

CITY COUNCIL AGENDA STATEMENT



Meeting Date: May 9, 2023
To: City Council
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: Resolution 2023-44, Approving A Final Plat As Submitted By La Palma 101 Inc For A Plat Pursuant To Chapter 102, Article 10 Of The City Of Marathon Land Development Regulation (LDRs) Entitled “Subdivision Of Land/Plats And Re-Plats,” Particularly, 400-800 101 And 104th Street Which Is Described As Part Of Government Lot 2, And Adjacent Bay Bottom, Section 6, Township 66S, Range 33E, Key Vaca, Monroe County, Florida, Having Real Estate Number 00104460-000100 And 00104460-000000. Nearest Mile Marker 52.

RECOMMENDATION:

Planning staff recommend approval of the final plat. For reference Conditional Use and Plat analysis are included below.

APPLICANT/ OWNER: La Palma 101 Inc

AGENT: Sady Torres

LOCATION: The project site is located at 400-800 101 and 104th Street, Marathon – Nearest Mile Marker 52.

Figure 1: Project Location



LOT SIZE:

Total acreage	6.325 Ac.	
Upland	0.815 Ac.	35,510 Sq. Ft.
Environmentally sensitive	4.41 Ac.	
Submerged	1.10 Ac.	

REQUEST: A Conditional Use Permit to authorize the platting of three lots for the completed market rate single-family homes and six lots for the existing deed restricted affordable duplexes, and one conservation deed restricted lot to be dedicated to the City of Marathon. The remaining one vacant lot will be combined with parcel 00104460-000000.

FUTURE LAND USE AND ZONING MAP DESIGNATIONS OF PROJECT AREA:

Mixed Use Commercial (MU-C) and Mixed Use (MU). The lower section is Residential Low and Residential Low (RL).

Figure 2.A: FLUM Map

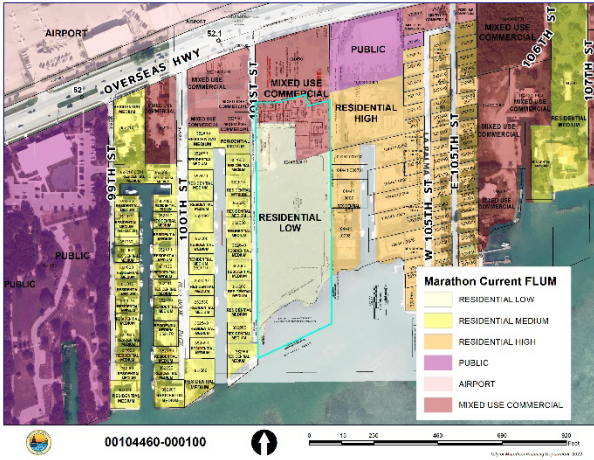
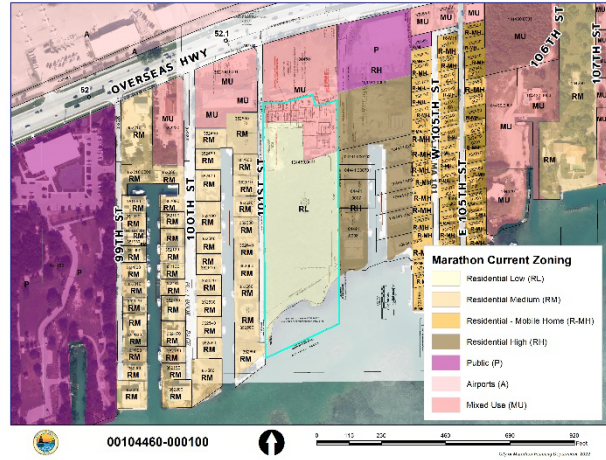


Figure 2.B: Zoning Map



SURROUNDING ZONING AND USES:

	<u><i>Zoning</i></u>	<u><i>Use</i></u>
North	Mixed Use	Proposed mixed use commercial, affordable and market rate units
East	Public & Residential High	City property and single-family residences
South	N/A	Atlantic
West	Mixed Use & Residential Medium	Offices and single-family residences

EXISTING CONDITIONS:

Already constructed on site are three single family market rate homes and three duplexes. The lower section of the parcel is undeveloped.

PROPOSED REDEVELOPMENT:

Proposed platting of the 11 (eleven lots). Three lots for the existing three market rate single-family homes and the six lots for the existing three deed restricted affordable duplexes, one conservation deed restricted lot and one lot to be combined with parcel 00104460-000000.

BACKGROUND:

The current conditional use was approved by Resolution 2020-44 for re: 00104460-000000 and Development order 2020-03. A simple subdivision (SSUB-20-21) divided the subject parcel from re: 00104460-000000.

All conditions of the Conditional Use approval will have to be met before plat is approved.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

A. The proposed use is consistent with the Comprehensive Plan and LDRs;

Consistent with the Comprehensive Plan

The proposed development project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City’s historic business district and the US1 Corridor, in an effort to recognize the role of US1 as the City of Marathon’s ‘Main Street.’ The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large.”

The proposed plat divides the currently constructed three single family residences and three duplexes into individual parcels. The surrounding properties are zoned Mixed Use, Residential High, Residential Medium and Residential Low.

a. Policy 1-1.1.2 b. & c. Adopt Compatibility for Residential Use and Non-residential Review Criteria

This conditional use will not change the existing residential use of the property. Three single family market rate homes and three duplexes have already been constructed on site. However, the lower section of the property will become a conservation deed restricted lot.

b. Policy 1-1.1.3 Protect Residential Neighborhood Character

The proposed conditional use will not change the existing residential character which was approved the larger Conditional Use permit for this project.

c. Policy 1-1.1.4 Transition Between Land Uses

The parcel is located in a residential and mixed-use commercial area. The proposed subdivision consists of nine residential lots and one conservation deed restricted lot. Final landscape plans were submitted as part of the building permit applications for each lot.

e. Policy 1-3.1.4 Future Land Use Categories

The Future Land Use Map (FLUM) designates the parcels as Mixed-Use Commercial and Residential Low. Within the Mixed-Use Commercial designation there are various residential uses including permanent single-family, affordable and/or commercial apartments as well as mobile

homes. Commercial or transient residential uses are permitted. The residential project area is consistent with the intent of Mixed-Use Commercial district and neither a zoning nor FLUM change is necessary.

f. Policy 1-3.2 Maximum Height

All buildings in the proposed plat were approved to meet code except as provided by City Code, as amended.

g. Policy 1-3.2.7 Restrict Density and Intensity of Development

The proposed subdivision will not increase the density that is currently allowable on this site.

h. Policy 1-3.3.1 a., c, and h. General Redevelopment Criteria

The site has been developed and site plans were approved for all buildings.

i. Policy 1-3.4.1 Established Densities and Policy 1-3.4.3 Replacement of Existing Densities and Intensities

No new density will be added by the proposed plat.

Consistent with the City Land Development Regulations

a. Section 103.09 – Mixed Use

The MU District is intended to accommodate a wide range of uses and activities. Market rate, permanent residential housing is permitted as of right, and duplexes are permitted by conditional use which was approved for this project before construction of the residential units.

b. Table 103.15.1 Uses by Zoning District

The proposed plat is consistent with Table 103.15.1, uses by Zoning District. A Plat of Subdivision requires a Conditional Use Permit Application, as contained herein.

c. Table 103.15.2 Density, Intensity, and Dimensions for Zoning Districts

The subject project site contains 35,510 square feet of upland, 4.41 acres of environmentally sensitive land and 1.10 acres of bay bottom. Table 103.15.2, Marathon City Code, lists the density for permitted uses in the MU Zoning district included in the proposed plat. No new density is to be added in the proposed plat.

The required setbacks in the MU district range from 0 to 30' for the front, 0 to 10' for the sides. Residential units already constructed on site met setback requirements and requirements for the project conditional use permit.

d. Section 107.00 Building Permit Allocation System

New BPAS allocations will not be required for this project.

e. Section 107.47 Parking

Existing residences demonstrated compliance as part of the Building Permit applications.

f. Section 107.40 Maximum Height

Existing residences met maximum height limits as provided by City code, as amended.

g. Sections 107.63 – 107.72 Landscaping

The property to the north has a zoning designation of Mixed Use. Therefore, district landscape buffers are not required. Final landscape plans for all residences were approved with associated Building Permits for each residence.

h. Section 107.73 – 107.81 Open Space

The required open space ratio for this site is 20%. Each lot provides the required open space pursuant to the Land Development Regulations in effect at the time of building permitting.

i. 107.82 – 107.85 Fences & Screening

Any fencing or screening shall be developed by the individual lot owner upon submission of Building Permit applications.

j. 107.98 – 107.102.5 Stormwater Management

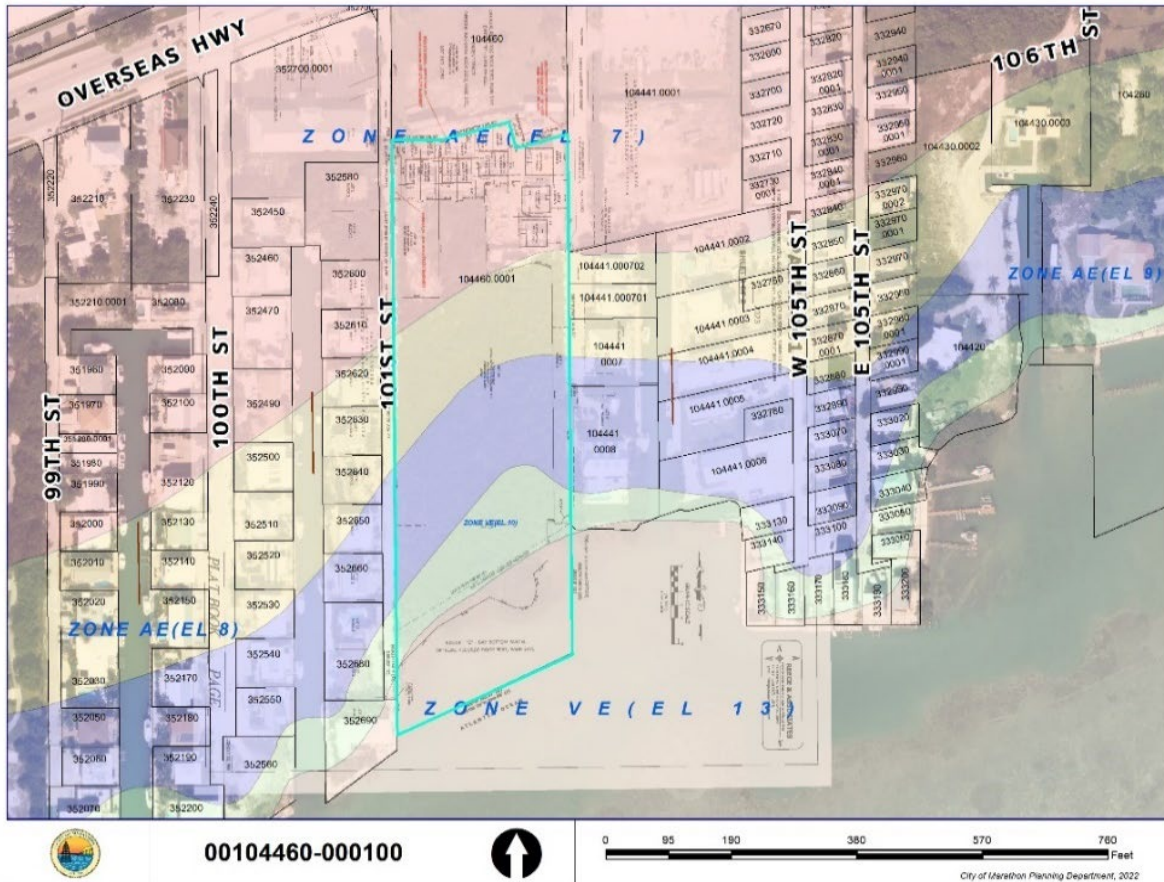
The Stormwater Management Plan provided demonstrates compliance with this requirement, based upon the buildable area of each lot as noted above. The Building Permits for each residence demonstrated compliance once the actual footprints and impervious areas are determined.

k. Sections 107.98 – 107 Floodplain Management

Pursuant to the current FEMA FIRM maps, Lots 1 through 8 are located in the AE7 flood zone. All residences meet the required, the finished floor elevations height the required per the base flood and design flood elevations. Lot 9 is located in the AE7, AE8, AE9 and VE10 flood zone and the finished residence meets required design flood elevations. Lot 10 is located in the AE7 flood zone no new residences are proposed for this lot at this time. Lot 11 is withing AE7, AE7, AE9, VE10 and VE13 flood zones this lot is to stay undeveloped and conservation deed restricted.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

Figure 3: FEMA Flood Zones



B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

The proposed project is located within the Mixed-Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial land use category is to provide for the establishment of mixed-use development patterns and to recognize established mixed use development patterns within the City.” Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. The proposed plat falls within the allowed densities and intensities.

The southerly section of the parcel follows into the Residential Low future land use category. The purpose of which is to provide for low density residential development that is characterized by partially developed areas with substantial native vegetation with limited infrastructure. The proposed plat falls within allowed densities and intensities and designates 130,710.29 sq ft of the area zoned RL with a conservation deed restriction to be granted to the City of Marathon.

Therefore, the request is in compliance with the requirements of these sections.

C. The proposed use shall not adversely affect the health, safety, and welfare of the public;

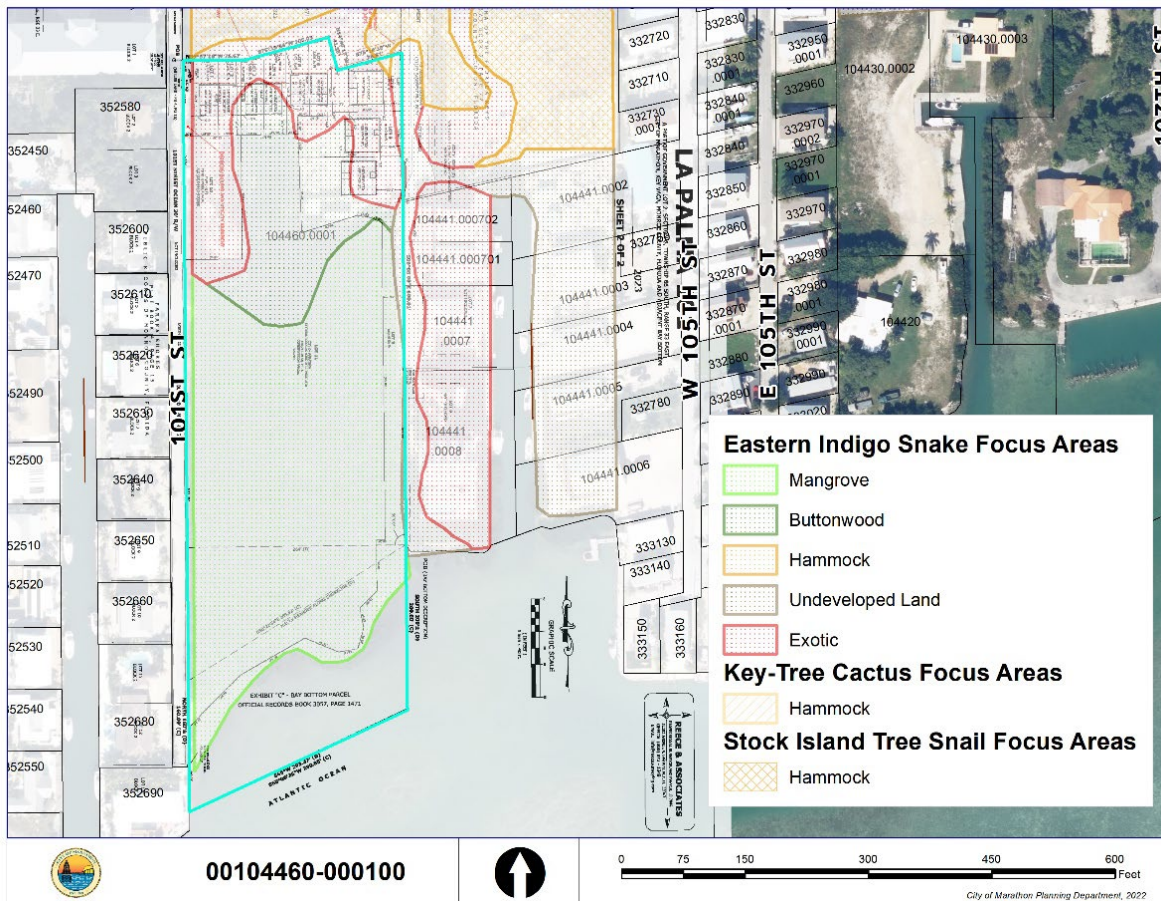
The proposed conditional use does not adversely affect the health, and welfare of the public. The completed residential development has already connected to the City’s wastewater treatment system. Stormwater management has met requirements on site, and all construction complied with the current Building Code.

Therefore, the request is ***in compliance*** with the requirements of these sections.

D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment:

The existing conditions maps indicate the subject area is designated as hammock, exotic, buttonwood, and mangrove. Exotics have been cleared from site under already completed building permits for the residential units. Though found within a ‘Species Focus Area’ as defined in the settlement for FEMA-FWS lawsuit for the Eastern Indigo Snake habitat that was removed was mitigated with a payment to the Tree Mitigation/ Restoration Fund and the majority of the habitat will remain undeveloped as deed restricted conservation. Completed permits complied with indigo snake protection measures and habitat compensation. See Figure 4

Figure 4: FEMA-FWS Focus Area Habitat



Therefore, the request is **in compliance** with the requirements of these sections.

E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in cases of fire or catastrophe;

The access to the residential parcels is by 4 entry/exist points onto 104th St. and one entry/exist point onto 101st St. A Traffic Statement prepared by David Douglas Associates Inc. was submitted with this application. As documented in this study, the developed already completed in this plat would not have an adverse impact on the operating characteristics LOS of 101st St, 104th St. or the Overseas Hwy.

The Fire Chief has been contacted for coordination purposes as part of the Technical Review Committee review and provided the below conditions.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Must meet NFPA 1, NFPA 101 emergency access and proper egress not shown on plans.
- Must receive final approval for the 100th to 101 street connection for through emergency access.

2. Off-street parking and loading areas where required, with particular attention to item 1 above;

The applicant has provided the required number of parking spaces per the LDRs. Parking requirements are outlined in Section 107.47 (Mixed-Use Development Parking Requirements). The following table shows the parking requirement for the parcel:

Use	Code Citation	Requirement	Spaces Required
Market Rate	Table 107.46.1	2 per Residence	8
Affordable	Table 107.46.1	2 per Residence	16
Total Residential			24
Café – Inside	Table 107.46.1	1 per 3 Seats +	17
Café – Outside	Table 107.46.1	1 per 3 Seats +	7
Café – Employees	Table 107.46.1	1 per 2	4
Fitness Center	Table 107.46.1	3 per 1,000 GFA	8
Retail & Office	Table 107.46.1	1 per 500 sf	44 (Day)

Retail & Office – Employees	Table 107.46.1		15 (Day)
Roof Deck	Table 107.46.1	1 per 4 Person	60 (Night)
Commercial ADA		1 per 25 Spaces	4
Total Commercial			95 (Day)
			96 (Night)
Total Required			119 (Day)
			120 (Night)
Total Provided			123

Therefore, the request is ***in compliance*** with the requirements of these sections.

3. The noise, glare, or odor effects of the conditional use on surrounding properties;

The proposed use has no known impacts to the health safety and welfare of the public. No detrimental noise or glare is expected to be generated by the proposed use.

Therefore, the request is ***in compliance*** with the requirements of this section.

4. Refuse and service areas, with particular reference to locations, screening, and Items 1 and 2 above;

The proposed Plat utilizes dumpsters and meets the standards of LDRs and met the requirements under the overall project conditional use.

Therefore, the request is ***in compliance*** with the requirements of this section.

5. Utilities, with reference to location and availability;

Chapter 107, Article 13, establishes the City’s Concurrency Management and certification requirements. This Conditional Use constitutes the City’s Concurrency Level of Service Certificate, as follows:

- Wastewater: The has worked work with the Utility Department to provide additional infrastructure.
- Water: The Florida Keys Aqueduct Authority already provides potable water for the facility.
- Solid Waste: Marathon Garbage Service already provides solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards.

- Recreation and Open Space: Completed site development already has a de minimis impact on recreation and open space.
- Roadways: The applicant submitted an appropriate traffic study showing minimal impact to traffic flow along US1; therefore, it poses no further impact on transportation facilities.
- Educational Facilities: This development as proposed will have a de minimus impact on educational facilities.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- A utility easement will be required for the vacuum pit and cleanouts in front of the duplexes. This will be added as a condition of this plat.

6. Screening and buffering with reference to type, dimensions, and character;

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The developed area of the subject parcel is zoned MU and is bordered to the west by properties zoned MU and Residential Medium and on the east by Residential High and to the south by Residential Low. The completed development met the buffering requirements for the project conditional use.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0 – 30’; side yard 1 and 2, 0 – 10; interior side yard, 10; and, street side, 0-5’.

This plan shows a 30’ setback on the front yard, 10’ setback on the western side and 15’ on the eastern side yard, and 20’ rear yard setback.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30’	NA	30’	Y
Sides	0-5’	NA	5’	Y
Side Interior	10’	NA	10’	Y
Rear	20’	20’	20’	Y

Therefore, the request is ***in compliance*** with the requirements of these sections.

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;

Entrance and directional signs shall be proposed as needed and will meet all current code requirements.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- The applicant will obtain sign permits for any signs erected on the property, as required under Code.

8. Required yards and other open space;

Section 106.16 established required open space for the project. The parcel is generally developed; therefore, a twenty percent open space requirement applies. The individually proposed lots will have to maintain a 20% open space requirement.

Therefore, the request is ***in compliance*** with the requirements of these sections.

9. General compatibility with surrounding properties; and

The proposed development is for a single-family residential community. The surrounding neighborhood is mixed use commercial and residential. The scale and layout of the proposed lots are consistent with the City Code.

Therefore, the request is *in compliance* with the requirements of these sections.

10. Any special requirements set forth in the LDRs for the particular use involved.

In addition to other requirements of the LDRs and pursuant to Table 103.15.1, all residential dwelling units, except mobile homes, shall comply with the following:

- A. Two (2) side yards are required for stacked duplexes.
- B. Townhouses are limited to ten (10) dwelling units per row, except for affordable housing.
- C. The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
- D. The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
- E. Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
- F. The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.

Therefore, with the conditions noted above, the request is *in compliance* with the requirements of this section.

CONCLUSION:

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety, or welfare of the community.

The proposed development is consistent with the existing land use patterns and is expected not to produce any nuisances, traffic congestion, or threat to public health, safety, or welfare. As such the development is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety, or welfare.

RECOMMENDATION:

The Planning staff recommend conditional approval of the conditional use for the proposed plat. The proposed conditions of approval are listed below.

With the following conditions, the staff recommended approval of the conditional use for the proposed plat. The Planning Commission voted to recommend approval (3-2).

Conditions of Approval

1. The applicant will obtain approval of final landscaping, buffer yard, parking landscaping, and mitigation plans (as needed) and lighting plans in coordination with the City Biologist prior to building permit issuance;
2. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
3. Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Full and final review of floodplain compliance will occur as part of building permit issuance. The Applicant has been advised about the adoption of the new FEMA flood maps and the potential impacts of the changes in flood maps on their project.
4. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
5. The applicant will provide on-site plans for the collection and disposal of wastewater via a connection to the City's sewer system. All engineering and wastewater flow calculations must be approved by the City Utility Department prior to final permitting and all wastewater fees must be paid prior to the issuance of construction permits.
6. The applicant will obtain any required permits from SFWMD, FDOT, ACOE, and DEP prior to building permit issuance;
7. The applicant will obtain sign permits for any signs erected on the property, as required under the Code;
8. The Applicant will provide an approximately 5' X 220' easement adjacent to the 101st Street Right-Of-Way (or the southernmost point of ingress/egress from the property) in order to assist in traffic flow in and out of the property on that street. The developer will be responsible for paving this area with engineering and design approvals from the City.
9. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
10. The Applicant will provide at a minimum 123 parking spaces, inclusive of commercial and residential uses. City approval is required for all general parking and ADA compliant parking spaces prior to Building Permit Approval.
11. Bike racks must be shown on the final site plan and approved prior to Building Permit Approval.
12. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Since additional buffering was required and agreed to by the applicant, this additional buffering must also be reviewed and approved by the City prior to final project approval.
13. A Transplantation/ Mitigation plan must be approved for any native trees destroyed as part of proposed construction. This Plan must be provided and approved prior to the initiation of site development.
14. Conservation easement for the site mangrove area, subject to City approval;

15. If the development is found to have any effect on the Eastern Indigo Snake, then the prescribed protection measures must be undertaken, and the information poster posted on site.
16. Affordable Housing Deed Restrictions must be filed prior to building permit issuance. Said deed restrictions shall be provided in a form acceptable to the City and shall be filed with the Monroe County Clerk of Court and shall run with the land for a period of ninety-nine (99) years.
17. The Applicant must obtain a minimum of three (3) market rate and six (6) affordable residential allocations to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
18. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

ANALYSIS OF PLAT APPROVAL REQUEST:

The standards for plat approval are established in Chapter 102, Article 10 of the Land Development Regulations. The application for the preliminary plat approval is being simultaneously reviewed per Section 102.45.D.2. through the Conditional Use process. Pursuant to the Code, the Planning Commission and City Council shall give due consideration to the evaluation criteria addressed within this report as well as the Conditional Use when rendering a decision to grant or deny the requested permit.

Per code streets, internal park and open space areas, recreation space, protected habitat areas requiring conservation easements may all be the basis for density reductions in the platted lot area if they are included in the overall density calculations for the subdivision and subsequent plat. Such reductions shall be noted in the plat and a complete accounting of acreage respective of allowed densities shall be made in the plat document. Equally, if lot area reductions are allowed as part of the subdivision and platting process, the plat documents shall clearly indicate that no future subdivision shall be allowed of any area accounted for in density calculations. The applicant is proposing no such reductions.

RECOMMENDATION:

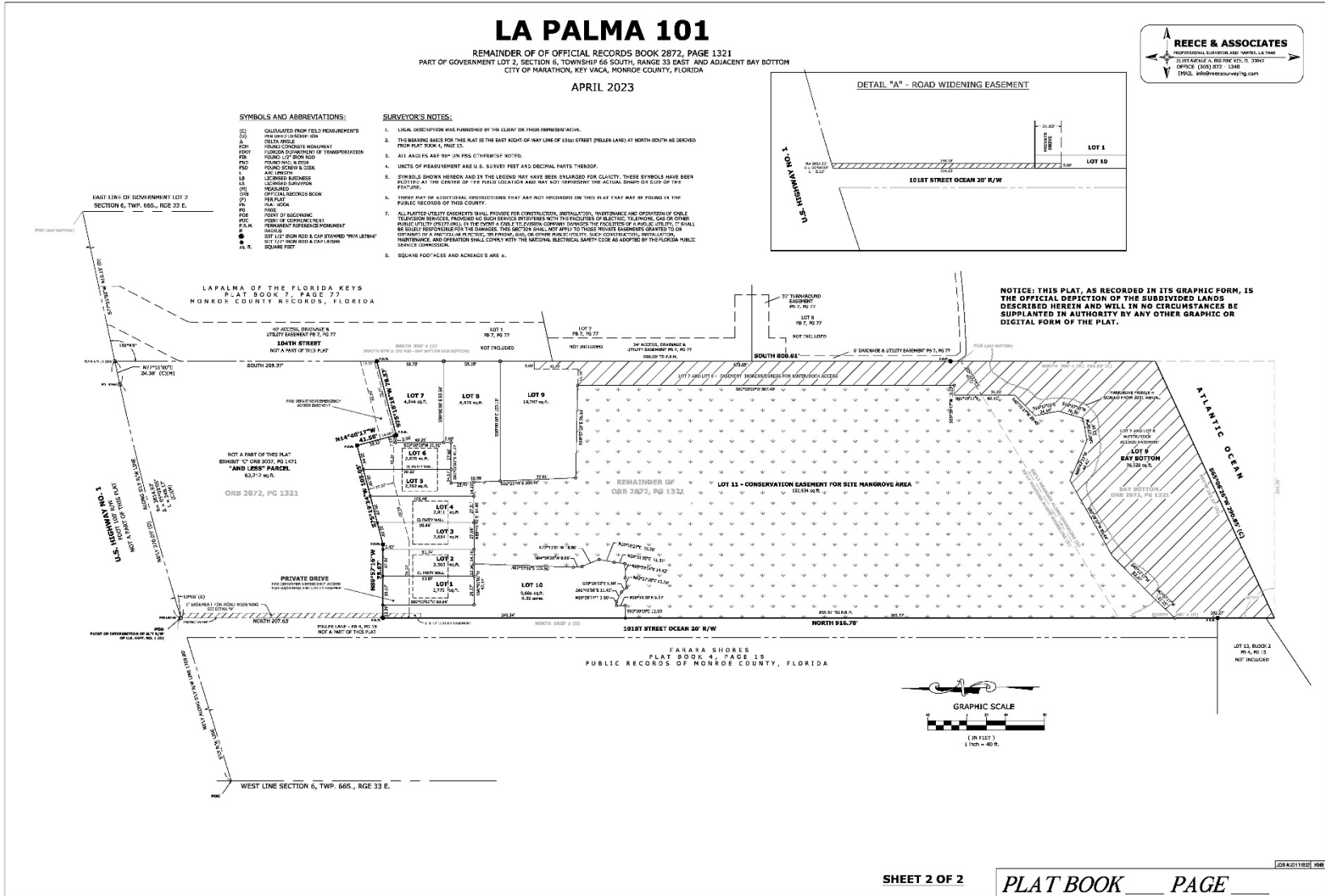
With the following conditions, the Planning staff recommends approval of the proposed plat.

Conditions:

1. Must meet NFPA 1, NFPA 101 emergency access and proper egress not shown on plans.

2. Must receive final approval for the 100th to 101 street connection for through emergency access.
3. A utility easement will be required for the vacuum pit and cleanouts in front of the duplexes.;
4. The Applicant will provide an approximately 5' x 220' easement adjacent to the 101st St Right-Of-Way (or the southernmost point of ingress/egress from the property) in order to assist in traffic flow in and out of the property on that street. The developer will be responsible for paving this area with engineering and design approvals from the City.;
5. A conservation easement for the site mangrove area will be recorded, subject to City approval;
6. Affordable Housing Deed Restrictions shall be recorded with the Monroe County Clerk of Court for each of the new duplex parcels and will be attached to each parcel for a period of ninety-nine (99) years.
7. All conditions of the Conditional Use must be met prior to final plat approval.

Attachments: Final Plat



**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-44**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A FINAL PLAT AS SUBMITTED BY LA PALMA 101 INC FOR A PLAT PURSUANT TO CHAPTER 102, ARTICLE 10 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATION (LDRS) ENTITLED “SUBDIVISION OF LAND/PLATS AND RE-PLATS,” PARTICULARLY, 400-800 101 AND 104TH STREET WHICH IS DESCRIBED AS PART OF GOVERNMENT LOT 2, AND ADJACENT BAY BOTTOM, SECTION 6, TOWNSHIP 66S, RANGE 33E, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104460-000100 AND 00104460-000000. NEAREST MILE MARKER 52.

WHEREAS, La Palma 101 Inc (Applicant) filed an Application on November 29, 2022, for a Conditional Use Permit for approval of eleven lots; including three lots for single family homes, six lots for three deed restricted affordable duplexes, one deed restricted conservation lot and one vacant lot to be combined parcel 00104460-000000 pursuant to Chapter 177, Florida Statutes and Chapter 102, Article 10, of the City of Marathon Land Development Regulations (LDRs);and

WHEREAS, on the 23rd day of January 2023, the City of Marathon Planning Commission (the “Commission”) reviewed and recommended approval of the final re-plat with several conditions; and

WHEREAS, on the 14th day of February 2023, the City Council (the “Council”) reviewed the Applicant’s proposal finding that the preliminary Re-plat documents were compliant with the terms of Chapter 177, Florida Statutes and the Chapter 102, Article 10 of the City LDR’s; and

WHEREAS, on the 9th day of May 2023, the City Council (the “Council”) reviewed the Applicant’s proposal finding that the final Re-plat documents were compliant with the terms of Chapter 177, Florida Statutes and the Chapter 102, Article 10 of the City LDR’s; and

WHEREAS, due process was afforded to the parties, the essential requirements of law were adhered to and competent and substantial evidence was presented, the Council voted to approve the Final Re-Plat; and

WHEREAS, the purpose of the Final Plat assures that La Palma 101 Inc. has complied with all subdivision and plat filing requirements of Chapter 102, Articles 10 and Florida Statutes Chapter 177.

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

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The final plat, an unsigned copy of which is attached hereto as Exhibit “A”, is hereby approved for signature and recordation and otherwise has complied with or must meet all conditions of the re-Plat as follows:

1. Must meet NFPA 1, NFPA 101 emergency access and proper egress not shown on plans.
2. Must receive final approval for the 100th to 101 street connection for through emergency access.
3. A utility easement will be required for the vacuum pit and cleanouts in front of the duplexes.;
4. The Applicant will provide an approximately 5’ x 220’ easement adjacent to the 101st St Right-Of-Way (or the southernmost point of ingress/egress from the property) in order to assist in traffic flow in and out of the property on that street. The developer will be responsible for paving this area with engineering and design approvals from the City.;
5. A conservation easement for the site mangrove area will be recorded, subject to City approval;
6. Affordable Housing Deed Restrictions shall be recorded with the Monroe County Clerk of Court for each of the new duplex parcels and will be attached to each parcel for a period of ninety-nine (99) years.
7. All conditions of the Conditional Use must be met prior to final plat approval.

Section 3. Corrective Affordable Housing Deed Restrictions are to be recorded with the new legal descriptions from the plat, which are attached hereto as Exhibits “B” through “G.”

Section 4. Corrective lot dedication warranty deed is to be recorded with the new legal description from the plat, which is attached hereto as Exhibit “H.”

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF MAY 2023.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

EXHIBIT A

**Final Plat of Property
(Original Re-plat to be attached at final adoption & signature)**

EXHIBIT B

**Amended Affordable Housing Deed Restriction (1 of 6)
(Original to be attached at final adoption & signature)**

EXHIBIT C

**Amended Affordable Housing Deed Restriction (2 of 6)
(Original to be attached at final adoption & signature)**

EXHIBIT D

**Amended Affordable Housing Deed Restriction (3 of 6)
(Original to be attached at final adoption & signature)**

EXHIBIT E

**Amended Affordable Housing Deed Restriction (4 of 6)
(Original to be attached at final adoption & signature)**

EXHIBIT F

**Amended Affordable Housing Deed Restriction (5 of 6)
(Original to be attached at final adoption & signature)**

EXHIBIT G

**Amended Affordable Housing Deed Restriction (6 of 6)
(Original to be attached at final adoption & signature)**

EXHIBIT H

**Corrective Lot Dedication Warranty Deed
(Original to be attached at final adoption & signature)**

**This instrument prepared by,
and after recording return to:**

Planning Dept.
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

THIS AGREEMENT AND DECLARATION OF **AFFORDABLE HOUSING RESTRICTIONS** (“Declaration”) is made and entered into this ____ day of _____, 2023, by and between _____, whose principal mailing address is _____ (Declarant”) and the City of Marathon, a Florida municipal corporation, whose principal mailing address is 9805 Overseas Highway, Marathon, Florida 30050 (the “City”).

RECITALS:

1. Declarant is the fee simple title owner to certain real property (the “Property”) located in the City of Marathon, Monroe County, Florida, which is more particularly described as:

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT “A”
(Identify the number of pages of the attachment)
2. Declarant is the recipient of 1 RBPAS Affordable Housing Residential Units which must follow the Affordable Housing requirements pursuant to Section **104.03 “Affordable Housing” and 107.06 (c) of the City of Marathon Land Development Regulations**
3. In consideration of the Declarant’s receipt of its Affordable Housing Residential Unit Allocations, and the waiver of fees as set forth herein, and for other good and valuable consideration, Declarant hereby covenants with the City of Marathon, a political subdivision of the State of Florida, its successors or assigns, for itself, its heirs and successors that the property described herein is subject to and bound by the Affordable Housing Restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, shall run with the land, and are enforceable by the City, its successors and assigns.
4. This document amends the deed restriction recorded in Book 3132 Page 2292, pursuant to section 7.

NOW, THEREFORE, the Declarant agrees that the Property shall be held and conveyed subject to the following Affordable Housing Restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interests in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

THE DECLARANT AGREES AND CERTIFIES THAT AS THE OWNER OF THE PROPERTY DESCRIBED HEREIN, THERE IS A CAP AND RESTRICTION UPON THE SALE OR OTHER CONVEYANCE OF THE SUBJECT PROPERTY. IN ORDER TO CONVEY THE PROPERTY, THE DECLARANT, HIS/HER/ITS SUCCESSORS OR ASSIGNS MUST COMPLY WITH THE FOLLOWING:

- A. **The prospective purchaser or occupant must be a qualified purchaser or occupant under the City of Marathon Affordable Housing Restrictions as set forth in Section 104.01 “Affordable Housing” and 107.06 (c) of the City of Marathon Land Development Regulations (as may be amended), or the City’s successors or assigns, as a precondition of the purchase or other conveyance of the subject property. A valid Certificate of Compliance issued by the City of Marathon, its successors or assigns, within 30 days of the prospective conveyance must be recorded in the Public Records of Monroe County contemporaneously with the recording of the deed of conveyance.**
 - B. **The Deed, or other document of conveyance must make specific reference to this document by name and the OR Book and Page where it is recorded in the Public Records of Monroe County.**
 - C. **The Deed, or other document of conveyance, must state, in bold print of at least 14 point font, on the first page of the document, immediately following the legal description the phrase, “THIS PROPERTY IS SUBJECT TO AFFORDABLE HOUSING RESTRICTIONS WHICH MAY EFFECT ITS SALE OR CONVEYANCE”.**
1. **Restrictions.** Declarant hereby covenants, agrees and certifies, in so far as the rights, powers, interests and authority of the Declarant is concerned, that development, sale, lease, or other conveyance of the Property shall be in accordance with the City’s Affordable Housing Restrictions as set forth in the provisions of Section 104.01 “Affordable Housing” and 107.06 (c) of the City of Marathon Land Development Regulations (as may be amended).
 2. **Impact Fees.** Under the provisions set forth in Chapter 111 of the City Code, any persons, including any governmental agency, prior to receiving a building permit for any new land development activity shall pay “Fair Share Impact Fees”.

3. **Waiver of Impact Fees.** Under the Affordable Housing Provisions set forth in Chapter 111 of the City Code, the owner or owners of the above described real Property have been exempted from payment of “Fair Share Impact Fees” for a single family dwelling constructed on said real property.
4. **City.** This Declaration is intended to benefit and run in favor to the City.
5. **Enforcement.** This Declaration may be enforced by the City at law or in equity or as a code compliance action against any party or person violating, or attempting to violate, any of the covenants and restrictions contained herein. The remedies available to the City shall include, but are not limited to, obtaining a court order requiring the Declarant or his/her successor or assigns to comply with the City’s affordable housing regulations in effect at the time of such order, and compelling the Property’s continuing compliance with the affordable housing regulations until this Declaration has expired. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys’ fees and costs as well as attorneys’ fees and cost incurred in enforcing this prevailing parties attorneys’ fees provision. This enforcement provision shall be in addition to any other remedies available at law or in equity.
6. **Term.** The restrictions, covenants and conditions of this Declaration shall run with the land for a term of ninety-nine (99) years from the date of the issuance of a Certificate of Occupancy issued by City of Marathon, its successors or assigns, for the dwelling unit or units to which this covenant applies. If any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if possible, to reflect the intent of such provision or application and then shall be enforced in a manner allowing the covenant, conditions, and restrictions to so run with the land.
7. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant and the City. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
8. **Paragraph Headings.** Paragraphs headings, where used herein, are inserted for the convenience only and are not intended to be a part of this Declaration or in any way defined, limited or described to be a part of this Declaration in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
9. **Effective Date.** This Declaration shall become effective upon date of execution by both parties hereto or the date of recordation of this Declaration in the Public Records of Monroe County, Florida, which ever is later.
10. **Governing Law.** This Declaration and the enforcement of the rights and obligations

established hereby shall be subject to and governed by the laws of the State of Florida.

11. **Recordation.** Declarant shall at its sole cost and expenses, record this Declaration in the Public Records of Monroe County, Florida within fifteen (15) days of the execution hereof by both the Declarant and the City. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph. Failure to record these restrictions shall entitle the City to refuse to issue the Certificate of Occupancy for the dwelling unit or units to which this covenant applies, and to other remedies, legal or equitable, available to the City to assure compliance with these Restrictions.

12. **Authorization for City to Withhold Permits and Inspections.** If the terms of this Declaration are not being complied with, in addition to any other remedies available at law or in equity, the City is hereby authorized after notice and an opportunity to cure, to withhold any permits regarding the Property or any portion thereof, and to refuse to make any inspections or grant any approvals for the Property or any portion thereof, until such time as the Declarant or its successor or assigns is in compliance with the covenants of this Declaration. The determination of non-compliance and to withhold permits, inspections, or approvals shall be by the Director of Planning and shall be subject to the appeal provision of the City's land development regulations.

IN WITNESS WHEREOF, Declarant, has caused these presents to be executed on the day and year first above written.

Signed, sealed and delivered
in the presence of:

DECLARANT

Printed Name: _____

By: _____
Printed Name: _____

Printed Name: _____

By: _____
Printed Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by, _____, who personally appeared before me, and is/are personally known to me or have produced _____ as identification and acknowledged executing the foregoing document.

Notary Public, State of _____
Printed Name:
My commission expires:

Agreed and accepted this ___ day of _____, 2023:

THE CITY OF MARATHON, a Florida Municipal Corporation

By: _____
George Garrett, City Manager

ATTEST:

Diane Clavier
City Clerk

(City Seal)

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

BY: _____
Steve Williams, City Attorney

JOINDER, CONSENT, AND SUBORDINATION

The undersigned hereby certifies that _____ is the holder of a mortgage, lien or other encumbrance upon the above-described Property, and that the undersigned hereby joins in and consents to the foregoing instrument by the Owner thereof (the "Declarant") and agrees that its mortgage, lien or other encumbrance, which is recorded in Official Records Book _____ at Page _____ of the Public Records of Monroe County, Florida, shall be subordinated to the foregoing Declaration of Covenants, Conditions, and Restrictions (the "Declaration") for the two affordable housing dwelling units.

Signed, sealed, and delivered
in the presence of:

Print Name: _____

By _____
Name: _____
Its: _____

Print Name: _____

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by _____, who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Notary Public, State of _____
Printed Name:
My commission expires: