

## SURFACE USE AGREEMENT

29<sup>th</sup> THIS SURFACE USE AGREEMENT ("Agreement") is made and entered into this day of May, 2008, by and between **K.P. KAUFFMAN COMPANY, INC.**, a Colorado corporation ("**KPK**"), whose address is 1675 Broadway, Suite 2800, Denver, Colorado 80202 and **GREAT WESTERN ETHANOL, LLC** ("**GWE**"), a Delaware limited liability company, whose address is 800 8th Ave., Suite 304, Greeley, Colorado 80631. KPK and GWE may be individually referred to herein as a "Party" or collectively as the "Parties."

### RECITALS

A. GWE represents that it owns or has the right to develop the surface estate of a tract of land (hereinafter called the "Property") located in a portion of the Southwest Quarter (SW/4) of Section 2, Township 4 North, Range 66 West of the 6th Principal Meridian, Weld County, Colorado, lying South of the Union Pacific Railroad Company ("UPRC") Right of Way and containing 102.82 acres, more or less, as more particularly described on **Exhibit A** attached and made a part hereto.

B. KPK represents that it is the assignee of certain oil and gas leasehold rights under the oil and gas leases described in **Exhibit C** (the "OG Leases") and as such, KPK has the right to explore for, develop, and produce certain oil, gas and other hydrocarbons that underlie the Property.

C. KPK is currently producing oil and gas wells on the Property and has other oil and gas production equipment on the Property including, but not limited to pipelines, tank batteries, and access roads.

D. KPK represents that it has the right to drill additional future wells on the Property in accordance with Colorado Oil and Gas Conservation Commission ("COGCC") rules and regulations.

E. GWE desires to develop the surface of the Property in a manner compatible with KPK's rights and obligations to produce oil and gas from beneath the surface. KPK desires to produce the oil and gas from beneath the surface of the Property in a manner that will allow the GWE to develop the surface of the property. The purpose of the parties to this Agreement is to resolve their competing uses in a manner that will allow each party to maximize use of their respective rights and at the same time provide maximum safety for uses of the Property.

### AGREEMENT

In consideration of the covenants and mutual promises set forth herein, including the information set forth in the recitals, the parties agree, to the extent of each of their respective interests in the Property only, as follows:

1. Production Site Locations, Oil and Gas Operations Areas (OGOA), and Battery Area.

a. Production Site Locations. KPK is now operating and producing oil and gas from the following existing wells at the locations depicted on **Exhibit B** attached to this Agreement:

CF&C (Hill) 3-83 (1-A) (the "1-A Well")

CF&C 7-83-1-B (the "1-B Well")

KPK plans to drill the following additional wells at the locations depicted on **Exhibit B**:

Terra 2-14-5 (the "Terra 5 Well")

Terra 2-14-A1 (the "Terra A1 Well")

Terra 2-14-A2 (the "Terra A2 Well")

b. OGOAs. The parties agree and understand that KPK requires a certain amount of surface area to safely drill, deepen, recomple, workover, operate, maintain each well or to drill a twin well. The parties agree that the space needed shall be the area within a circle with a radius of 150 feet and its center at the existing wellbore of the 1-A Well and 1-B Well and the proposed location of the wellbore of the Terra 5 Well and the Terra A1 Well (each an "OGOA," and, collectively, the "OGOAs") as shown on **Exhibit B** (for a total of four OGOAs on the Property). The parties agree and understand that the Terra A2 Well will be drilled inside the OGOA of the 1-B Well. The drilling of a twin well shall not increase the size of the OGOA. KPK reserves the right to expand its facilities within an OGOA, subject to the terms of this Agreement. Except as otherwise shown on **Exhibit B**, GWE shall not locate any improvements, fixtures or equipment, underground or on the surface within an OGOA. GWE shall not, however, be required to relocate any existing improvements, fixtures or equipment that are underground or on the surface within an OGOA. KPK shall fence all wells with at least a six foot fence around the well and located no more than twelve feet from the well.

c. Battery Area and Requirements. KPK has an existing oil and gas battery and other related production equipment located near the northeastern corner of the Property, and the existing access road and flow and gathering lines lead to such battery and to third party pipelines as depicted on **Exhibit B**. The parties agree to designate a 200 x 400 foot area around and including such battery and equipment as depicted on **Exhibit B** (the "Battery Area"). Subject to the terms of this Agreement, KPK may expand its facilities within the Battery Area but any new facilities can only be situated along the Eastern property line of the Property similar to the existing facilities in the Battery Area. Except as provided in this Agreement, GWE shall not locate any improvements, fixtures or equipment underground or on the surface within the 200 foot radius around the tanks located on the Battery Area, as depicted on **Exhibit B**. The parties acknowledge that a portion of the spur to the railroad tracks and related equipment that will be constructed on the Property ("RR Tracks") will be located within such 200 foot radius, as depicted on **Exhibit B**. Any expansion of the Battery Area shall only be to the South of the

location designated on **Exhibit B** and shall only occur with the consent of GWE, which consent shall not be unreasonably withheld.

d. GWE Option to Require KPK to Directionally Drill. KPK acknowledges and agrees that the well locations for the five wells specified in Paragraph 1.a. and set forth on **Exhibit B** comply with the spacing rules of the Colorado Oil and Gas Conservation Commission ("COGCC") without directional drilling to bottom hole locations, except that the Terra A2 Well will be directionally drilled at KPK's cost to a bottomhole location in compliance with COGCC rules and regulations. KPK also agrees that any additional well that it may drill on the Property under the OG Leases and permitted by the COGCC rules and regulations must be located within one of the four OGOAs designated in this Agreement. After the date of this Agreement, GWE may require that KPK change the location of any proposed well. To the extent such relocation requires KPK to directionally drill to the bottom hole location required by the COGCC rules and regulations, then GWE shall reimburse KPK for the additional cost of such directional drilling over the costs of drilling from the originally proposed location (the "Additional Costs"). In such event, KPK shall submit to GWE a bona fide third party estimate stating the Additional Costs. GWE shall have 10 days after receipt of such estimate to notify KPK to move the surface location of the well to the alternate location in which event KPK shall use the alternate location for the well and GWE shall pay the estimated Additional Costs to KPK within 30 days after giving such notice to KPK. If the actual Additional Costs are less than the estimated amount paid by GWE, KPK shall reimburse GWE for the difference in costs within 30 days of completion of the directional well. If the actual Additional Costs are more than the amount paid by GWE, GWE shall pay KPK the difference in costs within 30 days of completion of the directional well, upon provision by KPK of third party documentation evidencing the actual costs. If the subject well is not drilled within 180 days of such payment by GWE, KPK shall refund such payment to GWE, provided, however, that KPK shall have the right to resubmit an estimate of the Additional Costs at a later date. The Parties agree to comply with the provisions of this Paragraph should KPK resubmit such Additional Costs.

e. Additional Drilling and Reworking of Wells. KPK shall continue to have the right to exercise whatever oil and gas leasehold rights it may have under the OG Leases to produce, deepen, recomplete, or drill on each OGOA and to drill a twinned well on each OGOA. The drilling of a twin well shall not increase the size of the OGOA, which shall be measured from the existing, or, first, wellbore.

f. Waiver of Setback Requirement. The parties understand and acknowledge that the COGCC and other jurisdictional agencies have rules and regulations governing the distance between drilling a well, a wellhead and production facilities, and public roads, building units and surface property lines, among other things. To the extent permitted by applicable law, GWE hereby waives all setback requirements in COGCC Rule 603, or any amendment to the COGCC setback rules and to any other state or local setback requirements that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KPK to explore for and produce oil and gas in accordance with this Agreement. GWE understands that KPK may cite this Agreement as a waiver of any setback objections in order to obtain a location requirement exception or variance under COGCC rules or from a local, state or federal jurisdiction. GWE also agrees that it will not object in any form, either directly or indirectly, to the use by KPK of the surface of the Property consistent with this Agreement.

KPK consents and agrees to waive the Town of Evans' setback requirement for the tank battery currently located within the Battery Area as depicted on **Exhibit B** to allow the RR Tracks to be constructed at their currently planned location as shown on **Exhibit B**. The parties agree to jointly seek any necessary or required waiver. The parties agree to jointly seek the Town of Evans' approval for the waiver of the setback to allow construction of the RR Tracks at the designated location, and KPK, for its part, consents and agrees to the construction of the RR Tracks at their planned location as depicted on **Exhibit B** in accordance with this Agreement. KPK also agrees that it will not object in any form, either directly or indirectly, to the use by GWE of the surface of the Property consistent with this Agreement.

2. Access to OGOAs and Battery Area.

a. Present Access Roads. KPK now uses existing access and field roads across the Property to access to the 1-A Well, the 1-B Well and the Battery Area as shown on **Exhibit B**. KPK shall continue to use such existing roads until the new access roads described below have been constructed, after which KPK shall no longer have the right to use such existing roads.

b. New Access Roads. The following roads shall be new roads constructed on the Property and shall collectively be called the "Access Roads":

(i) "OGOAs Roads" shall mean the new roads located inside the oval of the RR Tracks that connect and provide access to the OGOAs, as depicted on **Exhibit B**. KPK shall construct and maintain the OGOA Roads at its sole cost and expense meeting the Access Road Requirements.

(ii) "Rig Access Road" shall mean an access road entering the Property at County Road 33 and crossing the RR Tracks to access the OGOA Roads as depicted on **Exhibit B**. GWE shall construct the Rig Access Road at its sole cost and expense meeting the Access Road Requirements. Upon completion, KPK shall use the Rig Access Road to access the OGOA Roads with drilling rigs, workover rigs and other heavy equipment.

(iii) "Battery Access Road" shall mean the road entering the Property from County Road 33 near the southwest corner of the Property and proceeding easterly alongside the southern boundary of the Property and then across the southern portion of the Property to the eastern boundary of the Property, and then continuing northward along the eastern boundary of the Property to the Battery Area as depicted on **Exhibit B**. GWE shall construct the Battery Access Road at its sole cost and expense meeting the Access Road Requirements. Upon completion, KPK shall use the Battery Access Road to access the Battery Area.

(iv) "Secondary Access Road" shall mean the access road entering the Property from the service road that borders the Property on the East and proceeding westerly into the oval of the RR Tracks as depicted on **Exhibit B**. Upon completion of the Rig Access Road, KPK shall use the Secondary Access Road for emergency access only. GWE may construct a guard house checkpoint on the Secondary Access Road and may monitor KPK emergency access to the Property at such checkpoint in accordance with the provisions of Paragraph 2(e) below.

"Access Road Requirements" shall mean a road sufficient to accommodate all equipment used by KPK for the production of oil and gas, drilling and completing of a well or reworking of a well, regardless of any lesser standard for roads or streets required by the governing entity zoning the Property. Such use by KPK shall include, but not be limited to, the use of a 110,000-pound or 28,000 pound per axle for oil and gas field equipment.

c. Use, Maintenance, and Relocation of Access Roads. KPK shall use reasonable care in the use of the Access Roads. Neither party shall unreasonably interfere with the use by the other in using the Access Roads. To the extent GWE has the legal right to do so, no public use of the Access Roads shall be permitted. KPK's access to the OGOAs and the Battery Area shall not be impeded at any time except for reasonable circumstances agreed upon by both parties including, but not limited to, the loading or unloading of trains on the RR Tracks on the Property. KPK shall maintain the Access Roads in accordance with the Access Road Requirements. The location of the Access Roads may be changed prior to or after construction by mutual agreement of KPK and GWE, provided however, that such relocation shall not unreasonably interfere with KPK's use and enjoyment of whatever rights it may have under the OG Leases and all costs and expenses of such relocation shall be borne solely by the requesting party. Neither KPK or GWE shall unreasonably withhold consent to any such relocation.

d. Regular Access Through Facility Guard House. The "Entrance Road" shall mean an access road entering GWE's ethanol production facility ("Facility") at County Road 33 and then proceeding to the North across the RR Tracks and into the Property and connecting with the OGOA Roads within the oval of the RR Tracks, as depicted on **Exhibit B**. KPK's and its agent's cars, pickups and similar vehicles accessing the Property for routine inspection and servicing of the wells and operations shall enter the Property by the Entrance Road or by some other entrance as may be designated by GWE from time to time. Such light-duty vehicles using the Entrance Road shall pass through GWE's guard house checkpoint for the Facility and shall use such paved or improved roads on the Facility site as designated by GWE. GWE may employ a security guard at any point on the Entrance Road at all times during KPK operations on the Property, and such security guard may require KPK vehicles and employees to present sufficient identification for access to the Property. KPK shall comply with all security regulations required by GWE. Under no circumstances shall any KPK vehicle or employee be unreasonably denied access to the Property. GWE shall keep the Facility Roads in good condition and repair. KPK shall use reasonable care in the use of the Facility Roads. Neither party shall unreasonably interfere with the use by the other in using the Facility Roads.

e. Access for KPK Across RR Tracks. GWE and KPK understand that GWE will need to increase the grade level to accommodate the RR Tracks and crossings located on the Property as depicted on **Exhibit B**. The RR Track crossings may need to be inclined to accommodate the grade level change for the RR Tracks. GWE agrees to construct such inclines at its sole cost and expense to meet the Access Road Requirements. GWE further agrees to submit such incline designs to KPK for confirmation that its oil and gas field equipment can safely traverse the incline. Regardless of the type of access to be used or its stage of construction, except for interruptions by trains, GWE will always provide unobstructed access to the OGOAs and Battery Area.

f. UPRC Right of Way. In the event KPK obtains the right to use the UPRC Right of Way to access the Battery Area across the northern boundary of the Property, then the parties agree that route shall constitute the Battery Access Road hereunder, and the Battery Access Road shall no longer constitute an Access Road and may not be used by KPK for any purpose.

3. Flow and Gathering Lines.

a. Flow and Gathering Lines for Existing Wells. KPK now has subsurface pipelines ("Lines") on the Property as shown on **Exhibit B** that carry oil, gas and other hydrocarbons from the wellhead to the Battery Area and then on to other pipelines. KPK may install Lines from the Terra 5 Well and the Terra A1 Well as depicted on **Exhibit B**. GWE shall grant a recorded easement for KPK's use to install and maintain the Lines on the Property as depicted on **Exhibit B**, which shall comprise an area of 50 feet in width during construction of the Lines and 25 feet in width for all operations, maintenance and transportation activities of such Lines ("Line Easement"). Line locations may be changed by mutual agreement of the parties, provided, however, all costs and expenses of the relocation shall be borne by the Party requesting the change. KPK shall not unreasonably withhold its consent to a line location change requested by GWE. GWE agrees that any relocation requested by GWE will not unreasonably interfere with KPK's ability to exercise whatever rights it has under the OG Leases to drill for and produce oil, gas and other hydrocarbons.

b. Requirements for Encasement of KPK's Lines. In the event that KPK Line(s) are within 75 feet of an ignition source constructed by GWE including, but not limited to, houses, buildings, structures or any other potential source of ignition, then such Line(s) shall be "encased" at GWE's expense. The term "encased" shall mean that KPK's Line(s) shall be enclosed in a second steel pipe with inspection vents on each end of the flow Line(s). All Lines that must be encased shall be constructed as straight as reasonably practicable to avoid any 90 degree angles in the Line. The Parties hereby agree and acknowledge that all Line(s) underneath the RR Tracks shall be encased at GWE's sole cost and expense.

c. Vertical Requirements within KPK Line Easement. After written notice of at least fifteen (15) days, GWE shall have the right to cross any Line Easement with roadways and utilities, provided such crossing is made at an angle of not less than 60° from KPK's Lines, but in no event shall any GWE utility be buried above or run parallel with KPK's Line within the Line Easement. GWE shall locate all subsurface utilities not less than 24 inches below KPK's Lines. Overburden above KPK's Lines shall not exceed 72 inches, except in those locations where KPK's Lines are encased as defined in subparagraph 3(b) above. If a GWE roadway crosses above a KPK Line, that portion of said Line will be encased, as defined in subparagraph 3(b) above. All expenses for the encased pipe and vents will be provided by GWE. Roadways shall not be constructed parallel with a KPK Line within the Line Easement.

d. Horizontal Requirements within KPK Easements. GWE may request from KPK the right to place a utility within a Line Easement that would parallel the KPK Line. KPK will not unreasonably withhold its consent to such use by GWE, but in no event shall such utility be placed within 10 feet of KPK's Line.

e. OGOAs. The provisions of subparagraphs c and d of this paragraph shall not be applicable to the OGOAs.

4. Line Easement.

a. Line Easement. The Line Easement shall provide that GWE, its successors and assigns, shall not, except as provided herein, locate or allow anything to be constructed on the surface or underneath the surface of the Line Easement including, but not limited to, structures, roads, fences, and pipes.

b. Description of Line Easement. The Line Easement may be described by metes and bounds or by specific notations on **Exhibit B** noting direction and length from a surveyed and physically established location on the Property. The Line Easement description shall be recorded with the Weld County Clerk and Recorder, State of Colorado.

c. Maintenance of Line Easement and OGOAs. KPK agrees to maintain the Line Easement and OGOAs in accordance with the rules and regulations of the COGCC. GWE reserves the right, but not the obligation, to plant dry land grasses on the Line Easement and OGOAs and to mow, provided however, before planting any grass in such areas, GWE shall request KPK's consent, which consent shall not be unreasonably withheld. Additionally, if GWE elects to mow the Line Easement and OGOAs, it shall do so only in a manner which does not violate the terms of the Line Easement or do damage to KPK's Lines or equipment, or interfere with KPK's Access or use. GWE agrees to hold KPK harmless for any injury to persons or equipment during any performance under this paragraph.

d. Recording of Easements. GWE shall deliver to KPK an easement in the form of **Exhibit D** attached hereto for the Line Easement. Said easement shall be recorded by GWE with the Weld County Clerk and Recorder, State of Colorado (Easement).

5. Shut in of KPK's Wells. The Parties recognize that the Lines now installed by KPK are made of fiberglass and/or metal and the running of GWE's earth moving equipment over said Line(s), may crack them, which can cause a release of oil, gas or other hydrocarbons. KPK represents that in its opinion it is not safe to continue to use such Lines after heavy earth moving equipment is in use. KPK will, for safety purposes, shut in any Line(s) that has had or may have heavy earth moving equipment working on the surface over the Line(s). If GWE begins using heavy equipment on the Property, KPK will shut in its affected wells. GWE shall have the right to request that KPK shut in one or more of its wells during construction activity on the surface. KPK shall not unreasonably refuse to shut in its wells.

a. Notification. GWE agrees to notify KPK at least twenty (20) days before GWE begins any activities on the Property, which will utilize any heavy equipment or other equipment likely to damage KPK's Line(s). In accordance with COGCC rules and regulations, KPK shall notify GWE prior to beginning any drilling, recompletion, twinning, deepening, rework or re-drilling operations within an OGOA, or battery construction or modification on the Battery Area. In addition, KPK shall notify GWE at GWE's emergency contact number, noted in Paragraph 19 below, or as updated in writing from time to time, as to any special or emergency condition at any of its facilities which might tend to have a potential to endanger the

facilities or equipment of GWE. GWE shall be added to KPK's emergency contacts list for its facilities on the Property.

b. Payment. During the period of any shut in, GWE shall pay KPK for each shut in the following amounts:

<u>Shut In Duration</u>	<u>Fee per Well per Day</u>
5 days or less	None
6 – 29 days	\$150
30 days or more	\$200

GWE shall also pay KPK any costs to rework the well in order to place the well in production status after the shut in and costs to replace pipelines and flowlines that are damaged by the surface construction activities of GWE.

6. Moving of Electrical Equipment. KPK acknowledges that it does not currently have any electrical service or any related electric lines or facilities on the Property. If in the future KPK or its electrical provider locates electric lines or facilities on the Property and, as a result of any physical location changes requested by GWE in a well location under Paragraph 1(d), in an Access Road under Paragraph 2(b), or in a Line Area under Paragraph 3(a), KPK's electrical provider charges KPK for any work necessary to change the electrical equipment used by KPK, then GWE shall pay all reasonable costs of relocation. GWE will cooperate with the electrical provider to accomplish the intent of this Agreement.

7. Inspection; Non-Interference; Indemnification.

a. Inspection. GWE shall have the right upon reasonable notice of not less than four (4) business days to enter onto the OGOA site locations and the Battery Area to conduct visual inspections similar to a Phase I environmental examination to ensure that no environmental matters have arisen or are potentially arising. In the event that GWE reasonably believes that further environmental investigation is merited, then GWE shall notify KPK of such belief, and KPK shall dispatch its Environmental, Health and Safety Coordinator (EHSCO) for further investigation. The EHSCO shall provide a written report to KPK and GWE based upon COGCC rules and regulations and other applicable law detailing what actions, if any are needed to be in compliance with the COGCC rules and regulations and other applicable law. The cost of all inspection and investigation by GWE shall be borne by GWE. GWE shall not interfere with or damage any of KPK's equipment or otherwise adversely affect KPK's operations at the OGOA site locations in the event GWE elects to conduct inspections as described in this Section 7(a).

b. Non-Interference. The Parties agree that they will use reasonable efforts during the period of construction on the surface and afterwards not to interfere or delay whatever rights KPK has under the OG Leases to produce the oil and gas or complete, recompleat or work on its equipment. KPK agrees that it will use reasonable efforts to accommodate GWE in its construction of and use of the surface. In addition to their joint notification responsibilities under Section 5(a) above, and in further addition to their non-interference agreement as contained in this Section 7, the Parties agree to consult by telephone or mail prior to the initiation of any



construction or new construction by GWE, or any drilling, re-drilling or battery construction or substantial modification of KPK's facilities, to attempt to identify any special issues or risks that might be created by such activity, and to discuss and plan any special step or effort required to ameliorate such issue or risk ("special issues or risks"), if presented. The Parties understand that it is possible that both of GWE and KPK will be constructing or developing on the Property simultaneously, from time to time ("Simultaneous Construction"). Prior to and during Simultaneous Construction, the Parties shall consult as provided above, and from time to time during the continuity of Simultaneous Construction, and shall attempt to co-ordinate traffic flow, equipment deployment and arrival, employee transportation and travel on the Property, testing and other construction period activities which might tend to lead to the creation of special issues or risks for either or both parties. The Parties, by mutual consultation and advance planning, agree to cooperate in taking reasonable steps to ameliorate special issues and risks, while at the same time not materially interfering with the activities of the other in the manner contemplated in this Agreement.

c. KPK Indemnification. KPK will indemnify, defend and hold GWE, its affiliates and their respective partners, managers, members, employees, officers, legal representatives, agents, successors and assigns, and any existing or future owner of any interest in the Property (the "GWE Indemnified Parties") harmless from and against any and all claims (including without limitation third party claims), judgments, damages, penalties, fines, costs, liabilities, losses or expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the GWE Indemnified Parties arising from or directly or indirectly relating to (i) any breach of, and any cleanup, response or remediation required by, applicable federal, state or other environmental laws in connection with operations of KPK on the Property as contemplated under this Agreement, and (ii) any third party claim contesting the rights of KPK under the OG Leases, except to the extent that one or more of the GWE Indemnified Parties' negligence or willful misconduct is the cause or contributing factor of the damage or loss claimed.

d. GWE Indemnification. GWE will indemnify, defend and hold KPK, its affiliates and their respective partners, managers, members, employees, officers, legal representatives, agents, successors and assigns, (the "KPK Indemnified Parties") harmless from and against any and all claims (including without limitation third party claims), judgments, damages, penalties, fines, costs, liabilities, losses or expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the KPK Indemnified Parties arising from or directly or indirectly relating to (i) any breach of, and any cleanup, response or remediation required by, applicable federal, state or other environmental laws in connection with operations of GWE on the Property as contemplated under this Agreement, and (ii) any damage to KPK facilities, equipment, or Access Roads caused directly by GWE, except to the extent that one or more of the KPK Indemnified Parties' negligence or willful misconduct is the cause or contributing factor of the damage or loss claimed.

## 8. Recording of Easements and Plat.

a. Plat and Notice. To the extent GWE has the power to do so, a reference to this Agreement, and its recording information, shall be included on any town, county or other jurisdictional government agency that require a plat. The plat shall be recorded in the Weld

County Clerk and Recorder Office, State of Colorado. The parties agree that no change in the plat shall be made that would be in conflict with the provisions of this Agreement, and that any change to the plat that might effect KPK rights under this Agreement shall not be considered until such time as KPK has been given reasonable notice and mutual acceptance provided. Furthermore, GWE agrees to provide each jurisdictional agency that has zoning jurisdiction over the Property, and all purchasers of the Property, with notice of this Agreement and its recording information, and will notify such purchasers that this Agreement is binding upon them as a successor in interest.

b. Recording of this Agreement. A copy of this Agreement shall be recorded in the books and records of the Office of the Weld County Clerk and Recorder, State of Colorado.

9. Waiver of Rights; Termination. KPK does not by entering into this Agreement waive any rights it might have under its OG Leases, except as specifically set forth herein, including, but not limited to, the drilling for and production of oil, gas and other hydrocarbons from the Property. This Agreement shall not be deemed to create or ratify any right in the mineral estate in KPK. KPK's rights (but not its obligations) under this Agreement shall terminate 60 days after the expiration or termination of the OG Leases insofar as they cover the Property, or the earlier abandonment of operations by KPK on the Property, and KPK agrees to execute and deliver to GWE a recordable release of its rights under this Agreement within 10 days after the end of such 60 day period. KPK's rights (but not its obligations) under this Agreement shall also terminate in the event that the representations made by KPK in Recitals B and D of this Agreement are not materially correct, and KPK agrees to execute and deliver to GWE a recordable release of its rights under this Agreement in that event. GWE does not by entering into this Agreement waive any rights it might have as the owner of the surface of the Property, except as specifically set forth in Agreement.

10. Payment of Relocation Costs. GWE shall give advance written notice to KPK at least ninety (90) days prior to the time that GWE wishes KPK to relocate an Access Road or a Line pursuant to this Agreement. KPK shall thereafter provide GWE with a bona fide third party estimate of the costs for the relocation. GWE shall pay the full amount of the estimate of relocation costs to KPK within ten (10) days from the date it receives the estimate from KPK to relocate the Access Road or the Line. Should GWE decide not to relocate a Access Road or Line, it shall notify KPK within ten (10) days of receipt of the estimate. Upon receipt of the payment of such estimate of costs by GWE, KPK will within a reasonable time commence the relocation of the applicable Access Road or Line, install the same in a good and workmanlike manner, and diligently pursue such relocation work to completion. Upon completion of the relocation, KPK shall give to GWE a full accounting of the costs and expenses of the relocation. If the amount of such costs exceeds the amount of the estimate, GWE shall pay KPK the amount of the balance due within ten (10) days from the receipt of the accounting. If the amounts of such costs are less than the amount of the estimate, KPK shall reimburse the difference to GWE within ten (10) days from the receipt of the accounting. KPK acknowledges that a future request by GWE to relocate an Access Road or a Line may be prompted by the construction of the Facility, in which case it may be imperative that such relocation occur as soon as possible. KPK will use reasonable efforts to commence and complete such a relocation as quickly as possible in response to the needs of the Facility construction, or, if such reasonable efforts will not

accommodate the needs of the Facility construction, KPK will allow GWE to handle such relocation, but only under the direct supervision of KPK and in accordance with KPK specifications.

11. Completion of Changes. The Parties agree and understand that it has been KPK's experience that third party contractors can complete the work required by this Agreement to be performed by KPK. Provided however, any third party contractor must be approved by KPK. However, it has also been KPK's experience that third party contractors are often not available to complete the work. KPK agrees it will complete such work as required, but because of other demands on its resources, it might not be able to complete such work in the time requested by the GWE. KPK will use reasonable business efforts to complete the work in the time requested by GWE. In the event that KPK is unable to complete such work in a timely fashion, GWE may complete such work, provided that all work is undertaken and completed in conformance with specifications set by KPK in its commercially reasonable discretion. KPK reserves the right to inspect and approve or disapprove the work performed by GWE's third party contractor.

12. Further Assurances. GWE and KPK shall execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered such instruments and take such other actions as may be necessary or advisable to carry out their respective obligations under this Agreement and under any exhibit, document, certificate, or other instrument delivered pursuant hereto.

13. Successor and Assigns. The covenants of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, the successors and assigns of the Parties and any existing or future owner of any interest in the Property.

14. Covenants Run with the Land. This Agreement constitutes a covenant running with the land and shall be binding upon all parties who succeed to any interest, which GWE or KPK has or will have in the Property.

15. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

16. Compliance with Common Law and Statutory and Regulatory Requirements. GWE expressly acknowledges that this Agreement satisfies the obligations and requirements of KPK pursuant to COGCC rules and regulations and Colorado statutes to consult in good faith with GWE regarding existing and proposed oil and gas operations on the Property. GWE further expressly acknowledges that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligations of KPK to accommodate the use of the surface of the Property by GWE, existing and future, and GWE waives any statutory and common law claims to the contrary, including, but not limited to, any claims pursuant to C.R.S. 34-60-127.

17. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with such laws; however, the remainder of this Agreement shall be in full force and effect. The representations, warranties and defined terms included in the Recitals shall have the same effect as if included in the body of this Agreement.

18. Notices. Any notice or communication required or permitted by this Agreement shall be given in writing either by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, and registered or certified mail with return receipt requested; or (d) prepaid telecopy or fax, the receipt of which shall be acknowledged, addressed as follows:

To GWE:	Jim Geist
	800 8th Ave.
	Suite 304
	Greeley, CO 80631
	GWE Emergency Contact Number:
To KPK:	K.P. Kauffman Company, Inc.
	1675 Broadway, Suite 2800
	Denver, CO 80202-4628
	(303) 825-4822
	(303) 825-4825 (FX)

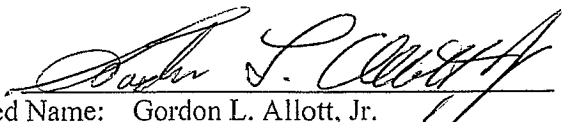
19. Entire Agreement. This Agreement sets forth the entire understanding among the parties and supersedes any previous communications, representations, or agreements, whether oral or written. No change of any of the terms or conditions herein shall be valid or binding on any party unless in writing and signed by an authorized representative of each party.

20. No Third Party Beneficiaries. Except for the successors and assigns of the Parties as described in Paragraph 13, nothing contained in this Agreement, either express or implied, is intended to confer upon any other person or entity any benefits, privileges, rights or remedies; provided, however, that to the extent third party oil and gas operators have rights to conduct operations on the land, GWE shall have the right to grant to such third party operators the right to use the OGOAs, Line Easements and Access Roads on the same terms and conditions that KPK is using the same and KPK shall cooperate with such third party operators in the use of such areas.

[Signatures on next page]


IN WITNESS WHEREOF the undersigned parties have caused this Agreement to be executed by a duly authorized representative on the day and year first above written.

**K.P. KAUFFMAN COMPANY, INC.**

By:   
Printed Name: Gordon L. Allott, Jr.  
Title: Executive Vice President

**GREAT WESTERN ETHANOL, LLC**

By: Colorado Ethanol Investments, L.L.C.  
Title: Manager

By:   
Printed Name: Kenneth Ulrich  
Title: Manager

ACKNOWLEDGMENTS

STATE OF COLORADO )  
COUNTY OF Denver ) ss.

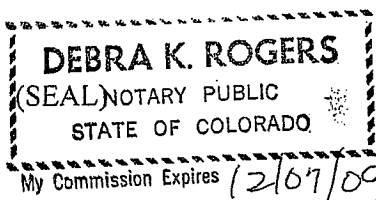
The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2008, by Gordon L. Allott, Jr. as Exec. Vice Pres. President of K.P. Kauffman Company, Inc., a Colorado corporation, on behalf of the corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 12/07/09

Debra K. Rogers  
Notary Public

Address: 1675 Broadway, Ste 2800  
Denver, CO 80202



STATE OF COLORADO )  
COUNTY OF Weld ) ss.

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 2008, by Kenneth Ulrich as Manager of Colorado Ethanol Investments, L.L.C., in its capacity as Manager of GREAT WESTERN ETHANOL, LLC, on behalf of the company.

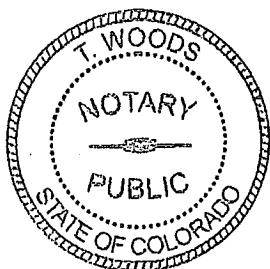
WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 2-21-2011

T. Woods  
Notary Public

Address: 800 8<sup>th</sup> Ave Ste 323  
Greeley, CO 80631

(SEAL)



## **EXHIBIT A**

### **Property**

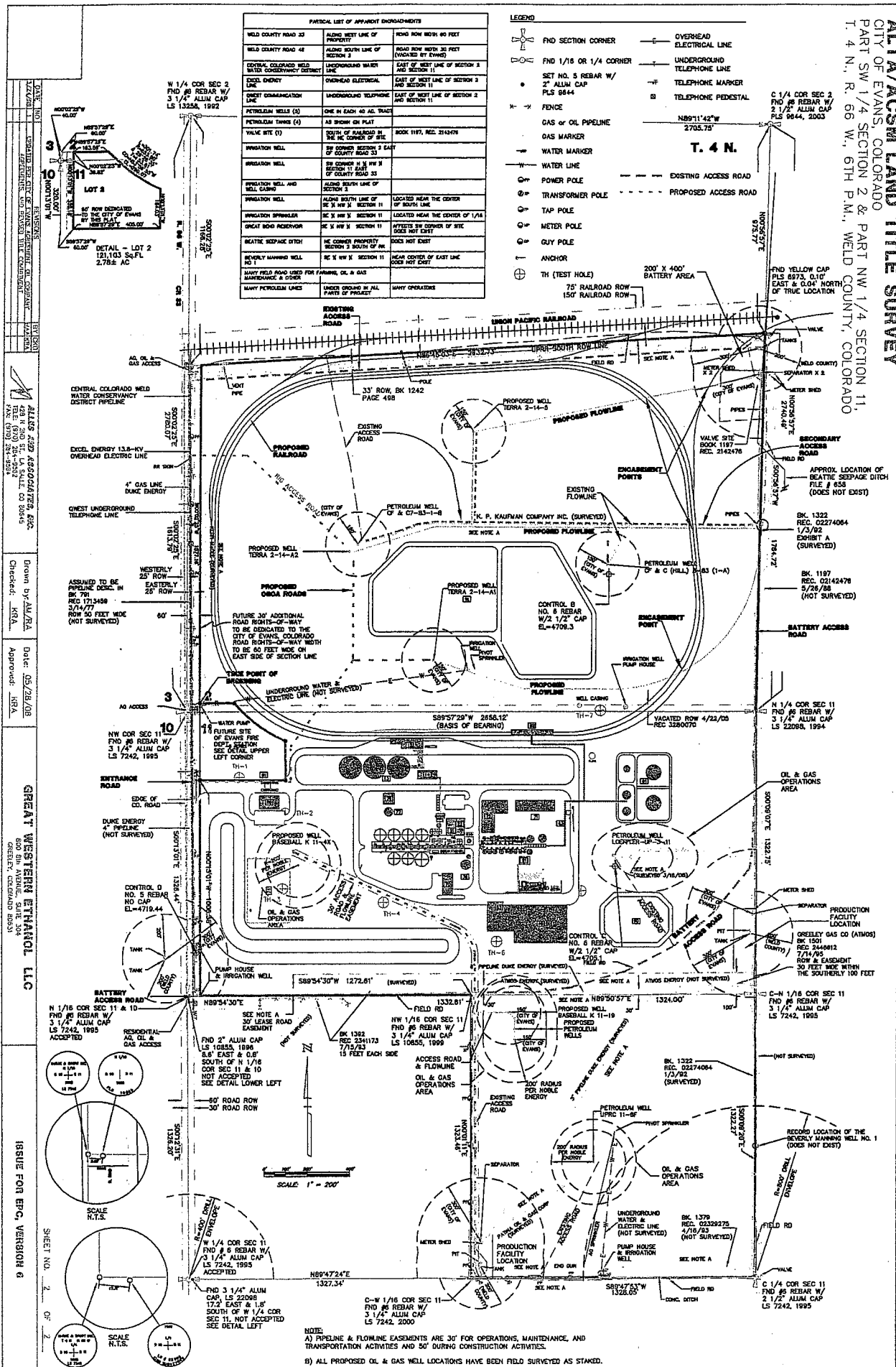
The SW  $\frac{1}{4}$  of Section 2, Township 4 North, Range 66 West of the 6<sup>th</sup> P.M.  
lying south of the right-of-way of the Union Pacific Railroad and east of  
the right of way for Weld County Road 33,  
County of Weld,  
State of Colorado.

**EXHIBIT B**

**Diagram of Property**



	END SECTION CORNER		OVERHEAD ELECTRICAL LINE
	1/8 OR 1/4 CORNER		UNDERGROUND TELEPHONE LINE
•	SET NO. 5 REBAR W/ 2" ALLUM CAP PL# 9844	-F	TELEPHONE MARKER
		□	TELEPHONE PEDESTAL
X - X	FENCE		N89°11'30"W 2705.75'
	GAS OR OIL PIPELINE		
	GAS MARKER		
-W-	WATER MARKER		
-- --	WATER LINE		
⊕	POWER POLE	---	EXISTING ACCESS ROAD
⊕	TRANSFORMER POLE	- - - -	PROPOSED ACCESS ROAD
⊕	TAP POLE		
⊕	METER POLE		
⊕	GUY POLE		
+	ANCHOR		
⊕	TH (TEST HOLE)		200' X 400' BATTERY AREA
	75' RAILROAD ROW (SEE BONDING ROWS)		



## **EXHIBIT C**

### **Oil and Gas Leases**

Lessor	Lessee	Date	Book	Page/Rec No	County	Township	Range	Section	Description	Depth
Hill, Richard S. and Larry A. Hill	CF&C Energy Resources, Inc.	04/09/83	994	1924964	Weld	4N	66W	Sec 02	SW/4	All depths
Hill, Victor R. and Charlotte T. Hill	CF&C Energy Resources Inc.	06/10/83	1001	1932482	Weld	4N	66W	Sec 02	SW/4	All depths
Hill, Victor R. and Charlotte T. Hill	CF&C Energy Resources Inc.	06/10/83	1001	1932482	Weld	4N	66W	Sec 02	NW/4SW/4	All depths
Hill, Victor R. and Charlotte T. Hill	CF&C Energy Resources Inc.	06/10/83	1010	1944116	Weld	4N	66W	Sec 02	SW/4	All depths
Champlin Petroleum Company	CF&C Energy Resources Inc.	08/02/83	1044	1983279	Weld	4N	66W	Sec 02	SW/4	All depths
Werning, Jessie	H&C Colton Company	09/20/84	1044	1983312	Weld	4N	66W	Sec 02	Part of NW/4SW/4	All depths
Monfort of Colorado, Inc.	H&C Colton Company	07/28/87	1166	2110607	Weld	4N	66W	Sec 02	S/2SE/4	All depths
Union Pacific Resources Company	Kauffman & Weinberger, Inc., as	01/06/87		2168092	Weld	4N	66W	Sec 02	NW/4SW/4	All depths
Werning, Jessie	CF&C Energy Resources, a Part.	09/29/87			Weld	4N	66W	Sec 02	Part of NW/4SW/4	All depths

## EXHIBIT D

To Surface Use Agreement dated May 29, 2008, by and between  
K. P. Kauffman, Inc., and Great Western Ethanol, LLC.

### LINE EASEMENT AGREEMENT

THIS LINE EASEMENT AGREEMENT ("Agreement") is entered into as of May 29, 2008, between **K.P. KAUFFMAN COMPANY, INC. ("KPK")**, whose address is 1675 Broadway, Suite 2800, Denver, Colorado 80202 and **GREAT WESTERN ETHANOL, LLC ("GWE")**, a Delaware limited liability company, whose address is 800 8th Ave., Suite 304, Greeley, Colorado 80631.

### RECITALS

A. The parties have entered into a Surface Use Agreement dated May 29, 2008, and recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ among the records of the Weld County Clerk and Recorder, State of Colorado (the "Surface Use Agreement") covering the lands described in **Exhibit A** attached hereto (the "Property"). Capitalized terms used in this Agreement and not defined herein shall have the meanings set forth for such terms in the Surface Use Agreement.

B. The Surface Use Agreement provides that GWE will grant to KPK a separate, recordable easement agreement with respect to KPK's subsurface pipeline(s) on the Property that carry oil, gas and other hydrocarbons (the "Lines").

### AGREEMENT

In consideration of the covenants and mutual promises set forth herein, including the information set forth in the recitals, the parties agree as follows:

1. GWE hereby grants a non-exclusive easement to install, construct, replace, repair, maintain and use subsurface Lines on the Property as shown on **Exhibit B** attached hereto and made a part hereof, which shall be 25 feet in width for all operations, maintenance and transportation activities of the Line(s), and which shall be 50 feet in width during the period of construction or relocation of any lines (the "Line Easement").

2. Line locations may be changed by mutual agreement of the parties, provided, however, all costs and expenses of the relocation shall be borne by the party requesting the change. KPK shall not unreasonably withhold its consent to a line location change requested by GWE. GWE agrees that any relocation requested by GWE will not unreasonably interfere with KPK's ability to exercise whatever rights it has under the OG Leases to drill for and produce oil, gas and other hydrocarbons.

3. After written notice of at least fifteen (15) days, GWE shall have the right to cross any Line Easement with roadways and utilities, provided such crossing is made at an angle of not less than 60° from KPK's Lines, but in no event shall any GWE utility be buried above or run parallel with KPK's Line within the Line Easement. GWE shall locate all subsurface utilities not less than 24 inches below KPK's Lines. Overburden above KPK's Lines shall not exceed 72 inches, except in those locations where KPK's Lines are encased as defined in subparagraph 3(b) of the Surface Use Agreement. If a GWE roadway crosses above a KPK Line, that portion of said Line will be encased, as defined in subparagraph 3(b) of the Surface Use Agreement. All expenses for the encased pipe and vents will be provided by GWE. Roadways shall not be constructed parallel with a KPK Line within the Line Easement.

4. GWE may request from KPK the right to place a utility within a Line Easement that would parallel the KPK Line. KPK will not unreasonably withhold its consent to such use by GWE, but in no event shall such utility be placed within 10 feet of KPK's Line.

5. In the event that KPK Line(s) are within 75 feet of an ignition source constructed by GWE including, but not limited to, houses, buildings, structures or any other potential source of ignition, then such Line(s) shall be "encased" at GWE's expense. The term "encased" shall mean that KPK's Line(s) shall be enclosed in a second steel pipe with inspection vents on each end of the flow Line(s). All Lines that must be encased shall be constructed as straight as reasonably practicable to avoid any 90 degree angles in the Line. The Parties hereby agree and acknowledge that all Line(s) underneath the RR Tracks shall be encased at GWE's sole cost and expense.

6. KPK agrees to maintain the Line Easement in accordance with the rules and regulations of the Colorado Oil and Gas Conservation Commission. GWE reserves the right, but not the obligation, to plant dry land grasses on the Line Easement and to mow, provided however, before planting any grass in such areas, GWE shall request KPK's consent, which consent shall not be unreasonably withheld. Additionally, if GWE elects to mow the Line Easement, it shall do so only in a manner which does not violate the terms of the Line Easement or do damage to KPK's Lines or equipment, or interfere with KPK's Access or use. GWE agrees to hold KPK harmless for any injury to persons or equipment during any performance under this paragraph.

7. The terms of this Agreement are subject to the Surface Use Agreement. The Surface Use Agreement will prevail in the event there is a conflict with this Agreement. This Agreement shall terminate upon the termination of the Surface Use Agreement.

8. The parties agree that this Agreement and the benefits hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns.

9. This Agreement and all of its covenants in it shall be covenants running with the land and shall be binding on all parties who succeed to any interest which GWE has in the Property.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

IN WITNESS WHEREOF the undersigned parties have caused this Agreement to be executed by a duly authorized representative on the day and year first above written.

K.P. KAUFFMAN COMPANY, INC.

By [Signature]  
Printed Name: Gordon L. Allott, Jr.  
Title: Executive Vice President

GREAT WESTERN ETHANOL, LLC

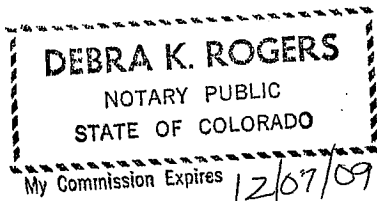
By [Signature]  
Printed Name: Kenneth Ulrich  
Title: Chairman

STATE OF COLORADO )  
COUNTY OF Denver ) ss.

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2008, by Gordon L. Allott, Jr., as Executive Vice President of K. P. Kauffman Company, Inc.

Witness my hand and official seal.  
My commission expires: 12/07/09

[Signature: Debra K. Rogers]  
Notary Public



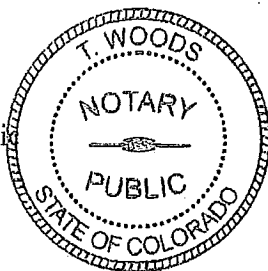
STATE OF COLORADO     )  
                                      )  
COUNTY OF Weld     ) ss.

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May 2008,  
by Kenneth Ulrich, as Chairman of the Board of Great Western Ethanol,  
LLC.

My Commission expires: 2-21-2011.

*Witness my hand and official seal.*

Notary Public



J Woods