

**700 - BUSINESS AND TRADES**

**710 - Regulation of Canvassers and Solicitors**

HISTORY: Ordinance No. 176, November 3, 1960; Repealed and reenacted September 1, 1966 by Ordinance No. 196

**710.1. PERMIT AND LICENSE REQUIRED.**

It shall be unlawful for any solicitor or canvasser as defined in Section **710.2.** of this ordinance to engage in such business within the corporate limits of the Town of Limon without first obtaining a permit and license therefore in compliance with the provisions of this code.

**710.2. DEFINITION.**

A canvasser or solicitor is defined as any individual, whether resident of the Town of Limon or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, ware and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself, or for another person, firm, or corporation, hires, leases, uses, or occupies any building, structure, tent, railroad box car, boat, hotel room, lodging house, apartment, shop, or any other place within the Town for the sole purpose of exhibiting samples and taking orders for future delivery.

**710.3. APPLICATION.**

Applicants for permit and license under this code must file with the Town Clerk a sworn application in writing (in duplicate) on a form to be furnished by the Town Clerk, which shall give the following information:

**710.3.1.**Name and description of the application;

**710.3.2.**Permanent home address and full local address of the applicant;

**710.3.3.**A brief description of the nature of the business and the goods to be sold;

**710.3.4.**If employed, the name and address of the employer, together with credentials establishing the exact relationship;

**710.3.5.**The length of time for which the right to do business is desired;

**710.3.6.** The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filled, and the proposed method of delivery.

**710.3.7.**A photograph of the applicant, taken within 60 days immediately prior to the date of filing of the application, which picture shall be 2 inches by 2 inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

**710.3.8.**The fingerprints of the applicant and the names of at least two reliable property owners of the County of Lincoln, State of Colorado, who will certify as to the applicant's good character and business respectability, or, in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility;

**710.3.9.**A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore; and

**710.3.10.** A statement by a reputable physician of the Town of Limon, or other qualified doctor, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of contagious, infectious, or communicable disease.

**710.3.10.1.** At the time of filing the application, a fee of \$2.00 shall be paid to the Town Clerk to cover the cost of investigation of the facts stated therein.

**710.4. INVESTIGATION AND ISSUANCE.**

**710.4.1.**Upon receipt of such application, the original shall be referred to the Chief of Police, who shall cause such investigation of the applicant's business and moral character to be made as he

deems necessary for the protection of the public good.

**710.4.2.** If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the Town Clerk, who shall notify the applicant that his application is disapproved and that no permit and license will be issued.

**710.4.3.** If as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return said permit, along with the application to the Town Clerk, who shall, upon payment of the prescribed license fee, deliver to the applicant his permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued and the kind of goods to be sold there under, the amount of the fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such soliciting or canvassing. The Clerk shall keep a permanent record of all licenses issued.

#### **710.5. FEES.**

**710.5.1.** The license fee which shall be \$5.00 per day, \$10.00 per week, \$30.00 per month, \$50.00 per year.

**710.5.2.** The annual fees herein provided shall be assessed on a calendar year basis and on or after July first the amount of such fee for annual license shall be one-half the amount stipulated above for the remainder of the year.

**710.5.3.** None of the license fees provided for by this ordinance shall be applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the Mayor for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at, or within six months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business

and the gross volume or estimated gross volume of business and such other information as the Mayor may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Mayor shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fee fixed by this ordinance is unfair, unreasonable or discriminatory as to applicant's business and shall fix as the license fee for the applicant, an amount that is fair, reasonable and nondiscriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the Mayor shall have the power to base the fee upon a percentage of gross sales, or any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as prescribed by Section **710.5.1.** of this ordinance. Should the Mayor determine the gross sales measure of the fee to be fair basis, he may require the applicant to submit, either at the time of termination of applicant's business in the Town of Limon or at the end of each three-month period, a sworn statement of the gross sales and pay the amount of fee therefore, provided that no additional fee during any open calendar year shall be required after the licensee shall have paid an amount equal to the annual license as prescribed in Section **710.5.1.** of this ordinance.

#### **710.6. BOND.**

Every applicant, not a resident of the Town of Limon, or who being a resident of the Town of Limon, represents a firm whose principal place of business is located outside the State of Colorado, shall file with the Town Clerk a surety bond, running to the Town in the amount of \$1,000 with surety acceptable to and approved by the Mayor, conditioned that the said applicant shall comply fully with all the provisions of the ordinances of the Town of Limon and the statutes of the state of Colorado regulating and concerning the business of solicitor and guaranteeing to any citizen of the town of Limon that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor and further guaranteeing to any citizen of the town of Limon doing business with said solicitor, that the property purchased will be delivered according to the representations of said solicitor. Action on such bond may be brought in the name of the Town to the use or benefit of the aggrieved person.

**710.7. BADGES.**

The Town Clerk shall issue to each licensee at the time of delivery of his license a badge which shall contain the words "Licensed Solicitor," the period for which the license is issued and the number of the license, in letters and figures easily discernible from a distance of ten feet. Such badge shall, during the time such licensee is engaged in soliciting, be worn constantly by the licensee on the front of his outer garment in such a way as to be conspicuous.

**710.8. EXHIBITION OF LICENSE.**

Solicitors and canvassers are required to exhibit their licenses at the request of any citizen.

**710.9. DUTY OF POLICE TO ENFORCE.**

It shall be the duty of any police officer of the Town of Limon to require any person seen soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his solicitor's or canvasser's license and to enforce the provisions of this ordinance against any person found to be violating the same.

**710.10. RECORDS.**

The Chief of Police shall report to the Town Clerk all convictions for violation of this code and the Town Clerk shall maintain a record for each license issued and record the reports of violation therein.

**710.11. REVOCATION OF LICENSE.**

**710.11.1.** Permits and licenses issued under the provisions of this code may be revoked by the Mayor of the Town of Limon after notice and hearing, for any of the following causes:

**710.11.1.1.** Fraud, misrepresentation, or false statement contained in the application for license;

**710.11.1.2.** Fraud, misrepresentation, or false statement made in the course of carrying on his business as solicitor or as canvasser;

**710.11.1.3.** Any violation of this code;

**710.11.1.4.** Conviction of any crime or misdemeanor involving moral turpitude; or

**710.11.1.5.** Conducting the business of soliciting, or of canvassing, in an unlawful manner or

in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

**710.11.2.** Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for hearing.

**710.12. APPEAL.**

Any person aggrieved by the action of the Chief of Police or the Town Clerk in the denial of a permit or license as provided in Section **710.4.** or the action of the Mayor in the assessing of the fee as provided in Section **710.5.3.** shall have the right of appeal to the Town of Limon. Such appeal shall be taken by filing with the Board of Trustees, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Board shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided in Section **710.11.** of this ordinance for notice of hearing on revocation. The decision and order of the Board on such appeal shall be final and conclusive.

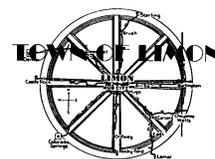
**710.13. EXPIRATION OF LICENSE.**

All annual licenses issued under the provisions of this ordinance shall expire on the 31st of December in the year when issued. Other than annual licenses shall expire on the date specified in the license.

**710.14. PENALTY FOR VIOLATION.**

Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not to exceed Five Hundred Dollars (\$500.00) Each day such violation is committed or permitted to continue, shall constitute a separate offense and shall be punishable as such hereunder.

(Amended January 2, 1997 by Ordinance No. 411)



**720 - Taxation****721 - Telephone Companies**

HISTORY: Adopted November 21, 1968 by Ordinance No. 206.

**721.1. LEVY OF TAX.**

There is hereby levied on and against telephone companies operating within the Town of Limon a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith within the Town of Limon and of supplying local exchange telephone service to the inhabitants of the Town. The amount of tax levied hereby shall be equal to 1 1/2 per cent of the gross revenues received by such company arising from the supplying, furnishing, distributing and selling of local exchange telephone service within the corporate limits of the Town of Limon, as now or hereafter established.

**721.2. EFFECTIVE DATE.**

The tax levied by this code shall commence on effective date of this code, and shall be due and payable quarterly to the Town Treasurer.

**721.3. FILING STATEMENT AND PAYMENT OF TAX.**

Within 45 days after the end of each calendar quarter after the effective date of the tax herein levied, each company subject to this code shall file with the Town Treasurer, in such form as the Treasurer may require, a statement showing the total gross receipts as prescribed in Section **721.1.** of this code during the preceding calendar quarter. Such statement shall be accompanied by payment to the Treasurer of the tax due for the period covered by the statement.

**721.4. FAILURE TO PAY.**

If any company subject to the provisions of this code shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town of Limon. The Town Attorney of the Town of Limon upon the direction of the Board of Trustees shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to

collect the said debt in the name of the people of the State of Colorado.

**721.5. PENALTY FOR VIOLATION.**

If any officer, agent or manager of a company which is subject to the provisions of this code shall fail, neglect, or refuse to make or file any quarterly statement in the manner herein prescribed, the said officer, agent, manager, or person shall, on conviction thereof, be punished by a fine of not more than Five Hundred Dollars (\$500.00), provided, that each day after said quarterly statement shall become delinquent during which the said officer, agent, manager or person shall so fail neglect, or refuse to make and file such statement shall be considered a separate and distinct offense.

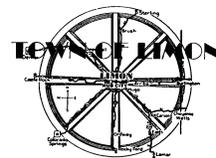
(Amended January 2, 1997 by Ordinance No. 411)

**721.6. INSPECTION OF RECORDS.**

The Town of Limon, its officers, agents, or representatives shall have the right at all reasonable hours and times to examine the books and records of the companies which are subject to the provisions of this code and to make copies of the entries or contents thereof.

**721.7. AGREEMENTS CANCELED.**

All agreements between the Town of Limon and any company subject to this code relating to payment or the furnishing of free services in lieu of taxes are hereby canceled as of the effective date of this code. All other agreements, franchises and leases of any nature whatsoever are hereby canceled as of the effective date of this code.



## 722 - Telephone Utility Companies

HISTORY: Adopted October 7, 1976 by Ordinance No. 241.

### 722.1. LEVY OF TAX.

There is hereby levied on and against telephone utility company operating within the Town of Limon, (hereinafter called the "Town") a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town of Limon and of supplying local exchange telephone service to the inhabitants of the Town. The annual amount of tax levied hereby shall be equal to \$3.60 per telephone account for which local exchange telephone service is provided within the corporate limits of the Town of Limon on the effective date as provided in Section **722.2.** and upon each anniversary of the effective date.

### 722.2. EFFECTIVE DATE.

The tax levied by this ordinance shall commence on November 15, 1976, and shall be due and payable in twelve (12) equal monthly installments with the first such installment due thirty (30) days after the effective date.

### 722.3. FILING STATEMENT.

**722.3.1.** Within thirty (30) days after the effective date as provided in Section **722.2.**, each telephone utility company subject to this code shall file with the Town Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the Town on the effective date.

**722.3.2.** Such statement shall be filed within thirty (30) days after each anniversary of the effective date showing such accounts on the anniversary date.

### 722.4. FAILURE TO PAY.

If any telephone utility company subject to the provisions of this code shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney of the Town upon direction of the Board of Trustees shall commence and prosecute to final judgment and determination in

any court of competent jurisdiction an action at law to collect the said debt in the name of the people of the Town of Limon, Colorado.

### 722.5. PENALTY FOR VIOLATION.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this code shall fail, neglect, or refuse to make or file the annual statement of accounts provided in Section 3, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not more than Five Hundred Dollars (\$500.00); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect, or refuse to make and file such statement shall be considered a separate and distinct offense.

(Amended January 2, 1997 by Ordinance No. 411)

### 722.6. INSPECTION OF RECORDS.

The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility company which are subject to the provisions of this code and to make copies of the entries or contents thereof.

### 722.7. LOCAL PURPOSE.

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this code be construed to mean that any telephone utility company is issued a franchise by the Town, and is subject to all standards for the use of streets and alleys as required or may be required by the Town, including repair of damage caused by the telephone utility company. The repair of damage shall, in no circumstance, be less than repair to a condition equal to the original condition before damages occurred.

### 722.8. TAX IN LIEU OF OTHER TAXES, ETC.

The tax herein provided shall be in lieu of all other payments by or fees and taxes on any telephone utility subject to the provisions of this code, other than ad valorem taxes, and in addition shall be in lieu of any free service furnished the Town by any said telephone utility.



## 723 - Sales and Use Tax

HISTORY: Adopted July 27, 1978 by Ordinance No. 251. Amended January 4, 1996 by Ordinance No. 395.

### 723.1. PURPOSE.

The purpose of this code is to impose a sales tax on the sale of tangible personal property at retail and the furnishing of services within the Town of Limon, Colorado (hereinafter "Limon" or "Town"), and a use tax on the privilege of using or consuming within the Town any construction and building materials and motor and other vehicles on which registration is required, purchased at retail, pursuant to Colorado Revised Statutes of 1973, Title 29, Article 2, as amended.

### 723.2. DEFINITIONS.

For the purpose of this code, the meanings of words herein contained shall be as defined in Colorado Revised Statutes of 1973, Section 39-26-102, as amended, and said definitions are incorporated herein.

### 723.3. SALES TAX LEVIED.

There is hereby levied and there shall be collected and paid a tax equal to two percent (2%) of gross receipts from all sales of tangible personal property at retail and the furnishing of services within the Town. The sales of tangible personal property and the furnishing of services taxable under this code shall be the same as those taxable pursuant to Colorado Revised Statutes of 1973, Section 39-26-104, as amended.

### 723.4. SALES TAX - NONAPPLICABILITY.

The Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in Colorado Revised Statutes of 1973, Section 29-2-109, as amended, if such materials are picked up by the purchaser, and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town,

including a Certificate of Use on a form provided by the Town, evidencing that a local use tax has been paid or is required to be paid.

### 723.5. SALES TAX COLLECTION AND SCHEDULES.

**723.5.1.** The collection, administration, and enforcement of this sales tax shall be performed by the Executive Director of the Department of Revenue of the State of Colorado (hereinafter the "Executive Director") in the same manner as the collection, administration, and enforcement of the Colorado state sales tax. The provisions of Colorado Revised Statutes of 1973, Title 39, Article 26, as amended, and all rules and regulations promulgated there under by the Executive Director shall govern the collection, administration, and enforcement of this sales tax.

**723.5.2.** The sales tax on individual sales levied by this code shall be collected in accordance with schedules set forth in a separate ordinance or code enacted by the Board of Trustees of Limon, or if no such separate ordinance or code is enacted, in accordance with schedules set forth in the rules and regulations promulgated by the Executive Director under Colorado Revised Statutes of 1973, Title 29, Article 2, or Title 39, Article 26, as amended. If any vendor, during any reporting period, shall collect as a sales tax under this code an amount in excess of two percent (2%) of his total taxable sales for that period, he shall remit to the Executive Director the full amount of this sales tax and also such excess.

### 723.6. SALES TAX EXEMPTIONS.

**723.6.1.** The sales of tangible personal property and the furnishing of services taxable under this code shall be subject to the exemptions from taxation specified in Colorado Revised Statutes of 1973, Section 39-26-114, as amended.

**723.6.2.** All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from this sales tax when such sales meet both of the following conditions:

**723.6.2.1.** The purchaser is a nonresident of or has his principal place of business outside the limits of Limon; and

**723.6.2.2.** Such personal property is registered or required to be registered outside the limits of Limon under the laws of the State of Colorado.

**723.6.3.**The value of construction and building materials on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from this sales tax if the materials are delivered by the retailer or his agent to a site within the limits of Limon.

#### **723.7. SALES TAX - CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO ANOTHER MUNICIPALITY.**

The Town's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of two percent (2%). A credit shall be granted against the Limon sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed two percent (2%).

#### **723.8. SALES TAX GENERAL PROVISIONS.**

**8.1.**All retail sales shall be considered consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.

**723.8.2.**Gross receipts from sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Colorado Revised Statutes of 1973, Title 39, Article 26, as amended, regardless of the place to which delivery is made.

**723.8.3.**In the event a retailer has no permanent place of business in Limon, or more than one place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Colorado Revised Statutes of 1973, Title 39, Article 26, as amended, and by the rules and regulations promulgated there under by the Executive Director.

**723.8.4.**Gross receipts shall not include the state sales and use tax imposed by Colorado Revised Statutes of 1973, Title 39, Article 26, as amended.

#### **723.9. SALES TAX VENDOR'S FEE.**

The vendor shall be entitled, as collection agent for Limon, to withhold a collection fee in the amount of three and one-third percent (3 1/3%) from the total amount of the sales tax remitted by the vendor to the Executive Director each month. If any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover his expense in collecting and remitting said tax, and an amount equivalent to the full three and one third percent (3 1/3%) shall be remitted to the Executive Director by any such delinquent vendor.

#### **723.10. USE TAX LEVIED.**

There is hereby levied and there shall be collected and paid a use tax upon the privilege of using or consuming within the Town, any construction and building materials, and motor and other vehicles on which registration is required, which are purchased at retail, in an amount equal to two percent (2%) of the retail cost thereof.

#### **723.11. USE TAX EXEMPTIONS.**

**723.11.1.** There shall be an exemption to the imposition of a use tax applicable as follows:

**723.11.1.1.** To the storage, use, or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town;

**723.11.1.2.** To the storage, use, or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

**723.11.1.3.** To the storage, use, or consumption of tangible personal property brought into the Town by a non-resident thereof for his own storage, use, or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into the State of Colorado by a non-resident to be used in the conduct of a business in this State;

**723.11.1.4.** To the storage, use or consumption of tangible personal property by the United States government or the State of Colorado,

or its institutions or political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their religious or charitable functions:

**723.11.1.5.** To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label, or the furnished shipping case thereof;

**723.11.1.6.** To the storage, use, or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a non-resident acquiring residency;

**723.11.1.7.** To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a non-resident of Limon and he purchased the vehicle outside of Limon for use outside of Limon and actually so used it for a substantial and primary purpose of which it was acquired and he registered, titled, and licensed said motor vehicle outside of the Town;

**723.11.1.8.** To the use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to July 27, 1978.

**723.11.1.9.** To the use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to July 27, 1978.

**723.11.1.10.** To the use or consumption of any construction and building materials for which a building permit is issued after August 1, 1996 by any business that shows proof of a valid Town of Limon Sales Tax Account with the Colorado Department of Revenue.

(Added August 1, 1996 by Ordinance no. 301)

#### **723.12. USE - TAX CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO ANOTHER MUNICIPALITY.**

The Town's use tax shall not apply to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of two percent (2%). A credit shall be granted against Limon's use tax with respect to a person's storage, use, or consumption in Limon of tangible personal property purchased by him in a previous statutory or home rule municipality. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed two percent (2%). It shall be the obligation of the person or entity claiming the credit to furnish receipts or other written proof of the tax paid by such person or entity to the previous statutory or home rule municipality.

#### **723.13. MOTOR AND OTHER VEHICLE USE TAX COLLECTION.**

**723.13.1.** The two percent (2%) use tax provided for herein shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and no registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue of the State of Colorado or its authorized agents until any tax due upon the use, storage, or consumption thereof pursuant to this ordinance has been paid.

**723.13.2.** This use tax shall be collected by the authorized agent of the Department of Revenue of the State of Colorado in Lincoln County.

**723.13.3.** The proceeds of this use tax shall be paid to the Town periodically in accordance with an agreement entered into by and between Limon and the authorized Lincoln County Agent of the Department of Revenue of the State of Colorado.

#### **723.14. CONSTRUCTION AND BUILDING MATERIALS USE TAX COLLECTION.**

**723.14.1.** The collection of this use tax for construction and building materials shall be administered by the Board of Trustees of Limon or its authorized representatives.

**723.14.2.** Any person, partnership, or corporation who shall build, construct, or improve any building, dwelling or other structure or improvement to realty whatsoever within the Town of Limon, shall upon application for a building permit, pay as a deposit for payment of the tax levied by this ordinance an amount equal to two percent (2%) of fifty percent (50%) of the estimated cost of the improvement, or two percent (2%) of fifty percent (50%) of the total contract price, if there is a contract for the building construction or improvement; provided, however, that if the estimated cost of the improvement or the total contract price is in excess of Two Hundred Thousand Dollars (\$200,000.00) the Board of Trustees, or their designated agents, in their discretion and upon proper application, may authorize a waiver of said deposit and accept the payment of said tax on a monthly, quarterly or other basis, based upon actual purchases of materials, supplies and equipment for which such tax may be due, subject to such rules and regulations as the Board may from time to time adopt. In all cases where the deposit required by the provisions of this Section is made, if it is determined at the time of the completion of the building, dwelling or other structure of improvement from the invoices and statements reflecting the purchase therefor, that the deposit made as herein required, together with the actual payments to the Town as a sales tax, is in excess of the actual tax due therefor, the person making said deposit or paying said tax may make application to the Board of Trustees or their designated agents for refund of any amount paid in excess of the actual taxes due, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing overpayment of the tax, and, if the Board or its designated agent, is satisfied that there has been such overpayment, the sum shall be refunded to the taxpayer.

**723.15. REFUND PROCEDURE.**

**723.15.1.** A refund shall be made or credit allowed for any tax paid under protest by any purchaser or user, who has, or claims to have, an exemption as provided in this code and who meets the following procedure and requirements:

**723.15.1.1. Application.** Applications for refund must be made within One Hundred Eighty (180) days after the completion of a construction project or within Thirty (30) days of the issuance of a Certificate of Occupation as issued by the Building Department whichever event first occurs. All other requests for refund which do not involve a

construction project shall be made within ninety (90) days after the purchase or use of the goods on which the exemption is claimed. Such application must be supported by the affidavit of the contractor, purchaser, or user accompanied by the original paid invoices or sales receipts and a certificate issued by the seller, together with such further information as may be requested by the Town or its designated agents.

**723.15.1.2.** An application for refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption pursuant to this code shall be made within sixty (60) days after the purchase, storage, use or consumption of the goods, or services whereon an exemption is claimed.

**723.15.1.3.** An application for refund of tax moneys paid in error or by mistake, shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed.

**723.15.2. Decisions.**

Upon receipt of such application and accompanying information, the Director shall examine the same with all due speed and shall give notice to the applicant by an order in writing of his decision thereon.

**723.15.3. Hearing.**

An aggrieved applicant may, within ten (10) days after such decision is mailed to him, petition the Town for a hearing on the claim in which case the Town, or its designated agents, shall, upon notice to the applicant, hold a hearing upon such application, taking such information or evidence as may be material, and shall, thereafter, render its final decision upon such application. The decision of the Town must be issued within ninety (90) days of the hearing. If the applicant remains aggrieved, he is entitled to request or participate in the Alternative Dispute Resolution Procedure as set forth below.

**723.16. USE TAX - ALTERNATIVE DISPUTE RESOLUTION PROCEDURE - DEFICIENCY NOTICE OR CLAIM FOR REFUND.**

**723.16.1.** The taxpayer may elect a state hearing on the Town's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section.

**723.16.2.** As used in this section, the term "state hearing" means a hearing before the Executive

Director of the Department of Revenue or delegate thereof as provided in Colorado Revised Statutes of 1973, Title 29, Article 2, Section 106.1(3), as amended.

**723.16.3.** When the Town asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the Town shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to C.R.S. 29-2-106.1(3), as amended. The taxpayer shall also have the right to elect a state hearing on the Town's denial of such taxpayer's claim for a refund of use tax paid.

**723.16.4.** The taxpayer shall request the state hearing within thirty days after the taxpayer has exhausted all local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this section. "Exhaustion of local remedies" shall mean:

**723.16.4.1.** The taxpayer has timely requested in writing a hearing before the Town and such Town has held such hearing and issued a final decision thereon in accordance with Section **723.15**. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the Town may submit a brief. The Town shall hold such hearing and issue the final decision thereon within ninety days after the Town's receipt of the taxpayer's written request therefore, except the Town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the Town shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefore; or

**723.16.4.2.** The taxpayer has timely requested in writing a hearing before the Town and the Town has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in section **723.16.4.1**.

**723.16.5.** If a taxpayer has exhausted his local remedies as provided above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner

as set forth in C.R.S. 29-2-106.1(3) through (7), as amended.

**723.16.6.** If the deficiency notice or claim for refund involves only the Town, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the Lincoln County District Court as provided in C.R.S. 29-2-106.1(8), as amended, provided that the taxpayer complies with the provisions set forth in Section **723.16.4**.

**723.16.7.** If the Town reasonably finds that the collection of the use tax will be jeopardized by delay, the Town may utilize the procedures set forth in C.R.S. 39-21-111, as amended.

**723.17. ELECTION.**

Before the sales and use taxes levied by this code shall become effective, they shall be submitted to and receive the approval of a majority of the qualified electors of Limon voting at a special election which shall be held solely for that purpose on the 29th day of August, 1978.

**723.18. AMENDMENTS.**

The Board of Trustees of Limon may amend, alter or change this code, except as to the two percent (2%) rate of sales and use taxes herein imposed, subsequent to its adoption. Such amendment, alteration, or change need not be submitted to the qualified electors of Limon for their approval.

**723.19. PENALTY FOR VIOLATION.**

Any person convicted of violating any of the provisions of this code shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) for each day of the offense. Further, the Town may impose and record such liens against the property and/or taxpayer as allowed by the laws of the State of Colorado.

(Amended January 2, 1997 by Ordinance No. 411)

**723.20. EFFECTIVE DATE OF SALE AND USE TAXES.**

Upon adoption of this code and subsequent approval of these sales and use taxes by the qualified electors of Limon these sales and use taxes shall apply to all retail sales, unless exempt, made on or after January 1, 1979.



**730 - Alcoholic Beverages**

HISTORY: Adopted May 4, 1978 by Ordinance No. 250.

**730.1.** Pursuant to Section 12-46-117, C.R.S. 1973, as amended, each application for a license to sell fermented malt beverages under the Colorado Beer Code, C.R.S. 1973 Sections 12-46-101, et seq., as amended, filed with the Town of Limon, shall be accompanied by a non-reimbursable application fee payable to the Town of Limon in the following amount:

**730.1.1.** For a new license, Three Hundred Fifty Dollars (\$350.00);

**730.1.2.** For a transfer of location of ownership of a license, One Hundred Fifty Dollars (\$150.00); and

**730.1.3.** For a renewal of a license, Fifty Dollars (\$50.00).

**730.2.** Pursuant to Section 12-47-135, C.R.S. 1973, as amended, each application for a license to sell alcoholic liquors under the Colorado Liquor Code, C.R.S. 1973 Sections 12-47-101, et seq., as amended, filed with the Town of Limon shall be accompanied by a non-reimbursable application fee payable to the Town of Limon in the following amount:

**730.2.1.** For a new license, Three Hundred Fifty Dollars (\$350.00);

**730.2.2.** For a transfer of location or ownership of a license, One Hundred Fifty Dollars (\$150.00); and

**730.2.3.** For the renewal of a license, Fifty Dollars (\$50.00).

**730.3.** The Town Clerk is hereby empowered and directed to collect said application fee at the time any such license application is presented for filing. Any such license application not accompanied by the correct application fee shall not be accepted for filing.



**731 – Hotel and Restaurant License**

(Added August 5, 2004 by Ordinance No. 493 [Duplicate Ordinance].)

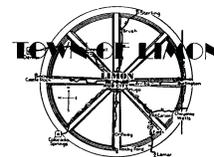
**731.1.** A hotel or restaurant licensed pursuant to Section 12-47-411(3.5), C.R.S. may permit a customer of the hotel or restaurant to reseal and remove from the licensed premises one opened container of partially consumed vinous liquor purchased on the premises so long as the original container did not contain more than 750 milliliters of vinous liquor.



**740 - Licensing**

**741 - Building Contractors**

HISTORY: Added by Ordinance No. 343, June 11, 1990; Deleted in its Entirety by Ordinance No. 404, October 3, 1996



**750 - Franchises****751 - Franchise Application Fee**

HISTORY: Added by Ordinance No. 364, November 5, 1992.

**751.1. APPLICATION FEE.**

At the time of making an application for a franchise within the Town, or at the time of applying for a renewal or transfer of an existing franchise, the franchisee shall make a partial payment of the franchise application fee to the Town in the amount of \$1,000.00.

**751.2. RECORD OF TOWN EXPENSES.**

From the time of the initial franchise application, through franchise negotiations, and up to and including the time that a new franchise or franchise renewal or transfer takes effect, the Town shall maintain accurate records of all expenses incurred, including but not limited to staff costs, consulting fees, publication fees, legal fees, election expenses, and any other expenses related to the franchising process.

**751.3. NOTIFICATION TO FRANCHISEE OF FINAL APPLICATION COSTS.**

Within thirty days after the effective date of the franchise code, or thirty days after the termination of franchise negotiations, the Town shall send to the franchisee, by certified mail, return receipt requested, an accounting which shall contain an itemization of all costs incurred by the Town as set forth in Section 751.2.

**751.4. FINAL PAYMENT OF APPLICATION FEE.**

In the event the costs incurred by the Town as set forth in Section 751.3., are less than the franchisee's initial \$1,000.00 payment, the Town shall refund the difference to the franchisee, which shall be mailed with the accounting. Should the costs incurred by the Town exceed the initial payment made by the franchisee, the franchisee shall be required to pay the difference to the Town within thirty days of the receipt of the accounting, which payment shall constitute the final installment of the franchise application fee.

**751.5. FAILURE TO PAY.**

Any franchise agreement entered into by the Town shall contain a provision acknowledging that a franchisee's failure to pay the franchise application fee as set forth in this code shall constitute a material breach of the terms of the franchise agreement.

**751.6. REVIEW OF FRANCHISE APPLICATION FEE.****751.6.1. Request for Review.**

If the franchisee disputes the reasonableness of the franchise application fee, it may seek review of the charges by filing a protest with the Town Board of Trustees within thirty days of the franchisee's receipt of the accounting statement.

**751.6.2. Hearing Procedure.**

In the event a protest is filed, the Town Board shall appoint a disinterested individual to serve as a hearing officer. The hearing officer shall schedule a hearing date not less than thirty and not more than sixty days from the date of his appointment, and shall notify both the Town and the franchisee of the hearing date by certified mail, return receipt requested. Notice must be mailed no less than twenty days prior to the hearing date. At the hearing, the franchisee shall bear the burden of proving that any charges are unreasonable, and may present evidence regarding the reasonableness of the charges. The Town may respond to any allegations of unreasonableness.

**751.6.3. Purpose of Hearing.**

The hearing shall be for the purpose of considering protest as to the reasonableness of the Town's incurred expenses in the franchising process. The hearing officer is not authorized to consider evidence challenging the Town's decision to incur the costs charged.

**751.6.4. Evidence.**

Evidence may be received in the form of documents, exhibits and testimony from witnesses. The hearing officer shall have all powers necessary to insure the fair and efficient conduct of the hearing but shall not be bound by the Colorado Rules of Evidence. All hearings shall be open to the public.

**751.6.5.Decision.**

The hearing officer may recommend approval of the charges, or recommend alterations of any charges based upon the evidence presented. The Town Board at its next regularly scheduled meeting, shall either approve or reject the recommendation of the hearing officer. Any action of the Town Board is final, and any payment determined to be due must be made to the Town within seven days. Nonpayment constitutes a material breach of the terms of the franchise.

**751.6.6.Costs.**

The Town and the franchisee shall share equally in the costs of the hearing. The franchisee's share of the costs shall be included in the final determination of charges due made by the Town Board of Trustees.

**751.7. CHALLENGE TO ORDINANCE / ATTORNEY'S FEES.**

In the event that any legal action is brought to challenge the validity, legality, or constitutionality of this code, the Town shall recover from any unsuccessful party as part of the costs of the action, all costs incurred, including reasonable attorneys fees, in such litigation.



**Chapter 752 – Natural Gas Franchise – Aquila, Inc.**

HISTORY: Created by Ordinance No. 199, April 6, 1967. Ordinance No. 318, November 6, 1986 repealed and replaced Ordinance No. 199; Amended April 5, 2007 by Ordinance No. 519.

**752.1. FRANCHISE GRANTED.**

The Board of Trustees of Limon, Colorado, (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Aquila, Inc., d/b/a Aquila Networks, a Delaware corporation (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are

now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

**752.2. ASSIGNMENT/TRANSFER.**

**752.2.1.** In this franchise agreement, the following words have the meanings indicated:

**752.2.1.1.** "Control" means actual working control in whatever manner exercised. Control includes, but may not necessarily require majority stock ownership.

**752.2.1.2.** "Proposed transferee" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Franchise or the Grantee.

**752.2.2.** Prior to an assignment or transfer, either party may request a proposed transferee to indicate whether it:

**752.2.2.1.** Has ever been convicted or held liable for acts involving deceit including any violation of federal, state or local law or regulations during the five years prior to the request, or is currently under an indictment, investigation or complaint charging such acts;

**752.2.2.2.** Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction during the five years prior to the request;

**752.2.2.3.** Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a natural gas distribution and/or supply system whereby the proposed transferee's potential liability exceeds \$75,000.00; or

**752.2.2.4.** Is financially solvent, by submitting supporting financial data.

**752.2.3.** The consent or approval of the Grantor to any transfer by the Grantee does not constitute a waiver or release of the rights of the Grantor in or to its public rights-of-way easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this Franchise Agreement.

**752.2.4.** Notwithstanding anything contained in this Agreement, Grantee may pledge or hypothecate the assets of its natural gas distribution and/or supply system (including this franchise) for the purposes of financing without the consent of the Grantor; provided however that no other entity shall be deemed to have authority to operate a natural gas distribution and/or supply system within the Franchise Area, unless authorized by both parties hereto.

**752.3. TERM.**

The rights and privileges granted hereunder shall remain in effect for a period of twenty-five (25) years from the effective date of this code.

**752.4. FRANCHISE FEES OR TAXES.**

**752.4.1.** In exchange for the franchise granted herein, Grantee shall collect from its residential and commercial customers, but not from the Town of Limon, Colorado, located within the corporate limits of Grantor, and pay to Grantor an amount equal to four percent (4%) of gross receipts derived from the sale, distribution or transportation of natural gas delivered within the present or future limits of Grantor. Gross receipts as used herein are revenues received from the sale, distribution or transportation of natural gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. In consideration of said grant and as compensation for the use and occupancy of the streets, alleys, and public grounds, Grantee shall make a report of gross receipts and shall pay, as a franchise fee, into the treasury of said Town, quarterly, an amount equal to four percent (4%) of Grantee's gross receipts from the sale of natural gas to domestic and commercial consumers in the Town.

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the Town may impose for the rights and privileges herein granted for the privilege of doing business within the Town, and in the event any such fee, charge, license, tax or assessment shall be

imposed by the Town, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the Town shall not be deemed to affect the obligation of the Grantee under this section.

**752.4.2.** Any consideration hereunder shall be reported and paid to Grantor by Grantee on a quarterly basis. Such payment shall be made not more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this code.

**752.4.3.** If at any time the Colorado Public Utilities Commission or other authority having proper jurisdiction, prohibits such recovery, then the parties shall within thirty (30) days of the effective date of any such ruling mutually determine a satisfactory and equitable means of compensating the Grantor for the Grantee's use of its streets, alleys, and public grounds. Should the parties fail to come to a mutually acceptable agreement as to the compensation to be paid to the Grantor, the parties agree to submit the question of compensation to an arbitrator of the parties joint choosing, such arbitration to be completed within thirty days of submittal and the result thereof to be binding upon the parties subject to the non-exclusive nature of this agreement. In addition, the Company may petition or request the Grantor to discount or reduce the fee payable for natural gas delivered to a specific customer of Company when it is required to reduce the fee to retain the business of that customer. Modification or reduction of the fee could occur if the fee would cause the customer to cease purchase or transportation deliveries of natural gas from the Company by installing equipment to access natural gas supply not subject to the Town's fee. The Grantor shall not unreasonably withhold its agreement to the requested discount or reduction of the fee and the parties shall mutually work together in such instance to further the interests of both the Grantor and the Grantee whenever possible.

**752.4.4.** Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of Grantor.

**752.4.5.** Grantor shall have access to and the right to examine during normal business hours, those of Grantee's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by Grantee shall be paid within 30 days of the recalculation and any over-payment by Grantee shall be discounted from the next payment(s) due.

**752.5. GOVERNING RULES AND REGULATIONS.**

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this code in accordance with the action taken so as to allow Grantee to be made economically whole. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance or code enacted by the Grantor.

**752.6. PROVISION FOR INADEQUATE ENERGY SUPPLIES.**

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or the supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective

customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

**752.7. CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES.**

**752.7.1.** Any pavements, sidewalks or curbing or other improvements in the public right-of-way taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

**752.7.2.** Grantee agrees that for the term of this franchise it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

**752.7.3.** Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee a sufficient length of time in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

**752.8. EXTENSION OF GRANTEE'S FACILITIES.**

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria and the other factors set forth herein, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor, acknowledging the Grantor's preference that all of the Grantor's residents have access to the

Grantee's service, whenever practicable. The Grantee acknowledges that in the extension of Grantee's facilities or in Grantee's unilateral improvement or relocation of its facilities, the Grantee will give the Grantor reasonable notice of plans for such extension, improvement, or relocation. The notice shall contain the nature and character of the extension, improvement, or relocation, the proposed time that the Grantee will start the work, and other pertinent information either required by the Grantor's codes and ordinances, or deemed necessary by the Grantor in the administration of Grantor's streets, alleys, public ways, and other infrastructure. Grantee will comply with all of Grantor's applicable codes and ordinances relative to land use.

**752.9. RELOCATION OF GRANTEE'S FACILITIES.**

**752.9.1.** If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference and is not merely for the convenience of the Grantor. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and is not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it receives the reasonable cost of relocating the same and Grantor provides a reasonable alternative location for such facilities.

**752.9.2.** Any person or corporation desiring to move a building or other structure along, or to make any unusual use of, any street, alley, avenue, bridge, public right-of-way or public place which shall

interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and a pay a sum sufficient to cover the expense of moving Grantee's facilities and equipment in such location, and any damages incident thereto.

**752.10. CONFIDENTIAL INFORMATION.**

Grantor acknowledges that certain information it might request from Grantee pursuant to this code may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

**752.11. FORCE MAJEURE.**

It shall not be a breach or default under this code if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, code, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

**752.12. HOLD HARMLESS.**

**752.12.1.** Each party hereto (the “Indemnifying Party”) shall, at its sole cost and expense, indemnify, hold harmless, release and defend the other party (the “Indemnified Party”), its officials, boards, commissions, employees and agents from and against any and all liability, loss, claims, suits, judgments, reasonable costs and attorneys fees, and damages of any kind alleged by a claimant against the Indemnifying Party that arises out of the Indemnifying Party’s negligence in performing its obligations under this Franchise.

**752.12.2.** If a claim arises, the Indemnified Party shall tender the defense of the claim to the Indemnifying Party. The Indemnified Party may participate in the defense of a claim at the expense of the Indemnifying Party. The Indemnifying Party may in its sole discretion settle any claims affecting the Indemnified Party without the latter’s approval or the Indemnifying Party may relieve itself of all duty to defend and indemnify the Indemnified Party by paying to the Indemnified Party that sum which the claimant has offered to accept and which the Indemnifying Party would have paid but for the Indemnified Party’s objection.

**752.12.3.** The Indemnifying Party is not required to indemnify the Indemnified Party for the unlawful activities, gross negligence or willful misconduct or ultra vires acts on the part of the Indemnifying Party’s officials, boards, commissions, agents or employees, nor for their actions contrary to statutory or constitutional law.

**752.12.4.** The fact that the Grantee carries out any activities under the Franchise through independent contractors does not constitute an avoidance of or defense to its duty of defense and indemnification under this section. Notwithstanding anything contained herein, Grantee and such independent contractor shall not be considered partners, agents or joint employers.

**752.13. INSURANCE.**

Grantee shall maintain insurance at all times during the term of this franchise and any extensions hereof in an adequate amount to cover and protect itself and others to whom Grantee may be held legally liable in the performance of its duties. Grantee shall upon request provide Grantor with a certificate of insurance evidencing such coverage and naming Grantor as an additional insured thereunder. All insurance carriers providing the coverage described

in this section shall be fully licensed to offer insurance in the State of Colorado.

**752.14. PROCEDURE FOR REMEDYING VIOLATIONS TO FRANCHISE.**

If either party asserts that the other is in default in the performance of a material obligation under this Franchise or has practiced deceit or fraud, the complaining party must, within 90 days of the date it discovers such default, notify the other party in writing of the nature of the default and the desired remedy. The notice shall be served in the manner provided under the laws of Colorado for the service of original notices in civil actions. The defaulting party shall have a reasonable amount of time, pursuant to applicable state law, but in no event more than 120 days after service of the notice, to cure the default, resolve any disputes with respect thereto, or agree to amend or terminate this Ordinance/code/franchise. If the default is not resolved within the 120 day period, the parties may seek all remedies available at law, including, but not limited to, non-binding arbitration, mediation or litigation.

**752.15. PROCEDURES IN EVENT OF TERMINATION.**

**752.15.1.** If this Agreement expires without renewal or is otherwise lawfully terminated, the Grantor may, subject to applicable law:

**752.15.1.1.** Allow the Grantee to maintain and operate its natural gas distribution and supply system on a month-to-month or short-term extension of this Agreement; or

**752.15.1.2.** Order the removal of the aboveground system facilities from the franchise area within a reasonable period of time as determined by the Grantor.

**752.15.2.** In any event, upon termination of this Franchise, Grantee shall be given a reasonable amount of time to remove its plant, structures and equipment, and in so doing, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets and public places in as good a condition as that prevailing prior to the Grantee’s removal of its equipment. The indemnification and insurance provisions shall remain in full force and effect during the period of removal.

**752.15.3.** If the Grantee fails to complete any removal required by this section, or any work

required by law within one-hundred-twenty (120) days after receipt of written notice or termination of this Franchise, as the case may be, the Grantor may cause the work to be done and the Grantee shall reimburse the Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs.

**752.15.4.** The Grantor may seek legal and equitable relief to enforce the provisions of this section.

#### **752.16. RECEIVERSHIP AND FORECLOSURE.**

**752.16.1.** At the option of the Grantor, subject to applicable law, this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

**752.16.1.1.** The receivership or trusteeship is vacated within one hundred twenty (120) days after such appointment; or

**752.16.1.2.** The receivers or trustees have, within one hundred twenty (120) days after their appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all defaults under the Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

**752.16.2.** If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the Grantor may serve notice of revocation on the Grantee and to the purchaser at the sale, and the rights and privileges of the Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

**752.16.2.1.** The Grantor has approved the transfer of the Franchise, in the manner provided herein; and

**752.16.2.2.** The purchaser has covenanted and agreed with the Grantor to assume and be bound by all of the terms and conditions of this Agreement.

#### **752.17. NON-ENFORCEMENT BY GRANTOR.**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement or the franchise ordinance by reason of any failure of the Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce the provisions of this Agreement shall not serve as a basis to stop any subsequent enforcement.

#### **752.18. SUCCESSORS AND ASSIGNS.**

**752.18.1.** All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

**752.18.2.** Neither party may assign this franchise without the prior written consent of the other party, which consent may not be unreasonably withheld and which, the parties acknowledge, is subject to state law; provided, however, that the Grantee may assign this franchise, without the Grantor's consent, to: (a) an affiliate of Grantee (which shall include any person or entity that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with Grantee); (b) any person or entity with which Grantee is merged or consolidated; (c) any person or entity which acquires a substantial part of the Grantee's assets; or (d) any person or entity to which Grantee has assigned, transferred or pledged its rights or interests under this franchise for a mortgage or otherwise as security for indebtedness. Upon the assignment of this franchise to an assignee referred to in clause (a) or (c) above and such assignee's delivery to the Grantor of a writing agreeing to assume Grantee's obligations, Grantee shall be relieved of all further liability hereunder. Nothing in this section shall restrict the right of a mortgagee or other debtor of Grantee, or a purchaser upon foreclosure sale, to operate the franchise, subject to the Grantor's consent as set forth herein, and subject to the terms contained herein and any provisions with respect to this franchise contained in the Grantor's Ordinances, Codes, standards, policies, and regulations as adopted by the Grantor during the terms of the franchise agreement or as empowered by applicable state statute.

#### **752.19. NO THIRD PARTY BENEFICIARIES.**

This code constitutes a franchise agreement between the Grantor and Grantee. No provision of this code

shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

#### **752.20. SEVERABILITY.**

If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, paragraph term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement, or any renewal or renewals thereof.

#### **752.21. NON WAIVER.**

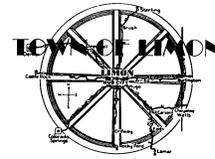
Any waiver of any obligation or default under this code shall not be construed as a waiver of any future defaults, whether of like or different character.

#### **752.22. REPEAL CONFLICTING ORDINANCES.**

This code, , shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances/codes or parts of ordinances/codes in conflict herewith are hereby repealed. Ordinance No. 318 of the Town of Limon, Colorado, is hereby repealed as of the effective date hereof.

#### **752.23. EFFECT AND INTERPRETATION OF ORDINANCE.**

The captions that precede each section of this code are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this code.



### **753 - Mountain View Electric Association**

HISTORY: Added by Ordinance No. 361, June 4, 1992.

#### **753.1. Town Designation.**

Whenever the word Town is hereinafter employed it shall designate the Town of Limon, Lincoln County, Colorado, the grantor, and whenever the word Company is used, it shall designate not only Mountain View Electric Association, Inc., a Colorado corporation, the grantee, but also its successors and assigns.

#### **753.2. Company Rights.**

**753.2.1.** There is hereby granted to the Company, for the period and upon the terms and conditions hereinafter specified, the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through said Town all necessary, needful and convenient poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works, for the purchase, generation, transmission and distribution of electrical energy, with the right and privilege to furnish, sell and distribute said electrical energy to the Town, and the inhabitants thereof, for light, heat and power or other purposes, by means of conduits, cables, poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in said Town and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said Town.

**753.2.2.** The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges,

roads, lanes and other public ways and places under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to said Town and the inhabitants thereof and in the territory adjacent thereto, and further, under the supervision of the properly constituted authority of the Town, to trim or cut down such trees and shrubbery and to control the growth of same by chemical means, machinery, or otherwise, as may be reasonably necessary to effect said purpose or purposes, provided, however, that the Company shall so locate its plants, substations, works, transmissions and distribution structures, lines, equipment and conduits within said Town as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of said streets, alleys or other public ways and places. The Company shall be subject to all reasonable regulations of general application which may now or hereafter be prescribed by general ordinance or code of the Town with respect to the use of the public streets, alleys, avenues and other public places of the Town. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, pavement, water main, sewer, or any other public or private improvement, the Company shall repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water main, sewer, or other public or private improvement after the installation of its poles, conduits or other structures, and in default thereof, after notice, the Town may make such repair and charge the cost thereof to, and collect the same from, the Company.

**753.2.3.**The Company shall so maintain its structures, apparatus, equipment, poles, wires and conduits as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save the Town harmless and indemnify it from all liability, claims, demands, judgments, litigation, suits or damage and all reasonable expenses, to include, but not be limited to, reasonable attorney fees, necessarily accruing against the Town arising or resulting from the negligent exercise by the Company of any of the rights and privileges hereby granted; provided, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same. None of

the Town's damages or expenses reimbursed by the Company under this section shall be surcharged solely to the residents of the Town.

**753.2.3.1.**The Company shall carry during the term of this franchise insurance in a solvent surety company authorized to do business in the State of Colorado, which policy of insurance shall provide minimum amounts of liability as follows:

**753.2.3.1.1.**Workmen's compensation insurance in accordance with the laws of the State of Colorado.

**753.2.3.1.2.**Public liability insurance on all its operations, with limits of not less than \$500,000 to any one person and \$1,000,000 to any one accident and \$200,000 for property damage, or a comparable single limit of liability, and

**753.2.3.1.3.**Motor vehicle liability insurance with limits of not less than \$500,000 to any one person and \$1,000,000 to any one accident and \$200,000 for property damage, or a comparable single limit of liability.

**753.2.3.1.4.**The Company shall provide the Town with a certificate of insurance in the minimum amounts aforesaid within 30 days of the effective date of this code.

**753.2.4.**If at any time it shall be necessary to change the position of any pole, conduit or service connection of the Company to permit the Town to lay, make or change street grades, pavements, sewers, water mains or other Town works, such changes shall be made by the Company at its own expense.

**753.2.5.**The Town shall have the right, without cost, to use all poles of the Company within said Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however, the Company assumes and shall be subject to no liability and shall be subject to no additional expense in connection therewith. It is further provided that the use of said poles by said Town shall not interfere in any unreasonable manner with the Company's use of same. The Company shall have the right to make such use of its poles and other property, other than the uses contemplated in this code as it deems proper so long as such other use does not interfere with the supplying of electrical energy.

**753.3. Company Responsibilities.**

**753.3.1.**The Company shall furnish electrical energy within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in the Town or any addition thereto, at the applicable and effective rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, on file with or fixed by The Public Utilities Commission of the State of Colorado, or by any other competent authority having jurisdiction in the premises.

**753.3.2.**The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

**753.3.3.**The Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution system as the business of the company and the growth of the Town justify, in accordance with the National Electric Safety Code and the Company's Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for electric service concurrently in effect and on file with The Public Utilities Commission of the State of Colorado or other competent authority having jurisdiction in the premises. The Company shall, at all times, make and keep full and complete plats, maps and records showing the exact location of all property of the Company used in the exercise of the rights and privileges granted there under.

**753.3.4.**The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefor, and the interference with, or alteration of any of the company's property upon the premises of its customers, as shall be necessary to insure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its office at Limon, Colorado, available to the public, copies of its Rate Schedules, Standards for Service, Rules and

Regulations and Service Connection and Extension Policies concurrently in effect and on file with The Public Utilities Commission of the State of Colorado or other competent authority having jurisdiction in the premises. Copies thereof shall also be filed in the office of the Town Clerk.

**753.4. Fees and Taxes.**

**753.4.1.**As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments or excises upon the conduits, poles, wires or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, permit charge, or for the inspection of meters, poles, conduits or other property of the Company, or otherwise, the Company shall pay to the Town a sum equal to Three per cent (3%) of its gross revenue derived from the sale of electricity within the corporate limits of the Town for electrical energy furnished for light, heat or power, or other purposes, for electric service furnished it and excluding all revenue received in excess of \$10,000.00 derived per annum from the sale of electric service rendered to each customer at any one location. All amounts paid to the Company by the Town or any of its departments for electric service shall be excluded from computations of the franchise fee.

**753.4.2.**Payment of the franchise fee accruing after the effective date of this code shall be made in quarterly installments not more than 30 days following the close of the calendar quarter for which payment is to be made. The initial and final payments shall be pro-rated for the portions of the quarters at the beginning and the end of the term of this code. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this section, the Town Clerk and/or any committee appointed by the Board of Trustees of said Town shall have access to the books of said Company for the purpose of checking the gross income received from operations within said Town.

**753.5. Further Responsibilities and Reservations.**

**753.5.1.**This code continues the franchise granted by Ordinance No. 198, adopted February 2, 1967, and it shall be in full force and effect from and after its passage, approval and publication, as by law required, and upon acceptance thereof in writing by the Company, and the terms, conditions and covenants hereof shall remain in full force and effect

for a period of twenty-five (25) years from and after such acceptance thereof by said Company. This code, when accepted by the Company as hereinabove provided, shall from and after the effective date, supersede, cancel and be in lieu of any and all other existing or prior grants of right, permission or authority to the Company or any predecessor companies or assignors of the Company, to construct, operate and maintain any system for the production, transmission, distribution and sale of electricity within the Town.

**753.5.2.**All poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works, conduits, plants, substations or other materials or objects pertaining thereto, used or placed by the Company within the Town shall be and remain the property of the Company.

**5.2.1.** If the Company shall be in default in the performance of any of the terms and conditions of this ordinance and shall continue in default for more than thirty (30) days after receiving notice from the Town of such default, the said Town may, by ordinance duly passed and adopted, terminate all rights granted under this code to the Company. The notice of default shall specify the provision or provisions in default. Said notice shall be in writing and shall be served in the manner provided by the laws of Colorado for the service of original notices in civil actions. In the event of cancellation or other termination of this franchise pursuant hereto, the Town may require the Company, at Company's own expense, to forthwith remove all its construction and equipment from the streets, alleys, and public ways in the Town and restore the same in good condition, satisfactory to the Town or its authorized representative.

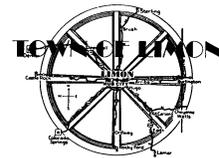
**753.5.3.**Nothing in this code shall be so construed as to prevent the Company from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this code, with the consent of said Town, which said consent shall not be unreasonably withheld. All provisions of this code which are obligatory upon, or which inure to the benefit of the Company shall also be obligatory upon and inure to the benefit of any and all successors and assigns of the Company.

**753.5.4.**The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not inconsistent with the rights herein

granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

**753.5.5.**The Company shall at all times during the period of this franchise maintain an office in the Town of Limon.

**753.5.6.**This is a non-exclusive franchise. The Town does not agree to restrict the number of franchises in all or any part of the Town for any person, firm or corporation in the same business, a competing business or any related business.



**754 - Cable TV**

**754.1. DEFINITIONS.**

For the purposes of this code the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

**754.1.1.**"Agreement" or "Franchise Agreement" means an ordinance or code containing the specific provisions of a franchise granted, including references, specifications, requirements and other related matters.

**754.1.2.**"Access Channels" or "PEG Access Channels" means those channels which, by the terms of this agreement, are required to be kept available by the Grantee for partial or total dedication to public access, educational access or local government access.

**754.1.3.**"Basic Cable Service" means the service tier which includes, at a minimum, the signals and programming as defined in 47 U.S.C. § 543(b)(7), as amended.

**754.1.4.** "Board" means the Town Board of Trustees of the Town of Limon.

**754.1.5.** "Cable Television System" or "System", also referred to as "Cable Communications System" or "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. This definition does not include a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public rights-of-way.

**754.1.6.** "Cable Services" means all communications, maintenance, repair and installation services provided by the Grantee, including the delivery of television signals and programming covered by the regular monthly charge paid by subscribers, including such standard type of television service that is normally furnished by cable communications companies for a regular monthly charge, and such additional communication services as are furnished as part of the cable communication system, including any two-way interactive, or return path services.

**754.1.7.** "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system which is capable of delivering a television channel as defined by the Federal Communications Commission.

**754.1.8.** "Franchise" means an initial authorization, or renewal thereof, issued by the Board, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

**754.1.9.** "Franchise Area" means the entire geographic area of the Town designated in this Agreement to receive cable service from Grantee, including any areas annexed by the Town during the term of this Agreement.

**754.1.10.** "Franchise Fee" means any fee or assessment of any kind imposed by a franchising authority on a Grantee as compensation for the use of public rights-of-way. The term "Franchise Fee" does not include:

**754.1.10.1.** Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable

operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);

**754.1.10.2.** Capital costs which are required by the franchise to be incurred by Grantee for public, educational or governmental access facilities;

**754.1.10.3.** Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance indemnification, penalties, or liquidated damages; or

**754.1.10.4.** Any fee imposed under Title 17, United States Code.

**754.1.11.** "Grantee" means Galaxy Telecom, Inc., a Delaware corporation and its lawful successor, transferee or assignee.

(Transferred by Ordinance No. 384 on December 1, 1994)

**754.1.12.** "Grantor" or "Town" or "Franchising Authority" means the Town of Limon, Colorado, as represented by the Board, or any delegate acting within the scope of its jurisdiction.

**754.1.13.** "Gross Annual Receipts" means the annual gross receipts or other consideration derived directly or indirectly by Grantee from all sources of operations of the cable television system within the Town utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service. This definition excludes refundable deposits, and rebates or credits.

**754.1.14.** "Installation" means the connection of the system to subscribers' terminals, and the provision of service.

**754.1.15.** "Person" means an individual, partnership, association, corporation, governmental entity, company or organization of any kind.

**754.1.16.** "Public building" means any structure located within the franchise area which may be owned, leased and/or occupied and utilized primarily by any governmental or quasi-governmental entity.

**754.1.17.** "Street" means the surface of and the space above and below any public street, right-of-way, road, highway, alley, sidewalk, lane and similar public property in areas that the Grantor shall permit to be included within the definition of street

from time to time, now or hereafter existing as such within the franchise area.

**754.1.18.** "Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the cable system, and who pays the charges therefore.

**754.2. GRANT OF FRANCHISE.**

**754.2.1. Grant.**

Grantor hereby grants to Grantee a non-exclusive, terminable franchise to construct, operate, maintain and reconstruct, a cable television system within the area of the Town of Limon, subject to the terms and conditions as set forth in this Franchise Agreement. Said Franchise shall constitute both a right and an obligation to provide the services required by the provisions of this Agreement.

**754.2.2. Police Powers.**

In accepting this Franchise, Grantee acknowledges its rights hereunder are subject to the police powers of the Grantor to adopt and enforce general ordinances necessary to the safety and welfare of the public. Grantee agrees to comply with all applicable general laws and ordinances enacted by the Grantor pursuant to such power. Nothing in this Franchise shall be deemed to waive the requirements of other codes and ordinances enacted under the police power, including but not limited to, those regarding permits, fees to be paid pursuant to those other codes or ordinances, and the manner of construction.

**754.2.2.1.** Any conflict between the provisions of this Agreement and any other present or future lawful exercise of Grantor's police power shall be resolved in favor of the latter. Any such enactment that is not of general application shall prevail only if the Grantor finds an emergency exists constituting a danger to the health, safety, property or general welfare or such enactment is mandated by federal or state law.

**754.2.3. Use of Public Streets and Ways.**

Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public rights-of-way and public utility easements within the franchise area such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals,

attachments and other property and equipment as are necessary and appurtenant to the operation of the cable system. Grantee shall comply with all applicable Grantor construction codes and procedures.

**754.2.4. Duration.**

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be fifteen (15) years from the effective date of this Agreement, unless lawfully terminated sooner as hereinafter provided.

**754.2.5. Franchise Non-Exclusive.**

This Franchise shall be non-exclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable system as it deems appropriate, provided however that such additional grant shall not operate to materially modify, revoke or terminate any rights previously granted to the Grantee, and provided further that the material provisions of any such additional franchise granted shall be reasonably comparable to those contained herein.

**754.2.6. Franchise Fee.**

**754.2.6.1.** Grantee shall pay to the Grantor an annual franchise fee of three percent (3%) of the Gross Annual Receipts or such greater amount as may be permitted by federal law, upon sixty (60) days notice from Grantor. Such payment shall commence as of the effective date of this Franchise. The Grantor, on an annual basis, shall be furnished with a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by an officer of the Grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment.

Upon thirty (30) days prior written notice Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with generally accepted accounting procedures, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit.

**754.2.6.1.1.** In the event that Grantee disputes the results of Grantor's audit, Grantee may take up to sixty (60) days from the time it is notified in writing of the results of Grantor's audit, to review and revise its financial statements provided to Grantor. Upon the expiration of such sixty day period, Grantee

shall either make the payments as called for in Grantor's audit, plus additional payments as described in section **754.2.6.1.3.**, resolve the issue to the parties' mutual satisfaction, or initiate the arbitration procedures described in Section **754.12.3.**

**754.2.6.1.2.** In the event of arbitration, upon a finding that there was a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of Grantor's audit, as well as the additional compensation described in section **754.2.6.1.3.**, and any other damages or costs as may be required by the arbitrators pursuant to Section **754.12.3.**

**754.2.6.1.3.** The Grantor's right to conduct an independent audit of Grantee's records as described in section **754.2.6.1.1.** shall be limited to the franchise fee payments made to Grantor for the preceding full five years, prior to the year in which the audit is undertaken.

**754.2.6.2.** Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Grantee.

**754.2.6.3.** In the event that any franchise payment or re-computed amount is not made on or before the date specified in the franchise agreement, Grantee shall pay as additional compensation:

**754.2.6.3.1.** An interest charge computed from such due date at an annual rate equal to the prime lending rate of Norwest Bank, Denver, Colorado, plus one percent (1%) during the period for which payment was due; and

**754.2.6.3.2.** If the payment is late by thirty (30) days or more after Grantee receives written notice from Grantor, a sum of money equal to five percent (5%) of the amount due. In lieu of this five percent penalty, at the Grantor's discretion, the late payment may be regarded as a material breach of this Agreement.

**754.2.6.3.3.** In the event that Grantee notifies Grantor of its intent to reevaluate and/or challenge the Grantor's determination of a franchise fee underpayment, no penalty shall accrue against Grantee until such time as the matter has been resolved by agreement of the parties, or an award

has been made in favor of Grantor after arbitration described in Section **754.12.3.**

**754.2.6.4.** Franchise Fee payments shall be made quarterly for the preceding quarter no later than May 15, August 15, November 15 and February 15 of each year. The quarterly payments may be based on unaudited revenue estimates, with any final adjustments made no later than ninety (90) days after the close of Grantee's fiscal year.

#### **754.2.7.Rates.**

The Grantee shall establish rates for its services and apply those rates consistent with governing law. Grantee is not precluded from discounting rates for promotional or marketing purposes.

#### **754.2.8.Rate Regulation.**

Grantor may regulate rates for cable services to the extent permitted by law, and may resume regulation of any rates currently deregulated by preemption of federal and state law, when such preemption is lifted.

#### **754.2.9.Notices.**

Throughout the term of this Franchise, Grantee shall maintain and file with Grantor an address for service of notices by mail. If such address is different from Grantee's corporate offices, a copy of all notices from Grantor to Grantee shall be sent to Grantee's corporate offices as well.

### **754.3. FRANCHISE RENEWAL AND TRANSFER.**

#### **754.3.1.Negotiated Renewal.**

Notwithstanding the formal renewal procedures mandated by the Cable Communications Policy Act of 1984, Grantee may submit to the Grantor a proposal for extension or renewal of the Franchise at any time before the expiration of the Franchise.

**754.3.1.1.** Grantor and Grantee at any time may elect to negotiate a franchise renewal agreement.

**754.3.1.2.** The provisions of this section shall constitute the informal renewal proceedings described in the Cable Communications Policy Act of 1984.

#### **754.3.2.Reimbursement of Processing Costs.**

Pursuant to Town Ordinance 364, and not later than thirty (30) days after the effective date of this Franchise Agreement, Grantee shall reimburse Grantor for all reasonable processing costs incurred in connection with the negotiation of this Franchise Agreement. The franchise processing costs shall not be charged against any franchise fees due the Grantor by the Grantee during the term of this Franchise Agreement, nor shall they be passed through as a direct cost to the Grantee's subscribers.

#### **754.3.3. Transfer of Ownership or Control.**

In this section, the following words have the meanings indicated:

**754.3.3.1.**"Control" means actual working control in whatever manner exercised. Control includes, but may not necessarily require majority stock ownership.

**754.3.3.2.**"Proposed transferee" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Franchise or the Grantee.

**754.3.4.**Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Franchise or any of the rights or privileges therein granted, without the prior consent of the Grantor and then only upon such terms and conditions as the Grantor may lawfully require, except that such prior consent shall not be required for an intra-corporate transfer from one wholly owned subsidiary to another wholly owned subsidiary. The consent required by the Grantor shall be given or denied no later than ninety (90) days following any request, and may not be unreasonably withheld.

**754.3.5.**The requirements of section **754.3.3.2.** shall apply to any change in control of Grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) or more of the voting shares of the Grantee. A transfer of control by the Grantee shall subject the franchise to cancellation unless and until the Grantor consents in writing. The consent required shall be given or denied by the Grantor no later than ninety (90) days following a request, and may not be unreasonably withheld. For the purpose of determining whether it should consent to a transfer or control, the Grantor may inquire into the

qualifications of the proposed transferee and the Grantee shall assist the Grantor in the inquiry.

**754.3.6.**In seeking the Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

**754.3.6.1.**Has ever been convicted or held liable for acts involving deceit including any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts; and

**754.3.6.2.**Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction; and

**754.3.6.3.**Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system whereby the proposed transferee's potential liability exceeds \$75,000.00; and

**754.3.6.4.**Is financially solvent, by submitting the financial data including the financial statements that are audited and certified by a certified public accountant, along with any other data that the Grantor may reasonably require; and

**754.3.6.5.**Has the financial and technical capability to enable it to maintain and operate the cable system for the remaining term of the Franchise.

**754.3.7.**The consent or approval of the Grantor to any transfer by the Grantee does not constitute a waiver or release of the rights of the Grantor in or to its public rights-of-way easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this Franchise Agreement.

**754.3.8.**A sale, transfer or assignment of the Franchise may not be approved without the successor in interest becoming a signatory to this Franchise Agreement.

**754.3.9.**Notwithstanding anything contained in this Agreement, Grantee may pledge or hypothecate the assets of the cable system (including this franchise) for the purposes of financing without the consent of the Grantor; provided however that no other entity shall be deemed to have authority to operate a cable communication systems within the Franchise Area, unless authorized by the Grantor as provided in this Section **754.3.3.**

**754.3.10.** Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the Franchise or of control of the Franchise, including without limitations costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses. Any such reimbursement shall not be charged against any franchise fee due Grantor during the term of the Franchise.

**754.3.11. Right of First Refusal.**

In the event that Grantee receives a bona fide offer to purchase the cable communications system, which offer is acceptable to the Grantee, the specific terms of such offer shall be presented to the Grantor.

Grantor shall have the right of first refusal to acquire the cable communications system upon the same terms and conditions as are made in the bona fide offer. Grantor shall notify Grantee in writing within sixty (60) days of receipt of the offer whether or not it intends to exercise its right of first refusal. If no response is made within sixty (60) days of receipt of a bona fide offer by Grantor, then Grantor shall be deemed to have waived its right of first refusal for that particular offer.

**754.4. FINANCIAL AND INSURANCE REQUIREMENTS.**

**754.4.1. Security Fund.**

**754.4.1.1.** Within thirty (30) days of the effective date of this Agreement, Grantee shall establish and provide to Grantor a security fund, as security for the faithful performance by Grantee of all material provisions of this Agreement. The security fund shall consist of two parts. The first part shall be a construction bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The second part shall be a performance bond in the amount of at least Five Thousand Dollars (\$5,000.00) and shall either be in the form of a bond, an irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of Grantor, as trustee for Grantee, with all interest distributed to the Grantee.

**754.4.1.2.** The construction bond shall be maintained at the Twenty-Five Thousand Dollars (\$25,000.00) level until the system improvements provided for in Exhibit A; as section **754A**, herein are

completed, at which time the bond shall be released, provided there are then no outstanding material violations of this Agreement. The performance bond portion of the security fund shall be maintained at the Five Thousand Dollar (\$5,000.00) level throughout the term of this Agreement, provided that at intervals no more than each three (3) years, Grantor shall have the right to require that this amount be increased to reflect changes in the Denver metropolitan area consumer price index during the prior three year period.

**754.4.1.3.** The performance bond may be assessed by Grantor for purposes including, but not limited to, the following:

**754.4.1.3.1.** Failure of Grantee to pay Grantor sums due under the terms of the Franchise.

**754.4.1.3.2.** Reimbursement of the costs borne by the Grantor to correct franchise violations not corrected by Grantee, after due notice.

**754.4.1.3.3.** Monetary remedies, penalties or damages assessed against Grantee due to default or breach of this Franchise Agreement.

**754.4.1.4.** Grantee agrees that it shall not refuse to pay any assessment on the security fund, or attempt, through litigation or otherwise, to prevent or inhibit Grantor from taking said funds, except as provided herein. Should Grantee seek to challenge Grantor's notice of an intent to assess the security fund for any reason, Grantee shall, within seven (7) days, unless such other time is provided for in this Franchise Agreement, notify Grantor of its dispute of the intent to assess the security fund, and the reasons therefor. In the event that the parties cannot resolve their differences, Grantee shall, within twenty-one (21) days after providing the notice of dispute of the proposed assessment, commence an arbitration proceeding to resolve the dispute pursuant to Section **754.12.3**. Failure to comply with the seven and/or twenty-one day notice provisions as described in this section shall be deemed a waiver of Grantee's right to dispute the proposed assessment, and at such time Grantor may make the assessment against the security fund.

**754.4.1.5.** Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund pursuant to section **754.4.1.3.**, the Grantee shall restore such security fund to the amount required by this agreement.

**754.4.1.6.** If the Grantee fails, after thirty (30) days written notice to pay to the Grantor any franchise fee or taxes lawfully due and unpaid; or, fails to pay the Grantor within such thirty days, any damages, costs or expenses which the Grantor shall be compelled to pay by the reason of any act or default of the Grantee in connection with the Franchise; or fails, after thirty days notice of such failure by the Grantor to comply with any material provision of the Franchise which the Grantor reasonably determines can be remedied by the expenditure of the security fund, the Grantor may thereafter notify the Grantee of its intent to withdraw the amount thereof from the security fund, and the reasons therefore.

**754.4.1.7.** In the event that the Franchise is lawfully terminated for cause by reason of the default of the Grantee, and after the Grantee has exhausted all of its remedies relating thereto, the Grantee may make written request that the Grantor return all of the security fund deposited pursuant to this section and its accrued interest. Such funds shall be returned to the Grantee provided there is then no further outstanding amounts due to Grantor pursuant to this Agreement. In the event that no written request is made by Grantee for return of the security funds within ninety (90) days after exhaustion of all remedies relating to the termination of the Franchise, such funds and all accrued interest shall become the property of the Grantor.

**754.4.1.8.** The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor whether reserved by this agreement or authorized by law. No action, proceeding or exercise of a right with respect to such security fund shall constitute an election of remedies or a waiver of any other right the Grantor may have.

**754.4.2. Indemnification**

**754.4.2.1.** The Grantee shall, at its sole cost and expense, indemnify, hold harmless, release and defend Grantor, its officials, boards, commissions, employees and agents from and against any and all liability, loss, claims, suits, judgments, reasonable costs and attorneys fees, and damages of any kind alleged by a claimant against Grantor or Grantee to arise out of or through any of the following:

**754.4.2.1.1.** The action of the Grantor in granting the Franchise; and

**754.4.2.1.2.** The acts or omissions of the Grantee, its employees, officers or agents, arising out

of the construction, installation, maintenance, operation or removal of the cable system, including damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of any structure, equipment, wire or cable installed; and

**754.4.2.1.3.** The acts or omissions of the Grantee, its employees, officers or agents, including any failure or refusal by the Grantee, its employees, officers or agents to comply with any obligation or duty imposed on the Grantee by this Agreement; and

**754.4.2.1.4.** Penalties arising out of Grantee's copyright infringement; and

**754.4.2.1.5.** Damages arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement.

**754.4.2.2.** If a claim arises, the Grantor or any other indemnified party shall tender the defense of the claim to the Grantee. The Grantor may participate in the defense of a claim at Grantor's expense. Grantee may settle any claims affecting Grantor without the Grantor's approval or Grantee may relieve itself of all duty to defend and indemnify Grantor by paying to Grantor that sum which the claimant has offered to accept and which Grantee would have paid but for Grantor's objection.

**754.4.2.3.** The Grantee is not required to indemnify the Grantor for the unlawful activities, negligence or willful misconduct or ultra vires acts on the part of the Grantor's officials, boards, commissions, agents or employees, nor for their actions contrary to statutory or constitutional law.

**754.4.2.4.** The fact that the Grantee carries out any activities under the Franchise through independent contractors does not constitute an avoidance of or defense to its duty of defense and indemnification under this section. Notwithstanding anything contained herein, Grantee and such independent contractor shall not be considered partners, agents or joint employers.

**754.4.2.5.** Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents or employees (hereinafter "such acts"). Grantor shall hold Grantee harmless from any damage resulting from any such acts of the

Grantor or its officials, boards, commissions, agents or employees in utilizing any government or educational access channels, equipment, or facilities and for any such acts committed by Grantor in connection with work performed by Grantor and permitted by this Agreement, on or adjacent to the cable system.

**754.4.3. Insurance.**

**754.4.3.1.** The Grantee shall provide and maintain general liability, automobile and worker's compensation insurance in the following minimal amounts:

**754.4.3.1.1.** General liability, including comprehensive form, personal injury, broad form property damage, contractual, and premises/operation coverage in limits of One Million Dollars (\$1,000,000.00) aggregate, bodily injury and property damage combined; and

**754.4.3.1.2.** Automobile liability in limits of One Million Dollars (\$1,000,000.00) bodily injury and property damage combined; and

**754.4.3.1.3.** Worker's compensation insurance in at least the minimum statutory amounts.

**754.4.3.2.** All insurance policies shall specify Grantor, its elective and appointive boards, commissions, officers and employees as additional insured. A certificate of insurance shall be provided to the Grantor prior to performance pursuant to this agreement.

**754.4.3.3.** All insurance carriers providing the coverage described in this section shall be fully licensed to offer insurance in the State of Colorado.

**754.5. DESIGN AND CONSTRUCTION REQUIREMENTS.**

**754.5.1. System Design.**

The Cable System shall comply with the design and service requirements and schedules contained in this Agreement and described more fully in Exhibit A, presented in its entirety as section **754A**.

**754.5.2. Geographical Coverage.**

The Grantee shall design and construct the Cable System in such manner as to have the capability to pass by every single-family dwelling unit, multiple-family dwelling unit, school and public

building within the franchise area; provided however that Grantee shall not be required to construct the Cable System in any area that is less than twenty (20) dwelling units per strand mile or an equivalent ratio thereof.

**754.5.3. System Upgrade Schedule.**

**754.5.3.1.** The Grantee shall comply with the requirements of the system upgrade schedule contained in this Agreement, section **754A.3**.

**754.5.3.2.** Within thirty (30) days of the effective date of this Agreement, the Grantee shall provide copies of its detailed construction plan indicating the detailed construction progress schedule, area construction maps, test plan, and projected dates for offering service, for all work presently planned or in progress. With respect to system upgrades not yet undertaken, such information as described herein shall be provided within 120 days from the effective date of this Agreement. In addition, the Grantee shall update this information on at least a quarterly basis, by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reasons for any delay.

**754.5.4. Installation of Cable Underground.**

Cable facilities shall be installed underground to the fullest extent possible. All underground cable shall be buried a minimum of twelve (12) inches below the surface. Non-aerial cable facilities (including cable running to individual homes and other structures) shall be installed underground at the Grantee's cost. Previously installed aerial cable shall be relocated in concert with other utilities at the Grantee's cost when such other utilities convert from aerial to underground construction. Grantor maintains the right to review and approve the Grantee's design for the installation of pedestal and/or vault facilities. Such approval shall be based upon standard cable industry design standards, and shall not be unreasonably withheld.

**754.5.5. Installation of Cable Underground in New Developments.**

Where electric or telephone utilities are to be placed underground in a new subdivision, the Grantor shall give each Grantee serving the franchise area within which the property is located at least seventy-two (72) hours notice of the date on which open trenching will be available for the Grantee's installation of conduit, pedestals, and vaults. On the

request of the Grantor or property owner, the Grantee shall provide specifications as needed for trenching.

#### **754.5.6.Underground of Multiple-Dwelling Units.**

In cases of single site multiple-dwelling units serviced by aerial utilities, the Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and dwelling unit where determined to be technologically feasible, in agreement with the owners and/or owner's association of the multiple-dwelling units.

#### **754.5.7.Rights-of-Way Occupancy.**

**754.5.7.1.**The Grantee shall utilize existing poles, conduits and other facilities whenever possible and economically feasible, and may not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the Grantor is obtained.

**754.5.7.2.**The Grantee shall:

**754.5.7.2.1.** Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners; and

**754.5.7.2.2.** Keep and maintain all transmission lines, equipment and structures in a safe, adequate and substantial condition, and in good order and repair; and

**754.5.7.2.3.** Employ professional care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public; and

**754.5.7.2.4.** Use suitable barricades, flags, lights, flares or other devices as necessary for the safety of all members of the public; and

**754.5.7.2.5.** Place any poles or other fixtures in any public right-of-way in such manner as not to interfere with the usual travel of the right-of-way.

**754.5.7.3.**The Grantee may not make paving cuts or curb cuts unless absolutely necessary, and only after written permission has been given by the Grantor.

**754.5.7.4.**The Grantor may reasonably require conduit for underground cable in areas specified by the Grantor. For the purposes of this subsection, conduit shall be in the form of a steel sleeve when located under improved streets, and in such form as determined by the Grantee, with respect to other right-of-way locations.

**754.5.7.5.**Subject to the supervision and approval of the Grantor, the Grantee may trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**754.5.7.6.**If requested by Grantor, before beginning any excavation or other construction activity on a public right-of-way or easement which crosses or abuts any private property, the Grantee shall clearly mark and delineate with flags, stakes or water-soluble spray paint the boundaries of that public right-of-way or easement where it abuts or crosses the public property.

**754.5.7.7.**The Grantee shall restore to a condition equal to the original condition any excavation or other disturbance of property within a public right-of-way or easement. Grantee shall advise the owners of property adjoining the excavated or disturbed sections of the right-of-way or the owners of property on which the easement is located that they may utilize the complaint procedure set forth in the consumer protection section of this Agreement.

#### **754.5.8.Completion of Work by Grantor.**

On reasonable written notice and on failure of the Grantee to commence, pursue or complete any work required by law or by the provisions of this Agreement to be done in any public right-of-way or public utilities easement, within the time prescribed and to the reasonable satisfaction of the Grantor, the Grantor may cause the work to be done. The Grantee shall pay to the Grantor the reasonable costs of the work in the itemized amount reported by the Grantor to the Grantee within thirty (30) days after receipt of the itemized report.

#### **754.5.9.Relocation/Removal of Facilities.**

**754.5.9.1.**On receipt of reasonable written notice, the Grantee at its own expense shall:

**754.5.9.1.1.**Protect, support, temporarily disconnect, relocate or remove any of its property as necessary because of traffic conditions, public safety, street vacation or street grade, separation or

realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks or any other type of public improvements; and

**754.5.9.1.2.** Nothing described in this section shall be considered a taking of the property of the Grantee and the Grantee is not entitled to additional compensation because of these actions.

**754.5.9.2.** In any such notice from Grantor requiring relocation or removal of facilities, Grantor shall disclose to Grantee any other public projects planned, under consideration, or of which Grantor has knowledge, which may affect the manner and cost of the relocation or removal of Grantee's facilities.

**754.5.10. Stop Work.**

**754.5.10.1.** On notice from the Grantor that any work is being prosecuted contrary to the provisions of this Agreement, or in an unsafe or dangerous manner, the work may immediately be stopped by the Grantor.

**754.5.10.2.** The stop work order shall be:

- In writing; and
- Given to the individual doing the work or posted on the work site; and
- Sent to the Grantee; and
- Clearly indicate the nature of the alleged violation or unsafe condition; and
- State the conditions under which work may be resumed.

**754.6. CONSTRUCTION AND TECHNICAL STANDARDS.**

**754.6.1. Construction Standards.**

**754.6.1.1.** Grantee shall comply with all applicable Grantor construction codes and permit procedures. Grantor may charge reasonable permit and inspection fees to recover the nonrecurring inspection costs imposed by the construction of the Cable System.

**754.6.1.2.** All construction practices shall be in accordance with all applicable sections of federal and

state Occupational Safety and Health Acts and any amendments thereto as well as all state and local codes where applicable.

**754.6.1.3.** All installation of electrical equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code as amended, and all applicable state and local codes.

**754.6.1.4.** Antenna supporting structures (towers) shall be erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state and local codes or regulations.

**754.6.1.5.** All of the Grantee's plant and equipment, and work it performs, shall not unreasonably endanger or physically interfere with the rights of any property owner, or hinder or obstruct pedestrian or vehicular traffic.

**754.6.1.6.** The Grantee shall at all times employ professional care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

**754.6.2. Technical Standards.**

The Cable System shall meet or exceed the technical and performance standards of the Federal Communications Commission, Part 76, Subpart K, as a minimum.

**754.6.3. Test and Compliance Procedure.**

Grantee shall comply with all applicable FCC technical regulations, including but not necessarily limited to 47 C.F.R. Parts 76 and 78, as they may be amended from time to time. Within thirty (30) days of written request from the Grantor, Grantee shall provide a description of the tests which it conducts from time to time pursuant to applicable FCC regulations, together with results of any tests so conducted. Grantee will, at a minimum, perform those tests described in 47 C.F.R. § 76.601, et seq. relating to the technical and performance standards described in 47 C.F.R. § 76.605(a)(2) (aural carrier center frequency), 47 C.F.R. § 76.605(a)(4) (visual and aural carrier; 24 hour variation), 47 C.F.R. § 76.605(a)(7) (carrier to noise ratio), 47 C.F.R. § 76.605(a)(8) (modulation distortions), 47 C.F.R. § 76.605(a)(10) (hum), and the testing requirements

described in 47 C.F.R. § 76.614 (signal leakage), as modified in 47 C.F.R. § 76.601(e). These tests shall be performed in accordance with the above-referenced regulations as they exist now, or as they may be amended from time to time, regardless of whether or not any exemptions from the testing obligations are made available to small system operators in those regulations.

#### **754.6.4.Additional Tests.**

At any time after commencement of service to subscribers, the Grantor may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating any unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its request for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber. In the event that the requests for additional tests are deemed by Grantee to be inappropriate or unnecessary pursuant to this subsection, the parties agree to resolve their differences pursuant to arbitration as described in Section **754.12.3**.

#### **754.6.5.Maintenance Inventory.**

Grantee shall undertake a maintenance inventory of the entire cable communications system within three (3) months of the effective date of this Agreement. The purpose of this inventory is to identify problems and potential problems with the maintenance of the system, and to prioritize those items needing repair and replacement. All such repair and replacement necessary to keep the system operating in accordance with FCC regulations, and in order to meet all requirements of applicable uniform codes, shall be completed within nine (9) months of the effective date of this Agreement. At the time of completion, Grantee shall notify Grantor at least ten days prior to the time it conducts a final inspection. Grantor shall, at its option, be permitted to have its engineer or other representative accompany Grantee on such final inspection. Until final inspection, Grantee shall report to Grantor, every two (2) months, regarding the status of the maintenance inventory, and the results through each reporting period.

### **754.7. SERVICE REQUIREMENTS.**

#### **754.7.1.Public, Educational and Government (PEG) Access Facilities.**

The Grantee shall provide the resources for PEG Access facilities including channel capacity, and either funding for, or the provision of, the necessary interface equipment and cabling to permit operation as specified herein.

#### **754.7.2.PEG Access Channel.**

No later than three (3) months after the effective date of this Agreement, Grantor may request and Grantee shall provide one (1) video channel for PEG use by Grantor.

#### **754.7.3.Grant for PEG Access Equipment.**

No sooner than one (1) month after the effective date of this Agreement, Grantee shall provide a grant of Five Thousand Dollars (\$5,000.00), to be utilized by Grantor for PEG access equipment. Operating expenses related to the use of these capital funds shall be the sole responsibility of the Grantor. The funds referred to in this paragraph are intended to conform with the provisions of Section 611 of the Cable Communications Policy Act of 1984, and further are intended to be payments of the type described in Section 622(g)(2)B) and (C) of said Act, and not to be or to constitute franchise fees.

#### **754.7.4.One-Time Only Basis.**

The grant of **section 754.7.3.** shall be provided on a one-time only basis.

#### **754.7.5.PEG Operations.**

Grantor may negotiate agreements with any neighboring jurisdictions, educational institutions or others to share operating expenses as appropriate. Grantor and Grantee may negotiate an agreement for management of PEG facilities, if so desired by the parties.

#### **754.7.6.Relocation of PEG Channels.**

If Grantee relocates any PEG access channel to a different channel number, Grantee shall reimburse Grantor for any out-of-pocket Grantor costs incurred as a result of the relocation, not to exceed the sum of \$1,500.00. Grantee shall provide Grantor and all subscribers with at least thirty (30) days written notice of such relocation.

#### **754.7.7.Promotion of PEG Access.**

Grantee shall allow the Grantor to place bill stuffers related to PEG access in Grantee's subscriber statements at a cost to the Grantor not to exceed Grantee's cost, no more than twice per year upon the written request of the Grantor and at such times that the placement of such materials would not effect Grantee's cost for the production and mailing of such statements. The Grantor agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available access information provided by Grantor in subscriber packets at the time of installation. Grantee shall also include a listing of the known programming to be cablecast on PEG access channels in any program guide of services that Grantee independently produces or publishes for the Cable System.

#### **754.7.8.PEG Access Facility Management.**

The Grantor may delegate the responsibility for PEG access facility management to a nonprofit entity that it designates or establishes.

#### **754.7.9.Review of PEG Access Management.**

**754.7.9.1.**The Grantor may review the activities of each PEG access facility management entity to determine if it is performing its purposes in a manner satisfactory to the Grantor.

**754.7.9.2.**If the PEG access facility management entity is not performing satisfactorily, the Grantor may receive and reallocate all or a portion of the channel capacity, operations appropriation and capital appropriation, including any facilities and equipment purchased previously with an appropriation to another PEG access facility management entity.

### **754.8. CONSUMER PROTECTION.**

#### **754.8.1.Consumer Service Standards.**

Grantee shall provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operations:

**754.8.1.1.**Sufficient customer service representatives and toll-free telephone line capacity during normal business hours to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds before

being connected to a service representative. No more than three percent (3%) of the callers shall receive a busy signal during the time that Grantee's office is open for business.

**754.8.1.2.**Emergency toll-free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

**754.8.1.3.**An emergency system maintenance and repair staff, capable of responding to major system malfunctions within four (4) hours after notice, if such notice is provided between the hours of 7:00 a.m. and 5:00 p.m. If such notice is provided to Grantee between the hours of 5:00 p.m. and 7:00 a.m., response to the major system malfunction shall be made no later than 11:00 a.m. following such notice.

**754.8.1.4.**An installation staff, capable of installing service to any subscriber within seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated. Except as otherwise provided in Section **754.5.2.**, in no event shall the time to install or initiate new service exceed thirty (30) days from the date of receipt of the request.

**754.8.1.5.** At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

#### **754.8.2.Cable Service and Repair Standards.**

**754.8.2.1.**Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six A.M. (6:00 A.M.)

**754.8.2.2.**The Grantee shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, for all service interruptions and requests for service that result in a service call.

**754.8.2.3.**The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:

**754.8.2.3.1.**For a system outage: Within eight (8) hours, including weekends and holidays, of

receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of all channels, affecting at least ten (10) subscribers of the system.

**754.8.2.3.2.** For an isolated outage: Within twenty-four (24) hours, excluding weekends and holidays, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends and holidays, an outage affecting fewer than three (3) subscribers shall result in a service call no later than the next business day.

**754.8.2.3.3.** For inferior signal quality: Within forty-eight (48) hours, excluding weekends and holidays, of receiving a request for service identifying a problem concerning picture or sound quality, affecting any subscriber.

**754.8.2.3.3.1.** Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem.

In the case of a subscriber not being home when the technician arrives, response time shall be extended twenty-four (24) hours to another appointed time if the technician leaves written notification of arrival and return time. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of duty to respond. In addition to legally permissible charges that may be made by Grantee to the subscriber in connection with a service call, Grantee may, to the extent not prohibited by federal law, make such additional charges to the subscriber for reasonable service charges incurred by Grantee resulting from a subscriber's failure to be present for a service call at a pre-arranged time and place.

**754.8.2.3.3.2.** Unless otherwise permitted by federal law, Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers, unless such equipment has been abused, tampered with or damaged by the subscriber.

**754.8.2.4.** Unless excused or technically infeasible, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work, and resolve all cable system related problems within five (5) business days. Failure to resolve Cable System related problems within thirty (30) days shall be a material breach of this Agreement, unless such failure is excused by Grantor or technically infeasible.

**754.8.2.5.** Grantee shall, at a minimum, maintain its current policy of providing credit at customer request for cable service problems that are not repaired within 48 hours from the time the problem is reported, provided that the Grantee has been given access to property necessary to effect the repair.

#### **754.8.3.Verification of Compliance.**

Grantee shall not be required to acquire equipment necessary to perform compliance measurements on response time to customer inquiries, or to actually measure compliance times as required herein, unless a historical record of complaints indicates a clear failure to comply. In such case, proof of compliance may be required by Grantor.

#### **754.8.4.Non-Compliance with Standards.**

A repeated and verifiable pattern of non-compliance with the consumer protection standards of Sections **754.8.1.** and **754.8.2.** above, after Grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of this Agreement.

#### **754.8.5.Complaint Procedure.**

Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. These procedures shall comply with all standards and specifications of this Agreement. Grantee shall file a copy of these procedures with Grantor.

#### **754.8.6.Notices.**

**754.8.6.1.** As subscribers are connected or reconnected to the Cable System, and at least once annually thereafter, the Grantee shall provide each subscriber with written information concerning the following: (1) products and services offered; (2) prices and options for programming services and conditions of subscription to programming and other services; (3) installation and service maintenance policies; (4) instructions on how to use the cable service; (5) channel positions of programming; and (6) billing and complaint procedures, including the name, address and toll free telephone number of the employee, employees or agent to whom such

inquiries or complaints are to be addressed, and also the Grantor office responsible for administration of the franchise with the name and telephone number of the office. The notice shall also indicate Grantee's business hours, legal holidays and procedures for responding to inquiries after normal business hours.

**754.8.6.2.** The Grantee shall provide all subscribers and the Grantor written notice no less than thirty (30) days prior to any proposed change in these policies.

**754.8.7. Continuity of Service.**

**754.8.7.1.** Subject to applicable law, it shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the Cable System, or the Grantor gives notice of intent to lawfully terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as this Agreement remains in force.

**754.8.7.1.1.** In the event of a change of control of Grantee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the Grantor, and the new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System.

**754.8.7.2.** In the event Grantee fails to operate the Cable System for seven (7) consecutive days without prior approval or subsequent excusal of the Grantor, the Grantor may, at its sole option, operate the Cable System or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the Cable System.

**754.8.8. Changes in Rates.**

At least thirty (30) days prior to the effective date of any rate changes, Grantee shall provide notification to all subscribers of any changes in rates, programming services or channel positions. Such notification shall be made to each subscriber in writing, and through announcements on the cable system.

**754.8.9. Billing.**

Grantee's billing will meet all requirements of 47 C.F.R. § 76.309(c)(3)(B), and any other provisions of federal law as may be in effect from time to time.

**754.8.10. Annual Review of Performance and Quality of Service.**

**754.8.10.1.** At the Grantor's sole option, each year throughout the term of the franchise, Grantor and Grantee shall meet publicly to review system performance and quality of service.

**754.8.10.2.** The various reports required pursuant to this Agreement, results of technical performance tests, the record of subscriber complaints and Grantee's response to complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after conclusion of system performance review meeting, Grantor may issue findings with respect to the Grantee's compliance with this Franchise Agreement and quality of service.

**754.8.10.3.** If Grantor determines that Grantee is not in compliance with the requirements of this Agreement, Grantor may direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of Grantee, after due notice, to correct the areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of this Agreement.

**754.9. OPERATION AND MAINTENANCE**

**754.9.1. Books and Records.**

The Grantor, upon reasonable advance notice, shall have the right to inspect at any time during normal business hours all Grantee books, records, maps, plans, service complaint logs, performance test results and other like materials which relate to the operation of the Cable System and are related to Grantor's legal regulatory authority, provided that Grantor and its authorized agents shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided, further, that records shall be exempt from inspection pursuant to this section to the extent required by applicable law regarding

subscriber privacy, and to the extent such records are protected by law against discovery in civil litigation.

#### **754.9.2.Records Required.**

**754.9.2.1.** In any event, the Grantee shall at all times maintain:

**754.9.2.1.1.** The complaint file required by Section **754.10.4.**; and

**754.9.2.1.2.** A full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the franchise area, exclusive of subscriber service drops and equipment provided in subscriber's homes.

#### **754.10. REPORTS.**

##### **754.10.1. Annual Reports.**

**754.10.1.1.** Within ninety (90) days after the close of Grantee's fiscal year, the Grantee shall submit a written annual report including, but not limited to, the following information for the franchise area:

**754.10.1.1.1.** A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service; and

**754.10.1.1.2.** A statement of projected construction, if any, for the next two (2) years.

**754.10.1.2.** In the event of a request by Grantor within ninety (90) days after the close of Grantee's fiscal year, Grantee shall additionally provide the following information to the Grantor:

**754.10.1.2.1.** A list of Grantee's officers, members of its boards of directors, and other principals of the Grantee; and

**754.10.1.2.2.** A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available, in which case a copy of the annual report shall be submitted.

##### **754.10.2. Service Requirements/Technical Standards Report.**

At the Grantor's request, Grantee shall submit to the Grantor information in sufficient detail to enable the Grantor to ascertain that the service requirements and technical standards of this Agreement are achieved and maintained. If Grantor has reason to believe that portions or all of the Cable System do not meet the FCC technical standards incorporated into this Agreement, at Grantor's request, but no more often than once per three years, the Grantee and the Grantor shall agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of the Cable System. The cost of the evaluation shall be borne equally by the Grantee and the Grantor.

##### **754.10.3. Copies of Federal and State Reports.**

The Grantee is required to submit to the Grantor copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to the operations of its Cable System within the franchise area. Grantee shall submit such documents to the Grantor no later than thirty (30) days after receipt of a Grantor request. The Grantee may not claim confidential, privileged or proprietary rights to such documents unless such rights are determined to be confidential by law or by the practices of federal and state agencies. Such confidential data exempt from public disclosure shall be retained in confidence by the Grantor and its authorized agents and shall not be made available for public inspection.

##### **754.10.4. Complaint File and Reports.**

**754.10.4.1.** The Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable system that result in a service call, in a manner consistent with the privacy rights of subscribers, and the Grantee's actions in response to those complaints.

**754.10.4.2.** Upon Grantor request, a summary of service requests, identifying the number and nature of the requests and their disposition, shall be completed for each quarter and submitted to the Grantor by the twentieth (20th) day of the succeeding month.

**754.10.4.3.** A log of all service interruptions shall be maintained, to the extent not maintained in subscriber records.

**754.10.5. Inspection of Facilities.**

The Grantor may inspect any of the Grantee's physical system facilities and equipment at any time upon at least forty-eight (48) hours notice, or, in case of emergency, upon demand without prior notice.

**754.10.6. Failure to Report/False Statements.**

The unexcused willful refusal or failure of the Grantee to file any of the reports reasonably required, or such other reports as the Grantor may reasonably request, or any materially false or misleading statement or representation made knowingly and willingly by the Grantee in any report required by this Agreement may be deemed a material breach of this Agreement.

**754.10.7. Cost of Reports.**

One (1) copy of all reports and records required under this or any other section shall be furnished to the Grantor at the sole expense of the Grantee.

**754.11. FRANCHISE BREACHES; TERMINATION OF FRANCHISE.**

**754.11.1. Procedure for Remedying Franchise Violations.**

**754.11.1.1.** If the Grantor has reason to believe that the Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, the Grantor may make written demand on the Grantee that it remedy the alleged failure. If the alleged failure is denied or not remedied to the satisfaction of the Grantor, the Grantor shall follow the procedures set forth in this section.

**754.11.1.2.** An informal meeting may be held to review the alleged failure. If the meeting does not result in a satisfactory resolution, the Grantee may request and the Grantor may require an administrative hearing to determine if the failure occurred. The Grantee shall be provided with thirty (30) days written notice of the time and the place of the hearing, the allegations of failure and the possible consequence if found to be true.

**754.11.1.3.** After notice is given and an administrative hearing is held, the Grantor shall determine whether the failure occurred and constitutes a default or material breach of this Agreement as described in Section **754.11.3.1.**, or was excusable. Grantor may order the Grantee to correct or remedy the failure within the reasonable time and in the manner and on the terms and conditions that the Grantor may establish, or, in its sole discretion, Grantor may find a default or material breach of this Agreement.

**754.11.1.4.** If the Grantor determines that the failure was a default or material breach, the Grantor may:

**754.11.1.4.1.** Assess against the Grantee monetary damages as provided in Section 11.2; and/or

**754.11.1.4.2.** Consider the revocation of the franchise as provided in Section **754.11.3.**; and/or

**754.11.1.4.3.** Pursue any other legal or equitable remedy available under the franchise or any applicable law.

**754.11.2. Assessment of Monetary Damages.**

**754.11.2.1.** The Grantor may assess against the Grantee monetary damages up to One Hundred Dollars (\$100.00) per day for material system upgrade/construction delays, and for any other material breaches. These damages may be levied against the security fund and collected as specified in Section **754.4.1.**

**754.11.2.2.** The assessment does not constitute a waiver by the Grantor of any other right or remedy it may have under the Franchise or applicable law including its right to recover from the Grantee any additional damages, losses, costs and expenses, including actual attorney's and/or consultant fees that are incurred by the Grantor by reason arising out of the breach of this Agreement.

**754.11.3. Revocation.**

**754.11.3.1.** Grantor may revoke this Agreement and rescind all rights and privileges associated with this Agreement in the following circumstances, each of which represents a default or a material breach of this Agreement;

**754.11.3.1.1.** If the Grantee fails to perform any of its material obligations under this Agreement or under any legal ordinances, documents and other terms and provisions entered into by and between the Grantor and the Grantee; or

**754.11.3.1.2.** If there is a repeated and verifiable pattern of noncompliance with the consumer service standards set forth in Section **754.8.**; or

**754.11.3.1.3.** If the Grantee fails to provide continuous and uninterrupted cable service; or

**754.11.3.1.4.** If the Grantee practices any fraud or deceit upon the Grantor or any subscriber; or

**11.3.1.5.** If the Grantee becomes insolvent, or if there is a listing of an order for relief in favor of the Grantee in a bankruptcy proceeding.

**754.11.3.2.** After completing the procedures provided in Section **754.11.1.**, the Grantor may place a request for revocation of the Franchise before the Board. The Board shall cause written notice of its intent to consider revocation to be served on the Grantee at least twenty (20) days prior to the date of the hearing. The notice shall contain the time and place of the hearing and shall be published at least once, ten (10) days before the hearing in a newspaper of general circulation within the franchise area.

**754.11.3.3.** The Board shall hear any persons interested in the revocation, and within ninety (90) days shall determine, based on the preponderance of the evidence, whether the Grantee has committed a material breach of this Agreement.

**754.11.3.4.** If the Grantor determines that the Grantee has committed a material breach, then the Grantor may:

**754.11.3.4.1.** Declare that the Franchise is revoked and the security funds forfeited; or

**754.11.3.4.2.** If the material breach is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Grantor determines are reasonable under the circumstances.

**754.11.4. Procedures in the Event of Termination.**

**754.11.4.1.** If this Agreement expires without renewal or is otherwise lawfully terminated, the Grantor may, subject to applicable law:

**754.11.4.1.1.** Allow the Grantee to maintain and operate its Cable System on a month-to-month or short-term extension of this Agreement; or

**754.11.4.1.2.** Order the removal of the above-ground system facilities from the franchise area within a reasonable period of time as determined by the Grantor.

**754.11.4.2.** In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets and public places in as good a condition as that prevailing prior to the Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the security fund shall remain in full force and effect during the period of removal.

**754.11.4.3.** If the Grantee fails to complete any removal required by this section, or any work required by law within ninety (90) days after receipt of written notice and to the satisfaction of the Grantor, the Grantor may cause the work to be done and:

**754.11.4.3.1.** The Grantee shall reimburse the Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs; or

**754.11.4.3.2.** The Grantor may recover the costs through the security fund provided by the Grantee.

**754.11.4.4.** The Grantor may seek legal and equitable relief to enforce the provisions of this section.

**754.11.5. Receivership and Foreclosure.**

**754.11.5.1.** At the option of the Grantor, subject to applicable law, this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

**754.11.5.1.1.** The receivership or trusteeship is vacated within one hundred twenty (120) days; or

**754.11.5.1.2.** The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all defaults under the Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

**754.11.5.2.** If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the Grantor may serve notice of revocation on the Grantee and to the purchaser at the sale, and the rights and privileges of the Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

**754.11.5.2.1.** The Grantor has approved the transfer of the Franchise, in the manner provided herein; and

**754.11.5.2.2.** The purchaser has covenanted and agreed with the Grantor to assume and be bound by all of the terms and conditions of this Agreement.

**754.11.6. Force Majeure.**

**754.11.6.1.** If Grantee's performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented or impaired due to any cause beyond Grantee's reasonable control, or any cause not reasonably foreseeable, the failure to perform shall be excused and penalties or sanctions shall not be imposed.

**754.11.6.2.** The Grantee shall notify the Grantor in writing as soon as possible after the occurrence of such a failure.

**754.11.6.3.** A failure by the Grantee to so notify the Grantor shall not act as a waiver of any of its rights under this section or stop it from asserting those rights.

**754.11.7. Nonenforcement by the Grantor.**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement or the

franchise code by reason of any failure of the Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce the provisions of this Agreement shall not serve as a basis to stop any subsequent enforcement.

**754.12. SEVERABILITY AND CHALLENGE.**

**754.12.1. Severability.**

If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction thereof, except as expressly provided in Sections **754.12.2.** and **754.12.3.**, such determination shall have no effect on the validity of any other section, subsection, paragraph term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement, or any renewal or renewals thereof.

**754.12.2. Challenge.**

**754.12.2.1.** If either party intends to challenge the validity of this Agreement or any provisions hereof, whether by means of initiating legal action or otherwise asserting such invalidity in any otherwise pending action, prior to initiating any legal action or asserting the invalidity, that party shall give written notice to the other party of its intent to challenge one (1) or more of the provisions of this Agreement. The notice shall identify with specificity the provision or provisions of this Agreement which the challenging party asserts are invalid and shall contain a statement of the legal and factual basis for its assertion of invalidity. At the request of the other party, the two parties shall meet to discuss the proposed challenge(s) including, but not limited to, negotiation of alternative or additional modifications to this Agreement mutually satisfactory to the parties, either in lieu of deletion or modification of the challenged provision or in addition to its deletion or modification are in order.

**754.12.2.2.** Within twenty (20) days of receipt of such notice, unless such time is extended by mutual agreement of the parties, the parties shall take one (1) of the following actions:

**754.12.2.2.1.** The non-challenging party will notify the challenging party that it will not agree to delete or modify the challenged provision. Upon receipt of such notice, the challenging party may take such legal action as it deems appropriate; or,

**754.12.2.2.2.** The parties may agree to delete or modify the challenged provision as requested by the challenging party; or

**754.12.2.2.3.** The parties may agree to implement such other modifications to this Agreement in order to resolve the proposed challenge.

**754.12.2.2.4.** In the event of agreement under sections **754.12.2.2.2.** or **754.12.2.2.3.**, Grantor shall prepare and adopt appropriate amendments to this Agreement.

**754.12.2.3.** Failure to comply with the provisions of this section shall constitute failure to exhaust administrative remedies and may be asserted as a defense in any action challenging the validity of any term or provision of this Agreement. Should either party challenge a provision of this Agreement, it is understood that the other party shall not bring legal action of any kind against the other party in connection with the specific provision being challenged, during the time period in which the procedures of Section **754.12.2.** are being followed.

**754.12.3. Effect of Adverse Judicial Rulings/Arbitration.**

**754.12.3.1.** If any provision of this Agreement is invalidated by a court of law or administrative tribunal, the parties agree to enter into good faith negotiations intended to cure the legal impediment in a manner which continues to reflect the intent of the parties in entering into this Agreement. If, after good faith negotiations, the parties are unable to cure the legal impediment in a manner which reflects the intent of the parties, the parties agree to enter into binding arbitration pursuant to the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, et seq.

**754.12.3.2.** An arbitration proceeding shall be commenced by either party notifying the other in writing of its intent to pursue arbitration, and the specific issue in dispute which will be the subject of the arbitration proceeding. Within fifteen days after the date of the notice, each party shall provide written notice to the other of the name and address of its chosen arbitrator.

**754.12.3.3.** In selecting arbitrators, Grantor and Grantee shall each select one arbitrator, and the two arbitrators shall select the third arbitrator. Each arbitrator shall have familiarity with cable television franchising issues.

**754.12.3.4.** Within fifteen days of their appointment, the two chosen arbitrators shall jointly select the third arbitrator and shall so notify the parties. Written position statements shall be provided to each of the arbitrators, with copies sent to the opposing party, within twenty-one (21) days of the date that the third arbitrator is selected. The arbitrators shall schedule a hearing, unless waived by the parties and determined not to be necessary by the arbitrators, and issue a written ruling within one hundred twenty (120) days after the selection of the third arbitrator. A concurring vote of at least two arbitrators shall be necessary for a decision.

**754.12.3.5.** Each party shall incur all the costs of its chosen arbitrator, and the parties shall share equally in the cost of the third arbitrator. The arbitrators shall have the power to require payment of the prevailing party's attorneys' fees by the other party.



**754A – CABLE TV EXHIBIT:**

**CABLE SYSTEM UPGRADE REQUIREMENTS AND SCHEDULE**

**754A.1. UPGRADE REQUIREMENTS.**

**754A.1.1.** Grantee's cable system serving Limon, Colorado, shall be upgraded and/or rebuilt to provide a system capacity of at least twenty-seven (27) video channels, corresponding to an operating frequency range up to Two hundred fifty-three Megahertz (253 Mhz) in accordance with the schedule contained in section **754A.3.**

**754A.1.2.** No later than the completion date of the system upgrade, Grantee shall provide the capability to transmit an emergency alert signal to all participating subscribers, in the form of an audio override which permits Grantor to interrupt and cablecast a spoken message on all channels simultaneously in the event of disaster or public emergency.

**754A.1.3.** As provided in Section **754.6.2.**, the Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical

Standards) and any amendments thereto, shall apply, to the extent permitted by applicable law.

**754A.1.4.** Grantee's cable system shall be further upgraded and/or rebuilt to provide programming of at least thirty-five (35) video channels, corresponding to an operating frequency range up to Three Hundred Megahertz ( 300 Mhz) on or before the fifth anniversary of the effective date of this Franchise Agreement.

**754A.2. SERVICE REQUIREMENTS.**

**754A.2.1.** Subject to applicable law, service shall be provided to all residents of the Town in accordance with the line extension policy described in section 754A.2.2. However, the Grantee shall not be required to offer service to any residences already served by another Grantee.

**754A.2.2.** The Grantee's line extension policy shall be as follows: In those portions of the Franchise area, including areas hereafter annexed by the Town, that consist of raw land presently or at the time of annexation, the Grantee shall install cable television lines and equipment at the same time that electric and telephone utilities are laid (using the same trenches and/or poles, if possible), and shall commence cable service as homes are built and occupied. In those portions of the Franchise area where homes are already built presently or at the time of annexation by the Town, Grantee shall extend its lines as necessary to make cable service available to each and every home within the Franchise area, except as provided in Section **754.5.2.**, within the time periods required by Section **754.8.1.4.** Reasonable extensions of time will be permitted when necessary due to weather conditions.

**754A.2.3.** Grantee shall provide one (1) free connection, and the highest level of basic cable service at no charge to the public buildings within the Town listed in section **754A.3.2.**

**754A.2.4.** No later than the date of completion of the system upgrade, Grantee shall provide a reverse (upstream) connection to the locations listed in section **754A.3.2.2.** to permit live or taped video programming to be transmitted from these locations to the cable system head end, for viewing by the system subscribers.

**754A.3. UPGRADE/CONSTRUCTION SCHEDULE.**

**754A.3.1.** The first part of the system upgrade (section **754A.3.2.**) shall be completed throughout

the Town of Limon by not later than five (5) months after the effective date of this Agreement, in accordance with the schedule indicated above. Completion is defined as the availability of the upgraded service to one hundred percent (100%) of the residences in the Town.

**754A.3.2. Figure A.**

**754A.3.2.1. Reception Locations:**

- Limon Town Hall
- Limon Elementary School
- Limon High School Board of Cooperative Educational Services Building
- Limon Municipal Library
- Limon Community Building
- Limon Volunteer Fire Department / Emergency Services Building

**754A.3.2.2. Origination Locations**

- Limon Town Hall
- Limon High School

**754A.3.3. System Upgrade Schedule**

**754A.3.3.1. Channel Capacity.** The upgrade to provide system capacity of at least twenty-seven (27) video channels shall be completed on or before December 31, 1993.

**754A.3.3.2. Trunk Cable Replacement.** Grantee has been in the process of replacing all of its trunk cable within the Franchise area. The trunk cable replacement shall be completed on or before December 31, 1993.

**754A.3.3.3. Maintenance and upgrades** necessary to reduce the amount of signal leakage to levels within FCC standards, for motels and other like structures within the Town, will be completed on or before December 31, 1993.

**754A.3.3.4.** The second part of the system upgrade, providing for programming on thirty-five (35) channels, shall be completed no later than the fifth anniversary date from the effective date of this Franchise Agreement.

**754A.3.3.5. PEG Access.** All upgrades and improvements necessary to comply with the PEG access requirements of the Franchise Agreement shall be completed on or before December 31, 1993; provided, however, that Grantee shall undertake all necessary excavation work to provide the upgrades and improvements to comply with the PEG access requirements prior to the onset of any weather conditions that might delay completion. There shall be no delays for weather problems and ground conditions for the provision of the PEG access requirements past December 31, 1993.



## 760 – Adult Entertainment Establishments

(Added January 6, 2005 by Ordinance No. 498.)

### 760.1. PURPOSE.

The purpose and intent of this section is to regulate adult businesses, to promote the health, safety, morals and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such adult businesses. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to adult materials protected by the First Amendment or the Colorado constitution, or to deny access by the distributors and exhibitors of adult entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

### 760.2. DEFINITIONS:

**760.2.1.ADULT ARCADE:** An establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video

cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

**760.2.2.ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE:** A commercial establishment which a) devotes a significant or substantial portion of its stock-in-trade or interior floor space to; b) receives a significant or substantial portion of its revenues from; or c) devotes a significant or substantial portion of its advertising expenditures to the promotion of: the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas". An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as the provisions hereof are otherwise met.

**760.2.3.ADULT BUSINESS:** An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or nude model studio. The definition of "adult businesses" shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

**760.2.4.ADULT CABARET:** A club, restaurant, "pop shop", or similar commercial establishment which features: a) persons who appear nude or in a state of nudity or semi-nude; b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

**760.2.5.ADULT MOTEL:** A motel, hotel or similar commercial establishment which: a) offers public accommodations for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this adult type of material by means of a sign visible from the public right of way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television, or b) offers a sleeping room for rent for a period of time less than ten (10) hours; or c) allows a tenant or occupant to subrent a sleeping room for a time period of less than ten (10) hours.

**760.2.6.ADULT MOTION PICTURE THEATER:** A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

**760.2.7.ADULT THEATER:** A theater, concert hall, auditorium or similar commercial establishment which, for any form or consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities".

**760.2.8.EMPLOYEE:** A person who works or performs in and/or for an adult business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

**760.2.9.ESTABLISHMENT:** In regard to an adult business, means and includes any of the following:

**760.2.9.1.** The opening or commencement of any such business as a new business;

**760.2.9.2.** The conversion of an existing business into an adult business;

**760.2.9.3.** The addition of an adult business to any other existing adult business; or

**760.2.9.4.** The relocation of an adult business.

**760.2.10. LICENSING OFFICER:** The Town Clerk.

**760.2.11. MANAGER:** An operator, other than a licensee, who is employed by an adult business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

**760.2.12. NUDE MODEL STUDIO:** Any place where a person, who appears in a state of nudity or displays "specified anatomical areas", is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.

**760.2.13. NUDITY OR STATE OF NUDITY:** a) The appearance of human bare buttocks, anus, male genitals, female genitals or the areola or nipple of the female breast; or b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

**760.2.14. OPERATOR:** Includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

**760.2.15. PEEP BOOTH:** A viewing room of less than one hundred fifty (150) square feet of floor space.

**760.2.16. PERMITTEE AND/OR LICENSEE:** A person in whose name a permit and/or license to operate an adult business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

**760.2.17. PERSON:** An individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

**760.2.18. PREMISES OR PERMITTED OR LICENSED PREMISES:** Any premises that requires a license and/or permit and that is classified as an adult business.

**760.2.19. PRINCIPAL OWNER:** Any person owning, directly or beneficially, a) ten percent (10%) or more of a corporation's equity securities; b) ten percent (10%) or more of the membership interests in a limited liability company; or c) in the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

**760.2.20. PRIVATE ROOM:** A room in an adult motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

**760.2.21. SEMINUDE:** A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

**760.2.22. SEXUAL ENCOUNTER ESTABLISH-MENT:** A business or commercial establishment, that as one of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or seminude. An adult motel will not be classified as a sexual encounter establishment by virtue of the fact that it offers private rooms for rent.

**760.2.23. SEXUAL ORIENTED BUSINESS:** This term shall have the same meaning as an Adult Entertainment Establishment as regulated by this code.

**760.2.24. SPECIFIED ANATOMICAL AREAS:** (A) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or (B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**760.2.25. SPECIFIED CRIMINAL ACTS:** Sexual crimes against children, sexual abuse, rape or crimes connected with another adult business, including distribution of obscenity, prostitution, or pandering.

**760.2.26. SPECIFIED SEXUAL ACTIVITIES:** (A) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts; (B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; (C) Masturbation, actual or simulated; or (D) Human genitals in a state of sexual stimulation, arousal or tumescence; (E) Excretory functions as part of or in connection with any of the activities set forth in subsections (A) through (D) of this definition.

**760.2.27. TRANSFER OF OWNERSHIP OR CONTROL OF AN ADULT BUSINESS;** (Means and includes any of the following):

**760.2.27.1.** The sale, lease or sublease of the business;

**760.2.27.2.** The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;

**760.2.27.3.** The establishment of a trust, management arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

**760.3. LOCATION OF ADULT BUSINESSES; AMORTI-ZATION.**

**760.3.1.** It shall be unlawful to operate or cause to be operated any adult entertainment establishments, also known as sexually oriented businesses in any location in the town except as provided in the Land Development Code of the Town of Limon, Chapter II-Zoning, as amended.

**760.3.2.** It shall be unlawful to operate or cause to be operated an adult entertainment establishments, also known as sexually oriented businesses within one thousand feet (1000') of:

**760.3.2.1.** A church;

**760.3.2.2.** A school or childcare facility;

**760.3.2.3.** A public park (not including trails);

**760.3.3.** It shall be unlawful to cause or permit the operation of an adult business within one thousand feet (1,000') of another adult entertainment establishment, also known as sexually oriented business . The distance between any such businesses and those businesses specified in section **760.3.2.** shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which the adult business is located.

**760.3.4.** It shall be unlawful to cause or permit the operation or maintenance of more than one adult business in the same building, structure or portion thereof.

**760.3.5.** Any adult business lawfully operating on the effective date of this chapter that is in violation of sections **760.3.2.** through **760.3.4.** will be permitted to continue for a period six (6) months from the effective date hereof. However, the zoning administrator may grant an extension of time during which an adult business in violation of sections **760.3.2.** through **760.3.4.** will be permitted to continue upon a showing that the owner of the business has not had a reasonable time to recover the initial financial investment in the business. No such extension of time shall be for a period greater than that reasonably necessary for the owner of the business to recover his/her initial financial investment in the business. An adult business in violation of subsections **760.3.2.** through **760.3.4.** may continue during such extended period, unless the business is sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such business shall not be enlarged, extended or altered except that the business may be brought into compliance with this chapter. If two (2) or more adult businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the adult business which was first established and continually operating at the particular location will be deemed to be in compliance with sections **760.3.2.** through **760.3.4.** , and the later established business(es) will be deemed to be in violation of sections **760.3.2.** through **760.3.4.** of this section.

**760.3.6.** An adult business lawfully operating is not rendered a nonconforming use by the subsequent location of a church, school, childcare facility, public park, residential district, or a residential lot within five hundred feet (500') of the adult business; however, if the adult business ceases operation for a period of one hundred eighty (180) days or more regardless of any intent to resume operation, it may not recommence operation in that location.

#### **760.4. LICENSE REQUIRED; FEE:**

**760.4.1.** No person shall conduct an adult business without first having obtained an annual adult business license.

**760.4.2.** Applicants for an annual adult business license shall pay a license fee of fifty dollars (\$50.00).

**760.4.3.** In the event an application for an adult business license is withdrawn or denied, the license fee shall not be refunded to the applicant.

#### **760.5. LICENSE APPLICATION:**

**760.5.1.** All applicants for an adult business license shall file an application for such license with the Town Clerk on forms to be provided by the Clerk. Each principal owner and all managers and employees shall be named in the application form.

**760.5.2.** The completed application shall contain the following information and shall be accompanied by the following documents:

**760.5.2.1.** If the applicant is:

**760.5.2.1.1.** An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is eighteen (18) years of age;

**760.5.2.1.2.** A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

**760.5.2.1.3.** A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the state, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the state, the names and capacity of all officers, directors and principal owners, and the name of the registered corporate agent and the address of the registered office for service of process;

**760.5.2.1.4.** A limited liability company shall state its complete name, the date of filing of the articles of organization and operating agreement, the names of all managers and members.

**760.5.2.2.** Whether the applicant or any other individual listed under section **760.5.1.** had worked under or has had a previous adult business license under this chapter or other adult business or adult entertainment ordinance from another state, city or county denied, suspended or revoked, including the name and location of the adult business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

**760.5.2.3.** Whether the applicant or any other individual listed under section **760.5.1.** holds any other licenses under this chapter or other similar adult business ordinance from another municipality,

county or state and, if so, the names and locations of such other permitted business.

**760.5.2.4.** The location of the proposed adult business, including a legal description of the property, street address and telephone number(s), if any.

**760.5.2.5.** Proof of the applicant's right to possession of the premises wherein the adult business is proposed to be conducted.

**760.5.2.6.** The applicant's, or any other individual's listed, pursuant to section **760.5.1.**, mailing address and residential address.

**760.5.2.7.** A photocopy of the driver's license or other government issued identification card for the individuals listed in section **760.5.1.**

**760.5.2.8.** A floor plan of the proposed licensed premises which specifies the location and dimensions of any manager's station and demonstrates that there is an unobstructed view from at least one of the manager's stations of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The proposed floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises. The proposed floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches ( $\pm 6''$ ). The diagram shall designate the place where the license will be conspicuously posted and the location of any proposed stage. A floor plan is not required of the licensed premises of an adult motion picture theater.

**760.5.2.9.** A current certificate drawing prepared, within thirty (30) days prior to the application, by a land surveyor depicting the property lines and the structures containing any adult business or massage parlor within one thousand feet (1,000') of the closest exterior wall of the structure in which the applicant's business is proposed to be located and depicting the property line of any church, school, childcare facility, public park, residential zone district or residential lot within five hundred feet (500') from the closest exterior wall of the structure in which the applicant's business is proposed to be located.

**760.5.2.10.** Whether the applicant or any of the other individuals listed pursuant to section **760.5.2.1.**

have been convicted of a specified criminal act within the times set forth in section **760.8.**and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

**760.5.2.11.** Photographs (passport size or approximately 2 inches by 2 inches) and fingerprints of all principal owners and each manager, general partner and in the case of a corporate applicant, the president of the corporation.

**760.5.3.** If the applicant is an individual, he/she must sign the application for a license. If the applicant is a corporation it must be signed by the president or vice president and attested to by the secretary or assistant secretary. If the applicant is a general or limited partnership it must be signed by a general partner. If the applicant is a limited liability company it must be signed by the manager.

**760.5.4.** If an omission or error is discovered by the Town clerk, the application will be returned to the applicant for completion or correction without further action by the town clerk. Any application rejected due to an omission or error shall be refiled only when the omission or error has been remedied. For the purposes of this chapter, the date the town clerk accepts an application which is complete shall be the date the application is filed with the Town clerk.

**760.5.5.** In the event that the Town clerk determines that the applicant has improperly completed the application, he/she shall promptly notify the applicant of such fact and allow the applicant thirty (30) days to properly complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

**760.5.6.** Applicants for a license under this chapter shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the town clerk, shall be grounds for the suspension or revocation of an adult business license.

#### **760.6. APPLICATION FEE:**

Each applicant for a new license or as specified in Section **760.12.1.**, whether an individual, partnership

or corporation, shall pay an application fee of one hundred fifty dollars (\$150.00) at the time of the filing of an application. Such application fee shall be nonrefundable.

#### **760.7. INVESTIGATION:**

On receipt of a properly completed application and the payment of the application and license fees, the Town clerk shall investigate the background of each individual applicant, employee, the partners of a partnership, or the officers, directors and holders of the stock of a corporation. Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado department of public safety for each person who will be investigated. The investigation conducted by the clerk shall be sufficient to verify the accuracy of all the information required by section 760.5. The clerk shall also transmit a request to the Town's zoning official for a report that the proposed location of such adult business complies with the locational requirements of this chapter. The zoning official shall issue such report within five (5) business days of transmission of the request. If the zoning official fails to issue the report as required, the Town clerk shall presume that the proposed location of the adult business complies with this chapter.

#### **760.8. APPROVAL/DENIAL OF LICENSE:**

**760.8.1.** The application of any applicant shall be approved or denied by the Town clerk within fourteen (14) days of the date the application is filed with the Town clerk. The Town clerk shall deny a license if:

**760.8.1.1.** The applicant is under the age of eighteen (18) years;

**760.8.1.2.** The applicant has made a false statement upon the application or has given false information in connection with an application;

**760.8.1.3.** The applicant or any holder of any class of stock, or a director, officer, partner or principal of the applicant has had an adult business license revoked or suspended anywhere within the state within one year prior to the application;

**760.8.1.4.** The applicant has operated an adult business which has determined to be a public nuisance under state law or this code within one year prior to the application;

**760.8.1.5.** A corporate applicant is not in good standing or authorized to do business in the state; or

**760.8.1.6.** The applicant is overdue in the payment to the Town of taxes, fees, fines or penalties assessed against him/her or imposed against him/her in relation to an adult business;

**760.8.1.7.** The applicant has not obtained the required sales tax license;

**760.8.1.8.** The applicant has been convicted of a specified criminal act within the five (5) year period prior to the date the application is filed with the Town clerk.

**760.8.2.** In the event that the Town clerk denies a license, he/she shall make written findings of fact stating the reasons for the denial, and a copy of such decision shall be sent by first class mail to the address shown in the application. An applicant shall have the right to a hearing before the Municipal Judge as set forth in section 760.11.3. A written request for such hearing shall be made to the Municipal Judge within ten (10) days of the date of the denial of the license by the Town clerk. This hearing shall be held within fourteen (14) days from the date a timely request for hearing is received by the Municipal Judge and shall follow all the relevant procedures set forth for a suspension or revocation of a license contained in Section 760.11.3.

**760.8.2.1.** At the hearing referred to above, the Municipal Judge shall hear such statements and consider such evidence as the police department or other enforcement officers, the applicant or other party in interest, or any other witness shall offer which is relevant to the denial of the license application by the Town clerk.

**760.8.2.2.** If the Municipal Judge determines that the applicant is ineligible for a license per section 760.8.1., he/she shall issue an order sustaining the Town clerk's denial of the application, within two (2) days after the hearing is concluded, based on findings of fact. A copy of the order shall be mailed to the applicant at the address supplied on the application.

**760.8.2.3.** The order of the Municipal Judge made pursuant to section 760.8.2.2. shall be a final decision and may be appealed to the district court pursuant to Colorado rules of civil procedure 106(a)(4). Failure of an applicant to timely follow the limits specified above constitutes a waiver by him/her

of any right he/she may otherwise have to contest the denial of his/her license application.

**760.8.3.** If any Town official or department fails to render a timely decision pursuant to the terms of this section then said official or department shall be deemed to have approved or consented to the issuance of the requested license.

**760.9. TERM OF LICENSE:**

All licenses granted pursuant to this chapter shall be for a term of one year. Said term shall commence on January 1 of each year and terminate upon December 31 of the same year. Applications for a license filed at any other time during the year shall be treated the same as if they were filed January 1 of that year and shall terminate on December 31 of that same year, and no proration shall be permitted.

**760.10. LICENSE RENEWAL:**

Renewal of an existing license granted pursuant to this chapter may be had by payment of the annual licensing fee and filing of a renewal application with the Town clerk not less than forty five (45) days prior to the date of expiration. The Town clerk may waive, for good cause shown, this filing time requirement.

**760.11. SUSPENSION OR REVOCATION OF LICENSE:**

**760.11.1.** The Municipal Judge may suspend a license for a period not to exceed six (6) months or revoke any license granted pursuant to this chapter upon a finding of any of the following facts:

**760.11.1.1.** Repeated disturbances of the public peace have occurred within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds within the neighborhood of the licensed establishment involving patrons, employees or the licensee;

**760.11.1.2.** The licensee or any employees thereof have offered for sale or knowingly allowed to be consumed or possessed upon the licensed premises, or upon any parking areas, sidewalks, walkways, accessways or grounds immediately adjacent to the licensed premises, narcotics, dangerous drugs or fermented malt, malt, vinous or spirituous beverages;

**760.11.1.3.** The licensee or manager is not upon the licensed premises at all times that adult entertainment is being provided;

**760.11.1.4.** Adult entertainment was offered at the licensed establishment during hours prohibited by section **760.14.**;

**760.11.1.5.** The licensee, manager or employee has allowed or has done nothing to prevent patrons from engaging in public displays of indecency in violation of state law or has allowed patrons or employees to engage in acts of prostitution or negotiations for acts of prostitution within the licensed establishment or upon any parking areas, sidewalks, accessways or grounds immediately adjacent to the licensed establishment, when the licensee, manager or employee knew or should have known such displays or acts were taking place;

**760.11.1.6.** The licensee or manager made a false statement or gave false information in connection with an application for a license or a renewal of a license;

**760.11.1.7.** The licensee, manager, or employee violated or permitted a violation of any provisions of this section **760** including the standards of conduct set forth in section **760.15.**;

**760.11.1.8.** The manager or the employee of the licensed establishment is under the age of eighteen (18) years;

**760.11.1.9.** The licensee, in the case of a corporation, is not in good standing or authorized to do business in the state;

**760.11.1.10.** The licensee or an employee knowingly operated any aspect or facilities of the adult business during a period of time when the adult business license was suspended;

**760.11.1.11.** The licensee is delinquent in the payment to the Town or state for any taxes or fees past due;

**760.11.1.12.** The licensee, manager or employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation, to occur within the licensed premises; or

**760.11.1.13.** The licensee, manager or employee has been convicted of a specified criminal act.

**760.11.2.** Nothing in this chapter shall prohibit the Town from taking any other enforcement action provided for by this code, the laws of the state, or of the United States.

**760.11.3.** A licensee shall be entitled to a hearing before the Municipal Judge if the Town seeks to suspend or revoke his/her license based on a violation of this chapter;

**760.11.3.1.** When there is probable cause to believe that a licensee has violated or permitted a violation of this chapter to occur in or near the licensed establishment, the police department may file a written complaint with Municipal Judge setting forth the circumstances of the violation.

**760.11.3.2.** Municipal Judge shall provide a copy of the complaint to the licensee, together with notice to appear before the Municipal Judge for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.

**760.11.3.3.** In such cases where specified criminal acts are in issue, the provisions of Colorado Revised Statutes section 24-5-101 shall control.

**760.11.3.4.** At the hearing referred to above, the Municipal Judge shall hear such statements and consider such evidence as the police department, or other enforcement officers, the owner, occupant, lessee or other party in interest, or any other witness shall offer which is relevant to the violation alleged in the complaint. The Municipal Judge shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Municipal Judge determines that a violation did occur he/she shall issue an order suspending or revoking the license, within twenty (20) days after the hearing is concluded, based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

**760.11.3.5.** The order of the Municipal Judge made pursuant to section **760.11.3.** shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Failure of a licensee to timely appeal said order constitutes a waiver by him/her of any right

he/she may otherwise have to contest the suspension or revocation of his/her license.

**760.11.3.6.** The Municipal Judge shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the Municipal Judge conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Municipal Judge. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the Town Attorney shall:

**760.11.3.6.1.** Petition any Judge of the Municipal Court of the Town, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the Court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of wilful failure to comply with such order of Court; or

**760.11.3.6.2.** Petition the appropriate District Court setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the Court, after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of wilful failure to comply with such order of Court.

**760.11.4.** In the event of suspension, revocation, or cessation of business, no portion of the license fee, application fee or investigative fee shall be refunded.

**760.11.5.** When the Municipal Judge revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult business license for one year from the date the revocation became effective.

**760.12. DISPLAY; TRANSFERABILITY; CHANGE OF OWNERSHIP:**

**760.12.1.** Any adult business license issued pursuant to the terms of this section **760** shall be

prominently displayed at all times upon the premises for which the license was issued in accordance with section **760.5.2.8**.

**760.12.2.** Licenses issued under this Chapter shall not be transferable except as provided herein. Any transfer of ownership or control by a licensee holding an adult business license shall result in termination of the license unless such licensee within thirty (30) days prior to any such transfer files a written notice of such transfer accompanied by the application fee and an investigation fee as required by Sections **760.6** and **760.7**. Any such transfer shall be reported on forms provided by the Town Clerk and shall require the names of all new principal owners and any information as required by Section **760.5**. Approval or denial by the Town Clerk of such transfer shall be upon the same terms as provided for in this Chapter for the approval or denial of an adult business license.

**760.12.3.** When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license.

**760.12.4.** Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license shall be issued for each specific adult business and each geographical location.

### **13. MANAGER; CHANGE OF MANAGER:**

**760.13.1.** A registered manager shall be on the premises of an adult business at all times that adult entertainment is being provided. It shall be unlawful for any person to work as a manager of an adult business without first registering with the Town Clerk. The registration form shall require the applicant to provide his/her legal name and any aliases, home address, telephone number and satisfactory proof that he is twenty one (21) years of age.

**760.13.2.** In the event a licensee changes the manager or any employees of an adult business, the licensee shall report such change and register the new manager or any employees on forms provided by the Town Clerk within ten (10) days of such change. Any new employee or manager shall pay the investigation fee specified in Section **760.7** and shall

be subject to approval or denial in accordance with the provisions of Section **760.8**.

### **760.14. HOURS OF OPERATION:**

It shall be unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises from twelve o'clock (12:00) midnight until eight o'clock (8:00) A.M.

### **760.15. STANDARDS OF CONDUCT:**

**760.15.1.** The following standards of conduct must be adhered to by employees of any adult business which offers, conducts or maintains live adult entertainment:

**760.15.1.1.** Clothing: No employee or entertainer mingling with the patrons or serving food or beverages shall be unclothed or in such attire, costume or clothing so as to expose to view any specified anatomical area.

**760.15.1.2.** Touching, Caressing, Fondling: No employee or entertainer shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

**760.15.1.3.** Simulation Of Specified Areas: No employee or entertainer shall wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

**760.15.1.4.** Performance Standards:

**760.15.1.4.1.** No employee or entertainer shall be unclothed or in such attire, costume or clothing so as to expose any portion of the specified anatomical area except upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest patron or behind a solid, uninterrupted physical barrier which completely separates the entertainer from any patrons. This barrier must be a minimum of one-fourth inch (1/4") thick and have no openings between the entertainer and any patrons. The stage shall be fixed and immovable.

**760.15.1.4.2.** No employee or entertainer shall perform while nude or seminude any obscene acts or obscene acts which simulate specified sexual activities.

**760.15.1.5.** Use Of Inanimate Objects: No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this Section.

**760.15.1.6.** Menu: There shall be posted and conspicuously displayed in every area offering adult entertainment a list of food and beverage prices.

**760.15.1.7.** Alcohol And Liquor: No adult entertainment use shall be located within any premises which is licensed for the retail sale of three and two-tenths percent (3.2%) beer, malt, vinous or spirituous liquor, as such terms are defined in title 12, articles 46 and 47 Colorado Revised Statutes.

**760.15.1.8.** Consumption Of Alcohol: It shall be unlawful to permit the consumption of three and two-tenths percent (3.2%) beer or other alcoholic beverages within the same premises as an adult entertainment use.

**760.15.1.9.** Tips: Any tips for entertainers shall be placed by a patron into a tip box which is permanently affixed in the adult business and no tip may be handed directly to an entertainer. A licensee that desires to provide for such tips from its patrons shall establish one or more containers to receive tips. Any physical contact between a patron and an entertainer is strictly prohibited.

**760.15.1.10.** Tip Boxes: An adult business that provides tip boxes shall conspicuously display in the common area of the premises one or more signs in letters at least one inch (1") high to read as follows:

**ADULT ENTERTAINMENT IS REGULATED BY THE TOWN OF LIMON**

*Any tips are to be placed in tip box and not handed directly to the entertainer. Any physical contact between the patron and the entertainer is prohibited by law. Violators face maximum penalties of \$1,000 and/or one year in jail.*

**760.15.1.11.** Outside Visibility: No adult entertainment occurring on the premises shall be visible at any time from outside of the premises.

**760.15.2.** Any licensee who offers, conducts, or maintains live adult entertainment or an adult arcade which exhibits in a peep booth, a film, videocassette or other video reproduction, shall comply with the following requirements in addition to those set forth in section **760.15.2.1.**:

**760.15.2.1.** It is the duty of the licensee of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

**760.15.2.2.** It is the duty of the licensee and manager of the premises to ensure that any doors to public areas on the premises remain unlocked during business hours.

**760.15.2.3.** The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment or other forms of adult entertainment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the manager's, stations. The view required in this subsection must be by direct line of sight from the manager's station. A manager's station may not exceed thirty two (32) square feet of floor area.

**760.15.2.4.** No alteration to the configuration or location of an adult business may be made without the prior written approval of the zoning official.

**760.15.2.5.** It shall be the duty of the licensee, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in section **760.2.3.** remains unobstructed by any doors, curtains, drapes, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the license application filed pursuant to this chapter.

**760.15.2.6.** No peep booth may be occupied by more than one person at any one time.

**760.15.2.7.** Peep booths must be separated from other peep booths by a solid, uninterrupted physical divider which is a minimum of one-fourth inch (1/4") thick and serves to prevent physical contact between patrons.

**760.16. AGE RESTRICTIONS:**

Admission to adult businesses is restricted to persons of the age of eighteen (18) years or more.

**760.17. LIGHTING REQUIREMENTS:**

**760.17.1.** All off street parking areas and premises entries of adult businesses shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on all parking surfaces and/or walkways. This required lighting level is to help ensure the personal safety of patrons and employees and to reduce the incidence of vandalism and other criminal conduct.

**760.17.2.** The premises of all adult businesses, except adult motion picture theaters, shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than two (2) foot-candles of light as measured at the floor level.

**760.17.3.** Adult motion picture theaters shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than one foot-candle of light as measured at the floor level.

**760.18. RIGHT OF ENTRY:**

The application for an adult business license shall constitute consent of the licensee and his/her agents or employees to permit the Town's police department or any other agent of the Town to conduct routine inspections of any licensed adult business during the hours the establishment is conducting business.

**760.19. EXEMPTIONS, GENERALLY:**

**760.19.1.** It is an affirmative defense to prosecution under this chapter if a person appearing in a state of nudity or seminude did so in a modeling class operated:

**760.19.1.1.** By a proprietary school, licensed by the state; a college, junior college or university supported entirely or partly by taxation;

**760.19.1.2.** By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

**760.19.1.3.** In a structure:

**760.19.1.3.1.** Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

**760.19.1.3.2.** Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

**760.19.1.3.3.** Where no more than one nude model is on the premises at any one time.

