

BOARD BILL # 69

**INTRODUCED BY ALDERWOMAN PHYLLIS YOUNG
PRESIDENT LEWIS REED, AND ALDERMAN ALFRED
WESSELS, JR.**

1 An ordinance recommended by the Board of Estimate and Apportionment authorizing the
2 City to execute a certificate stating that the City is not in default under Lease Financing
3 Agreement; providing legal description of the property on which the Kiel Opera House is located
4 (“Opera House Property”) to be released from the transaction involving certain lease certificates
5 of participation; stating purpose for the release of Opera House Property from said transaction;
6 requesting necessary actions be taken for release of the Opera House Property from said
7 transaction; approving certain documents in connection with the release of said leasehold interest;
8 authorizing certain other actions in connection with the foregoing; and containing a severability
9 clause.

10 WHEREAS, the City of St. Louis Missouri, as Master Lessor (the “City”), and the Land
11 Clearance for Redevelopment Authority of the City of St. Louis, as Master Lessee (the
12 “Authority”), entered into an Amended and Restated Master Lease, dated as of November 2,
13 1992 (the “Master Lease”), whereby the City leased to the Authority certain properties described
14 in the Master Lease, including, together with other real property, the “Opera House Property; and

15 WHEREAS, the Authority and Kiel Center Redevelopment Corporation, a Missouri
16 urban redevelopment corporation (“KCRC”), entered into an Amended and Restated Lease and
17 Development Agreement, dated as of November 24, 1992 (the “Existing Redevelopment
18 Agreement”), whereby the real estate leased by the Authority pursuant to the Master Lease was
19 subleased by the Authority to KCRC; and

20 WHEREAS, the Authority and St. Louis Municipal Finance Corporation, a Missouri
21 nonprofit corporation (“Finance Corp”), executed and recorded an instrument titled "Assignment

1 and Assumption of Master Lease Agreement", dated September 1, 2008, whereby the Authority
2 assigned to Finance Corp all of the Authority's right, title and interest as Master Lessee under the
3 Master Lease, and Finance Corp assumed all of the Authority's obligations under the Master
4 Lease; and

5 WHEREAS, the Authority and Finance Corp executed and recorded an instrument titled
6 "Assignment and Assumption of Master Lease Agreement", dated September 1, 2008, whereby
7 the Authority assigned to Finance Corp all of the Authority's right, title and interest as lessor
8 under the Existing Redevelopment Agreement, and Finance Corp assumed all of the Authority's
9 obligations under the Existing Redevelopment Agreement; and

10 WHEREAS, Finance Corp and the City entered into a Lease Financing Agreement dated
11 as of September 1, 2008 (the "Financing Lease"), whereby Finance Corp leased to the City
12 (subject to the Permitted Encumbrances as defined in the Financing Lease) the real estate leased
13 pursuant to the Master Lease; and

14 WHEREAS, pursuant to an Indenture of Trust, dated as of September 1, 2008 (the
15 "Indenture"), between Finance Corp and UMB Bank, N.A., a national banking association (the
16 "Trustee"), Finance Corp assigned its right, title and interest in and to the Financing Lease and
17 all rentals due thereunder to the Trustee as security for certain lease certificates of participation
18 described in the Indenture; and

19 WHEREAS, Section 7.5 of the Financing Lease sets forth the conditions under which
20 interests in real estate may be released from the Financing Lease and the Indenture, which
21 conditions include: (1) an amendment of the Financing Lease, (2) an appraisal of the market
22 value of the real estate to be released, and (3) an ordinance of the Board of Aldermen of the City
23 approving the amendment of the Financing Lease, authorizing a representative of the City to

1 execute a certificate stating that the City is not in default under any provisions of the Financing
2 Lease, giving a legal description of the Opera House Property, stating the purpose for the release
3 of the Opera House Property from the provisions of the Financing Lease and requesting the
4 release of the Opera House Property from the provisions of the Financing Lease; and

5 WHEREAS, Finance Corp and the City still hold all interests as lessor and lessee under
6 the Financing Lease, and the Trustee holds a lien on the Financing Lease; and

7 WHEREAS, an appraisal has been conducted by Sutton Realty Company (the
8 “Appraisal”), which appraisal has determined that the market value of the leasehold interest in
9 the Opera House Property under the Financing Lease has no value if such leasehold interest was
10 sold to a third party; and

11 WHEREAS, there is a proposal being considered by the Authority that would involve the
12 redevelopment of the Opera House Property, which redevelopment would benefit the other real
13 estate being leased to the City under the Financing Lease and such redevelopment shall not occur
14 if the leasehold interest in the Opera House Property is not released from the provisions of the
15 Financing Lease; and

16 WHEREAS, it is in the best interest of the City and the value of the remaining real estate
17 under the Financing Lease if the Board of Aldermen approved an amendment of the Financing
18 Lease to release the leasehold interest in the Opera House Property from the provisions of the
19 Financing Lease, approved a form of certificate to be executed by a representative of the City as
20 described above and took certain other actions in accordance with the Financing Agreement
21 described above.

22 NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS AS
23 FOLLOWS:

1 **SECTION ONE.** The Board of Aldermen has reviewed the Appraisal. The Board of
2 Aldermen hereby adopts the foregoing recitals as findings and further finds and declares that (a)
3 the legal description of the Opera House Property as set forth on Exhibit A to this Ordinance
4 provides an adequate legal description of the portion of the real estate to be released from the
5 Financing Lease, (b) the release of the leasehold interest in the Opera House Property from the
6 provisions of the Financing Lease is appropriate for the purpose of allowing the Opera House
7 Property to be redeveloped from its current condition and the Opera House Property would not
8 be redeveloped if this leasehold interest is not released from the provisions of the Financing
9 Lease, (c) no compensation is payable by the City for the release of this leasehold interest under
10 the Financing Lease, and (d) the City should request the release of this leasehold interest from
11 the provisions of the Financing Lease.

12 **SECTION TWO.** The Board of Aldermen hereby approves, and the Mayor and the
13 Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the
14 following documents: (a) the First Amendment to Lease Financing Agreement and Consent of
15 Trustee Under Indenture of Trust, attached as Exhibit B to this Ordinance; and (b) the Certificate
16 of the City stating that the City is not in default of the Financing Lease and requesting that the
17 foregoing leasehold interest be released from the provisions of the Financing Lease, which
18 Certificate is attached as Exhibit C to this Ordinance (the foregoing two documents collectively
19 referred to as the “Lease Financing Documents”). The City Register is hereby authorized and
20 directed to attest to the Lease Financing Documents and to affix the seal of the City thereto.
21 Each of the Lease Financing Documents shall be in substantially the form of such Document
22 attached to this Ordinance, with such changes therein as shall be approved by the Mayor and the

1 Comptroller executing the same and as may be consistent with the intent of this Ordinance and
2 necessary and appropriate in order to carry out the matters herein authorized.

3 **SECTION THREE.** The Mayor and the Comptroller of the City or their designated
4 representatives are hereby authorized and directed to take any and all actions to execute and
5 deliver for and on behalf of the City any and all additional certificates, documents, agreements or
6 other instruments as may be necessary and appropriate in order to carry out the matters herein
7 authorized, with no such further action of the Board of Aldermen necessary to authorize such
8 action by the Mayor and the Comptroller or their designated representatives.

9 **SECTION FOUR.** The Mayor and the Comptroller of the City or their designated
10 representatives, with the advice and concurrence of the City Counselor, are hereby further
11 authorized and directed to make any changes to the documents, agreements and instruments
12 approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance
13 and necessary and appropriate in order to carry out the matters herein authorized, with no such
14 further action of the Board of Aldermen necessary to authorize such changes by the Mayor and
15 the Comptroller or their designated representatives.

16 **SECTION FIVE.** It is hereby declared to be the intention of the Board of Aldermen
17 that each and every part, section and subsection of this Ordinance shall be separate and severable
18 from each and every other part, section and subsection hereof and that the Board of Aldermen
19 intends to adopt each said part, section and subsection separately and independently of any other
20 part, section and subsection. In the event that any part, section or subsection of this Ordinance
21 shall be determined to be or to have been unlawful or unconstitutional, the remaining parts,
22 sections and subsections shall be and remain in full force and effect, unless the court making

- 1 such finding shall determine that the valid portions standing alone are incomplete and are
- 2 incapable of being executed in accord with the legislative intent.

EXHIBIT A

LEGAL DESCRIPTION OF OPERA HOUSE PROPERTY

Beginning at the east right-of-way of 15th Street and the south right-of-way of Market Street intersection point being the Point of Beginning of this description of Lease Premises for the Kiel Opera House; thence along the south right-of-way line of Market Street South 75 degrees 26 minutes 22 seconds East a distance of 331.12'; thence along the west right-of-way line of 14th Street South 17 degrees 15 minutes 47 seconds West a distance of 235.12' to a cross; thence leaving said right-of-way North 72 degrees 56 minutes 51 seconds West a distance of 30.81' along first floor building line per Sheet 6T of the City of St. Louis Municipal Auditorium and Community Center Building drawing set, dated 3/15/1932 and prepared by The Plaza Commission, Inc.; thence South 17 degrees 03 minutes 09 seconds West a distance of 49.41'; thence to a point North 72 degrees 56 minutes 51 seconds West a distance of 19.89'; thence to a point South 17 degrees 03 minutes 09 seconds West a distance of 20.77'; thence to a point North 73 degrees 05 minutes 43 seconds West a distance of 39.10'; thence to a point North 17 degrees 37 minutes 48 seconds East a distance of 21.54'; thence North 72 degrees 57 minutes 26 seconds West a distance of 241.19' to a set cross on the east right-of-way of 15th Street; thence along the east right-of-way of 15th Street North 17 degrees 13 minutes 38 seconds East a distance of 269.50' to the Point of Beginning; having an area of 2.09 Acres.

EXHIBIT B

**FIRST AMENDMENT TO LEASE FINANCING AGREEMENT
AND CONSENT OF TRUSTEE UNDER INDENTURE OF TRUST**

EXHIBIT C
CERTIFICATE OF CITY

Date: May 15, 2009
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Sponsors: Alderwoman Phyllis Young
President Lewis Reed
Alderman Alfred Wessels, Jr.