

# NEVERFADE® COATINGS 15-YEAR LIMITED WARRANTY AGAINST FADING

BY

## APV ENGINEERED COATINGS

As part of our on-going commitment to you – our customer – **AKRON PAINT AND VARNISH, INC. , doing business as APV ENGINEERED COATINGS** (“APV”) is pleased to provide you this 15 year limited warranty against Fading as described below (the “Limited Warranty”).

### LIMITED WARRANTY

Subject to the terms of this Limited Warranty, APV warrants to (i) the original purchaser of its NeverFade® paint products (the “Products”), or (ii) if purchased by a contractor, to the owner of the item or structure at the time the Products are originally applied ((i) and (ii) collectively the “Original Purchaser”), and (iii) to any subsequent owner of the item or structure to which the Products are originally applied (a “Subsequent Purchaser” and collectively with the Original Purchaser, the “Purchaser”), that its Products will not Fade for the duration of this Limited Warranty. Subject to the conditions and limitations set forth below, APV shall, upon proof of purchase, provide the Purchaser replacement Products in sufficient quantity to repair the Faded Products and shall arrange and pay for all labor and costs necessary to repair the Faded Products; *provided, however*, APV shall not be responsible for any labor or costs to repair damage to any structure, item, surface or substrate to which the Products were applied, however caused, unless such damage was caused, in APV’s sole and absolute discretion, by the Fading of the Products. If, in APV’s sole and absolute discretion, APV is unable to repair and/or replace the Faded Products, or repair and/or replacement of the Faded Products are commercially impracticable, APV shall refund to the Purchaser the original purchase price of the Products.

This Limited Warranty covers only the Fading of the Products, and no other defects or conditions. This Limited Warranty does not cover any Fading to the Products that results from blistering, peeling, cracking, chipping, improper installation, improper surface preparation, damaged or weathered substrate, accident, abuse, misuse, natural disaster, exposure to chemicals, exposure to excessive heat, and/or abnormal environmental conditions.

This Limited Warranty shall be null and void and of no force or effect if the Products are: (i) altered or modified, (ii) handled or stored improperly, (iii) applied after the shelf life as listed on the Products’ Product Data Sheet and/or labels, (iv) not applied by a professional contractor approved by APV, (v) color selections that are outside colors available using complex in-organic pigments, (vi) not in stalled or applied in compliance with the application instructions provided by APV, and/or (vii) resold by the Original Purchaser not in connection with the sale of the item or structure to which they were originally applied (each an “Event of Default”).

### ELIGIBILITY

This Limited Warranty applies only to the Purchaser of the Products and only if the Products are purchased from APV authorized applicators, distributors and/or resellers.

### FADE, FADED AND FADING DEFINED

As used herein, “Fade”, “Faded” and “Fading” mean the color difference in the Products at the time of the Purchaser’s warranty claim is, in APV’s sole and absolute discretion, more than five (5) units from the Products’ color per APV’s color chart, and/or as originally applied to the surface in question, as measured using the International Commission on Illumination’s Delta E 1976 calculation (i.e. difference > 5.0 ΔE 76). This Limited Warranty covers chalk in excess of a numerical rating eight (8), as measured using the procedures of ASTM D-4214-89 (Method D-659) for fifteen (15) years from the date of Substantial Completion.

### DURATION OF LIMITED WARRANTY

Except as may be further limited herein, this Limited Warranty shall be effective for a period of fifteen (15) years, commencing on the date of substantial completion and continuing to the fifteenth (15<sup>th</sup>) anniversary of such date. Notwithstanding the foregoing, this Limited Warranty shall terminate and be of no further force and effect upon the occurrence of an Event of Default hereunder.

### DISCLAIMER

THE FOREGOING IS THE COMPLETE WARRANTY FOR APV PRODUCTS AND SUPERSEDES ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN. EXCEPT AS EXPRESSLY SET FORTH ABOVE, NO OTHER WARRANTIES ARE MADE WITH RESPECT TO THE PRODUCTS AND APV EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN, INCLUDING, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTY THAT MAY EXIST UNDER NATIONAL, STATE, PROVINCIAL OR LOCAL LAW INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE LIMITED TO THE PERIODS OF TIME SET FORTH ABOVE.

APV’s total liability under this or any other warranty, express or implied, is limited to repair, replacement and/or refund as stated herein. Repair, replacement and/or refund are the sole and exclusive remedies for breach of warranty or any other legal theory. To the fullest extent permitted by applicable law, APV shall not be liable to the Purchaser for any damages, expenses, lost revenues, lost savings, lost profits, or any other incidental, indirect or consequential damages arising from the purchase, use or Fading of the Products, even if APV has been advised of the possibility of such damages.

### APPLICABLE LAW

This Limited Warranty and the rights of the Purchaser and APV hereunder shall be interpreted in accordance with and governed by the laws of the State of Ohio without giving effect to the choice of law rules thereof. APV and the Purchaser irrevocably consent and submit to the exclusive jurisdiction and venue within the courts of Summit County, Ohio and/or the United States District Court for the Northern District of Ohio in connection with any litigation arising out of, or in any way relating to, this Limited Warranty or the Products, including, but not limited to, any and all claims for breach of warranty or products liability, and APV and the Purchaser expressly waive any objection they have or may have as to the jurisdiction and/or venue of any such courts.