

## RENT

### DRAFT - FOR DISCUSSION PURPOSES ONLY

Revised May 2, 2008

A) The C&OR shall pay rent for the Rail Property as follows:

1. The sum of seven hundred ninety-nine thousand dollars (\$799,000) annually.
  - i. **Fixed Rent.** A portion of the rent amount above shall be considered “fixed rent,” and must be paid by the C&OR regardless of the reduction factors discussed below. Fixed rent shall consist of debt payments, administrative fees, and return on investment, as described in this section.
    1. **Debt payments.**
      - a. **Acquisition debt.** If any amount of the acquisition debt, i.e. original certificates of participation, remains outstanding at any time during the term of this agreement, the C&OR shall pay from the gross revenues received from operation of the Rail Property the amount of fifty-eight thousand dollars (\$58,000) per month. Such payments shall fulfill ORDC’s Lease requirements with First Capital Corp or its subsidiary, CAPRAIL I, INC. The abovementioned payments shall be made to a special account established and maintained at the Bank of New York by means of direct electronic transfer by the first of each month, or 24 hours before said payments are due, whichever comes later. Payments by the C&OR towards the acquisition debt shall be considered a portion of the fixed rent.
      - b. **Infrastructure loans.** If the C&OR obtains a Railroad Rehabilitation and Infrastructure Fund or other infrastructure rehabilitation loan from the Federal Railroad Administration, or its successor, or any other federal agency, and uses the loan amount to defease the certificates of participation or to undertake major capital improvements along the Rail Property, the amount of the payments made to service the loan shall be considered a portion of the fixed rent.
    2. **Administrative fees.** The administrative fee shall be \$60,000 per year.
    3. **Return on investment.** A fixed amount of \$X per year shall be the return on investment paid by the C&OR to the ORDC.
  - ii. **Variable Rent.** The remaining portion of the rent amount above, less the fixed rent, shall be considered “variable rent.” The variable rent may be reduced based on extraordinary capital expenditures defined below, subject to ORDC approval.

RENT – DRAFT – FOR DISCUSSION PURPOSES ONLY

April 28, 2008

**Extraordinary capital expenditures.** Extraordinary capital expenditures shall be defined as: C&OR individual investments in track and fixture beyond the activities and investments needed to maintain the Rail Property pursuant to section 11 of this agreement that are:

1. significant, i.e. an amount equal to or greater than 25% of the C&OR capital and maintenance expenditure for the previous calendar year;
2. Only required to be done periodically in normal circumstances, i.e. every 30 years or more;
3. Result from an Act of God or from a natural or manmade disaster; or
4. Are considered extraordinary by the Executive Director of ORDC.

The items listed below are examples of what the ORDC Executive Director could, at his or her discretion, approve as “Extraordinary Capital Expenditure Items”. Extraordinary Capital Expenditures shall not be limited to the examples below.

- Replacing, or major repairs to bridges.
- Repairing Gould Tunnel for major slides or collapse; major tunnel renovation.
- Replacement of major sections of rail with heavier rail.
- Repairing major washouts of over 1,000 feet per occurrence (i.e. total length of wash outs in a particular area occurring at the same time).
- Replacing defective culverts of significant size or which require extensive work to replace.
- Bringing an out of service portion of the Panhandle which is in very poor condition back into service.
- Performing significantly more capital and maintenance work in a particular calendar year than the average of the capital and maintenance work performed in the previous five year period.
- Installing new wayside signals or new train control devices.
- Purchasing maintenance of way equipment and machinery.
- Investing in track and fixtures specifically to serve shippers who are newly located along the line or are new rail customers.

In order for an extraordinary capital expenditure to qualify for a deduction from the annual rent amount:

1. The C&OR must submit a proposal prior to undertaking the project(s) to the ORDC. The proposal must include, at a minimum, a description of the work being undertaken and the need for it, and the estimated cost to complete the project.
2. The ORDC director will review the proposal, determine whether the project will be eligible for a deduction, and notify the C&OR of the decision.
3. Not later than ninety days before any one year anniversary date of this Agreement, the C&OR must submit to the ORDC a request for all of the deductions, based on the approvals received under item 2 above, to be made from the variable rent for the upcoming year. The request shall include detailed evidence as to the C&OR material, labor, and equipment costs as well as evidence of costs the C&OR has already paid for any work performed by outside contractors.

RENT – DRAFT – FOR DISCUSSION PURPOSES ONLY  
April 28, 2008

4. The ORDC will review the request, including, if needed, consultation with the ORDC Chair or ORDC Commissioners within 60 days of the receipt of a deduction request.
5. Within 80 days of the request, the ORDC shall notify the C&OR in writing the amount the rent for the following year of the Agreement (i.e. starting from the next one year anniversary date) will be reduced because of the Extraordinary Capital Expenditures made by the C&OR. At the discretion of the Executive Director of ORDC, the rent deduction resulting from the C&OR request for an Extraordinary Capital Expense request, may be spread out over several years of the Agreement.

It is the intent of this Article \_\_, “Rent,” to allow the C&OR to pay lower rent payments because of Extraordinary Capital Expenditures only when the C&OR has expended good faith, extraordinary funding efforts for the improvement of the Panhandle track and fixtures. It is not the intent of this Article \_\_, “Rent,” for ORDC to allow deductions in the future years’ rent in instances where the C&OR has acted in bad faith by investing in Extraordinary Capital Expenditures at the expense of needed normal maintenance, nor is it the intent of this Article \_\_, “Rent,” for the ORDC to arbitrarily or capriciously deny C&OR requests for rent deductions. The granting of rent deductions shall be at the sole discretion of the Executive Director of ORDC. Granting of rent deductions by the Executive Director of ORDC shall not be unreasonably withheld.

B) All deductions to the variable rent made pursuant to this section are subject to audit.

The amount of the deduction for extraordinary capital expenditures shall not exceed the amount of the variable rent in any year.

Payments made pursuant to this section shall be made payable to Treasurer, State of Ohio, and delivered to ORDC pursuant to the notice provisions of this Lease.

C) As stipulated in Article 6, “Twenty-Five Year Term,” in the event that the C&OR chooses to renew this Lease Agreement for an additional five years, the C&OR and ORDC shall adjust the payments in this Article 8 “Rent” in the following manner:

The C&OR payment shall be the amounts from the previous five year period, escalated or deescalated in accordance with the Consumer Price Index. The amounts shall remain the same for the five years of the renewal period.

D) The C&OR’s failure to pay monthly rent will be considered a default of this lease Agreement.