

*Bill No.* \_\_\_\_\_ *Ordinance No.* \_\_\_\_\_

AN ORDINANCE ESTABLISHING A HOME EQUITY PROGRAM FOR THE CITY OF \_\_\_\_\_; PROVIDING TERMS, CONDITIONS, RULES AND REGULATIONS PERTAINING THERETO; PROVIDING FOR THE ORGANIZATION AND OPERATION THEREOF; AUTHORIZING A PROPERTY TAX TO SUPPORT SUCH PROGRAM; PROVIDING A PENALTY FOR VIOLATION; AND CALLING AN ELECTION FOR VOTER APPROVAL THEREOF.

WHEREAS, Sections 67.1600 et seq., RSMo. Supp. 1999 provide a method by which municipalities may establish and maintain a program to guarantee home equity for the housing stock in their community; and

WHEREAS, the City of \_\_\_\_\_ finds and believes that a program of home equity guarantee will preserve the tax base of the city, enhance the city's housing stock, foster housing investment and development in the community, protect the value of residential investment for hundreds of city residents, and protect the public health, safety and welfare of the people of the city; and

WHEREAS, the [governing body of the municipality] hereby finds and determines that adoption of the program hereinafter provided is in the best interest of the city and its residents and wishes to offer the voters of the city the opportunity to accept or reject such a program and the taxation necessary to support it;

NOW, THEREFORE, BE IT ORDAINED BY THE [governing body] OF THE CITY OF \_\_\_\_\_ AS FOLLOWS:

Section 1. Program Established.

There is hereby established a program of home equity guarantee for the City of \_\_\_\_\_, to be known as the \_\_\_\_\_ Home Equity Guarantee Program, subject to voter approval and the various terms, conditions, rules and regulations as hereinafter provided. Section 2. Definitions.

As used in this Ordinance, the following terms shall have the meaning hereinafter stated.

(1) "Bona Fide Offer", an offer made in good faith and for a valuable consideration to purchase a Qualified Residence;

(2) "Certificate of Participation", the duly notarized document of membership in a Program, signed by the qualified applicant and by an authorized representative of the Governing Commission, which specifies the location and description of the Guaranteed Residence, its Guaranteed Value, the Registration Date, and which has attached a Program Appraisal for the Guaranteed Residence;

(3) "Community Organization", a not for profit organization which has been registered with this state for at least five years as a not for profit organization, which qualifies for tax exempt status under Section 501(c)(3) or 501(c)(4) of the United States Internal Revenue Code of 1986, as now or hereafter amended, which continuously maintains an office or business location within the area of the Program together with a current listed telephone number, and whose members reside within the area of a Program;

(4) "District", the district for the \_\_\_\_\_ Home Equity Guarantee Program shall be the entirety of the City of \_\_\_\_\_;

(5) "Eligible Applicant", a natural person who is the Owner of a Qualified Residence within the area of a Program who shall occupy or have a family member who occupies such Qualified Residence as the principal place of residence;

(6) "Family Member", a spouse, child, stepchild, parent, grandparent, brother, sister, or any such relations of the spouse of the Member;

(7) "Governing Commission", the [governing body] of the of City of \_\_\_\_\_;

(8) "Gross Selling Value", the total consideration to be paid for the purchase of a Guaranteed Residence, and shall include any amount that the buyer or prospective buyer agrees to assume on behalf of a Member, including broker commissions, points, legal fees, personal financing, or other items of value involved in the sale;

(9) "Guarantee Fund", the funds collected pursuant to this Ordinance and Sections 67.1600 to 67.1663, RSMo. Supp. 1999 for the purpose of guaranteeing the property values of Members within the area of a Program;

(10) "Guaranteed Residence", a Qualified Residence, including condominiums as defined in chapter 448, RSMo, for which a Certificate of Participation has been issued, which is owned by the Eligible Applicant, which is described in the Certificate of Participation, and which is entitled to coverage pursuant to this ordinance and Sections 67.1600 to 67.1663, RSMo. Supp. 1999;

(11) "Guaranteed Value", the appraised valuation based upon a standard of current market value as of the Registration Date on the Qualified Residence as determined by a Program Appraiser pursuant to accepted professional appraisal standards and which is authorized by the Commission for the Registration Date. The Guaranteed Value shall be used solely by the Commission for the purpose of administering the Program and shall remain confidential;

(12) "Member", the Owner of a Guaranteed Residence;

(13) "Owner", a natural person who is the legal titleholder or who is the beneficiary of a trust which is the legal titleholder;

(14) "Physical Perils", physical occurrences such as, but not limited to, fire, windstorm, hail, nuclear explosion, seepage, war, insurrection, wear and tear, cracking, settling, vermin, rodents, insects, vandalism, pollution or contamination, and all such related occurrences or acts of God;

(15) "Program", means the \_\_\_\_\_ Guaranteed Home Equity Program established by this ordinance or another Program established by some other ordinance of the city and governed by a specific home equity Commission;

(16) "Program Appraisal", a real estate appraisal conducted by a Program Appraiser for the purpose of establishing the Guaranteed Value of a Qualified Residence under a Program and providing a general description of the Qualified Residence. The Program Appraisal shall be used solely by the Governing Commission for the purpose of administering the Program and shall remain confidential except for transactions between family members;

(17) "Program Appraiser", a real estate appraiser who is state licensed or state certified pursuant to sections 339.500 to 339.549, RSMo;

(18) "Program Guidelines", those policies, rules, regulations, and bylaws established from time to time by the Governing Commission to explain, clarify, or modify the Program in order to fulfill its goals and objectives;

(19) "Qualified Residence", a building:

(a) Located in the area of a Program and having at least one, but not more than six, dwelling units, however, in the case of owner-occupied condominiums there is no limit on the number of dwelling units; and

(b) Classified by city ordinance as residential and assessed as such for property tax purposes;

(20) "Registration Date", the date of receipt by the Governing Commission of the Registration Fee and a completed application of a Qualified Applicant for participation in a Program;

(21) "Registration Fee", the fee which is established by the Governing Commission to defray the cost of a Program Appraisal on a Qualified Residence.

### Section 3. Governing Commission Established; Powers and Duties.

The [governing body of the municipality] shall constitute the Governing Commission for the purpose of managing and administering the \_\_\_\_\_ Home Equity Guarantee Program. Commissioners shall serve without compensation except for reimbursement for reasonable expenses incurred in the performance of duties as a Commissioner. The duties and functions of the Governing Commission shall include the following:

1. To select an administrator to conduct or supervise the day-to-day operation of the Program, including but not limited to the administration of homeowner applications for participation in the Program and homeowner claims against the Guarantee Fund;
2. To establish policies, rules, regulations, bylaws, and procedures for both the Governing Commission and the Program. No policies, rules, regulations, or bylaws shall be adopted by the Governing Commission without prior notice to the residents of the area of a Program and an opportunity for such residents to be heard;
3. To provide annual status reports on the program to the [governing body of the municipality] of the city.
4. To establish Guaranteed Value standards which are directly linked to the Program Appraisal, to approve Guarantee Values, and to establish requirements for Program Appraisers consistent with subdivision (16) of Section 2 of this ordinance, above. In no event shall the program guidelines adopted by the Governing Commission provide for selecting appraisers based on criteria other than the quality and timeliness of the appraisals provided to the Governing Commission;
5. To manage, administer, and invest the Guarantee Fund under the supervision of the [governing body of the municipality];

6. To liquidate acquired assets to maintain the Guarantee Fund;
7. To participate in arbitration required pursuant to the Program, including gathering information from all necessary persons, parties, or documents required to proceed with such arbitration;
8. To employ necessary personnel, acquire necessary office space, enter into contractual relationships and disburse funds pursuant to sections 67.1600 to 67.1663, RSMo. Supp. 1999 and this ordinance; and
9. To perform such other functions in connection with the Program and the Guarantee Fund as required pursuant to sections 67.1600 to 67.1663 RSMo. Supp. 1999 and this ordinance.

#### Section 4. Eligibility for Program.

1. Eligibility for membership in the Program shall be limited to the Owner of a qualified residential property within the area of the Program.
2. An Eligible Applicant shall apply to the Program by submitting an application and a Registration Fee as determined by the Governing Commission. Prior to accepting a Registration Fee, the Governing Commission shall inform the applicant of the rights, duties, and obligations of both the Member and the Governing Commission pursuant to the Program. Upon receipt of the Registration Fee, the Governing Commission shall have the residence of the applicant appraised by a Program Appraiser at the expense of the Program to determine the Guaranteed Value of the residence. If the appraisal, at the time completed by a Program Appraiser, differs by more than fifteen percent from the market value as determined in the most recent assessment performed by the county assessor, the Program administrator shall notify the Governing Commission and provide a written justification for the difference between the Guaranteed Value of the residence and the market value as determined in the most recent assessment before the Commission accepts the Guaranteed Residence into the Program.
3. At its option, the Governing Commission may require a second Program Appraisal of the Qualified Residence, also at the expense of the Program, if it determines that the first Program Appraisal is incomplete, inadequate, or inaccurate.
4. A Certificate of Participation shall then be issued to the Eligible Applicant certifying membership in the Program and stating the Guaranteed Value, the Registration Date, the address of the Guaranteed Residence and description of the

conditions and exclusions of the Program. An authorized Program Appraisal shall be attached to the Certificate of Participation.

#### Section 5. Guarantee; Exceptions and Limitations.

1. A Member or the estate of a Member participating in the Program created pursuant to sections 67.1600 to 67.1663, RSMo. Supp. 1999 and this ordinance shall be paid one hundred percent of the difference between the Guaranteed Value as determined by the Program and the Gross Selling Value as determined in section 6 of this ordinance, below, if the Guaranteed Value is greater than the Gross Selling Value. The guarantee provided by the Program shall only apply to sales made three years or more after the date of issuance of the Certificate of Participation and shall be provided subject to all of the terms, conditions, and stipulations of the Program. The guarantee provided by the Program shall extend only to those who qualified as Members at the time of their application, or to the estates of Members; provided that the estate applies within two years of the Member's death or within five years after the date of issuance of the Certificate of Participation, whichever is later. A Member of the Program agrees to abide by all conditions, stipulations, and provisions of the Program and shall not be eligible for protection and shall not receive the guarantee unless all such conditions, stipulations and provisions have been met. Any Member failing to abide by the conditions, stipulations and provisions of the Program or who engages in fraud, misrepresentation, or concealment in any process involving the Program forfeits both the Registration Fee and any claim to the guarantee.

2. The Program provides a guarantee only against specifically local adverse housing market conditions within the area of the Program as they may differ from regional or national housing conditions. The Program shall not provide relief from adverse regional or national housing market conditions as they may affect local housing conditions. The Program shall not guarantee against a decline in the value of housing due to economic forces such as a national or regional recession or depression. In the event of a regional decline in the value of housing in the regional or national housing markets, the Governing Commission may temporarily suspend coverage pursuant to the Program in order to protect the fiscal integrity of the Guarantee Fund. For the purposes of this section, a regional decline in the value of housing is defined as a five percent annual decline in the median value of existing houses in any twelve month period for the nation, Midwest region, or state of Missouri, according to statistics published by the national association of realtors.

3. If the Guarantee Fund becomes depleted and payments of guarantees pursuant to the Program cannot be made in a timely fashion as required by the Program guidelines, the Governing Commission may temporarily suspend the registration of new Members and borrow funds against future tax revenues until such time as the

Guarantee Fund is sufficiently restored. Under no circumstances shall the indebtedness or obligations of the Program or the Governing Commission become an indebtedness or obligation of either the City of \_\_\_\_\_ or the state of Missouri.

#### Section 6. Procedures.

1. In order to be eligible for payment from the Program, a Member shall follow the program guidelines adopted by the Governing Commission as well as the procedures set forth in this section.

2. A Member shall file a notice of intent to sell with the Governing Commission pursuant to Program guidelines if and when the Member intends to place the Guaranteed Residence on the market for sale. Upon receipt of a notice of intent to sell, the Governing Commission shall provide the Member with a copy of this Ordinance and Section 67.1621, RSMo. Supp. 1999, and a written description of the rights and responsibilities of both the Member and the Governing Commission and the procedures for obtaining benefits; provided, however, that such information provided by the Governing Commission shall not restrict or advise the Member with respect to the selection of a real estate broker or agent. The information shall be delivered to the Member either in person or by registered mail. A Member is not eligible to file notice of intent to sell until at least three years after the member's Registration Date.

3. A Member is required to offer the Guaranteed Residence for sale pursuant to the Program guidelines, including the utilization of complete and proper methods for listing residential property, listing the Guaranteed Residence at a price equal to or greater than the Guaranteed Value and which reasonably can be expected to attract buyers, and providing reasonable access for potential buyers to see the Guaranteed Residence.

4. A Member may list the Guaranteed Residence pursuant to Program guidelines with a real estate broker of the Member's choice for up to ninety days following the date on which the Member listed the residence.

5. Within sixty days of receipt of a notice of intent to sell, the Governing Commission has the right to have the Guaranteed Residence inspected by a Program Appraiser, at the Governing Commission's expense, in order to determine if the Guaranteed Residence is in substantially the same condition as described by the Program Appraisal attached to the Certificate of Participation. If the Guaranteed Residence fails to meet this standard, the following procedures shall be followed:

(1) The Program Appraiser shall determine the percentage depreciation of the Guaranteed Residence due to failure to maintain the premises or due to Physical Perils or other causes not covered by the Program;

(2) This percentage figure shall be multiplied by the Guaranteed Value to determine the dollar depreciation;

(3) This dollar depreciation shall be subtracted from the Guaranteed Value to derive a lower Guaranteed Value to be used for the purpose of determining the amount of payment pursuant to the Program.

6. A Member shall make the Guaranteed Residence available to a Program Appraiser within a reasonable time within this sixty-day period after receipt of notice from the Commission that an inspection pursuant to subsection 5 of this section is required, or the Member's coverage pursuant to the Program shall be null, void and of no further effect, and the Member's Registration Fee shall be forfeited.

7. Ninety days after listing the Guaranteed Residence, a Member shall be eligible to file a notice of intent to claim with the Governing Commission, pursuant to guidelines established by the Governing Commission, attesting to the fact that the Member has followed Program guidelines in offering the Guaranteed Residence for sale, that the Member is unable to obtain an offer for purchase of the Guaranteed Residence for at least its Guaranteed Value, and that the Member intends to file a claim against the Program. Such notice shall include verifiable evidence of placement of the Guaranteed Residence on the market, the dates such placement took place, and shall list all reasonable offers to buy the property. Verifiable evidence may include a copy of advertisements for sale, a contract with a licensed real estate broker, or other evidence satisfactory to a majority of the Governing Commission.

8. Upon receipt of the notice of intent to claim, the Governing Commission has sixty days during which it shall require the Member to list the Guaranteed Residence at a price that the Governing Commission deems reasonable with a real estate broker of the Member's choosing. The real estate broker chosen by the Member shall advertise the Guaranteed Residence throughout the residential market area typically used in the St. Louis metropolitan region.

9. During the periods during which the Qualified Residence is offered for sale, the Member shall forward to the Governing Commission all offers of purchase by either personal delivery or registered mail. If the Member receives an offer of purchase which can reasonably be expected to be consummated if accepted and whose Gross Selling Value is greater than the Guaranteed Value of the Guaranteed Residence, then no benefits may be claimed pursuant to the Program. If the Member



receives an offer to purchase at a Gross Selling Value that is less than the Guaranteed Value, the Governing Commission shall, within five working days of the receipt of such offer, either:

(1) Approve the offer, in which case the Governing Commission shall authorize the payment of the amount afforded pursuant to sections 67.1600 to 67.1663, RSMo. Supp. 1999 and section 5 of this Ordinance upon receipt of verifiable evidence of the sale of the Guaranteed Residence subject to the following conditions:

(a) Sales involving eminent domain shall be covered pursuant to section 67.1630, RSMo. Supp. 1999 and section 7 of this ordinance, below.

(b) Sales subsequent to an insured property and casualty loss shall be guaranteed for the Guaranteed Value as determined pursuant to subsection 5 of this section;

(c) Contract sales shall be guaranteed as determined by the Guaranteed Value in subsection 5 of this section, however proceeds payable from the Program shall be disbursed in equal annual installments over the life of the contract; or

(2) Reject the offer, in which case the Member shall continue showing the Guaranteed Residence until the termination of the period.

Any offer that the Governing Commission deems not to be a Bona Fide Offer shall be rejected by the Governing Commission. Unless the Member and the Governing Commission otherwise agree, the Governing Commission's failure to act upon an offer within five working days shall be deemed to be a rejection of the offer.

10. No guarantee is afforded by the Program until sixty days after a Member files a notice of intent to claim. Furthermore, the Governing Commission shall be required to make payments to a Member only upon receipt of verifiable evidence of the actual sale of the Guaranteed Residence in accordance with the terms agreed upon between the Member and the Governing Commission at the time the Governing Commission authorized payment. If a Member rejects an offer for purchase which has been submitted to and approved by the Governing Commission, the Governing Commission or Program shall not be liable for any future guarantee payment larger than that authorized for this proposed sale. 11. Except as otherwise provided in sections 67.1600 to 67.1663, RSMo. Supp. 1999 and this ordinance, payments under the Program pursuant to section 5 of this ordinance shall not be made until the sale of the Guaranteed Residence has closed and title has passed or the beneficial interest has been transferred.

Section 7. Eminent Domain.

When a Guaranteed Residence is to be acquired through the use of eminent domain by a condemning body, the following procedures shall apply:

(1) If the Member rejects an offer from the condemning body equal to or greater than the Guaranteed Value, then no benefits may be claimed pursuant to the Program;

(2) If the condemning body offers less than the Guaranteed Value, the Governing Commission may either:

(a) Pay one hundred percent of the difference between the Guaranteed Value and the offered price if the Member agrees to sell at the offered price; or

(b) Advise the Member that the offer is inadequate and should be refused. If the Member refuses the offer and the final court determination of the value of the property is less than the Guaranteed Value, then the Program shall pay one hundred percent of the difference between the judgment and the Guaranteed Value.

Section 8. Updating Value.

1 A Member has the option of applying for a new Program Appraisal by a Program Appraiser in order to establish a new Certificate of Participation with a new Registration Date. The Governing Commission may exercise the right to require a second Program Appraisal in accordance with the procedures described in section 67.1615, RSMo. Supp. 1999 and section 4 of this ordinance, above. This new Guaranteed Value shall be subject to the following conditions:

(1) A new Guaranteed Value established solely for the purpose of determining a property's increased value due to inflation may not be requested by the Member until at least three years have elapsed from the most recent Registration Date;

(2) A new Guaranteed Value established due to home improvements shall be granted only when the value of the home improvements exceed five thousand dollars;

(3) A Member may not initiate a claim against the Program based upon the new Guaranteed Value until at least three years after the new Registration Date. Until that time, coverage shall be based on the most recent Certificate of Participation which is at least three years old and the Guaranteed Value set forth in that Certificate of Participation;

(4) If the Governing Commission, by majority vote, determines that the application for a new appraisal is due to substantial property improvements on the

Guaranteed Residence, then the application fee for the appraisal shall be one-half of the Registration Fee then being charged by the Program;

(5) If the Governing Commission, by a majority vote, concludes that the application for a new appraisal is not due to substantial property improvements, the application fee for the new appraisal shall be the amount of the Registration Fee then being charged by the Program;

(6) A new Guaranteed Value shall be subject to all of the conditions, stipulations, and provisions of sections 67.1600 to 67.1663, RSMo. Supp. 1999 and this ordinance.

2. After following the above procedures, the Member shall be issued a new Certificate of Participation which shall state the new Guaranteed Value and Registration Date.

3. A Member may request a new Guaranteed Value and Registration Date only once per year.

#### Section 9. Guarantee Fund.

1. The Governing Commission and Program created pursuant to this ordinance shall maintain a Guarantee Fund for the purposes of paying the costs of administering the Program and extending protection to Members pursuant to the limitations and procedures in sections 67.1600 to 67.1663, RSMo. Supp. 1999 and this ordinance.

2. The Guarantee Fund shall be raised by means of an annual tax levied on all real property within the area of the Program. The rate of this tax may be changed from year to year by majority vote of the [governing body] of the city but in no case shall it exceed a rate of fifteen hundredths of a percent of the equalized assessed valuation of all real property in the area of the Program, or the maximum tax rate approved by the voters of the area at the election which created the Program, whichever rate is lower. The Commissioners shall cause the amount to be raised by taxation in each year to be certified to the county clerk, and any tax so levied and certified shall be collected and enforced in the same manner and by the same officers as those taxes for other purposes of the city. Any such tax, when collected, shall be paid over to the proper officer of the Commission who is authorized to receive such tax. The Governing Commission may issue tax anticipation warrants against the taxes to be assessed for the calendar year in which the Program is created and for the first full calendar year after the creation of the Program.

3. The moneys deposited in the Guarantee Fund shall, as nearly as practicable, be fully and continuously invested or reinvested by the Governing Commission in investment obligations which shall be in such amounts, and shall mature at such times, that the maturity or date of redemption at the option of the holder of such investment obligations shall coincide, as nearly as practicable, with the times at which moneys will be required for the purposes of the Program. For the purposes of this section, "investment obligation" shall mean direct general municipal, state, or federal obligations which at the time are legal investments pursuant to the laws of this state and the payment of principal of and interest on which are unconditionally guaranteed by the governing body issuing them.

4. The Guarantee Fund, including principal, interest, fees and all other sources of income, shall be used solely and exclusively for the purpose of providing guarantees to Members of the \_\_\_\_\_ Guaranteed Home Equity Program and for reasonable salaries, expenses, bills, and fees incurred in administering the Program, and shall be used for no other purpose.

5. The Guarantee Fund shall be maintained, invested, and expended exclusively by the Governing Commission of the Program for which it was created. Under no circumstance shall the Guarantee Fund be used by any person or persons, governmental body, or public or private agency or concern other than the Governing Commission of the Program for which it was created. Under no circumstances shall the Guarantee Fund be commingled with other funds or investments. No Commissioner or family member of a Commissioner, or employee or family member of an employee, may receive any financial benefit, either directly or indirectly, from the Guarantee Fund. Nothing in this subsection shall be construed to prohibit payment of expenses to a Commissioner pursuant to section 3, above or payment of salaries or expenses to an employee pursuant to this section. As used in this subsection, "family member" means a spouse, child, stepchild, parent, brother, or sister of a Commissioner or a child, stepchild, parent, brother, or sister of a Commissioner's spouse.

6. An independent audit of the Guarantee Fund and the management of the Program shall be conducted annually and made available to the public through any office of the Governing Commission or a public facility such as a local public library located within the area of the Program.

7. The city shall periodically calculate the amount of moneys necessary to pay the liabilities that may occur as a result of Members seeking payments and shall adjust the tax rate within the limits allowed in this section to meet the liabilities. If the city determines that the Fund contains or is likely to contain sufficient moneys, then the

tax rate shall be reduced or eliminated until such calculations demonstrate that additional tax revenues are needed to fulfill commitments to Members in the Program.

8. If the Guarantee Fund becomes depleted and payments of guarantees pursuant to the Program cannot be made in a timely fashion as required by the Program guidelines, the Governing Commission may temporarily suspend the registration of new Members and borrow funds against future tax revenues until such time as the Guarantee Fund is sufficiently restored. Under no circumstances shall the indebtedness or obligations of a Program or a Governing Commission become an indebtedness or obligation of either the City of \_\_\_\_\_ or the state of Missouri.

#### Section 10. Withdrawal; Termination.

1. No provision of this ordinance and no procedure, regulation, or bylaw of a Governing Commission or Program created hereby shall abridge a Member's right to forfeit the Registration Fee and guarantee and withdraw from the Program at any time and sell the Guaranteed Residence in any legal manner he or she sees fit.

2. The \_\_\_\_\_ Home Equity Program may be terminated only by approval of the [governing body of the city]. In terminating the Program, the Governing Commission shall refund the remaining balance of the Guarantee Fund, if any, after all potential liabilities have been satisfied, to the then current property taxpayers of all real property within the area of the Commission in an equitable manner proportionate to the manner in which the Guarantee Fund was raised.

#### Section 11. Liability; Indemnification; Limitation of Actions.

1. Pursuant to the provision of Sec. 67.1651, RSMo. Supp. 1999, no Commissioner, officer or employee, whether on salary, wages or voluntary basis shall be personally liable and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the performance of Program duties or responsibilities unless the act or omission involved willful or wanton conduct.

2. As permitted by Sec. 67.1651, RSMo. Supp. 1999, the Program shall indemnify each Commissioner, officer and employee, whether on salary, wages or voluntary basis against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney fees, and any other liabilities incurred by, imposed upon, or suffered by such individual in connection with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of or in connection with the performance of Program duties. Any settlement of any claim shall be made with prior

approval of the Governing Commission in order for indemnification pursuant to this section to be available. 3. The immunity and indemnification provided by the Program pursuant to this section shall not cover any acts or omissions which involve willful or wanton conduct, breach of good faith, intentional misconduct, knowing violation of the law, or for any transaction from which such individual derives an improper personal benefit.

4. If insurance or other form of payment is available to and carried by a Member to provide protection similar to that provided by the Program, the Governing Commission shall not be liable for a greater proportion of the loss than the amount provided by the Program bears to the total amount available from all sources.

5. No lawsuit or any other type of legal action brought pursuant to the terms of this ordinance shall be sustainable in a court of law or equity unless all conditions, stipulations, and provisions of the Program have been complied with, and unless the suit is brought within twelve months after the event which is the subject of the legal action.

#### Section 12. Non-Discrimination.

No provision of this ordinance or any procedure, regulation, or bylaw of the Governing Commission and Program created hereby is intended as, and none shall be used as, a means of discriminating against any individual on the basis of ethnic background, gender, race or religion.

#### Section 13. Penalty.

Any person violating the provisions of this ordinance or any procedure, regulation, or bylaw of the Governing Commission and Program created hereby shall be guilty of an ordinance violation and punished by a fine as provided by law.

#### Section 14. Election to be Held.

The City Clerk is hereby ordered and directed to certify to the Board of Election Commissioners of St. Louis County and otherwise take any and all steps necessary to cause an election to be held on [insert available election date] on the question of authorizing establishment of the \_\_\_\_\_ Home Equity Guarantee Program and the levying of a property tax to support same as herein provided, such question to be submitted in substantially the following form:

Shall the City of \_\_\_\_\_ be authorized to establish the \_\_\_\_\_ Home Equity Guarantee Program throughout the geographical limits of the city to provide a system

to guarantee the value of residential properties which qualify and apply for participation in the program, and to levy a property tax not to exceed fifteen hundredths of a percent of the equalized assessed valuation of all real property in the city or \_\_\_\_\_, whichever is less?                      Yes                      ?

No                      ?

Section 15. Severability.

It is hereby declared to be the intention of the [governing body of the municipality] that each and every part, section and subsection of this ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the [governing body of the municipality] intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

Section 16. Codification.

The codification company servicing the City's Code of Ordinances, upon supplementation of such code, shall include each portion of this ordinance which is of a general and permanent nature at such appropriate place as may, in the reasonable and professional discretion of the editor, be appropriate. In doing so, the editor may also change sequence, section designations, and numerical assignment of provisions to accommodate such changes.

Section 17. Effective Date.

This Ordinance shall be in full force and effect both from and after its passage and approval by the Mayor; provided, however, that the Program provided herein shall only be effective and established when and if approved by a majority of the voters voting on the question to be submitted as herein provided.

PASSED BY THE [governing body] FOR THE CITY OF \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

Presiding Officer Attest:

\_\_\_\_\_

\_\_\_\_\_ City Clerk

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

Mayor

Attest:

\_\_\_\_\_ City Clerk

First Reading \_\_\_\_\_ Second Reading \_\_\_\_\_ Sec. 67.1603.4 requires that each proposed home equity program have a name. (Source notes will be provided for each substantive portion of the sample ordinance by citation to RSMo. ) Sections 67.1600(4) and 67.1603 allow the creation of a "district" within the city as to which the program may be applicable. Sec. 67.1600.4 also requires the area of the district to be described on the ballot. If the city intends to create a district which is less than the entire city, this Section may be expanded by the addition of a sentence along the following lines: "The Program shall encompass and be made available in each District, as hereinafter defined, in which it is approved by the voters of such District." In that case, the definition of "district" in subsection (4) of section 2 of this draft ordinance would also need to be changed to define (or cross reference an attached legal description of) the area of the district. Also, this sample ordinance assumes that the creation of a Program is initiated by the governing body of the city rather than by citizen petition. In cases where citizen petitions may be applicable, see Sec's. 67.1603.1, .4 and .5 and 67.1606. Finally, note that Sec. 67.1603.4 provides that no new program may be established by petition unless the area to be served contains at least five hundred or more residential properties. Derived from Sec. 67.1600. Defined terms are capitalized when used in the ordinance. This definition would not appear to be necessary if the governing commission for the program is to be the governing body of the city as defined in subsection (7) of this section and Section 3 of the ordinance and note 5, below. This sample ordinance is drafted with the assumption that the "governing body" for the program will be the municipality's city council, board of aldermen or board of trustees as permitted by



Sec. 67.1603.5 for cities with more than 500 but less than 300,000 inhabitants. If the city desires to establish a separate governing body this definition would have to be changed. In that case see Sections 67.1600(7), and (3) and Sec. 67.1603.5 for qualifications and appointment procedures for a separate Governing Commission. Source: 67.1603.5. Also, see, alternative Governing Commission reference in footnote 5, above. Powers and duties of the Commission are derived from Sec. 67.1612. Eligibility is derived from Sec. 67.1615. Paragraph 1 is derived from Sec. 67.1618. Paragraph 2 is derived from Sec. 67.1645. Paragraph 3 is derived from Sec. 67.1648. Paragraphs 1 through 9 are derived from Sec. 67.121. Paragraph 10 is derived from Sec. 67.1624. Paragraph 11 is derived from Sec. 67.1627. Derived from Sec. 67.1630. Derived from Sec. 67.1633. Derived from Sec. 67.1639. The statute (Sec. 67.1639.2) appears to authorize the levying of a property tax by vote of only the residents of the covered district. The author of this sample ordinance makes no representation as to whether Missouri law permits an election authorizing the levy of a property tax for this purpose to be conducted in just the applicable "district" as opposed to a city-wide election. See: *Spradlin v. City of Fulton*, 924 S.W.2d 259 (Mo. banc 1996). Sec. 67.1639.4 also provides at this point in the text as follows: "Any municipality with a population of less than one thousand shall administer the program in conjunction with another such program in the same county, if another such program exists in such county." Also, because of their limited application at this time, this ordinance makes no provision for merger of existing programs or the addition of areas previously excluded from a district due to lack of sufficient petition signatures. These matters are addressed in Sec's 67.1609 and 67.1606, respectively. Communities where such matters are applicable should consult these Sections for inclusion in their ordinance. Paragraph 8 repeats the borrowing and suspension authority also stated in paragraph 3 of Section 5, above. It is derived from Sec. 67.1648. The withdrawal provision (paragraph 1) is derived from Sec. 67.1660.1. The termination provision (paragraph 2) is derived from Sec. 67.1642. The first three paragraphs are derived from Sec. 67.1651. Paragraph 4 is derived from Sec. 67.1657. Paragraph 5 is derived from Sec. 67.1654. Derived from Sec. 67.1660.2. Derived from Sec. 67.1663. Sec. 67.1603.4 requires the ordinance initiating a program under the statute to specify the election at which the question is to be submitted. The statute does not specify the form of the ballot question to be presented to the voters. The text here is purely hypothetical. Sec. 67.1603.4 states: "Such question, and the ordinance or petition initiating the question, shall include a description of the area, the name of the proposed home equity program and the maximum rate at which the home equity program shall be able to levy such property tax." As to the rate of the tax to be submitted for approval, Sec. 67.1639.2 states: "The guarantee fund shall be raised by means of an annual tax levied on all real property within the area of the program. The rate of this tax may be changed from

year to year by majority vote of the governing body of the municipality . . . but in no case shall it exceed a rate of fifteen hundredths of a percent of the equalized assessed valuation of all real property in the area of the program, or the maximum tax rate approved by the voters of the area at the election which created the program . . . whichever rate is lower." Finally, as to the scope of the election if the area to be served is less than the entire city, the statute is unclear whether only voters living within the "district" are to vote or whether the question must be voted on by the entire city regardless of the area to be served. In defining the number of signatures necessary to initiate a program by petition, Sec. 67.1603.1 and .2 (for cities) refers to "a petition signed by not less than five percent of the total number of registered voters of the municipality who voted at the last gubernatorial election, the registered voters of which are eligible to sign the petition." (Emphasis added.) In contrast, in regard to programs in unincorporated St. Louis County, Sec. 67.1603.3 refers to a petition "signed by not less than five percent of the total number of registered voters within the area to be served who voted in the last gubernatorial election, the registered voters of which are eligible to sign the petition." (Emphasis added.) Sec. 67.1603.4 merely says the election "shall be held in accordance with the general election law" and Sec. 67.16-3.5 says that approval requires "a majority of the voters on such public question." Sec. 67.1603.4 provides that if a lengthy description of a district "cannot be included within the space limitations of the ballot, the election authority shall prepare large printed copies of a notice of the question, which shall be prominently displayed in the polling place of each district in which the question is to be submitted", thereby suggesting (but not clearly stating) that the election may be held only in the area of the district. See also, the cautionary comment at note 18, above. The author of this sample ordinance expresses no opinion and makes no representation as to the scope of the required election, but does note that conducting an election for an area which is not congruent with established boundary lines of political subdivisions presents substantial technical and practical difficulties. Obviously, however, a program encompassing the entire city avoids concern over these issues.

February 2, 2000

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