

FIFTEEN YEAR FULL VALUE ROOF MEMBRANE WARRANTY

Warranted By
GS Roofing Products Company, Inc.

Date Issued: 8/2/79

Warranty No.: FV388C97

FIFTEEN Years from: 8/1/79

WHEREAS, GS Roofing Products Company, Inc., 5535 MacArthur Blvd., Suite 300, Irving, Texas (hereinafter referred to as "GS"), has sold its products which have been used in applying a Roof Membrane on the building described as follows:

Owner: BEECHNUT SE, L.P., c/o SHELBY/VESTUS REALTY
Address of Owner: 1009 BERING DR., SUITE 483, HOUSTON, TX 77057
Address of Building: 8407 BEECHNUT AVE., HOUSTON, TX 77063
Area of Roof: 138 Squares GS Specifications: GMS 1-3/8S-S/V
Description of Building and its Use: ECKERD DRUG STORE RETAIL
Applied By: BEAR SERVICES, L.P.

NOW, THEREFORE, GS hereby warrants to the above Owner, subject to the following terms, conditions, limitations and exclusions, that should there be any leaks or manufacturing defects in the GS products used in that portion of the above building hereinafter referred to as the "Roof Membrane" during the term of this warranty which are caused solely by means of ordinary wear of the elements or workmanship on the part of the GS authorized roofing contractor and not caused, completely or partially, by any of the causes hereinafter excluded from the coverage hereof. GS or its authorized agent will repair such leaks (exclusive of those work and non-GS approved materials) as necessary to retain the Roof Membrane in a watertight condition. A GS factory made "water stop" will be used as determined by GS. GS is not responsible for any costs related to the removal or alterations of any asbestos present in the existing roof system to which the GS roof system is applied.

The Roof Membrane referred to herein is composed of the following: A base sheet, optional gravel, bituminous asphaltic material between layers when required, and a capsheet and/or surfacing layer applied per GS published specifications and conditions.

Included among the items which are not part of the Roof Membrane and hence not included within the protection provided by this warranty are the following: underlying roof deck; insulation; vapor retarders; fasteners; metal work; drains; expansion joints; skylights; vents; flashings or reflective coating. Bituminous flashings shall not be considered part of the Roof Membrane.

ROOF ACCESS AND REPAIR COVERAGE

Other than for leaks of conditions of leaks due to covered causes, GS shall not be liable for correction of conditions on, or any damage to, any building, interior or exterior, or property contained therein or thereon, or for damages or injuries of any kind whatsoever, and shall not be liable for damages or injuries to roof insulation, roof decks or other bases over which the GS products are applied, or for leaks, damages or injuries attributable to any of the following (for any combination thereof):

1. Damage caused directly or indirectly by natural disasters, including, but not limited to, cyclones, tornadoes, hurricanes or other winds exceeding Force 8 on the Beaufort scale, lightning, earthquakes, flood, hail or fire.
2. Physical damage resulting from falling objects, maintenance work, civil insurrection, war, riot or vandalism.
3. Damage resulting from settlement, expansion or other movement of the roof deck, walls, foundations or any other part of the building structure, insulation or other materials underlying the Roof Membrane.
4. Damage to, or failure of, the Roof Membrane and Base Flashings caused or contributed to by:
 - a) Infiltration or condensation of moisture in, through or around the walls, coping, building structure or underlying or surrounding materials; or
 - b) Traffic of any nature or use of the roof surface as a storage area, walking or recreational surface or for any other similar purpose; or
 - c) Movement or deterioration of metal work used in conjunction with the Roof Membrane; or
 - d) Solid or liquid deposits of any substance; or
 - e) Building design or construction; or
 - f) Lack of positive drainage, including, but not limited to, lack of adequate drainage to promptly and readily remove water from the Roof Membrane.
5. Failure to follow GS' roof maintenance program.
6. Changes in the DRAGG's basic usage unless approved in advance in writing by GS.
7. Any failure of non-GS approved roofing material of any kind or nature.

UNAPPROVED REPAIRS; ALTERATIONS, ADDITIONS OR DELETIONS; AND CHANGE OF USE OF BUILDING

All repairs, alterations, deletions or additions to any aspect of the roof or any material contiguous thereto, must have the prior written approval of GS' Commercial Services Department. In the event that the owner, without having first obtained the written consent of GS, shall hereafter make or permit any repairs, alterations, deletions or additions to the Roof Membrane or place any additional structural members (such as, but not limited to, equipment or framework used in connection with air conditioning units, television and radio antennas, signs and/or water towers), or change the use of the building or any part thereof as approved in writing in advance by GS, then any obligations, duties or liabilities of GS under this warranty or by law shall be immediately terminated and of no further effect. However, the remaining terms, conditions, limitations and exclusions relating to the warranties, duties, and responsibilities of the contractor and owner continue to be in full force and effect. GS agrees to respond promptly and in a reasonable manner whenever it is consent to the foregoing repairs, alterations, additions, deletions or additional structures is requested in writing at the address set forth in the Notice of Claim section below.

GS shall have access to the roofing system. If access is not allowed, GS shall have the right to terminate the sections of this warranty that provide protection to the owner.

In the event an emergency condition exists which requires immediate repair to avoid damage to the building or its contents, the owner may make essential temporary repairs performed by a qualified roofing contractor. GS will reimburse the owner for only those essential repair expenses which would have been the responsibility of GS under the terms and conditions of the warranty.

NOTICE OF CLAIM

To require GS to perform any obligation under this warranty, the owner named herein must, within thirty (30) days of discovery of the alleged defect to which the claim relates, and at owner's expense, send written notification of such alleged defect, together with proof of purchase, certified mail, to GS Roofing Products Company, Inc., 5535 MacArthur Blvd., Suite 300, Irving, Texas 75038, Attn: Commercial Services Department. This notice must include a general description of the alleged defect. Within thirty (30) days after written notice of the alleged defect has been received by GS, a GS representative may inspect the roof in question. The owner must allow reasonable investigation including, but not limited to, the taking of samples that adequately demonstrate the alleged problem for testing by GS as part of the claim investigation. PROPER AND TIMELY NOTICE TO GS, ALLOWING GS TIMELY ACCESS TO THE ROOF AND REASONABLE TIME TO INVESTIGATE THE SAME ARE ABSOLUTE CONDITIONS PRECEDENT TO THE RIGHT TO BRING A CLAIM OR LEGAL ACTION OF ANY KIND. Upon being permitted such opportunity to investigate and inspect the roof membrane, GS will then promptly perform any obligation imposed by the terms of the warranty as a result of such investigation.

NOTE: GS shall not be liable for any expenditure you may incur in replacing or repairing the Roof Membrane in question which is incurred prior to written acknowledgment from GS that it is responsible for the claim pursuant to the terms of this warranty.

NO MODIFICATION OF THIS WARRANTY

No representative, employee, agent of GS, or any other person has the authority to assume for GS any additional or other liability or responsibility in connection with the roof membrane described above. GS shall not be responsible for or liable for any change or amendment to this warranty or to the GS specifications in regard to the construction of the TRANSFERABILITY OF WARRANTY.

Subject to payment of applicable transfer fee to GS and proper documentation being delivered to GS within thirty (30) days after building ownership transfer, the owner may transfer this warranty to a subsequent owner, subject to all terms, conditions, limitations and exclusions, provided the use to which the subsequent owner puts the structure is not one prohibited by GS in its published material. Subsequent prohibited uses include, but are not limited to, residential, solid storage, treated tanks and/or storage tanks. Owner shall contact GS for applicable transfer fee and notification documentation.

EFFECTIVE DATE

This warranty shall become effective only upon the occurrence of all the following events:

1. Payment in full to GS of the warranty fee.
2. Roofing contractor's notice of completion.
3. When all bills or statements for installation and supplies have been paid in full to the roofing contractor.
4. Upon GS' approval of the completed Roof Membrane.

Note: This warranty period shall be calculated from the date of completion of the roof system stated above.

LIMITATION OF DAMAGES AND LEGAL REMEDIES; AGREEMENT TO BINDING ARBITRATION

THE OBLIGATIONS CONTAINED IN THIS LIMITED WARRANTY 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 GS. IN NO EVENT SHALL GS BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND. SOME STATES DO NOT ALLOW EXCLUSIONS OR LIMITATIONS OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. NO ACTION FOR BREACH OF THIS LIMITED WARRANTY SHALL BE BROUGHT LATER THAN ONE YEAR AFTER ANY POTENTIAL CAUSE OF ACTION HAS ACCRUED.

Nothing contained in the warranty shall be construed to be a waiver of GS' right for contribution or indemnity for any liability incurred as a result of this limited warranty. Invalidity or unenforceability of any provisions herein shall not affect the validity or enforceability of any other provision which shall remain in full force and effect. This warranty supersedes all prior roof membrane warranties and bonds.

All disputed claims or other disputes that may arise between the owner, contractor and/or GS arising out of or relating to or in connection with this limited warranty shall be submitted to and decided by arbitration in accordance with the Construction Industry Arbitration Association then in effect unless the parties mutually agree otherwise. The agreement to arbitrate shall be specifically enforceable under the applicable state or federal arbitration laws. The award rendered by the arbitrator shall be final and judgment may be entered upon such award in accordance with applicable law in any court having jurisdiction thereof.

EXAMINATION OR INSPECTION

Neither the issuance of this limited warranty nor any review or inspection of plans, building or product application by a GS representative shall constitute a waiver by GS of any of the conditions or limitations of the limited warranty, nor may any GS representative waive any of the conditions or limitations of this warranty either orally or in writing. GS does not practice Engineering or Architecture. Therefore, GS cannot and does not warrant any review of construction or design plans, or any inspection of the roof or the installation thereof and neither the issuance of this limited warranty nor any review of the building's construction or inspection of roof or roof plans (or of the building's roof deck) by GS representatives shall constitute any warranty of such plans, specifications and construction or in any way constitute an extension of the terms and conditions of the limited warranty.

Any roof inspections made by GS or an authorized agent for GS are for the sole benefit of GS. The owner is encouraged to retain its own inspectors and/or other roof professionals to review any and all roof designs, construction plans, and/or installation of the roof system.

ACCEPTANCE OF TERMS

Owner acknowledges that the effectiveness of this warranty is part of the consideration for the purchase of the roof materials. By purchasing GS products, Owner hereby accepts the terms, conditions, limitations and exclusions of this limited warranty.