

## MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, of \_\_\_\_\_ (“Company”), and Stoughton Trailers, LLC (“STO”), having its principal place of business at 416 S. Academy Street, Stoughton, WI 53589.

**WHEREAS**, STO and Company are evaluating the possibility of entering into a business relationship with each other; and

**WHEREAS**, each party proposes to disclose, and likewise is desirous of receiving, certain information which the other party deems confidential and proprietary concerning each party’s business for the purpose of evaluating such other party’s products, processes, cost, and other business information to determine whether to enter into a business relationship with such other party; and

**WHEREAS**, each party is willing to disclose certain information to the other party from time to time, but subject to the terms and conditions contained herein and specifically related to the foregoing.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants contained herein, both parties agree as follows:

- (1) “Confidential Information” is defined as any information disclosed by either party, its employees, agents, or representatives, to the other party, its employees, agents, or representatives, including, but not limited to: corporate, business, product, and financial information, documents, tapes, drawings, records, parts, samples, prototypes, specifications, photographs, reports, and other written materials, information, or hardware, whether such items are the property of the disclosing party or its customer(s), supplier(s), vendor(s), licensor(s), or any other party, and regardless whether patented or patentable, trade secret or otherwise, and any and all information learned through physical visits and viewings of the parties’ facilities or a review of any of the foregoing, and including the fact that discussions are or may be taking place between the parties concerning a possible business relationship.
- (2) Unless otherwise expressly authorized by the disclosing party, Company and STO, as receiving parties, agree to retain the Confidential Information in confidence for a period of five (5) years from the date of receipt of the Confidential Information by exercising reasonable precautions to prevent disclosure of the received Confidential Information to any third party and not to use the received Confidential Information for any purpose other than the aforesaid purposes. The standard of care imposed on each party for protecting the Confidential Information received from the other party shall be that degree of care that such party uses to protect disclosure, publication, or dissemination of its own confidential information of like importance.
- (3) Each party shall keep such Confidential Information received by it under such filing and storage system as is necessary to prevent unauthorized access thereto. The party receiving Confidential Information may disclose same only to its employees, agents, or representatives with a direct need to know such Confidential Information for purposes of evaluating the proposed business relationship between the parties, provided that each such employee, agent, or representative shall first be informed of the confidentiality obligations pertaining thereto.
- (4) Each party agrees that all Confidential Information received by it, the fact that Confidential Information has been disclosed, and the fact that discussions are taking place relative to a possible business relationship will be maintained in secrecy and covenants that it will take all reasonable precautions that none of such information is disclosed to third persons or used by it except as may be required in the performance of the above agreements.
- (5) Confidential Information shall not include information which:

- a. the receiving party shows to be publicly known through no wrongful act of its own
  - b. the receiving party received independently from a third party that has the right to transfer the Confidential Information without restriction
  - c. was independently developed by the receiving party
  - d. is approved for disclosure by the disclosing party
- (6) Each party who has received Confidential Information agrees to return to the disclosing party or destroy (with certification of such destruction), upon request, the Confidential Information received by it including, without exception, all information, documents, and records of any kind, notes, memoranda, and any and all parts, components, samples, prototypes, and copies of same to the extent they contain Confidential Information.
- (7) Each party lawfully in possession of Confidential Information shall have the right to report any such Confidential Information in its possession in response to legitimate orders to which it might be subjected by a duly constituted governmental agency of any jurisdiction having a legitimate right to make such orders, such agencies including any agency of individual states or provinces or political subdivisions thereof, or otherwise by law or legal process, and shall make reasonable efforts to have such information accepted by such agencies in confidence. In the event that any receiving party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process) to disclose any of the Confidential Information, it is agreed that the receiving party shall provide the disclosing party with prompt notice of such request(s) so that such disclosing party may seek an appropriate protective order or other appropriate remedy and/or waive the receiving party's compliance obligations under this Agreement. In the event such protective order or other remedy is not obtained, or that the disclosing party grants a waiver hereunder, the receiving party may furnish that portion (and only that portion) of the Confidential Information which, in the written opinion of its counsel, it is legally compelled to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.
- (8) In addition, each party acknowledges that it is aware that the United States securities laws restrict persons with material non-public information about a company obtained directly or indirectly from that company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.
- (9) Nothing in this Agreement shall be construed as granting or conferring any rights upon any party receiving Confidential Information, by license or otherwise, expressly, impliedly, or otherwise, for any invention, discovery, or improvement conceived, made, or acquired by the party disclosing such Confidential Information prior to or after the date of this Agreement, and each party covenants that it shall not use any of the Confidential Information for any purpose not specifically identified herein, including using such Confidential Information for purposes of competing with the business of the disclosing party.
- (10) Each party reserves the right to designate certain persons within its organization who will be responsible for the technical aspects of, and to whom all requests should be directed concerning, the Confidential Information. No other employee, agent, or representative of either party shall be contacted by employees, agents, or representatives of the other company in connection with the Confidential Information. Failure of either party to designate such persons shall not be interpreted as a waiver of this clause nor of any other clause within this Agreement. Neither party, without the prior written consent of the other party, shall initiate or cause to be initiated any communications with any employee of the other party concerning the Confidential Information, except through such person designated by such other party.
- (11) Although each party has endeavored to include in the Confidential Information such information known to it which it believes to be relevant for the purposes specified herein, each party understands that no representation or warranty is made as to the accuracy or completeness of such Confidential Information. Neither party, or any employee, agent, or representative thereof, shall

have any liability to the other party, or any employee, agent, or representative thereof, resulting from the use of the Confidential Information.

- (12) Each party receiving Confidential Information agrees to indemnify and hold harmless the other party from any damage, loss, cost, or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure of Confidential Information by the party receiving same. Each party also recognizes that money damages would likely be incalculable and would also provide an insufficient remedy for any breach of this Agreement and that any such breach could cause the party disclosing Confidential Information irreparable harm. Accordingly, each party agrees that, in addition to any other remedies allowed by law or in equity, the other party shall be entitled, without the posting of a bond or other security, to equitable relief, including injunctive relief and specific performance in appropriate circumstances.
- (13) This Agreement may not be amended, modified, or altered except in writing, duly accepted and executed by both parties.
- (14) This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, U.S.A. without giving effect to the principles of conflicts of laws thereof.
- (15) This Agreement constitutes the entire agreement and understanding of the parties hereto concerning the subject matter hereof, and no representation or promises have been made with respect thereto that are not fully set forth herein.

**IN WITNESS WHEREOF**, this Agreement has been duly executed the day and date first written above. The provisions of Paragraphs 2, 3, 4, 5, 6, 7, 9, 11, and 12, above, shall survive expiration and any termination.

**“COMPANY”**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“STO”**

**Stoughton Trailers, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_