CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2004-50

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF CORAL GABLES, FLORIDA, BY PROVIDING THE PROCEDURES AND REQUIREMENTS RELATING TO CABLE TELEVISION FRANCHISES TO REFLECT CHANGES IN APPLICABLE LAW AND TO BETTER ENSURE THAT USE OF CITY STREETS BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST; PROVIDING FOR SEVERABILITY; AND PROVIDING A SAVINGS CLAUSE AND EFFECTIVE DATE.

WHEREAS, two cable operators are currently occupying the City's public rights-of-way and operating cable systems within the City; and

WHEREAS, it is the intent of the City to exercise its authority as a local franchising authority to the fullest extent allowed by federal Law, the Florida Constitution, and Florida Law; and

WHEREAS, in many areas cable services have expanded currently into bundling cable television with other services, and is a rapidly growing and significant participant in the communications industry offering a wide variety of video programming, pay-per-view movies, two-way interactive programming, digital services, Internet access, local and long distance telephone service, and other broadband communications services; and

WHEREAS, federal and state law has encouraged competition to the point that communities are often no longer being serviced by only one provider of cable service; rather, competition among providers of cable services is favored by local governments striving to assure that their residents are given the opportunity to receive higher quality and more services at lower rates; and

WHEREAS, changes in federal law concerning local government regulatory authority over cable television systems and developments in cable technology and services have resulted in a substantially changed regulatory environment from when the City of Coral Gables enacted a Cable Television Ordinance in 1997; and

WHEREAS, providers and potential providers of cable television and other broadband services as well as residents of the City have had an opportunity to provide input with respect to the provisions of this ordinance; and

WHEREAS, the City Commission of the City of Coral Gables, Florida, deems it is in the best interests of the health, safety and general welfare of the citizens and residents of City to amend Ordinance No. 3278 of the City of Coral Gables, Florida, to govern cable television franchises and the administration of such franchises, and establish minimum service requirements, consumer protection, and construction standards that takes into consideration the aforementioned developments in the industry and in the regulatory environment to better ensure that use of City streets by cable systems serves the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, THAT:

SECTION 1. Amendment of Ordinance No. 3278.
Chapter 7 of the Code of the City of CORAL GABLES, Florida, is hereby amended to read as follows[1]:

Section 7-01. Short Title.
This Ordinance shall be known and may be cited as City of Coral Gables, Florida Cable Television Ordinance.

Section 7-02. Definitions.
For the purpose of this Ordinance, the following terms, phrases, words and derivations shall have the meanings given herein. When not inconsistent with the context, 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. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any franchise agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §521 et seq., and the Telecommunications Act of 1996, and as those Acts may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, the common and ordinary meaning.

A. **"Activated Channel"** means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use. Channels on which signals flow in the direction from the headend to the subscriber are referred to as "downstream channels". Where the signal flows to the headend for re-distribution, it shall be referred to as an "upstream channel".

B. **"Access Channel"** means any channel on a cable system set aside without charge by the Franchisee for public, educational and/or local governmental use.

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[1] **Language to be added is shown by underline; Language to be deleted is shown by strikethrough.**

C. **"Affiliate"** means any person which directly or indirectly owns or controls a grantee or Franchisee, any person which a grantee or Franchisee directly or indirectly owns or which it controls, or any person under common ownership or control with a grantee or Franchisee.

D. **"Applicant"** means any person submitting an application within the meaning of this Ordinance.

E. **"Application"** means any proposal, submission or request to (1) construct and operate a cable system within the City; (2) transfer a franchise or control of the Franchisee; (3) renew a franchise; (4) modify a franchise; or (5) seek any other relief from the City pursuant to this Ordinance, a franchise agreement, the Communications Act, or other applicable law. An application includes an initial proposal for an applicant's submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence.

F. **"Basic Cable Service" or Basic Service"** means any service tier which includes the retransmission of local television broadcast signals, and public, educational, or governmental access channels.

G. **"Communications Act"** means the Communications Act of 1934, 47 U.S.C. §151 et seq., as that Act has and may hereinafter be amended.

H. **"Cable Service"** means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

I. **"Cable System," "Cable Television System," or "System,"** means any facility consisting of a set of closed transmission paths or other transmission lines or forms of terrestrial transmission 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 the City. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves subscribers without using any public right of way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. §201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services; (d) an open video system that complies with Section 653 of the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of "cable system" shall not be deemed to circumscribe the valid authority of the City to regulate the activities of any other communications system or provider of communications services, including but not limited to telephony and open video systems.

J. **"City"** means the City of Coral Gables, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

K. **"Control of a Franchisee, Grantee or Applicant"** means possession of the ability to direct or cause the direction of the management or policies of a Franchisee, grantee or applicant, or the operation of the system of a Franchisee, either directly or indirectly, whether through ownership of voting securities, by contract or understanding, or in any other manner.

L. **"Fair Market Value"** means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.

M. **"FCC"** means the Federal Communications Commission, or any successor governmental entity thereto.

N. **"Franchise"** means the right granted by the City to a Franchisee in a franchise agreement to construct, maintain and operate a cable system under, on, and over streets, roads and any other public ways, rights-of-ways, or easements within all or specified areas of the City.

The term does not include any license or permit that may be required by this Ordinance or other laws, ordinances or regulations of the City for the privilege of transacting and carrying on a business within the City or for disturbing or carrying out any work on any street.

O. **"Franchise Agreement"** means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth the terms and conditions under which the franchise will be exercised.

P. **"Franchisee"** means any person granted a franchise pursuant to this Ordinance who has entered into a franchise agreement with the City.

Q. **"Gross revenues"** means all revenues recognized in accordance with Generally Accepted Accounting Procedures (GAAP) generated directly or indirectly by the Franchisee and, any affiliates, subsidiaries or parent of the Franchisee from any source whatsoever arising from, attributable to, or in any way derived from the operation of the cable system to provide cable services in the City. Gross revenues includes, but is not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per-channel or per-program service; fees charged subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change-in-service fees; late fees; leased access fees; fees, payments or other consideration from programmers for carriage of programming on the system (excluding marketing support provided for the launch of new services on the system to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals or sales; revenues from studio and studio equipment rental; revenues from leases of cable or fiber optic lines and other transmission devices and equipment; revenues from transmission of data; revenues from consumer products including but not limited to cable guides; advertising revenues allocable to the City based on a percentage of subscriber base in the City divided by the subscriber base of the system. Such percentage will then be multiplied by the total advertising revenue of the system to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the City, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the franchise will allocate the percentage of revenue to the City which is equivalent to the percentage of the population of the City divided by the total population for the allocable franchise areas in question; Gross revenues shall be the basis for computing the franchise fee imposed pursuant to Section 7-16 hereof. Gross revenues shall not include any taxes on services furnished by the Franchisee which are imposed upon any subscriber or user by the state, county, City or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authority or authorities. However, it is hereby expressly provided that unless otherwise prohibited by applicable law, franchise fees shall be included in the calculation of gross revenues. Further, franchise fees shall not be paid on subscriber deposits unless said deposit is applied to a customer account for services rendered. <u>The definition of "Gross Revenues" contained herein is subject to Florida and federal Law, and shall only apply if the City is able to charge and collect franchise fees, pursuant to this Article and a Franchise Agreement.</u>

R. **"Institutional Network"** means a voice, data and/or video communications system constructed, operated and/or maintained by the Franchisee for the City, the transmissions on which are generally available only to, and intended to be sent and received by, persons other than cable subscribers generally. This is meant to define the network itself, and not any peripheral equipment, such as computers and modems, that may be required.

S. **"Interconnection"** means the electronic connection of two or more cable systems for the purpose of sharing programming.

T. **"Law"** means all duly enacted and applicable federal, state, county and City laws, ordinances, codes, rules, regulations and orders.

U. **"Leased Access Channel"** means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C. §532, for commercial use by persons unaffiliated with the Franchisee.

V. **"Overbuild"** means a cable system constructed to serve subscribers already served by an existing cable system.

W. **"Person"** means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City.

X. **"Service Tier"** means a category of cable service provided by a Franchisee and for which a separate charge is made by the Franchisee.

Y. **"State of the Art"** means that level of production facilities, technical performance, capacity, equipment, components and service equal to that which has been developed and demonstrated to be more modern than generally accepted and used in the cable industry for comparable areas of equivalent population. The System shall have, at minimum, the capability of providing no less than the channel capacity, products, services and technology available from a cable system to any other community of equivalent population in the State of Florida. In no event shall a System having a bandwidth of less than 750 MHZ be considered "State of the Art," unless otherwise accepted within the sole discretion of the City. Nothing herein shall be construed to require a Franchisee to employ any specific transmission technology.

Z. **"Street or Streets"** means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the City holds any kind of property interest or over which the City exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system.

AA. **"Subscriber"** means any person who lawfully receives cable service delivered over the cable system.

BB. **"Subscriber Base"** means the total number of residential and commercial subscribers within the City. For purposes of calculating subscribers under bulk or multi-user contracts, the Franchisee shall count each unit included within a contract for service as one subscriber. Franchisee shall not use any equivalency measures including calculation based on market rate.

CC. **"System Malfunction"** means any cable system equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one (1) or more channels to one (1) or more subscribers. A malfunction is major if it affects fifty (50) or more subscribers.

DD. **"Transfer of a Franchise"** means any transaction in which (1) an ownership or other interest in a Franchisee or its cable system is transferred from one person or group of persons to another person or group of persons so that control of a Franchisee or cable system is transferred; or (2) the rights and/or obligations held by a Franchisee under a franchise agreement are transferred or assigned to another person, group of persons or business entity. A transfer shall be considered "pro forma" when it involves a transfer to a person, group of persons or business entity wholly owned by the Franchisee and will not result in a change in the control or ownership of the Franchisee.

EE. **"Two-Way Capability"** means the incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the system can be implemented and activated.

FF. **"Video Channel" or "Channel"** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.

Section 7-03. <u>Intent and Purposes</u>

A. It is the intent of the City and the purpose of this Ordinance to promote the public health, safety, and general welfare by providing for the grant of one (1) or more franchises for the construction and operation of a cable system within the City; to provide for the regulation, to the extent provided for by law, of each cable system within the City in the public interest; to provide for the payment of fees and other valuable consideration by a Franchisee to the City for the use of streets by its cable system; to promote the widespread availability of quality cable service to City residents and businesses, the City, and other public institutions; to encourage the development of cable and other communications technologies and cable systems as a means of communication between and among members of the public, City businesses, the City, and other public institutions; to promote competitive cable rates and services; to promote the safe and efficient use of City streets; to enhance and maximize the communicative potential of streets used by cable systems; and to encourage the provision of a diversity of information sources to City residents, businesses, the community, the City, and other public institutions by cable technology.

B. Recognizing the continuing development of communications technology and uses, it is the policy of the City to encourage experimentation and innovation in the development of cable system uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

Section 7-04. <u>Grant of Authority; Franchise Required</u>.

A. The City may grant one or more franchises in accordance with this Ordinance.

B. No person may construct or operate a cable system or any other communications transmission facilities over, on, or under public streets in the City without a franchise granted by the City unless otherwise authorized by law, and no person may be granted a franchise without having entered into a franchise agreement with the City pursuant to this Ordinance or other such ordinance of the City as may be applicable. <u>Any person who operates a Cable System or provides Cable Service in the City without a Franchise may be subject to penalties as provided herein and other sanctions as provided by applicable Law. Such violations may be punishable as provided in Section 1-14 of the City Code, as well as other appropriate sanctions under applicable Law.</u>

C. Unless otherwise authorized by law, any franchise granted pursuant to this Ordinance is solely for the provision of cable service and shall not be constructed to authorize the provision of telephone, non-cable video or other telecommunications service. However, any person including but not limited to, franchisees shall, unless otherwise prohibited by applicable law, submit an application to the city for the privilege of providing other telecommunications services including, but not limited to telephone service and/or alternative video programming services.

Section 7-05. Franchise Characteristics.

A. A franchise authorizes use of City streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable system to serve subscribers within the City, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

B. A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the City, or affect the right of the City to authorize use of City streets to other persons to operate cable systems or for other purposes as it determines appropriate.

C. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the streets, and the City reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights of way.

D. A franchise shall be a privilege which is in the public trust. No transfer of a franchise shall occur without the prior consent of the City and unless application is made by the Franchisee, and City approval obtained, pursuant to Section 7-24 hereof and the franchise agreement.

E. A Franchise granted to an applicant pursuant to this Ordinance to construct, operate and maintain a cable television system within a specified Franchise Area, shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a cable television system as required by the provisions of this Ordinance and the Franchise. The Franchise Agreement shall incorporate by reference all of the provisions of the application of the Franchisee for the franchise that are finally negotiated and agreed upon by the City and the Franchisee; and, all relevant representations made by the Franchisee in its application and/or public hearings before the City Commission shall be deemed to be material and made for the purpose of inducing the City to grant the franchise in the form accepted.

F. Notwithstanding anything to the contrary, in the event that Franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a cable system, including but not limited to an "open video system", Franchisee shall remain subject to all terms and conditions of the cable television franchise granted pursuant to this Ordinance.

Section 7-06. Franchisee Subject to Other Laws, Police Power.

A. A Franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws. A Franchisee shall at all times be subject to all lawful exercise of the police power of the City.

B. Subject to applicable law, except as may be specifically provided in this Ordinance or under the terms of a Franchise Agreement and subject to the Communications Act, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Ordinance or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

Section 7-07. <u>Interpretation of Franchise Terms; Conflicts</u>.

A. The provisions of this Ordinance shall apply to a Franchise Agreement as if fully set forth in the Franchise Agreement, and the express terms of this Ordinance will prevail over conflicting or inconsistent provisions in a Franchise Agreement unless such Franchise Agreement expresses an explicit intent to waive a requirement of this Ordinance.

B. Except as to matters which are governed by federal law or regulation, a Franchise Agreement will be governed by and construed in accordance with the laws of the State of Florida.

Section 7-08. Applications for Grant, Renewal, Modification or Transfer of Franchises.

A. A written application shall be filed with the City for (a) grant of a new franchise; (b) renewal of a franchise in accordance with Section 626 of the Communications Act, 47 U.S.C. 546; (c) modification of a Franchise Agreement; (d) transfer of a franchise; or (e) any other relief from the City pursuant to this Ordinance or a Franchise Agreement.

B. To be acceptable for filing, a signed original of the application shall be submitted together with seven (7) copies, be accompanied by the required non-refundable application filing fee as set forth in Section 7-08(I) hereof, conform to any applicable request for proposals, and contain all reasonably required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

C. All applications accepted for filing shall be made available by the City for public inspection.

D. An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by the City or on an unsolicited basis. The City, upon receipt of an unsolicited application, may issue a Request for Proposals. If the City elects to issue a Request for Proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the Request for Proposals, or may inform the City that its unsolicited application should be considered in response to the Request for Proposals, or may withdraw its unsolicited application. An application which does not conform to the reasonable requirements of a Request for Proposals may be considered non-responsive and denied on that basis.

E. An application for the grant of an initial franchise shall contain, at minimum, the following information:

1. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent (5%) or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other cable system ownership or other communication ownership interest of each named person;

2. An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent (5%) or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;

3. A demonstration of the technical, legal and financial ability of the applicant to construct and/or operate the proposed cable system, including identification of key personnel;

4. A statement prepared by a certified public accountant or duly authorized financial officer of the applicant regarding the financial ability of the applicant to complete the construction and operation of the cable system proposed;

5. A description of the prior experience of the applicant in cable system ownership, construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a ten percent (10%) ownership interest in the applicant has, or has had, a cable franchise or license or any interest therein;

6. Identification of the area of the City to be served by the proposed cable system, including a description of service area boundaries;

7. A description of the physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant shall make information on technical design available for inspection;

8. Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

9. For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the ownership interest of the applicant in any proposed program services to be delivered over the cable system;

10. A demonstration of how the proposal of the applicant will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the City;

11. A description of any non-cable telecommunications services offered by the applicant or its parent, affiliate or subsidiary and plan of the Franchisee with respect to the availability of such services to subscribers in the City.

12. Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;

13. If an applicant proposes to provide cable service to an area already served by an existing cable Franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional system;

14. Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance and information that the City may request of the applicant that is relevant to the consideration of the City of the application; and

15. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state law requirements.

F. An application for modification of a Franchise Agreement shall include, at minimum, the following information:

1. The specific modification requested;

2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;

3. A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545

4. Any other reasonable information necessary for the City to make an informed determination on the application for modification; and

5. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

G. An application for renewal of a franchise shall comply with the requirements of Section 7-23 hereof.

H. An application for approval of a transfer of a franchise shall comply with the requirements of Section 7-24 hereof.

I. To be acceptable for filing, an application shall be accompanied by a non-refundable filing fee in the following amount, as appropriate:

1)	For a new or initial franchise:	$10,000
2)	For renewal of a franchise:	$10,000
3)	For a transfer of a franchise (other than a pro forma transfer):	$10,000

4) For a pro forma transfer of a franchise: $1,000

5) For modification of a franchise agreement pursuant to 47 U.S.C. § 545: $5,000

6) For any other relief: $1,000

The purpose of the filing fee is to defray a portion of the cost of the City in processing an application. Such fee shall be credited against amounts due under Section 9(F) herein. The filing fee is therefore intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a Franchise Agreement.

Section 7-09. Grant of Franchises.

A. The City may grant a franchise for a period not to exceed fifteen (15) years.

B. The City may make the grant of a franchise conditioned upon the completion of construction within a reasonably prescribed time or upon the performance of other specific obligations which are to be set forth in the Franchise Agreement, specifying that failure to comply with the condition will cause the franchise to become null and void, or may require the Franchisee to pay liquidated damages as specified in a Franchise Agreement.

C. In evaluating an application for a franchise, the City may consider, among other things, the following factors: the technical, financial, and legal qualifications of the applicant to construct and operate the proposed system; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety and welfare; the experience of the applicant in constructing and operating cable systems and providing cable service in other communities, if any; the ability of City streets to accommodate the proposed system; the potential disruption to users of City streets and any resultant inconvenience to the public; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by the City shall not be based on the content of the programming the applicant proposes to provide.

D. The City shall hold a public hearing to consider an application or applications. The applicant(s) shall be notified of the hearing and shall be given an opportunity to be heard. Based upon the application(s), the testimony presented at the public hearing, any recommendations of the City or staff, and any other information relevant to the application(s), the City shall decide by resolution whether to grant or deny a franchise application(s) and decide the terms and conditions of any franchise(s) granted. Upon the grant of a franchise, the application of the grantee shall become an integral part of said franchise, and the grantee shall be bound by the representations therein made. This subsection shall satisfy the public notice requirements of 47 U.S.C. §546. Following at least ten (10) days prior notice to the grantee and the public, the

City Commission may hold a public hearing at which it will receive comment on the proposed Franchise.

E. After complying with the above requirements, the City Commission shall approve or disapprove the proposed Franchise Agreement by resolution, or may direct that it be subject to further negotiation.

F. Franchisee shall reimburse the City for all reasonable expenses incurred by the City in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee set pursuant to Section 7-08(I) up to an amount not to exceed Fifty Thousand Dollars ($50,000.00) for each transaction. Within thirty (30) calendar days from the date of the resolution approving or denying the Franchise Agreement or renewal or modification or transfer thereof by the City Commission, the City shall bill the grantee for the amount of the processing fee and its method of calculation. If the processing fee is not paid to the City within sixty (60) calendar days of the date of the City Commission resolution approving or denying the Franchise Agreement or a modification or transfer thereof, any approval granted by such resolution will be null and void. This processing fee is intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a Franchise Agreement or the communications services tax and shall not be passed through to subscribers.

Section 7-10. Insurance; Surety; Indemnification.

A. A Franchisee shall maintain, and by its acceptance of the franchise, specifically agrees that it will maintain, throughout the entire term of the franchise including any renewals thereof, insurance coverage insuring the Franchisee with respect to the construction, operation and maintenance of the cable system, and the conduct of the Franchisee's business in the City, as described below and as required to satisfy all requirements of Florida law.

1. Comprehensive General Liability Insurance including contractual liability, explosion, collapse and underground property damage, bodily injury and broad form property damage, personal and advertising injury and products/completed operations coverage. The Franchisee will carry limits with a combined single limit of no less than $3,000,000 per occurrence naming the City as an additional insured. The Franchisee will require any subcontractors to provide adequate insurance and provide proof of insurance to the City as well.

2. The Franchisee will carry Workers Compensation and Employers Liability Insurance in compliance with Florida Statute Section 440. The Franchisee will require any subcontractors to provide workers compensation insurance for all of the subcontractors' employees.

3. Automobile Liability Insurance covering all owned, hired and non-owned vehicles used in connection with any activities arising out of this agreement. Such insurance shall afford coverage with a combined single limit of no less than $1,000,000 per occurrence. The Franchisee will require any subcontractors to provide automobile liability insurance for all of the vehicles used by subcontractors as respects this agreement.

B. All insurance policies shall be with insurance companies authorized to do business in the State of Florida and shall be with insurance companies with a minimum Best's Rating of AV11.

C. A Franchisee shall keep on file with the City certificates of insurance which certificates shall indicate evidence of payment of the required premiums and shall indicate that the City, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds, and that this insurance is primary over any other insurance or self-insurance program available to the City whether collectible or not. In the event of a potential claim such that the City claims insurance coverage, Franchisee shall immediately respond to all reasonable requests by the City for information with respect to the scope of the insurance coverage.

D. All insurance policies shall name the City, as additional insured and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days prior written notice thereof has been given to the City. A Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance satisfactory to the City which complies with this Ordinance.

E. A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, waive subrogation and defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its cable system, the conduct of Franchisee's business in the City, or in any way arising out of the Franchisee's enjoyment or exercise of a franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance or a Franchise Agreement. However, the obligation of the Franchisee shall not extend to any claims caused by the sole gross negligence of the City, its officials, boards, commissioners, agents or employees. This provision includes, but is not limited to, the reasonable attorneys' fees of the City incurred in defending against any such claim, suit or proceedings; and claims arising out of copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system, claims arising out of Section 638 of the Communications Act, 47 U.S.C. §558, and claims against the Franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation. Notwithstanding the foregoing, Franchisee may select counsel to represent the City. City agrees to notify Franchisee, in writing, within ten (10) days of City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel if in the reasonable belief of the City there exists or may exist a conflict, potential conflict or appearance of a conflict.

F. Notwithstanding anything to the contrary, a Franchisee shall be responsible for all actions of the subcontractors and shall agree to indemnify and hold harmless the City for any and all claims against the City or arising out of the activity of such subcontractors.

Section 7-11. Security Fund/Corporate Guarantee.

A. A Franchise Agreement may provide that, prior to the franchise becoming effective, the Franchisee shall post with the City a cash security deposit, letter of credit, bond or in the alternative a corporate guarantee in a form acceptable to the City as provided for in a Franchise Agreement, to be used as a security fund to ensure the faithful performance of the Franchisee and compliance with all provisions of this Ordinance, the Franchise Agreement, and other applicable law, and compliance with all orders, permits and directions of the City, and the payment by the Franchisee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation or maintenance of the system. The amount of the security fund or corporate guarantee shall be the amount that the City determines, under circumstances existing at the time, that is necessary to protect the public, to provide adequate incentive to the Franchisee to comply with this Ordinance and the Franchise Agreement, and to enable the City to effectively enforce compliance therewith. In no event shall such fund be less than One Hundred Thousand Dollars ($100,000).The Franchise Agreement shall provide for the procedures to be followed with respect to the security fund or corporate guarantee. Neither the posting of the security fund or corporate guarantee with the City, nor the receipt of any damages by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages either to the full amount of the security fund or otherwise.

B. The rights reserved to the City with respect to the security fund or an indemnity bond or letter of credit are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by other law or the Franchise Agreement, and no action, proceeding or exercise of a right with respect to such security fund or indemnity bond or letter of credit will affect any other right the City may have.

C. Notwithstanding anything to the contrary, where a franchisee provides the City with a corporate guarantee then the City shall not require a surety bond from the Franchisee.

Section 7-12. Construction Bond.

A. A Franchise Agreement may provide that, prior to any cable system construction, upgrade, rebuild or other significant work in the streets a Franchisee shall establish in the favor of the City a construction bond in an amount specified in the Franchise Agreement or other authorization as necessary to ensure the faithful performance of the Franchisee of the construction, upgrade, rebuild or other work, but the amount of the construction bond shall not be less than One Hundred Thousand Dollars ($100,000).

B. In the event a Franchisee subject to such a construction bond fails to complete the cable system construction, upgrade or other work in the streets in a safe, timely and competent manner in accord with the provisions of the Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the system construction, upgrade or other work in the streets, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund pursuant to Section 7-11 hereof where such amount exceeds that available under the security fund.

C. The franchise agreement may specify that upon completion of the system construction, upgrade, rebuild or other work in the streets and payment of all construction obligations of the cable system to the satisfaction of the City, the City may eliminate the bond or reduce its amount. However, the City may subsequently require an increase in the bond amount for any subsequent construction, upgrade, rebuild or other work in the streets.

D. The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney; and shall provide that:

> "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

E. The rights reserved by the City with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the City may have under this Ordinance , the Franchise Agreement, or at law or equity.

Section 7-13. <u>Minimum Facilities and Services</u>.

A. The following minimum requirements for facilities and services apply to all franchises granted by the City. The City may require in a Franchise Agreement that a Franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet the future cable related needs of the City and interests or to serve the public interest. Notwithstanding anything to the contrary, a Franchisee shall make available facilities, services, products, benefits, and a level of technology to all subscribers in the City no less than that offered by the Franchisee, its parent, affiliate, or subsidiary to any community of equivalent or smaller population within twelve (12) months of same being offered to any other city in the State of Florida. However, the City hereby reserves the right to waive the aforestated time for good cause. Good cause shall be determined by the City Commission if, in its sole discretion, determines such waiver is warranted for good cause. Notwithstanding anything to the contrary, a Franchisee shall not have any obligation pursuant to this section for a period of twelve (12) months after the effective date of this Ordinance.

1. Any cable system that commences construction, including but not limited to initial construction, rebuild, upgrade, or reconstruction after the effective date of this Ordinance shall have a minimum capacity of at least **<u>750</u>** MHZ providing no less than seventy-eight (78) video channels available for immediate use. A Franchise Agreement may provide for a larger minimum channel capacity requirement<u> and for future upgrade of the System.</u>

2. The City may require in a Franchise Agreement that a Franchisee provide access channels, facilities and other support for public, educational and/or governmental use<u>, in accordance with this Chapter</u>.

3. A cable system shall provide leased access channels as required by federal law.

4. A Franchisee shall, upon request, provide at least one cable television service outlet and when technically feasible, at least one additional outlet equipped for on-line access to all City buildings and all public and private schools within its Franchise Area that are passed by its cable system at no cost to the City or school involved, and shall charge no more than its time and material costs for any additional service outlets to such facilities.

5. A Franchisee shall design its system to allow the City or other appropriate government body, to interrupt cable service in an emergency to deliver necessary information to subscribers.

6. A Franchisee shall make available to its subscribers equipment capable of decoding closed circuit captioning information for the hearing impaired. A Franchisee may impose a reasonable charge for such equipment.

7. Standard installation shall consist of a drop, not exceeding one hundred twenty five (125) feet from the cable plant to the nearest part of a subscriber's residence. Residential drops in excess of one hundred twenty five (125) feet may be charged according to the rate schedule of the Franchisee.

B. A Franchisee shall make cable service available to every residential dwelling within the City within five (5) years of the effective date of a franchise unless prohibited by a private property owner from doing so. This provision shall not apply to structures located on property considered a part of the University of Miami campus located within the City.

C. Construction/Build-Out

A Franchise Agreement may specify the construction schedule that will apply to any required construction, upgrade or rebuild. The schedule shall provide for prompt completing of the project, considering the amount and type of construction required, as well as for liquidated damages if the schedule is not met.

Section 7-14. Technical Standards.

A. Any cable system within the City shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted including but not limited to digital transmission, HDTV or other advanced technologies. Specifically, all cable Systems shall satisfy the FCC's technical standards contained in 47 C.F.R. 76.605, as such standards may be amended. All television signals transmitted on a cable system shall include any closed circuit captioning information for the hearing impaired. Antennas, supporting structures, and outside plants used in the system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, county, City ordinances, rules and regulations, including but not limited to the City Zoning Code.

B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, the Florida Building Code, all local and state codes and ordinances, and all laws and accepted industry practices, and as hereinafter may be amended or changed.

C. At the times specified in the Franchise Agreement or as required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this Ordinance, the Franchise Agreement, and FCC requirements. The Franchisee shall provide, upon written request, the proof of performance test results to the City within thirty (30) days after completion. The City shall have the right to inspect the cable system facilities during and after construction to ensure compliance with the requirements of the Franchise Agreement, this Ordinance, and FCC standards.

D. The City may require any other tests as specified in a Franchise Agreement or applicable law or regulation, to be performed at the expense of the Franchisee. The Franchisee shall provide the test results to the City within thirty (30) days of completion of the proof of performance or other tests.

E. The Franchisee shall provide the City ten (10) days advance written notice when a proof of performance test required in subsections (C) and (D) above is scheduled in order that the City may have an observer present.

F. A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals.

G. In any franchise granted pursuant to this Ordinance, a Franchisee shall agree to maintain that level of technology to satisfy the state of the art as defined in Section 2 (Y) herein.

H. Franchisee shall provide access channels, equipment and facilities, , and financial support, in accordance with Section 7-15, as well as such other benefits and services as provided in a Franchise Agreement.

Section 7-15. Public, Education and Government Support.

A. It is the purpose and intent of the City to require that all Franchisees provide access channels, facilities, equipment and support sufficient to meet the needs and interests of the community with respect to public, education and government activities.

B. A Franchisee granted a franchise pursuant to this Ordinance shall pay quarterly to the City of Coral Gables, an amount equal to two percent (2%) of its gross revenues, as defined in Section 7-02 (Q) herein. The funds shall be disbursed at the sole discretion of the City Commission to be primarily utilized for cable related programming, events, equipment, services, personnel and supplies and any other cable related expenses.

C. A Franchisee shall provide, at the request of the City, access channels to be allocated to public, education and government use at the sole discretion of the City.

D. During the term of a franchise, a Franchisee shall provide at the request of the City, such equipment, facilities and technical support as the City Commission may determine is useful for the production and cablecasting of programming on the public, education and government channels. Applications for initial or renewed franchises shall include a proposal to provide such support.

E. A Franchisee shall provide for live and repeat cablecasting of all City Commission meetings to all subscribers within the City.

F. At the request of the City, a Franchisee shall provide for live and repeat cablecasting of events at the Miracle Theater and/or such successor or alternate venue as may be designated by the City.

G. Applications for an initial or renewed franchise may, and at the request of the City, shall include proposals for the provision of an Institutional Network interconnecting City, educational institution, and/or other public facilities as designated by the City from time to time.

H. Applications for an initial or renewed franchise, shall include a proposal for the interconnection of Franchisee to any or all other cable systems operating within the County.

I. A franchise may provide for a financial grant in lieu of or in addition to some or all of the facilities, equipment, and services referenced in Section 15.

J. A Franchisee shall agree that the facilities, equipment, monetary grant, and all other support to be provided by Franchisee pursuant to this Section 15 constitute capital costs which are required by the franchise to be incurred by Franchisee for public, educational, or government access facilities within the meaning of Section 622(g)(2)(C) of the Cable Act, 47 U.S.C. § 542(g)(2)(C); that such grant does not constitute a franchise fee or tax within the meaning of Cable Act, state law, City Code of the City of Coral Gables, or a Franchise Agreement; and that the Franchisee shall waive, and will not assert in any proceeding, any claim to the contrary.

Section 7-16. Franchise Fee.

This Section and any Franchise fee provision in a Franchise Agreement, shall not apply during such time as Florida Law prohibits the City from collecting Franchise fees or similar compensation. During the period Florida law prohibits the City from collecting Franchise fees, a Franchisee shall pay the tax required by Florida Law to the State of Florida. If the City is legally entitled to charge Franchise fees or similar fees, a Franchisee will pay the highest fee legally authorized or as provided in a Franchise Agreement.

A. A Franchisee, as compensation for the privilege granted under a franchise for the use of the streets of the City to construct and operate a cable system, shall pay to the City a franchise fee in an amount up to a maximum of either (1) five percent (5%) of the Franchisee's gross revenues derived directly or indirectly from the operation of its cable system within the City during the term of its franchise; or (2) in the event the Communications Act or other applicable law is amended to permit the City to assess a franchise fee of a greater amount than that specified in (1) above, the Franchisee agrees to pay to the City the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee. Moreover, Franchisee shall conclude any such agreement with respect to a fee increase with the City prior to finalizing an agreement with Miami-Dade County.

B. A Franchisee shall pay the franchise fee due to the City on a quarterly basis. Payment for each quarter shall be made to the City not later than thirty (30) calendar days after the end of each calendar quarter.

C. A Franchisee shall file with the City, on a quarterly basis with the payment of the franchise fee, a financial statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding quarter and a detailed explanation of the method of computation. The statement shall be certified by a certified public accountant or the chief financial or other duly authorized officer of the Franchisee, The Franchisee will bear the cost of the preparation of such financial statements.

D. Subject to applicable law, no acceptance by the City of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable.

E. The franchise fee payment is not a payment in lieu of any other tax, fee or assessment.

F. The City may, from time to time, and upon reasonable notice, inspect and audit any and all books and records of the Franchisee relevant to the determination of gross revenues and the computation of franchise fees due, and may re-compute any amounts determined to be payable under the franchise. The cost of the audit will be borne by the Franchisee if, as a result of the audit, the City determines that the Franchisee has underpaid the franchise fees owed in an amount equal to or exceeding two percent (2%) of the franchise fees actually paid. A Franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in Miami-Dade County, for inspection and copying or in the alternative, Franchisee shall pay all costs necessary for the City to perform the audit at a location outside of Miami-Dade County.

G. In the event that a franchise fee payment is not received by the City on or before the due date set forth in subsection B above, or is underpaid, the Franchisee will pay a late charge of eighteen percent (18%) per annum of the amount of the unpaid or underpaid franchise fee payment, provided, however, that such rate does not exceed the maximum amount allowed under Florida law. Any interest and/or late charges paid by Franchisee is intended to be a charge incidental to the enforcing of a franchise within the meaning of Section 622 (g)(2)(D) of the Communications Act, 47 U.S.C. §542 (g)(2)(D), and may not be deducted from the franchise fee imposed by this Ordinance or any Franchise Agreement.

______H. When a franchise terminates for any reason, the Franchisee shall file with the City within ninety (90) calendar days of the date its operations in the City cease a financial statement, certified by a certified public accountant or the chief financial officer of the Franchisee, showing the gross revenues received by the Franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the Franchisee's operations ceased.

Section 7-17. <u>Reports and Records</u>.

A. Within six (6) months of the close of its fiscal year, the Franchisee shall provide the City an annual report to the City that includes the following information:

1. Upon written request by the City, a summary of the activities of the previous year in development of the system, including but not limited to, services initiated or discontinued, number of subscribers for each tier or type of service (including gains and losses), homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year.

2. Upon written request by the City, an annual financial report to include a balance sheet of income and expenses, and a statement of sources of revenues. The Franchisee shall provide an audited financial report if Franchisee has a report in its normal course of business. If not, the statements shall be certified by the chief financial officer of the Franchisee or other duly authorized financial officer of the Franchisee. The financial report shall include notes to the financial statements that specify all significant accounting policies and practices upon which it is based.

3. Upon written request, a copy of updated maps depicting the location of all cable plants, showing areas served and locations of all trunk lines and feeder lines in the City. At such time as such maps become available in digitized form, same will be provided to the City at expense of the Franchisee.

4. A summary of subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the City.

5. Upon written request, a summary of the number of outages, number of planned outages, number of outages during prime viewing hours (8:00 p.m. - 11:00 p.m. daily), and number of outages by duration.

6. Upon written request by the City if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or parent corporation stock or ownership interests are publicly traded, a copy of its most recent annual report.

7. Upon written request by the City if the Franchisee is a partnership, a list of the partners, including any limited partners, and addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or parent corporation ownership interests are publicly traded, a copy of its most recent annual report.

8. Upon written request by the City a list of all persons holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to 47 C.F.R. 76.501.

9. A copy of the rules and regulations of the Franchisee applicable to subscribers of the cable system, upon written request.

10. Upon written request by the City a report on the number of senior citizen, economically disadvantaged or disabled subscribers receiving any rate discounts, the number of multiple dwelling buildings and units therein receiving any discount pursuant to Section - 7-20(A) hereof, and the amount of any such discounts for specific services if Franchisee offers separate rates or discounts for those categories of subscribers.

11. Upon written request a full schedule and description of services, service hours and location of the customer service office of the Franchisee or offices available to subscribers, and a schedule of all rates, fees and charges for all services provided over the cable system.

12. Upon written request a report on the number of total subscribers served by the Franchisee in the cable system, with a breakdown by the types of services received by the subscribers.

B. Upon written request by the City, a Franchisee shall provide, on an annual basis, the following documents to the City as received or filed, without regard to whether the documents are filed by the Franchisee or an affiliate:

1. Annual financial report of the Franchisee or its parent or any affiliate of Franchisee which controls Franchisee and issues an annual financial report;

2. Copyright filings reflecting the operation of the system;

3. FCC Forms 325 and 395A for the system, or successor forms;

4. Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, court or regulatory commission which filings may impact the operation of the cable system of the Franchisee in the City or that may impact the rights or obligations of the City under this Ordinance of the Franchise Agreement issued pursuant to this Ordinance and any and all responses, if any, to the above mentioned filings.

5. Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the system, Franchisee, or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of Franchisee need be provided only to the extent the same may directly or indirectly affect or bear on operations of the Franchisee in the City. For example, a notice that an Affiliate which has a management contract for the City's system was not in compliance with FCC EEO requirements would be deemed to affect or bear on operations in the City.

6. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

7. Notwithstanding anything to the contrary, the Franchisee agrees to provide the City, within thirty (30) days of filing or receipt of such, any document that may adversely impact the construction, operation or maintenance of the cable system of the Franchisee.

C. A Franchisee shall make a complete set of books and records available for inspection, copying and audit by the City in Miami-Dade County, for purposes of ascertaining compliance with requirements of this Ordinance and the Franchise Agreement. Such inspection, copying and audit shall be upon reasonable notice and during normal business hours.

D. Any materials requested by City which are deemed proprietary and confidential by the Franchisee shall be made available for review and inspection by the City (but not copying or removal), but shall not be required to be filed with the City unless such filing is required by applicable law.

Section 7-18. Customer Service Requirements. To provide Franchisees a reasonable opportunity to make necessary changes to their operations, the amendments to the customer service requirements contained within this Ordinance will be enforced beginning ninety (90) days after the effective date of this Ordinance. A Franchisee shall satisfy other customer service requirements established by the City from time to time by ordinance. In addition, a Franchisee shall at all times comply with any additional or stricter requirements established by applicable Law, including, without limitation, FCC customer service standards and Florida and federal consumer protection laws. In addition, Franchisee shall at all times comply with any additional or stricter requirements established by applicable law, including, without limitation, FCC customer service standards and Florida and federal consumer protection laws.

A. Maintenance Generally.

(1) A Franchisee shall maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its customers and facilities.

(2) Disaster Recovery. In the event of a disaster that results in a major Service Interruption, a Franchisee shall undertake diligent efforts, including but not limited to, allocating employees and equipment from other areas, having employees work overtime, and hiring contractors, to restore service as promptly as possible to affected Subscribers. In no event shall such restoration take longer that reasonably necessary after electric service is restored to affected Subscribers unless such extension is approved by the City Manager. Franchisees shall develop a Hurricane Preparedness Plan ("HPP"), which shall be provided to the City, with proprietary information redacted. The HPP shall at a minimum contain procedures to provide for maintenance of service to Franchisee's headend including at least 24-hours backup power supply and shall contain procedures to restore service in the field of the event of disaster as quickly as possible. If a Franchisee updates or revises the HPP, the Franchisee shall submit the revised HPP to the City. In recovering from a disaster, the City Manager may issue Emergency Orders to a Franchisee regarding restoration of service and work on the Cable System in the interest of the health, safety and welfare of the City's residents and the Franchisee shall comply with the City Manager's Emergency Orders within the time frame specified. If the Franchisee does not provide the HPP, the City may provide a notice of violation after which time the Franchisee shall have thirty (30) days to provide the HPP to the City, or shall be subject to a fine in the amount of $500 per day for each day that the violation continues. Because of the serious consequences of not restoring service and complying with Emergency Orders of the City Manager following a disaster as required herein, a Franchisee that violates this provision shall be subject to a fine in an amount

up to $100 per affected Subscriber. In determining whether to impose a fine and the amount of the fine, the City shall take into consideration the length of the Service Interruption and the numbers of affected Subscribers, the nature and extent of the disaster, the efforts by Franchisee to take appropriate steps to prevent major Service Interruptions in the event of a disaster, the Franchisee's efforts to restore service as quickly as possible, and Franchisee's efforts to comply with the City Manager's Emergency Orders.

B. A Franchisee shall maintain at least one (1) conveniently located business office and service center within the City limits or in the alternative, at such location outside of the City as approved by the City Manager, to which subscribers may telephone without incurring added message units or toll charges. This business office shall be open at minimum from 8:30 a.m. to 6:00 p.m., Monday through Friday, and some weekend and evening hours. Further, Franchisee shall locate, construct, design, staff, operate and maintain said office(s) so as to provide all subscribers, including but not limited to those subscribers who may be elderly, disabled or otherwise impaired, with access to its office. The office shall make available for all customers 1) parking within reasonable proximity of the office and 2) sufficient covered waiting areas and adequate seating capacity.

C. Franchisee (or an affiliate), shall maintain a listed local, toll-free telephone number under the business name familiar to subscribers and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by subscribers and members of the public to contact the Franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified Franchisee representatives will be available to respond to customer telephone inquiries, twenty-four (24) hours per day, seven (7) days per week including holidays.

D. Franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three percent (3%) of the time. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

E. A Franchisee shall employ and maintain sufficient qualified personnel and equipment to be available (i) to accept payments; (ii) to exchange or accept converters or other equipment; (iii) to receive subscriber complaints or requests for service or repairs on a full-time basis, twenty-four (24) hours per day, seven (7) days per week; (iv) to initiate service installations, undertake normal repairs, initiate action with respect to any subscriber service complaints within twenty-four (24) hours; (v) to enable a service technician to respond to service calls twenty-four (24) hours per day, seven (7) days a week including holidays when more than 25 subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same complaint.

F. Franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis:

1. Standard installation work shall be performed within seven (7) calendar days after an order has been placed except in those instances where a subscriber specifically requests an installation date beyond the seven (7) calendar day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the subscriber will be telephoned by an employee of the Franchisee the same day. Evening personnel shall also attempt to call subscribers at home between the hours of 5:30 p.m. and 8:00 p.m. If the call to the subscriber is not answered, an employee of the Franchisee shall telephone the subscriber the next day;

2. Franchisee will respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than forty-eight (48) hours after the problem becomes known. All service interruptions, and service problems within the control of grantee, will be corrected within seventy-two (72) hours after receipt of a complaint;

3. The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the subscriber, "all day";

4. Franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment; and

5. If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time which is convenient for the customer.

G. Subscribers who have experienced one missed installation or service appointments due to the fault of Franchisee shall receive installation free of charge. If the installation was to have been provided free of charge or if the appointment was for service or repair, the subscriber shall receive a credit on its bill of not less than twenty dollars ($20.00).

H. Disconnection.

1. Voluntary Disconnection.

(a) A subscriber may terminate service at any time.

(b) A Franchisee shall promptly disconnect any subscriber who so requests from the cable system of the Franchisee. No period of notice prior to voluntary termination of service may be required of subscribers by any Franchisee. So long as the subscriber returns equipment within three (3) business days of the disconnection, no charge may be imposed by any Franchisee for such voluntary disconnection, or for any cable services delivered after the date of disconnect request.

(c) A subscriber may be asked, but not required, to disconnect the equipment of the Franchisee and return it to the business office.

(d) Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment including all converters but excluding wiring have been recovered by the Franchisee. The refund process shall take a maximum of thirty (30) days from the date disconnection was completed to the date the customer receives the refund.

2. Involuntary Disconnection. If a subscriber fails to pay a monthly subscriber or other fee or charge, the Franchisee may disconnect the service outlet of the subscriber; however, such disconnection shall not be effected until thirty-five (35) days after the due date of the monthly subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the subscriber in question. If the subscriber pays within thirty-five (35) days of the due date and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service. Franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for non-payment of services to the extent such rights are consistent with applicable state and federal law.

3. Nothing in this Ordinance shall be construed to prevent the Franchisee from removing its property from a premises of a subscriber upon the termination of service consistent with FCC rules and regulations and any other applicable law. At the request of a subscriber, a Franchisee shall remove all of its facilities and equipment from the premises of the subscriber within thirty (30) calendar days of the request. Where removal is impractical, such as with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed, unless there is a written agreement stating otherwise, provided, however, that such agreement must be consistent with applicable law and FCC rules.

I. Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. Franchisee shall use its best efforts to insure that such interruptions shall occur only during the hours of 1:00 a.m. to 6:00 a.m., except during a rebuild or upgrading of the cable system. Franchisee shall maintain a written log for all intentional service interruptions.

J. Franchisee shall notify the City Manager immediately if a service interruption affects fifty or more subscribers for a time period greater than one hour.

K. <u>Franchisee Identification.</u>

1. Franchisee shall cause all of its field employees <u>and field contractors</u> to wear a picture identification badge indicating employment by Franchisee. This badge shall be clearly visible to the public.

2. <u>Upon request, employees must provide a supervisor's name and telephone number for City employees and Subscribers to contact.</u>

3. <u>All company vehicles shall prominently display the name under which the Franchisee is doing business, and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall prominently display the contractor name, contractor license number, if applicable, and the Franchisee's name. There must be a listed local telephone number for the names displayed .</u>

4. <u>When any work is performed by or on behalf of the Franchisee in the Public Rights-of-Way where the work involves cutting or trenching, or requires more than one hour to perform, each Franchisee will post a sign that prominently displays the name under which the Franchisee is doing business in the City, and Franchisee's telephone number.</u>

5. The telephone number posted must be a local or toll-free number. The phone must connect to Persons trained to receive and respond to calls regarding employees, construction and problems (including repair problems) associated with construction.

L. A Franchisee shall develop written procedures for the investigation and resolution of all subscriber or City resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be subject to the review and approval by the City Manager. A subscriber or City resident who has not been satisfied by following the procedures of the Franchisee may file a written complaint with the office of the City Manager, who will investigate the matter and, in consultation with the Franchisee as appropriate, attempt to resolve the matter. The good faith or lack thereof of the Franchisee in attempting to resolve subscriber and resident complaints in a fair and equitable manner will be considered in connection with the renewal application of the Franchisee. Franchisee shall maintain a complete list of all complaints not resolved within seven (7) days of receipt and the measures taken to resolve those complaints. This list shall be compiled in a form to be approved by the City. It shall be compiled on a monthly basis. The list for each calendar month shall be supplied to the City no later than the 15th day of the next month. Franchisee shall also maintain a list of all complaints received, which list will be available to the City.

M. Franchisee shall permit the City designee to inspect and test the technical equipment and facilities of the system upon reasonable notice not to be less than forty-eight (48) hours.

N. Franchisee shall abide by the following requirements governing communications with customers, bills and refunds:

1. Each Franchisee shall provide to subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the subscriber:

(a) How to use the cable service;
(b) Installation and service maintenance policies;
(c) The products and services offered;
(d) Prices and service options;
(e) Channel positions of programming carried on the system;
(f) The procedures of the Franchisee for the receipt and resolution of customer complaints, the address of the Franchisee and telephone number to which complaints may be reported, and the hours of operation;
(g) The telephone number and address of the City and as required by County ordinance, the County office designated to handle cable television complaints and inquiries shall be printed on the back of the bill;
(h) The availability of a "lock-out" device;
(i) The information of the Franchisee, collection, and disclosure policies for the protection of the privacy of the subscriber.

2. In addition, each Franchisee shall provide written notice in its monthly billing, at the request of the City, of any City meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its license or change in service, rates or charges to subscribers. The City shall make such a request in writing, no less than forty-five (45) days prior to the mailing of any billing by Franchisee. Said notices shall be made at expense of the Franchisee and said expense shall not be considered part of the franchise fee assessed pursuant to this Ordinance and shall not be regarded as a franchise fee, as the term is defined in Section 622 of the Communications Act, 47 U.S.C. Section 542.

3. Franchisee bills will be clear, concise and understandable.

4. Refund checks will be issued promptly, but no later than the earlier of thirty (30) days or the next billing cycle of the customer following the resolution of a refund request, or the return of the equipment supplied by the Franchisee if service is terminated.

5. Credits for service will be issued no later than the next billing cycle of the customer following the determination that a credit is warranted.

6. A Franchisee shall provide subscribers, the City Commission, and the City Manager with at least thirty (30) days advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of service or services offered over the cable system whenever practicable.

O. A Franchisee shall provide a pro-rated 24-hour credit to the account of the subscriber for any period of eight (8) hours or more within a 24-hour period during which a subscriber experienced an outage of service or substantial impairment of service, whether due to a system malfunction or other cause.

P. Billing.

1. The first billing statement of the Franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.

2. The billing statement of the Franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Invoices will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

3. The billing statement of the Franchisee must show a specific due date not earlier than ten (10) days after the date of the beginning of the service period. Any balance not received within ten (10) days after the due date may be assessed an administrative charge. The charge will appear on the billing statement of the following month.

(a) Any administrative charge applied to unpaid bills shall be subject to regulation by the City consistent with applicable law.

(b) Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

4. The Franchisee must notify the subscriber that payment can be remitted in person at the office of the Franchisee in the City and inform the subscriber of the address of that office where payment can be made.

5. The Franchisee shall not charge Subscribers an additional fee for paying bills by either telephone or on-line by credit card unless such charges are related to Franchisee's costs. To implement such a fee, Franchisee shall provide the City with an analysis of its costs of processing such payments and the City Commission must approve the additional fee at a public hearing. If an additional fee is approved by the City Commission, the Franchisee shall provide at least sixty (60) days written notice of adoption of the fee to all Subscribers.

Q. A Franchisee may not substantially alter the service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) without the express permission of such subscriber, unless it complies with this subsection.

1. If a Franchisee wishes to alter the service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) in such a way that the subscriber will no longer be able to obtain the same package of services, then the Franchisee must provide the subscriber with thirty (30) days notice of such alteration, explain the substance and the full effect of the alteration, and provide the subscriber the right within the thirty (30) day period following notice, to opt to receive any combination of services offered by the Franchisee.

2. Except as provided herein, or under applicable federal or state law, no charge may be made for any service or product which the subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill, that wishes to be received.

R. Franchisee shall certify in writing to the City on January 1 and July 1 of each year based upon internal due diligence by the Franchisee that to the best of knowledge of the Franchisee it is in substantial compliance with the standards set forth in this Section 7-18. At the request of the City, the Franchisee shall submit such documentation, as may be required, to demonstrate compliance of the Franchisee with this Section 7-18. This documentation shall be submitted within forty five (45) days of the receipt of the Franchisee of the request of the City.

S. Responsibility for the administration of this Ordinance and any franchise granted hereunder and for the resolution of all complaints against a Franchisee regarding the quality of service, equipment malfunctions, and related matters, including the authority to order refunds or fees, is hereby delegated to the City Manager, who is empowered, among other things, to settle, or compromise any controversy arising from operations of the Franchisee, either on behalf of the City, the Franchisee or any subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is unsatisfactory for whatever reason, the City Manager or designee, hereafter referred to jointly as City Manager, shall have the power to require the Franchisee to provide service if in the opinion of the City Manager or designee such request for service is reasonable. Provided, that any person aggrieved by a decision of the City Manager, including the Franchisee, may appeal the matter to the City Commission for hearing and determination. The City Commission may accept, reject or modify the decision of the City Manager. No adjustment, settlement, or compromise, whether instituted by the City Manager or by the City Commission shall be contrary to the provisions of this Ordinance or any franchise agreement issued pursuant to this Ordinance, and neither the City Manager nor the City Commission, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of this Ordinance or of the Franchise, or to interfere with any rights of subscribers or any Franchisee under applicable federal, or state law or private contract.

T. 1. In addition to the powers delegated in Section 7-18(S) above, the City Manager shall have the authority to order refunds from a Franchisee to individual cable television subscribers who have submitted a written complaint to the City and to assess fines against a Franchisee for any violation of this Ordinance or any franchise issued pursuant to this Ordinance, which fines will be paid to the City.

2. In ordering refunds to cable television subscribers, the City Manager shall be governed by the schedule set out below in which the refund indicated is expressed as a percentage of the monthly bill of the subscriber. The refunds listed are to be made on a per violation basis with each day of a continuing violation constituting a separate violation. The refund ordered by the City Manager pursuant to this Section 7-18(T) shall not exceed 100 percent of a monthly bill of the subscriber, unless a violation has continued at least 30 days from the date first reported to the Franchisee.

SCHEDULE OF REFUNDS TO SUBSCRIBERS

		Single Violation of: Maximum Refund (Percent of subscriber's monthly bill)
(a)	Failure to comply with Section 7-18(B), hereof	10%
(b)	Failure to comply with the telephone availability requirements of Section 7-18(C) and (D), hereof	10%
(c)	Failure to comply with the repair and installation requirements of Section 7-18(F), hereof.	50%

3. In assessing fines against a Franchisee, the City Manager shall be governed by the schedule set out below. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation.

SCHEDULE OF FINES

	SINGLE VIOLATION OF:	**MAXIMUM FINES**
(a)	Section 7-18(A), hereof.	$500.00
(b)	Section 7-18(B), hereof.	$500.00
(c)	Section 7-18(C), hereof.	$500.00
(d)	Section 7-18(D), hereof.	$500.00
(e)	Section 7-18(E) and (F), hereof.	$500.00
(f)	Section 7-18(G) and (H), hereof.	$300.00
(g)	Section 7-18(I), hereof.	$500.00
(h)	Section 7-18(J), hereof.	$300.00
(i)	Section 7-18(K), hereof.	$300.00
(j)	Section 7-18(L), hereof.	$500.00
(k)	Section 7-18(M), hereof.	$500.00
(l)	Section 7-18(N)(1)(a) - (1)(i), hereof.	$300.00
(m)	Section 7-18(N)(2), hereof.	$500.00
(n)	Section 7-18(N)(3) - (N)(6), hereof.	$300.00
(o)	Section 7-18(O), hereof	$300.00
(p)	Section 7-18(P) and (Q), hereof.	$300.00
(q)	Section 7-18(R), hereof.	$500.00

4. Prior to ordering a refund and/or assessing a fine, the City Manager shall mail to the Franchisee a written notice by certified or registered mail of the proposed refund and/or fine, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to file a written response to the notice of the City Manager. Written response of the Franchisee shall be signed by management level personnel of Franchisee and all statements contained therein will be regarded as material representations to the City. Fines shall begin to accrue on the first business day after the thirty (30) day cure period has terminated.

5. Prior to ordering a refund and/or assessing a fine, the City Manager shall consider any justification or mitigating factor advanced in the written response of the Franchisee, including but not limited to rebates or credits to the subscriber or a cure of the violation. The City Manager may, after consideration of the response of the Franchisee, waive or reduce any proposed refund or fine. In the case of a complaint from a single subscriber or a violation of this Ordinance or any franchise issued pursuant to this Ordinance in which only a single subscriber has been affected, the City Manager may not assess any fine if the Franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame not to exceed three (3) days. However, said subscriber may be entitled to a credit/refund as provided herein.

6. Subsequent to the notice of proposed refund and/or fine to Franchisee and consideration of the response of the Franchisee, if any, the City Manager may issue an

assessment of refund or fine. The refund and/or fine shall be paid within thirty (30) days of written notice to the Franchisee. This refund and/or fine shall constitute liquidated damages to the subscriber and City for the violation and the City may enforce payment of the refund or fine in any court having jurisdiction. It is the intent of the City to determine fines/refunds as a reasonable estimate of the damages suffered by the City and/or its subscribers, whether actual or potential, and may include without limitation, increased costs of administration and other damages difficult to measure.

7. Franchisee may appeal any decision of the City Manager directly to the City Commission within thirty (30) days of notice of the decision to the Franchisee.

8. Any person who intentionally files a false complaint against a Franchisee shall be subject to a fine in the amount of $50 for the first violation and $100 for each subsequent violation.

9. Intentional misrepresentation by a Franchisee in any response to a notice of proposed refund and/or fine shall be grounds for license revocation.

U. In addition to complying with the customer service standards set forth in this Ordinance or in any franchise issued pursuant to this Ordinance, a Franchisee shall comply with all customer service standards applicable to cable systems of the FCC and any other applicable federal, state or county law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.

V. The City expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any Franchise Agreement.

Section 7-19. <u>Subscriber Privacy</u>.

A. A Franchisee shall at all times protect the privacy of all subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law. A Franchisee shall not condition subscriber or other service on the grant of permission of the subscriber to disclose information which, pursuant to federal or state law, cannot be disclosed without the explicit consent of the subscriber. No penalties or extra charges may be invoked by the Franchisee for a failure of the subscriber to grant consent.

B. Unless otherwise permitted by federal or state law, neither the Franchisee nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.

Section 7-20. <u>Discrimination Prohibited</u>.

A. No Franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any undue prejudice or any disadvantage. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged or disabled that are applied in a uniform and consistent manner. A Franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

B. A Franchisee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.

C. A Franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, marital status, or political affiliation. The Franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Section 7-21. Use of Streets.

A. A Franchisee shall, at all times, comply with Chapter 22 of the City Code or as such may hereafter be amended.

B. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Franchisee shall be done under the supervision and direction of the City under permits issued for work by the proper officials of the City, and shall be completed in such manner as to give the least inconvenience to the inhabitants of the City. A Franchisee shall, at its own cost and expense, and in a manner approved by the City, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain and provide to the City Public Works full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways, and easements of the City.

C. Except to the extent required by law, a Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the City by reason of traffic conditions, public safety, street construction, street resurfacing or widening, change of street grade, installation or sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place.

D. A Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the City, in which case no such payment shall be required. The Franchisee shall be given not less than five (5) calendar days advance notice to arrange for such temporary wire changes.

E. A Franchisee shall upon notice to the City of not less than seven (7) days, emergency situations excepted, have the authority to trim the trees or other natural growth upon and overhanging the streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the Franchisee, except that, at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Franchisee.

F. A Franchisee shall use, with the permission of the owner, existing underground conduits (if applicable) or overhead utility facilities whenever feasible. Copies of agreements between a Franchisee and third party for use of conduits or other facilities shall be filed with the City provided that the Franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties.

G. All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The City may issue such rules and regulations concerning the installation and maintenance of a cable system installed in, on, or over the streets, as may be consistent with this Ordinance and the Franchise Agreement.

H. All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A Franchisee shall not place facilities, equipment or fixtures where any gas, electric, telephone, water, sewer or other utility facilities will interfere, or obstruct or hinder in any manner the various utilities serving the residents of the City of the use of any street or any other public right of way.

I. A Franchisee shall, at all times:

1. Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the Florida Building Code and Electrical Safety Ordinances and any other applicable Building or Electrical Safety Code, and in such manner that the installations of the City shall not receive interference.

2. Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located.

J. On streets where electrical or telephone utility wiring is located underground, either at the time of initial construction of a cable system or at any time thereafter, the cable of a Franchisee shall also be located underground at the expense of the Franchisee only if the utilities in the area are also required to relocate facilities underground at expense. Between a street and a residence of a subscriber, the cable of the Franchisee must be located underground if both electrical and telephone utility wiring are located underground. The City shall encourage, to the extent feasible, that the public utility and the Franchisee cooperate in opening of trenches and making such trenches available to all parties with the understanding that the costs of opening and refilling of such trenches would be shared equally by all users of such trenches.

K. In the event the use of any part of a cable system is discontinued for any reason for a continuous period of six (6) months, or in the event such system or property has been installed in any street without complying with the requirements of this Ordinance or a Franchise Agreement, or the franchise has been terminated, canceled or expired, the Franchisee, within thirty (30) days after written notice by the City, shall commence removal from the streets of all such property as the City may require.

L. The City may extend the time for the removal of equipment of the Franchisee and facilities for a period not to exceed one hundred eighty (180) days, and thereafter such equipment and facilities may be deemed abandoned.

M. In the event of such removal or abandonment, the Franchisee shall restore the area to as good a condition as prior to such removal or abandonment.

N. In accordance with Section 27-1 of the City Code, the City shall evaluate all trenching activities that might be necessary for the installation of underground facilitates to protect tree roots. The City may require that a Franchisee employ trenchless or other means such as directional bore or relocate its facilities so as to protect root systems of existing trees. No Franchisee shall, without an appropriate permit from the City, disturb or remove any tree or vegetation in a street, park or other public property in the course of installation, construction or repair of its Cable System.

Section 7-22. Enforcement Remedies.

A. In addition to any other remedies available at law or equity or provided herein under Section 7-18, the City may apply any one (1) or combination of the following remedies in the event a Franchisee violates this Ordinance, its Franchise Agreement, applicable state or federal law, or applicable local law or order:

1. Impose a fine in the amount of $500 for each violation with each day of a continuing violation constituting a separate violation for any violation of the Franchise Agreement or this chapter. Payment of fines by the Franchisee will not relieve the Franchisee of its obligation to comply with the Franchise Agreement and the requirements of this Ordinance.

2. Revoke the Franchise pursuant to the procedures specified in Section 7-25 hereof.

3. In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.

B. In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest.

C. Before imposing a fine pursuant to this Section, the City shall give the Franchisee written notice of the violation and its intention to assess such fine, which notice shall contain a description of the alleged violation. Whenever practical, the Franchisee shall have twenty (20) business days after notice to cure the violation or provide a satisfactory plan to cure the violation and the City shall make good faith reasonable efforts to assist the Franchisee in resolving the violation. If the violation is not cured or a satisfactory plan has not been provided within that twenty (20) day period, the City may collect all fines owed, beginning on the first business day after the cure period as determined by the City has terminated, either by removing such amount from the security fund or through any other means allowed by Law.

D. Failure of the City to enforce any requirements of a Franchise Agreement or this Ordinance shall not constitute a waiver of the right of the City to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

E. In any proceeding wherein there exists an issue with respect to the performance of its obligations of a Franchisee pursuant to this Ordinance, the Franchisee has, throughout any such proceedings and appeals thereof, the burden of proving that said Franchisee is in compliance with the terms of the Ordinance. The City Commission may find a Franchisee that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Ordinance.

Section 7-23. Renewal of Franchise.

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C. 546. To the extent such additional requirements are consistent with applicable law, the following requirements shall apply.

A. Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C. 546, should that process be invoked, the City shall notify the Franchisee, by certified or registered mail that it may file a renewal application including a renewal proposal. The notice shall specify the information to be included in the renewal application and the deadline for filing the application, which shall be no earlier than thirty (30) calendar days following the date of the notice.

1. The application shall comply with the requirements of Section 7-08 hereof and provide the specific information requested in the notice. If the Franchisee does not submit a renewal application by the date specified in the notice by the City to the Franchisee given pursuant to this subsection, the Franchisee will be deemed not to be seeking renewal of its franchise.

2. Upon receipt of the renewal application, the City shall publish notice of its receipt and make copies available to the public. The City, following prior public notice, may hold one (1) or more public hearings on the renewal application.

B. In the event a public hearing on the renewal application is held, or in the event that the City Commission considers the renewal application without a public hearing, the City Commission will either:

1. Pass a resolution agreeing to renew the franchise, subject to the negotiation of a Franchise Agreement satisfactory to the City and the Franchisee; or

2. Pass a resolution that makes a preliminary assessment that the franchise should not be renewed.

C. If a preliminary assessment is made that a franchise should not be renewed, at the request of the Franchisee or on its own initiative, the City will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C. § 546(c) to address the issues set forth in Section 626(c)(1)(A)-(D) of the Communications Act, 47 U.S.C. § 546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of § 546 shall be based on one or more adverse findings made with respect to the factors described in § 546(c)(1)(A)-(D), pursuant to the record of proceedings under § 546(c). The City shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under § 546(c)(1)(A) or on events considered under § 546(c)(1)(B) unless the City has provided the Franchisee with notice and opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or the Franchisee gives written notice of a failure or inability to cure and the City fails to object within a reasonable time after receipt of such notice.

D. Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C. § 546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C. § 546(h). The City may hold one (1) or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the City Commission shall determine whether the franchise should be renewed and the terms and conditions of any renewal.

E. If the City Commission grants a renewal application, the City and the Franchisee shall agree on the terms of a Franchise Agreement, pursuant to the procedures specified in Section 7-09 of this Ordinance , before such renewal becomes effective.

F. If renewal of a franchise is lawfully denied, the City may acquire ownership of the cable system or effect a transfer of ownership of the system to another person upon approval of the City Commission. Any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself. The City may not acquire ownership of the system while an appeal of a denial for renewal is pending in any court pursuant to § 546(e).

G. If renewal of a franchise is lawfully denied and no appeal to a court is pending, and the City does not purchase the cable system or approve or effect a transfer of the cable system to another person, the City may require the former Franchisee to remove its facilities and equipment at the former expense of the Franchisee. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal completed at the expense of the Franchisee and/or surety.

Section 7-24. <u>Transfers.</u>

A. No transfer of a franchise shall occur without prior approval of the City.

B. All applications for a Transfer of a Franchise shall be filed at least 120 calendar days prior to the effective date of the Transfer, shall meet the requirements of Section 7-08 hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. Except in the case of a pro forma transfer, the application shall provide, at a minimum, the information required in subsections 7-08(E)(1)-(E)(5) and (E)(14) with respect to the proposed transferee. The information required in subsections 7-08(E)(6)-(E)(13) shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

C. An application for approval of a pro forma transfer of a franchise shall be considered granted on the sixty-first (61^{st}) calendar day following the filing of such application with the City unless, prior to that date, the City notifies the Franchisee to the contrary. An application for approval of a pro forma transfer of a franchise shall clearly identify the application as such, describe the proposed transaction, and explain why the applicant believes the transfer is pro forma. Unless otherwise requested by the City within thirty (30) calendar days of the filing of an application for a pro forma transfer, the applicant shall be required only to provide the information required in subsections 7-08(E)(1), (3) and (14) with respect to the proposed transferee.

D. In making a determination on whether to grant an application for a transfer of a franchise, the City Commission shall consider the legal, financial, and technical and other qualifications of the transferee to operate the system; whether the incumbent cable operator is in substantial compliance with the material terms of its Franchise Agreement and this Ordinance and, if not, the proposed commitment of the transferee to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers, or otherwise be contrary to the public interest.

E. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing to abide by and accept all terms of this Ordinance and the Franchise Agreement, and all obligations and liabilities of the previous Franchisee under this Ordinance and the Franchise Agreement will be assumed.

F. Approval by the City of a transfer of a franchise does not constitute a waiver or release of any of the rights of the City under this Ordinance or the Franchise Agreement, whether arising before or after the date of the transfer.

G A brief summary of the proposed transferee's plans for at least the next five (5) years regarding line extension, plant and equipment upgrades, Channel capacity, expansion or elimination of Cable Services, and any other changes affecting or enhancing the performance of the Cable System.

H. The City may impose a processing fee to cover its actual out-of-pocket expenses in excess of the filing fee in considering an application for Transfer of a Franchise.

Section 7-25. Revocation or Termination of Franchise.

A. A franchise may be revoked by the City Commission for failure of the Franchisee to construct, operate or maintain the cable system as required by this Ordinance or the Franchise Agreement, or for any other material violation of this Ordinance or material breach of the Franchise Agreement. To invoke the provisions of this subsection (A), the City shall give the Franchisee written notice, by certified mail at the last known address, that Franchisee is in material violation of this Ordinance or in material breach of the Franchise Agreement and describing the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the City to the Franchisee, the Franchisee has not cured such violation or breach, or has not commenced corrective action and such corrective action is not being actively and expeditiously pursued, the City may give written notice to the Franchisee of its intent to revoke the franchise, stating reasons.

B. Prior to revoking a franchise under subsection (A) hereof, the City Commission shall hold a public hearing, upon thirty (30) calendar days notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing the City Commission may determine whether to revoke the franchise based on the evidence presented at the hearing, and other evidence of record. If the City Commission determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

C. Notwithstanding subsections (A) and (B) hereof, any franchise may, at the option of the City following a public hearing before the City Commission, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

1. Such assignment, receivership or trusteeship has been vacated; or
2. Such assignee, receiver or trustee has fully complied with the terms and conditions of this Ordinance and the Franchise Agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Ordinance and the Franchise Agreement.

D. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee, the City may revoke the franchise, following a public hearing before the City Commission, by serving notice upon the franchise and the successful bidder at the sale, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

1. The City has approved the transfer of the franchise to the successful proposal; and
2. The successful proposal has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise Agreement and this Ordinance.

E. If the City revokes a franchise, or if for any other reason a Franchisee abandons, terminates or fails to operate or maintain service to its subscribers for a period of six (6) months, the following procedures and rights are effective:

1. The City may require the former Franchisee to remove its facilities and equipment at the expense of the former Franchisee. If the former Franchisee fails to remove facilities and/or equipment within a reasonable period of time, the City may have the removal done at the expense of the former Franchisee and/or surety.

2. The City, by resolution of the City Commission, may acquire ownership, or effect a transfer, of the cable system at an equitable price.

3. If a cable system is abandoned by a Franchisee, the City may sell, assign or transfer all or part of the assets of the system.

F. Where the City has issued a franchise specifically conditioned in the Franchise Agreement upon the completion of construction, system upgrade or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, will result in the automatic forfeiture of the franchise without further action by the City where it is so provided in the Franchise Agreement, unless the City, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.

G. No franchisee will construct or activate a system upgrade in any community served by the same system prior to activating the upgrade for all subscribers within the City, without prior authorization from the City.

H. Except as provided in subsection (F), no adverse action against a Franchisee may be taken by the City pursuant to this Section except after a noticed public hearing at which the Franchisee is given an opportunity to participate.

Section 7-26. Continuity of Service Mandatory.

A. It is the right of all subscribers to receive all available services requested from the Franchisee as long as all financial and other obligations to the Franchisee are satisfied.

B. In the event of a termination or transfer of a franchise for whatever reason, the Franchisee shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. The Franchisee shall cooperate with the City to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the written consent of the Franchisee. During such period the cable system shall be operated under such terms and conditions as the City and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and provide reasonable compensation to the cable operator.

C. In the event a Franchisee fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as the Franchisee restores service under conditions acceptable to the City or until a permanent operator is selected. If the City is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the City for all costs or damages resulting from the failure of the Franchisee to perform that are in excess of the revenues from the system received by the City. Additionally, the Franchisee will cooperate with the City to allow City employees and/or City agents free access to the facilities and premises of the Franchisee for purposes of the Franchisee of continuing system operation.

Section 7-27. Rates.

A. Nothing in this Ordinance shall prohibit the City from regulating rates for cable services to the full extent permitted by law.

B. Any rate or charge established for cable television service, equipment, repair and installation shall be reasonable to the public. Upon written request from the City or its agent, Franchisee shall provide all requested data, records and documentation to show the reasonableness of the rates or to comply with FCC guidelines. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection, to the extent the City is permitted to protect such information from public inspection under applicable law.

C. Subject to the regulation of rates by the City as permitted under applicable state and federal law, should a Franchisee desire to change any rate or charge, it shall submit a written proposal for the amounts and effective date of such change to the City Manager who shall evaluate the proposal in a manner consistent with Federal Communications Commission cable television rate regulation standards or other applicable law in effect at the time and report of this evaluation to the City Commission. The report by the City Manager shall be placed before the City Commission at a duly noticed public hearing. The City will provide written notice of the public hearing to the Franchisee no later than five (5) days prior to the public hearing. The City may require the Franchisee to notify each subscriber, by placing an announcement of not less than one quarter page in a newspaper(s) of general circulation and/or via the cable system, of the proposed rate change and the date and time of the public hearing, with such notice commencing no later than forty-eight (48) hours prior to time of the public hearing. At such hearing, the Franchisee and members of the public will be given an opportunity to present respective views on the proposed rates. Upon conclusion of the public hearing, the City Commission shall decide the matter by majority vote and adopt a Resolution approving, disapproving, or modifying the proposed rate changes and providing such further relief as is appropriate and authorized by Federal Communications Commission rate regulation standards. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the determination of the City Commission.

Section 7-28. Performance Evaluation.

The City will conduct periodic performance evaluations of a Franchisee as the City determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the City implements a survey of cable subscribers in connection with a performance evaluation, the City may require a Franchisee to distribute a City questionnaire to its subscribers at City expense. Upon request and upon reimbursement of City copying costs, the Franchisee may receive copies of all responses.

Section 7-29. Administration.

A. The City Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and Franchise Agreements. The City Manager shall be empowered to take all administrative actions on behalf of the City, except for those actions specified in this Ordinance that are reserved to the City Commission. The City Manager may recommend that the Commission take certain actions with respect to the franchise. The City Manager shall keep the Commission apprised of developments in cable and provide the City Commission with assistance, advice and recommendations as appropriate.

B. Subject to federal and state law, the City Commission shall have the sole authority to regulate rates for cable services, grant franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.

Section 7-30. Force Majeure.

In the event the performance of the Franchisee of or compliance with any of the provisions of this Ordinance or the Franchise Agreement is prevented by a cause or event not within the control of the Franchisee, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that Franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance and any Franchise Agreement granted or renewed hereunder, causes or events not within the control of the Franchisee shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within control of the Franchisee, and thus not falling within this Section, shall include, without limitation, the financial inability of the Franchisee to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of directors, officers, employees, contractors or agents of the Franchisee.

Section 7-31. Applicability.

A. This Ordinance shall be applicable to all cable franchises granted or renewed after ~~________, 1997~~ the effective date hereof, and shall apply to all cable franchises granted prior to the effective date of this Ordinance, to the full extent permitted by state and federal law.

B. Any cable Franchisee whose Franchise Agreement predates the effective date of this Ordinance shall notify the City in writing within thirty (30) calendar days of the passage of this Ordinance, or any subsequent amendment thereof, of:

1. any provision which it believes should not be applicable to it by reason of the pre-existing Franchise Agreement or the continuing applicability of the prior ordinance; and
2. the reason for each such claim of non-applicability.

C. Failure to notify the City as provided in subsection (B) of this Section shall constitute a waiver of any right to object.

D. This Chapter shall be construed in accordance with the Laws of the State of Florida and is subject to applicable state and federal Law.

Section 7-32. Municipal Cable System Ownership Authorized.

A. To the full extent permitted by law, the City may acquire, construct, own, and/or operate a cable system.

B. Nothing in this Ordinance shall be construed to limit in any way the ability or authority of the City to acquire, construct, own, and/or operate a cable system to the full extent permitted by law.

Section 7-33. Reservation of Rights.

A. The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

B. Any additional regulations adopted by the City shall be incorporated into this Ordinance and complied with by all Franchisees within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law.

C. The City reserves the right to exercise the power of eminent domain to acquire the property of the cable system of the Franchisee, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this Section shall not enlarge or restrict the exercise of eminent domain of the City except to the extent provided by applicable law.

D. The City shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect the facilities of the Franchisee to the extent needed to monitor the compliance of the Franchisee with and performance under this Ordinance and the Franchise Agreement.

SECTION 2. Repeal of Conflicting Ordinances.

All sections or parts of sections of the Code of the City of Coral Gables, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 3. Savings.

All rates, fees, charges and financial obligations previously accrued pursuant to the ordinances and resolutions repealed pursuant to Section 2 above shall continue to be due and owing until paid.

SECTION 4. Severability.

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION 5: Inclusion in the Code. That it is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and made a part of the Code of the City of Coral Gables; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

SECTION 6: Effective Date. This Ordinance shall take effect within ten (10) days upon passage.

PASSED AND ADOPTED THIS FOURTEENTH DAY OF DECEMBER, A.D., 2004
(Moved: Anderson / Seconded: Kerdyk)
(Yeas: Kerdyk, Withers, Anderson, Slesnick)
(Absent: Cabrera)
(Vote: 4/0)
(Agenda Item E-2)

APPROVED:

DONALD D. SLESNICK, II
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

ELIZABETH M. HERNANDEZ
CITY ATTORNEY