

CITY COUNCIL AGENDA STATEMENT



Meeting Date: October 14, 2025
To: Honorable Mayor and City Council
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:

	<u>Zoning</u>	<u>Use</u>
North	Residential Mobile Home (R-MH)	Residences of 91 st Street
East	Residential Mobile Home (R-MH)	Residences of 92 nd Street
South	Residential Mobile Home (R-MH)	Residences of 91 st Court
West	Residential Mobile Home (R-MH)	Residences of 91 st 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 of 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 have to 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 brought 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 City Council grant **CONDITIONAL APPROVAL** of the Development Agreement. Planning Commission recommended denial of the Development Agreement (3-0).

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

~~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 1-3.43 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.

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 (1) 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

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.

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

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 hearing. 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.

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

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.

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

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.

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)

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

ATTEST:

CITY OF MARATHON

City Clerk

By: _____
Mayor

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

Steve Williams, City Attorney