

BOARD BILL # 70

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

1 An ordinance authorizing and approving the First Amendment to Amended and Restated
2 Master Lease between the City of St. Louis, Missouri (“City”) and St. Louis Municipal Finance
3 Corporation (the “Finance Corp”) pursuant to which the real property on which the Kiel Opera
4 House is released and removed from the terms and provisions of the Amended and Restated
5 Master Lease, and the Agreement Relating to Existing Agreements among the City the Land
6 Clearance for Redevelopment Authority for the City of St. Louis (“Authority”), Finance Corp,
7 Kiel Center Redevelopment Corporation (“KCRC”), Kiel Center Partners, L.P. (“KCP”) and
8 Opera House Redevelopment Company, LLC (“Redeveloper”) pursuant to which certain
9 agreements relating to the Kiel Opera House and Scottrade Center are amended; authorizing
10 certain other actions; and containing a severability clause.

11 WHEREAS, the City is the owner of the real property located at 1400 Market Street and
12 1401 Clark Avenue in the City on which real property are located the Kiel Opera House and the
13 Scottrade Center, respectively (all of the real property located at the two (2) addresses
14 collectively referred to as the “Entire Property”); and

15 WHEREAS, the City and the Authority entered into the Amended and Restated Master
16 Lease, dated as of November 2, 1992 (the “Existing Master Lease”), pursuant to which Existing
17 Master Lease the City leased the Entire Property to the Authority and agreed to the sublease of
18 the Entire Property to KCRC, and the redevelopment of the property by KCRC and KCRC’s
19 assignee, K

20 WHEREAS, the Authority and KCRC entered into the Amended and Restated Lease and
21 Development Agreement, dated as of November 24, 1992 (the “Existing Development

1 Agreement”), pursuant to which Existing Development Agreement KCRC leased the Entire
2 Property from the Authority and agreed to redevelop the Entire Property; and

3 WHEREAS, KCRC and KCP entered into the Amended and Restated Sublease
4 Agreement, dated as of November 24, 1992 (the “Existing Sublease”), pursuant to which
5 Existing Sublease KCP subleased the Entire Property from KCRC and agreed to redevelop the
6 Entire Property; and

7 WHEREAS, KCP undertook the redevelopment of the Entire Property by developing and
8 constructing the Scottrade Center on a portion of the Entire Property, located at 1401 Clark
9 Avenue in the City and KCP made limited improvements to the portion of the Entire Property
10 known as the Kiel Opera House and located at 1400 Market Street in the City (the “Opera House
11 Property”); and

12 WHEREAS, the City, the LCRA, KCRC and KCP entered into the Amended and
13 Restated Non-Disturbance and Recognition Agreement, dated as of November 9, 1992 (the
14 “NDR Agreement”), pursuant to which the parties agreed to take, or to forbear from taking,
15 certain actions upon the termination of the Existing Master Lease or the Existing Development
16 Agreement or the occurrence of a default under the Existing Development Agreement or the
17 Existing Sublease; and

18 WHEREAS, the City, KCRC and KCP entered into the Agreement for Payments in Lieu
19 of Taxes, dated as of November 24, 1992 (the “PILOTs Agreement”), pursuant to which KCP
20 agreed to commence making payments in lieu of taxes twenty-six (26) years after the
21 Commencement Date, as that term is defined in the Existing Sublease; and

22 WHEREAS, pursuant to the Assignment and Assumption of Master Lease Agreement
23 (the “Master Lease Assignment:”), dated as of September 1, 2008, by and between the Authority

1 and Finance Corp, the Authority assigned all of its rights, duties, interests and obligations under
2 and pursuant to the Existing Master Lease to Finance Corp and Finance Corp assumed and
3 agreed to perform all of such rights, duties, interests and obligations of the Authority under the
4 Existing Master Lease; and

5 WHEREAS, at this same time, pursuant to Assignment and Assumption of Lease and
6 Development Agreement (the “Development Agreement Assignment”), dated as of September 1,
7 2008, by and between the Authority and Finance Corp, the Authority assigned all of its rights,
8 duties, interests and obligations under and pursuant to the Existing Development Agreement to
9 Finance Corp and Finance Corp assumed and agreed to perform all of such rights, duties,
10 interests and obligations of the Authority under the Existing Development Agreement; and

11 WHEREAS, pursuant to the Master Lease Assignment and the Development Agreement
12 Assignment and as confirmed by the Estoppel and Assurances Agreement, dated September 18,
13 2008, by and among Finance Corp, the Authority, the City, KCP (through Sports Capital
14 Holdings (St. Louis) LLC) and KCRC (through SCH (St. Louis) GP LLC), succeeded to the
15 rights and obligations of the Authority under the NDR Agreement; and

16 WHEREAS, pursuant to the Lease Financing Agreement, dated as of September 1, 2008
17 (the “Lease Financing Agreement”), between the City and Finance Corp, the Finance Corp
18 leased the Entire Property to the City, subject to certain permitted encumbrances (including the
19 Existing Development Agreement and the Existing Sublease), and the City leased the Entire
20 Property from Finance Corp, subject to permitted encumbrances, including, but not limited to,
21 the foregoing; and

22 WHEREAS, pursuant to the terms of the Indenture of Trust, dated as of September 1,
23 2008, between Finance Corp and UMB Bank, N.A., a national banking association, Finance

1 Corp issued certain certificates of lease participation, which certificates of participation are to be
2 paid by the rentals paid by the City to Finance Corp under the terms of the Lease Financing
3 Agreement; and

4 WHEREAS, at this time, the Opera House Property and the improvements thereon are in
5 need of major rehabilitation, and the Redeveloper has presented a proposal to the Authority to
6 redevelop the Opera House Property into a special purpose civic building that will provide
7 facilities for entertainment productions, conferences, assemblies, receptions, dining and
8 associated functions; and

9 WHEREAS, in order to redevelop the Opera House Property, the Opera House Property
10 is being released and removed from the terms and provisions of the Lease Financing Agreement,
11 the Existing Master Lease, the Existing Development Agreement, the Existing Sublease and
12 certain deeds of trust and other encumbrances, and, after the Opera House Property is released
13 and removed from the terms and provisions of such documents, it is contemplated that the City
14 will lease the Opera House Property to the Authority pursuant to the terms of a new master lease,
15 and agree that the Authority can sublease the Opera House Property to the Redeveloper and that
16 the Redeveloper can redevelop and rehabilitate the Opera House Property; and

17 WHEREAS, it is also contemplated that, concurrently with the execution of the new
18 master lease, the Authority and the Redeveloper will enter into a sublease and development
19 agreement pursuant to which the Authority will sublease the Opera House Property to the
20 Redeveloper and the Redeveloper will redevelop and rehabilitate the Opera House Property in
21 accordance with said sublease and development agreement; and

22 WHEREAS, in order to release the Opera House Property from the structure of all of the
23 prior documentation, the Opera House Property must be released from the terms and provisions

1 of the Existing Master Lease and the NDR Agreement, and, in order to provide for continuing
2 tax exempt status for the Scottrade Center and to release the Opera House Property from such
3 prior documentation, the PILOTs Agreement is to be amended; and

4 WHEREAS, it is in the best interest of the City to execute and deliver the First
5 Amendment to Amended and Restated Master Lease and the Agreement Relating to Existing
6 Agreements and to take certain other actions described above.

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

8 **SECTION ONE.** Based upon the foregoing, the Board of Aldermen has determined
9 that it is in the best interest of the City to redevelop and to rehabilitate the Opera House Property
10 and to release the Opera House Property from the structure of all of the prior encumbrances and
11 agreements affecting the Opera House Property in order to assist such redevelopment and
12 rehabilitation.

13 **SECTION TWO.** The Board of Aldermen hereby approves, and the Mayor and the
14 Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the
15 following documents: (a) the First Amendment to Amended and Restated Master Lease,
16 between the City and Finance Corp, which Amendment is attached as Exhibit A to this
17 Ordinance; and (b) the Agreement Relating to Existing Agreements, among the City, the
18 Authority, Finance Corp, KCRC, KCP and the Redeveloper, which Agreement is attached as
19 Exhibit B to this Ordinance (the foregoing two documents collectively referred to as the
20 “Amendment Documents”). The City Register is hereby authorized and directed to attest to the
21 Amendment Documents and to affix the seal of the City thereto. Each of the Amendment
22 Documents shall be in substantially the form of such Document attached to this Ordinance, with
23 such changes therein as shall be approved by the Mayor and the Comptroller executing the same

1 and as may be consistent with the intent of this Ordinance and necessary and appropriate in order
2 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

FIRST AMENDMENT TO AMENDED AND RESTATED MASTER LEASE

EXHIBIT B

AGREEMENT RELATING TO EXISTING AGREEMENTS