

## **ATTACHMENT “A” TO NOTICE OF DEPOSITION OF NGL WAREHOUSE**

Pursuant to Fed. R. Civ. P. 30(b)(6), Plaintiffs Unique Home Design, Inc., and Federal Insurance Co. (collectively “Plaintiffs”), provide the following designation of subject matter for the deposition of corporate Defendant NGL.

### **I. DEFINITIONS**

The following terms and phrases are employed in **boldface** within the subject matter areas (also referred to as “categorical descriptions”) that are identified below. These terms are defined below. Words and terms that are not specifically defined herein shall be construed in accordance with their ordinary dictionary definitions. The following definitions apply regardless of whether the words are used in the singular or plural and regardless of the tense of the use of any term, unless otherwise specified.

“**Agent**” means any representative, including employees, contractors, attorneys, investigators, insurers, affiliates, subsidiaries or others retained by one to act for or on behalf of another in any capacity.

“**Averitt**” means Averitt Express, Inc.

“**Data**” includes **electronically stored information** (as defined below), as well as paper documents, handwritten notes, billing records, general ledger or other business records, financial records, bank statements, time cards, pay stubs, cancelled checks, receipts, note cards, business cards, sticky notes, day-timer notes or records of any kind and all other forms of recorded information of any kind, whether on paper, in microfiche or other film storage or any other medium or media.

“**Document**” means any written or electronic recording of any kind, including but not limited to documents on paper, scanned documents, written notes, audio recordings on any format or medium (such as tape or digital recordings of audio or visual material) and any other form of stored or recorded information of any kind or type that is available to or within the possession, custody or control of the party responding to the foregoing requests. The term “**documents**” also includes **data** and **electronically stored information** as defined herein.

“**Electronically stored information**” refers to all electronic files in any form or format that is maintained by, or available to Defendants or their respective agents, including but not limited to all digital information, files, folders, directories, images in any digital format (including photographs, diagrams, CAD and AutoCAD files, scanned material and electronic reproductions of any kind), presentations (including but not limited to PowerPoint, Keynote and other formats), audio recordings, video recordings, movie files, PDF documents, text files

(including but not limited to files stored in any digital format or template format used by Word, Word Perfect, Pages, Google Docs, Notability, EverNote, One Note, and other note-taking and word-processing software, RTF and TXT files), web format documents, images, movies and recordings (including but not limited to HTML, XHTML, XML, JSON, CSV, CSS and other web file formats), spreadsheets and tabulations (including but not limited to files created or stored in any file format used by Excel, Numbers, Google Sheets and similar types of files), Notes, Lotus Notes, and other similar documents), electronic files stored in proprietary format by task management and case management systems, accounting systems and calendar systems, contact management software, databases of any kind (including but not limited to SQL compatible files, DBase files, File Maker files, Daylite, RTM, ToodleDo, or other software), digital files stored on optical storage devices, digital storage devices, smart phone files using any operating system (including but not limited to Windows, iOS, Android, Chrome or any browser format), hand-held and tablet computer files (including iPad files, Surface and similar device files and the like), magnetic audio, video analog and digital tapes, files stored in private and remote servers or “cloud” services, files or data of any kind stored on portable storage devices (such as removable thumb drives, memory chips, storage cards, memory sticks, digital camera storage media) and any and all other forms of electronically or technologically stored information.

“**File**” or “**files**” refer to all **data** or compilation of any kind as that term is defined herein, including but not limited to all types and kinds of information maintained, generated or acquired in whole or in part by each and any defendant herein, including but not limited to all papers, documents, scanned documents, electronically stored documents and files, emails and all attachments, images, recordings, sound or video files, photographs, handwritten note, memorandum, typed document, or computer files, computer directories or data compilations, whether stored on paper or electronic means (including but not limited to paper, notebooks, microfiche, storage disk, storage drive, tape or solid state storage, cloud or internet storage of any kind, or any other kind or type of information), as well as any file jackets (inside or out), tablets, thumb drives, optical drives and any and all other means of storage or retrieval of information.

“**John Valdez**” means John Gilbert Valdez, Sr., the identified decedent in the “Underlying Litigation” defined below, a civil action for wrongful death that was commenced in state court in Texas and removed to United States District Court for the Southern District of Texas, McAllen Division, Case No. 7:13-CV-00226.

“**General liability**” refers to civil liability of any kind or nature, and to any insurance coverage pertaining to the same.

“**NGL**” means Defendant NGL Warehouse, LLC.

“**Of**” means pertaining to, on behalf, in relation to or belonging to.

“**Plaintiff**” means Plaintiff herein unless otherwise specified.

“**SOP**” refers to the Standard Operating Procedures to be utilized in the packaging, palletization and shipment of the doors that were involved in the death of **Valdez**.

“**THD**” refers to Home Depot and any of its related subsidiaries or affiliates as named as parties in the **underlying litigation**.

“**UHD**” means Plaintiff Unique Home Designs, Inc.

“**Underlying Litigation**” as defined below means a civil action for wrongful death that was commenced in state court in Texas and removed to United States District Court for the Southern District of Texas, McAllen Division, Case No. 7:13-CV-00226.

“**Valdez**” means John Gilbert Valdez, Sr., the identified decedent in the “Underlying Litigation” defined below, a civil action for wrongful death that was commenced in state court in Texas and removed to United States District Court for the Southern District of Texas, McAllen Division, Case No. 7:13-CV-00226.

“**Warehouse Agreement**” means the document entitled “NGL WAREHOUSE, LLC FIRST AMENDED AND RESTATED WAREHOUSE AGREEMENT” that is referenced in the Complaint in the instant action, and that was executed by a controller for **NGL** on or about July 12, 2012.

“**You**” and “**Your**” mean the party to whom this notice is addressed for the purposes of Fed.R.Civ.P. 30(b)(6) and shall pertain to the knowledge obtained by, or information or documents available to, any agent, representative or attorney of said party.

## **II. SUBJECT MATTER**

Defendant NGL Warehouse is required to respond pursuant to Fed.R.Civ.P. 30(b)(6) to questions posed by counsel for Plaintiffs in relation to the following areas of subject matter. Notice is hereby given that the questions posed at the deposition may not follow the order set forth below and may exceed the bounds of these subject matter areas for the purposes of determining: (1) foundation; (2) hearsay issues; (3) whether the deponent(s) designated by NGL Warehouse, LLC have personal knowledge of areas outside of these topics, which knowledge is appropriate subject matter and discoverable in a Fed.R.Civ.P. 30(b)(6) deposition under federal law; and (4) the exercise of diligent inquiry in preparation for the deposition as required under the aforementioned Rule. The titles used below are offered only for aid in organizing topics and are not to be construed as a limitation or dilution of the information otherwise responsive to the expressly stated, separately enumerated, topic areas.

### ***A. Individual Background, Training, Education, and Experience***

1. The background, training, education, and experience of the deponent.
2. The employment history of the deponent.
3. The deponent’s preparation for the deposition, including efforts by **NGL** and the deponent to determine what information is known or reasonably available to **NGL** regarding the topics identified herein.

4. The deponent's understanding of the procedure used in Rule 30(b)(6) depositions.
5. The deponent's review of any and all investigative files, statements, photographs, videotapes, contracts (including but not limited to the Warehouse Agreement referenced in the Complaint).
6. The deponent's communications with **NGL** related to the facts of the death of Valdez.
7. The deponent's use of documents during the deposition, including any documents produced by **NGL** or **Averitt** in response to discovery or as attachments to the Initial Disclosures and supplements thereto filed by either of them.
8. The documents used by the witness to prepare for the deposition noticed herein.

***B. The Warehouse Agreement***

9. **NGL's** compliance with the insuring requirements set forth in the **Warehouse Agreement**, including but not limited to the provisions of section 5.01 and 5.03 thereof.
10. **NGL's** compliance with the insuring requirements set forth in the **Warehouse Agreement**, including but not limited to the provisions of section 3.17(a) thereof.
11. **NGL's** compliance with the insuring requirements set forth in the **Warehouse Agreement**, including but not limited to the provisions of section 12.02 thereof.
12. All facts reasonably available to **NGL** at any time tending to prove the liability or fault of either **NGL** or any of its subcontractors in relation to the work or services performed under the **Warehouse Agreement** or to any liability or fault of Unique Home Design in connection with the **Warehouse Agreement**, as well as all evidence reasonably available to **NGL** in relation to such facts.
13. Any and all insuring agreements, indemnity agreements, reinsuring agreements or other contracts of any kind or nature related to the risk of loss associated with the provisions of Article XII of the **Warehouse Agreement** entered between **NGL** or any of its contractors or subcontractors in connection with the same.
14. Any and all certificates of insurance (whether in relation to status as an insured, named insured or additional insured) obtained by or on behalf of **NGL** in connection with the insuring obligations contained in the **Warehouse Agreement**.
15. **NGL's** interpretation of the **Warehouse Agreement**.
16. **NGL's** performance of all work or services under the **Warehouse Agreement**, including but not limited to the shipment of the pallet of doors that was involved in the death of **Valdez**.

17. All requirements related to the shipment, transportation, palletization and packaging of doors performed in accordance with the **Warehouse Agreement** by **NGL** or **Averitt**.

18. **NGL's** understanding and interpretation of all requirements, standards, guidelines, requirements or specifications of any kind or nature that were applicable to the **Warehouse Agreement**.

19. **NGL's** responses to discovery and its disclosures of documents, persons and other information related to the **Warehouse Agreement**.

20. **NGL's** efforts to ensure that any and all requirements, standards, guidelines, requirements or specifications of any kind or nature that were applicable to the **Warehouse Agreement** were followed.

21. All claims made in the past 10 years related to any alleged breach by **NGL** or any of its subcontractors in connection with any similar Warehouse Agreement pertaining to the shipment of commercial cargo and related bodily injury or death or failure by **NGL** or any of its subcontractors to adhere to any applicable requirements, standards, guidelines, requirements or specifications of any kind or nature that were applicable to the same.

22. **NGL's** understanding of any industry standards related to the palletization, packaging and shipment of doors.

23. **NGL's** representations to any of its insurers or potential insurers related to the indemnity obligations contained in the **Warehouse Agreement** or similar agreements.

24. **NGL's** practices and procedures with respect to the performance of the obligations contained in the **Warehouse Agreement**.

25. **NGL's** negotiations and representations leading to its execution of the **Warehouse Agreement**, including all requested interlineations, changes or modifications to earlier versions of the same or precedent contracts entered between **NGL** and Unique Home Design.

26. **NGL's** communications with **Averitt** relating to the **Warehouse Agreement** and any work, services or performance of any of the terms of the **Warehouse Agreement** contracted or subcontracted by **NGL** to **Averitt** or any other party, whether before or after the death of **Valdez**.

27. The history of the contractual relations and business relations between **NGL** and **Averitt**.

28. The history of the contractual relations and business relations between **NGL** and Unique Home Designs.

***C. The Death of Valdez***

29. All **data, documents, and electronically stored information** as defined above reasonably available to, or obtained by, **NGL** in relation to the death of **Valdez**, the claims made in the **underlying litigation** or the instant litigation.

***D. The Underlying Litigation and NGL's Relationship With Averitt***

30. All communications between **Averitt** and **NGL** pertaining to the claims of **Valdez** or the claims of Unique Home Design or Federal Ins. Co., in the instant litigation or in the **underlying litigation**, including but not limited to all **data, documents, and electronically stored information** as defined above.

31. All pleadings filed by **NGL** in the underlying litigation, including all factual averments contained therein and any and all evidence reasonably available to **NGL** to support such averments.

***E. NGL's Litigation Representations, Admissions And Averments***

32. All evidence available to **NGL** to support its decision to reject the tender of the claims made for purposes of defense and indemnity under the **Warehouse Agreement** by Unique Home Designs in the **underlying litigation**.

33. All documents referencing the SOPs that were related to the **Warehouse Agreement**.

34. All affirmative defenses raised by or on behalf of **NGL** in the **underlying litigation**.

35. All settlement negotiations and settlements involving **NGL** in the **underlying litigation**.

36. All agreements entered between **NGL** and any party or entity in relation to the instant litigation or the **underlying litigation**, including but not limited to any reservation agreements, funding agreements, "Mary Carter" or "Copper Mountain" style agreements, indemnity agreements, arbitration agreements, sharing agreements, risk-distribution agreements, post-event insuring agreements, or agreements for adjustment of claims.

37. All facts known to **NGL** related to the role of **Averitt** in the performance of any services under the **Warehouse Agreement** that may be relevant to the instant litigation or the **underlying litigation**.

38. All information provided at any time to **NGL** or any of its **agents** by **Averitt** or any of its **agents** relating in any way to the death of **Valdez** or the claims for defense or indemnity made by or on behalf of Unique Home Design in connection with litigation arising out of the death of **Valdez**.

39. The operational basis for the assignment or subcontracting of duties of any kind by **NGL** under the **Warehouse Agreement** to **Averitt**, including any and all course of dealings, usage of trade, patterns or practices, established protocols or other historic dealings between **NGL** and **Averitt** by which each or either of them contend to hold any understanding or expectation related to the performance by the other of any duties or responsibilities owed under the **Warehouse Agreement**.

40. All evidence available to **NGL** that tends to support its contentions in the Texas action and the Colorado action that **Averitt** is wholly or partly at fault in relation to the death of **Valdez**, including but not limited to any and all bases or evidence to support the factual averments and conclusions set forth by **NGL** in its Third-Party Complaint against **Averitt** in the Federal Action.

***F. General Subject Matter***

41. All facts related to any affirmative defense raised by **NGL** in the **underlying litigation**.

42. The negotiation of any and all contracts or settlements between **NGL** and Unique Home Design and/or **THD**.

43. Any settlements between **NGL** and the Plaintiffs in the **underlying litigation**. The scope of this topic includes, but is not limited to, the date of any settlement or agreement containing any form of limitation or waiver of liability or terms in exchange for which claims were dismissed, held in abeyance or not asserted; the consideration contemplated in any such agreement; the documents evidencing such agreements and any modification or amendment to any such agreements, any and all consideration given or promised by or on behalf of **NGL** to the plaintiffs in the **underlying litigation** in exchange for dismissal of claims and/or release of liability in the **underlying litigation**.

44. **NGL**'s policies and procedures that were in place and in effect at any time relevant to the performance of any and all services pertaining to the **Warehouse Agreement**.

45. Any and all contracts, agreements, or communications between **NGL** and **THD**.

46. Any and all information, documents, communications, analysis or expert analysis or evaluations or investigation or averments made by **NGL** regarding the liability of **Averitt**.

47. The identities and responsibilities of individuals employed or commissioned or charged with the responsibility to pick, audit, prepare or load pallets.

48. Any and all memoranda or similar reports purporting to memorialize issues or concerns with, including any modifications, revisions or repairs thereto measures implemented by **NGL** or **Averitt** as a result of the death of **Valdez** or the claims brought by his heirs in the **underlying litigation**.

49. Any studies, root cause analysis, safety surveys, quality control, quality assurance measures, corrective measures, changes in standard operating procedures (or requests for the

same) made by or on behalf of **NGL** since the death of **Valdez**, whether or not spurred by, or made in response to, such death.

50. The procedures used by **NGL** to receiving and responding to written discovery requests.

51. The identities and duties of all persons working for or on behalf of **NGL** in the performance of any service contracted by Unique Home Design, including but not limited to the services or work performed by or on behalf of **NGL** in connection with the **Warehouse Agreement**.

52. All tender letters or other correspondence issued or received by or on behalf of **NGL** in relation to the instant litigation or the **underlying litigation**.

53. **NGL**' s Initial Disclosures and responses to written discovery.

54. All factual averments set forth in any briefing by counsel for **NGL** in the instant litigation or the **underlying litigation**.

55. Any information pertaining to changes in the SOPs after the incident.

56. Any information related to complaints or notifications (including the form of the complaint or notification, the dates thereof, and the identities of the persons involved and the substance of the complaint or notification) regarding the palletization of Unique Home Doors by **NGL**

57. All procedures utilized by **NGL** for receiving and responding to complaints or notifications related to property damage, bodily injury or other complaints related to improper packaging or shipment of cargo.

58. The subjects (including **NGL**' s answers thereto) of the written discovery requests set forth by Plaintiffs in their written discovery requests.