

CABLE TELEVISION FRANCHISE ORDINANCE

BETWEEN

RIFKIN/NARRAGANSETT SOUTH FLORIDA CATV LIMITED PARTNERSHIP

AND

TOWN OF GOLDEN BEACH, FLORIDA

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**TOWN CODE - APPENDIX A - FRANCHISES  
ARTICLE IV  
COMMUNITY ANTENNA TELEVISION SYSTEM (CATV)**

**GOLDEN BEACH, FLORIDA  
ORDINANCE NO. 428.97**

AN ORDINANCE OF THE TOWN OF GOLDEN BEACH, FLORIDA; REGARDING A COMMUNITY ANTENNA TELEVISION SYSTEM (CATV) FRANCHISE; RENEWING THE FRANCHISE; PROVIDING FOR THE NONEXCLUSIVE RIGHT TO ERECT, MAINTAIN, AND OPERATE A CABLE COMMUNICATIONS SYSTEM IN THE STREETS, HIGHWAYS, RIGHT-OF-WAY, AND OTHER PUBLIC PLACES IN THE TOWN OF GOLDEN BEACH, FLORIDA, FOR THE RECEPTION, TRANSMISSION AND DISTRIBUTION OF TELEVISION AND OTHER SIGNALS TO THE INHABITANTS OF THE TOWN, AND OTHER PURPOSES AS SPECIFIED HEREIN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town of Golden Beach granted a Community Antenna Television System (CATV) franchise to Rifkin/Narragansett South Florida CATV Limited Partnership, d/b/a Gold Coast CableVision Communications, by Town Resolution No. 235 adopted June 15, 1982, extended by Town Ordinance No. 425.97, adopted April 15, 1997; and

**WHEREAS**, the Town wishes to renew the CATV franchise with the same Franchisee now d/b/a CableVision Communications for a term of ten (10) years (from September 30, 1997 through September 30, 2007) with updated provisions and improved service than was available in 1982;

**NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA:**

**Sec. 1. Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein, unless the context clearly indicates that another meaning is intended. The word "shall" is always mandatory, and not merely directory:

1.1 **Access Channels** shall mean those channels set aside for specific access purposes, as described in Sections 611 and 612 of the Cable Act.

1.2 **Annual Gross Revenue** shall mean all revenue from all sources, including cash, credits, property of any kind or nature or other consideration, which is derived directly or indirectly by the licensee, arising from or in connection with operation of the cable system within Dade County including, but not limited to: revenues from all charges for entertainment and non-entertainment services provided to subscribers; basic service monthly fees; installation, reconnection and similar fees; leased access fees; converter rentals or retail sales; studio or other facility or equipment rentals; advertising; revenue derived from the sale of products advertised or promoted on the system, including home shopping services; the sale of signal to unlicensed operators; late fees; premium services; enhanced basic services; and all other revenue received by the Franchisee for the delivery of other communications services over its cable system, including without limitation, telephony, data transmission and interactive services or other broadband information services. Annual Gross revenue shall not include uncollected bad debt; revenue derived from the sale or rent of real property, except studios; interest; taxes imposed by law on subscribers which the company is obligated to collect and which the company passes on, in full, to the applicable tax authority or authorities; charges for repair to equipment; resale of equipment on a wholesale basis; sublicensing fees to other licensed operators that pay license fees to the County; collection fees; returned check charges; or unreturned check charges; or unreturned equipment charges.

1.3 **Application** shall include all written communications, in whatever form, made by the Franchisee to the Town concerning the construction, rendition of services, maintenance, or any other matter pertaining to the Cable Television System contemplated herein.

1.4 **Basic Cable Subscriber Services** or **Basic Cable Service** shall mean the lowest priced tier of service which includes the retransmission of local television broadcast signals as defined in the Cable Act.

1.5 **Cable Act** shall mean the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992.

1.6 **Cable Television System** shall mean any facility which consists of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which provides other communications services.

1.7 **Channel** shall mean a band of frequencies in the electromagnetic spectrum which is capable of carrying either one (1) audio-video television signal and/or a number of non-video signals.

1.8 **Chief Administrative Officer** shall mean the existing or succeeding Clerk Town Manager of the Town of Golden Beach, Florida, or such other Town official as the Council may designate as Chief Administrative Officer.

1.9 **Town** shall mean the Town of Golden Beach, a Florida Municipal Corporation.

1.10 **Town Attorney** shall mean the existing or succeeding retained legal counsel of the Town or his/her assistants.

1.11 **Town Council** shall mean the present governing body of the Town or any successor to the legislative powers of the present Council.



1.12 **Town Engineer** shall mean the existing or succeeding Town Engineer, or his/her designee.

1.13 **Town Clerk** shall mean the existing or succeeding Town Clerk of the Town of Golden Beach, Florida.

1.14 **Federal Communications Commission, FCC** shall mean that administrative agency of the Federal government responsible for cable television regulation on a national level, or its lawful successor.

1.15 **Franchise** shall mean the permission, license or authorization given hereunder to construct, operate and maintain a Cable Television System in the Town of Golden Beach, including this Ordinance.

1.16 **Franchisee** shall mean any grantee under this Ordinance receiving a franchise granted herein; or the successors, transferees or assignees of such grantee as may be provided herein.

1.17 **Good Cause** shall represent that set of facts and circumstances which, in an individual case, a reasonable person would adjudge to be beyond Franchisee's reasonable control and which would, therefore, represent a justifiable excuse of nonperformance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility changes, rearrangements, power outages, damage to the equipment of Franchisee by the Town or a third party, the fulfillment of any Federal, state and/or local governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquakes, hurricanes, or the elements and acts of God.

1.18 **Mayor** shall mean the existing or succeeding Mayor of the Town, or his/her designee.

1.19 **Normal Service Interval** shall mean the period between the time that Franchisee will begin working on service problems as specified in Section 76.309(c)(2)(ii) of the Rules and Regulations of the Federal Communications Commission as it may be amended from time to time .

1.20 **Ordinance** as used herein shall include this Ordinance (which is codified as an Appendix to the Code of Ordinances of the Town) and as the same from time to time may be amended.

1.21 **Person** shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

1.22 **State** shall mean the State of Florida.

1.23 **Street** shall mean the surface of and the space above and between any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the Town for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the Town which shall, within their proper use and meaning, entitle the Town and its Franchisee to the use thereof for the purpose of installing or transmitting Cable Television System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable Television System.

1.24 **Subscriber** shall mean a purchaser of any service delivered over the system to an individual dwelling unit or of service to be utilized in connection with a business, trade or profession, that is billed by Franchisee to an address within the Town.

**Sec. 2. Franchise Agreement.**

2.1 Franchise Term - There is hereby granted by the Town of Golden Beach to Rifkin/Narragansett South Florida CATV Limited Partnership d/b/a CableVision Communications ("Franchisee"), its successors and assigns, the right, privilege and Franchise to construct, operate, maintain and upgrade a Cable Communications System within the franchise area as herein defined, for a period of ten (10) years from the effective date of this Ordinance, subject to the conditions and restrictions as hereinafter provided. Said contract may be renewed by the Town for a subsequent additional period up to ten (10) years, upon a showing by Franchisee that the renewal is required under an existing finance agreement or a proposed finance agreement to have a longer remaining term than the then current remaining term, provided that no terms of this Franchise have been breached by the Franchisee.

**Sec. 3. Franchise nonexclusive.**

3.1 Franchise nonexclusive - The right to use and occupy said franchise Territory as defined in Section 4 herein for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said franchise area to any person or entity at any time during the period of this Franchise, in accordance with state and federal

law. The Town shall not authorize or permit another Cable Television System to operate within the franchise territory on terms or conditions more favorable or less burdensome to such operator than those applied to Franchisee pursuant to this Franchise. To the extent such requirements are not imposed on any other franchisee, the Franchisee's corresponding obligations shall be reduced to reflect terms and conditions which are no more burdensome and no less favorable than those applied to any other franchisee.

**Sec. 4 Franchise territory.**

4.1 Entire Town - This Franchise is for the present territorial limits of the Town of Golden Beach, Florida, and for any area henceforth added thereto during the term of this Franchise.

**Sec. 5. Operational Standards.**

5.1 Technical Operations and Line Extensions - The Cable Television System as contemplated herein shall be installed and maintained in accordance with the accepted industry standards and will meet all applicable technical standards of the Federal Communications Commission. The Cable Television System will be built in all areas of the Town within the October 1, 1997 municipal boundaries; also the system will be built in future areas, if any, having a density of 40 occupied dwelling units per cable mile. The number of miles will be calculated starting at the closest point of the activated cable system where the extension must be connected and will continue until reaching 300 feet of the dwelling unit.

5.2 Access for Franchised Cable Television System - In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Franchisee reasonable notice of not less than thirty (30) days prior to such construction or development, and of the particular date on which open trenches will be available for Franchisee's installation of cable, conduit, pedestals and laterals to be provided at Franchisee's expense. Franchisee shall also provide specifications as needed for trenching. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner.

#### **Sec. 6. Construction Standards.**

6.1 Reasonable Care - Franchisee shall, at all times, employ reasonable care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

6.2 Interference - Franchisee shall install and maintain its wires, cables, fixtures and other equipment so as not to interfere with the equipment of any utility serving the residents of the Town or any other entity lawfully and rightfully using the conduit, pole or other part of the right of way.

6.3 Construction and Maintenance Standards - The Cable Television System shall at all times conform to the construction and maintenance standards set forth below:

6.3.1 Methods of construction, installation and maintenance of the Cable Television System shall comply with the National Electrical Safety Code 1975 (ANSI C1-1975), and any future amendments, modifications or replacements thereof, to the extent

that such Code is consistent with the local law affecting the construction, installation and maintenance of electrical supply and communications lines including the South Florida Building Code - Dade County Edition. To the extent that such Code is inconsistent with the other provisions of this Franchise or with local law, the latter shall govern.

6.3.2 No tower shall be constructed or maintained in the Town for use in the Cable Television System.

6.3.3 Reserved.

6.3.4 All working facilities and conditions used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

6.3.5 Franchisee shall at all times use reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

6.4 Published Standards - As stated above, Franchisee shall be required to reasonably comply with standards as set forth in the publications recited above, this to include any modifications, replacements and/or amendments thereto. However, in the event any publications mentioned herein should become obsolete or should expire, then Franchisee shall be required to comply with the latest set of published standards available at such time of obsolescence or expiration to the extent practically and economically feasible.

6.4.1 Franchisee shall construct and operate the system and related facilities in accordance with generally accepted related industry codes, standards and recommendations that are applicable now or that may hereafter become applicable.

6.5 Facilities Placement - All conductors, cables, poles and other components of the system shall be located and constructed by the Franchisee in back of the street curbs, except insofar as such components cross streets and public rights of way, so as to provide minimum interference with access by adjoining property owners to the streets and public ways, and no pole or other fixture of the Franchisee shall be placed in the public way so as to interfere with the usual travel on such public way.

6.6 Waiver - The requirements of 6.1 through 6.5 above shall be waived by the Town upon showing of good cause.

## **Sec. 7. Conditions of Street Occupancy.**

7.1 Code Compliance - All transmissions and distribution structures, lines and equipment erected by Franchisee within the franchise area shall be located so as to not cause unreasonable interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. The Cable Television System shall be constructed and operated in compliance in all material respects with all adopted local, state and national construction and electrical codes which are in effect as of the date of this Ordinance. New installations shall comply with current codes.

7.2 Maps - Prior to commencing any new construction, Franchisee shall submit to the Town upon request detailed maps showing proposed construction locations. These maps shall show the proposed placement of Franchisee's cables on the Town right of way, poles that are to be erected by Franchisee as required for construction, and locations where Franchisee proposes to attach to existing utility poles. Franchisee shall cooperate with the Town and any of its agents during any new construction period and throughout the full term of the Franchise in regards to construction procedures, practices and locations. All cable construction and installations located within Town property or Town rights-of-way shall be installed and maintained at such locations and depths so as to not interfere with any Town road or right-of-way maintenance.

7.3 Relocation of Facilities - Whenever the Town or State of Florida shall require the relocation or re-installation of any property of Franchisee in any of the streets of the franchise area, it shall be the obligation of the Franchisee, upon notice of such requirements, to cooperate in the timely removal and relocation or reinstallation of said property so as not to cause unreasonable delay. Such relocations, removal or reinstallations by Franchisee shall be at the cost of Franchisee unless funds are otherwise available to partially or wholly reimburse franchisee.

7.4 Facilities Placement - Whenever in any place within the franchise area, all or any part of both the electric and telephone utilities shall be located underground, it shall be the obligation of the Franchisee to locate or to cause its property to be located underground within such places. If the electric and telephone utilities shall be relocated underground in any place within the franchise area after Franchisee shall have previously



installed its property, Franchisee shall, nevertheless, at the same time or in a timely manner thereafter, remove and relocate its property also underground in such places. Any facilities of Franchisee placed underground at the property owner's request, in an area where electric or telephone facilities are aerial, shall be installed with the additional expense being paid by the property owner. The Franchisee shall cooperate with the upcoming undergrounding of utilities that will begin at the south end of the town, at no additional cost to the town for undergrounding the CATV cable conduit or relocation of equipment.

7.5 Tree Trimming - Franchisee shall have the authority to trim trees upon and overhanging streets of the franchise area so as to prevent the branches of such trees from coming into contact with Franchisee's wires and cables. Franchisee shall obtain from the Town, if required, a permit to conduct any such trimming and the same shall be conducted in strict obedience of all local laws and ordinances and at the expense of Franchisee.

7.6 Repair of Streets - In the case of any disturbance of any road, ditch or other area within the Town right-of-way caused by Franchisee, Franchisee shall, at its own cost and expense and in a manner approved by the Town, replace and restore such street or sidewalk to its previous condition or better, reasonable wear and tear excepted.

7.7 Repairs - Franchisee shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of a sidewalk or street disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by Franchisee.

7.8 Wire Raising - Franchisee shall, upon the request of any person holding a building permit issued by the Town, temporarily remove, raise or lower its wires to permit the moving of such building(s). The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than seventy-two (72) hours' advance notice to arrange for such temporary wire changes.

7.9 Emergency Procedures - If at any time, in case of fire or disaster in the franchise area, it shall become necessary in the judgment of the Chief Administrative Officer or the Chief of Police, to cut or move any of the wire cables, amplifiers, appliances or other fixtures of Franchisee, this may be done and the repairs thereby rendered necessary shall be made by Franchisee, which expense shall be reimbursed by the Town.

7.10 Warning Devices - Franchisee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the street involved or the adjacent property.

7.11 Off-Duty Police Details - Should the Franchisee need the assistance of off-duty police officers for traffic control, security, or other similar services, the police officers of the Town, through the coordination of the Town Police Chief or his designee, shall be given first right of refusal for such off-duty work, at prevailing rates reasonable and customary for the Town and surrounding communities.

## **Sec. 8. Franchise Fees.**

8.1 Payment to Town - Franchisee herein shall pay to the Town for the use of the streets and other facilities of the Town in the operation of the Cable Television System and for the Town supervision thereof a sum equal to five percent (5%) of the Annual Gross Revenues, as defined herein, from receipts from subscribers within the Town. Of that Franchise fee three percent (3%) of the Annual Gross Revenues shall be paid to the Town on a quarterly basis within sixty (60) days after the end of each calendar quarter. With the payment for the last quarter in the Franchisee's fiscal year or calendar year, at its discretion, the Franchisee shall file with the Town a statement showing the Annual Gross Revenues received by the Franchisee during the preceding calendar year. The remaining two percent (2%) of the Annual Gross Revenues shall be paid to Metropolitan Dade County. Should there come a time when the Franchise fee paid to Metropolitan Dade County is reduced, then the Town's Franchise fee shall be raised in an equivalent amount so that the total Franchise fee remains at five percent (5%) of the Annual Gross Revenues.

8.2 Payment upon Termination - In the event this Franchise should be terminated or forfeited prior to the end of the Franchise term, as defined herein, Franchisee shall immediately submit to the Town a financial statement prepared by a certified public accountant or the chief financial officer of Franchisee showing the Annual Gross Revenues of Franchisee for the time elapsed since the last fiscal year report. Franchisee shall pay to the Town not later than forty-five (45) days following the termination of this Franchise a like percentage of such Annual Gross Revenues and any other sums legally due and owing the Town.

8.3 Penalties - In the event that any payment is not made on or before the applicable date fixed herein, Franchisee shall be subject to the penalty provided for hereinafter.

8.4 Right to Inspect Books - The Town shall have the right to inspect the Franchisee's records showing the Annual Gross Revenues from which its franchise payments are computed. The right of audit and computation of any and all amounts paid under this Franchise shall always be accorded to the Town. Should the Town notify Franchisee in writing of its desire to inspect and/or audit Franchisee's records, Franchisee shall be obligated to produce such records and make them available to the Town within twenty (20) working days of such notification.

#### **Sec. 9. Service Maintenance Standards and Rates.**

9.1 Personnel - Franchisee shall maintain sufficient repair and maintenance crews capable of responding to subscriber complaints or requests for service within the normal service interval as defined herein. Service reporters shall be available to the subscribers 24 hours a day by local or toll free telephone number.

9.2 Service to Subscribers - Service to Subscribers shall be as follows:

9.3 Any verbal, telephonic or written complaint relating to the quality or continuity of service shall be attended to within the normal service interval as defined herein.

9.4 The provisions contained in this Subsection shall not apply if the discontinuation of service is occasioned because of an act of God, strike, national emergency, or any other circumstance beyond the control of Franchisee. Similarly, this

provision shall not apply to service requests or complaints pertaining to television set malfunctions or other breakdowns not related to the operation of the Cable Television System.

9.5 Rates and Service Rules and Regulations - Franchisee shall have the right to prescribe reasonable service rules, regulations and rates for the conduct of its business; provided however that such service rules and regulations, as well as subsequent amendments or modifications thereof, shall be made available upon request for inspection by the Town. The Franchisee shall provide a copy of its current service rules, regulations and rates to the Town Manager and shall provide copies of updated changes to the Town Manager. Rate changes and programming changes shall be provided to the Town Manager in writing at least 30 days before going into effect.

9.6 The subscribers in the Town shall receive rates that are as favorable as any other municipality or unincorporated service area, serviced by the Franchisee in Dade County, Florida. Should the Franchisee reduce its rates to subscribers in such an area outside the Town, then the subscribers in the Town shall be entitled to an equivalent reduction of the rates.

9.7 The Town may enact by ordinance reasonable service standards and requirements as permitted by law, which ordinances shall be provided to the Franchisee.

9.8 Service to the Town - Franchisee shall provide the Town with access to a local channel which will be fed only to subscribers in the Town. The Town will have a character generator VCR, monitor and input jack in Town Hall, provided by Franchisee at no cost to the Town. The Town Council shall designate in writing the specific channel that

will be dedicated to the Town subscribers. The Town will utilize the character generator and related equipment to place Town announcements and notices for the public. The Town may also show public service video cassette presentations and other appropriate broadcasts. The Franchisee shall install and the Town may use cable TV outlets in each of the Town's buildings, at the request of the Town Manager for CATV service and, when available, internet access.

### **Sec. 10. Complaint Procedures.**

10.1 Procedures and Logs - Franchisee shall establish procedures for receiving, acting upon and resolving subscriber complaints. Franchisee shall furnish a notice of such procedures to each subscriber at the time of the initial subscription to the system. In addition, Franchisee shall maintain a written record, or "log," listing the date and time of each customer's complaints, identifying the subscriber, describing the nature of the complaints, and when and what action was taken by Franchisee in response thereto. Such records shall be kept for a period of one (1) year reflecting the operations to date and shall be available for inspection during normal business hours.

10.2 Town Complaint Officer - The Chief Administrative Office or his/her authorized designee is hereby designated as the "Town Complaint Officer" and shall have the primary responsibility for the continuing administration of the complaint procedures hereunder.

10.3 Subscriber Notification to the Town - Any subscriber, user, programmer or other interested person who has a complaint regarding the quality of cable television

service, equipment malfunctions, billings, or any other matters, which remain unsolved for thirty (30) days after same have been brought to Franchisee's attention, may file a complaint in writing with the Town Complaint Officer.

10.4 Upon the filing of such a complaint, such Town Complaint Officer shall notify Franchisee and make an investigation to determine whether or not there is probable cause to credit the allegations. If he determines after such investigation that there is probable cause to credit the allegations of the complaint, he shall so notify Franchisee and complainant in writing and promptly endeavor to resolve the matter.

10.5 In the event that the Town Complaint Officer is unable to obtain conciliation within a reasonable time, he shall promptly set the matter for a hearing where all parties may give evidence and the merits of the dispute will be decided. The Town Complaint Officer shall make public his decision, along with a statement reciting the basis therefor.

10.6 Within thirty (30) days thereafter, either Franchisee or the complainant may appeal in writing the decision rendered by the Town Complaint Officer to the Council. At the appeal hearing, the aggrieved party may contest the findings of fact or interpretation of controlling law, at which time the Council may affirm, reject, or modify the decision of the Town Complaint Officer.

10.7 The affirmance, rejection or modification of said decision by the Council shall be final, subject to judicial review upon request of the Franchisee.

10.8 Subscriber Notification by the Franchisee - Franchisee shall notify each Subscriber at the time of initial installation and all Subscribers at least once a year of the

name and address of the Town Complaint Officer and of the procedures contained in this section in accordance with Section 76.607 of the FCC Rules and Regulations.

### **Sec 11. Performance Bond.**

11.1 Bond Amount - Within thirty (30) days after acceptance of this Franchise, Franchisee shall deposit with the Town Clerk of the Town of Golden Beach a performance bond from surety authorized to do business in the State of Florida, in the minimum amount of five Thousand Dollars (\$5,000.00). The form and content of such performance bond shall be acceptable to the Town. The Performance Bond shall be used to ensure the faithful performance by Franchisee of all provisions of this Ordinance; compliance with all orders, permits and direction of any agency, commission, board, department, division, or office of the Town having jurisdiction over its acts or defaults under this Franchise; and the payment of Franchisee of any claims, liens and taxes due the Town which arise by reason of the construction, operation or maintenance of the Cable Television System.

11.2 Use of Bond - If Franchisee fails to pay the Town any compensation within the time fixed herein, and fails after thirty (30) days' written notice to pay to the Town any fees due and unpaid, or fails to repay the Town within such thirty (30) days any damages, costs or expenses which the Town is compelled to pay by reason of the acts of default of Franchisee in connection with this Franchise, and fails after receipt of thirty (30) days' written notice of such failure by the Town to comply with any provision of this Franchise which the Town reasonably determines can be remedied by demand on the performance bond, the Town may, subject to Subsection herein, demand payment of the amount



thereof, with interest and any penalties, from the performance bond. Upon such demand for payment, the Town shall notify Franchisee of the amount and date thereof.

11.3 Appeal - Notwithstanding Subsection 11.2 hereinabove, in the case of a bona fide dispute regarding compliance, Franchisee may request a hearing before the Town's Chief Administrative Officer within thirty (30) days after written notification of non-compliance and penalty by the Town. At such hearing, all parties may file evidence and the merits of the dispute will be decided. The Chief Administrative Officer shall make public his/her decision, along with a statement reciting the basis therefor. Within thirty (30) days, Franchisee may appeal to the Council, in writing, the decision rendered by the Chief Administrative Officer. At the appeal hearing, Franchisee may contest the findings of fact or interpretation of controlling law, at which time the Council may affirm, reject or modify the decision of the Chief Administrative Officer. The affirmance, rejection or modification of said decision by the Council shall be final, subject to judicial review upon request of Franchisee.

## **Sec. 12. Liability Insurance.**

12.1 Maintenance of Insurance - Franchisee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of this Franchise, liability insurance insuring the Town and Franchisee with regard to any and all damages for the following:

12.2 Certificate of Insurance - A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the Town, its officers, boards,

commissions, agents or employees from any and all claims by any person or entity whatsoever on account of injury to or death of a person or persons or derivative from any injury to or death of a person or persons (i.e., including but not limited to claims for loss of services, medical and other expenses) occasioned by the operations of Franchisee under this Franchise or alleged to have been so caused with a minimum liability of One Million Dollars (\$1,000,000.00) per personal injury or death of any one (1) person and Two Million Dollars (\$2,000,000.00) per personal injury or death of any two (2) or more persons in any one (1) occurrence.

12.3 Property damage insurance indemnifying, defending and saving harmless the Town, its officers, boards, commissions, agents and employees from and against all claims by any person or entity whatsoever for property damage, including loss of use and all consequential damages, occasioned by the operation of Franchisee under this Franchise or alleged to have been so caused with a minimum liability of Five Hundred Thousand Dollars (\$500, 000.00) for property damage to any one (1) person and One Million Dollars (\$1,000,000.00) for property damage to any two (2) persons in any one (1) occurrence.

12.4 One Million Dollars (\$1,000,000.00) for all other types of liability.

12.4.1 All insurance shall be kept in full force and effect by Franchisee throughout the term of this Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of the Cable Television System as defined in this Franchise.

12.5 Certificate of Insurance - An insurance certificate obtained by Franchisee in compliance with this Section shall be filed and maintained with the Town Clerk during the term of this Franchise. The Town shall be named an additional insured and shall receive at least 20 days notice of cancellation of insurance coverage.

12.6 No Limitation - Neither the provision of this Section nor any damages recovered by the Town hereunder shall be construed as limiting the terms, obligations or liabilities imposed under any other Section of this Franchise, however, nothing in this Ordinance waives sovereign immunity on behalf of the Town as it relates to torts as provided in Sec. 768.28, F.S.

### **Sec. 13. General Indemnification.**

13.1 Liability and Indemnification Procedures - By its acceptance of this Franchise the Franchisee specifically agrees that it will indemnify and hold the Town, including all its officials, employees and agents, harmless against any and all claims by third parties arising out of the Franchisee's exercise of its rights and obligations under this Franchise and the Franchisee's negligence with respect to the operation of its Cable Television System. The Franchisee shall not be liable to the Town for any loss, cost or damage caused by negligence of the Town, its employees or agents or any persons acting on behalf of the Town.

13.2 Cost of Defense - Franchisee shall pay all reasonable expenses incurred by the Town in defending itself against all such claims, including all out-of-pocket expenses

such as attorney fees, provided Franchisee had written notice of such claim and has declined to defend the Town.

**Sec. 14. Assignment of franchise.**

14.1 Consent Necessary - No assignment of this Franchise shall take place, whether by forced or voluntary sale, lease, or assignment, without prior written notice to and approval by the Council, which approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction, and the Council shall act by resolution. The Council shall have sixty (60) days within which to approve or disapprove an assignment. If no action is taken within such sixty (60) day period, approval shall be deemed to have been given. This subsection does not apply to any restructure, recapitalization or refinancing which does not change the effective control or level of customer service of the Franchisee.

14.2 Hypothecation - Franchisee shall have the right without notice to mortgage, pledge or otherwise hypothecate the assets of its Cable Television System including the rights granted under this Franchise.

**Sec. 15. Review and renewal.**

15.1 Compliance with Cable Act - The Council shall not make a decision involving the renewal, cancellation or expiration of Franchisee's Franchise unless the Town's Chief Administrative Officer has advised Franchisee in writing, at least thirty (30) days prior to

such meeting, as to its time, place and purpose. Such renewal procedures will be conducted pursuant to Section 626 of the Cable Act.

15.2 New Developments - It shall be the policy of the Town to amend this Franchise, upon application of the Franchisee, when necessary to enable Franchisee to take advantage of advancements in the state of the art which will afford it an opportunity to more effectively, efficiently or economically serve its Subscribers. No such amendment shall create any rights in Franchisee other than those specifically set out in such amendments.

#### **Sec. 16. Revocation of Franchise.**

16.1 Revocation - In addition to all other rights and powers reserved or pertaining to the Town, the Town reserves, as an additional and as a separate and distinct remedy, the right to revoke this Franchise and all rights and privileges of Franchisee hereunder in any of the following enumerated events or for any of the following reasons:

16.1.1 Franchisee violates a material or substantial term or condition of this Ordinance and fails within sixty (60) days following written notice by the Town to effect compliance; unless effecting compliance within the sixty (60) days is not reasonably practicable, in which case Franchisee fails to make a good faith effort to effect compliance within that sixty (60) day period; or

16.1.2. Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the Town under this franchise.

16.2 Council Action - No such revocation shall be effective unless or until the Council shall have adopted an Ordinance setting forth the cause and reason for the revocation and the effective date thereof, which Ordinance shall not be adopted without thirty (30) days' prior written notice thereof to Franchisee and an opportunity for the Franchisee to be heard upon the proposed adoption of said Ordinance. Franchisee shall furnish to the Town a written statement at least ten (10) days prior to the date on which Council convenes to consider such proposed Ordinance setting out its position relative to the cause(s) of such revocation. In the event the revocation as proposed in said Ordinance depends upon finding of fact, such finding of fact as made by the Council shall be in writing, after the hearing provided for, if requested by Franchisee.

16.3 Compliance with Act - Notwithstanding the grounds for termination herein, no termination procedure shall be held except in compliance with FCC regulations and the Cable Act.

16.4 Judicial Review - Franchisee shall not be declared in default nor be subject to any sanction under any provision of this Section in any case in which the performance of such provision is prevented for reasons of good cause. Any final determination on revocation shall be subject to judicial review upon request of the Franchisee.

### **Sec. 17. Removal of facilities.**

17.1 Requirements - In the event of revocation of this Franchise as provided for in Section 16 herein or in the event this Franchise is not renewed as provided for in Section 15 herein, the Town shall have the option of either requiring Franchisee to remove

from the public streets where its properties are located all or any part of its equipment and facilities so located within one hundred eighty (180) days of the effective date of such revocation or non-renewal, or of requiring Franchisee to leave all of its equipment and facilities in place within the Franchise area.

17.2 Enforcement - The Chief Administrative Officer is hereby authorized to enforce the provisions of this Section as hereinafter provided.

17.3 Notification - The Chief Administrative Officer shall immediately notify Franchisee in writing of such revocation or non-renewal. Within ninety (90) days following receipt of such notice, Franchisee shall, if required, remove from the streets of the Town upon, over and under which its properties are located all of said properties.

17.4 Manner of Removal - Such removal, if required, shall be performed by Franchisee in such a manner so as to not permanently destroy, mar or damage the Franchise areas in which such removal is being conducted. The Town Engineer shall make an inspection of the areas in which the removal is being or has been conducted, and should it be found that Franchisee has unreasonably destroyed, marred or damaged such areas, Franchisee shall be held responsible for the expenses of repairing such areas to the reasonable satisfaction of the Town.

17.5 Sale of Facilities - In the event Franchisee has not removed its facilities within one hundred eighty (180) days as described herein, or in the event the Town elects not to require Franchisee to remove its facilities, Franchisee shall be obligated to sell its facilities in place within the Franchisee area to either the Town or to any new franchisee

operator. Any sale of facilities as required by this subsection shall be pursuant to the valuation requirements of Section 627 of the Cable Act.

**Sec. 18. Rights reserved to the Town.**

18.1 Town Police Powers and Regulations - The Franchisee shall, at all times during the life of this Franchisee, be subject to all lawful exercise of the police power by the Town and to such reasonable regulation as the Town shall hereafter provide, provided that such police power and reasonable regulation shall not alter the Franchisee's rights or obligations under this franchise.

**Sec. 19. Compliance with federal laws, rules and regulations.**

19.1 FCC Rules - Franchisee and Town agree that each shall be subject to the Cable Act and to all applicable rules and regulations which, from time to time, may be promulgated by the Federal Communications Commission.

**Sec. 20. Notices to franchisee.**

20.1 Prior Notice - Any time the Town's Chief Administrative Officer, Mayor, Council members or staff of the Town brings an issue regarding this Ordinance, agreements or applications thereunder, or the activities of any Franchisee to a meeting or work session of the Council, the Chief Administrative Officer will notify Franchisee. Such notification shall take place at least ten (10) days prior to the meeting unless waived by



the Franchisee. Any action taken by the Town without such notice shall be voidable by the Franchisee.

20.2 Notice Methods- Notice as provided in this Ordinance shall be given in writing by hand delivery, Certified U.S. Mail-return receipt, Fed Ex, or by facsimile if receipt is confirmed by telephone and sent within 24 hours by the other methods listed in this paragraph. Notice shall be provided to:

**For the Town:**

Town of Golden Beach

Town Manager, Skip Johnston

One Golden Beach Drive

Golden Beach, FL 33160

Telephone: (305) 932-0744

Facsimile: (305) 933-3825

With a copy to:

Jon M. Henning, Town Attorney

Gustafson, Tilton, Henning & Metzger, P.A.

4901 N. Federal Hwy., Suite 440

Fort Lauderdale, FL 33308

Telephone: (954) 492-0071

Facsimile: (954) 492-0074

**For the Franchisee:**

CableVision Communications

Anthony Bello, General Manager

1440 79th Street Causeway, Suite 201

North Bay Village, FL 33141

Telephone: (305) 864-7824

Facsimile: (305) 861-9047

The Town and Franchisee shall notify each other, as provided in this section, of any changes in the listed address or officials.

**Sec. 21. Reserved**

**Sec. 22. Acceptance.**

22.1 Reserved.

22.2 Written Execution - This Ordinance shall, upon adoption of the Council of the Town of Golden Beach and its execution by the proper municipal officials and further acceptance by the Franchisee, be and become a valid and binding contract between the Town of Golden Beach and Rifkin/Narragansett South Florida CATV Limited Partnership, its successors and assigns.

**Sec. 23. Conflict.**

That all ordinances or parts of ordinances, all Town Code sections or parts of Town Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**Sec. 24. Severability.**

That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be

invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, clauses, sentences and phrases of this Ordinance but they shall remain in effect, notwithstanding the invalidity of any part.

**Sec. 25. Inclusion In The Code.**

That it is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance, shall become and be made a part of the Code of the Town of Golden Beach (Appendix A, Article IV); that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" may be changed to "Section" or other appropriate word.

**Sec. 26. Effective Date.**

That this Ordinance shall become effective immediately upon its adoption on second reading.

The Motion to adopt the foregoing Ordinance on first reading was offered by Vice Mayor Chikofsky, seconded by Councilman Fistel and on roll call the following vote ensued:

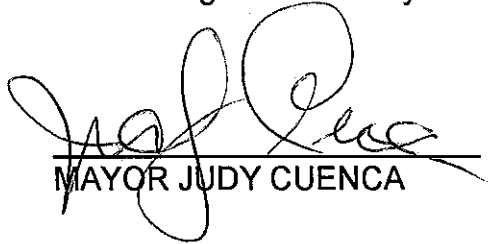
Mayor Cuenca AYE  
Vice Mayor Chikovsky AYE  
Councilwoman Addicott AYE  
Councilman Fistel AYE  
Councilwoman Lowrance ABSENT

**PASSED AND ADOPTED** on first reading this 9th day of September, 1997.

The Motion to adopt the foregoing Ordinance on second reading was offered by Vice Mayor Chikofsky, seconded by Councilman Fistel and on roll call the following vote ensued:

Mayor Cuenca AYE  
Vice Mayor Chikovsky AYE  
Councilwoman Addicott AYE  
Councilman Fistel AYE  
Councilwoman Lowrance AYE

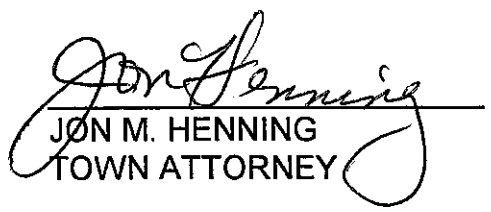
**PASSED AND ADOPTED** on second reading this 16th day of September, 1997.

  
MAYOR JUDY CUENCA

ATTEST:

  
TOWN CLERK PAT MONGIELLO

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
JON M. HENNING  
TOWN ATTORNEY

The terms and conditions of this Franchise Ordinance as provided herein are accepted by:

RIFKIN/NARRAGANSETT SOUTH FLORIDA CATV LIMITED PARTNERSHIP

BY:   
VICE PRESIDENT OF THE GENERAL PARTNER  
A Duly Authorized Officer

DATE: 6<sup>th</sup> day of October, 1997

  
WITNESS

Kim L. MUSSELMAN  
PRINT

  
WITNESS

Sandra McElroy  
PRINT