

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CRYSTAL CITY, MISSOURI, AUTHORIZING THE MAYOR, THOMAS V. SCHILLY, TO ENTER INTO AN "AMENDMENT TO LEASE AGREEMENT" WITH WINGS ENTERPRISES, INC., INVOLVING THE LEASE OF REAL ESTATE IN THE CITY KNOWN AS THE PPG PROPERTY, THE UNDERLYING LEASE AGREEMENT BEING ENTERED INTO ON SEPTEMBER 10, 2007, PURSUANT TO ORDINANCE 1459.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CRYSTAL CITY, MISSOURI, AS FOLLOWS:

Section I. The Mayor of the City of Crystal City, Missouri is hereby authorized to execute on behalf of said City, a certain "Amendment to Lease Agreement" with Wings Enterprises, Inc., relating to the real estate known as the former PPG plant site in the City of Crystal City, Missouri, the underlying lease being entered into on September 10, 2007 pursuant to Ordinance 1459.

Section II. A copy of said "Amendment to Lease Agreement" is attached.

Section III. This ordinance shall become in full force and effect from and after the date of its passage by the City Council upon its approval by the Mayor.

Read three times and passed this ____ day of December, 2007.

Thomas V. Schilly, Mayor
CITY OF CRYSTAL CITY

ATTEST:

City Clerk

AYES

NAYS

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT is to the LEASE, made and entered into this 11th day of December, 2007, by and between CITY OF CRYSTAL CITY, a municipality of the State of Missouri (hereinafter referred to as the "Landlord"), and WINGS ENTERPRISES, INC., a Missouri corporation (hereinafter referred to as "Tenant").

R E C I T A L S

A. Parties have heretofore entered into a lease agreement relating to real estate in the City of Crystal City, County of Jefferson, State of Missouri which is currently owned by PPG Industries, Incorporated ("PPG") and was referred to in said lease agreement as the "Demised Premises" for the express purpose of developing the "Project" as defined in said agreement..

B. In consideration of the Project proposal, the financial incentives to Landlord, and the covenants and promises of the Tenant under the Lease and otherwise that the City would not have any substantial expense in relation to this transaction, Landlord approved the Project and enacted Ordinance Number 1459 approving the Lease.

C. Relying on the lease agreement to provide funding for the acquisition of said real estate, the City entered into a contract to purchase same from PPG.

D. Following the execution of the contract with PPG, Parties hereto have undertaken thorough due diligence steps to assure both that the Project is potentially viable and that the real estate proposed is in acceptable condition, both physically and as to title to go forward.

E. In the course of said due diligence, several matters of concern have surfaced. Among the concerns are the legal description of the real estate to be purchased, various exceptions to fee simple title, including the existence and location of easements benefiting an adjoining property owner, the possible existence of previously unknown environmental liabilities, adverse ownership claims as well as claims of certain prescriptive rights. Lawsuits have been filed against the City and others regarding some of these matters as well as the action by the City in entering into the Project agreements.

F. As a result of aforesaid matters of concern, the City has expressed concern about the condition of the Property and Records relating thereto as well as the Title to the real estate and exceptions noted to full fee simple ownership. As a result of those concerns, the City may be reluctant to proceed with the purchase from PPG and may elect under the terms of its contract with PPG to declare the Contract terminated under the provisions of paragraph 8(b) thereof and/or to file Title Exceptions under the provisions of paragraph 8(a).

G. Tenant has verbally assured the City that there is no concern of the condition of the Property and/or the Records and has presented letters from engineers and

environmental attorneys that support its contention that the conditions raised present no substantial exposure to the City, will not affect the proposed use of same in developing the Project and will not adversely impact the value in the future. Furthermore, Tenant has agreed to save and hold harmless the City from any and all such claims and to reimburse to the City any expenses it may incur in the defense thereof, including, but not limited to professional fees of any type.

H.. In order to clarify all assurances previously given by Lessee and to induce the City to proceed to waive any objection it may have to the Property or the Records under the provisions of paragraph 8(b) of its contract with PPG and to file Title Exceptions only as to the legal description and proper exceptions noted relating to that legal (which all parties believe can be resolved within the cure period provided) and then to proceed to close on the purchase from PPG and to then honor the Lease, Tenant has proposed this amendment and supplement to the existing Lease agreement which the City, by it's execution, has accepted..

WITNESSETH THAT, in consideration of the Recitals and mutual agreements herein contained, the receipt and sufficiency of which are acknowledged by all parties, the parties do hereby covenant to and with each other as follows:

FIRST

Tenant, having had full opportunity to review and investigate as it may desire, the Property and Records relating thereto, is fully satisfied with the condition of the Property and the Records relating thereto and all action taken by the Council of the City in negotiating and executing the Purchase Contract and the Lease and shall assume all liability and/or responsibility of Landlord and/or Tenant in any litigation now pending or hereafter filed in the future regarding the Purchase contract, the Lease Agreement or the condition of the Property. In the Lease agreement, Tenant has agreed to pay for or reimburse Landlord for all survey expenses, title insurance premiums, escrow fees, and closing costs, involved in the transaction and has always intended the Project which it presented to be of true benefit to the City and not to cause the City to expend any substantial money in the development thereof, therefore in addition to the aforesaid reimbursements, has tendered to the City the sum of FIFTY THOUSAND Dollars (\$50,000.00) to be paid twenty five thousand dollars (\$25,000.00) on or before 4:00 p.m. on December 12, 2007 and the additional sum of fifteen thousand dollars (\$15,000.00) at closing, (which shall be defined as set forth in the "Commercial Sale Contract" between Landlord and PPG Industries, Inc.) and the additional sum of ten thousand dollars (\$10,000.00) on or before March 30, 2008 in order to defer administrative expenses the City has incurred to date regarding the due diligence and related matters involving the Purchase Contract, the Lease and the Property. Tenant will also reimburse to Landlord any documented out-of-pocket expenses (excluding ordinary City employees salaries, but including reasonable professional fees) that it may incur in the future in the defense of any claim pending or made in the future relating to pending or future claims of "Sunshine Law" violations, or to the Purchase Contract, the Lease or the Property. Said sum and any additional amount so paid shall be considered additional prepaid rent.

SECOND

With regard to the uses which Tenant may make of the Demised Property, it is the clear intent, as set forth in Section 3.3 of the Lease Agreement, that the project to be developed by Tenant shall be a facility that will produce pig iron that will result in "Tonnage Rental" to the City. Further, in addition to any "Tonnage Rental" to the City as set forth in Section 3.5 of the Lease Agreement, Tenant shall also pay to the Landlord the amount of \$0.14 per ton for all iron ore not converted into pig iron that is sold or shipped from or through the Demised Property, which shall be deemed additional tonnage rental throughout the term of said lease which shall be increased or decreased by the same percentage as the sale price of iron ore increases or decreases at the expiration of each five (5) year anniversary per Section 3.5 of the Lease Agreement.

THIRD

Some concern has been raised about the obligations of Tenant for the payment of real estate taxes or assessments in lieu thereof pursuant to the provisions of Article IV of the lease. It is the understanding of the parties that development of the Project under the Purchase by the City and Lease to Tenant would in no way result in any decrease in assessed value which would cause a loss of tax revenue to any of the taxing entities. Furthermore, it is the intent of said Article to make it clear that the lease is full triple net – so that Landlord shall not be responsible for the payment of any such taxes, for any maintenance on the Property nor for any increase in its insurance cost resulting from the Project.

Accordingly, it is agreed that if for any reason the equalized assessed valuation for the Demised Premises in 2008 or any year thereafter during the existence of the lease be less than \$445,400.00 (the assessed value for 2007) the Tenant shall make a payment in lieu of taxes to Landlord of a sum which, when added to the total taxes levied, based on the lesser assessment, will equal the total tax based on the assessed value of \$445,400.00. Thereafter, the City Treasurer of Landlord shall disburse said sum pro-rata to each taxing entity due to receive same based on assessed value.

FOURTH

Parties have learned through their insurance agents that "comprehensive general liability" policies are no longer written under such label and that such policies are now most commonly known as "commercial general liability" policies. Accordingly, the parties agree that throughout Section VII of the lease, whenever the term "comprehensive general liability" is used it shall instead be "commercial general liability". Furthermore, the provisions of sections 7.2 and 7.3 were written with the understanding that Landlord has in existence such policy as required under section 7.3 and that acquiring ownership of the real estate involved in its present condition will not result in any additional premium. Also, when any substantial and ongoing physical work (excluding environmental testing, engineering or security work) is to be done on the premises, such work will be done by Tenant or those retained by Tenant and that prior to any such work, Tenant will have the

policy required by section 7.2 in place which names Landlord as an additional insured, thus resulting in no change on Landlord's policy.

FIFTH

It is understood by the Parties that provisions of this Amendment may relate to issues which Landlord warranted or represented in paragraph 12.3 of the Lease. It is further understood that by this agreement, any action by Landlord to establish or assure that Landlord has the authority it represented and warranted will be protected by Tenant and that, if for some reason a court should decide the purchase of the real estate or the lease is invalid, the lease shall be invalid and Landlord shall have no further responsibility to Tenant; provided however that Landlord shall transfer any rights that it has against PPG to Tenant including but not limited to any rights that it has to recover any consideration paid to PPG and in the event the Lease is voided the parties shall have one year from the date the Lease is voided to negotiate in good faith to enter into a new lease agreement or the Tenant shall have the right to purchase the PPG property for One Dollar (\$1.00). Furthermore, it is understood that the use contemplated by Tenant is not a permitted use under the zoning code and will require a conditional use permit. This paragraph Fifth shall survive the termination or voiding of the Lease.

SIXTH

Parties agree that default in any part of this agreement shall be deemed default under the provisions of Article X of the lease.

WITNESS WHEREOF, Landlord and Tenant have executed this Amendment to Lease in one or more counterparts, each of which shall be deemed an original, as of the day and year first above written.

"LANDLORD"

"TENANT"

CITY OF CRYSTAL CITY

WINGS ENTERPRISES, INC.

By: _____
Authorized Representative

By: _____
Authorized Representative