

PRO-RATA LIMITED MATERIAL WARRANTY ON PONDGARD™

Purchaser: _____ Phone No: _____

Building Identification: _____

Building Address: _____

Date of Purchase: (Day/Month/Year): _____

Installing Contractor: _____ Phone No: _____

Holcim Solutions and Products US, LLC, an Indiana limited liability company (“Holcim”), warrants to the home owner named above (“Owner”) that: (1) the Elevate branded PondGard liner (the “PondGard”) is fish friendly, and, (2) subject to the Terms, Conditions, and Limitations set forth herein, Holcim will provide replacement material during the Warranty Period to repair any area of the PondGard that leaks due to normal weathering or a manufacturing defect.

TERMS, CONDITIONS, AND LIMITATIONS

Products Covered. This Limited Warranty only covers Elevate branded PondGard when installed for normal use in approved applications, and in accordance with Holcim’s written technical specifications.

Notice. In the event of a leak through the PondGard, Owner must give notice in writing or by telephone to Holcim Warranty Services (“Warranty Services”) within thirty (30) days of the occurrence of the leak and submit two (2) 6" x 6" samples of the PondGard selected as follows: one sample must be from the suspected area, and one must be from another area. The costs related to removal of the samples and repairs to make the PondGard watertight are not included in this Limited Warranty. Holcim shall have no obligation to under this Limited Warranty if Owner fails to give proper notice to Warranty Services as set forth herein. Notifying a contractor, a retailer or other reseller, or an authorized Elevate sales representative, is not notice to Warranty Services as required by this section. Owner agrees to retain original proof of purchase of the PondGard, and to supply the original upon submitting a claim.

Investigation. If upon investigation, Holcim determines that the leak is excluded under the Terms, Conditions, and Limitations of this Limited Warranty, Owner will be responsible for repairing the unwarranted leak at Owner’s expense. Failure by Owner to repair unwarranted leaks in a reasonable manner and within sixty (60) days shall render this Limited Warranty null and void.

Limitations. If upon investigation, Holcim determines that the leak is not excluded under the Terms, Conditions, and Limitations set forth herein, Owner’s sole and exclusive remedy and Holcim’s total liability shall be limited to providing replacement material to repair the affected area of the PondGard. For the first year following the Warranty Commencement Date, Holcim will provide replacement material for warranted leaks without a reduction for use and thereafter will provide replacement material on a prorated yearly basis. Holcim’s obligations over the life of this Limited Warranty are limited to Owner’s original purchase price of the PondGard.

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Exclusions. Holcim shall have no obligation to provide replacement material if a leak or damage is caused by: (a) natural forces, disasters, or acts of God including, but not limited to, hurricanes, tornadoes, hail, lightning, earthquakes, atomic radiation, insects, or animals; (b) act(s), conduct or omission(s) by any person, or act(s) of war, which damages the PondGard or which impairs the product's ability to resist leaks; (c) failure by Owner to use reasonable care in maintaining the PondGard. Said maintenance to include, but not limited to those items listed in the PondGard Care and Maintenance Guide included with this Limited Warranty; (d) acid, oil, harmful chemicals, or the reactions between them; (e) any atypical atmospheric conditions or weather which damages the PondGard, or which impairs its ability to resist leaks; (f) any penetrations, alterations or repairs to the PondGard not approved in writing by Holcim; (g) improper site preparation or covering materials, or improper application or installation; (h) excessive pressures or stresses from any source; or, (h) failure by Owner to properly notify Warranty Services as set forth herein.

Term. The term of this Limited Warranty shall be for a Warranty Period of twenty (20) years as long as Owner remains a resident at the address listed above. This term shall not be extended under any circumstances without Holcim's written approval.

Non-Assignability. This Limited Warranty is not transferable or assignable and Holcim precludes Owner from claiming, representing, or implying that this Limited Warranty extends to or is available to anyone other than the Owner named above.

Products Not Covered. This Limited Warranty only covers Elevate branded PondGard and does not cover other products and/or services, including, but not limited to: flashings, seams, adhesives, sealants, coatings, installation, or workmanship.

Waiver & Severability. Holcim's failure to enforce any of the terms or conditions stated herein shall not be construed as a waiver of such provision or of any other terms and conditions of this Limited Warranty. If any portion of this Limited Warranty is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force.

Disputes. Any dispute, controversy or claim between Owner and Holcim concerning this Limited Warranty or relating to any material supplied or specifically required by Holcim shall be submitted to mediation in Davidson County, Tennessee. Owner hereby releases Holcim from all liability to Owner's insurance carrier or to anyone claiming under or through Owner by reason of subrogation or otherwise. In the event that Owner and Holcim do not resolve any dispute, controversy, or claim in mediation, Owner and Holcim agree that neither party will commence or prosecute any suit, proceeding, or claim other than in the state and federal courts in Davidson County, Tennessee. Each party irrevocably consents to the jurisdiction and venue of the above-identified courts.

Governing Law. This Limited Warranty shall be governed and construed in accordance with the laws of the state of Tennessee without regard to its rules on conflicts of laws.

THIS LIMITED WARRANTY SHALL BE OWNER'S SOLE AND EXCLUSIVE REMEDY AGAINST HOLCIM AND HOLCIM SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES INCLUDING BUT NOT LIMITED TO CLAIMS OF PERSONAL INJURY OR DEATH, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE, OR DAMAGE TO THE CONTENTS OF THE PONDGARD. HOLCIM SPECIFICALLY DISCLAIMS LIABILITY UNDER ANY THEORY OF LAW ARISING OUT OF THE INSTALLATION OR PERFORMANCE OF, OR DAMAGES SUSTAINED BY OR CAUSED BY, MATERIALS NOT FURNISHED BY HOLCIM. THIS LIMITED WARRANTY SUPERSEDES AND IS IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THIS LIMITED WARRANTY CANNOT BE AMENDED, ALTERED, OR MODIFIED IN ANY WAY EXCEPT IN WRITING SIGNED BY AN OFFICER OF HOLCIM. NO OTHER PERSON HAS ANY AUTHORITY TO BIND HOLCIM WITH ANY REPRESENTATION OR WARRANTY, WHETHER ORAL OR WRITTEN.