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## **STATEMENT OF INTEREST OF AMICUS CURIAE**

The City of Kansas City, Missouri (“Kansas City”) is a duly organized Missouri constitutional charter city. Since its adoption by Missouri’s General Assembly, Kansas City has employed Missouri’s Real Property Tax Increment Allocation Act (the “TIF Act”), §§ 99.800-.865, RSMo (2000) to address rehabilitation and redevelopment of the City. See Tax Increment Financing Com’n of Kansas City v. J.E. Dunn Constr. Co., Inc., 781 S.W.2d at 74-75 (Mo. banc 1989).

Kansas City’s interest in this matter stems from its historical use of the TIF Act as a primary redevelopment tool. Kansas City has 40 active TIF Plans, under which it has issued over \$175 million in TIF bonds (which include Kansas City’s pledge to request annual appropriation from general revenues in the event TIF increment becomes unavailable). For over 20 years, the TIF Act has been to be an important tool for the continued economic and civic vitality of Kansas City. Without this economic development tool or the ability to depend upon the availability of this economic development tool, Kansas City and its citizens will be much less successful in attracting new jobs and retaining existing jobs. Given Kansas City’s location on the border of Missouri and Kansas and the current commercial and residential growth in the Kansas side of the Kansas City metropolitan area, many of those jobs will be lost to Kansas. In addition, Kansas City and its citizens will never see needed roads and other public infrastructure built and will continue to see its tax base erode.

Several of the issues raised on this Appeal involve issues of general importance to the State of Missouri, its municipalities and, in particular, Kansas City. Specifically,

Kansas City may be impacted by rulings on the issues of (1) the timeliness of challenges to ordinances adopting tax increment financing for Redevelopment Plans and Projects; (2) the propriety of the use of PILOTS for public improvements and public facilities; and (3) the constitutionality of EATS under Article VI, §§ 23 and 25.

Any significant judicial interpretation of the TIF Act has the potential of adverse impact on the viability of Kansas City's TIF Plans, the City's finances, and redevelopment programs and municipal finances of municipalities throughout the State.

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## STATEMENT OF FACTS

Amicus Curiae, the City of Kansas City, Missouri (“Kansas City”), adopts the Statement of Facts presented by Respondent, the City of St. Peters, Missouri (“St. Peters”), and supplements the record before this Court with the following additional facts relevant to Kansas City’s interest in this matter.

The Stipulation of Facts agreed to by the parties to the trial proceedings states that “as of February 1, 2001, 49 municipalities in the State have adopted 125 Plans under the TIF Act.” Appellants Substitute Brief, 17.<sup>1</sup> The “2003 Annual Report, Tax Increment Financing in Missouri” (“2003 Report”) shows a total of 116 Projects reporting, in 47 different municipalities. The summary pages and pertinent excerpts of the 2003 Annual Report as published by Missouri’s Department of Economic Development are collected in Kansas City’s Appendix to this Brief. KC App. 1-19.

The 2003 Report, however, does not include Kansas City’s **80 TIF Plans**. Excerpts of the 2004 Kansas City, Missouri Tax Increment Financing Annual Report (“Kansas City TIF Report”) are attached at KC App. 20-100.

Since 1986, Kansas City has adopted **80** TIF Redevelopment Plans. KC App. 21-22. Currently, there are over 40 active TIF Redevelopment Plans in Kansas City. Taken together, the 2003 Report and the Kansas City TIF Report show that **over 156**

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<sup>1</sup> References to the Appellants’ Substitute Brief shall be to “App. \_\_\_”; references to Appellants’ Substitute Appendix shall be to “Sub.Appendix \_\_\_”; references to Kansas City’s Appendix (separately filed) shall be to “KC App. \_\_\_.”

**redevelopment plans** are supported by the TIF Act.

Among the various activities undertaken or planned in the Kansas City Redevelopment Plans are construction of public parking garages and parking facilities (KC App. 24, 73, 92); improvements to infrastructure such as streets, interchanges and bridges (Id. at 24, 40, 51, 87); construction of a public library (Id. at 56); construction of a building for lease by a public library district (Id. at 72); park areas (Id. at 61, 67, 83); streetscapes (Id. at 77); a public mall (Id. at 61); acquisition of public art (Id. at 34); development of an archeological park (Id. at 97); expansion of publicly-owned convention facilities (Id. at 92); and construction of a publicly-owned performing arts center (Id. at 92).

Statewide, the nature of specific projects supported by tax increment under the auspices of TIF Act Redevelopment Plans is uncertain. The State's 2003 Annual Report, however, indicates that various public improvements and facilities are financed through TIF or planned for financing through TIF, including a public golf course (KC App. 4); a "convention center" (Id. at 6); a "public safety facility" (Id. at 8); a park (Id. at 10); "recreational ice facilities" (Id. at 10); a "performing arts center," (Id. at 16); a publicly-owned business park (Id. at 12, 18); and, almost universally, construction of streets, street improvements, utilities and other public infrastructure.

Since adoption, Kansas City's TIF Plans have generated and captured over \$64 million in EATS and over \$79 million in PILOTS. Kansas City has issued over \$175 million in TIF bonds in support of these redevelopment programs. Each of those bonds includes Kansas City's pledge to request annual appropriation from general revenue if

TIF increment becomes unavailable to pay bond obligations.

Missouri's Economic Development Council concludes that the use of TIF has generated over \$1.4 billion in investment in Missouri. The State of Missouri reports that over \$146 million in EATS and PILOTS have been generated and collected for application to TIF redevelopment—not including the Kansas City TIF Act Plans.

As particularly relevant to the issues raised in this Appeal, Kansas City's Brush Creek-Plaza Library TIF Plan (adopted in March 1999) contemplates the construction of a 50,000 square-foot library and redevelopment of commercial and institutional properties. KC App. 55-59. That construction is now in progress. The Civic Mall-Illus Davis Park and FAA Building TIF Plan (adopted December 1994) proposes construction a public mall with the purpose to spur redevelopment in the blighted area. Id. at 60-65. That construction is completed. The "Performing Arts TIF Plan" proposes the construction of a performing arts center and convention center facilities. Id. at 91-95. Construction of the convention center facilities is now in progress. A great many of the TIF Redevelopment plans involve the construction of public parking facilities, street improvements, landscaping and public beautification activities.

## POINTS RELIED ON

**I. Section 516.120 Properly Applies To Bar Claims For PILOTS And EATS Unless Such Claims Are Brought Within 5 Years Of The Date Of Adoption Of Tax Increment Financing Under The Act In That At That Time An Obligation Or Liability With Respect To The Increment Arises Triggering Running Of The Limitations Period.**

Dixon v. Shafton, 649 S.W.2d 435 (Mo. banc 1983)

Heman Ins. Corp. of America v. Ryerson, 108 S.W.3d 90 (Mo. App. E.D. 2003)

§ 516.120, RSMo (2000)

**II. The Reference To “Private Use” In The Act’s Definition Of PILOTS Cannot Preclude The Use Of PILOTS For “Public Uses” Because The TIF Act Clearly And Specifically Permits The Use Of PILOTS For Public Purposes.**

§ 99.805(7), RSMo (Supp. 1991)

**III. The Act’s Provisions Regarding EATS Do Not Violate Article VI, §§ 23 and 25 Of The Missouri Constitution.**

Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822 (Mo. 1991)

Art. VI, §§ 23 and 25, Mo.Const.

## **ARGUMENT**

### **Standard of Review**

Review of summary judgment is *de novo*. “The propriety of summary judgment is purely an issue of law. As the trial court’s judgment is founded on the record submitted and the law, an appellate court need not defer to the trial court’s order granting summary judgment.” ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp, 854 S.W.2d 371, 376 (Mo. banc 1993).

### **POINT I**

**Section 516.120 Properly Applies To Bar Claims For PILOTS And EATS Unless Such Claims Are Brought Within 5 Years Of The Date Of Adoption Of Tax Increment Financing Under The Act In That At That Time An Obligation Or Liability With Respect To The Increment Arises Triggering Running Of The Limitations Period.**

In POINTS VII through IX, Plaintiffs appeal the Trial Court’s judgment against them based on the timeliness of their suit. Kansas City strongly supports the application of the 5-year limitations period under § 516.120 RSMo 2000<sup>2</sup> for claims challenging the validity of ordinances adopting Redevelopment Plans and tax increment financing with the limitations period beginning to run on the date of adoption of the ordinance establishing the tax increment and redevelopment financing plan. Sub. Appendix 19. A

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<sup>2</sup> All references to § 516.120 are to the 2000 version; all statutory references to the TIF Act and to the Act as revised through 1991, except as specifically noted.

decision confirming the application of § 516.120 to such claims adequately protects the settled expectations of municipalities who have incurred and agreed to incur substantial obligations in support of TIF Act redevelopment and adequately protects the rights of taxpayers and taxing districts to challenge proposed TIF Redevelopments.

The Redevelopment Plan at issue was adopted in December, 1992. L.F. 507, 517. St. Charles County first filed suit on August 9, 2000—8 years after the declaration of blight, the adoption of the Redevelopment Plan and the adoption of tax increment financing for the Project area. R.L. 11. The first increment payable under the Redevelopment Plan accrued as early as December, 1993. L.F. 748.

As with many TIF Plans, St. Peters' investment in its program for the eradication and elimination of blight began at adoption of the Plan and ordinances and increased in the following years. In Kansas City's case, the City has issued over \$175 million in TIF bonds in support of these redevelopment programs. Each of those bonds includes Kansas City's pledge to request annual appropriation from general revenue if TIF increment becomes unavailable to pay bond obligations.

Section 516.120(1) or (2) (barring such claims after 5 years) applies to the claims of Plaintiffs challenging the actions of St. Peters in establishing the TIF and adopting tax increment financing. Section 516.120(1) and (2) provide:

Within five years:

(1) All actions upon contracts, obligations, or liabilities, express or implied, except those mentioned in section 516.110, and except upon judgments or decrees of a court of record, and except where a different time is herein limited;

(2) An action upon a liability created by a statute other than a penalty or a forfeiture.

Id. (Sub. Appendix 19).

The Trial Court and Missouri Court of Appeals, Eastern District, correctly reasoned that challenges to a municipal Redevelopment Plan and adoption of tax increment financing fall within the limitations period prescribed under § 516.120. Therefore, the claims of Plaintiffs first brought in August, 2000, are barred because they were first filed more than 5 years from the date of adoption of the ordinances establishing the St. Peters Redevelopment Plan and adopting tax increment financing.

In this case, two questions are presented. First, does the limitations period contained in § 516.120 of five years apply? Second, when does the limitations period begins to run?

Plaintiffs do not contest the application of § 516.120 to their claims. App. 106-15. Clearly, § 516.120 applies.

As a primary matter, a “cause of action shall ... be deemed to accrue ... when the damage resulting therefrom is sustained and is capable of ascertainment.” § 516.100. As Missouri’s Eastern District Court of Appeals recognized in its opinion in this case:

Since its adoption in 1919, “[t]he word ‘ascertain’ [in Section 516.100] has always been read as referring to *the fact of damage, rather than to the precise amount.*”

Dixon v. Shafton, 649 S.W.2d 435, 438 (Mo. banc 1983) (emphasis added).

As recognized by the Missouri Courts, “a statute of limitations begins to run when a suit may be maintained.” Hemar Ins. Corp. of America v. Ryerson, 108 S.W.3d 90, 95

(Mo. App. E.D. 2003).

Under the TIF Act, the limitations period for claims of refunds of increment begins to run on the enactment of the ordinance adopting the Plan and adopting tax increment financing (pursuant to § 99.845) because at that point the liability and the obligation to taxing districts accrues.

This Court's confirmation of the conclusion that § 516.120 applies to challenges to TIF Act Redevelopment Plans and ordinances complies with the plain meaning of the limitations statutes, adequately protects the interests of taxing districts and taxpayers, and will promote necessary certainty for the over 150 active TIF Plans in the State.

The TIF Act clearly provides that *all* PILOTS are increment dedicated to the Redevelopment Plan and that 50% of the EATS (the increased economic activity taxes generated within the area selected for the redevelopment project) are increment dedicated to the Redevelopment Plan. On adoption of tax increment financing, by operation of law, the loss to the taxing districts of tax revenues accrues. The liability and obligation exist and are capable of ascertainment at the time of adoption of the Plan and tax increment financing.

As this Court recognized in Ste. Genevieve School Dist. R-II v. Board of Aldermen of the City of Ste. Genevieve, 66 S.W. 3d 6 (Mo. banc 2002), *upon adoption of tax increment financing* pursuant to the TIF Act, a taxpayer has standing to bring suit challenging the adoption. This is true because the taxing districts “*will suffer* a pecuniary loss from the transaction. Because the TIF financing ... abates increases in property tax, both the city and school district will be unable to collect property taxes that they

otherwise would have collected.”<sup>3</sup> 66 S.W.3d 6, 11 (Mo. banc 2002) (emphasis added). The “loss” recognized by this Supreme Court in Ste. Genevieve is known—and therefore ascertainable—upon adoption of tax increment financing.

Looked at another way, a taxpayer has standing to bring a declaratory judgment action testing the propriety of the adoption of tax increment financing *at the time of enactment of the ordinance adopting tax increment financing*. This Court’s conclusion on standing in Ste. Genevieve recognizes that taxpayer standing exists as of the date of adoption of tax increment financing—long before any increment actually accrues. At that point in time, by implication, suit may be brought seeking to enjoin the threatened injury to the tax revenues of affected taxing districts.

In this case, Ordinance No. 1962 adopts tax increment financing on December 29, 1992. At that point in time, Plaintiffs could have brought a declaratory judgment action suit challenging the validity of the ordinance. At that point in time, as recognized by this Court in Ste. Genevieve, they had standing to bring suit to enjoin the threatened loss of tax revenue which results by operation of the Act. Accordingly, adoption of Ordinance No. 1962 on December 29, 1992, began the running of the statute. In addition, since all of

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<sup>3</sup> Although it is the holding of this Court that revenues are “lost” to the taxing districts, Ste. Genevieve, 66 S.W.3d at 11, the TIF Act proceeds under the assumption that the area from which increment is captured would not have generated **any** new tax revenues absent the adoption of the TIF Plan. It is questionable what, if any, “loss” exists because the incremental revenues never would have arisen but for TIF.

Plaintiffs' claims challenge the liabilities and obligations resulting from the adoption of the Redevelopment Plan, all of Plaintiffs' claims are barred by the 5-year statute.

Application of § 516.120 to Plaintiffs' claims also adequately protects the interests of affected taxpayers and taxing districts. Plaintiffs complain that, at the time of passage of Ordinance No. 1962, they could not know the area from which increment would be captured. App. 109-110. The Act provides for public hearing and public notice of the adoption of a Redevelopment Area and Redevelopment Plan. § 99.825 (providing for public hearing and notice prior to "adoption of an ordinance proposing the designation of a redevelopment area, or approving a redevelopment plan ...."); § 99.830 (providing details of notice requirements). The Act requires specific notice to affected taxpayers and taxing districts.

Because specific notice is provided to taxing districts—such as St. Charles County in this case—the application of the limitations period to the date of adoption of tax increment financing adequately protects the taxing districts' interests.

Moreover, there is no contention that St. Charles County was not notified of the intention of St. Peters to adopt the Plan and adopt tax increment financing for the Area.<sup>4</sup> There is no contention that public notice of the hearings relating to St. Peters' actions were in any way deficient.

In addition, there can be no serious contention that St. Charles County did not

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<sup>4</sup> Indeed, St. Charles County contributed \$25,000 to assist in development of the REC- PLEX. Respondents' Legal File, pages 231 - 234.

appreciate the Area found to be blighted was the intended Redevelopment Project area from which increment would be captured. Its Assessor and Collector have been collecting the increment and paying it over to St. Peters since adoption of the Plan and using the legal description of the Area provided in Ordinances 1961 and 1962 to carry out those duties.

The premise of the TIF Act is that the redevelopment of blighted areas will increase the tax base and tax revenues of all taxing districts. “The Act contemplates that improvements in the district will result in an increased assessed valuation of the property within the redevelopment area.” Dunn, 781 S.W.2d at 73. Blighted areas do not generate the same level of tax revenues as generated by areas not suffering from blight. The “tax base” is depressed as a result of the blight. After redevelopment is complete, as a result of the redevelopment of the “tax base,” tax revenues increase. For PILOTS, at the end of redevelopment, the revenues provided by levies applied to the increased value of the real property in the area generates more tax revenues than before redevelopment (to the benefit of all taxing districts). As to EATS, in addition to benefiting from the improved vitality of the area after redevelopment is complete, taxing districts share in increased sales tax revenues as redevelopment occurs because 50% of the EATS are retained by the taxing districts.

Under TIF, the improved “tax base” results from efforts of the municipality. The efforts include, as in this case, the issuance of substantial obligations secured by the increment to be collected. Claims that the increment is illegally collected (as Plaintiffs contend in this case) raised long after adoption of tax increment financing unfairly

burdens the municipality, yet retains for the other taxing districts all the benefits of redevelopment of their tax base.

Finally, upholding the application of § 510.120's 5-year bar in this case supports certainty in the law and, specifically with regard to TIF redevelopments, promotes continued confidence in obligations issued in support of TIF redevelopments state-wide. Under the TIF Act, obligations may be issued in advance of the work of redevelopment. § 99.835.1. Permitting (as Plaintiffs argue) new causes of action to arise on each year's accrual of PILOTS and EATS creates each year new uncertainty as to validity of obligations issued in support of redevelopment.

Section 516.120 correctly applies to end the point in time when a suit may be brought to challenge the legislative decisions regarding adoption of the Plan and the use of tax increment financing for redevelopment. Actions challenging existing Redevelopment Plans and Projects subject municipalities, such as Kansas City, to millions of dollars of liabilities for increment that has been collected and, at the same time, undermines the obligations issued in support of the redevelopment. In the absence of a limitations period, in Kansas City's case, over \$175 million in bonds are subject to legal challenge during the entire repayment period.

Application of the 5-year statute of limitations also provides certainty that, after a certain point in time, collections and investments of increment are not subject to reversal or "refunding," as requested by St. Charles County in this case. The deadline within which a challenge may be brought to the enactment of tax increment financing is set.

As Judge Wolff recognized in Green v. Lebanon R-III School Dist., 13 S.W.3d

278, 287 (Mo. banc 2000), “It is well to interpret and enforce the requirements of the constitution, but it is quite another matter to disrupt settled expectations years after a constitutional violation has purportedly occurred.” (Wolff, J., concurring). In Green, taxpayers brought suit alleging the tax levies set by school districts exceeded the maximum permissible levy permitted under the Hancock Amendment. Id. at 280. In his concurring opinion in Green, Judge Wolff would have held taxpayers’ claims for refunds barred as untimely. Id. at 290. In reaching his conclusion, Judge Wolff recognized that “[F]inality in taxation is essential to local government.” Id. at 289.

The same “essential” finality is required under the TIF Act. Long-term obligations have been issued to support the redevelopment plans and projects in Kansas City and throughout the State of Missouri. In the absence of a limitations period applicable to challenges to such redevelopment plans and projects, the “essential” finality may never be obtained.

Obligations secured by the special allocation fund may be issued for periods as long as 23 years. Under Plaintiffs’ theory of “installments” (App. 112-113), the finality essential to local governments (not to mention bond holders) may never exist. The security of the funds supporting such obligations—the increment collected and to be collected as a result of adoption of tax increment financing—requires the application of a limitations period.

In Kansas City, through 1999, over \$140 million in increment has been collected and applied to redevelopment. Over \$175 million in bonds have been issued (backed by Kansas City’s pledge to request annual appropriation from general revenue in the event

TIF increment no longer is available). Challenges to the capture of increment can and should be brought when the enactment of tax increment financing occurs. The application of the 5-year limitations period provides more than adequate time for taxing districts and affected taxpayers to bring such suits.

Kansas City respectfully requests this Court affirm the decision of the Trial Court, and hold that § 516.120 applies to bar the claims of Plaintiffs challenging the adoption of tax increment financing.

## POINT II

### **The Reference To “Private Use” In The Act’s Definition Of PILOTS Cannot Preclude The Use Of PILOTS For “Public Uses” Because The TIF Act Clearly And Specifically Permits The Use Of PILOTS For Public Purposes.**

In POINTS I and III of their Brief, Plaintiffs assert the Trial Court erred in granting summary judgment on Counts IV of their Petition because they claim PILOTS are to be used for a “private use” and the use of PILOTS to finance the REC-PLEX—a public community recreation center—is a “public use.” App. 34, 50, 66.

The issue is the nature of “public uses” to which PILOTS can be applied. Section 99.805(7) defines PILOTS as:

those estimated revenues from real property in the area selected for a redevelopment project, **which revenues according to the redevelopment project or plan are to be used for a private use**, which taxing districts would have received had a municipality not adopted tax increment allocation financing, and which would result from levies made after the time of the adoption of tax increment allocation financing during the time the current equalized value of real property in the area selected for the redevelopment project exceeds the total initial equalized value of real property in such area until the designation is terminated pursuant to subsection 2 of section 99.850.

§ 99.805(7) (emphasis added).

Kansas City supports the conclusion that the use of PILOTS to support a redevelopment plan or project is not limited to “private uses” and may be used for those

“public uses” as delineated in the TIF Act. As referenced above, Kansas City and numerous other municipalities have long engaged in the application of PILOTS to “public uses.” Libraries, convention centers, public art, public parks and public malls are among the numerous “public uses” to which tax increment financing has been applied in this State. Kansas City and other municipalities embarked on those projects (and issued, in many cases, substantial obligations based on the plain and clear language of the TIF Act delineating permissible “public uses” such as “public facilities,” “public works,” and “public improvements.”

Any decision engrafting onto the TIF Act a new interpretation of the permissible uses of PILOTS threatens settled expectations regarding the appropriate uses to which increment may be applied, and potentially threatens the viability of over 150 ongoing TIF Act redevelopment projects throughout the State.

Plaintiffs recognize that the TIF Act is replete with references to permissible “public uses.” Indeed, it is indisputable that PILOTS may be used for “public works” [§ 99.805(11)(f)]; “public improvements” [Id.]; the acquisition and construction of “public facilities” [§ 99.820.1(9)]; and “highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing [and] sidewalks.” [§ 99.825.2]. The TIF Act specifically permits the acquisition of land and the payment of costs for construction and rehabilitation of buildings without any limitation on whether the land acquired and buildings construction are publicly owned or privately owned. § 99.805(11)(c) and (d). Indeed, the costs of financing redevelopment—a “public” cost borne by the municipality—is specifically identified as a permissible redevelopment

project cost. § 99.805(11)(g).

In the TIF Act's original iteration, PILOTS were the **only** increment—EATS were not adopted until 1990. All of the “public uses” listed above were contained in the TIF Act prior to the adoption of EATS by the General Assembly. Since its original adoption, therefore, the TIF Act clearly provided for the application of PILOTS to public uses. The inescapable conclusion, therefore, is that the TIF Act has always permitted and continues to permit the use of PILOTS for “public uses.”

Plaintiffs would concede that PILOTS may be used for some “public uses,” but contend that PILOTS may not be used for other “public uses.” No discernable distinction can be made between permissible and impermissible “public uses” for PILOTS as posited by Plaintiffs. The claims of Plaintiffs do not require that this Court create such a distinction. Plaintiffs' complaint about the use of PILOTS to support the REC-PLEX is sufficiently addressed, and shown to be without merit, in the TIF Act. The use of PILOTS to support financing of the REC-PLEX is adequately provided for in § 99.820.1(9), which specifically provides a municipality may construct public facilities, or, alternatively, in § 99.840.2, providing for the repayment of municipal obligations with increment.

Plaintiffs suggest this Court add a new definition to the TIF Act: A “private use” is a permissible “public use” of PILOTS, which is defined as a “use” which “enhances the value of the private property [the PILOTS] improve in a manner sufficient to support a special assessment.” App. 67. Such convoluted reasoning is necessitated by the numerous provisions of the TIF Act permitting, what all reasonable people would have to

concede, are purely public uses of PILOTS.

The interpretation proposed ignores the plain meaning of the TIF Act as adopted by the General Assembly. The General Assembly carefully detailed permissible activities under redevelopment projects and plans in § 99.805(11), and set out the permissible activities a municipality could undertake under the auspices of the TIF Act. See §§ 99.805(11) (outlining permissible project or plan activities); 99.820.1, (providing a laundry list of powers of a municipality under the TIF Act, including the construction of “public facilities”). The TIF Act itself provides adequate detail regarding the permissible redevelopment activities and nowhere makes illegal the use of PILOTS in support of those permissible activities. The General Assembly, of course, could have made the use of PILOTS illegal for some uses otherwise permissible under the TIF Act.<sup>5</sup> It did not. Accordingly, the contention that PILOTS are permissible increment for some activities while impermissible for others is not supported by the plain language of the Act.

Plaintiffs suggest that permissible “public uses” can be easily delineated from impermissible “public uses” by analyzing the real property benefited by the Redevelopment Project. According to Plaintiffs, impermissible “public uses” (such as the REC-PLEX) benefit a broader geographical area than the Redevelopment Area. The TIF Act, however, does not support Plaintiffs’ reasoning. The TIF Act clearly provides

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<sup>5</sup> Indeed, when the General Assembly determined that “gambling establishment” are impermissible redevelopment projects under the TIF Act, it so stated. § 99.810.1(6), RSMo (2000).

that a benefit must exist between the project and the real property in the area selected for the project (§ 99.810.1), (KC App. 101-103), but nowhere makes illegal the use of PILOTS for “public uses” which incidentally provide public benefits city-wide, county-wide or regionally. The municipality’s legislative determination that a benefit is provided to the real property in the area selected for the redevelopment project is all the General Assembly requires.

“Private use,” as contained in the definition of PILOTS, imposes no additional limitation on the nature of permissible redevelopment activities provided under the TIF Act. It recognizes the character of PILOTS as “special assessments,” but when read together with the entire TIF Act, permits the use of PILOTS in the construction of public works, public improvements and public facilities.

Kansas City, and numerous other municipalities throughout the State, utilize PILOTS for purely “public uses” as defined by Plaintiffs in this case. None of those uses are illegal, however, because the projects are included within the TIF Act as permissible activities. Kansas City’s legislative determinations include the use of increment in support of public malls, a performing arts center, expansion of a convention center and for public libraries. Each of these “public uses” is specifically designed to eradicate blight, and each is supported by the language of the TIF Act. These “public uses” of increment all support the public purposes of redevelopment under the TIF Act. Each “public use” is part of each individual Redevelopment Plan’s “comprehensive program ... for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualify the area as a blighted area,

conservation area, economic development area or combination thereof.” § 99.805(8).

The TIF Act specifically permits each such “public use” of the increment because the TIF Act specifically permits a municipality “to acquire and construct [such] public facilities,” “public works” and “public improvements.” § 99.820.1(9); § 99.805(11)(f).

For the foregoing reasons, this Court should affirm the Trial Court’s grant of summary judgment against Plaintiffs on Count IV of their Petition, and deny POINTS I and III of Plaintiffs’ appeal on the issue of whether PILOTS may be permissibly applied to public uses such as the REC-PLEX.

### POINT III

#### **The Act's Provisions Regarding EATS Do Not Violate Article VI, §§ 23 and 25 Of The Missouri Constitution.**

In Count VIII of their Petition, Plaintiffs claim that EATS violate Art. VI, §§ 23 and 25, Mo.Const., which prohibit the General Assembly and political subdivisions of the state from granting public money to private individuals. App. 102. Plaintiffs contend in POINT VI of their Brief that the TIF Act's provisions relating to EATS violates Art. VI, §§ 23 and 25.

A statute is presumed constitutional and will not be held to be unconstitutional “unless it clearly and undoubtedly contravenes the constitution; it should be enforced by the courts unless it plainly and palpably affronts fundamental law embodied in the constitution.” Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822, 828 (Mo. 1991).

Plaintiffs' theory of unconstitutionality is premised on the erroneous assertion that the Missouri Constitution does not permit the diversion of sales taxes and therefore, unlike PILOTS, the use of EATS for the public purposes of the TIF Act is not constitutionally authorized. Art. X, § 7, Mo.Const., provides the specific constitutional authority permitting the use of PILOTS.

The erroneous premise of Plaintiffs' argument is that a similar specific constitutional provision must exist in order to authorize EATS.

The Missouri Constitution squarely vests in the General Assembly all authority over sales taxes: “The taxing power may be exercised ... by counties and other political subdivisions under power granted to them by the general assembly for county, municipal

and other corporate purposes.” Art. X, § 1, Mo. Const. Article X, § 3 also places a limit, as applicable here, that “Taxes may be levied and collected for public purposes only.” But no other limit relevant to the TIF Act and presented in this case exists.

In County of Jefferson v. Quiktrip Corp., this Court reviewed the EATS provisions of the TIF Act and held that the TIF Act “authorizes the redistribution of existing tax revenues from one local government to another.” 912 S.W.2d 487, 491 (Mo. banc 1995).

In addition, this Court has specifically held that the redevelopment undertaken pursuant to the TIF Act is for a **public purpose**. Dunn, 781 S.W.2d at 78-79 (“Dunn claims that the use to which the land in the District will be put is not a public purpose. We disagree.”). And, this Court recognized that taxes may be expended for the public purposes of the TIF Act: “Even if one assumes that PILOTS are tax revenues, Art. X, § 3 requires that taxes collected be expended for public purposes; beyond that limitation, Article X, § 3 does not control the distribution or allocation to which tax receipts may be put.” Id. at 75.

It is well-settled that the money provided to private individuals or corporations to finance redevelopment under the TIF Act or other redevelopment laws is money expended for a public purpose. “[T]he primary purpose of a redevelopment project is a public purpose, and . . . any benefits to private individuals are merely incidental to the public purpose.” State ex inf. Dalton v. Land Clearance for Redevelopment Authority of Kansas City, 270 S.W.2d 44, 53 (Mo. banc 1954).

These two principles—that TIF Act redevelopment is for a public purpose and that incidental benefit to private entities in accomplishing such public purposes is permitted—

compel the conclusion that EATS do not offend Article VI, §§ 23 and 25. The General Assembly, under its constitutional authority over sales taxes, directs that sales tax revenues may be distributed to a municipality in support of the public purposes of the TIF Act. Consequently, the use of EATS pursuant to the TIF Act does not involve improper granting or lending of public money or public credit for private use and are not unconstitutional.

Since the statutory change in 1990, EATS have been relied upon in Redevelopment Plans and projects used throughout the State. The settled expectations of Kansas City and other municipalities throughout the State is the continued use of EATS for the redevelopment projects currently underway. Kansas City's redevelopment projects have generated and collected over \$47 million in EATS revenues. The settled expectations of Kansas City and the many other municipalities throughout the State is the continued viability of EATS—at least those already generated and collected—as a revenue source in support of redevelopment.

The use of EATS under the TIF Act does not violate Art. VI, §§ 23 and 25, Mo. Const., and accordingly, this Court should affirm the decision of the Trial Court granting summary judgment against Plaintiffs on Count VIII of their Petition.

**CONCLUSION**

Kansas City respectfully requests this Court affirm the Trial Court's decision in all respects.

Respectfully Submitted,

The City of Kansas City, Missouri

By: \_\_\_\_\_

Galen Beaufort, #26498

City Attorney

Heather A. Brown, #29693

Assistant City Attorney

City of Kansas City, Missouri

2800 City Hall

414 East 12th Street

Kansas City, Missouri 64106

618-513-3129

FAX #: 618-513-3133

Attorney for Amicus Curiae, The City of  
Kansas City, Missouri



Respectfully Submitted,

The City of Kansas City, Missouri

By: \_\_\_\_\_

Galen Beaufort, #26498

City Attorney

Heather A. Brown, #29693

Assistant City Attorney

City of Kansas City, Missouri

2800 City Hall

414 East 12th Street

Kansas City, Missouri 64106

618-513-3129

FAX #: 618-513-3133

Attorney for Amicus Curiae, The City of  
Kansas City, Missouri

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was

served on the \_\_\_\_ day of December 2004, by

  X   United States mail, postage prepaid;

\_\_\_\_\_ facsimile transmission at \_\_\_\_\_ a.m./p.m.;

\_\_\_\_\_ hand delivery; to:

Edward D. Robertson, Jr. #27183

BARTIMUS, FRICKLETON, ROBERTSON & OBETZ, P.C.

715 Swifts Highway

Jefferson City, MO 65109

573-659-4454

573-659-4460 Fax

and

Joann Leykam #29075  
Office of the St. Charles  
County Counselor  
100 North Third St., Suite 216  
St. Charles, MO 63301  
636-949-7540  
636-949-7541 Fax

and

James Borchers #29632  
1603 Boone's Lick Road  
St. Charles, MO 63301  
636-946-9911  
636-946-3336 Fax  
**Attorneys For Appellants**

David T. Hamilton, #28166  
Matthew J. Fairless, #3905  
200 North Third Street  
St. Charles, Missouri 63301  
636-947-4700  
Facsimile 636-947-1743

And

Michael T. White, Esq.  
White Goss Bowers March  
Schulte & Weisenfels  
4510 Belleview, Suite 300  
Kansas City, Missouri 64111  
Office: (816) 502-4716  
Facsimile: (816) 753-9201  
**Attorneys for Respondent/  
Cross-Appellant City of St. Peters**

Marc H. Ellinger, #40828  
Thomas W. Rynard, #34562  
BLITZ, BARDGETT & DEUTSCH, L.C.  
308 East High Street, Suite 301  
Jefferson City, MO 65101  
Telephone No.: (573) 634-2500

Facsimile No.: (573) 634-3358  
**Attorneys for Amicus Curiae  
Great Rivers Habitat Alliance**

Jeremiah W. (Jay) Nixon

Attorney General

Paul C. Wilson

Assistant Attorney General and  
Deputy Chief of Staff

Rex Burlison

Assistant Attorney General

Earl D. Kraus

Assistant Attorney General

Supreme Court Building

P.O. Box 899

Jefferson City, MO 65102-0899

573-751-3321

FAX 573-751-9456

**Attorneys for Intervenor, the  
State of Missouri**

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