

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2023-111**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AS THE OWNER, AND QOF, INC. AS LESSEE FOR SUBMERGED LANDS IDENTIFIED BY REAL ESTATE NUMBER 00355400-000000; INCLUDING, BUT NOT LIMITED TO ESTABLISHING A LEASE AREA, LEASE AMOUNT, LEASE DURATION, AND RELEASE OF LIABILITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon, Florida (the “City”) is the owner of certain properties existing below the mean high waters of the State of Florida, further identified by real estate number 00355400-000000 and located within the geographical bounds of Boot Key Harbor (the “Property”); and

**WHEREAS**, QOF, Inc. (the “Lessee”) desires to lease certain portions of said Property for the purposes of future construction of docking facilities associated with the Lessee’s upload property identified by real estate numbers 00355370-002203 and 00355370-002204; and

**WHEREAS**, the parties have agreed to lease terms including, but not limited to, lease area, lease amount, lease duration, and release of liability; and

**WHEREAS**, the City believes that the Lease Agreement is in the best interest of the Parties and of the residents of the City of Marathon, Florida.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

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

**Section 2.** The Lease Agreement between the City and the Lessee attached hereto as “Exhibit A,” is hereby approved. The City is authorized to execute the Lease Agreement on behalf of the City.

**Section 3. Effective Date.** This resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 14<sup>th</sup> DAY OF NOVEMBER, 2023.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Robyn Still**


AYES: Gonzalez, Landry, Matlock, Smith, Still  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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

## SUBMERGED LAND LEASE

**THIS SUBMERGED LAND LEASE** ("Lease") dated as of Nov 21<sup>st</sup>, 2023 made by and between the CITY OF MARATHON ("City" or "Lessor"), a Florida Municipal Corporation, having an address at 9805 Overseas Highway, Marathon, Florida 33503, and QOF Inc. ("Lessee"), having an address at 1222 SE 44<sup>th</sup> Street, Unite 330, Cape Coral, FL 33904.

### RECITALS

1. City owns certain submerged real property (the "Premises") located in Monroe County, Florida adjacent to 1507B Sombrero Boulevard, Marathon, Florida ("Upland Parcel"), upon which Lessee constructed a single-family dock (the "Dock").

2. Lessor desires to lease to QOF Inc. ("QOF Inc."), and Lessee desires to lease from Lessor, the Premises solely for the operation, construction, use, maintenance and repair of the Dock, subject to the terms and conditions of this Lease.

**NOW, THEREFORE**, in consideration of payment of the lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to QOF Inc., hereinafter referred to as the Lessee, the submerged lands described as follows:

A portion of bay bottom in Boot Key Harbor, adjacent to the Southwest One-half of Lot 22, Parcel 11 of THE SOMBRERO PROPERTIES, as Recorded in Plat Book 5, Page 101 of the Public Records of Monroe County, Florida, and more particularly described by metes and bounds as follows:

Commencing at the Southeast corner of the aforementioned, Southwest One-half of Lot 22, thence bear N 42°34'00" W for a distance of 105.25 feet to the Point of Beginning of the bay bottom hereinafter described; from said Point of Beginning, continue bearing N 42°34'00" W for a distance of 50.0 feet; thence bear S 47°26'00" W for a distance of 50.0 feet; thence bear S 42°34'00" E for a distance of 51.25 feet; thence bear Northeasterly along Boot Key Harbor 50.05 feet back to the POINT OF BEGINNING.

TO HAVE THE USE OF the hereinabove described premises for a period of twenty (20) years as set forth below. The terms and conditions on and for which is lease is granted are as follows:

### **SECTION 1. TERM**

(a) Term. The term ("Term") of this Lease shall commence on the date of execution for this Lease and shall terminate on the twenty year anniversary of this lease, unless sooner terminated if Lessee purchases the Premises or as otherwise provided herein.

(b) Renewal. In the event that Lessee is in full compliance with the terms of this Lease, the lease will automatically renew unless sooner terminated if Lessee purchases the Premises or as

otherwise provided herein. The term of the renewal shall commence on the last day of the previous lease term.

(c) Upland. During the Term, Lessee shall maintain a leasehold or fee simple title interest in the Upland Parcel. If the Lessee's fee simple title interest is terminated, the Lease will automatically transfer to the fee simple title holder of the Upland Parcel, in which case the Lessee's lease fees shall be prorated as of the date of termination and the parties shall be relieved of all rights and obligations hereunder except for the Surviving Obligations.

## **SECTION 2. LEASE FEES.**

The Lessee hereby agrees to pay to the Lessor a lease fee of \$ \_\_\_\_\_ within 30 days of receipt of this fully executed lease. The lease fee shall satisfy the cost of the entire 20-year lease. If the Term of this Lease is renewed, the Lessee shall remit the lease fee of \$ \_\_\_\_\_ to Lessor within 30 days of renewal.

## **SECTION 3. RIGHTS AND USES OF THE LESSEE.**

(a) Permitted Use. Lessee shall be permitted to utilize the Premises solely for the operation, use, construction, maintenance and repair of the single-family docking facilities.

## **SECTION 4. INSURANCE REQUIREMENTS FOR LESSEE.**

(a) Homeowner's Insurance. Lessee shall, during the Term of this Lease, insure and keep insured not less than the minimum amount required by a homeowner's insurance carrier authorized to do business in the State of Florida. The City shall be named as an additional insured on the homeowner's insurance policy. No other insurance shall be required as part of this Lease.

## **SECTION 5. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS.**

(a) The Lessee shall indemnify and hold harmless the City from and against any and all claims, costs, losses and damages, liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of the Lessee, any subcontractor, any supplier, any person directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, such is caused by the Lessor's gross negligence. This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury of destruction of tangible property, including the improvements, and including the loss of use resulting therefrom. Payment of any amount due pursuant to this section shall, after receipt of written notice by Lessee from the City that such amount is due, be paid by Lessee if the City becomes legally obligated to pay same, or the Lessee agrees that it is responsible for said claim, or in the alternative, that City, at the City's option, may make payment of an amount so due and Lessee shall promptly reimburse the City for same. Where the basis for a claim for damages brought against the City by a third party is that the City has breached a contract or other duty to the third party, and the action or inaction which constitutes the breach was a result of the negligent acts or omissions of the Lessee under this Lease, then Lessee agrees, at Lessee's expense, after written notice from the

City to defend any action against the City that falls within the scope of this section, or the City, at the City's option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit which alleged that the breach was a result of the negligent act or omissions of the Lessee under this Lease, then the reasonable costs and expenses of the City incurred in defending such action shall be payable by Lessee. If the City requests the Lessee to defend such action on behalf of the City and the City is not found liable for any damages which are expressly or impliedly claimed to be the result of the Lessee's acts or omissions, then the City shall reimburse the Lessee all the reasonable fees and costs expended in the defense. If either the City or Lessee is required to incur attorney's fees or costs to enforce this section, the prevailing party in any litigation shall recover all of their attorney's fees and costs at both trial and appellate levels. The provisions of this section shall survive the expiration or earlier termination of this Lease.

**SECTION 6. SURRENDER.**

(a) The Lessee covenants and agrees to yield and deliver peaceably and promptly to the Lessor, possession of the Premises, on the Termination Date or earlier termination of this Lease. The Lessee shall surrender the Premises in the condition required pursuant to this Lease, reasonable wear, tear, casualty and condemnation accepted. All maintenance and repairs shall be completed prior to surrender.

**SECTION 7. SURRENDER OF LEASE**

(a) No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Lessor and of the Lessee in a document of equal dignity and formality herewith. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of the Lessor shall be deemed an acceptance of a surrender.

**SECTION 8. NOTICES.**

(a) Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

**FOR LESSOR:**

City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050 Attn: City Manager

and

City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050 Attn: City Attorney

**FOR LESSEE:**

QOF Inc.  
1222 SE 44<sup>th</sup> Street, Unit 330  
Cape Coral, FL 33904  
Attn: Michael Arranda

All notices, approvals and consents required hereunder must be in writing to be effective.

**SECTION 9. NON-LIABILITY OF INDIVIDUALS.**

(a) No limited partner, director, officer, administrator, official, agent or employee of the Lessor or Lessee shall be charged personally or held contractually liable under any term or provisions of this Lease or of any supplement, modification or amendment to this Lease or because of any breach thereof, or because of its or their execution or attempted execution.

**SECTION 10. ENVIRONMENTAL COMPLIANCE; ENVIRONMENTAL CONTAINMENT AND REMOVAL**

(a) No Warranty by Lessor. Lessor makes no representations or warranties whatsoever as to the existence of any pollutants, or hydrocarbon contamination, hazardous materials, or other contaminants or regulated materials (collectively, "Materials") on, in or under the Premises, whether or not in violation of any law, administrative code provision, ordinance, rule, regulation, order or directive of Governmental Authorities, as amended. It shall be the sole responsibility of Lessee to make sufficient inspection of the Premises to satisfy itself as to the presence or absence of any Materials.

**SECTION 11. NON-DISCRIMINATION**

Lessee shall not discriminate against any Person because of that Person's race, color, religion, sex, national origin, age, or handicap with respect to any activity occurring within the Premises or upon the Upland.

**SECTION 12. MISCELLANEOUS.**

(a) Headings. The section and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(b) Jurisdiction. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any disputes shall lie in the courts of Monroe County, Florida.

(c) Severance. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the fullest extent permitted by law.

(d) Relationship of Parties/Independent Contractor. It is the intent of the parties that the relationship of Lessor and Lessee hereunder is the relationship of landlord and tenant. Services provided by Lessee shall be subject to the supervision of Lessee and such services shall not be provided by Lessee, or its agents, as officers, employees, or agents of the Lessor. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease. Nothing contained herein shall create or be deemed or construed to create a partnership, joint venture, joint enterprise or any other agency or other similar such relationship between the parties hereto.

(e) Third Party Beneficiaries. Neither Lessee nor Lessor intend to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this Lease.

(f) Negotiated Lease. Both parties have substantially contributed to the drafting and negotiation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

(g) Incorporation by Reference. The truth and accuracy of each "Recitals" clause set forth above is acknowledged by the parties. The attached Exhibits to this Lease are incorporated into and made a part of this Lease and all Exhibits subsequently attached to this Lease pursuant to the terms hereof shall be deemed incorporated into and made a part of this Lease.

(h) Estoppel Statement. The parties agree that from time to time, upon not less than fifteen (15) days prior request by a party hereto, the other party will deliver a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the lease fees and other charges have been paid; (c) that neither party is in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either party may reasonably request. Failure to timely respond will be deemed a breach of this agreement.

(i) Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by the Lessor and Lessee.

(j) Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, including the understanding that the City's intent is to sell the Premises to Lessee. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or

conditions contained herein shall be effective unless contained in a written document in accordance with subparagraph (i), above.

(k) References. All personal pronouns used in this Lease shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Lease as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Lease, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

(l) Agent for Service of Process. It is expressly understood and agreed that if the Lessee is not a resident of the State of Florida, or is an association, corporation or partnership without a registered agent for service of process in the State of Florida, then in any such event the Lessee does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and the Lessor arising out of or based upon this Lease, and the service shall be made as provided by the laws of the State for service upon a non-resident, who has designated the Secretary of State as agent for service. The Lessee shall designate an agent for service process in Florida. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Lessee may be personally served with such process out of this State by certified mailing to the Lessee at the address set forth herein. Any such service out of this State shall constitute valid service upon the Lessee as of the date of mailing. It is further expressly agreed that the Lessee is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

(m) Waiver of Claims. Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) arising from any use of the Premises or any part thereof; (ii) caused by any defect in any building, structure, or other Improvements thereon or in any equipment or other facility located therein; (iii) caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees or invitees; (iv) arising from any accident on the Premises or any fire or other casualty thereon; (v) occasioned by Lessee's failure to maintain the Premises and Improvements in a safe condition; or (vi) arising from any other cause; unless, in any of such events, caused by the gross negligence or willful act of Lessor. The Lessor does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Lessor be liable for any consequential or punitive damages in connection with this Lease.

(n) Successors and Assigns Bound. This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Lease.

(o) Time of Essence. Time is expressed to be of the essence of this Lease.

(p) Written Approvals. All approvals and consents required to be obtained hereunder must be in writing to be effective. Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Agreement shall not be unreasonably withheld, conditioned or delayed.



(q) Authority of Individuals. The individuals executing this Lease on behalf of Lessee personally warrant that they have full authority to execute this Lease in a representative capacity on behalf of Lessee for whom they are acting herein.

(r) Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your local public health unit.

(s) Broker. Each party represents to the other that it has not dealt with any broker or finder in connection with the execution of this Lease.

(t) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original.

(u) Joint and Several Liability. Notwithstanding anything to the contrary contained herein, if Lessee is a general partnership or joint venture, any general partner or venturer of Lessee shall be jointly and severally liable and obligated with Lessee for the full performance of all of the terms, covenants, obligations and conditions of this Agreement.

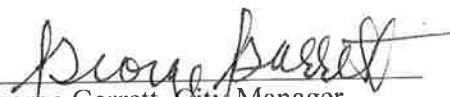
(v) Attorneys' Fees. In the event of any litigation which arises out of, pertains to, or relates to this Lease or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, subject to the limits of this Section.


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IN WITNESS WHEREOF, the parties hereto have made and executed this Lease on the respective dates under each signature.

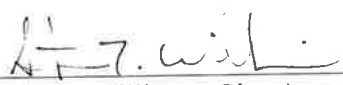
**LESSOR:**

CITY OF MARATHON, a Florida municipal corporation

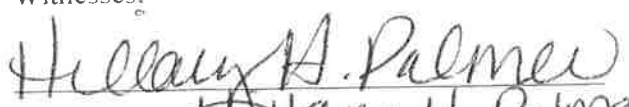
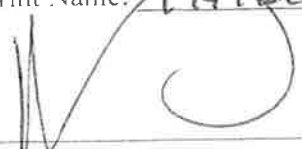
By:   
George Garrett, City Manager

ATTEST:  
  
Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE CITY OF MARATHON ONLY:

By:   
Steve Williams, City Attorney

**LESSEE:**  
  
Michael Aranda

Witnesses:  
  
Print Name: Hillary H. Palmer  
  
Print Name: Maria Angela Varegas

## SUBMERGED LAND LEASE

THIS SUBMERGED LAND LEASE ("Lease") dated as of NOV-21<sup>st</sup>, 2023 made by and between the CITY OF MARATHON ("City" or "Lessor"), a Florida Municipal Corporation, having an address at 9805 Overseas Highway, Marathon, Florida 33503, and QOF Inc. ("Lessee"), having an address at 1222 SE 44<sup>th</sup> Street, Unite 330, Cape Coral, FL 33904.

### RECITALS

1. City owns certain submerged real property (the "Premises") located in Monroe County, Florida adjacent to 1507A Sombrero Boulevard, Marathon, Florida ("Upland Parcel"), upon which Lessee constructed a single-family dock (the "Dock").

2. Lessor desires to lease to QOF Inc. ("QOF Inc."), and Lessee desires to lease from Lessor, the Premises solely for the operation, construction, use, maintenance and repair of the Dock, subject to the terms and conditions of this Lease.

**NOW, THEREFORE**, in consideration of payment of the lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to QOF Inc., hereinafter referred to as the Lessee, the submerged lands described as follows:

A portion of bay bottom in Boot Key Harbor, adjacent to the Northeast One-half of Lot 22, Parcel 11 of THE SOMBRERO PROPERTIES, as Recorded in Plat Book 5, Page 101 of the Public Records of Monroe County, Florida, and more particularly described by metes and bounds as follows:

Commencing at the Southeast corner of the aforementioned, Northeast One-half of Lot 22, thence bear N 42°34'00" W for a distance of 106.50 feet to the Point of Beginning of the bay bottom hereinafter described; from said Point of Beginning, continue bearing N 42°34'00" W for a distance of 50.0 feet; thence bear S 47°26'00" W for a distance of 50.0 feet; thence bear S 42°34'00" E for a distance of 51.25 feet; thence bear Northeasterly along Boot Key Harbor 50.05 feet back to the POINT OF BEGINNING.

TO HAVE THE USE OF the hereinabove described premises for a period of twenty (20) years as set forth below. The terms and conditions on and for which is lease is granted are as follows:

### **SECTION 1. TERM**

(a) Term. The term ("Term") of this Lease shall commence on the date of execution for this Lease and shall terminate on the twenty year anniversary of this lease, unless sooner terminated if Lessee purchases the Premises or as otherwise provided herein.

(b) Renewal. In the event that Lessee is in full compliance with the terms of this Lease, the lease will automatically renew unless sooner terminated if Lessee purchases the Premises or as

otherwise provided herein. The term of the renewal shall commence on the last day of the previous lease term.

(c) Upland. During the Term, Lessee shall maintain a leasehold or fee simple title interest in the Upland Parcel. If the Lessee's fee simple title interest is terminated, the Lease will automatically transfer to the fee simple title holder of the Upland Parcel, in which case the Lessee's lease fees shall be prorated as of the date of termination and the parties shall be relieved of all rights and obligations hereunder except for the Surviving Obligations.

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The Lessee hereby agrees to pay to the Lessor a lease fee of \$\_\_\_\_\_ within 30 days of receipt of this fully executed lease. The lease fee shall satisfy the cost of the entire 20-year lease. If the Term of this Lease is renewed, the Lessee shall remit the lease fee of \$\_\_\_\_\_ to Lessor within 30 days of renewal.

## **SECTION 3. RIGHTS AND USES OF THE LESSEE.**

(a) Permitted Use. Lessee shall be permitted to utilize the Premises solely for the operation, use, construction, maintenance and repair of the single-family docking facilities.

## **SECTION 4. INSURANCE REQUIREMENTS FOR LESSEE.**

(a) Homeowner's Insurance. Lessee shall, during the Term of this Lease, insure and keep insured not less than the minimum amount required by a homeowner's insurance carrier authorized to do business in the State of Florida. The City shall be named as an additional insured on the homeowner's insurance policy. No other insurance shall be required as part of this Lease.

## **SECTION 5. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS.**

(a) The Lessee shall indemnify and hold harmless the City from and against any and all claims, costs, losses and damages, liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of the Lessee, any subcontractor, any supplier, any person directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, such is caused by the Lessor's gross negligence. This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury of destruction of tangible property, including the improvements, and including the loss of use resulting therefrom. Payment of any amount due pursuant to this section shall, after receipt of written notice by Lessee from the City that such amount is due, be paid by Lessee if the City becomes legally obligated to pay same, or the Lessee agrees that it is responsible for said claim, or in the alternative, that City, at the City's option, may make payment of an amount so due and Lessee shall promptly reimburse the City for same. Where the basis for a claim for damages brought against the City by a third party is that the City has breached a contract or other duty to the third party, and the action or inaction which constitutes the breach was a result of the negligent acts or omissions of the Lessee under this Lease, then Lessee agrees, at Lessee's expense, after written notice from the

City to defend any action against the City that falls within the scope of this section, or the City, at the City's option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit which alleged that the breach was a result of the negligent act or omissions of the Lessee under this Lease, then the reasonable costs and expenses of the City incurred in defending such action shall be payable by Lessee. If the City requests the Lessee to defend such action on behalf of the City and the City is not found liable for any damages which are expressly or impliedly claimed to be the result of the Lessee's acts or omissions, then the City shall reimburse the Lessee all the reasonable fees and costs expended in the defense. If either the City or Lessee is required to incur attorney's fees or costs to enforce this section, the prevailing party in any litigation shall recover all of their attorney's fees and costs at both trial and appellate levels. The provisions of this section shall survive the expiration or earlier termination of this Lease.

**SECTION 6. SURRENDER.**

(a) The Lessee covenants and agrees to yield and deliver peaceably and promptly to the Lessor, possession of the Premises, on the Termination Date or earlier termination of this Lease. The Lessee shall surrender the Premises in the condition required pursuant to this Lease, reasonable wear, tear, casualty and condemnation accepted. All maintenance and repairs shall be completed prior to surrender.

**SECTION 7. SURRENDER OF LEASE**

(a) No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Lessor and of the Lessee in a document of equal dignity and formality herewith. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of the Lessor shall be deemed an acceptance of a surrender.

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(a) Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

**FOR LESSOR:**

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9805 Overseas Highway  
Marathon, Florida 33050 Attn: City Manager

and

City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050 Attn: City Attorney

**FOR LESSEE:**

QOF Inc.  
1222 SE 44<sup>th</sup> Street, Unit 330  
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All notices, approvals and consents required hereunder must be in writing to be effective.

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**SECTION 12. MISCELLANEOUS.**

(a) Headings. The section and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(b) Jurisdiction. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any disputes shall lie in the courts of Monroe County, Florida.

(c) Severance. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the fullest extent permitted by law.

(d) Relationship of Parties/Independent Contractor. It is the intent of the parties that the relationship of Lessor and Lessee hereunder is the relationship of landlord and tenant. Services provided by Lessee shall be subject to the supervision of Lessee and such services shall not be provided by Lessee, or its agents, as officers, employees, or agents of the Lessor. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease. Nothing contained herein shall create or be deemed or construed to create a partnership, joint venture, joint enterprise or any other agency or other similar such relationship between the parties hereto.

(e) Third Party Beneficiaries. Neither Lessee nor Lessor intend to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this Lease.

(f) Negotiated Lease. Both parties have substantially contributed to the drafting and negotiation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

(g) Incorporation by Reference. The truth and accuracy of each "Recitals" clause set forth above is acknowledged by the parties. The attached Exhibits to this Lease are incorporated into and made a part of this Lease and all Exhibits subsequently attached to this Lease pursuant to the terms hereof shall be deemed incorporated into and made a part of this Lease.

(h) Estoppel Statement. The parties agree that from time to time, upon not less than fifteen (15) days prior request by a party hereto, the other party will deliver a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the lease fees and other charges have been paid; (c) that neither party is in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either party may reasonably request. Failure to timely respond will be deemed a breach of this agreement.

(i) Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by the Lessor and Lessee.

(j) Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, including the understanding that the City's intent is to sell the Premises to Lessee. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or

conditions contained herein shall be effective unless contained in a written document in accordance with subparagraph (i), above.

(k) References. All personal pronouns used in this Lease shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Lease as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Lease, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

(l) Agent for Service of Process. It is expressly understood and agreed that if the Lessee is not a resident of the State of Florida, or is an association, corporation or partnership without a registered agent for service of process in the State of Florida, then in any such event the Lessee does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and the Lessor arising out of or based upon this Lease, and the service shall be made as provided by the laws of the State for service upon a non-resident, who has designated the Secretary of State as agent for service. The Lessee shall designate an agent for service process in Florida. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Lessee may be personally served with such process out of this State by certified mailing to the Lessee at the address set forth herein. Any such service out of this State shall constitute valid service upon the Lessee as of the date of mailing. It is further expressly agreed that the Lessee is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

(m) Waiver of Claims. Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) arising from any use of the Premises or any part thereof; (ii) caused by any defect in any building, structure, or other Improvements thereon or in any equipment or other facility located therein; (iii) caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees or invitees; (iv) arising from any accident on the Premises or any fire or other casualty thereon; (v) occasioned by Lessee's failure to maintain the Premises and Improvements in a safe condition; or (vi) arising from any other cause; unless, in any of such events, caused by the gross negligence or willful act of Lessor. The Lessor does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Lessor be liable for any consequential or punitive damages in connection with this Lease.

(n) Successors and Assigns Bound. This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Lease.

(o) Time of Essence. Time is expressed to be of the essence of this Lease.

(p) Written Approvals. All approvals and consents required to be obtained hereunder must be in writing to be effective. Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Agreement shall not be unreasonably withheld, conditioned or delayed.



(q) Authority of Individuals. The individuals executing this Lease on behalf of Lessee personally warrant that they have full authority to execute this Lease in a representative capacity on behalf of Lessee for whom they are acting herein.

(r) Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your local public health unit.

(s) Broker. Each party represents to the other that it has not dealt with any broker or finder in connection with the execution of this Lease.

(t) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original.

(u) Joint and Several Liability. Notwithstanding anything to the contrary contained herein, if Lessee is a general partnership or joint venture, any general partner or venturer of Lessee shall be jointly and severally liable and obligated with Lessee for the full performance of all of the terms, covenants, obligations and conditions of this Agreement.

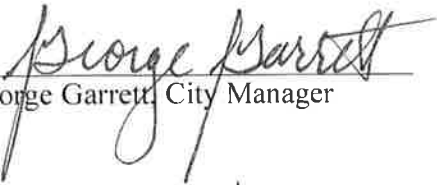
(v) Attorneys' Fees. In the event of any litigation which arises out of, pertains to, or relates to this Lease or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, subject to the limits of this Section.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Lease on the respective dates under each signature.

**LESSOR:**

CITY OF MARATHON, a Florida municipal corporation

By:   
George Garrett, City Manager

ATTEST:

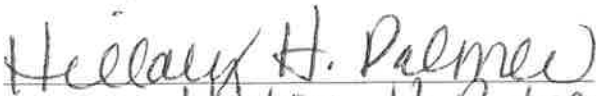
  
Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE CITY OF MARATHON ONLY:

By:   
Steve Williams, City Attorney

**LESSEE:**   
Michael Aranda

Witnesses:

  
Print Name: Hillary H. Palmer

  
Print Name: Mono Angeles Vargas