

MATERIAL WARRANTY

Project Name: _____ *Specimen* _____
 Project Address: _____
 NEOGARD System: _____
 Substrate: _____ Area in Squares: _____
 Applicator: _____

The NEOGARD® Division of JONES-BLAIR® Company (NEOGARD), hereby warrants to the Building Owner (OWNER) of the above described building(s), subject to the provisions hereof, that the supplied materials as manufactured by NEOGARD (NEOGARD Products or, as used in combination with each other, the NEOGARD System) will remain watertight, for a period of X year(s) from date of substantial completion, ~~XXXX~~. If upon inspection, NEOGARD determines that a leak or coating failure has occurred due to faulty NEOGARD Products, NEOGARD will supply without cost to the OWNER, necessary coating for repair, inclusive of labor or the cost of labor, subject to the conditions and exclusions listed below. NEOGARD makes no warranty with respect to the handling, installation, or workmanship of the party applying the NEOGARD Products. NEOGARD neither represents nor warrants that any NEOGARD Products have any qualities and/or meet any specifications not expressly set forth in the current NEOGARD guide specifications and product data sheet(s) available at www.neogard.com, and OWNER expressly disclaims any and all reliance on any representations about NEOGARD Products and/or the NEOGARD System which representations are not expressly set forth in the current NEOGARD guide specifications and product data sheet(s).

CONDITIONS & EXCLUSIONS:

1. This warranty only applies to use of NEOGARD Products on institutional, commercial, industrial, and high-rise/multi-family residential buildings.
2. This warranty only applies to NEOGARD Products applied strictly in accordance with NEOGARD's written instructions.
3. This warranty only applies if the NEOGARD System as installed strictly complies with the applicable written NEOGARD Guide Specification.
4. This warranty does not extend to costs associated with removal of any obstructions from the affected area that would hinder or impede repair of the NEOGARD System or lift equipment necessary to gain access to the NEOGARD System. Any such costs shall be OWNER's sole responsibility.
5. This warranty becomes effective only upon payment in full to NEOGARD, its Distributor, and/or the Applicator for all NEOGARD Products supplied to the project.
6. The unexpired portion of this warranty may be transferred to a subsequent owner of record only during the warranty period. To affect a transfer of this warranty, OWNER must notify NEOGARD in writing of the transfer within 30 days of the effective date of the change of ownership and must pay a fee of \$500. Any requested transfer of this warranty is expressly subject to (1) the completion by NEOGARD of a full inspection, unrestricted by the OWNER, of the premises constituting the project building(s) named on this warranty and (2) the completion of any and all repairs by the OWNER which are deemed necessary by NEOGARD, in its sole discretion, following such inspection.
7. **This warranty does not cover damage to the NEOGARD System, OWNER's property, building(s), or contents and/or failure of the NEOGARD System:**
 - a. That is caused by fire, faulty construction or design, misuse of structure, inadequate drainage or other failure of the structure.
 - b. That is caused directly or indirectly by unusual occurrences of the elements such as, but not limited to, floods, lightning, hail, earthquakes, cyclones, hurricanes, tornadoes, or other winds or gusts exceeding 72 mph (117 km/h).
 - c. That is due to settlement, cracking, warping, expansion, contraction, deflection or other movement in the substrate or any part of the building greater than 1/16" in width at its widest point.
 - d. That is due to vapor drive, infiltration or condensation of moisture in, through or around walls, copings, building structure or underlying or surrounding materials.
 - e. That is caused by acids, fatty acids, or other harmful chemicals and the like, other than those for which the NEOGARD Products are designed, coming in contact with the NEOGARD System.
 - f. That is caused by snow or ice removal or improper cleaning procedures.
 - g. That is caused by falling objects, third parties or foreign objects or agents, including, without limitation, plant or animal life.
 - h. That is caused by repairs or alterations to, encroachment upon, or erection of any structure on the coated area or any use of the coated area other than for its intended purpose at the time this warranty was issued.
8. **Other express exclusions from the scope of this warranty:**
 - a. Appearance due to surface profile, texture, and/or color changes in the NEOGARD System as the result of normal weathering or atmospheric conditions.
 - b. Cleanliness or discoloration of the NEOGARD System caused by environmental conditions including, but not limited to, dirt, pollutants, or biological agents.
 - c. Areas of any structure to which the NEOGARD System has been applied where ponding or standing water exists longer than 48 hours after precipitation during conditions conducive to drying.
 - d. Defects, blisters, or delaminations in the materials, substrate, coatings or systems to which the NEOGARD Products are attached.
 - e. Items not part of the NEOGARD System and/or any Products not supplied by NEOGARD are expressly excluded from the protection of this warranty. In particular, and without limitation, NEOGARD does not manufacture or supply Spray Polyurethane Foam; therefore, if such Foam has been used on this project, it has been supplied by others, and is specifically excluded from coverage under this warranty.

9. **This warranty shall be null and void if:**
 - a. OWNER fails to use reasonable care in maintaining the NEOGARD System, said maintenance to include, but not be limited to, those items listed on NEOGARD's Preventative Maintenance brochure; or
 - b. Any repairs are made to the NEOGARD System with materials other than the appropriate NEOGARD Product(s).
10. NEOGARD's failure at anytime to enforce any of the conditions and exclusions stated herein shall not be construed to be a waiver of such provision.

Any notice of leaks or coating failures in the NEOGARD System shall be sent in writing to NEOGARD, and shall include a statement of scope of leak or coating failure and evidence suggesting liability by NEOGARD, within thirty (30) days of discovery, but in no event later than the expiration date of this warranty. NEOGARD shall have the right to inspect the NEOGARD System to determine the cause(s) of the leak or coating failure before incurring any obligation hereunder. NEOGARD reserves the right to charge a re-inspection fee to the OWNER in the event the cause of the leak or coating failure is not covered by this warranty. If, upon inspection, NEOGARD determines that the leak or coating failure is caused by defects in the NEOGARD Products, OWNER's sole remedy and NEOGARD's sole liability hereunder shall be replacement and installation of NEOGARD Products proven defective as hereinabove expressly provided and in no event shall NEOGARD's liability for replacement and installation expenses hereunder exceed the original cost of the supplied NEOGARD Products. It shall be the OWNER's responsibility (1) to secure necessary approval and release of liability from the building occupants who might be affected by the repair operations, and (2) to remove at OWNER's expense, all obstructions from the affected area as determined by NEOGARD or Applicator that would hinder or impede repairs being made in the most expedient and least expensive manner possible.

WAIVER OF RIGHT TO TRIAL BY JURY:

NEOGARD and OWNER hereby knowingly, voluntarily, and unconditionally waive their right to a jury trial of any and all claims or causes of action arising from or relating to this warranty or otherwise arising out of or relating to any transaction between OWNER and the NEOGARD Division of JONES-BLAIR Company. NEOGARD and OWNER acknowledge that a right to a jury is a constitutional right and that they have had an opportunity to consult with independent counsel with regard to this express waiver of their right to a jury trial.

CHOICE OF LAW AND FORUM:

This warranty shall be governed by, and construed in accordance with, the laws of the State of Texas, United States of America. All transactions and/or controversies between NEOGARD and OWNER shall be governed by the laws of the State of Texas. OWNER hereby agrees that the exclusive venue for any and all claims arising from or relating to this warranty or otherwise arising out of or relating to any transaction between OWNER and the NEOGARD Division of JONES-BLAIR Company shall be in Dallas County, Texas. OWNER expressly waives any defense based on lack of personal jurisdiction, inappropriate venue, or forum non conveniens.

ATTORNEYS FEES:

To the extent any dispute arises under this warranty, the prevailing party in any such dispute shall be entitled to recover from the other party all of its reasonable attorneys' fees, costs and expenses incurred as a result of such dispute.

THE ABOVE WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES OR LEGAL REMEDIES, AND NEOGARD MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, IN RESPECT OF NEOGARD PRODUCTS AND/OR THE NEOGARD SYSTEM, EXCEPT AS PROVIDED HEREIN. NEOGARD SHALL NOT BE LIABLE OR OBLIGATED FOR ANY LOSS OR CONSEQUENTIAL OR OTHER DAMAGE INCURRED DIRECTLY OR INDIRECTLY BY OWNER OR ANY OTHER PERSON OR ENTITY THAT ARISES IN ANY WAY IN RELATION TO NEOGARD PRODUCTS AND/OR THE NEOGARD SYSTEM OR THE USE OR FAILURE THEREOF, WHETHER BASED ON BREACH OF WARRANTY OR NEGLIGENCE, EXCEPT AS PROVIDED HEREIN.

NEOGARD Division of JONES-BLAIR Co.
2728 Empire Central, Dallas, TX 75235

OWNER

By: Signature Required to be Valid Dennis Bigley

Firm: _____

Title: Technical Department Manager

By: _____
Signature w/Printed Name

Date: _____

Title: _____

Issue Number: _____

Product Information Available at www.neogard.com

Warranty is null and void if a valid copy, executed by all parties, is not on file at NEOGARD's Warranty Department, Dallas, TX.