

HOMEOWNER PROTECTION PLAN CONTRACT

Between: _____
Homeowner's Name PLEASE TYPE OR PRINT!

Address

City State Zip

And: Take 5 Homeowner Protection Trust

Original Take Five Homeowner Protection Plan Contractor(s)

Plumbing: _____
HVAC: _____
Complete Description of Work: _____

Work Completion Date: _____
(Authorized Take Five Representative) PLEASE TYPE OR PRINT

In consideration of the mutual promises set forth in this Agreement, and other valuable consideration, the Owner and Take Five agree as follows:

I. Application

- 1.01 **Application for Membership and Participation:** The Owner hereby applies to participate in the Take Five Homeowner's Protection Plan.
- 1.02 **Accuracy of Application:** The Owner represents that all information provided by Owner in connection with this Agreement is accurate.
- 1.03 **Acceptance of Owner:** The Take Five Homeowner Protection Plan will execute this Agreement and provide service warranty/repair coverage to an Owner when:
- a) verification is obtained that the plumbing, pipefitting, and/or heating, ventilation, air conditioning (HVAC) construction work on Owner's home as described above was performed by a Take Five Homeowner Protection Plan participating contractor; and
 - b) the Owner has fully executed this Agreement and satisfied all conditions required herein.
- 1.04 **Covered Structures:** In this Agreement, "home" means a single family house or a single family unit in a multi-unit residential structure in which title to the unit is transferred to the Owner. Coverage shall be limited to new construction of owner-occupied homes and new construction of at least an entire new room in an existing owner-occupied home.

II. Participation in the Take Five Homeowner Protection Plan

- 2.01 **Participation Approval:** The take Five Homeowner Protection Plan may reject an Owner if it finds:
- a) the home is not constructed according to local approved building codes;
 - b) the work is not performed by a Take Five Homeowner Protection Plan participating contractor;
 - c) the work is not inspected as required by applicable building codes and laws;
 - d) the Owner failed to execute this Service Contract within ninety (90) days of the work completion date indicated above.
- 2.02 **Cost of Plan:** This Plan is provided FREE OF CHARGE for any home that is accepted for coverage by the Take Five Homeowner Protection Plan. The Builder may not impose a separate charge on the home owner for Take Five participation.
- 2.03 **Scope of Coverage:** The Plan provides for repairs and corrections of failures or defects in the home's plumbing and/or piping system (e.g. drain, waste, vent, potable water systems), and HVAC (heating, ventilation, and air conditioning), caused by deficiencies or defects in the workmanship by the Original Take Five Homeowner Protection Plan Contractor, except that neither ductwork nor HVAC design deficiencies shall be covered by the warranty. This Plan does not include defect or failures of manufactured items including but not limited to fixtures, water heaters, toilets, sinks, garbage disposals, lavatories, valves, fans, air conditioners, furnaces, boilers or related ductwork. This Plan does not provide for repair of damage or correction of conditions caused by abuse, neglect, failure to maintain, or negligent use of the plumbing and/or piping system in the home, such as freezing, clogging or stoppage of pipes. In addition, the Plan does not reimburse for costs incurred to obtain access to the piping to be repaired or to return the premises to the condition it was in prior to making the repair.
- 2.04 **Not Insurance:** This plan is not an insurance policy, but solely a service warranty/repair agreement. The Take Five Homeowner Protection Plan is limited solely to the cost of repairing or correcting failures or defects in the home's plumbing, piping, and/or HVAC system resulting from defective workmanship except that ductwork and HVAC design is not covered by the warranty. Take Five Homeowner Protection Plan liability is limited to the repair and correction of such defective workmanship. The Take Five Homeowner Protection Plan does not warrant equipment and is not liable for consequential or incidental damages, including damages caused to other parts of the home by a defect or deficiency in the plumbing, piping, and/or HVAC system(s).

III. Continued Participation in the Take Five Homeowner Protection Plan

- 3.01 **Conformance required:** To qualify for continued participation in this plan, the home must meet the following requirements:
- a) Subsequent to the initial installation, all work performed on the designated system(s) must have been performed by a participating Take Five Homeowner Protection Plan plumbing, pipefitting, and/or HVAC contractor.
 - b) All work performed on the designated system(s) must have been inspected and approved in accordance with the applicable building codes and laws.

IV. Dispute Settlement Procedures and Limit of Liability

- 4.01 **Cooperation:** The Owner shall fully cooperate with the Take Five Homeowner Protection Plan in any dispute settlement proceeding under this Agreement including but not limited to, making themselves available at their expense to consult or testify, and providing the Take Five Homeowner Protection Plan with any and all relevant records concerning the home that is subject to the proceeding.
- 4.02 **Maximum Liability:** The maximum liability of the Take Five Homeowner Protection Plan under this agreement is \$1,000.00 per home, per year, per customer.

V. Termination and Suspension

- 5.01 **Termination:** The Take Five Homeowner Protection Plan may, upon giving written notice to the owner, terminate the Agreement if, in the judgment of the Take Five Homeowner Protection Plan:
- a) The owner misrepresented facts in the application for membership or for registration which were material to the evaluation of that application or registration;
 - b) The owner had addition work performed on the designated system(s) by anyone other than a participating Take Five Homeowner Protection Plan plumbing, pipefitting, and/or HVAC contractor;
 - c) The home fails to meet local government codes or fails to meet required inspections;
 - d) The owner fails to cooperate in the Take Five Homeowner Protection Plan's dispute which is rendered pursuant to those procedures, or fails to abide by an agreement voluntarily made with the owner in a dispute settlement;
 - e) The owner exceeds the maximum loss limitations established by the Take Five Homeowner Protection Plan.

VI. Compliance with the Rules and Regulations of the Take Five Homeowner Protection Plan

- 6.01 **Rules and Regulations:** The owner shall be bound by all rules and regulations of the Take Five Homeowner Protection Plan as may be adopted or amended as fully as if said rules and regulations were specifically set out in this Agreement. The Take Five Homeowner Protection Plan shall provide a copy of the rules and regulations to the owner.
- 6.02 **Inspection:** The Take Five Homeowner Protection Plan shall have the right to inspect at any reasonable time and upon reasonable notice the home for the purposes of verifying compliance by the owner.

VII. General Provisions

- 7.01 **Term:** The term of this agreement will be five (5) years after the fixtures are set and covered work is completed (the "work completion date") on the home as specified above. To the extent that covered work is subject to a warranty provided by another party including the original builder or contractor: the warranty provided by this Agreement shall be supplemental. The preceding notwithstanding, during the first year after the work completion date, the original mechanical contractor shall have the sole responsibility to correct any defects that would otherwise be covered hereunder. The obligations under this Plan commence on the date that is one year after the work completion date.
- 7.02 **Non-Liability of Plan Sponsors:** Neither the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting, Local 99 nor the Bloomington-Normal Plumbing, Heating & Cooling Contractors Industry Advancement Fund shall be liable to any person or party for any claims arising out of, or relating to, this Agreement.
- 7.03 **Force Majeure:** In the event that the performance by any party or any of its obligations under this agreement is delayed by an occurrence not occasioned by the conduct of the party obligated to perform including without limitations, any act of god or the common enemy, or the result of war, riot, civil commotion, sovereign conduct or the act or conduct of a person not a party to this Agreement, then that party shall be excused from such performance for as long as is reasonably necessary to remedy the effects of that occurrence.
- 7.04 **Attorney and Witness Fees:** In any legal action between the parties arising out of this Agreement each shall be responsible for its own attorney's fees, witness fees and costs of litigation.
- 7.05 **Entire Agreement:** Except as otherwise expressly provided in this Agreement, the Agreement constitutes

the entire Agreement between the parties regarding the rights granted and the obligations assumed in this instrument. Any representations or modifications concerning this instrument shall be of not force or effect except for subsequent modification in writing signed by the parties or by amendment pursuant to the rules and regulations of the Take Five Homeowner Protection Plan.

- 7.06 **Partial Invalidity:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected.
- 7.07 **Choice of Law:** This Agreement shall be governed and construed in accordance with the law of the State of Illinois.
- 7.08 **Assignment:** This Agreement may be assigned by the Owner to a purchaser, so long as the conditions of Article II of this Agreement continue to be met by giving written notice of the identity of the purchaser to the Take Five Homeowner Protection Plan within thirty (30) days after the sale.
- 7.09 **Notice:** Any notice to be given by any party shall be in writing, and may be delivered personally or by registered or certified mail return receipt requested, to the intended recipient as follows: notice to the Owner shall be delivered to the Owner's address shown on the first page of this Agreement;
- Take 5 Homeowner Protection Plan
P.O. Box 91
Deer Creek, IL 61733
- 7.10 **Captions:** Captions as to the contents of particular provisions are intended for convenience only and shall not be considered in construing this instrument.
- 7.11 **No Agency:** This Agreement shall not constitute or be considered an agency, employer-employee relationship, joint venture, or partnership between any contractor hired by the Take Five Homeowner Protection Plan to perform work. None of the parties, nor any of their employees or agents, shall have the authority to bind or obligate the other party except as provided by this Agreement.
- 7.12 **Waivers:** Failure of any party to complain of any act or omission on the part of another party, no matter how long it may continue, shall not constitute a waiver of any breach of this Agreement, or a consent to any subsequent breach.
- 7.13 **Effective Date:** This Agreement shall become effective as of the work completion date on the first page of this Agreement.