

(Railway 4-4-24)

ORDINANCE NO. 205

AN ORDINANCE GRANTING TO THE MIAMI BEACH RAILWAY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE OR FRANCHISE FOR THE PERIOD OF THIRTY YEARS, TO CONSTRUCT, EQUIP, OPERATE AND MAINTAIN, ON, OVER, ALONG AND ACROSS CERTAIN SPECIFIED STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND PUBLIC PLACES IN THE CITY OF MIAMI BEACH, FLORIDA, AND ITS SUCCESSORS, A STREET RAILWAY, OR OTHER TRANSPORTATION SYSTEM, AND IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO:--

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI BEACH, FLORIDA:

Section I: That there is hereby granted to THE MIAMI BEACH RAILWAY COMPANY, a Florida Corporation, its successors and assigns, (herein called the Grantee), the right, privilege or franchise for the full period of thirty (30) years from the effective date hereof, to construct, equip, operate and maintain a street railway (including tracks, sidings, switches, turnouts, and overhead trolley lines and feeders, and all other necessary or desirable appurtenances) or other transportation system (including all necessary or desirable appurtenances) for the purpose of conducting a transportation business, as herein provided, on, over, along and across the following streets, avenues, alleys, highways, bridges and public places, and in either or both directions thereon, in the City of Miami Beach, Florida, and its successors, to-wit:

From the eastern terminus of the tracks now owned by Dade County at or near the intersection of Fifth Street and Alton Road in a general southeasterly direction along Alton Road to the intersection of Alton Road and First Street; thence in an easterly direction along First Street to the intersection of First Street and Washington Avenue; thence in a southerly direction along Washington Avenue to the intersection of Washington Avenue and Biscayne Avenue; thence in an easterly direction along Biscayne Avenue to the intersection of Biscayne Avenue and Ocean Drive; thence in a northerly direction along Ocean Drive to the intersection of Ocean Drive and First Street; thence in a westerly direction along First Street to the intersection of First Street and Washington Avenue; thence in a general northerly direction along Washington Avenue to the intersection of Washington Avenue and Nineteenth Street; thence in an easterly direction along Nineteenth Street to the intersection of Sheridan Avenue and Nineteenth Street; thence in a northerly direction along Sheridan Avenue to the intersection of Sheridan Avenue and Twenty-third Street; thence across Collins Canal and in a northerly direction along East Golf

Drive (known on the official City Map adopted 1920 as Pine Tree Drive) to the intersection of Sheridan Avenue and Pine Tree Drive; thence in a northerly direction along Sheridan Avenue to West Forty Fifth Street, being the present northerly boundary of the present City limits; and also from the eastern terminus of the tracks now owned by Dade County at or near the intersection of Fifth Street and Alton Road in a northerly direction along Alton Road and across the Collins Canal to the intersection of Alton Road and Dade Boulevard; thence in a northeasterly direction along Dade Boulevard to the intersection of Dade Boulevard and Michigan Avenue; thence in a northwesterly direction along Michigan Avenue to the intersection of Michigan Avenue and Alton Road; thence in a general northerly direction along Alton Road and across Biscayne Waterway to West Forty Fifth Street, being the present northerly boundary of the present City limits; and also from the intersection of Biscayne Avenue and Collins Avenue in a southerly direction along Collins Avenue to the intersection of Harley Avenue and Collins Avenue.

Provided, however, that at any time within five (5) years from the effective date of this franchise, Grantee shall have the right, subject to the approval of the City Council, to construct, equip, operate and maintain tracks and all necessary or desirable appurtenances along Alton Road from the intersection of Alton Road and Dade Boulevard to the intersection of Alton Road and Michigan Avenue, and upon or at any time after the construction thereof, Grantee may at its option, and without affecting in any way any of the other provisions of this franchise, cease to operate its transportation system and remove its tracks and appurtenances from that part of its system herein described as commencing at:

"the intersection of Alton Road and Dade Boulevard; thence in a northeasterly direction along Dade Boulevard to the intersection of Dade Boulevard and Michigan Avenue; thence in a northwesterly direction along Michigan Avenue to the intersection of Michigan Avenue and Alton Road,"

and, provided further, that Grantee at any time within five (5) years from the effective date of this franchise shall have the right, subject to the approval of the City Council, to construct, equip, operate and maintain tracks and all necessary or desirable appurtenances along Washington Avenue from the intersection of Washington Avenue and Nineteenth Street across Collins Canal to the intersection of Washington Avenue and Dade Boulevard and along Dade Boulevard to the intersection of Dade Boulevard and East Golf Drive (known on the official City Map adopted 1920 as Pine

Tree Drive) and upon or at any time after the construction thereof, Grantee may at its option, and without affecting in any way any of the other provisions of this franchise, cease to operate its transportation system and remove its tracks and appurtenances from that part of its system herein described as commencing at:

"the intersection of Washington Avenue and Nineteenth Street; thence in an easterly direction along Nineteenth Street to the intersection of Sheridan Avenue and Nineteenth Street; thence in a northerly direction along Sheridan Avenue to the intersection of Sheridan Avenue and Twenty-third Street; thence across Collins Canal" to the intersection of Dade Boulevard and East Golf Drive (known on the official City Map adopted 1920 as Pine Tree Drive.)

This grant is made in consideration of the maintenance and operation of the transportation system by the Grantee herein provided for and for the benefits and conveniences of the inhabitants of said City as a result thereof.

Section II: That as a condition precedent to the granting of this franchise, the City shall have the right upon the expiration of this franchise to purchase the property of the Grantee located within the corporate limits of the City of Miami Beach, Florida, as provided by the Statutes of Florida, in effect on the date of Grantee's acceptance hereof, including Section 1844 of the Revised General Statutes of Florida of 1920.

Section III: That all tracks hereunder shall be laid on grades established and in locations designated by the City Council, and the City Council shall upon Grantee's request furnish Grantee all maps, profiles and other information necessary to enable said Grantee to conform to the established profiles or grades of all streets, avenues, alleys, highways, bridges and other public places, occupied or to be occupied, and all poles and towers and other overhead construction shall be located or relocated and erected so as to interfere as little as possible with traffic thereon, and with reasonable egress from and ingress to abutting property, and such location or relocation and erection shall be subject to the approval and supervision of the City Council, which supervision shall

not be exercised so as unreasonably to interfere with the proper operation of Grantee's lines and service, and all construction and maintenance hereunder shall be in accordance with established practice with respect to such construction and maintenance.

Section IV: That except as in Section V provided, the City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its transportation system hereunder, and the acceptance of this franchise shall be deemed an agreement on the part of said Grantee to indemnify said City and hold it harmless from and against any and all liability, loss, cost, damage or expense which may accrue to said City by reason of the neglect, default or misconduct of the Grantee in the construction, operation or maintenance of its transportation system hereunder.

Section V: That so long as Grantee shall use electric motive power for the operation of its transportation system, Grantee agrees to give the City, without rental cost to it, the right to occupy the poles of Grantee for the purpose of attaching thereto, and maintaining and operating thereon, the wires and fixtures necessary for the operation of its fire alarm and police alarm systems, provided that the City shall install, maintain and operate the same in such manner as not to interfere with the use, operation and maintenance by Grantee of Grantee's facilities. In consideration whereof the City assumes full liability and responsibility for its use and occupancy of Grantee's poles and for the construction, operation and maintenance of said fire alarm and police alarm systems, and agrees to indemnify and save said Grantee harmless from and against any and all liability, loss, cost, damage or expense arising directly or indirectly out of said City's use and occupancy of Grantee's poles as herein provided.

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Section VI: That whenever, during the life of this grant, the City shall undertake any paving, repaving, or other highway improvements on any street, avenue, alley, highway, bridge or other public place, on which Grantee's tracks are located, then, upon the making of such improvements by the City, Grantee shall pay to the City, as Grantee's cost of such improvement, the sum of \$1.00 for each project so undertaken, which amount shall be assessed against and paid by Grantee in the same manner and condition as other assessments, levies and payments are made for such improvements, and the payment by Grantee and the receipt by the City of said sum shall be in full payment of and satisfaction for all paving, repaving, or highway improvement assessments, and levies, that might otherwise be assessed or levied against the Grantee for such paving, repaving or other highway improvements. Provided that if the Grantee's tracks are located within an area paved or improved, or which area may hereafter be paved, re-paved or improved, then whenever the City shall order, during the life of this grant, any paving, re-paving or other highway improvement thereon, the Grantee shall, at its expense upon the order of the City Council, make such repairs or replacements as to ballast, ties or other track facilities, and provide such, if any, additional ballast required, as in the opinion of said City Council will put said track in such condition as to preclude the probability of damage to said paving, re-paving or improvement during the reasonable life thereof, due to deterioration of Grantee's tracks maintained pursuant hereto, and that if such order of the City Council is not complied with within a reasonable time and within time to enable said City to pave that portion of the street occupied by such tracks at the same time it is enabled to pave the remainder of said street, then the City Council may assess the cost of such paving and a proportionate part of the incidental expenses, against the owner of such tracks, including such cost upon any intersection of highways, anything in this section to the contrary notwithstanding.

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Whenever Grantee may open up, remove, excavate or disturb the surface of any paving, or may remove or disturb any water pipes, sewers, curbs, gutters, side-walks, or other improvements of said City for the purpose of repairing its tracks or road bed, or for any other purpose whatsoever, then said Grantee shall, as promptly as possible, and at its own cost and expense, restore such public improvement to as good condition as existed at the time of the opening up, removal, excavation, or disturbance of such public improvement by Grantee.

Whenever the condition of any bridge owned by the City and occupied by Grantee shall be such as to necessitate the reconstruction of such bridge, including such portion as is occupied by Grantee, then Grantee shall pay to said City Grantee's proper proportion, as may be mutually agreed upon, of the cost of such reconstruction, not to exceed, however, the cost to Grantee of constructing its own bridge of the plate girder type, or of such other type as may be mutually agreed upon, and provided that Grantee shall for the purpose of this grant, but not otherwise, and under the reasonable supervision of the City Council, have the right to construct, operate, maintain and use over waterways, bridges which may be of the said plate girder type, or of such other type as may be mutually agreed upon.

Provided, however, nothing herein contained shall be construed to exempt Grantee from lawful assessments for paving or other highway improvements which may be made against real property of Grantee abutting upon any highway within said City.

Section VII: That nothing herein shall prohibit said City from laying any municipal improvements or utilities under the surface of the streets over which this franchise is granted. Provided, however, that the laying of any such municipal improvements or utilities shall not unreasonably interfere with the Grantee's operations, and provided also that said City shall restore Grantee's facilities to as good condition as existed at the time of the beginning of such

work by said City, or its agents, and that said City shall, in addition thereto, reimburse Grantee for any loss, cost, damage or expense whatsoever that may result from such work by said City, or its agents.

Section VIII: That except as hereinafter provided, Grantee agrees that the fare for one continuous journey by the shortest practicable route from any point on Grantee's railway to any other point on Grantee's railway, both within the present City limits of Miami Beach, shall be five cents per passenger, and if such passenger's destination be on a cross line or connecting line, then, for each full cash fare so paid, such passenger shall be entitled to receive, for his own use only, one transfer good only on the next connecting car; provided however, that Grantee shall always be entitled to charge a like fare for any return journey.

That Grantee will carry, free of charge, children under five years of age when each such child is accompanied by a separate passenger paying full fare, and Grantee also agrees to carry free of charge all policemen and paid members of the Fire Department while in the discharge of their duties and in proper uniform. That, provided however, if the fares specified herein fail to produce sufficient revenues to enable Grantee to earn all of the costs of service (said costs of service being defined as follows: to-wit: (a) all reasonable operating expenses, including taxes, rentals, tolls, insurance, and all maintenance, and (b) to provide for all necessary and proper reserves, including reserves to pay judgments or claims in behalf of other persons arising from personal injury or other damage suits, and necessary incidental expenses in connection therewith, and accrued and accruing depreciation, and (c) to yield a return equal at least to Eight (8) per cent on the value of all the facilities used and useful in rendering the service hereunder, it being understood that such value shall never be less than the original cost of all such facilities, including installation, organization, development and financing costs, but excluding any value for or costs of franchises) then and in that event Grantee

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is hereby authorized to make such adjustment in its fares and charges as will enable Grantee to earn sufficient revenues to pay all of the costs of service as above defined.

Section IX: That the railway shall consist of a single track of standard gauge, with switches, turnouts, etc., but Grantee shall, at any time, with the approval of the City Council, have the right to double track all or any part of its railway.

Section X: That Grantee shall have the right to transport, express, mail and freight, and to charge for such transportation. The right to transport freight and freight cars, and the manner and time of the transportation thereof, shall be at all times subject to the reasonable restrictions and regulations of the City Council.

Section XI: That Grantee shall stop its cars on the near side of every alternate street or avenue crossing when passengers desire to board or alight from said cars. Grantee shall place signs at such points where passengers are to be received and discharged. All cars shall come to a full stop before crossing an intersecting railroad line. Grantee shall have at all times during the life of this grant the right to operate cars by and with one employee. Except as modified from time to time by agreement between the City Council and Grantee, cars shall be operated over each line now or hereafter constructed by said Grantee with such frequency as to maintain a schedule of not less than one trip per hour between the hours of six A.M. and eleven P.M.

Section XII: That changes in the means and methods of transportation and substitution for those at any time existing hereunder may be made at any time and from time to time, in whole or in part, but only with the approval and on the authority of the City Council, provided, however, that at no time shall steam or animal power be used as motive power for the operation of Grantee's transportation system hereunder.



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Section XIII: That, subject to Grantee providing adequate transportation service, all other competing agencies for public transportation, operating within the City of Miami Beach, shall be subject to the same lawful regulations as to hours of service, schedules, fares, routes, transfers, and free service, as herein imposed or as may hereafter be imposed upon Grantee by the said City by ordinance or otherwise.

Section XIV: That failure on the part of Grantee to comply with any of the provisions of this franchise, or with any lawful order affecting in any way the operations of the Grantee hereunder, shall not work a forfeiture of this franchise until such order, resolution or ordinance shall have been shown to have been reasonable in all its requirements by some court or courts of competent jurisdiction, or if appealed, by some appellate court or courts, or until it shall have been found by some court or courts of competent jurisdiction, or if appealed, by some appellate court or courts, that said Grantee has failed to comply with the provisions of this franchise, and upon the entry of an order or decree of any court of competent jurisdiction, or if appealed, upon the entry of the order or decree by such appellate court or courts, then the Grantee shall have six months after such entry to comply with such decree before working a forfeiture, and the City Council may at its discretion grant such additional time to the Grantee for compliance with the Court's decree as necessities in the case require.

Section XV: That the City agrees to pass all necessary and suitable ordinances both for the protection of the rights and property of said Grantee and to enable said Grantee to enforce any of said Grantee's reasonable rules and regulations for the management, operation, control and conduct of Grantee's business hereunder, and to pass any ordinance or ordinances that may be necessary or suitable in order to fully confirm to said Grantee the right herein or hereby granted or intended so to be, or to carry out any of the provisions herein contained.

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Section XVI: That the Grantee is hereby given the right and authority to make assignments of this franchise and rights thereunder. A copy of any such assignment shall thereupon be deposited in the office of the City Clerk of Miami Beach, Florida.

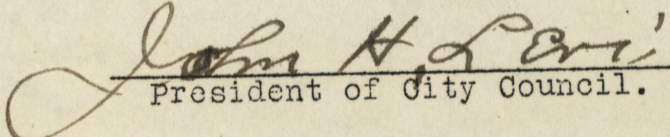
Section XVII: That this ordinance shall take effect as soon as it shall have been duly adopted as required by law and accepted as required herein.

Section XVIII: That the Grantee shall file its written acceptance of this franchise with the City Clerk of the City of Miami Beach within thirty (30) days after it shall have been duly adopted.

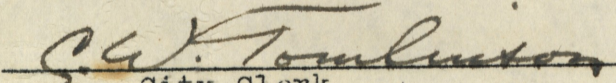
Section XIX: That simultaneously with Grantee's acceptance of this franchise, said Grantee shall surrender to said City of Miami Beach, all of its right, title and interest in and to that certain franchise adopted by said City Council April 15, 1919, and granted to Carl G. Fisher, C.R. Cummins, Arthur C. Newby, J.H. McDuffee and George R. Kline, their successors, heirs, legal representatives and assigns, and known as Ordinance No. 122, and the said City of Miami Beach shall thereupon accept said surrender upon its tender to said City, and immediately thereon said franchise, known as Ordinance No. 122, shall be null and void.

Section XX: That all ordinances, and parts of ordinances, in conflict herewith (particularly that certain ordinance known as No. 122) be and the same are hereby repealed.

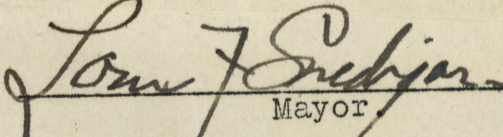
Passed and adopted this 9th day of April, A.D. 1924.

  
President of City Council.

ATTEST:

  
City Clerk.

APPROVED this 9<sup>th</sup> day of April,  
A.D. 1924.

  
Mayor.

Passed First and Second Readings, March 28, 1924.  
Passed Third Reading, April 9, 1924.

Posted April 15<sup>th</sup>, 1924

(Original)

Ordinance No. 205

Granting a franchise  
to the Western Bank  
for a period of 20  
years.