

Analysis of Lease Agreement between Wings Enterprises, Inc. and Crystal City, Missouri

RECITALS

PARAGRAPH A: Exhibit A:

- Is missing 6 pages (only contains 4/10), as well as 1 the 4 plats of land described in the LA.
- “Said real estate currently owned by PPG Industries.” I didn’t think anyone could “lease” property they didn’t even own yet. The Sale Contract wasn’t fortified until September 13, 2007, but the Lease Agreement herein is dated September 10th.

PARAGRAPH B

- The City did not make any detailed, written Requests for a Real Estate Development Proposal prior to Wings Enterprises. According to Mayor Schilly, “We made proposal requests but they were verbal, in nature” (if my memory serves me correctly)
- Kennedy submitted a proposal but it was not in a formal and/or proper form (i.e. Company history, financial statements/liquidity, prior real estate development deals made, personal credentials (job/education), environmental feasibility studies, etc.)
- Mentions “*drying, barge and pipeline facilities*”. Mr. Kennedy’s own words were, “there is not going to be any changes made to Plattin Creek and no pipeline put in. I care about the surrounding environment too much do do anything to alter its present condition.”

PARAGRAPH C

- Mayor Schilly entered into this real estate Lease Agreement before the land was legally and rightfully owned by the City. The Lease Agreement was signed on September 10, 2007. PPG did not execute and finalize the Sale Contract of their property until September 13, 2007...3 days later. So, therefore, I/we do not believe that the City had any legal/ethical/moral right, authority or statutory privilege to enter into the Lease Agreement in the first place.

PARAGRAPH D

- Mayor Schilly refers to City Ordinance 1459. At the time of the execution of this Lease Agreement, this Ordinance had not been signed/passed by the City Council and therefore makes the Lease Agreement null and void.

ARTICLE I

Lease: Term of the Lease

Section 1.2 (Lease Term)

- The term of this Lease runs 100 years. That’s ridiculous in and of itself. For the next 100 years, the City will act solely as a Landlord, and therefore, no incoming personal/real property tax income will be generated by this immense development idea for the next 100 years and the City’s tax base is not improved.
- Schilly gave Kennedy/Wings an UNLIMITED number of renewal options of ten (10) year increments, and a renewal fee of \$1,000,000 for each renewal period based on the 2008 dollar rate. This whole Section is absurd.
- **Section 442.581 RSMo. states that “any person who obtains a lease on agricultural/farmland for a term of more than ten (10) years [or a lease renewable for terms of 10 years or longer is deemed to have “ownership” of this land within the meaning of Sections 442.560 through 442.591.”**

Section 1.3 (Kennedy has sole discretion as to use of land with City cooperation and approval)

- Wings has the sole right of using other City-owned land for the purposes of entering/exiting the Property.
- To this end, Schilly guaranteed that “Schilly/the City will give Wings separate easement agreements for this purpose or to “establish required utility connections
- This type of language suggests possible easement, eminent domain and/or condemnation proceedings to be guaranteed by the City so Wings can have unobstructed use of the Property. And it also means that these same proceedings can affect any/all residents within an applicable radius of the PPG property.

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Section 1.4 (Wings can terminate Lease at any time)

- Wings can give the City 120 days notice and terminate their Lease relationship at any time and for any reason. Then, give back the Property to the City in whatever shape its in and without any monetary reompense. Wings can terminate this Lease at any time and the City will be left holding the bag, so to speak.

Section 1.5 (Consequences if City sells the land at some time)

- Refers to the City selling the land at some point. This is irrelevant since they gave the 100-year term lease with a one-time rental payment.
- In case the City wants to sell the property, which they will never do as they have too high of a financial/personal stake in this project, Wings can then “purchase” the property for the grand sum of \$1.00!

ARTICLE II
Use of Premises; Deliverables

Section 2.1 THIS IS HUGE!

- Wings can use the Property at its discretion (either for the iron-ore smelter or ANY OTHER INDUSTRIAL PURPOSE) as permitted by local, state and Federal laws and regulations.
- No other use, other than INDUSTRIAL, is authorized under the Lease.
- Wings has already gotten permission from Mayor Schilly to sublease the Property to American Milling Group, LLC or other “similar entities” (meaning anyone else he chooses) for the purposes of building/operating a large **barge port and railroad facility**.
- Schilly has already given Wings his guarantee that NO restrictions or changes in land use laws (by City Ordinance) that may get in Kennedy’s way (“harm or obstruct development of the Project”).
- Schilly gave Kennedy full permission to allow any company he wanted that might be waiting in the wings and invade Crystal City with whatever industrial plans they may have without any interference from the City.
- The fact that Schilly did this without getting any background information (i.e. financial statements, historical background, other investigative research as to the legitimacy and the credibility of American Milling Group, LLC. Or any other entity Kennedy may be associated with. **Section 441.030 RSMo. states: “No tenant, for a term not exceeding two years, or at will, or by sufferance shall assign his term or interest, or in any part or portion thereof, to another entity without the prior, written assent/consent of the Landlord.**

Section 2.2 (Kennedy has full control of Project without City interference)

- Kennedy can choose any architect, construction manager, general contractor, engineers, additional subcontractors, materials, suppliers and **any other persons or companies (FOREIGN or domestic)** in connection with the Project. Kennedy does this with Schilly’s full and complete cooperation and approval without any regard to the background of any of these persons or companies (or their potential ties to any foreign entities or governments).

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Section 2.3 (Documents given to Kennedy but not to the public)

- The City handed over several, pertinent documents to Kennedy prior to this Lease Agreement, yet the City has provided ZERO/NONE of these documents to the public for examination and inspection. Not only that, the Policy of Title Insurance and Survey, I would think, should be part of this Lease Agreement package.
- Commitment to provide Owner's policy of title insurance (dated July 6, 2007). This reflects that this deal was already in the works 3-4 months ago;
- June 15, 2000 survey done on the property (See how far back this potential real estate sale was begun?);
- August 9, 2007 letter to Mr. Edward D. Meyers (Lechner Realty) regarding potential claims with respect to the property (why this is listed I have no idea).
- If the City applies for State/Federal assistance for environmental cleanup operations, then Wings will be responsible for matching funds.

ARTICLE III **Pre-Paid Rent; Escrow**

Section 3.1 (Lump Sum Rental Payment)

- Mayor Schilly accepted A ONE-TIME RENTAL PAYMENT of \$2.2M. At 100 years, this comes out to a total average rent of \$22,000 for 242 acres of land. Boy, that's cheap. Kennedy stole the land from the City. At no time, and in full agreement of Mayor Schilly, will Wings (or anyone other "future owner") have to pay any monthly or yearly rent to the City.
- The City will never receive any guaranteed monthly/yearly rental income on the Property, since Mayor Schilly already sold away that possibility to Kennedy.
- The only yearly income the City "might" get is for "Tonnage Rental", and even that is no guarantee at \$0.20/ton of material produced.

Section 3.2(I) (Lease Escrow)

- Kennedy and Mayor Schilly opened up an escrow account at the Bank of Bloomsdale.

Section 3.2(ii) (Escrow Account)

- Why would Kennedy be privy to an escrow account set up by Mayor Schilly with PPG at Hillsboro Title Company?

Section 3.2(ii)(A) (Pre-paid Rent Deposit)

- As of September 10, 2007, Kennedy gave Schilly \$200,000 as and for "prepaid rent deposit" at the Bank of Bloomsdale (where Kennedy AND Schilly will be on the signature card). Both Kennedy and Schilly (on September 13, 2007) will withdraw/release the \$200,000 to the Hillsboro Title Company that Schilly will then use for "earnest money" in the City's purchase of the PPG property. AT NO TIME WILL THE CITY HAVE THE USE OF THESE FUNDS.
- By Kennedy giving Hillsboro Title Company this "pre-paid rental deposit" (as defined in any legal dictionary), as it is never going to be deposited into any City bank account for the use and pleasure of the City. He is simply "financing" the City to help them purchase the land for Kennedy and his soon-to-be-named cronies.
- If the City's purchase/closing on the PPG property does not occur, then the whole \$200,000 (plus whatever interest may have accrued) goes right back to Kenned's pocket.

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Section 3.2(ii)(B) (Payment of Lump-Sum Rent)

- On or about September 13, 2007 (date of execution for the PPG Sale Contract), Kennedy will forward \$2M to the Bank of Bloomsdale (lease escrow) as “payment in full”.
- At such time of the closing of the PPG real estate sale, then Kennedy/Schilly will authorize the release of these funds straight to the Hillsboro Title Company (which will then be given to PPG as payment-in-full of the Property).

Section 3.2(ii)(C) (If Closing Does Not Occur)

Again, if the closing does not occur, the \$2M sitting in the bank accruing interest will be given back to Kennedy and the Lease Agreement becomes null and void.

Section 3.3 (Deadline For Project To Become Operational)

- Kennedy has 5 years to get the Project (production of pig-iron ore and paying Tonnage Rental) operational. If Kennedy fails to get the Project operational in 5 years, then Schilly won't refund any of the prepaid rent. ***Which is impossible since the \$2M (prepaid rent) will have already been paid to PPG in the first place.***
- Kennedy and Schilly will actively look for another “Tenant” or purchaser. Like Kennedy will still be around. But, if he is, and another Lessee or Purchasor is found then >> **Kennedy gets \$2,000,000 PLUS 6% interest per year minus any sublease payments to Kennedy from American Milling. Hypothetically: So, if the City gets \$3M, Kennedy gets \$1M (which is adjusted for \$1M in sublease payments received from American Milling) from the City either monthly/yearly or lump-sum.**

Section 3.4 (Protection from Default)

- Wings cannot be found in default for any reasons and that the times for their performance of this Project can/will be extended for any reason or necessity under the sun.

Section 3.5 (Tonnage Rental)

- The only source of income for the City will be in the form of “tonnage rental” paid by Wings to the City. This tonnage rental is calculated at \$0.20/ton/year for the first 5 years after whatever time the Project actually becomes operational.
 - But if/when the City decides to then sell the Property (Section 1.5) and Wings purchases the Property outright for \$1.00, then the “tonnage rental” goes up to \$0.30/ton/year.
- The calculation for the tonnage rental will depend upon the fluctuation of the then-present economy, inflation, etc at the end of every 5 year anniversary (from the commencement of production).

Section 3.6 (Tonnage Rental Payment Frequency)

- Tonnage rental will be paid to the City every year within 75 days of the end of Wings' fiscal year (usually June 30th).

Section 3.7 (Maintain and keep proper books/accounting records)

- Wings will keep and maintain accounting books/records as required by mining and/or shipping operations.

Section 3.8 (Right to examine books and records by the City)

Section 3.9 (Consequences if error is found during examination of books/records)

- If additional tonnage rental is due to the City > \$1,000, then Wings will pay the costs of such examination/audit, including the additional tonnage rental.

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Section 3.10 (City's separation from Wings)

- City is not in a joint venture or partnership with Wings (or any other party) and nothing in the Lease will require the City to be responsible for the debts/obligations of Wings (or any other party).

Section 3.11 (Non-Disclosure Agreement)

- City will treat any/all confidential information from Wings as necessary regarding the Lease, the Project, the purpose and terms of the Lease, the subject matter of any meetings between Kennedy (and/or other parties) and the City, the identity of any customers, financing sources, accounts, suppliers of products or services, forms, manuals, documents, correspondence, financial data, business methods and trade secrets.
- Schilly has already agreed to keep all these secrets....A SECRET.

**ARTICLE 4
TRIPLE NET LEASE**

Section 4.1 (Indemnity of the City)

- Wings indemnifies and holds the City harmless for any/all debts and obligations of Wings relative to the daily operation (utility payments, etc.) of the Project.

**ARTICLE 5
IMPROVEMENTS, CHANGES AND ALTERATIONS**

Section 5.1(a) (Relative to construction of any buildings or other structures)

- All buildings will be built at Wings' cost, in compliance with laws, not diminish the land value, become part of the Property (upon completion) and will be surrendered at time of early termination or end of lease.
- Wings will give the City a "completion and payment" bond.
- Wings will not allow any mechanics liens be attached to the Property.
- Upon early termination (or end of lease term), Wings will dismantle and remove all buildings, as well as any/all improvements, changes and alterations. If Wings fails to remove such property, then the City can remove and store whatever property is left by Wings. If Wings fails to pay cost of storage, the City will sell whatever items it has.

Section 5.1(b) (City's approval of Project plans)

- City will approve all of Wings' plans for the Project without delay with a 30-day timeframe. If the City does not approve/disapprove such Plans, then the Plans will be deemed to have been approved by the City.

Section 5.1 (c)

- Wings will apply for all permits to commence/complete the Project with the City's full approval, consent and cooperation (as long as the City doesn't have to pay anything for it).

Section 5.1 (d) (Wings' indemnifies the City)

- Wings defend, indemnify and hold the City harmless for mechanics liens and other encumbrances (including any materials, fixtures, equipment or other improvements to the Property) filed by any person against Wings (or any other party).
- Wings will satisfy any lien within 60 days after the filing of such a lien.

Section 5.1(e)

- If City don't demand removal of the buildings, alterations and improvements, then they become part of the Property and become the City's property.

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Section 5.2 (Wings' indemnifies the City)

- Wings' indemnifies and holds the City harmless from any liabilities, judgments, demands, lawsuits, claims, losses, damages, costs and expenses arising out of the conduct or management of the Property, any work done on/to the Property or any condition created in or about the Property; any act, omission, or negligence of Wings' (or any of its employees/agents) and vice-versa (the City against Wings).
- Both Wings and the City will carry insurance that covers their obligations if any lawsuit does arise for the reasons above, and either Party has to indemnify and protect the other.

Section 5.3 (Wings' access to utilities)

- City will provide Wings full and complete access to all utilities from existing lines on, under or over its property.
- The City will acquire and provide Wings with all necessary utility easements to fulfill this purpose.

ARTICLE 6

Repairs, Maintenance and Hazardous Waste Material Handling

Section 6.1 (Wings' promises as to maintenance/upkeep of the Property)

- Wings promises to keep the Property in good, clean, safe, secure and sanitary condition and make necessary repairs as they arise.
- Wings will comply with all regulations affecting ENVIRONMENTAL BROWNFIELDS.

Section 6.2(B) (Hazardous Material Handling)

- Wings (or any of its agents, employees, contractors, licensees) will not allow, cause or permit any "hazardous materials" upon, kept upon or used in or about the Property unless necessary or useful to Wings' business.
- Wings will acquire all necessary permits and follow all laws, rules and regulations regarding this issue.

Section 6.2 ©) (Wings indemnifies the City)

- Wings will indemnify/hold the City harmless for all claims, costs, liabilities arising out of this Section, including the necessary removal, cleanup and restoration work.

ARTICLE 7

Insurance

Section 7.1

- Wings shall purchase and maintain all necessary insurance policies.

Section 7.2 (Wings' insurance liability amounts)

Section 7.3 (The City's insurance liability amounts)

ARTICLE 8

Damage and Destruction

Section 8.1 (Material casualty insurance terms, conditions, limits and amounts)

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ARTICLE 9

Assignments and Subleases; Mortgages (See also: Sections 2.1 and 2.2)

Section 9.1

- Wings may not sublease or assign this Lease (in whole or in part) without the City's prior approval/permission/consent EXCEPT Wings MAY sublease the Property located "east of the tracks for the to American Milling Group, LLC (or any other corporation/company/entity created by AMG), for the purposes of developing and operation of a barge port and rail facility; and ASSIGN THIS LEASE AS COLLATERAL TO SECURE THE FINANCING FOR THE PROJECT.
- This is odd, as the financing for the project should have already been in place prior to initiation of construction...except if that is just a ruse for future subleases.
- This is relative to the sublease/assignment mentioned in Sections 2.1 and 2.2.
- AMERICAN MILLING GROUP recently partnered with SEMO MILLING in building a corn mill/ethanol plant with SEMO MILLING in Cape Girardeau. SEMO MILLING specializes in the development of barge/rail facilities necessary in conjunction with the daily operations of corn/ethanol production mills.
- AMG is the manufacturer's representative for SELIS (who provides all the machinery and materials), which is based in Turkey.

Section 9.3

- Wings may encumber its interest by an additional mortgage, lien or other encumbrance ("leasehold mortgagee").
- Such a transaction will be called "the financing".
- Copies of all loan documents are to be given to the City. As of this time, no loan documents exist.
- This paragraph sounds as if Kennedy hasn't gotten the financing or backing to put this plan in operation.
- Financing may be secured by a collateral assignment of this Lease over to the Leasehold Mortgagee.
- Another words, Kennedy can turn this Lease over to some foreign entity and the City has no control over it.
- Mayor Schilly will not interfere with any such assignment.

Section 9.4 (Default of Wings)

- Wings defaults on whatever loan/mortgage he gets using this Lease as collateral, and the LM can write the City notifying them of such default, and the City has 60 days to satisfy the debt (which could be in the thousands/millions of dollars) prior to any further proceedings to satisfy the debt (foreclosure sale, etc.)

Section 9.5

- If this Lease is purchased at a foreclosure sale, the Lease shall continue in full force for the entire 100 year term (or whatever years are remaining at that time) unless the Purchaser satisfies the debt.

Section 9.6

- This paragraph mentions "default by Tenant" which is impossible since no such default language exists in this Lease. Then, Section 9.5 is reversed. I don't know how this can be since if Wings defaults on whatever 2ndary loan Kennedy takes out, then the City has to cure the default but there's no recourse against Kennedy or Wings.

Section 9.7

- Default of Wings on any Leasehold Mortgage, the Lmgee shall notify the City as to its rights under the mortgage.
- These rights include giving the City the option to buy back the land for all the amounts necessary to cure the outstanding debt. The City has 60 days to satisfy the outstanding loan/financing. If the City fails to make such satisfaction, the LM has the right to proceed with further remedies needed to cure the default.

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Section 9.8

- Neither Wings nor the City will be able to cancel, terminate or surrender their rights to this Lease without the written consent of the LM

Section 9.9

- All rights, title and interest in this Lease will then be transferred to the new purchaser of this Lease

**ARTICLE 10
DEFAULT**

Section 10.1

- This Paragraph talks about either Wings or the City defaults on this Lease (not sure how that can happen). The breaching party has 30 days to cure the default.

Section 10.2

- Non-defaulting party shall have the right to invoke any legal/equity remedies

**ARTICLE 11
NOTICES**

ARTICLE 12
Covenant of Quiet Enjoyment; Representations

Section 12.1

- Schilly guarantees that Kennedy/Wings will be allowed to enjoy the Property without any local/otherwise interference or disturbance
- In case this Lease or Property is challenged by lawsuit, the City will defend (at its own cost and expense) all such challenges, litigation or claim.
- There is nothing about Kennedy's share of liability and payment of court costs/fees relative to a lawsuit.

Section 12.2 (Environmental Brownfield status)

- Kennedy understands that the Property is deemed to be a "Brownfield" (according to the EPA) and assumes all responsibility and liability incurred as part of the operating of this Project.
- Kennedy also will assure that no further contamination or environmental hazard of any type or nature is created on the Property during the term of this Lease
- Kennedy's responsibility for environmental protection and lack of contamination shall extend beyond the term of the lease.

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Section 12.3. (The City's representations and warranties to Kennedy)

- Execution, delivery and performance of this lease by Mayor Schilly has been authorized by all necessary actions on the part of the City and the City Council.
- Lease is legal, valid and binding obligations upon the City.
- Mayor Schilly has authority to lease the Property to Wings under the Rev. Statutes of Missouri and the Constitution.
- **THERE ARE NO LIENS OR ENCUMBRANCES ON THE PROPERTY OTHER THAN THOSE CREATED BY THIS LEASE, AND AS SHOWN ON THE CURRENT COMMITMENT AND SURVEY**
- **THERE IS NO LITIGATION OR ADMINISTRATIVE PROCEEDINGS PENDING OR TO THE KNOWLEDGE OF THE CITY THAT WOULD PREVENT THE City FROM EXECUTING OR PERFORMING THIS LEASE OR THAT AFFECTS THE PROJECT.**
- The City is not a party to any agreement, order, proceeding, ruling or other matter in in conflict with any provision of this Lease.

Section 12.4 (Kennedy/Wings' representations and warranties to the City)

- Execution and delivery of this Lease and performance therein by Wings are authorized by duly requisite corporate actions.
- No litigation is pending, or to the best of Wings/Kennedy's knowledge, threatened against Wings/Kennedy which, if adversely determined, would likely have a material adverse impact on Kennedy/Wings or the Project.
- Kennedy/Wings is not a party to, and neither Kennedy/Wings' properties (real or personal) are subject to any agreement, order proceeding, ruling or other matter in conflict with any provision of this Lease which materially and adversely affects its ability to perform its obligations
- **MAJOR LIE!!! TENANT IS SOLVENT AND IS NOT A PARTY TO ANY ASSIGNMENT FOR THE BENEFIT OF CREDITORS OR BANKRUPTCY PROCEEDINGS**
- : **KENNEDY/WINGS IS NOT IN ANY MATERIAL DEFAULT OF ANY CONTRACT OR AGREEMENT TO WHICH IT IS A PARTY THAT MATERIALLY AND ADVERSELY AFFECTS TENANT'S ABILITY TO PERFORM ITS OBLIGATIONS UNDER THIS LEASE!!**

ARTICLE 13
REAL ESTATE BROKERS

Section 13.1 (Dual indemnification)

ARTICLE 15
COOPERATION

Section 15.1

- : The City agrees to fully cooperate with Kennedy/Wings and to take all reasonable actions to support Kennedy/Wings in obtaining financing for the Project, seek Brownfield funds, or any other incentives from the State of Missouri, to seek and obtain all necessary approval and permits from MoDNR.
- **THE CITY WILL EXERCISE ITS RIGHT OF EMINENT DOMAIN TO ACQUIRE TITLE TO ANY PROPERTIES WITHIN THE CITY THAT ARE DEEMED NECESSARY TO DEVELOP AND CONSTRUCT THE PROJECT.**
- Kennedy/Wings will pay all of the City's costs and expenses, and shall comply with any requirements in the exercise of the power of eminent domain.

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ARTICLE 16
MISCELLANEOUS

Section 16.3

- This Lease can be altered, amended or revoked by an instrument in writing signed by both parties. Both parties agree that all prior oral agreements between and among themselves and their agents or representatives relative to the acquisition and leasing of the Property are merged in or revoked by this Lease.

Section 16.4

- If any terms or provisions of this Lease shall be determined by a court of law to be “invalid or unenforceable”, the remainder of the Lease shall not be affected and each remaining term or provision of the Lease shall be valid.