda Item: An Ordinance Of The City Of Marathon, Florida, Amending The City's Land Development Regulations, Chapter 104, "Specific Use Regulations," Article 1, "General Provisions," Section 104.64, "Waterfront Walkways And Docks"; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Commerce After Final Adoption By The City Council; And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL.

APPLICANT: City of Marathon

REQUEST:

To amend the Land Development Regulations to allow for covered fish cleaning tables.

Purpose of Proposed Amendment:

To modify the Land Development Regulations that require that fish cleaning tables to be uncovered and less than 4' tall.

Particularly, the City is requesting to change, Chapter 104, Article 1, Section 104.6451.1 "Waterfront Walkways And Docks" to add additional language to allow for covered fish cleaning tables.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;
2. The consistency of the proposed amendment with the Comprehensive Plan; and
3. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:

1. Approved as proposed;
2. Approved with amendments proposed by the PC; or
3. Denied

Section 102.27. - Hearing(s) by Council.

A. The decision to process a text amendment is within the sole discretion of the Council.

B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

Council requested staff to review the code requirements to address the ability to have covered fish cleaning tables.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Policy 4-1.4.10 entitled Accessory Structure Shoreline Setbacks allows for fish cleaning tables to be within the shoreline setbacks. Policy 4-1.11.4 entitled Regulate Docks references that design criteria be incorporated into the Land Development regulations.

C. Whether regulations change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan. It provides specific criteria for dock uses

within the special use section of the code.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL.

Sponsored By: Garrett
Planning Commission Public Hearing Date: August 18, 2025
City Council Public Hearing Date: September 9, 2025
October 14, 2025
Enactment Date: October 14, 2025

CITY OF MARATHON, FLORIDA
ORDINANCE 2025-XXX

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, CHAPTER 104, "SPECIFIC USE REGULATIONS," ARTICLE 1, "GENERAL PROVISIONS," SECTION 104.64, "WATERFRONT WALKWAYS AND DOCKS:"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT COMMERCE AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Commerce ("FloridaCommerce"), pursuant to Chapters 163 and 380, Florida Statutes; and

WHEREAS, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Land Development Regulations corresponding to a similar amendment to the City's Comprehensive Plan in order to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

WHEREAS, this Ordinance had a hearing before the Planning Commission on August 18, 2025 and a first hearing before the City Council on September 9, 2025 during which both entities, took staff testimony, all public comment, and having duly deliberated, determined that the Ordinance was in the best interest of the public, supporting the public health, safety, and welfare. The Ordinance was noticed for a second hearing on October 14, 2025, at which time, the Ordinance was passed unanimously, and

WHEREAS, the Ordinance was heard on October 14, 2025, passing on that date,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT

~~Strikethrough~~ = deletion **<u>bold underline</u>** = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Amend the Land Development Regulations, Chapter 104, "Specific Use Regulations," Article 1, "General Provisions," Section 104.64 Entitle "Waterfront Walkways and Docks" as attached in Exhibit A.

DRAFT

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. The provisions of this Ordinance constitute an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Commerce for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall become effective upon approval by the Florida Department of Commerce pursuant to Chapters 163, 166, and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14 DAY OF OCTOBER 2025.

THE CITY OF MARATHON, FLORIDA

_____
Lynn Landry, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

_____
Steven T. Williams, City Attorney

[1]Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

[Sec 104.64] Waterfront Walkways And Docks

It is the intent of the Council to protect and enhance the City's bodies of water so that the public may continue to enjoy the traditional recreational uses of those waters such as swimming, boating, and fishing. These uses may be allowed pursuant to Table 103.15.1, subject to the following conditions:

A. *Water Access Structures*. Water access structures such as walkways and observation platforms, not intended for use as a docking facility, are permitted as an accessory use as limited or conditional uses in all zoning districts, subject to the limitations of Article 4, Chapter 106 and the following standards. If the water access structure is part of a larger project required to undergo conditional use approval then the water access structure shall be included in the conditional use review.

    1. Walkways and access ways landward of mean high water, located in habitat types other than those listed in Subsection 2. below, and that serve nonresidential uses or residential uses of more than three (3) dwelling units shall be no greater than eight (8) feet in width, Such walkways that serve all other uses shall not exceed five (5) feet in width.

    2. Except as provided herein, all structures extending over mangrove, wetlands, or submerged lands shall be pile supported and not exceed four (4) feet in width, but may be up to eight (8) feet wide for structures whose purpose serves an educational and/or research function and which is intended to provide for ADA compliance access.

    3. All structures shall be approximately perpendicular to the shoreline. Through the Special Approval process the City may permit a nonperpendicular walkway.

    4. Such structures shall not be used for docking purposes and shall bear signage indicating "No Mooring of Motorized Vessels".

    5. All structures shall be designed to terminate in water no deeper than six (6) inches at MLW or begin the terminal platform no further than ten (10) feet beyond the waterward extent of mangroves.

    6. All structures shall be designed so that the top of the decking, including the terminal platform, must be elevated at least five (5) feet above MHW, except for a ladder or steps that may be added for swimming access only in the absence of seagrasses or hardbottom communities.

7. Where a terminal platform is proposed, such platform shall not exceed 160 square feet, inclusive of any steps or ladder. The terminal platform may include a non-enclosed gazebo that does not exceed 100 square feet in area and the highest portion of the roof shall be no more than 12 feet above the decking or terminal platform level. The terminal platform shall be designed and built in such a manner as to deter or restrict the structure for boating use. Such requirements may include, but are not limited to, double railing, no lower landings, ladders, superelevated decks and signage, etc.

B. *Docking Facilities*. The intent of this section is to address the design and construction of docking facilities extending from land located at or landward of the mean low water (MLW) line. Docking facilities not meeting the definition of a marina are permitted as of right as an accessory use in all zoning districts. Docking facilities meeting the definition of a marina may be allowed as specified in Table 103.14.1, subject to the following criteria:

1. *Generally*.

a. The City, based on the location of natural resources, encourages, and may require, the use of a single mooring facility at apartments, condominiums, zero lot line attached units, and cooperative apartments.

b. Docking facilities are allowed in all zoning districts. Type of use (principal or accessory), approval process, use restrictions and other standards shall be consistent with the zoning and/or lawful existing use of the applicable adjacent upland riparian property that is the subject of the application for development approval.

c. No more than one (1) dock structure can be constructed per single-family residential property under common ownership, provided it complies with the other sections of this article and the provisions of Laws of Florida ch. 311.82(1955).

d. Docks for the joint use of adjacent waterfront property owners may be centered on the extended common property line without being in variance to the setback requirements.

e. Boat lifts shall not be permitted where the installation of such lifts can reasonably be expected to have an adverse

impact on the natural resources in the immediate vicinity of the installation.

f. No building shall be permitted to be constructed over any wetland or submerged waters. Covered boat lifts without side walls may be permitted.

g. Multi-family and commercial docks abutting adjacent waterfront single-family residential property must be set back a minimum of 20 feet from the adjacent waterfront residential property line and riparian line. This requirement may be waived by the Director provided that signed statements of no objection from the affected property owners have been submitted.

h. The permitted structure over water shall not substantially interfere with the riparian rights of other property owners nor substantially obstruct a navigable channel or the navigation rights of other property owners.

i. Except as provided below, no building, equipment, facility or any other type of structure shall be erected, placed, located, or maintained on a dock that extends above the walking surface of the dock:

(1) Pilings, subject to a maximum height limit of eight and one-half (8 1/2) feet above the highest walking surface of the dock when a piling is attached to a boat dock, in all other cases the maximum height limit for a piling shall be eleven and one-half (11 1/2) feet above the mean high water line.

(2) Benches, guard rails~~, fish cleaning tables~~, ladders and equipment lockers which do not exceed a height of four (4) feet above the walking surface of the dock upon which such structures are placed or erected.

(3) Boat lifts adjacent to a boat dock or seawall. No part of the boat lift structure, except boat guides, shall exceed a height of five (5) feet, measured from the highest walking surface of the dock or seawall cap.

(4) Pile-mounted davits which do not exceed a height of eight and one-half (8 1/2) feet, measured from the highest walking surface of the dock.

(5) Covered boat lifts over submerged bottoms containing areas of protected living marine resources are prohibited. The maximum height of a covered boat lift is twenty (20) feet above mean high water, as measured from mean high water to the highest point of the covered boat lift.

(6) Fish cleaning tables, whether covered or uncovered, which do not exceed a height of eight (8) feet above the walking surface of the dock upon which such structures are placed or erected.

2. *Protect Living Marine Resources*. Docking facilities shall not terminate over submerged lands which are vegetated with sea grasses or hard bottom communities, except as may be permitted by the FDEP and ACOE. The dock may be lengthened beyond the below minimum water depth standards only enough to allow the terminal platform to not be located over protected living marine resources, subject to the maximum length standards of this section.

3. *Minimum Water Depth*. Except as otherwise provided within this Ordinance, the siting of docking facilities shall require minimum minus four (-4) feet mean low water (MLW) depth at the terminal end. Where adequate depth at the terminal end of the dock is not available, the dock may be lengthened only enough to allow the centerline of an average width vessel to lie in four (4) feet of water at MLW, subject to the maximum length standards of this section.

4. *Access to Open Water*. The docking facility must have continuous access to open water at depths of minus four (-4) feet or greater over a channel width of 20 feet, or access to open water via a marked, Federal and State approved navigation channel. For the purposes of this requirement, "open water" means the portion of the Straits of Florida, Florida Bay, the Gulf of Mexico or the Atlantic Ocean, which consists of an uninterrupted expanse of water deeper than four (4) feet at MLW and continuous access means a natural passage or an existing man-made channel no shallower than four (4) feet at MLW and no narrower than 20 feet.

5. *Maximum Length and Maintenance of Navigational Access*.

    a. The permitted length of docks shall be commensurate with the shoreline width of the land parcel at which the dock is located subject to a maximum length of 100 feet waterward from the mean low water line.

    b. The length of docks shall not exceed ten (10%) percent of the width of the water body as measured laterally across the water body from the mean low water line at the proposed dock location to the mean low water line on the opposite shoreline. Where the minimum water depth pursuant to Subsections 3. and 4. of this section cannot be reached, the dock may be lengthened only enough to allow the centerline of the vessel to be located at the required water depth.

    c. Notwithstanding any other part of this section, in no case shall a dock or mooring structure together with a moored vessel preempt more than 25 percent of the navigable portion of a water body thereby creating a significant navigational obstruction.

6. *Dock Orientation and Design*.

    a. All docks shall be approximately perpendicular to the shoreline. Through the Special Approval process the City may permit a nonperpendicular walkway where perpendicular designs are not feasible. Any existing bulkhead or bulkhead approved pursuant to Section 106.36 of Chapter 106 may be improved as a parallel dock by attaching a cantilever or pile-supported extension as needed to reach required water depths and comply with all other standards of this article. Any parallel structure shall not exceed eight (8) feet in width.

    b. Where a continuous mangrove fringe exists along the shoreline, a dock with a walkway perpendicular to the shoreline such as "T" or "L" dock may be permitted. Such structures shall be located to provide access through an existing break or existing trimmed area in the mangrove fringe or native shoreline vegetation; however, if no such break exists, a walkway, no more than four (4) feet in width, may be

cut through the mangrove fringe or native shoreline vegetation. The terminal platform or shore-parallel end of such a "T" or "L" dock must be located entirely outside the mangrove fringe if navigational standards can be met. If they cannot be met, the terminal platform is restricted to 160 square feet in size and no wider than eight (8) feet and the design shall minimize mangrove trimming or removal.

c. Pier type docks may be permitted provided that:

(1) Such structures are oriented approximately perpendicular to the shoreline;

(2) Such structures are located in an existing break in the mangroves or shoreline vegetation; however, if no such break exists, a walkway, no more than four (4) feet in width, may be cut through the mangroves or shoreline vegetation;

(3) If proposed, the terminal platform is no wider than eight (8) feet in dimension and does not exceed a total of 160 square feet in area. The terminal platform may include stairways for swimming access provided that all stairways are contained within the square footage allowed for the terminal platform;

(4) Any docking portions extending over water no shallower than four (4) feet at MLW may be supported by floats.

7. *Lighting*.

a. No dusk to dawn lights are allowed. All dock facility lighting must be able to switch off or on by motion detector, or be activated by a three-way switch.

b. Lights limited to one (1) on the terminal platform and one (1) on the landward end of the dock or pier, and one (1) every 100 feet between the terminal platform and the landward end of the dock, except where a hardship exists.

c. All lights must be downward directed and have adequate shielding to prevent light trespass and minimize light pollution from light scatter.

d. The type and location of lighting fixtures must be included on the diagram of the dock or pier and submitted with permit application.

e. All docks shall have amber colored night time reflectors set at a minimum of one (1) at each side in the middle and one (1) at each side of the terminal end.

f. Lighting shall not exceed a height of six (6) feet, measured from the highest walking surface of the dock for the Protection of Sea Turtles.

8. *Navigation Hazard Reductions*. All docks with boat lifts, davits or similar lifting mechanisms shall provide cleats, rings, or similar features that can be used to tie down the vessel when it is out of the water in order to stabilize the vessel during high wind.

    a. *Other Agency Permits Required*. All applicable federal, state and water management district permits are received before the issuance of a building permit.

    b. *Impact on Natural Systems*. A dock shall not be detrimental to the continued functioning of natural systems, including aquatic vegetation.

    c. *Removal of Regulated Trees*. Removal of regulated trees, shall comply with Article 2, Trees and Native Vegetation, of Chapter 106, and shall be the minimum necessary to facilitate construction of a dock.

    d. *Marine Turtle Nesting Area Special Requirements*. No development other than pile supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within 50 feet of any portion of any beach berm complex which is known to be or is potential nesting area for marine turtles.

        (1) The 50-foot setback shall be measured from either the landward toe of the most landward beach berm or from 50 feet landward of MHW, whichever results in the greater setback distance, but the maximum total setback shall be 100 feet from MHW.

(2) Within known or potential nesting areas for marine turtles, as determined by the City Biologist, the U.S. Fish and Wildlife Service, and/or other appropriate agencies, the City Biologist may, in cooperation with other appropriate agencies, determine that specific segments of shorelines have been previously, lawfully altered to such a degree that suitable nesting habitat for marine turtles is not longer present. In such case, the City Biologist in cooperation with the FDEP may recommend reasonable measures to restore the nesting habitat. If such measure is not feasible, the specific requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

(3) Any such dock or walkway shall be designed to the following criteria to minimize adverse impacts on marine turtles.

(A) The structure shall have a minimum horizontal distance of four (4) feet between pilings or other upright members.

(B) The structure shall have a minimum clearance of two (2) feet above grade.

(C) If stairs or a ramp with less than the minimum two (2) feet clearance above grade is required, such stairs or ramp shall be enclosed with vertical barriers no more than two (2) inches apart.

(D) All outdoor and indoor artificial lighting complies with applicable sections of the City Code, Protection of Sea Turtles.

9. *Special Exceptions and Approvals*. A special approval may be granted for variances to the standards in Subsections 5. and 6. only of this Section subject to the following guidelines and procedures:

a. The City Manager or his designee may approve exceptions to the standards in Subsection B.5. "Maximum Length and Maintenance of Navigational Access" subject to the following limitations and required findings:

(1) A dock length exceeding the standards in Subsection (e) of this Section may only be approved for the purpose of complying with minimum water depth requirements of Subsection (c) of this Section;

(2) In no case shall any dock be approved that violates Subsection B.5. of this Section that prohibits significant obstruction of navigational access;

(3) Exceptions shall not be available for properties on beaches that serve as potential or known marine turtle nesting habitat, including, but not limited to; the oceanfront shoreline of Grassy Key;

(4) Such special exceptions shall only be granted based on a written determination that, among other criteria, the proposed dock will not be inconsistent with community character, will not interfere with public recreational uses in or on adjacent waters, and will pose no navigational or safety hazard;

(5) At least 30 calendar days prior to the issuance of a City permit under such a special exception, the City Manager shall ensure that shoreline property owners within 300 feet of the subject parcel are notified by regular mail of the proposed special exception in order to allow an opportunity for appeal.

10. *After-the-Fact Dock Permits.* Any person who undertakes to construct a dock without obtaining the required permit from the City shall have 30 days from the date of written notice from the City to file an application for an after-the-fact permit, or to remove the unpermitted structure. Such after-the-fact application must comply with all the terms and conditions of this article.

11. *Disrepaired or Dilapidated Docks.* If any dock constructed under this article or continued in existence under this article falls into disrepair so as to become a dangerous structure involving risks to the safety and well-being of the community or individual members thereof, such structure must either be removed or repaired so as to conform with the requirements of this article. Upon determination by the City or its

designated representative that any dock has become a dangerous structure, written notice thereof shall be given by registered/certified mail or personal service to the owner of record of the riparian upland property. Such party so informed shall have 30 days from the date of the notice within which to secure the area and respond to the City indicating the intent regarding the dilapidated structure. Such party shall have an additional 60 days to remove the structure or apply for a permit to repair such structure to conform to the requirements of this article. The entire structure must be brought into conformance with the requirements of this article.

12. *Application Information*.

    a. All applications under this article are to be filed in accordance with Article 2, Chapter 102, "Common Development Application Elements". Processing fees shall be paid at the time of application.

    b. Prior to the issuance of a permit under this article, the applicant must show that the proposed activity is consistent with the City Comprehensive Plan.

    c. Prior to a final determination on an application under this article, the applicant may be requested to supply any other information necessary to promote a thorough review of a permit application.

    d. All applications under this article must include a statement outlining the intended use of the project facility.

13. *Single-Family Dock Application Information*.

    a. Adequate water depth at the slip and to navigable waters must be evidenced on applications for the expansion of existing dock facilities or the creation of new dock facilities.

    b. In addition to the requirements of Article 2, Chapter 102, "Common Development Application Elements", the following information is required for applications for single family dock permits:

        (1) The application form adopted by the City, properly filled out and signed.

(2) A detailed statement describing the upland land use and activities.

(3) Satisfactory evidence of title or extent of interest of the applicant to the riparian upland ownership or submerged ownership with a copy of the trustee's deed in chain of title.

(4) A copy of the State Department of Environmental Protection permit or South Florida Water Management District permit, where applicable.

(5) A copy of the U.S. Army Corps of Engineers permit, where applicable.

(6) An affidavit attesting to the dates any existing structures were built, and a copy of any prior authorization or permit for the structures, where applicable.

(7) Permit sketches clearly depicting the proposed project. The sketches and application package must include the following:

(A) Drawings of the proposed project drawn to an appropriate scale showing plan view and representative cross section view(s).

(B) The drawings must clearly show the following:

(a) Name of waterway.

(b) North arrow and graphic scale.

(c) Existing shoreline, and the apparent mean high water line.

(d) Sufficient water depths in the affected areas.

(e) Locations of existing structures.

(f) Linear footage of riparian shoreline.

(g) All drawings and legal descriptions pertaining to proof of ownership submitted as part of an application for a permit from the City must contain the required signature and seal of a

registered professional land surveyor in accordance with Fla. Stat. 472.031(1).

(h) Location of the proposed activity, including half section, township, range, affected water body, vicinity map, and legal description (lot, block and subchapter or parcel real estate number.

14. *Multi-Family Dock Application Information*. The following information is required for applications for multi-family docks:

    a. All information required for single-family docks.

    b. Except for applications for tie piling and previously approved lifts, all applications for multi-family docks shall have the signature and seal of a state registered professional engineer affixed to the plans submitted for approval.

    c. Information shall be submitted, prepared by a state registered civil engineer, attesting to the fact that adequate flushing exists and that the project will not cause stagnation or water quality degradation.

    d. The following additional information is required:

        (1) A detailed statement describing the proposed activity and how it affects the Waters of the City.

        (2) A completed copy of the disclosure form provided by the City.

15. *Commercial Dock Application Information*. The following information is required for applications for commercial docks. If the commercial dock meets the definition of a marina, standards for marinas shall apply:

    a. All information required for single-family docks and multi-family docks.

    b. An approved hurricane preparedness plan.

    c. Any other information deemed necessary by the Director to meet the criteria of this article.

16. *Minimum Construction Specifications.* All waterfront construction such as docks, piers, seawalls, or revetments shall be planned and designed by a professional engineer in accordance with the LDRs and the applicable standards of the City.

PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: August 18, 2025

To: Planning Commission Members

From: Brian Shea, Planning Director

Through: George Garrett, City Manager

Agenda Item: Consideration Of A Request For A Development Agreement, For QOF Inc., Pursuant To Chapter 102, Articles 8 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Development Agreement" For The Development Of Four (4) Single Family Affordable Residences; Located At And Around 701 91st Street; Which Is Legally Described As Lots 13 And 14 Sea Crest Heights Subdivision, Marathon, Monroe County, Florida; Having Real Estate Numbers 00350630-000000 & 00350640-000000, Nearest Mile Marker 52.

CONDITIONS:

- Modify the following sections of the Development Agreement as follows:
  - Amend dates as needed.
  - Strike last whereas clause.
  - Amend II.A to reference Objective 1-3.3.
  - Strike II.C through II.F.
  - Amend and renumber II.F by adding "up to 13 transfers or $520,000, whichever occurs first."
  - Add II.D documenting Administrative Variance and Nonconforming Setbacks.
  - Amend Department of Economic Opportunity to Department of Commerce.

APPLICANT/OWNER: QOF INC.

LOCATION: 701 91st Street and adjacent vacant parcel, having RE 00350630-000000 & 00350640-000000.

REQUEST: Enter into a Development Agreement with the City of Marathon for redevelopment of the subject property with four affordable housing units.

FUTURE LAND USE MAP DESIGNATION: Residential High (RH)

ZONING MAP DESIGNATION: Residential Mobile Home (R-MH)

LOT SIZE: Approximately 11,224 square feet or .26 acres.

SURROUNDING ZONING AND USES:

	Zoning	***Use***
North	Residential Mobile Home (R-MH)	Residences of 91st Street
East	Residential Mobile Home (R-MH)	Residences of 92nd Street
South	Residential Mobile Home (R-MH)	Residences of 91st Court
West	Residential Mobile Home (R-MH)	Residences of 91st Street

EXISTING CONDITIONS:
Currently, the property consists of the following:

- Two vacant parcels.
    - One market rate unit demolished under permit P2018-1150.
    - One affordable allocation awarded under Resolution 2021-76.

PROPOSED DEVELOPMENT
The proposed redevelopment of this property will consist of the following:

- Develop the property with four affordable housing dwelling units.
    - Building Permits: P-20-80, P-20-81, P-20-82, P-20-83.
    - BPAS applications: BPAS-21-75, BPAS-21-89, BPAS-21-90, BPAS-21-91.

BACKGROUND:
These properties are located at the southern end of the Sea crest Heights subdivision and are bordered on three sides by 91st Street. Lot 13 previously was developed with a structure, while lot 14 remained vacant. One market rate right remains from the demolished structure. And one affordable allocation was awarded from a previously rescinded allocation in September of 2021. The associated permit (P-20-82) for this allocation (BPAS-21-75) has yet to be issued.

CRITERIA FOR APPROVAL:
A development agreement may only be considered for approval if it meets the following criteria:

1. The development agreement meets all the requirements of the Florida Local Government Development Agreement Act, Fla. Stat. §§ 163.3220—163.3243.
2. The duration of the development agreement shall not exceed an initial period of five (5) years, unless otherwise approved by Council for a longer time period.
3. The development agreement is consistent with the City comprehensive plan and the LDRs.
4. The development agreement is signed by the developer prior to execution by the City.

ANALYSIS:
Comprehensive Plan
The proposed development should meet the following criteria as set forth in the Comprehensive Plan. Objective 1-3.3 entitled Encourage Redevelopment states that the City shall evaluate potential redevelopment areas and prepare redevelopment plans or Land Development Regulations for areas determined to be in need of redevelopment. Specifically, Policy 1-3.3.1 entitled General Redevelopment Criteria states that the "City shall investigate commonly used planning strategies and identify available funding sources to address the revitalization of areas in need of redevelopment. The City shall strive to utilize the most appropriate and creative mechanisms available to address such issues. Additionally, the City shall analyze existing development patterns, property values,

structural conditions, renter/owner ratios, commercial vacancy rates, and other indicators of economic vitality and physical living conditions as part of the preparation of redevelopment plans or Land Development Regulations.

Such redevelopment plans or Land Development Regulations shall:

A. Prevent negative impacts on the fragile coastal ecosystem by directing development away from environmentally sensitive lands and critical habitat;
B. Revitalize existing commercial areas;
C. Promote safe and efficient vehicular, bicycle, and pedestrian movement;
D. Prevent or minimize the City's cost to provide infrastructure;
E. Mitigate incompatible commercial activity where commercial activity is adjacent to established residential neighborhoods;
F. Enhance the unique character of the City's commercial land uses through incentives for bufferyards and landscaping; and
G. Facilitate within the City, the creation of aesthetically pleasing commercial spaces outdoors, as places for social leisure and interaction, while limiting light industrial uses, outdoor storage, and sales as a primary use of land, and outdoor retail sales as an accessory use of land; and
H. Provide for affordable/workforce housing."

In addition, Policy 1-1.1.1 ensures the City enhances or preserves the existing community character, which explicitly includes that the City desires to "Protect, enhance, and increase the number of affordable housing units. Policy 1-3.5.16 establishes the TDR and TBR process and doubly lists (A.5 & A.10) the attempt to "protect housing affordability and facilitate the provision of new affordable housing units throughout the City."

Affordable Housing

The proposed redevelopment creates affordable housing. The affordable housing must be consistent with Section 104.03 entitled Affordable Housing. Parts B, C, D, and F under part II of the development agreement apply to affordable housing.

Under section 107.05.D.1., to apply for allocations, a development must have completed all steps otherwise necessary to apply for and receive a building permit including habitat assessment (if required by the City Biologist), other agency approvals or letters of coordination and the requisite construction plans, zoning and subdivision approvals. Therefore, part B or section II has been met and is consistent with the City LDRs.

Part II.C relies on the last whereas clause of the agreement, as well as part M.3 of the agreement. Senate bill 180 became effective July 1 of 2025. It amended the clearance times from 24 to 24.5 hours, thus effectuating the next steps to address BPAS and ROGO within Monroe County. In addition, it included the following section:

> The Department of Commerce shall conduct baseline modeling scenarios and gather data in order to determine a number of building permit allocations to be distributed in the Florida Keys Area based upon the hurricane evacuation clearance time provided in s. 380.0552(9)(a), Florida Statutes, as amended by this act. The

> permit allocations must be distributed to counties and municipalities based on the number of vacant buildable lots within each jurisdiction. The permit allocations must be distributed over a period of at least 10 years but may not exceed 900 total permit allocations. All permits must be issued for vacant, buildable parcels, of which only one may be awarded for any individual parcel, and the distribution of which must prioritize allocations for owner occupied residences, affordable housing, and workforce housing.

The last sentence of this language precludes the City's ability to grant multiple allocations to a single lot. The previous allocations that the City received were approved by the Administration commission and distributed through a Memorandum of Understanding signed by each jurisdiction, the Department of Emergency Management, and the Department of Community Affairs (Now Department of Commerce). The original modeling based upon the 24-hour evacuation criteria listed approximately 220 units still within that time frame. Staff is still awaiting clarification of whether those approximate 220 units must abide by the same criteria noted above, and if not, how many will be allocated to the City of Marathon. Therefore II.C cannot be confirmed to be consistent with the City LDRs and should be struck. Upon confirmation of State laws, the development agreement may be brough back for amendment pursuant to M.3 of the agreement.

Under Section 107.09 Applicants that dedicate buildable lots or cash in lieu of dedication may receive the following points:

Point Assignment:	Criteria:
5	Donation of a cash fee to the City of Marathon, for the purposes of affordable housing. The required fee shall be established by the Council.
6	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a legally platted, buildable lot * within the City containing one (1) or more existing affordable dwelling units.**

*An applicant may dedicate a maximum of one (1) lot to obtain the maximum allowable points under the Moderate Category.
**To be used for the purposes of perpetually income deed-restricted affordable housing

For II.D to apply for BPAS points on a market rate application, then after the units are constructed, the property must be donated to the City or nonprofit approved by Council. Since the units are not going to be donated (as noted in section IV. G), section D should be struck from the development agreement, thereby making it consistent with the City LDRs.

Section II.F states the purpose is to satisfy any future requirement for affordable housing relating to future development(s) as may be required and until such units are accounted for. Only one section of code requires inclusionary affordable housing, Section 104.25 entitled Hotels or Motels. As part of those requirements a new development agreement is required and that portion of the code can be addressed then. The affordable housing can also satisfy development as it relates to the affordable housing compliance requirements of transferable building rights under Section 107.18. Under the replacement criteria, the development of (four) 4 affordable housing units at the 30% minimum requirement could cover thirteen (13) affordable compliance transfer fees. Under the fund criteria, based upon the most recent Council resolution, this is the equivalent of a

$520,000 affordable housing waiver. Because the fee program can be changed by Council resolution it is recommended that the language be added at the end of II.F stating, "up to 13 transfers or $520,000, whichever occurs first." Thereby making it consistent with the current City LDRs.

Wastewater

The property will have to connect to the sewer system. This parcel was previously assessed for the one connection for the demolished home. Three more assessments would be required. Under II.E of the proposed agreement the applicant is requesting to reduce or eliminate the sewer impact fee. Under section 34-24 of the code of ordinances the City is authorized to fix and collect rates, rentals, fees, and charges for the use of any wastewater system facilities. Additionally, under Section 34-23 a customer that receives wastewater service from the City is responsible for all fees and charges incurred in connection with the rendering of service. Failure to pay amounts due the City within the time designated for payment may result in the disconnection of wastewater service until all amounts due the City have been paid in full. Section 34-44 sets forth that the City is authorized to impose fees and charges as appropriate to the construction, operation, and maintenance of its wastewater system. rates, fees, and charges shall be established by resolution of the City Council. The Council set the current fees based upon the Wastewater Connection Fee Study and adopted them through Resolution 2022-25. The only section that allows for the reduction in fees is Section 34-51.2. This section only applies to businesses that provide a public good that is being assessed in excess of 5 EDUs and would therefore not apply to this proposed 4-unit residential development. Based upon this, the language in II.E of the development agreement should be removed, thereby making it consistent with the City LDRs.

Stormwater

The property currently has no erosion control or stormwater management system. A stormwater management system will be constructed onsite as part of the site redevelopment. This system will retain, detain, and treat stormwater on the property and therefore will provide a substantial benefit to water quality in the area. The proposed plans show 1,012 cubic feet of stormwater swales being constructed on site.

FEMA/Floodplain Management

The property is entirely within the AE 8 flood zone. The submitted plans show that the finished floor elevation of the units will be at 12' NGVD. This is three feet above the minimum requirements of the Florida Building Code.

Compliance with Bulk and Open Space Regulations

Open Space

The property is categorized as a disturbed area which requires a 20 percent open space ratio. The proposed plans show impervious lot coverage totaling 4,806 square feet. This means that there is a 53% open space ratio on site.

Height

The land development regulations establish an overall building height of 42 feet. The plans that were submitted show that the building does not exceed the 42-foot height limit. The proposed height is 21'.

Setbacks

Residential mobile home zoning has a 10' front, 10' rear, and 5' side setbacks. The structure that was demolished on the southern lot had a nonconforming setback of 3'. The proposed plans shows that the nonconformity was reduced by increasing the setback to 4'8". The applicant received an administrative variance to allow for the side setbacks between the two lots to be reduced from 5' to 4'8" to account for the roof overhangs. Both variances and nonconformities have 1-year timeframes associated with them. The permits were submitted within these timeframes, however, they have yet to be allocated and/or issued. It is recommended that the administrative variance, and setback nonconformity be included in the purposes of the agreement section, thereby making it consistent with the City LDRs.

Density

The application indicates that the combined parcels are 11,224 square feet. The proposed densities comply with the Residential High FLUM and Residential Mobile Home Zoning.

Use	Units/acre	Proposed # Units	Required Acreage/Dwelling Unit
Market Rate Dwelling Units	8	0	5445 sq ft
Affordable/Workforce Dwelling Units	25	4	1742 sq ft
Total Acreage Required			6,968 sq ft
Total Acreage Provided			11,224 sq ft

RECOMMENDATION:

Planning Staff recommends that the Planning Commission forward a recommendation of **CONDITIONAL APPROVAL** of the Development Agreement to City Council.

Conditions of Approval

- Modify the following sections of the Development Agreement as follows:
  - Amend dates as needed.
  - Strike last whereas clause.
  - Amend II.A to reference Objective 1-3.3.
  - Strike II.C through II.F.
  - Amend and renumber II.F by adding "up to 13 transfers or $520,000, whichever occurs first."
  - Add II.D documenting Administrative Variance and Nonconforming Setbacks.
  - Amend Department of Economic Opportunity to Department of Commerce.

Parcel I.D. Nos.:
RE# 00350630-000000 and 00350640-000000
(Space reserved/or recording)

DEVELOPMENT AGREEMENT FOR
QOF INC.
MARATHON, FLORIDA

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as "City"), and QOF Inc., 1477 Overseas Hwy Marathon, Fl 33050, a Florida Corporation (herein referred to as "Owner',), pursuant to Chapter 102, Article 8, of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the Effective Date set forth herein.

WITNESSETH:

WHEREAS, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit "A" (boundary survey), attached hereto and incorporated herein by reference; and

WHEREAS, Owner has submitted a proposal to develop and construct Four (4) affordable residential units; and

WHEREAS, the construction and maintenance of affordable housing within the City of Marathon is a desirable goal and will serve to preserve workforce housing in the face of economic gentrification; and

WHEREAS, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

WHEREAS, the Marathon Planning Commission held a public hearing on the day of , 2022, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the day of and day of 2022, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest and is consistent with its policy to encourage the redevelopment of Marathon in a manner that provides and preserves affordable housing and will further the health, safety, and welfare of the residents of Marathon; and

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~~**WHEREAS,** the State of Florida has awarded the City of Marathon sufficient allocations of market rate and affordable housing to allow the Owner an award of three (3) affordable unit entitlements that will allow completion of the project; and~~

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. RECITALS.

The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

II. PURPOSES OF AGREEMENT.

The purposes of this Agreement are as follows:

A. To encourage redevelopment of the Property consistent with Objective 1-3.~~4~~3 in the City's Comprehensive Plan.

B. To secure the ability to construct Owner's proposed development of residences totaling four (4) units.

~~C. To secure three (3) affordable building allocations.~~

~~D. To establish points towards any application made by Owner or Owner like entity for a market rate ROGO as it relates to the construction of affordable housing~~

~~E. To reduce or eliminate the sewer impact fee~~

C~~F~~. To satisfy any future requirement for affordable housing relating to future development(s) as may be required and until such units are accounted for up to 13 transfers or $520,000, whichever occurs first.

D. To document and extend the approved Administrative Variance and setback nonconformities.

III. DEFINITIONS.

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (LDRs), Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

IV. STATUTORY AND CODE REQUIREMENTS.

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The parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

A. Legal Description and Ownership. QOF Inc., 1477 Overseas Hwy Marathon, Fl 33050, is the Owner of the Property, and the Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement and Submission of Permit Application. Owner shall have a period of twelve (12) months from the Effective Date of this Agreement to submit an application for a building permit with the City to commence construction of the project contemplated herein. The duration of this Agreement shall be ten (10) years from the effective date. Should the owner not commence construction within eighteen (18) months of the effective date of this Agreement, then this Agreement shall be null, and void and the allocation of affordable housing contained herein shall be canceled and said allocation shall revert to the City. This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

Affordable Housing is defined in Section 110.00 of the City's LDRs as: "Dwelling units which contain less than or equal to 1,800 square feet of habitable space meet all applicable requirements of the United States Department of Housing and Urban Development minimum property standards as to room sizes, fixtures, landscaping and building materials, when not in conflict with applicable laws of City; and are restricted in perpetuity or as allowed by law for a minimum 50-year period to use by households that meet the requirements of at least one (l) of the following income categories: very low, low, median, moderate or middle. The requirements for these income categories are as provided in Chapter 104, "Specific Use Regulations". "

It is agreed that the affordable housing shall comply with the Moderate-income standards or Middle-income standards as set forth in Section 104.03 (d) and 104.03 (e).

Moderate-income is defined as: "A household whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;"

Middle-income is defined as: "A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;"

D. Sale or Lease. Owner agrees to comply with all the requirements of the City of Marathon regarding sale or leasing of the affordable housing units (general affordable pool as defined in Section 107.06(c) to be constructed as part of the project. In addition, Owner anticipates establishing the affordable units as rental units, but in the event that the affordable units are sold, individually or in bulk, the affordable housing deed restrictions required by the City shall be

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imposed with a duration of fifty (50) years from the date of the issuance of the certificate of occupancy.

E. Density and Building Height. The property is located in a Residential Mobile Home Zoning District as defined in the Land Development Regulations. The maximum building height permitted on the property is thirty-seven (42) feet.

F. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.

2. Electric Service. Electric service is provided by Florida Keys Electric Service.

3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

4. Fire Service. Fire service is provided by the Marathon Fire Department.

5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.

6. Public Recreational Facilities. Public recreational facilities are available near the property in the Marathon Community Park and Jesse Hobbs Park.

7. Stormwater Management. There shall be no direct discharge to the City of Marathon Nearshore Waters.

8. Fire Protection. Per the Florida building code

9. Concurrency. All public facilities, apart from Wastewater, identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development. Wastewater capacity is available through the Central Sewer system for the City of Marathon.

10. Impact Fees. The City shall waive the impact fees for the affordable units allowed pursuant to Section 111.02 F.3(f).

G. Reservations or Dedications of Land for Public Purposes. These are not contemplated or necessary for this development.

H. Local Development Permits. The following City development approvals are required for the development of the Property.

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1. This Development Agreement.

2. Building and related construction permits for the structures, land clearing and landscaping. At any time, any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.

3. Local Permits for Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

I. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

J. Mutual Cooperation. City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

K. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed

L. Compliance With Permit Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

M. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement

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2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

a. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;

b. The new laws and policies are essential to public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;

c. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

d. The Agreement is based on substantially accurate information supplied by Owner. Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as necessary to comply with the relevant state or Federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

N. Amendment Renewal and Termination. This Agreement may be amended, renewed, or terminated as follows:

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LORs. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public bearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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3. This Agreement may be terminated by the Owner or its successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.

4. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, based on substantial competent evidence, the City finds there has been a failure by Owner to comply with the terms of this Agreement.

5. This Agreement may be terminated by mutual consent of the parties.

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

a. Failure to comply with the provisions of this Agreement.

b. Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

a. Failure to comply with the provisions of this Agreement.

b. Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of

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such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. Notices. All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:
QOF Inc.
1477 Overseas Hwy
Marathon, Fl 33050

TO THE CITY:
George Garrett, City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

With a copy by regular U.S. Mail to:
Steve Williams, City Attorney
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

Q. Annual Report. On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

R. Enforcement. In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the Circuit Court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Section 163.3220-163.3243, Florida Statutes.

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S. Binding Effect. This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

T. Assignment. This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

U. Drafting of Agreement. The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

V. Severability. In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or validity of the remaining provisions of this Agreement

W. Applicable Laws. This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida

X. Litigation/Attorney's Fees: Venue; Waiver of Right to Jury Trial. As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes but is not limited to~ reimbursement for reasonable attorney's fees and costs incurred with respect to any appellate~ bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida.

THE PARTIES TO THIS AGREEMENT WAIVE THE RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

Y. Use of Singular and Plural. Where the context requires, the singular includes the plural, and plural includes the singular.

Z. Duplicate Originals; Counterparts. This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

A.A. Headings. The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of this Agreement.

B.B. Entirety of Agreement. This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and

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exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

C.C. Recording; Effective Date. The Owner shall record this Agreement in the Public Records of Monroe County, Florida, within fourteen (14) days after the date the last party signs this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the city by the Owner; to which the City shall submit the recorded agreement to the State Land Planning Agency at the Department of Commerce ~~Economic Opportunity~~, Division of Community Planning, 107 Madison Street, Room 22, Tallahassee, Florida 32399 by hand delivery or registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded and received by the Owner or his agents. This Agreement shall become effective after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes or within the time frames that may be laid out in any Memorandum of Understanding between the City of Marathon and the Department of Commerce ~~Economic Opportunity~~.

D.D. Date of Agreement. The Date of this Agreement is the date the last party signs and acknowledges this Agreement.

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Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER
QOF Inc. a Delaware Corporation

_____
Signature

By: _____
Name: Michael D. Aranda
Title: President

_____
Name of witness (printed or typed)

_____
Signature

_____
Name of witness (printed or typed)

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On the _____ day of _____, 2022, The City Council of the City of Marathon approved this Agreement by Resolution No.

ATTEST: CITY OF MARATHON

_____ By: _____

City Clerk Mayor

APPROVED AS TO FROM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY.

_____

Steve Williams, City Attorney

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