

## MODERN SURFACE™ LIMITED WARRANTY

KJB Supply Company, Inc., an Arizona corporation (“Big D”) grants to the Customer (defined below), the following limited warranties set forth herein (this “Agreement”), which are being provided subject to the Exclusions to Limited Warranties and the Terms and Conditions described below:

### ARTICLE 1 APPLICABLE LVT PRODUCTS

1.1 **Qualifying Products:** Each luxury vinyl tile or plank qualifying for this Limited Warranty (“LVT product”) and the maximum limited warranty term for each is described below and subject to the terms of this Agreement:

- Pinnacle Peaks Luxury Vinyl Plank (Lifetime Residential, 10 Year Commercial)
- Pinnacle Luxury Vinyl Plank (Lifetime Residential, 10 Year Commercial)
- Apex Luxury Vinyl Tile (Lifetime Residential, 10 Year Commercial)
- Advantage Luxury Vinyl Plank (25 Year Residential, 7 Year Commercial)
- Essential Luxury Vinyl Plank (15 Year Residential, 5 Year Light Commercial)

### ARTICLE 2 LIMITED WARRANTIES

2.1 **Exclusive Structural Limited Warranty:** Big D warrants that the qualifying luxury vinyl tile or plank (“LVT product”) to the original owner of the property in which the LVT product is installed (the “Customer”) that the LVT Product is free from manufacturing defects for the earlier of (a) the time period for the specific LVT Product for the use specified above, running from the date of purchase or (b) as long as the Customer owns the property in which the LVT product is installed. In the unlikely event that any structural aspect of the LVT product fails, as Customer’s exclusive remedies, Big D (i) will supply the Customer with an LVT product for that portion the floor in which the defect has occurred (the “Affected Area”) of the same or similar style, color, grade and will pay reasonable labor cost, if the LVT product was professionally installed or (ii) will refund the original purchase price of LVT product for the Affected Area and the original cost of installation, at Big D’s option. Big D reserves the right to inspect the defective LVT product and request photographs or samples, prior to approving any warranty claim.

2.2 **Pre-Installation Limited Warranty:** Big D strongly encourages the Customer and the installer to inspect all of the material prior to installation to determine whether the color and appearance of the floor are what they expect. Any pieces that appear to have defects should not be installed. Any planks or tiles that are determined to be defective prior to installation should be set aside and will be replaced upon delivery to Big D, free of charge. (Vinyl planks have inherent character that cannot always be fully viewed in a display sample or hand set.) Big D will not be responsible for any claim for product installed with visible defects. Installation instructions are detailed on the Modern Surface™ website [here](#).

Failure to comply with all of the installation instructions will invalidate the limited warranties set forth in this Agreement.

**2.3 Wear Limited Warranty:** The LVT Product is protected with a “wear layer.” Big D warrants that there will be no wear-through of the wear layer for the earlier of: (a) the time period for the specific LVT Product for the use specified above, running from the date of purchase or (b) as long as the Customer owns the property in which the LVT product is installed. “Wear-through” refers to the complete loss of the wear layer so that the printed design layer is changed or affected. Should the wear-through warranty fail to be met, the Customer will have, as its exclusive remedy, the same rights to replacement or refund as provided in Paragraph 2.1, above. Installation instructions are detailed on the Modern Surface™ website [here](#). Failure to comply with all of the installation instructions will invalidate the limited warranties set forth in this Agreement.

**2.4 Installation and Maintenance Requirements and Radiant Heat Warranty Limitations:** The limited warranties granted herein will be honored only if installation instructions and maintenance procedures are followed. Installation instructions (including those with flooring subject to radiant heating) are detailed on the Modern Surface™ website [here](#). Care and maintenance instructions are detailed on the Modern Surface™ website [here](#). Failure to comply with all of the installation instructions and care and maintenance instructions will invalidate the limited warranties set forth in this Agreement.

### **ARTICLE 3 EXCLUSIONS TO LIMITED WARRANTIES**

The following circumstances are not covered by or otherwise limit the application of the above-described limited warranties:

**3.1 Color Variation:** Although great care is taken in the production of the LVT product, environmental conditions can create small differences between production runs and dye lots.

**3.2 Ultraviolet Light/Sunlight Exposure:** Close blinds or curtains where extreme sunlight hits the floor. A combination of heat and sunlight can cause discoloration and excessive temperatures may cause floor expansion (buckling) or delamination. Discoloration due to use of rubber-backed mats, coco-fiber mats, solvent-based polishes or cleaners, or asphalt tracked in from driveways or parking lots is excluded from any warranty coverage.

**3.3 Pre-Installation Inspection of Planks and Tiles:** Planks and tiles containing manufacturing defects are eligible for replacement. Return unused planks & tiles for free replacement material. However, material that is subjectively viewed as defective but meets Big D’s and industry standards for grade will not be replaced. Boards and tiles that are installed when visibly defective will not be eligible for replacement.

3.4 **Adverse Environment:** Damage created by moisture, mold, mildew, fungus, leaking plumbing, flooding, sharp objects, sand, gravel, or other abrasive material, loss of sheen, scratches, high heels, dents caused by unprotected chair/furniture legs, heavy rolling loads, appliances and pet claw damage is excluded from this Agreement. The use of chair mats and resilient rollers on office chairs is recommended.

3.5 **Maintenance:** Full compliance with maintenance instructions is required. Big D will not honor this Agreement if any LVT product is improperly maintained. Spills must be wiped up immediately. Care and maintenance instructions are detailed on the Modern Surface™ website [here](#).

3.6 **Improper Installation or Use:** Big D will not honor this Agreement if any LVT product is abused, improperly installed (see installation instructions), or damaged by moisture intrusion, plumbing leaks, mold, building defects, floods, or circumstances beyond our control. Installation instructions are detailed on the Modern Surface™ website [here](#).

3.7 **Internet Purchases:** Big D does not warrant product purchased on the internet or through another dealer. This Agreement is not valid for any product purchased in the United States which is installed outside the United States. Only the specified products purchased from an authorized dealer and serviced locally will be covered under this Agreement. Any claim must be accompanied by an original dealer invoice and original dealer inspection report.

3.8 **Qualified Products:** This Agreement applies only LVT products purchased after June 1, 2015 and may be subject to change on new purchases.

#### **ARTICLE 4 TERMS AND CONDITIONS**

The following Terms and Conditions are applicable with respect to the above-described limited warranties:

4.1 **Non-transferrable:** The limited warranties are made solely to the Customer, are valid for the Customer only and are non-transferable.

4.2 **No Modification:** No agent, dealer, fabricator, installer, or employee of Big D, is authorized to alter or increase the terms, limitations, or obligations of this Agreement, except in a writing signed by a duly authorized officer of Big D.

4.3 **Claims for Service:** In the unlikely event that warranty service is required, please contact your original Modern Surface™ retailer to arrange an evaluation of the floor. Such claims are valid only if made by the earlier of (a) the time period for the specific LVT Product for the use specified above, running from the date of purchase or (b) as long as the Customer owns the property in which the LVT product is installed. All repairs for which warranty claims are made must be pre-authorized by Big D. Big D reserves the right to final judgment regarding claim approval.

4.4 **Miscellaneous Exclusions:** The limited warranties granted herein are limited solely to residential (including multi-family) and commercial use and do not apply to industrial uses. This Agreement does not extend to any damage to the LVT product caused by or attributable to freight damage, abuse, misuse, improper or abnormal usage or repairs not authorized by Big D.

4.5 **Limitation on Damages:** In no event shall Big D's exposure to monetary damages hereunder exceed the cost of refund of the Customer's purchase price for the LVT product and the cost of installation of the LVT product. Some states do not allow the exclusion or limitation of incidental or consequential damages. Accordingly, the above limitation may not apply.

4.6 **NO OTHER WARRANTIES:** THE LIMITED WARRANTY EXTENDED HEREUNDER IS IN LIEU OF ANY AND ALL OTHER WARRANTIES WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

(a) **LIMITS ON IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE:** THERE ARE NO IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, EXTENDING BEYOND THE TIME PERIOD IN WHICH LIMITED WARRANTIES AVAILABLE UNDER THIS AGREEMENT.

(b) **LIMITS ON CONSEQUENTIAL DAMAGES:** IN ANY CASE, BIG D SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INDIRECT OR OTHER DAMAGES ARISING FROM BREACH OF LIMITED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHER LEGAL THEORY OF RECOVERY EVEN IF BIG D OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BIG D IS NOT RESPONSIBLE OR LIABLE FOR DAMAGES WITH RESPECT TO ANY ECONOMIC LOSS, LOSS OF PROPERTY, LOSS OF REVENUES OR PROFITS, LOSS OF ENJOYMENT OR USE, INCONVENIENCE OR LOSS OF TIME. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

4.7 **ARBITRATION:** EACH OF THE PARTIES AGREE AS ITS SOLE AND EXCLUSIVE METHOD TO SETTLE DISPUTES, TO ARBITRATE ANY AND ALL DISPUTES ARISING UNDER THIS AGREEMENT AND TO BE BOUND BY THE DECISION OF THE ARBITRATION AS FINAL, WHICH ARBITRATION SHALL BE CONDUCTED PURSUANT TO THE CONSTRUCTION INDUSTRY RULES OF THE AMERICAN ARBITRATION ASSOCIATION. ALL COSTS OF ENFORCEMENT OF THIS AGREEMENT INCLUDING COURT COSTS AND REASONABLE LEGAL FEES AS ARE NECESSARY TO ENFORCE THIS AGREEMENT ARE REIMBURSABLE.

4.8 **Headings:** The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

4.9 **Governing Law; Forum; Venue:** This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern its interpretation and enforcement. Any arbitration or other action brought to interpret or enforce any provisions of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in Maricopa County, Arizona and should the parties determine to judicially confirm any arbitration award, such action shall be brought in the State or Federal Courts situated in Maricopa County, Arizona and each of the Parties consents to jurisdiction and venue in such court for such purposes.

4.10 **Severability; Integration; Time of the Essence:** The inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement, including the installation instructions and the care and maintenance instructions in effect at the time of the purchase of the LVT product, constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, whether oral or written. Time is of the essence in all matters associated with this Agreement. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto shall be bound by or liable for any alleged misrepresentation, promise, inducement or statement of intention not so set forth.