

AGREEMENT

THIS AGREEMENT is made and entered into this 17<sup>th</sup> day of November, 2009, by and between MANATEE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY," and the TOWN OF LONGBOAT KEY, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "TOWN."

WITNESSETH:

WHEREAS, the COUNTY owns and operates a countywide wastewater collection, storage, treatment, disposal, recycling and reclamation system (hereinafter referred to as the "COUNTY's wastewater system") under the authority of Section 125.01, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended; and

WHEREAS, the COUNTY is governed by federal and state laws, rules and regulations, including but not limited to, the Clean Water Act (33 United States Code § 1251 et seq.) and General Pretreatment Regulations (Chapter 62-625, Florida Administrative Code), and operating permit conditions applicable to the COUNTY's wastewater system; and

WHEREAS, the COUNTY has enacted the Manatee County Sewer Use Ordinance, codified as Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances, as amended, which establishes uniform requirements for all users of the COUNTY's wastewater system; and

WHEREAS, the TOWN owns and operates a wastewater collection system which consists of wastewater lines, pipes, lift stations, pumping stations, and other facilities and appurtenances (hereinafter referred to as the "TOWN's wastewater collection system"); and

WHEREAS, the TOWN's wastewater collection system collects wastewater from real property located within the municipal boundaries of the TOWN as depicted on Exhibit A, attached hereto and incorporated herein, and provides such wastewater to the COUNTY for treatment; and

WHEREAS, the TOWN intends to continue operation of said wastewater collection system within its municipal boundaries and provision of such wastewater to the COUNTY; and

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ALBINO WOODS & ASSOC

WHEREAS, the TOWN, as a user of the COUNTY's wastewater system, is governed by federal, state and local laws, ordinances, rules and regulations, including but not limited to, the Clean Water Act (33 United States Code § 1251 et seq.), General Pretreatment Regulations (Chapter 62-625, Florida Administrative Code), and Manatee County Sewer Use Ordinance (Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances), as amended, and operating permit conditions applicable to the COUNTY's wastewater system; and

WHEREAS, the COUNTY accepts wastewater from the TOWN under an Agreement dated September 14, 1971, as amended by Amendment to Agreement dated July 8, 1975, which expires on or about September 13, 2011; and

WHEREAS, the COUNTY and the TOWN desire to enter into a new written agreement for the acceptance of wastewater by the COUNTY from the TOWN.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The COUNTY agrees to accept for treatment wastewater from the TOWN as a wholesale customer and the TOWN agrees to provide wastewater to the COUNTY which the TOWN shall collect through the TOWN's wastewater collection system and accept from the TOWN's wastewater customers within the areas depicted on Exhibit A.

2. Effective upon execution of this Agreement by both parties, the COUNTY agrees to allocate for the TOWN two and twenty-six hundreds (2.26) million gallons per day (MGD) reserve capacity in the COUNTY's wastewater system. Effective October 1, 2010, the TOWN may increase the reserve capacity in the COUNTY's wastewater system by increments of one thousand (1,000) gallons per day no more than one (1) time each fiscal year, subject to payment of Facility Investment Fees established by the COUNTY ordinance relating to Facility Investment Fees in effect at the time and in accordance with the following procedures:

A. For each year ending June 30 during which the TOWN requests an increase in

reserve capacity, the TOWN shall submit a report to the COUNTY no later than August 1 for the period of time from July 1 through June 30 of the previous year. The report shall itemize all new or increased connections to the TOWN's wastewater collection system, the meter size of each connection, and the reserve capacity equivalent of each connection. The TOWN shall maintain records relating to each connection itemized on the report. Such records shall be open for audit, inspection, examination and copying in compliance with Chapter 119, Florida Statutes.

- B. Subject to the COUNTY's receipt of water use permits from the Southwest Florida Water Management District, the TOWN may purchase additional reserve capacity in the COUNTY's wastewater system by paying to the COUNTY the appropriate amount of all Facility Investment Fees for wholesale customers established by the COUNTY ordinance relating to Facility Investment Fees in effect for the period of time covered by the report described in paragraph 2.A above for all new and increased connections to the TOWN's wastewater collection system. The Facility Investment Fees shall be paid to the COUNTY at the same time the TOWN submits the report to the COUNTY described in paragraph 2.A above and no later than August 1 of each year.
  - C. Effective October 1 of each year following receipt of the report described in paragraph 2.A above and the appropriate amount of Facility Investment Fees from the TOWN, the COUNTY shall adjust the reserve capacity in its wastewater system to accommodate the additional reserve capacity for the TOWN. The increased reserve capacity shall also result in a corresponding increase in the monthly customer charge paid by the TOWN effective October 1 of each year.
3. The TOWN agrees to pay to the COUNTY on a monthly basis customer charges

based on two and twenty-six hundreds (2.26) MGD reserve capacity, or such higher reserve capacity increased in accordance with section 2 of this Agreement, at the rates established by the COUNTY utility rate resolution in effect at the time, provided such rates are equivalent to the rates charged to other wholesale wastewater customers of the COUNTY.

4. The TOWN agrees to pay to the COUNTY on a monthly basis flow rates for consumption and excess demand charges based on two and twenty-six hundreds (2.26) MGD reserve capacity, or such higher reserve capacity increased in accordance with section 2 of this Agreement, at the rates established by the COUNTY utility rate resolution in effect at the time.

5. Unless otherwise specifically provided in this Agreement, the TOWN agrees to render full payment to the COUNTY in United States funds within thirty (30) calendar days of receipt of any bills, statements, costs, expenses, rates and charges from the COUNTY.

6. The COUNTY shall submit to the TOWN the COUNTY's estimated utility rates for wholesale wastewater customers no later than July 1 of each year. The COUNTY shall provide notice of any proposed resolutions establishing or revising the COUNTY's utility rates in accordance with Chapter 63-1598, Laws of Florida, as amended.

7. The COUNTY and the TOWN agree that the areas located within the municipal boundaries of the TOWN depicted on Exhibit A constitute the only areas of Manatee County and Sarasota County, Florida, served by the TOWN's wastewater collection system. The TOWN shall not collect, accept or purchase wastewater from any other areas of Manatee County or Sarasota County, Florida, located outside the municipal boundaries of the TOWN. The TOWN shall not purchase, provide, furnish, transfer or sell wastewater reserve capacity in the COUNTY's wastewater system for or to any other jurisdiction, including Sarasota County, Florida, or the City of Sarasota, Florida.

8. It is understood and agreed that the acceptance of wastewater as set forth in this Agreement is subject to the rules, regulations, orders and permits of the U.S. Environmental

Protection Agency and Florida Department of Environmental Protection and that the COUNTY's ability to accept wastewater under this Agreement is so governed. The COUNTY and the TOWN shall comply with all applicable rules, regulations, orders and permits of the U.S. Environmental Protection Agency and Florida Department of Environmental Protection.

9. The COUNTY agrees that acceptance of wastewater under this Agreement shall be continuous at all times; provided, however, that disruption or interruption of service at any time caused by an act of God, fire, strike, casualty, war, terrorism, natural disaster, accident, federal, state, regional or local governmental action or order, necessary maintenance work, breakdown of or damage to machinery, pumps or pipelines, act or omission of any federal, state, regional or local governmental authority, civil or military authority, insurrection, riot, or any cause beyond the reasonable control of the COUNTY shall not constitute a breach of this Agreement by the COUNTY, and the COUNTY shall not be liable to the TOWN or any of its customers for any claims, damages, injuries, liabilities, losses, costs or expenses resulting from such unavoidable disruption or interruption of service. The COUNTY agrees to correct any and all disruptions or interruptions that may occur and restore service as soon as practicable.

10. Effective upon execution of this Agreement by both parties, the TOWN is connected to the COUNTY's wastewater system by one (1) meter at the following location: twenty-inch (20") meter located at the COUNTY's Southwest Water Reclamation Facility, 5101 65<sup>th</sup> Street West, Bradenton. All wastewater lines and pipes extending from the COUNTY's Southwest Water Reclamation Facility to and including the meter shall be the property and responsibility of the COUNTY, and all components of the TOWN's wastewater collection system extending from the TOWN to the meter shall be the property and responsibility of the TOWN.

11. The TOWN shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, orders, permits and standards within the municipal boundaries of the TOWN served by the TOWN's wastewater collection system and extending from the TOWN to the meter

located at the COUNTY's Southwest Water Reclamation Facility. Such federal, state and local requirements shall include but not be limited to the Clean Water Act (33 United States Code § 1251 et seq.), General Pretreatment Regulations (Chapter 62-625, Florida Administrative Code), and Manatee County Sewer Use Ordinance (Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances), as amended, and operating permit conditions applicable to the COUNTY's wastewater system.

12. Throughout the term of this Agreement and renewal of this Agreement, the TOWN shall make every reasonable effort to ensure that the quality of wastewater furnished by the TOWN complies with the requirements of the Manatee County Sewer Use Ordinance (Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances) and all other regulations, as subsequently enacted or amended, applicable to the COUNTY's wastewater system. To ensure that the TOWN is making every reasonable effort, the TOWN shall take the following action:

- A. Effective April 1, 2010, and each year thereafter, the TOWN shall submit an annual report no later than April 1 of each year for the period of time from January 1 through December 31 of the previous year. The annual report shall be signed by the Town Manager or Public Works Director of the TOWN. The annual report shall list the results of tests for all pollutants, including chlorides, in the TOWN's wastewater discharge sampled during the year. The frequency of such tests and locations of such samples shall be agreed upon by the utility staffs of both parties. The annual report shall outline the TOWN's progress and demonstrate continued reduction in the intrusion of saltwater and other sources of chlorides into the COUNTY's wastewater system from the TOWN's wastewater collection system, unless severely impacted by abnormal or extreme weather conditions, until the TOWN's wastewater discharge complies with the standards for pollutants, including but not limited to chlorides, established in the Manatee County Sewer Use

Ordinance (Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances) and all other regulations, as subsequently enacted or amended, applicable to the COUNTY's wastewater system. Thereafter, the annual report shall demonstrate that the TOWN's wastewater discharge continues to comply with the standards specified in this paragraph. Notwithstanding the annual report, the COUNTY shall have the right to test the TOWN's wastewater discharge at the meter located at the COUNTY's Southwest Water Reclamation Facility for all pollutants, including chlorides, on a weekly basis.

- B. The TOWN shall continue to make all necessary and reasonable repairs and improvements to its wastewater collection system to minimize the intrusion of salt water and other sources of chlorides into the COUNTY's wastewater system. The COUNTY and the TOWN acknowledge that such repairs and improvements to the TOWN's wastewater collection system shall be ongoing throughout the term of this Agreement and renewal of this Agreement until the TOWN's wastewater discharge complies with the standards for pollutants, including but not limited to chlorides, established in the Manatee County Sewer Use Ordinance (Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances) and all other regulations, as subsequently enacted or amended, applicable to the COUNTY's wastewater system. Thereafter, the TOWN shall continue to operate, maintain, repair and improve its wastewater collection system to prevent the intrusion of salt water and other sources of chlorides into the COUNTY's wastewater system. The annual report described in paragraph 12.A above shall itemize the repairs and improvements commenced, constructed, installed and completed during the previous year and shall contain the proposed five (5)-year capital plan for the TOWN's wastewater collection system.

C. To evaluate the success of the TOWN's efforts, the utility staffs of both parties shall meet each year during the month of April following submission of the annual report described in paragraph 12.A above. The utility staffs shall compare the TOWN's progress with a similar program being implemented by the COUNTY to limit the intrusion of salt water and other sources of chlorides into the COUNTY's wastewater system on Anna Maria Island. It is reasonably expected that the reduction of salt water and other sources of chlorides by the TOWN shall be able to keep pace with the COUNTY's program on Anna Maria Island.

13. Chapter 52 of the Longboat Key Code of Ordinances, entitled "Sewers," regulates use of the TOWN's wastewater collection system. Throughout the term of this Agreement and renewal of this Agreement, the TOWN shall take appropriate action upon the request of the COUNTY, if necessary, including enactment, amendment, adoption, implementation and enforcement of ordinances, resolutions and regulations, to ensure that all users of the TOWN's wastewater collection system comply with the Manatee County Sewer Use Ordinance (Chapter 2-31, Article II, Division 3, Manatee County Code of Ordinances) and all other regulations, as subsequently enacted or amended, applicable to the COUNTY's wastewater system. The TOWN shall require all users of the TOWN's wastewater collection system to comply with the general sewer use requirements specified in section 2-31-41, Manatee County Code of Ordinances, as amended, and, if necessary, to provide wastewater pretreatment in accordance with section 2-31-42, Manatee County Code of Ordinances, as amended. The TOWN shall further require all significant industrial users of the TOWN's wastewater collection system and, if determined necessary by the COUNTY, any other users of the TOWN's wastewater collection system to obtain wastewater discharge permits from the COUNTY in accordance with sections 2-31-43 and 2-31-44, Manatee County Code of Ordinances, as amended.

14. The quantity of wastewater furnished by the TOWN shall be determined based on



readings of the meter by calculating the difference in quantity registered from the previous reading of the meter, said meter readings to be made by the COUNTY. In the event of a meter malfunction, the quantity of wastewater consumption shall be based on all available information agreed to by the utility staffs of both parties. The COUNTY agrees to render monthly bills to the TOWN for amounts then due and payable. Said monthly bills shall consist of two (2) components computed in accordance with the COUNTY utility rate resolution in effect at the time: (1) a monthly customer charge; and (2) a flow rate for consumption.

15. All wastewater furnished by the TOWN under this Agreement shall be measured by meter equipment of standard manufacture at the point of connection located at the COUNTY's Southwest Water Reclamation Facility, said meter to be maintained, calibrated and read by the COUNTY at its expense. No meter shall be allowed to remain in service which has an error in excess of the normal test flow rates for accuracy limits established by the American Water Works Association (A.W.W.A.) guidelines, or succeeding guidelines, as of the time of testing. The COUNTY shall inspect and test the meter at intervals recommended by the A.W.W.A., with the meter tested at least twice per year. Upon written request by the TOWN, the COUNTY shall make available the results of such tests to the TOWN within seven (7) calendar days of receipt of the written request. The COUNTY shall pay all inspection and testing costs, except as provided below. Upon written request by the TOWN, the COUNTY shall inspect and test the meter in the presence of a representative or representatives of the TOWN. If the meter conforms to the A.W.W.A. guidelines upon testing, the TOWN shall pay all inspection and testing costs. In the event a faulty meter is discovered, the COUNTY shall immediately take steps to restore the meter to an accurate condition or to install a new meter at the COUNTY's cost.

16. It is understood that this is not an Agreement between the COUNTY and the wastewater customers of the TOWN. Nothing in this Agreement shall be construed to convey to the TOWN any ownership interest in any portion of the assets of the COUNTY's wastewater

system, including collection, storage, treatment, disposal, recycling or reclamation facilities.

17. This Agreement shall commence upon execution by both parties and shall expire on September 30, 2031. Subject to mutual written agreement by both parties, this Agreement may be renewed for one (1) additional period of ten (10) years, commencing on October 1, 2031, and expiring on September 30, 2041. The Town Commission shall provide written notice of the TOWN's intent to renew this Agreement to the COUNTY at least eighteen (18) months prior to the expiration date of this Agreement. Upon approval of the TOWN's written renewal notice by the Board of County Commissioners, this Agreement shall be renewed for the additional ten (10) year period. If the Board of County Commissioners determines not to approve the TOWN's renewal notice, this Agreement shall terminate ten (10) years from such determination. In the event the COUNTY does not intend to renew this Agreement, the COUNTY shall provide written notice of such intent to the TOWN no later than ten (10) years prior to the expiration date of this Agreement.

18. This Agreement or any renewal of this Agreement may be canceled or terminated by mutual written consent of the parties or as described below:

- A. If canceled or terminated by the COUNTY, at least ten (10) years advance written notice to the TOWN is required; or
- B. If canceled or terminated by the TOWN, at least eighteen (18) months advance written notice to the COUNTY is required.

19. All requests and notices required to be given by either party under this Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or by hand delivery:

- A. COUNTY:                      Director  
   Utilities Department  
   Manatee County  
   4410 66<sup>th</sup> Street West  
   Bradenton, Florida 34210

WITH COPY TO: County Administrator  
Manatee County  
1112 Manatee Avenue West  
Bradenton, Florida 34205

B. TOWN: Town Manager  
Town of Longboat Key  
Longboat Key Town Hall  
501 Bay Isles Road  
Longboat Key, Florida 34228

WITH COPY TO: Public Works Director  
Town of Longboat Key  
Longboat Key Town Hall  
501 Bay Isles Road  
Longboat Key, Florida 34228

Either party may, by written notice to the other party as provided above, change the address for subsequent notice.

20. Neither party shall assign this Agreement or any rights or duties under this Agreement to any other person.

21. The failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment of such covenant, agreement, option, right, power or remedy for the future. No payment by either party or receipt of payment by the other party of a lesser amount than the amount that party claims to be due shall be deemed to be other than on account of the earliest payment due, nor shall any endorsement or statement on any check or any letter accompanying any check for any payment due either party be deemed an accord and satisfaction, and either party may accept such check or payment without prejudice to that party's right to recover the balance of any payment then due or to pursue any other remedy provided by law.

22. The parties agree that they have each participated in the drafting of this Agreement, and that the rules with respect to construing ambiguities against the drafter of a contract shall not

apply in any action or litigation regarding this Agreement.

23. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

24. Should any term, provision, covenant, condition, section, paragraph, sentence or portion of this Agreement be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms, provisions, covenants, conditions, sections, paragraphs, sentences and portions shall, nevertheless, remain in full force and effect.

25. This Agreement sets forth all covenants, promises, agreements and understandings between the parties concerning the subject matter of this Agreement, and there are no covenants, promises, agreements or understandings, either oral or written, between the parties except as herein set forth. No subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon the parties unless reduced to writing and approved and executed by the COUNTY and the TOWN with the same formality as this Agreement.

26. This Agreement shall supersede and replace the Agreement between the parties dated September 14, 1971, as amended by Amendment to Agreement dated July 8, 1975, which expires on or about September 13, 2011. Upon the commencement date as provided in section 17 of this Agreement, the Agreement between the parties dated September 14, 1971, and Amendment to Agreement dated July 8, 1975, shall be rescinded in their entirety and shall have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, by and through their duly authorized representatives, on the respective dates below.

COUNTY

Manatee County, Florida, a political subdivision of the State of Florida, acting by and through the Board of County Commissioners, with a quorum present and voting, hereby approves this Agreement on the 17th day of November, 2009.

ATTEST: R. B. Shore  
Clerk of the Circuit Court

MANATEE COUNTY, FLORIDA, a political subdivision of the State of Florida

By: [Signature]  
Deputy Clerk

By: [Signature]  
Chairman  
Board of County Commissioners  
Date: 11/17/09



TOWN

The Town of Longboat Key, Florida, a municipal corporation of the State of Florida, acting by and through the Town Commission, with a quorum present and voting, hereby approves this Agreement on the 2nd day of November, 2009.

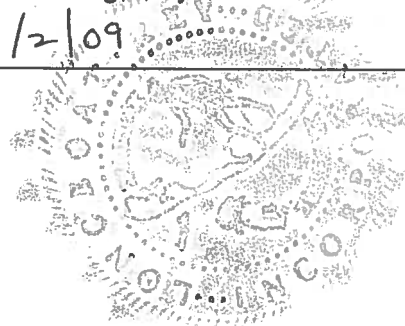
TOWN OF LONGBOAT KEY, FLORIDA, a municipal corporation of the State of Florida

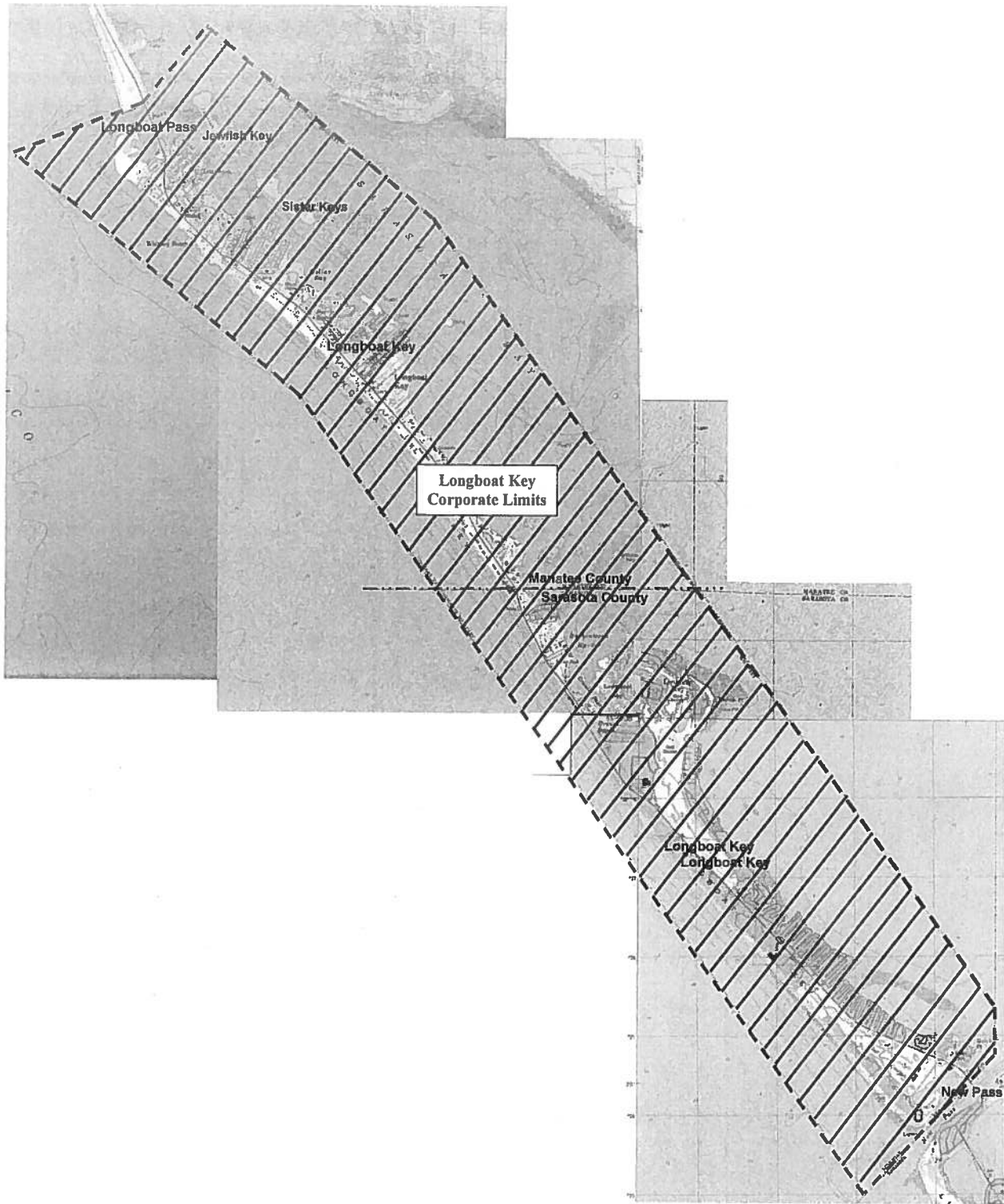
ATTEST: [Signature]  
Trish Granger, Town Clerk

By: [Signature]  
Lee Rothenberg, Mayor  
Date: 11/2/09

Approved as to Legal Form and Correctness:

[Signature]  
David P. Persson, Esquire, Town Attorney





Not to Scale  
Source: USGS Bradenton, Sarasota, and Bradenton Beach (FL) Quadrangle

**Exhibit A**  
**Town of Longboat Key**  
**Corporate Boundaries**