



AGENDA
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, NOVEMBER 01, 2022 - 6:00 PM

ROLL CALL:

INVOCATION OR MOMENT OF SILENCE: led by Mayor Betty Resch

PLEDGE OF ALLEGIANCE: led by Commissioner Sarah Malega

AGENDA - Additions / Deletions / Reordering:

PRESENTATIONS: (there is no public comment on Presentation items)

- A. Presentation by Richard Pinsky regarding the FY 2022-2023 Legislative Session
- B. Special Events Update by Lauren Bennett, Leisure Services Director

COMMISSION LIAISON REPORTS AND COMMENTS:

CITY MANAGER'S REPORT:

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

- A. [Regular Meeting - October 6, 2022](#)
- B. [Pre-agenda Work Session - October 12, 2022](#)

CONSENT AGENDA: (public comment allowed during Public Participation of Non-Agendaed items)

- A. [Resolution 84-2022 - FDOT License Agreement for 1702 Lake Worth Road](#)
- B. [Proclamation declaring November as Native American Indian Heritage Month](#)
- C. [Third Amendment to Retail Lease with B. F. Enterprises, Inc., the current tenant](#)
- D. [Fourth Amendment to Retail Lease with Pura Vida Treats, Inc., the current tenant](#)
- E. [Fifth Amendment to Retail Lease with RVRA, LLC, the current tenant](#)

PUBLIC HEARINGS:

- A. [Ordinance No. 19-2022 – Second Reading – Adopting amendments to Chapter 7 “Beaches, Parks and Recreation” to prohibit smoking and vaping in City parks and on the City’s beach](#)

- B. [Ordinance No. 2022-22 – Second Reading - Amending Section 15-24.1 “Definitions” and Section 15-24.5 “Enforcement,” to modify the enforcement process for a noise control violation and for other purposes](#)
- C. [Ordinance No. 2022-23 – Second Reading - Amending Chapter 2 “Administration,” Article X “Supplemental Code Compliance Procedures,” Section 2-86 “Code Citation Procedures; Appeals,” Section 2-87 “Civil Penalties,” and Section 2-88 “Classification of Infractions”](#)

UNFINISHED BUSINESS:

- A. [Discussion of proposed redistricting maps and public input](#)

NEW BUSINESS:

- A. [Resolution No. 85-2022 – Revised Investment Policy](#)
- B. [Resolution No. 86-2022 – FY23 Regional Sewer Budget Amendment](#)

CITY ATTORNEY'S REPORT:

UPCOMING MEETINGS AND WORK SESSIONS:

November 9 - Pre-agenda Work Session @ 9 AM
November 15 - Regular Meeting @ 6 PM
November 23 - Pre-agenda Work Session @ 9 AM
November 29 - Utility Meeting @ 6 PM

ADJOURNMENT:

The City Commission has adopted Rules of Decorum for Citizen Participation (See Resolution No. 81-2022). The Rules of Decorum are posted within the City Hall Chambers, City Hall Conference Room, posted online at: <https://lakeworthbeachfl.gov/government/virtual-meetings/>, and available through the City Clerk's office. Compliance with the Rules of Decorum is expected and appreciated.

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

**MINUTES
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, OCTOBER 6, 2022 – 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:00 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: (0:24) Present were Mayor Betty Resch, Vice Mayor Christopher McVoy (via Zoom), Commissioners Sarah Malega, Kimberly Stokes and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Elizabeth Lenihan and City Clerk Melissa Ann Coyne.

INVOCATION OR MOMENT OF SILENCE: (1:03) was led by Commissioner Sarah Malega.

PLEDGE OF ALLEGIANCE: (1:45) was led by Mayor Resch.

ADDITIONS/DELETIONS/REORDERING (2:05)

New Business A, Presentation by FAU of the disparity analysis and the four alternative redistricting maps for review and discussion was reordered to follow the Consent Agenda. Ordinances 2022-12 and 2022-13 were updated as there were slight modifications.

Action: Motion made by Commissioner Stokes and seconded by Commissioner Diaz to approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

PRESENTATIONS: (3;10) (there is no public comment on Presentation items)

- A. Proclamation declaring October 2022 as LGBT History Month, brought forward by Commissioner Malega (3:12)
- B. Presentation of LWB Challenge Coins by Commissioner Malega to Lifeguard Michael Saumell, Lt. Xavier DeSalis, Chief of Ocean Rescue Mathew Botts and Aquatics Manager Doug Yoakum (8:55)
- C. Presentation of the "Greetings from Lit City" board game by Lauren Bennett, Leisure Services Director, and Cindy Ansell, Library Manager (13:03)
- D. Presentation from WGI regarding Mobility Planning and Connectivity (19:08)

COMMISSION LIAISON REPORTS AND COMMENTS: (38:00)

CITY MANAGER'S REPORT: (50:45)

City Manager Davis provided the following report:

- sent thoughts to those affected by Hurricane Ian and reported that the city wanted to help; a Water Utility team went to Naples to assist with the water issues caused by Hurricane Ian
- the Electric Utility crew from Georgia was released to help cities on the west coast of Florida due to Hurricane Ian
- announced that Melissa Ann Coyne, City Clerk, was elected to the Executive Board of the Palm Beach County Municipal Clerks Association

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA: (53:09)

APPROVAL OF MINUTES: (57:19)

Action: Motion made by Commissioner Stokes and seconded by Commissioner Diaz to approve the following minutes:

- A. Special Meeting - September 8, 2022
- B. Work Session - September 12, 2022
- C. Pre-agenda Work Session - September 14, 2022

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

CONSENT AGENDA: (57:36) (public comment allowed during Public Participation of Non-Agendaed items)

Action: Motion made by Commissioner Malega and seconded by Commissioner Diaz to approve the Consent Agenda:

- A. Proclamation declaring October 10, 2022 as The Republic of China's (Taiwan) 111th National Day
- B. Approval of settlement with Adrian Tano Pascual for \$175,000 (inclusive of attorney's fees and costs)

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

NEW BUSINESS (reordered to follow the Consent Agenda)

- A. Presentation by FAU of the disparity analysis and the four alternative redistricting maps for review and discussion (55:15)

PUBLIC HEARINGS: (1:41:52)

- A. Ordinance No. 2022-12 – Second Reading – Consideration of an ordinance amending Chapter 23 “Land Development Regulations,” Article 1 “General Provisions,” Division 2 “Definitions,” and Article 2 “Administration”, Division 3 “Permits” adding a new Section 23.2-39 “Affordable/Workforce Housing Program,” providing for a Lake Worth Beach Affordable/Workforce Housing Program (1:42:07)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2022-12 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 "LAND DEVELOPMENT REGULATIONS," ARTICLE 1 "GENERAL PROVISIONS," DIVISION 2 "DEFINITIONS," SECTION 23.1-12 "DEFINITIONS," ADDING A NEW DEFINITIONS "ANNUAL GROSS HOUSEHOLD INCOME," "GROSS RENT" AND "OVERALL HOUSING EXPENSE;" AND ARTICLE 2 "ADMINISTRATION," DIVISION 3 "PERMITS," ADDING A NEW SECTION 23.2-39 "AFFORDABLE/WORKFORCE HOUSING PROGRAM," PROVIDING FOR AN AFFORDABLE/WORKFORCE HOUSING PROGRAM WITHIN THE CITY OF LAKE WORTH BEACH; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

Action: Motion made by Commissioner Stokes and seconded by Commissioner Malega to approve Ordinance No. 2022-12 amending Chapter 23 "Land Development Regulations," Article 1 "General Provisions," Division 2 "Definitions," and Article 2 "Administration", Division 3 "Permits" adding a new Section 23.2-39 "Affordable/Workforce Housing Program," providing for a Lake Worth Beach Affordable/Workforce Housing Program.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

- B. Ordinance No. 2022-13 – Second Reading – Consideration of an ordinance amending Chapter 23 "Land Development Regulations," Article 1 "General Provisions," Division 2 "Definitions," Section 23.1-12 "Definitions," and Article 4 "Development Standards," adding a new Section 23.4-25 "Micro-Units," providing for Micro-Unit Housing (1:52:26)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2022-13 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 "LAND DEVELOPMENT REGULATIONS," ARTICLE 1 "GENERAL PROVISIONS," DIVISION 2 "DEFINITIONS," SECTION 23.1-12 "DEFINITIONS," ADDING A NEW DEFINITION "MICRO-UNIT;" AND ARTICLE 4 "DEVELOPMENT STANDARDS," ADDING A NEW SECTION 23.4-25 "MICRO-UNITS," PROVIDING FOR DEVELOPMENT STANDARDS FOR MICRO-UNITS; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

Action: Motion made by Commissioner Diaz and seconded by Commissioner Stokes to approve Ordinance No. 2022-13 amending Chapter 23 "Land Development Regulations," Article 1 "General Provisions," Division 2 "Definitions," Section 23.1-12 "Definitions," and Article 4 "Development Standards", adding a new Section 23.4-25 "Micro-Units," providing for Micro-Unit Housing.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

- C. Ordinance No. 2022-14 – Second Reading – Consideration of an ordinance amending Chapter 23 "Land Development Regulations," Article 1 "General Provisions," Division 2

“Definitions,” Section 23.1-12 “Definitions”, and Article 2 “Administration”, Division 3 “Permits,” Section 23.2-31 “Site Design Qualitative Standards,” providing standards for buildings (1:59:22)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2022-14 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS,” ARTICLE 1 “GENERAL PROVISIONS,” DIVISION 2 “DEFINITIONS,” SECTION 23.1-12 “DEFINITIONS,” ADDING THERETO NEW DEFINITIONS “SOCIAL JUSTICE” AND “SUSTAINABILITY;” AND “ARTICLE 2 “ADMINISTRATION,” DIVISION 3 “PERMITS,” SECTION 23.2-31 “SITE DESIGN QUALITATIVE STANDARDS,” PROVIDING FOR STANDARDS FOR BUILDINGS; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Stokes to approve Ordinance No. 2022-14 amending Chapter 23 “Land Development Regulations,” Article 1 “General Provisions,” Division 2 “Definitions,” Section 23.1-12 “Definitions”, and Article 2 “Administration”, Division 3 “Permits,” Section 23.2-31 “Site Design Qualitative Standards,” providing standards for buildings, adding the words “and equity” to follow “fairness” on line 62.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

The meeting recessed at 8:03 PM and reconvened at 8:14 PM.

UNFINISHED BUSINESS: (2:13:57)

A. (continued from September 20, 2022 meeting) Ordinance No. 19-2022 – First Reading - Adopting amendments to Chapter 7 “Beaches, Parks and Recreation” to prohibit smoking and vaping in City parks and on the City’s beach (2:14:00)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2022-19 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 7 “BEACHES, PARKS AND RECREATION,” ARTICLE I “PARKS, RECREATIONAL FACILITIES AND PUBLIC PROPERTY,” SECTION 7-9 “REGULATION OF CONDUCT IN PARKS AND RECREATION AREAS AND ON PUBLIC PROPERTY” BY CREATING A NEW SUBSECTION (K) TO BE ENTITLED “SMOKING AND VAPING” TO PROHIBIT SMOKING AND VAPING IN CITY PARKS AND PROVIDING FOR ENFORCEMENT; AND ARTICLE VI “MUNICIPAL BEACH AREA AND MUNICIPAL BEACH,” SECTION 7-80 “ADDITIONAL REGULATIONS APPLYING TO THE MUNICIPAL BEACH AREA,” BY CREATING A NEW SUBSECTION (Z) TO BE ENTITLED “SMOKING AND VAPING” TO BAN SMOKING AND VAPING ON CITY BEACH AND TO PROVIDE FOR ENFORCEMENT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to approve Ordinance No. 19-2022 on first reading and set the second reading and public hearing for November 1, 2022, with an amendment for a designated smoking area added to special events at city parks.

Vote: Voice vote showed: AYES: Mayor Resch, and Commissioners Malega, Stokes and Diaz. NAYS: Vice Mayor McVoy.

- B. (continued from September 20, 2022 meeting) Resolution No. 78-2022 – Establishment of a Public Education Fund (2:46:27)

City Attorney Lenihan did not read the resolution.

RESOLUTION NO. 78-2022 OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, ESTABLISHING A PUBLIC EDUCATION FUND; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

Action: Motion made by Commissioner Stokes and seconded by Commissioner Malega to approve Resolution No. 78-2022 – Establishment of a Public Education Fund.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

- C. (continued from September 20, 2022 meeting) Resolution No. 79-2022 – FY 2022 Budget Transfer (2:57:16)

City Attorney Lenihan did not read the resolution.

RESOLUTION NO. 79-2022, 12th BUDGET AMENDMENT OF THE CITY OF LAKE WORTH BEACH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, MAKING SEPARATE AND SEVERAL BUDGET AMENDMENTS AND CORRESPONDING APPROPRIATIONS FOR THE CITY'S NECESSARY OPERATING EXPENSES, THE USES AND EXPENSES OF THE VARIOUS FUNDS AND DEPARTMENTS OF THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021 AND ENDING SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE

Action: Motion made by Commissioner Stokes and seconded by Vice Mayor McVoy to approve Resolution No. 79-2022 – FY 2022 Budget Transfer.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, Stokes and Diaz. NAYS: None.

- D. Update Status Discussion of CRA Owned Contributing Properties along South L and South K Streets (2:57:35)

NEW BUSINESS:

- A. (reordered to follow the Consent Agenda) Presentation by FAU of the disparity analysis and the four alternative redistricting maps for review and discussion

CITY ATTORNEY'S REPORT: (3:11:55)

- A. Report regarding RFP for housing crisis / rent control

UPCOMING MEETINGS AND WORK SESSIONS:

- October 12 - Pre-agenda Work Session @ 9 AM
- October 13 - Public Meeting (redistricting) @ 6 PM
- October 15 - Public Meeting (redistricting) @ 10 AM
- October 18 - Regular Meeting @ 6 PM

ADJOURNMENT: (3:49:25)

Action: Motion made by Commissioner Stokes and seconded by Commissioner Malega to adjourn the meeting at 9:50 PM.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Stokes and Diaz. NAYS: None. ABSENT: Commissioner Malega.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

Minutes approved November 1, 2022.

Item time stamps refer to the recording of the meeting which is available on YouTube.

**MINUTES
CITY OF LAKE WORTH BEACH
CITY COMMISSION PRE-AGENDA WORK SESSION
CITY HALL COMMISSION CHAMBER
WEDNESDAY, OCTOBER 12, 2022 - 9:00 AM**

The meeting was called to order by Mayor Resch on the above date at 9:06 AM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: (0:44) Present were Mayor Betty Resch; Vice Mayor Christopher McVoy, Commissioners Sarah Malega and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Glen Torcivia, and City Clerk Melissa Ann Coyne. Commissioner Kimberly Stokes was absent.

UPDATES / FUTURE ACTION / DIRECTION:

Action: Consensus for Mayor Resch to proceed with investigating mooring fields. (08:06)

ADJOURNMENT: (55:19)

The meeting adjourned at 10:03 AM.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

Minutes Approved: November 1, 2022

Item time stamps refer to the recording of the meeting which is available on YouTube.

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: Public Works

TITLE:

Resolution No. 84-2022 – granting a License Agreement to FDOT for 1702 Lake Worth Road

SUMMARY:

As part of the Florida Department of Transportation (FDOT) project number 4400461, temporary use and modification of 1702 Lake Worth Road will be necessary.

BACKGROUND AND JUSTIFICATION:

The scope for FDOT project 4400461 includes pedestrian enhancements as well as a reconfiguration of the traffic circle at A Street. Due to these improvements, access to the City owned property on the north-west corner of the traffic circle (1702 Lake Worth Road) will be necessary. By granting this license to FDOT, the City is agreeing to allow sloping, grading, tie ins, and harmonization of the project improvements within the right-of-way with the existing features located on the 1702 Lake Worth Road property.

MOTION:

Move to approve/disapprove Resolution 84-2022 granting a license to FDOT for the purpose of harmonizing the property with the new roadway improvements.

ATTACHMENT(S):

Resolution 84-2022
FDOT License

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RESOLUTION NO. 84-2022 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, GRANTING A LICENSE TO THE STATE OF FLORIDA FOR TRANSPORTATION PURPOSES RELATED TO IMPROVEMENTS ON STATE ROAD NO. 802 (LAKE WORTH ROAD); AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 802, Item/Segment No. 4400461, Section 93180-2508, in Palm Beach County, Florida: and

WHEREAS, it is necessary that certain lands now owned by the City of Lake Worth Beach, Florida, be used temporarily by the State of Florida for the use and benefit of the State of Florida Department of Transportation: and

WHEREAS, said use is in the best interest of the City: and

WHEREAS, the State of Florida Department of Transportation has made application to said City to execute and deliver to the State of Florida Department of Transportation a license, in favor of the State of Florida, for the purpose of sloping, grading, tying in, harmonizing and reconnecting existing features with highway improvements, and said request having been duly considered.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA, that:

SECTION 1: The City Commission of the City of Lake Worth Beach, Florida, deems that the application of the State of Florida Department of Transportation for a license is for transportation purposes which are in the public or community interest and for public welfare; that a license, in favor of the State of Florida, in Lake Worth Beach, Florida, should be drawn and executed by this City Commission.

SECTION 2: Upon execution of the resolution, one copy shall be forwarded to the Public Works Director and a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at 3400 W. Commercial Boulevard, Fort Lauderdale, Florida 33309. The fully executed original shall be maintained by the City Clerk as a public record of the City.

SECTION 3: This resolution shall become effective upon adoption.

The passage of this Resolution was moved by _____, seconded by

44 _____, and upon being put to a vote, the vote was as follows:

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Mayor Betty Resch

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Vice Mayor Christopher McVoy

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Commissioner Sarah Malega

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Commissioner Kimberly Stokes

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Commissioner Reinaldo Diaz

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The Mayor thereupon declared this resolution duly passed and adopted on the ____

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day of _____, 2022.

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LAKE WORTH BEACH CITY COMMISSION

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By: _____

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Betty Resch, Mayor

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ATTEST:

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Melissa Ann Coyne, City Clerk

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09-LA.13-07/18

This instrument prepared under the direction of:

Elizabeth S. Quintana, Esq. _____

District Four Assistant General Counsel

Legal Description prepared by:

Amelia Rodriguez-Alers, P.S.M. (03/04/2022)

Document prepared by:

Cochise Wadley (03/18/2022)

Florida Department of Transportation

Right of Way Production Services

3400 W. Commercial Boulevard

Fort Lauderdale, Florida 33309

Parcel No.

900.1

Item/Segment No.

4400461

Section:

93180-2508

Managing District:

04

S.R. No.

802 (Lake Worth Road)

County:

Palm Beach

LICENSE

THIS LICENSE Made this _____ day of _____, 20____, between the **CITY OF LAKE WORTH BEACH a/k/a THE CITY OF LAKE WORTH**, a municipality of the State of Florida, whose address is: 7 N. Dixie Highway, Lake Worth Beach, Fl 33460-3725, herein called licensor and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, herein called Licensee.

In consideration of the benefits accruing unto the licensor, the parties agree as follows:

Licensor hereby grants to Licensee a license to occupy and use, subject to all of the terms and conditions hereof, the following described premises:

A portion of Lot 1, Block 35, SAWYER'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 5, Page 12 of the Public Records of Palm Beach County, Florida, lying in Section 21, Township 44 South, Range 43 East; said portion lying westerly of the Existing West Right of Way line of North A Street, extending no more than 7.00 feet between Baseline of Survey Stations 4+96.09 and 5+18.14, as shown on the Florida Department of Transportation Roadway Plan for Financial Project ID No. 440046-1-52-01.

The premises may be occupied and used by Licensee solely for sloping, grading, tying in, harmonizing and reconnecting existing features of the Licensor's property with the highway improvements which are to be constructed together with incidental purposes related thereto during the period beginning with the date first above written and continuing until completion of the transportation project, but not later than the last day of **September 2027**.

The making, execution and delivery of this license by licensor has been induced by no representations, statements, warranties, or agreements other than those contained herein. This license embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the said licensor has signed and sealed these presents the day and year first above written.

ATTEST: _____
Melissa Ann Coyne, City Clerk

CITY OF LAKE WORTH BEACH,
a municipality of the State of Florida
By Its City Commission

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

(Official Seal)

By: _____
City Attorney

CITY OF LAKE WORTH BEACH

PROCLAMATION

- WHEREAS,** The history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and
- WHEREAS,** The contributions of American Indians have enhanced the freedom, prosperity, and greatness of America today; and
- WHEREAS,** Their customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and
- WHEREAS,** Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President Bush in August 1990, designating the month of November as National American Indian Heritage Month.

NOW, THEREFORE, I, BETTY RESCH, Mayor of the City of Lake Worth Beach, Florida by virtue of the authority vested in me and on behalf of the City Commission, do hereby proclaim:

NOVEMBER 2022

as

NATIONAL AMERICAN INDIAN HERITAGE MONTH

and urge all residents to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth Beach, Florida, to be affixed this 1st day of November, 2022.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: Leisure Services

TITLE:

Third Amendment to Retail Lease with B. F. Enterprises, Inc., the current tenant

SUMMARY:

This amendment authorizes B. F. Enterprises, Inc., to extend its lease of units #5 and #6 at the Lake Worth Beach Municipal Casino Building. The Current Appropriation for FY23 is \$66,552.

BACKGROUND AND JUSTIFICATION:

On June 5, 2012 the City entered into a retail lease agreement with B.F. Enterprises, Inc., also known as the Lake Worth Beach Tee Shirt Company. The lease allowed for B.F. Enterprises to lease units #5 and #6 at the Lake Worth Beach Casino Building for five (5) years with the option to four (4) additional five (5) year renewals.

On November 7, 2017 the City and the tenant entered into the First Amendment to the lease to extend the lease for five (5) years).

On August 31, 2020 the City and the tenant entered into a Second Amendment to revise certain terms and conditions of the lease as a result of the COVID-19 pandemic.

The Third Amendment will extend B.F. Enterprise's lease on units #5 and #6 at the Lake Worth Beach Casino Building for an additional five (5) years.

There remain two (2) additional options to renew the Lease for five (5) years each.

MOTION:

Move to approve/disapprove the Third Amendment with B.F. Enterprises, Inc.

ATTACHMENT(S):

Fiscal Impact Analysis
Third Amendment Retail Lease

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	\$66,552.05	\$68,881.38	\$71,292.22	\$73,787.45	\$76,370.01
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation	
	Revenue Source / Expenditure
Department	Leisure Services
Division	Beach Fund
GL Description	Leased Properties
GL Account Number	140-0000-362.10-00
Project Number	N/A
Requested Funds	N/A: Revenues

THIRD AMENDMENT TO RETAIL LEASE

THIS THIRD AMENDMENT TO THE RETAIL LEASE (the "Amendment") is made between the **City of Lake Worth Beach**, a Florida municipal corporation ("Landlord") and **B. F. Enterprises, Inc.**, a Florida corporation ("Tenant") (collectively Landlord and Tenant are referred to as the "Parties").

RECITALS

WHEREAS, on June 6, 2012, the Landlord and Tenant entered into a Retail Lease agreement for the lease of unit nos. 5 and 6 on the first floor of the Lake Worth Municipal Casino Building for use by the Tenant as a tee shirt and beach wear retailer (the "Lease"); and

WHEREAS, on November 7, 2017, the Landlord and the Tenant entered into the First Amendment to the Lease to extend the lease for five (5) years; and

WHEREAS, on August 31, 2020, the Landlord and the Tenant entered into the Second Amendment to the Lease to revise certain terms and conditions of the Lease as a result of the COVID-19 pandemic; and

WHEREAS, when the Lease is referenced hereinafter, it shall be defined to also include the First Amendment and Second Amendment.

WHEREAS, the Parties wish to extend the Lease for a five (5) year renewal term retroactive to October 31, 2022 and to set forth the revised Base Rent for each year of such renewal term; and

WHEREAS, the Landlord finds amending the Lease as set forth herein serves a valid public purpose.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in the Lease and this Amendment, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by this reference.
2. **City Commission Consideration.** This Amendment will be considered by the Landlord's City Commission at a public meeting on Tuesday, November 1, 2022.
3. **Second Renewal Option.** The Lease is hereby extended for an additional five (5) years through and including October 31, 2027. There remain two (2) additional options to renew the Lease for five (5) years each.
4. **Base Rent.** Paragraph 1.15 of the Lease, "Base Rent," is here by deleted in full and amended to read as follows:

1.15 **Base Rent (1st renewal).** The following amounts:

Period	Rate P/S/F Annum	Monthly Base Rent	Period Base Rent
11 th year	\$49.37	\$5,546.00	\$66,552.05
12 th year	\$51.10	\$5,740.00	\$68,881.38
13 th year	\$52.89	\$5,941.02	\$71,292.22
14 th year	\$54.74	\$6,148.95	\$73,787.45
15 th year	\$56.66	\$6,364.17	\$76,370.01

5. **Agreement Unchanged.** Except as specifically amended herein, all other provisions of the Lease shall remain in full force and effect.
6. **Controlling Documents.** To the extent that there exists a conflict between this Amendment and the Lease, the terms and conditions of this Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
7. **Entire Agreement.** The Parties agree that the Lease and this Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
8. **Counterparts.** Each Party may sign one copy of this Amendment and together, whether by signed original, or by digitally signed, facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Amendment.

IN WITNESS WHEREOF, the Parties have caused this Third Amendment to the Retail Lease to be executed by their duly authorized representatives.

LANDLORD: CITY OF LAKE WORTH BEACH, FLORIDA

Witness:

By: _____
 Print Name: _____

By: _____
 Betty Resch, Mayor

ATTEST:

 Melissa A. Coyne, CMC, City Clerk

STATE OF FLORIDA)
 COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2022, by Betty Resch, as the Mayor of the City of Lake Worth Beach (Landlord), who is personally known to me.

Notary Seal:

Notary Public Signature

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

TENANT:

B. F. ENTERPRISES, INC.

Witnesses:

By: Reynol
Print Name: Reynolson Manasse

By: Barry S. Freedman
Barry Freedman, President

By: Linda
Print Name: Linda Shulte

[Corporate Seal, if required]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 24 day of Oct 2022, by Barry Freedman, as the President of B. F. Enterprises, Inc., a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the Tenant to the same.

Notary Seal:

Laurie Figueroa
Notary Public Signature



RETAIL LEASE

THIS RETAIL LEASE (the "Lease") is made and entered into as of the Date of this Lease, by and between Landlord and Tenant. "Date of this Lease" shall mean the date on which the last one of the Landlord and Tenant has signed this Lease.

WITNESSETH:

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises.

1. **BASIC LEASE INFORMATION AND DEFINED TERMS.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord.** CITY OF LAKE WORTH, a Florida municipal corporation.

1.2 **Tenant.** B.F. Enterprises, Inc., a Florida Corporation.

1.3 **Tenant's Trade Name.** Lake Worth Beach Tee Shirt Company.

1.4 **Building.** The Building containing the Premises and is located within the Project.

1.5 **Project.** The parcel of land, the Building, and any other buildings and improvements located at the Lake Worth Municipal Casino Building, 10 Ocean Boulevard, Lake Worth, Florida 33460, and legally described in **EXHIBIT "A"** to this Lease.

1.6 **Premises.** Unit #5 and #6 on the first floor of the Building. The Premises are located in the Project and are depicted in the sketch attached as **EXHIBIT "B"**. Landlord reserves the right to install, maintain, use, repair, and replace pipes, ducts, conduits, risers, chases, wires, and structural elements leading through the Premises in locations that will not materially interfere with Tenant's use of the Premises.

1.7 **Gross Leasable Area of the Premises.** 1348 square feet. This square footage figure has been agreed upon by the parties as final and correct and is not subject to challenge or dispute by either party. The square footage is approximate. Accurate footage will be determined when the premises have been constructed and delivered to Tenant.

1.8 **Permitted Use of the Premises.** Tenant is leasing the Premises for future use as a tee shirt and beach wear retailer, including the sale of men's, women's, and children's specific apparel items such as tee shirts, sweatshirts, sweatpants, cover-ups, dresses, hats, jackets and shorts that have name drop destination on them; beach accessories including beach chairs, umbrellas, and beach towels; suntan lotion products; and men's, ladies and children's swimwear, souvenirs, gifts, jewelry, sandals and shoes and boogie boards; health, beauty aids and tobacco products; and for no other purpose whatsoever.

1.9 **Commencement Date.** The date Landlord delivers possession of the Premises with Landlord's Work substantially complete. Substantial completion shall mean the date that a Certificate of Occupancy or its equivalent is issued by the appropriate local government entity concerning the Landlord's Work, or, if no Certificate of Occupancy will be issued for the Landlord's Work, the date on which the Landlord's Work is substantially completed so that Tenant may use the Premises for their intended purpose, notwithstanding that punch list items or insubstantial details concerning construction, decoration, or mechanical adjustment remain to be performed.

1.10 **Rental Concessions.** Free rent during build-out period. The maximum build-out period is to be six (6) months. When tenant opens for business the rent shall commence. First and Security is due upon signing of the lease.

1.11 **Access.** Lessee shall be provided full access to the Property, at their own risk, during the Free Rent period for the purpose of conducting all necessary alterations, upgrades, and decorating.

1.12 **Rent Commencement Date.** The date which is the earlier of (a) six (6) months after the Commencement Date, or (b) the date Tenant opens for business in any part of the Premises, but no later than November 1st, 2012.

1.13 **Lease Term.** A term commencing on the Rent Commencement Date and continuing for five (5) full calendar years (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by Tenant for the partial month. Following the initial sixty (60) month base term, four (4) options to renew are provided for five (5) years each.

1.14 **Renewal Option Rates.** The Tenant shall have the right to four (4) additional five (5) year optional rental periods. When each option is exercised, the base rent for the first year of each option renewal period shall be the lesser of fair market rent or an increase of 3.5% over the previous year's rent. For the following four (4) years of each rental period, the rent shall then be increased 3.5% each year over the previous year's rent.

1.15 **Base Rent.** The initial rent shall be \$35.00 per square foot per annum for a yearly total of \$47,180 and monthly rent of \$3,931.67 plus Operating Costs and Sales Tax for year one. The base rate shall increase by 3.5% annually.

Period	Rate P/S/F Per Annum	Monthly Base Rent	Period Base Rent
1 st year	\$35.000	\$3,931.67	\$47,180.00
2 nd year	\$36.22	\$4,069.28	\$48,831.30
3 rd year	\$37.49	\$4,211.70	\$50,540.40
4 th year	\$38.81	\$4,359.11	\$52,309.31
5 th year	\$40.16	\$4,511.68	\$54,140.14

Base Rent amounts shown above do not include applicable sales tax.

1.16 **Allocated Share.** The percentage share resulting from dividing the Gross Leasable Area of the Premises by the Gross Leasable Area of the Project as determined by Landlord from time to time.

1.17 **Security Deposit.** A cash bond in an amount equal to one year's base rent shall be provided to Landlord upon execution of this Lease by Tenant. Such cash bond shall be kept in force and effect the entire term of the lease and shall be renewed annually and amended to reflect the new base amount. Should Tenant exercise the option to renew as provided in paragraph 1.14 above, the Security Deposit shall be returned to Tenant at the end of the fifth lease year, pending a determination by Landlord that Tenant has timely paid its rent during the first five years of the lease period.

1.18 **First Month's Rent:** \$5,001.08 to be paid to Landlord upon execution of this Lease by Tenant.

Base Rent:	\$3,931.67
Operating Costs:	\$ 786.33
Sales Tax:	<u>\$ 283.08</u>
Total:	\$5,001.08

1.19 **Tenant's Notice Address:** 1425 Lake Bass Drive, Lake Worth, FL 33461, attn: Barry Freedman.

1.20 **Landlord's Notice Address.** c/o City Manager, City of Lake Worth, 7 North Dixie Highway, Lake Worth, Florida 33460.

1.21 **Landlord's Broker.** Anderson & Carr, Inc.

1.22 **Tenant's Broker.** N/A

1.23 **Guarantor.** N/A

1.24 **Business Days.** All days.

1.25 **Tenant Improvements.** Tenant Improvements has the meaning set forth in Exhibit "E" attached hereto.

2. **TERM.** Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall commence on the Rent Commencement Date. Landlord shall determine the Commencement Date and Rent Commencement Date as provided in Basic Lease Information and Defined Terms article of this Lease and shall notify Tenant of the dates so determined. Tenant shall, if Landlord so requests, thereafter execute and return within ten days a letter confirming the Commencement Date, Rent Commencement Date, and the expiration date of this Lease in the form attached as **EXHIBIT "H"**. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to conduct business or pay rent) from the date that the Premises are delivered to Tenant until the Rent Commencement Date in the same manner as though the Lease Term began when the Premises were so delivered to Tenant.

3. **USE.**

3.1 **Permitted Use.** Tenant shall continuously use and occupy the Premises only for the Permitted Use of the Premises, in keeping with first-class standards of quality, respect, decorum, integrity, fitness, and stability. Tenant shall not use or permit or suffer the use of the Premises for any other business or purpose. Tenant shall conduct its business in the Premises solely under Tenant's Trade Name. Tenant shall conduct its business upon the Premises in accordance with the highest ethical and operating standards of the retail industry. Tenant acknowledges that the Project is a mixed-use project containing other retail uses. The agreements of Tenant concerning limitations on the use of the Premises, as set forth in this Lease, are a material inducement to Landlord in entering into this Lease. The provisions of this article are in the nature of restrictive covenants running with the land. Tenant shall warehouse, store, and stock in the Premises only goods, wares, and merchandise that Tenant intends to offer for sale at, in, from, or upon the Premises. This shall not preclude occasional emergency transfers of merchandise from the other stores of Tenant, if any, not located in the Project. Nothing contained in this Lease shall be construed as giving Tenant an express or implied exclusive use in the Project, unless expressly set forth in this Lease. Tenant shall conform to the Rules and Regulations. "**Rules and Regulations**" shall mean the rules and regulations for the Project promulgated by Landlord from time to time. The Rules and Regulations which apply as of the Date of this Lease are attached as **EXHIBIT "D"**.

3.2 **No Offensive or Illegal Use.** No use of the Premises during the Lease Term shall be offensive to the neighborhood by reason of odor, fumes, noise, or traffic; no illegal activity shall be conducted on the Premises by Tenant or by anyone claiming the right to use the Premises by or through Tenant; and no activities on the Premises shall be permitted by Tenant, or by anyone claiming the right to use the Premises by or through Tenant, which are, in the sole discretion of Landlord, immoral or lewd or capable of subjecting the Premises to an unfavorable reputation or reducing the sale or rental value of the Premises.

3.3 **Restricted Uses.** Tenant expressly acknowledges that Landlord has advised it of restricted, prohibited, and exclusive uses (collectively, "**Restricted Uses**") applicable to the Premises. Restricted Uses are set forth in **EXHIBIT "K"**. Further, Landlord may grant future exclusive uses in the Project, so long as such future exclusive uses ("**Future Exclusive Uses**") established after the Date of this Lease do not prohibit Tenant's Permitted Use or violate any exclusive rights granted to Tenant hereunder. Tenant shall not use or permit or suffer the use of the Premises for any of the Restricted Uses or Future Exclusive Uses, and shall indemnify, defend and hold Landlord harmless from all costs and claims arising from Tenant's violation of such restrictions. Tenant further acknowledges that the provisions in the agreements granting exclusive use rights to other tenants in the Project and the provisions of this Lease concerning the Restricted Uses are in the nature of restrictive covenants running with the land.

3.4 **Conduct of Business.** Throughout the Lease Term, Tenant shall actively conduct its business upon 100% of the Premises at least for the Minimum Business Hours of 10:00AM – 6:00 PM, Monday through Saturday and 10:00AM- 5:00PM on Sunday. Interruption of Tenant's business because of any act of war, strike, fire, the elements, governmental action, or other cause beyond the reasonable control of the Tenant shall not constitute a default under this article, but no interruption of business shall affect the Tenant's responsibility to pay any form of rent due under this Lease. Tenant shall carry at all times in the Premises a stock of "in season" merchandise of such quantity, character, and quality as shall be in accord with advanced and highest quality retail business practices within the locale for Tenant's business. Tenant shall keep the Premises fully staffed with experienced personnel. Additionally, Tenant shall keep the display windows in the Premises well lighted during the hours that Landlord may designate from time to time.

3.5 **Failure to Open for Business.** If Tenant fails to open the Premises for business fully fixtured, stocked with "in season" merchandise, and staffed within 30 days after the Rent Commencement Date, then Tenant shall be in default under this Lease and Landlord shall have, in addition to the other remedies provided in this Lease, the right at its option to collect Base Rent at double the rate for Base Rent otherwise applicable on a per day basis for each and every day that Tenant shall fail to open for and conduct business.

4. **RENT.** Tenant shall pay Rent to Landlord in lawful United States currency. **On the execution of this Lease by Tenant, Tenant shall pay to Landlord the installments of Base Rent and additional rent for Operating Costs for the first month of the Lease Term.** All Base Rent shall be payable in monthly installments, in advance, beginning on the Rent Commencement Date, and continuing on the first day of each and every calendar month thereafter during the Lease Term. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent, shall be denominated as additional rent. Except as otherwise provided, all additional rent payments are due ten days after delivery of an invoice. Tenant shall pay monthly to Landlord any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed on any Rent due under this Lease. The term "**Rent**" when used in this Lease shall include Base Rent and all forms of additional rent. All Rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord's Notice Address, or at such other place as Landlord shall designate in writing to Tenant. Tenant's obligations to pay Rent are covenants independent of the Landlord's obligations under this Lease.

5. **OPERATING COSTS.**

5.1 **General.** Tenant shall pay to Landlord its Allocated Share of Operating Costs in accordance with the terms and provisions of this article and based on the following.

5.2 **Real Estate Taxes.** The term "**Real Estate Taxes**" shall mean the total of all taxes, assessments, and other charges by any governmental or quasi-governmental authority, including real and personal property taxes, transit and other special district taxes, franchise taxes, and solid waste assessments that are assessed, levied, or in any manner imposed on the Project. If a tax shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes or otherwise as a result of the ownership of the Project, then the other tax shall be deemed to be included within the definition of "Real Estate Taxes. Real Estate Taxes are paid annually.

5.3 **Common Area Maintenance Costs (CAM).** The term "**CAM**" shall mean the total of all of the costs and expenses incurred or borne by Landlord relating to the operation, maintenance, repair, and security of the Project and the services provided tenants in the Project. By way of explanation and clarification, but not by way of limitation, Operating Costs will include the costs and expenses incurred for the following: Real Estate Taxes; heating, air conditioning, ventilation, plumbing, electrical, fire sprinkler, fire alarm, and emergency generator systems; elevators; pest control; trash and garbage removal (including dumpster and compactor rental); protection and security; Common Areas decorations, repairs, replacements, and maintenance; amounts paid under easements or other recorded agreements affecting the Project; improvements required by law; building painting and roof repairs; materials, tools, supplies, and equipment to enable Landlord to supply services that Landlord would otherwise have obtained from a third party; expenditures designed to result in savings or reductions in Common Area Maintenance Costs; exterior landscaping and irrigation supply, repair, and maintenance; parking and driveway area repair, and maintenance, including periodic resurfacing and restriping; illumination, repair, maintenance, and replacement of Project signs, property management fees; all utilities serving the Project and not separately billed to or reimbursed by any tenant of the Project; music systems; depreciation on machinery and equipment used in the maintenance of the Project, costs of maintaining, reporting, commissioning or recommissioning any part of the Project that was designed and/or built to be sustainable and conform with Landlord's environmental management plans and any current or future green/sustainable building rating system or standard; extended coverage, all risks, terrorism, earthquake, change in condition, sprinkler apparatus, plate glass, electronic data processing, boiler and machinery, rental guaranty or interruption, public liability and property damage, flood, and any other additional insurance customarily carried by owners of comparable buildings or required by any mortgagee of the Project; supplies; service and maintenance contracts for the Project; compensation and other benefits respecting employees of the Landlord involved in the operation and maintenance of the Project up to and including the Project manager (including a pro rata share only of the wages and benefits of employees who are employed at more than one building, which pro rata share shall be determined by Landlord and shall be based on Landlord's estimate of the percentage of time spent by the employees at the Project); legal, accounting, and administrative costs; expenses imposed on the Landlord under any law or any collective bargaining agreement concerning Landlord's employees; workers' compensation insurance; and payroll, social security, unemployment, and other similar taxes relating to employees. Landlord may contract for the performance of some or all of the management, operation, maintenance, repair, service and security functions generally described in this section with any persons or entities that Landlord shall deem appropriate, including persons or entities who are affiliated with Landlord. The amount Tenant pays in CAM shall not increase more than 10% annually.

5.4 **Payment.** Landlord shall reasonably estimate the Common Area Maintenance Costs that will be payable for each fiscal year of Landlord expiring September 3^{0th} of each calendar year. Tenant shall pay one-twelfth of its share of the estimated Operating Costs monthly in advance, together with the payment of Base Rent. After the end of each fiscal year and after receipt by Landlord of all necessary information and computations, Landlord shall furnish Tenant a detailed statement of the actual

Operating Costs for the prior fiscal year period; and an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant for Common Area Maintenance Costs for the year and Tenant shall receive reimbursement for any overpayments. Any payment adjustment owed by Tenant will be due forthwith. Any refund will be credited against Tenant's monthly Rent obligations. Tenant waives and releases any and all objections or claims relating to Operating Costs for any calendar year unless, within 30 days after Landlord provides Tenant with the annual statement of the actual Operating Costs for the calendar year, Tenant provides Landlord notice that it disputes the statement. If Tenant disputes the statement then, Tenant shall continue to pay the Rent in question to Landlord in the amount provided in the disputed statement pending resolution of the dispute. Tenant acknowledges that Operating Costs will be included in a Comprehensive Financial Annual Report prepared by Landlord and made publicly available, and Tenant waives all rights to independently audit or review Landlord's books and records for Operating Costs, except as allowed by applicable law and procedures.

6. ASSIGNMENT OR SUBLETTING.

6.1 **General.** Tenant may not transfer, directly or indirectly, any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Landlord's prior written consent which Landlord may withhold in its sole and absolute discretion. Without limiting the generality of the foregoing, Tenant may not sublease, assign, mortgage, encumber, permit the transfer of ownership or control of the business entity comprising Tenant, or permit any portion of the Premises to be occupied by third parties. Consent by Landlord to a transfer shall not relieve Tenant from the obligation to obtain Landlord's consent to any further transfer. Tenant and Guarantor shall remain fully liable for all obligations under this Lease following any such transfer. The joint and several liability of Tenant, Guarantor, and any successor in interest of Tenant (by assignment or otherwise) under this Lease shall not in any way be affected by any agreement that modifies any of the rights or obligations of the parties under this Lease or any waiver of, or failure to enforce, any obligation under this Lease. Tenant shall pay to Landlord, on demand, an administrative fee of \$1,000, plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated therewith. Any transfer by Tenant in violation of this article shall, at Landlord's option, be void. Tenant shall submit in writing to Landlord, not later than 30 days before any anticipated transfer, (a) the name and address of the proposed transferee, (b) a duly executed counterpart of the proposed transfer agreement, (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the space, and (d) banking, financial, or other credit information relating to the proposed transferee reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed transferee.

6.2 **Consideration for Consent.** Any amounts received by Tenant as a result of any such transfer, assignment or subletting in excess of the Rent then being paid by Tenant to Landlord under this Lease shall be payable by Tenant to Landlord, it being the parties' intention that Landlord, and not Tenant, shall be the party to receive any profit from any assignment or subletting. Upon reasonable notice, Landlord shall have the right to audit Tenant's books and records to determine the amount payable to Landlord under this section.

7. INSURANCE.

7.1 **Tenant's Insurance.** Tenant shall obtain and keep in full force and effect the following insurance coverages: commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form with combined single limits of \$3 million per occurrence; property insurance on the ISO causes of loss—special form, in an amount adequate to cover 100% of the replacement costs, without co-insurance, of all of Tenant's property at the Premises; workers' compensation insurance; plate glass insurance with a deductible of not more than \$250; if alcoholic beverages are served or sold from the Premises, liquor liability insurance in the amount of \$1 million; and such other insurance as may be reasonably required by Landlord. The commercial general liability insurance shall be primary and non-contributing to any insurance otherwise available to Landlord and shall not have any deductibles. Tenant shall comply with all requirements of the Board of Fire Underwriters of Florida any other similar body affecting the Premises and shall not use the Premises in a manner that shall increase the rate of fire insurance or other insurance of Landlord over that in effect during the year before the Commencement Date. If the use of the Premises by Tenant increases any insurance rate concerning the Project, Tenant shall reimburse Landlord for the additional costs.

7.2 **Insurance Requirements.** All insurance policies shall be written with insurance companies and shall have coverage limits acceptable to Landlord and having a policyholder rating of at least "A-" and a financial size category of at least "Class XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies. The commercial general

liability insurance policy shall name Landlord and Landlord's managing agent as additional insureds. All policies shall provide that they may not be terminated or modified in any way that would materially decrease the protection afforded Landlord under this Lease without 30 days' advance notice to Landlord. Tenant shall furnish evidence that it maintains all insurance coverages required under this Lease (ACORD 25 for Commercial General Liability and the 2003 edition of ACORD 28 for Property, with copies of declaration pages for each required policy). Coverage amounts for the commercial general liability insurance may be increased after commencement of the fifth full year of the Lease Term, if Landlord shall reasonably determine that an increase is necessary for adequate protection.

7.3 **Waiver of Subrogation.** Landlord and Tenant each expressly, knowingly, and voluntarily waive and release any claims that they may have against the other or the other's employees, agents, or contractors and against every other tenant in the Project who shall have executed a waiver similar to this one for damage to its property and loss of business (specifically including loss of Rent by Landlord and business interruption by Tenant) as a result of the acts or omissions of the other party or the other party's employees, agents, or contractors (specifically including the negligence of either party or its employees, agents, or contractors and the intentional misconduct of the employees, agents, or contractors of either party), to the extent any such claims are covered by the worker's compensation, employer's liability, property, rental income, business income, or extra expense insurance described in this Lease, or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer concerning the workers' compensation, employer's liability, property, rental income, and business interruption insurance maintained by it for the Project and the property located in the Project. This section shall control over any other provisions of the Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

8. DEFAULT.

8.1 **Events of Default.** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of Rent when due ("**Monetary Default**"); (b) Tenant fails to perform any other obligation under this Lease or the Rules and Regulations or any Guarantor defaults under any guaranty of this Lease and fails to cure such default within ten days of written notice from Landlord ("**Non-Monetary Default**"); (c) Tenant violates any requirement under the Use article of this Lease; (d) Tenant or any Guarantor or surety for Tenant's obligations under this Lease becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings be taken by or against Tenant or any Guarantor; surety; (e) a receiver or trustee in bankruptcy is appointed for the Tenant's property and the appointment is not vacated and set aside within 60 days from the date of the appointment; (f) Tenant rejects this Lease in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency laws; (g) Tenant ceases to conduct business in the Premises for a period of 15 consecutive days; (h) Tenant, before the expiration of the Lease Term, and without the written consent of Landlord, vacates the Premises or abandons possession of the Premises; (i) the leasehold estate granted to Tenant by this Lease is taken on execution or other legal process; (j) Tenant transfers this Lease in violation of the Assignment or Subletting article.; (k) Tenant fails to deliver an estoppel certificate within the time period required by the Estoppel Certificates article of this Lease; (l) Tenant's net worth or stockholder's equity falls below its net worth or stockholder's equity on the Date of this Lease or other material adverse change occurs in Tenant's financial condition; or (m), if Tenant is a franchisee, Tenant's franchise agreement is terminated.

8.2 **Remedies.** If Tenant defaults, in addition to all remedies provided by law, Landlord may declare the entire balance of all forms of Rent due under this Lease for the remainder of the Lease Term to be forthwith due and payable and may collect the then present value of the Rents (calculated using a discount rate equal to the discount rate of the branch of the Federal Reserve Bank closest to the Premises in effect as of the date of the default). Landlord may draw on the Security Deposit and apply the proceeds thereof to any monetary amounts due from Tenant to Landlord. In addition, Landlord may institute a distress for rent action and obtain a distress writ under Sections 83.11 through 83.19, Florida Statutes. If this Lease is rejected in any bankruptcy proceeding, Rent for the entire month in which the rejection occurs shall be due and payable in full and shall not be prorated. **TENANT EXPRESSLY, KNOWINGLY, AND VOLUNTARILY WAIVES (I) ALL CONSTITUTIONAL, STATUTORY, OR COMMON LAW BONDING REQUIREMENTS, INCLUDING THE REQUIREMENT UNDER SECTION 83.12, FLORIDA STATUTES, THAT LANDLORD FILE A BOND, IT BEING THE INTENTION OF THE PARTIES THAT NO BOND SHALL BE REQUIRED TO BE FILED BY LANDLORD IN ANY DISTRESS ACTION; AND (II) THE RIGHT UNDER SECTION 83.14, FLORIDA STATUTES, TO REPLEVY DISTRAINED PROPERTY.**

8.3 **Landlord's Right to Perform.** If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money,

including reasonable attorneys' fees, the sums so paid or obligations incurred shall be paid by Tenant to Landlord within five days of rendition of a bill or statement to Tenant therefor.

8.4 Late Charges, Interest, and Bad Checks. If any payment due Landlord shall not be paid within ten (10) days of the date when due, Tenant shall pay, in addition to the payment then due, an administrative charge equal to the greater of (a) 5% of the past due payments, or (b) \$250. All payments due Landlord shall bear interest at the lesser of: (a) 18% per annum, or (b) the highest rate of interest permitted to be charged by applicable law, accruing from the date the obligation arose through the date payment is actually received by Landlord. If any check given to Landlord for any payment is dishonored for any reason whatsoever not attributable to Landlord, in addition to all other remedies available to Landlord, upon demand, Tenant will reimburse Landlord for all insufficient funds, bank, or returned check fees, plus an administrative fee not to exceed the maximum amount prescribed by Section 68.065, Florida Statutes. In addition, Landlord may require all future payments from Tenant to be made by cashier's check from a local bank or by Federal Reserve wire transfer to Landlord's account.

8.5 Limitations. None of Landlord's officers, employees, agents, directors, shareholders, partners, members, managers, or affiliates shall ever have any personal liability to Tenant. No person holding Landlord's interest shall have any liability after such person ceases to hold such interest, except for any liability accruing while such person held such interest. **TO THE EXTENT PROVIDED BY LAW, TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT UNDER THIS LEASE, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.** No act or omission of Landlord or its agents shall constitute an actual or constructive eviction of Tenant or a default by Landlord as to any of its obligations under this Lease unless Landlord shall have first received written notice from Tenant of the claimed default and shall have failed to cure it after having been afforded reasonable time in which to do so, which in no event shall be less than 30 days. Further, Tenant waives any claims against Landlord that Tenant does not make in writing within 30 days of the onset of the cause of such claim. Landlord and Tenant each waive all rights (other than rights under the End of Term article) to consequential damages, lost profits, punitive damages, or special damages of any kind.

8.6 Multiple Defaults. Tenant acknowledges that, based on Tenant's credit, reputation, and other factors, Landlord has granted Tenant certain special rights that are not generally granted to tenants in the Project, including any rights or options of first refusal, or to extend the Lease Term, to expand or reduce the size of the Premises, to purchase the Premises or the Project, Project signage rights, rights under co-tenancy provisions, performance, rights to "go dark" or cease operations, "kick-out", or early termination clauses or other similar rights or options. Tenant, therefore, acknowledges that those special rights are expressly conditioned on the prompt and diligent performance of the terms of this Lease by Tenant and should Tenant, on two or more occasions during any 12-month period, (a) fail to pay any installment of rent within five days of the due date, or (b) otherwise default under this Lease; in addition to all other remedies available to Landlord, any and all such rights shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect. Should Tenant default under this Lease on two or more occasions during any 12-month period, in addition to all other remedies available to Landlord, any notice requirements or cure periods otherwise set forth in this Lease for a default by Tenant shall not apply.

8.7 Security Interest. Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises including, but not limited to, all fixtures, furniture, inventory, machinery, equipment, merchandise, furnishings and other articles of personal property, and all proceeds of the sale or other disposition of such property (collectively, the "Collateral") to secure the payment of all rent to be paid by Tenant pursuant to this Lease. Such lien and security interest shall be in addition to any landlord's lien provided by law. This Lease shall constitute a security agreement under the Uniform Commercial Code, so that Landlord shall have and may enforce a security interest in the Collateral. Tenant authorizes Landlord to file a financing statement or statements and any further documents as Landlord may now or hereafter reasonably require to protect such security interest under such Code. Landlord, as secured party, shall be entitled to all rights and remedies afforded a secured party under such Code, which rights and remedies shall be in addition to Landlord's liens and rights provided by law or by the other terms and provisions of this Lease.

9. ALTERATIONS.

9.1 "Alterations" shall mean any alteration, addition, or improvement in or on or to the Premises of any kind or nature, including any improvements made prior to Tenant's occupancy of the Premises. Tenant shall make no Alterations which affect utility services or plumbing and electrical lines or fire suppression or other systems of the Project, are exterior to the Premises,

or require other alterations, additions, or improvements to portions of the Project outside the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion ("**Material Alterations**"). Tenant may make non-Material Alterations with Landlord's prior consent which consent shall not be unreasonably withheld. All Alterations shall be performed in accordance with Landlord's Tenant Alterations Rules and Requirements attached to this Lease as **EXHIBIT "F"**. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor's license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor's work schedule, list of all subcontractors, and all building or other governmental permits required for the Alterations shall be delivered to Landlord before commencement of the Alterations. Except as expressly set forth in this Lease, Landlord has made no representation or promise as to the condition of the Premises, Landlord shall not perform any alterations, additions, or improvements in order to make the Premises suitable and ready for occupancy and use by Tenant, and Tenant shall accept possession of the Premises in its then "as-is", "where-is" condition, without representation or warranty of any kind by Landlord. Except for work to be performed by Landlord, before any Alterations are undertaken by or on behalf of Tenant, Tenant shall require any contractor performing work on the Premises to obtain and maintain, at no expense to Landlord, workers' compensation insurance as required by law, builder's risk insurance in the amount of the replacement cost of the applicable Alterations (or such other amount reasonably required by Landlord), and commercial general liability insurance written on an occurrence basis with minimum limits of \$2 million per occurrence limit, \$2 million general aggregate limit, \$2 million personal and advertising limit, and \$2 million products/completed operations limit; which coverage limits may be effected with umbrella coverage (including contractual liability, broad form property damage and contractor's protective liability coverage).

9.2 **LEED Requirements.** The Casino is pursuing a third party certification through the US Green Building Council called Leadership in Energy and Environmental Design (LEED) Certification. The LEED Core and Shell (CS) certification promotes energy and water conservation in addition to providing a healthy indoor environment for all of its occupants. More information on can be found at www.usgbc.org. Attached as **EXHIBIT "G"** are LEED Tenant Guidelines to follow in order to leverage the efforts made in the construction of the Casino Project so you maximize tenant's energy and water savings in conjunction with the City's Sustainable practices and policies. Other helpful resources are listed in the LEED Tenant Guidelines to assist Tenant in creating the improvements to the leased space that would be complimentary to the Casino's environmental commitment.

9.3 **Tenants Use of outside and inside area.** Tenant's use of outside and inside area shall comply with all applicable state and local guidelines and laws. Tenant acknowledges that Florida's extensive coastal development brings with it a high level of artificial beachfront lighting, which can make beaches unsuitable for sea turtle nesting. Artificial beachfront lighting, including lights located on or near beaches and the urban skyglow from intensive inland light, affects both nesting females and hatchlings. Lighting can deter female sea turtles from emerging from the sea to nest and can interfere with sea-finding ability after nesting is completed. Tenant hereby acknowledges the existence of Landlord's light management measures adopted to promote sea turtle nesting habitat. These measures include turning off unnecessary lights during the nesting season; using a smaller number or lower wattage of lights; repositioning, shielding, redirecting, lowering, or recessing fixtures so light does not reach the beach; using timers and motion detector switches; planting native dune vegetation to screen light; and reducing interior lighting by moving lights from windows, drawing curtains or blinds after dark, and tinting windows. The Casino building lighting has been approved by both the Florida Department of Environmental Protection and the Palm Beach County Department of Environmental Management. Failure to comply with the requirements of the permit will result in heavy fines. Tenant alterations of the approved site lighting are expressly forbidden and any fines will be assessed directly to the responsible party.

10. **LIENS.** The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Section 713.10, Florida Statutes. Tenant represents to Landlord that that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease and that any improvements which may be made by Tenant do not constitute the "pith of the Lease" under applicable Florida case law. If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within ten days after notice to Tenant. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

11. **ACCESS TO PREMISES.** Landlord and persons authorized by Landlord shall have the right, at all reasonable times, to enter and inspect the Premises, to make repairs and alterations Landlord deems necessary, and in the last nine months of the Lease Term to exhibit the Premises to prospective tenants, with reasonable prior notice, except in cases of emergency.

12. **COMMON AREAS.** The “Common Areas” of the Project include such areas and facilities as delivery facilities, walkways, landscaped and planted areas, and parking facilities and are those areas designated by Landlord for the general use in common of occupants of the Project, including Tenant. Landlord shall provide Common Area restrooms and supplies. The Common Areas shall at all times be subject to the exclusive control and management of Landlord. Landlord may grant third parties specific rights concerning portions of the Common Areas. Landlord may increase, reduce, improve, or otherwise alter the Common Areas, otherwise make improvements, alterations, or additions to the Project, and change the name or number by which the Project is known. Landlord may also temporarily close the Common Areas to make repairs or improvements. In addition, Landlord may temporarily close the Project and preclude access to the Premises in the event of casualty, governmental requirements, the threat of an emergency such as a hurricane or other act of God, for pest extermination, or if Landlord otherwise reasonably deems it necessary in order to prevent damage or injury to person or property. Landlord reserves the right, from time to time, to utilize portions of the Common Areas for entertainment, carnival type shows, rides, outdoor shows, displays, automobile and other product shows, the leasing of kiosks, or other uses that in Landlord’s judgment tend to attract the public, provided, however, the use of the common area shall not violate the exclusive rights granted to the Tenant under this lease. Further, the Landlord reserves the right to utilize the lighting standards and other areas of the parking areas for advertising purposes and holiday decorations. This Lease does not create, nor will Tenant have any express or implied easement for, or other rights to, air, light, or view over, from, or about the Project.

13. **CASUALTY DAMAGE.** If: (a) the Project shall be so damaged that substantial alteration or reconstruction of the Project shall, in Landlord’s opinion, be required (whether or not the Premises shall have been damaged by the casualty), or (b) the Premises shall be partially damaged by casualty during the last two years of the Lease Term, and the estimated cost of repair exceeds 25% of the Base Rent then remaining to be paid by Tenant for the balance of the Lease Term periods, plus any renewal options; Landlord may, within 90 days after the casualty, give notice to Tenant of Landlord’s election to terminate this Lease, and the balance of the Lease Term shall automatically expire on the fifth day after the notice is delivered. If Landlord does not elect to terminate this Lease, Landlord shall proceed with reasonable diligence to restore the Project and the Premises to substantially the same condition they were in immediately before the happening of the casualty only to the extent of Landlord’s Work obligations on the Commencement Date. However, Landlord shall not be required to restore any unleased premises in the Project or any portion of Tenant’s property, alterations, or improvements. When repairs to the Premises that are Landlord’s obligation under this article have been completed by Landlord, Tenant shall complete the restoration or replacement of the Premises and all of Tenant’s Property necessary to permit Tenant’s reoccupancy of the Premises. Rent shall abate in proportion to the portion of the Premises not usable by Tenant as a result of any casualty resulting in damage to the Building which is covered by insurance carried or required to be carried by Landlord under this Lease, as of the date on which the Premises becomes unusable. Landlord shall not otherwise be liable to Tenant for any delay in restoring the Premises or any inconvenience or annoyance to Tenant or injury to Tenant’s business resulting in any way from the damage or the repairs, Tenant’s sole remedy being the right to an abatement of Rent.

14. **CONDEMNATION.** If the whole or any substantial part of the Premises shall be condemned by eminent domain or acquired by private purchase in lieu of condemnation, this Lease shall terminate on the date on which possession of the Premises is delivered to the condemning authority and Rent shall be apportioned and paid to that date. If no portion of the Premises is taken but a substantial portion of the Project is taken, at Landlord’s option, this Lease shall terminate on the date on which possession of such portion of the Project is delivered to the condemning authority and Rent shall be apportioned and paid to that date. Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term, nor shall Tenant be entitled to any part of the condemnation award or private purchase price. If this Lease is not terminated as provided above, Rent shall abate in proportion to the portion of the Premises condemned.

15. **REPAIR AND MAINTENANCE.**

15.1 **Landlord’s Obligations.** Landlord shall repair and maintain in good order and condition, ordinary wear and tear excepted, only the roof, the outside walls (excluding storefronts), the structural portions of the Premises (exclusive of structural elements constructed by Tenant), and the portions of the electrical and plumbing systems servicing the Premises which are located outside the exterior boundaries of the Premises. However, unless the Waiver of Subrogation section of this Lease applies, Tenant shall pay the cost of any such repairs or maintenance resulting from acts or omissions of Tenant, its employees, agents, or contractors. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord’s expense or to withhold Rent or terminate this Lease based on any alleged failure of Landlord to make repairs. All costs associated with the repair and maintenance obligations of Landlord under this article shall be included in and constitute Operating Costs.

15.2 **Tenant’s Obligations.** Except to the extent Landlord is obligated to repair and maintain the Premises as provided in the Landlord’s Obligations section of this article, Tenant shall, at its sole cost, repair, replace, and maintain the Premises

(including the walls, storefronts, ceilings, and floors in the Premises and electrical, plumbing (including grease traps), mechanical, fire protection, life safety, sprinklers, and HVAC systems servicing the Premises exclusively), in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. Tenant shall not commit or allow to be committed any waste on any portion of the Premises. Tenant shall enter into and maintain an annual maintenance contract with an air conditioning service firm. Tenant shall furnish to Landlord from time to time and upon request of Landlord, a copy of the air conditioning maintenance contract and the yearly service reports from the contractor. If Tenant fails to furnish copies of the air conditioning maintenance contract and yearly service reports to Landlord within 15 days following Landlord's request, Tenant shall pay a late charge of \$5.00 per day for each day that Tenant is delinquent in submitting the required copies, and Tenant agrees that such late charge shall not be considered a penalty. Tenant shall be responsible for any damage to the roof of the Project caused by Tenant's air conditioning maintenance activities.

15.3 **Service Areas.** Tenant shall also maintain any exclusive service areas adjacent to the Premises in good repair and in a good, clean, attractive, first-class condition and free from rubbish and dirt at all times and shall store all trash and garbage within the Premises until such time as Tenant has the trash and garbage removed from the Premises. Tenant shall be responsible for placing all its trash and garbage into dumpsters or trash bins without allowing the trash or garbage to spill over onto the ground adjacent to the dumpsters or trash bins. If Tenant does not properly dispose of its trash and garbage, Landlord may have the area cleaned in which event Tenant upon Landlord's demand shall pay all charges incurred by Landlord therefor, plus an administrative charge equal to the greater of \$50 or 20% of the charges incurred by Landlord. These charges shall be considered additional rent and shall be paid to Landlord upon presentation of a bill therefor.

15.4 **Replacement of Improvements.** At any time during the Lease Term after the fifth anniversary of the Commencement Date, and thereafter at any time after the fifth anniversary of the completion of any replacements of improvements under this section, if Landlord determines, in Landlord's sole reasonable discretion, that any leasehold improvements made to the Premises by Landlord or Tenant, as a result of wear, normal depreciation, or any other cause are of a quality which in Landlord's reasonable judgment is not consistent with the level of quality of, or generally prevailing within, the Project, Tenant will cause those improvements to be replaced. Any such worn or depreciated improvements will be replaced with materials and workmanship of a quality at least equal to the original installation for which replacement is made.

15.5 **Food Services.** If Tenant's operations include the services and/or preparation of food and/or beverages, Tenant shall comply with all Health Department and other governmental rules and regulations applicable to Tenant's operations in the Premises and shall promptly (a) furnish or cause to be furnished to Landlord copies of all Health Department and other governmental reports, notices, and citations issued with respect to the Premises, and (b) immediately cure or otherwise eliminate all deficiencies and violations noted by the Health Department and other governmental authorities. Tenant shall sanitize the dumpster designated for its use by Landlord and the area surrounding the dumpster on a regular basis, but no less than once a week. If Tenant does not properly dispose of its refuse, Landlord may have the area cleaned and Tenant shall pay all cleaning charges incurred by Landlord, plus an administrative fee equal to the greater of \$50.00 or 20% of the cleaning charges.

15.6 **Grease Traps.** Landlord shall install, maintain, repair, and replace all grease traps and other equipment necessary to maintain the restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project, but if a discharge should occur, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which Landlord may incur.

15.7 **Exhaust Equipment.** Tenant shall maintain all exhausts, filtering or other devices (the "**Exhaust Equipment**") so as to prevent odors from emanating from the Premises. Tenant shall continuously operate the Exhaust Equipment during all hours of operation of Tenant's business in the Premises, and shall maintain and repair (or if necessary, replace) the Exhaust Equipment in good working order at all times at Tenant's sole cost. In the event Landlord notifies Tenant in writing that odors are emanating from the Premises, Tenant shall, within three days after notice from Landlord, commence in good faith to install such other reasonable control devices or procedures, at Tenant's cost and expense, as is reasonably required to eliminate such odors within a reasonable time, not to exceed seven days. If Tenant fails to take such action, Landlord may, at its sole discretion (i) cure such failure at Tenant's cost and expense, or (ii) treat such failure to eliminate such odors as a default under this Lease.

15.8 **Dumpster.** Tenant is required to use a City provided dumpster and make arrangements for daily pick up. The rental cost of the dumpster shall be borne by the Landlord. Landlord shall keep the dumpster area and other equipment washing and cleaning area in a clean and sanitary condition.

16. **ESTOPPEL CERTIFICATES.** From time to time, Tenant, on not less than five days' prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to Landlord and any mortgagee or prospective mortgagee or purchaser of the Project. Tenant shall indemnify, defend, and hold Landlord harmless from all damages resulting from Tenant's failure to comply strictly with its obligations under this article.

17. **SUBORDINATION.** This Lease is and shall be subject and subordinate to all mortgages and ground leases that may now or hereafter affect the Building, and to all renewals, modifications, consolidations, replacements, and extensions of the leases and mortgages. This article shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute promptly any certificate that Landlord may request. If any ground or underlying lease is terminated, or if the interest of Landlord under this Lease is transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution for the mortgage, or if this Lease is terminated by termination of any lease or by foreclosure of any mortgage to which this Lease is or may be subordinate, then Tenant will, at the option to be exercised in writing by the landlord under any ground or underlying lease or the purchaser, assignee, or tenant, as the case may be (a) attorn to it and will perform for its benefit all the terms, covenants, and conditions of this Lease on Tenant's part to be performed with the same force and effect as if the landlord or the purchaser, assignee, or tenant were the landlord originally named in this Lease, or (b) enter into a new lease with the landlord or the purchaser, assignee, or tenant for the remainder of the Lease Term and otherwise on the same terms, conditions, and rents as provided in this Lease.

18. **INDEMNIFICATION.** To the fullest extent permitted by law, Landlord and Tenant shall each indemnify, defend, and save harmless the other party and the other party's employees, agents, and contractors (the "**Indemnified Parties**") from and against any and all loss, damage, claim, demand, liability, or expense (including reasonable attorneys' fees) resulting from claims by third parties and based on any acts or omissions (specifically including negligence and the failure to comply with this Lease) of the indemnitor, its employees, agents, and contractors in connection with the Project, but only to the extent caused in whole or in part by acts or omissions of the indemnitor, its employees, agents, and contractors, regardless of whether or not the claim is caused in part by any of the Indemnified Parties. This Indemnification article shall not be construed to restrict, limit, or modify either party's insurance obligations under this Lease and shall not be deemed a waiver of any rights of sovereign immunity that Landlord may have under applicable law. Either party's compliance with the insurance requirements under this Lease shall not restrict, limit, or modify that party's obligations under this Indemnification article.

19. **NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances. The receipt by Landlord of any Rent after default on the part of Tenant (whether the Rent is due before or after the default) shall not excuse any delays as to future Rent payments and shall not be deemed to operate as a waiver of any then existing default by Tenant or of the right of Landlord to enforce the payment of any other Rent reserved in this Lease or to pursue eviction or any other remedies available to Landlord. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent actually owed under the terms of this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated Rent. No endorsement or statement on any check or any letter accompanying any check or payment of Rent will be deemed an accord and satisfaction. Landlord may accept the check or payment without prejudice to Landlord's right to recover the balance of the Rent or to pursue any other remedy. It is the intention of the parties that this article modify the common law rules of waiver and estoppel and the provisions of any statute which might dictate a contrary result.

20. **SERVICES AND UTILITIES.**

20.1 **Services Furnished.** Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for and shall promptly pay all charges for water, electricity, or any other utility used or consumed in the Premises, including all costs associated with the provision of separate meters for the Premises. Tenant shall contract directly with the local utility providers for such services. Tenant shall be responsible for repairs and maintenance to exit lighting, emergency lighting, and fire extinguishers for the Premises, and for interior janitorial, pest control, and waste removal services. Landlord may at any time change the electrical utility provider for the Building. Tenant's use of electrical and heating, water, ventilating, and air conditioning services furnished by Landlord shall not exceed, either in voltage, rated capacity, use, or overall load, that which Landlord deems to be standard for the Building, and, if required by Landlord, all costs associated with the additional usage and the installation and maintenance of facilities for the additional usage, including separate submetering, shall be paid by Tenant as additional rent. Tenant may be required, upon request of Landlord, to provide Tenant's energy consumption data to Landlord in reasonable format required by Landlord.

20.2 **Interruption of Services.** In no event shall Landlord be liable for damages resulting from the failure to furnish HVAC, water, electric, or other service, unless caused by the negligence or intentional acts of Landlord, and any interruption or failure shall in no manner constitute an eviction of Tenant or entitle Tenant to abatement of any Rent due under this Lease.

21. **SECURITY DEPOSIT.** The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of this Lease including the payment of Rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord and Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant. If Landlord so applies the Security Deposit, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five days after notice from Landlord. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant. If Tenant fully and faithfully complies with all of the terms, covenants, and conditions of this Lease, any part of the Security Deposit not used or retained by Landlord under the terms of this Lease shall be returned to Tenant within 45 days after the expiration of the Lease Term and after Tenant's delivery of possession of the Premises to Landlord. However, if at the expiration of the Lease Term there are any amounts that may be due from Tenant that have not yet been finally determined (for example, Rent for Operating Costs for the year in which the Lease Term expires) then Landlord may estimate the amounts which will be owed and deduct them from the Security Deposit. When the actual amounts are finally determined, an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant and Tenant shall receive reimbursement for any overpayments.

22. **GOVERNMENTAL REGULATIONS.** Tenant shall promptly comply with all laws, codes, and ordinances of governmental authorities pertaining to Tenant or its use of the Premises and activities on or about the Project, including the Americans with Disabilities Act of 1990 ("ADA") and all applicable environmental laws. If Tenant's operations require the ongoing use of hazardous or toxic substances, then Tenant shall supply Landlord with copies of reports and any other monitoring information required by applicable laws. Tenant agrees to pay, and shall indemnify defend, and hold Landlord harmless from and against, any and all losses, claims, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred by Landlord as a result of any breach by Tenant of its obligations under this article, and as a result of any contamination of the Premises because of Tenant's use of hazardous or toxic substances on the Premises. Tenant shall obtain all licenses and permits from time to time required to enable Tenant to conduct its business under this Lease. No failure of Tenant to obtain or maintain any licenses or permits, or extensions or renewals of them, shall release Tenant from the performance and observance of Tenant's obligations under this Lease.

23. **SIGNS.**

23.1 **Landlord's Consent Required.** Tenant will not place or permit to be placed or maintained on any portion of the Project, including on any exterior door, wall, or window of the Premises, or within the interior of the Premises, if visible from the exterior of the Premises, any signage or advertising matter of any kind, without first obtaining Landlord's written approval and consent, which may be withheld in Landlord's sole discretion. All signage shall comply with applicable governmental regulations and restrictions affecting the Project.

23.2 **Building Standard Signage.** Prior to the Commencement Date, Tenant shall erect an exterior sign in conformance with Landlord's Building standard signage within the area designated by Landlord, which sign shall be subject to the prior written approval of Landlord and the Sign Criteria, **EXHIBIT "J"**. If Landlord redevelops or remodels the Project, Landlord may require Tenant, at Tenant's expense, to install new signs in conformity with signage standards established by Landlord or to remodel the storefront of the Premises, or both.

23.3 **Exterior Alterations.** Any signs or other exterior Alterations, including awnings, canopies, decorations, lettering, advertising matters, or other things as may be approved by Landlord shall be maintained by Tenant in good condition and repair at all times and shall conform to the criteria established from time to time by Landlord for the Project. Upon the expiration or sooner termination of this Lease, if Landlord shall so elect, Tenant at its own expense shall remove all signs and restore the exterior of Premises to its original condition. This obligation of Tenant shall survive the expiration or sooner termination of this Lease.

24. **BROKER.** Tenant represents and warrants that it neither consulted nor negotiated with any broker or finder regarding the Premises, except the Landlord's Broker and Tenant's Broker. Landlord shall indemnify, defend, and hold Tenant harmless from and against any claims for commissions from the Landlord's Broker and Tenant's Broker. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims for commissions from any real estate broker other than the Landlord's Broker and the Tenant's Broker with whom it has dealt in connection with this Lease.

25. **END OF TERM/HOLDOVER.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, broom-clean, except for reasonable wear and tear. Tenant shall be liable to Landlord for all damages, including any consequential damages and holdover rent in accordance with state law, that Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify, defend, and save Landlord harmless against all costs, claims, loss, or liability resulting from delay by Tenant in so surrendering the Premises, including any claims made by any succeeding tenant founded on any delay. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. On the expiration or sooner termination of the Lease Term, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property, all computer and telecommunications wiring, and all Alterations that Landlord designates by notice to Tenant. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease Term, may, at the option of Landlord, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without accountability to Tenant or any other party, in the manner Landlord shall determine, at Tenant's expense. "**Tenant's Property**" shall mean all moveable personal property, machinery, furniture, and equipment, including moveable trade fixtures that are installed in the Premises by or for the account of Tenant without expense to Landlord and that can be removed without damage to the Premises or the Project.

26. **ATTORNEYS' FEES.** The prevailing party in any litigation arising out of or in any manner relating to this Lease, including the declaration of any rights or obligations under this Lease, shall be entitled to recover from the losing party reasonable attorneys' fees and costs. In addition, if Landlord becomes a party to any suit or proceeding affecting the Premises or involving this Lease or Tenant's interest under this Lease, other than a suit between Landlord and Tenant, or if Landlord engages counsel to collect any of the amounts owed under this Lease, or to enforce performance of any of the agreements, conditions, covenants, provisions, or stipulations of this Lease, without commencing litigation, then the costs, expenses, and reasonable attorneys' fees and disbursements incurred by Landlord shall be paid to Landlord by Tenant.

27. **NOTICES.** Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved.

28. **IMPOSSIBILITY OF PERFORMANCE.** For purposes of this Lease, the term "**Unavoidable Delay**" shall mean any delays due to strikes, lockouts, civil commotion, war or warlike operations, acts of terrorism, acts of a public enemy, acts of bioterrorism, epidemics, quarantines, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, or other natural disasters, acts of God, or any other cause beyond the direct control of the party delayed. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Unavoidable Delay, then provided notice of the Unavoidable Delay is given to the other party within ten days after its occurrence, performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of the delay. The provisions of this article shall not operate to excuse Tenant from the payment of Rent or from surrendering the Premises at the end of the Lease Term, and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds or the increased cost of obtaining labor and materials shall not be deemed delays beyond the direct control of a party.

29. **FINANCIAL REPORTING.** Within 15 days after a request from Landlord, Tenant shall make available to Landlord a balance sheet of Tenant (and, if applicable, the Guarantor) as of the end of the most recently ended fiscal year of Tenant and a statement of income and expense for the year then ended, together with a certificate of the chief financial officer of Tenant to the effect that the financial statements have been prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial condition and results of operations of Tenant (and, if applicable, the Guarantor) as of and for the period covered. In addition (unless Tenant is paying Percentage Rent, in which case the reporting and audit provisions of the Percentage Rent article shall apply), by February 15 of each year during the Term, Tenant shall make available to Landlord a complete statement, similarly certified, showing in all reasonable detail the amount of gross sales made by Tenant from the Premises during the preceding year. Gross sales shall mean the aggregate of Tenant's receipts of every nature relating to the Premises that are received directly or indirectly through an affiliated or related entity, including, but not limited to, all sales and rentals made by Tenant of all goods, wares, merchandise, meals, food, food stuffs, and beverages sold and all services performed by Tenant in, at, or from the Premises, whether for cash, credit, by gift certificate redeemed at the Premises, or other consideration. Any failure of Tenant to timely provide make available to Landlord with any of the statements of Gross Sales required under this section shall be deemed a default

under this Lease, and (a) Tenant shall pay a late charge of \$25.00 per day for each day that Tenant is delinquent in submitting each statement, and Tenant agrees that such late charge shall not be considered a penalty, and (b) Landlord shall be entitled, without prior notice to Tenant, to conduct an audit of Tenant's books for the purpose of determining Gross Sales for the period or periods during which Tenant has failed to supply Landlord with statements, with the cost and expense thereof to be paid by Tenant, together with an administrative fee of \$500.00.

30. ADVERTISING.

30.1 **Advertised Name and Address.** Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises and Tenant shall not acquire any property right in or to any name which contains the name of the Project as a part of the name. Tenant shall not use the name of Landlord in any advertisement or otherwise. Tenant shall use in its advertising and promotional activities for its business in the Premises such references to the name of the Project and such identifying lettering, logos, marks, or symbols referring to the Project as Landlord shall specify from time to time. Tenant shall include the name of the Project in its address. Notwithstanding the foregoing, Landlord shall have the right to prohibit the use by Tenant of the name, marks, and symbols of the Project in any manner determined to be unacceptable to Landlord in its sole discretion.

30.2 **Trademark License.** During the Lease Term, Tenant grants Landlord a non-exclusive and royalty-free license and limited right to use Tenant's trade names, trademarks, logos, and designs in the printing, publication, and distribution of promotional newsletters, advertisements, marketing brochures, and other materials (the "**Marketing Materials**") by Landlord and related entities.

31. **MOLD.** Tenant is advised that mold and/or other microscopic organisms ("**Mold Conditions**") are prevalent in Florida's humid climate and locations, especially in proximity to bodies of water. Mold Conditions may cause allergic reactions, respiratory reactions or other problems, particularly in persons with immune system problems, young children and elderly persons. Tenant acknowledges that it is fully responsible to maintain the proper operation of the HVAC system in the Premises at all times during the Lease Term to inhibit Mold Conditions. Tenant shall ensure property maintenance of the Premises to limit the accumulation of water and excessive moisture inside the Premises. Tenant shall notify Landlord immediately of any water intrusion conditions arising within the Premises. TENANT ACKNOWLEDGES THE FOREGOING, AND AGREES TO ACCEPT FULL RESPONSIBILITY FOR ANY AND ALL RISKS RELATED TO MOLD CONDITIONS IN THE PREMISES. TENANT AGREES TO RELEASE, HOLD HARMLESS AND INDEMNIFY LANDLORD, LANDLORD'S OFFICERS, AGENTS, EMPLOYEES, AND SUCCESSORS FROM ANY AND ALL LIABILITY OR DAMAGES, WHETHER FINANCIAL OR OTHERWISE, ARISING FROM OR RELATED TO MOLD CONDITIONS IN THE PREMISES.

32. GENERAL PROVISIONS.

32.1 **Construction Principles.** The words "including" and "include" and similar words will not be construed restrictively to limit or exclude other items not listed. This Lease has been negotiated "at arm's-length" by Landlord and Tenant, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease. Therefore, this Lease shall not be more strictly construed against either party by reason of the fact that one party may have drafted this Lease. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. This Lease shall constitute the entire agreement of the parties concerning the matters covered by this Lease. All prior understandings and agreements had between the parties concerning those matters, including all preliminary negotiations, lease proposals, letters of intent, and similar documents, are merged into this Lease, which alone fully and completely expresses the understanding of the parties. Landlord and Tenant intend that faxed or PDF format signatures constitute original signatures binding on the parties. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease.

32.2 **No Representations by Landlord.** Neither Landlord nor Landlord's agents have made any representations or promises concerning the physical condition of the Project or the Premises, Tenant's ability to use the Premises for the uses permitted under this Lease, the area of the Premises or the manner of calculating such area, anticipated Operating Costs, or any other matter affecting or relating to the Premises, except as expressly set forth in this Lease and no rights, easements, or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in this Lease.

32.3 **Radon Gas.** The following notification is provided under Section 404.056(6), Florida Statutes: “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 county health department.”

32.4 **Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:

- EXHIBIT “A” – Legal Description of the Project
- EXHIBIT “B” – Sketch of Premises
- EXHIBIT “C” – Guaranty (not applicable)
- EXHIBIT “D” – Rules and Regulations
- EXHIBIT “E” – Tenant Improvements
- EXHIBIT “E-1” – Landlord’s Work Schedule
- EXHIBIT “F” – Tenant Alteration Requirements
- EXHIBIT “G” – LEED Tenant Guidelines
- EXHIBIT “H” – Special Requirements
- EXHIBIT “I” – Commencement Date Letter
- EXHIBIT “J” – Sign Criteria
- EXHIBIT “K” – Restricted Uses
- EXHIBIT “L” – Copy of Cash Bond

33. **JURY WAIVER; COUNTERCLAIMS; VENUE.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. TENANT FURTHER WAIVES THE RIGHT TO INTERPOSE ANY NON-COMPULSORY COUNTERCLAIM OF ANY NATURE IN ANY ACTION TO OBTAIN POSSESSION OF THE PREMISES. THIS AGREEMENT SHALL BE CONSTRUED BY AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA. ANY AND ALL LEGAL ACTION NECESSARY TO ENFORCE THE AGREEMENT WILL BE HELD IN PALM BEACH COUNTY. NO REMEDY HEREIN CONFERRED UPON ANY PARTY IS INTENDED TO BE EXCLUSIVE OF ANY OTHER REMEDY, AND EACH AND EVERY SUCH REMEDY SHALL BE CUMULATIVE AND SHALL BE IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXISTING AT LAW OR IN EQUITY OR BY STATUTE OR OTHERWISE. NO SINGLE OR PARTIAL EXERCISE BY ANY PARTY OF ANY RIGHT, POWER, OR REMEDY HEREUNDER SHALL PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF.

34. **SDN COMPLIANCE.** Tenant hereby represents, warrants and certifies that neither (i) Tenant, nor (ii) any of persons or entities that control or are controlled by Tenant (each a “**Tenant Party**”), has been, is currently, or at any time in the future shall be listed on the Specially Designated National list (“**SDN List**”) maintained by the United States Department of the Treasury Office of Foreign Assets Control (“**OFAC**”). At its option, Landlord shall have the right to immediately terminate this Lease if any Tenant Party becomes listed on the SDN List.

35. **QUIET ENJOYMENT.** Landlord covenants that Tenant shall have the quiet enjoyment of the premises.

[signatures on following page]

IN WITNESS WHEREOF, this Lease has been executed on behalf of Landlord and Tenant as of the Date of this Lease.

LANDLORD:

REVIEWED AND APPROVED FOR EXECUTION

CITY OF LAKE WORTH,
a municipal corporation under the laws of the State of
Florida

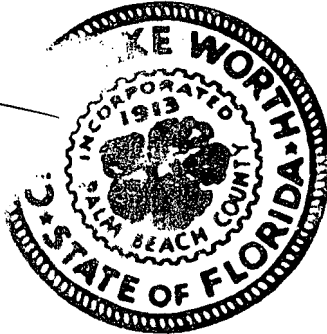
By: [Signature]
Michael Bornstein, City Manager

By: [Signature]
Pam Triolo, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Date Executed: 6/6/12

By: [Signature]
Elaine A Humphreys, City Attorney



ATTEST:

By: [Signature]
Pamela J. Lopez, City Clerk

TENANT:

B.F. Enterprises, Inc.,
a Florida Corporation

Lori Williams
Signature of Witness 1

By: [Signature]
Name: BARRY S. FREEDMAN
Title: PRESIDENT

LORI WILLIAMS
Print or type name of Witness 1

[CORPORATE SEAL]

[Signature]
Signature of Witness 2

MARY HOBBS
Print or type name of Witness 2

Date Executed: 5/29/12

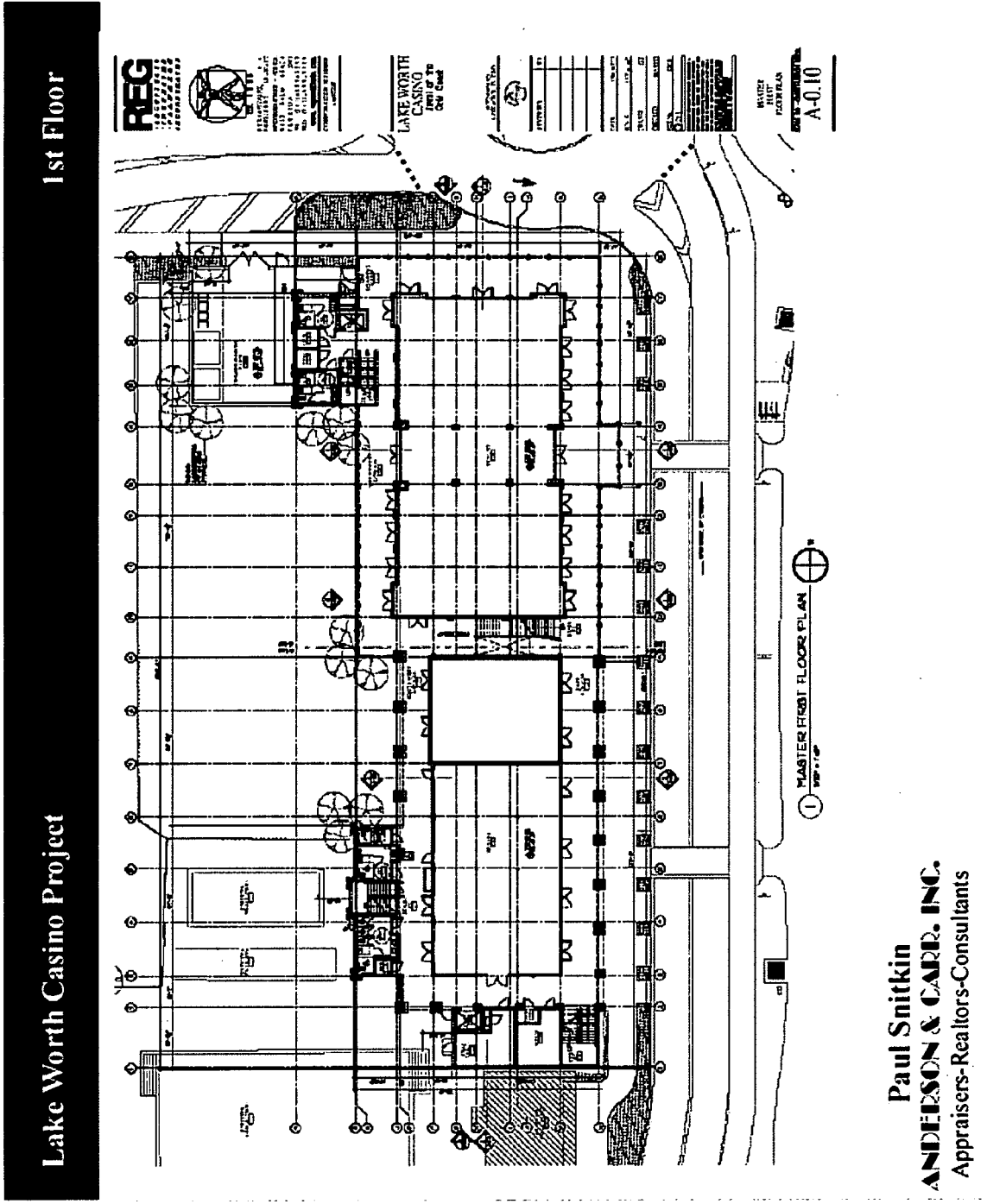
EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROJECT

Lake Worth Casino Building located at 10 South Ocean Boulevard, Florida, 33460

EXHIBIT "B"

SKETCH OF PREMISES



1st Floor

Lake Worth Casino Project

Paul Smitkin
ANDERSON & CARR, INC.
Appraisers-Realtors-Consultants

The above plan is for location of Premises only and is not a representation by Landlord as to any other improvements shown.

EXHIBIT "C"

GUARANTY

THIS IS A GENERAL GUARANTY WHICH IS ENFORCEABLE BY THE LANDLORD, ITS SUCCESSORS AND ASSIGNS. THIS IS ALSO AN ABSOLUTE AND UNCONDITIONAL GUARANTY.

The undersigned (the "Guarantor") absolutely and unconditionally guaranties the prompt and full performance and observance by Lake Worth Beach Tee Shirt Company, a Florida Corporation (the "Tenant"), and by its legal representatives, successors, and assigns, of all of the provisions to be performed by the Tenant under a Lease dated _____, 2011, between CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida (the "Landlord"), and Tenant for space at Unit #5 AND #6, Lake Worth Casino Building at 10 South Ocean Boulevard, Lake Worth, Florida 33460, whether before, during, or after the Lease Term. Guarantor represents and warrants that he has a direct financial interest in Tenant and that he has received substantial consideration in exchange for making this Guaranty.

This Guaranty shall not be impaired by, and Guarantor consents to, any modifications, supplement, extension, or amendment of the lease to which the parties to the Lease may hereafter agree. Presentment, notice and demand on Tenant or Guarantor and subsequent dishonor are not conditions to proceeding against Guarantor.

In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Guaranty, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys', paralegals', and legal assistants' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding) and expert witness fees through and including all post-judgment and appellate levels.

Any legal action or proceeding arising out of or in any way connected with this Guaranty shall be instituted in a court (federal or state) located in the county in which the Premises are located, which shall be the exclusive jurisdiction and venue for litigation concerning this Guaranty. Landlord and Guarantor shall be subject to the jurisdiction of those courts. The execution of this Guaranty and performance of its obligations by Guarantor, for purposes of personal or long-arm jurisdiction, constitutes doing business in the State of Florida under Section 48.193, Florida Statutes. In addition, Landlord and Guarantor waive any objection that they may now or hereafter have to the laying of venue of any action or proceeding in those courts, and further waive the right to plead or claim that any action or proceeding brought in any of those courts has been brought in an inconvenient forum. All payments to be made by Guarantor under this Guaranty shall be payable at Landlord's office at c/o City Manager, City of Lake Worth 7 North Dixie Highway, Lake Worth, FL 33460.

This Guaranty is a continuing guaranty that shall be effective before the commencement of the Lease Term and shall remain effective following the Lease Term as to any surviving provisions that remain effective after the termination of the Lease. Guarantor's obligations under this Guaranty shall also continue in full force and effect after any transfer of the Tenant's interest under the Lease, during any renewals or extensions of the Lease Term, and during any holdover by Tenant after expiration of the Lease Term.

The liability of Guarantor under this Guaranty shall in no way be affected, modified, or diminished by reason of any of the following, regardless of whether Guarantor receives notice of them, all of which notices Guarantor expressly waives: (a) any assignment, renewal, modification, amendment, or extension of the Lease, or (b) any modification or waiver of or change in any of the terms, covenants, and conditions of the Lease by Landlord and Tenant, or (c) any extension of time that may be granted by Landlord to Tenant, or (d) any consent, release, indulgence, or other action, inaction, or omission under or in respect of the Lease, or (e) any dealings, or transactions, or matters between Landlord and Tenant that may cause the lease to terminate, including without limitation, any adjustment, compromise, deferral, waiver, settlement, accord and satisfaction, or release of Tenant's obligations under the Lease, or (f) any bankruptcy, insolvency, reorganization, liquidation, arrangement, assignment for the benefit of creditors, receivership, trusteeship, or similar proceeding affecting Tenant, or the rejection or disaffirmance of the Lease in any proceedings, whether or not notice of the proceedings is given to Guarantor.

For purposes of this Guaranty, on a default by Tenant under the Lease the entire balance of all forms of Rent due under the Lease for the remainder of the Lease Term may be declared to be forthwith due and payable as provided in the Lease notwithstanding any stay, injunction, or other prohibition preventing a similar declaration as against Tenant and, in the event of any such declaration by

Landlord, all of the obligations (whether or not due and payable by Tenant) shall forthwith become due and payable by Guarantor under this Guaranty.

If Landlord assigns the Lease or sells the Project, Landlord may assign this Guaranty to the assignee or transferee, who shall thereupon succeed to the rights of Landlord under this Guaranty to the same extent as if the assignee were an original guaranteed party named in this Guaranty, and the same rights shall accrue to each subsequent assignee of this Guaranty. If Tenant assigns or sublets the Premises, the obligations of the Guarantor under this Guaranty shall remain in full force and effect.

From time to time, Guarantor, on not less than five days' prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to Landlord and any mortgagee or prospective mortgagee or purchaser of the Project. In addition, if requested, Guarantor shall provide any financial information concerning Guarantor that may be reasonably requested by any mortgagee or prospective mortgagee or purchaser of the Project and Landlord agrees that this information shall not become a public document.

If there is more than one Guarantor, the liability of each Guarantor shall be joint and several with all other Guarantors.

Guarantor authorizes Landlord, in Landlord's discretion, to obtain from time to time credit reports and information regarding Guarantor.

This Guaranty shall terminate five years after the commencement date of the Lease.

_____, Guarantor

Guarantor's address:

Guarantor's Social Security No. _____
Guarantor's Driver's License No. _____

Dated: _____, 20__

STATE OF _____)
) ss.:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, who is personally known to me or who has produced _____ as identification.

OFFICIAL NOTARIAL SEAL:

(type, print, or stamp name)

NOTARY PUBLIC
My commission expires: _____
Commission No. _____

EXHIBIT "D"

RULES AND REGULATIONS

1. The sidewalks and public portions of the Project, such as entrances, passages, courts, parking areas, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by Tenant or its employees, agents, invitees, or guests nor shall they be used for any purpose other than ingress and egress to and from the Premises. Tenant shall not conduct any business, loading or unloading, assembling, or any other work connected with Tenant's business on any portion of the Common Areas or in any other area of the Project outside the confines of the Premises. Tenant shall not sell or display merchandise on, or otherwise obstruct, the Common Areas or any other area of the Project outside the confines of the Premises.

2. No awnings or other projections shall be attached to the outside walls of the Project. No curtains, blinds, shades, louvered openings, or screens or anything else which may be visible from outside the Building shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of Landlord. No aerial or antenna shall be erected on the roof or exterior walls of the Premises or in the Project.

3. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by Tenant on any part of the outside of the Premises or Project or on corridor walls or doors or mounted on the inside of any windows without the prior written consent of Landlord. Signs on any entrance door or doors shall conform to Project standards and shall, at Tenant's expense, be inscribed, painted, or affixed for Tenant by sign makers approved by Landlord.

4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in the public halls, corridors, or vestibules without the prior written consent of Landlord.

5. Whenever Tenant shall submit to Landlord any plan, agreement, assignment, sublease, or other document for Landlord's consent or approval, Tenant shall reimburse Landlord, on demand, for the actual out-of-pocket costs for the services of any architect, engineer, or attorney employed by Landlord to review or prepare the plan, agreement, assignment, sublease, consent, or other document.

6. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown in them. All damages resulting from any misuse of fixtures shall be borne by the Tenant who, or whose employees, agents, invitees, or guests, shall have caused the damages.

7. No animals of any kind (except dogs assisting disabled persons) shall be brought on the Premises or Project.

8. Unless the Permitted Use includes food service uses, no cooking shall be done or permitted by Tenant on the Premises. Except for standard residential type refrigerator and microwave oven, no refrigeration or heating equipment may be placed inside the Premises without the prior written consent of Landlord in each instance. Tenant shall not cause or permit any unusual or objectionable odors to be produced on or permeate from the Premises.

9. Prohibited Disposable Food Service Ware: Food Vendors, Restaurants and any other vendor may not sell Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

10. Required Biodegradable/Compostable Disposable Food Service Ware: All Food Vendors using any Disposable Food Service Ware shall use a suitable, affordable alternative Biodegradable/Compostable product to containers made from Polystyrene Foam. The city will assist the vendors by providing a list of potential products. However, it is the responsibility of the Food Vendor to locate a suitable alternative. A number of other cities around the world including San Francisco and Berkeley have successfully banned Styrofoam so there are plenty of commercially viable alternatives.

11. Plastic Bags: In the City of Lake Worth Contract with the vendors at the Beach, this section requires the use of recyclable paper, compostable and/or reusable checkout bags. The goal is to reduce litter of plastic bags that kill over 100,000 marine animals a year and create a nuisance to our residents by being both unsightly and creating a potential biohazard.

12. All Stores shall provide recyclable Bags, compostable bags and/or reusable bags.

13. Definitions: "Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag and (4) should contain post consumer discarded waste.

14. Tenant shall not make or permit to be made any unseemly or disturbing noises, or electromagnetic, radio or television interference, or disturb or interfere with occupants of the Project or neighboring premises or those having business with them, or interfere with equipment of Landlord or occupants of the Project, whether by the use of any musical instrument, radio, television, machines or equipment, unmusical noise, or in any other way, including use of any wireless device or equipment. Tenant shall not use any advertising medium such as loud speakers, sound amplifiers, or radio or television broadcasts in a manner which may be heard outside the Premises.

15. Neither Tenant nor any of Tenant's employees, agents, invitees, or guests shall at any time bring or keep on the Premises any firearms, inflammable, combustible, or explosive substance or any chemical substance, other than reasonable amounts of cleaning fluids and solvents required in the normal operation of Tenant's business, all of which shall only be used in strict compliance with all applicable environmental laws.

16. Landlord shall have a valid pass key to all spaces within the Premises at all times during the Lease Term. No additional locks or bolts of any kind shall be placed on any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism of the locks, without the prior written consent of the Landlord and unless and until a duplicate key is delivered to Landlord. Tenant must, on the termination of its tenancy, restore to the Landlord all keys to stores, offices, and toilet rooms, either furnished to or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay Landlord for the replacement cost of them.

17. Tenant shall not create or use any advertising mentioning or exhibiting any likeness of the Project without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising that, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability as a retail center, and on notice from Landlord, Tenant shall discontinue the advertising.

18. The Premises shall not be used for lodging or sleeping, or for any immoral, disreputable, or illegal purposes, or for any purpose that may be dangerous to life, limb, or property.

19. Canvassing, soliciting, and peddling within the Project or in the Common Areas is prohibited and Tenant shall cooperate to prevent such activities.

20. Tenant, its employees, agents, contractors, and invitees shall park their vehicles only in the portion of the parking areas and roadways of the Project designated by Landlord. Usage of parking spaces shall be in common with all other tenants of the Project and their employees, agents, contractors, and invitees. All parking space usage shall be subject to any reasonable rules and regulations for the sale and proper use of parking spaces that Landlord may prescribe. Tenant's employees, agents, contractors, and invitees shall abide by all posted roadway signs in and about the parking facilities. Landlord shall have the right to tow or otherwise remove vehicles of Tenant and its employees, agents, contractors, or invitees that are improperly parked, blocking ingress or egress lanes, or violating parking rules, at the expense of Tenant or the owner of the vehicle, or both, and without liability to Landlord. Upon request by Landlord, Tenant shall furnish Landlord with the license numbers and descriptions of any vehicles of Tenant, its principals, employees, agents, and contractors. Landlord reserves the right to charge Tenant an administrative fee of \$50.00 per violation of the foregoing rules.

21. Tenant shall not go upon the roof of the Project without the written consent of Landlord. Any roof opening or other work on the roof required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include, as required, supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening or other work request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

22. Tenant shall secure and keep in effect an effective pest control contract providing for periodic inspection and treatment for roaches, insects, rodents, termites, and other pests. If Tenant violates this requirement, Landlord may provide pest control and bill Tenant the costs therefor.

23. Tenant shall not conduct any auction, fire, "going out of business," or bankruptcy sales.

24. All trucks and delivery vans shall be parked in designated areas only and not parked in spaces reserved for cars. All delivery service doors are to remain closed except during the time that deliveries, garbage removal, or other approved uses are taking place. All loading and unloading of goods shall be done only at the times, in the areas, and through the entrances designated for loading purposes by Landlord. Tenant shall assume all liability and risk concerning these movements.

25. Tenant shall be responsible for the removal and proper disposition of all crates, oversized trash, boxes, and items of garbage from the Premises. The corridors and parking and delivery areas are to be kept clear of these items.

26. Landlord shall not be responsible or liable for lost or stolen personal property, equipment, or money occurring anywhere in the Project, regardless of how or when the loss occurs.

27. Tenant shall give Landlord prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electric facilities, or any part or appurtenance of the Premises.

28. Tenant agrees and fully understands that the overall aesthetic appearance of the Project is of paramount importance; thus Landlord shall maintain complete aesthetic control over any and every portion of the Premises visible from outside the Premises in Landlord's sole and absolute discretion. Landlord will notify Tenant in writing of any aesthetic deficiencies and Tenant will have seven days to correct the deficiencies to Landlord's satisfaction or Tenant shall be in default of this Lease and the Default article shall apply.

29. Tenant shall not install, operate, or maintain in the Premises or in any other area, any electrical equipment that does not bear the U/L (Underwriters Laboratories) seal of approval, or that would overload the electrical system or any part of the system beyond its capacity for proper, efficient, and safe operation as determined by Landlord, taking into consideration the overall electrical system and the present and future requirements therefor in the Project. Tenant shall not furnish any cooling or heating to the Premises, including the use of any electronic or gas heating devices, without Landlord's prior written consent.

30. Landlord may, on request by any tenant, waive compliance by the tenant with any of the Rules and Regulations provided that (a) no waiver shall be effective unless in writing and signed by Landlord or Landlord's authorized agent, (b) a waiver shall not relieve the tenant from the obligation to comply with the rule or regulation in the future unless expressly consented to by Landlord, and (c) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the Rules and Regulations unless the other tenant has received a similar waiver in writing from Landlord.

31. Tenant will take all steps necessary to prevent: inadequate ventilation, emission of chemical contaminants from indoor or outdoor sources, or both, or emission of biological contaminants. Tenant will not allow any unsafe levels of chemical or biological contaminants (including volatile organic compounds) in the Premises, and will take all steps necessary to prevent the release of contaminants from adhesives (for example, upholstery, wallpaper, carpet, machinery, supplies, and cleaning agents).

32. Tenant shall comply with any recycling programs for the Project implemented by Landlord from time to time.

33. Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot area that such floor was designed to carry. Landlord reserves the right to prescribe the weight limitations and position of all heavy equipment and similar items, and to prescribe the reinforcing necessary, if any, that in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's expense.

34. All contractors performing work to the structure or systems of the Project must be approved by Landlord.

35. The Project is a smoke-free environment and smoking is not permitted on the Premises or within 25 feet of any entrance to the Project.

36. Landlord reserves the right to grant or deny access to the Project to any telecommunications service provider. Access to the Project by any telecommunications service provider (unless through Landlord's current Building telecommunications provider's lines) shall be governed by the terms of Landlord's standard telecommunications license agreement, which must be executed and delivered to Landlord by such provider before it is allowed any access whatsoever to the Project.

37. No vinyl wall covering may be installed on any interior side of any wall which comprises an exterior wall of the Building, unless the wall covering was manufactured using a micro-venting procedure having no less than 140 needle/venting holes per square inch, and Tenant shall provide a letter from the wall covering manufacturer confirming such process.

38. Whenever these Rules and Regulations directly conflict with any of the rights or obligations of Tenant under this Lease, this Lease shall govern.

EXHIBIT "E"

TENANT IMPROVEMENTS

As-Is

1. **Landlord's Work.** Landlord shall perform the work described in EXHIBIT "E-1", Landlord's Work Schedule, in a good and workmanlike manner, using Building Standard materials and in accordance with all applicable governmental and legal requirements, at Landlord's sole cost and expense ("**Landlord's Work**"). Other than as set forth in the preceding sentence, Landlord has made no representation or promise as to the condition of the Premises. "Building Standard" shall mean the type, brand, grade, or quality of materials Landlord designates from time to time to be the minimum quality to be used in the Project or, as the case may be, the exclusive type, brand, grade, or quality of material to be used in the Project. On the Commencement Date, Tenant shall be deemed to have inspected the Premises and be fully familiar with the physical condition of the Premises, and shall accept the Premises in its then existing "as-is," "where-is" condition. Landlord shall not perform any work other than the Landlord's Work and shall not perform any work as to any portions of the Premises not specifically addressed in the description of the Landlord's Work. Landlord warrants that the Landlord's Work shall be free from defects in materials and workmanship for a period of one year from the Commencement Date. Landlord shall correct any defects to Landlord's Work reported to it within the one-year warranty period. Landlord has made no other warranty, express or implied, or representation as to fitness or suitability. Except under the express warranty provided in this paragraph, Landlord shall not be liable for any latent or patent defect in the Premises, or any costs or expenses related in any way to the Tenant's Work.

2. **Tenant's Work.** Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "**Tenant's Work or Improvements**"). Within 21 days after the Commencement Date, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "**Plans**"). The Plans shall include the following: fully dimensioned architectural plan; electric/telephone outlet diagram; reflective ceiling plan with light switches; mechanical plan; furniture plan; electric power circuitry diagram; plumbing plans; all color and finish selections; all special equipment and fixture specifications; and fire sprinkler design drawings. Tenant shall submit the approved Plans to applicable building authorities for permit within five days following Landlord's approval and Tenant shall thereafter diligently pursue obtaining its building permits. The Plans will be prepared by a licensed architect and the electrical and mechanical plans will be prepared by a licensed professional engineer. The Plans shall be produced on CAD. The architect and engineer will be subject to Landlord's approval, which shall not be unreasonably withheld. The Plans shall comply with all applicable laws, ordinances, directives, rules, regulations, and other requirements imposed by any and all governmental authorities having or asserting jurisdiction over the Premises. Landlord shall review the Plans and either approve or disapprove them within a reasonable period of time. Should Landlord disapprove them, Tenant shall make any necessary modifications and resubmit the Plans to Landlord in final form within ten days following receipt of Landlord's disapproval of them. Tenant shall thereafter diligently pursue obtaining its building permits for the Tenant's Work.

The Tenant's Work shall be constructed by a general contractor selected and paid by Tenant and approved by Landlord. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor's license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor's work schedule, list of all subcontractors, and all building or other governmental permits required for the Tenant's Work shall be delivered to Landlord before commencement of the Tenant's Work. Tenant shall cause the Tenant's Work to be completed promptly and with due diligence. Unless approved by Landlord in its sole discretion, Tenant shall not have access to the Premises for the commencement of the Tenant's Work until Landlord has delivered the Premises to Tenant with a Certificate of Occupancy or Completion, as the case may be, as to Landlord's Work as required by governmental authorities and Tenant and its vendors and contractors have obtained all governmentally required permits separate from any permits obtained by Landlord as to the Tenant's Work. Tenant's Work shall be performed in accordance with the Plans and shall be done in a good and workmanlike manner using new materials in accordance with Building standards. All work shall be done in compliance with all other applicable provisions of this Lease and with all applicable laws, ordinances, directives, rules, regulations, and other requirements of any governmental authorities having or asserting jurisdiction over the Premises, including the making of any alterations or improvements to the Premises or the Project which are required to comply with the ADA. Tenant shall pay any impact fees or assessments arising from the Tenant's Work. Before the commencement of any work by Tenant, Tenant shall furnish to Landlord certificates evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements set forth in the Insurance article of this Lease. Any damage to any part of the Project that occurs as a result of Tenant's Work shall be promptly repaired by Tenant.

3. **Compliance.** Tenant shall also ensure compliance with the Tenant Improvement Rules and Regulations attached to the Lease.

4. **Tenant Delays.** If Landlord or the general contractor is delayed in substantially completing Landlord's Work as a result of the occurrence of any Tenant Delay (as hereafter defined), then, (i) any deadlines set forth in the Lease for Landlord's delivery of the Premises shall be extended day for day for each day of Tenant's Delay, and (ii) at Landlord's option, for purposes of determining the Rent Commencement Date, the date of delivery of the Premises shall be deemed to be the day that Landlord's Work would have been substantially completed absent any Delay(s). For purposes of this provision each of the following shall constitute a "Tenant Delay": (a) Tenant's failure to furnish information or to respond to any request by Landlord or any design consultant for any approval within any time period prescribed, or if no time period is prescribed, within two business days of a request, including any information required to modify the Building shell plans to accommodate Tenant's Work; or (b) changes or proposed changes required by Tenant's Work requiring changes to Landlord's Work or Building shell construction; or (c) any delay resulting from Tenant's activities in the Premises before substantial completion of Landlord's Work; or (d) any other delay to Landlord's ability to complete Landlord's Work as required by the terms of this Lease caused by Tenant, its employees, agents, contractors, or consultants.

5. **Changes.** Tenant shall be responsible to reimburse Landlord for all costs resulting from changes to Landlord's Work requested by Tenant. Such costs shall be deducted from the Tenant Improvement Allowance, if any, or if no Allowance is granted, paid to Landlord within ten days of receipt of invoice. If the cost of any changes will exceed any remaining balance of the Tenant Improvement Allowance (after deducting the most current estimate of the work cost before the change in question), Tenant shall pay to Landlord the amount of the excess within ten days of receipt of a notice from Landlord as to the amount. Such payments by Tenant shall not be considered additional rent.

EXHIBIT "E-1"

LANDLORD'S WORK SCHEDULE

Landlord shall deliver the following ("**Landlord's Work**") only:

Vanilla Shell (as defined by City) Poured in-place, unfinished concrete slab floor with appropriate stub outs for plumbing and electrical; taped and primed, appropriately rated demising walls; basic code required electrical service including minimal lighting; open raw ceilings with exposed mechanical systems; fire sprinklers to code; conduits provided for wireless/cable/telephone services. Code required restrooms for the entire building are provided as shared facilities. H/V/A/C per code. Tenant will provide duct work.

The costs of any changes to Landlord's Work requested or required by Tenant will be paid to Landlord by Tenant within 30 days following invoice therefor.

EXHIBIT "F"

TENANT ALTERATION REQUIREMENTS

A. Requirements Prior to Commencement of Any Work in the Premises:

1. Two (2) copies of Tenant's general contractor's or any subcontractor, as may apply, liability insurance naming Landlord and its managing agent as additional insureds.
2. Two (2) copies of approved building permit. Permit to include sufficient information to describe the work and designate the name and suite number of Tenant or if the work is extensive provide copies of plans and specifications as approved by the Building Department with the permit. (Landlord reserves the right to review and approve additional items and comments that may be required by the Building Department before commencement of the work.)
3. Prepare two (2) copies for Landlord's approval of a recordable "Notice of Commencement" executed by Tenant as "Owner".
4. Two (2) copies of Contractor "Certificate of Liability Insurance" prepared in accordance with the requirements of the Project, and evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements of the Insurance article of this Lease.
5. One (1) copy of the Contractor's Florida Contracting License.
6. Two (2) copies of the work/project's completion schedule.
7. Two (2) copies of project vendor list with contact information.
8. Tenant, at its expense, will provide and furnish to Landlord payment and performance bonds (or other similar assurances agreed by Landlord), by a surety company reasonably acceptable to Landlord, in amounts equal to 150% of the costs and expenses of the work to be performed by the Tenant.

B. General Requirements:

1. Tenant and all construction personnel shall abide by Landlord's job site rules and regulations and fully cooperate with Landlord's construction representatives in coordinating all construction activities in the Project, including rules and regulations concerning working hours, parking, and use of the construction elevator, if applicable.
2. Tenant shall be responsible for cleaning up any refuse or other materials left behind by construction personnel at the end of each work day.
3. Tenant shall deliver to Landlord all forms of approval provided by the appropriate local governmental authorities to certify that the Tenant Improvements and Alterations have been completed and the Premises are ready for occupancy, including original building permit and a final, unconditional certificate of occupancy.
4. At all times during construction, Tenant shall allow Landlord access to the Premises for inspection purposes. On completion of any Alterations and Tenant Improvements, Tenant's general contractor shall review the Premises with Landlord and Tenant and secure Landlord's and Tenant's acceptance of the Tenant Improvements and Alterations.
5. Workers shall provide their own temporary toilet facilities, trash facilities, water coolers, and construction materials dumpsters and shall locate them along with any construction trailers or field offices in areas specifically designated by Landlord.
6. No painting or spraying of chemicals, varnishes, lacquers, finishes, or paint will be allowed during normal business hours. Such activities shall only occur during days and times specifically preapproved by Landlord.

7. Any work that may disturb tenants of the Building (including welding, cutting torch, drilling or cutting of the concrete floor slab or temporary interruption of any utility service), shall only occur before or after normal business hours and with Landlord's prior consent. Any unduly loud noise complained of by other Tenants will be immediately diminished to Landlord's reasonable satisfaction or the work will cease until the noise is so diminished.

8. Reasonable quantities of water and electricity for lighting, portable power tools, and other common uses as well as use of the construction elevator will be furnished to the contractor at a cost to be assigned at the completion of the job based on usage during the build-out period (including Building standard charges for use of the elevator). The contractor shall make all connections, furnish any necessary extensions, and promptly and professionally remove such connections and extensions on completion of work.

9. If a shutdown of plumbing, sprinkler, electrical, air conditioning and/or other equipment becomes necessary in connection with Tenant's work, Tenant will notify Landlord in advance and Landlord will determine when such shutdown may be made, and at Landlord's election any such shutdown will be done only when a representative of Landlord is present. In all instances where this is done, the system shall not be left inoperable overnight or over a prolonged period.

10. All equipment installed shall be compatible with the base building fire alarm system and the contractor shall warrant that any connection to the base building fire alarm system shall only occur after proper notification to Landlord and on an after-hours basis. Any disruption to the existing fire alarm system or damage as a result of contractor's work will be the sole responsibility of Tenant.

11. All additional electrical circuits added to existing electrical panels or any new circuits added to new electrical panels will be appropriately labeled as to the area or equipment serviced by the circuit in question. Any electrical panel covers removed to facilitate installation or connection shall be reattached.

12. All workers must stay in their designated work areas and the use of radios, loud music, alcoholic beverages, narcotics, or cigarette smoking is prohibited on the Project.

13. Any roof opening required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

14. Any damage to any part of the Building that occurs as a result of any work performed by Tenant shall be promptly repaired by Tenant to the reasonable satisfaction of Landlord.

15. Tenant, at its expense, will promptly repair or replace, or at Landlord's election reimburse Landlord for the cost of repairing or replacing, property of Landlord that may be damaged, lost or destroyed in the performance of the work or as a result thereof.

16. Landlord will have no responsibility for or in connection with the work; Tenant, at its expense, will remedy and be responsible for all defects in the work, whether appearing during its progress or after completion and whether the same affect the Premises in particular or any of the Building in general.

17. Demolition of partitions and removal of rubbish will be done during hours first approved by Landlord in writing. All such materials are to be taken from the Premises through the delivery entrance of the Building, by the freight elevator only (if any); or, if not freight elevator exists, only through the rear entrance of the Premises.

18. Electrical and power panel balancing will be maintained by and at the expense of Tenant during the entire period of Tenant Work.

19. Tenant and its contractors will not demolish or remove any of the Building's structure.

20. Roof openings (including, supporting structures, angles, curbs, flashing, ducts, vents and grills) are subject to Landlord's prior written consent in each instance, which consent will not be unreasonably withheld. Notwithstanding the foregoing,

Landlord may refuse to give its consent to any roof opening that in Landlord's judgment exceeds the capability of the structural system. Any roof openings consented to by Landlord must be made only by Landlord's roofing contractor at Tenant's expense, or such duly licensed roofing contractor as Landlord may designate or approve in writing in its sole discretion.

21. All corridor, elevator, and lobby finishes require protection during construction.

There is a Two Hundred Fifty and 00/100 Dollar (\$250.00) penalty for "false alarms". There is a Two Hundred Fifty and 00/100 Dollar (\$250.00) penalty for "false alarms".

C. Upon Completion of the Work, Tenant Shall Provide to the Landlord:

1. Two (2) copies each of final inspection report and Certificate of Occupancy or Completion indicating that the work has been completed in accordance with the permit issued by the Building Department.

2. Two (2) copies each of "as-built" drawings indication the alterations and relocating of existing construction (mechanical, electrical, etc...) if applicable, in PDF file format or on CD's.

3. Two (2) copies each of "Final Releases" in accordance with the Florida Lien Laws from general contractor, subcontractors, vendors, and suppliers associated with the work and Contractor's Final Affidavit indicating that all subcontractors have been paid in full for the work.

4. Two (2) copies each of permit plans including approved fire sprinkler drawings.

5. Two (2) copies of all equipment operating and maintenance manuals and demonstration of any equipment that will become the property of Landlord.

6. Two (2) copies of general contractor's one (1) year warranty on labor and materials for the work.

7. Two (2) copies of all other manufacturer guarantees/warranties on the improvements. Manufacturer's guarantees/warranties shall name Landlord as beneficiary where Landlord is or shall become responsible for the repair and maintenance of the installation.

8. Two (2) original copies of a letter from the architect of record indicating that the improvements have been installed in accordance with the approved plans and specification for the Building.

9. Two (2) copies of Tenant's completed "punch list" signed off by the Architect or Tenant's representative that the work has been satisfactorily completed by the Contractor.

10. Extra attic stock materials used in the build-out such as flooring, ceiling, base, paint, wall covering, etc materials to be stored in Tenant's suite for future use.

11. Two (2) copies of an independent HVAC Test and Balance report, if applicable.

12. Two (2) original copies of the Contractor's Final Owner (Tenant) Affidavit which is necessary to terminate the Notice of Commencement once the work has been concluded and the "Notice to Terminate the Notice of Commencement" document prepared by Tenant's Contractor and recorded by the Tenant.

13. Two (2) copies of the final payment application from the general contractor and accounting of the construction contract amounts (final AIA application for payment).

The above required documentation must be delivered to Landlord prior to the release of any payments that may be due under the Lease.

D. Sustainability Requirements:

1. Tenant shall comply with any recycling requirements enacted by Landlord, including the separation of construction materials/debris, paper, cardboard, plastics and glass.

2. Tenant shall provide all contractors performing work with a copy of these Rules and Regulations and a copy of the Lien section of the Lease indicating that no liens may be placed against Landlord's interest in the Project for work performed by Tenant.

EXHIBIT "G"

LEED Tenant Requirements

Tenant Design and Construction Guidelines - Lake Worth Casino

The Lake Worth Casino has been designed and constructed to be environmentally friendly, incorporating the sustainable design and construction features outlined below in designing the core and shell. In addition, tenant design and construction guidelines have been prepared to assist tenants in designing and building sustainable interiors and to adopt green building practices within their individual tenant spaces. Combined, these important features and required guidelines contribute to attaining LEED-CS (Core and Shell) and LEED-CI (Commercial Interiors) certifications.

Sustainable Design and Construction Features at Lake Worth Casino (LEED-CS, Core and Shell)

Water Use Reduction:

-All common area and future tenant water fixtures shall have sensors and meet or exceed federal mandates on gallons used.
-All landscape has been designed for minimal use of irrigation water. -Partial irrigation water is from storm runoff drained from the surface parking into the Storm Drainage system in numerous areas using an ecological filtration system or bioswale

Optimize Energy Performance, Lighting Power and Lighting Controls, Daylighting and Views:

-Window head height has been set at 8'-0" to maximize daylight and views, thereby reducing the amount of energy required for interior lighting.

Optimize Energy Performance, HVAC, Thermal Comfort, and Controllability of Systems:

-The Cooling Tower system facilitates energy efficient HVAC, providing individual air handling systems in each tenant space. The system also maximizes flexibility in tenant build out, minimizing construction time and reducing construction waste.
-The high reflective roof covering lowers cooling costs by reducing "hot spots" on the Roof with SRI's above 29 for steep sloped roof areas and above 78 for flat roofed areas.

Construction Indoor Air (IAQ) Management, Indoor Chemical and Pollutant Source Control and the Elimination or Control of Environmental Tobacco Smoke:

-The air circulation system incorporates Merv 13 filters. Interior finishes are specified at minimum volatile organic compound (VOC) levels including primers, paints, and adhesives. Cabinets and wood materials contain no added urea-formaldehyde resins to prevent off gassing. The building is a non-smoking environment.

Sustainable Products and Materials:

-Interior products and construction materials maximize recycled content. For example, door frames are regionally manufactured from post-consumer recycled content, the concrete masonry construction is composed of local aggregate and recycled content, and the steel floor system utilizes recycled steel.

Tenant Design and Construction Guidelines at the Lake Worth Casino (LEED-CI, Commercial Interiors)

The following tenant design and construction guidelines complement the features and sustainable strategies for the core and shell of the building. They are intended to assist tenants in designing and building sustainable interiors and to adopt green building practices. The interior finish specifications for Lake Worth Casino qualify typical interior finishes so that they reduce harmful off gassing, optimize indoor air quality, utilize locally produced and recycled materials where possible, protect against deforestation, and reclaim removed finishes during renovation or tenant turnover. These are the minimum standards to be used in evaluating a material finish when making selections for tenant spaces.

Floor

Carpet Tile – 18 to 20 oz. yarn weight, level loop pile, direct glue down, Materials Estimated Price Range: \$ TBA (to include allowance for General Contractor/Flooring Contractor and Freight)

Meets Green Label Plus.

Carpet is reclaimable and is reclaimed. No PVC backing.

Carpet Adhesive – does not exceed VOC limit 50.

No vinyl, reclaim unused flooring.

Floor Tile – 12” x 12”, chlorine free, contains no plasticizers, VOC free, requires no dressing or cleaning with caustic chemicals.

Installed Estimated Price (with “click” system): \$TBA.

Floor Tile Adhesive (if adhesive-free “click” system is not utilized) – does not exceed VOC limit 50.

Base

Carpet Base - 4” carpet base to match carpet in carpeted areas, meets Green Label Plus.

Cove Base – 4” cove base, no vinyl.

Materials Estimated Price Range: \$ TBA

Wood Base, Crowns, Chair rail – FSC (Forest Stewardship Council)-certified wood.

Walls

Tenant demising wall - 3 5/8” metal studs with 5/8” Type ‘X’ gypsum wall board each side (per code), gypsum does not exceed VOC limit 50.

Interior walls – 3 5/8” metal studs with 5/8” gypsum wall board each side, gypsum does not exceed VOC limit 50.

Interior Paint – (2) Two coats of latex flat over (1) coat primer. Latex flat does not exceed VOC limit 50 and primer does not exceed VOC limit 200.

Doors

Entry Doors – Provided in Shell.

Interior Doors – 3’-0” wide x 8’-0” height, wheat board core or Medex.

Alternate door as per demountable partition system specification for owner approval

Door Frames

Painted recycled hollow metal.

Semi-gloss trim paint not to exceed VOC limit 250.

Regionally manufactured, post-consumer recycled content.

Prehung FSC wood frames

Door Hardware

All exterior doors shall have the Building Standard for Common Spaces.

Interior doors shall be Schlage, AL series, Jupiter, lever type, brushed chrome finish or Equal and approved by Owner.

Locksets shall be: Passage set.

Door Stops: Typical all doors.

Ceiling

The Owner’s preference is no to have a dropped ceiling.

Ceiling height – a minimum of 8’-6” above finish floor.

Acoustical ceiling system – 2’ x 2’ tegular ceiling tiles, 60%-80% recycled content, reclamation and recyclable.

Window Treatment

Non-PVC 2” blinds, interior mount, valance and “white” finish.

Alternate wood blinds manufactured locally, FSC-certified, Low-VOC finish.

Cabinetry

All cabinets of composite wood, including core materials, must contain no added urea-formaldehyde resins. All laminate adhesives must contain no added urea-formaldehyde.

Appliances

Shall be by tenant.

Shall meet or exceed federal energy standards and be *ENERGY STAR* qualified.

Plumbing Fixtures

Toilets and urinals must have sensors.

All faucets must meet or exceed federal mandates for water consumed and be consistent with the project's current specified plumbing fixtures.

Lights

-2'x4' fluorescent light fixture, CFL or LED as approved by owner

-emergency lights as required by code

-exit signs as required by code

-all lights and controls are to meet Florida Building Code (FBC) 2007 chapter 13.

-all lights will have motion sensors for controls and a maximum watts per square foot as per FBC chapter 13.

HVAC

-complete air handler system and controls

- no fiberboard ductwork permitted

-this system allows for passive controls as well as individually controlled tenant spaces

-high efficiency cooling tower with individual air handler per tenant zone at 600-800sf per zone.

-condensate collection to be tied into building rainwater collection system.

EXHIBIT "H"

SPECIAL REQUIREMENTS

1. **Option to Renew.** Provided that Tenant has never been in default of the Lease, Tenant shall have four (4) renewal options of five (5) years to extend the Lease Term, provided that Tenant shall provide written notice to Landlord of its election to extend the Lease Term at least six (6) months, but not more than fifteen (15) months, prior to the expiration of the initial Lease Term, with time being of the essence as to this notification period. Landlord shall have no obligation to notify Tenant hereafter of the required notification date to renew the Lease and Tenant shall be deemed to have waived its renewal option in the event Tenant fails to notify Landlord in writing by the required notification date.

1.1 All terms and conditions of the Lease shall remain unchanged and in full force and effect upon Tenant's extension of the Lease Term except that Base Rent shall be increased as set forth in the Basic Lease Information of the Lease.

1.2 The foregoing renewal option shall no longer be available and shall automatically cease to exist, upon the occurrence of any of the following: (1) the expiration or sooner termination of the Lease, (2) the occurrence of any uncured event of default by Tenant under the Lease, or (3) any assignment of the Lease, subletting of the Premises (or any part thereof) or other transfer which was not allowed by the lease. within the meaning of the Assignment Article of the Lease.

2. **License to Use Outside Patio Area.** So long as the federal, state, and local laws, codes, zoning restrictions, ordinances, regulations, and safety requirements permit (provided that the failure to obtain such approvals and permits shall not be deemed to be a contingency of the effectiveness of this Lease or entitle Tenant to terminate this Lease), Landlord agrees that Tenant shall have, at such time during the Lease Term as Landlord shall designate, a revocable license to use the area adjacent to and immediately outside of the Premises, as described on **Exhibit "H-1"** attached hereto.

2.1 Tenant's use of the Patio Area complies with all laws, codes, zoning restrictions, ordinances, regulations, safety requirements, approvals, permits and licenses relating thereto.

2.2 All necessary approvals, permits, and licenses in connection with such use are obtained and paid for by Tenant (with copies furnished to Landlord) and remain in full force and effect during Tenant's use of the Patio Area.

2.3 Tenant shall install, at its sole cost and expense, all furniture and equipment (collectively, "**Furniture**") in the Patio Area. Tenant acknowledges and agrees that the furniture shall not be used or placed in the Patio Area until its design, size, color, position, and method of attachment or installation are first approved by Landlord in writing; and Tenant shall be solely responsible for any destruction, damage, theft, or vandalism of, or to, the Furniture.

2.4 Tenant hereby covenants and agrees that it shall not: (i) restrict access to the Project or pedestrian flow through the common areas outside the Patio Area; (ii) erect or place any canopy or other enclosure or covering on the Patio Area without Landlord's prior written approval; (iii) permit any music or other similar sounds to be heard in the Patio Area without Landlord's prior written approval; or (iv) permit loitering in the Patio Area by persons who are not customers of Tenant.

2.5 Tenant shall clean and keep in good repair the Patio Area and Furniture and shall remove all trash generated therefrom on a daily basis or more frequently as needed. If Tenant fails to clean or keep the Patio Area in good repair, or remove trash therefrom as required by this section, then in addition to and not in lieu of any other remedy to which Landlord may be entitled, Landlord shall have the right but not the obligation, upon 24 hours' prior written notice to Tenant, to clean, repair, or remove the trash on Tenant's behalf; and Tenant shall pay Landlord 125 percent of Landlord's cleaning, repair, or trash removal costs (including any overtime costs) immediately upon Landlord's demand therefore.

2.6 Tenant shall reimburse Landlord immediately upon Landlord's demand therefore, the cost of repairs or restoration of the common areas arising out of Tenant's use of the Patio Area or acts or negligence of Tenant, its customers, employees, agents, contractors, invitees, or licensees.

2.7 Tenant agrees to pay to the landlord \$15.00 per square foot per annum, on a gross square footage basis, for use of the Patio Area which shall be added to the base rent and subject to all annual escalation clauses contained in this lease document including lease renewal options.

2.8 Tenant's right granted herein to use the Patio Area is neither transferable nor assignable independently from its leasehold interest.

2.9 Landlord shall have no liability to Tenant if it is unable to use the Patio Area for any reason other than Landlord's negligence or willful misconduct.

2.10 Landlord shall be entitled, in its sole and absolute discretion, to revoke Tenant's license to use the Patio Area, upon 30 days' prior written notice to Tenant and to remove Tenant therefrom; and Prior to the revocation of such license, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand.

2.11 Should Landlord require the use of any portion of the Patio Area in connection with special events at the Project, operation or maintenance of the Project, construction of Tenant improvements or moving in of new tenants to the Project, or for any other purpose or use, Tenant shall remove its Furniture and other personal property from the Patio Area for such periods of time as Landlord shall designate in order to accommodate such uses.

EXHIBIT "H-1"

Description of Patio Area

The Patio areas will be laid out based on the amount of footage needed for walk thru traffic. The café seating must allow for 4' for walk thru traffic and cannot be blocked.

EXHIBIT "I"
CITY OF LAKE WORTH
COMMENCEMENT DATE LETTER

_____, 20__

TENANT
B.F. Enterprises, Inc.
Units #5 and #6
Lake Worth Casino Building

Re: Lease dated _____, 20__ by and between City of Lake Worth, as Landlord, and B.F. Enterprises as Tenant (the "Lease")

Dear _____:

This will confirm that:

1. All Landlord's Work required under the terms of this Lease have been satisfactorily performed in accordance with the Lease, and as of the date of this notice Tenant has inspected the Premises and accepted the Premises "as-is", "where-is";
2. The Commencement Date of the Lease Term is _____; and
3. The Rent Commencement Date is _____ and the expiration date of the Lease Term is _____.

ACCEPTED AND AGREED:

TENANT:

B.F. Enterprises, Inc.
a Florida Corporation

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Date Executed: _____

LANDLORD:

CITY OF LAKE WORTH,
a municipal corporation under the laws of the State of Florida

By: _____
Name: _____
Title: _____

(SEAL)

Date Executed: _____

EXHIBIT "J"

SIGN CRITERIA

Signage must comply with City ordinances and final approval from Landlord.

EXHIBIT "K"

PROHIBITED/RESTRICTED USES

Specific Leases:

General Restrictions:

Adult book store or facility selling, renting or displaying pornographic or adult books, literature, magazines, films, pictures, video discs, videotapes or other paraphernalia or merchandise (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), provided that the sale, rental or display of such items as an incidental part of a permitted business (as used above, the term "incidental" means, with respect to any national or regional video store chain, any sale or rental of such material, and with respect to other tenants, the sale of such materials from not more than 10% of the sales area of such business and so as to constitute less than ten percent 10% of the gross sales of such business) shall be permitted.

Auction or bankruptcy sale, unless bona fide and permitted by law

Auction house

Automobile body shop

Automobile dealership or used car lot

Automotive repairs and service

Barbecue stands or barbecue pits

Bingo parlor or similar games of chance, except as incidental retail sale such as lottery tickets and other items commonly sold in retail establishments

Boat sale or display

Bottling of beverages

Bowling alley

Brothel

Cabinet working and carpentry shops

Car wash

Carnival

Catering hall

Cocktail lounge, pub or bar, except as incidental to a restaurant

Cold storage warehouse and pre-cooling plants

Cult meeting place

Dance hall

Discotheque or nightclub

Food stamp center

Feed, hay and other livestock supplies

Fertilizer stores

Firing range

Flea market

Funeral establishment

Glass installation

Government offices

Gun store

Head shop

House of worship

Junk yard

Labor camp

Leather goods manufacturing, excluding tanning

Locksmith shops, sharpening and grinding shops

Lumber yards

Manufacturing use—contractors' plants and storage yards
Massage parlor, except a lawful business providing massages only by a licensed massage therapist or a physiotherapist is allowable
Meeting hall
Mobile home park
Mobile home sales
Off-track betting parlor
Pawn shop
Place of public assembly
Poultry markets and commercial chicken hatcheries
Psychic
Railroad, motor truck and water freight and passenger stations
Religious organization
Refinery
Sale, repair, service or storage of trucks and/or trailers and recreational vehicles
Second-hand stores for the disposal of furniture, fixture and tools
Shooting gallery
Skating rink
Stockyard
Theater
Tire vulcanizing and retreading or sale of used tires
Unemployment agency
Upholstery and furniture repairs
Warehouse use
Wood burning for cooking
Any use prohibited by recorded restrictions, covenants or conditions affecting the Project as of the Date of this Lease, if any.
Any restrictions or conditions set forth in the Zoning and Land Use Codes applicable to the Project.

EXHIBIT "L"

Copy of Cash Bond

PRINTED ON SECURED PAPER. HOLD TO LIGHT TO VIEW FOR ADDITIONAL SECURITY FEATURES. SEE BACK.

CASHIER'S CHECK

0066404 11-24
Office AU # 1210(8)

Operator I.D.: 0000506 0008989

May 25, 2012

PAY TO THE ORDER OF ***CITY OF LAKE WORTH***
REM: B. F. ENTERPRISE INC / BARRY S FREEDMAN

Forty-seven thousand one hundred eighty dollars and no cents

\$47,180.00

WELLS FARGO BANK, N.A.
500 W LANTANA RD
LANTANA, FL 33462
FOR INQUIRIES CALL (480) 394-3122

*One year Base Rent
Security Deposit on
Unit # 5-6 IN LW Casino Bldg -*

VOID IF OVER US \$ 47,180.00

AUTHORIZED SIGNATURE

Details on Back. Security Features Included.

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: Leisure Services

TITLE:

Fourth Amendment to Retail Lease with Pura Vida Treats, Inc., the current tenant

SUMMARY:

This amendment authorizes Pura Vida Treats, Inc., to extend its lease of units #3 and #4 at the Lake Worth Beach Municipal Casino Building. The current appropriation for FY23 is \$46,972.

BACKGROUND AND JUSTIFICATION:

On February 2, 2012, the City entered into a retail lease agreement with Maxplan Enterprises Inc., also known as Kilwins Chocolates and Ice Cream Lake Worth Beach. The lease allowed for Maxplan Enterprises, Inc., to lease units #3 and #4 at the Lake Worth Beach Casino Building for ten (10) years with the option of two (2) additional five (5) year renewals.

On August 13, 2020, the City and the tenant entered into a Second Amendment to revise certain terms and conditions of the lease as a result of the COVID-19 pandemic.

On March 2, 2021, the City, Tenant/Assignor and Tenant/Assignee entered into the Second Amendment to the lease to assign the lease to Pura Vida Treats, Inc., to continue to operate as Kilwins Chocolates and Ice Cream Lake Worth Beach.

On September 20, 2022, the Landlord and Tenant/Assignee entered into the Third Amendment to the lease to extend the Lease for up to 60 days.

The Fourth Amendment will extend Pura Vida Treats, Inc., lease on units #3 and #4 at the Lake Worth Beach Casino Building for an additional five (5) years. There will be a 3.5% a year increase per the terms of the lease.

There remains one (1) option to renew the Lease for five (5) additional years.

MOTION:

Move to approve/disapprove the Fourth Amendment with Pura Vida Treats, Inc.

ATTACHMENT(S):

Fiscal Impact Analysis
Fourth Amendment Retail Lease

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	\$46,972.34	\$48,616.37	\$50,317.94	\$52,079.07	\$53,901.84
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation	
	Revenue Source/ Expenditure
Department	Leisure Services
Division	Beach Fund
GL Description	Leased Properties
GL Account Number	140-0000-362.10-00
Project Number	N/A
Requested Funds	N/A: Revenues

FOURTH AMENDMENT TO RETAIL LEASE

THIS FOURTH AMENDMENT TO THE RETAIL LEASE (the “Amendment”) is made on the _____ day of _____, 2022, between the **City of Lake Worth Beach**, a Florida municipal corporation (“Landlord”), and **Pura Vida Treats, Inc.**, a Florida corporation (“Tenant/Assignee”) (collectively Landlord, Tenant/Assignor, and Tenant/Assignee are referred to as the “Parties”).

RECITALS

WHEREAS, on February 2, 2012, the Landlord and Maxplan Enterprises, Inc. (Tenant/Assignor) entered into a Retail Lease agreement for the lease of unit nos. 3 and 4 on the first floor of the Lake Worth Municipal Casino Building for use by the Tenant/Assignor as a retail ice cream and chocolates establishment (the “Lease”); and

WHEREAS, on August 13, 2020, the Landlord and the Tenant/Assignor entered into the First Amendment to the Lease to revise certain terms and conditions of the Lease as a result of the COVID-19 pandemic; and

WHEREAS, on March 2, 2021, the Landlord, Tenant/Assignor and Tenant/Assignee entered into the Second Amendment to the lease to assign the Lease to the Tenant/Assignee and to revise certain terms and conditions of the Lease; and

WHEREAS, on September 20, 2022, the Landlord and Tenant/Assignee entered into the Third Amendment to the lease to extend the Lease for up to 60 days so that the market rate analysis could be completed; and

WHEREAS, when the Lease is referenced hereinafter, it shall be defined to also include the First Amendment, Second Amendment, and Third Amendment.

WHEREAS, the Parties wish to extend the Lease for a five (5) year renewal term (which includes the initial 60 day extension), to set forth the revised Base Rent for each year of such renewal term, and to amend the grease trap maintenance requirements; and

WHEREAS, the Tenant/Assignee is established in its role as Tenant and for other relevant reasons, the Landlord agrees to release the Tenant/Assignor from its obligations under the Lease; and

WHEREAS, the Landlord finds amending the Lease as set forth herein serves a valid public purpose.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in the Lease and this Amendment, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree as follows:

1. **City Commission Consideration.** This Amendment will be considered by the Landlord’s City Commission at a public meeting on November 1, 2022.

2. **First Renewal Option.** The Lease is hereby extended for an additional five (5) years through and including October 1, 2027. There remains one (1) option to renew the Lease for five (5) additional years.
3. **Base Rent.** Paragraph 1.15 of the Lease, “Base Rent,” is here by deleted in full and amended to read as follows:

1.15 **Base Rent (1st renewal).** The following amounts:

Period	Rate P/S/F Annum	Monthly Base Rent	Period Base Rent
11 th year	\$35.26	\$3,914.36	\$46,972.34
12 th year	\$36.50	\$4,051.36	\$48,616.37
13 th year	\$37.78	\$4,193.16	\$50,317.94
14 th year	\$39.10	\$4,339.92	\$52,079.07
15 th year	\$40.47	\$4,491.82	\$53,901.84

4. **Grease Traps.** Subsection 15.6 of the Lease is deleted and amended in full to clarify the current operation of Grease Traps at the premises: “The Casino Building has one (1) grease trap and all of the tenants’ floor drains are connected to the grease trap line. The Tenant does not currently use grease; however, if the grease trap and/or the floor drain becomes clogged, or is otherwise not in good working order, due to the Tenant’s use of the premises, the Tenant shall immediately address the issues with the trap and drain at its sole cost. If the Tenant fails to timely address the issues, the Landlord shall be entitled to hire a vendor of Landlord’s choice to fix or otherwise clean out/pump the grease trap and drain line, and the Tenant shall pay for such costs upon demand. If the Tenant begins to use grease, it shall immediately notify the Landlord in writing, and the Landlord may, in its sole discretion, require the Tenant to comply with a schedule (approved by the Landlord) for the regular maintenance and pumping of the grease trap and drain line. If such schedule is required and the Tenant fails to have the grease trap and drain line regularly and properly maintained and/or pumped in accordance with the schedule and all applicable laws, ordinances, rules and regulations, the Landlord shall be entitled to hire a vendor of Landlord’s choice to timely and properly maintain and/or pump the grease trap and drain line and the Tenant shall pay for such costs upon demand. Tenant shall also be responsible for all costs and expenses to repair the grease trap and drain line if damaged by the negligence of the Tenant, its employees, or any contracted vendor. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project; however, if such discharge occurs, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including, but not limited to, any fines or penalties imposed by governmental authorities) which may be assessed against Landlord or that the Landlord may incur to resolve the discharge.”
5. **Release of Assignor.** The Landlord hereby releases the Tenant/Assignor, Maxplan Enterprises, Inc., from any and all obligations or liabilities accruing under the Lease after the date this Amendment is fully executed. The Tenant/Assignee, Pura Vida Treats, Inc., hereby reconfirms its acceptance of the Lease and its assumption of all duties, obligations, liabilities, terms, provisions and covenants contained in or arising under the Lease.

6. **Agreement Unchanged.** Except as specifically amended herein, all other provisions of the Lease shall remain in full force and effect.
7. **Controlling Documents.** To the extent that there exists a conflict between this Amendment and the Lease, the terms and conditions of this Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
8. **Entire Agreement.** The Parties agree that the Lease and this Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
9. **Counterparts.** Each Party may sign one copy of this Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Amendment.

IN WITNESS WHEREOF, the Parties have caused this Fourth Amendment to the Retail Lease to be executed by their duly authorized representatives.

LANDLORD: CITY OF LAKE WORTH BEACH, FLORIDA

Witness:

By: _____
Print Name: _____

By: _____
Betty Resch, Mayor

ATTEST:

Melissa A. Coyne, CMC, City Clerk

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2022, by Betty Resch, as the Mayor of the City of Lake Worth Beach (Landlord), who is personally known to me.

Notary Seal:

Notary Public Signature

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

TENANT/ASSIGNEE:
PURA VIDA TREATS, INC.

Witnesses:

By: [Signature]
Print Name: Alicia Kaye

By: Wayne Pyers President
Wayne Pyers, President

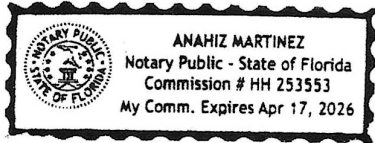
By: [Signature]
Print Name: ANAHIZ MARTINEZ

[Corporate Seal, if required]

STATE OF Florida)
COUNTY OF Palm Beach)

THE FOREGOING instrument acknowledged before me by means of • physical presence or • online notarization on this 27th day of October 2022, by Wayne Pyers, as the President of Pura Vida Treats, Inc., a Florida Corporation, who is personally known to me or who has produced valid Drivers License as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the TENANT/ASSIGNEE to the same.

Notary Seal:



[Signature]
Notary Public Signature

RETAIL LEASE

THIS RETAIL LEASE (the "Lease") is made and entered into as of the Date of this Lease, by and between Landlord and Tenant. "Date of this Lease" shall mean the date on which the last one of the Landlord and Tenant has signed this Lease.

WITNESSETH:

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant hires from Landlord the Premises.

1. **BASIC LEASE INFORMATION AND DEFINED TERMS.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord.** CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida.

1.2 **Tenant.** Maxplan Enterprises, a Florida corporation

1.3 **Tenant's Trade Name.** Kilwin's Chocolates and ice Cream

1.4 **Building.** The building containing the Premises. The Building is located within the Project.

1.5 **Project.** The parcel of land, the Building, and any other buildings and improvements located on such land and known as the Lake Worth Municipal Casino Building located at 10 Ocean Boulevard, Lake Worth, Florida 33460, and legally described in EXHIBIT "A" to this Lease.

1.6 **Premises.** Unit #3 and 4 on the First floor of the Building. The Premises are located in the Project and are depicted in the sketch attached as EXHIBIT "B". Landlord reserves the right to install, maintain, use, repair, and replace pipes, ducts, conduits, risers, chases, wires, and structural elements leading through the Premises in locations that will not materially interfere with Tenant's use of the Premises.

1.7 **Gross Leasable Area of the Premises.** 1,332 square feet. This square footage figure has been agreed upon by the parties as final and correct and is not subject to challenge or dispute by either party.

1.8 **Permitted Use of the Premises.** Buyer is leasing the subject property for future use as a retail Ice Cream and chocolates establishment.

1.9 **Commencement Date.** The date Landlord delivers possession of the Premises with Landlord's Work substantially complete. Substantial completion shall mean the date that a Certificate of Occupancy or its equivalent is issued by the appropriate local government entity concerning the Landlord's Work, or, if no Certificate of Occupancy will be issued for the Landlord's Work, the date on which the Landlord's Work is substantially completed so that Tenant may use the Premises for their intended purpose, notwithstanding that punchlist items or insubstantial details concerning construction, decoration, or mechanical adjustment remain to be performed.

1.10 **Rental Concessions.** Free rent during build-out period. The maximum build-out period is to be 8 months. When tenant opens for business the rent shall commence. First and Security (Security equals two months of the fifth year base rent) is due upon signing of lease.

1.11 **Access.** Lessee shall be provided full access to the Property, at their own risk, during the Free Rent period for the purpose of conducting all necessary alterations, upgrades, and decorating.

1.12 **Rent Commencement Date.** The date which is the earlier of (i) 8 months after the Commencement Date, or (ii) the date Tenant opens for business in any part of the Premises, on October 1, 2012 for one hundred and twenty (120) months with two (2) five year options to renew.

1.13 **Lease Term.** A term commencing on the Rent Commencement Date and continuing for ten (10) full calendar years (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by Tenant for the partial month. Following the initial one hundred and twenty (120) month base term, two (2) options to renew are provided for five (5) years each.

1.14 **Renewal Option Rates.** Rent for both renewal options shall increase based on market rent with an annual escalation of 3.5%. First renewal is based on increases or market rent, whatever is less. Second renewal option is based on same formula. Renewal option(s) at the then escalated rent increases at 3.5% per year.

1.15 **Base Rent.** The following amounts:

Period	Rate P/S/F Per Annum	Monthly Base Rent	Period Base Rent
1 st year	\$25.000	\$2,775.00	\$33,300.00
2 nd year	\$25.875	\$2,872.12	\$34,465.50
3 rd year	\$26.780	\$2,972.58	\$35,670.96
4 th year	\$27.717	\$3,076.59	\$36,919.04
5 th year	\$28.687	\$3,184.26	\$38,211.08
6 th year	\$29.692	\$3,295.81	\$39,549.74
7 th year	\$30.731	\$3,411.14	\$40,933.69
8 th year	\$31.807	\$3,530.58	\$42,366.92
9 th year	\$32.920	\$3,654.12	\$43,849.44
10 th year	\$34.072	\$3,781.99	\$45,383.90

Base Rent amounts shown above do not include applicable sales tax.

1.16 **Allocated Share.** The percentage share resulting from dividing the Gross Leasable Area of the Premises by the Gross Leasable Area of the Project as determined by Landlord from time to time.

1.17 **Security Deposit.** \$6,368.52 to be paid to Landlord upon execution of this Lease by Tenant. Security equals two (2) months of the fifth year base rent.

1.18 **First Month's Rent:** \$3,718.50 to be paid to Landlord upon execution of this Lease by Tenant.

Base Rent:	\$2,775.00
Operating Costs:	\$ 777.00
Sales Tax:	<u>\$ 166.50</u>
Total:	<u>\$3,718.50</u>

1.19 **Tenant's Notice Address.** 512 Lake Avenue, Lake Worth, Florida, 33460

1.20 **Landlord's Notice Address.** c/o City Manager, City of Lake Worth, 7 North Dixie Highway, Lake Worth, Florida 33460.

1.21 **Landlord's Broker.** Anderson & Carr, Inc.

1.22 **Tenant's Broker.** Anderson & Carr, Inc.

1.23 **Guarantor.** N/A

1.24 **Business Days.** All days

2. **TERM.** Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall commence on the Rent Commencement Date. Landlord shall determine the Commencement Date and Rent Commencement Date as provided in Basic Lease

Information and Defined Terms article of this Lease and shall notify Tenant of the dates so determined. Tenant shall, if Landlord so requests, thereafter execute and return within ten days a letter confirming the Commencement Date, Rent Commencement Date, and the expiration date of this Lease in the form attached as **EXHIBIT "H"**. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to conduct business or pay rent) from the date that the Premises are delivered to Tenant until the Rent Commencement Date in the same manner as though the Lease Term began when the Premises were so delivered to Tenant.

3. USE.

3.1 **Permitted Use.** Tenant shall continuously use and occupy the Premises only for the Permitted Use of the Premises, in keeping with first-class standards of quality, respect, decorum, integrity, fitness, and stability. Tenant shall not use or permit or suffer the use of the Premises for any other business or purpose. Tenant shall conduct its business in the Premises solely under Tenant's Trade Name. Tenant shall conduct its business upon the Premises in accordance with the highest ethical and operating standards of the retail industry. Tenant acknowledges that the Project is a mixed-use project containing other retail uses. The agreements of Tenant concerning limitations on the use of the Premises, as set forth in this Lease, are a material inducement to Landlord in entering into this Lease. The provisions of this article are in the nature of restrictive covenants running with the land. Tenant shall warehouse, store, and stock in the Premises only goods, wares, and merchandise that Tenant intends to offer for sale at, in, from, or upon the Premises. This shall not preclude occasional emergency transfers of merchandise from the other stores of Tenant, if any, not located in the Project. Nothing contained in this Lease shall be construed as giving Tenant an express or implied exclusive use in the Project, unless expressly set forth in this Lease. Tenant shall conform to the Rules and Regulations. "**Rules and Regulations**" shall mean the rules and regulations for the Project promulgated by Landlord from time to time. The Rules and Regulations which apply as of the Date of this Lease are attached as **EXHIBIT "D"**.

3.2 **No Offensive or Illegal Use.** No use of the Premises during the Lease Term shall be offensive to the neighborhood by reason of odor, fumes, noise, or traffic; no illegal activity shall be conducted on the Premises by Tenant or by anyone claiming the right to use the Premises by or through Tenant; and no activities on the Premises shall be permitted by Tenant, or by anyone claiming the right to use the Premises by or through Tenant, which are, in the sole discretion of Landlord, immoral or lewd or capable of subjecting the Premises to an unfavorable reputation or reducing the sale or rental value of the Premises.

3.3 **Restricted Uses.** Tenant expressly acknowledges that Landlord has advised it of restricted, prohibited, and exclusive uses (collectively, "**Restricted Uses**") applicable to the Premises. Restricted Uses are set forth in **EXHIBIT "K"**. Further, Landlord may grant future exclusive uses in the Project, so long as such future exclusive uses ("**Future Exclusive Uses**") established after the Date of this Lease do not prohibit Tenant's Permitted Use or violate any exclusive rights granted to Tenant hereunder. Tenant shall not use or permit or suffer the use of the Premises for any of the Restricted Uses or Future Exclusive Uses, and shall indemnify, defend and hold Landlord harmless from all costs and claims arising from Tenant's violation of such restrictions. Tenant further acknowledges that the provisions in the agreements granting exclusive use rights to other tenants in the Project and the provisions of this Lease concerning the Restricted Uses are in the nature of restrictive covenants running with the land.

3.4 **Conduct of Business.** Throughout the Lease Term, Tenant shall actively conduct its business with the closing hours of 11pm on Sunday, 12am Monday through Wednesday and 1am on Thursday through Saturday at the latest. Interruption of Tenant's business because of any act of war, strike, fire, the elements, governmental action, or other cause beyond the reasonable control of the Tenant shall not constitute a default under this article, but no interruption of business shall affect the Tenant's responsibility to pay any form of rent due under this Lease. Tenant shall carry at all times in the Premises a stock of "in season" merchandise of such quantity, character, and quality as shall be in accord with advanced and highest quality retail business practices within the locale for Tenant's business. Tenant shall keep the Premises fully staffed with experienced personnel. Additionally, Tenant shall keep the display windows in the Premises well lighted during the hours that Landlord may designate from time to time.

3.5 **Failure to Open for Business.** If Tenant fails to open the Premises for business fully fixtured, stocked with "in season" merchandise, and staffed within 30 days after the Rent Commencement Date, then Tenant shall be in default under this Lease and Landlord shall have, in addition to the other remedies provided in this Lease, the right at its option to collect Base Rent at double the rate for Base Rent otherwise applicable on a per day basis for each and every day that Tenant shall fail to open for and conduct business.

4. **RENT.** Tenant shall pay Rent to Landlord in lawful United States currency. **On the execution of this Lease by Tenant, Tenant shall pay to Landlord the installments of Base Rent and additional rent for Operating Costs for the first**

month of the Lease Term. All Base Rent shall be payable in monthly installments, in advance, beginning on the Rent Commencement Date, and continuing on the first day of each and every calendar month thereafter during the Lease Term. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent, shall be denominated as additional rent. Except as otherwise provided, all additional rent payments are due ten days after delivery of an invoice. Tenant shall pay monthly to Landlord any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed on any Rent due under this Lease. The term “**Rent**” when used in this Lease shall include Base Rent and all forms of additional rent. All Rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord’s Notice Address, or at such other place as Landlord shall designate in writing to Tenant. Tenant’s obligations to pay Rent are covenants independent of the Landlord’s obligations under this Lease.

5. OPERATING COSTS.

5.1 General. Tenant shall pay to Landlord its Allocated Share of Operating Costs in accordance with the terms and provisions of this article and based on the following.

5.2 Real Estate Taxes. The term “**Real Estate Taxes**” shall mean the total of all taxes, assessments, and other charges by any governmental or quasi-governmental authority, including real and personal property taxes, transit and other special district taxes, franchise taxes, and solid waste assessments that are assessed, levied, or in any manner imposed on the Project by such authority. If a tax shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes or otherwise as a result of the ownership of the Project, then the other tax shall be deemed to be included within the definition of “**Real Estate Taxes**.” Real Estate Taxes are paid annually, upon invoice by the City and are separate from Common Area Maintenance Costs.

5.3 Common Area Maintenance Costs (CAM). The term “**CAM**” shall mean the total of all of the costs and expenses incurred or borne by Landlord relating to the operation, maintenance, repair, and security of the Project and the services provided tenants in the Project. By way of explanation and clarification, but not by way of limitation, **CAM** will include the costs and expenses incurred for the following: heating, air conditioning, ventilation, plumbing, electrical, fire sprinkler, fire alarm, and emergency generator systems; elevators; pest control; trash and garbage removal (including dumpster and compactor rental); protection and security; Common Areas decorations, repairs, replacements, and maintenance; amounts paid under easements or other recorded agreements affecting the Project; improvements required by law; building painting and roof repairs; materials, tools, supplies, and equipment to enable Landlord to supply services that Landlord would otherwise have obtained from a third party; expenditures designed to result in savings or reductions in Common Area Maintenance Costs; exterior landscaping and irrigation supply, repair, and maintenance; parking and driveway area repair, and maintenance, including periodic resurfacing and restriping; illumination, repair, maintenance, and replacement of Project signs, property management fees; all utilities serving the Project and not separately billed to or reimbursed by any tenant of the Project; music systems; depreciation on machinery and equipment used in the maintenance of the Project, costs of maintaining, reporting, commissioning or recommissioning any part of the Project that was designed and/or built to be sustainable and conform with Landlord’s environmental management plans and any current or future green/sustainable building rating system or standard; extended coverage, all risks, terrorism, earthquake, change in condition, sprinkler apparatus, plate glass, electronic data processing, boiler and machinery, rental guaranty or interruption, public liability and property damage, flood, and any other additional insurance customarily carried by owners of comparable buildings or required by any mortgagee of the Project; supplies; service and maintenance contracts for the Project; compensation and other benefits respecting employees of the Landlord involved in the operation and maintenance of the Project up to and including the Project manager (including a pro rata share only of the wages and benefits of employees who are employed at more than one building, which pro rata share shall be determined by Landlord and shall be based on Landlord’s estimate of the percentage of time spent by the employees at the Project); legal, accounting, and administrative costs; expenses imposed on the Landlord under any law or any collective bargaining agreement concerning Landlord’s employees; workers’ compensation insurance; and payroll, social security, unemployment, and other similar taxes relating to employees. Landlord may contract for the performance of some or all of the management, operation, maintenance, repair, service and security functions generally described in this section with any persons or entities whom Landlord shall deem appropriate, including persons or entities who are affiliated with Landlord.

5.4 CAM Payment. Landlord shall reasonably estimate the Common Area Maintenance Costs that will be payable for each fiscal year by Landlord expiring September 30th of each calendar year. Tenant shall pay one-twelfth of its share of the estimated **CAM**, monthly in advance, together with the payment of Base Rent. After the end of each fiscal year and after receipt by Landlord of all necessary information and computations, Landlord shall furnish Tenant a detailed statement of the actual Operating Costs for the prior fiscal year period; and an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant for Common Area

Maintenance Costs (CAM) for the year and Tenant shall receive reimbursement for any overpayments for the year. Any payment adjustment owed by Tenant will be due forthwith. Any refund due the Tenant will be credited against Tenant's monthly Rent obligations. Tenant waives and releases any and all objections or claims relating to CAM payment for any calendar year unless, within 30 days after Landlord provides Tenant with the annual statement of the actual Operating Costs for the calendar year, Tenant provides Landlord notice that it disputes the statement. If Tenant disputes the statement, then Tenant shall continue to pay the Rent in question to Landlord in the amount provided in the disputed statement pending resolution of the dispute. Tenant acknowledges that Operating Costs will be included in a Comprehensive Financial Annual Report prepared by Landlord and made publicly available, and Tenant waives all rights to independently audit or review Landlord's books and records for Operating Costs, except as allowed by applicable law and procedures.

6. ASSIGNMENT OR SUBLETTING.

6.1 **General.** Tenant may not transfer any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Landlord's prior written consent which shall not be unreasonably withheld. Without limiting the generality of the foregoing, Tenant may not sublease, assign, mortgage, encumber, permit the transfer of ownership or control of the business entity comprising Tenant, or permit any portion of the Premises to be occupied by third parties. Consent by Landlord to a transfer shall not relieve Tenant from the obligation to obtain Landlord's consent to any further transfer. Tenant and Guarantor shall remain fully liable for all obligations under this Lease following any such transfer. The joint and several liability of Tenant, Guarantor, and any successor in interest of Tenant (by assignment or otherwise) under this Lease shall not in any way be affected by any agreement that modifies any of the rights or obligations of the parties under this Lease or any waiver of, or failure to enforce, any obligation under this Lease. Tenant shall pay to Landlord, on demand, an administrative fee of \$1,000, plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated therewith. Any transfer by Tenant in violation of this article shall, at Landlord's option, be void. Tenant shall submit in writing to Landlord, not later than 30 days before any anticipated transfer, (a) the name and address of the proposed transferee, (b) a duly executed counterpart of the proposed transfer agreement, (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the space, and (d) banking, financial, or other credit information relating to the proposed transferee reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed transferee. Landlord shall have the sole option, which shall be, exercised by providing Tenant with written notice of terminating the Tenant's rights and obligations under this Lease rather than permitting any assignment or subletting by Tenant to be exercised within 15 Business Days from submission of Tenant's request for Landlord's consent to a specific transfer.

6.2 **Consent Criteria.** Notwithstanding the foregoing, Landlord's consent to a transfer may be withheld in Landlord's sole and absolute discretion, to any party who: (a) has been presented space for lease in the Project by the Landlord or its agents, and/or employees within the 120 days preceding Tenant's request to sublease or assign, (b) is an occupant of the Project at the time of Tenant's request to sublet or assign for whom Landlord then has alternative space available in the Project, (c) would be using the Premises for a use that is not compatible with the Project or any existing exclusive use restriction in Landlord's sole discretion, (d) does not have the financial wherewithal to discharge its obligations under the Lease, (e) if Lessee is in default under this Lease beyond applicable notice and cure periods, or (f) the transferee has been disbarred, suspended or rendered ineligible to enter into contracts with Landlord, County of Palm Beach, or any other municipal, state or federal entity. In the event Landlord withholds consent to any transfer contrary to the provisions of this article, Tenant's sole remedy will be to seek injunctive relief against or specific performance by Landlord, and Tenant expressly waives any right to damages of any kind for such withholding by Landlord of its consent.

6.3 **Consideration for Consent.** Any amounts received by Tenant as a result of any such transfer, assignment or subletting in excess of the Rent then being paid by Tenant to Landlord under this Lease shall be payable by Tenant to Landlord, it being the parties' intention that Landlord, and not Tenant, shall be the party to receive any profit from any assignment or subletting. Upon reasonable notice, Landlord shall have the right to audit Tenant's books and records to determine the amount payable to Landlord under this section.

7. INSURANCE.

7.1 **Tenant's Insurance.** Tenant shall obtain and keep in full force and effect the following insurance coverages: commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form with combined single limits of \$3 million per occurrence; property insurance on the ISO

causes of loss—special form, in an amount adequate to cover 100% of the replacement costs, without co-insurance, of all of Tenant’s property at the Premises; workers’ compensation insurance; plate glass insurance with a deductible of not more than \$250; if alcoholic beverages are served or sold from the Premises, liquor liability insurance in the amount of \$1 million; and such other insurance as may be reasonably required by Landlord. The commercial general liability insurance shall be primary and non-contributing to any insurance otherwise available to Landlord and shall not have any deductibles. Tenant shall comply with all requirements of the Board of Fire Underwriters of Florida any other similar body affecting the Premises and shall not use the Premises in a manner that shall increase the rate of fire insurance or other insurance of Landlord over that in effect during the year before the Commencement Date. If the use of the Premises by Tenant increases any insurance rate concerning the Project, Tenant shall reimburse Landlord for the additional costs.

7.2 **Insurance Requirements.** All insurance policies shall be written with insurance companies and shall have coverage limits acceptable to Landlord and having a policyholder rating of at least “A-” and a financial size category of at least “Class XII” as rated in the most recent edition of “Best’s Key Rating Guide” for insurance companies. The commercial general liability insurance policy shall name Landlord and Landlord’s managing agent as additional insureds. All policies shall provide that they may not be terminated or modified in any way that would materially decrease the protection afforded Landlord under this Lease without 30 days’ advance notice to Landlord. Tenant shall furnish evidence that it maintains all insurance coverages required under this Lease (ACORD 25 for Commercial General Liability and the 2003 edition of ACORD 28 for Property, with copies of declaration pages for each required policy). Coverage amounts for the commercial general liability insurance may be increased after commencement of the fifth full year of the Lease Term, if Landlord shall reasonably determine that an increase is necessary for adequate protection.

7.3 **Waiver of Subrogation.** Landlord and Tenant each expressly, knowingly, and voluntarily waive and release any claims that they may have against the other or the other’s employees, agents, or contractors and against every other tenant in the Project who shall have executed a waiver similar to this one for damage to its property and loss of business (specifically including loss of Rent by Landlord and business interruption by Tenant) as a result of the acts or omissions of the other party or the other party’s employees, agents, or contractors (specifically including the negligence of either party or its employees, agents, or contractors and the intentional misconduct of the employees, agents, or contractors of either party), to the extent any such claims are covered by the worker’s compensation, employer’s liability, property, rental income, business income, or extra expense insurance described in this Lease, or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer concerning the workers’ compensation, employer’s liability, property, rental income, and business interruption insurance maintained by it for the Project and the property located in the Project. This section shall control over any other provisions of the Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

8. **DEFAULT.**

8.1 **Events of Default.** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of Rent when due (“**Monetary Default**”); (b) Tenant fails to perform any other obligation under this Lease or the Rules and Regulations or any Guarantor defaults under any guaranty of this Lease and fails to cure such default within ten days of written notice from Landlord (“**Non-Monetary Default**”); (c) Tenant violates any requirement under the Use article of this Lease; (d) Tenant or any Guarantor or surety for Tenant’s obligations under this Lease becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings be taken by or against Tenant or any Guarantor; surety; (e) a receiver or trustee in bankruptcy is appointed for the Tenant’s property and the appointment is not vacated and set aside within 60 days from the date of the appointment; (f) Tenant rejects this Lease in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency laws; (g) Tenant ceases to conduct business in the Premises for a period of 15 consecutive days; (h) Tenant, before the expiration of the Lease Term, and without the written consent of Landlord, vacates the Premises or abandons possession of the Premises; (i) the leasehold estate granted to Tenant by this Lease is taken on execution or other legal process; (j) Tenant transfers this Lease in violation of the Assignment or Subletting article; (k) Tenant fails to deliver an estoppel certificate within the time period required by the Estoppel Certificates article of this Lease; (l) Tenant’s net worth or stockholder’s equity falls below its net worth or stockholder’s equity on the Date of this Lease or other material adverse change occurs in Tenant’s financial condition; or (m), if Tenant is a franchisee, Tenant’s franchise agreement is terminated.

8.2 **Remedies.** If Tenant defaults, in addition to all remedies provided by law, Landlord may declare the entire balance of all forms of Rent due under this Lease for the remainder of the Lease Term to be forthwith due and payable and may collect the then present value of the Rents (calculated using a discount rate equal to the discount rate of the branch of the Federal Reserve Bank closest to the Premises in effect as of the date of the default). In addition, Landlord may institute a distress for rent action and obtain a distress writ under Sections 83.11 through 83.19, Florida Statutes. If this Lease is rejected in any bankruptcy proceeding, Rent for the entire month in which the rejection occurs shall be due and payable in full and shall not be prorated. **TENANT EXPRESSLY, KNOWINGLY, AND VOLUNTARILY WAIVES (I) ALL CONSTITUTIONAL, STATUTORY, OR COMMON LAW BONDING REQUIREMENTS, INCLUDING THE REQUIREMENT UNDER SECTION 83.12, FLORIDA STATUTES, THAT LANDLORD FILE A BOND, IT BEING THE INTENTION OF THE PARTIES THAT NO BOND SHALL BE REQUIRED TO BE FILED BY LANDLORD IN ANY DISTRESS ACTION; AND (II) THE RIGHT UNDER SECTION 83.14, FLORIDA STATUTES, TO REPLEVY DISTRAINED PROPERTY.**


TENANT INITIALS

8.3 **Landlord's Right to Perform.** If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money, including reasonable attorneys' fees, the sums so paid or obligations incurred shall be paid by Tenant to Landlord within five days of rendition of a bill or statement to Tenant therefor.

8.4 **Late Charges, Interest, and Bad Checks.** If any payment due Landlord shall not be paid within five days of the date when due, Tenant shall pay, in addition to the payment then due, an administrative charge equal to the greater of (a) 5% of the past due payments, or (b) \$250. All payments due Landlord shall bear interest at the lesser of: (a) 18% per annum, or (b) the highest rate of interest permitted to be charged by applicable law, accruing from the date the obligation arose through the date payment is actually received by Landlord. If any check given to Landlord for any payment is dishonored for any reason whatsoever not attributable to Landlord, in addition to all other remedies available to Landlord, upon demand, Tenant will reimburse Landlord for all insufficient funds, bank, or returned check fees, plus an administrative fee not to exceed the maximum amount prescribed by Section 68.065, Florida Statutes. In addition, Landlord may require all future payments from Tenant to be made by cashier's check from a local bank or by Federal Reserve wire transfer to Landlord's account.

8.5 **Limitations.** None of Landlord's officers, employees, agents, directors, shareholders, partners, members, managers, or affiliates shall ever have any personal liability to Tenant. No person holding Landlord's interest shall have any liability after such person ceases to hold such interest, except for any liability accruing while such person held such interest. **TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT UNDER THIS LEASE, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.** No act or omission of Landlord or its agents shall constitute an actual or constructive eviction of Tenant or a default by Landlord as to any of its obligations under this Lease unless Landlord shall have first received written notice from Tenant of the claimed default and shall have failed to cure it after having been afforded reasonable time in which to do so, which in no event shall be less than 30 days. Further, Tenant waives any claims against Landlord that Tenant does not make in writing within 30 days of the onset of the cause of such claim. Landlord and Tenant each waive all rights (other than rights under the End of Term article) to consequential damages, lost profits, punitive damages, or special damages of any kind.

8.6 **Multiple Defaults.** Tenant acknowledges that, based on Tenant's credit, reputation, and other factors, Landlord has granted Tenant certain special rights that are not generally granted to tenants in the Project, including any rights or options of first refusal, or to extend the Lease Term, to expand or reduce the size of the Premises, to purchase the Premises or the Project, Project signage rights, rights under co-tenancy provisions, performance, rights to "go dark" or cease operations, "kick-out", or early termination clauses or other similar rights or options. Tenant, therefore, acknowledges that those special rights are expressly conditioned on the prompt and diligent performance of the terms of this Lease by Tenant and should Tenant, on two or more occasions during any 12-month period, (a) fail to pay any installment of rent within five days of the due date, or (b) otherwise default under this Lease; in addition to all other remedies available to Landlord, any and all such rights shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect. Should Tenant default under this Lease on two or more occasions during any 12-month period, in addition to all other remedies available to Landlord, any notice requirements or cure periods otherwise set forth in this Lease for a default by Tenant shall not apply.

8.7 **Security Interest.** Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises including, but not limited to, all fixtures, furniture, inventory, machinery, equipment, merchandise, furnishings and other articles of personal property, and all proceeds of the sale or other disposition of such property (collectively, the “**Collateral**”) to secure the payment of all rent to be paid by Tenant pursuant to this Lease. Such lien and security interest shall be in addition to any landlord’s lien provided by law. This Lease shall constitute a security agreement under the Uniform Commercial Code, so that Landlord shall have and may enforce a security interest in the Collateral. Tenant authorizes Landlord to file a financing statement or statements and any further documents as Landlord may now or hereafter reasonably require to protect such security interest under such Code. Landlord, as secured party, shall be entitled to all rights and remedies afforded a secured party under such Code, which rights and remedies shall be in addition to Landlord’s liens and rights provided by law or by the other terms and provisions of this Lease.

9. ALTERATIONS.

9.1 **“Alterations”** shall mean any alteration, addition, or improvement in or on or to the Premises of any kind or nature, including any improvements made prior to Tenant’s occupancy of the Premises. Tenant shall make no Alterations which affect utility services or plumbing and electrical lines or fire suppression or other systems of the Project, are exterior to the Premises, or require other alterations, additions, or improvements to portions of the Project outside the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord’s sole discretion (“**Material Alterations**”). Tenant may make non-Material Alterations with Landlord’s prior consent which consent shall not be unreasonably withheld. All Alterations shall be performed in accordance with Landlord’s Tenant Alterations Rules and Requirements attached to this Lease as **EXHIBIT “F”**. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor’s license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor’s work schedule, list of all subcontractors, and all building or other governmental permits required for the Alterations shall be delivered to Landlord before commencement of the Alterations. Except as expressly set forth in this Lease, Landlord has made no representation or promise as to the condition of the Premises, Landlord shall not perform any alterations, additions, or improvements in order to make the Premises suitable and ready for occupancy and use by Tenant, and Tenant shall accept possession of the Premises in its then “as-is”, “where-is” condition, without representation or warranty of any kind by Landlord. Except for work to be performed by Landlord, before any Alterations are undertaken by or on behalf of Tenant, Tenant shall require any contractor performing work on the Premises to obtain and maintain, at no expense to Landlord, workers’ compensation insurance as required by law, builder’s risk insurance in the amount of the replacement cost of the applicable Alterations (or such other amount reasonably required by Landlord), and commercial general liability insurance written on an occurrence basis with minimum limits of \$2 million per occurrence limit, \$2 million general aggregate limit, \$2 million personal and advertising limit, and \$2 million products/completed operations limit; which coverage limits may be effected with umbrella coverage (including contractual liability, broad form property damage and contractor’s protective liability coverage).

9.2 **LEED Requirements.** The Casino is pursuing a third party certification through the US Green Building Council called Leadership in Energy and Environmental Design (LEED) Certification. The LEED Core and Shell (CS) certification promotes energy and water conservation in addition to providing a healthy indoor environment for all of its occupants. More information on can be found at www.usgbc.org. Attached as **EXHIBIT “G”** are LEED Tenant Guidelines to follow in order to leverage the efforts made in the construction of the Casino Project so you maximize tenant’s energy and water savings in conjunction with the City’s Sustainable practices and policies. Other helpful resources are listed in the LEED Tenant Guidelines to assist Tenant in creating the improvements to the leased space that would be complimentary to the Casino’s environmental commitment.

9.3 **Tenants Use of outside and inside area.** Tenant’s use of outside and inside area shall comply with all applicable state and local guidelines and laws. Tenant acknowledges that Florida’s extensive coastal development brings with it a high level of artificial beachfront lighting, which can make beaches unsuitable for sea turtle nesting. Artificial beachfront lighting, including lights located on or near beaches and the urban skyglow from intensive inland light, affects both nesting females and hatchlings. Lighting can deter female sea turtles from emerging from the sea to nest and can interfere with sea-finding ability after nesting is completed. Tenant hereby acknowledges the existence of Landlord’s light management measures adopted to promote sea turtle nesting habitat. These measures include turning off unnecessary lights during the nesting season; using a smaller number or lower wattage of lights; repositioning, shielding, redirecting, lowering, or recessing fixtures so light does not reach the beach; using timers and motion detector switches; planting native dune vegetation to screen light; and reducing interior lighting by moving lights from windows, drawing curtains or blinds after dark, and tinting windows. The Casino building lighting has been approved by both the Florida Department of Environmental Protection and the Palm Beach County Department of Environmental Management. Failure

to comply with the requirements of the permit will result in heavy fines. Tenant alterations of the approved site lighting are expressly forbidden and any fines will be assessed directly to the responsible party.

10. **LIENS.** The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Section 713.10, Florida Statutes. Tenant represents to Landlord that that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease and that any improvements which may be made by Tenant do not constitute the "pith of the Lease" under applicable Florida case law. If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within ten days after notice to Tenant. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

11. **ACCESS TO PREMISES.** Landlord and persons authorized by Landlord shall have the right, at all reasonable times, to enter and inspect the Premises, to make repairs and alterations Landlord deems necessary, and in the last nine months of the Lease Term to exhibit the Premises to prospective tenants, with reasonable prior notice, except in cases of emergency.

12. **COMMON AREAS.** The "Common Areas" of the Project include such areas and facilities as delivery facilities, walkways, landscaped and planted areas, and parking facilities and are those areas designated by Landlord for the general use in common of occupants of the Project, including Tenant. Landlord shall provide Common Area restrooms and supplies. The Common Areas shall at all times be subject to the exclusive control and management of Landlord. Landlord may grant third parties specific rights concerning portions of the Common Areas. Landlord may increase, reduce, improve, or otherwise alter the Common Areas, otherwise make improvements, alterations, or additions to the Project, and change the name or number by which the Project is known. Landlord may also temporarily close the Common Areas to make repairs or improvements. In addition, Landlord may temporarily close the Project and preclude access to the Premises in the event of casualty, governmental requirements, the threat of an emergency such as a hurricane or other act of God, for pest extermination, or if Landlord otherwise reasonably deems it necessary in order to prevent damage or injury to person or property. Landlord reserves the right, from time to time, to utilize portions of the Common Areas for entertainment, carnival type shows, rides, outdoor shows, displays, automobile and other product shows, the leasing of kiosks, or other uses that in Landlord's judgment tend to attract the public. Further, the Landlord reserves the right to utilize the lighting standards and other areas of the parking areas for advertising purposes and holiday decorations. This Lease does not create, nor will Tenant have any express or implied easement for, or other rights to, air, light, or view over, from, or about the Project.

13. **CASUALTY DAMAGE.** If: (a) the Project shall be so damaged that substantial alteration or reconstruction of the Project shall, in Landlord's opinion, be required (whether or not the Premises shall have been damaged by the casualty), or (b) the Premises shall be partially damaged by casualty during the last two years of the Lease Term, and the estimated cost of repair exceeds 25% of the Base Rent then remaining to be paid by Tenant for the balance of the Lease Term; Landlord may, within 90 days after the casualty, give notice to Tenant of Landlord's election to terminate this Lease, and the balance of the Lease Term shall automatically expire on the fifth day after the notice is delivered. If Landlord does not elect to terminate this Lease, Landlord shall proceed with reasonable diligence to restore the Project and the Premises to substantially the same condition they were in immediately before the happening of the casualty only to the extent of Landlord's Work obligations on the Commencement Date. However, Landlord shall not be required to restore any unleased premises in the Project or any portion of Tenant's property, alterations, or improvements. When repairs to the Premises that are Landlord's obligation under this article have been completed by Landlord, Tenant shall complete the restoration or replacement of the Premises and all of Tenant's Property necessary to permit Tenant's reoccupancy of the Premises. Rent shall abate in proportion to the portion of the Premises not usable by Tenant as a result of any casualty resulting in damage to the Building which is covered by insurance carried or required to be carried by Landlord under this Lease, as of the date on which the Premises becomes unusable. Landlord shall not otherwise be liable to Tenant for any delay in restoring the Premises or any inconvenience or annoyance to Tenant or injury to Tenant's business resulting in any way from the damage or the repairs, Tenant's sole remedy being the right to an abatement of Rent.

14. **CONDEMNATION.** If the whole or any substantial part of the Premises shall be condemned by eminent domain or acquired by private purchase in lieu of condemnation, this Lease shall terminate on the date on which possession of the Premises is delivered to the condemning authority and Rent shall be apportioned and paid to that date. If no portion of the Premises is taken but a substantial portion of the Project is taken, at Landlord's option, this Lease shall terminate on the date on which possession of such portion of the Project is delivered to the condemning authority and Rent shall be apportioned and paid to that date. Tenant shall have

no claim against Landlord for the value of any unexpired portion of the Lease Term, nor shall Tenant be entitled to any part of the condemnation award or private purchase price. If this Lease is not terminated as provided above, Rent shall abate in proportion to the portion of the Premises condemned.

15. REPAIR AND MAINTENANCE.

15.1 Landlord's Obligations. Landlord shall repair and maintain in good order and condition, ordinary wear and tear excepted, only the roof, the outside walls (excluding storefronts), the structural portions of the Premises (exclusive of structural elements constructed by Tenant), and the portions of the electrical and plumbing systems servicing the Premises which are located outside the exterior boundaries of the Premises. However, unless the Waiver of Subrogation section of this Lease applies, Tenant shall pay the cost of any such repairs or maintenance resulting from acts or omissions of Tenant, its employees, agents, or contractors. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense or to withhold Rent or terminate this Lease based on any alleged failure of Landlord to make repairs. All costs associated with the repair and maintenance obligations of Landlord under this article shall be included in and constitute Operating Costs.

15.2 Tenant's Obligations. Except to the extent Landlord is obligated to repair and maintain the Premises as provided in the Landlord's Obligations section of this article, Tenant shall, at its sole cost, repair, replace, and maintain the Premises (including the walls, storefronts, ceilings, and floors in the Premises and electrical, plumbing (including grease traps), mechanical, fire protection, life safety, sprinklers, and HVAC systems servicing the Premises exclusively), in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. Tenant shall not commit or allow to be committed any waste on any portion of the Premises. Tenant shall enter into and maintain an annual maintenance contract with an air conditioning service firm. Tenant shall furnish to Landlord from time to time and upon request of Landlord, a copy of the air conditioning maintenance contract and the yearly service reports from the contractor. If Tenant fails to furnish copies of the air conditioning maintenance contract and yearly service reports to Landlord within 15 days following Landlord's request, Tenant shall pay a late charge of \$5.00 per day for each day that Tenant is delinquent in submitting the required copies, and Tenant agrees that such late charge shall not be considered a penalty. Tenant shall be responsible for any damage to the roof of the Project caused by Tenant's air conditioning maintenance activities.

15.3 Service Areas. Tenant shall also maintain the service areas adjacent to the Premises in good repair and in a good, clean, attractive, first-class condition and free from rubbish and dirt at all times and shall store all trash and garbage within the Premises until such time as Tenant has the trash and garbage removed from the Premises. Tenant shall be responsible for placing all its trash and garbage into dumpsters or trash bins without allowing the trash or garbage to spill over onto the ground adjacent to the dumpsters or trash bins. If Tenant does not properly dispose of its trash and garbage, Landlord may have the area cleaned in which event Tenant upon Landlord's demand shall pay all charges incurred by Landlord therefor, plus an administrative charge equal to the greater of \$50 or 20% of the charges incurred by Landlord. These charges shall be considered additional rent and shall be paid to Landlord upon presentation of a bill therefor.

15.4 Replacement of Improvements. At any time during the Lease Term after the fifth anniversary of the Commencement Date, and thereafter at any time after the fifth anniversary of the completion of any replacements of improvements under this section, if Landlord determines, in Landlord's sole reasonable discretion, that any leasehold improvements made to the Premises by Landlord or Tenant, as a result of wear, normal depreciation, or any other cause are of a quality which in Landlord's reasonable judgment is not consistent with the level of quality of, or generally prevailing within, the Project, Tenant will cause those improvements to be replaced. Any such worn or depreciated improvements will be replaced with materials and workmanship of a quality at least equal to the original installation for which replacement is made.

15.5 Food Services. If Tenant's operations include the services and/or preparation of food and/or beverages, Tenant shall comply with all Health Department and other governmental rules and regulations applicable to Tenant's operations in the Premises and shall promptly (a) furnish or cause to be furnished to Landlord copies of all Health Department and other governmental reports, notices, and citations issued with respect to the Premises, and (b) immediately cure or otherwise eliminate all deficiencies and violations noted by the Health Department and other governmental authorities. Tenant shall sanitize the dumpster designated for its use by Landlord and the area surrounding the dumpster on a regular basis, but no less than once a week. If Tenant does not properly dispose of its refuse, Landlord may have the area cleaned and Tenant shall pay all cleaning charges incurred by Landlord, plus an administrative fee equal to the greater of \$50.00 or 20% of the cleaning charges.

15.6 **Grease Traps.** Landlord shall install, maintain, repair, and replace all grease traps and other equipment necessary to maintain the restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project, but if a discharge should occur, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which Landlord may incur.

15.7 **Exhaust Equipment.** Tenant shall maintain all exhausts, filtering or other devices (the “**Exhaust Equipment**”) so as to prevent odors from emanating from the Premises. Tenant shall continuously operate the Exhaust Equipment during all hours of operation of Tenant’s business in the Premises, and shall maintain and repair (or if necessary, replace) the Exhaust Equipment in good working order at all times at Tenant’s sole cost. In the event Landlord notifies Tenant in writing that odors are emanating from the Premises, Tenant shall, within three days after notice from Landlord, commence in good faith to install such other reasonable control devices or procedures, at Tenant’s cost and expense, as is reasonably required to eliminate such odors within a reasonable time, not to exceed seven days. If Tenant fails to take such action, Landlord may, at its sole discretion (i) cure such failure at Tenant’s cost and expense, or (ii) treat such failure to eliminate such odors as a default under this Lease.

15.8 **Dumpster.** Tenant is required to use a City provided dumpster and make arrangements for daily pick up. The rental cost of the dumpster shall be borne by the Tenant. Tenant shall keep the dumpster area and other equipment washing and cleaning area in a clean and sanitary condition.

16. **ESTOPPEL CERTIFICATES.** From time to time, Tenant, on not less than five days’ prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to Landlord and any mortgagee or prospective mortgagee or purchaser of the Project. Tenant shall indemnify, defend, and hold Landlord harmless from all damages resulting from Tenant’s failure to comply strictly with its obligations under this article.

17. **SUBORDINATION.** This Lease is and shall be subject and subordinate to all mortgages and ground leases that may now or hereafter affect the Building, and to all renewals, modifications, consolidations, replacements, and extensions of the leases and mortgages. This article shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute promptly any certificate that Landlord may request. If any ground or underlying lease is terminated, or if the interest of Landlord under this Lease is transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution for the mortgage, or if this Lease is terminated by termination of any lease or by foreclosure of any mortgage to which this Lease is or may be subordinate, then Tenant will, at the option to be exercised in writing by the landlord under any ground or underlying lease or the purchaser, assignee, or tenant, as the case may be (a) attorn to it and will perform for its benefit all the terms, covenants, and conditions of this Lease on Tenant’s part to be performed with the same force and effect as if the landlord or the purchaser, assignee, or tenant were the landlord originally named in this Lease, or (b) enter into a new lease with the landlord or the purchaser, assignee, or tenant for the remainder of the Lease Term and otherwise on the same terms, conditions, and rents as provided in this Lease.

18. **INDEMNIFICATION.** To the fullest extent permitted by law, Landlord and Tenant shall each indemnify, defend, and save harmless the other party and the other party’s employees, agents, and contractors (the “**Indemnified Parties**”) from and against any and all loss, damage, claim, demand, liability, or expense (including reasonable attorneys’ fees) resulting from claims by third parties and based on any acts or omissions (specifically including negligence and the failure to comply with this Lease) of the indemnitor, its employees, agents, and contractors in connection with the Project, but only to the extent caused in whole or in part by acts or omissions of the indemnitor, its employees, agents, and contractors, regardless of whether or not the claim is caused in part by any of the Indemnified Parties. This Indemnification article shall not be construed to restrict, limit, or modify either party’s insurance obligations under this Lease and shall not be deemed a waiver of any rights of sovereign immunity that Landlord may have under applicable law. Either party’s compliance with the insurance requirements under this Lease shall not restrict, limit, or modify that party’s obligations under this Indemnification article.

19. **NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances. The receipt by Landlord of any Rent after default on the part of Tenant (whether the Rent is due before or after the default) shall not excuse any delays as to future Rent payments and shall not be deemed to operate as a waiver of any then existing

default by Tenant or of the right of Landlord to enforce the payment of any other Rent reserved in this Lease or to pursue eviction or any other remedies available to Landlord. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent actually owed under the terms of this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated Rent. No endorsement or statement on any check or any letter accompanying any check or payment of Rent will be deemed an accord and satisfaction. Landlord may accept the check or payment without prejudice to Landlord's right to recover the balance of the Rent or to pursue any other remedy. It is the intention of the parties that this article modify the common law rules of waiver and estoppel and the provisions of any statute which might dictate a contrary result.

20. SERVICES AND UTILITIES.

20.1 Services Furnished. Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for and shall promptly pay all charges for water, electricity, or any other utility used or consumed in the Premises, including all costs associated with the provision of separate meters for the Premises. Tenant shall contract directly with the local utility providers for such services. Tenant shall be responsible for repairs and maintenance to exit lighting, emergency lighting, and fire extinguishers for the Premises, and for interior janitorial, pest control, and waste removal services. Landlord may at any time change the electrical utility provider for the Building. Tenant's use of electrical and heating, water, ventilating, and air conditioning services furnished by Landlord shall not exceed, either in voltage, rated capacity, use, or overall load, that which Landlord deems to be standard for the Building, and, if required by Landlord, all costs associated with the additional usage and the installation and maintenance of facilities for the additional usage, including separate submetering, shall be paid by Tenant as additional rent. Tenant may be required, upon request of Landlord, to provide Tenant's energy consumption data to Landlord in reasonable format required by Landlord.

20.2 Interruption of Services. In no event shall Landlord be liable for damages resulting from the failure to furnish HVAC, water, electric, or other service, unless caused by the negligence or intentional acts of Landlord, and any interruption or failure shall in no manner constitute an eviction of Tenant or entitle Tenant to abatement of any Rent due under this Lease.

21. SECURITY DEPOSIT. The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of this Lease including the payment of Rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord and Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant. If Landlord so applies the Security Deposit, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five days after notice from Landlord. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant. If Tenant fully and faithfully complies with all of the terms, covenants, and conditions of this Lease, any part of the Security Deposit not used or retained by Landlord under the terms of this Lease shall be returned to Tenant within 45 days after the expiration of the Lease Term and after Tenant's delivery of possession of the Premises to Landlord. However, if at the expiration of the Lease Term there are any amounts that may be due from Tenant that have not yet been finally determined (for example, Rent for Operating Costs for the year in which the Lease Term expires) then Landlord may estimate the amounts which will be owed and deduct them from the Security Deposit. When the actual amounts are finally determined, an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant and Tenant shall receive reimbursement for any overpayments.

22. GOVERNMENTAL REGULATIONS. Tenant shall promptly comply with all laws, codes, and ordinances of governmental authorities pertaining to Tenant or its use of the Premises and activities on or about the Project, including the Americans with Disabilities Act of 1990 ("ADA") and all applicable environmental laws. If Tenant's operations require the ongoing use of hazardous or toxic substances, then Tenant shall supply Landlord with copies of reports and any other monitoring information required by applicable laws. Tenant agrees to pay, and shall indemnify defend, and hold Landlord harmless from and against, any and all losses, claims, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred by Landlord as a result of any breach by Tenant of its obligations under this article, and as a result of any contamination of the Premises because of Tenant's use of hazardous or toxic substances on the Premises. Tenant shall obtain all licenses and permits from time to time required to enable Tenant to conduct its business under this Lease. No failure of Tenant to obtain or maintain any licenses or permits, or extensions or renewals of them, shall release Tenant from the performance and observance of Tenant's obligations under this Lease.

23. SIGNS.

23.1 **Landlord's Consent Required.** Tenant will not place or permit to be placed or maintained on any portion of the Project, including on any exterior door, wall, or window of the Premises, or within the interior of the Premises, if visible from the exterior of the Premises, any signage or advertising matter of any kind, without first obtaining Landlord's written approval and consent, which may be withheld in Landlord's sole discretion. All signage shall comply with applicable governmental regulations and restrictions affecting the Project.

23.2 **Building Standard Signage.** Prior to the Commencement Date, Tenant shall erect an exterior sign in conformance with Landlord's Building standard signage within the area designated by Landlord, which sign shall be subject to the prior written approval of Landlord and the Sign Criteria, **EXHIBIT "J"**. If Landlord redevelops or remodels the Project, Landlord may require Tenant, at Tenant's expense, to install new signs in conformity with signage standards established by Landlord or to remodel the storefront of the Premises, or both.

23.3 **Exterior Alterations.** Any signs or other exterior Alterations, including awnings, canopies, decorations, lettering, advertising matters, or other things as may be approved by Landlord shall be maintained by Tenant in good condition and repair at all times and shall conform to the criteria established from time to time by Landlord for the Project. Upon the expiration or sooner termination of this Lease, if Landlord shall so elect, Tenant at its own expense shall remove all signs and restore the exterior of Premises to its original condition. This obligation of Tenant shall survive the expiration or sooner termination of this Lease.

24. **BROKER.** Tenant represents and warrants that it neither consulted nor negotiated with any broker or finder regarding the Premises, except the Landlord's Broker and Tenant's Broker. Landlord shall indemnify, defend, and hold Tenant harmless from and against any claims for commissions from the Landlord's Broker and Tenant's Broker. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims for commissions from any real estate broker other than the Landlord's Broker and the Tenant's Broker with whom it has dealt in connection with this Lease.

25. **END OF TERM/HOLDOVER.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, broom-clean, except for reasonable wear and tear. Tenant shall be liable to Landlord for all damages, including any consequential damages and holdover rent in accordance with state law, that Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify, defend, and save Landlord harmless against all costs, claims, loss, or liability resulting from delay by Tenant in so surrendering the Premises, including any claims made by any succeeding tenant founded on any delay. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. On the expiration or sooner termination of the Lease Term, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property, all computer and telecommunications wiring, and all Alterations that Landlord designates by notice to Tenant. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease Term, may, at the option of Landlord, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without accountability to Tenant or any other party, in the manner Landlord shall determine, at Tenant's expense. "**Tenant's Property**" shall mean all moveable personal property, machinery, furniture, and equipment, including moveable trade fixtures, that are installed in the Premises by or for the account of Tenant without expense to Landlord and that can be removed without damage to the Premises or the Project.

26. **ATTORNEYS' FEES.** The prevailing party in any litigation arising out of or in any manner relating to this Lease, including the declaration of any rights or obligations under this Lease, shall be entitled to recover from the losing party reasonable attorneys' fees and costs. In addition, if Landlord becomes a party to any suit or proceeding affecting the Premises or involving this Lease or Tenant's interest under this Lease, other than a suit between Landlord and Tenant, or if Landlord engages counsel to collect any of the amounts owed under this Lease, or to enforce performance of any of the agreements, conditions, covenants, provisions, or stipulations of this Lease, without commencing litigation, then the costs, expenses, and reasonable attorneys' fees and disbursements incurred by Landlord shall be paid to Landlord by Tenant.

27. **NOTICES.** Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved.

28. **IMPOSSIBILITY OF PERFORMANCE.** For purposes of this Lease, the term “Unavoidable Delay” shall mean any delays due to strikes, lockouts, civil commotion, war or warlike operations, acts of terrorism, acts of a public enemy, acts of bioterrorism, epidemics, quarantines, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, or other natural disasters, acts of God, or any other cause beyond the direct control of the party delayed. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Unavoidable Delay, then provided notice of the Unavoidable Delay is given to the other party within ten days after its occurrence, performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of the delay. The provisions of this article shall not operate to excuse Tenant from the payment of Rent or from surrendering the Premises at the end of the Lease Term, and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds or the increased cost of obtaining labor and materials shall not be deemed delays beyond the direct control of a party.

29. **FINANCIAL REPORTING.** Within 15 days after a request from Landlord, Tenant shall furnish to Landlord a balance sheet of Tenant (and, if applicable, the Guarantor) as of the end of the most recently ended fiscal year of Tenant and a statement of income and expense for the year then ended, together with a certificate of the chief financial officer of Tenant to the effect that the financial statements have been prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial condition and results of operations of Tenant (and, if applicable, the Guarantor) as of and for the period covered. In addition (unless Tenant is paying Percentage Rent, in which case the reporting and audit provisions of the Percentage Rent article shall apply), by February 15 of each year during the Term, Tenant shall furnish to Landlord a complete statement, similarly certified, showing in all reasonable detail the amount of gross sales made by Tenant from the Premises during the preceding year. Gross sales shall mean the aggregate of Tenant’s receipts of every nature relating to the Premises that are received directly or indirectly through an affiliated or related entity, including, but not limited to, all sales and rentals made by Tenant of all goods, wares, merchandise, meals, food, food stuffs, and beverages sold and all services performed by Tenant in, at, or from the Premises, whether for cash, credit, by gift certificate redeemed at the Premises, or other consideration. Any failure of Tenant to timely provide Landlord with any of the statements of Gross Sales required under this section shall be deemed a default under this Lease, and (a) Tenant shall pay a late charge of \$25.00 per day for each day that Tenant is delinquent in submitting each statement, and Tenant agrees that such late charge shall not be considered a penalty, and (b) Landlord shall be entitled, without prior notice to Tenant, to conduct an audit of Tenant’s books for the purpose of determining Gross Sales for the period or periods during which Tenant has failed to supply Landlord with statements, with the cost and expense thereof to be paid by Tenant, together with an administrative fee of \$500.00.

30. **ADVERTISING.**

30.1 **Advertised Name and Address.** Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises and Tenant shall not acquire any property right in or to any name which contains the name of the Project as a part of the name. Tenant shall not use the name of Landlord in any advertisement or otherwise. Tenant shall use in its advertising and promotional activities for its business in the Premises such references to the name of the Project and such identifying lettering, logos, marks, or symbols referring to the Project as Landlord shall specify from time to time. Tenant shall include the name of the Project in its address. Notwithstanding the foregoing, Landlord shall have the right to prohibit the use by Tenant of the name, marks, and symbols of the Project in any manner determined to be unacceptable to Landlord in its sole discretion.

30.2 **Trademark License.** During the Lease Term, Tenant grants Landlord a non-exclusive and royalty-free license and limited right to use Tenant’s trade names, trademarks, logos, and designs in the printing, publication, and distribution of promotional newsletters, advertisements, marketing brochures, and other materials (the “Marketing Materials”) by Landlord and related entities.

31. **MOLD.** Tenant is advised that mold and/or other microscopic organisms (“Mold Conditions”) are prevalent in Florida’s humid climate and locations, especially in proximity to bodies of water. Mold Conditions may cause allergic reactions, respiratory reactions or other problems, particularly in persons with immune system problems, young children and elderly persons. Tenant acknowledges that it is fully responsible to maintain the proper operation of the HVAC system in the Premises at all times during the Lease Term to inhibit Mold Conditions. Tenant shall ensure property maintenance of the Premises to limit the accumulation of water and excessive moisture inside the Premises. Tenant shall notify Landlord immediately of any water intrusion conditions arising within the Premises. TENANT ACKNOWLEDGES THE FOREGOING, AND AGREES TO ACCEPT FULL

RESPONSIBILITY FOR ANY AND ALL RISKS RELATED TO MOLD CONDITIONS IN THE PREMISES. TENANT AGREES TO RELEASE, HOLD HARMLESS AND INDEMNIFY LANDLORD, LANDLORD'S OFFICERS, AGENTS, EMPLOYEES, AND SUCCESSORS FROM ANY AND ALL LIABILITY OR DAMAGES, WHETHER FINANCIAL OR OTHERWISE, ARISING FROM OR RELATED TO MOLD CONDITIONS IN THE PREMISES.

32. GENERAL PROVISIONS.

32.1 **Construction Principles.** The words "including" and "include" and similar words will not be construed restrictively to limit or exclude other items not listed. This Lease has been negotiated "at arm's-length" by Landlord and Tenant, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease. Therefore, this Lease shall not be more strictly construed against either party by reason of the fact that one party may have drafted this Lease. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. This Lease shall constitute the entire agreement of the parties concerning the matters covered by this Lease. All prior understandings and agreements had between the parties concerning those matters, including all preliminary negotiations, lease proposals, letters of intent, and similar documents, are merged into this Lease, which alone fully and completely expresses the understanding of the parties. Landlord and Tenant intend that faxed or PDF format signatures constitute original signatures binding on the parties. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease.

32.2 **No Representations by Landlord.** Neither Landlord nor Landlord's agents have made any representations or promises concerning the physical condition of the Project or the Premises, Tenant's ability to use the Premises for the uses permitted under this Lease, the area of the Premises or the manner of calculating such area, anticipated Operating Costs, or any other matter affecting or relating to the Premises, except as expressly set forth in this Lease and no rights, easements, or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in this Lease.

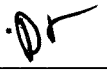
32.3 **Radon Gas.** The following notification is provided under Section 404.056(6), Florida Statutes: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon 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 county health department."


32.4 **Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:

- EXHIBIT "A" – Legal Description of the Project
- EXHIBIT "B" – Sketch of Premises
- EXHIBIT "C" – Guaranty
- EXHIBIT "D" – Rules and Regulations
- EXHIBIT "E" – Tenant Improvements
- EXHIBIT "E-1" – Landlord's Work Schedule
- EXHIBIT "F" – Tenant Alteration Requirements
- EXHIBIT "G" – LEED Tenant Guidelines
- EXHIBIT "H" – Special Requirements
- EXHIBIT "I" – Commencement Date Letter
- EXHIBIT "J" – Sign Criteria
- EXHIBIT "K" – Restricted Uses

33. JURY WAIVER; COUNTERCLAIMS; VENUE. LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. TENANT FURTHER WAIVES THE RIGHT TO INTERPOSE ANY NON-COMPULSORY COUNTERCLAIM OF ANY NATURE IN ANY ACTION TO OBTAIN POSSESSION OF THE PREMISES. THIS AGREEMENT SHALL BE CONSTRUED BY AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA. ANY AND ALL LEGAL ACTION NECESSARY TO ENFORCE THE AGREEMENT WILL BE HELD IN PALM BEACH COUNTY. NO REMEDY HEREIN CONFERRED UPON

ANY PARTY IS INTENDED TO BE EXCLUSIVE OF ANY OTHER REMEDY, AND EACH AND EVERY SUCH REMEDY SHALL BE CUMULATIVE AND SHALL BE IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXISTING AT LAW OR IN EQUITY OR BY STATUTE OR OTHERWISE. NO SINGLE OR PARTIAL EXERCISE BY ANY PARTY OF ANY RIGHT, POWER, OR REMEDY HEREUNDER SHALL PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF.

LANDLORD: 

TENANT: 

34. **SDN COMPLIANCE.** Tenant hereby represents, warrants and certifies that neither (i) Tenant, nor (ii) any of persons or entities that control or are controlled by Tenant (each a “**Tenant Party**”), has been, is currently, or at any time in the future shall be listed on the Specially Designated National list (“**SDN List**”) maintained by the United States Department of the Treasury Office of Foreign Assets Control (“**OFAC**”). At its option, Landlord shall have the right to immediately terminate this Lease if any Tenant Party becomes listed on the SDN List.

[signatures on following page]

IN WITNESS WHEREOF, this lease has been executed on behalf of landlord and tenant as of the date of this lease.

LANDLORD:

REVIEWED AND APPROVED FOR EXECUTION

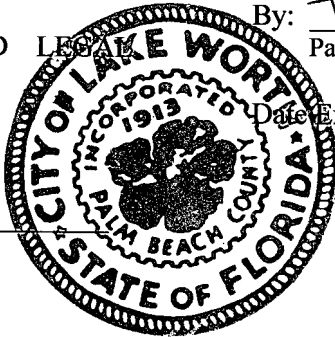
CITY OF LAKE WORTH,
a municipal corporation under the laws of the
State of Florida

By: [Signature]
Steven A. Carr, Acting City Manager

By: [Signature]
Pam Triolo, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Date Executed: Feb. 2, 2012



By: [Signature]
Elaine A Humphreys, City Attorney

ATTEST:

By: [Signature]
Pamela J. Lopez, City Clerk

TENANT:

Maxplan Enterprises
a Florida Corporation

By: [Signature]
Name: MARIA MATIAS
Title: DIRECTOR

Date Executed: JAN 30, 2012

[Signature]
Signature of Witness 1

Michelle Ray Anne King-Fettig
Print or type name of Witness 1

[Signature]
Signature of Witness 2

Sherry GRAY
Print or type name of Witness 2

[Signature]
Signature of Witness 1

Michelle Ray Anne King-Fettig
Print or type name of Witness 1

[Signature]
Signature of Witness 2

Sherry GRAY
Print or type name of Witness 2

By: [Signature]
Name: RAAFAT IBRAHIM
Title: PRESIDENT

Date Executed: 01-30-12

EXHIBIT "A"

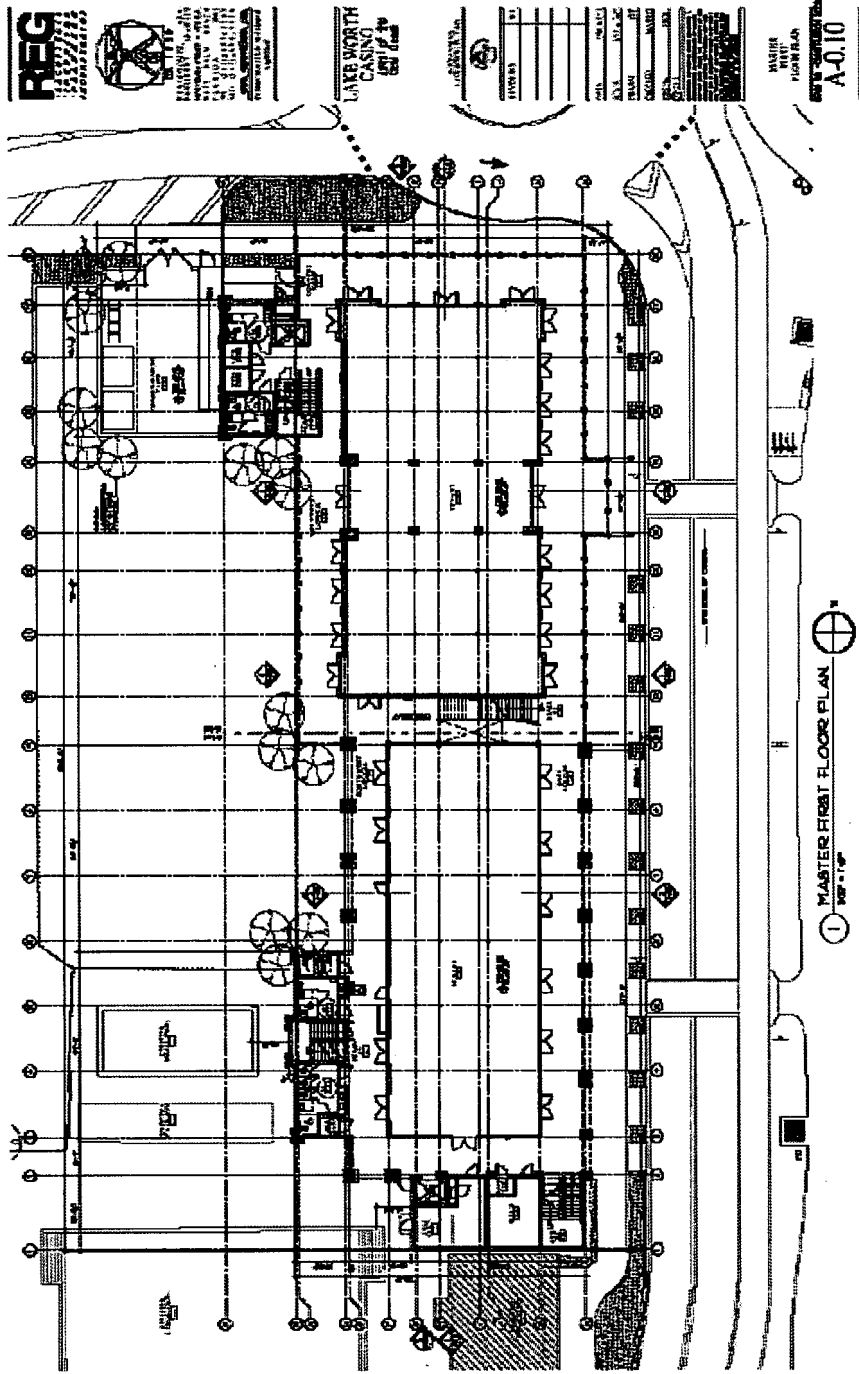
LEGAL DESCRIPTION OF THE PROJECT

Lake Worth Casino Building located at 10 South Ocean Boulevard, Florida, 33460

EXHIBIT "B"

SKETCH OF PREMISES

Lake Worth Casino Project
1st Floor



Paul Snitkin
ANDERSON & CARR, INC.
Appraisers-Realtors-Consultants

The above plan is for location of Premises only and is not a representation by Landlord as to any other improvements shown.

EXHIBIT "C"

GUARANTY

THIS IS A GENERAL GUARANTY WHICH IS ENFORCEABLE BY THE LANDLORD, ITS SUCCESSORS AND ASSIGNS. THIS IS ALSO AN ABSOLUTE AND UNCONDITIONAL GUARANTY.

The undersigned (the "Guarantor") absolutely and unconditionally guaranties the prompt and full performance and observance by Maxplan Enterprises, Inc. (Kilwin's Chocolates and Ice Cream) a Florida Corporation by the Tenant under a Lease dated _____, 2011, between CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida (the "Landlord"), and Tenant for space at Unit #3 and 4, Lake Worth Casino Building at 10 South Ocean Boulevard, Lake Worth, Florida 33460, whether before, during, or after the Lease Term. Guarantor represents and warrants that he has a direct financial interest in Tenant and that he has received substantial consideration in exchange for making this Guaranty.

This is a guaranty of payment and not collection and Landlord may proceed directly against Guarantor without first proceeding with any remedies against Tenant. This Guaranty shall not be impaired by, and Guarantor consents to, any modification, supplement, extension, or amendment of the Lease to which the parties to the Lease may hereafter agree. Presentment, notice, and demand on Tenant or Guarantor and subsequent dishonor are not conditions to proceeding against Guarantor.

In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Guaranty, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys', paralegals', and legal assistants' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding) and expert witness fees through and including all post-judgment and appellate levels.

Any legal action or proceeding arising out of or in any way connected with this Guaranty shall be instituted in a court (federal or state) located in the county in which the Premises are located, which shall be the exclusive jurisdiction and venue for litigation concerning this Guaranty. Landlord and Guarantor shall be subject to the jurisdiction of those courts. The execution of this Guaranty and performance of its obligations by Guarantor, for purposes of personal or long-arm jurisdiction, constitutes doing business in the State of Florida under Section 48.193, Florida Statutes. In addition, Landlord and Guarantor waive any objection that they may now or hereafter have to the laying of venue of any action or proceeding in those courts, and further waive the right to plead or claim that any action or proceeding brought in any of those courts has been brought in an inconvenient forum. All payments to be made by Guarantor under this Guaranty shall be payable at Landlord's office at c/o City Manager, City of Lake Worth 7 North Dixie Highway, Lake Worth, FL 33460.

This Guaranty is a continuing guaranty that shall be effective before the commencement of the Lease Term and shall remain effective following the Lease Term as to any surviving provisions that remain effective after the termination of the Lease. Guarantor's obligations under this Guaranty shall also continue in full force and effect after any transfer of the Tenant's interest under the Lease, during any renewals or extensions of the Lease Term, and during any holdover by Tenant after expiration of the Lease Term.

The liability of Guarantor under this Guaranty shall in no way be affected, modified, or diminished by reason of any of the following, regardless of whether Guarantor receives notice of them, all of which notices Guarantor expressly waives: (a) any assignment, renewal, modification, amendment, or extension of the Lease, or (b) any modification or waiver of or change in any of the terms, covenants, and conditions of the Lease by Landlord and Tenant, or (c) any extension of time that may be granted by Landlord to Tenant, or (d) any consent, release, indulgence, or other action, inaction, or omission under or in respect of the Lease, or (e) any dealings, or transactions, or matters between Landlord and Tenant that may cause the lease to terminate, including without limitation, any adjustment, compromise, deferral, waiver, settlement, accord and satisfaction, or release of Tenant's obligations under the Lease, or (f) any bankruptcy, insolvency, reorganization, liquidation, arrangement, assignment for the benefit of creditors, receivership, trusteeship, or similar proceeding affecting Tenant, or the rejection or disaffirmance of the Lease in any proceedings, whether or not notice of the proceedings is given to Guarantor.

For purposes of this Guaranty, on a default by Tenant under the Lease the entire balance of all forms of Rent due under the Lease for the remainder of the Lease Term may be declared to be forthwith due and payable as provided in the Lease notwithstanding any stay, injunction, or other prohibition preventing a similar declaration as against Tenant and, in the event of any such declaration by

Landlord, all of the obligations (whether or not due and payable by Tenant) shall forthwith become due and payable by Guarantor under this Guaranty.

If Landlord assigns the Lease or sells the Project, Landlord may assign this Guaranty to the assignee or transferee, who shall thereupon succeed to the rights of Landlord under this Guaranty to the same extent as if the assignee were an original guaranteed party named in this Guaranty, and the same rights shall accrue to each subsequent assignee of this Guaranty. If Tenant assigns or sublets the Premises, the obligations of the Guarantor under this Guaranty shall remain in full force and effect.

From time to time, Guarantor, on not less than five days' prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to Landlord and any mortgagee or prospective mortgagee or purchaser of the Project. In addition, if requested, Guarantor shall provide any financial information concerning Guarantor that may be reasonably requested by any mortgagee or prospective mortgagee or purchaser of the Project.

If there is more than one Guarantor, the liability of each Guarantor shall be joint and several with all other Guarantors.

Guarantor authorizes Landlord, in Landlord's discretion, to obtain from time to time credit reports and information regarding Guarantor.

_____, Guarantor

Guarantor's address:

Guarantor's Social Security No. _____

Guarantor's Driver's License No. _____

Dated: _____, 20__

STATE OF)
) ss.:
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, who is personally known to me or who has produced _____ as identification.

OFFICIAL NOTARIAL SEAL:

(type, print, or stamp name)

NOTARY PUBLIC

My commission expires: _____

Commission No. _____

EXHIBIT "D"

RULES AND REGULATIONS

1. The sidewalks and public portions of the Project, such as entrances, passages, courts, parking areas, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by Tenant or its employees, agents, invitees, or guests nor shall they be used for any purpose other than ingress and egress to and from the Premises. Tenant shall not conduct any business, loading or unloading, assembling, or any other work connected with Tenant's business on any portion of the Common Areas or in any other area of the Project outside the confines of the Premises. Tenant shall not sell or display merchandise on, or otherwise obstruct, the Common Areas or any other area of the Project outside the confines of the Premises.

2. No awnings or other projections shall be attached to the outside walls of the Project. No curtains, blinds, shades, louvered openings, or screens or anything else which may be visible from outside the Building shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of Landlord. No aerial or antenna shall be erected on the roof or exterior walls of the Premises or in the Project.

3. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by Tenant on any part of the outside of the Premises or Project or on corridor walls or doors or mounted on the inside of any windows without the prior written consent of Landlord. Signs on any entrance door or doors shall conform to Project standards and shall, at Tenant's expense, be inscribed, painted, or affixed for Tenant by sign makers approved by Landlord.

4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in the public halls, corridors, or vestibules without the prior written consent of Landlord.

5. Whenever Tenant shall submit to Landlord any plan, agreement, assignment, sublease, or other document for Landlord's consent or approval, Tenant shall reimburse Landlord, on demand, for the actual out-of-pocket costs for the services of any architect, engineer, or attorney employed by Landlord to review or prepare the plan, agreement, assignment, sublease, consent, or other document.

6. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown in them. All damages resulting from any misuse of fixtures shall be borne by the Tenant who, or whose employees, agents, invitees, or guests, shall have caused the damages.

7. No animals of any kind (except dogs assisting disabled persons) shall be brought on the Premises or Project.

8. Unless the Permitted Use includes food service uses, no cooking shall be done or permitted by Tenant on the Premises. Except for standard residential type refrigerator and microwave oven, no refrigeration or heating equipment may be placed inside the Premises without the prior written consent of Landlord in each instance. Tenant shall not cause or permit any unusual or objectionable odors to be produced on or permeate from the Premises.

9. Prohibited Disposable Food Service Ware: Food Vendors, Restaurants and any other vendor may not sell Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

LANDLORD: PR
TENANT: MGM



10. Required Biodegradable/Compostable Disposable Food Service Ware: All Food Vendors using any Disposable Food Service Ware shall use a suitable, affordable alternative Biodegradable/Compostable product to containers made from Polystyrene Foam. The city will assist the vendors by providing a list of potential products. However, it is the responsibility of the Food Vendor to locate a suitable alternative. A number of other cities around the world including San Francisco and Berkeley have successfully banned Styrofoam so there are plenty of commercially viable alternatives.

LANDLORD: PR
TENANT: MGM

11. Plastic Bags: In the City of Lake Worth Contract with the vendors at the Beach, this section requires the use of recyclable paper, compostable and/or reusable checkout bags. The goal is to reduce litter of plastic bags that kill over 100,000 marine animals a year and create a nuisance to our residents by being both unsightly and creating a potential biohazard.

11.1 All Stores shall provide recyclable Bags, compostable bags and/or reusable bags.

11.2 Definitions: "Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag and (4) should contain post consumer discarded waste.

LANDLORD: 
TENANT: 

12. Tenant shall not make or permit to be made any unseemly or disturbing noises, or electromagnetic, radio or television interference, or disturb or interfere with occupants of the Project or neighboring premises or those having business with them, or interfere with equipment of Landlord or occupants of the Project, whether by the use of any musical instrument, radio, television, machines or equipment, unmusical noise, or in any other way, including use of any wireless device or equipment. Tenant shall not use any advertising medium such as loud speakers, sound amplifiers, or radio or television broadcasts in a manner which may be heard outside the Premises.

13. Neither Tenant nor any of Tenant's employees, agents, invitees, or guests shall at any time bring or keep on the Premises any firearms, inflammable, combustible, or explosive substance or any chemical substance, other than reasonable amounts of cleaning fluids and solvents required in the normal operation of Tenant's business, all of which shall only be used in strict compliance with all applicable environmental laws.

14. Landlord shall have a valid pass key to all spaces within the Premises at all times during the Lease Term. No additional locks or bolts of any kind shall be placed on any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism of the locks, without the prior written consent of the Landlord and unless and until a duplicate key is delivered to Landlord. Tenant must, on the termination of its tenancy, restore to the Landlord all keys to stores, offices, and toilet rooms, either furnished to or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay Landlord for the replacement cost of them.

15. Tenant shall not create or use any advertising mentioning or exhibiting any likeness of the Project without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising that, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability as a retail center, and on notice from Landlord, Tenant shall discontinue the advertising.

16. The Premises shall not be used for lodging or sleeping, or for any immoral, disreputable, or illegal purposes, or for any purpose that may be dangerous to life, limb, or property.

17. Canvassing, soliciting, and peddling within the Project or in the Common Areas is prohibited and Tenant shall cooperate to prevent such activities.

18. Tenant, its employees, agents, contractors, and invitees shall park their vehicles only in the portion of the parking areas and roadways of the Project designated by Landlord. Usage of parking spaces shall be in common with all other tenants of the Project and their employees, agents, contractors, and invitees. All parking space usage shall be subject to any reasonable rules and regulations for the sale and proper use of parking spaces that Landlord may prescribe. Tenant's employees, agents, contractors, and invitees shall abide by all posted roadway signs in and about the parking facilities. Landlord shall have the right to tow or otherwise remove vehicles of Tenant and its employees, agents, contractors, or invitees that are improperly parked, blocking ingress or egress lanes, or violating parking rules, at the expense of Tenant or the owner of the vehicle, or both, and without liability to Landlord. Upon request by Landlord, Tenant shall furnish Landlord with the license numbers and descriptions of any vehicles of Tenant, its principals,

employees, agents, and contractors. Landlord reserves the right to charge Tenant an administrative fee of \$50.00 per violation of the foregoing rules.

19. ~~Tenant shall not go upon the roof of the Project without the written consent of Landlord.~~ Any roof opening or other work on the roof required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include, as required, supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening or other work request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

LANDLORD: Pr
TENANT: Megan

20. Tenant shall secure and keep in effect an effective pest control contract providing for periodic inspection and treatment for roaches, insects, rodents, termites, and other pests. If Tenant violates this requirement, Landlord may provide pest control and bill Tenant the costs therefor.

21. Tenant shall not conduct any auction, fire, "going out of business," or bankruptcy sales.

22. All trucks and delivery vans shall be parked in designated areas only and not parked in spaces reserved for cars. All delivery service doors are to remain closed except during the time that deliveries, garbage removal, or other approved uses are taking place. All loading and unloading of goods shall be done only at the times, in the areas, and through the entrances designated for loading purposes by Landlord. Tenant shall assume all liability and risk concerning these movements.

23. Tenant shall be responsible for the removal and proper disposition of all crates, oversized trash, boxes, and items of garbage from the Premises. The corridors and parking and delivery areas are to be kept clear of these items.

24. Landlord shall not be responsible or liable for lost or stolen personal property, equipment, or money occurring anywhere in the Project, regardless of how or when the loss occurs.

25. Tenant shall give Landlord prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electric facilities, or any part or appurtenance of the Premises.

26. Tenant agrees and fully understands that the overall aesthetic appearance of the Project is of paramount importance; thus Landlord shall maintain complete aesthetic control over any and every portion of the Premises visible from outside the Premises in Landlord's sole and absolute discretion. Landlord will notify Tenant in writing of any aesthetic deficiencies and Tenant will have seven days to correct the deficiencies to Landlord's satisfaction or Tenant shall be in default of this Lease and the Default article shall apply.

27. Tenant shall not install, operate, or maintain in the Premises or in any other area, any electrical equipment that does not bear the U/L (Underwriters Laboratories) seal of approval, or that would overload the electrical system or any part of the system beyond its capacity for proper, efficient, and safe operation as determined by Landlord, taking into consideration the overall electrical system and the present and future requirements therefor in the Project. Tenant shall not furnish any cooling or heating to the Premises, including the use of any electronic or gas heating devices, without Landlord's prior written consent.

28. Landlord may, on request by any tenant, waive compliance by the tenant with any of the Rules and Regulations provided that (a) no waiver shall be effective unless in writing and signed by Landlord or Landlord's authorized agent, (b) a waiver shall not relieve the tenant from the obligation to comply with the rule or regulation in the future unless expressly consented to by Landlord, and (c) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the Rules and Regulations unless the other tenant has received a similar waiver in writing from Landlord.

29. Tenant will take all steps necessary to prevent: inadequate ventilation, emission of chemical contaminants from indoor or outdoor sources, or both, or emission of biological contaminants. Tenant will not allow any unsafe levels of chemical or biological contaminants (including volatile organic compounds) in the Premises, and will take all steps necessary to prevent the release of contaminants from adhesives (for example, upholstery, wallpaper, carpet, machinery, supplies, and cleaning agents).

30. Tenant shall comply with any recycling programs for the Project implemented by Landlord from time to time.

31. Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot area that such floor was designed to carry. Landlord reserves the right to prescribe the weight limitations and position of all heavy equipment and similar items, and to prescribe the reinforcing necessary, if any, that in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's expense.

32. All contractors performing work to the structure or systems of the Project must be approved by Landlord.

33. The Project is a smoke-free environment and smoking is not permitted on the Premises or within 25 feet of any entrance to the Project.

34. Landlord reserves the right to grant or deny access to the Project to any telecommunications service provider. Access to the Project by any telecommunications service provider (unless through Landlord's current Building telecommunications provider's lines) shall be governed by the terms of Landlord's standard telecommunications license agreement, which must be executed and delivered to Landlord by such provider before it is allowed any access whatsoever to the Project.

35. No vinyl wall covering may be installed on any interior side of any wall which comprises an exterior wall of the Building, unless the wall covering was manufactured using a micro-venting procedure having no less than 140 needle/venting holes per square inch, and Tenant shall provide a letter from the wall covering manufacturer confirming such process.

36. Whenever these Rules and Regulations directly conflict with any of the rights or obligations of Tenant under this Lease, this Lease shall govern.

EXHIBIT "E"

TENANT IMPROVEMENTS

As-Is

1. **Landlord's Work.** Landlord shall perform the work described in EXHIBIT "E-1", Landlord's Work Schedule, in a good and workmanlike manner, using Building Standard materials and in accordance with all applicable governmental and legal requirements, at Landlord's sole cost and expense ("**Landlord's Work**"). Other than as set forth in the preceding sentence, Landlord has made no representation or promise as to the condition of the Premises. "Building Standard" shall mean the type, brand, grade, or quality of materials Landlord designates from time to time to be the minimum quality to be used in the Project or, as the case may be, the exclusive type, brand, grade, or quality of material to be used in the Project. On the Commencement Date, Tenant shall be deemed to have inspected the Premises and be fully familiar with the physical condition of the Premises, and shall accept the Premises in its then existing "as-is," "where-is" condition. Landlord shall not perform any work other than the Landlord's Work and shall not perform any work as to any portions of the Premises not specifically addressed in the description of the Landlord's Work. Landlord warrants that the Landlord's Work shall be free from defects in materials and workmanship for a period of one year from the Commencement Date. Landlord shall correct any defects to Landlord's Work reported to it within the one-year warranty period. Landlord has made no other warranty, express or implied, or representation as to fitness or suitability. Except under the express warranty provided in this paragraph, Landlord shall not be liable for any latent or patent defect in the Premises, or any costs or expenses related in any way to the Tenant's Work.

2. **Tenant's Work.** Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "**Tenant's Work or Improvements**"). Within 21 days after the Date of the Lease, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "**Plans**"). The Plans shall include the following: fully dimensioned architectural plan; electric/telephone outlet diagram; reflective ceiling plan with light switches; mechanical plan; furniture plan; electric power circuitry diagram; plumbing plans; all color and finish selections; all special equipment and fixture specifications; and fire sprinkler design drawings. Tenant shall submit the approved Plans to applicable building authorities for permit within five days following Landlord's approval and Tenant shall thereafter diligently pursue obtaining its building permits. The Plans will be prepared by a licensed architect and the electrical and mechanical plans will be prepared by a licensed professional engineer. The Plans shall be produced on CAD. The architect and engineer will be subject to Landlord's approval, which shall not be unreasonably withheld. The Plans shall comply with all applicable laws, ordinances, directives, rules, regulations, and other requirements imposed by any and all governmental authorities having or asserting jurisdiction over the Premises. Landlord shall review the Plans and either approve or disapprove them within a reasonable period of time. Should Landlord disapprove them, Tenant shall make any necessary modifications and resubmit the Plans to Landlord in final form within ten days following receipt of Landlord's disapproval of them. Tenant shall thereafter diligently pursue obtaining its building permits for the Tenant's Work.

The Tenant's Work shall be constructed by a general contractor selected and paid by Tenant and approved by Landlord. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor's license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor's work schedule, list of all subcontractors, and all building or other governmental permits required for the Tenant's Work shall be delivered to Landlord before commencement of the Tenant's Work. Tenant shall cause the Tenant's Work to be completed promptly and with due diligence. Unless approved by Landlord in its sole discretion, Tenant shall not have access to the Premises for the commencement of the Tenant's Work until Landlord has delivered the Premises to Tenant with a Certificate of Occupancy or Completion, as the case may be, as to Landlord's Work as required by governmental authorities and Tenant and its vendors and contractors have obtained all governmentally required permits separate from any permits obtained by Landlord as to the Tenant's Work. Tenant's Work shall be performed in accordance with the Plans and shall be done in a good and workmanlike manner using new materials in accordance with Building standards. All work shall be done in compliance with all other applicable provisions of this Lease and with all applicable laws, ordinances, directives, rules, regulations, and other requirements of any governmental authorities having or asserting jurisdiction over the Premises, including the making of any alterations or improvements to the Premises or the Project which are required to comply with the ADA. Tenant shall pay any impact fees or assessments arising from the Tenant's Work. Before the commencement of any work by Tenant, Tenant shall furnish to Landlord certificates evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements set forth in the Insurance article of this Lease. Any damage to any part of the Project that occurs as a result of Tenant's Work shall be promptly repaired by Tenant.

3. **Compliance.** Tenant shall also ensure compliance with the Tenant Improvement Rules and Regulations attached to the Lease.

4. **Tenant Delays.** If Landlord or the general contractor is delayed in substantially completing Landlord's Work as a result of the occurrence of any Tenant Delay (as hereafter defined), then, (i) any deadlines set forth in the Lease for Landlord's delivery of the Premises shall be extended day for day for each day of Tenant's Delay, and (ii) at Landlord's option, for purposes of determining the Rent Commencement Date, the date of delivery of the Premises shall be deemed to be the day that Landlord's Work would have been substantially completed absent any Delay(s). For purposes of this provision each of the following shall constitute a "Tenant Delay": (a) Tenant's failure to furnish information or to respond to any request by Landlord or any design consultant for any approval within any time period prescribed, or if no time period is prescribed, within two business days of a request, including any information required to modify the Building shell plans to accommodate Tenant's Work; or (b) changes or proposed changes required by Tenant's Work requiring changes to Landlord's Work or Building shell construction; or (c) any delay resulting from Tenant's activities in the Premises before substantial completion of Landlord's Work; or (d) any other delay to Landlord's ability to complete Landlord's Work as required by the terms of this Lease caused by Tenant, its employees, agents, contractors, or consultants.

5. **Changes.** Tenant shall be responsible to reimburse Landlord for all costs resulting from changes to Landlord's Work requested by Tenant. Such costs shall be deducted from the Tenant Improvement Allowance, if any, or if no Allowance is granted, paid to Landlord within ten days of receipt of invoice. If the cost of any changes will exceed any remaining balance of the Tenant Improvement Allowance (after deducting the most current estimate of the work cost before the change in question), Tenant shall pay to Landlord the amount of the excess within ten days of receipt of a notice from Landlord as to the amount. Such payments by Tenant shall not be considered additional rent.

EXHIBIT "E-1"

LANDLORD'S WORK SCHEDULE

Landlord shall deliver the following ("**Landlord's Work**") only:

Vanilla Shell (as defined by City) Poured in-place, unfinished concrete slab floor with appropriate stub outs for plumbing and electrical; taped and primed, appropriately rated demising walls; basic code required electrical service including minimal lighting; open raw ceilings with exposed mechanical systems; fire sprinklers to code; conduits provided for wireless/cable/telephone services. Code required restrooms for the entire building are provided as shared facilities

The costs of any changes to Landlord's Work requested or required by Tenant will be paid to Landlord by Tenant within 30 days following invoice therefor.

EXHIBIT "F"

TENANT ALTERATION REQUIREMENTS

A. Requirements Prior to Commencement of Any Work in the Premises:

1. Two (2) copies of Tenant's general contractor's or any subcontractor, as may apply, liability insurance naming Landlord and its managing agent as additional insureds.
2. Two (2) copies of approved building permit. Permit to include sufficient information to describe the work and designate the name and suite number of Tenant or if the work is extensive provide copies of plans and specifications as approved by the Building Department with the permit. (Landlord reserves the right to review and approve additional items and comments that may be required by the Building Department before commencement of the work.)
3. Prepare two (2) copies for Landlord's approval of a recordable "Notice of Commencement" executed by Tenant as "Owner".
4. Two (2) copies of Contractor "Certificate of Liability Insurance" prepared in accordance with the requirements of the Project, and evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements of the Insurance article of this Lease.
5. One (1) copy of the Contractor's Florida Contracting License.
6. Two (2) copies of the work/project's completion schedule.
7. Two (2) copies of project vendor list with contact information.
8. Tenant, at its expense, will provide and furnish to Landlord payment and performance bonds (or other similar assurances agreed by Landlord), by a surety company reasonably acceptable to Landlord, in amounts equal to 150% of the costs and expenses of the work to be performed by the Tenant.

B. General Requirements:

1. Tenant and all construction personnel shall abide by Landlord's job site rules and regulations and fully cooperate with Landlord's construction representatives in coordinating all construction activities in the Project, including rules and regulations concerning working hours, parking, and use of the construction elevator, if applicable.
2. Tenant shall be responsible for cleaning up any refuse or other materials left behind by construction personnel at the end of each work day.
3. Tenant shall deliver to Landlord all forms of approval provided by the appropriate local governmental authorities to certify that the Tenant Improvements and Alterations have been completed and the Premises are ready for occupancy, including original building permit and a final, unconditional certificate of occupancy.
4. At all times during construction, Tenant shall allow Landlord access to the Premises for inspection purposes. On completion of any Alterations and Tenant Improvements, Tenant's general contractor shall review the Premises with Landlord and Tenant and secure Landlord's and Tenant's acceptance of the Tenant Improvements and Alterations.
5. Workers shall provide their own temporary toilet facilities, trash facilities, water coolers, and construction materials dumpsters and shall locate them along with any construction trailers or field offices in areas specifically designated by Landlord.
6. No painting or spraying of chemicals, varnishes, lacquers, finishes, or paint will be allowed during normal business hours. Such activities shall only occur during days and times specifically preapproved by Landlord.

7. Any work that may disturb tenants of the Building (including welding, cutting torch, drilling or cutting of the concrete floor slab or temporary interruption of any utility service), shall only occur before or after normal business hours and with Landlord's prior consent. Any unduly loud noise complained of by other Tenants will be immediately diminished to Landlord's reasonable satisfaction or the work will cease until the noise is so diminished.

8. Reasonable quantities of water and electricity for lighting, portable power tools, and other common uses as well as use of the construction elevator will be furnished to the contractor at a cost to be assigned at the completion of the job based on usage during the build-out period (including Building standard charges for use of the elevator). The contractor shall make all connections, furnish any necessary extensions, and promptly and professionally remove such connections and extensions on completion of work.

9. If a shutdown of plumbing, sprinkler, electrical, air conditioning and/or other equipment becomes necessary in connection with Tenant's work, Tenant will notify Landlord in advance and Landlord will determine when such shutdown may be made, and at Landlord's election any such shutdown will be done only when a representative of Landlord is present. In all instances where this is done, the system shall not be left inoperable overnight or over a prolonged period.

10. All equipment installed shall be compatible with the base building fire alarm system and the contractor shall warrant that any connection to the base building fire alarm system shall only occur after proper notification to Landlord and on an after-hours basis. Any disruption to the existing fire alarm system or damage as a result of contractor's work will be the sole responsibility of Tenant.

11. All additional electrical circuits added to existing electrical panels or any new circuits added to new electrical panels will be appropriately labeled as to the area or equipment serviced by the circuit in question. Any electrical panel covers removed to facilitate installation or connection shall be reattached.

12. All workers must stay in their designated work areas and the use of radios, loud music, alcoholic beverages, narcotics, or cigarette smoking is prohibited on the Project.

13. Any roof opening required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

14. Any damage to any part of the Building that occurs as a result of any work performed by Tenant shall be promptly repaired by Tenant to the reasonable satisfaction of Landlord.

15. Tenant, at its expense, will promptly repair or replace, or at Landlord's election reimburse Landlord for the cost of repairing or replacing, property of Landlord that may be damaged, lost or destroyed in the performance of the work or as a result thereof.

16. Landlord will have no responsibility for or in connection with the work; Tenant, at its expense, will remedy and be responsible for all defects in the work, whether appearing during its progress or after completion and whether the same affect the Premises in particular or any of the Building in general.

17. Demolition of partitions and removal of rubbish will be done during hours first approved by Landlord in writing. All such materials are to be taken from the Premises through the delivery entrance of the Building, by the freight elevator only (if any); or, if not freight elevator exists, only through the rear entrance of the Premises.

18. Electrical and power panel balancing will be maintained by and at the expense of Tenant during the entire period of Tenant Work.

19. Tenant and its contractors will not demolish or remove any of the Building's structure.

20. Roof openings (including, supporting structures, angles, curbs, flashing, ducts, vents and grills) are subject to Landlord's prior written consent in each instance, which consent will not be unreasonably withheld. Notwithstanding the foregoing,

Landlord may refuse to give its consent to any roof opening that in Landlord's judgment exceeds the capability of the structural system. Any roof openings consented to by Landlord must be made only by Landlord's roofing contractor at Tenant's expense, or such duly licensed roofing contractor as Landlord may designate or approve in writing in its sole discretion.

21. All corridor, elevator, and lobby finishes require protection during construction.
22. There is a Two Hundred Fifty and 00/100 Dollar (\$250.00) penalty for "false alarms".

C. Upon Completion of the Work, Tenant Shall Provide to the Landlord:

1. Two (2) copies each of final inspection report and Certificate of Occupancy or Completion indicating that the work has been completed in accordance with the permit issued by the Building Department.
2. Two (2) copies each of "as-built" drawings indication the alterations and relocating of existing construction (mechanical, electrical, etc...) if applicable, in PDF file format or on CD's.
3. Two (2) copies each of "Final Releases" in accordance with the Florida Lien Laws from general contractor, subcontractors, vendors, and suppliers associated with the work and Contractor's Final Affidavit indicating that all subcontractors have been paid in full for the work.
4. Two (2) copies each of permit plans including approved fire sprinkler drawings.
5. Two (2) copies of all equipment operating and maintenance manuals and demonstration of any equipment that will become the property of Landlord.
6. Two (2) copies of general contractor's one (1) year warranty on labor and materials for the work.
7. Two (2) copies of all other manufacturer guarantees/warranties on the improvements. Manufacturer's guarantees/warranties shall name Landlord as beneficiary where Landlord is or shall become responsible for the repair and maintenance of the installation.
8. Two (2) original copies of a letter from the architect of record indicating that the improvements have been installed in accordance with the approved plans and specification for the Building.
9. Two (2) copies of Tenant's completed "punch list" signed off by the Architect or Tenant's representative that the work has been satisfactorily completed by the Contractor.
10. Extra attic stock materials used in the build-out such as flooring, ceiling, base, paint, wall covering, etc materials to be stored in Tenant's suite for future use.
11. Two (2) copies of an independent HVAC Test and Balance report, if applicable.
12. Two (2) original copies of the Contractor's Final Owner (Tenant) Affidavit which is necessary to terminate the Notice of Commencement once the work has been concluded and the "Notice to Terminate the Notice of Commencement" document prepared by Tenant's Contractor and recorded by the Tenant.
13. Two (2) copies of the final payment application from the general contractor and accounting of the construction contract amounts (final AIA application for payment).

The above required documentation must be delivered to Landlord prior to the release of any payments that may be due under the Lease.

D. Sustainability Requirements:

1. Tenant shall comply with any recycling requirements enacted by Landlord, including the separation of construction materials/debris, paper, cardboard, plastics and glass.

2. Tenant shall provide all contractors performing work with a copy of these Rules and Regulations and a copy of the Lien section of the Lease indicating that no liens may be placed against Landlord's interest in the Project for work performed by Tenant.

EXHIBIT "G"

LEED Tenant Requirements

Tenant Design and Construction Guidelines - Lake Worth Casino

The Lake Worth Casino has been designed and constructed to be environmentally friendly, incorporating the sustainable design and construction features outlined below in designing the core and shell. In addition, tenant design and construction guidelines have been prepared to assist tenants in designing and building sustainable interiors and to adopt green building practices within their individual tenant spaces. Combined, these important features and required guidelines contribute to attaining LEED-CS (Core and Shell) and LEED-CI (Commercial Interiors) certifications:

Sustainable Design and Construction Features at Lake Worth Casino (LEED-CS, Core and Shell)

Water Use Reduction:

- All common area and future tenant water fixtures shall have sensors and meet or exceed federal mandates on gallons used.
- All landscape has been designed for minimal use of irrigation water. -Partial irrigation water is from storm run off drained from the surface parking into the Storm Drainage system in numerous areas using an ecological filtration system or bioswale

Optimize Energy Performance, Lighting Power and Lighting Controls, Daylighting and Views:

- Window head height has been set at 8'-0" to maximize daylight and views, thereby reducing the amount of energy required for interior lighting.

Optimize Energy Performance, HVAC, Thermal Comfort, and Controllability of Systems:

- The Cooling Tower system facilitates energy efficient HVAC, providing individual air handling systems in each tenant space. The system also maximizes flexibility in tenant build out, minimizing construction time and reducing construction waste.
- The high reflective roof covering lowers cooling costs by reducing "hot spots" on the Roof with SRI's above 29 for steep sloped roof areas and above 78 for flat roofed areas.

Construction Indoor Air (IAQ) Management, Indoor Chemical and Pollutant Source Control and the Elimination or Control of Environmental Tobacco Smoke:

- The air circulation system incorporates Merv 13 filters. Interior finishes are specified at minimum volatile organic compound (VOC) levels including primers, paints, and adhesives. Cabinets and wood materials contain no added urea-formaldehyde resins to prevent off gassing. The building is a non-smoking environment.

Sustainable Products and Materials:

- Interior products and construction materials maximize recycled content. For example, door frames are regionally manufactured from post-consumer recycled content, the concrete masonry construction is composed of local aggregate and recycled content, and the steel floor system utilizes recycled steel.

Tenant Design and Construction Guidelines at the Lake Worth Casino (LEED-CI, Commercial Interiors)

The following tenant design and construction guidelines complement the features and sustainable strategies for the core and shell of the building. They are intended to assist tenants in designing and building sustainable interiors and to adopt green building practices. The interior finish specifications for Lake Worth Casino qualify typical interior finishes so that they reduce harmful off gassing, optimize indoor air quality, utilize locally produced and recycled materials where possible, protect against deforestation, and reclaim removed finishes during renovation or tenant turnover. These are the minimum standards to be used in evaluating a material finish when making selections for tenant spaces.

Floor

Carpet Tile – 18 to 20 oz. yarn weight, level loop pile, direct glue down, Materials Estimated Price Range: \$ TBA (to include allowance for General Contractor/Flooring Contractor and Freight)

Meets Green Label Plus.

Carpet is reclaimable and is reclaimed. No PVC backing.

Carpet Adhesive – does not exceed VOC limit 50.

No vinyl, reclaim unused flooring.

Floor Tile – 12” x 12”, chlorine free, contains no plasticizers, VOC free, requires no dressing or cleaning with caustic chemicals.

Installed Estimated Price (with “click” system): \$TBA.

Floor Tile Adhesive (if adhesive-free “click” system is not utilized) – does not exceed VOC limit 50.

Base

Carpet Base - 4” carpet base to match carpet in carpeted areas, meets Green Label Plus.

Cove Base – 4” cove base, no vinyl.

Materials Estimated Price Range: \$ TBA

Wood Base, Crowns, Chair rail – FSC (Forest Stewardship Council)-certified wood.

Walls

Tenant demising wall - 3 5/8” metal studs with 5/8” Type ‘X’ gypsum wall board each side (per code), gypsum does not exceed VOC limit 50.

Interior walls – 3 5/8” metal studs with 5/8” gypsum wall board each side, gypsum does not exceed VOC limit 50.

Interior Paint – (2) Two coats of latex flat over (1) coat primer. Latex flat does not exceed VOC limit 50 and primer does not exceed VOC limit 200.

Doors

Entry Doors – Provided in Shell.

Interior Doors – 3’-0” wide x 8’-0” height, wheat board core or Medex.

Alternate door as per demountable partition system specification for owner approval

Door Frames

Painted recycled hollow metal.

Semi-gloss trim paint not to exceed VOC limit 250.

Regionally manufactured, post-consumer recycled content.

Prehung FSC wood frames

Door Hardware

All exterior doors shall have the Building Standard for Common Spaces.

Interior doors shall be Schlage, AL series, Jupiter, lever type, brushed chrome finish or Equal and approved by Owner.

Locksets shall be: Passage set.

Door Stops: Typical all doors.

Ceiling

The Owner’s preference is no to have a dropped ceiling.

Ceiling height – a minimum of 8’-6” above finish floor.

Acoustical ceiling system – 2’ x 2’ tegular ceiling tiles, 60%-80% recycled content, reclamation and recyclable.

Window Treatment

Non-PVC 2” blinds, interior mount, valance and “white” finish.

Alternate wood blinds manufactured locally, FSC-certified, Low-VOC finish.

Cabinetry

All cabinets of composite wood, including core materials, must contain no added urea-formaldehyde resins. All laminate adhesives must contain no added urea-formaldehyde.

Appliances

Shall be by tenant.

Shall meet or exceed federal energy standards and be *ENERGY STAR* qualified.

Plumbing Fixtures

Toilets and urinals must have sensors.

All faucets must meet or exceed federal mandates for water consumed and be consistent with the project's current specified plumbing fixtures.

Lights

-2'x4' fluorescent light fixture, CFL or LED as approved by owner

-emergency lights as required by code

-exit signs as required by code

-all lights and controls are to meet Florida Building Code (FBC) 2007 chapter 13.

-all lights will have motion sensors for controls and a maximum watts per square foot as per FBC chapter 13.

HVAC

-complete air handler system and controls

- no fiberboard ductwork permitted

-this system allows for passive controls as well as individually controlled tenant spaces

-high efficiency cooling tower with individual air handler per tenant zone at 600-800sf per zone.

-condensate collection to be tied into building rainwater collection system.

EXHIBIT "H"

SPECIAL REQUIREMENTS

1. **Option to Renew.** Provided that Tenant has never been in default of the Lease, Tenant shall have two renewal options of five (5) years to extend the Lease Term, provided that Tenant shall provide written notice to Landlord of its election to extend the Lease Term at least nine (9) months, but not more than fifteen (15) months, prior to the expiration of the initial Lease Term, with time being of the essence as to this notification period. Landlord shall have no obligation to notify Tenant hereafter of the required notification date to renew the Lease and Tenant shall be deemed to have waived its renewal option in the event Tenant fails to notify Landlord in writing by the required notification date.

1.1 All terms and conditions of the Lease shall remain unchanged and in full force and effect upon Tenant's extension of the Lease Term except that Base Rent shall be increased as set forth in the Basic Lease Information of the Lease.

1.2 The foregoing renewal option shall no longer be available and shall automatically cease to exist, upon the occurrence of any of the following: (1) the expiration or sooner termination of the Lease, (2) the occurrence of any event of default by Tenant under the Lease, or (3) any assignment of the Lease, subletting of the Premises (or any part thereof) or other transfer within the meaning of the Assignment Article of the Lease.

2. **License to Use Outside Patio Area.** So long as the federal, state, and local laws, codes, zoning restrictions, ordinances, regulations, and safety requirements permit (provided that the failure to obtain such approvals and permits shall not be deemed to be a contingency of the effectiveness of this Lease or entitle Tenant to terminate this Lease), Landlord agrees that Tenant shall have, at such time during the Lease Term as Landlord shall designate, a revocable license to use the area adjacent to and immediately outside of the Premises, as described on **Exhibit "H-1"** attached hereto.

2.1 Tenant's use of the Patio Area complies with all laws, codes, zoning restrictions, ordinances, regulations, safety requirements, approvals, permits and licenses relating thereto.

2.2 All necessary approvals, permits, and licenses in connection with such use are obtained and paid for by Tenant (with copies furnished to Landlord) and remain in full force and effect during Tenant's use of the Patio Area.

2.3 Tenant shall install, at its sole cost and expense, all furniture and equipment (collectively, "**Furniture**") in the Patio Area. Tenant acknowledges and agrees that the furniture shall not be used or placed in the Patio Area until its design, size, color, position, and method of attachment or installation are first approved by Landlord in writing; and Tenant shall be solely responsible for any destruction, damage, theft, or vandalism of, or to, the Furniture.

2.4 Tenant hereby covenants and agrees that it shall not: (i) restrict access to the Project or pedestrian flow through the common areas outside the Patio Area; (ii) erect or place any canopy or other enclosure or covering on the Patio Area without Landlord's prior written approval; (iii) permit any music or other similar sounds to be heard in the Patio Area without Landlord's prior written approval; or (iv) permit loitering in the Patio Area by persons who are not customers of Tenant.

2.5 Tenant shall clean and keep in good repair the Patio Area and Furniture and shall remove all trash generated therefrom on a daily basis or more frequently as needed. If Tenant fails to clean or keep the Patio Area in good repair, or remove trash therefrom as required by this section, then in addition to and not in lieu of any other remedy to which Landlord may be entitled, Landlord shall have the right but not the obligation, upon 24 hours' prior written notice to Tenant, to clean, repair, or remove the trash on Tenant's behalf; and Tenant shall pay Landlord 125 percent of Landlord's cleaning, repair, or trash removal costs (including any overtime costs) immediately upon Landlord's demand therefore.

2.6 Tenant shall reimburse Landlord immediately upon Landlord's demand therefore, the cost of repairs or restoration of the common areas arising out of Tenant's use of the Patio Area or acts or negligence of Tenant, its customers, employees, agents, contractors, invitees, or licensees.

2.7 Tenant agrees to pay to the landlord \$15.00 per square foot per annum for use of the Patio Area which shall be added to the base rent and subject to all annual escalation clauses contained in this lease document including lease renewal options.

2.8 Tenant's right granted herein to use the Patio Area is neither transferable nor assignable independently from its leasehold interest.

2.9 Landlord shall have no liability to Tenant if it is unable to use the Patio Area for any reason other than Landlord's negligence or willful misconduct.

2.10 Landlord shall be entitled, in its sole and absolute discretion, to revoke Tenant's license to use the Patio Area, upon 30 days' prior written notice to Tenant and to remove Tenant therefrom; and Prior to the revocation of such license, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand.

2.11 Should Landlord require the use of any portion of the Patio Area in connection with special events at the Project, operation or maintenance of the Project, construction of Tenant improvements or moving in of new tenants to the Project, or for any other purpose or use, Tenant shall remove its Furniture and other personal property from the Patio Area for such periods of time as Landlord shall designate in order to accommodate such uses.

EXHIBIT "H-1"

Description of Patio Area

The Patio areas will be laid out based on the amount of footage needed for walk thru traffic. The café seating must allow for 4' for walk thru traffic and cannot be blocked.

EXHIBIT "I"

CITY OF LAKE WORTH

COMMENCEMENT DATE LETTER

_____, 20__

TENANT
Maxplan Enterprises, Inc.,
Unit #3 and #4
Lake Worth Casino Building

Re: Lease dated _____, 20__ by and between City of Lake Worth, as Landlord, and Maxplan Enterprises, Inc. (Kilwin's Chocolates and ice Cream, as Tenant (the "Lease"))

Dear _____:

This will confirm that:

1. All Landlord's Work required under the terms of this Lease have been satisfactorily performed in accordance with the Lease, and as of the date of this notice Tenant has inspected the Premises and accepted the Premises "as-is", "where-is";
2. The Commencement Date of the Lease Term is _____; and
3. The Rent Commencement Date is _____ and the expiration date of the Lease Term is _____.

ACCEPTED AND AGREED:

TENANT:

Maxplan Enterprises, Inc.
a Florida Corporation

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Date Executed: _____

LANDLORD:

CITY OF LAKE WORTH,
a municipal corporation under the laws of the State of Florida

By: _____
Name: _____
Title: _____

(SEAL)

Date Executed: _____

EXHIBIT "J"

SIGN CRITERIA

Signage must comply with City ordinances and final approval from Landlord.

EXHIBIT "K"

PROHIBITED/RESTRICTED USES

Specific Leases:

General Restrictions:

Adult book store or facility selling, renting or displaying pornographic or adult books, literature, magazines, films, pictures, video discs, videotapes or other paraphernalia or merchandise (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), provided that the sale, rental or display of such items as an incidental part of a permitted business (as used above, the term "incidental" means, with respect to any national or regional video store chain, any sale or rental of such material, and with respect to other tenants, the sale of such materials from not more than 10% of the sales area of such business and so as to constitute less than ten percent 10% of the gross sales of such business) shall be permitted.

Auction or bankruptcy sale, unless bona fide and permitted by law

Auction house

Automobile body shop

Automobile dealership or used car lot

Automotive repairs and service

Barbecue stands or barbecue pits

Bingo parlor or similar games of chance, except as incidental retail sale such as lottery tickets and other items commonly sold in retail establishments

Boat sale or display

Bottling of beverages

Bowling alley

Brothel

Cabinet working and carpentry shops

Car wash

Carnival

Catering hall

Cocktail lounge, pub or bar, except as incidental to a restaurant

Cold storage warehouse and pre-cooling plants

Cult meeting place

Dance hall

Discotheque or nightclub

Food stamp center

Feed, hay and other livestock supplies

Fertilizer stores

Firing range

Flea market

Funeral establishment

Glass installation

Government offices

Gun store

Head shop

House of worship

Junk yard

Labor camp

Leather goods manufacturing, excluding tanning

Locksmith shops, sharpening and grinding shops

Lumber yards

Manufacturing use—contractors' plants and storage yards
Massage parlor, except a lawful business providing massages only by a licensed massage therapist or a physiotherapist is allowable
Meeting hall
Mobile home park
Mobile home sales
Off-track betting parlor
Pawn shop
Place of public assembly
Poultry markets and commercial chicken hatcheries
Psychic
Railroad, motor truck and water freight and passenger stations
Religious organization
Refinery
Sale, repair, service or storage of trucks and/or trailers and recreational vehicles
Second-hand stores for the disposal of furniture, fixture and tools
Shooting gallery
Skating rink
Stockyard
Theater
Tire vulcanizing and retreading or sale of used tires
Unemployment agency
Upholstery and furniture repairs
Warehouse use
Wood burning for cooking
Any use prohibited by recorded restrictions, covenants or conditions affecting the Project as of the Date of this Lease, if any.
Any restrictions or conditions set forth in the Zoning and Land Use Codes applicable to the Project.

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: Leisure Services

TITLE:

Fifth Amendment to Retail Lease with RVRA, LLC, the current tenant

SUMMARY:

This amendment authorizes RVRA, LLC, to extend its lease of units #1 and #2 at the Lake Worth Beach Municipal Casino Building. The current appropriation for FY23 is \$65,754.

BACKGROUND AND JUSTIFICATION:

On February 23, 2012, the City entered into a retail lease agreement with Mamma Mia's on the Beach, Inc. (prior "Tenant/Assignor) to lease units #1 and #2 at the Lake Worth Beach Casino Building for ten (10) years with the option to two (2) additional five (5) year renewals.

On May 2, 2017, the Landlord and the Tenant/Assignor entered into the First Amendment to the Retail Lease authorizing Vincenzo Lograsso to deliver ownership of the Tenant/Assignor's corporation to Francesco Lograsso.

On May 7, 2019, the Landlord, the Tenant/Assignor and RVRA, LLC entered into the Second Amendment to the Retail Lease wherein the Landlord agreed to the assignment of the Lease from the Tenant/Assignor to RVRA, LLC, the current Tenant.

On December 1, 2020 the City and the tenant entered into a Third Amendment to revise certain terms and conditions of the lease as a result of the COVID-19 pandemic.

On September 20, 2022, the Landlord and Tenant/Assignee entered into the Fourth Amendment to the lease to extend the Lease for up to 60 days.

The Fifth Amendment will extend the RVRA, LLC, lease on units #1 and #2 at the Lake Worth Beach Casino Building for an additional five (5) years. There will be a 3.5% a year increase per the terms of the lease.

There remains one (1) option to renew the Lease for five (5) additional years.

MOTION:

Move to approve/disapprove the Fifth Amendment with RVRA, LLC.

ATTACHMENT(S):

Fiscal Impact Analysis
Fifth Amendment Retail Lease

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	\$65,754.66	\$68,056.07	\$70,438.03	\$72,903.36	\$75,454.98
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation	
	Expenditure
Department	Leisure Services
Division	Beach Fund
GL Description	Leased Properties
GL Account Number	140-0000-362.10-00
Project Number	N/A
Requested Funds	N/A: Revenues

FIFTH AMENDMENT TO RETAIL LEASE

THIS FIFTH AMENDMENT TO THE RETAIL LEASE (the “Amendment”) is made between the **City of Lake Worth Beach**, a Florida municipal corporation (“Landlord”), and **RVRA, LLC**, a Florida limited liability company (the “Tenant”) (collectively, the “Parties”).

RECITALS

WHEREAS, on February 23, 2012, the Landlord and Mamma Mia’s on the Beach, Inc. (prior “Tenant/Assignor”) entered into a Retail Lease agreement for the lease of unit nos. 1 and 2 on the first floor of the Lake Worth Municipal Casino Building for use by the Tenant as an Italian restaurant for on and off premises consumption (the “Lease”); and,

WHEREAS, on May 2, 2017, the Landlord and the Tenant/Assignor entered into the First Amendment to the Retail Lease authorizing Vincenzo Lograsso to deliver ownership of the Tenant/Assignor’s corporation to Francesco Lograsso; and

WHEREAS, on May 7, 2019, the Landlord, the Tenant/Assignor and RVRA, LLC entered into the Second Amendment to the Retail Lease wherein the Landlord agreed to the assignment of the Lease from the Tenant/Assignor to RVRA, LLC, the current Tenant; and

WHEREAS, on December 1, 2020, the Landlord and the Tenant entered into the Third Amendment to the Retail Lease wherein the Parties addressed changes to the terms and conditions of the Lease due to COVID-19; and,

WHEREAS, on September 20, 2022, the Landlord and Tenant entered into the Fourth Amendment to the lease to extend the Lease for up to 60 days so that the market rate analysis could be completed; and

WHEREAS, when the Lease is referenced hereinafter, it shall be defined to also include the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment.

WHEREAS, the Parties wish to extend the Lease for a five (5) year renewal term (which includes the initial 60 day extension) and to set forth the revised Base Rent for each year of such renewal term; and

WHEREAS, the Landlord finds amending the Lease as set forth herein serves a valid public purpose.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in the Lease, as previously amended, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by this reference.
2. **City Commission Consideration.** This Amendment will be considered by the Landlord’s City Commission at a public meeting on _____.

3. **First Renewal Option.** The Lease is hereby extended for an additional five (5) years through and including October 1, 2027. There remains one (1) option to renew the Lease for five (5) additional years.
4. **Base Rent.** Paragraph 1.15 of the Lease, "Base Rent," is here by deleted in full and amended to read as follows:

1.15 **Base Rent (1st renewal).** The following amounts:

Period	Rate P/S/F Annum	Monthly Base Rent	Period Base Rent
11 th year	\$49.37	\$5,479.56	\$65,754.66
12 th year	\$51.09	\$5,671.34	\$68,056.07
13 th year	\$52.88	\$5,869.84	\$70,438.03
14 th year	\$54.73	\$6,075.28	\$72,903.36
15 th year	\$56.65	\$6,287.92	\$75,454.98

5. **Agreement Unchanged.** Except as specifically amended herein, all other provisions of the Lease shall remain in full force and effect.
6. **Controlling Documents.** To the extent that there exists a conflict between this Amendment and the Lease, the terms and conditions of this Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
7. **Entire Agreement.** The Parties agree that the Lease and this Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
8. **Counterparts.** Each Party may sign one copy of this Amendment and together, whether by signed original or by digitally signed, facsimiled, or e-mailed copy, the signed copies shall constitute one, fully executed Amendment.

IN WITNESS WHEREOF, the Parties have caused this Amendment to the Retail Lease to be executed by their duly authorized representatives.

LANDLORD: CITY OF LAKE WORTH BEACH, FLORIDA

Witness:

By: _____
 Print Name: _____

By: _____
 Betty Resch, Mayor

ATTEST:

Date: _____

 Melissa A. Coyne, CMC, City Clerk

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2022, by Betty Resch, as the Mayor of the City of Lake Worth Beach (Landlord), who is personally known to me.

Notary Seal:

Notary Public Signature

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

TENANT: RVRA, LLC

Witnesses:

By: _____
Print Name: _____

By: _____

By: _____
Print Name: _____

[Corporate Seal, if required]

STATE OF FLORIDA)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2022, by _____, as the _____ of RVRA, LLC, a Florida limited liability company, who is personally known to me or who has produced _____ as identification, and who did take an oath that he is duly authorized to execute the foregoing instrument and bind the TENANT to the same.

Notary Seal:

Notary Public Signature

RETAIL LEASE

THIS RETAIL LEASE (the "Lease") is made and entered into as of the Date of this Lease, by and between Landlord and Tenant. "Date of this Lease" shall mean the date on which the last one of the Landlord and Tenant has signed this Lease.

WITNESSETH:

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant hires from Landlord the Premises.

1. **BASIC LEASE INFORMATION AND DEFINED TERMS.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord.** CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida.

1.2 **Tenant.** Mamma Mia's on the Beach, Inc., a Florida Corporation

1.3 **Tenant's Trade Name.** Mamma Mia's on the Beach



1.4 **Building.** The building containing the Premises. The Building is located within the Project.

1.5 **Project.** The parcel of land, the Building, and any other buildings and improvements located on such land and known as the Lake Worth Municipal Casino Building located at 10 Ocean Boulevard, Lake Worth, Florida 33460, and legally described in EXHIBIT "A" to this Lease.

1.6 **Premises.** Units #1 and #2 on the First floor of the Building. The Premises are located in the Project and are depicted in the sketch attached as EXHIBIT "B". Landlord reserves the right to install, maintain, use, repair, and replace pipes, ducts, conduits, risers, chases, wires, and structural elements leading through the Premises in locations that will not materially interfere with Tenant's use of the Premises.

1.7 **Gross Leasable Area of the Premises.** 1,332 square feet. Attached is a sketch of the premises. The square footage is approximate. Accurate footage will be determined when the premises have been constructed and delivered to Tenant.

1.8 **Permitted Use of the Premises.** Tenant is leasing the subject property for future use as an Italian Restaurant for on and off-premises consumption, and for no other purpose whatsoever. The restaurant shall be allowed to serve beer and wine and exclusive right to sell pizza.

1.9 **Commencement Date.** The date Landlord delivers possession of the Premises with Landlord's Work substantially complete. Substantial completion shall mean the date that a Certificate of Occupancy or its equivalent is issued by the appropriate local government entity concerning the Landlord's Work, or, if no Certificate of Occupancy will be issued for the Landlord's Work, the date on which the Landlord's Work is substantially completed so that Tenant may use the Premises for their intended purpose, notwithstanding that punchlist items or insubstantial details concerning construction, decoration, or mechanical adjustment remain to be performed.

1.10 **Rental Concessions.** Free rent during build-out period. The maximum build-out period is to be 8 months. When tenant opens for business the rent shall commence. First and Security (Security equals two months of the fifth year base rent) is due upon signing of lease.

1.11 **Access.** Lessee shall be provided full access to the Property, at their own risk, during the Free Rent period for the purpose of conducting all necessary alterations, upgrades, and decorating.

1.12 **Rent Commencement Date.** The date which is the earlier of (i) 8 months after the Commencement Date, or (ii) the date Tenant opens for business in any part of the Premises, on October 1, 2012 for one hundred and twenty (120) months with two (2) five year options to renew.

1.13 **Lease Term.** A term commencing on the Rent Commencement Date and continuing for one hundred and twenty (120) months (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by Tenant for the partial month. Following the initial one hundred and twenty (120) month base term, two (2) options to renew are provided for five (5) years each.

1.14 **Renewal Option Rates.** First renewal is based on a rent increase of 3.5% or market rent, whatever is less, with an annual escalation of 3.5%. Second renewal option is based on same formula.

1.15 **Base Rent.** The following amounts:

Period	Rate P/S/F Per Annum	Monthly Base Rent	Period Base Rent
1st year	\$35.000	\$3,885.00	\$46,620.00
2nd year	\$36.225	\$4,020.97	\$48,251.70
3rd year	\$37.492	\$4,161.61	\$49,939.34
4th year	\$38.804	\$4,307.24	\$51,686.93
5th year	\$40.162	\$4,457.89	\$53,495.78
6th year	\$41.567	\$4,613.94	\$55,367.24
7th year	\$43.021	\$4,775.33	\$57,303.97
8th year	\$44.526	\$4,946.38	\$59,356.58
9th year	\$46.084	\$5,115.32	\$61,383.89
10th year	\$47.696	\$5,294.26	\$63,531.07

Base Rent amounts shown above do not include applicable sales tax.

1.16 **Allocated Share.** The percentage share resulting from dividing the Gross Leasable Area of the Premises by the Gross Leasable Area of the Project as determined by Landlord from time to time.

1.17 **Security Deposit.** A Letter of Credit generally in the form attached hereto as Exhibit "L" attached hereto in the amount of \$46,620.00, to be delivered to Landlord upon execution of this Lease by Tenant. The Security Deposit equals twelve (12) months of one years Base Rent. Such Letter of Credit shall be kept in force and effect the entire term of the lease and shall be renewed annually.

1.18 **First Month's Rent:** \$ 4,895.10 to be paid to Landlord upon execution of this Lease by Tenant.

Base Rent: \$3,885.00
 Operating Costs: \$ 777.00
 Sales Tax: \$ 233.10
 Total: \$4,895.10



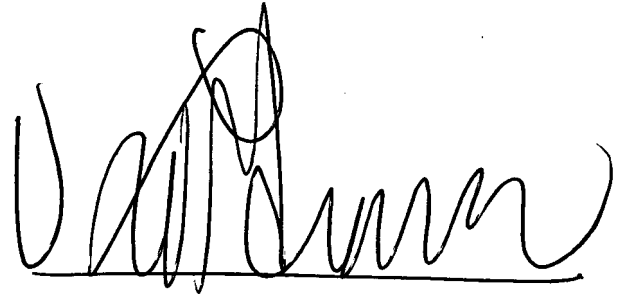
1.19 **Tenant's Notice Address.** ~~9731~~ 9737 Campi Drive, Lake Worth, FL 33467.



1.20 **Landlord's Notice Address.** c/o City Manager, City of Lake Worth, 7 North Dixie Highway, Lake Worth, Florida 33460.

1.21 **Landlord's Broker.** Anderson & Carr, Inc.

1.22 **Tenant's Broker.** H. Alan Welles Real Estate.



1.25 **Tenant Improvements.** Tenant Improvements has the meaning set forth in Exhibit "E" attached hereto.

2. **TERM.** Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall commence on the Rent Commencement Date. Landlord shall determine the Commencement Date and Rent Commencement Date as provided in Basic Lease Information and Defined Terms article of this Lease and shall notify Tenant of the dates so determined. Tenant shall, if Landlord so requests, thereafter execute and return within ten days a letter confirming the Commencement Date, Rent Commencement Date, and the expiration date of this Lease in the form attached as **EXHIBIT "H"**. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to conduct business or pay rent) from the date that the Premises are delivered to Tenant until the Rent Commencement Date in the same manner as though the Lease Term began when the Premises were so delivered to Tenant.

3. **USE.**

3.1 **Permitted Use.** Tenant shall continuously use and occupy the Premises only for the Permitted Use of the Premises, in keeping with first-class standards of quality, respect, decorum, integrity, fitness, and stability. Tenant shall not use or permit or suffer the use of the Premises for any other business or purpose. Tenant shall conduct its business in the Premises solely under Tenant's Trade Name. Tenant shall conduct its business upon the Premises in accordance with the highest ethical and operating standards of the retail industry. Tenant acknowledges that the Project is a mixed-use project containing other retail uses. The agreements of Tenant concerning limitations on the use of the Premises, as set forth in this Lease, are a material inducement to Landlord in entering into this Lease. The provisions of this article are in the nature of restrictive covenants running with the land. Tenant shall warehouse, store, and stock in the Premises only goods, wares, and merchandise that Tenant intends to offer for sale at, in, from, or upon the Premises. This shall not preclude occasional emergency transfers of merchandise from the other stores of Tenant, if any, not located in the Project. Nothing contained in this Lease shall be construed as giving Tenant an express or implied exclusive use in the Project, unless expressly set forth in this Lease. Tenant shall conform to the Rules and Regulations. "**Rules and Regulations**" shall mean the rules and regulations for the Project promulgated by Landlord from time to time. The Rules and Regulations which apply as of the Date of this Lease are attached as **EXHIBIT "D"**.

3.2 **No Offensive or Illegal Use.** No use of the Premises during the Lease Term shall be offensive to the neighborhood by reason of odor, fumes, noise, or traffic; no illegal activity shall be conducted on the Premises by Tenant or by anyone claiming the right to use the Premises by or through Tenant; and no activities on the Premises shall be permitted by Tenant, or by anyone claiming the right to use the Premises by or through Tenant, which are, in the sole discretion of Landlord, immoral or lewd or capable of subjecting the Premises to an unfavorable reputation or reducing the sale or rental value of the Premises.

3.3 **Restricted Uses.** Tenant expressly acknowledges that Landlord has advised it of restricted, prohibited, and exclusive uses (collectively, "**Restricted Uses**") applicable to the Premises. Restricted Uses are set forth in **EXHIBIT "K"**. Further, Landlord may grant future exclusive uses in the Project, so long as such future exclusive uses ("**Future Exclusive Uses**") established after the Date of this Lease do not prohibit Tenant's Permitted Use or violate any exclusive rights granted to Tenant hereunder. Tenant shall not use or permit or suffer the use of the Premises for any of the Restricted Uses or Future Exclusive Uses, and shall indemnify, defend and hold Landlord harmless from all costs and claims arising from Tenant's violation of such restrictions. Tenant further acknowledges that the provisions in the agreements granting exclusive use rights to other tenants in the Project and the provisions of this Lease concerning the Restricted Uses are in the nature of restrictive covenants running with the land.

3.4 **Conduct of Business.** Throughout the Lease Term, Tenant shall actively conduct its business with the closing hours of 11pm on Sunday, 12am Monday through Wednesday and 1am on Thursday through Saturday at the latest. Interruption of Tenant's business because of any act of war, strike, fire, the elements, governmental action, or other cause beyond the reasonable control of the Tenant shall not constitute a default under this article, but no interruption of business shall affect the Tenant's responsibility to pay any form of rent due under this Lease. Tenant shall carry at all times in the Premises a stock of "in season" merchandise of such quantity, character, and quality as shall be in accord with advanced and highest quality retail business practices within the locale for Tenant's business. Tenant shall keep the Premises fully staffed with experienced personnel. Additionally, Tenant shall keep the display windows in the Premises well lighted during the hours that Landlord may designate from time to time.

3.5 **Failure to Open for Business.** If Tenant fails to open the Premises for business as a fully fixtured and staffed restaurant for the Permitted Use within 30 days after the Rent Commencement Date, then Tenant shall be in default under this Lease and Landlord shall have, in addition to the other remedies provided in this Lease, the right at its option to collect Base Rent at

double the rate for Base Rent otherwise applicable on a per day basis for each and every day that Tenant shall fail to open for and conduct business.

4. **RENT.** Tenant shall pay Rent to Landlord in lawful United States currency. **On the execution of this Lease by Tenant, Tenant shall pay to Landlord the installments of Base Rent and additional rent for Operating Costs for the first month of the Lease Term.** All Base Rent shall be payable in monthly installments, in advance, beginning on the Rent Commencement Date, and continuing on the first day of each and every calendar month thereafter during the Lease Term. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent, shall be denominated as additional rent. Except as otherwise provided, all additional rent payments are due ten days after delivery of an invoice. Tenant shall pay monthly to Landlord any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed on any Rent due under this Lease. The term "**Rent**" when used in this Lease shall include Base Rent and all forms of additional rent. All Rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord's Notice Address, or at such other place as Landlord shall designate in writing to Tenant. Tenant's obligations to pay Rent are covenants independent of the Landlord's obligations under this Lease.

5. **OPERATING COSTS.**

5.1 **General.** Tenant shall pay to Landlord its Allocated Share of Operating Costs in accordance with the terms and provisions of this article and based on the following.

5.2 **Real Estate Taxes.** The term "**Real Estate Taxes**" shall mean the total of all taxes, assessments, and other charges by any governmental or quasi-governmental authority, including real and personal property taxes, transit and other special district taxes, franchise taxes, and solid waste assessments that are assessed, levied, or in any manner imposed on the Project by such authority. If a tax shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes or otherwise as a result of the ownership of the Project, then the other tax shall be deemed to be included within the definition of "Real Estate Taxes. Real Estate Taxes are paid annually, upon invoice by the City and are separate from Common Area Maintenance Costs.

5.3 **Common Area Maintenance Costs (CAM).** The term "**CAM**" shall mean the total of all of the costs and expenses incurred or borne by Landlord relating to the operation, maintenance, repair, and security of the Project and the services provided tenants in the Project. By way of explanation and clarification, but not by way of limitation, **CAM** will include the costs and expenses incurred for the following: heating, air conditioning, ventilation, plumbing, electrical, fire sprinkler, fire alarm, and emergency generator systems; elevators; pest control; trash and garbage removal (including dumpster and compactor rental); protection and security; Common Areas decorations, repairs, replacements, and maintenance; amounts paid under easements or other recorded agreements affecting the Project; improvements required by law; building painting and roof repairs; materials, tools, supplies, and equipment to enable Landlord to supply services that Landlord would otherwise have obtained from a third party; expenditures designed to result in savings or reductions in Common Area Maintenance Costs; exterior landscaping and irrigation supply, repair, and maintenance; parking and driveway area repair, and maintenance, including periodic resurfacing and restriping; illumination, repair, maintenance, and replacement of Project signs, property management fees; all utilities serving the Project and not separately billed to or reimbursed by any tenant of the Project; music systems; depreciation on machinery and equipment used in the maintenance of the Project, costs of maintaining, reporting, commissioning or recommissioning any part of the Project that was designed and/or built to be sustainable and conform with Landlord's environmental management plans and any current or future green/sustainable building rating system or standard; extended coverage, all risks, terrorism, earthquake, change in condition, sprinkler apparatus, plate glass, electronic data processing, boiler and machinery, rental guaranty or interruption, public liability and property damage, flood, and any other additional insurance customarily carried by owners of comparable buildings or required by any mortgagee of the Project; supplies; service and maintenance contracts for the Project; compensation and other benefits respecting employees of the Landlord involved in the operation and maintenance of the Project up to and including the Project manager (including a pro rata share only of the wages and benefits of employees who are employed at more than one building, which pro rata share shall be determined by Landlord and shall be based on Landlord's estimate of the percentage of time spent by the employees at the Project); legal, accounting, and administrative costs; expenses imposed on the Landlord under any law or any collective bargaining agreement concerning Landlord's employees; workers' compensation insurance; and payroll, social security, unemployment, and other similar taxes relating to employees. Landlord may contract for the performance of some or all of the management, operation, maintenance, repair, service and security functions generally described in this section with any persons or entities whom Landlord shall deem appropriate, including persons or entities who are affiliated with Landlord.

5.4 **CAM Payment.** Landlord shall reasonably estimate the Common Area Maintenance Costs that will be payable for each fiscal year by Landlord expiring September 30th of each calendar year. Tenant shall pay one-twelfth of its share of

the estimated CAM, monthly in advance, together with the payment of Base Rent. After the end of each fiscal year and after receipt by Landlord of all necessary information and computations, Landlord shall furnish Tenant a detailed statement of the actual Operating Costs for the prior fiscal year period; and an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant for Common Area Maintenance Costs (CAM) for the year and Tenant shall receive reimbursement for any overpayments for the year. Any payment adjustment owed by Tenant will be due forthwith. Any refund due the Tenant will be credited against Tenant's monthly Rent obligations. Tenant waives and releases any and all objections or claims relating to CAM payment for any calendar year unless, within 30 days after Landlord provides Tenant with the annual statement of the actual Operating Costs for the calendar year, Tenant provides Landlord notice that it disputes the statement. If Tenant disputes the statement, then Tenant shall continue to pay the Rent in question to Landlord in the amount provided in the disputed statement pending resolution of the dispute. Tenant acknowledges that Operating Costs will be included in a Comprehensive Financial Annual Report prepared by Landlord and made publicly available, and Tenant waives all rights to independently audit or review Landlord's books and records for Operating Costs, except as allowed by applicable law and procedures. The items which make up CAM, at least initially, are set forth in EXHIBIT "L" attached hereto and made a part hereof. Notwithstanding the initial assessment, CAM, shall not exceed \$7 per square foot (\$700.00 per month) nor shall it increase faster than an annual adjustment based on CPI increases.

6. ASSIGNMENT OR SUBLETTING.

6.1 **General.** Tenant may not transfer, directly or indirectly, any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Landlord's prior written consent, which Landlord may withhold on its sole and absolute discretion. Without limiting the generality of the foregoing, Tenant may not sublease, assign, mortgage, encumber, permit the transfer of ownership or control of the business entity comprising Tenant, or permit any portion of the Premises to be occupied by third parties. Consent by Landlord to a transfer shall not relieve Tenant from the obligation to obtain Landlord's consent to any further transfer. Tenant and Guarantor shall remain fully liable for all obligations under this Lease following any such transfer. The joint and several liability of Tenant, Guarantor, and any successor in interest of Tenant (by assignment or otherwise) under this Lease shall not in any way be affected by any agreement that modifies any of the rights or obligations of the parties under this Lease or any waiver of, or failure to enforce, any obligation under this Lease. Tenant shall pay to Landlord, on demand, an administrative fee of \$1,000, plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated therewith. Any transfer by Tenant in violation of this article shall, at Landlord's option, be void. Tenant shall submit in writing to Landlord, not later than 30 days before any anticipated transfer, (a) the name and address of the proposed transferee, (b) a duly executed counterpart of the proposed transfer agreement, (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the space, and (d) banking, financial, or other credit information relating to the proposed transferee reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed transferee. Landlord shall have the sole option, which shall be, exercised by providing Tenant with written notice of terminating the Tenant's rights and obligations under this Lease rather than permitting any assignment or subletting by Tenant to be exercised within 15 Business Days from submission of Tenant's request for Landlord's consent to a specific transfer.

~~6.2 **Consideration for Consent.** Any amounts received by Tenant as a result of any such transfer, assignment or subletting in excess of the Rent then being paid by Tenant to Landlord under this Lease shall be payable by Tenant to Landlord, it being the parties' intention that Landlord, and not Tenant, shall be the party to receive any profit from any assignment or subletting. Upon reasonable notice, Landlord shall have the right to audit Tenant's books and records to determine the amount payable to Landlord under this section.~~

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LANDLORD: _____

TENANT: _____

7. INSURANCE.

7.1 **Tenant's Insurance.** Tenant shall obtain and keep in full force and effect the following insurance coverages: commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form with combined single limits of \$3 million per occurrence; property insurance on the ISO causes of loss—special form, in an amount adequate to cover 100% of the replacement costs, without co-insurance, of all of Tenant's property at the Premises; workers' compensation insurance; plate glass insurance with a deductible of not more than \$250; if alcoholic beverages are served or sold from the Premises, liquor liability insurance in the amount of \$1 million; and such other insurance as may be reasonably required by Landlord. The commercial general liability insurance shall be primary and non-contributing to any insurance otherwise available to Landlord and shall not have any deductibles. Tenant shall comply with all requirements of the Board of Fire Underwriters of Florida any other similar body affecting the Premises and shall not use the Premises in a manner that shall increase the rate of fire insurance or other insurance of Landlord over that in effect during the year before the Commencement Date. If the use of the Premises by Tenant increases any insurance rate concerning the Project, Tenant shall reimburse Landlord for the additional costs.

7.2 **Insurance Requirements.** All insurance policies shall be written with insurance companies and shall have coverage limits acceptable to Landlord and having a policyholder rating of at least "A-" and a financial size category of at least "Class XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies. The commercial general liability insurance policy shall name Landlord and Landlord's managing agent as additional insureds. All policies shall provide that they may not be terminated or modified in any way that would materially decrease the protection afforded Landlord under this Lease without 30 days' advance notice to Landlord. Tenant shall furnish evidence that it maintains all insurance coverages required under this Lease (ACORD 25 for Commercial General Liability and the 2003 edition of ACORD 28 for Property, with copies of declaration pages for each required policy). Coverage amounts for the commercial general liability insurance may be increased after commencement of the fifth full year of the Lease Term, if Landlord shall reasonably determine that an increase is necessary for adequate protection.

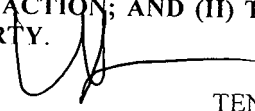
7.3 **Waiver of Subrogation.** Landlord and Tenant each expressly, knowingly, and voluntarily waive and release any claims that they may have against the other or the other's employees, agents, or contractors and against every other tenant in the Project who shall have executed a waiver similar to this one for damage to its property and loss of business (specifically including loss of Rent by Landlord and business interruption by Tenant) as a result of the acts or omissions of the other party or the other party's employees, agents, or contractors (specifically including the negligence of either party or its employees, agents, or contractors and the intentional misconduct of the employees, agents, or contractors of either party), to the extent any such claims are covered by the worker's compensation, employer's liability, property, rental income, business income, or extra expense insurance described in this Lease, or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer concerning the workers' compensation, employer's liability, property, rental income, and business interruption insurance maintained by it for the Project and the property located in the Project. This section shall control over any other provisions of the Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

8. DEFAULT.

8.1 **Events of Default.** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of Rent when due ("**Monetary Default**"); (b) Tenant fails to perform any other obligation under this Lease or the Rules and Regulations or any Guarantor defaults under any guaranty of this Lease and fails to cure such default within thirty days of written notice from Landlord ("**Non-Monetary Default**"); (c) Tenant violates any requirement under the Use article of this Lease; (d) Tenant or any Guarantor or surety for Tenant's obligations under this Lease becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings be taken by or against Tenant or any Guarantor; surety; (e) a receiver or trustee in bankruptcy is appointed for the Tenant's property and the appointment is not vacated and set aside within 60 days from the date of the appointment; (f) Tenant rejects this Lease in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency laws; (g) Tenant ceases to conduct business in the Premises for a period of 15 consecutive days; (h) Tenant, before the expiration of the Lease Term, and without the written consent of Landlord, vacates the Premises or abandons possession of the Premises; (i) the leasehold estate granted to Tenant by this Lease is taken on execution or other legal process; (j) Tenant transfers this Lease in violation of the Assignment or Subletting article; (k) Tenant fails to deliver an estoppel certificate within the time period required by the Estoppel Certificates article of this Lease; (l) Tenant's net worth or stockholder's equity falls below its net worth or stockholder's equity on the Date of this Lease or

other material adverse change occurs in Tenant's financial condition; or (m), if Tenant is a franchisee, Tenant's franchise agreement is terminated.

8.2 **Remedies.** If Tenant defaults, in addition to all remedies provided by law, Landlord may declare the entire balance of all forms of Rent due under this Lease for the remainder of the Lease Term to be forthwith due and payable and may collect the then present value of the Rents (calculated using a discount rate equal to the discount rate of the branch of the Federal Reserve Bank closest to the Premises in effect as of the date of the default). Landlord may draw on the Security Deposit and apply the proceeds thereof to any monetary amounts due from Tenant to Landlord. In addition, Landlord may institute a distress for rent action and obtain a distress writ under Sections 83.11 through 83.19, Florida Statutes. If this Lease is rejected in any bankruptcy proceeding, Rent for the entire month in which the rejection occurs shall be due and payable in full and shall not be prorated. **TENANT EXPRESSLY, KNOWINGLY, AND VOLUNTARILY WAIVES (I) ALL CONSTITUTIONAL, STATUTORY, OR COMMON LAW BONDING REQUIREMENTS, INCLUDING THE REQUIREMENT UNDER SECTION 83.12, FLORIDA STATUTES, THAT LANDLORD FILE A BOND, IT BEING THE INTENTION OF THE PARTIES THAT NO BOND SHALL BE REQUIRED TO BE FILED BY LANDLORD IN ANY DISTRESS ACTION; AND (II) THE RIGHT UNDER SECTION 83.14, FLORIDA STATUTES, TO REPLEVY DISTRAINED PROPERTY.**



TENANT INITIALS

8.3 **Landlord's Right to Perform.** If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money, including reasonable attorneys' fees, the sums so paid or obligations incurred shall be paid by Tenant to Landlord within five days of rendition of a bill or statement to Tenant therefor.

8.4 **Late Charges, Interest, and Bad Checks.** If any payment due Landlord shall not be paid within five days of the date when due, Tenant shall pay, in addition to the payment then due, an administrative charge equal to the greater of (a) 5% of the past due payments, or (b) \$250. All payments due Landlord shall bear interest at the lesser of: (a) 18% per annum, or (b) the highest rate of interest permitted to be charged by applicable law, accruing from the date the obligation arose through the date payment is actually received by Landlord. If any check given to Landlord for any payment is dishonored for any reason whatsoever not attributable to Landlord, in addition to all other remedies available to Landlord, upon demand, Tenant will reimburse Landlord for all insufficient funds, bank, or returned check fees, plus an administrative fee not to exceed the maximum amount prescribed by Section 68.065, Florida Statutes. In addition, Landlord may require all future payments from Tenant to be made by cashier's check from a local bank or by Federal Reserve wire transfer to Landlord's account.

8.5 **Limitations.** None of Landlord's officers, employees, agents, directors, shareholders, partners, members, managers, or affiliates shall ever have any personal liability to Tenant. No person holding Landlord's interest shall have any liability after such person ceases to hold such interest, except for any liability accruing while such person held such interest. **TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT UNDER THIS LEASE, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.** No act or omission of Landlord or its agents shall constitute an actual or constructive eviction of Tenant or a default by Landlord as to any of its obligations under this Lease unless Landlord shall have first received written notice from Tenant of the claimed default and shall have failed to cure it after having been afforded reasonable time in which to do so, which in no event shall be less than 30 days. Further, Tenant waives any claims against Landlord that Tenant does not make in writing within 30 days of the onset of the cause of such claim. Landlord and Tenant each waive all rights (other than rights under the End of Term article) to consequential damages, lost profits, punitive damages, or special damages of any kind.

8.6 **Multiple Defaults.** Tenant acknowledges that, based on Tenant's credit, reputation, and other factors, Landlord has granted Tenant certain special rights that are not generally granted to tenants in the Project, including any rights or options of first refusal, or to extend the Lease Term, to expand or reduce the size of the Premises, to purchase the Premises or the Project, Project signage rights, rights under co-tenancy provisions, performance, rights to "go dark" or cease operations, "kick-out", or early termination clauses or other similar rights or options. Tenant, therefore, acknowledges that those special rights are expressly conditioned on the prompt and diligent performance of the terms of this Lease by Tenant and should Tenant, on two or more occasions during any 12-month period, (a) fail to pay any installment of rent within five days of the due date, or (b) otherwise default under this Lease; in addition to all other remedies available to Landlord, any and all such rights shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect. Should Tenant default under this Lease on

two or more occasions during any 12-month period, in addition to all other remedies available to Landlord, any notice requirements or cure periods otherwise set forth in this Lease for a default by Tenant shall not apply.

8.7 **Security Interest.** Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises including; but not limited to, all fixtures, furniture, inventory, machinery, equipment, merchandise, furnishings and other articles of personal property, and all proceeds of the sale or other disposition of such property (collectively, the "**Collateral**") to secure the payment of all rent to be paid by Tenant pursuant to this Lease. Such lien and security interest shall be in addition to any landlord's lien provided by law. This Lease shall constitute a security agreement under the Uniform Commercial Code, so that Landlord shall have and may enforce a security interest in the Collateral. Tenant authorizes Landlord to file a financing statement or statements and any further documents as Landlord may now or hereafter reasonably require to protect such security interest under such Code. Landlord, as secured party, shall be entitled to all rights and remedies afforded a secured party under such Code, which rights and remedies shall be in addition to Landlord's liens and rights provided by law or by the other terms and provisions of this Lease.

9. ALTERATIONS.

9.1 "**Alterations**" shall mean any alteration, addition, or improvement in or on or to the Premises of any kind or nature, including any improvements made prior to Tenant's occupancy of the Premises. Tenant shall make no Alterations which affect utility services or plumbing and electrical lines or fire suppression or other systems of the Project, are exterior to the Premises, or require other alterations, additions, or improvements to portions of the Project outside the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion ("**Material Alterations**"). Tenant may make non-Material Alterations with Landlord's prior consent which consent shall not be unreasonably withheld. All Alterations shall be performed in accordance with Landlord's Tenant Alterations Rules and Requirements attached to this Lease as **EXHIBIT "F"**. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor's license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor's work schedule, list of all subcontractors, and all building or other governmental permits required for the Alterations shall be delivered to Landlord before commencement of the Alterations. Except as expressly set forth in this Lease, Landlord has made no representation or promise as to the condition of the Premises, Landlord shall not perform any alterations, additions, or improvements in order to make the Premises suitable and ready for occupancy and use by Tenant, and Tenant shall accept possession of the Premises in its then "as-is", "where-is" condition, without representation or warranty of any kind by Landlord. Except for work to be performed by Landlord, before any Alterations are undertaken by or on behalf of Tenant, Tenant shall require any contractor performing work on the Premises to obtain and maintain, at no expense to Landlord, workers' compensation insurance as required by law, builder's risk insurance in the amount of the replacement cost of the applicable Alterations (or such other amount reasonably required by Landlord), and commercial general liability insurance written on an occurrence basis with minimum limits of \$2 million per occurrence limit, \$2 million general aggregate limit, \$2 million personal and advertising limit, and \$2 million products/completed operations limit; which coverage limits may be effected with umbrella coverage (including contractual liability, broad form property damage and contractor's protective liability coverage).

9.2 **LEED Requirements.** The Casino is pursuing a third party certification through the US Green Building Council called Leadership in Energy and Environmental Design (LEED) Certification. The LEED Core and Shell (CS) certification promotes energy and water conservation in addition to providing a healthy indoor environment for all of its occupants. More information on can be found at www.usgbc.org. Attached as **EXHIBIT "G"** are LEED Tenant Guidelines to follow in order to leverage the efforts made in the construction of the Casino Project so you maximize tenant's energy and water savings in conjunction with the City's Sustainable practices and policies. Other helpful resources are listed in the LEED Tenant Guidelines to assist Tenant in creating the improvements to the leased space that would be complimentary to the Casino's environmental commitment.

9.3 **Tenants Use of outside and inside area.** Tenant's use of outside and inside area shall comply with all applicable state and local guidelines and laws. Tenant acknowledges that Florida's extensive coastal development brings with it a high level of artificial beachfront lighting, which can make beaches unsuitable for sea turtle nesting. Artificial beachfront lighting, including lights located on or near beaches and the urban skyglow from intensive inland light, affects both nesting females and hatchlings. Lighting can deter female sea turtles from emerging from the sea to nest and can interfere with sea-finding ability after nesting is completed. Tenant hereby acknowledges the existence of Landlord's light management measures adopted to promote sea turtle nesting habitat. These measures include turning off unnecessary lights during the nesting season; using a smaller number or lower wattage of lights; repositioning, shielding, redirecting, lowering, or recessing fixtures so light does not reach the beach; using timers and motion detector switches; planting native dune vegetation to screen light; and reducing interior lighting by moving lights

from windows, drawing curtains or blinds after dark, and tinting windows. The Casino building lighting has been approved by both the Florida Department of Environmental Protection and the Palm Beach County Department of Environmental Management. Failure to comply with the requirements of the permit will result in heavy fines. Tenant alterations of the approved site lighting are expressly forbidden and any fines will be assessed directly to the responsible party.

10. **LIENS.** The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Section 713.10, Florida Statutes. Tenant represents to Landlord that that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease and that any improvements which may be made by Tenant do not constitute the "pith of the Lease" under applicable Florida case law. If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within ten days after notice to Tenant. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

11. **ACCESS TO PREMISES.** Landlord and persons authorized by Landlord shall have the right, at all reasonable times, to enter and inspect the Premises, to make repairs and alterations Landlord deems necessary, and in the last nine months of the Lease Term to exhibit the Premises to prospective tenants, with reasonable prior notice, except in cases of emergency.

12. **COMMON AREAS.**

12.1 The "**Common Areas**" of the Project include such areas and facilities as delivery facilities, walkways, landscaped and planted areas, and parking facilities and are those areas designated by Landlord for the general use in common of occupants of the Project, including Tenant. Landlord shall provide Common Area restrooms and supplies. The Common Areas shall at all times be subject to the exclusive control and management of Landlord. Landlord may grant third parties specific rights concerning portions of the Common Areas. Landlord may increase, reduce, improve, or otherwise alter the Common Areas, otherwise make improvements, alterations, or additions to the Project, and change the name or number by which the Project is known. Landlord may also temporarily close the Common Areas to make repairs or improvements. In addition, Landlord may temporarily close the Project and preclude access to the Premises in the event of casualty, governmental requirements, the threat of an emergency such as a hurricane or other act of God, for pest extermination, or if Landlord otherwise reasonably deems it necessary in order to prevent damage or injury to person or property. Landlord reserves the right, from time to time, to utilize portions of the Common Areas for entertainment, carnival type shows, rides, outdoor shows, displays, automobile and other product shows, the leasing of kiosks, or other uses that in Landlord's judgment tend to attract the public. Further, the Landlord reserves the right to utilize the lighting standards and other areas of the parking areas for advertising purposes and holiday decorations. This Lease does not create, nor will Tenant have any express or implied easement for, or other rights to, air, light, or view over, from, or about the Project.

12.2 **Tenant** In events sponsored or permitted by the landlord, the tenant shall be reasonably permitted to use some portion of the common area in order to take advantage of increased business opportunities. Permission must be sought and approval granted by the City of Lake Worth in writing.

13. **CASUALTY DAMAGE.** If: (a) the Project shall be so damaged that substantial alteration or reconstruction of the Project shall, in Landlord's opinion, be required (whether or not the Premises shall have been damaged by the casualty), or (b) the Premises shall be partially damaged by casualty during the last two years of the Lease Term, and the estimated cost of repair exceeds 25% of the Base Rent then remaining to be paid by Tenant for the balance of the Lease Term; Landlord may, within 90 days after the casualty, give notice to Tenant of Landlord's election to terminate this Lease, and the balance of the Lease Term shall automatically expire on the fifth day after the notice is delivered. If Landlord does not elect to terminate this Lease, Landlord shall proceed with reasonable diligence to restore the Project and the Premises to substantially the same condition they were in immediately before the happening of the casualty only to the extent of Landlord's Work obligations on the Commencement Date. However, Landlord shall not be required to restore any unleased premises in the Project or any portion of Tenant's property, alterations, or improvements. When repairs to the Premises that are Landlord's obligation under this article have been completed by Landlord, Tenant shall complete the restoration or replacement of the Premises and all of Tenant's Property necessary to permit Tenant's reoccupancy of the Premises. Rent shall abate in proportion to the portion of the Premises not usable by Tenant as a result of any casualty resulting in damage to the Building which is covered by insurance carried or required to be carried by Landlord under this Lease, as of the date on which the Premises becomes unusable. Landlord shall not otherwise be liable to Tenant for any delay in restoring the Premises or any

inconvenience or annoyance to Tenant or injury to Tenant's business resulting in any way from the damage or the repairs, Tenant's sole remedy being the right to an abatement of Rent.

14. **CONDEMNATION.** If the whole or any substantial part of the Premises shall be condemned by eminent domain or acquired by private purchase in lieu of condemnation, this Lease shall terminate on the date on which possession of the Premises is delivered to the condemning authority and Rent shall be apportioned and paid to that date and the Tenant shall be refunded all prepaid rent and security deposits. If no portion of the Premises is taken but a substantial portion of the Project is taken, at Landlord's option, this Lease shall terminate on the date on which possession of such portion of the Project is delivered to the condemning authority and Rent shall be apportioned and paid to that date. If there is a partial condemnation and such partial condemnation materially and adversely affects the operation of the business: the tenant shall have the option of cancelling the lease and receiving a refund of all prepaid monies. Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term, nor shall Tenant be entitled to any part of the condemnation award or private purchase price. If this Lease is not terminated as provided above, Rent shall abate in proportion to the portion of the Premises condemned.

15. **REPAIR AND MAINTENANCE.**

15.1 **Landlord's Obligations.** Landlord shall repair and maintain in good order and condition, ordinary wear and tear excepted, only the roof, the outside walls (excluding storefronts), the structural portions of the Premises (exclusive of structural elements constructed by Tenant), and the portions of the electrical and plumbing systems servicing the Premises which are located outside the exterior boundaries of the Premises. However, unless the Waiver of Subrogation section of this Lease applies, Tenant shall pay the cost of any such repairs or maintenance resulting from acts or omissions of Tenant, its employees, agents, or contractors. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense or to withhold Rent or terminate this Lease based on any alleged failure of Landlord to make repairs. All costs associated with the repair and maintenance obligations of Landlord under this article shall be included in and constitute Operating Costs.

15.2 **Tenant's Obligations.** Except to the extent Landlord is obligated to repair and maintain the Premises as provided in the Landlord's Obligations section of this article, Tenant shall, at its sole cost, repair, replace, and maintain the Premises (including the walls, storefronts, ceilings, and floors in the Premises and electrical, plumbing (including grease traps), mechanical, fire protection, life safety, sprinklers, and HVAC systems servicing the Premises exclusively), in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. Tenant shall not commit or allow to be committed any waste on any portion of the Premises. Tenant shall enter into and maintain an annual maintenance contract with an air conditioning service firm. Tenant shall furnish to Landlord from time to time and upon request of Landlord, a copy of the air conditioning maintenance contract and the yearly service reports from the contractor. If Tenant fails to furnish copies of the air conditioning maintenance contract and yearly service reports to Landlord within 15 days following Landlord's request, Tenant shall pay a late charge of \$5.00 per day for each day that Tenant is delinquent in submitting the required copies, and Tenant agrees that such late charge shall not be considered a penalty. Tenant shall be responsible for any damage to the roof of the Project caused by Tenant's air conditioning maintenance activities.

15.3 **Service Areas.** Tenant shall also maintain the service areas adjacent to the Premises in good repair and in a good, clean, attractive, first-class condition and free from rubbish and dirt at all times and shall store all trash and garbage within the Premises until such time as Tenant has the trash and garbage removed from the Premises. Tenant shall be responsible for placing all its trash and garbage into dumpsters or trash bins without allowing the trash or garbage to spill over onto the ground adjacent to the dumpsters or trash bins. If Tenant does not properly dispose of its trash and garbage, Landlord may have the area cleaned in which event Tenant upon Landlord's demand shall pay all charges incurred by Landlord therefor, plus an administrative charge equal to the greater of \$50 or 20% of the charges incurred by Landlord. These charges shall be considered additional rent and shall be paid to Landlord upon presentation of a bill therefor.

15.4 **Replacement of Improvements.** At any time during the Lease Term after the fifth anniversary of the Commencement Date, and thereafter at any time after the fifth anniversary of the completion of any replacements of improvements under this section, if Landlord determines, in Landlord's sole reasonable discretion, that any leasehold improvements made to the Premises by Landlord or Tenant, as a result of wear, normal depreciation, or any other cause are of a quality which in Landlord's reasonable judgment is not consistent with the level of quality of, or generally prevailing within, the Project, Tenant will cause those improvements to be replaced. Any such worn or depreciated improvements will be replaced with materials and workmanship of a quality at least equal to the original installation for which replacement is made.

15.5 **Food Services.** If Tenant's operations include the services and/or preparation of food and/or beverages, Tenant shall comply with all Health Department and other governmental rules and regulations applicable to Tenant's operations in the Premises and shall promptly (a) furnish or cause to be furnished to Landlord copies of all Health Department and other governmental reports, notices, and citations issued with respect to the Premises, and (b) immediately cure or otherwise eliminate all deficiencies and violations noted by the Health Department and other governmental authorities. Tenant shall sanitize the dumpster designated for its use by Landlord and the area surrounding the dumpster on a regular basis, but no less than once a week. If Tenant does not properly dispose of its refuse, Landlord may have the area cleaned and Tenant shall pay all cleaning charges incurred by Landlord, plus an administrative fee equal to the greater of \$50.00 or 20% of the cleaning charges.

15.6 **Grease Traps.** Landlord shall install, maintain, repair, and replace all grease traps and other equipment necessary to maintain the restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project, but if a discharge should occur, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which Landlord may incur.

15.7 **Exhaust Equipment.** Tenant shall maintain all exhausts, filtering or other devices (the "Exhaust Equipment") so as to prevent odors from emanating from the Premises. Tenant shall design an exhaust system to meet all of Landlord's specifications and Tenant and Landlord engineer's and/or contractors shall confer and agree on design to meet Landlord requirements. Tenant shall continuously operate the Exhaust Equipment during all hours of operation of Tenant's business in the Premises, and shall maintain and repair (or if necessary, replace) the Exhaust Equipment in good working order at all times at Tenant's sole cost. In the event Landlord notifies Tenant in writing that odors are emanating from the Premises, Tenant shall, within three days after notice from Landlord, commence in good faith to install such other reasonable control devices or procedures, at Tenant's cost and expense, as is reasonably required to eliminate such odors within a reasonable time, not to exceed seven days. If Tenant fails to take such action, Landlord may, at its sole discretion (i) cure such failure at Tenant's cost and expense, or (ii) treat such failure to eliminate such odors as a default under this Lease.

15.8 **Dumpster.** Tenant is required to use a City provided dumpster and make arrangements for daily pick up. The rental cost of the dumpster shall be borne by the Tenant. Tenant shall keep the dumpster area and other equipment washing and cleaning area in a clean and sanitary condition.

16. **ESTOPPEL CERTIFICATES.** From time to time, Tenant, on not less than five days' prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to Landlord and any mortgagee or prospective mortgagee or purchaser of the Project. Tenant shall indemnify, defend, and hold Landlord harmless from all damages resulting from Tenant's failure to comply strictly with its obligations under this article. Landlord will be held to same requirement.

17. **SUBORDINATION.** This Lease is and shall be subject and subordinate to all mortgages and ground leases that may now or hereafter affect the Building, and to all renewals, modifications, consolidations, replacements, and extensions of the leases and mortgages. This article shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute promptly any certificate that Landlord may request. If any ground or underlying lease is terminated, or if the interest of Landlord under this Lease is transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution for the mortgage, or if this Lease is terminated by termination of any lease or by foreclosure of any mortgage to which this Lease is or may be subordinate, then Tenant will, at the option to be exercised in writing by the landlord under any ground or underlying lease or the purchaser, assignee, or tenant, as the case may be (a) attorn to it and will perform for its benefit all the terms, covenants, and conditions of this Lease on Tenant's part to be performed with the same force and effect as if the landlord or the purchaser, assignee, or tenant were the landlord originally named in this Lease, or (b) enter into a new lease with the landlord or the purchaser, assignee, or tenant for the remainder of the Lease Term and otherwise on the same terms, conditions, and rents as provided in this Lease.

18. **INDEMNIFICATION.** To the fullest extent permitted by law, Landlord and Tenant shall each indemnify, defend, and save harmless the other party and the other party's employees, agents, and contractors (the "Indemnified Parties") from and against any and all loss, damage, claim, demand, liability, or expense (including reasonable attorneys' fees) resulting from claims by third parties and based on any acts or omissions (specifically including negligence and the failure to comply with this Lease) of the indemnitor, its employees, agents, and contractors in connection with the Project, but only to the extent caused in whole or in part by acts or omissions of the indemnitor, its employees, agents, and contractors, regardless of whether or not the claim is caused in part by

any of the Indemnified Parties. This Indemnification article shall not be construed to restrict, limit, or modify either party's insurance obligations under this Lease and shall not be deemed a waiver of any rights of sovereign immunity that Landlord may have under applicable law. Either party's compliance with the insurance requirements under this Lease shall not restrict, limit, or modify that party's obligations under this Indemnification article.

19. **NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances. The receipt by Landlord of any Rent after default on the part of Tenant (whether the Rent is due before or after the default) shall not excuse any delays as to future Rent payments and shall not be deemed to operate as a waiver of any then existing default by Tenant or of the right of Landlord to enforce the payment of any other Rent reserved in this Lease or to pursue eviction or any other remedies available to Landlord. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent actually owed under the terms of this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated Rent. No endorsement or statement on any check or any letter accompanying any check or payment of Rent will be deemed an accord and satisfaction. Landlord may accept the check or payment without prejudice to Landlord's right to recover the balance of the Rent or to pursue any other remedy. It is the intention of the parties that this article modify the common law rules of waiver and estoppel and the provisions of any statute which might dictate a contrary result.

20. **SERVICES AND UTILITIES.**

20.1 **Services Furnished.** Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for and shall promptly pay all charges for water, electricity, or any other utility used or consumed in the Premises, including all costs associated with the provision of separate meters for the Premises. Tenant shall contract directly with the local utility providers for such services. Tenant shall be responsible for repairs and maintenance to exit lighting, emergency lighting, and fire extinguishers for the Premises, and for interior janitorial, pest control, and waste removal services. Landlord may at any time change the electrical utility provider for the Building. Tenant's use of electrical and heating, water, ventilating, and air conditioning services furnished by Landlord shall not exceed, either in voltage, rated capacity, use, or overall load, that which Landlord deems to be standard for the Building, and, if required by Landlord, all costs associated with the additional usage and the installation and maintenance of facilities for the additional usage, including separate submetering, shall be paid by Tenant as additional rent. Tenant may be required, upon request of Landlord, to provide Tenant's energy consumption data to Landlord in reasonable format required by Landlord.

20.2 **Interruption of Services.** In no event shall Landlord be liable for damages resulting from the failure to furnish HVAC, water, electric, or other service, unless caused by the negligence or intentional acts of Landlord, and any interruption or failure shall in no manner constitute an eviction of Tenant or entitle Tenant to abatement of any Rent due under this Lease.

21. **SECURITY DEPOSIT.** The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of this Lease including the payment of Rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord and Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant. If Landlord so applies the Security Deposit, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five days after notice from Landlord. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant. If Tenant fully and faithfully complies with all of the terms, covenants, and conditions of this Lease, any part of the Security Deposit not used or retained by Landlord under the terms of this Lease shall be returned to Tenant within 45 days after the expiration of the Lease Term and after Tenant's delivery of possession of the Premises to Landlord. However, if at the expiration of the Lease Term there are any amounts that may be due from Tenant that have not yet been finally determined (for example, Rent for Operating Costs for the year in which the Lease Term expires) then Landlord may estimate the amounts which will be owed and deduct them from the Security Deposit. When the actual amounts are finally determined, an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant and Tenant shall receive reimbursement for any overpayments.

22. **GOVERNMENTAL REGULATIONS.** Tenant shall promptly comply with all laws, codes, and ordinances of governmental authorities pertaining to Tenant or its use of the Premises and activities on or about the Project, including the Americans with Disabilities Act of 1990 ("ADA") and all applicable environmental laws. If Tenant's operations require the ongoing use of

hazardous or toxic substances, then Tenant shall supply Landlord with copies of reports and any other monitoring information required by applicable laws. Tenant agrees to pay, and shall indemnify, defend, and hold Landlord harmless from and against, any and all losses, claims, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred by Landlord as a result of any breach by Tenant of its obligations under this article, and as a result of any contamination of the Premises because of Tenant's use of hazardous or toxic substances on the Premises. Tenant shall obtain all licenses and permits from time to time required to enable Tenant to conduct its business under this Lease. No failure of Tenant to obtain or maintain any licenses or permits, or extensions or renewals of them, shall release Tenant from the performance and observance of Tenant's obligations under this Lease.

23. SIGNS.

23.1 **Landlord's Consent Required.** Tenant will not place or permit to be placed or maintained on any portion of the Project, including on any exterior door, wall, or window of the Premises, or within the interior of the Premises, if visible from the exterior of the Premises, any signage or advertising matter of any kind, without first obtaining Landlord's written approval and consent, which may be withheld in Landlord's sole discretion. All signage shall comply with applicable governmental regulations and restrictions affecting the Project.

23.2 **Building Standard Signage.** Prior to the Commencement Date, Tenant shall erect an exterior sign in conformance with Landlord's Building standard signage within the area designated by Landlord, which sign shall be subject to the prior written approval of Landlord and the Sign Criteria, **EXHIBIT "J"**. If Landlord redevelops or remodels the Project, Landlord may require Tenant, at Tenant's expense, to install new signs in conformity with signage standards established by Landlord or to remodel the storefront of the Premises, or both.

23.3 **Exterior Alterations.** Any signs or other exterior Alterations, including awnings, canopies, decorations, lettering, advertising matters, or other things as may be approved by Landlord shall be maintained by Tenant in good condition and repair at all times and shall conform to the criteria established from time to time by Landlord for the Project. Upon the expiration or sooner termination of this Lease, if Landlord shall so elect, Tenant at its own expense shall remove all signs and restore the exterior of Premises to its original condition. This obligation of Tenant shall survive the expiration or sooner termination of this Lease.

24. **BROKER.** Tenant represents and warrants that it neither consulted nor negotiated with any broker or finder regarding the Premises, except the Landlord's Broker and Tenant's Broker. Landlord shall indemnify, defend, and hold Tenant harmless from and against any claims for commissions from the Landlord's Broker and Tenant's Broker. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims for commissions from any real estate broker other than the Landlord's Broker and the Tenant's Broker with whom it has dealt in connection with this Lease.

25. **END OF TERM/HOLDOVER.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, broom-clean, except for reasonable wear and tear. Tenant shall be liable to Landlord for all damages, including any consequential damages and holdover rent in accordance with state law, that Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify, defend, and save Landlord harmless against all costs, claims, loss, or liability resulting from delay by Tenant in so surrendering the Premises, including any claims made by any succeeding tenant founded on any delay. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. Tenant, at its expense, shall remove from the Premises all of Tenant's personal property, all computer and telecommunications wiring, and all Alterations that Landlord designates by notice to Tenant. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease Term, may, at the option of Landlord, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without accountability to Tenant or any other party, in the manner Landlord shall determine, at Tenant's expense. "**Tenant's Property**" shall mean all moveable personal property, machinery, furniture, and equipment, including moveable trade fixtures, that are installed in the Premises by or for the account of Tenant without expense to Landlord and that can be removed without damage to the Premises or the Project.

26. **ATTORNEYS' FEES.** The prevailing party in any litigation arising out of or in any manner relating to this Lease, including the declaration of any rights or obligations under this Lease, shall be entitled to recover from the losing party reasonable attorneys' fees and costs. In addition, if Landlord becomes a party to any suit or proceeding affecting the Premises or involving this Lease or Tenant's interest under this Lease, other than a suit between Landlord and Tenant, or if Landlord engages counsel to collect any of the amounts owed under this Lease, or to enforce performance of any of the agreements, conditions, covenants, provisions, or

stipulations of this Lease, without commencing litigation, then the costs, expenses, and reasonable attorneys' fees and disbursements incurred by Landlord shall be paid to Landlord by Tenant.

27. **NOTICES.** Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved.

28. **IMPOSSIBILITY OF PERFORMANCE.** For purposes of this Lease, the term "Unavoidable Delay" shall mean any delays due to strikes, lockouts, civil commotion, war or warlike operations, acts of terrorism, acts of a public enemy, acts of bioterrorism, epidemics, quarantines, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, or other natural disasters, acts of God, or any other cause beyond the direct control of the party delayed. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Unavoidable Delay, then provided notice of the Unavoidable Delay is given to the other party within ten days after its occurrence, performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of the delay. The provisions of this article shall not operate to excuse Tenant from the payment of Rent or from surrendering the Premises at the end of the Lease Term, and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds or the increased cost of obtaining labor and materials shall not be deemed delays beyond the direct control of a party.

29. **FINANCIAL REPORTING.** Within 15 days after a request from Landlord, Tenant shall furnish to Landlord a balance sheet of Tenant (and, if applicable, the Guarantor) as of the end of the most recently ended fiscal year of Tenant and a statement of income and expense for the year then ended, together with a certificate of the chief financial officer of Tenant to the effect that the financial statements have been prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial condition and results of operations of Tenant (and, if applicable, the Guarantor) as of and for the period covered. In addition (unless Tenant is paying Percentage Rent, in which case the reporting and audit provisions of the Percentage Rent article shall apply), by February 15 of each year during the Term, Tenant shall furnish to Landlord a complete statement, similarly certified, showing in all reasonable detail the amount of gross sales made by Tenant from the Premises during the preceding year. Gross sales shall mean the aggregate of Tenant's receipts of every nature relating to the Premises that are received directly or indirectly through an affiliated or related entity, including, but not limited to, all sales and rentals made by Tenant of all goods, wares, merchandise, meals, food, food stuffs, and beverages sold and all services performed by Tenant in, at, or from the Premises, whether for cash, credit, by gift certificate redeemed at the Premises, or other consideration. Any failure of Tenant to timely provide Landlord with any of the statements of Gross Sales required under this section shall be deemed a default under this Lease, and (a) Tenant shall pay a late charge of \$25.00 per day for each day that Tenant is delinquent in submitting each statement, and Tenant agrees that such late charge shall not be considered a penalty, and (b) Landlord shall be entitled, without prior notice to Tenant, to conduct an audit of Tenant's books for the purpose of determining Gross Sales for the period or periods during which Tenant has failed to supply Landlord with statements, with the cost and expense thereof to be paid by Tenant, together with an administrative fee of \$500.00.

30. **ADVERTISING.**

30.1 **Advertised Name and Address.** Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises and Tenant shall not acquire any property right in or to any name which contains the name of the Project as a part of the name. Tenant shall not use the name of Landlord in any advertisement or otherwise, unless permitted by Landlord in writing. Tenant shall use in its advertising and promotional activities for its business in the Premises such references to the name of the Project and such identifying lettering, logos, marks, or symbols referring to the Project as Landlord shall specify from time to time. Tenant shall include the name of the Project in its address. Notwithstanding the foregoing, Landlord shall have the right to prohibit the use by Tenant of the name, marks, and symbols of the Project in any manner determined to be unacceptable to Landlord in its sole discretion.

30.2 **Trademark License.** During the Lease Term, Tenant grants Landlord a non-exclusive and royalty-free license and limited right to use Tenant's trade names, trademarks, logos, and designs in the printing, publication, and distribution of promotional newsletters, advertisements, marketing brochures, and other materials (the "Marketing Materials") by Landlord and related entities.

31. **MOLD.** Tenant is advised that mold and/or other microscopic organisms (“**Mold Conditions**”) are prevalent in Florida’s humid climate and locations, especially in proximity to bodies of water. Mold Conditions may cause allergic reactions, respiratory reactions or other problems, particularly in persons with immune system problems, young children and elderly persons. Tenant acknowledges that it is fully responsible to maintain the proper operation of the HVAC system in the Premises at all times during the Lease Term to inhibit Mold Conditions. Tenant shall ensure property maintenance of the Premises to limit the accumulation of water and excessive moisture inside the Premises. Tenant shall notify Landlord immediately of any water intrusion conditions arising within the Premises. TENANT ACKNOWLEDGES THE FOREGOING, AND AGREES TO ACCEPT FULL RESPONSIBILITY FOR ANY AND ALL RISKS RELATED TO MOLD CONDITIONS IN THE PREMISES. TENANT AGREES TO RELEASE, HOLD HARMLESS AND INDEMNIFY LANDLORD, LANDLORD’S OFFICERS, AGENTS, EMPLOYEES, AND SUCCESSORS FROM ANY AND ALL LIABILITY OR DAMAGES, WHETHER FINANCIAL OR OTHERWISE, ARISING FROM OR RELATED TO MOLD CONDITIONS IN THE PREMISES.

32. **GENERAL PROVISIONS.**

32.1 **Construction Principles.** The words “including” and “include” and similar words will not be construed restrictively to limit or exclude other items not listed. This Lease has been negotiated “at arm’s-length” by Landlord and Tenant, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease. Therefore, this Lease shall not be more strictly construed against either party by reason of the fact that one party may have drafted this Lease. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. This Lease shall constitute the entire agreement of the parties concerning the matters covered by this Lease. All prior understandings and agreements had between the parties concerning those matters, including all preliminary negotiations, lease proposals, letters of intent, and similar documents, are merged into this Lease, which alone fully and completely expresses the understanding of the parties. Landlord and Tenant intend that faxed or PDF format signatures constitute original signatures binding on the parties. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease.

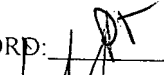
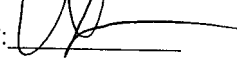
32.2 **No Representations by Landlord.** Neither Landlord nor Landlord’s agents have made any representations or promises concerning the physical condition of the Project or the Premises, Tenant’s ability to use the Premises for the uses permitted under this Lease, the area of the Premises or the manner of calculating such area, anticipated Operating Costs, or any other matter affecting or relating to the Premises, except as expressly set forth in this Lease and no rights, easements, or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in this Lease.

32.3 **Radon Gas.** The following notification is provided under Section 404.056(6), Florida Statutes: “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 county health department.”

32.4 **Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:

- EXHIBIT “A” – Legal Description of the Project
- EXHIBIT “B” – Sketch of Premises
- EXHIBIT “C” – Guaranty
- EXHIBIT “D” – Rules and Regulations
- EXHIBIT “E” – Tenant Improvements
- EXHIBIT “E-1” – Landlord’s Work Schedule
- EXHIBIT “F” – Tenant Alteration Requirements
- EXHIBIT “G” – LEED Tenant Guidelines
- EXHIBIT “H” – Special Requirements
- EXHIBIT “I” – Commencement Date Letter
- EXHIBIT “J” – Sign Criteria
- EXHIBIT “K” – Restricted Uses
- EXHIBIT “L” – Letter of Credit

33. **JURY WAIVER; COUNTERCLAIMS; VENUE.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. TENANT FURTHER WAIVES THE RIGHT TO INTERPOSE ANY NON-COMPULSORY COUNTERCLAIM OF ANY NATURE IN ANY ACTION TO OBTAIN POSSESSION OF THE PREMISES. THIS AGREEMENT SHALL BE CONSTRUED BY AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA. ANY AND ALL LEGAL ACTION NECESSARY TO ENFORCE THE AGREEMENT WILL BE HELD IN PALM BEACH COUNTY. NO REMEDY HEREIN CONFERRED UPON ANY PARTY IS INTENDED TO BE EXCLUSIVE OF ANY OTHER REMEDY, AND EACH AND EVERY SUCH REMEDY SHALL BE CUMULATIVE AND SHALL BE IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXISTING AT LAW OR IN EQUITY OR BY STATUTE OR OTHERWISE. NO SINGLE OR PARTIAL EXERCISE BY ANY PARTY OF ANY RIGHT, POWER, OR REMEDY HEREUNDER SHALL PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF.

LANDLORD: 
TENANT: 

34. **SDN COMPLIANCE.** Tenant hereby represents, warrants and certifies that neither (i) Tenant, nor (ii) any of persons or entities that control or are controlled by Tenant (each a “**Tenant Party**”), has been, is currently, or at any time in the future shall be listed on the Specially Designated National list (“**SDN List**”) maintained by the United States Department of the Treasury Office of Foreign Assets Control (“**OFAC**”). At its option, Landlord shall have the right to immediately terminate this Lease if any Tenant Party becomes listed on the SDN List.

35. IN WITNESS WHEREOF, this lease has been executed on behalf of landlord and tenant as of the date of this lease.

[SIGNATURES ON FOLLOWING PAGE]

REVIEWED AND APPROVED FOR EXECUTION

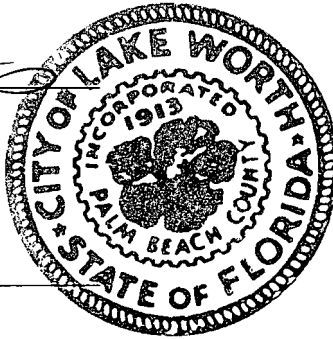
By: [Signature]
Steven J. Carr, Acting City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
Elaine A. Humphreys, City Attorney

ATTEST:

By: [Signature]
Pamela J. Lopez, City Clerk



[Signature]
Signature of Witness 1

Danielle Imbrey
Print or type name of Witness 1

[Signature]
Signature of Witness 2

Shannon Emmel
Print or type name of Witness 2

LANDLORD:

CITY OF LAKE WORTH,
a municipal corporation under the laws of the
State of Florida

By: [Signature]
Pam Triolo, Mayor

Date Executed: 2/23/12

TENANT:

Mamma Mia's on the Beach, Inc
a Florida Corporation

By: [Signature]
Name: VINCENT LO GRASSY
Title: pres.

[CORPORATE SEAL]

Date Executed: 2/23/2012

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROJECT

Lake Worth Casino Building located at 10 South Ocean Boulevard, Florida, 33460

Exhibit B.

REG
 REGISTERED ARCHITECTS
 ALABAMA
 INCORPORATED



BOY CONZALEZ, ALA
 PRESIDENT - CIVIL
 1000 W. UNIVERSITY BLVD
 SUITE 100
 FLORENCE, ALABAMA 36633
 PH: (205) 653-3311
 FAX: (205) 653-3316
 www.boyconzalez.com
 CORPORATION NUMBER
 14002441

LAKE WORTH CASINO
 Jewel of the
 Gulf Coast

1000 W. UNIVERSITY BLVD
 LAKE WORTH, FL 33460

NO.	0515201
DATE	05/15/2011
SCALE	1/8" = 1'-0"
DRAWN	REVISED
CHECKED	MADE
DESIGN	DATE
NO.	0515201

FIRST FLOOR
 PLAN (SOUTH)

1000 W. UNIVERSITY BLVD
 LAKE WORTH, FL 33460
A-1.02

NO.	DESCRIPTION	DATE
1	FOUNDATION	05/15/2011
2	WALLS	05/15/2011
3	FLOORING	05/15/2011
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50	MECHANICAL	05/15/2011

WALL TYPES NOTES

1. WALL TYPES - SEE PLAN AND SECTION FOR WALL TYPES AND FINISHES.

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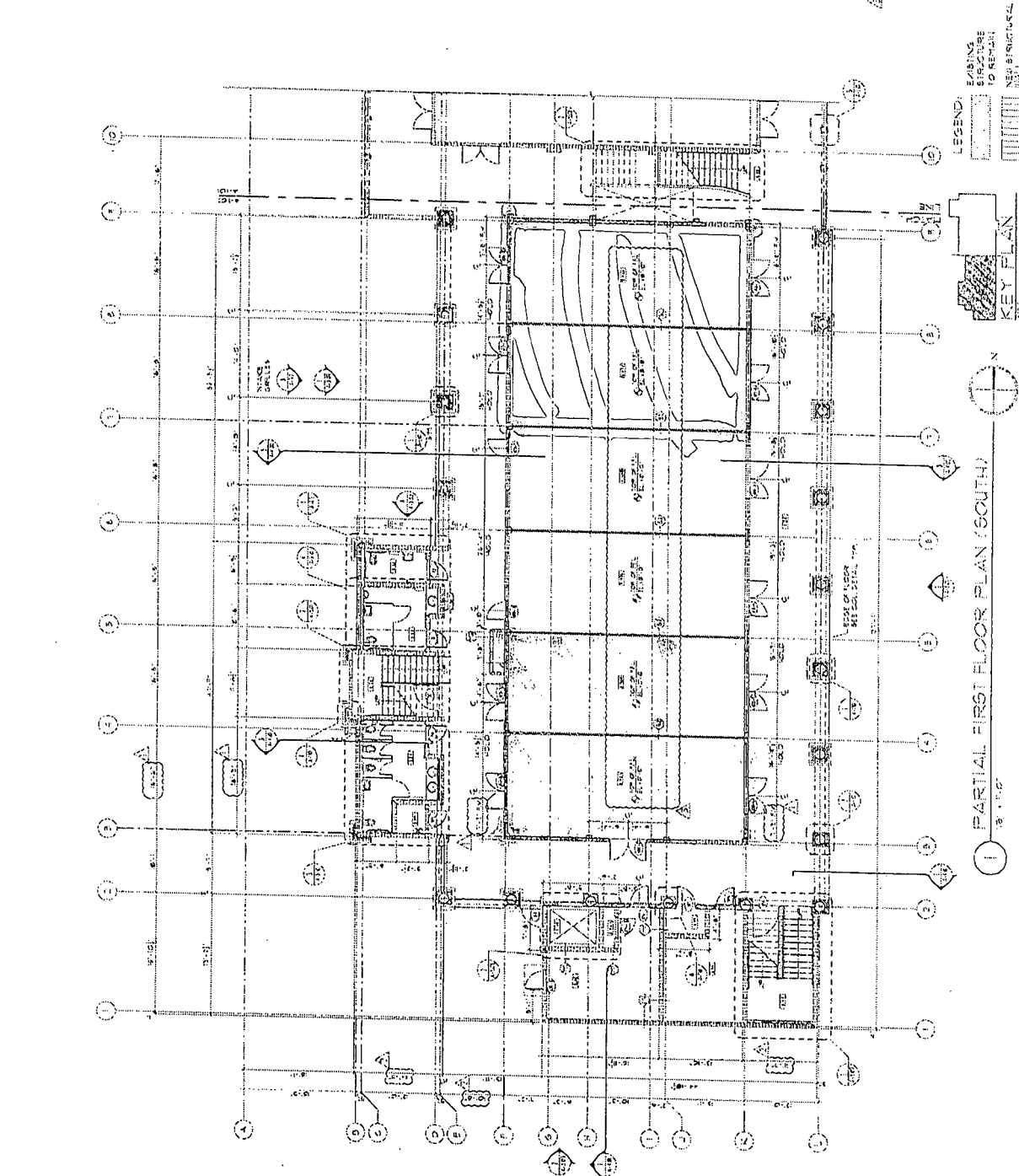
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1 PARTIAL FIRST FLOOR PLAN (SOUTH)

LEGEND:
 EXISTING STRUCTURE TO REMAIN
 NEW STRUCTURAL WALL

KEY PLAN

EXHIBIT "D"

RULES AND REGULATIONS

1. The sidewalks and public portions of the Project, such as entrances, passages, courts, parking areas, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by Tenant or its employees, agents, invitees, or guests nor shall they be used for any purpose other than ingress and egress to and from the Premises. Tenant shall not conduct any business, loading or unloading, assembling, or any other work connected with Tenant's business on any portion of the Common Areas or in any other area of the Project outside the confines of the Premises. Tenant shall not sell or display merchandise on, or otherwise obstruct, the Common Areas or any other area of the Project outside the confines of the Premises.

2. No awnings or other projections shall be attached to the outside walls of the Project. No curtains, blinds, shades, louvered openings, or screens or anything else which may be visible from outside the Building shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of Landlord. No aerial or antenna shall be erected on the roof or exterior walls of the Premises or in the Project.

3. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by Tenant on any part of the outside of the Premises or Project or on corridor walls or doors or mounted on the inside of any windows without the prior written consent of Landlord. Signs on any entrance door or doors shall conform to Project standards and shall, at Tenant's expense, be inscribed, painted, or affixed for Tenant by sign makers approved by Landlord.

4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in the public halls, corridors, or vestibules without the prior written consent of Landlord.


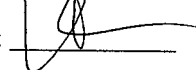
5. Whenever Tenant shall submit to Landlord any plan, agreement, assignment, sublease, or other document for Landlord's consent or approval, Tenant shall reimburse Landlord, on demand, for the actual out-of-pocket costs for the services of any architect, engineer, or attorney employed by Landlord to review or prepare the plan, agreement, assignment, sublease, consent, or other document.

6. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown in them. All damages resulting from any misuse of fixtures shall be borne by the Tenant who, or whose employees, agents, invitees, or guests, shall have caused the damages.


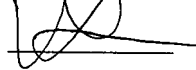
7. No animals of any kind (except dogs assisting disabled persons) shall be brought on the Premises or Project.

8. Unless the Permitted Use includes food service uses, no cooking shall be done or permitted by Tenant on the Premises. Except for standard residential type refrigerator and microwave oven, no refrigeration or heating equipment may be placed inside the Premises without the prior written consent of Landlord in each instance. Tenant shall not cause or permit any unusual or objectionable odors to be produced on or permeate from the Premises.

9. Prohibited Disposable Food Service Ware: Food Vendors, Restaurants and any other vendor may not sell Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

LANDLORD: 
TENANT: 

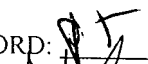
10. Required Biodegradable/Compostable Disposable Food Service Ware: All Food Vendors using any Disposable Food Service Ware shall use a suitable, affordable alternative Biodegradable/Compostable product to containers made from Polystyrene Foam. The city will assist the vendors by providing a list of potential products. However, it is the responsibility of the Food Vendor to locate a suitable alternative. A number of other cities around the world including San Francisco and Berkeley have successfully banned Styrofoam so there are plenty of commercially viable alternatives.

LANDLORD: 
TENANT: 

11. Plastic Bags: In the City of Lake Worth Contract with the vendors at the Beach, this section requires the use of recyclable paper, compostable and/or reusable checkout bags. The goal is to reduce litter of plastic bags that kill over 100,000 marine animals a year and create a nuisance to our residents by being both unsightly and creating a potential biohazard.

11.1 All Stores shall provide recyclable Bags, compostable bags and/or reusable bags.

11.2 Definitions: "Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag and (4) should contain post consumer discarded waste.

LANDLORD: 

TENANT: 

12. Tenant shall not make or permit to be made any unseemly or disturbing noises, or electromagnetic, radio or television interference, or disturb or interfere with occupants of the Project or neighboring premises or those having business with them, or interfere with equipment of Landlord or occupants of the Project, whether by the use of any musical instrument, radio, television, machines or equipment, unmusical noise, or in any other way, including use of any wireless device or equipment. Tenant shall not use any advertising medium such as loud speakers, sound amplifiers, or radio or television broadcasts in a manner which may be heard outside the Premises.

13. Neither Tenant nor any of Tenant's employees, agents, invitees, or guests shall at any time bring or keep on the Premises any firearms, inflammable, combustible, or explosive substance or any chemical substance, other than reasonable amounts of cleaning fluids and solvents required in the normal operation of Tenant's business, all of which shall only be used in strict compliance with all applicable environmental laws.

14. Landlord shall have a valid pass key to all spaces within the Premises at all times during the Lease Term. No additional locks or bolts of any kind shall be placed on any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism of the locks, without the prior written consent of the Landlord and unless and until a duplicate key is delivered to Landlord. Tenant must, on the termination of its tenancy, restore to the Landlord all keys to stores, offices, and toilet rooms, either furnished to or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay Landlord for the replacement cost of them.

15. Tenant shall not create or use any advertising mentioning or exhibiting any likeness of the Project without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising that, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability as a retail center, and on notice from Landlord, Tenant shall discontinue the advertising.

16. The Premises shall not be used for lodging or sleeping, or for any immoral, disreputable, or illegal purposes, or for any purpose that may be dangerous to life, limb, or property.

17. Canvassing, soliciting, and peddling within the Project or in the Common Areas is prohibited and Tenant shall cooperate to prevent such activities.

18. Tenant, its employees, agents, contractors, and invitees shall park their vehicles only in the portion of the parking areas and roadways of the Project designated by Landlord. Usage of parking spaces shall be in common with all other tenants of the Project and their employees, agents, contractors, and invitees. All parking space usage shall be subject to any reasonable rules and regulations for the sale and proper use of parking spaces that Landlord may prescribe. Tenant's employees, agents, contractors, and invitees shall abide by all posted roadway signs in and about the parking facilities. Landlord shall have the right to tow or otherwise remove vehicles of Tenant and its employees, agents, contractors, or invitees that are improperly parked, blocking ingress or egress lanes, or violating parking rules, at the expense of Tenant or the owner of the vehicle, or both, and without liability to Landlord. Upon request by Landlord, Tenant shall furnish Landlord with the license numbers and descriptions of any vehicles of Tenant, its principals,

employees, agents, and contractors. Landlord reserves the right to charge Tenant an administrative fee of \$50.00 per violation of the foregoing rules.

19. ~~Tenant shall not go upon the roof of the Project without the written consent of Landlord.~~ Any roof opening or other work on the roof required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include, as required, supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening or other work request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

LANDLORD: _____
TENANT: _____

20. Tenant shall secure and keep in effect an effective pest control contract providing for periodic inspection and treatment for roaches, insects, rodents, termites, and other pests. If Tenant violates this requirement, Landlord may provide pest control and bill Tenant the costs therefor.

21. Tenant shall not conduct any auction, fire, "going out of business," or bankruptcy sales.

22. All trucks and delivery vans shall be parked in designated areas only and not parked in spaces reserved for cars. All delivery service doors are to remain closed except during the time that deliveries, garbage removal, or other approved uses are taking place. All loading and unloading of goods shall be done only at the times, in the areas, and through the entrances designated for loading purposes by Landlord. Tenant shall assume all liability and risk concerning these movements.

23. Tenant shall be responsible for the removal and proper disposition of all crates, oversized trash, boxes, and items of garbage from the Premises. The corridors and parking and delivery areas are to be kept clear of these items.

24. Landlord shall not be responsible or liable for lost or stolen personal property, equipment, or money occurring anywhere in the Project, regardless of how or when the loss occurs.

25. Tenant shall give Landlord prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electric facilities, or any part or appurtenance of the Premises.

26. Tenant agrees and fully understands that the overall aesthetic appearance of the Project is of paramount importance; thus Landlord shall maintain complete aesthetic control over any and every portion of the Premises visible from outside the Premises in Landlord's sole and absolute discretion. Landlord will notify Tenant in writing of any aesthetic deficiencies and Tenant will have seven days to correct the deficiencies to Landlord's satisfaction or Tenant shall be in default of this Lease and the Default article shall apply.

27. Tenant shall not install, operate, or maintain in the Premises or in any other area, any electrical equipment that does not bear the U/L (Underwriters Laboratories) seal of approval, or that would overload the electrical system or any part of the system beyond its capacity for proper, efficient, and safe operation as determined by Landlord, taking into consideration the overall electrical system and the present and future requirements therefor in the Project. Tenant shall not furnish any cooling or heating to the Premises, including the use of any electronic or gas heating devices, without Landlord's prior written consent.

28. Landlord may, on request by any tenant, waive compliance by the tenant with any of the Rules and Regulations provided that (a) no waiver shall be effective unless in writing and signed by Landlord or Landlord's authorized agent, (b) a waiver shall not relieve the tenant from the obligation to comply with the rule or regulation in the future unless expressly consented to by Landlord, and (c) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the Rules and Regulations unless the other tenant has received a similar waiver in writing from Landlord.

29. Tenant will take all steps necessary to prevent: inadequate ventilation, emission of chemical contaminants from indoor or outdoor sources, or both, or emission of biological contaminants. Tenant will not allow any unsafe levels of chemical or biological contaminants (including volatile organic compounds) in the Premises, and will take all steps necessary to prevent the release of contaminants from adhesives (for example, upholstery, wallpaper, carpet, machinery, supplies, and cleaning agents).

30. Tenant shall comply with any recycling programs for the Project implemented by Landlord from time to time.
31. Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot area that such floor was designed to carry. Landlord reserves the right to prescribe the weight limitations and position of all heavy equipment and similar items, and to prescribe the reinforcing necessary, if any, that in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's expense.
32. All contractors performing work to the structure or systems of the Project must be approved by Landlord.
33. The Project is a smoke-free environment and smoking is not permitted on the Premises or within 25 feet of any entrance to the Project.
34. Landlord reserves the right to grant or deny access to the Project to any telecommunications service provider. Access to the Project by any telecommunications service provider (unless through Landlord's current Building telecommunications provider's lines) shall be governed by the terms of Landlord's standard telecommunications license agreement, which must be executed and delivered to Landlord by such provider before it is allowed any access whatsoever to the Project.
35. No vinyl wall covering may be installed on any interior side of any wall which comprises an exterior wall of the Building, unless the wall covering was manufactured using a micro-venting procedure having no less than 140 needle/venting holes per square inch, and Tenant shall provide a letter from the wall covering manufacturer confirming such process.
36. Whenever these Rules and Regulations directly conflict with any of the rights or obligations of Tenant under this Lease, this Lease shall govern.

EXHIBIT "E"

TENANT IMPROVEMENTS

As-Is

1. **Landlord's Work.** Landlord shall perform the work described in **EXHIBIT "E-1"**, Landlord's Work Schedule, in a good and workmanlike manner, using Building Standard materials and in accordance with all applicable governmental and legal requirements, at Landlord's sole cost and expense ("**Landlord's Work**"). Other than as set forth in the preceding sentence, Landlord has made no representation or promise as to the condition of the Premises. "Building Standard" shall mean the type, brand, grade, or quality of materials Landlord designates from time to time to be the minimum quality to be used in the Project or, as the case may be, the exclusive type, brand, grade, or quality of material to be used in the Project. On the Commencement Date, Tenant shall be deemed to have inspected the Premises and be fully familiar with the physical condition of the Premises, and shall accept the Premises in its then existing "as-is," "where-is" condition. Landlord shall not perform any work other than the Landlord's Work and shall not perform any work as to any portions of the Premises not specifically addressed in the description of the Landlord's Work. Landlord warrants that the Landlord's Work shall be free from defects in materials and workmanship for a period of one year from the Commencement Date. Landlord shall correct any defects to Landlord's Work reported to it within the one-year warranty period. Landlord has made no other warranty, express or implied, or representation as to fitness or suitability. Except under the express warranty provided in this paragraph, Landlord shall not be liable for any latent or patent defect in the Premises, or any costs or expenses related in any way to the Tenant's Work.

2. **Tenant's Work.** Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "**Tenant's Work or Improvements**"). Within 90 days after the Date of the Lease, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "**Plans**"). The Plans shall include the following: fully dimensioned architectural plan; electric/telephone outlet diagram; reflective ceiling plan with light switches; mechanical plan; furniture plan; electric power circuitry diagram; plumbing plans; all color and finish selections; all special equipment and fixture specifications; and fire sprinkler design drawings. Tenant shall submit the approved Plans to applicable building authorities for permit within five days following Landlord's approval and Tenant shall thereafter diligently pursue obtaining its building permits. The Plans will be prepared by a licensed architect and the electrical and mechanical plans will be prepared by a licensed professional engineer. The Plans shall be produced on CAD. The architect and engineer will be subject to Landlord's approval, which shall not be unreasonably withheld. The Plans shall comply with all applicable laws, ordinances, directives, rules, regulations, and other requirements imposed by any and all governmental authorities having or asserting jurisdiction over the Premises. Landlord shall review the Plans and either approve or disapprove them within a reasonable period of time. Should Landlord disapprove them, Tenant shall make any necessary modifications and resubmit the Plans to Landlord in final form within ten days following receipt of Landlord's disapproval of them. Tenant shall thereafter diligently pursue obtaining its building permits for the Tenant's Work.

The Tenant's Work shall be constructed by a general contractor selected and paid by Tenant and approved by Landlord. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor's license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor's work schedule, list of all subcontractors, and all building or other governmental permits required for the Tenant's Work shall be delivered to Landlord before commencement of the Tenant's Work. Tenant shall cause the Tenant's Work to be completed promptly and with due diligence. Unless approved by Landlord in its sole discretion, Tenant shall not have access to the Premises for the commencement of the Tenant's Work until Landlord has delivered the Premises to Tenant with a Certificate of Occupancy or Completion, as the case may be, as to Landlord's Work as required by governmental authorities and Tenant and its vendors and contractors have obtained all governmentally required permits separate from any permits obtained by Landlord as to the Tenant's Work. Tenant's Work shall be performed in accordance with the Plans and shall be done in a good and workmanlike manner using new materials in accordance with Building standards. All work shall be done in compliance with all other applicable provisions of this Lease and with all applicable laws, ordinances, directives, rules, regulations, and other requirements of any governmental authorities having or asserting jurisdiction over the Premises, including the making of any alterations or improvements to the Premises or the Project which are required to comply with the ADA. Tenant shall pay any impact fees or assessments arising from the Tenant's Work. Before the commencement of any work by Tenant, Tenant shall furnish to Landlord certificates evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements set forth in the Insurance article of this Lease. Any damage to any part of the Project that occurs as a result of Tenant's Work shall be promptly repaired by Tenant.

3. **Compliance.** Tenant shall also ensure compliance with the Tenant Improvement Rules and Regulations attached to the Lease.

4. **Tenant Delays.** If Landlord or the general contractor is delayed in substantially completing Landlord's Work as a result of the occurrence of any Tenant Delay (as hereafter defined), then, (i) any deadlines set forth in the Lease for Landlord's delivery of the Premises shall be extended day for day for each day of Tenant's Delay, and (ii) at Landlord's option, for purposes of determining the Rent Commencement Date, the date of delivery of the Premises shall be deemed to be the day that Landlord's Work would have been substantially completed absent any Delay(s). For purposes of this provision each of the following shall constitute a "Tenant Delay": (a) Tenant's failure to furnish information or to respond to any request by Landlord or any design consultant for any approval within any time period prescribed, or if no time period is prescribed, within two business days of a request, including any information required to modify the Building shell plans to accommodate Tenant's Work; or (b) changes or proposed changes required by Tenant's Work requiring changes to Landlord's Work or Building shell construction; or (c) any delay resulting from Tenant's activities in the Premises before substantial completion of Landlord's Work; or (d) any other delay to Landlord's ability to complete Landlord's Work as required by the terms of this Lease caused by Tenant, its employees, agents, contractors, or consultants.

5. **Changes.** Tenant shall be responsible to reimburse Landlord for all costs resulting from changes to Landlord's Work requested by Tenant. Such costs shall be deducted from the Tenant Improvement Allowance, if any, or if no Allowance is granted, paid to Landlord within ten days of receipt of invoice. If the cost of any changes will exceed any remaining balance of the Tenant Improvement Allowance (after deducting the most current estimate of the work cost before the change in question), Tenant shall pay to Landlord the amount of the excess within ten days of receipt of a notice from Landlord as to the amount. Such payments by Tenant shall not be considered additional rent.

EXHIBIT "E-1"

LANDLORD'S WORK SCHEDULE

Landlord shall deliver the following ("**Landlord's Work**") only:

Vanilla Shell (as defined by City) Poured in-place, unfinished concrete slab floor with appropriate stub outs for plumbing and electrical; taped and primed, appropriately rated demising walls; basic code required electrical service including minimal lighting; open raw ceilings with exposed mechanical systems; fire sprinklers to code; conduits provided for wireless/cable/telephone services. Code required restrooms for the entire building are provided as shared facilities

The costs of any changes to Landlord's Work requested or required by Tenant will be paid to Landlord by Tenant within 30 days following invoice therefor.

EXHIBIT "F"

TENANT ALTERATION REQUIREMENTS

A. Requirements Prior to Commencement of Any Work in the Premises:

1. Two (2) copies of Tenant's general contractor's or any subcontractor, as may apply, liability insurance naming Landlord and its managing agent as additional insureds.
2. Two (2) copies of approved building permit. Permit to include sufficient information to describe the work and designate the name and suite number of Tenant or if the work is extensive provide copies of plans and specifications as approved by the Building Department with the permit. (Landlord reserves the right to review and approve additional items and comments that may be required by the Building Department before commencement of the work.)
3. Prepare two (2) copies for Landlord's approval of a recordable "Notice of Commencement" executed by Tenant as "Owner".
4. Two (2) copies of Contractor "Certificate of Liability Insurance" prepared in accordance with the requirements of the Project, and evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements of the Insurance article of this Lease.
5. One (1) copy of the Contractor's Florida Contracting License.
6. Two (2) copies of the work/project's completion schedule.
7. Two (2) copies of project vendor list with contact information.
8. Tenant, at its expense, will provide and furnish to Landlord payment and performance bonds (or other similar assurances agreed by Landlord), by a surety company reasonably acceptable to Landlord, in amounts equal to 150% of the costs and expenses of the work to be performed by the Tenant.

B. General Requirements:

1. Tenant and all construction personnel shall abide by Landlord's job site rules and regulations and fully cooperate with Landlord's construction representatives in coordinating all construction activities in the Project, including rules and regulations concerning working hours, parking, and use of the construction elevator, if applicable.
2. Tenant shall be responsible for cleaning up any refuse or other materials left behind by construction personnel at the end of each work day.
3. Tenant shall deliver to Landlord all forms of approval provided by the appropriate local governmental authorities to certify that the Tenant Improvements and Alterations have been completed and the Premises are ready for occupancy, including original building permit and a final, unconditional certificate of occupancy.
4. At all times during construction, Tenant shall allow Landlord access to the Premises for inspection purposes. On completion of any Alterations and Tenant Improvements, Tenant's general contractor shall review the Premises with Landlord and Tenant and secure Landlord's and Tenant's acceptance of the Tenant Improvements and Alterations.
5. Workers shall provide their own temporary toilet facilities, trash facilities, water coolers, and construction materials dumpsters and shall locate them along with any construction trailers or field offices in areas specifically designated by Landlord.
6. No painting or spraying of chemicals, varnishes, lacquers, finishes, or paint will be allowed during normal business hours. Such activities shall only occur during days and times specifically preapproved by Landlord.

7. Any work that may disturb tenants of the Building (including welding, cutting torch, drilling or cutting of the concrete floor slab or temporary interruption of any utility service), shall only occur before or after normal business hours and with Landlord's prior consent. Any unduly loud noise complained of by other Tenants will be immediately diminished to Landlord's reasonable satisfaction or the work will cease until the noise is so diminished.

8. Reasonable quantities of water and electricity for lighting, portable power tools, and other common uses as well as use of the construction elevator will be furnished to the contractor at a cost to be assigned at the completion of the job based on usage during the build-out period (including Building standard charges for use of the elevator). The contractor shall make all connections, furnish any necessary extensions, and promptly and professionally remove such connections and extensions on completion of work.

9. If a shutdown of plumbing, sprinkler, electrical, air conditioning and/or other equipment becomes necessary in connection with Tenant's work, Tenant will notify Landlord in advance and Landlord will determine when such shutdown may be made, and at Landlord's election any such shutdown will be done only when a representative of Landlord is present. In all instances where this is done, the system shall not be left inoperable overnight or over a prolonged period.

10. All equipment installed shall be compatible with the base building fire alarm system and the contractor shall warrant that any connection to the base building fire alarm system shall only occur after proper notification to Landlord and on an after-hours basis. Any disruption to the existing fire alarm system or damage as a result of contractor's work will be the sole responsibility of Tenant.

11. All additional electrical circuits added to existing electrical panels or any new circuits added to new electrical panels will be appropriately labeled as to the area or equipment serviced by the circuit in question. Any electrical panel covers removed to facilitate installation or connection shall be reattached.

12. All workers must stay in their designated work areas and the use of radios, loud music, alcoholic beverages, narcotics, or cigarette smoking is prohibited on the Project.

13. Any roof opening required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

14. Any damage to any part of the Building that occurs as a result of any work performed by Tenant shall be promptly repaired by Tenant to the reasonable satisfaction of Landlord.

15. Tenant, at its expense, will promptly repair or replace, or at Landlord's election reimburse Landlord for the cost of repairing or replacing, property of Landlord that may be damaged, lost or destroyed in the performance of the work or as a result thereof.

16. Landlord will have no responsibility for or in connection with the work; Tenant, at its expense, will remedy and be responsible for all defects in the work, whether appearing during its progress or after completion and whether the same affect the Premises in particular or any of the Building in general.

17. Demolition of partitions and removal of rubbish will be done during hours first approved by Landlord in writing. All such materials are to be taken from the Premises through the delivery entrance of the Building, by the freight elevator only (if any); or, if not freight elevator exists, only through the rear entrance of the Premises.

18. Electrical and power panel balancing will be maintained by and at the expense of Tenant during the entire period of Tenant Work.

19. Tenant and its contractors will not demolish or remove any of the Building's structure.

20. Roof openings (including, supporting structures, angles, curbs, flashing, ducts, vents and grills) are subject to Landlord's prior written consent in each instance, which consent will not be unreasonably withheld. Notwithstanding the foregoing,

Landlord may refuse to give its consent to any roof opening that in Landlord's judgment exceeds the capability of the structural system. Any roof openings consented to by Landlord must be made only by Landlord's roofing contractor at Tenant's expense, or such duly licensed roofing contractor as Landlord may designate or approve in writing in its sole discretion.

21. All corridor, elevator, and lobby finishes require protection during construction.
22. There is a Two Hundred Fifty and 00/100 Dollar (\$250.00) penalty for "false alarms".

C. Upon Completion of the Work, Tenant Shall Provide to the Landlord:

1. Two (2) copies each of final inspection report and Certificate of Occupancy or Completion indicating that the work has been completed in accordance with the permit issued by the Building Department.
2. Two (2) copies each of "as-built" drawings indication the alterations and relocating of existing construction (mechanical, electrical, etc...) if applicable, in PDF file format or on CD's.
3. Two (2) copies each of "Final Releases" in accordance with the Florida Lien Laws from general contractor, subcontractors, vendors, and suppliers associated with the work and Contractor's Final Affidavit indicating that all subcontractors have been paid in full for the work.
4. Two (2) copies each of permit plans including approved fire sprinkler drawings.
5. Two (2) copies of all equipment operating and maintenance manuals and demonstration of any equipment that will become the property of Landlord.
6. Two (2) copies of general contractor's one (1) year warranty on labor and materials for the work.
7. Two (2) copies of all other manufacturer guarantees/warranties on the improvements. Manufacturer's guarantees/warranties shall name Landlord as beneficiary where Landlord is or shall become responsible for the repair and maintenance of the installation.
8. Two (2) original copies of a letter from the architect of record indicating that the improvements have been installed in accordance with the approved plans and specification for the Building.
9. Two (2) copies of Tenant's completed "punch list" signed off by the Architect or Tenant's representative that the work has been satisfactorily completed by the Contractor.
10. Extra attic stock materials used in the build-out such as flooring, ceiling, base, paint, wall covering, etc materials to be stored in Tenant's suite for future use.
11. Two (2) copies of an independent HVAC Test and Balance report, if applicable.
12. Two (2) original copies of the Contractor's Final Owner (Tenant) Affidavit which is necessary to terminate the Notice of Commencement once the work has been concluded and the "Notice to Terminate the Notice of Commencement" document prepared by Tenant's Contractor and recorded by the Tenant.
13. Two (2) copies of the final payment application from the general contractor and accounting of the construction contract amounts (final AIA application for payment).

The above required documentation must be delivered to Landlord prior to the release of any payments that may be due under the Lease.

D. Sustainability Requirements:

1. Tenant shall comply with any recycling requirements enacted by Landlord, including the separation of construction materials/debris, paper, cardboard, plastics and glass.
2. Tenant shall provide all contractors performing work with a copy of these Rules and Regulations and a copy of the Lien section of the Lease indicating that no liens may be placed against Landlord's interest in the Project for work performed by Tenant.

EXHIBIT "G"

LEED Tenant Requirements

Tenant Design and Construction Guidelines - Lake Worth Casino

The Lake Worth Casino has been designed and constructed to be environmentally friendly, incorporating the sustainable design and construction features outlined below in designing the core and shell. In addition, tenant design and construction guidelines have been prepared to assist tenants in designing and building sustainable interiors and to adopt green building practices within their individual tenant spaces. Combined, these important features and required guidelines contribute to attaining LEED-CS (Core and Shell) and LEED-CI (Commercial Interiors) certifications.

Sustainable Design and Construction Features at Lake Worth Casino (LEED-CS, Core and Shell)

Water Use Reduction:

- All common area and future tenant water fixtures shall have sensors and meet or exceed federal mandates on gallons used.
- All landscape has been designed for minimal use of irrigation water. -Partial irrigation water is from storm run off drained from the surface parking into the Storm Drainage system in numerous areas using an ecological filtration system or bioswale

Optimize Energy Performance, Lighting Power and Lighting Controls, Daylighting and Views:

- Window head height has been set at 8'-0" to maximize daylight and views, thereby reducing the amount of energy required for interior lighting.

Optimize Energy Performance, HVAC, Thermal Comfort, and Controllability of Systems:

- The Cooling Tower system facilitates energy efficient HVAC, providing individual air handling systems in each tenant space. The system also maximizes flexibility in tenant build out, minimizing construction time and reducing construction waste.
- The high reflective roof covering lowers cooling costs by reducing "hot spots" on the Roof with SRI's above 29 for steep sloped roof areas and above 78 for flat roofed areas.

Construction Indoor Air (IAQ) Management, Indoor Chemical and Pollutant Source Control and the Elimination or Control of Environmental Tobacco Smoke:

- The air circulation system incorporates Merv 13 filters. Interior finishes are specified at minimum volatile organic compound (VOC) levels including primers, paints, and adhesives. Cabinets and wood materials contain no added urea-formaldehyde resins to prevent off gassing. The building is a non-smoking environment.

Sustainable Products and Materials:

- Interior products and construction materials maximize recycled content. For example, door frames are regionally manufactured from post-consumer recycled content, the concrete masonry construction is composed of local aggregate and recycled content, and the steel floor system utilizes recycled steel.

Tenant Design and Construction Guidelines at the Lake Worth Casino (LEED-CI, Commercial Interiors)

The following tenant design and construction guidelines complement the features and sustainable strategies for the core and shell of the building. They are intended to assist tenants in designing and building sustainable interiors and to adopt green building practices. The interior finish specifications for Lake Worth Casino qualify typical interior finishes so that they reduce harmful off gassing, optimize indoor air quality, utilize locally produced and recycled materials where possible, protect against deforestation, and reclaim removed finishes during renovation or tenant turnover. These are the minimum standards to be used in evaluating a material finish when making selections for tenant spaces.

Floor

Carpet Tile – 18 to 20 oz. yarn weight, level loop pile, direct glue down, Materials Estimated Price Range: \$ TBA (to include allowance for General Contractor/Flooring Contractor and Freight)

Meets Green Label Plus.

Carpet is reclaimable and is reclaimed. No PVC backing.

Carpet Adhesive – does not exceed VOC limit 50.

No vinyl, reclaim unused flooring.

Floor Tile – 12” x 12”, chlorine free, contains no plasticizers, VOC free, requires no dressing or cleaning with caustic chemicals.

Installed Estimated Price (with “click” system): \$TBA.

Floor Tile Adhesive (if adhesive-free “click” system is not utilized) – does not exceed VOC limit 50.

Base

Carpet Base - 4” carpet base to match carpet in carpeted areas, meets Green Label Plus.

Cove Base – 4” cove base, no vinyl.

Materials Estimated Price Range: \$ TBA

Wood Base, Crowns, Chair rail – FSC (Forest Stewardship Council)-certified wood.

Walls

Tenant demising wall - 3 5/8” metal studs with 5/8” Type ‘X’ gypsum wall board each side (per code), gypsum does not exceed VOC limit 50.

Interior walls – 3 5/8” metal studs with 5/8” gypsum wall board each side, gypsum does not exceed VOC limit 50.

Interior Paint – (2) Two coats of latex flat over (1) coat primer. Latex flat does not exceed VOC limit 50 and primer does not exceed VOC limit 200.

Doors

Entry Doors – Provided in Shell.

Interior Doors – 3’-0” wide x 8’-0” height, wheat board core or Medex.

Alternate door as per demountable partition system specification for owner approval

Door Frames

Painted recycled hollow metal.

Semi-gloss trim paint not to exceed VOC limit 250.

Regionally manufactured, post-consumer recycled content.

Prehung FSC wood frames

Door Hardware

All exterior doors shall have the Building Standard for Common Spaces.

Interior doors shall be Schlage, AL series, Jupiter, lever type, brushed chrome finish or Equal and approved by Owner.

Locksets shall be: Passage set.

Door Stops: Typical all doors.

Ceiling

The Owner’s preference is no to have a dropped ceiling.

Ceiling height – a minimum of 8’-6” above finish floor.

Acoustical ceiling system – 2’ x 2’ tegular ceiling tiles, 60%-80% recycled content, reclamation and recyclable.

Window Treatment

Non-PVC 2” blinds, interior mount, valance and “white” finish.

Alternate wood blinds manufactured locally, FSC-certified, Low-VOC finish.

Cabinetry

All cabinets of composite wood, including core materials, must contain no added urea-formaldehyde resins. All laminate adhesives must contain no added urea-formaldehyde.

Appliances

Shall be by tenant.

Shall meet or exceed federal energy standards and be *ENERGY STAR* qualified.

Plumbing Fixtures

Toilets and urinals must have sensors.

All faucets must meet or exceed federal mandates for water consumed and be consistent with the project's current specified plumbing fixtures.

Lights

-2'x4' fluorescent light fixture, CFL or LED as approved by owner

-emergency lights as required by code

-exit signs as required by code

-all lights and controls are to meet Florida Building Code (FBC) 2007 chapter 13.

-all lights will have motion sensors for controls and a maximum watts per square foot as per FBC chapter 13.

HVAC

-complete air handler system and controls

- no fiberboard ductwork permitted

-this system allows for passive controls as well as individually controlled tenant spaces

-high efficiency cooling tower with individual air handler per tenant zone at 600-800sf per zone.

-condensate collection to be tied into building rainwater collection system.

EXHIBIT "H"

SPECIAL REQUIREMENTS

1. **Option to Renew.** Provided that Tenant has never been in default of the Lease, Tenant shall have two renewal options of five (5) years each to extend the Lease Term, provided that Tenant shall provide written notice to Landlord of its election to extend the Lease Term at least nine (9) months, but not more than fifteen (15) months, prior to the expiration of the initial Lease Term, with time being of the essence as to this notification period. Landlord shall have no obligation to notify Tenant hereafter of the required notification date to renew the Lease and Tenant shall be deemed to have waived its renewal option in the event Tenant fails to notify Landlord in writing by the required notification date.

1.1 All terms and conditions of the Lease shall remain unchanged and in full force and effect upon Tenant's extension of the Lease Term except that Base Rent shall be increased as set forth in the Basic Lease Information of the Lease.

1.2 The foregoing renewal option shall no longer be available and shall automatically cease to exist, upon the occurrence of any of the following: (1) the expiration or sooner termination of the Lease, (2) the occurrence of any event of default by Tenant under the Lease, or (3) any assignment of the Lease, subletting of the Premises (or any part thereof) or other transfer within the meaning of the Assignment Article of the Lease.

2. **License to Use Outside Patio Area.** So long as the federal, state, and local laws, codes, zoning restrictions, ordinances, regulations, and safety requirements permit (provided that the failure to obtain such approvals and permits shall not be deemed to be a contingency of the effectiveness of this Lease or entitle Tenant to terminate this Lease), Landlord agrees that Tenant shall have, at such time during the Lease Term as Landlord shall designate, a revocable license to use the area adjacent to and immediately outside of the Premises, as described on **Exhibit "H-1"** attached hereto.

2.1 Tenant's use of the Patio Area complies with all laws, codes, zoning restrictions, ordinances, regulations, safety requirements, approvals, permits and licenses relating thereto.

2.2 All necessary approvals, permits, and licenses in connection with such use are obtained and paid for by Tenant (with copies furnished to Landlord) and remain in full force and effect during Tenant's use of the Patio Area.

2.3 Tenant shall install, at its sole cost and expense, all furniture and equipment (collectively, "**Furniture**") in the Patio Area. Tenant acknowledges and agrees that the furniture shall not be used or placed in the Patio Area until its design, size, color, position, and method of attachment or installation are first approved by Landlord in writing; and Tenant shall be solely responsible for any destruction, damage, theft, or vandalism of, or to, the Furniture.

2.4 Tenant hereby covenants and agrees that it shall not: (i) restrict access to the Project or pedestrian flow through the common areas outside the Patio Area; (ii) erect or place any canopy or other enclosure or covering on the Patio Area without Landlord's prior written approval; (iii) permit any music or other similar sounds to be heard in the Patio Area without Landlord's prior written approval; or (iv) permit loitering in the Patio Area by persons who are not customers of Tenant.

2.5 Tenant shall clean and keep in good repair the Patio Area and Furniture and shall remove all trash generated therefrom on a daily basis or more frequently as needed. If Tenant fails to clean or keep the Patio Area in good repair, or remove trash therefrom as required by this section, then in addition to and not in lieu of any other remedy to which Landlord may be entitled, Landlord shall have the right but not the obligation, upon 24 hours' prior written notice to Tenant, to clean, repair, or remove the trash on Tenant's behalf; and Tenant shall pay Landlord 125 percent of Landlord's cleaning, repair, or trash removal costs (including any overtime costs) immediately upon Landlord's demand therefore.

2.6 Tenant shall reimburse Landlord immediately upon Landlord's demand therefore, the cost of repairs or restoration of the common areas arising out of Tenant's use of the Patio Area or acts or negligence of Tenant, its customers, employees, agents, contractors, invitees, or licensees.

2.7 Tenant agrees to pay to the landlord \$15.00 per square foot per annum for use of the Patio Area which shall be added to the base rent and subject to all annual escalation clauses contained in this lease document including lease renewal options.

2.8 Tenant's right granted herein to use the Patio Area is neither transferable nor assignable independently from its leasehold interest.

2.9 Landlord shall have no liability to Tenant if it is unable to use the Patio Area for any reason other than Landlord's negligence or willful misconduct.

2.10 Landlord shall be entitled, in its sole and absolute discretion, to revoke Tenant's license to use the Patio Area, upon 30 days' prior written notice to Tenant and to remove Tenant therefrom; and Prior to the revocation of such license, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand.

2.11 Should Landlord require the use of any portion of the Patio Area in connection with special events at the Project, operation or maintenance of the Project, construction of Tenant improvements or moving in of new tenants to the Project, or for any other purpose or use, Tenant shall remove its Furniture and other personal property from the Patio Area for such periods of time as Landlord shall designate in order to accommodate such uses.

EXHIBIT "H-1"

Description of Patio Area

The Patio areas will be laid out based on the amount of footage needed for walk thru traffic. The café seating must allow for 4' for walk thru traffic and cannot be blocked.

EXHIBIT "I"

CITY OF LAKE WORTH

COMMENCEMENT DATE LETTER

_____, 20__

TENANT

Mamma Mia's on the Beach Inc.
Suites #1 and #2
Lake Worth Casino Building

Re: Lease dated _____, 20__ by and between City of Lake Worth, as Landlord, and Mamma Mia's on the Beach, Inc. as Tenant (the "Lease")

Dear _____:

This will confirm that:

1. All Landlord's Work required under the terms of this Lease have been satisfactorily performed in accordance with the Lease, and as of the date of this notice Tenant has inspected the Premises and accepted the Premises "as-is", "where-is";
2. The Commencement Date of the Lease Term is _____; and
3. The Rent Commencement Date is _____ and the expiration date of the Lease Term is _____.

ACCEPTED AND AGREED:

TENANT:

Mamma Mia's on the Beach, Inc.
a Florida Corporation

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Date Executed: _____

LANDLORD:

CITY OF LAKE WORTH,
a municipal corporation under the laws of the State of Florida

By: _____
Name: _____
Title: _____

(SEAL)

Date Executed: _____

EXHIBIT "J"

SIGN CRITERIA

Signage must comply with City ordinances and final approval from Landlord.

EXHIBIT "K"

PROHIBITED/RESTRICTED USES

Specific Leases:

General Restrictions:

Adult book store or facility selling, renting or displaying pornographic or adult books, literature, magazines, films, pictures, video discs, videotapes or other paraphernalia or merchandise (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), provided that the sale, rental or display of such items as an incidental part of a permitted business (as used above, the term "incidental" means, with respect to any national or regional video store chain, any sale or rental of such material, and with respect to other tenants, the sale of such materials from not more than 10% of the sales area of such business and so as to constitute less than ten percent 10% of the gross sales of such business) shall be permitted.

Auction or bankruptcy sale, unless bona fide and permitted by law

Auction house

Automobile body shop

Automobile dealership or used car lot

Automotive repairs and service

Barbecue stands or barbecue pits

Bingo parlor or similar games of chance, except as incidental retail sale such as lottery tickets and other items commonly sold in retail establishments

Boat sale or display

Bottling of beverages

Bowling alley

Brothel

Cabinet working and carpentry shops

Car wash

Carnival

Catering hall

Cocktail lounge, pub or bar, except as incidental to a restaurant

Cold storage warehouse and pre-cooling plants

Cult meeting place

Dance hall

Discotheque or nightclub

Food stamp center

Feed, hay and other livestock supplies

Fertilizer stores

Firing range

Flea market

Funeral establishment

Glass installation

Government offices

Gun store

Head shop

House of worship

Junk yard

Labor camp

Leather goods manufacturing, excluding tanning

Locksmith shops, sharpening and grinding shops

Lumber yards

Manufacturing use—contractors' plants and storage yards
Massage parlor, except a lawful business providing massages only by a licensed massage therapist or a physiotherapist is allowable
Meeting hall
Mobile home park
Mobile home sales
Off-track betting parlor
Pawn shop
Place of public assembly
Poultry markets and commercial chicken hatcheries
Psychic
Railroad, motor truck and water freight and passenger stations
Religious organization
Refinery
Sale, repair, service or storage of trucks and/or trailers and recreational vehicles
Second-hand stores for the disposal of furniture, fixture and tools
Shooting gallery
Skating rink
Stockyard
Theater
Tire vulcanizing and retreading or sale of used tires
Unemployment agency
Upholstery and furniture repairs
Warehouse use
Wood burning for cooking
Any use prohibited by recorded restrictions, covenants or conditions affecting the Project as of the Date of this Lease, if any.
Any restrictions or conditions set forth in the Zoning and Land Use Codes applicable to the Project.

EXHIBIT "L"

Standard Letter of Credit Template — ISP 98
Single Beneficiary/Single Counterparty

[BANK LETTERHEAD]

Irrevocable Standby Letter of Credit No. _____

From:

Insert name and address of Bank

To:

Insert name and address of Beneficiary

(the "Beneficiary's Address")

Applicants Name and Address:

Ladies and Gentlemen:

We, _____ (the "Bank"), hereby establish and issue in your favour this Irrevocable Standby Letter of Credit No. ____ (the "Letter of Credit") in the aggregate amount not exceeding USD \$ _____ in support of the liabilities and obligations of the Applicant to the Beneficiary, effective immediately and expiring on the Expiration Date (as hereinafter defined).

Funds under this Letter of Credit are available to you on or before the Expiration Date (as hereinafter defined) on presentation by you, during business hours on any day on which banks are open for business in **Insert name and address where presentation must take place** (the "Bank's Address"), of a sight draft in substantially the form attached hereto as Exhibit "1", indicating the same is drawn under this Letter of Credit, and accompanied by one of the following additional documents:

- (a) a completed certificate in substantially the form attached hereto as Exhibit "2" signed by a person purporting to be an officer or authorized agent of you and dated the date of presentation; or
- (b) a completed certificate in substantially the form attached hereto as Exhibit "3" signed by a person purporting to be an officer or authorized agent of you and dated the date of presentation.

The Bank hereby undertakes with you to honor each request drawn under and in compliance with the terms of this Letter of Credit if duly presented together with a certificate, as set forth above, at the Bank's Address on or before the Expiration Date (as hereinafter defined). Presentation of drafts and certificates via facsimile, courier or in person shall be permitted hereunder. The Bank shall by same-day return fax to the attention of Director, Counterparty Risk at the fax number set forth in the Beneficiary's Address confirm receipt of presentation (but no failure or delay by the Bank in confirming receipt of presentation shall affect the effectiveness of presentation by the Beneficiary).

The Bank will honor your request(s) drawn under and in compliance with this Letter of Credit without inquiring whether you have a right, as between the Beneficiary and the Applicant, to make such request and without recognizing any claims of the Applicant.

The "Expiration Date" shall be one year from the date hereof, provided that the Expiration Date in effect at any time shall be automatically extended, effective as of such Expiration Date then in effect, to the date one (1) year thereafter (and thereupon such date shall be deemed the Expiration Date) unless at least ninety (90) days prior to any such Expiration Date then in effect, we notify you in writing by registered mail, or by overnight courier delivery, to the Beneficiary's Address that such Expiration Date then in effect shall not be extended. In the event such notice is provided by us to you, and you are not in receipt of a replacement letter of credit or alternate security which is acceptable to you at least thirty (30) days prior to the then current Expiration Date, you may draw upon this Letter of Credit as outlined above.

Any number of partial drawings and multiple presentations are permitted under this Letter of Credit. The amount of this Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder.

All charges relating to the issuance of this Letter of Credit are for the account of Applicant.

This Letter of Credit shall be governed by the International Chamber of Commerce's International Standby Practices ("ISP98") except to the extent that the terms hereof are inconsistent with the provisions of the ISP98, in which case the terms of this Letter of Credit shall govern.

This Letter of Credit shall be deemed to be a contract made under the laws of the State of New York and applicable U.S. federal law and shall be governed by and construed in accordance with such laws as to matters which are not governed by the ISP98. The parties hereby irrevocably agree to attorn to the exclusive jurisdiction of the courts of the State of New York.

Document(s) presented in excess of the amount of this Letter of Credit are acceptable, however, payment(s) shall not exceed the value of this Letter of Credit.

A facsimile of this Letter of Credit shall serve as the operative instrument until receipt by the Beneficiary of the original document.

Notices concerning this Letter of Credit may be sent to a party by courier, certified mail, registered mail, facsimile, electronic transmission or similar communications facility, to its respective address set forth herein. Any notice, demand, request or other communication is deemed to have been received by the party to whom it is sent at the time of its delivery if personally delivered, or on the business day following its receipt if mailed by registered mail, or on the business day following its successful transmittal if sent by facsimile transmission or other form of electronic transmission, as the case may be, but if mail, facsimile transmission or other form of electronic transmission is interrupted by force majeure or other cause beyond the control of the parties, then the party sending the notice, demand, request or communication shall use any of the services that have not been so interrupted to deliver the notice, demand, request or other communication, in order to ensure prompt receipt of the notice, demand, request or other communication, by the other party. Each party may notify the other of any change of address in the manner provided above.

The Beneficiary may make inquiries regarding this Letter of Credit by way of writing addressed to the Bank's Address or by telephone at () ____ - ____

NAME of BANK

Per:

Name:

Title:

EXHIBIT "1"

**To That Certain
Irrevocable Standby
Letter of Credit**

[Insert Place], [Insert Date]

Amount: [Insert Currency] [Insert Amount in Numbers]
 [Insert Amount in Letters]

Drawn under Irrevocable Standby Letter of Credit No. _____ of [Name of Bank]

At Sight

Pay to the order of: [NAME OF BENEFICIARY]

In reference to: Irrevocable Standby Letter of Credit No. _____, dated _____

To: **NAME AND ADDRESS OF BANK**

NAME OF BENEFICIARY

AUTHORIZED SIGNATURE

EXHIBIT "2"

**To That Certain
Irrevocable Standby
Letter of Credit**

CERTIFICATE

The undersigned hereby certifies to _____ (the "Bank"), with reference to Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit") issued by the Bank in favour of [**Name of Beneficiary**] (the "Beneficiary"), that because the Applicant (as defined in the Letter of Credit) has not provided a replacement letter of credit, or alternate security, acceptable to the Beneficiary not less than thirty (30) days prior to the Expiration Date (as defined in the Letter of Credit), the Beneficiary is drawing upon the Letter of Credit in an amount equal to [**USDS** _____].

DATED as of the ____ day of _____, _____.

[**Name of Beneficiary**]

Per:

Name:
Title:

EXHIBIT "3"

**To That Certain
Irrevocable Standby
Letter of Credit**

CERTIFICATE

The undersigned hereby certifies to _____ (the "Bank"), with reference to Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit") issued by the Bank in favor of [Name of Beneficiary] (the "Beneficiary"), that the Applicant (as defined in the Letter of Credit) has failed to pay the Beneficiary or perform its obligations in accordance with the terms and provisions of the lease dated _____, _____ between the Beneficiary and the Applicant and, thus, the Beneficiary is drawing upon the Letter of Credit in an amount equal to [USDS _____].

DATED as of the ____ day of _____, _____.

Name of Beneficiary

Per:

Name:

Title:



Bank

America's Most Convenient Bank®

TD Bank, N.A.
6000 Atrium Way
Mount Laurel, NJ 08054
T: 888-751-9000 F: 856-533-6545
www.tdbank.com

Received

February 22, 2012

FEB 23 2012

Mamma Mia Boynton Beach
3841 woolbright Road
Boynton Beach, FL. 33436

**City of Lake Worth
Office of the City Manager**

Re: Mamma Mia's on the Beach, Inc.
Irrevocable Standby Letter of Credit No. 20005101

Gentlemen:

Enclosed is the original above-referenced Letter of Credit issued in favor of City of Lake Worth.

Kindly address all correspondence regarding this Letter of Credit to the attention of our International Department, Letter of Credit Section, 6000 Atrium Way, Mt. Laurel, NJ 08054 mentioning our Letter of Credit number as it appears above.

If you have any questions, please call me at 856-533-6562.

Very truly yours,

TD BANK, N.A.

Darleen M. Strieffler
Vice President



America's Most Convenient Bank®

TD Bank, N.A.
6000 Atrium Way
Mount Laurel, NJ 08054
T: 888-751-9000 F: 856-533-6545
www.tdbank.com

February 22, 2012

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 20005101
EXPIRATION DATE: February 22, 2013

City of Lake Worth
7 N. Dixie Highway
Lake Worth, FL. 33460

Re: Mamma Mia's on the Beach, Inc.

Ladies & Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit No. 20005101 in favor of City of Lake Worth, hereinafter referred to as "Beneficiary", at the request of Mamma Mia's on the Beach, Inc., hereinafter referred to as "Applicant", in an amount not to exceed in the aggregate Forty-Six Thousand Six Hundred Twenty and 00/100 (\$46,620.00) U.S. Dollars.

Funds are available by your draft on us at sight, duly endorsed on the reverse side thereof bearing the clause: "Drawn under TD Bank, N. A. Letter of Credit No. 20005101 dated February 22, 2012" and accompanied by the following documents:

1. The original of this Letter of Credit and any amendments thereto.
2. A statement signed by a purported officer/representative of Beneficiary which reads:

"We hereby certify that the draft accompanying this statement drawn under TD Bank, N. A. Letter of Credit No. 20005101 represents the amount due us as a result of a default under the terms and conditions of that certain Lease Agreement by and between City of Lake Worth, as Landlord and Mamma Mia's on the Beach, Inc., as Tenant."

It is a condition of this Letter of Credit that it will be extended automatically, without amendment, for additional periods of one (1) year from the present or each future expiration date, unless at least thirty (30) days prior to the then current expiration date, we notify you in writing by overnight courier, at the above address, that we elect not to renew this Letter of Credit for said additional period.

Upon receipt by you of such notice, you may draw hereunder by your draft on us, payable at sight, in an amount up to the then current available outstanding balance.

This Letter of Credit is transferable in its entirety, but not in part. Transfer of this Letter of Credit is subject to our receipt of instruction on the form attached hereto as Exhibit A, accompanied by the original Letter of Credit. Please include our transfer fee of ¼% - minimum \$250.

This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or contract referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or contract.



America's Most Convenient Bank®

TD Bank, N.A.
6000 Atrium Way
Mount Laurel, NJ 08054
T: 888-751-9000 F: 856-533-6545
www.tdbank.com

February 22, 2012
Irrevocable Standby Letter of Credit No. 20005101
Page-2

We hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of documents as specified above, if presented at our office located at 6000 Atrium Way, Mt. Laurel, NJ 08054 on or before the expiration date noted above or any extended date.

Except as otherwise specified herein, this Letter of Credit is subject to the International Standby Practices (1998), International Chamber of Commerce Publication No. 590.

Very truly yours,

TD BANK, N. A.

A handwritten signature in black ink that reads 'Darleen M. Strieffler'. The signature is written in a cursive style.

Darleen M. Strieffler
Vice President



America's Most Convenient Bank®

TD Bank, N.A.
6000 Atrium Way
Mount Laurel, NJ 08054
T: 888-751-9000 F: 856-533-6545
www.tdbank.com

**EXHIBIT A
STANDBY LC REQUEST FOR FULL TRANSFER**

Date: _____

To: TD Bank, N.A.
Attn: Global Trade Finance Standby Letter of Credit Department

Re: Standby Letter of Credit No. _____

For value received, the undersigned beneficiary hereby irrevocably transfers to:

(Name of Transferee)

(Address)

(Address)

The referenced Standby Letter of Credit and all rights of the undersigned beneficiary to draw under the above Standby Letter of Credit in its entirety or up to the remaining available balance if prior drawings have been made under the Standby Letter of Credit and any amounts thereof have not been reinstated.

By transfer of the referenced Letter of Credit, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee who shall have the sole rights as beneficiary thereof, including sole rights to any amendments whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary. As such, no further consent of or notice to the undersigned beneficiary shall be required of TD Bank, N.A. in connection with such Standby Letter of Credit Amendments.

We are enclosing the original Standby Letter of Credit and any amendments to date so that you may deliver same to the transferee together with your customary letter of transfer.

We agree to indemnify and hold you harmless from and against any and all claims, losses or damages of any nature whatsoever (including but not limited to attorney and paralegal fees and disbursements, including, without limitation, any such fees and disbursements arising in any bankruptcy case or proceeding), arising directly or indirectly from the transfer requested herein or from any other matters related to this Agreement, except as may be attributable to Bank's gross negligence or willful misconduct.

Bank Name

Beneficiary Name

Authorized Signature Date

By: _____
Title: _____ Date: _____

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: City Attorney

TITLE:

Ordinance No. 19-2022 – Second Reading - Adopting amendments to Chapter 7 “Beaches, Parks and Recreation” to prohibit smoking and vaping in City parks and on the City’s beach

SUMMARY:

The proposed Ordinance will amend Chapter 7 “Beaches, Parks and Recreation,” Article I “Parks, Recreational Facilities and Public Property” and Article VI “Municipal Beach Area and Municipal Beach” to prohibit smoking and vaping in city parks and on the beach and to provide for enforcement of the same.

BACKGROUND AND JUSTIFICATION:

The State legislature preempted the regulation of smoking to the State under section 386.209, Florida Statutes, which prohibited municipalities from regulating smoking. However, effective July 1, 2022, section 386.209 was amended to allow municipalities to restrict smoking and vaping within the boundaries of public beaches and public parks owned by such municipalities, except that they may not restrict the smoking of unfiltered cigars. Based upon the documented health problems caused by secondhand smoke and aerosol (vaping), the City wishes to adopt an ordinance that will prohibit smoking and vaping within its City parks and on its beach. The ordinance also provides for enforcement of these regulations by the Palm Beach County Sheriff’s Office through the City’s civil citation process set forth in Chapter 2, Article X of the Code.

The commission voted 4-1 to approve the Ordinance on first reading at the October 6 meeting with an amendment adding an exemption allowing for a designated smoking area with special event permits.

MOTION:

Move to approve / disapprove Ordinance No. 19-2022 prohibiting smoking and vaping in city parks and on the beach and to provide for enforcement of the same.

ATTACHMENTS:

Ordinance No. 19-2022

1
2
3
4 **ORDINANCE 2022-19 – AN ORDINANCE OF THE CITY OF LAKE**
5 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 7 “BEACHES,**
6 **PARKS AND RECREATION,” ARTICLE I “PARKS, RECREATIONAL**
7 **FACILITIES AND PUBLIC PROPERTY,” SECTION 7-9 “REGULATION**
8 **OF CONDUCT IN PARKS AND RECREATION AREAS AND ON PUBLIC**
9 **PROPERTY” BY CREATING A NEW SUBSECTION (K) TO BE**
10 **ENTITLED “SMOKING AND VAPING” TO PROHIBIT SMOKING AND**
11 **VAPING IN CITY PARKS AND PROVIDING FOR ENFORCEMENT; AND**
12 **ARTICLE VI “MUNICIPAL BEACH AREA AND MUNICIPAL BEACH,”**
13 **SECTION 7-80 “ADDITIONAL REGULATIONS APPLYING TO THE**
14 **MUNICIPAL BEACH AREA,” BY CREATING A NEW SUBSECTION (Z)**
15 **TO BE ENTITLED “SMOKING AND VAPING” TO BAN SMOKING AND**
16 **VAPING ON CITY BEACH AND TO PROVIDE FOR ENFORCEMENT;**
17 **AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION**
18 **AND AN EFFECTIVE DATE**
19
20

21 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted
22 municipality having such home rule power and authority conferred upon it by the Florida
23 Constitution and Chapter 166, Florida Statutes; and
24

25 **WHEREAS**, under section 386.209, Florida Statutes, the State legislature
26 preempted the regulation of smoking to the State which prohibited municipalities and
27 counties from regulating smoking within local parks and beaches; and
28

29 **WHEREAS**, effective July 1, 2022, the Florida legislature amended section
30 386.209, Florida Statutes, to allow municipalities to restrict smoking within the boundaries
31 of public beaches and public parks that are owned by such municipalities, except that
32 they may not restrict the smoking of unfiltered cigars; and
33

34 **WHEREAS**, as noted in the reports cited in the staff analysis for HB 105 (2022)
35 which amended section 386.209, Florida Statutes (and which are incorporated herein by
36 reference), secondhand smoke can cause numerous health problems and has been
37 causally linked to cancer and other fatal diseases; and
38

39 **WHEREAS**, various articles have reported that electronic smoking devices emit
40 secondhand aerosol which contain nicotine, ultrafine particles and low levels of toxins
41 that are known to cause cancer; and
42

43 **WHEREAS**, further, the Ocean Conservancy, Inc. has also reported that cigarette
44 butts are the number one littered item on beaches and that cigarette butts are also a
45 major part of plastic pollution because they are made of tightly packed plastic fibers that
46 erode into smaller bits, which accumulate in fish and other organisms and not only

47 impacts animal health and reproductivity, but also human health when people consume
48 sick fish; and

49
50 **WHEREAS**, the City Commission finds that the harmful impact of cigarette butts,
51 secondhand smoke and secondhand aerosol at the City’s beaches and parks are
52 detrimental to beach and park users and should be banned to the greatest extent allowed
53 by law; and

54
55 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted
56 municipality having such power and authority conferred upon it by the Florida Constitution
57 and Chapter 166, Florida Statutes; and

58
59 **WHEREAS**, the City Commission finds and declares that the adoption of this
60 ordinance is appropriate, and in the best interest of the health, safety and welfare of the
61 City, its residents and visitors.

62
63 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
64 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**

65
66 **Section 1:** The foregoing “WHEREAS” clauses are incorporated into this
67 Ordinance as true and correct findings of the City Commission, without limitation, the
68 reports cited in the staff analysis for Florida HB 105 (2022) which amended section
69 386.209, Florida Statutes.

70
71 **Section 2:** Chapter 7 “Beaches, Parks and Recreation,” Article I “Parks,
72 Recreational Facilities and Public Property,” Section 7-9 “Regulation of conduct in parks
73 and recreation areas and on public property” is hereby amended by adding thereto a new
74 subsection (k) to read as follows:

75
76 **Sec. 7-9. – Regulation of conduct in parks and recreation areas and on public**
77 **property.**

78 In addition to the regulations contained in sections 7-1 through 7-7 of this article, the
79 following regulations shall apply to all parks and recreation facilities and public property,
80 unless otherwise noted. Conduct relating specifically to the municipal beach area shall
81 be proscribed by chapter 7, article VI of this Code.

82
83 * * *

84 **(k) Smoking and vaping.**

85
86 **(1) Definitions.** For the purposes of this section, the following terms shall have
87 the meanings given. Words not otherwise defined shall have the meaning
88 set forth in Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act),
89 or shall be construed to mean the common and ordinary meaning.

90 “Smoking” means inhaling, exhaling, burning, carrying, or possessing any
91 lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any
92 other lighted tobacco product. However, “unfiltered cigars” shall be exempt
93 from this definition of smoking.

94 “Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-
95 generating electronic device or to possess a vapor-generating electronic
96 device while that device is actively employing an electronic, a chemical, or
97 a mechanical means designed to produce vapor or aerosol from a nicotine
98 product or any other substance. The term does not include the mere
99 possession of a vapor-generating electronic device.

100 (2) Prohibition. Except as otherwise set forth herein, a person is prohibited from
101 smoking and/or vaping in a park located within the city.

102 (3) Special event exception. Smoking and vaping in a designated smoking area
103 may be authorized in a park pursuant to a special event permit issued by the
104 city. The location of the designated smoking area shall be pre-approved by the
105 city. The permittee shall remove all cigarettes and cigarette butts, filters,
106 papers, and other associated debris from the event premises or be subject to
107 a fine established in the reasonable discretion of the city or as otherwise set
108 forth in the special permit conditions.

109 (4) Enforcement. The city’s law enforcement agency is hereby authorized to
110 enforce this subsection through the issuance of a city civil citation as set forth
111 in Chapter 2, Article X of this Code.

112 **Section 3:** Chapter 7 “Beaches, Parks and Recreation,” Article VI “Municipal
113 Beach Area and Municipal Beach,” Section 7-80 “Additional regulations applying to the
114 municipal beach area” is hereby amended by adding thereto a new subsection (z) to read
115 as follows:

116
117 **Sec. 7-80. – Additional regulations applying to the municipal beach area.**

118 *Purpose.* Citizens and visitors should be afforded a safe, clean environment in which
119 recreational opportunities can be maximized. Due to the wide variety of patron needs
120 and use of city property, it is necessary to establish the following regulations. These
121 regulations are in addition to regulations that are contained in other sections of the Code
122 of Ordinances or otherwise posted in particular parks, recreational facilities or municipal
123 beaches.

124
125 * * *

126 (z) Smoking and vaping.

127
128 (1) Definitions. For the purposes of this section, the following terms shall have the
129 meanings given. Words not otherwise defined shall have the meaning set forth in
130 Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act), or shall be
131 construed to mean the common and ordinary meaning.

132 “Smoking” means inhaling, exhaling, burning, carrying, or possessing any
133 lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any
134 other lighted tobacco product. However, “unfiltered cigars” shall be exempt
135 from this definition of smoking.

136 “Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-
137 generating electronic device or to possess a vapor-generating electronic

138 device while that device is actively employing an electronic, a chemical, or
139 a mechanical means designed to produce vapor or aerosol from a nicotine
140 product or any other substance. The term does not include the mere
141 possession of a vapor-generating electronic device.

142 (2) Prohibition. A person is prohibited from smoking and/or vaping on the municipal
143 beach located within the city. This prohibition shall only apply to the beach and
144 not the entire municipal beach area as defined in this Code.

145 (3) Enforcement. The city’s law enforcement agency is hereby authorized to enforce
146 this subsection through the issuance of a city civil citation as set forth in Chapter
147 2, Article X of this Code.

148 **Section 4: Severability.** If any section, subsection, sentence, clause, phrase or
149 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
150 competent jurisdiction, such portion shall be deemed a separate, distinct, and
151 independent provision, and such holding shall not affect the validity of the remaining
152 portions thereof.
153

154 **Section 5: Repeal of Laws in Conflict.** All ordinances or parts of ordinances in
155 conflict herewith are hereby repealed to the extent of such conflict.
156

157 **Section 6: Codification.** The sections of the ordinance may be made a part of
158 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
159 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or
160 any other appropriate word.
161

162 **Section 7: Effective Date.** This ordinance shall become effective 10 days after
163 passage.
164

165
166 The passage of this ordinance on first reading was moved by Commissioner
167 Malega, seconded by Commissioner Stokes, and upon being put to a vote, the vote was
168 as follows:

169
170 Mayor Betty Resch AYE
171 Vice Mayor Christopher McVoy NAY
172 Commissioner Sarah Malega AYE
173 Commissioner Kimberly Stokes AYE
174 Commissioner Reinaldo Diaz AYE
175

176 The Mayor thereupon declared this ordinance duly passed on first reading on the
177 6th day of October, 2022.
178

179
180 The passage of this ordinance on second reading was moved by
181 _____, seconded by _____, and upon being put to a vote,
182 the vote was as follows:

183
184 Mayor Betty Resch
185 Vice Mayor Christopher McVoy
186 Commissioner Sarah Malega
187 Commissioner Kimberly Stokes
188 Commissioner Reinaldo Diaz
189

190 The Mayor thereupon declared this ordinance duly passed on the _____ day of
191 _____, 2022.

192

193

LAKE WORTH BEACH CITY COMMISSION

194

195

196

By: _____
Betty Resch, Mayor

197

198

199

200 ATTEST:

201

202

203

Melissa Ann Coyne, City Clerk

204

205

STAFF REPORT REGULAR MEETING

AGENDA DATE: October 18, 2022

DEPARTMENT: City Attorney (and PBSO)

TITLE:

Ordinance No. 2022-22 – Second Reading - Amending Section 15-24.1 “Definitions” and Section 15-24.5 “Enforcement,” to modify the enforcement process for a noise control violation and for other purposes

SUMMARY:

An ordinance amending the City’s Noise Ordinance to allow for enforcement of violations by the Palm Beach County Sheriff’s Office through the issuance of City civil citations. The City will also have alternative enforcement options including the issuance of a notice to appear, injunctive relief and any other available legal or equitable remedy.

BACKGROUND AND JUSTIFICATION:

The City has adopted noise control regulations in Chapter 15 “Offenses-Miscellaneous,” Article I “In General,” Section 15-24 “Noise control.” The definitions section of the ordinance is being amended to include a definition of “person” so that it includes businesses in addition to individuals. Currently, a noise violation may only be enforced through the issuance of a notice to appear which is handled through the county court system. The amendments to the ordinance will authorize the Palm Beach County Sheriff’s Office to issue a City civil citation that is processed through the City’s special magistrate. Violations may also be enforced through the issuance of a notice to appeal and any other available alternative legal or equitable remedy.

The commission unanimously approved the Ordinance on first reading at the October 18th meeting with the additional language (highlighted on the ordinance) defining that the officers must be informed or observe the infraction and highlighting the reasonable time frame of 10 minutes.

MOTION:

Move to approve/disapprove Ordinance No. 2022-22 on first reading and setting the second reading and public hearing for November 1, 2022.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2022-22

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ORDINANCE NO. 2022-22 – AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 15, “OFFENSES--MISCELLANEOUS,” ARTICLE I, “IN GENERAL,” BY AMENDING SECTION 15-24.1 “DEFINITIONS” AND SECTION 15-24.5, “ENFORCEMENT,” WHICH SHALL MODIFY THE ENFORCEMENT PROCESS FOR A NOISE CONTROL VIOLATION AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, noise has been a topic of concern within the City for a significant period of time, and has recently been the subject of discussion regarding the modification of enforcement and legislative solutions; and

WHEREAS, the purpose of the City's Noise Control Ordinance is to obtain compliance of unnecessary and excessive noise violations before imposing fines and other penalties; and

WHEREAS, in order to strike a balance between the concerns of the business community and residents, a warning and violation system has been developed which takes into account the diverse character of the City; and

WHEREAS, the provisions of this Ordinance are intended to preserve the quality of life in all City neighborhoods, to allow businesses to provide an inviting environment for their patrons, and to strike the proper balance in the enforcement of noise violations; and

WHEREAS, the amendments to the Ordinance seek to streamline the enforcement provision through the option for law enforcement to issue a City civil citation and to provide alternatives means of enforcement; and

WHEREAS, the City’s civil citation procedure, as set forth in Chapter 2, Article 10 of the Code of Ordinances, is also being amended to provide for a graduated fine for subsequent noise violations at the same property; and

WHEREAS, the City Commission has reviewed the recommended amendments and has determined that they serve a valid public purpose and are in the best interest of the public health, safety, and general welfare of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA that:

Section 1. Recitals. The foregoing recitals are hereby affirmed and ratified.

Section 2. Chapter 15 OFFENSES--MISCELLANEOUS, Article I, “IN GENERAL,” Section 15-24.1 shall be amended to read as follows:

1 **Sec. 15-24.1. – Definitions.**

2
3 The following words, terms and phrases, when used in this article, shall
4 have the meanings ascribed to them in this section, except where the context
5 clearly indicates a different meaning:

6 * * *

7 Person means individuals, firms, associations, joint ventures, partnerships,
8 estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all
9 other business entities, groups or combinations.

10 Section 3. Chapter 15 OFFENSES--MISCELLANEOUS, Article I, "IN
11 GENERAL," Section 15-24.5 shall be amended to read as follows:

12
13 **Sec. 15-24.5. – Enforcement.**

- 14
15 (a) Whenever a law enforcement officer is notified of and observes a violation of the
16 ordinance from which this section derives or, whenever a law enforcement officer
17 observes, the officer shall issue a warning in writing if there is a violation to the
18 person(s) individual, or individuals, responsible for the violation. The warning shall
19 advise the person(s) individual or individuals of the specific violation of the noise control
20 ordinance and shall specify a reasonable time to reduce the sound level to an
21 appropriate level as set forth within the noise control ordinance. Absent special
22 circumstances, a reasonable time shall not exceed ten (10) minutes.
23
24 (b) If the violation is not eliminated within a reasonable time (ten (10) minutes) after the
25 warning has been issued, or if the violation recurs within ninety (90) days of the
26 issuance of the warning, the individual or individuals so warned and not complying,
27 shall be charged with a violation of the noise control ordinance and shall be subject to
28 enforcement, prosecution and punishment as set forth herein.
29
30 (c) Each re-measurement, after warning, which exceeds the maximum permissible sound
31 levels established by the noise control ordinance, shall constitute a separate violation.
32
33 (d) The city's law enforcement agency is hereby authorized to enforce this subsection
34 through the issuance of a city civil citation as set forth in Chapter 2, Article X of this
35 Code. Law enforcement may, in the alternative, issue a notice to appear. A violation of
36 the noise control ordinance is a criminal offense, for which violators may be subject to
37 a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not
38 exceeding sixty (60) days or by both such fine and imprisonment. The city may also
39 choose to pursue injunctive relief and/or any other remedy available at law or in equity.
40

41 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or portion
42 of this Ordinance is for any reason held invalid or unconstitutional by any court of
43 competent jurisdiction, such portion shall be deemed a separate, distinct, and
44 independent provision, and such holding shall not affect the validity of the remaining
45 portions thereof.

46
47 Section 5. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict
48 herewith are hereby repealed to the extent of such conflict.
49

1 Section 6. Codification. The sections of the ordinance may be made a part of the City
2 Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish
3 such, and the word "ordinance" may be changed to "section", "division", or any other
4 appropriate word.

5
6 Section 7. Effective Date. This ordinance shall take effect ten days after its adoption.
7

8 The passage of this ordinance on first reading was moved by Commissioner
9 Malega, seconded by Commissioner Diaz, and upon being put to a vote, the vote was as
10 follows:

11		
12	Mayor Betty Resch	AYE
13	Vice Mayor Christopher McVoy	AYE
14	Commissioner Sarah Malega	AYE
15	Commissioner Kimberly Stokes	AYE
16	Commissioner Reinaldo Diaz	AYE

17
18 The Mayor thereupon declared this ordinance duly passed on first reading on the
19 18th day of October, 2022.
20

21
22 The passage of this ordinance on second reading was moved by
23 _____, seconded by _____, and upon being put to a vote,
24 the vote was as follows:

25	
26	Mayor Betty Resch
27	Vice Mayor Christopher McVoy
28	Commissioner Sarah Malega
29	Commissioner Kimberly Stokes
30	Commissioner Reinaldo Diaz

31
32 The Mayor thereupon declared this ordinance duly passed on the _____ day of
33 _____, 2022.
34

35 LAKE WORTH BEACH CITY COMMISSION

36
37
38 By: _____
39 Betty Resch, Mayor

40 ATTEST:
41
42
43 _____
44 Melissa Ann Coyne, City Clerk

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: City Attorney and
Community Sustainability

TITLE:

Ordinance No. 2022-23 – Second Reading - Amending Chapter 2 “Administration,” Article X “Supplemental Code Compliance Procedures,” Section 2-86 “Code Citation Procedures; Appeals,” Section 2-87 “Civil Penalties,” and Section 2-88 “Classification of Infractions”

SUMMARY:

An ordinance amending the City’s Civil Citation process to streamline the contesting of a citation and to address penalties for the City’s new ordinance prohibiting smoking and vaping at City parks and the beach and to address graduated penalties for repeat noise ordinance violations.

BACKGROUND AND JUSTIFICATION:

The City has adopted supplemental code enforcement procedures in Chapter 2 “Administration,” Article X “Supplemental Code Enforcement Procedures.” Currently, the civil citation form includes the fine and the date of the scheduled special magistrate hearing if the violator wishes to contest the citation. The City wishes to amend the process to require a violator to make a written request for a hearing if he or she wishes to contest the violation. This will allow the City to better manage special magistrate agendas and hearings. Further, the City is amending its noise ordinance to allow for the issuance of City civil citations for noise violations. The civil citation penalties provision requires amending to include graduated penalties for noise ordinance violations and to also include violations of the City’s recently adopted ordinance that prohibits smoking and vaping in City parks and beach.

The Ordinance was approved unanimously at the October 18 City Commission meeting with an amendment adding “and location” to 2-86 (d) (3).

MOTION:

Move to approve/disapprove Ordinance No. 2022-23, amending Chapter 2 “Administration,” Article X “Supplemental Code Compliance Procedures,” Section 2-86 “Code Citation Procedures; Appeals,” Section 2-87 “Civil Penalties,” and Section 2-88 “Classification of Infractions”.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2022-23

1
2
3 **ORDINANCE 2022-23 – AN ORDINANCE OF THE CITY OF LAKE**
4 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 2**
5 **“ADMINISTRATION,” ARTICLE X “SUPPLEMENTAL CODE**
6 **COMPLIANCE PROCEDURES,” SECTION 2-86 “CODE CITATION**
7 **PROCEDURES; APPEALS,” SECTION 2-87 “CIVIL PENALTIES,” AND**
8 **SECTION 2-88 “CLASSIFICATION OF INFRACTIONS,” PROVIDING**
9 **FOR CONSISTENCY WITH CHANGES IN CODES TO BE ENFORCED**
10 **AND FOR OTHER PURPOSES; AND PROVIDING FOR SEVERABILITY,**
11 **CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**
12

13 **WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State
14 of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the
15 “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct
16 municipal government, perform municipal functions, and render municipal services, and
17 may exercise any power for municipal purposes, except as expressly prohibited by law;
18 and
19

20 **WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing
21 body of each municipality in the state has the power to enact legislation concerning any
22 subject matter upon which the state legislature may act, except when expressly prohibited
23 by law; and
24

25 **WHEREAS**, the City has adopted supplemental code enforcement procedures in
26 Chapter 2 “Administration”, Article X “Supplemental Code Enforcement Procedures”; and
27

28 **WHEREAS**, Ch. 162, Florida Statutes, and Florida case law permit a municipality
29 to enforce its codes by alternative procedures as long as due process is provided; and
30

31 **WHEREAS**, the City wishes to streamline its civil citation process to provide for
32 the payment of such citation or, in the alternative, to request a hearing to challenge such
33 citation; to include additional penalties; and to address additional violations of the Code,
34 including but not limited to graduated penalties for repeat noise violations and violations
35 involving conduct in parks, recreation areas and at the municipal beach (e.g., smoking
36 and vaping violations); and
37

38 **WHEREAS**, the City Commission finds and declares that the adoption of this
39 ordinance is appropriate, and in the best interest of the health, safety and welfare of the
40 City, its residents and visitors.
41

42 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
43 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**
44

45 Section 1: The foregoing “WHEREAS” clauses are ratified and confirmed as
46 being true and correct and are made a specific part of this ordinance as if set forth herein.
47

48 Section 2: Chapter 2 “Administration,” Article X “Supplemental Code
49 Compliance Procedures,” Section 2-86 “Code citation procedures; appeals” is hereby
50 amended to read as follows:

51 **Sec. 2-86. - Code citation procedures; appeals.**

52 (a) As used in this article, "code officer" means any designated employee or
53 agent of the city whose duty it is to enforce the codes and ordinances enacted by the city.
54

55 (b) The city may designate certain of its employees or agents as code officers. The
56 training and qualifications of the employees or agents for such designation shall be
57 determined by the city. Employees or agents who may be designated as code officers
58 may include, but are not limited to, code officers, law enforcement officers, or fire safety
59 inspectors. Designation as a code officer does not provide the code officer with the power
60 of arrest or subject the code officer to the provisions of F.S. §§ 943.085 through 943.255.
61

62 (c) A code officer is authorized to issue a citation to a person when, based upon
63 personal investigation, the officer has reasonable cause to believe that the person has
64 committed a civil infraction in violation of a duly enacted code or ordinance for which a
65 fine has been set under this article.
66

- 67 (d) A citation issued pursuant to this section shall contain:
- 68 (1) The date and time of issuance.
 - 69 (2) The name and address of the person (as defined in Section 1-2 of this Code)
70 to whom the citation is issued.
 - 71 (3) The date, time, **and location where** the civil infraction was committed.
 - 72 (4) The facts constituting reasonable cause.
 - 73 (5) The number or section of the code or ordinance violated.
 - 74 (6) The name and authority of the code officer.
 - 75 (7) The procedure for the person to follow in order to pay the civil penalty or to
76 contest the citation.
 - 77 (8) The applicable civil penalty if the person elects to contest the citation.
 - 78 (9) The applicable civil penalty if the person elects not to contest the citation.
 - 79 (10) A conspicuous statement that if the person fails to pay the civil penalty or
80 contest the citation within the time allowed, or if the person contests the
81 citation and fails to appear before the special magistrate to contest the
82 citation, he or she shall be deemed to have waived his or her right to contest
83 the citation and that, in such case, an order may be entered against the
84 person for an amount up to the maximum civil penalty.
 - 85 (11) The date the property must be brought into compliance.
 - 86 ~~(12) The hearing date, time, and location.~~
- 87

88 (e) A respondent may avoid an appearance before the special magistrate by timely
89 complying with the code section cited, requesting and passing an inspection, and electing
90 to pay a fine and administrative costs as provided on the issued citation. However, the
91 respondent may otherwise elect to contest the violation cited and appear before the
92 special magistrate to contest the violation cited, and at that time must bring any witnesses
93 or evidence to be presented at the special magistrate hearing. If the respondent wishes
94 to contest the violation, he or she shall deliver a written request for a hearing to the code
95 enforcement clerk within the time given on the citation. The request shall include the
96 respondent's name, citation number, code section/ordinance number that was violated,
97 date of issuance of the citation, and the respondent's current telephone number and
98 mailing address. The city will mail the notice of hearing by regular mail to the mailing

99 address provided. If a fine or costs, or both, is not paid in accordance with the citation, if
100 the respondent fails to contest the citation within the time afforded by the citation, or if the
101 respondent fails to appear at the special magistrate hearing, the respondent shall have
102 waived all rights to a hearing. Thereafter, an order may be entered by the special
103 magistrate against the respondent in an amount up to the maximum permitted by law. If
104 the respondent fails to timely comply with the code section cited and the special
105 magistrate determines that the violation exists, the respondent may be subject to daily
106 fines as determined by the special magistrate. Further, if the fine and costs are not timely
107 paid prior to the hearing and the special magistrate determines a violation occurred, the
108 respondent will be subject to additional administrative costs and fees. Once a ~~find~~ fine is
109 paid, or if unpaid, after the date set for payment in the code citation, it is deemed to be
110 conclusive proof of the violation for the purpose of establishing a later repeat violation.

111
112 (f) The special magistrate, after a hearing on the citation, shall make a
113 determination whether or not a violation of the code has been committed. The hearing
114 shall be conducted in accordance with section 2-67 of this chapter. If a violation is found
115 to have occurred, the special magistrate may enter an order requiring compliance and the
116 payment of fines and administrative costs in accordance with subsection 2-67(d) of this
117 chapter. In the alternative, the city may forego the pursuit of a daily fine and request an
118 order be immediately entered assessing the citation fine and administrative costs.

119
120 (g) A certified order assessing fines and/or costs may be recorded as a lien against
121 the subject property as set forth in subsection 2-69(d) of this chapter or as otherwise
122 provided by law.

123
124 (h) Appeals. An aggrieved party, including the local governing body, may appeal a
125 final administrative order of a special magistrate to the circuit court. Such an appeal shall
126 not be a hearing de novo but shall be limited to appellate review of the record created
127 before the special magistrate. An appeal shall be filed with thirty (30) days of the execution
128 of the order to be appealed. The city attorney or designee is hereby authorized to defend
129 such appeals on behalf of the city and/or special magistrate.

130
131 Section 3: Chapter 2 "Administration," Article X "Supplemental Code
132 Compliance Procedures," Section 2-87 "Civil penalties" is hereby amended to read as
133 follows:

134
135 **Sec. 2-87. - Civil penalties.**

136 (a) The maximum civil penalty for a civil infraction cited under this article shall be
137 five hundred dollars (\$500.00). A civil penalty may also be referred to as a citation fine.
138 The fee set for a reinspection under this section shall be set by resolution of the city
139 commission.

140
141 (b) If the person who has committed a civil infraction does not contest the citation
142 and pays the penalty and complies the property in accordance with the citation, the civil
143 penalty shall be as follows:

- 144 (1) For a Class I infraction, fifty dollars (\$50.00) plus a reinspection fee, if
145 required.

- 146 (2) For a Class II infraction, seventy-five dollars (\$75.00) plus a reinspection
147 fee, if required.
- 148 (3) For a Class III infraction, one hundred twenty-five dollars (\$125.00) plus a
149 reinspection fee, if required.
- 150 (4) For a Class IV infraction, two hundred fifty dollars (\$250.00) plus a
151 reinspection fee, if required.
- 152 (5) For a Class V infraction, five hundred dollars (\$500.00) plus a reinspection
153 fee, if required.

154
155 Section 4: Chapter 2 "Administration," Article X "Supplemental Code
156 Compliance Procedures," Section 2-88 "Classification of infractions" is hereby amended
157 to read as follows:

158
159 **Sec. 2-88. - Classification of infractions.**

- 160 (a) *Class I.*
 - 161 (1) Violations of the building code of the city, as adopted in section 9-2 of the
162 Code of Ordinances, not specifically enumerated in this section.
 - 163 (2) Violations involving recreational vehicles or boats.
 - 164 (3) Obstruction of public right-of-way.
 - 165 (4) Violations involving conduct in parks and recreation areas, municipal beach
166 areas, and on public property, as adopted in Chapter 7 of the Code of
167 Ordinances, not specifically enumerated in this section.
- 168
169 (b) *Class II.*
 - 170 (1) Violations of the Property Maintenance Code, as adopted in section 2-
171 75.6 of the Code of Ordinances, not specifically enumerated in this section.
 - 172 (2) Violations involving solid waste, refuse, garbage, rubbish or trash.
 - 173 (3) Violations involving fences, walls or hedges.
 - 174 (4) Violations of the sign code, as adopted in ~~Chapter 23, Article XXVIII~~ section
175 23.5-1, of the Code of Ordinances, not specifically enumerated in this
176 section.
 - 177 (5) Abandoned property on private property.
 - 178 (6) Violations involving landscaping.
- 179
180 (c) *Class III.*
 - 181 (1) Performing work without a required permit.
 - 182 (2) Violations of the Code of Ordinances not specifically enumerated in this
183 section.
 - 184 (3) Violations of the zoning ordinance, as adopted in Chapter 23 of the Code of
185 Ordinances, not specifically enumerated in this section.
 - 186 (4) Violations of Chapter 14 of the Code of Ordinances (use and occupancy
187 certificates, business tax receipts, and business regulations).
 - 188 (5) Prohibited or unsafe signs.
 - 189 (6) Violations involving a required visibility triangle.
- 190
191 (d) *Class IV.*
 - 192 (1) Violations of "cease and desist" or "stop work" orders.
 - 193 (2) Repeat violations.

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(3) Violations involving noise, as adopted in section 15-24 of the Code of Ordinances, not specifically enumerated in this section.

(e) Class V.

(1) Repeat violations involving noise, as adopted in section 15-24 of the Code of Ordinances, not specifically enumerated in this section.

Section 5: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6: Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 8: Effective Date. This ordinance shall become effective 10 days after passage.

The passage of this ordinance on first reading was moved by Commissioner Malega, seconded by Vice Mayor McVoy, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Christopher McVoy	AYE
Commissioner Sarah Malega	AYE
Commissioner Kimberly Stokes	AYE
Commissioner Reinaldo Diaz	AYE

The Mayor thereupon declared this ordinance duly passed on first reading on the 18th day of October, 2022.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

242 The Mayor thereupon declared this ordinance duly passed on the _____ day of
243 _____, 2022.

244

245

LAKE WORTH BEACH CITY COMMISSION

246

247

248

By: _____

249

Betty Resch, Mayor

250

251

ATTEST:

252

253

254

255

Melissa Ann Coyne, City Clerk

256

STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: City Manager

TITLE:

Discussion of proposed redistricting maps and public input

SUMMARY:

Pursuant to the City's Professional Services Agreement with FAU, representatives from The John Scott Dailey Florida Institute of Government at Florida Atlantic University (the "Institute") presented the analysis of the City's existing election districts and discussed with the City Commission the details of such analysis, advising that redistricting was strongly recommended.

BACKGROUND AND JUSTIFICATION:

Every ten years, after a census, updated population data often results in election districts with unequal populations, which requires the redrawing of districts to maintain compliance with the United States Constitution and the Voting Rights Act. The City of Lake Worth Beach has never done redistricting since its incorporation in 1913. Generally, redistricting redefines election districts based on changes in the population. The Equal Protection Clause of the United States Constitution guarantees the right of "one person, one vote" to municipal residents, such that a municipality must redraw its election districts periodically to maintain equal population.

The City Commission entered into an Agreement with FAU to analyze the City's 2020 Census data and population projections and the City's existing election districts. At the September 12, 2022 work session, James Gammack-Clark, Senior Instructor in the Geosciences Department at FAU, presented FAU's report on the population analysis, recommending that redistricting be undertaken due to the imbalance in the population of the four districts. The City Commission gave consensus to continue with the process by creating potential maps of the new districts for discussion. Four possible map options were presented at the October 6, 2022 commission meeting as well as at two public meetings, on October 13 and October 15.

The next step is for the Commission to vote on which map options to proceed with and how many other map options to be created for consideration. Those options will be presented at the November 15 Commission meeting.

MOTION:

Move to accept map option(s) xxx and proceed to a final map option presentation.
Move to consider xxx other map options for the final map presentation.

Consultant Report: District Analysis for the City of Lake Worth Beach

September 7, 2022

John Scott Dailey Florida Institute of Government
Florida Atlantic University

Steven Bourassa, Ph.D.
Professor and Chair, Department of Urban and Regional Planning

James Gammack-Clark, M.A., Ph.D. candidate (ABD)
Senior Instructor, Department of Geosciences

Ronald R. Schultz, Ph.D.
Professor Emeritus, Department of Geosciences

Michael Stamm Jr. MURP
Adjunct Faculty, Department of Urban and Regional Planning

Introduction

The City of Lake Worth Beach contracted with Florida Atlantic University (FAU) to conduct an analysis of their City Commission election districts. The contract outlines a two-part process: Part A, a population analysis of the current election districts and recommendation for redistricting and Part B, if necessary, the creation of redistricting options for the City.

This report transmits a general analysis of the 2020 U.S. Census apportionment dataset, adjusted for future growth to the year 2024, as well as a population analysis of the existing City Commission election districts for the City. The report then provides a recommendation as to whether the City should conduct a full redistricting analysis.

The districting requirements in the City Charter are unique, as the Charter defines the specific district boundaries. The consulting team was tasked by the City to prepare an analysis of population balance among the districts that accounts for the 2020 U.S. Census population count to determine if the districts have fallen out of alignment.

The 2020 Census

There are two primary differences that make the 2020 U.S. Census stand out from those that preceded it: a significant delay in its release due to the COVID-19 pandemic, and the implementation of a new 'differential privacy' policy. We will briefly address both of these here for the sake of posterity and context.

The decennial census aims to capture a snapshot in time of the population of the United States of America. Understanding that the population is constantly changing, with births, deaths, and migration patterns constantly adjusting the fabric of the American people, Census Day represents a single moment in time for which the U.S. population is enumerated with the greatest precision possible. This day is always April 1st. By this date, every household in America received an invitation to participate in the 2020 census, with three options to respond: online, by mail, or by phone. 2020 represented the first census to include an online response option. Subsequent to this day is a period of time in which the U.S. Census Bureau follows up with non-responders and begins a quality control process. Traditionally, the Census Bureau would deliver an apportionment count to the U.S. President on December 31st, followed by a distribution of redistricting data to the states exactly one year to the day after Census Day: in this case, April 1, 2021.

However, due to complications caused by the COVID-19 pandemic, the Census Bureau sought statutory relief from Congress that would allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than September 30, 2021. Additionally, the Census Bureau compressed the typical three-month nonresponse follow up enumeration period to two and half months. Ultimately, redistricting data were released in a 'legacy format' on August 12, 2021. This delay inevitably and unavoidably complicated redistricting efforts for every electoral district in the nation. It also meant that the amount of error in the data, inherent to every census where 100% accuracy is impossible, would likely be greater in the 2020 census. The Census Bureau has since confirmed that the rate of missing information was higher in the 2020 census than in the 2010 census. However, they have also stated that this rate was lower than they initially feared.

The 2020 redistricting data are the first to employ 'differential privacy protection'. This represents the Census Bureau's introduction of 'noise' into the data at the more local geographic scale (Blocks and Block Groups) with the intent to strike a balance between data protection and precision. The effect is that while the enumeration counts can be trusted at the Census Tract level, we must anticipate a certain degree of 'fuzziness' at the Block level. Specifically, while the aggregate count of population for a Census Tract will be accurate, a certain proportion of people/housing units will have been *deliberately* misallocated by the Census Bureau at the Block level. While this may not be problematic in the realignment of Congressional Districts, for example, it certainly represents a challenge for Municipal Districts, for which the geographic precision of Census Blocks is highly desirable.

Taken together, therefore, the complications related to the COVID-19 pandemic and the implementation of 'differential privacy' introduce a certain amount of additional uncertainty to the primary source of data for this analysis (2020 Census Redistricting Data (PL 94-171)) that is unprecedented. Nevertheless, these data remain the standard upon which municipal redistricting efforts shall be based across the nation.

Lake Worth Beach City Charter

The Charter does not provide procedural language as it pertains to redistricting or evaluation of election district population.

Article II (Territorial Boundaries: Election Precincts) Sec. 2 – Election Districts:

The City of Lake Worth is hereby divided into four (4) election districts, as follows:

District 1. All that territory lying west of Dixie Highway and south of Lake Avenue.

District 2. All that territory lying west of Dixie Highway and north of Lake Avenue.

District 3. All that territory lying east of Dixie Highway and north of Lake Avenue.

District 4. All that territory lying east of Dixie Highway and south of Lake Avenue.

Current Districts

An Evaluation of the Existing Districts:

Referring to the 2020 Census Blocks, the City of Lake Worth Beach has a population of 42,219 which means the ideal district size for each of the four election districts is 10,555 people. District 2 is the largest district with 14,149 people and District 4 is the smallest District with 6,539 people. Based on 2020 data, the election districts have a total deviation of **133.31%** and a spread between the largest and smallest districts of **72.10%**. Based on the 2020 Census block data, the current districts are well above the 10% deviation (spread) threshold used to evaluate election districts for population equity.

An Evaluation of Future Growth:

To ensure that any recommendations for redistricting reflect the most up-to-date information about population growth, they are based on projections to 2024. City staff identified developments that were not included in the 2020 Census counts but are expected to be constructed and occupied by 2024. These projects add a total of 1,554 new units to the city's existing housing stock. Population projections were established for each of these projects by multiplying the number of units by the Persons Per Household (PPH) value established by the U.S. Census American Community Survey for the City of Lake Worth Beach (2016-2020): 2.9 (with the result rounded to the nearest whole number). These results are listed in **Table 1** below. (Note: Population projections were made at the census block level, rather than on a project by project basis. Rounding error will thus produce a slight discrepancy in the population column if the reader attempts to multiply the total units per project by the PPH value, rather than summing the projected population for each block, as was done in this case.) In total, 4,508 people will be added to the city's total population count, with the majority (3,588) being allotted to District 2.

*Table 1 – City of Lake Worth Beach
Population Estimates for Approved Developments*

Subdivision	Units	Population Estimate	Current District	Completion Date
The One	14	41	4	2020
The Mid	230	667	2	2021
Aviara	49	142	3	2022
The Bohemian	200	580	1	2022
129 South K Street	4	12	4	2023
1303/1305 Lucerne Avenue	4	12	2	2023
15 North E Street	2	6	2	2023
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230 North L Street	6	17	3	2023
320 Lake Osborne Drive	6	17	1	2023
509 North H Street	3	9	2	2023
Advantix	189	548	2	2023
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Lake Worth Apartments	24	70	2	2023/2024
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Solimar	8	23	3	2023/2024
The Avery	200	580	2	2023/2024
The Cloisters Phase III	15	44	4	2023/2024
The Perch	18	52	2	2023/2024
Village Flats Phase I	41	119	2	2023/2024
Village Flats Phase II and III	12	35	2	2023/2024
Lake Worth Residences	197	571	2	2024
	1,554	4,509		

Note: The U.S. Census average persons per household (2016-2020) for the City of Lake Worth Beach (2.9) was used to calculate the population estimate, rounded to the nearest whole number.

Accounting for this anticipated growth, the 2024 projected population for the City of Lake Worth Beach will be 46,727. Dividing by four puts the projected average population for each district at 11,682. The **Existing Districts Map** and **Table 2** show the geographic boundaries and projected population counts for the current districts. The district with the greatest projected population is District 2 with 17,737 residents; the district with the smallest projected population is District 4 with 6,680 residents.

Under these projections, District 2 will account for the greatest portion of the city’s population at 37.96%. This deviates from the theoretical average population of 11,682 by 51.84%. District 4, the smallest district, has 14.30% of the population and deviates from the average by -42.82%. This represents a difference of 11,057 people between the two districts, and a spread of **94.66%** (42.82% + 51.84%). The sum deviation of all districts, meanwhile, is **153.51%** and the mean deviation is **38.38%**. As such, the current districts are severely unbalanced and the anticipated growth will exacerbate the situation. While the current district configuration is geographically compact and utilizes easy to understand boundaries consistent with the descriptions in the City Charter, the current population imbalance exceeds the standard criterion for redistricting: there must be no more than a 10% deviation between districts.

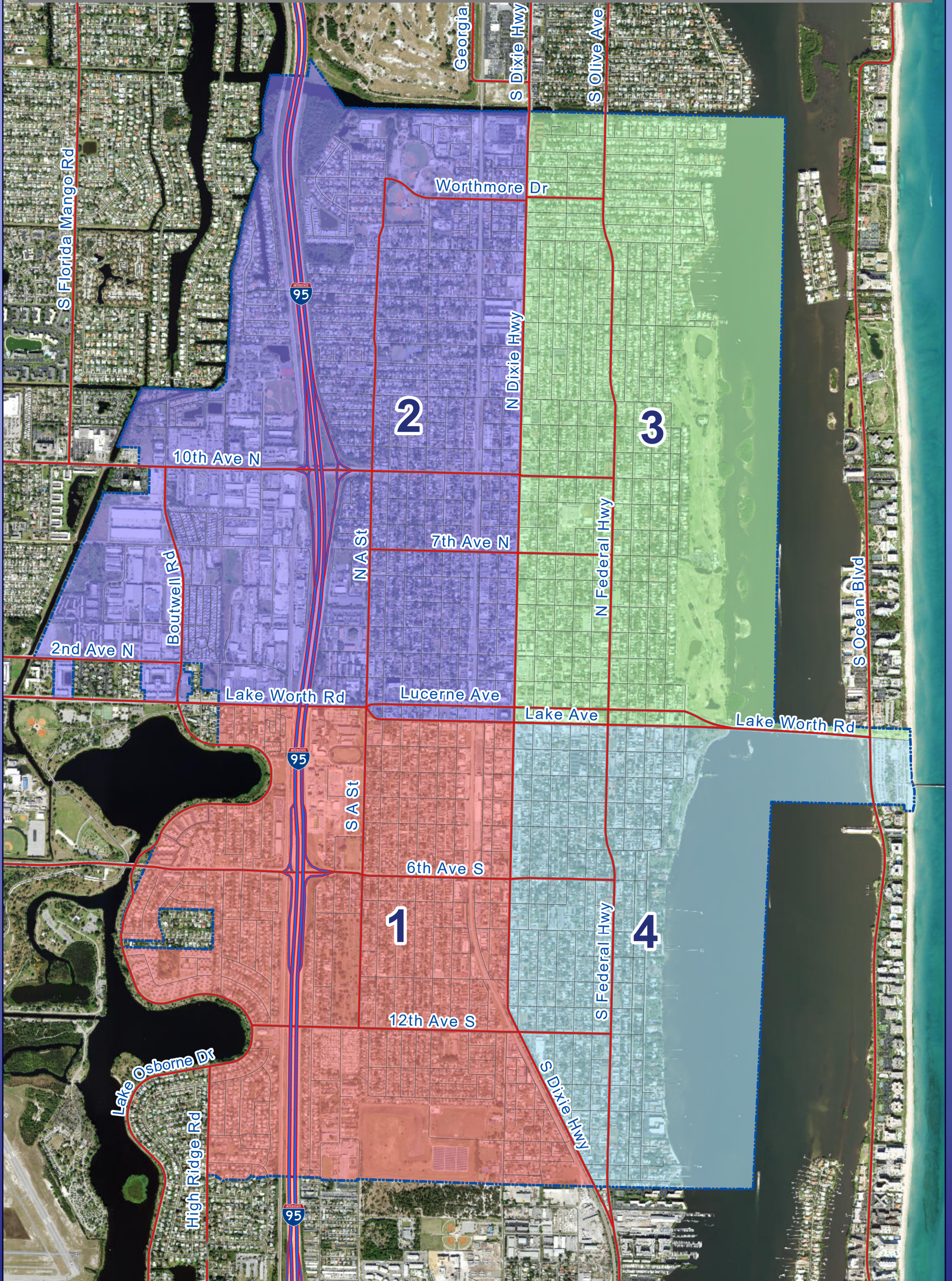
*Table 2 – Current Commission Districts – City of Lake Worth Beach
2020 Enumeration and 2024 Population Projection*

Current Districts	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	13,996	33.15	32.60%	14,593	31.23	24.92%
District 2	14,149	33.51	34.05%	17,737	37.96	51.84%
District 3	7,535	17.85	-28.61%	7,717	16.52	-33.94%
District 4	6,539	15.49	-38.05%	6,680	14.30	-42.82%
Total	42,219	100	133.31%	46,727	100	153.51%
Average	10,555	25	33.33%	11,682	25	38.38%

The overall pattern of district boundary changes would need to increase the population of District 3 and District 4. This will, of course, necessitate an adjustment of their geographic boundaries where District 3 and 4 gain territory, while districts 1 and 2 lose territory.

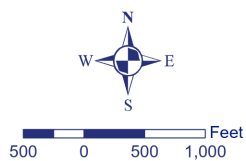
City of Lake Worth Beach

Existing Commission Districts



Revision Date: 9/3/2022
 Contact: James Gammack-Clark
 Filename: Lake_Worth_Beach.aprx
 Sources: U.S. Census Bureau
 City of Lake Worth Beach
 Florida Atlantic University

- District 1
- District 3
- District 2
- District 4



City of Lake Worth Beach

7 North Dixie Highway
 Lake Worth Beach FL, 33460
 Phone (561) 586-1600



Redistricting Criteria and Data Sources

The City's Charter defines the geographic boundaries of the election districts, but does not clarify the process as to how and when election districts should be evaluated. To conduct the City's redistricting process, the consultant will abide by the following standards by which rational districts are developed nationwide and which are supported by case law and practice throughout the nation. These criteria can be summarized as follows:

- 1) Reasonable population equality across districts:
 - Districts should have approximately the same number of people when all persons, regardless of age, are counted. Ideal district size is based on the total population divided by the number of districts.
 - Redistricting should adhere to Section 2 of the Voting Rights Act of 1965, as amended and interpreted through case law. This criterion requires that minority population clusters be respected in the development of district boundaries. Arbitrary dilution and other discriminatory practices are prohibited.
 - Redistricting should adhere to Florida's Fair Districting Amendment.
 - Although deviations should be avoided wherever possible, there must be no more than a 10% overall deviation from the ideal size across districts.
- 2) Geographic contiguity and appropriate compactness:
 - Follow major natural and manmade boundaries to the extent possible in defining boundaries of voting districts.
 - Maintain the integrity of communities of interest based on race, life cycle/age, income, and other community identity characteristics such as subdivisions.
 - Minimize the degree of change in pre-existing patterns of districts, to promote continuity of citizen identification with a district.
 - Maintain district compactness and spatial contiguity. A compact shape for each district will be sought in each redistricting option presented to the city.

The first criterion is of primary importance; the second is significant in guiding decisions in reaching reasonable population balance.

In developing revised Lake Worth Beach City Commission election districts, the spatial units used in composing or building the districts are residential housing subdivisions (communities) and U.S. Census blocks. Subdivisions are typically homogeneous in their housing characteristics and thus serve households with broadly similar interests. Therefore, district borders are typically subdivision boundaries and associated major roadways or other obvious physical features. U.S. Census blocks are typically subunits in subdivisions and are the smallest spatial unit used in tabulating Census data.

Recommendation

It is the opinion of the FAU redistricting team, that the existing City Commission election district boundaries are severely imbalanced and that a realignment of these boundaries, to better balance their population, is required. Without redistricting, the sum of the deviations from the ideal average population is expected to be 153.51%, with a mean deviation of 38.38%, and a spread of 94.66%. This far exceeds the 10% desired maximum.

The overall pattern of district boundary changes will need to increase the population of District 3 and 4 to achieve the desired population equity between districts. This will necessitate an adjustment of the geographic boundaries where District 1 and 2 decrease in size. Should the City of Lake Worth Beach opt to proceed, it is the intent of the FAU team to provide the City's Commission with redistricting map alternatives for their consideration, consistent with the terms of the agreement between FAU and the City. FAU will work with City staff to schedule future meetings to present the redistricting map alternatives to the City Commission.

Appendix

District Demographics

The table below depict the demographics taken from the 2020 U.S. Census for the existing commission districts. Note that the columns 'White' through 'Other' sum to the City's population total. These categories represent the U.S. Census' definition of race. The last two columns ('Hispanic or Latino' and 'Not Hispanic or Latino') also sum to the City's population total (the U.S. Census' classification of ethnicity).

Current Commission Districts – City of Lake Worth Beach
Expanded Demographics, U.S. Census 2020

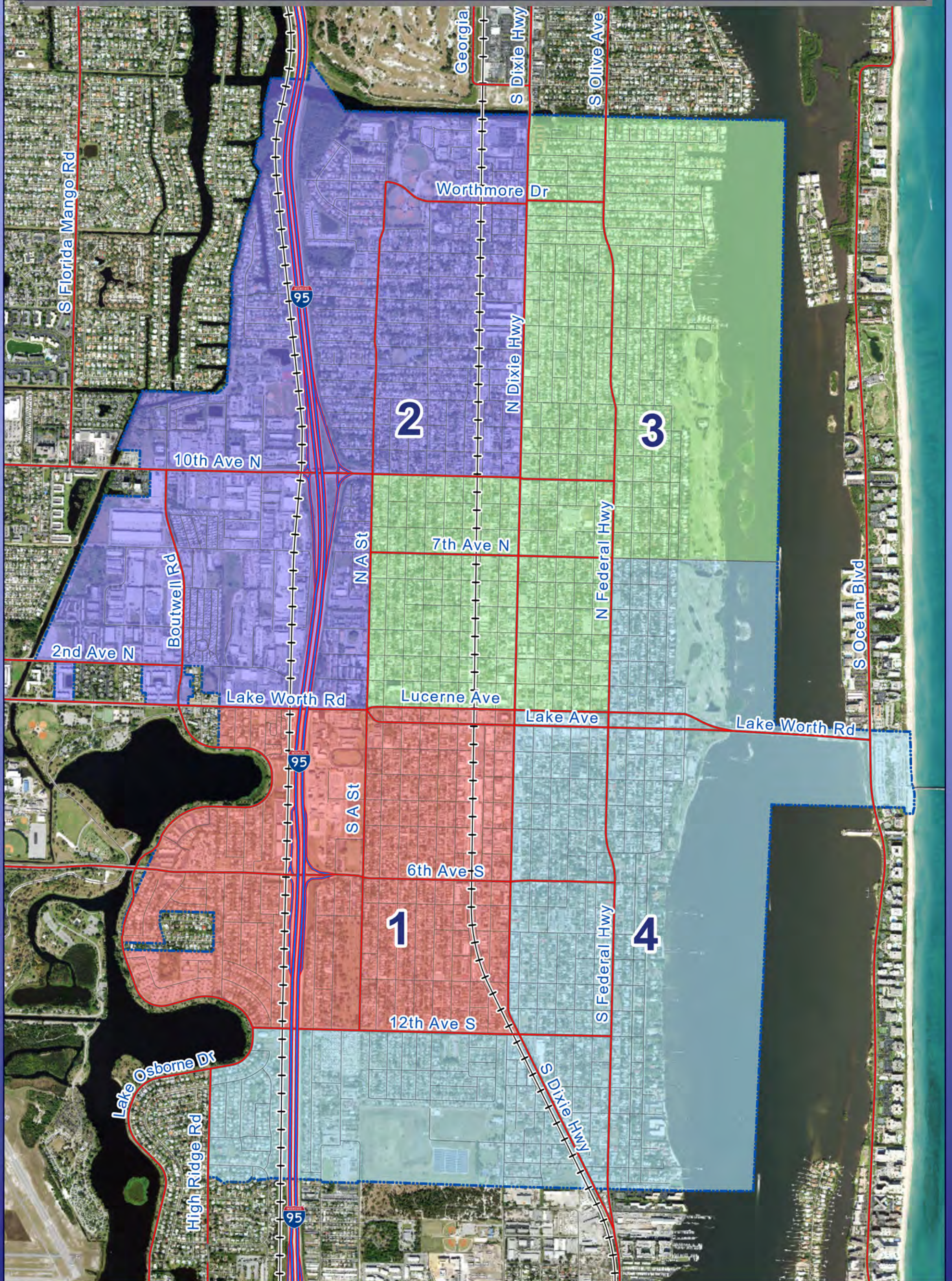
District (Existing)	Total Population	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Other	Hispanic or Latino	Not Hispanic or Latino
1	13,996	3,785 (27.04%)	3,515 (25.11%)	993 (7.09%)	89 (0.64%)	8 (0.06%)	5,606 (40.05%)	7,422 (53.03%)	6,574 (46.97%)
2	14,149	4,490 (31.73%)	2,767 (19.56%)	1,087 (7.68%)	182 (1.29%)	14 (0.1%)	5,609 (39.64%)	7,740 (54.7%)	6,409 (45.3%)
3	7,535	5,056 (67.1%)	512 (6.79%)	134 (1.78%)	77 (1.02%)	6 (0.08%)	1,750 (23.22%)	1,950 (25.88%)	5,585 (74.12%)
4	6,539	3,149 (48.16%)	1,266 (19.36%)	237 (3.62%)	69 (1.06%)	0 (0%)	1,818 (27.8%)	2,245 (34.33%)	4,294 (65.67%)
	42,219	16,480 (39.03%)	8,060 (19.09%)	2,451 (5.81%)	417 (0.99%)	28 (0.07%)	14,783 (35.02%)	19,357 (45.85%)	22,862 (54.15%)

Deviation Summary

Configuration	Impacted Population	Total Deviation	Mean Deviation	Spread
Existing	N/A	150.21	37.55	90.65
Alternative 1	9,892	7.44	1.86	4.96
Alternative 2	10,073	11.27	2.82	8.28
Alternative 3	10,360	2.62	0.66	1.72
Alternative 4	10,743	7.91	1.98	6.10

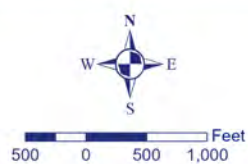
City of Lake Worth Beach

Alternative Districts: Option 1



Revision Date: 9/20/2022
Contact: James Gammack-Clark
Filename: Lake_Worth_Beach.aprx
Sources: U.S. Census Bureau
City of Lake Worth Beach
Florida Atlantic University

-  District 1
-  District 2
-  District 3
-  District 4



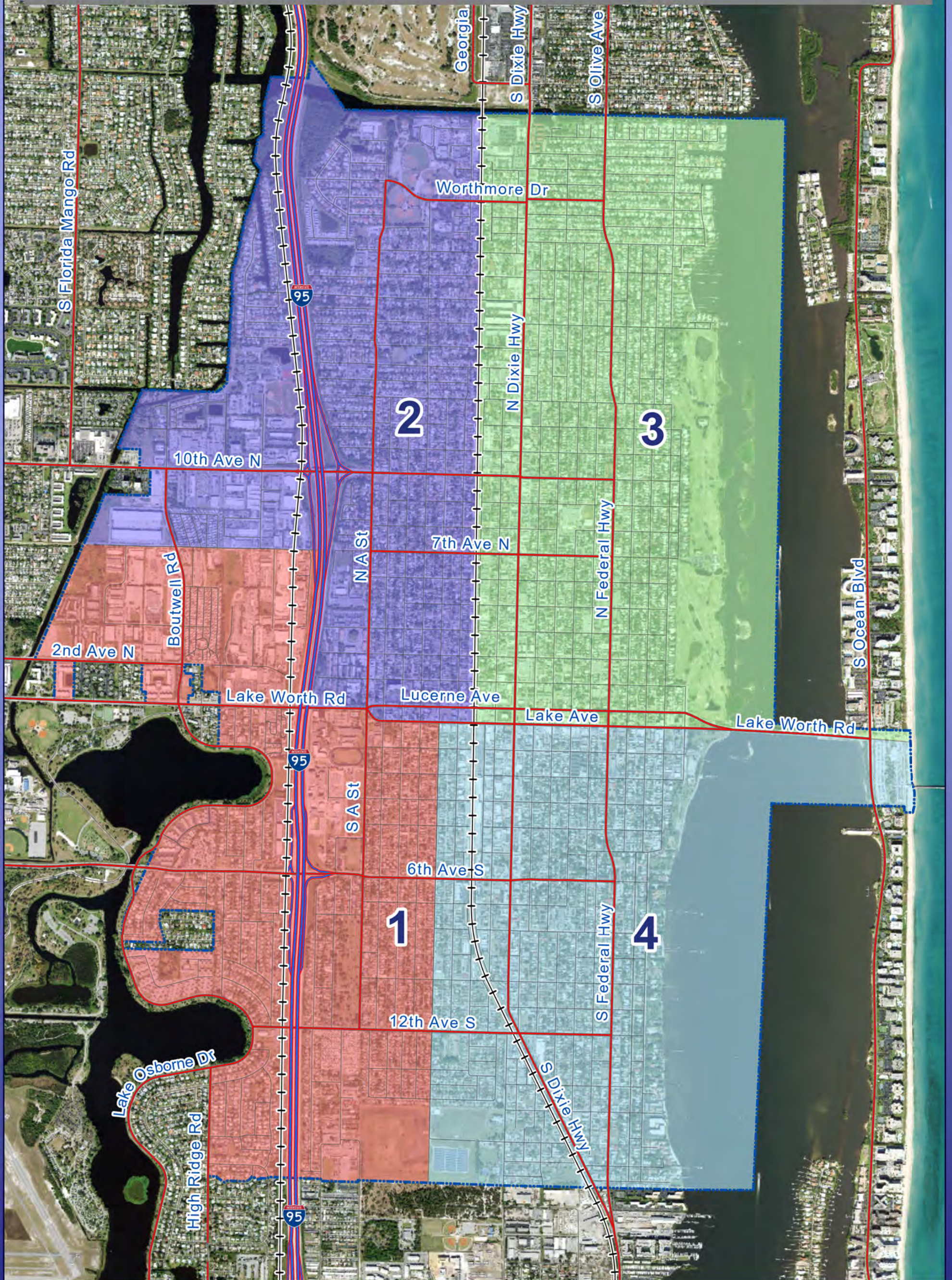
City of Lake Worth Beach

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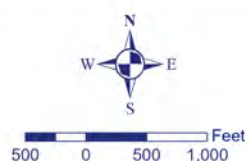
City of Lake Worth Beach

Alternative Districts: Option 2



Revision Date: 9/20/2022
 Contact: James Gammack-Clark
 Filename: Lake_Worth_Beach.aprx
 Sources: U.S. Census Bureau
 City of Lake Worth Beach
 Florida Atlantic University

- District 1
- District 3
- District 2
- District 4



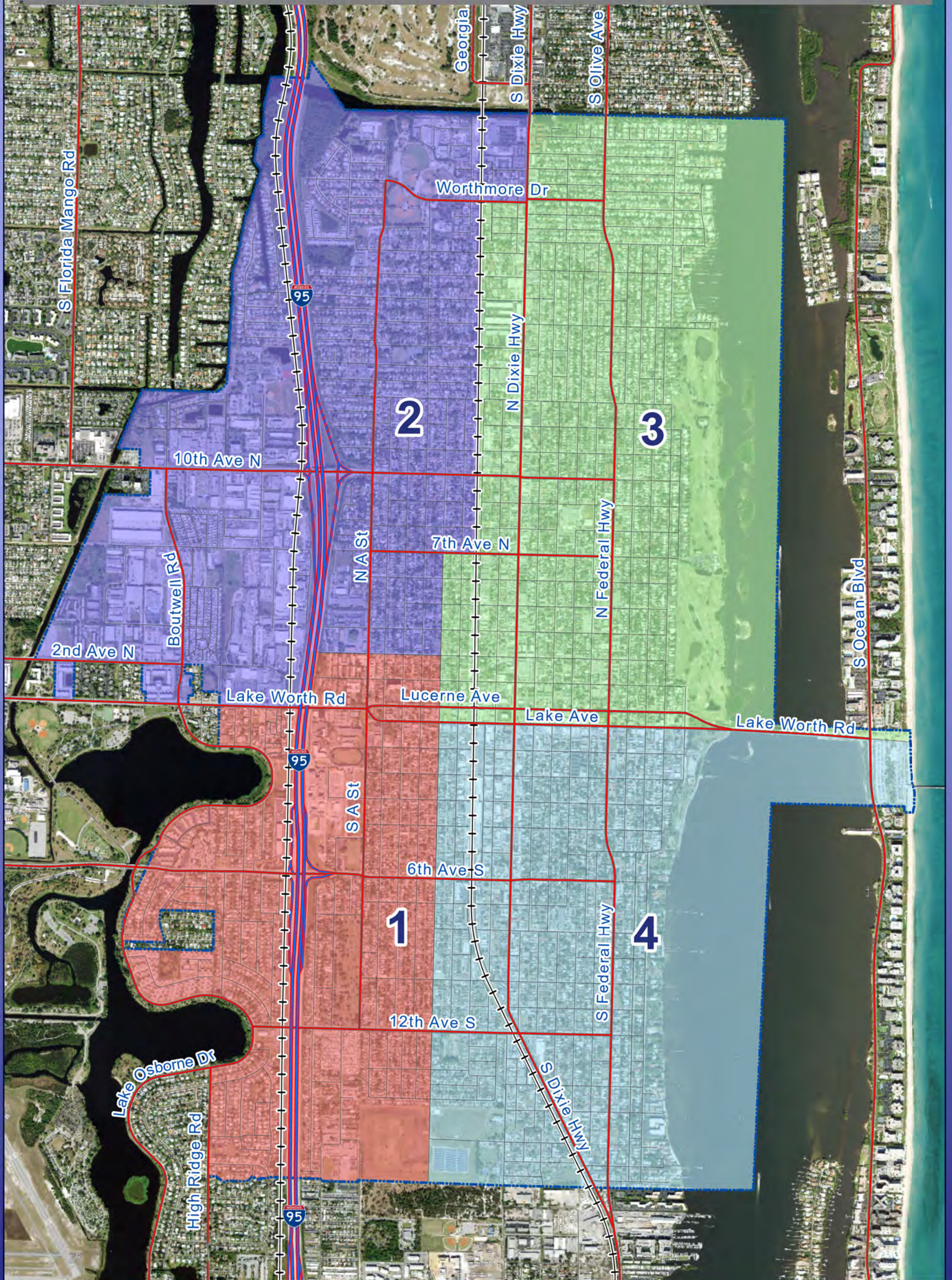
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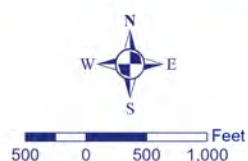
City of Lake Worth Beach

Alternative Districts: Option 3



Revision Date: 9/20/2022
Contact: James Gammack-Clark
Filename: Lake_Worth_Beach.aprx
Sources: U.S. Census Bureau
City of Lake Worth Beach
Florida Atlantic University

- District 1
- District 2
- District 3
- District 4



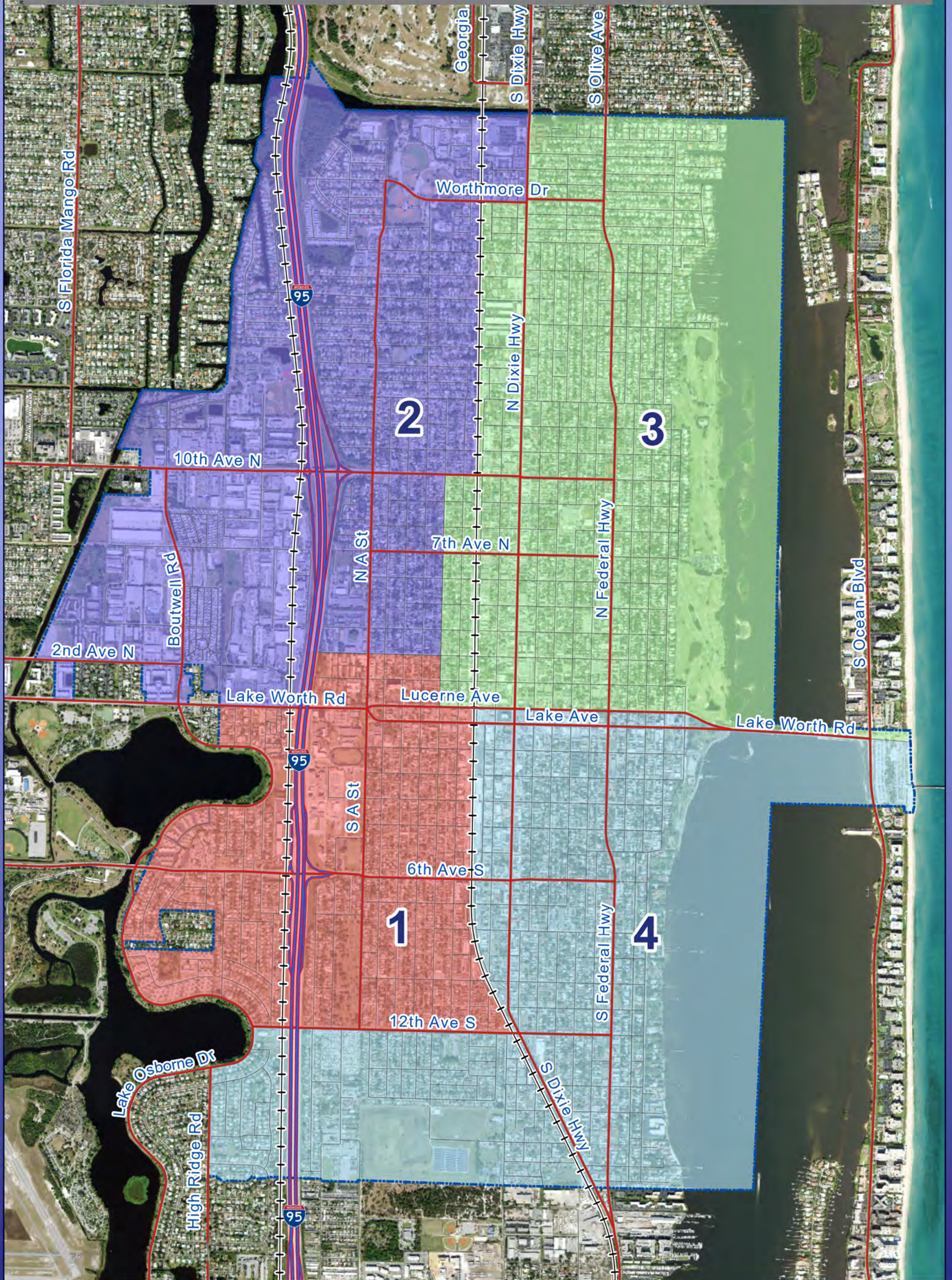
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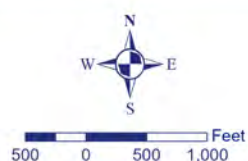
City of Lake Worth Beach

Alternative Districts: Option 4



Revision Date: 9/20/2022
Contact: James Gammack-Clark
Filename: Lake_Worth_Beach.aprx
Sources: U.S. Census Bureau
City of Lake Worth Beach
Florida Atlantic University

- District 1
- District 2
- District 3
- District 4



City of Lake Worth Beach

7 North Dixie Highway
Lake Worth Beach FL, 33460
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Interim Consultant Report: Redistricting Alternatives for the City of Lake Worth Beach

September 25, 2022

John Scott Dailey Florida Institute of Government
Florida Atlantic University

Steven Bourassa, Ph.D.
Professor and Chair, Runstad Department of Real Estate, University of Washington;
formerly Professor and Chair, Department of Urban and Regional Planning,
Florida Atlantic University

James Gammack-Clark, M.A., Ph.D. candidate (ABD)
Senior Instructor, Department of Geosciences, Florida Atlantic University

Ronald R. Schultz, Ph.D.
Professor Emeritus, Department of Geosciences, Florida Atlantic University

Michael Stamm Jr. MURP
Adjunct Faculty, Department of Urban and Regional Planning,
Florida Atlantic University

Introduction

The City of Lake Worth Beach contracted with Florida Atlantic University (FAU) to conduct an analysis of their City Commission election districts. The contract outlines a two-part process: Part A, a population analysis of the current election districts and recommendation for redistricting and Part B, if necessary, the creation of redistricting options for the City. On September 7, 2022 the FAU redistricting team submitted the District Analysis for the City of Lake Worth Beach that provided a population analysis of the existing City Commission Districts, a population projection through 2024 for the Commission Districts and a recommendation to proceed to Part B of the contract. The City Commission at their September 12, 2022 meeting voted to proceed to Part B of the contract, creating map alternatives for the City Commission election districts.

This report transmits redistricting map alternatives (Part B) for dissemination to the City Commission and public as part of the City's redistricting process. The population data used to create the map options is from the 2020 U.S. Census apportionment dataset, adjusted for future growth to the year 2024. The FAU team anticipates updating the Redistricting Alternatives report following public meetings and prior to the anticipated first reading of an ordinance selecting a map option.

Redistricting Criteria and Data Sources

The City's Charter defines the geographic boundaries of the election districts, but does not clarify the process as to how and when election districts should be evaluated. To conduct the City's redistricting process, the consultant has used the following standards by which rational districts are developed nationwide and which are supported by case law and practice throughout the nation:

- 1) Reasonable population equality across districts:
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discriminatory practices are prohibited.

- Redistricting should adhere to Florida's Fair Districting Amendment.
- Although deviations should be avoided wherever possible, there must be no more than a 10% overall deviation from the ideal size across districts.

2) Geographic contiguity and appropriate compactness:

- Follow major natural and manmade boundaries to the extent possible in defining boundaries of voting districts.
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The first criterion is of primary importance; the second is significant in guiding decisions in reaching reasonable population balance.

In developing revised Lake Worth Beach City Commission election districts, the spatial units used in composing or building the districts are residential housing subdivisions (communities) and U.S. Census blocks. Subdivisions are typically homogeneous in their housing characteristics and thus serve households with broadly similar interests. Therefore, district borders are typically subdivision boundaries and associated major roadways or other obvious physical features. U.S. Census blocks are typically subunits in subdivisions and are the smallest spatial unit used in tabulating Census data.

Lake Worth Beach City Charter

This redistricting process was motivated by a change to the City's Charter that was approved March 8, 2022. This change provided for election of City Commissioners by District rather than City-wide (the mayor will continue to be elected City-wide). This Charter amendment led to a concern about possible imbalance in population across the current districts, which presently divide the City into four quadrants without any consideration for population equity.

The Charter does not provide procedural language pertaining to redistricting or evaluation of election district population. However, Article II (Territorial Boundaries: Election Precincts) Sec. 2 – Election

Districts, defines the boundaries of the current districts:

The City of Lake Worth is hereby divided into four (4) election districts, as follows:

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An Evaluation of Future Growth:

To ensure that any recommendations for redistricting reflect the most up-to-date information about population growth, they are based on projections to 2024. City staff identified developments that were not included in the 2020 Census counts but are expected to be constructed and occupied by 2024. The projected population was amended after the submission of the initial Part A report. Following discussions with the City Commission and City staff, February of 2024 was specified as the new planning horizon for this Redistricting project. Consequently, the FAU team reduced the projected new units total from 1,554 to 1,364. The reduction in units resulted in a projected population growth of 3,958 instead of 4,508.

*Table 1 – City of Lake Worth Beach
Population Estimates for Approved Developments*

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The Lord's Place	7	21	4	2023/2024
The Perch	18	52	2	2023/2024
Village Flats Phase I	41	119	2	2023/2024
Village Flats Phase II and III	12	35	2	2023/2024
1,364	3,959			

Note: The U.S. Census average persons per household (2016-2020) for the City of Lake Worth Beach (2.9) was used to calculate the population estimate, rounded to the nearest whole number.

Population projections were established for each of these projects by multiplying the number of units by the Persons Per Household (PPH) value established by the U.S. Census American Community Survey for the City of Lake Worth Beach (2016-2020): 2.9 (with the result rounded to the nearest whole number).

These results are listed in **Table 1** above. (Note: Population projections were made at the Census Block

level, rather than on a project-by-project basis. Rounding error will thus produce a slight discrepancy in the population column if the reader attempts to multiply the total units per project by the PPH value, rather than summing the projected population for each block, as was done in this case.) In total, 3,958 people will be added to the city's total population count, with the majority (3,018) being allotted to the District 2 population count.

Accounting for this anticipated growth, the 2024 projected population for the City will be 46,177. Dividing by four puts the projected average population for each district at 11,544. The **Existing Districts Map** and **Table 2** show the geographic boundaries and projected population counts for the current districts. The district with the greatest projected population is District 2 with 17,166 residents; the district with the smallest projected population is District 4 with 6,701 residents.

*Table 2 – Current Commission Districts – City of Lake Worth Beach
2020 Enumeration and 2024 Population Projection*

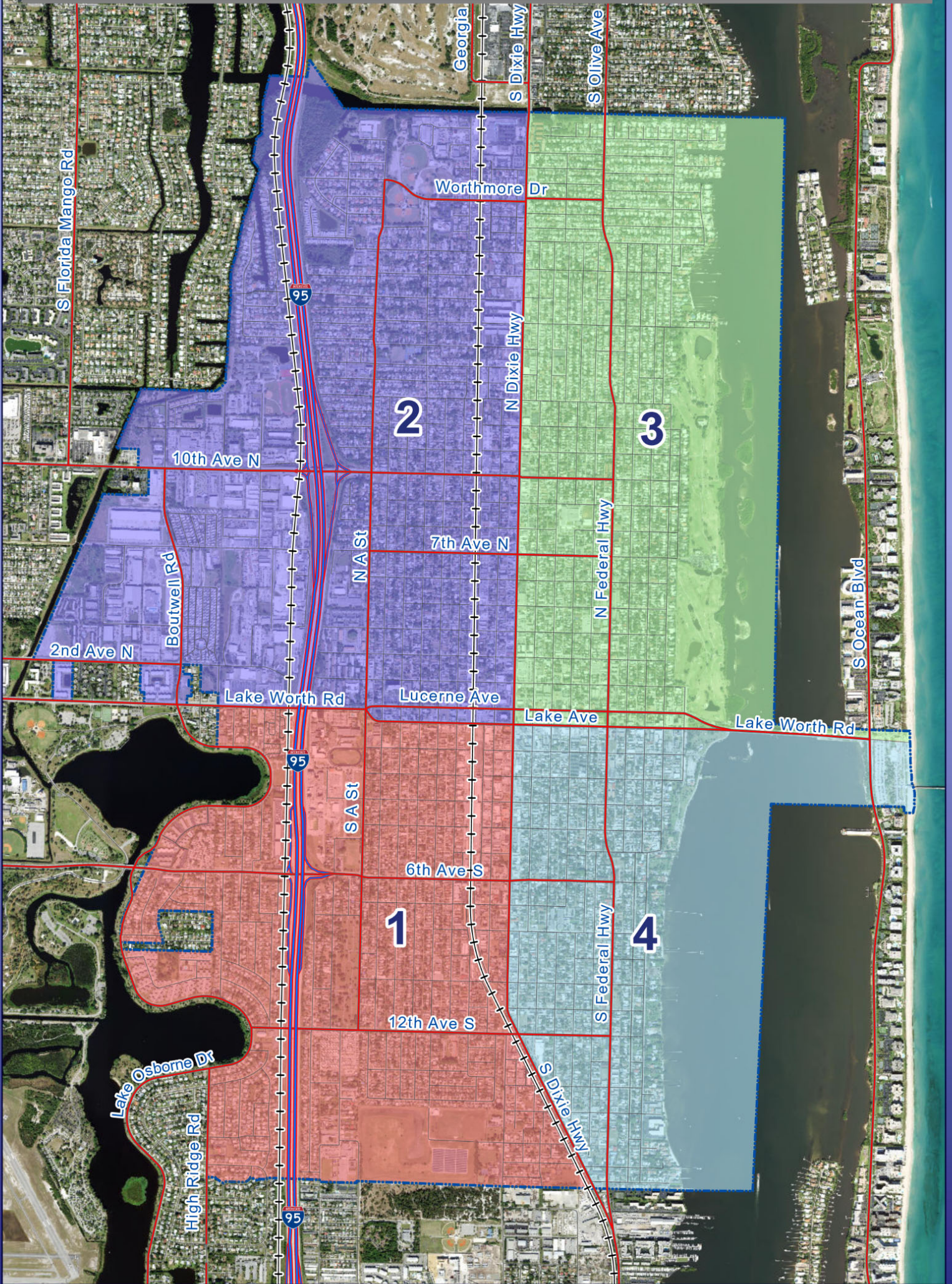
Current Districts	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	13,996	33.15	32.60%	14,593	31.60	26.41%
District 2	14,149	33.51	34.05%	17,166	37.17	48.70%
District 3	7,535	17.85	-28.61%	7,717	16.71	-33.15%
District 4	6,539	15.49	-38.05%	6,701	14.51	-41.95%
Total	42,219	100	133.31%	46,177	100	150.21%
Average	10,555	25	33.33%	11,544	25	37.55%

Under these projections, District 2 will account for the greatest portion of the city's population at 37.17%. This deviates from the theoretical average population of 11,544 by 48.7%. District 4, the smallest district, has 14.51% of the population and deviates from the average by -41.95%. This represents a difference of 10,465 people between the two districts, and a spread of **90.65%** (48.7% + 41.95%). The sum deviation of all districts, meanwhile, is **150.21%** and the mean deviation is **37.55%**. As such, the current districts are severely unbalanced and the anticipated growth will exacerbate the situation. While the current district configuration is geographically compact and utilizes easy to understand boundaries consistent with the descriptions in the City Charter, the projected population imbalance exceeds the standard criterion for redistricting: there must be no more than a 10% deviation between districts.

The overall pattern of district boundary changes would need to increase the population of District 3 and District 4. This will, of course, necessitate an adjustment of their geographic boundaries where District 3 and 4 gain territory, while districts 1 and 2 lose territory.

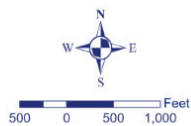
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Existing Commission Districts



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Alternatives

Given the necessity for redistricting, four alternatives have been developed for review and discussion by the City Commission and the citizens of Lake Worth Beach. All the alternatives presented here meet standard districting guidelines. They represent alternative ways to better balance district populations, while also keeping with the intent of the other identified guidelines.

The high degree of population inequality across districts means that significant changes to district boundaries are needed to achieve compliance with redistricting standards. Consequently, all the proposed alternatives involve substantial modifications to current boundaries.

Alternative 1

Alternative 1 shifts territory in all the districts to achieve population equity. The impacts of these modifications on the districts' 2024 projected populations and geographic boundaries are reflected in **Table 3**, the **Existing vs. Alternative 1 Comparison Map**, the **Neighborhoods & Alternative 1 Map**, and the **Alternative 1 Map**.

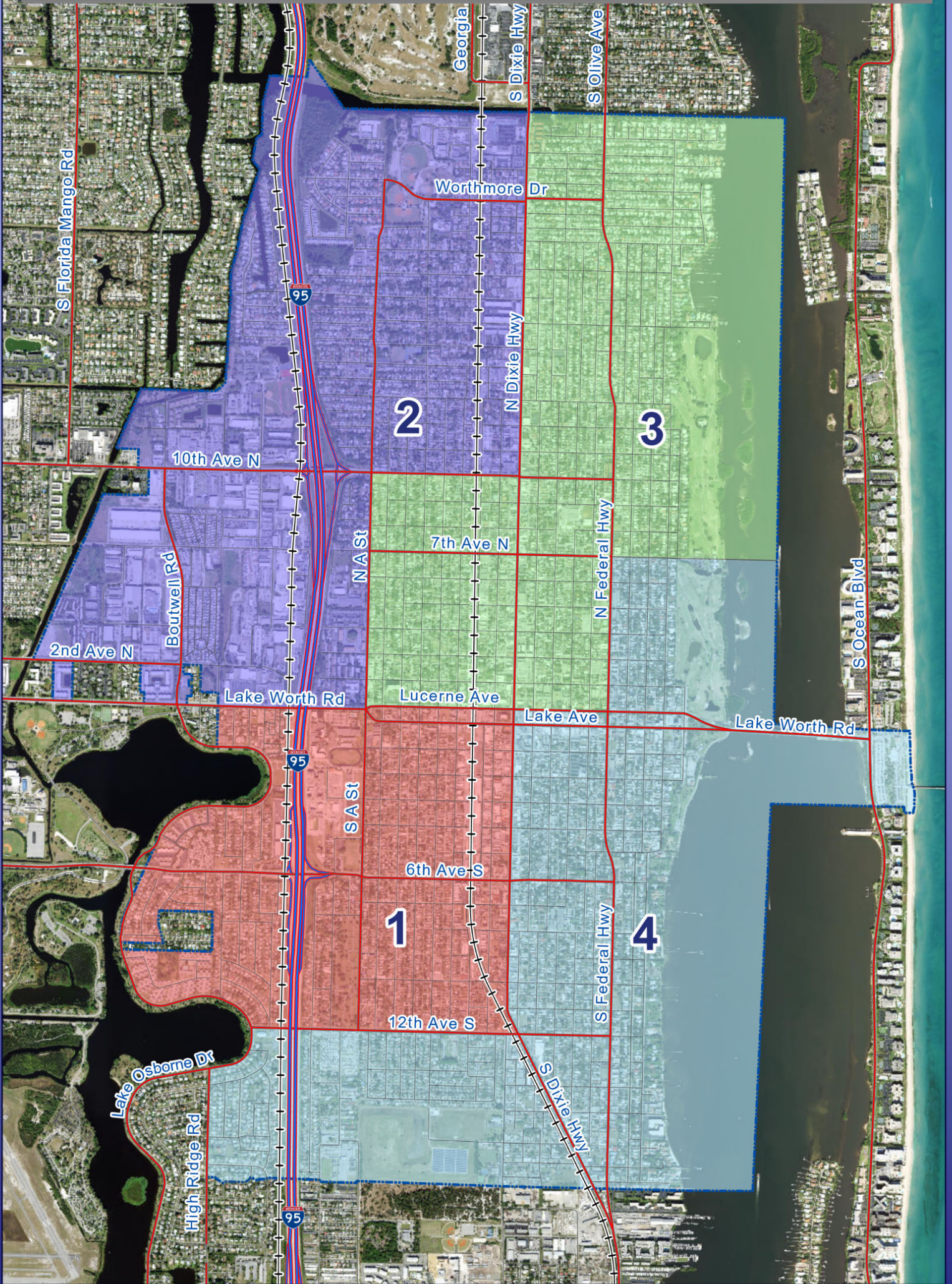
*Table 3 – Alternative Districts 1 – City of Lake Worth Beach
2024 Population Projections*

Alt. 1	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	10,648	25.22	0.88%	11,468	24.83	-0.66%
District 2	9,249	21.91	-12.37%	11,764	25.48	1.90%
District 3	11,293	26.75	6.99%	11,754	25.45	1.82%
District 4	11,029	26.12	4.49%	11,191	24.24	-3.06%
Total	42,219	100	24.74%	46,177	100	7.44%
Average	10,555	25	6.19%	11,544	25	1.86%

This Alternative represents the biggest departure of the four alternatives presented in this report from the city's present four quarters configuration. The North-South border becomes Lucerne Avenue, while the East-West border largely remains Dixie Highway, except for where District 3 projects west to North A Street, south of 10th Avenue. This results in only three neighborhoods being split in this alternative, which is the fewest among the four alternatives. The mean deviation of Alternative 1 is **1.86%**, while the spread between the largest and smallest districts is **4.96%** (3.06 +1.90).

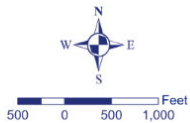
City of Lake Worth Beach

Alternative Districts: Option 1



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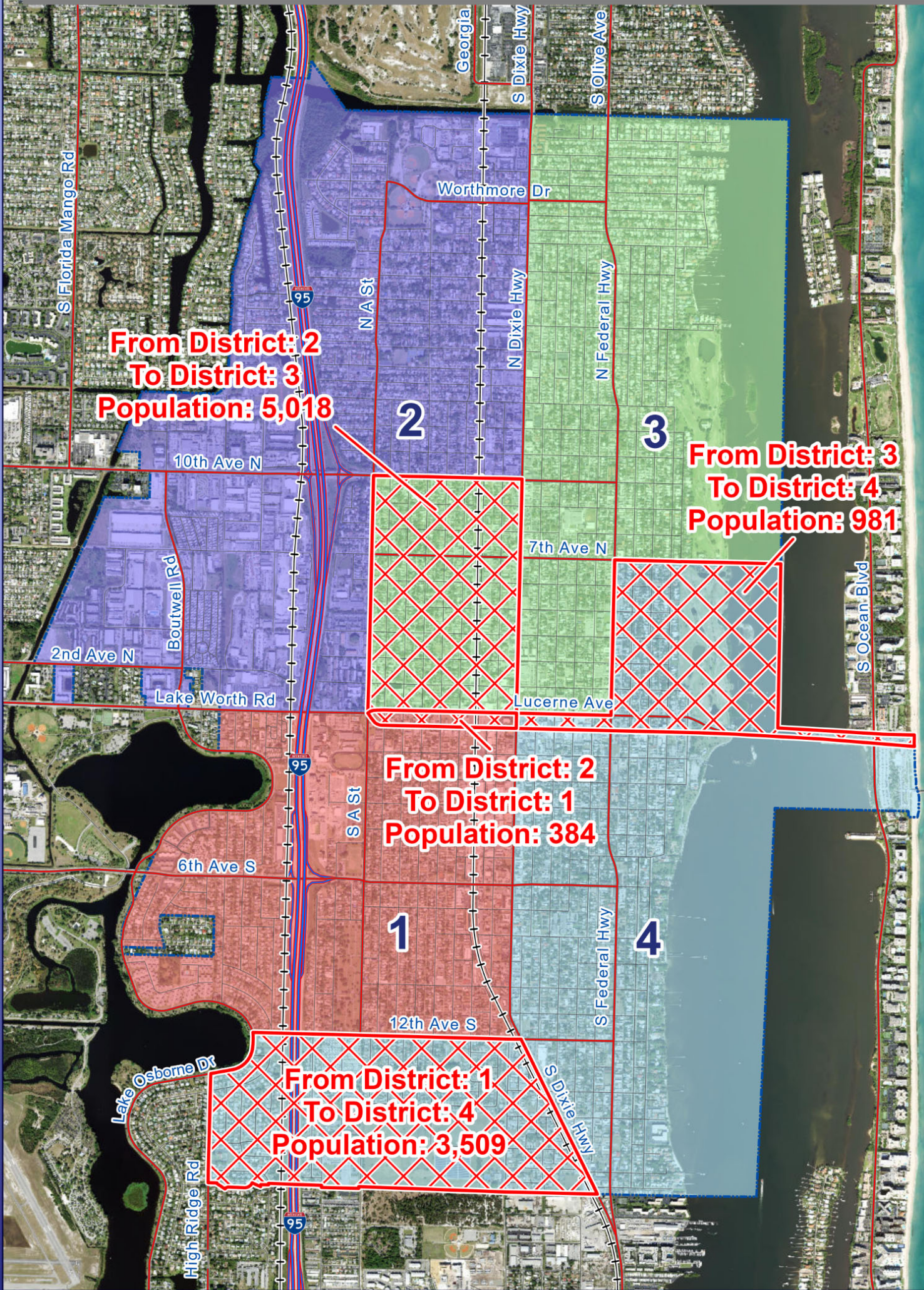
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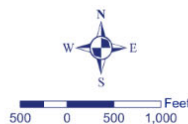
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Existing vs. Alternative Districts: Option 1



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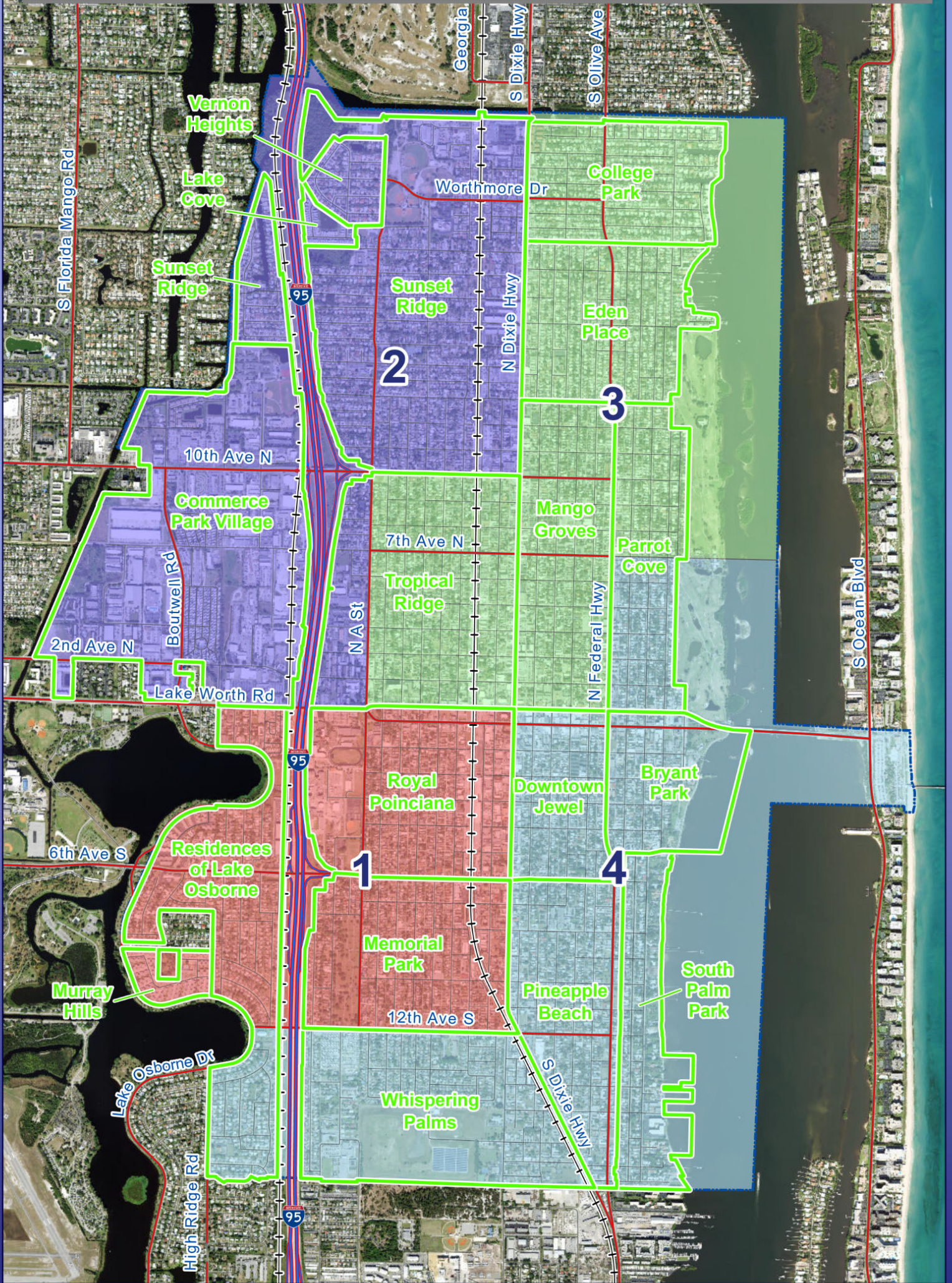
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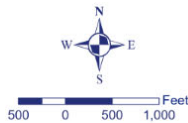
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Neighborhoods & Alternative Districts: Option 1



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Alternative 2

Alternative 2 shifts territory in all the districts to achieve population equity. The impacts of these modifications on the districts’ 2024 projected populations and geographic boundaries are reflected in **Table 4**, the **Existing vs. Alternative 2 Comparison Map**, the **Neighborhoods & Alternative 2 Map**, and the **Alternative 2 Map**.

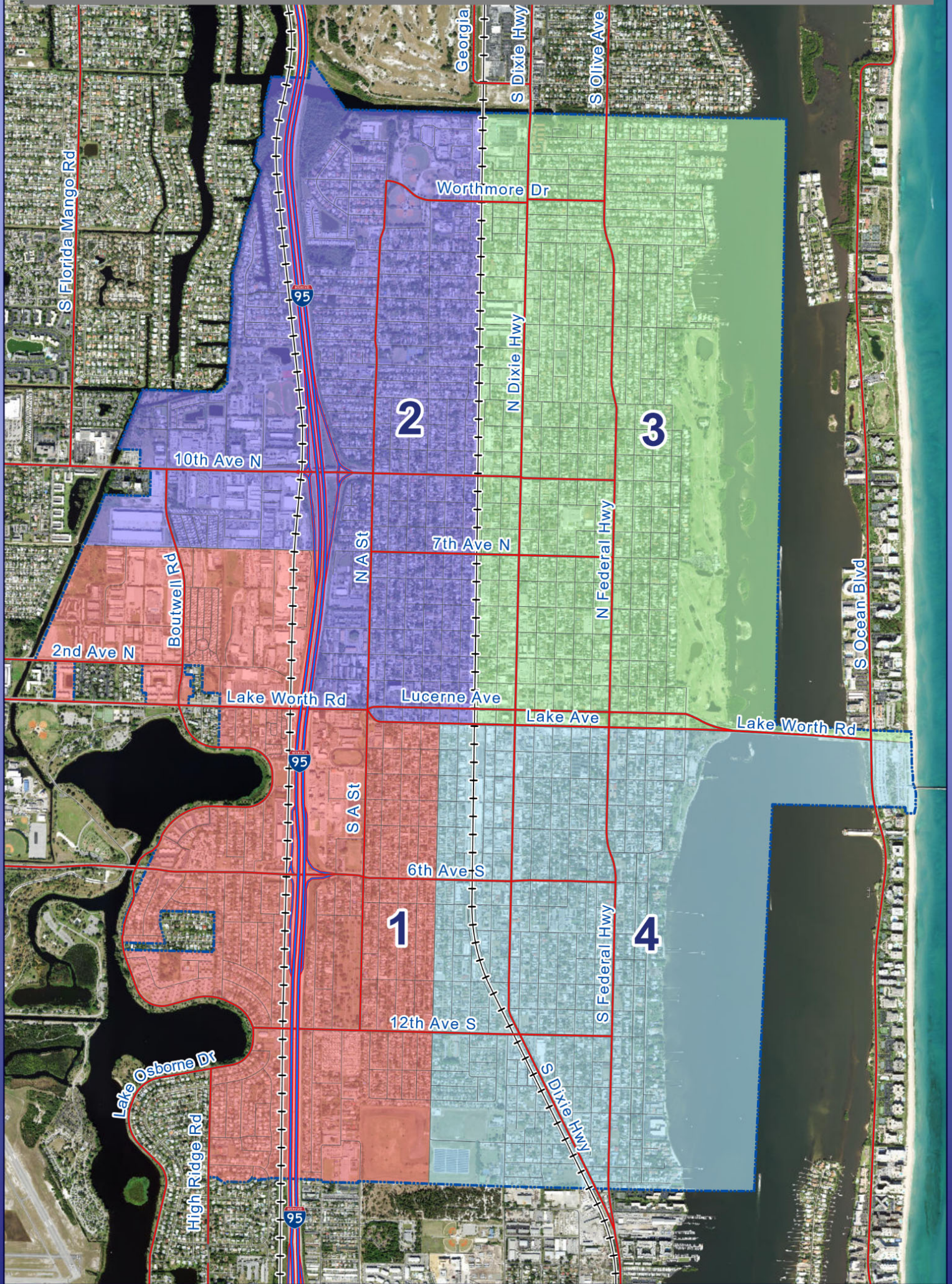
*Table 4 – Alternative Districts 2 – City of Lake Worth Beach
2024 Population Projections*

Alt. 2	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	11,594	27.46	9.85%	11,846	25.65	2.61%
District 2	10,420	24.68	-1.28%	11,893	25.76	3.02%
District 3	9,446	22.37	-10.50%	10,937	23.68	-5.26%
District 4	10,759	25.48	1.94%	11,501	24.91	-0.37%
Total	42,219	100	23.56%	46,177	100	11.27%
Average	10,555	25	5.89%	11,544	25	2.82%

This alternative attempts to maintain somewhat the four quarters arrangement of the existing Districts, although they no longer meet at a common intersection. The East-West border between Districts 2 and 3 is moved west to another easily recognizable landmark: the FEC railway. The North-South border remains unchanged at Lake Worth Road, with the exception of District 1 expanding north into the southern half of the Lake Worth Park of Commerce, west of I-95. The border between Districts 1 and 4 moves further to the west, running along a minor road: South E Street. Eight neighborhoods are split in this alternative, which is the most among the four alternatives. The mean deviation of Alternative 2 is **2.82%**, while the spread between the largest and smallest districts is **8.28%** (3.02 +5.26). Both measures are the highest among the four alternatives.

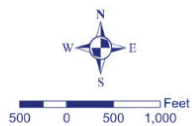
City of Lake Worth Beach

Alternative Districts: Option 2



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Sources: U.S. Census Bureau
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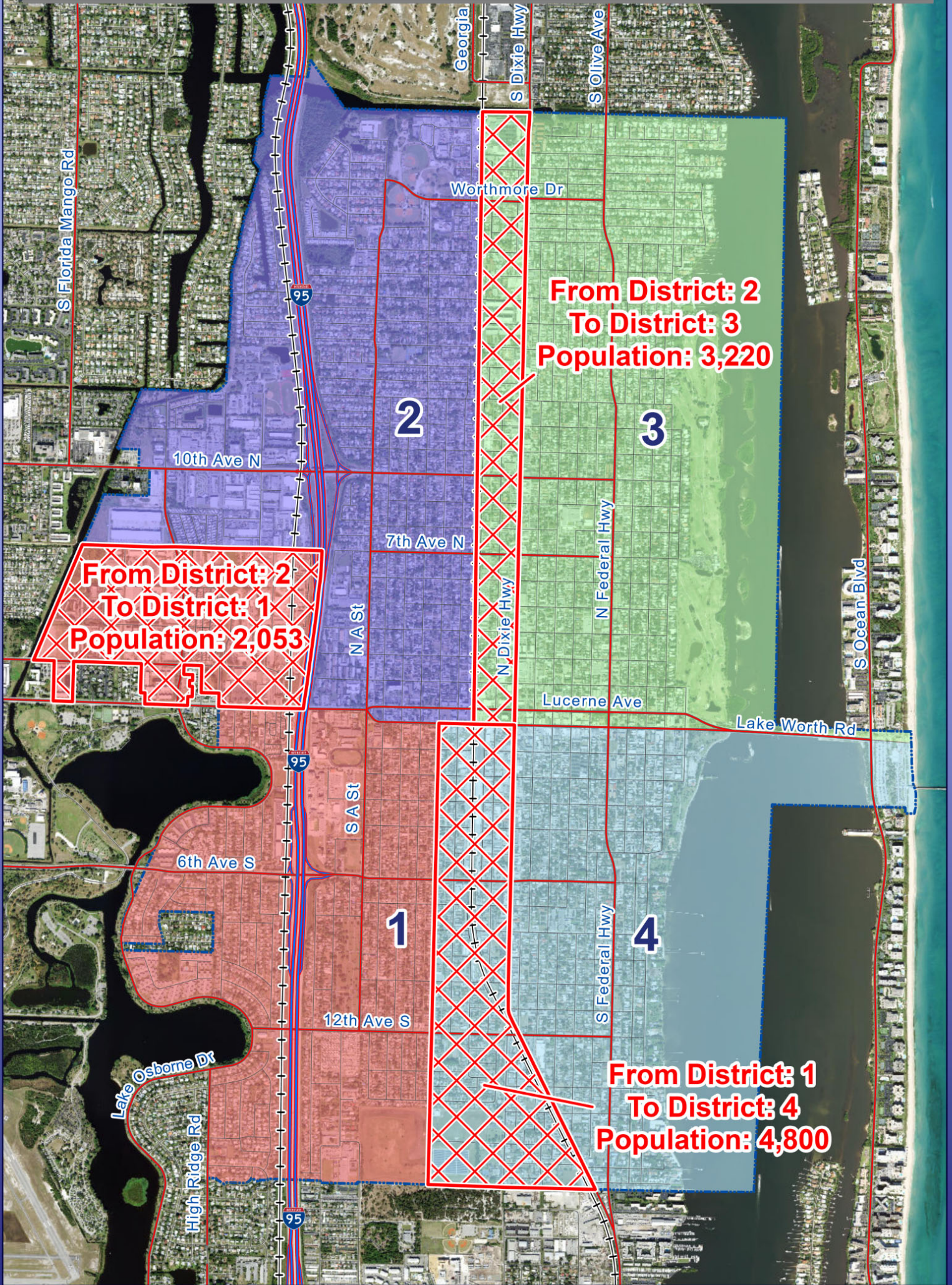
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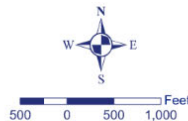
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Existing vs. Alternative Districts: Option 2



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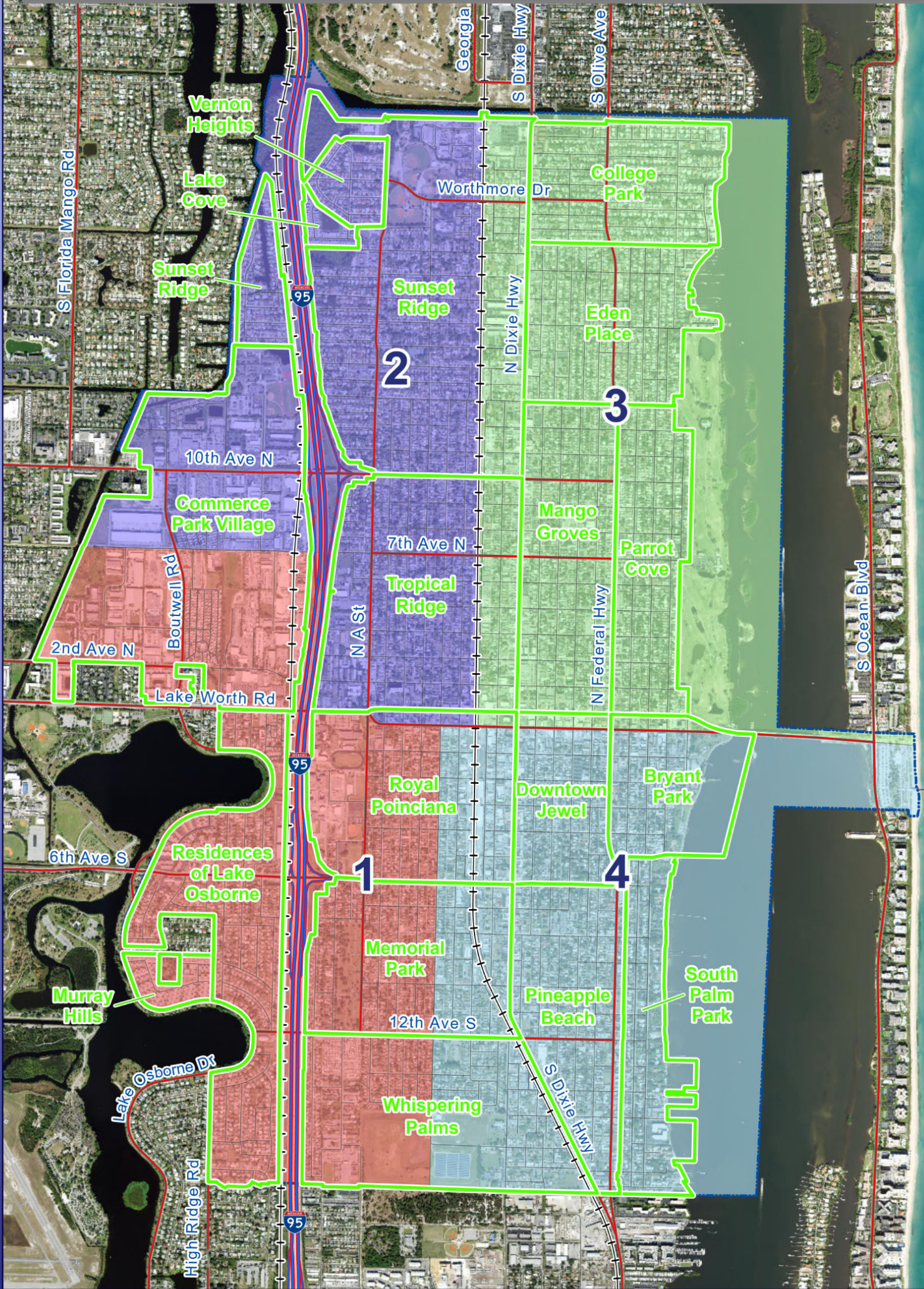
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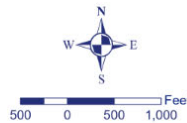
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Neighborhoods & Alternative Districts: Option 2



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Alternative 3

Alternative 3 shifts territory in all the districts to achieve population equity. The impacts of these modifications on the districts’ 2024 projected populations and geographic boundaries are reflected in **Table 5**, the **Existing vs. Alternative 3 Comparison Map**, the **Neighborhoods & Alternative 3 Map**, and the **Alternative 3 Map**.

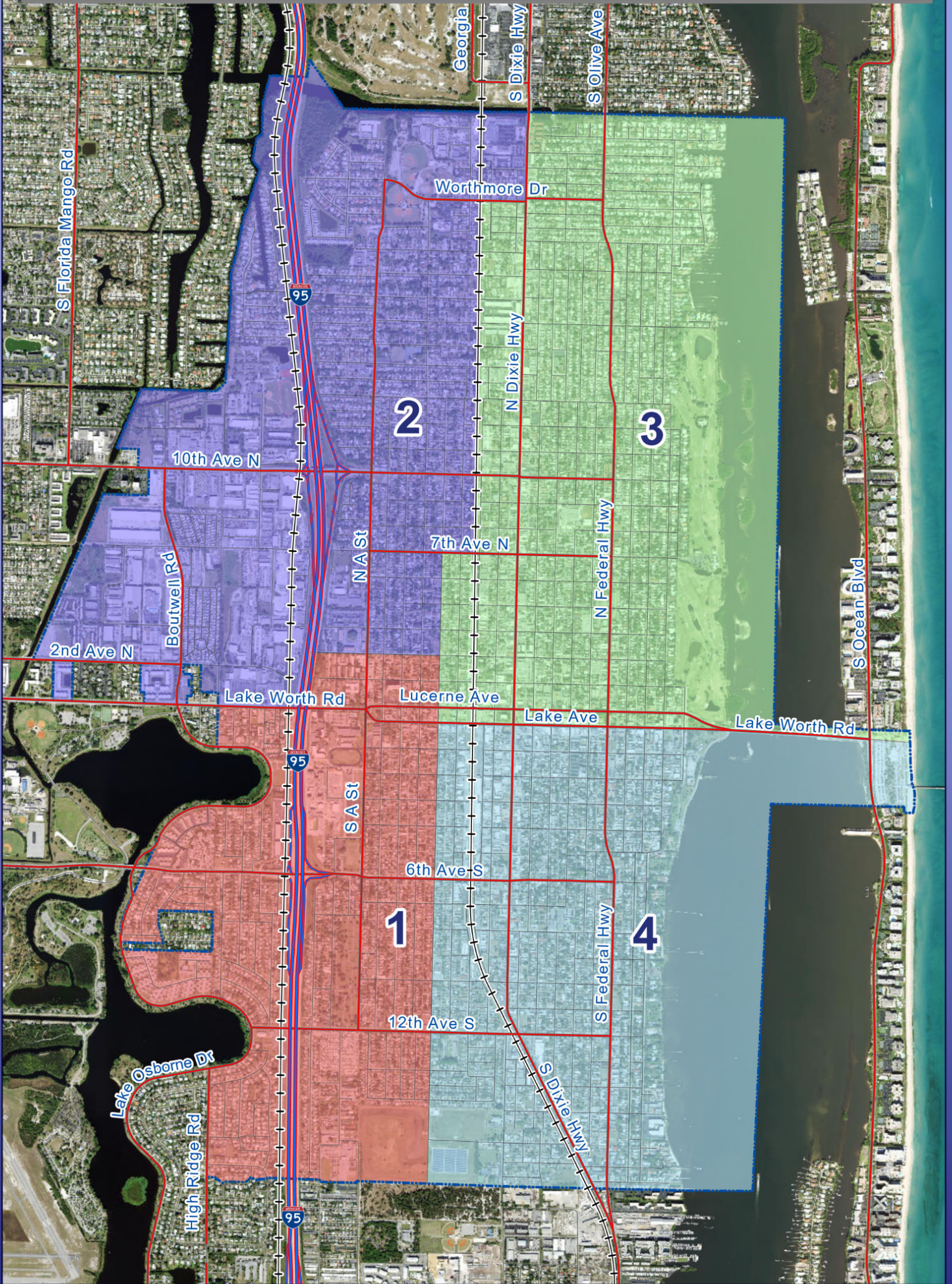
*Table 5 – Alternative Districts 3 – City of Lake Worth Beach
2024 Population Projections*

Alt. 3	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	11,315	26.80	7.20%	11,436	24.77	-0.94%
District 2	10,121	23.97	-4.11%	11,606	25.13	0.53%
District 3	10,024	23.74	-5.03%	11,634	25.19	0.78%
District 4	10,759	25.48	1.94%	11,501	24.91	-0.37%
Total	42,219	100	18.28%	46,177	100	2.62%
Average	10,555	25	4.57%	11,544	25	0.66%

Alternative 3 is a variant of Alternative 2 that creates a more compact and balanced District 1 while leaving District 4 unchanged. District 1’s border extends north to 3rd Ave N, while the East-West border remains E Street. As with Alternative 2, this somewhat maintains the city’s four quarters alignment, though again without a common intersection. Lake Worth Road remains the North-South border. The population balance between Districts 2 and 3 is improved by sacrificing the straight East-West border found in Alternative 2. It now makes several westerly jogs as it runs from the north to the south: first from Dixie Highway to the FEC railway south of Worthmore Drive, and then again to E Street south of 7th Avenue North. Seven neighborhoods are split in this alternative. The mean deviation of Alternative 3 is **0.66%**, while the spread between the largest and smallest districts is **1.72%** (0.94 + 0.78). Both measures are the lowest among the four alternatives.

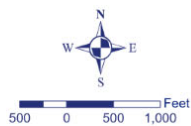
City of Lake Worth Beach

Alternative Districts: Option 3



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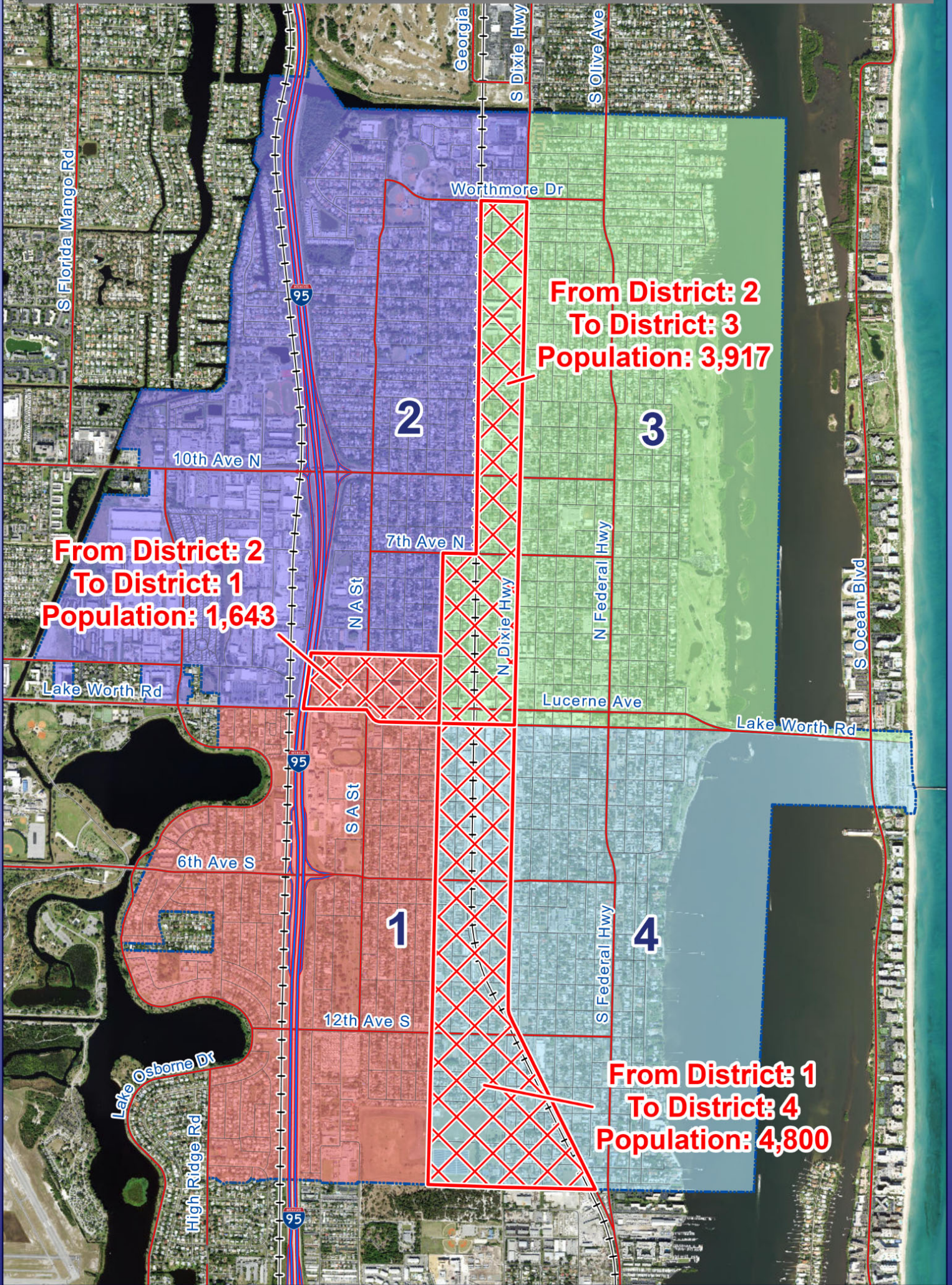
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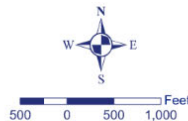
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Existing vs. Alternative Districts: Option 3



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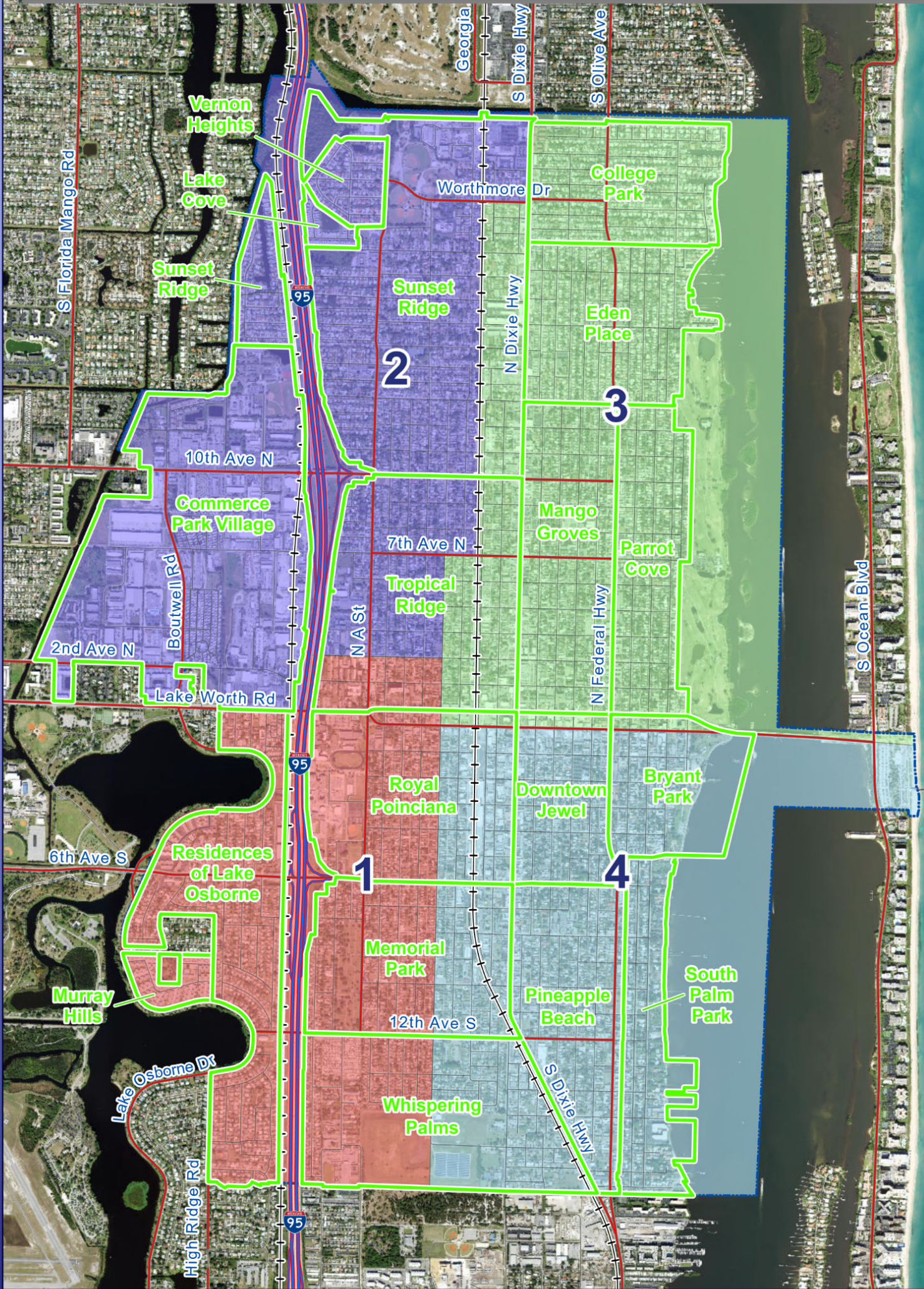
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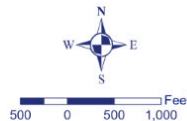
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Neighborhoods & Alternative Districts: Option 3



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Alternative 4

Alternative 4 shifts territory in all the districts to achieve population equity and spatial contiguity. The impacts of these modifications on the districts' 2024 projected populations and geographic boundaries are reflected in **Table 6**, the **Existing vs. Alternative 4 Comparison Map**, the **Neighborhoods & Alternative 4 Map**, and the **Alternative 4 Map**.

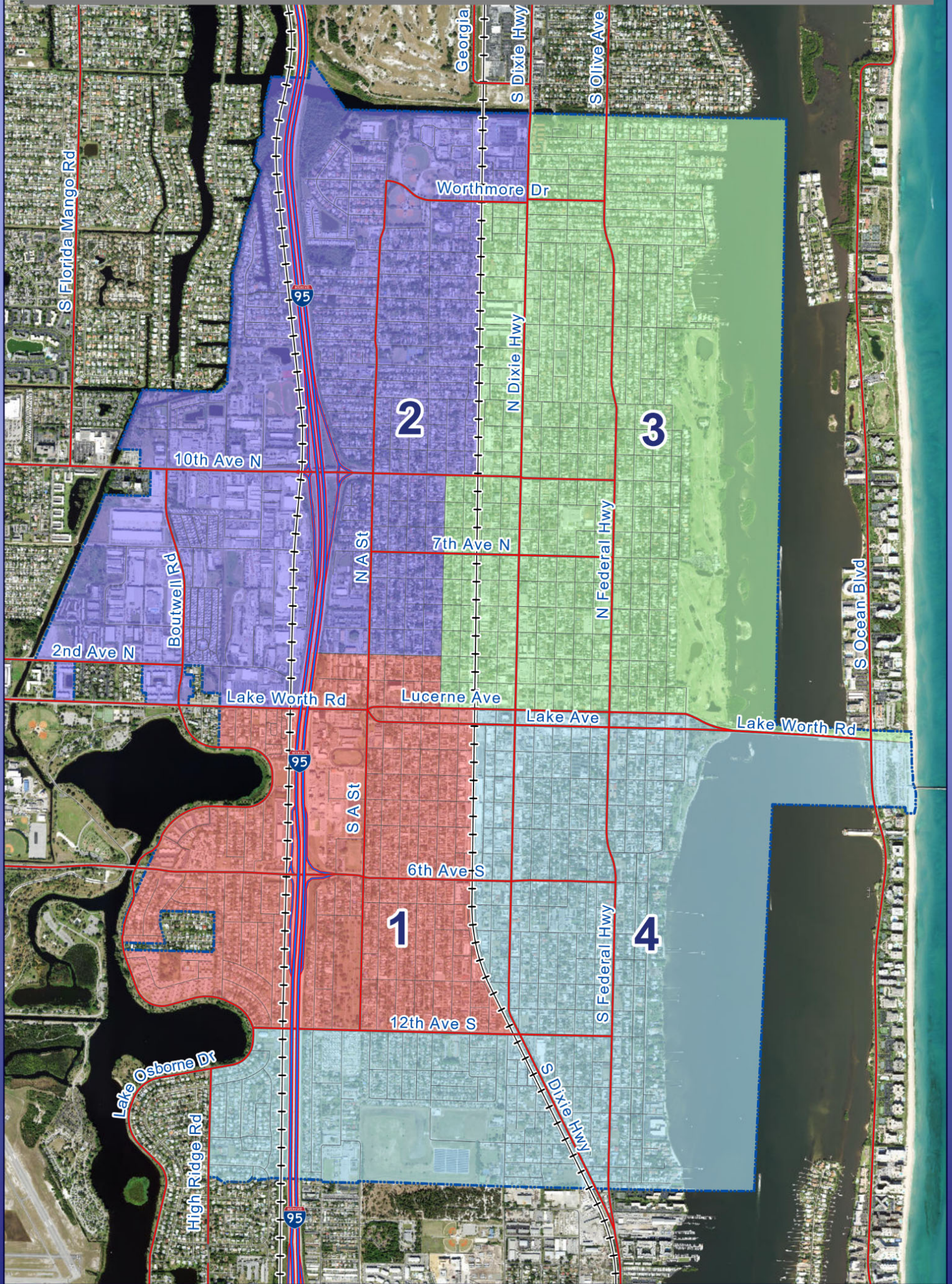
*Table 6– Alternative Districts 4 – City of Lake Worth Beach
2024 Population Projections*

Alt. 4	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	11,637	27.56	10.25%	11,877	25.72	2.88%
District 2	9,687	22.94	-8.22%	11,172	24.19	-3.22%
District 3	10,177	24.11	-3.58%	11,668	25.27	1.07%
District 4	10,718	25.39	1.55%	11,460	24.82	-0.73%
Total	42,219	100	23.60%	46,177	100	7.91%
Average	10,555	25	5.90%	11,544	25	1.98%

Alternative 4 attempts to marry the best of Alternatives 1 and 3 together. The East-West border between districts 2 and 3 jogs west at 10th Avenue North rather than at 7th Avenue North, and the North-South border between districts 3 and 4 moves to Lucerne Avenue. District 4's western border moves from Dixie Highway to the FEC railway, north of 12th Ave S. Four neighborhoods are split in this alternative, which is the second fewest among the four. The mean deviation of Alternative 4 is **1.98%**, while the spread between the largest and smallest districts is **6.1%** (2.88 + 3.22).

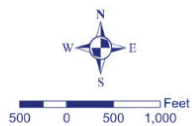
City of Lake Worth Beach

Alternative Districts: Option 4



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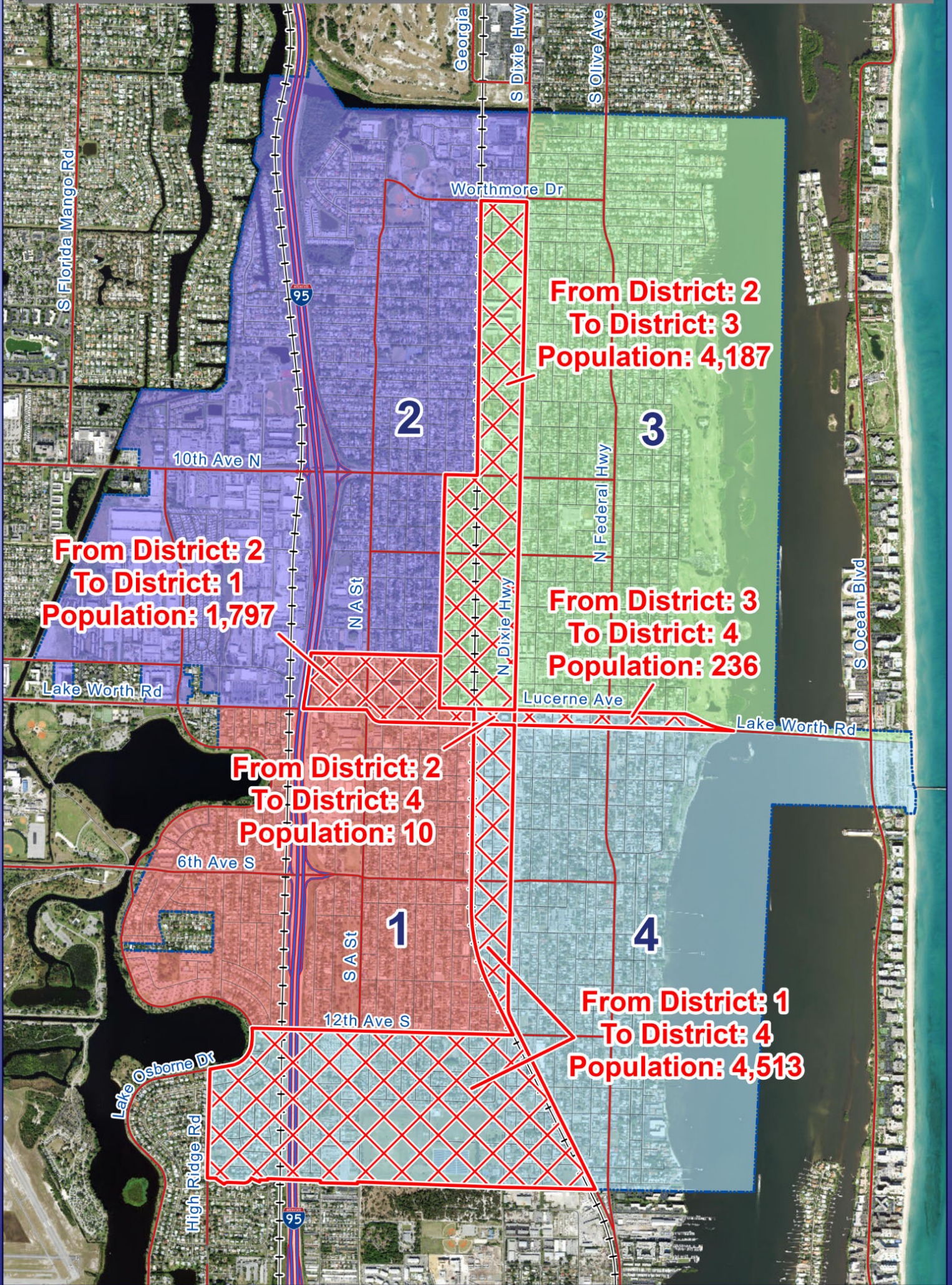
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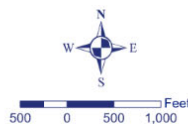
City of Lake Worth Beach

Existing vs. Alternative Districts: Option 4



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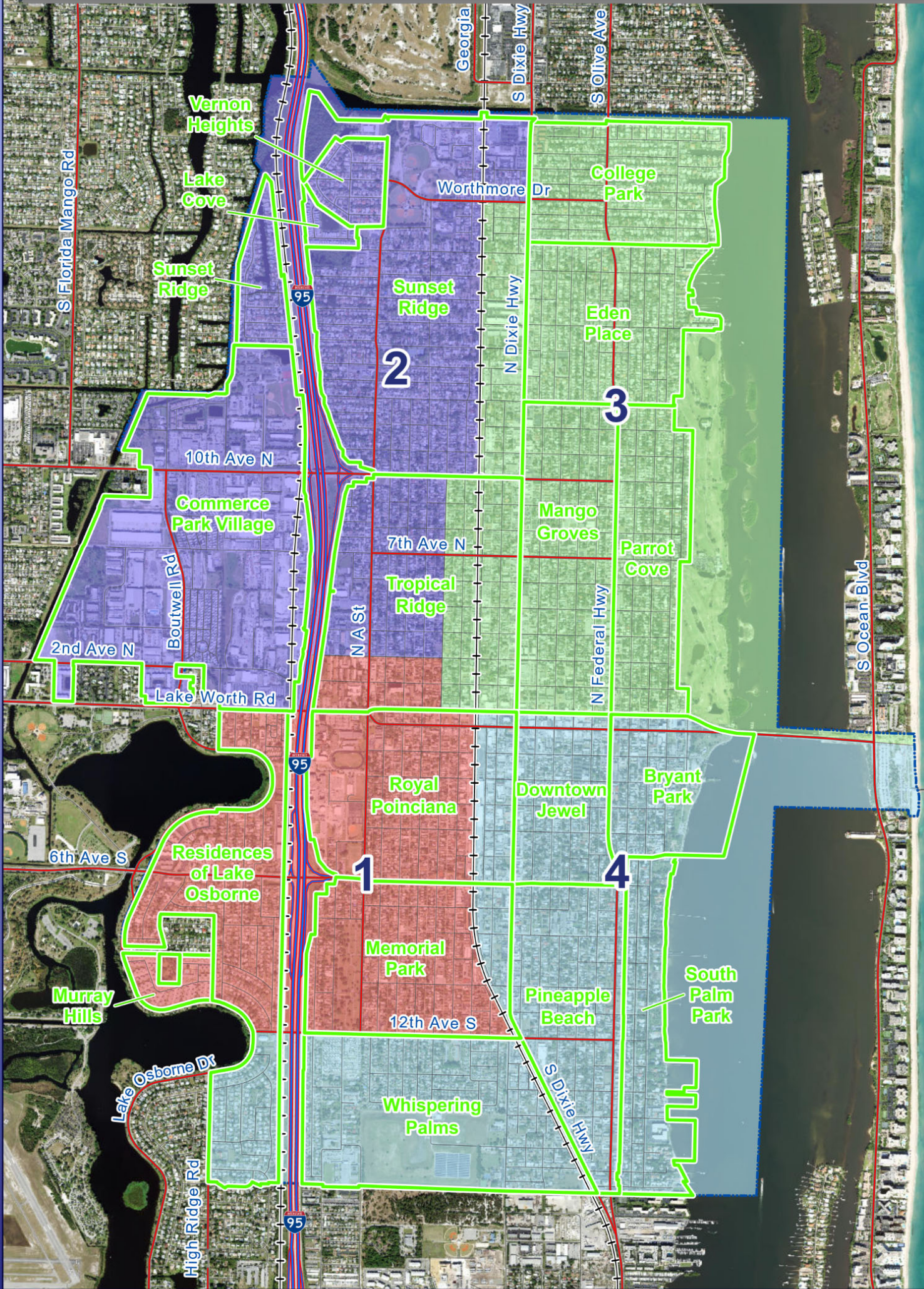
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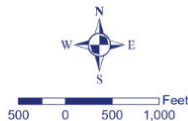
City of Lake Worth Beach

Neighborhoods & Alternative Districts: Option 4



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Summary of Map Alternatives

Each of the four redistricting map alternatives achieves population equity by adjusting the geographic boundaries of the existing City Commission election Districts, with Districts 1 and 2 contracting and Districts 3 and 4 expanding. Each of the map options causes approximately 10,000 residents to be moved to new election districts. This is directly related to the existing extreme deviation that exists between districts in their current configuration. **Table 7** below compares each of the map options showing the impacted population, the number of split neighborhoods, and the population deviations. Each of the alternatives reduces the spread between the largest and smallest districts to acceptable levels (less than 10%). Alternative 1 splits the fewest number of number of neighborhoods among the four alternatives and impacts the fewest number of residents. However, it also represents the biggest departure from the city's existing four quarters district configuration. Alternative 3 has both the lowest spread and mean deviation, meaning that it is the balanced of the options presented. Alternative 4 attempts to marry the best of aspects of Alternatives 1 and 3 together.

*Table 7 – Map Alternatives Summary Table – City of Lake Worth Beach
2024 Population Projections*

Configuration	Impacted Population	Split Neighborhoods	Total Deviation	Mean Deviation	Spread
Existing Districts	N/A	3	150.21	37.55	90.65
Alternative 1	9,892	3	7.44	1.86	4.96
Alternative 2	10,073	8	11.27	2.82	8.28
Alternative 3	10,360	7	2.62	0.66	1.72
Alternative 4	10,743	4	7.91	1.98	6.10

Appendix

The 2020 Census

There are two primary differences that make the 2020 U.S. Census stand out from those that preceded it: a significant delay in its release due to the COVID-19 pandemic, and the implementation of a new 'differential privacy' policy. We will briefly address both of these here for the sake of posterity and context.

The decennial census aims to capture a snapshot in time of the population of the United States of America. Understanding that the population is constantly changing, with births, deaths, and migration patterns continuously adjusting the fabric of the American people, Census Day represents a single moment in time for which the U.S. population is enumerated with the greatest precision possible. This day is always April 1st. By this date, every household in America received an invitation to participate in the 2020 census, with three options to respond: online, by mail, or by phone. 2020 represented the first census to include an online response option. Subsequent to this day is a period of time in which the U.S. Census Bureau follows up with non-responders and begins a quality control process. Traditionally, the Census Bureau would deliver an apportionment count to the U.S. President on December 31st, followed by a distribution of redistricting data to the states exactly one year to the day after Census Day: in this case, April 1, 2021.

However, due to complications caused by the COVID-19 pandemic, the Census Bureau sought statutory relief from Congress that would allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than September 30, 2021. Additionally, the Census Bureau compressed the typical three-month nonresponse follow up enumeration period to two and half months. Ultimately, redistricting data were released in a 'legacy format' on August 12, 2021. This delay inevitably and unavoidably complicated redistricting efforts for every electoral district in the nation. It also meant that the amount of error in the data, inherent to every census where 100% accuracy is impossible, would likely be greater in the 2020 census. The Census Bureau has since confirmed that the rate of missing information was higher in the 2020 census than in the 2010 census. However, they have also stated that this rate was lower than they initially feared.

The 2020 redistricting data are the first to employ 'differential privacy protection'. This represents the Census Bureau's introduction of 'noise' into the data at the more local geographic scale (Blocks and Block Groups) with the intent to strike a balance between data protection and precision. The effect is that while

the enumeration counts can be trusted at the Census Tract level, we must anticipate a certain degree of ‘fuzziness’ at the Block level. Specifically, while the aggregate count of population for a Census Tract will be accurate, a certain proportion of people and housing units will have been *deliberately* misallocated by the Census Bureau at the Block level. While this may not be problematic in the realignment of Congressional Districts, for example, it certainly represents a challenge for Municipal Districts, for which the geographic precision of Census Blocks is highly desirable.

Taken together, therefore, the complications related to the COVID-19 pandemic and the implementation of ‘differential privacy’ introduce a certain amount of additional uncertainty to the primary source of data for this analysis (2020 Census Redistricting Data (PL 94-171)) that is unprecedented. Nevertheless, these data remain the standard upon which municipal redistricting efforts shall be based across the nation.

District Demographics

The tables below depict the demographics taken from the 2020 U.S. Census for the existing commission districts and the four proposed alternatives. Note that the columns ‘White’ through ‘Other’ sum to the City’s population total. These categories represent the U.S. Census’ definition of race. The ‘Other’ column, which accounts for a significant portion of the city’s population, represents all of those people who identified as belong to two or more races. The last two columns are ‘Hispanic or Latino’ and ‘Not Hispanic or Latino’ (the U.S. Census’ classification of ethnicity) also sum to the City’s population total.

Current Commission Districts – City of Lake Worth Beach

Expanded Demographics, U.S. Census 2020

District (Existing)	Total Population	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Other	Hispanic or Latino	Not Hispanic or Latino
1	13,996	3,785 (27.04%)	3,515 (25.11%)	993 (7.09%)	89 (0.64%)	8 (0.06%)	5,606 (40.05%)	7,422 (53.03%)	6,574 (46.97%)
2	14,149	4,490 (31.73%)	2,767 (19.56%)	1,087 (7.68%)	182 (1.29%)	14 (0.1%)	5,609 (39.64%)	7,740 (54.7%)	6,409 (45.3%)
3	7,535	5,056 (67.1%)	512 (6.79%)	134 (1.78%)	77 (1.02%)	6 (0.08%)	1,750 (23.22%)	1,950 (25.88%)	5,585 (74.12%)
4	6,539	3,149 (48.16%)	1,266 (19.36%)	237 (3.62%)	69 (1.06%)	0 (0%)	1,818 (27.8%)	2,245 (34.33%)	4,294 (65.67%)
	42,219	16,480 (39.03%)	8,060 (19.09%)	2,451 (5.81%)	417 (0.99%)	28 (0.07%)	14,783 (35.02%)	19,357 (45.85%)	22,862 (54.15%)

Alternative 1 – City of Lake Worth Beach

Expanded Demographics, U.S. Census 2020

District (Alt 1)	Total Population	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Other	Hispanic or Latino	Not Hispanic or Latino
1	10,648	2,874 (26.99%)	2,329 (21.87%)	844 (7.93%)	72 (0.68%)	5 (0.05%)	4,524 (42.49%)	6,005 (56.4%)	4,643 (43.6%)
2	9,249	3,081 (33.31%)	2,231 (24.12%)	233 (2.52%)	146 (1.58%)	10 (0.11%)	3,548 (38.36%)	4,495 (48.6%)	4,754 (51.4%)
3	11,293	5,651 (50.04%)	969 (8.58%)	971 (8.6%)	98 (0.87%)	10 (0.09%)	3,594 (31.83%)	4,961 (43.93%)	6,332 (56.07%)
4	11,029	4,874 (44.19%)	2,531 (22.95%)	403 (3.65%)	101 (0.92%)	3 (0.03%)	3,117 (28.26%)	3,896 (35.33%)	7,133 (64.67%)
	42,219	16,480 (39.03%)	8,060 (19.09%)	2,451 (5.81%)	417 (0.99%)	28 (0.07%)	14,783 (35.02%)	19,357 (45.85%)	22,862 (54.15%)

*Alternative 2 – City of Lake Worth Beach
Expanded Demographics, U.S. Census 2020*

District (Alt 2)	Total Population	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Other	Hispanic or Latino	Not Hispanic or Latino
1	11,594	3,504 (30.22%)	2,743 (23.66%)	670 (5.78%)	97 (0.84%)	4 (0.03%)	4,576 (39.47%)	5,997 (51.73%)	5,597 (48.27%)
2	10,420	3,467 (33.27%)	1,878 (18.02%)	899 (8.63%)	146 (1.4%)	13 (0.12%)	4,017 (38.55%)	5,572 (53.47%)	4,848 (46.53%)
3	9,446	5,636 (59.67%)	786 (8.32%)	294 (3.11%)	91 (0.96%)	7 (0.07%)	2,632 (27.86%)	3,179 (33.65%)	6,267 (66.35%)
4	10,759	3,873 (36%)	2,653 (24.66%)	588 (5.47%)	83 (0.77%)	4 (0.04%)	3,558 (33.07%)	4,609 (42.84%)	6,150 (57.16%)
42,219	16,480 (39.03%)	8,060 (19.09%)	2,451 (5.81%)	417 (0.99%)	28 (0.07%)	14,783 (35.02%)	19,357 (45.85%)	22,862 (54.15%)	

*Alternative 3 – City of Lake Worth Beach
Expanded Demographics, U.S. Census 2020*

District (Alt 3)	Total Population	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Other	Hispanic or Latino	Not Hispanic or Latino
1	11,315	3,541 (31.29%)	2,459 (21.73%)	774 (6.84%)	101 (0.89%)	6 (0.05%)	4,434 (39.19%)	5,804 (51.29%)	5,511 (48.71%)
2	10,121	3,297 (32.58%)	2,095 (20.7%)	691 (6.83%)	147 (1.45%)	11 (0.11%)	3,880 (38.34%)	5,330 (52.66%)	4,791 (47.34%)
3	10,024	5,769 (57.55%)	853 (8.51%)	398 (3.97%)	86 (0.86%)	7 (0.07%)	2,911 (29.04%)	3,614 (36.05%)	6,410 (63.95%)
4	10,759	3,873 (36%)	2,653 (24.66%)	588 (5.47%)	83 (0.77%)	4 (0.04%)	3,558 (33.07%)	4,609 (42.84%)	6,150 (57.16%)
42,219	16,480 (39.03%)	8,060 (19.09%)	2,451 (5.81%)	417 (0.99%)	28 (0.07%)	14,783 (35.02%)	19,357 (45.85%)	22,862 (54.15%)	

Alternative 4 – City of Lake Worth Beach
Expanded Demographics, U.S. Census 2020

District (Alt 4)	Total Population	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Other	Hispanic or Latino	Not Hispanic or Latino
1	11,637	3,244 (27.88%)	2,571 (22.09%)	927 (7.97%)	98 (0.84%)	7 (0.06%)	4,790 (41.16%)	6,370 (54.74%)	5,267 (45.26%)
2	9,687	3,184 (32.87%)	2,079 (21.46%)	616 (6.36%)	139 (1.43%)	11 (0.11%)	3,658 (37.76%)	4,990 (51.51%)	4,697 (48.49%)
3	10,177	5,682 (55.83%)	842 (8.27%)	471 (4.63%)	93 (0.91%)	7 (0.07%)	3,082 (30.28%)	3,896 (38.28%)	6,281 (61.72%)
4	10,718	4,370 (40.77%)	2,568 (23.96%)	437 (4.08%)	87 (0.81%)	3 (0.03%)	3,253 (30.35%)	4,101 (38.26%)	6,617 (61.74%)
42,219	16,480 (39.03%)	8,060 (19.09%)	2,451 (5.81%)	417 (0.99%)	28 (0.07%)	14,783 (35.02%)	19,357 (45.85%)	22,862 (54.15%)	



FLORIDA ATLANTIC UNIVERSITY

City Commission Election District Analysis

October 6, 2022 • City of Lake Worth Beach, Florida



Agenda

- The FAU Redistricting Team
- The City Charter
- The Process
- District Population Analysis
 - 2020 Enumeration
 - 2024 Projection
- Next Steps
- Redistricting Criteria
- Map Alternatives 1 to 4
- Summary of Map Alternatives



FAU Redistricting Team

- **Steven C. Bourassa, Ph.D.**
 - Professor and Chair, Runstad Department of Real Estate, University of Washington;
Formerly Professor and Chair, Department of Urban and Regional Planning
- **James Gammack-Clark, M.A., Ph.D. candidate (ABD)**
 - Senior Instructor, Department of Geosciences
- **Ronald R. Schultz, Ph.D.**
 - Professor Emeritus, Department of Geosciences
- **Michael Stamm, Jr., MURP**
 - Adjunct Faculty, Department of Urban and Regional Planning

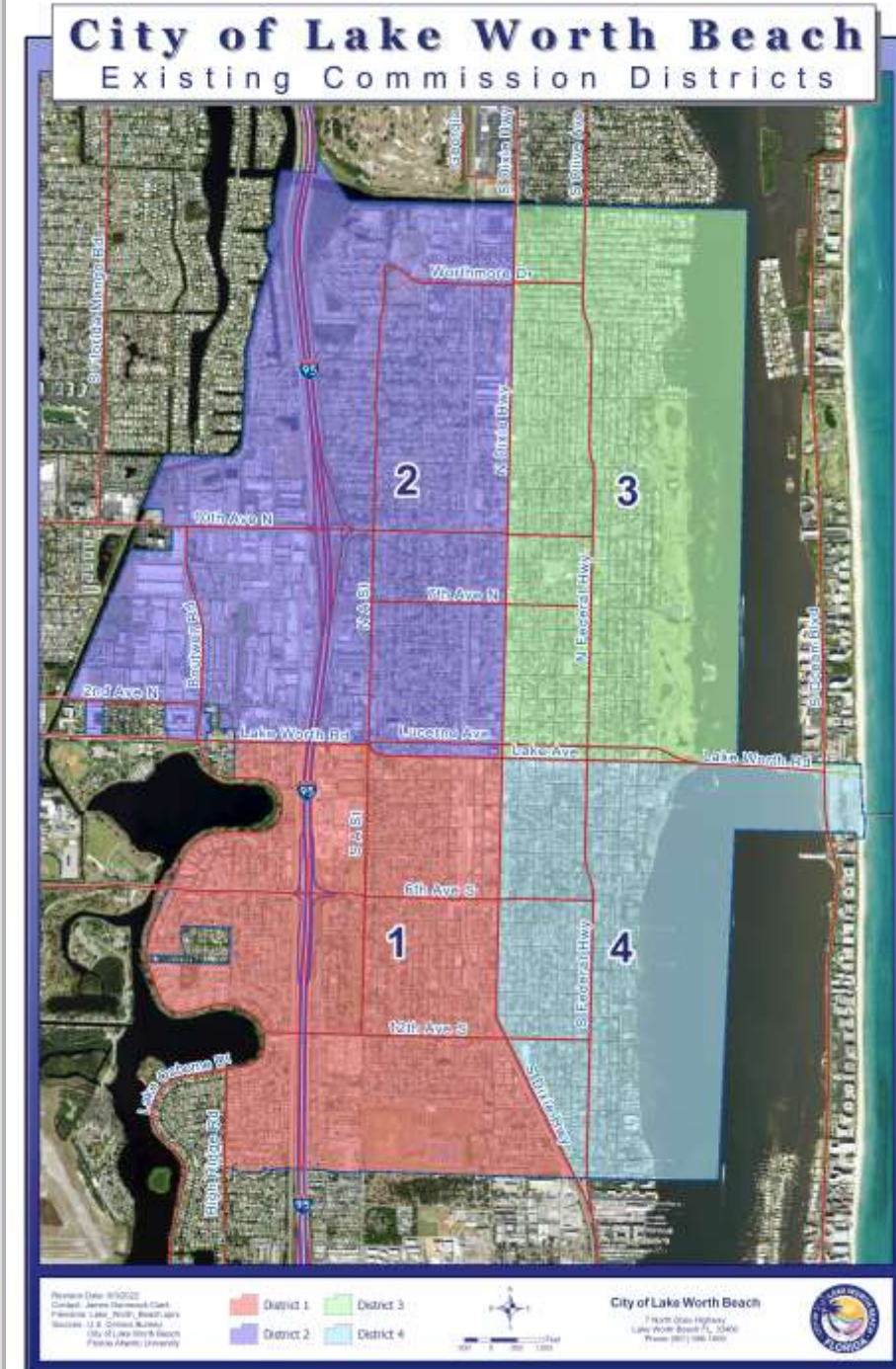


City Charter Current Election Districts

Four election districts

All territory lying:

1. West of Dixie Hwy and south of Lake Ave
2. West of Dixie Hwy and north of Lake Ave
3. East of Dixie Hwy and north of Lake Ave
4. East of Dixie Hwy and south of Lake Ave





The Process

- Part A – Current District Analysis and Population Projections
 - September 7, 2022: report submitted to City
 - September 12, 2022: City Commission voted to proceed to Part B
- Part B – Creation of Redistricting Map Alternatives
 - Presentation of alternatives to City Commission and public
 - Map selection and adoption by ordinance



Data

- U.S. Census Bureau's 2020 Census Redistricting Summary Files [Public Law 94-171]:
 - Resident population counts by census block
 - The smallest enumeration unit possible
 - Aggregated to form each of the four voting districts
- Housing data provided by the City of Lake Worth Beach
 - From which Population Estimates were derived to account for new housing, completed since April 1, 2020 (Census Day) or scheduled for completion and occupancy by February of 2024



2020 Enumeration and 2024 Population Projection

- 2020 US Census Blocks:
 - The population of the City of Lake Worth Beach is 42,219
 - Average population for each district is 10,555

Current Districts	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	13,996	33.15	32.60%	14,593	31.60	26.41%
District 2	14,149	33.51	34.05%	17,166	37.17	48.70%
District 3	7,535	17.85	-28.61%	7,717	16.71	-33.15%
District 4	6,539	15.49	-38.05%	6,701	14.51	-41.95%
Total	42,219	100	133.31%	46,177	100	150.21%
Average	10,555	25	33.33%	11,544	25	37.55%



Existing Districts – Projections

- Projection required to determine future population equity
- 3,958 people will be added to the city by 2024
 - The majority of which (3,018) will be located in District 2

Subdivision	Units	Population Estimate	Current District	Completion Date
The One	14	41	4	2020
The Mid	230	667	2	2021
Aviara	49	142	3	2022
The Bohemian	200	580	1	2022
129 South K Street	4	12	4	2023
1303/1305 Lucerne Avenue	4	12	2	2023
15 North E Street	2	6	2	2023
211 Ocean Breeze	3	9	4	2023
230 North L Street	6	17	3	2023
320 Lake Osborne Drive	6	17	1	2023
509 North H Street	3	9	2	2023
Advantix	189	548	2	2023
Alora	12	35	4	2023
Casa Bella	18	52	2	2023
Deco Green	125	363	2	2023
Detroit Street Apartments	81	235	2	2023
Lake Worth Apartments	24	70	2	2023/2024
Lake Worth Station	81	235	2	2023/2024
Serendipity	12	35	2	2023/2024
Solimar	8	23	3	2023/2024
The Avery	200	580	2	2023/2024
The Cloisters Phase III	15	44	4	2023/2024
The Lord's Place	7	21	4	2023/2024
The Perch	18	52	2	2023/2024
Village Flats Phase I	41	119	2	2023/2024
Village Flats Phase II and III	12	35	2	2023/2024
	1,364	3,959		



2020 Enumeration and 2024 Population Projection

- 2024 population projection :
 - The population of the City of Lake Worth Beach will be 46,177
 - Average population for each district will be 11,544

Current Districts	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	13,996	33.15	32.60%	14,593	31.60	26.41%
District 2	14,149	33.51	34.05%	17,166	37.17	48.70%
District 3	7,535	17.85	-28.61%	7,717	16.71	-33.15%
District 4	6,539	15.49	-38.05%	6,701	14.51	-41.95%
Total	42,219	100	133.31%	46,177	100	150.21%
Average	10,555	25	33.33%	11,544	25	37.55%



District Analysis – PROJECTED (2024)

- Largest: District 2 will have 17,166 people
 - 5,622 (48.70%) more people than the projected average
- Smallest: District 4 will have 6,701 people
 - 4,483 (41.95%) fewer people than the projected average

Current Districts	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	13,996	33.15	32.60%	14,593	31.60	26.41%
District 2	14,149	33.51	34.05%	17,166	37.17	48.70%
District 3	7,535	17.85	-28.61%	7,717	16.71	-33.15%
District 4	6,539	15.49	-38.05%	6,701	14.51	-41.95%
Total	42,219	100	133.31%	46,177	100	150.21%
Average	10,555	25	33.33%	11,544	25	37.55%



District Analysis - PROJECTED (2024)

- Population imbalance will become even more extreme
 - Total deviation of 150.21% across all four districts
 - Spread = 90.65% (48.7% + 41.95% between highest and lowest districts)
 - Exceeding max. 10% overall deviation from the ideal size across districts

Current Districts	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	13,996	33.15	32.60%	14,593	31.60	26.41%
District 2	14,149	33.51	34.05%	17,166	37.17	48.70%
District 3	7,535	17.85	-28.61%	7,717	16.71	-33.15%
District 4	6,539	15.49	-38.05%	6,701	14.51	-41.95%
Total	42,219	100	133.31%	46,177	100	150.21%
Average	10,555	25	33.33%	11,544	25	37.55%



Next Steps:

- Part B
 - Election districts are severely out of balance
 - City needs to redistrict
 - The overall pattern of district boundary changes will need to increase the population of Districts 3 and 4, while reducing that of Districts 1 and 2
 - This will necessitate an adjustment of the geographic boundaries where District 3 and 4 must expand in size, while Districts 1 and 2 must contract
 - Creation of map options for Commission consideration
- The Charter does not provide guidance for redistricting
 - It only defines the existing district boundaries



COMMISSION ELECTION DISTRICT MAP ALTERNATIVES



Redistricting Parameters

- The following guide our efforts:
 1. Reasonable population equality across districts
 - A maximum 10% overall deviation from the ideal size across districts.
 - Adhere to Section 2 of the Voting Rights Act of 1965: Arbitrary dilution of minority population clusters and other discriminatory practices are prohibited.
 2. Geographic contiguity and appropriate compactness
 - Follow major natural and manmade boundaries where possible.
 - Respect for the integrity of communities of interest.
 - Minimize the degree of change in pre-existing patterns of districts.
- Population equality is of primary importance
 - The others are significant in guiding decisions towards reaching reasonable population balance.

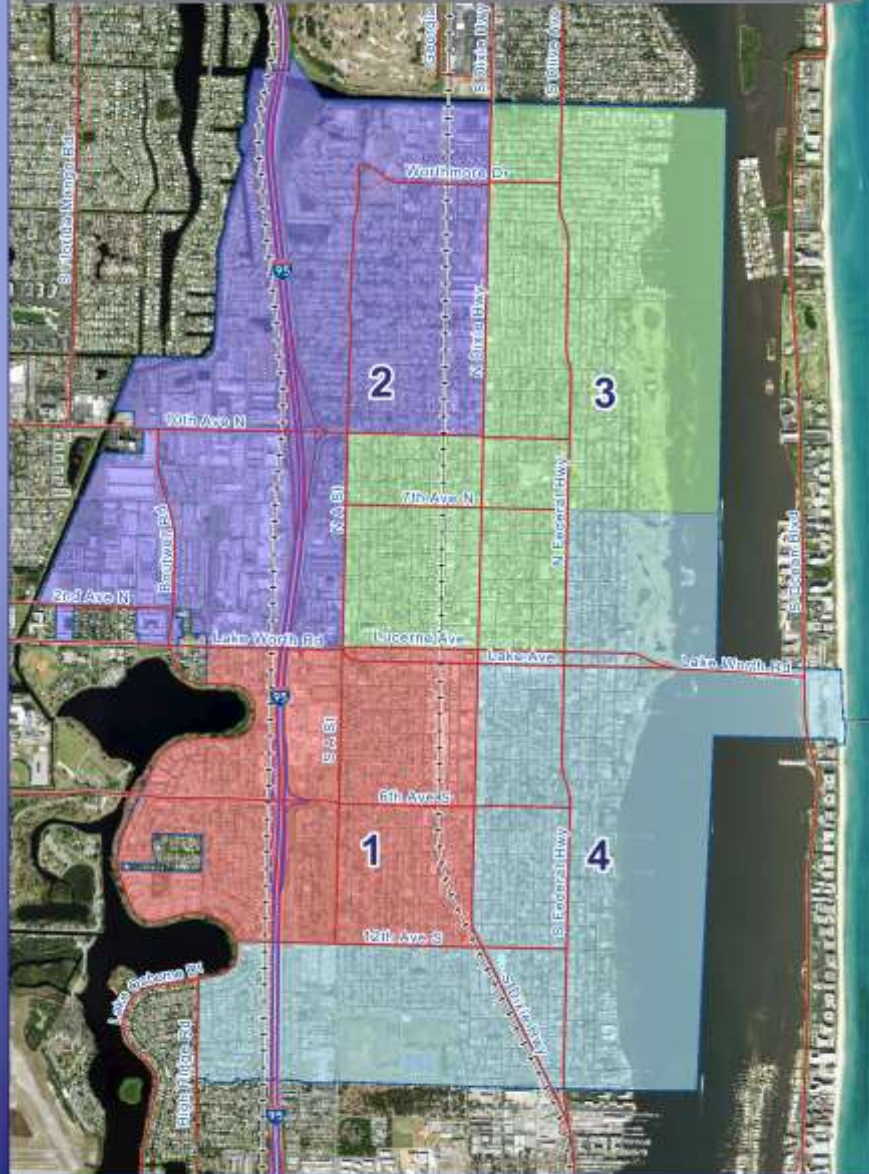


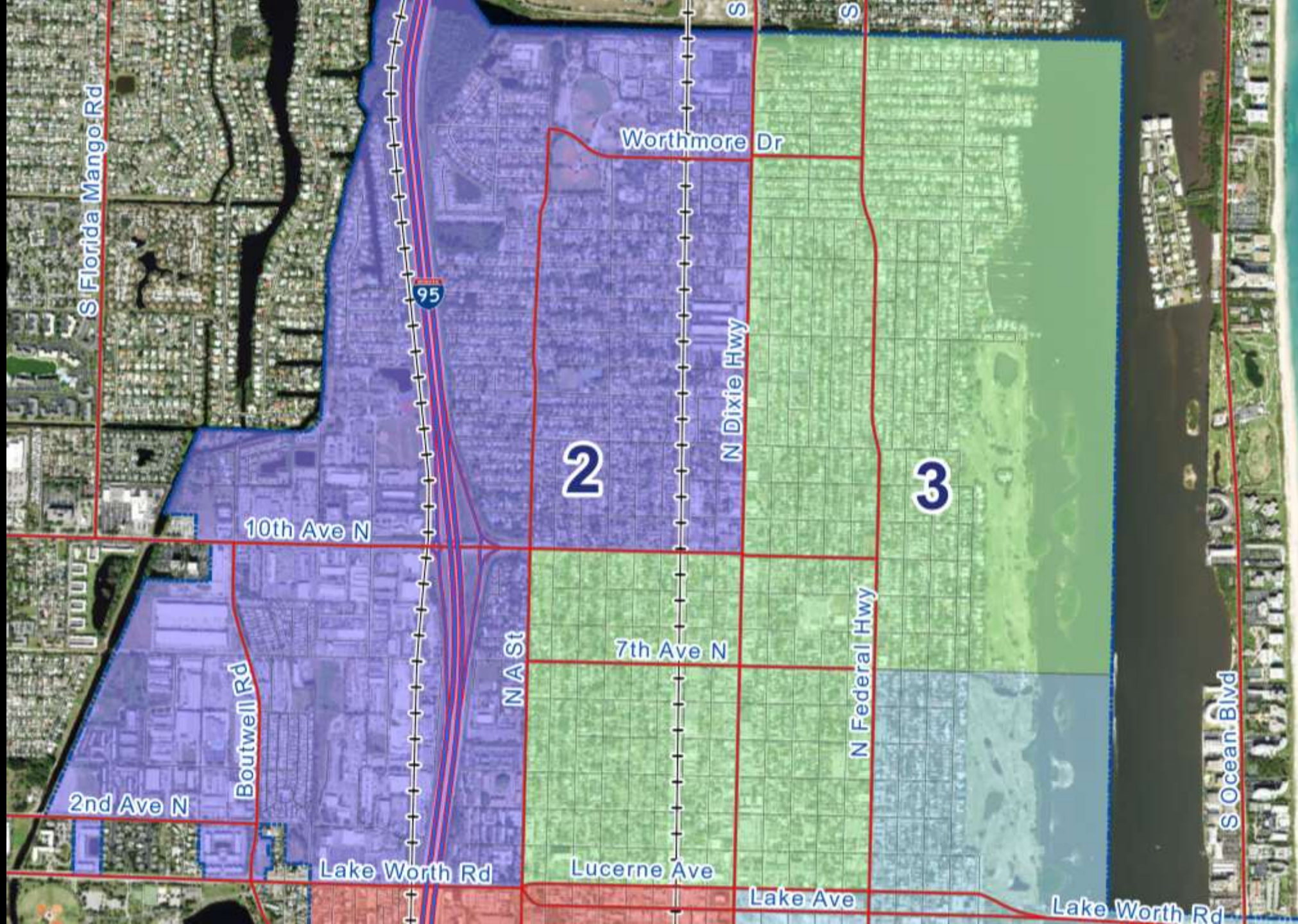
Alternatives

- Four Alternatives have been prepared for consideration:
 - All meet standard districting guidelines
 - Alternative ways to better balance district populations
 - Keep with the intent of the other identified guidelines

Alternative 1

- The biggest departure from the city's present four quadrant configuration:
 - North-South border becomes Lucerne Ave, except where District 4 projects north to 7th Ave, east of Federal Hwy
 - East-West border largely remains Dixie Hwy
 - Except for where District 3 projects west to North A St, south of 10th Ave, and where
 - District 4 projects west to High Ridge Rd south of 12th Ave S





S Florida Mango Rd

Worthmore Dr

95

2

N Dixie Hwy

3

10th Ave N

7th Ave N

NA St

N Federal Hwy

2nd Ave N

Boutwell Rd

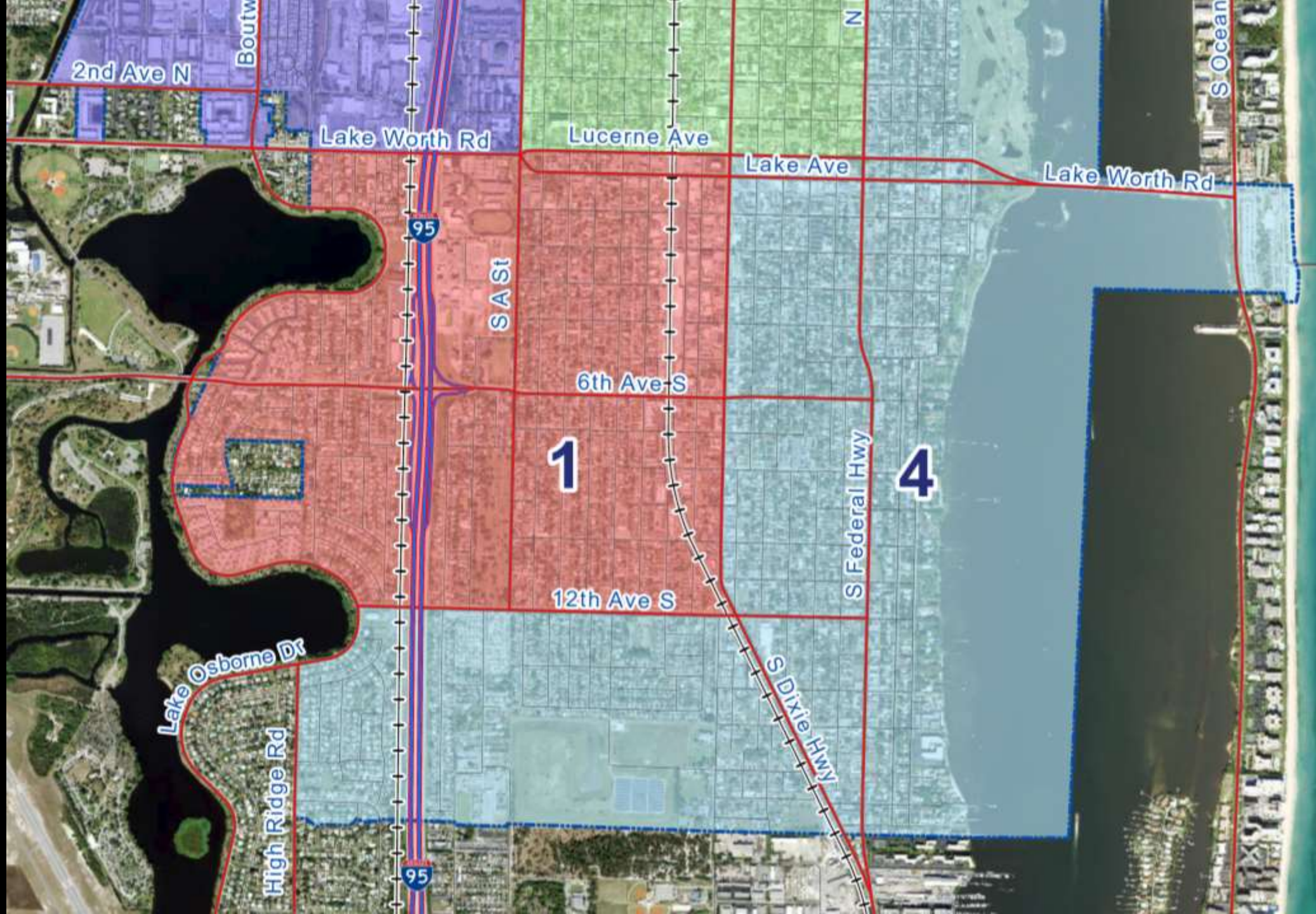
Lake Worth Rd

Lucerne Ave

Lake Ave

S Ocean Blvd

Lake Worth Rd



2nd Ave N

Boutw

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Lucerne Ave

Lake Ave

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S Ocean

95

S A St

6th Ave S

1

4

12th Ave S

S Federal Hwy

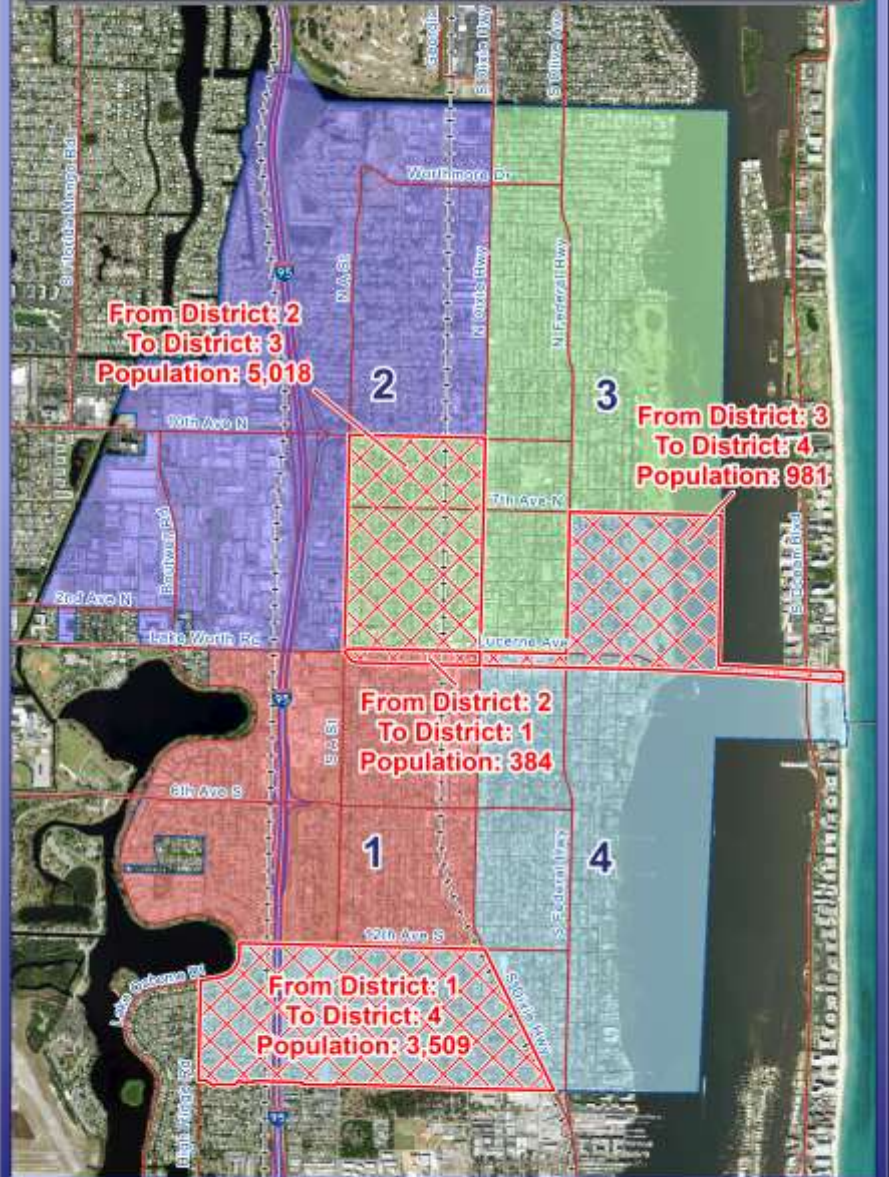
S Dixie Hwy

Lake Osborne Dr

High Ridge Rd

95

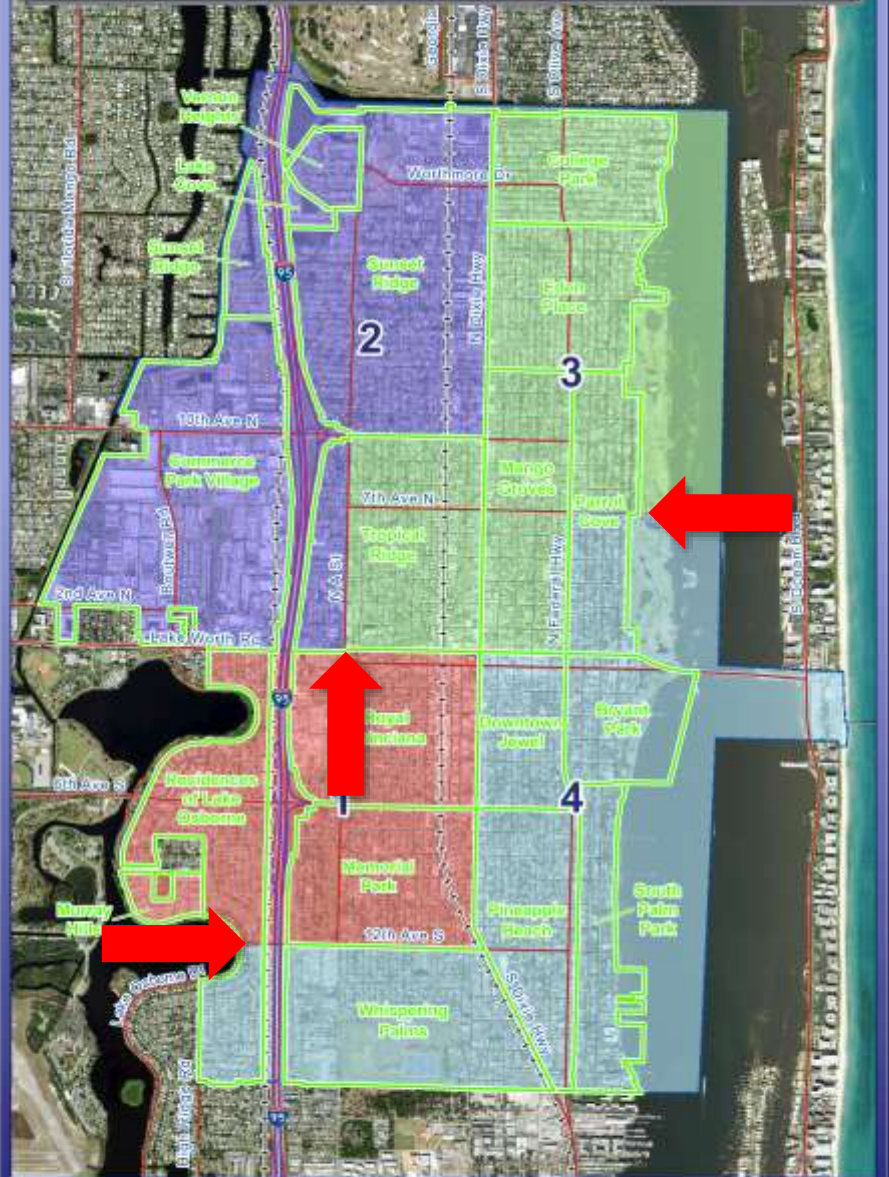
Alternative 1



- District 1 gains:
 - 384 people from District 2
 - That area south of Lucerne Ave and west of Dixie Hwy
- District 3 gains:
 - 5,018 people from District 2
 - That part of the Tropical Ridge community found to the west of Dixie Hwy, east of A St, north of Lucerne Ave, and south of 10th Ave N
- District 4 gains:
 - 981 people from District 3
 - To the south and east Federal Hwy and 7th Ave N, and the area between Lucerne Ave and Lake Worth Rd, east of Dixie
 - 3,509 people from District 1
 - South of 12th Ave S and west of Dixie Hwy

Alternative 1

- Only three neighborhoods are split:
 - Fewest among the four alternatives
 - Tropical Ridge, Parrot Cove, and Residences of Lake Osborne





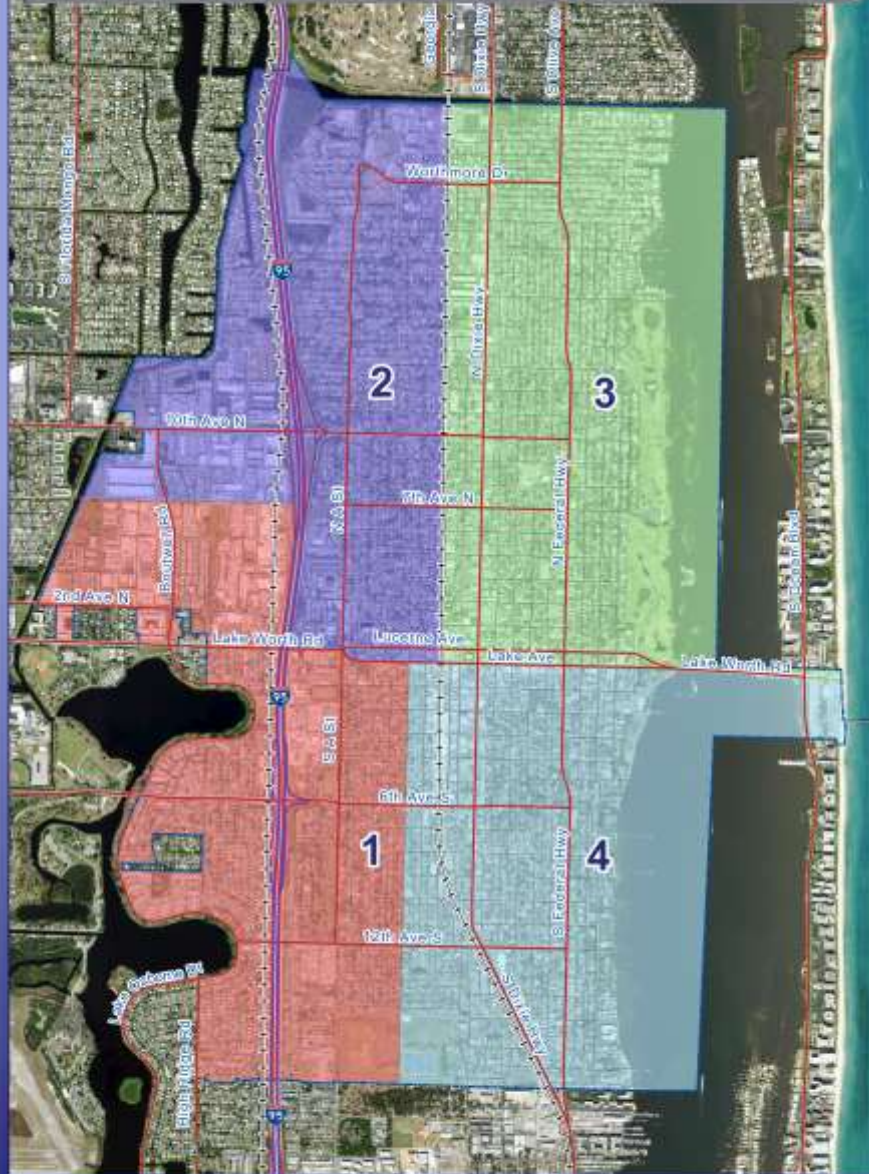
Alternative 1

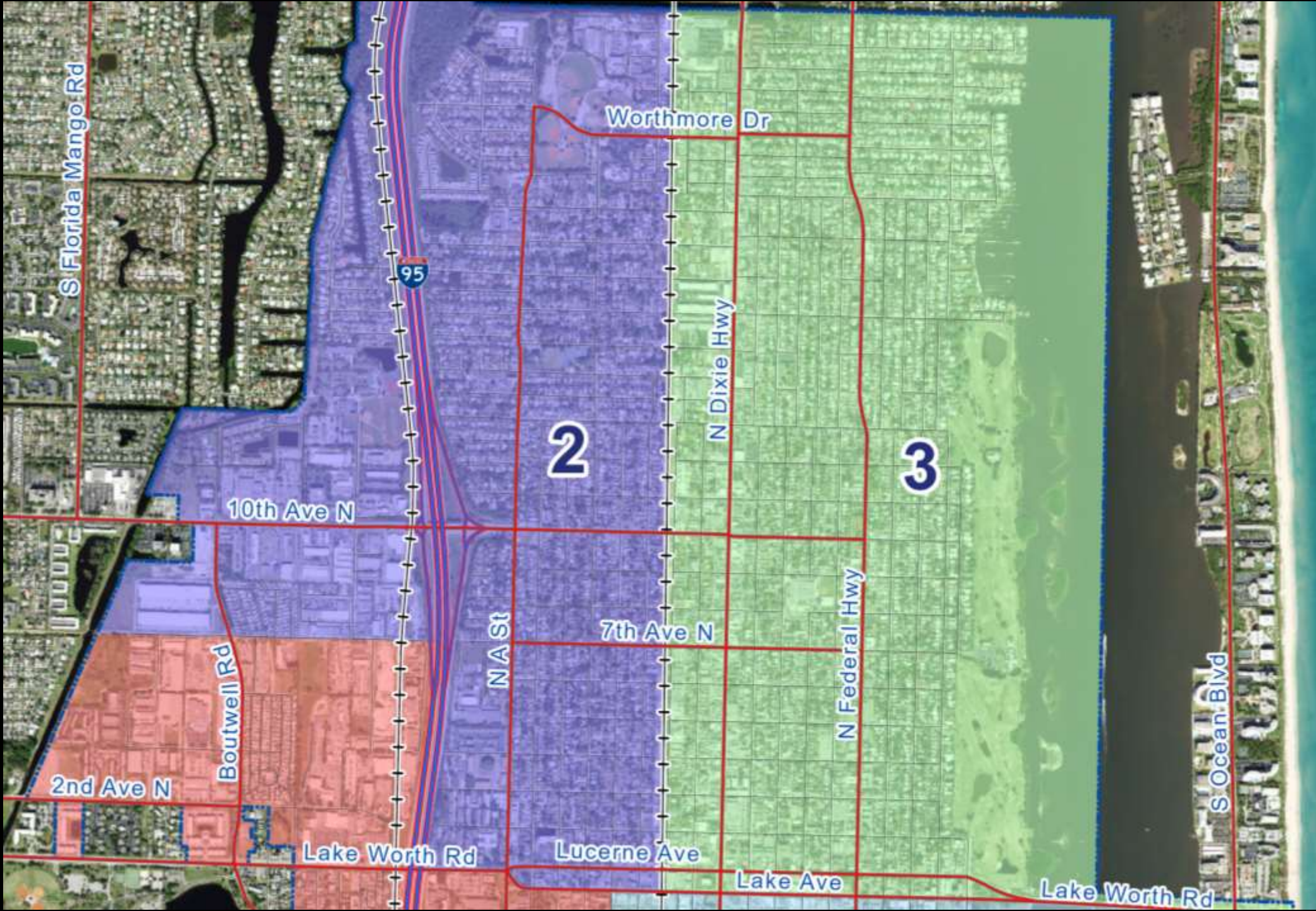
- Overall deviation is much improved under Alternative 1
 - Total deviation falls from 150.21% to 7.44%
 - Mean deviation falls from of 37.55% to 1.86%
 - The spread falls from 90.65% to 4.96%

Alt. 1	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	10,648	25.22	0.88%	11,468	24.83	-0.66%
District 2	9,249	21.91	-12.37%	11,764	25.48	1.90%
District 3	11,293	26.75	6.99%	11,754	25.45	1.82%
District 4	11,029	26.12	4.49%	11,191	24.24	-3.06%
Total	42,219	100	24.74%	46,177	100	7.44%
Average	10,555	25	6.19%	11,544	25	1.86%

Alternative 2

- Maintains, somewhat, the four quadrant arrangement of the existing Districts:
 - Though the four districts no longer meet at a common intersection
 - North-South border remains Lake Worth Rd, except where District 1 expands north to the west of I-95, south of 7th Ave N
 - East-West border between Districts 2 and 3 moves west to the FEC Railway
 - Between Districts 1 & 4, the East-West boundary moves west to South E St





S Florida Mango Rd

Worthmore Dr

95

2

3

10th Ave N

N Dixie Hwy

NAST

7th Ave N

N Federal Hwy

2nd Ave N

Boutwell Rd

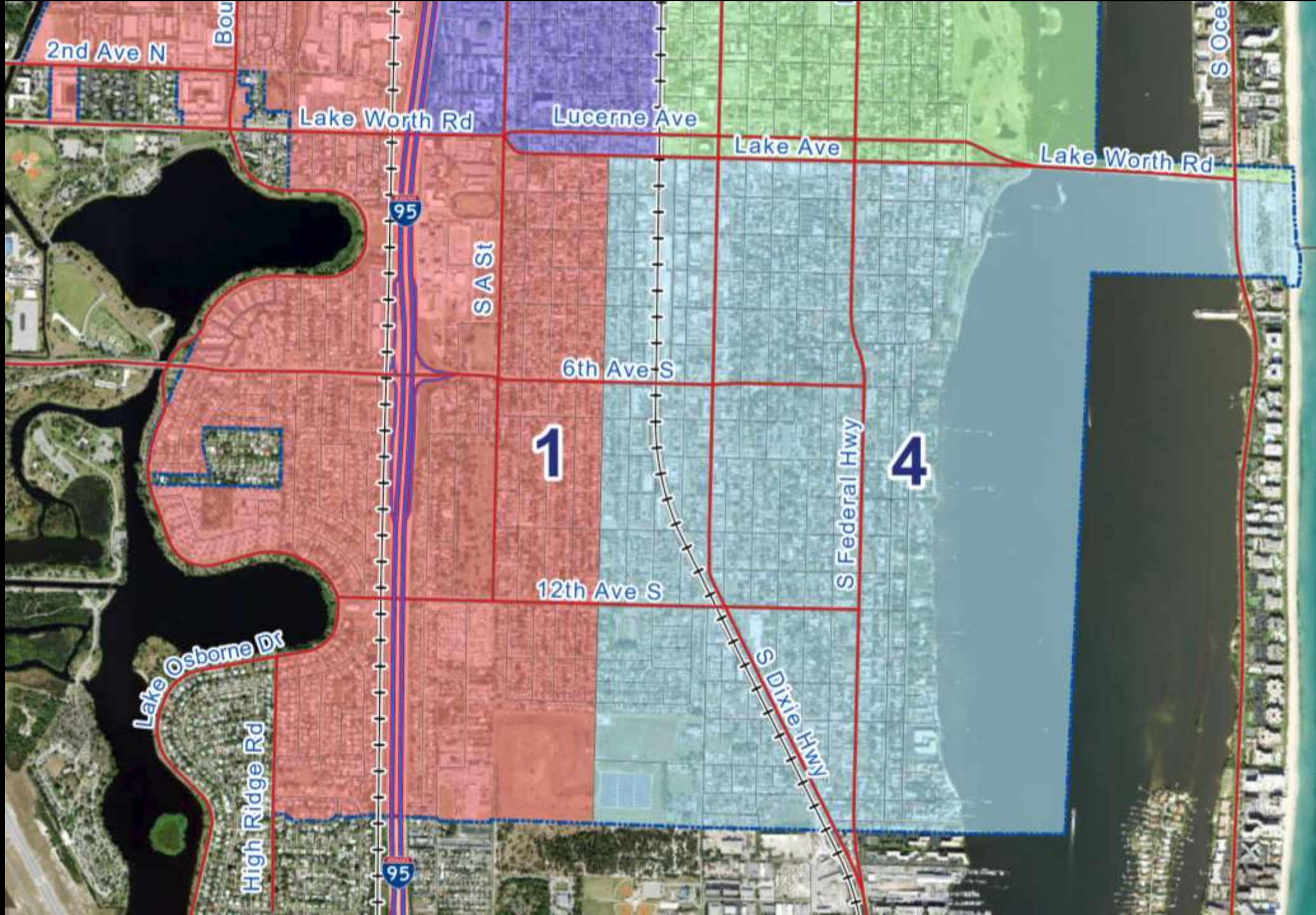
Lake Worth Rd

Lucerne Ave

Lake Ave

S Ocean Blvd

Lake Worth Rd



2nd Ave N

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Lake Worth Rd

Lucerne Ave

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12th Ave S

S Federal Hwy

S Dixie Hwy

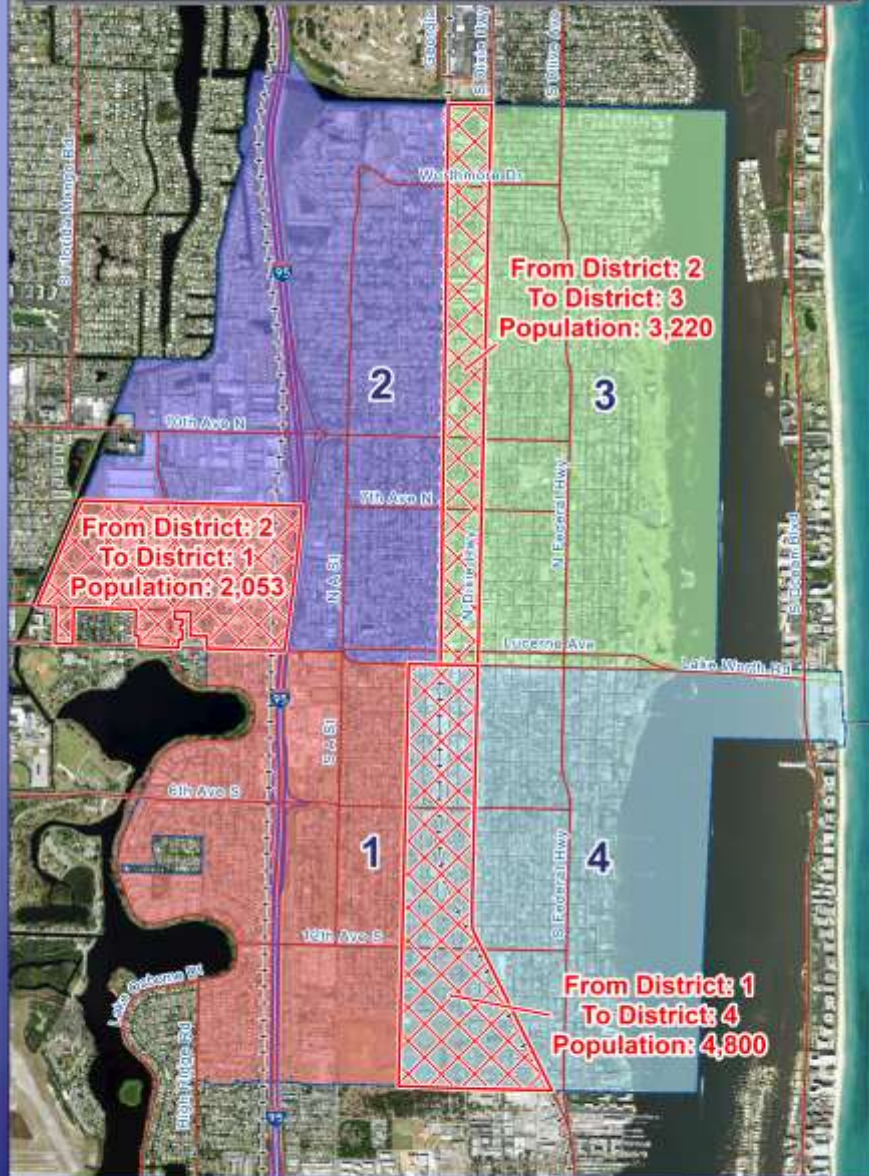
Lake Osborne Dr

High Ridge Rd

95

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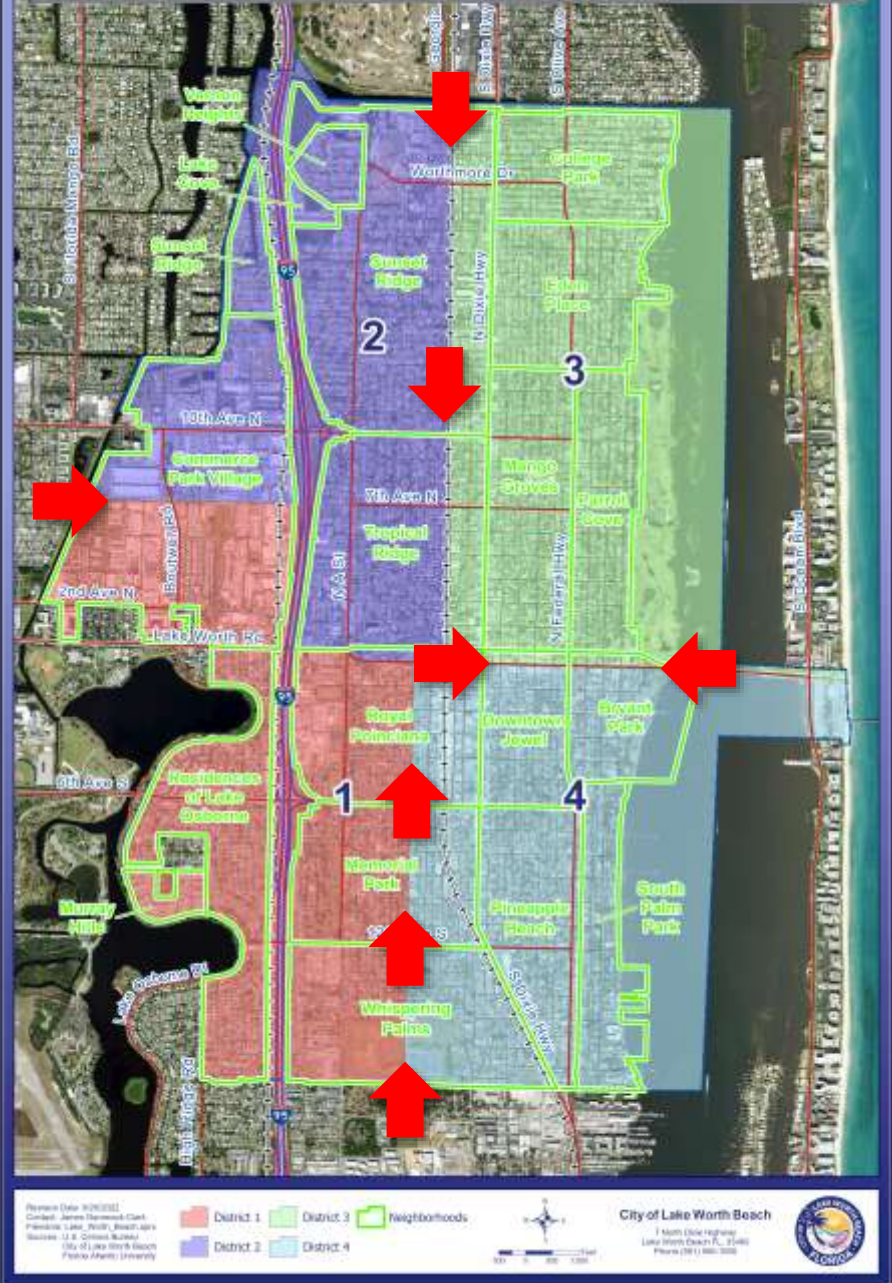
Alternative 2



- District 1 gains:
 - 2,053 people from District 2
 - That portion of the Lake Worth Park of Commerce, south of 7th Ave S
- District 2 gains:
 - 3,220 people from District 2
 - That area between Dixie Hwy and the FEC Railway, north of Lake Worth Rd
- District 3 gains:
 - 4,800 people from District 1
 - That area between Dixie Hwy and South E St, south of Lake Worth Rd

Alternative 2

- Eight neighborhoods are split:
 - Most among the four alternatives
 - Sunset Ridge, Tropical Ridge, Royal Poinciana, Memorial Park, Whispering Palms, Downtown Jewel, Bryant Park, and Commerce Park Village





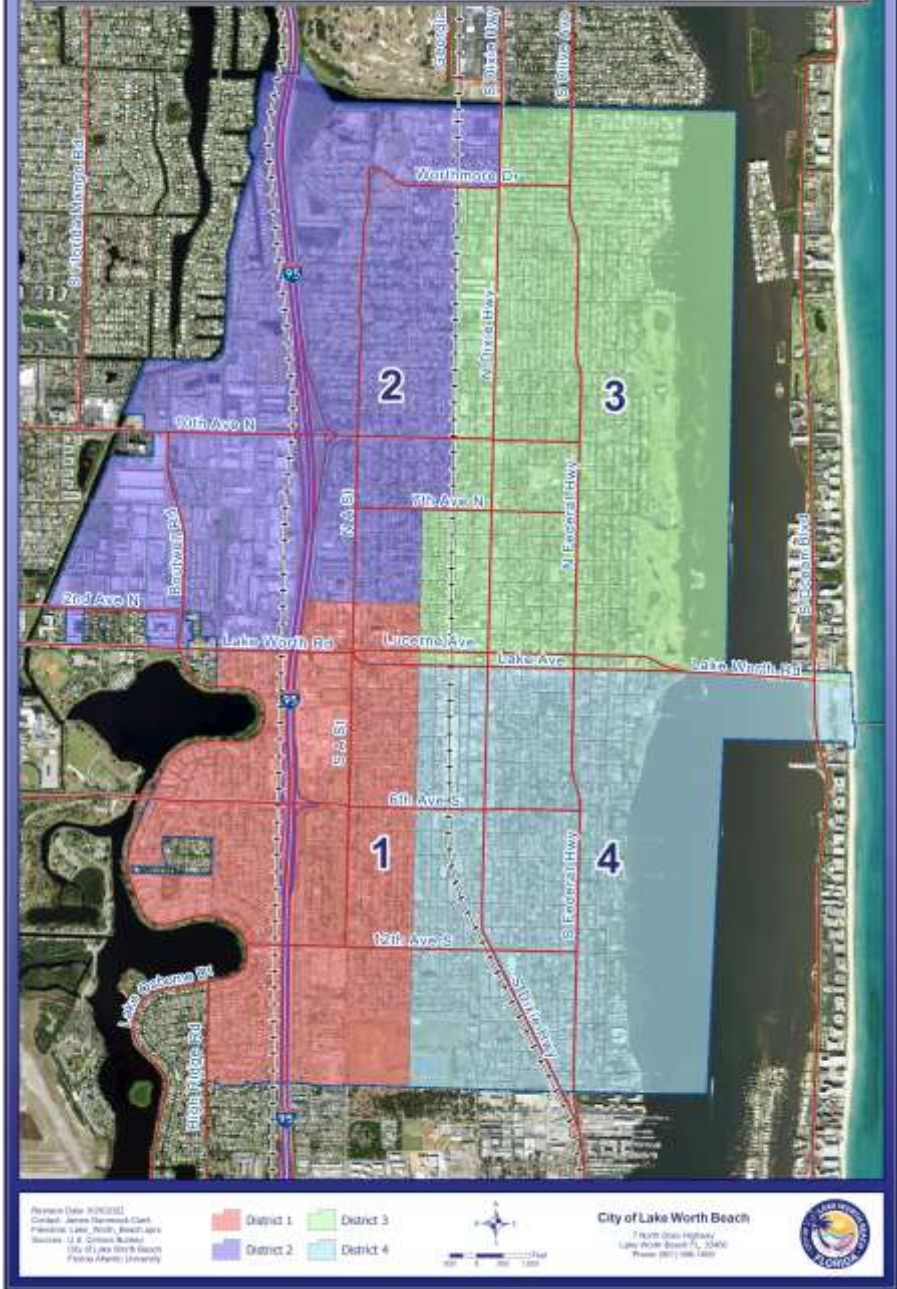
Alternative 2

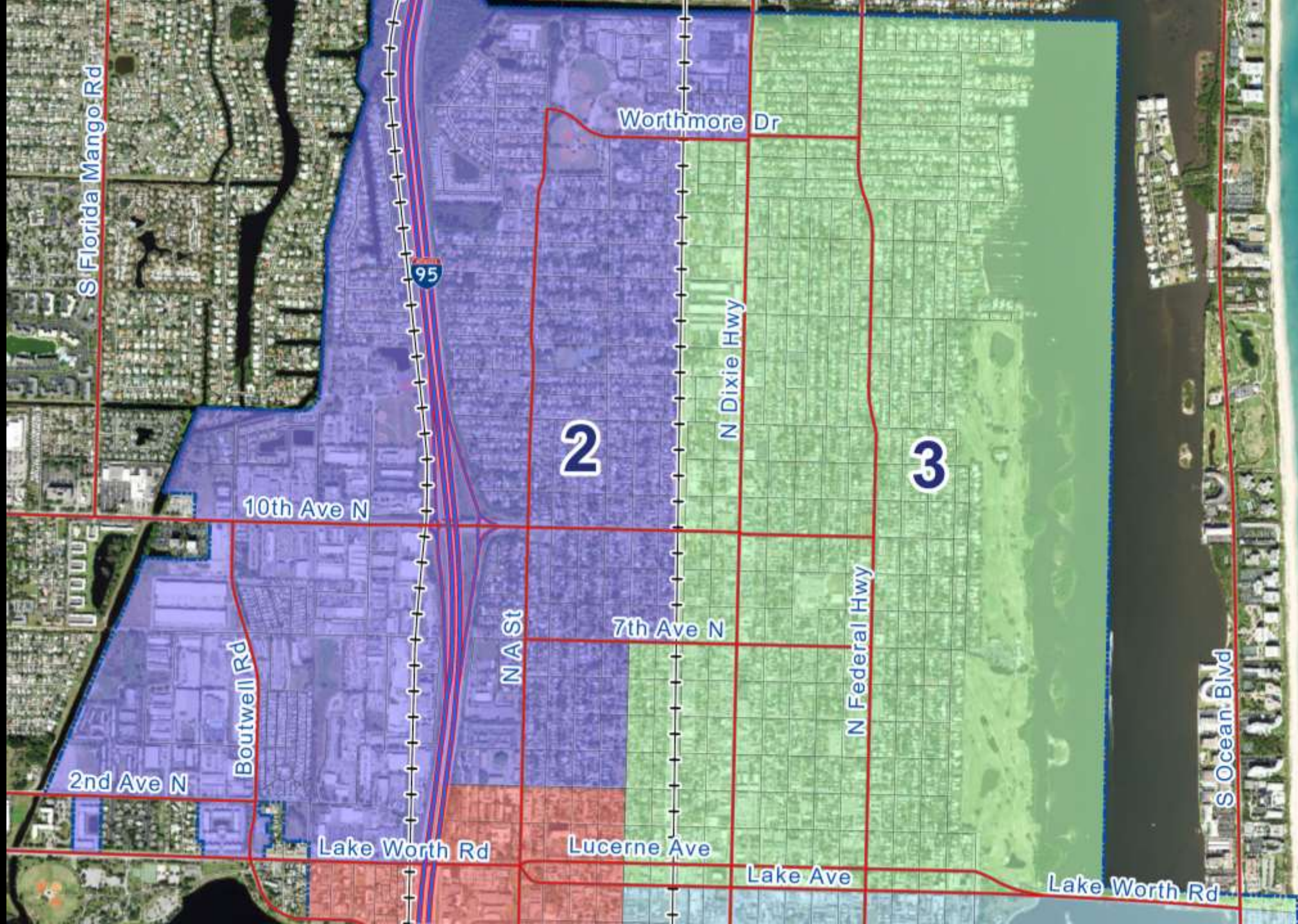
- Overall deviation is much improved under Alternative 2
 - Total deviation falls from 150.21% to 11.27%
 - Mean deviation falls from of 37.55% to 2.82% (highest of the alternatives)
 - The spread falls from 90.65% to 8.28% (highest of the alternatives)

Alt. 2	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	11,594	27.46	9.85%	11,846	25.65	2.61%
District 2	10,420	24.68	-1.28%	11,893	25.76	3.02%
District 3	9,446	22.37	-10.50%	10,937	23.68	-5.26%
District 4	10,759	25.48	1.94%	11,501	24.91	-0.37%
Total	42,219	100	23.56%	46,177	100	11.27%
Average	10,555	25	5.89%	11,544	25	2.82%

Alternative 3

- Variant of Alternative 2 that creates a more compact and balanced District 1 while leaving District 4 unchanged:
 - North-South border remains Lake Worth Rd, except where District 1 expands north to 3rd Ave N, east of I-95
 - To improve population equity between Districts 2 and 3, several jogs are introduced to their East-West border: from Dixie Hwy to the FEC railway south of Worthmore Dr, then to E St south of 7th Ave N
 - Between Districts 1 and 4, the East-West boundary moves west to South E St





S Florida Mango Rd

Worthmore Dr

95

2

N Dixie Hwy

3

10th Ave N

7th Ave N

N Federal Hwy

NA St

2nd Ave N

Boutwell Rd

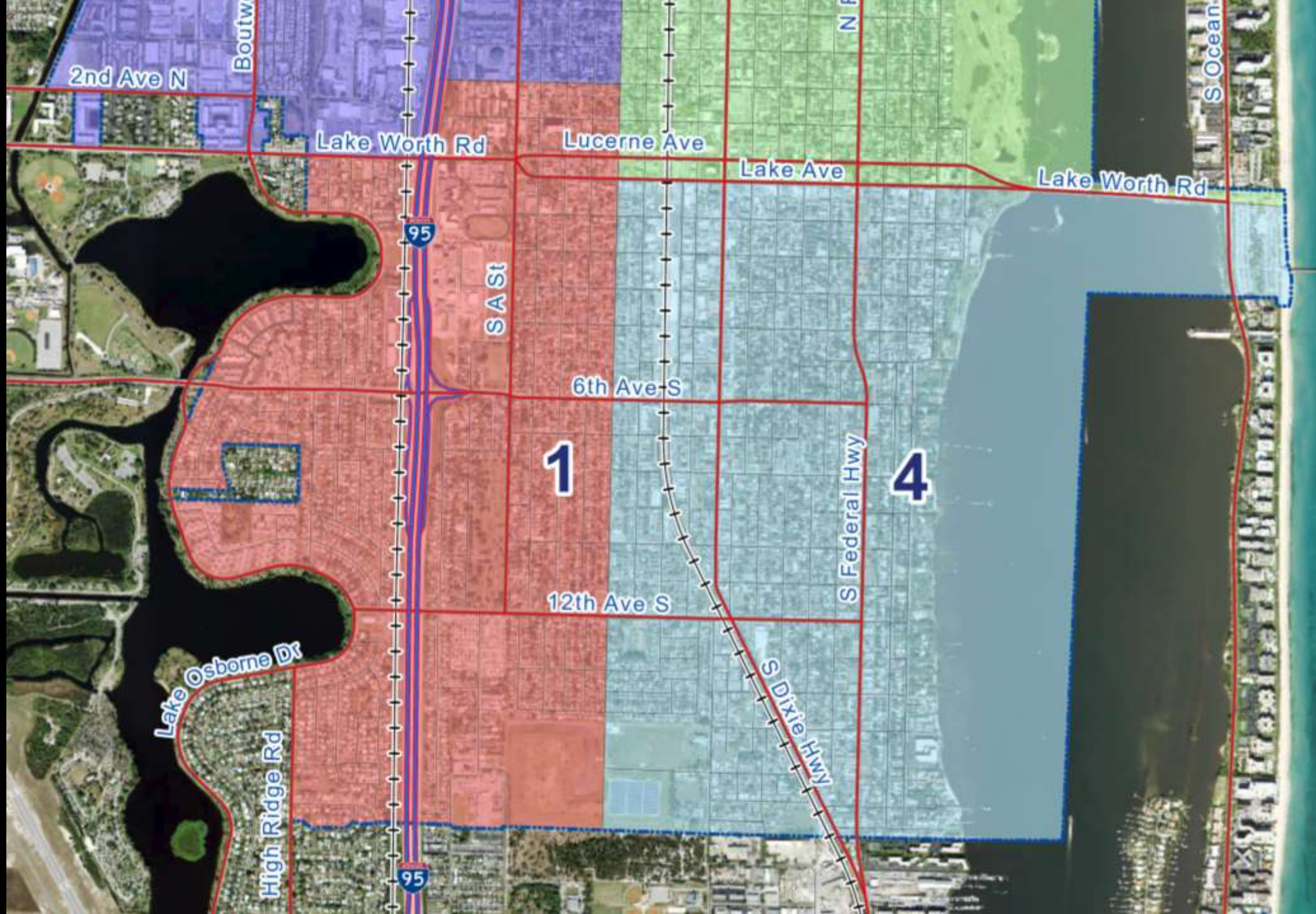
S Ocean Blvd

Lake Worth Rd

Lucerne Ave

Lake Ave

Lake Worth Rd



2nd Ave N

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S Federal Hwy

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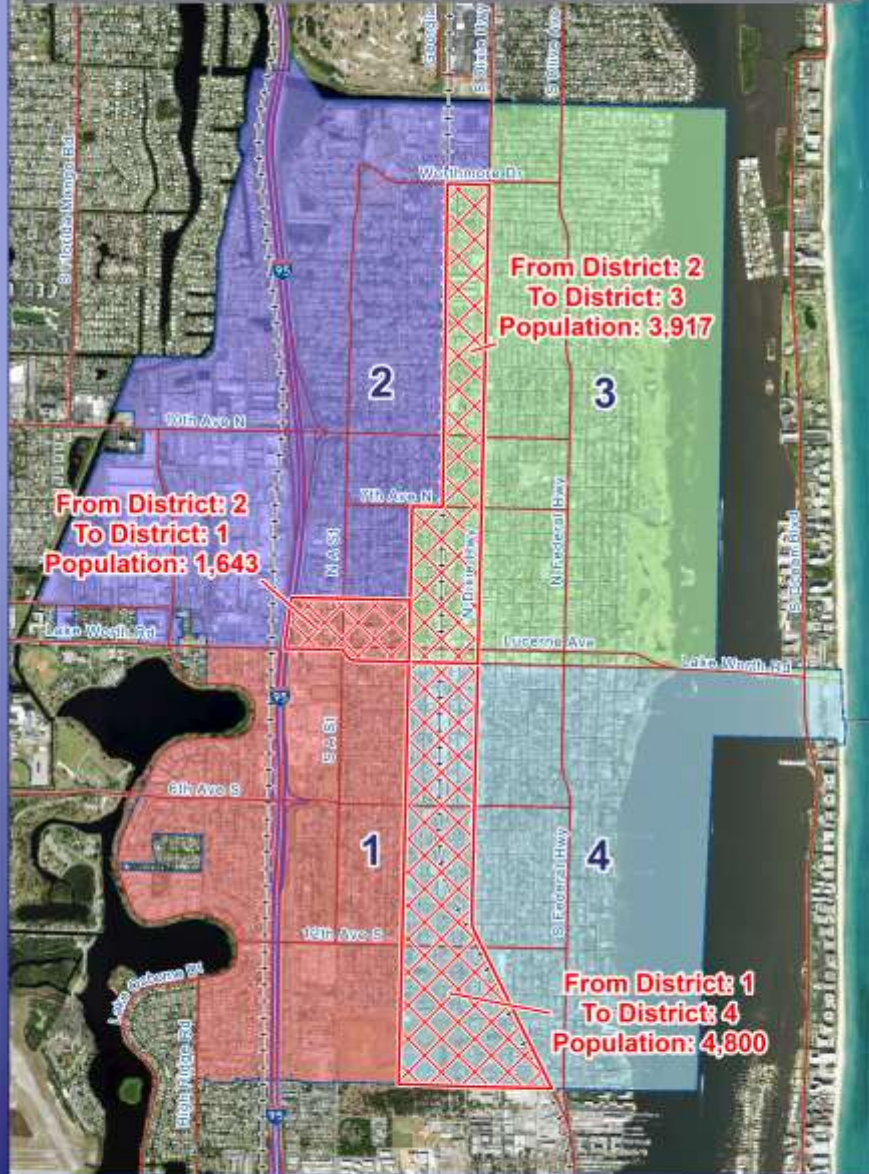
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Lake Osborne Dr

High Ridge Rd

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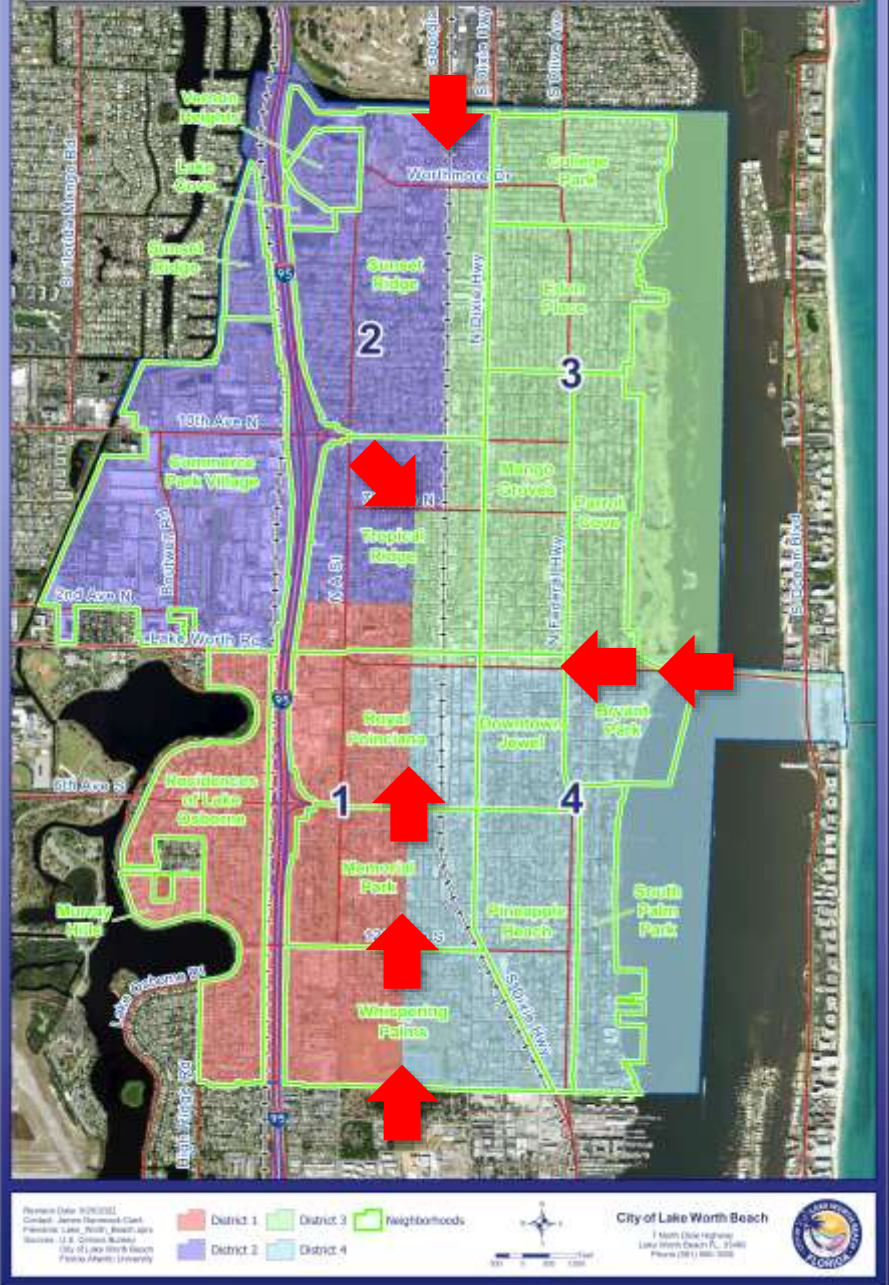
Alternative 3



- District 1 gains:
 - 1,643 people from District 2
 - That portion of Tropical Ridge, south of 3rd Ave N and west of E St
- District 3 gains:
 - 3,917 people from District 2
 - That area between Dixie Hwy and the FEC Railway, north of 7th Ave N and south of Worthmore Dr, together with that area between Dixie Hwy and E St, south of 7th Ave N and north of Lake Worth Rd
- District 4 gains:
 - 4,800 people from District 1
 - That area between Dixie Hwy and the South E St, south of Lake Worth Rd

Alternative 3

- Seven neighborhoods are split:
 - Sunset Ridge, Tropical Ridge, Royal Poinciana, Memorial Park, Whispering Palms, Downtown Jewel, and Bryant Park





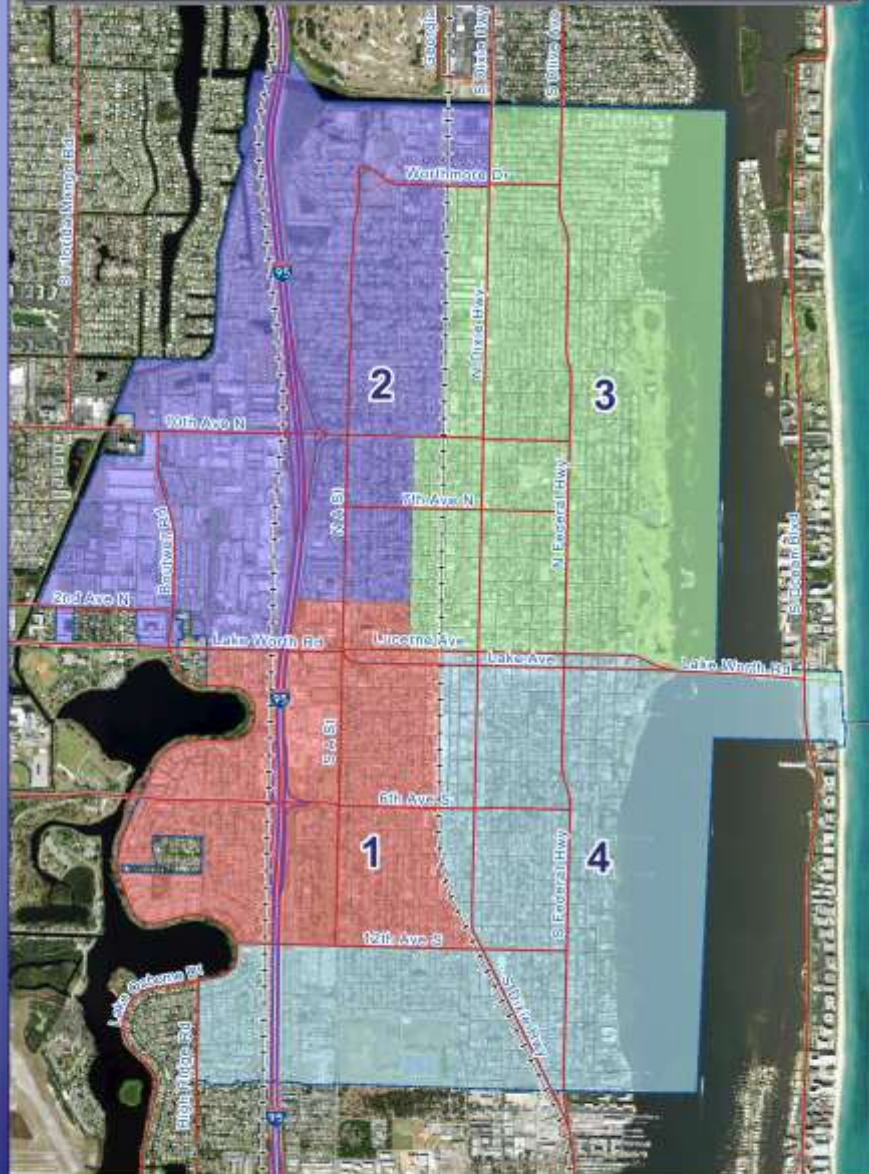
Alternative 3

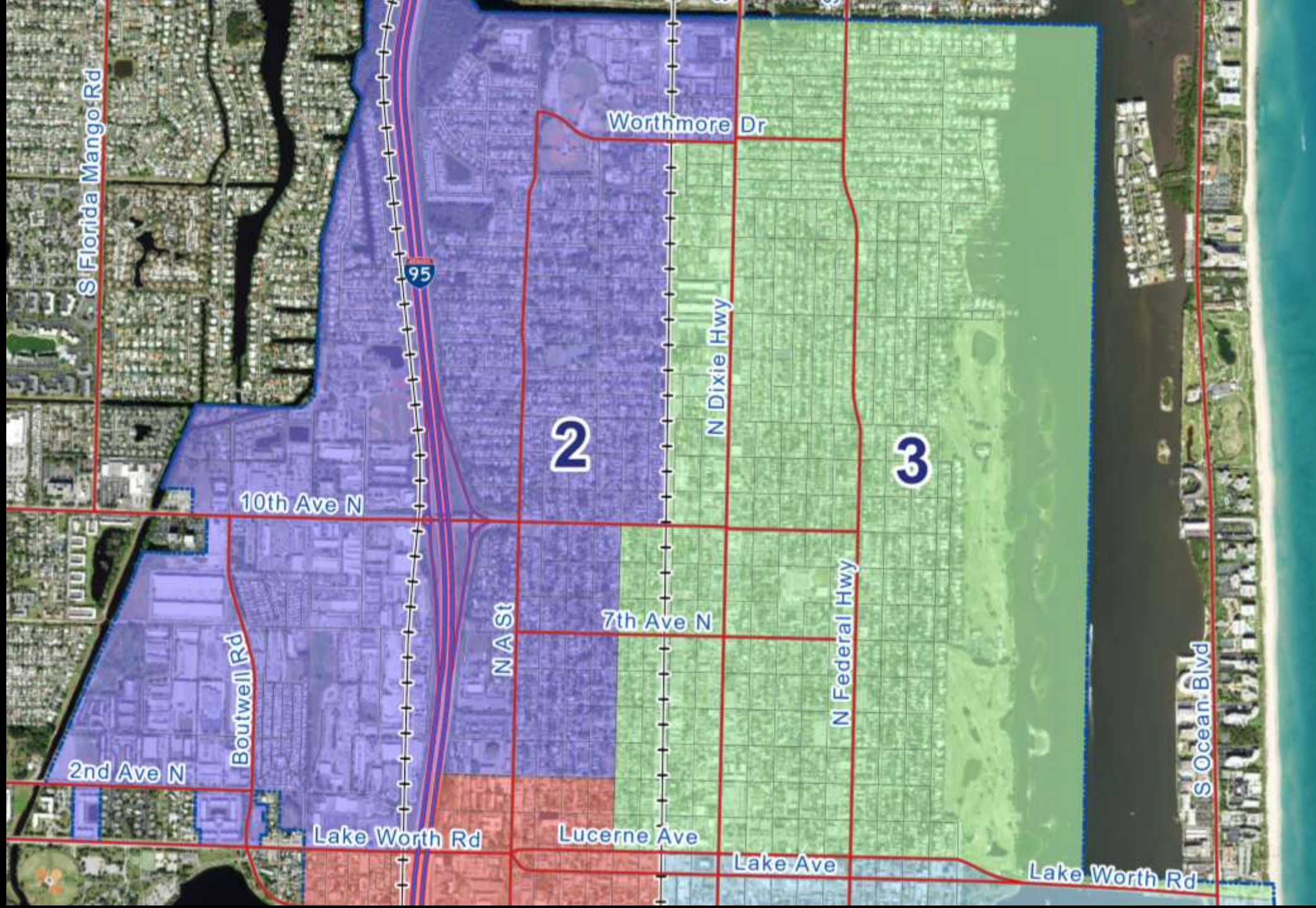
- Overall deviation is much improved under Alternative 3
 - Total deviation falls from 150.21% to 2.62%
 - Mean deviation falls from of 37.55% to 0.66% (lowest of the alternatives)
 - The spread falls from 90.65% to 1.72% (lowest of the alternatives)

Alt. 3	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	11,315	26.80	7.20%	11,436	24.77	-0.94%
District 2	10,121	23.97	-4.11%	11,606	25.13	0.53%
District 3	10,024	23.74	-5.03%	11,634	25.19	0.78%
District 4	10,759	25.48	1.94%	11,501	24.91	-0.37%
Total	42,219	100	18.28%	46,177	100	2.62%
Average	10,555	25	4.57%	11,544	25	0.66%

Alternative 4

- Marries the best of Alt. 1 and 3 together:
 - North-South border remains Lake Worth Rd, except where District 1 expands north to 3rd Ave N, east of I-95
 - To improve population equity between Districts 2 and 3, several jogs are introduced to their East-West border: from Dixie Hwy to the FEC railway south of Worthmore Dr, then to E St south of 10th Ave N
 - Between Districts 1 and 4, the East-West boundary moves west to the FEC Railway, and then District 4 projects west to High Ridge Rd south of 12th Ave S





S Florida Mango Rd

Worthmore Dr

95

2

N Dixie Hwy

3

10th Ave N

NA St

7th Ave N

N Federal Hwy

2nd Ave N

Boutwell Rd

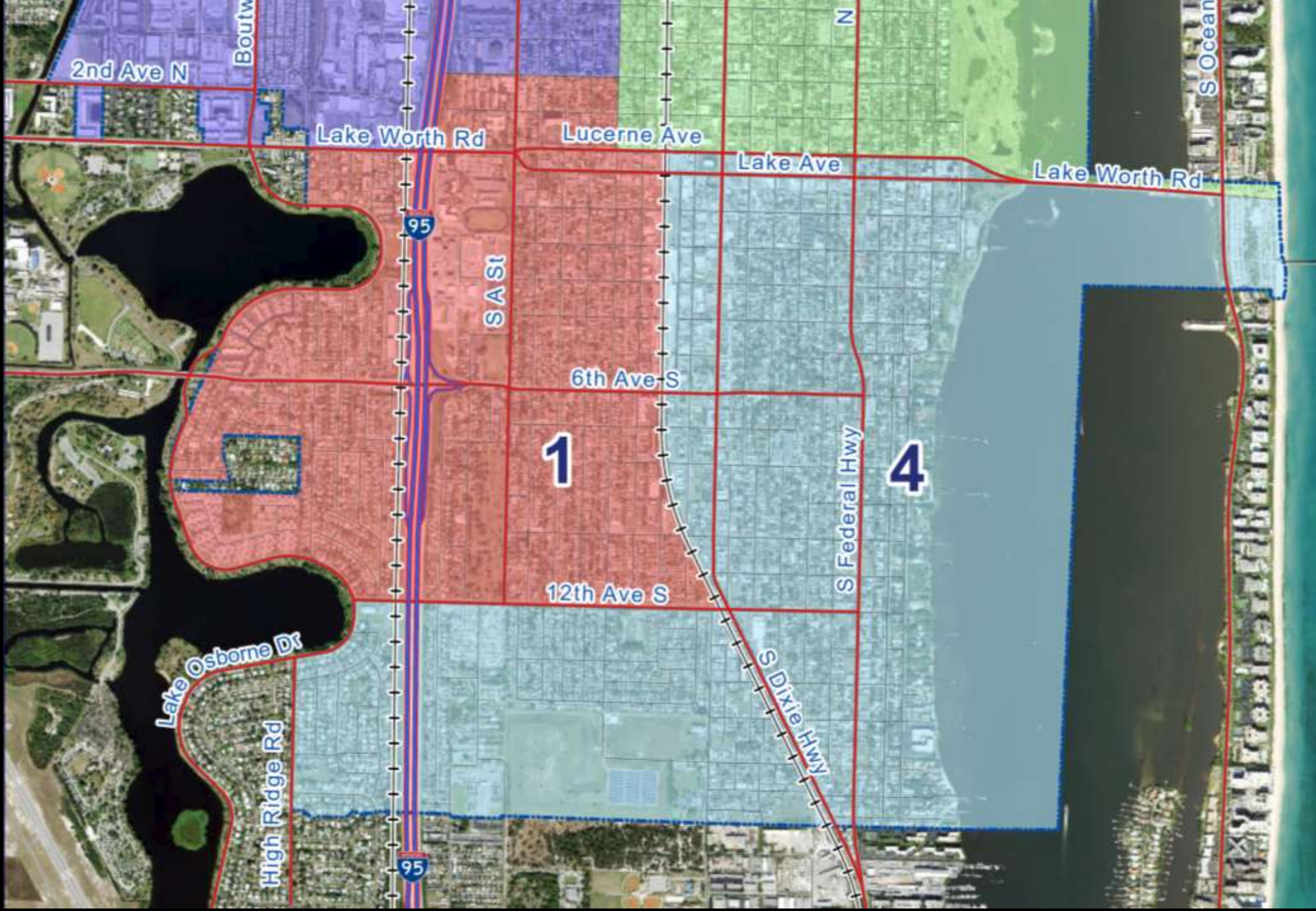
Lake Worth Rd

Lucerne Ave

Lake Ave

S Ocean Blvd

Lake Worth Rd



2nd Ave N

Boutw

Lake Worth Rd

Lucerne Ave

Lake Ave

Lake Worth Rd

S Ocean

95

S A St

6th Ave S

1

4

12th Ave S

S Federal Hwy

S Dixie Hwy

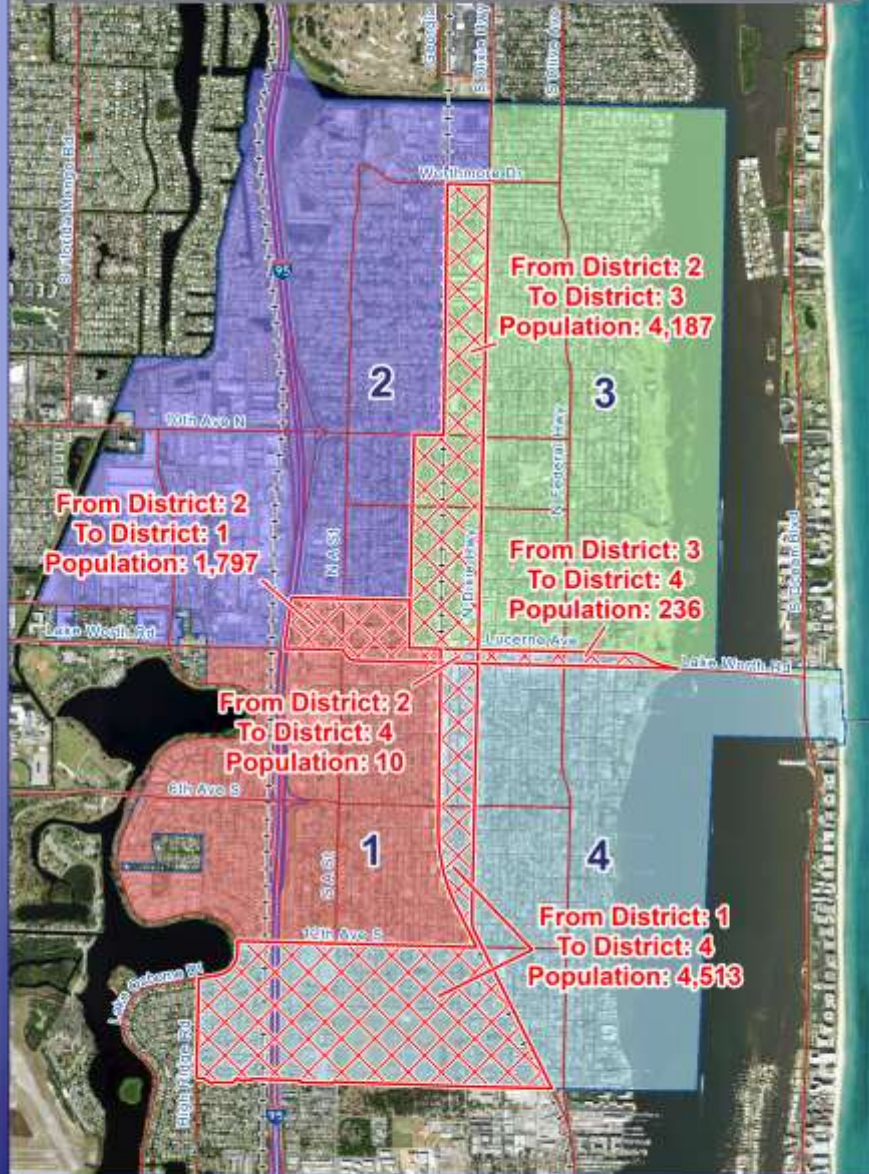
Lake Osborne Dt

High Ridge Rd

95

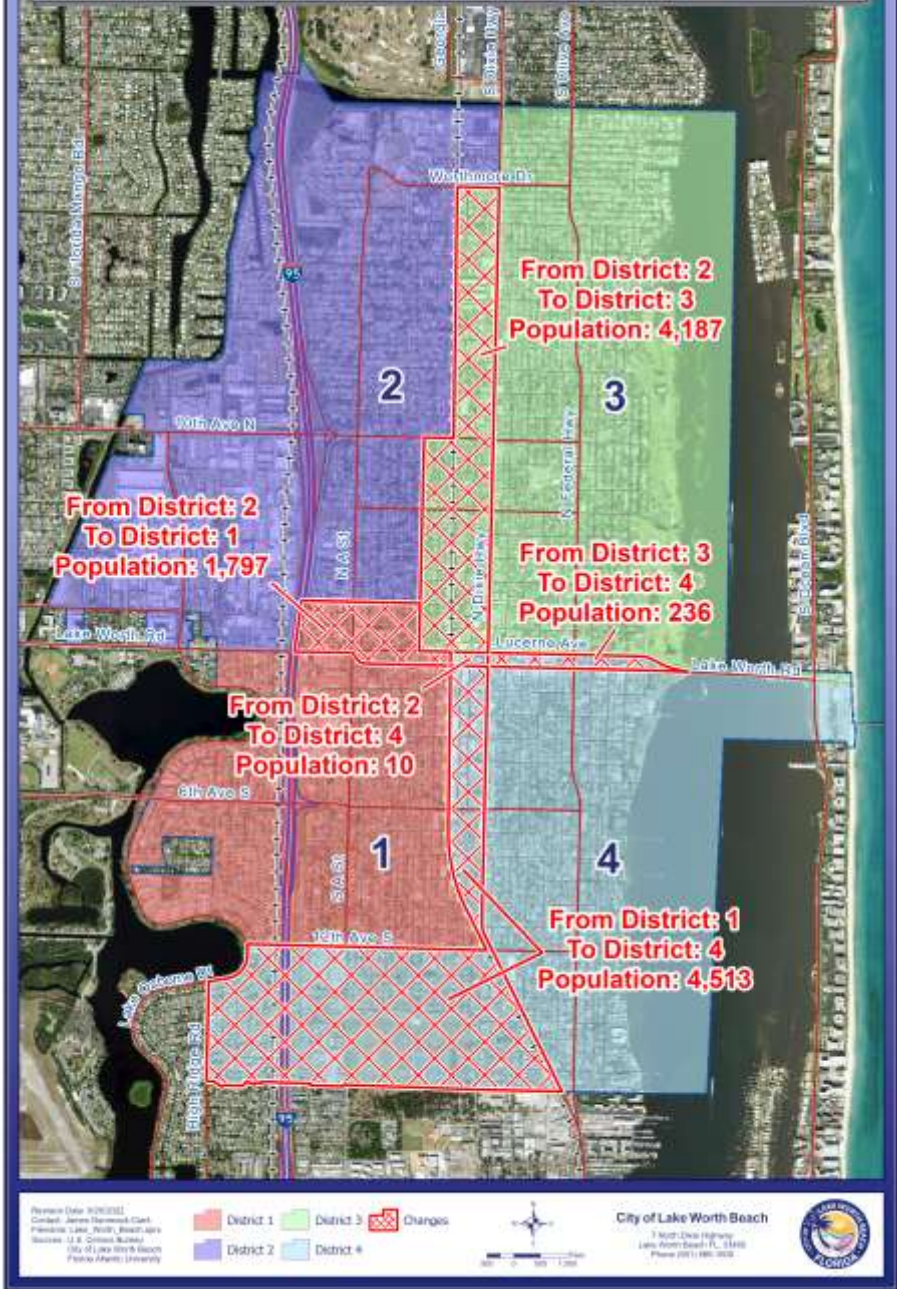
Alternative 4

- District 1 gains:
 - 1,797 people from District 2
 - That area south of 3rd Ave N and west of E St, together with that area found to the west of the FEC Railway between Lucerne Ave and Lake Worth Rd
- District 3 gains:
 - 4,187 people from District 2
 - That area between Dixie Hwy and the FEC Railway, north of 10th Ave N and south of Worthmore Dr, together with that area between Dixie Hwy and E St, south of 10th Ave N and north of Lucerne Ave



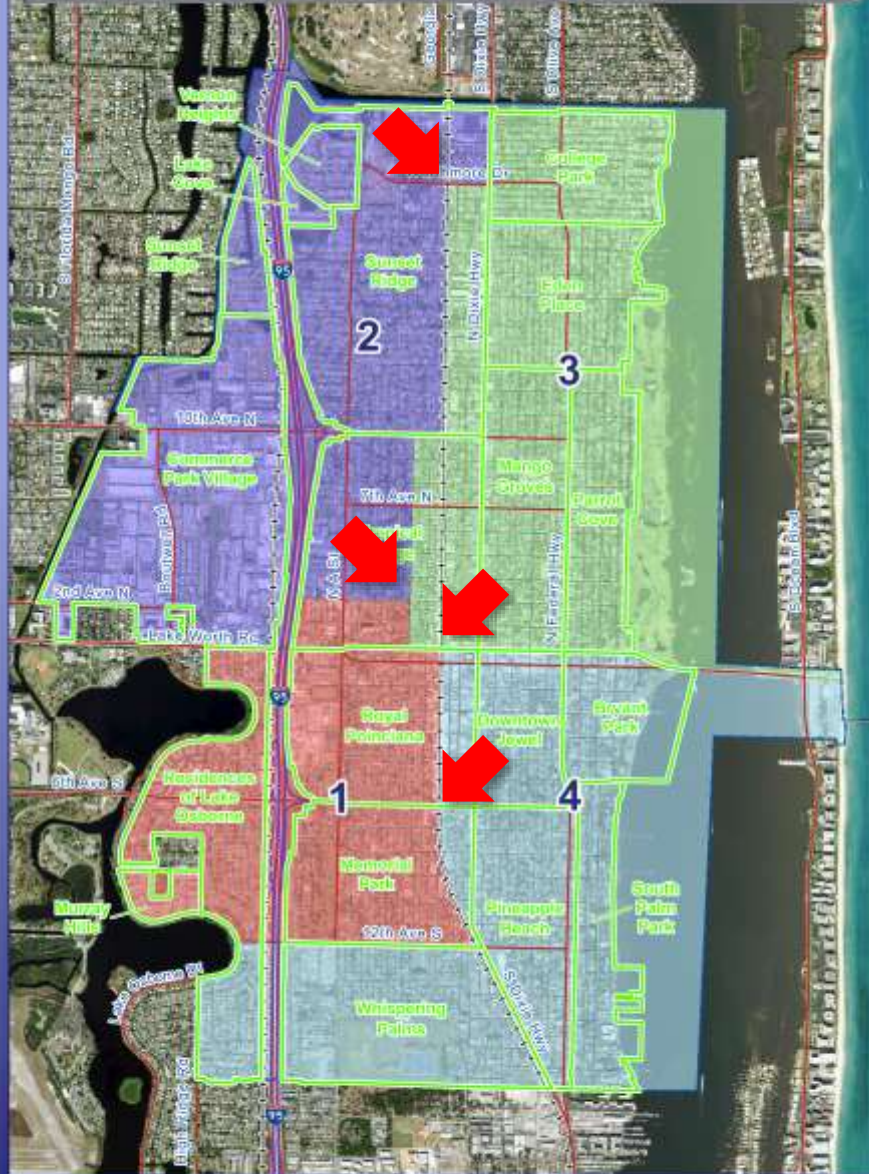
Alternative 4

- District 4 gains:
 - 4,513 people from District 1
 - That area between Dixie Hwy and the FEC Railway, and that part of the city found to the east of Dixie Hwy and south of 12th Ave S
 - 10 people from District 2
 - That area found between Lucerne Ave and Lake Worth Rd, and between Dixie Hwy and the FEC Railway
 - 236 people from District 3
 - That area found between Lucerne Ave and Lake Worth Rd, and east of the FEC Railway



Alternative 4

- Four neighborhoods are split:
 - Sunset Ridge, Tropical Ridge, Royal Poinciana, and Memorial Park





Alternative 4

- Overall deviation is much improved under Alternative 4
 - Total deviation falls from 150.21% to 7.91%
 - Mean deviation falls from of 37.55% to 1.98%
 - The spread falls from 90.65% to 6.10%

Alt. 4	2020 Population	% of City	Deviation From Average	2024 Population Projection	% of City	Deviation From Average
District 1	11,637	27.56	10.25%	11,877	25.72	2.88%
District 2	9,687	22.94	-8.22%	11,172	24.19	-3.22%
District 3	10,177	24.11	-3.58%	11,668	25.27	1.07%
District 4	10,718	25.39	1.55%	11,460	24.82	-0.73%
Total	42,219	100	23.60%	46,177	100	7.91%
Average	10,555	25	5.90%	11,544	25	1.98%



Summary

- All of the alternatives dramatically improve population equity
 - Alt 1 splits the fewest number of number of neighborhoods
 - Alt 2 attempts to maintain the existing 4 quadrants configuration
 - Alt 3 is the most balanced of the options presented
 - Alt 4 marries the best of aspects of Alt's 1 and 3 together

Configuration	Impacted Population	Split Neighborhoods	Total Deviation	Mean Deviation	Spread
Existing Districts	N/A	3	150.21	37.55	90.65
Alternative 1	9,892	3	7.44	1.86	4.96
Alternative 2	10,073	8	11.27	2.82	8.28
Alternative 3	10,360	7	2.62	0.66	1.72
Alternative 4	10,743	4	7.91	1.98	6.10



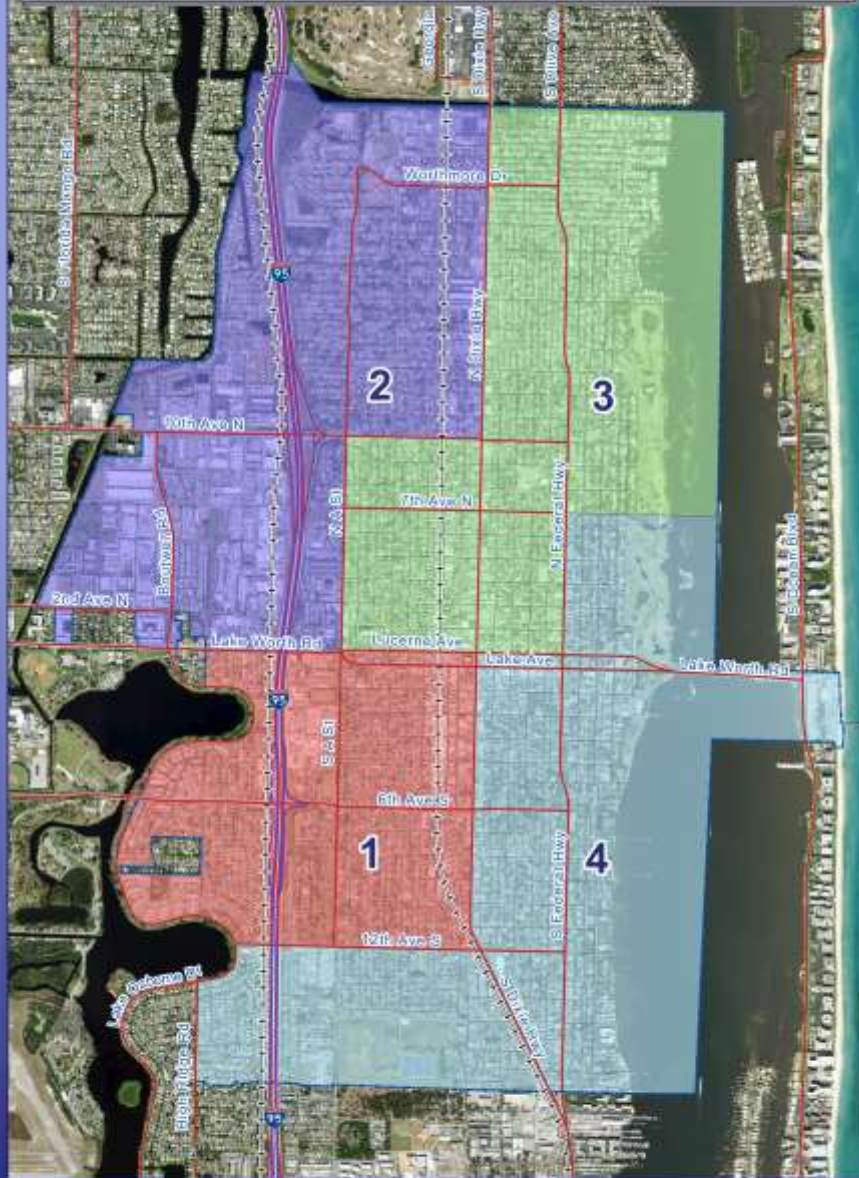
FLORIDA ATLANTIC UNIVERSITY

Questions?

City of Lake Worth Beach Redistricting Alternatives

City of Lake Worth Beach

Alternative Districts: Option 1



Revision Date: 10/2022
Contact: James Hammond, Clerk
Planning: Lake Worth Beach, 3000 1st
District: U.S. Census Bureau
100 W. Lake Worth Beach
P.O. Box 1000

- District 1
- District 2
- District 3
- District 4

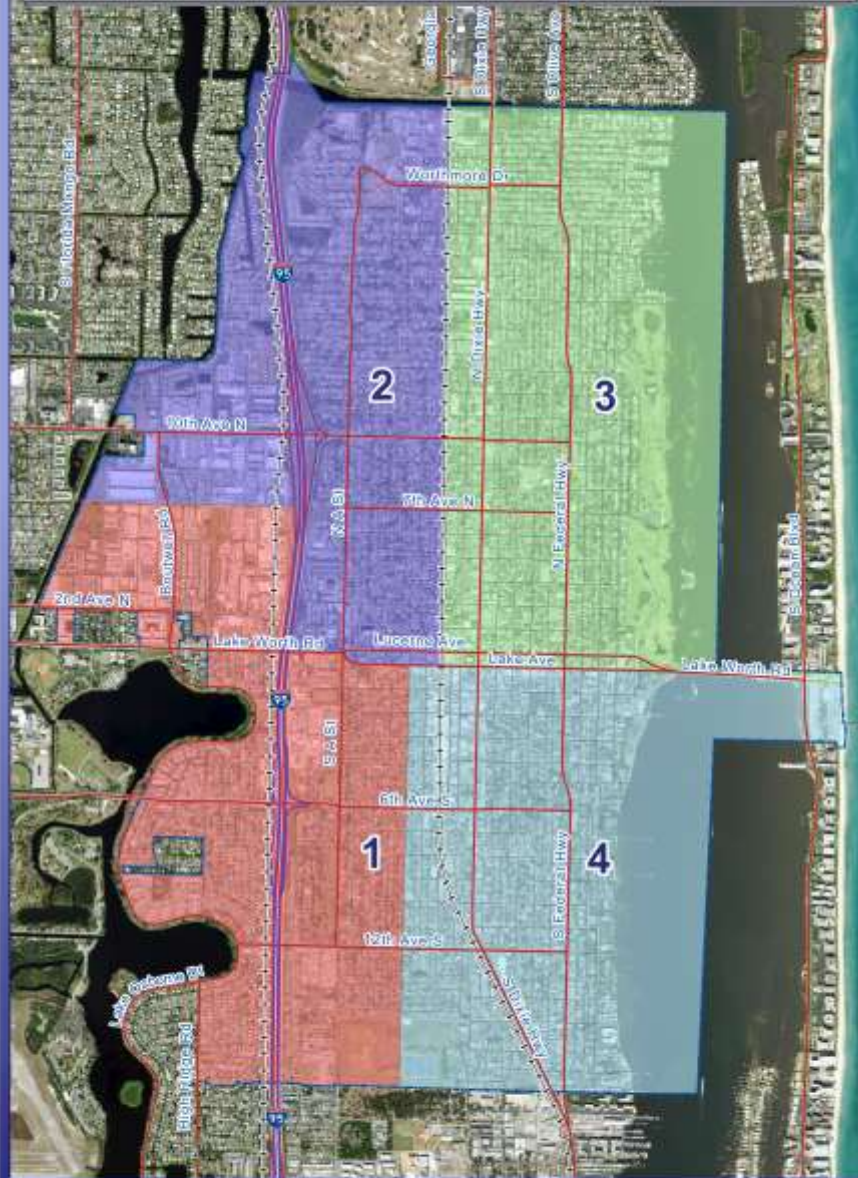


City of Lake Worth Beach
7 North State Highway
Lake Worth Beach, FL 33460
Phone: (561) 986-1800



City of Lake Worth Beach

Alternative Districts: Option 2



Revision Date: 10/2022
Contact: James Hammond, Clerk
Planning: Lake Worth Beach, 3000 1st
District: U.S. Census Bureau
100 W. Lake Worth Beach
P.O. Box 1000

- District 1
- District 2
- District 3
- District 4

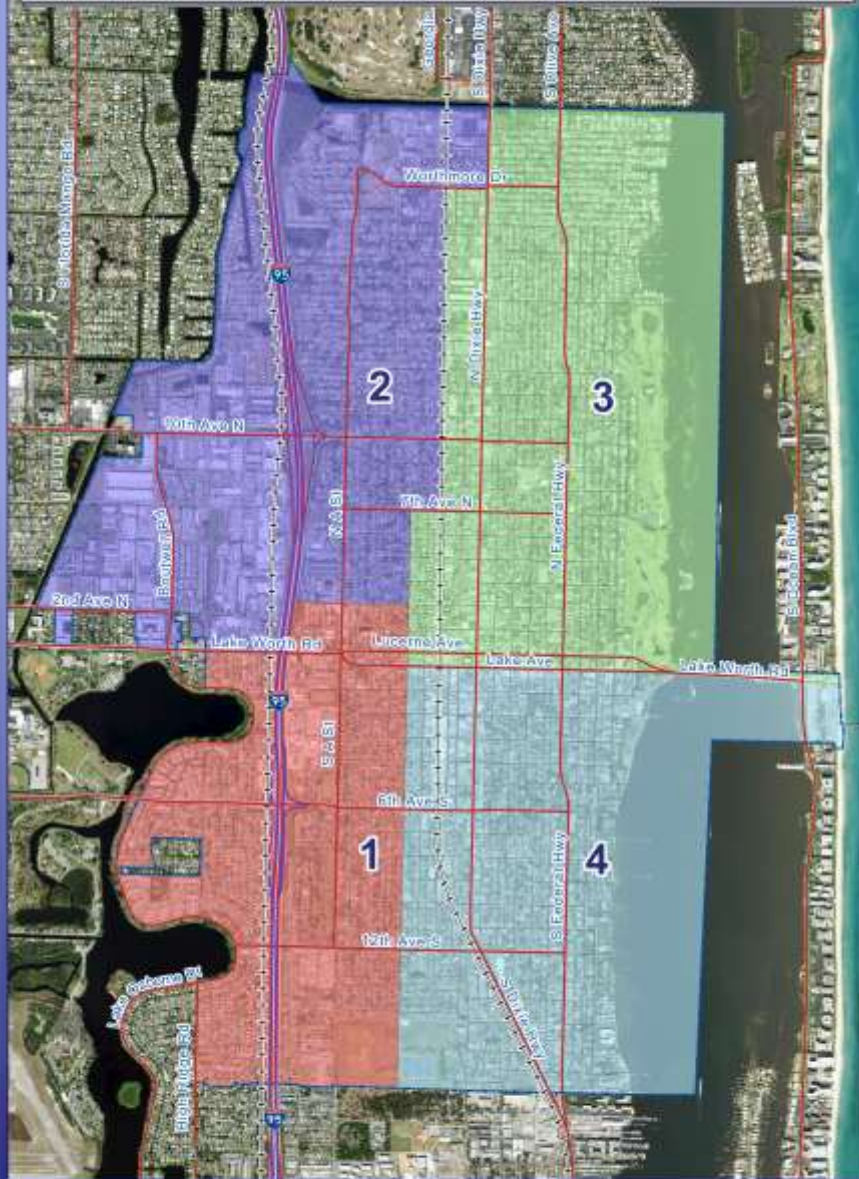


City of Lake Worth Beach
7 North State Highway
Lake Worth Beach, FL 33460
Phone: (561) 986-1800



City of Lake Worth Beach

Alternative Districts: Option 3



Revision Date: 10/2022
Contact: James Hammond, Clerk
Planning: Lake Worth Beach, 3094
Revised: U.S. Census Bureau
100 W. Lake Worth Beach
P.O. Box 10000

- District 1
- District 2
- District 3
- District 4

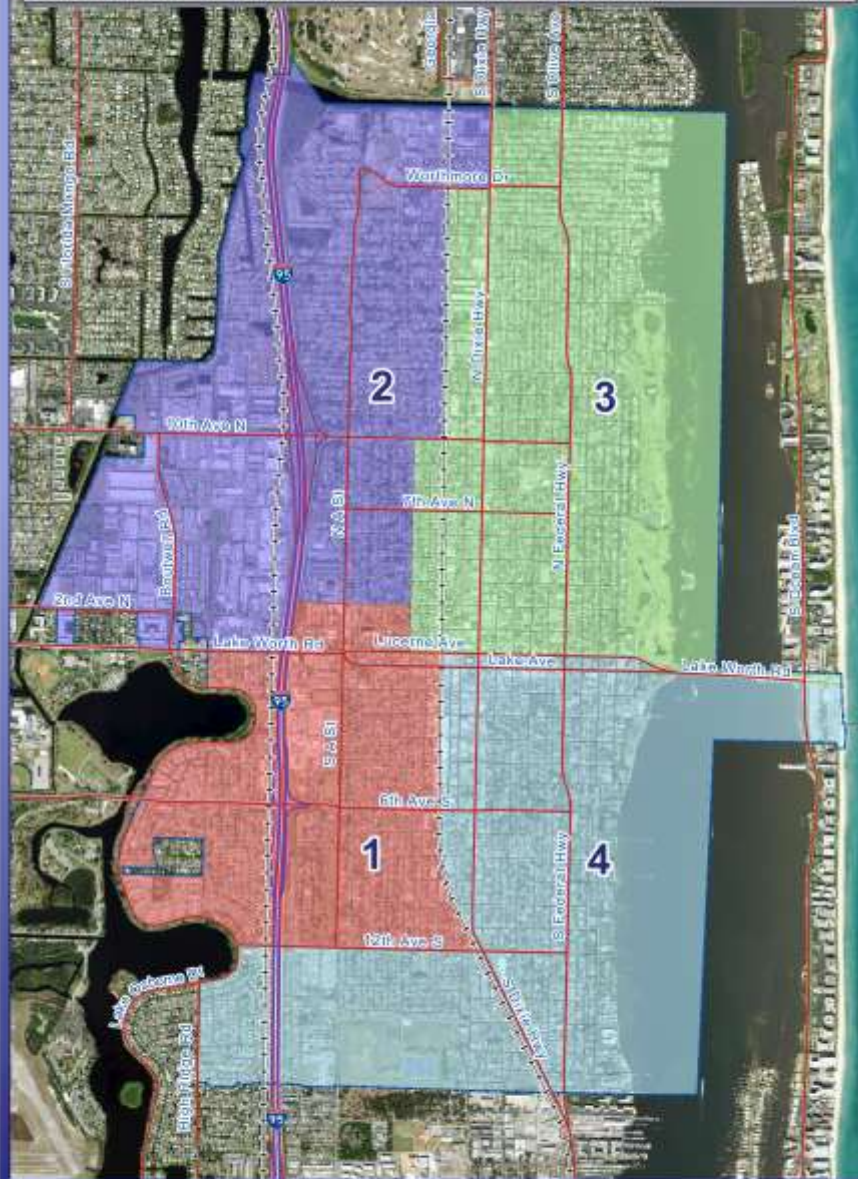


City of Lake Worth Beach
7 North State Highway
Lake Worth Beach, FL 33460
Phone: (561) 986-1800



City of Lake Worth Beach

Alternative Districts: Option 4



Revision Date: 10/2022
Contact: James Hammond, Clerk
Planning: Lake Worth Beach, 3094
Revised: U.S. Census Bureau
100 W. Lake Worth Beach
P.O. Box 10000

- District 1
- District 2
- District 3
- District 4







City of Lake Worth Beach
7 North State Highway
Lake Worth Beach, FL 33460
Phone: (561) 986-1800



City of Lake Worth Beach

Alternative Districts: Option 1



-  District 1
-  District 2
-  District 3
-  District 4



City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460
Phone (561) 586-1600



STAFF REPORT REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: Financial Services

TITLE:

Resolution No. 85-2022 – Revised Investment Policy

SUMMARY:

Resolution No. 85-2022 amends the investment policy designed to ensure prudent management of public funds for the City of Lake Worth Beach.

BACKGROUND AND JUSTIFICATION:

The purpose of this investment policy is to set forth the investment objectives and parameters for the management of public funds of City of Lake Worth Beach cash surplus funds and reserves. This policy is designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

In accordance with § 218.415, Florida Statutes, this policy applies to the investment of public funds in excess of the amounts needed to meet current expenses, which includes cash and investment balances of the following funds:

- General Fund
- Special Revenue Funds
- Debt Service Funds
- Capital Project Funds
- Enterprise Funds
- Internal Service Funds
- Trust and Agency Funds
- Any new fund created by the governing body

The policy does not apply to the investment of principal, interest, reserve, construction, capitalized interest, and redemption or escrow accounts created by ordinance or resolution pursuant to the issuance of bonds where the investments are held by an authorized depository. Also, this policy does not apply to funds not under investment control of the City; such as Employee Pension Plans.

MOTION:

Move to approve/disapprove Resolution No. 85-2022 – Revised Investment Policy designed to ensure prudent management of public funds for the City.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Resolution 85-2022
Investment Policy Draft

1
2
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8

**RESOLUTION NO. 85-2022 OF THE CITY OF LAKE WORTH BEACH,
FLORIDA, ESTABLISHING A REVISED INVESTMENT POLICY;
PROVIDING FOR THE REPEAL OF CONFLICTING RESOLUTIONS;
PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE
DATE**

9 **WHEREAS**, the Investment Policy (hereafter “policy”) is to set forth the investment
10 objectives and parameters for the management of public funds of City of Lake Worth
11 Beach (hereinafter “City”) cash surplus funds and reserves.

12 **WHEREAS**, in order to comply with Chapter 218.415, Florida Statutes, governing
13 Municipal Investment policies, the policy applies to the investment of public funds in
14 excess of the amounts needed to meet current expenses, which includes cash and
15 investment balances of various funds.

16 **WHEREAS**, the primary objective of the Director of Financial Services is the
17 protection of City funds (preservation of capital) to keep capital losses to a minimum,
18 whether they are from securities defaults or erosion of market value.

19 **WHEREAS**, the second highest priority is liquidity of funds to meet the City’s
20 reasonable anticipated cash flow requirements.

21 **WHEREAS**, the third highest priority is income to increase the value of the
22 portfolios through reinvestment of income and capital gains.

23 **WHEREAS**, the Director of Financial Services will seek to control credit and market
24 risks and diversify fixed investments regarding specific types, maturities, and financial
25 institutions.

26 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE
27 WORTH, FLORIDA:

28 Section 1. That the foregoing recitals are true and correct and are hereby made a specific
29 part of this Resolution.

30 Section. 2. That the City of Lake Worth Beach revised investment policy is hereby
31 attached and is hereby made a part of this Resolution.

32 Section 3. That all resolutions or parts of resolutions in conflict herewith are hereby
33 repealed.

34 Section 4. That if any provision of this Resolution or the application thereof to any person
35 or circumstance is held invalid, the invalidity shall not affect other provisions or
36 applications of the Resolution, which can be given effect without the invalid provision or
37 application, and to this end the provisions of this Resolution are declared severable.

38 Section 5. That this Resolution shall take effective immediately upon adoption.

39 The passage of this resolution was moved by Commissioner _____,
40 seconded by Commissioner _____, and upon being put to a vote, the vote
41 was as follows:

- 42 Mayor Betty Resch
- 43 Vice Mayor Christopher McVoy
- 44 Commissioner Sarah Malega
- 45 Commissioner Kimberly Stokes
- 46 Commissioner Reinaldo Diaz

47
48 The Mayor thereupon declared this resolution duly passed and adopted on the
49 _____ day of _____, 2022.

50 LAKE WORTH BEACH CITY COMMISSION

51
52
53 By: _____
54 Betty Resch, Mayor

55 ATTEST:

56
57
58 _____
59 Melissa Ann Coyne, City Clerk

DRAFT



INVESTMENT POLICY

Implements Resolution #28-2010
Effective Date: 08/17/2010

Amendment # 1: 43-2012
Effective Date: 09/11/2012

Amendment # 2: 65-2013
Effective Date: 12/03/2013

Amendment # 3: xx-2022
Effective Date: 03/01/2022

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ATTACHMENT A: Glossary of Cash and Investment Management Terms
ATTACHMENT B: Investment Pool/Fund Questionnaire

PURPOSE

The purpose of this Investment Policy (hereafter “policy”) is to set forth the investment objectives and parameters for the management of public funds of City of Lake Worth Beach (hereinafter “City”) cash surplus funds and reserves. This policy is designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

SCOPE

In accordance with § 218.415, Florida Statutes, this policy applies to the investment of public funds in excess of the amounts needed to meet current expenses, which includes cash and investment balances (hereafter “portfolios”) of the following funds:

- General Fund
- Special Revenue Funds
- Debt Service Funds
- Capital Project Funds
- Enterprise Funds
- Internal Service Funds
- Trust and Agency Funds
- Any new fund created by the governing body

The policy does not apply to the investment of principal, interest, reserve, construction, capitalized interest, and redemption or escrow accounts created by ordinance or resolution pursuant to the issuance of bonds where the investments are held by an authorized depository. Also, this policy does not apply to funds not under investment control of the City, such as Employee Pension Plans.

INVESTMENT OBJECTIVES

The following investment objectives will be applied in the management of the City's funds.

Safety of Principal

The primary objective of the Director of Financial Services investment activities is the protection of City funds (preservation of capital). Investment transactions shall seek to keep capital losses to a minimum, whether they are from securities defaults or erosion of market value.

Maintenance of Liquidity

The second highest priority is liquidity of funds. The Director of Financial Services investment strategy will provide sufficient liquidity to meet the City's reasonable anticipated cash flow

requirements.

Return on Investment

The third highest priority is income. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Return on investment is of least importance compared to the safety and liquidity objectives described above. However, return is attempted through active management where the investment manager utilizes a total return strategy (which includes both realized and unrealized gains and losses in the portfolios). This total return strategy seeks to increase the value of the portfolios through reinvestment of income and capital gains. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. The investment manager or City designee will execute trades that minimize the risk of loss to achieve the highest perceived relative value based on its potential to enhance the total return of the portfolios.

Diversification

Director of Financial Services will seek to control credit and market risks and diversify fixed income investments regarding specific types, maturities, and financial institutions. Diversification is important to ensure that potential losses on individual securities do not exceed the income generated from the remainder of the portfolios.

Credit Risk

Minimizing Credit Risk will be accomplished by limiting the maximum percentage that may be invested in any one entity or instrument at any one time, as outlined in this policy.

Market Risk

Risks of market price volatility shall be controlled through maturity diversification limitations established by this policy.

PERFORMANCE MEASUREMENT

In order to assist in the evaluation of the portfolio's performance, the City will use performance benchmarks for short-term and long-term portfolios. The use of benchmarks will allow the City to measure its returns against other investors in the same markets.

- A. The short-term investment portfolios shall be designed with the annual objective of exceeding the weighted average return (net book value rate of return) of the S&P Rated GIP Index/All 30-Day Gross of Fees Yield.
- B. The long-term investment portfolios shall be designed with the annual objective of exceeding the return of the BofA Merrill Lynch 1-3 Year U.S. Treasury Index compared to the portfolios' total rate of return. The BofA Merrill Lynch 1-3 Year U.S. Treasury Index

represents all U.S. Treasury securities maturing over one year, but less than three years. This maturity range is an appropriate benchmark based on the objectives of the City.

PRUDENCE AND ETHICAL STANDARDS

The "prudent person" standard shall be used by all City Staff and third-party vendors providing investment services in the management of the overall portfolio. The Financial Services Director, his/her designee, or persons performing the investment functions, acting suitable capacity in accordance with these written policies and procedures, and exercising due diligence, shall not be responsible for an individual security's credit risk or market price changes provided that appropriate monitoring efforts are performed. For any external City Designee(s), it is expected that they will have a higher fiduciary standard of care, acting in suitable capacity. The "prudent person" standard is herewith understood to mean the following:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

The Prudent Person standard shall be applied to all activities associated with managing City funds, including; the investing, reinvesting funds and in acquiring, retaining, managing, and disposing of investments. Those individuals responsible for the City's investment oversight and management, including third party vendors, shall exercise: the judgment, care, skill, prudence, and diligence under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the funds, so as to minimize the risk, considering the probable income as well as the probable safety of their capital.

The Financial Services Department staff involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Also, employees involved in the investment process shall disclose to the Financial Services Director any material financial interests in financial institutions that conduct business with the City, and they shall further disclose any material personal financial/investment positions that could be related to the performance of the City's investment program.

DELEGATION OF AUTHORITY

Responsibility for the administration of the investment program is hereby delegated to the Financial Services Director or his/her designee, who shall establish investment procedures based on this policy. No person may engage in an investment transaction except as stated in the Internal Control Section of the policy. The City may appoint an outside investment manager as "Agent" for the City's investments. (See Section "External Investment Manager".) It is further recommended that if the City does appoint an outside investment manager, that they are a fiduciary of the City. Positions authorized as investment signatories are Financial Services Director, Assistant Financial Services Director, and Treasurer. The Financial Services Director or his/her designee shall be responsible for the implementation of internal controls and monitoring the activities of subordinate staff.

SECURITY SELECTION PROCESS

When purchasing or selling securities the Financial Services Director or his/her designee shall select the security which provides the highest rate of return within the parameters of this policy, given the current objectives and needs of the City's portfolios. These selections shall be made utilizing one of the following methods:

1. Comparison to the current market price as indicated by one of the market pricing resources available to the City (such as the City's financial advisors, the Wall Street Journal, or a comparable nationally recognized financial publication providing daily market pricing).
2. The City shall avoid conflicts of interest in the selection of institutions used for all City investments.

In most situations, the City or its agent shall utilize the best execution policy of the agent to select the securities to be purchased or sold. Selection by the best execution policy of the agent, as indicated above, shall be utilized when, in the judgment of the investment staff, competitive bidding would inhibit the process to select the securities to be purchased or sold.

AUTHORIZED INVESTMENTS

No investment shall be made using City funds unless the authorized investment is listed in this Section. The following are the investment requirements and allocation limits on security types, issuers, and maturities as established by the City. Diversification strategies within the established guidelines shall be reviewed and revised periodically as necessary by the Financial Services Director or his/her designee. The Financial Services Director or his/her designee, and/or City's investment manager shall have the option to further restrict investment percentages from time to time based on market conditions, risk and diversification investment strategies. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment, at the time of purchase. The following requirements do not apply to

funds derived from the sale of debt.

- 1) **U.S. Treasury & Government Guaranteed** - U.S. Treasury obligations, and obligations the principal and interest of which are backed or guaranteed by the full faith and credit of the U.S. Government.
- 2) **Federal Agency/GSE** - Debt obligations, participations or other instruments issued or fully guaranteed by any U.S. Federal agency, instrumentality or government-sponsored enterprise (GSE).
- 3) **Corporates** – U.S. dollar denominated corporate notes, bonds or other debt obligations issued or guaranteed by a domestic corporation, financial institution, non-profit, or other entity.
- 4) **Municipals** – Obligations, including both taxable and tax-exempt, issued or guaranteed by any State, territory or possession of the United States, political subdivision, public corporation, authority, agency board, instrumentality or other unit of local government of any State or territory.
- 5) **Agency Mortgage Backed Securities** - Mortgage-backed securities (MBS), backed by residential, non-Agency commercial mortgage backed securities, multi-family or commercial mortgages, that are issued or fully guaranteed as to principal and interest by a U.S. Federal agency or government sponsored enterprise, including but not limited to pass-throughs, collateralized mortgage obligations (CMOs) and REMICs.
- 6) **Asset-Backed Securities** - Asset-backed securities (ABS) whose underlying collateral consists of loans, leases or receivables, including but not limited to auto loans/leases, credit card receivables, student loans, equipment loans/leases, or home-equity loans.
- 7) **Non-Negotiable Certificate of Deposit and Savings Accounts** - Non-negotiable interest-bearing time certificates of deposit, or savings accounts in banks organized under the laws of this state or in national banks organized under the laws of the United States and doing business in this state, provided that any such deposits are secured by the Florida Security for Public Deposits Act, Chapter 280, Florida Statutes.
- 8) **Commercial Paper** – U.S. dollar denominated commercial paper issued or guaranteed by a domestic corporation, company, financial institution, trust or other entity, only unsecured debt permitted.
- 9) **Money Market Funds** - Shares in open-end and no-load money market mutual funds, provided such funds are registered under the Investment Company Act of 1940 and operate in accordance with Rule 2a-7.

A thorough investigation of any money market fund is required prior to investing.

Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. A current prospectus must be obtained.

- 10) **Local Government Investment Pools** – State, local government or privately-sponsored investment pools that are authorized pursuant to state law.

A thorough investigation of any intergovernmental investment pool is required prior to investing. Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. A current prospectus must be obtained.

- 11) **The Florida Local Government Surplus Funds Trust Funds (“Florida Prime”)** A thorough investigation of the Florida Prime is required prior to investing. Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. A current prospectus or portfolio report must be obtained.

- 12) Inter-Fund Loans permitted under the City's Comprehensive Financial Policies

General Investment and Portfolio Limits

1. General investment limitations:
 - a. Investments must be denominated in U.S. dollars and issued for legal sale in U.S. markets.
 - b. Minimum ratings are based on the highest rating by any one Nationally Recognized Statistical Ratings Organization (“NRSRO”), unless otherwise specified.
 - c. All limits and rating requirements apply at time of purchase.
 - d. Should a security fall below the minimum credit rating requirement for purchase, the investment manager will notify the Financial Services Director.
 - e. The maximum maturity (or average life for MBS/ABS) of any investment is 5.5 years. Maturity and average life are measured from settlement date. The final maturity date can be based on any mandatory call, put, pre-refunding date, or other mandatory redemption date.
2. General portfolio limitations:
 - a. The maximum effective duration of the aggregate portfolio is 3 years.
3. The following are **NOT PERMITTED** investments, unless specifically authorized by statute and with prior approval of the governing body:

- a. Trading for speculation
- b. Derivatives (other than callables and traditional floating or variable-rate instruments)
- c. Mortgage-backed interest-only structures -(I/Os)
- d. Inverse or leveraged floating-rate and variable-rate instruments
- e. Currency, equity, index and event-linked notes (e.g. range notes), or other structures that could return less than par at maturity
- f. Private placements and direct loans, except as may be legally permitted by Rule 144A or commercial paper issued under a 4(2) exemption from registration
- g. Convertible, high yield, and non-U.S. dollar denominated debt
- h. Short sales
- i. Use of leverage
- j. Futures and options
- k. Mutual funds
- l. Equities, commodities, currencies and hard assets

EXISTING INVESTMENTS

Any investments currently held that do not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies so invested shall be reinvested only as provided for in this policy.

Maturity and Liquidity Requirements

- A. To the extent possible, an attempt will be made to match investment maturities with known cash needs and anticipated cash flow requirements. Investments of current operating funds shall have maturities of no longer than twenty-four (24) months. Investments of bond reserves, construction funds, and other non-operating funds shall have a term appropriate to the need for funds and in accordance with debt covenants, but in no event shall exceed five and one-half (5.50) years. The maturities of the underlying securities of a repurchase agreement will follow the requirements of the Master Repurchase Agreement.
- B. The Finance staff's policy is to "buy and hold" but the maturity composition of the portfolio and the general economic conditions will be evaluated to determine if a replacement investment would be advantageous. Accounting losses may be incurred in this situation if an economic gain is achieved. The portfolios maturity may be shortened or extended dependent on interest rate projections or the portfolios quality may be improved by reducing the maturity or risk of security.

- C. Investments do not necessarily have to be made for the same length of time that the funds are available. The basic criteria for consideration for investments are listed below:
1. Keep maturities short in a period of constantly rising interest rates based on treasury bill auctions or the daily Federal Funds rate and also keep maturities short in a period of an inverted treasury yield curve (short-term rates are higher than the long-term rates).
 2. Maturities should be lengthened when the treasury yield curve is normal and is expected to remain that way based on economic reports taken as a whole. The yield curve is normal when short-term rates are lower than long-term rates.
 3. Maturities should be lengthened when interest rates are expected to fall based on economic reports taken as a whole.
 4. The yield curves of the market should be analyzed for significant breaks in yields over various maturity dates. The points at which the yield curve breaks are the points at which there are significant marginal declines in yields for incremental changes in the maturity dates. Investments should be made at these breaks in the yield curve so that yields will be maximized.

PORTFOLIO COMPOSITION

Prudent investing necessitates that the portfolios be diversified as to instruments and dealers. The following are guidelines for investments and limits on security issues, issuers, and maturities as established by the Finance staff. The Finance Director shall have the option to restrict or increase investments from time to time based on market conditions. Purchases of investments based on bond covenant requirements shall not be included in the portfolios' composition calculations. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment, at the time of purchase.

Permitted Investments

Sector	Sector Maximum (%)	Per Issuer Maximum (%)	Minimum Ratings Requirement ¹	Maximum Maturity
U.S. Treasury	100%	100%	N/A	5.50 Years (5.50 Years avg. life ⁴ for GNMA)
GNMA		40%		
Other U.S. Government Guaranteed (e.g. AID, GTC)		10%		
Federal Agency/GSE: FNMA, FHLMC, FHLB, FFCB*	80%	40% ³	N/A	5.50 Years
Federal Agency/GSE other than those above		10%		
Corporates	40% ²	5%	Highest ST or Three Highest LT Rating Categories (A-1/P-1, A-/A3 or equivalent)	5.50 Years
Municipals	40%	5%	Highest ST or Three Highest LT Rating Categories (SP-1/MIG 1, A-/A3, or equivalent)	5.50 Years
Agency Mortgage-Backed Securities (MBS)	40%	40% ³	N/A	5.50 Years Avg. Life ⁴
Non-Negotiable Collateralized Bank Deposits or Savings Accounts	50%	None, if fully collateralized	None, if fully collateralized.	3 Years
Commercial Paper (CP)	30% ²	5%	Highest ST Rating Category (A-1/P-1, or equivalent)	270 Days
Money Market Funds (MMFs)	50%	25%	Highest Fund Rating by all NRSROs who rate the fund (AAAm/Aaa-mf, or equivalent)	N/A
Intergovernmental Pools (LGIPs)	50%	25%	Highest Fund Quality and Volatility Rating Categories by all NRSROs who rate the LGIP, (AAAm/AAAf, S1, or equivalent)	N/A
Florida Local Government Surplus Funds Trust Funds ("Florida Prime")	25%	N/A	Highest Fund Rating by all NRSROs who rate the fund (AAAm/Aaa-mf, or equivalent)	N/A
Inter-Fund Loans	As needed	As needed	N/A	N/A

Notes:

¹ Rating by at least one SEC-registered Nationally Recognized Statistical Rating Organization ("NRSRO"), unless otherwise noted. ST=Short-term; LT=Long-term.

² Maximum allocation to all corporate and bank credit instruments is 50% combined.

³ The maturity limit for MBS and ABS is based on the expected average life at time of settlement, measured using Bloomberg or other industry standard methods.

* Federal National Mortgage Association (FNMA); Federal Home Loan Mortgage Corporation (FHLMC); Federal Home Loan Bank or its District banks (FHLB); Federal Farm Credit Bank (FFCB).

RISK AND DIVERSIFICATION

Assets held shall be diversified to control the risk of loss resulting from over-concentration of assets in a specific maturity, issuer, instrument, dealer, or bank through which these instruments are bought and sold. Diversification strategies within the established guidelines shall be reviewed and revised periodically as necessary by the appropriate management staff.

AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

The Financial Services Director shall only purchase certificates of deposit from financial institutions which are qualified as public depositories by the Treasurer of the State of Florida.

Brokers/Dealers

The City may utilize dealers designated as "Primary Dealers" by the Federal Reserve Bank of New York, for purchases and sales of securities. The City may also utilize non-primary (regional) dealers. All securities traded with approved broker/dealers must be DTC eligible. DTC eligible securities are delivered through a computerized system established by the Depository Trust Company instead of physical delivery. DTC eligibility assures proper security delivery. All securities purchased by the City under this policy shall be purchased using the "Delivery Versus Payment" procedure. Both primary and non-primary dealers must qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). The firms must provide the following information prior to executing investment trades with the City:

1. Audited annual financial statement.
2. Regulatory history, through either the Office of the Comptroller or the Currency for dealer banks, or the Financial Industry Regulatory Authority, Inc. (FINRA) for securities firms.
3. Statement of any pending lawsuits materially affecting the firm's business.
4. Proof of state registration.

The City's investment manager shall utilize and maintain its own list of approved primary and non-primary dealers.

EXTERNAL INVESTMENT MANAGER

Purpose

The purpose of this section is to set forth the policy and objectives governing the City's use of external investment managers. The outside investment manager for the City is required to adhere to all of the principals as set forth by the City policy concerning; purpose, scope, objectives, prudence, internal controls, safekeeping and custody, accounting methods, debt service and bond covenants requirements, diversification, liquidity, credit risk, market risk and reporting requirements.

Monitoring and Adjusting the Portfolio

The external investment officer will constantly monitor the contents of the portfolio, the available markets and the relative values of competing securities and will adjust the portfolio accordingly. The external investment manager is required to provide the City with a confirmation of each transaction executed within each calendar month by providing the Finance Department with a calendar month statement detailing each investment transaction and a summary of all monthly accumulated investment transactions. The confirmations should include all information necessary to allow the City to accurately monitor the activity of the external investment officer for compliance purposes (including purchase price, coupon, premium/discount, investment/transaction costs and the effective yield of the investment at the time of purchase and compliance with this policy).

Authorized Investments

The external investment manager may invest only in the authorized investments instruments, listed above.

Due Diligence Requirements

Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. Additionally, a current prospectus or equivalent documentation, including an Investment Policy, Financial Statements, and Portfolio Holdings must be obtained.

Accounting Methods

Investments will be carried at market value. Gains and losses from investments will be credited or charged to investment income at the time of sale. The external investment manager is restricted from executing a trade that will realize a "Net Loss" in any of the City's accounts without written authorization from the City Manager. A "Net Loss" is defined as any sale in which the principal loss realized on the sale of a security, in an account, is greater than the income (including accrued income) generated by that individual account during the City's fiscal year. Premiums or discounts on securities may be amortized over the life of the securities. The City shall comply with Government Accounting Standards Board (GASB) requirements for reporting fiscal year end investment balances.

Performance Evaluation

The external investment manager's performance shall be measured at least annually based on the total return of the portfolio. The City will evaluate the investment manager by comparing results during the City's fiscal year to the BofA Merrill Lynch 1-3 Year U.S. Treasury Index.

Fees

All fees will be determined annually in advance based on the City's fiscal year ending September 30.

THIRD PARTY CUSTODIAL AGREEMENTS

All securities, with the exception of certificates of deposits, shall be held with a third-party custodian; and all securities purchased by the City should be properly designated as an asset of the City. The Financial Services Director will execute a Third-Party Custodial Safekeeping Agreement with a commercial bank or the commercial bank's trust department. A third party custodian is defined as any bank depository chartered by the Federal Government, the State of Florida, or any other state or territory of the United States which has a branch or principal place of business in the State of Florida as defined in § 658.12 Florida Statutes, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in the State of Florida. Third party agents will maintain participation in SIPC. Certificates of deposits maintained by book-entry at the issuing bank shall clearly identify the City as the owner. All securities purchased and/or collateral obtained by the City shall be properly designated as an asset of the City and held in safekeeping by the custodian and no withdrawal of such securities, in whole or in part, shall be made from safekeeping except by an authorized Finance staff member. The Third-Party Custodial Safekeeping Agreement shall include letters of authority from the Financial Services Director with details as to responsibilities of each party, notification of security purchases, sales, delivery, repurchase agreements, wire transfers, safekeeping and transactions costs, procedures in case of wire failure or other unforeseen mishaps including liability of each party.

BEST EXECUTION BID POLICY

After the Financial Services Director, Financial Services Directors Designee, or investment manager has determined the approximate maturity date based on cash flow needs and market conditions and has analyzed and selected one or more optimal types of investment, the Best Execution method will be used to purchase the securities.

On an exception basis, securities may be purchased utilizing the comparison to current market price method. Acceptable current market price providers include, but are not limited to:

1. *The Wall Street Journal* or a comparable nationally recognized financial publication providing daily market pricing.
2. Daily market pricing provided by the City's custody agents.

The Financial Services Department shall utilize the Best Execution process to purchase or sell the securities. Selection by comparison to a current market price, as indicated above, shall only be utilized when, in the judgment of the Finance Director or his/her designee, competitive bidding would inhibit the selection process. Examples of when this method may be used include:

1. When no active market exists for the issue being traded due to the age or depth of the issue.
2. When a security is unique to a single dealer, for example, a private placement.
3. When the transaction involved new issues or issues in the "when issued" market.

If the maturing investment is a certificate of deposit, then of the contacts made, one shall be the present holder of the funds subject to the portfolio diversification requirements in this policy. Due to the cost of safekeeping, one business day repurchase agreements less than \$1,000,000 and overnight sweep repurchase agreements will not be bid, but may be placed with the depository bank relating to the demand account for which the repurchase agreement was purchased.

Notwithstanding the above, in order to afford local banks within the City opportunities to enhance the economics of the local area, an aggregate face value of up to \$1,000,000 in certificates of deposit may be purchased from a local bank provided the following additional conditions have been satisfied:

1. The bank is located within the boundaries of City of Lake Worth Beach or has a branch office located within the boundaries of City of Lake Worth Beach.
2. The bank matches the highest bid of three or more bids from other non-local banks.

INTERNAL CONTROLS

The Financial Services Director or his/her designee shall establish and monitor a set of written internal controls designed to protect the City's funds and ensure proper accounting and reporting of securities transactions. The internal controls should be designed to prevent losses of funds, which might arise from fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees. No person may engage in an investment transaction except as authorized under the terms of this policy. Such internal controls shall include, but not be limited to, the following:

1. All securities purchased or sold will be transferred only under the "delivery versus payment" (D.V.P.) method to ensure that funds or securities are not released until all criteria relating to the specific transaction are met.

2. The Financial Services Director or his/her designee is authorized to accept, on behalf of and in the name of City of Lake Worth Beach, bank trust receipts or confirmations as evidence of actual delivery of the obligations or securities in return for investments of funds.
3. Trust receipts or confirmations shall fully describe the various obligations or securities held. The receipt or confirmation shall state that the investment is held in the name of City of Lake Worth Beach.
4. The actual obligations or securities, whether in book-entry or physical form, on which trust receipts or confirmations are issued, may be held by a third-party custodial bank and/or institution or a designated correspondent bank which has a correspondent relationship to the City's third-party custodian.
5. Other internal controls such as:
 - A. Written documentation of all transactions; including, telephone transactions
 - B. Adequate separation of duties
 - C. Custodial safekeeping
 - D. Supervisory control of employee actions and operations review
 - E. Interim and annual performance evaluations and reporting
6. All daily investment activity is coordinated by an assigned Accountant and reviewed by the Treasurer as well as the Financial Services Director. The Treasurer oversees day-to-day operations; however, the whole investment function is under direct control of the Financial Services Director.

CONTINUING EDUCATION

City employees responsible for making investment decisions shall complete 8 hours of continuing education annually in subjects or courses of study related to investment practices and products.

REPORTING

On an annual basis, the Financial Services Director or his/her designee shall submit to the City Commission a written report on all invested funds. The annual report shall provide all, but not limited to, the following items;

1. a complete list of all invested funds
2. the name or type of security in which the funds are invested
3. the amount invested
4. the maturity date
5. earned income
6. the book value
7. the market value
8. the yield on each investment

The annual report will show performance on both a book value and total rate of return basis (if applicable) and will compare the results to the above-stated performance benchmarks. All investments shall be reported at fair value per the then prevailing GASB Statement governing the fair value reporting of investments (currently GASB 72).

AUDITS

As part of the City's annual audit, the City's independent CPA's, pursuant to F.S. 11.45, shall report the City's compliance with F.S. 218.415.

POLICY REVIEW AND AMENDMENT

The Finance staff and the Financial Services Director or his/her designee shall review these policies in their entirety on an annual basis.

This policy may be amended in writing from time to time by the City Commission.

Attachment A

Glossary of Cash and Investment Management Terms

The following is a glossary of key investing terms, many of which appear in the City's policy. This glossary clarifies the meaning of investment terms generally used in cash and investment management. This glossary has been adapted from the GFOA Sample Investment Policy and the Association of Public Treasurers of the United States and Canada's Model Investment Policy.

Accrued Interest. Interest earned but which has not yet been paid or received.

Agency. See "Federal Agency Securities."

Ask Price. Price at which a broker/dealer offers to sell a security to an investor. Also known as "offered price."

Asset Backed Securities (ABS). A fixed-income security backed by notes or receivables against assets other than real estate. Generally issued by special purpose companies that "own" the assets and issue the ABS. Examples include securities backed by auto loans, credit card receivables, home equity loans, manufactured housing loans, farm equipment loans, and aircraft leases.

Average Life. The average length of time that an issue of serial bonds and/or term bonds with a mandatory sinking fund feature is expected to be outstanding.

Bankers' Acceptance (BA's). A draft or bill of exchange drawn upon and accepted by a bank. Frequently used to finance shipping of international goods. Used as a short-term credit instrument, bankers' acceptances are traded at a discount from face value as a money market instrument in the secondary market on the basis of the credit quality of the guaranteeing bank.

Basis Point. One hundredth of one percent, or 0.01%. Thus 1% equals 100 basis points.

Bearer Security. A security whose ownership is determined by the holder of the physical security. Typically, there is no registration on the issuer's books. Title to bearer securities is transferred by delivery of the physical security or certificate. Also known as "physical securities."

Benchmark Bills: In November 1999, FNMA introduced its Benchmark Bills program, a short-term debt securities issuance program to supplement its existing discount note program. The program includes a schedule of larger, weekly issues in three- and six-month maturities and biweekly issues in one-year for Benchmark Bills. Each issue is brought to market via a Dutch (single price) auction. FNMA conducts a weekly auction for each Benchmark Bill maturity and accepts both competitive and non-competitive bids through a web-based auction system. This program is in addition to the variety of other discount note maturities, with rates posted on a daily basis, which FNMA offers. FNMA's Benchmark Bills are unsecured general obligations that are issued in book-entry form through the Federal Reserve Banks. There are no periodic payments of interest on Benchmark Bills, which are sold at a discount from the principal amount and payable at par at maturity. Issues under the Benchmark program constitute the same credit

standing as other FNMA discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

Benchmark Notes/Bonds: Benchmark Notes and Bonds are a series of FNMA “bullet” maturities (non-callable) issued according to a pre-announced calendar. Under its Benchmark Notes/Bonds program, 2, 3, 5, 10, and 30-year maturities are issued each quarter. Each Benchmark Notes new issue has a minimum size of \$4 billion, 30-year new issues having a minimum size of \$1 billion, with re-openings based on investor demand to further enhance liquidity. The amount of non-callable issuance has allowed FNMA to build a yield curve in Benchmark Notes and Bonds in maturities ranging from 2 to 30 years. The liquidity emanating from these large size issues has facilitated favorable financing opportunities through the development of a liquid overnight and term repo market. Issues under the Benchmark program constitute the same credit standing as other FNMA issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Benchmark. A market index used as a comparative basis for measuring the performance of an investment portfolio. A performance benchmark should represent a close correlation to investment guidelines, risk tolerance, and duration of the actual portfolio's investments.

Bid Price. Price at which a broker/dealer offers to purchase a security from an investor.

Bond. Financial obligation for which the issuer promises to pay the bondholder (the purchaser or owner of the bond) a specified stream of future cash-flows, including periodic interest payments and a principal repayment.

Book Entry Securities. Securities that are recorded in a customer’s account electronically through one of the financial markets electronic delivery and custody systems, such as the Fed Securities wire, DTC, and PTC

(as opposed to bearer or physical securities). The trend is toward a certificate-free society in order to cut down on paperwork and to diminish investors’ concerns about the certificates themselves. The vast majority of securities are now book entry securities.

Book Value. The value at which a debt security is reflected on the holder's records at any point in time. Book value is also called “amortized cost” as it represents the original cost of an investment adjusted for amortization of premium or accretion of discount. Also called “carrying value.” Book value can vary over time as an investment approaches maturity and differs from “market value” in that it is not affected by changes in market interest rates.

Broker/Dealer. A person or firm transacting securities business with customers. A “broker” acts as an agent between buyers and sellers, and receives a commission for these services. A “dealer” buys and sells financial assets from its own portfolio. A dealer takes risk by owning inventory of securities, whereas a broker merely matches up buyers and sellers. See also "Primary Dealer."

Bullet Notes/Bonds. Notes or bonds that have a single maturity date and are non-callable.

Call Date. Date at which a call option may be or is exercised.

Call Option. The right, but not the obligation, of an issuer of a security to redeem a security at a specified value and at a specified date or dates prior to its stated maturity date. Most fixed-income calls are a par, but can be at any previously established price. Securities issued with a call provision typically carry a higher yield than similar securities issued without a call feature. There are three primary types of call options (1) European - one-time calls, (2) Bermudan - periodically on a predetermined schedule (quarterly, semi-annual, annual), and (3) American - continuously callable at any time on or after the call date. There is usually a notice period of at least 5 business days prior to a call date.

Callable Bonds/Notes. Securities which contain an imbedded call option giving the issuer the right to redeem the securities prior to maturity at a predetermined price and time.

Certificate of Deposit (CD). Bank obligation issued by a financial institution generally offering a fixed rate of return (coupon) for a specified period of time (maturity). Can be as long as 10 years to maturity, but most CDs purchased by public agencies are one year and under.

Collateral. Investment securities or other property that a borrower pledges to secure repayment of a loan, secure deposits of public monies, or provide security for a repurchase agreement.

Collateralization. Process by which a borrower pledges securities, property, or other deposits for securing the repayment of a loan and/or security.

Collateralized Mortgage Obligation (CMO). A security that pools together mortgages and separates them into short, medium, and long-term positions (called tranches). Tranches are set up to pay different rates of interest depending upon their maturity. Interest payments are usually paid monthly. In "plain vanilla" CMOs, principal is not paid on a tranche until all shorter tranches have been paid off. This system provides interest and principal in a more predictable manner. A single pool of mortgages can be carved up into numerous tranches each with its own payment and risk characteristics.

Commercial Paper. Short term unsecured promissory note issued by a company or financial institution. Issued at a discount and matures for par or face value. Usually a maximum maturity of 270 days and given a short-term debt rating by one or more NRSROs.

Convexity. A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

Corporate Note. A debt instrument issued by a corporation with a maturity of greater than one year and less than ten years.

Counterparty. The other party in a two-party financial transaction. "Counterparty risk" refers to the risk that the other party to a transaction will fail in its related obligations. For example, the bank or broker/dealer in a repurchase agreement.

Coupon Rate. Annual rate of interest on a debt security, expressed as a percentage of the bond's

face value.

Current Yield. Annual rate of return on a bond based on its price. Calculated as (coupon rate / price), but does not accurately reflect a bond's true yield level.

Custody. Safekeeping services offered by a bank, financial institution, or trust company, referred to as the "custodian." Service normally includes the holding and reporting of the customer's securities, the collection and disbursement of income, securities settlement, and market values.

Dealer. A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his/her own account.

Delivery Versus Payment (DVP). Settlement procedure in which securities are delivered versus payment of cash, but only after cash has been received. Most security transactions, including those through the Fed Securities Wire system and DTC, are done DVP as a protection for both the buyer and seller of securities.

Depository Trust Company (DTC). A firm through which members can use a computer to arrange for securities to be delivered to other members without physical delivery of certificates. A member of the Federal Reserve System and owned mostly by the New York Stock Exchange, the Depository Trust Company uses computerized debit and credit entries. Most corporate securities, commercial paper, CDs, and BAs clear through DTC.

Derivatives. (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities, or commodities). For hedging purposes, common derivatives are options, futures, interest rate swaps, and swaptions.

Derivative Security. Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

Designated Bond. FFCB's regularly issued, liquid, non-callable securities that generally have a 2 to 3-year original maturity. New issues of Designated Bonds are \$1 billion or larger. Re-openings of existing Designated Bond issues are generally a minimum of \$100 million. Designated Bonds are offered through a syndicate of two to six dealers. Twice each month the Funding Corporation announces its intention to issue a new Designated Bond, reopen an existing issue, or to not issue or reopen a Designated Bond. Issues under the Designated Bond program constitute the same credit standing as other FFCB issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Discount Notes. Unsecured general obligations issued by Federal Agencies at a discount. Discount notes mature at par and can range in maturity from overnight to one year. Very large primary (new issue) and secondary markets exist.

Discount Rate. Rate charged by the system of Federal Reserve Banks on overnight loans to member banks. Changes to this rate are administered by the Federal Reserve and closely mirror changes to the “fed funds rate.”

Discount Securities. Non-interest bearing money market instruments that are issued at discount and redeemed at maturity for full face value. Examples include: U.S. Treasury Bills, Federal Agency Discount Notes, Bankers' Acceptances, and Commercial Paper.

Discount. The amount by which a bond or other financial instrument sells below its face value. See also "Premium."

Diversification. Dividing investment funds among a variety of security types, maturities, industries, and issuers offering potentially independent returns.

Dollar Price. A bond’s cost expressed as a percentage of its face value. For example, a bond quoted at a dollar price of 95 ½, would have a principal cost of \$955 per \$1,000 of face value.

Duff & Phelps. One of several NRSROs that provide credit ratings on corporate and bank debt issues.

Duration. The weighted average maturity of a security’s or portfolio’s cash-flows, where the present values of the cash-flows serve as the weights. The greater the duration of a security/portfolio, the greater its percentage price volatility with respect to changes in interest rates. Used as a measure of risk and a key tool for managing a portfolio versus a benchmark and for hedging risk. There are also different kinds of duration used for different purposes (e.g. MacAuley Duration, Modified Duration).

Fannie Mae. See "Federal National Mortgage Association."

Fed Money Wire. A computerized communications system that connects the Federal Reserve System with its member banks, certain U. S. Treasury offices, and the Washington D.C. office of the Commodity Credit Corporation. The Fed Money Wire is the book entry system used to transfer cash balances between banks for themselves and for customer accounts.

Fed Securities Wire. A computerized communications system that facilitates book entry transfer of securities between banks, brokers and customer accounts, used primarily for settlement of U.S. Treasury and Federal Agency securities.

Fed. See "Federal Reserve System."

Federal Agency Security. A debt instrument issued by one of the Federal Agencies. Federal Agencies are considered second in credit quality and liquidity only to U.S. Treasuries.

Federal Agency. Government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets. The largest Federal Agencies are GNMA, FNMA, FHLMC, FHLB, FFCB, SLMA,

and TVA.

Federal Deposit Insurance Corporation (FDIC). Federal agency that insures deposits at commercial banks, currently to a limit of \$250,000 per depositor per bank.

Federal Farm Credit Bank (FFCB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system that is a network of cooperatively-owned lending institutions that provides credit services to farmers, agricultural cooperatives and rural utilities. The FFCBs act as financial intermediaries that borrow money in the capital markets and use the proceeds to make loans and provide other assistance to farmers and farm-affiliated businesses. Consists of the consolidated operations of the Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks. Frequent issuer of discount notes, agency notes and callable agency securities. FFCB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and agricultural industry. Also, issues note under its "designated note" program.

Federal Funds (Fed Funds). Funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

Federal Funds Rate (Fed Funds Rate). The interest rate charged by a depository institution lending Federal Funds to another depository institution. The Federal Reserve influences this rate by establishing a "target" Fed Funds rate associated with the Fed's management of monetary policy.

Federal Home Loan Bank System (FHLB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system, consisting of wholesale banks (currently twelve district banks) owned by their member banks, which provides correspondent banking services and credit to various financial institutions, financed by the issuance of securities. The principal purpose of the FHLB is to add liquidity to the mortgage markets. Although FHLB does not directly fund mortgages, it provides a stable supply of credit to thrift institutions that make new mortgage loans. FHLB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes and callable agency securities. Also, issues notes under its "global note" and "TAP" programs.

Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides stability and assistance to the secondary market for home mortgages by purchasing first mortgages and participation interests financed by the sale of debt and guaranteed mortgage backed securities. FHLMC debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities, and MBS. Also, issues notes under its "reference note" program.

Federal National Mortgage Association (FNMA or "Fannie Mae"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides liquidity to the residential mortgage market by purchasing mortgage loans from lenders, financed by the issuance of debt securities and MBS (pools of mortgages packaged together as a security). FNMA debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also issues notes under its "benchmark note" program.

Federal Reserve Bank. One of the 12 distinct banks of the Federal Reserve System.

Federal Reserve System (the Fed). The independent central bank system of the United States that establishes and conducts the nation's monetary policy. This is accomplished in three major ways: (1) raising or lowering bank reserve requirements, (2) raising or lowering the target Fed Funds Rate and Discount Rate, and (3) in open market operations by buying and selling government securities. The Federal Reserve System is made up of twelve Federal Reserve District Banks, their branches, and many national and state banks throughout the nation. It is headed by the seven-member Board of Governors known as the "Federal Reserve Board" and headed by its Chairman.

Financial Industry Regulatory Authority, Inc. (FINRA). A private corporation that acts as a self-regulatory organization (SRO). FINRA is the successor to the National Association of Securities Dealers, Inc. (NASD). Though sometimes mistaken for a government agency, it is a non-governmental organization that performs financial regulation of member brokerage firms and exchange markets. The government also has a regulatory arm for investments, the Securities and Exchange Commission (SEC).

Fiscal Agent/Paying Agent. A bank or trust company that acts, under a trust agreement with a corporation or municipality, in the capacity of general treasurer. The agent performs such duties as making coupon payments, paying rents, redeeming bonds, and handling taxes relating to the issuance of bonds.

Fitch Investors Service, Inc. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Floating Rate Security (FRN or "floater"). A bond with an interest rate that is adjusted according to changes in an interest rate or index. Differs from variable-rate debt in that the changes to the rate take place immediately when the index changes, rather than on a predetermined schedule. See also "Variable Rate Security."

Freddie Mac. See "Federal Home Loan Mortgage Corporation."

Ginnie Mae. See "Government National Mortgage Association."

Global Notes: Notes designed to qualify for immediate trading in both the domestic U.S. capital market and in foreign markets around the globe. Usually large issues that are sold to investors

worldwide and therefore have excellent liquidity. Despite their global sales, global notes sold in the U.S. are typically denominated in U.S. dollars.

Government National Mortgage Association (GNMA or "Ginnie Mae"). One of the large Federal Agencies. Government-owned Federal Agency that acquires, packages, and resells mortgages and mortgage purchase commitments in the form of mortgage-backed securities. Largest issuer of mortgage pass-through securities. GNMA debt is guaranteed by the full faith and credit of the U.S. government (one of the few agencies that are actually full faith and credit of the U.S. government).

Government Securities. An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest quality of investment securities available in the U.S. securities market. See "Treasury Bills, Notes, Bonds, and SLGS."

Government Sponsored Enterprise (GSE). Privately owned entity subject to federal regulation and supervision, created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy such as students, farmers, and homeowners. GSEs carry the implicit backing of the U.S. government, but they are not direct obligations of the U.S. government. For this reason, these securities will offer a yield premium over U.S. Treasuries. Examples of GSEs include: FHLB, FHLMC, FNMA, and SLMA.

Government Sponsored Enterprise Security. A security issued by a Government Sponsored Enterprise. Considered Federal Agency Securities.

Index. A compilation of statistical data that tracks changes in the economy or in financial markets.

Interest-Only (IO) STRIP. A security based solely on the interest payments from the bond. After the principal has been repaid, interest payments stop and the value of the security falls to nothing. Therefore, IOs are considered risky investments. Usually associated with mortgage-backed securities.

Internal Controls. An internal control structure ensures that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

1. **Control of collusion** - Collusion is a situation where two or more employees are working in conjunction to defraud their employer.

2. **Separation of transaction authority from accounting and record keeping** - A separation of duties is achieved by separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction.
3. **Custodial safekeeping** - Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.
4. **Avoidance of physical delivery securities** - Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. **Clear delegation of authority to subordinate staff members** - Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. **Written confirmation of transactions for investments and wire transfers** - Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.
7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

Inverse Floater. A floating rate security structured in such a way that it reacts inversely to the direction of interest rates. Considered risky as their value moves in the opposite direction of normal fixed-income investments and whose interest rate can fall to zero.

Investment Advisor. A company that provides professional advice managing portfolios, investment recommendations, and/or research in exchange for a management fee.

Investment Adviser Act of 1940. Federal legislation that sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

Investment Grade. Bonds considered suitable for preservation of invested capital, including bonds rated a minimum of Baa3 by Moody's, BBB- by Standard & Poor's, or BBB- by Fitch. Although "BBB" rated bonds are considered investment grade, most public agencies cannot invest in securities rated below "A."

Liquidity. Relative ease of converting an asset into cash without significant loss of value. Also, a relative measure of cash and near-cash items in a portfolio of assets. Additionally, it is a term describing the marketability of a money market security correlating to the narrowness of the spread between the bid and ask prices.

Local Government Investment Pool (LGIP). An investment by local governments in which their money is pooled as a method for managing local funds, (e.g., Florida State Board of Administration's Florida Prime Fund).

Long-Term Core Investment Program. Funds that are not needed within a one-year period.

Market Value. The fair market value of a security or commodity. The price at which a willing buyer and seller would pay for a security.

Mark-to-market. Adjusting the value of an asset to its market value, reflecting in the process unrealized gains or losses.

Master Repurchase Agreement. A widely accepted standard agreement form published by the Securities Industry and Financial Markets Association (SIFMA) that is used to govern and document Repurchase Agreements and protect the interest of parties in a repo transaction.

Maturity Date. Date on which principal payment of a financial obligation is to be paid.

Medium Term Notes (MTN's). Used frequently to refer to corporate notes of medium maturity (5-years and under). Technically, any debt security issued by a corporate or depository institution with a maturity from 1 to 10 years and issued under an MTN shelf registration. Usually issued in smaller issues with varying coupons and maturities, and underwritten by a variety of broker/dealers (as opposed to large corporate deals issued and underwritten all at once in large size and with a fixed coupon and maturity).

Money Market. The market in which short-term debt instruments (bills, commercial paper, bankers' acceptance, etc.) are issued and traded.

Money Market Mutual Fund (MMF). A type of mutual fund that invests solely in money market instruments, such as: U.S. Treasury bills, commercial paper, bankers' acceptances, and repurchase agreements. Money market mutual funds are registered with the SEC under the Investment Company Act of 1940 and are subject to "rule 2a-7" which significantly limits average maturity and credit quality of holdings. MMF's are managed to maintain a stable net asset value (NAV) of \$1.00. Many MMFs carry ratings by a NRSRO.

Moody's Investors Service. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Mortgage Backed Securities (MBS). Mortgage-backed securities represent an ownership interest in a pool of mortgage loans made by financial institutions, such as savings and loans, commercial

banks, or mortgage companies, to finance the borrower's purchase of a home or other real estate. The majority of MBS are issued and/or guaranteed by GNMA, FNMA, and FHLMC. There are a variety of MBS structures with varying levels of risk and complexity. All MBS have reinvestment risk as actual principal and interest payments are dependent on the payment of the underlying mortgages which can be prepaid by mortgage holders to refinance and lower rates or simply because the underlying property was sold.

Mortgage Pass-Through Securities. A pool of residential mortgage loans with the monthly interest and principal distributed to investors on a pro-rata basis. The largest issuer is GNMA.

Municipal Note/Bond. A debt instrument issued by a state or local government unit or public agency. The vast majority of municipals are exempt from state and federal income tax, although some non-qualified issues are taxable.

Mutual Fund. Portfolio of securities professionally managed by a registered investment company that issues shares to investors. Many different types of mutual funds exist (e.g., bond, equity, and money market funds); all except money market funds operate on a variable net asset value (NAV).

Negotiable Certificate of Deposit (Negotiable CD). Large denomination CDs (\$100,000 and larger) that are issued in bearer form and can be traded in the secondary market.

Net Asset Value. The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets including securities, cash, and any accrued earnings, then subtracting the total assets from the fund's liabilities, and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. (See below.)

$$[(\text{Total assets}) - (\text{Liabilities})]/(\text{Number of shares outstanding})$$

NRSRO. A "Nationally Recognized Statistical Rating Organization" (NRSRO) is a designated rating organization that the SEC has deemed a strong national presence in the U.S. NRSROs provide credit ratings on corporate and bank debt issues. Only ratings of a NRSRO may be used for the regulatory purposes of rating. Includes Moody's, S&P, Fitch, and Duff & Phelps.

Offered Price. See also "Ask Price."

Open Market Operations. A Federal Reserve monetary policy tactic entailing the purchase or sale of government securities in the open market by the Federal Reserve System from and to primary dealers in order to influence the money supply, credit conditions, and interest rates.

Par Value. The face value, stated value, or maturity value of a security.

Physical Delivery. Delivery of readily available underlying assets at contract maturity.

Portfolio. Collection of securities and investments held by an investor.

Premium. The amount by which a bond or other financial instrument sells above its face value. See also "Discount."

Primary Dealer. A designation given to certain government securities dealer by the Federal Reserve Bank of New York. Primary dealers can buy and sell government securities directly with the Fed. Primary dealers also submit daily reports of market activity and security positions held to the Fed and are subject to its informal oversight. Primary dealers are the largest buyers and sellers by volume in the U.S. Treasury securities market.

Prime Paper. Commercial paper of high quality. Highest rated paper is A-1+/A-1 by S&P and P-1 by Moody's.

Principal. Face value of a financial instrument on which interest accrues. May be less than par value if some principal has been repaid or retired. For a transaction, principal is par value times price and includes any premium or discount.

Prudent Expert Rule. Standard that requires that a fiduciary manage a portfolio with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. This statement differs from the "prudent person" rule in that familiarity with such matters suggests a higher standard than simple prudence.

Prudent Investor Standard. Standard that requires that when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. More stringent than the "prudent person" standard as it implies a level of knowledge commensurate with the responsibility at hand.

Qualified Public Depository - Per Subsection 280.02(26), F.S., "qualified public depository" means any bank, savings bank, or savings association that:

1. Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States.
2. Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
3. Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.1811 et seq.

4. Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.
5. Meets all requirements of Chapter 280, F.S.
6. Has been designated by the Chief Financial Officer as a qualified public depository.

Range Note. A type of structured note that accrues interest daily at a set coupon rate that is tied to an index. Most range notes have two coupon levels; a higher accrual rate for the period the index is within a designated range, the lower accrual rate for the period that the index falls outside the designated range. This lower rate may be zero and may result in zero earnings.

Rate of Return. Amount of income received from an investment, expressed as a percentage of the amount invested.

Realized Gains (Losses). The difference between the sale price of an investment and its book value. Gains/losses are “realized” when the security is actually sold, as compared to “unrealized” gains/losses which are based on current market value. See “Unrealized Gains (Losses).”

Reference Bills: FHLMC’s short-term debt program created to supplement its existing discount note program by offering issues from one month through one year, auctioned on a weekly or on an alternating four-week basis (depending upon maturity) offered in sizeable volumes (\$1 billion and up) on a cycle of regular, standardized issuance. Globally sponsored and distributed, Reference Bill issues are intended to encourage active trading and market-making and facilitate the development of a term repo market. The program was designed to offer predictable supply, pricing transparency, and liquidity, thereby providing alternatives to U.S. Treasury bills. FHLMC’s Reference Bills are unsecured general corporate obligations. This program supplements the corporation’s existing discount note program. Issues under the Reference program constitute the same credit standing as other FHLMC discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

Reference Notes: FHLMC’s intermediate-term debt program with issuances of 2, 3, 5, 10, and 30-year maturities. Initial issuances range from \$2 - \$6 billion with re-openings ranging \$1 - \$4 billion.

The notes are high-quality bullet structures securities that pay interest semiannually. Issues under the Reference program constitute the same credit standing as other FHLMC notes; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Repurchase Agreement (Repo). A short-term investment vehicle where an investor agrees to buy securities from a counterparty and simultaneously agrees to resell the securities back to the counterparty at an agreed upon time and for an agreed upon price. The difference between the purchase price and the sale price represents interest earned on the agreement. In effect, it represents a collateralized loan to the investor, where the securities are the collateral. Can be DVP, where securities are delivered to the investor’s custodial bank, or “tri-party” where the securities are delivered to a third-party intermediary. Any type of security can be used as “collateral,” but only some types provide the investor with special bankruptcy protection under the law. Repos

should be undertaken only when an appropriate Securities Industry and Financial Markets Association (SIFMA) approved master repurchase agreement is in place.

Reverse Repurchase Agreement (Reverse Repo). A repo from the point of view of the original seller of securities. Used by dealers to finance their inventory of securities by essentially borrowing at short-term rates. Can also be used to leverage a portfolio and in this sense, can be considered risky if used improperly.

Safekeeping. Service offered for a fee, usually by financial institutions, for the holding of securities and other valuables. Safekeeping is a component of custody services.

Secondary Market. Markets for the purchase and sale of any previously issued financial instrument.

Securities Industry and Financial Markets Association (SIFMA). The bond market trade association representing the largest securities markets in the world. In addition to publishing a Master Repurchase Agreement, widely accepted as the industry standard document for Repurchase Agreements, the SIFMA also recommends bond market closures and early closes due to holidays.

Securities Lending. An arrangement between an investor and a custody bank that allows the custody bank to “loan” the investor's investment holdings, reinvest the proceeds in permitted investments, and shares any profits with the investor. Should be governed by a securities lending agreement. Can increase the risk of a portfolio in that the investor takes on the default risk on the reinvestment at the discretion of the custodian.

Sinking Fund. A separate accumulation of cash or investments (including earnings on investments) in a fund in accordance with the terms of a trust agreement or indenture, funded by periodic deposits by the issuer (or other entity responsible for debt service), for the purpose of assuring timely availability of moneys for payment of debt service. Usually used in connection with term bonds.

Spread. The difference between the price of a security and similar maturity U.S. Treasury investments, expressed in percentage terms or basis points. A spread can also be the absolute difference in yield between two securities. The securities can be in different markets or within the same securities market between different credits, sectors, or other relevant factors.

Standard & Poor's. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

STRIPS (Separate Trading of Registered Interest and Principal of Securities). Acronym applied to U.S. Treasury securities that have had their coupons and principal repayments separated into individual zero-coupon Treasury securities. The same technique and “strips” description can be applied to non-Treasury securities (e.g., FNMA strips).

Structured Notes. Notes that have imbedded into their structure options such as step-up coupons or derivative-based returns.

Supranational. Supranational organizations are international financial institutions that are generally established by agreements among nations, with member nations contributing capital and participating in management. These agreements provide for limited immunity from the laws of member countries. Bonds issued by these institutions are part of the broader class of Supranational, Sovereign, and Non-U.S. Agency (SSA) sector bonds. Supranational bonds finance economic and infrastructure development and support environmental protection, poverty reduction, and renewable energy around the globe. For example, the World Bank, International Finance Corporation (IFC), and African Development Bank (AfDB) have “green bond” programs specifically designed for energy resource conservation and management. Supranational bonds, which are issued by multi-national organizations that transcend national boundaries. Examples include the World Bank, African Development Bank, and European Investment Bank.

Swap. Trading one asset for another.

TAP Notes: Federal Agency notes issued under the FHLB TAP program. Launched in 6/99 as a refinement to the FHLB bullet bond auction process. In a break from the FHLB’s traditional practice of bringing numerous small issues to market with similar maturities, the TAP Issue Program uses the four most common maturities and reopens them up regularly through a competitive auction. These maturities (2, 3, 5, and 10 year) will remain open for the calendar quarter, after which they will be closed and a new series of TAP issues will be opened to replace them. This reduces the number of separate bullet bonds issued, but generates enhanced awareness and liquidity in the marketplace through increased issue size and secondary market volume.

Tennessee Valley Authority (TVA). One of the large Federal Agencies. A wholly owned corporation of the United States government that was established in 1933 to develop the resources of the Tennessee Valley region in order to strengthen the regional and national economy and the national defense. Power operations are separated from non-power operations. TVA securities represent obligations of TVA, payable solely from TVA's net power proceeds, and are neither obligations of nor guaranteed by the United States. TVA is currently authorized to issue debt up to \$30 billion. Under this authorization, TVA may also obtain advances from the U.S. Treasury of up to \$150 million. Frequent issuer of discount notes, agency notes, and callable agency securities.

Total Return. Investment performance measured over a period of time that includes coupon interest, interest on interest, and both realized and unrealized gains or losses. Total return includes, therefore, any market value appreciation/depreciation on investments held at period end.

Treasuries. Collective term used to describe debt instruments backed by the U.S. government and issued through the U.S. Department of the Treasury. Includes Treasury bills, Treasury notes, and Treasury bonds. Also a benchmark term used as a basis by which the yields of non-Treasury securities are compared (e.g., "trading at 50 basis points over Treasuries").

Treasury Bills (T-Bills). Short-term direct obligations of the United States government issued with an original term of one year or less. Treasury bills are sold at a discount from face value and do not pay interest before maturity. The difference between the purchase price of the bill and the maturity value is the interest earned on the bill. Currently, the U.S. Treasury issues 4-week, 13-week, and 26-week T-Bills.

Treasury Bonds. Long-term interest-bearing debt securities backed by the U.S. government and issued with maturities of ten years and longer by the U.S. Department of the Treasury.

Treasury Notes. Intermediate interest-bearing debt securities backed by the U.S. government and issued with maturities ranging from one to ten years by the U.S. Department of the Treasury. The Treasury currently issues 2-year, 3-year, 5-year, and 10-year Treasury Notes.

Trustee. A bank designated by an issuer of securities as the custodian of funds and official representative of bondholders. Trustees are appointed to insure compliance with the bond documents and to represent bondholders in enforcing their contract with the issuer.

Uniform Net Capital Rule. SEC Rule 15c3-1 that outlines the minimum net capital ratio (ratio of indebtedness to net liquid capital) of member firms and non-member broker/dealers.

Unrealized Gains (Losses). The difference between the market value of an investment and its book value. Gains/losses are “realized” when the security is actually sold, as compared to “unrealized” gains/losses which are based on current market value. See also “Realized Gains (Losses).”

Variable-Rate Security. A bond that bears interest at a rate that varies over time based on a specified schedule of adjustment (e.g., daily, weekly, monthly, semi-annually, or annually). See also “Floating Rate Note.”

Weighted Average Maturity (or just “Average Maturity”). The average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. A simple measure of risk of a fixed-income portfolio.

Weighted Average Maturity to Call. The average maturity of all securities and investments of a portfolio, adjusted to substitute the first call date per security for maturity date for those securities with call provisions.

Yield Curve. A graphic depiction of yields on like securities in relation to remaining maturities spread over a time line. The traditional yield curve depicts yields on U.S. Treasuries, although yield curves exist for Federal Agencies and various credit quality corporates as well. Yield curves can be positively sloped (normal) where longer-term investments have higher yields, or “inverted” (uncommon) where longer-term investments have lower yields than shorter ones.

Yield to Call (YTC). Same as "Yield to Maturity," except the return is measured to the first call date rather than the maturity date. Yield to call can be significantly higher or lower than a security's yield to maturity.

Yield to Maturity (YTM). Calculated return on an investment, assuming all cash-flows from the security are reinvested at the same original yield. Can be higher or lower than the coupon rate depending on market rates and whether the security was purchased at a premium or discount. There are different conventions for calculating YTM for various types of securities.

Yield. There are numerous methods of yield determination. In this glossary, see also "Current Yield," "Yield Curve," "Yield to Call," and "Yield to Maturity."

Attachment B
Investment Pool/Fund Questionnaire

1. A description of eligible investment securities, and a written statement of investment policy and objectives.
2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
3. Does the pool have a stable net asset value or floating net asset value?
4. What are the liquidity gates and fees?
5. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
6. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
7. A schedule for receiving statements and portfolio listings.
8. Are reserves, retained earnings, etc. utilized by the pool/fund?
9. A fee schedule, and when and how is it assessed.
10. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 1, 2022

DEPARTMENT: Water Utilities

TITLE:

Resolution No. 86-2022 – FY23 Regional Sewer Budget Amendment

SUMMARY:

Resolution 86-2022 adopts a budget amendment to the FY23 Regional Sewer fund increasing \$1,216,523 of revenues and \$1,175,696 of expenditures.

BACKGROUND AND JUSTIFICATION:

The Lake Worth Beach Regional Sewer System is made up of wastewater collection systems that connect to the Lake Worth Beach system before being sent to the East Central Regional Water Reclamation Facility (ECR) and include the City of Lake Worth Beach and seven other entities (Town of Lantana, City of Atlantis, Town of Manalapan, Town of South Palm Beach, Village of Palm Springs, Town of Lake Clarke Shores and Palm Beach State College).

This Budget Amendment corrects some scrivener's errors on various revenue and expense accounts from budget development and changes in the ECR budget that is passed through to the City and its Regional Sewer partners. There is a net revenue of \$40,827 which will be trued up in the year end accounting per the Interlocal Agreement of 2013 with the partner entities.

Resolution 86-2022 establishes the amended budget for FY23.

MOTION:

Move to approve/disapprove Resolution No. 86-2022 to adopt the budget amendment to the FY23 Regional Sewer fund increasing \$1,216,523 of revenues and \$1,175,696 of expenditures.

ATTACHMENT(S):

Fiscal Impact Analysis
Resolution 86-2022
Exhibit A

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	\$1,216,523	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	\$1,175,696	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$40,827	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department	Regional Sewer	Regional Sewer
Division	Pumping	Pumping
GL Description	Various (See Exhibit A)	Various (See Exhibit A)
GL Account Number	Various (See Exhibit A)	Various (See Exhibit A)
Project Number	N/A	N/A
Requested Funds	\$1,216,523	\$1,175,696

Budget Transfer Impact: N/A		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation: N/A	
	Expenditure
Department	
Division	
GL Description	
GL Account Number	
Project Number	
Requested Funds	

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RESOLUTION NO. 86-2022 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, TO ADOPT A BUDGET AMENDMENT TO INCREASE \$1,216,523 OF REVENUES AND \$1,175,696 OF EXPENDITURES DUE TO SCRIVENER’S ERRORS AND CHANGES IN THE EAST CENTRAL REGIONAL WATER RECLAMATION FACILITY (ECR) BUDGET THAT ARE PASSED ON TO THE LAKE WORTH BEACH REGIONAL SEWER FUND FOR THE FISCAL YEAR 2023 REGIONAL SEWER BUDGET BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the “City”) previously adopted the Fiscal Year (FY) 2023 Annual Operating Budget pursuant to Resolution No. 69-2022 on September 22, 2022;

WHEREAS, the City finds it is necessary and essential to amend the budget for the Regional Sewer fund to reflect amounts needed to fund various operating expenditures and revenues to be collected from the Regional Sewer partners for FY 2023;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1. The above recitals are hereby ratified and confirmed as being true and correct and are hereby incorporated into this Resolution.

Section 2. As hereinafter stated in this Resolution, the term “fiscal year” shall mean the period of time beginning October 1, 2022, and ending and including September 30, 2023.

Section 3 The funds and available resources and revenues that are set out and attached as Exhibit “A” and incorporated herein by reference, be, and the same hereby are, transferred to provide the monies to be used to pay the necessary operating and other expenses of the respective funds and departments of the City for the fiscal year.

Section 4. The sums, which are set out in Exhibit “A” and herein incorporated by reference, listed as operating and other expenses of the respective funds and departments of the City, be, and the same hereby are, transferred and shall be paid out of the revenues herein transferred for the fiscal year.

Section 5. The revenues and the expenses for which transfers are hereby made, all set forth above, shall be as set out in the Revised City of Lake Worth Beach Operating Budget for the fiscal year as attached in Exhibit “A”.

Section 6. The sums set out in Exhibit “A” are hereinbefore incorporated by reference and based upon departmental estimates prepared by the City Manager and the Finance Director, shall be, and the same hereby are, fixed and adopted as the revised budget for the operation of the City and its other enterprises for the fiscal year.

47 Section 7. Except as amended in Exhibit "A" hereto, the remainder of the FY 2023
48 Annual Operating Budget for the fiscal year remains in full force and effect.

49
50 Section 8. This resolution shall become effective immediately upon its passage.

51
52 The passage of this resolution was moved by Commissioner _____,
53 seconded by Commissioner _____, and upon being put to a vote, the vote was
54 as follows:

- 55
56 Mayor Betty Resch
57 Vice Mayor Christopher McVoy
58 Commissioner Sarah Malega
59 Commissioner Kimberly Stokes
60 Commissioner Reinaldo Diaz

61
62 The Mayor thereupon declared this resolution duly passed and adopted on the 1st
63 day of November 2022.

64
65 LAKE WORTH BEACH CITY COMMISSION

66
67
68 By: _____
69 Betty Resch, Mayor
70

71 ATTEST:
72
73
74 _____
75 Melissa Ann Coyne, City Clerk
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EXHIBIT A

	Account Number	Account Description	FY 2023 Original Budget	FY 2023 Revised Budget	Adjustment
Revenues	405-0000-343.55-51	O&M - Lake Worth Beach	\$ 4,110,657.00	\$ 4,410,347.39	\$ 299,690.39
	405-0000-343.55-52	O&M - Palm Springs	1,965,381.00	2,132,850.84	167,469.84
	405-0000-343.55-53	O&M - Lantana	1,229,061.00	1,319,160.53	90,099.53
	405-0000-343.55-54	O&M - Atlantis	347,362.00	372,826.70	25,464.70
	405-0000-343.55-55	O&M - PBSC	24,009.00	25,769.07	1,760.07
	405-0000-343.55-56	O&M - Manalapan	77,317.00	82,984.96	5,667.96
	405-0000-343.55-57	O&M - Lake Worth Beach	173,215.00	185,913.10	12,698.10
	405-0000-343.55-59	O&M - Lake Clarke Shores	400,099.00	431,083.59	30,984.59
	405-0000-343.56-51	ECR R&R - Lake Worth Beach	746,758.00	994,150.05	247,392.05
	405-0000-343.56-52	ECR R&R - Palm Springs	479,400.00	638,219.30	158,819.30
	405-0000-343.56-53	ECR R&R - Lantana	239,242.00	318,499.57	79,257.57
	405-0000-343.56-54	ECR R&R - Atlantis	71,696.00	95,447.54	23,751.54
	405-0000-343.56-55	ECR R&R - PBSC	15,965.00	21,254.30	5,289.30
	405-0000-343.56-56	ECR R&R - Manalapan	22,470.00	29,913.45	7,443.45
	405-0000-343.56-57	ECR R&R - South Palm Beach	50,557.00	67,305.27	16,748.27
	405-0000-343.56-59	ECR R&R - Lake Clarke Shores	73,913.00	98,399.52	24,486.52
	405-0000-343.54-51	LWB R&R - Lake Worth Beach	149,571.00	158,137.04	8,566.04
	405-0000-343.54-52	LWB R&R - Palm Springs	96,021.00	101,520.00	5,499.00
	405-0000-343.54-53	LWB R&R - Lantana	47,919.00	50,662.96	2,743.96
	405-0000-343.54-54	LWB R&R - Atlantis	14,360.00	15,182.61	822.61
	405-0000-343.54-55	LWB R&R - PBSC	3,198.00	3,380.87	182.87
	405-0000-343.54-56	LWB R&R - Manalapan	4,501.00	4,758.26	257.26
	405-0000-343.54-57	LWB R&R - South Palm Beach	10,126.00	10,706.09	580.09
	405-0000-343.54-59	LWB R&R - Lake Clarke Shores	14,804.00	15,652.17	848.17
				TOTAL:	\$ 1,216,523.18
Expenditures					
	405-7421-535.34-87	Regional Exp -ECR R & R	\$ 1,700,000.00	\$ 2,263,189.00	\$ 563,189.00
	405-7421-535.34-85	Regional Exp -Flow	\$ 6,551,200.00	\$ 7,199,281.00	\$ 648,081.00
	405-7421-535.34-80	Reg System Expense	\$ 380,000.00	\$ 365,000.00	\$ (15,000.00)
	405-7421-535.43-10	Water	\$ 26,000.00	\$ 26,716.14	\$ 716.14
	405-7421-535.43-20	Sewer	\$ 2,500.00	\$ 1,812.04	\$ (687.96)
	405-7421-535.43-40	Refuse/Waste Disposal	\$ 3,600.00	\$ 3,613.75	\$ 13.75
	405-7421-535.46-21	Equipment-General	\$ 118,000.00	\$ 100,000	\$ (18,000.00)
	405-7421-535.46-27	Heavy Equip-ext repairs	\$ 82,600.00	\$ 80,000.00	\$ (2,600.00)
	405-9010-519.58-70	Bank Charges and Fees	\$ 3,900.00	\$ 3,884.00	\$ (16.00)
				TOTAL:	\$ 1,175,695.93
Net Fiscal Impact					\$ 40,827.25