



PREMIUM ROOFING
System NDL Guarantee
(A Limited Warranty)

Guarantee Number: \_\_\_\_\_
Owner: \_\_\_\_\_
Building Project: \_\_\_\_\_
Building Location: \_\_\_\_\_
Roof Specification No: \_\_\_\_\_
Area of Roof: \_\_\_\_\_
Roofing Contractor: \_\_\_\_\_
Date of Roofing System Completion: \_\_\_\_\_
Term: \_\_\_\_\_ years

DEFINITIONS: (a) "TAMKO" means TAMKO Building Products, Inc.;

(b) "Roofing System" means the continuous flexible (or semi flexible) roof membrane that forms a water control element of the roof of the Building, consisting of TAMKO built up roofing felts and/or TAMKO modified roll roofing materials; the Roofing System does not include any other components of the Building or roof, areas of the roof not described above, or workmanship for the installation of any of the foregoing; by way of example, but not as a limitation of the preceding clause, the following materials and the workmanship for their installation are not part of the Roofing System: insulation, vapor barriers, counter-flashing, metal flashing, scuppers, drains, pitch pans and other roof components not manufactured by TAMKO;

(c) "Leaks in the Roofing System" means infiltration of water from outside of the Building through the Roofing System, that are not the result of any matter described below in the section entitled "What This Guarantee Does Not Cover";

(d) "Owner" means the person or entity identified above as the owner; and

(e) "Building" means the building described above.

WHAT THIS GUARANTEE COVERS: Subject to the following paragraph (What this Guarantee Does Not Cover) commencing with the Date of Roofing System Completion and continuing for the Term set forth above, TAMKO will repair or cause to be repaired Leaks in the Roofing System that directly result from manufacturing defects in products manufactured by TAMKO, ordinary wear and tear or workmanship deficiencies in the application of the Roofing System.

WHAT THIS GUARANTEE DOES NOT COVER: This Guarantee is an agreement to perform certain repairs; it is not a guarantee that the Roofing System will never leak or to undertake any responsibility, liability or obligation other than those specifically identified in the preceding paragraph (What this Guarantee Covers). By way of example and not as a limitation of the preceding sentence, TAMKO is not responsible or liable for: (a) leaks that are not Leaks in the Roofing System, (b) removal or abatement of asbestos in or on the Building, (c) personal injury or property damage of any kind, even if arising from a breach of this Guarantee, (d) damage to the Building, its contents or components of the roof below the Roofing System, (e) the effects of leaks, including Leaks in the Roofing System, (f) repairs to or replacement of the Roofing System not authorized in writing by TAMKO, (g) the design of the roof or any of its components, (h) workmanship for the installation of Building or roof components other than the Roofing System, and (i) leaks or damages to the Roofing System attributable to one or more of the following conditions:

- 1. Acts of God (including, but without limitation, lightning, wind greater than 72 miles per hour, hurricane, tornado, hail, or other violent storm or casualty), impact of objects or damage to the Roofing System due to settlement, distortion, failure or cracking of the roof deck, walls or foundation of the Building, or for any defect in or failure of material used as a roof base over which the Roofing System is applied, or for damage by traffic on the roof.
2. Civil insurrection, war, riot or vandalism.
3. Exposure to ionized radiation, contamination by radioactivity from any nuclear source, or chemical attack on the Roofing System.
4. Failure to timely report Leaks in the Roofing System or to repair leaks not covered by this Guarantee.
5. Defects or failures in the Building.
6. Changes in the Building usage unless approved in writing by TAMKO prior to such change.
7. Installations on or through the Roofing System after the Date of Roofing System Completion.
8. Repairs or alterations to the Roofing System that are (i) not authorized in writing by TAMKO, or (ii) performed by a roofing contractor who is not a "TAMKO Approved Roofing Contractor."
9. Inadequate drainage.
10. Splitting, cracking, blistering, delamination or separation of the Roofing System due to underlying materials (e.g. insulation).
11. Failure to follow TAMKO's recommended maintenance program.

TAMKO's sole responsibility hereunder is to perform certain repairs to the Roofing System. Inspections of the roof or plans therefore by TAMKO are solely for TAMKO's benefit and others shall have no right to rely upon the results of such inspections. Responsibility for the design of the roof, supervision of roofers and contractors, maintenance of the Roofing System and all responsibilities not expressly assumed by TAMKO herein remain with the Owner of the Building.

NOTICE: In the event of Leaks in the Roofing System, the Owner shall give written notice to TAMKO no later than thirty (30) days after discovery of such leaks. The notice shall include all information available to the Owner regarding the nature and source of the leaks. When properly and timely notified as set forth herein, TAMKO will inspect the roof, and if there are Leaks in the Roofing System covered by the terms of this Guarantee, will arrange for repairs to the Roofing System. Repair, and the cost thereof, of all other leaks is the responsibility of the Owner of the Building. All notices to TAMKO must be sent to P.O. Box 1404, Joplin, MO 64802.

TIME FOR REPAIRS: TAMKO shall have ninety (90) days after receipt of written notification of leaks to initiate repairs of Leaks in the Roofing System unless prevented by acts of God or events beyond TAMKO's reasonable control.

CANCELLATION: If any of the following events occur, TAMKO may, at its option, without notice, cancel this Guarantee. The right to cancel, as set forth herein, shall not be waived except in a written instrument signed by a TAMKO officer or TAMKO's Corporate Director of Technical Systems. Any such cancellation shall be effective the date of the event giving rise to the right to cancel.

- 1. Installations on or through the Roofing System after the Date of Roofing System Completion, unless performed in a manner prescribed and approved in writing by TAMKO;

- Repairs or alterations to the Roofing System after the Date of Roofing System Completion, unless performed in a manner prescribed and approved in writing by TAMKO prior to the repair or alteration,
- Failure to follow TAMKO's recommended maintenance program. For information regarding TAMKO's recommended maintenance program, contact TAMKO's Technical Service Department at P. O. Box 1404, Joplin, MO 64802, or see our web site at [www.tamko.com](http://www.tamko.com).
- Failure of the Owner to cooperate in TAMKO's investigation of leaks, including, but not limited to, failure to permit TAMKO access to the Roofing System at reasonable times when requested or making access subject to conditions not contained herein.
- Failure of the Owner to repair leaks that are not Leaks in the Roofing System, and which are not covered by this Guarantee as described in the section above entitled "What This Guarantee Does Not Cover."

In the event of cancellation of this Guarantee by TAMKO, TAMKO shall have no further obligation to the Owner or any other entity with regard to the Roofing System.

**NO MODIFICATION OF THIS GUARANTEE:** No representative, employee, agent of TAMKO, or person other than TAMKO's president, has authority to assume for TAMKO any additional or other liability or responsibility in connection with the Roofing System or the roof described above.

**TRANSFERABILITY:** During the ten (10) year period immediately following the Date of Roofing System Completion (but in no event after the expiration or termination of the Guarantee), and upon complete satisfaction of the Conditions of Transfer set forth below within six (6) months of a sale or transfer of the Building, the Owner may transfer the Guarantee to a purchaser of the Building (a "Purchaser"). Only one transfer is permitted. Except for one transfer to a Purchaser the Guarantee may not be sold, assigned or transferred in any manner whatsoever. Except as set forth herein, any assignment, sale or transfer of the Guarantee or the Building shall terminate all liability of TAMKO under this Guarantee, all warranties for TAMKO manufactured products and any applicable implied warranties including warranties of merchantability and fitness for a particular purpose. Termination pursuant to this paragraph shall be effective as of the date of the assignment, sale or transfer. Upon transfer of the Guarantee any and all obligations or liabilities of TAMKO to the Owner shall automatically terminate. Transfer of the Guarantee shall not renew, extend or alter any term of the Guarantee except as set forth herein.

**Conditions of Transfer:** The Owner and Purchaser must (1) within thirty (30) days after the transfer of the Building, pay to TAMKO a transfer fee of \$1,000.00 and provide TAMKO with written notice containing the names of the Owner and the Purchaser, the address of the Building, the Guarantee Number set forth above, and the date of the transfer; (2) permit TAMKO to inspect the Roofing System; (3) cause repairs or replacements to be made at the Owner's or Purchaser's expense, by a TAMKO Approved Roofing Contractor in accordance with TAMKO's written recommendations and specifications, for all areas identified by TAMKO in its sole discretion; and (4) provide written certification to TAMKO that the Building's use has not changed since the Date of Roofing System Completion.

**EFFECTIVE DATE:** The obligations of TAMKO contained in this Guarantee are conditioned on and shall be effective only after the last to occur of the following:

- TAMKO has received payment in full of the guarantee fee,
- TAMKO has received Notice of Completion from the roofing contractor on TAMKO's form, and
- This Guarantee has been issued and accepted by the Owner.

**LEGAL REMEDIES: EXCEPT WHERE PROHIBITED BY LAW, THE OBLIGATIONS CONTAINED IN THIS GUARANTEE ARE EXPRESSLY IN LIEU OF ANY OTHER OBLIGATIONS, GUARANTEES AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF TAMKO BUILDING PRODUCTS, INC. REGARDING THE ROOFING SYSTEM AND THE TAMKO PRODUCTS INSTALLED THEREIN. TAMKO'S TOTAL LIABILITY HEREUNDER IS LIMITED TO THE COST OF REPAIRING LEAKS IN THE ROOFING SYSTEM. IN NO EVENT SHALL TAMKO BE LIABLE FOR PERSONAL INJURIES, PROPERTY DAMAGE, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, EVEN IF ANY OF THE FOREGOING ARISES FROM A BREACH OF THIS GUARANTEE. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. ALL OBLIGATIONS AND LIABILITY OF TAMKO FOR BREACH OF THIS GUARANTEE SHALL TERMINATE AND EXPIRE UNLESS AN ARBITRATION THEREFORE IS BROUGHT WITHIN ONE (1) YEAR AFTER ANY SUCH CAUSE OF ACTION HAS ACCRUED.**

**MANDATORY BINDING ARBITRATION:** EVERY CLAIM, CONTROVERSY, OR DISPUTE OF ANY KIND WHATSOEVER (EACH AN "ACTION") RELATING TO OR ARISING OUT OF THE TAMKO PRODUCTS INSTALLED ON THE BUILDING IDENTIFIED ABOVE OR THIS GUARANTEE SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION, REGARDLESS OF WHETHER THE ACTION SOUNDS IN WARRANTY, CONTRACT, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY. TO ARBITRATE AN ACTION AGAINST TAMKO, THE OWNER MUST INITIATE THE ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION (WHICH ARE AVAILABLE ONLINE AT [www.adr.org](http://www.adr.org) OR BY CALLING THE AMERICAN ARBITRATION ASSOCIATION AT 1-800-778-7879), AND PROVIDE WRITTEN NOTICE TO TAMKO BY CERTIFIED MAIL AT P. O. BOX 1404, JOPLIN, MISSOURI 64802 WITHIN THE TIME PERIOD PRESCRIBED IN THE PRECEDING PARAGRAPH. TAMKO SHALL BE ENTITLED TO RECOVER ITS REASONABLE COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, INCURRED IN ANY ARIBTRATION OR LITIGATION OF CLAIMS CONCERNING THE ROOFING SYSTEM, TAMKO'S PRODUCTS OR THIS GUARANTEE UNLESS THE ARBITRATOR DETERMINES (1) THERE ARE "LEAKS IN THE ROOFING SYSTEM" COVERED BY THIS GUARANTEE AND (2) TAMKO HAS FAILED TO FULFILL ITS OBLIGATIONS HEREUNDER.

**ANY ACTION BROUGHT BY YOU AGAINST TAMKO WILL BE ARBITRATED (OR, IF ARBITRATION OF THE ACTION IS NOT PERMITTED BY LAW, LITIGATED) INDIVIDUALLY AND YOU WILL NOT CONSOLIDATE, OR SEEK CLASS TREATMENT FOR, ANY ACTION UNLESS PREVIOUSLY AGREED TO IN WRITING BY BOTH TAMKO AND YOU.**

**OWNER'S AGREEMENT:** TAMKO would not agree to assume the obligations contained in this Guarantee in the absence of any of the limitations and exclusions contained herein. Therefore, (1) the Owner's agreement to each and every term of this Guarantee is an essential condition precedent to TAMKO's obligations; (2) TAMKO shall have no obligation or liability hereunder in the absence of such agreement by the Owner; and (3) by accepting or asserting any rights hereunder, the Owner irrevocably agrees to indemnify and hold harmless TAMKO, its affiliates, successors, assigns, directors, officers, employees and agents (each an "Indemnified Party") from and against all claims, expenses (including attorneys fees and expenses), losses, liabilities, and damages in any way related to or arising from matters described in the section of this Guarantee entitled "What This Guarantee Does Not Cover," and all amounts paid in defense of the foregoing which may be imposed upon, incurred by or asserted against an Indemnified Party by any person, firm or entity.

Nothing contained in this Guarantee shall be construed to be a waiver of any right to contribution or indemnity available to TAMKO. TAMKO shall be subrogated to the rights of the Building owner to the extent of any payment by TAMKO for repairs made necessary by the acts of others. This Guarantee supersedes all prior guarantees and warranties concerning the Roofing System and/or the TAMKO products installed on the roof.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.**

By \_\_\_\_\_ Date \_\_\_\_\_  
AUTHORIZED SIGNATURE