



KEMPER SYSTEM AMERICA, INC.
__-YEAR PREMIER NDL LIMITED WARRANTY
WORKMANSHIP AND MATERIALS

SYSTEM USED: _____ FLEECE WITH _____ RESIN

OWNER
NAME:
ADDRESS:
TELEPHONE:

APPLICATOR FIRM
NAME:
ADDRESS:
TELEPHONE:

STRUCTURE INFORMATION

NAME:
ADDRESS:
SIZE OF PROJECT:

APPLICATION LOCATION:
COMPLETION DATE:
PROJECT NO.:

KEMPER SYSTEM AMERICA, INC. ("KSA") warrants to the above-named **Owner** that the Kemperol® waterproofing system defined above ("**System**") installed on the **Structure** in the locations identified above shall be free from leaks or seepage through the System to the substrate for a period of years from the **Completion Date**. This warranty is subject to the conditions, limitations, and exclusions set forth below and on any riders. Only leaks or seepage found by KSA to have been caused by **(1)** defects in the content or composition of products supplied by KSA or **(2)** improper installation of the System by the above-named **Applicator Firm** shall constitute defects covered by this warranty ("**System defects**"). NDL ("No Dollar Limit") refers to Kemper's liability under this warranty for covered claims; Kemper has no liability for excluded items, conditions or damages as set forth below.

KSA shall at its option repair or replace any defective area of the System discovered to be defective during the warranty period. The Owner must notify KSA in writing of the claimed defect within 30 days of its discovery and during the warranty period. Failure to give timely notice of a claimed System defect shall constitute absolute waiver of any claim and KSA shall have no liability, under this warranty or otherwise, with respect to such System defect. The Owner shall, at its sole expense, furnish KSA and its agents free access to the Structure for inspection, testing, and repairs or replacement and provide all required scaffolding, staging, and rigging. Owner shall bear the cost of materials and labor for repairs to the Structure and, except as otherwise provided by an overburden rider, for removal and replacement of overburden to afford access to the claimed System defect. Failure by the Owner to furnish free access to the Structure or pay for the removal/replacement of overburden shall constitute an absolute waiver of any claim.

If leaks or seepage are caused in part by a System defect covered by this warranty and in part by a cause or condition excluded from this warranty, then KSA's liability under this warranty shall be proportionately and equitably reduced. In such event the Owner shall reimburse KSA for the cost of any repairs or replacement in excess of its proportionate liability. If after inspection it is determined that there is no System defect or that coverage under this warranty is for any reason excluded, then Owner shall reimburse KSA for its costs incurred in investigating or remedying the claimed defect.

ADDITIONAL COVERAGE. The following additional coverage is extended to this project:
In addition to the Kemperol® waterproofing system, the following specified coating/surfacing will be applied directly over the waterproofing membrane: _____.
KSA warrants the specified coating/surfacing to be free from separation between the coating/surfacing and waterproofing membrane, blistering and peeling for a period of _____ years from the Completion Date.
Upon written notice of a coating/surfacing defect within the above period, KSA shall, at its expense and at its option, reapply or repair the included coating/surfacing system if it was necessitated by (i) the repair of a warrantable System defect or (ii) separation between the coating/surfacing and waterproofing membrane.

- The **exclusions** to the coating/surfacing warranty are:
- Damage caused by settlement, cracking, warping, expansion, contraction, deflection or other movement in the substrate or any part of the building;
 - Damage caused any deliberate or negligent act, vandalism, act of terrorism or war, mechanical damage, vehicular or pedestrian traffic, storage of material, or other misuse or abuse;
 - Abrasions of the surfacing due to the development of traffic wear patterns and mechanical damage.
 - Appearance due to surface profile, texture, and/or color changes in the coating/surfacing as a result of weathering or atmospheric conditions.
 - Cleanliness or discoloration of the coating/surfacing caused by environmental conditions, including, but not limited to, dirt, pollutants, or biological agents.

EXCLUSIONS AND LIMITATIONS FROM WARRANTY COVERAGE. The System shall not be considered defective, and this warranty will not apply, where the claimed defect is attributable to any cause other than the above-defined System defects. In particular, this warranty shall not apply to:

- Damage to the System caused by:

- animals, flying or falling objects, or by natural disasters, including but not limited to earthquakes, hailstorms, windstorms (winds in excess of 72 miles per hour measured at 33 feet above ground), hurricanes, and tornadoes;
- any deliberate or negligent act, vandalism, act of terrorism or war, mechanical damage, vehicular or pedestrian traffic, storage of material, or other misuse or abuse;
- defects or irregularities in the design, materials, or construction of the Structure or substrate, including but not limited to structural movement, structural failure, substrate failure, internal substrate moisture, or internal pressure conditions;
- unprotected contact with uncured concrete and similar alkaline materials, organic solvents, or any other chemical (solid, liquid, gas, or any other form) that is not listed in KSA's literature regarding chemicals to which the System is resistant and that has not been otherwise approved by KSA in writing;
- Owner's failure to prevent or mitigate degradation or deterioration of, or leakage through, the substrate, overburden, or other elements of the Structure or substrate that are in contact with or otherwise affect the performance of the System;
- leaks or seepage due to existing project conditions that prevent proper termination or adhesion of membrane and flashing, including but not limited to low flashings less than 6" in height, tie-ins to adjacent roofing or waterproofing systems, or application to existing coatings or other finish materials;
- Repairs or modifications (including penetrations) made without KSA's prior written consent to the methods and materials to be used, or performed by an applicator not authorized by KSA;
- Damage, defects or irregularities in the System or Materials that do not cause leaks or seepage through the System to the substrate;
- The performance of materials installed on the Structure in locations other than those identified above;
- The performance of materials that are not supplied by KSA, regardless of whether KSA approves their use with the System;
- Unless otherwise agreed as additional coverage in this warranty, the performance of optional KSA and non-KSA surfacing materials not required for watertightness as part of the System, which Owner recognizes will require periodic reapplication.

CONDITIONS TO CONTINUING COVERAGE. This warranty shall be voided if:

- Owner fails to comply with its obligations under this warranty, including prompt reimbursement to KSA for expenses incurred in the investigation and repair of non-warranted conditions;
- Owner fails to remedy conditions affecting the System that are excluded from warranty coverage, including maintaining the Structure and any other non-System components, and repairing non-warranted damage to the System;
- There is a misrepresentation as to, or material change in, the use of the System or type of occupancy of the Structure that has a deleterious effect on the performance of the System;
- The extent of repairs or modifications made by third parties without KSA's prior written consent damages the System (the performance of emergency repairs will not in and of itself cause this warranty to be voided provided that permanent repairs are made promptly in a KSA-approved manner).

THIS EXPRESS WARRANTY IS GIVEN BY KSA IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR USE.

Owner's sole and exclusive remedy against KSA in connection with the purchase, installation, use, and/or performance of the System is repair or replacement of the failed area as expressed in this warranty. KSA shall not be liable for damage to other components of the System not provided by KSA or approved by KSA in writing, the substrate, the Structure itself, or to the contents of the Structure, whether or not caused by a defect covered by this warranty. **KSA SHALL NOT BE LIABLE TO THE OWNER OR TO ANYONE ELSE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES ARISING FROM ANY DEFECT, DELAY, NONDELIVERY, NONPERFORMANCE, RECALL OR OTHER BREACH BY KSA, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOST PROFITS, OR OTHER ECONOMIC INJURY.** All claims of negligence, strict liability in tort, failure of essential purpose and any other action at law or in equity are waived and excluded. KSA shall not be liable to the Owner or anyone else in tort for any negligent design, manufacture or application of the System, or for the omission of any warning with respect thereto.

This warranty is not transferable unless KSA otherwise agrees in writing and a transfer fee is paid by the transferee. Neither the parties to this warranty nor any other person (including Applicator Firm) may modify or expand this warranty, waive any of the limitations, or make any different or additional warranties with respect to the System. Any statements to the contrary are null and void unless made in a writing signed by the Managing Director of KSA

This warranty is subject to and shall be interpreted according to New York law without regard to principles of conflicts of laws. Any controversy or claims relating to the System shall be settled exclusively by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"), in the office of the AAA closest to the Structure within the state where the Structure is located, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. No action or claim shall be brought against KSA unless filed within one year after the basis for such claim becomes known, or with the exercise of reasonable diligence should have become known, to the Owner or its representatives. Any action or claim not timely filed shall be deemed waived. This agreement to arbitrate disputes shall not, however, apply to any lawsuits commenced by third parties wherein KSA brings a claim against the Owner.

This warranty shall not be effective unless or until (i) Owner has paid in full all invoices of KSA, Applicator Firm and any other supplier of materials for the System, (ii) KSA, receives payment in full of the purchase price for the warranty and any attached riders, and (iii) this document is signed by the Owner of the Structure and the Managing Director of KSA

THE TERMS OF THE FOLLOWING RIDERS ARE INCORPORATED IN THIS WARRANTY BY REFERENCE:

C_____	C_____
FOR OWNER	FOR KEMPER SYSTEM AMERICA, INC.
BY_____	BY_____
(Print/Type)	(Print/Type)
TITLE_____ DATE_____	TITLE_____ DATE_____