



**APPLICATION FOR WAREHOUSE LICENSE**  
**PUBLIC SERVICE COMMISSION**  
 SFN 9470 (01-2000)

New # 3655 Rec # 6170  
 ANNUAL LICENSE PERIOD  
 EXPIRES JULY 31 550.00  
 NDCC 60-02

|  |                               |   |                          |
|--|-------------------------------|---|--------------------------|
| Name of Firm<br><b>Tharaldson Ethanol Plant I L.L.C.</b> |                               | Telephone Number<br><b>701-347-4000</b>                               |                          |
| Firm's Mailing Address<br><b>3549 153rd Ave S.</b>       |                               | City<br><b>Casselton</b>  | State<br><b>ND</b>       |
| Warehouse Mailing Address<br><b>3549 153rd Ave S</b>     |                               | City<br><b>Casselton</b>  | Zip Code<br><b>58012</b> |
| Warehouse Location<br><b>3549 153rd Ave S</b>            |                               | Warehouse Capacity Including All Annexes and Additional Storage (BU): |                          |
| Telephone Number<br><b>701-347-4000</b>                  | Railroad<br><b>BNSF + RRW</b> | County<br><b>Cass</b>   |                          |
| Name of General Manager<br><b>Ken Bennett</b>            |                               | Name of Station Manager<br><b>Mark Stevens</b>                        |                          |

PARTNERS IF OPERATED BY GENERAL OR LIMITED PARTNERSHIP - MANAGING PARTNERS IF OPERATED BY LIMITED LIABILITY PARTNERSHIP

| NAME | ADDRESS |
|------|---------|
|      |         |
|      |         |
|      |         |
|      |         |

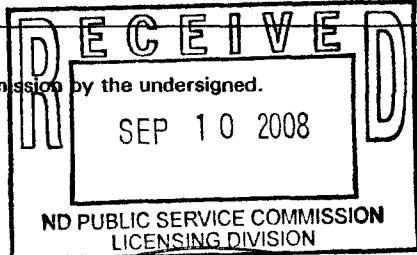
NAMES & TITLES OF OFFICERS IF OPERATED BY A CORPORATION - NAMES OF MANAGERS IF OPERATED BY A LIMITED LIABILITY COMPANY

| TITLE         | NAME            | ADDRESS                     |
|---------------|-----------------|-----------------------------|
| President     | Matt Tharaldson | 3549 153rd Ave S. Casselton |
| Senior VP     | Kyle Newman     | 3549 153rd Ave S. Casselton |
| VP of Finance | Ryan Thorpe     | 3549 153rd Ave S. Casselton |

Do you currently have any commercial weighing or measuring devices (scales used for buying and selling commodities) at your facility?  
 No  Yes - Please list by manufacturer and capacity. **Mettler Toledo - 200,000 lbs (2)**

If you currently do not have any commercial weighing or measuring devices located at your facility, whose facility are you using?

Do your future plans include the installation of a device?  
 No  Yes - When do you plan to begin construction?



This application for license to operate a public grain warehouse is submitted to the Public Service Commission by the undersigned.

STATE OF North Dakota ) SS  
 COUNTY OF Cass )

Ryan Thorpe being duly sworn, says he/she is the owner or official of the warehouse named in the foregoing application, and that the facts stated in the application are true to his/her own knowledge.

Signature of Applicant  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (Notary Public)

Sworn to before me this 10th day of Sept., 2008

**DARCY BEILKE**  
 Notary Public  
 State of North Dakota  
 My Commission Expires Apr. 12, 2012

My commission expires Apr. 12, 2012

(Seal)

Bond was issued in triplicates.

**GRAIN ELEVATOR WAREHOUSE BOND  
PUBLIC SERVICE COMMISSION**  
SFN 7573 (4-95)

**BOND NO:** 08916922

ND PUBLIC SERVICE COMMISSION  
LICENSING DIVISION  
SEP 10 2008  
PRINCIPAL  
SURETY

|  |                    |             |                         |
|--|--------------------|-------------|-------------------------|
| Name<br>THARALDSON ETHANOL PLANT I, LLC          |                    |             |                         |
| Address<br>1020 36th St., SW                     | City<br>Fargo      | State<br>ND | Zip Code<br>58103       |
| Name<br>FIDELITY AND DEPOSIT COMPANY OF MARYLAND |                    |             |                         |
| Address<br>1400 American Lane                    | City<br>Schaumburg | State<br>IL | Zip Code<br>610916-1056 |

We, the above named PRINCIPAL and SURETY are bound to the State of North Dakota in the penal sum of One Million Five Hundred Thousand and 00/100 Dollars. The payment of the penal sum shall bind ourselves, our heirs, legal representatives, successors, and assigns, jointly and severally.

The PRINCIPAL is the operator of a public warehouse(s) doing business in North Dakota. The warehouse(s) operated by the PRINCIPAL is(are) located as follows: 3549 153rd Ave. S, Casselton, ND 58012

The warehouse(s) described above is(are) to be operated pursuant to the law for receiving grain for buying, selling, storing, or shipping for compensation. The surety bond shall cover the warehouse(s) operated by the PRINCIPAL as a whole and not a specific amount for each.

The condition of this obligation is as follows: If the PRINCIPAL shall (1) faithfully perform all duties as a public warehouseman, (2) comply with the provisions of law and the rules of the North Dakota Public Service Commission (Commission) relating to the storage and purchase of grain by a warehouseman, and (3) pay for all grain purchased and all sums for which the PRINCIPAL shall become liable to the holders of receipts, then this obligation shall be void, otherwise it shall remain in effect, provided, however, that this surety bond shall not accrue to the benefit of any person entering into a credit-sale contract with the PRINCIPAL.

Liability for this undertaking commences on August 5, 2008, and shall be continuous unless the SURETY by certified mail notifies the PRINCIPAL and the Commission that the surety bond has been canceled. The cancellation notice shall state that the surety bond will be canceled ninety (90) days after the receipt of the cancellation notice or on a later date specified by the SURETY. In no event shall the aggregate liability of the SURETY accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The liability of the SURETY for any violation of the obligations hereof by the PRINCIPAL during the period of time the bond remains in effect, shall remain in force thereafter for such period of time as may be permitted under the laws of the State of North Dakota.

This bond, including definitions of the terms used herein, are governed by the provisions of Chapters 60-02 and 60-04 of the North Dakota Century Code.

Counter-signed by North Dakota Resident Agent:

N/A

| Name/Signature | Address | City, State(ND), Zip Code |
|----------------|---------|---------------------------|
|----------------|---------|---------------------------|

**THIS SECTION TO BE COMPLETED BY PRINCIPAL**

**ACKNOWLEDGMENT OF PRINCIPAL**

State of North Dakota,  
County of Cass ) ss.  
On this 3rd day of September, 2008,  
before me personally appeared Matt Tharaldson  
known to me to be the person or said corporation described in and who executed the within instrument as PRINCIPAL and acknowledged to me that he/she or said corporation executed the same.

[Signature]  
Signature of Principal

[Signature]  
Notary Public

My Commission expires Sept 13, 2010

**THIS SECTION TO BE COMPLETED BY SURETY**

**ACKNOWLEDGMENT OF SURETY**  
(Corporate Officer)

State of IL )  
County of Cook ) ss.  
On this 5th day of August, 2008,  
before me personally appeared Linda Iser  
known to me to be Attorney-in-Fact  
of said corporation that is described in and that executed the within instrument as SURETY, and acknowledged to me that such corporation executed the same.

Linda Iser, Attorney-in-Fact  
Name and Title of Person Signing for Surety

[Signature]  
Signature

[Signature]  
Notary Public

My Commission expires 2/25/09

North Dakota Public Service Notary Public Telephone 701-328-4097  
State Capitol  
Bismarck, ND 58505-0800  
State of North Dakota  
My Commission Expires SEP 13 2010

OFFICIAL SEAL  
BRIAN O'LEARY  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES FEB. 20, 2009

ATTACH VALID POWER OF ATTORNEY FROM SURETY.

**Power of Attorney  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Sandra MARTINEZ, Linda ISER, Kathleen J. MAILES, Karen DANIEL, Susan J. PREIKSA, Susan A. WELSH, Robert E. DUNCAN, Joellen M. MENDOZA, James A. CUTHBERTSON and Geoffrey E. HEEKIN, all of Chicago, Illinois, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: ~~any and all bonds and undertakings~~, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Sandra MARTINEZ, Linda ISER, Kathleen J. MAILES, Karen DANIEL, Susan J. PREIKSA, Susan A. WELSH, Robert E. DUNCAN, Joellen M. MENDOZA, James A. CUTHBERTSON, Geoffrey E. HEEKIN, dated April 17, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 24th day of November, A.D. 2004.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Eric D. Barnes*

*Eric D. Barnes* Assistant Secretary

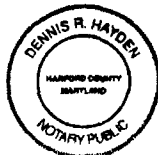
*William J. Mills*

By: *William J. Mills* Vice President

State of Maryland }  
City of Baltimore } ss:

On this 24th day of November, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Dennis R. Hayden*

*Dennis R. Hayden* Notary Public  
My Commission Expires: February 1, 2009

**EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

“Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages....and to affix the seal of the Company thereto.”

**CERTIFICATE**

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

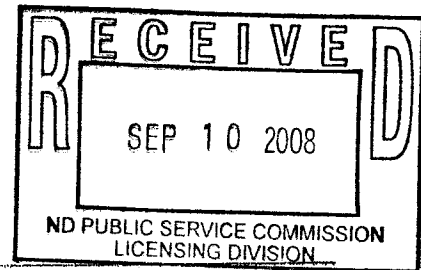
This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 5<sup>th</sup> day of August, 2008.

*Gerald F. Haley*  
Assistant Secretary



**CERTIFICATE OF INSURANCE ON GRAIN**  
PUBLIC SERVICE COMMISSION  
SFN 16698 (Rev. 05-99)

|                                     |       |          |
|-------------------------------------|-------|----------|
| Insurance Company                   |       |          |
| Travelers Property Casualty Company |       |          |
| Address                             |       |          |
| 385 Washington Street               |       |          |
| City                                | State | Zip Code |
| St. Paul                            | MN    | 55102    |

|                        |
|------------------------|
| Policy Number          |
| QT-660-2873C98A-TIL-07 |
| Locations              |
| 3549 153rd Ave. South  |
| Casselton, ND 58102    |

|                                 |           |       |          |
|---------------------------------|-----------|-------|----------|
| Licensee                        |           |       |          |
| Tharaldson Ethanol Plant 1, LLC |           |       |          |
| Address                         | City      | State | Zip Code |
| 3549 153rd Ave. South           | Casselton | ND    | 58102    |

An insurance policy covering the current market value of all grain in storage or on deposit has been issued to the above-named licensee. The terms of this policy do and will continue to coincide with the requirements of Sections 60-02-35 and 60-02.1-21 of the N.D.C.C.


This policy is continuous and will not be cancelled without at least sixty days prior notice to the Commission and the insured as required by N.D.C.C. Sections 60-02-35.1 and 60-02.1-22. This sixty day period will not begin prior to the day that the notice is received by the Commission.

A duplicate original of this policy and all endorsements will be provided to the Commission upon request.

North Dakota Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480

Telephone (701) 328-4097  
Fax (701) 328-2410

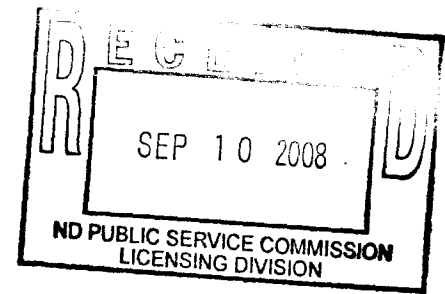
|  |
|--|
| Dated this 2nd day of September, 2008. |
| Authorized Company Representative      |



\*\* REPRINT \*\* in bound

Tharaldson Ethanol Plant, LLC  
1020 36th Street SW  
Fargo, ND 58103

3549 153rd Ave. SE  
Casselton, ND 58012



|                         |                       |                   |
|-------------------------|-----------------------|-------------------|
| DRIVER SIGNATURE        | PRINTED AGENT NAME    | DEALER            |
| UNLOAD DATE: 07/21/2008 |                       | TICKET NO.: 47    |
| VENDOR:                 | PRODUCER:             | DELIVERY NO.:     |
| ABC ABC                 | BOB FARMER BOB        | BOL:              |
| 1020 36TH STREET SW     | CARRIER:              | INBOUND           |
| FARGO, ND 58103         | ACTRUCK ACME TRUCKING | DRIVER: MAX OFF   |
|                         |                       | SCALE EXIT        |
|                         |                       | TRUCK ID JKY-1337 |

|          |              |           |
|----------|--------------|-----------|
| GROSS WT | 71,020 LBS   | 10:59 AM  |
| TARE WT  | 26,000 LBS M | 11:45 AM  |
| NET WT   | 45,020 LBS   | 803.93 BU |
| EST NET  | 45,020 LBS   | 803.93 BU |

|             |            |              |
|-------------|------------|--------------|
| YELLOW CORN | U.S. No. 1 |              |
| HT TW       | 0.1        | BCFM Pro 0.7 |
| FB M        | 0.9        | Oil          |
| SPL OKT     | 0.1        | Starch       |
| FW BCFM     | 56.0       | OTHER        |
| MO HT       | 15.0       |              |

NOTES: Demo transaction for Tharaldson Ethanol Plant, LLC

Sampling, weighing and Grading provided by North Dakota Grain Inspection Inc., Fargo, ND

weigher: \_\_\_\_\_

Tharaldson Ethanol Plant, LLC

1020 36th Street SW  
Fargo, ND 58103

\*\* REPRINT \*\*OUTBOUND

TICKET # 48  
BOL: 17483  
LOAD #: 3948572  
DATE: 07/21/2008 02:40 PM

3549 153rd Ave. SE  
Casselton, ND 58012

Sold To: XYZ  
123 ETHANOL LANE  
FARGO, ND, 58103

WEIGHTS

GROSS WT 71,020 LBS 07/21/2008 02:40 PM  
TARE WT 26,510 LBS M 07/21/2008 02:39 PM

Ship to: XYZ  
123 ETHANOL LANE  
FARGO, ND, 58103

NET WT 44,510  
DDG 22.25 TON

Guaranteed By:  
Tharaldson Ethanol

TRUCK ID: KPL-7184

DRIED DISTILLERS GRAIN

DRIVER: OFF MAX

Bulk Net Weight Shown on Invoice

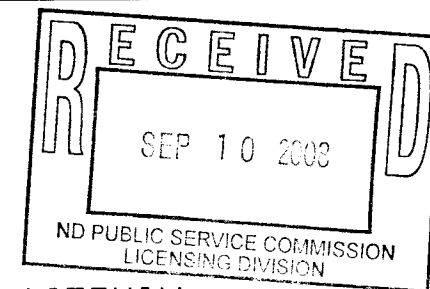
Guaranteed Analysis

Minimum Crude Protein 26.0%  
Minimum Crude Fat 9.0%  
Maximum Crude Fiber 15.0%  
Maximum Ash 5.5%

SHIPPER: Tharaldson Ethanol  
Plant, LLC

CARRIER ID: ACTRUCK  
CARRIER NAME: ACME TRUCKING

NOTES: Test outbound transaction



DRIVER SIGNATURE: \_\_\_\_\_



**Tharaldson Ethanol Plant I, LLC**

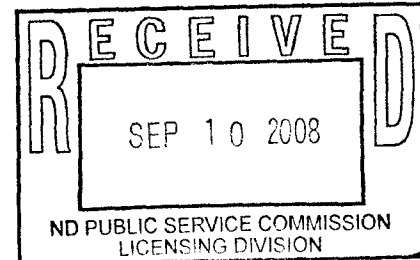
**1020 36<sup>th</sup> St SW**

**Fargo, ND 58103**

**Phone: 701-365-4026**

**Fax: 701-365-0049**

**Tharaldson | Ethanol**



### **Storage and Handling Policy**

Tharaldson Ethanol has the following storage and handling policy: **Cash basis only!**

**NDPSC Bin Capacity Chart**

Exam Date:09/08/2008

Tharaldson Ethanol Plant 1, LLC  
 3549 153rd Avenue SE  
 Casselton, ND  
 County:

| Status | Section | Bin Number | Bin Type | Base Point | Diameter or Bu/Ft (Irreg.) | Length | Width | Side wall | Add for Hopper | Ded. for Obst. | Effective Depth | Add for Peak | Depth for Capac. | Bushels per Foot | Base Pack% | Bushel Capacity with Pack |
|--------|---------|------------|----------|------------|----------------------------|--------|-------|-----------|----------------|----------------|-----------------|--------------|------------------|------------------|------------|---------------------------|
|--------|---------|------------|----------|------------|----------------------------|--------|-------|-----------|----------------|----------------|-----------------|--------------|------------------|------------------|------------|---------------------------|

**Facility: Casselton**

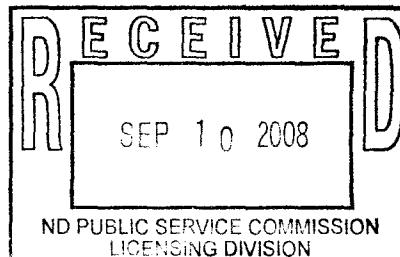
**Section: A**

|       |   |      |        |             |        |       |       |       |      |      |        |       |      |        |      |         |
|-------|---|------|--------|-------------|--------|-------|-------|-------|------|------|--------|-------|------|--------|------|---------|
| Added | A | 1101 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 1102 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2001 | Peaked | Eave of Bin | 72.000 | 0.000 | 0.000 | 67.50 | 0.00 | 0.00 | 67.500 | 5.000 | 72.5 | 3272.9 | 10.0 | 261,014 |
| Added | A | 2002 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2003 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2004 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2005 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2006 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2007 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2008 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2009 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2010 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |
| Added | A | 2011 | Peaked | Eave of Bin | 105.00 | 0.000 | 0.000 | 63.75 | 0.00 | 0.00 | 63.750 | 7.400 | 71.2 | 6960.6 | 10.0 | 545,155 |

Bin count: 13

Facility: Casselton Section: A Total: **6,802,874**

To Even: **6,803,000**



Tharaldson Ethanol Plant 1  
Casselton ND  
Section A

1102

1101

RAIL  
LOAD  
OUT

X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X

RAILROAD  
TRACKS

2001

2003

2005

2007

2009

2011

d  
r  
y  
e  
r

2002

2004

2006

2008

2010

**Overall Licensed Bin Capacity for:**

**Tharaldson Ethanol Plant 1, LLC**

**Bin count: 13**

**Licensed Capacity:**  
(includes pack)

**6,802,874 Bu.**

**Licensed Capacity (to even):**  
(includes pack and section totals are  
rounded up to next highest 1000)

**6,803,000 Bu.**



Short Term Grain Storage

Truck/Rail Unload/  
Load Building

Long Term Grain Storage

DDG Storage

8/13/08

343041

22,585,300 LLC

RECEIVED

OCT 25 2006

SEC. OF STATE

Articles of Organization  
Of  
**Tharaldson Ethanol Plant I, L.L.C.**

I, the undersigned, a natural person of the age of eighteen or more, acting as an organizer of a limited liability company under the North Dakota Limited liability Company Act, adopt the following Articles of Organization:

I.

The name of the limited liability company is **Tharaldson Ethanol Plant I, L.L.C.**

II.

The address of the principal executive office of the limited liability company is 1202 Westrac Drive, Fargo, North Dakota 58103.

III.

The address of the registered office of the limited liability company and the name of its registered agent at the address is:

Lori Kasowski  
1202 Westrac Drive  
Fargo, North Dakota 58103  
SS# 502-82-5969

IV.

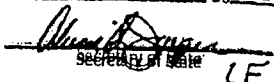
The names and addresses of the organizers of the limited liability company are:

Gary Tharaldson  
1202 Westrac Drive  
Fargo, North Dakota 58103  
SS# 502-46-0546

V.

Unless dissolved earlier according to law, the limited liability company shall exist of a period of thirty (30) years from and after the date these Articles of Organization are filed with the North Dakota Secretary of State.

NORTH DAKOTA  
Filed 10-25 2006

  
Secretary of State  
LF



VI.

Upon the occurrence of any event under subdivision (e) of Subsection (1) Section 10-32-109, that terminates the continued membership of a member in the limited liability company, the remaining members shall have the power to avoid dissolution by giving dissolution avoidance consent.

VII.


The members of the limited liability company shall have the power to enter into a business continuation agreement.

VIII.

The management of the limited liability company is vested in its members

I, the above-named organizer, have read the foregoing Articles of Organization, know the contents thereof and verily believe the statements made therein to be true.

Dated this 25th day of October, 2006.

  
\_\_\_\_\_  
Gary Tharaldson

# *State of North Dakota*

## SECRETARY OF STATE



### CERTIFICATE OF ORGANIZATION OF

THARALDSON ETHANOL PLANT I, L.L.C.  
Secretary of State ID#: 22,585,300

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that Articles of Organization for

THARALDSON ETHANOL PLANT I, L.L.C.  
duly signed and executed pursuant to the provisions governing a North Dakota Limited Liability Company, have been received in this office and are found to conform to law.

**ACCORDINGLY** the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Organization to

THARALDSON ETHANOL PLANT I, L.L.C.

Effective date of organization: October 25, 2006

Issued: October 25, 2006

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger  
Secretary of State

THARALDSON ETHANOL PLANT I, LLC

FIRST AMENDED AND RESTATED  
OPERATING AND MEMBER CONTROL AGREEMENT

THIS FIRST AMENDED AND RESTATED OPERATING AND MEMBER CONTROL AGREEMENT is made as of the 1st day of February, 2007, by and among each of the undersigned:

RECITALS

WHEREAS, the undersigned constitute all of the current members of Tharaldson Ethanol Plant I, LLC, a North Dakota limited liability company; and

WHEREAS, the North Dakota Limited Liability Company Act authorizes a "Member Control Agreement" as defined therein; and

WHEREAS, each of the undersigned wishes to enter into such an agreement;

NOW THEREFORE, each of the undersigned agrees as follows:

**Article 1. Definitions**

**Section 1.1 Definitions.** The terms defined in this Article 1 (except as may be otherwise expressly provided in this Agreement or unless the context otherwise requires) shall, for all purposes of this Agreement, have the following respective meanings:

"Act" means the North Dakota Limited Liability Company Act, as amended from time to time.

"Agreement" means this Member Control Agreement as hereafter amended from time to time, including any schedules to the Agreement.

"Capital Account" means the account of a Member which is maintained in accordance with the provisions of Section 6.2 hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor thereto. Any reference herein to specific sections of the Code shall be deemed to include a reference to any corresponding provisions of future law.

"Company" means Tharaldson Ethanol Plant I, LLC, a North Dakota limited liability company.

"Distribution" means the distributions to the Members of cash or other assets of the Company made from time to time pursuant to the provisions of this Agreement.

**"Distributable Cash Flow"** means, for any period, all cash received by the Company from all sources during such period (other than cash received from borrowings by the Company), minus the sum of (a) all expenditures paid by the Company during the period (excluding depreciation or other noncash expenses, but including capital expenditures), (b) all payments of debts and other liabilities of the Company during the period, and (c) such additions to the reserves of the Company for contingencies, working capital or future expansion needs as the Managers may determine to be necessary.

**"Estimated Member Tax Liability"** means 38% percent of the taxable income and gains of the Company as reported on the Company's federal partnership tax return for the fiscal year.

**"Financial Rights"** means a Member's rights to share in Net Income and Net Losses and Distributions with respect to a Membership Interest in accordance with the terms of this Agreement.

**"Governance Rights"** means all of a Member's rights as a Member in the Company other than Financial Rights and the right to assign Financial Rights.

**"Manager"** means a person elected, appointed, or otherwise designated as a manager by the Members, and any other person considered elected as a manager pursuant to the Act.

**"Members"** mean persons reflected in the required records of the Company as the owner of some Governance Rights of a Membership Interest of the Company.

**"Membership Interest"** means a Member's interest in the Company consisting of the Member's Financial Rights and Governance Rights with respect to the Company.

**"Net Income"** and **"Net Losses"** mean the profits and losses of the Company, as the case may be, as determined for federal income tax purposes as of the close of each of the fiscal years of the Company.

**"Percentage Interest"** as to any Member means the "Percentage Interest" reflected on Schedule 1 for such Member.

**"Unit(s)"** means an ownership interest in the Company. Units shall be divided into "Class A Units" and "Class B Units". Class A Units are Voting Units. Class B Units are Non-Voting Preferred Units.

**"Voting Interest"** as to any Member means the "Voting Interest" reflected on Schedule 1 for such Member.

## Article 2. Membership Interests and Contributions

**Section 2.1 Terms of Membership Interests.** The Company shall have the following two classes of membership units. The respective rights, obligations and privileges with respect to each class of units is as follows:

- 2.1.1 Class A Units: Class A Units issued by the Company are voting Units with complete Governance Rights and Financial Rights as set forth herein. Each holder of a Class A Unit is entitled to one vote per Unit on all matters to come before the Members.
- 2.1.2 Class B Units: Class B Units issued by the Company are non-voting Units with the following rights and preferences:
  - (B) Class B Units will have the liquidation preference provided in Section 11.3.
  - (C) Class B Units are entitled to Preferred Distributions with respect to all outstanding Class B Units as provided in Section 3.5.1 and Section 3.5.2.

**Section 2.2 Membership Interests and Member Authority as to Additional Membership Interests.** The names of the initial Members are reflected on Schedule 1, which is attached hereto and incorporated herein by reference. No additional contributions shall be accepted and Membership Units issued without the consent of more than fifty percent of the outstanding Voting Interests.

**Section 2.3 Additional Capital Contributions.** No Member shall have any obligation to make additional capital contributions to the Company or to fund, advance, or loan monies which may be necessary to pay deficits, if any, incurred by the Company during the term hereof. Members may make loans to the Company from time to time, as authorized by the consent of more than 50% of the outstanding Voting Interest. Any payment or transfer accepted by the Company from a Member which is not a capital contribution complying with Section 2.2 shall be deemed a loan and shall neither be treated as a contribution to the capital of the Company for any purpose hereunder, nor entitle such Member (as such) to any increase in such Member's Percentage Interest. Any such loan shall be repaid at such times and with such interest (at rates not to exceed the maximum permitted by law) as the Members and the lending Member shall reasonably agree.

**Section 2.4 Statement of Membership Interest.** The Company will not issue any certificates of Membership Interests. However, at the request of any Member, the Company shall state in writing the particular Membership Interest owned by that Member as of the moment the Company makes the statement. The statement must describe the Member's right to vote, to share in profits and losses, and to share in distributions, as well as any assignment of the Member's rights then in effect.

### Article 3. Profits, Losses, and Distributions

**Section 3.1 Allocation of Net Income and Net Losses.** Net Income and Net Losses shall be allocated among the Members as follows:

- 3.1.1 Net Losses will be allocated annually to those Class A and Class B Members with positive capital accounts in such proportion as the balance of each member's Capital Account bears to the total balance of all such Members' Capital Accounts.
- 3.1.2 Net Income will be allocated first to the Class B Members to the extent of their rights to Preferred Distributions (as defined below), with the balance, if any, allocated among the Class A Members based on their Percentage Interests.

**Section 3.2 Special Allocations.** The following special allocations shall be made in the following order:

- 3.2.1 Minimum Gain Chargeback. Notwithstanding any other provision in this Article 3, if there is a net decrease in "partnership minimum gain", as defined in Treas. Reg. Section 1.704-2(d), during any fiscal year of the Company, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Member's share of the net decrease in partnership minimum gain, determined in accordance with Treas. Reg. Section 1.704-2(g)(2), that is allocable to the disposition of Company property subject to "nonrecourse liabilities", as such term is defined in Treas. Reg. Section 1.752-1(a)(2). Allocations pursuant to the foregoing sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be allocated under this Section 3.2.1 shall be determined in accordance with Treas. Reg. Section 1.704-2(j)(2). This Section 3.2.1 is intended to comply with the minimum gain chargeback requirement in such regulation and shall be interpreted and applied consistently therewith.

To the extent permitted by such regulation and for purposes of this Section 3.2.1 only, each Member's deficit capital account balance, as adjusted, shall be determined prior to any other allocations pursuant to this Article 3 with respect to such fiscal year and without regard to any net decrease in partnership minimum gain during such year.

- 3.2.2 Qualified Income Offset. Notwithstanding anything in this Article 3 to the contrary, if a Member unexpectedly receives an adjustment, allocation or distribution described in Treas. Reg. Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and such unexpected adjustment, allocation or distribution puts such Member's capital account into a deficit balance or increases such deficit balance determined after adjusting such account for all other allocations tentatively made pursuant to this Article 3 as if this Section 3.2.2 were not in this Agreement, such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit or increase as quickly as possible. It is intended that this Section 3.2.2 shall meet the requirement that this Agreement contains a "qualified income offset", as defined in Treas. Reg. Section 1.704-1(b)(2)(ii)(d), and this Section 3.2.2 shall be interpreted and applied consistent therewith.
- 3.2.3 Gross Income Allocation. In the event any Member has a deficit capital account at the end of any fiscal year that is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treas. Reg. Sections 1.704-2(g)(i) and Section 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 3.2.3 shall be made only if and to the extent that such Member would have a deficit capital account in excess of such sum after all other allocations provided for in this have been made as if Section 3.2.2 and this Section 3.2.3 were not in the Agreement.
- 3.2.4 Nonrecourse Deductions. Nonrecourse deductions, as defined in Treas. Reg. Section 1.704-2(b), for any fiscal year shall be allocated to the Members in accordance with Section Section 3.1.
- 3.2.5 Partner Nonrecourse Deductions. Any "partner nonrecourse deductions", as defined below, for any fiscal year or other periods shall be specially allocated to the Member who bears the economic risk of loss with respect to the "partner nonrecourse debt", as defined below, to which such partner nonrecourse deductions are attributable in accordance with Treas. Reg. Section 1.704.2(i). For purposes of this Agreement, the term "partner nonrecourse deductions" shall have the meaning set forth in Treas. Reg. Section 1.704-2(i)(2), and the term "partner nonrecourse debt" shall have the meaning set forth in Treas. Reg. Section 1.704-2(b)(4). The amount of partner nonrecourse deductions with respect to a partner nonrecourse debt for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of partnership *minimum gain* attributable to such partner nonrecourse debt during such fiscal year over the aggregate amount of the proceeds of the liability distributed during that fiscal year to the Member that bears the economic risk of loss for such partner nonrecourse debt.

**Section 3.3 Curative Allocations.** The allocations set forth in Sections 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5 (collectively, the "Regulatory Allocations") are intended to comply with certain requirements of Treas. Reg. Section 1.704-1(b). Notwithstanding any other provision of this Article 3 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction, and credit among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. Notwithstanding the preceding sentence, Regulatory Allocations relating to nonrecourse deductions pursuant to Section 3.2.5 shall not be taken into account except to the extent that there has been a reduction in partnership minimum gain.

**Section 3.4 Tax Distributions.** To the extent legally permitted, the Members will, by April 15 of each year, distribute cash to each of the Members in an amount equal to their Estimated Member Tax Liability (as defined in Section 1.1) for the prior year, unless otherwise agreed by the vote of 60% of the Governors. Such distribution may be made on a quarterly basis if approved by 60% of the Governors. In the event that the Company does not distribute cash equal to the entire Estimated Member Tax Liability of all Members, the amount distributed shall be allocated prorata to the Members based on their percentage of the overall Estimated Tax Liability for all Members.

**Section 3.5 Operating Distributions.** Except as otherwise provided in this Agreement, Distributable Cash Flow, if any, remaining after distributions under Section 3.3 and Section 3.4 (such remaining Distributable Cash Flow being a "Distributable Amount"), may be distributed to the Members at such times as the Members may determine as follows:

- 3.5.1 First, one hundred percent (100%) of any Distributable Amount shall be distributed to holders of Class B Units at the rate of \$1,200 per year for each Class B Unit less the sum of all tax distributions made in connection with each Class B Unit pursuant to Section 3.4 ("Preferred Distributions"), and plus any unpaid Preferred Distributions for all previous years. Unpaid Preferred Distributions will not accrue interest or other charges. Preferred Distributions are cumulative, and must be paid or reserved for the current year and paid for all previous years before any ordinary distributions (exclusive of tax distributions as provided in Section 3.4) are made to other members with respect to membership units which are not Class B Units.
- 3.5.2 Second, to the extent there are outstanding Class B Units, any remaining Distributable Amount shall be distributed to the holders of Class B Units in redemption of such Class B Units for an amount equal to \$10,000.00 per unit.
- 3.5.3 After holders of the Class B Units have been paid any unpaid Preferred Distributions for all previous calendar years and the Preferred Distributions payable for the current calendar year as required by 3.5.1, and all Class B Units have been redeemed pursuant to Section 3.5.1, up to one hundred percent (100%) of the remaining

Distributable Amount may be made to holders of Class A Units proportionate to their respective Percentage Interests in the Company.

#### **Article 4. Governance**

**Section 4.1 Member Control.** The Members of the Company shall serve as its Board of Governors, with all the rights, duties, and obligations accorded to the Board of Governors by law and this Operating and Member Control Agreement. Members shall vote on all matters that come before them in accordance with the Voting Interest in the Company.

**Section 4.2 Place of Meetings.** Each meeting of the Members shall be held at the principal executive office of the Company or at such other place as may be designated by the Members or the President; provided, however, that any meeting called by or at the demand of a Member or Members shall be held in the county where the principal executive office of the Company is located.

**Section 4.3 Regular Meetings.** Regular meetings of the Members may be held on an annual or other less frequent basis as determined by the Members; provided, however, that if a regular meeting has not been held during the immediately preceding 15 months, a Member or Members owning three percent or more of the voting power of all Membership Interests entitled to vote may demand a regular meeting of Members by written demand given to the President or Treasurer of the Company. At each regular meeting the Members entitled to vote shall elect qualified successors for Managers who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting and may transact any other business; provided, however, that no business with respect to which special notice is required by law shall be transacted unless such notice shall have been given.

**Section 4.4 Special Meetings.** A special meeting of the Members may be called for any purpose or purposes at any time by the President; by the Treasurer; by two or more Members; or by one or more Members owning not less than ten percent of the voting power of all Membership Interests of the Company entitled to vote, who shall demand such special meeting by written notice given to the President or the Treasurer of the Company specifying the purposes of such meeting.

**Section 4.5 Meetings Held Upon Member Demand.** Within 30 days after receipt of a demand by the President or the Treasurer from any Member or Members entitled to call a meeting of the Members, it shall be the duty of the Members of the Company to cause a special or regular meeting of Members, as the case may be, to be duly called and held on notice no later than 90 days after receipt of such demand. If the Members fail to cause such a meeting to be called and held as required by this Section, the Member or Members making the demand may call the meeting by giving notice as provided in Section 4.7 hereof at the expense of the Company.

**Section 4.6 Adjournments.** Any meeting of the Members may be adjourned from time to time to another date, time and place. If any meeting of the Members is so adjourned, no notice as

to such adjourned meeting need be given if the date, time and place at which the meeting will be reconvened are announced at the time of adjournment.

**Section 4.7 Notice of Meetings.** Unless otherwise required by law, written notice of each meeting of the Members, stating the date, time and place and, in the case of a special meeting, the purpose or purposes, shall be given at least ten days and not more than 60 days prior to the meeting to every owner of Membership Interests entitled to vote at such meeting except as specified in Section 4.8 or as otherwise permitted by law. The business transacted at a special meeting of Members is limited to the purposes stated in the notice of the meeting.

**Section 4.8 Waiver of Notice.** A Member may waive notice of the date, time, place and purpose or purposes of a meeting of Members. A waiver of notice by a Member entitled to notice is effective whether given before, at or after the meeting, and whether given in writing, orally or by attendance. Attendance by a Member at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

**Section 4.9 Voting Rights.** A Member shall have voting power in proportion to the Member's Voting Interest. Each organization which is a member in the Company must authorize one or more persons to vote the interest of the member in the Company. If more than one is designated, either, but not both, of the persons so designated will be entitled to attend and to vote the entire interest of the member. If any member that is an organization fails to make the designation required by this provision:

- 4.9.1 If the membership interests in the Company is owned by a domestic or foreign partnership or limited partnership, the interest must be voted as a block by any general partner.
- 4.9.2 Membership interests held by any other organization must be voted as a block by the president, vice-president, or another legal representative of any other organization.

**Section 4.10 Proxies.** A Member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the Company at or before the meeting at which the appointment is to be effective. The Member may sign or authorize the written appointment by telegram, cablegram or other means of electronic transmission setting forth or submitted with information sufficient to determine that the Member authorized such transmission. Any copy, facsimile, telecommunication or other reproduction of the original of either the writing or transmission may be used in lieu of the original, provided that it is a complete and legible reproduction of the entire original.

**Section 4.11 Quorum.** The owners of a majority of the voting power of the Membership Interests entitled to vote at a meeting of the Members are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the Articles of Organization of the Company or this Operating and Member Control Agreement. If a quorum is present when a duly called or held meeting is convened, the Members present may continue to transact business until adjournment, even though the withdrawal of Members originally present leaves less than the proportion otherwise required for a quorum.

**Section 4.12 Acts of Members.** Except as otherwise required by law or specified in the Articles of Organization of the Company or this agreement, the Members shall take action by the affirmative vote of the owners of a majority of the Voting Interest present and entitled to vote on that item of business.

**Section 4.13 Action Without a Meeting.** Any action may be taken by written action signed by the Members who own voting power equal to the voting power that would be required to take the same action at a meeting of the Members at which all Members were present. The written action is effective when signed by the required Members, unless a different effective time is provided in the written action. When written action is permitted to be taken by less than all Members, all Members shall be notified immediately of its text and effective date.

**Section 4.14 Committees.**

4.14.1 A resolution approved by the affirmative vote of a majority of the Members may establish committees having the authority of the Members in the management of the business of the Company only to the extent provided in the resolution. Committees shall be subject at all times to the direction and control of the Members, except as provided in Section 4.15.

4.14.2 A committee shall consist of one or more natural persons, who need not be Members, appointed by affirmative vote of a majority of the Members present at a duly held Member meeting.

4.14.3 Section 4.3 and Sections 4.5 to 4.13 hereof shall apply to committees and members of committees to the same extent as those sections apply to the Members.

4.14.4 Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any Member.

**Section 4.15 Special Litigation Committee.** Pursuant to the procedure set forth in Section 4.14, the Members may establish a committee composed of one or more independent Members or other independent persons to determine whether it is in the best interests of the Company to pursue a particular legal right or remedy of the Company and whether to cause, to the extent permitted by law, the dismissal or discontinuance of a particular proceeding that seeks to assert a right or remedy

on behalf of the Company. The committee, once established, is not subject to the direction or control of, or termination by, the Members. A vacancy on the committee may be filled by a majority vote of the remaining committee members. The good faith determinations of the committee are binding upon the Company and its Managers and Members to the extent permitted by law. The committee terminates when it issues a written report of its determinations to the Members.

## **Article 5. Managers**

**Section 5.1 Number and Designation.** The Company shall have one or more natural persons exercising the functions of the position of President and Treasurer. The Members may elect or appoint such other managers or agents as it deems necessary for the operation and management of the Company, with such powers, rights, duties and responsibilities as may be determined by the Members, each of whom shall have the powers, rights, duties and responsibilities set forth in this Operating and Member Control Agreement unless otherwise determined by the Members. Any of the positions or functions of those positions may be held by the same person.

**Section 5.2 President.** Unless provided otherwise by a resolution adopted by the Members, the President shall have general active management of the business of the Company; shall, when present, preside at all meetings of the Members; shall see that all orders and resolutions of the Members are carried into effect; may maintain records of and certify proceedings of the Members; and shall perform such other duties as may from time to time be prescribed by the Members.

**Section 5.3 Treasurer.** Unless provided otherwise by a resolution adopted by the Members, the Treasurer shall keep accurate financial records for the Company; shall deposit all monies, drafts and checks in the name of and to the credit of the Company in such banks and depositories as the Members shall designate from time to time; shall endorse for deposit all notes, checks and drafts received by the Company as ordered by the Members, making proper vouchers therefor; shall disburse company funds and issue checks and drafts in the name of the Company, as ordered by the Members; shall render to the President and the Members, whenever requested, an account of all of such manager's transactions as Treasurer and of the financial condition of the Company; and shall perform such other duties as may be prescribed by the Members or the President from time to time.

**Section 5.4 Vice Presidents.** Any one or more Vice Presidents, if any, may be designated by the Members as Executive Vice Presidents or Senior Vice Presidents. During the absence or disability of the President, it shall be the duty of the highest ranking Executive Vice President, and, in the absence of any such Vice President, it shall be the duty of the highest ranking Senior Vice President or other Vice President, who shall be present at the time and able to act, to perform the duties of the President. The determination of who is the highest ranking of two or more persons holding the same position shall, in the absence of specific designation of order of rank by the Members, be made on the basis of the earliest date of appointment or election, or, in the event of simultaneous appointment or election, on the basis of the longest continuous employment by the Company.

**Section 5.5 Secretary.** The Secretary, unless otherwise determined by the Members, shall attend all meetings of the Members, shall record or cause to be recorded all proceedings thereof in a book to be kept for that purpose, and may certify such proceedings. Except as otherwise required or permitted by law or by this Operating Agreement, the Secretary shall give or cause to be given notice of all meetings of the Members.

**Section 5.6 Authority and Duties.** In addition to the foregoing authority and duties, all managers of the Company shall respectively have such authority and perform such duties in the management of the business of the Company as may be designated from time to time by the Members. Unless prohibited by a resolution approved by the affirmative vote of a majority of the Members present, a manager elected or appointed by the Members may, without the approval of the Members, delegate some or all of the duties and powers of a position to other persons.

**Section 5.7 Term.**

5.7.1 All managers of the Company shall hold office until their respective successors are chosen and have qualified or until their earlier death, resignation or removal.

5.7.2 A manager may resign at any time by giving written notice to the Company. The resignation is effective without acceptance when the notice is given to the Company, unless a later effective date is specified in the notice.

5.7.3 A manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the Members present at a duly held Member meeting, subject to the provisions of this Operating and Member Control Agreement.

5.7.4 A vacancy in a position because of death, resignation, removal, disqualification or other cause may, or in the case of a vacancy in the position of President or Treasurer shall, be filled for the unexpired portion of the term by the Members.

**Section 5.8 Salaries.** The salaries of all managers of the Company shall be fixed by the Members or by the President if authorized by the Members.

**Article 6. Tax Matters**

**Section 6.1 Tax Characterization and Returns.** The Members acknowledge that the Company will be treated as a "partnership" for tax purposes. Within 90 days after the end of each fiscal year, the President will cause to be delivered to each person who was a Member at any time during such fiscal year a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of such Member's federal or state income tax (or

information) returns, including a statement showing each Member's share of income, gain, or loss and credits for such fiscal year for federal or state income tax purposes.

**Section 6.2 Capital Accounts.** A Capital Account shall be established for each Member and shall be maintained in accordance with Treasury Regulation §1.704-1(b). Any Member who shall receive any Membership Interest in the Company or whose Membership Interest shall be increased by means of the transfer to such Member of any financial interest in the Company from another Member shall have a Capital Account that has been appropriately adjusted to reflect such transfer. No interest shall be paid by the Company on capital contributions or on balances in Members' Capital Accounts.

**Section 6.3 Accounting Decisions.** All decisions as to accounting matters shall be made by the Members in its sole discretion. The Company, at the sole discretion of the Members, also may make or revoke such elections as may be allowed pursuant to the Code, including the election referred to in Section 754 of the Code to adjust the basis of Company property.

**Section 6.4 Tax Matters Partner.** The Members shall designate a Member to act on behalf of the Company as the "tax matters partner" within the meaning of Section 6231(a)(7) of the Code.

#### **Article 7. Transfers of Interests**

**Section 7.1 Restrictions on Assignments.** No Member shall have the right to sell, encumber, transfer or assign all or any portion of its interest in the Company except as provided in this Article 7.

**Section 7.2. Right of First Refusal.** Subject to the other provisions of this Article 7, no party hereto shall sell, exchange, transfer, assign, donate, or otherwise dispose of a Membership Interest now or hereafter owned by him, to any person, unless such party shall have first delivered to the other parties and to the Company written notice stating: (a) that such selling party has received a bona fide offer from a responsible prospective purchaser (hereinafter called the "Offeror") to purchase all of or a portion of the Membership Interest owned by such selling party and to assume the obligations of such selling party under this Agreement with regard to the Membership Interest to be sold; (b) the name and address of the Offeror making such offer; (c) the Membership Interest which the selling party desires to sell; (d) the price currently being offered to the selling party by the Offeror, including all terms of such offer; and (e) the proposed closing date of the transaction. Any such written notice stating a closing date less than sixty (60) days after the date of delivery of the notice to the Company shall be null and void and of no effect.

7.2.1 The Company shall have the right to purchase all or a part of the offered Membership Interest by serving written notice upon the selling party within thirty (30) days after receipt of the notice from the selling party. In the event the Company elects to purchase the offered Membership Interest, the selling party shall sell such Membership Interest to the Company at the price and upon the terms set forth in said

offer. The selling party shall not vote at the Members meeting on the question of the exercise or non-exercise of the aforesaid right of the Company to purchase; however, if the Company elects to exercise the option, the selling party shall then vote to take any other action necessary in order to effectuate the election. If the Company elects not to purchase all the Membership Interest offered for sale by the selling party, it shall promptly notify all parties to this Agreement, in writing, of its decision.

7.2.2 In the event that the Company does not elect to purchase all of the Membership Interest offered, the other Members shall have the right, within twenty (20) days of the date of the notice of non-election by the Company, to elect to purchase the remaining shares offered for sale. Such election shall be made in writing delivered to the selling party and the Secretary of the Company specifying the percentage of the Membership Interest purchasing Member agrees to purchase. The selling party shall sell such Membership Interest to the other Members at the price and upon the terms set forth in said offer.

7.2.3 If the total Membership Interest specified in the elections by the Members exceeds the available Membership Interest, each Member shall have priority, up to the percentage Membership Interest specified in its notice of election to purchase, to such proportion of the Membership Interest the purchasing Member holds bears to the total Membership Interest in the Company held by all Members electing to purchase. Any Membership Interest not purchased on such a priority basis shall be allocated in one or more successive allocations to those Members electing to purchase more of a Membership Interest to which they have a priority right, up to the number percentage Membership Interest specified in their respective notices, in the proportion that the Membership Interest held by each of them bears to the Membership Interest held by all of them.

7.2.4 Within five (5) days after the end of the twenty (20) day period during which a Member can elect to purchase a Membership Interest not purchased by the Company, the Secretary of the Company shall notify each Member of the Membership Interest as to which its election was effective.

7.2.5 Closing of the sale of the Membership Interest to the Company or to the other Members, as aforesaid, shall be held at the principal office of the Company not later than ninety (90) days after receipt of notice from the selling Member by the other Members and the Company or the proposed closing date provided under Section 7.2 hereof, whichever is later, and such sale shall be made at such price and upon such terms, including terms of payment (other than the time of closing as hereinbefore provided), as were offered by the particular Offeror.

7.2.6 In the event that the other Members and the Company do not purchase all, and not less than all, of the offered Membership Interest, the selling party may, within a

period of one hundred twenty (120) days from the date written notice of the proposed sale was first delivered to the Company and the other parties, sell to the Offeror the Membership Interest to which such offer related at a price not less than the price stated in the aforementioned notice of the selling party and upon the terms, including terms of payment, stated therein; provided, however, that before such sale shall be consummated, the Offeror shall have executed and delivered to the other party an undertaking to the effect that the Offeror and the Membership Interest held by the Offeror shall be bound by the terms of this Agreement to the same extent as if the Offeror had been an original party hereto. If such Membership Interest is not so sold to the Offeror within such period of one hundred twenty (120) days, said Membership Interest shall again become subject to the right of first refusal of the Company and other Members.

**Section 7.3 Other Authorized Transfers.** Notwithstanding anything in this Agreement to the contrary, a Member may transfer all or any portion of its Membership Interest in the Company only under the following circumstances:

7.3.1 A Member may pledge or encumber the Member's financial rights in the Company as security for a loan provided that any transfer of ownership rights to the lender as a result of foreclosure, whether by action, notice, self-help or otherwise, or transfer in lieu thereof (a "Foreclosure") shall constitute a default under Article 8, and give rise to an option to purchase the foreclosed interest as provided in said Article 8.

7.3.2 A Member may Transfer its Membership Interest upon receipt of unanimous written consent of the Members.

**Section 7.4 Unauthorized Transfer.** If a Member transfers the Member's Membership Interest in violation of this agreement, the Transfer shall not cause the dissociation of the Company, or a dissolution and winding up of the Company business, but thereafter, neither the Member nor the transferee shall be entitled to exercise any governance rights. If a transferee is excluded from exercising governance rights, the transferee's Membership Interest shall not be included for the purpose of determining votes required for Company matters, but shall be included for the purpose of allocating profits and losses of the Company and all Company distributions.

In addition to the foregoing, if a Transfer is made in violation of this agreement, the Company may, at any time the Ownership Default continues to exist, elect to treat such failure as an offer to sell all of the Membership Interest owned by a non-compliant Member in accordance with the terms of Article 8 at the price and terms set forth in Article 9 and Article 10 of the date of such Company election. Said election shall be made by a vote of a majority in interest of all of the Members, exclusive of the interest of the non-compliant Member who shall have no vote. If the Company votes to treat an Ownership Default as an offer to sell under this provision, the right of the

other Members to purchase the Membership Interest of the non-compliant Member will not be affected by the non-compliant Member's subsequent cure of the Ownership Default.

**Section 7.5 Obligations of Newly Admitted Member.** Any party who acquires an interest of a Member who is not already a Member, shall be required to execute an undertaking to the effect that such party and the Company units held by such party shall be bound by the terms of this agreement, to the same extent as if the said Member had been an original party thereto.

## **Article 8. Option to Acquire Interest of Member**

**Section 8.1. Option Triggering Events.** If (a) a Member should become bankrupt, insolvent or file any debtor proceedings, including a proceedings in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or a trustee of all or a portion of the Member's property; (b) a Member makes an assignment for the benefit of creditors or petitions for or enters into an arrangement or suffers the shares to be taken under any writ of execution; (c) a Member acquires an ownership interest in, becomes employed by, contracts with, or otherwise, or participates or engages in any business in competition with that operated by the Company (except for other related entities owned by the Members); (d) any lienholder obtains title to a Membership Interest through foreclosure, or exercise any assignment of income or other distributions in connection therewith which is not released within 30 days; (e) it should be unlawful to carry on business with a Member; (f) a Member's interest should be subjected to a "charging order" which is not released within 30 days after notice by the Company; (g) a Member's interest is to be transferred as the result of an order of a court and which the Company is required by law to recognize; (h) in the event of a Member election pursuant to Section 7.4 following an unauthorized transfer; (i) or if any other event should occur that, were it not for the provisions of this Agreement, would cause the Member's Membership Interest in the Company or any part of its interest to be sold, assigned, or otherwise transferred, voluntarily or involuntarily, under circumstances that would not be pursuant to Article 7 of this Agreement, then the Company (and thereafter the remaining Members) shall have the option to purchase all or any part of the Membership Interest owned by the Member.

**Section 8.2. Exercise of Option.** The rights hereunder shall be exercisable first by the Company and thereafter by the remaining Members with the method of exercise the same as the Right of First refusal set forth in Section 7.2 except that for option to purchase shall be for the price provided in Article 9 and on such payment terms as are set forth in Article 10.

**Section 8.3. Closing.** The Closing of the sale of the affected Member's Membership Interest to the Company or to the other Members, as aforesaid, shall be held at the principal office of the Company not later than four (4) months after the initial receipt of actual notice of the triggering event.

**Section 8.4. Failure to Exercise Option.** In the event this option is not exercised as to the entire Membership Interest owned by the Member, the option granted by this Article 8 shall not

apply, and the Member or its successor in interest may continue to hold the Membership Interest subject to the provisions of this Agreement.

**Section 8.5 Voting of Interests Subject to Option.** Neither the transferee nor assignee of an unauthorized transfer or assignment or the Member whose interest is subject to the option provided under this provision will have the right to vote on Company matters during the prescribed option period or, if the option to purchase is timely exercised, until the sale is closed, and such parties' vote will not be considered in determining the existence of a majority.

## **Article 9. Valuation of Membership Interest**

**Section 9.1 Price.** The price payable for the Membership Interest of a Member to be acquired under Article 8 or pursuant to any other provision of this agreement shall be determined as follows:

- 9.1.1 Each Class B Unit shall be valued at \$10,000 plus any unpaid Preferred Distributions for all previous calendar years and the Preferred Distributions payable for the current calendar year as required by 3.5.1.
- 9.1.2. For Class A Units, by multiplying the sum of the (a) the Agreed Value as determined under Section 9.2 less (b) the value of the Class B Units determined under Section 9.1.2 by Percentage Interest acquired.

**Section 9.2 Agreed Value.** The initial Agreed Value of the Company is \$10,000. At the annual Member's meeting of each year hereafter the Members shall review the Company's financial condition as of the end of the preceding fiscal year and shall endeavor to determine by mutual agreement the Company's fair market value, which, if agreed on, shall be the Company's value until a different value is agreed on or otherwise established under the provisions of this Agreement. If the Members are able to reach mutual agreement, they shall evidence it by placing their written and executed agreement in the minute book of the Company.

9.2.1 If the Members have not by mutual agreement arrived at an Agreed Value within eighteen months (18) months of the event requiring determination of value, the value of a selling Member's Membership Interest shall be agreed upon by the selling Members or its successor in interest and the remaining Members. If they do not mutually agree on a value within thirty (30) days after the date of the event requiring the determination, the value of the selling Member's interest shall be determined by arbitration as follows: The remaining Members and the selling Member or its successor in interest shall each name an arbitrator. If the two (2) arbitrators cannot agree on a value within thirty (30) days of appointment, they shall appoint a third, and the decision of the majority, to be rendered within thirty (30) days of the appointment of the third, shall be binding on all parties. Arbitration shall

be in accordance with the rules of the American Arbitration Association as such rules may be in effect at the time of arbitration

**Section 9.3 Nonrecognition of an Unauthorized Transfer.** The Company will not be required to recognize the interest of any Assignee or transferee who has obtained a purported Membership Interest as the result of a transfer or assignment which is not authorized by this Agreement. If there is a doubt as to ownership of a Membership Interest or who is entitled to distributable cash or liquidating proceeds, the Member may accumulate distributable cash or liquidation proceeds until the issue is resolved to the satisfaction of the Member.

**Section 9.4 No Other Payments to the Separated Members; Right of Offset.** The purchase price for a separated Member's interest in the capital, income, profits and assets of the Company as determined in and paid pursuant to this provision shall be the only compensation or payment to which such Member shall be entitled for the separated Member's interest. If the separated Member shall owe the Company any sums, including damages resulting from any wrongful withdrawal, the Company may make an offsetting credit against the first sums otherwise due the separated Member.

**Section 9.5 Payments for Interest in Company.** The Members agree that payments to Members by the Company pursuant to Article 8 or any other provision of this agreement are in exchange for the interest of the selling Member to the extent provided in Internal Revenue Code Section 736(b).

**Section 9.6 Status of New Member.** In the event that the remaining Members do not purchase the interest of the withdrawing Member, the Member, trustee in bankruptcy, spouse, or other assignee shall become a Member in the Company but not entitled to exercise any management decisions in connection therewith unless otherwise agreed by the Company. Any further assignment of transfer of the Membership Interest by the withdrawing Member, trustee in bankruptcy, spouse, or assignee, shall be subject to the provisions of this agreement.

## **Article 10. Payment of Amount Due Members**

**Section 10.1 Payment.** The purchase price payable for Membership Interests acquired pursuant to Article 8 shall, at the election of the Company, be paid in full to the extent of any insurance proceeds, if any, and the balance in the form of:

10.1.1 Cash at closing in the amount by which twenty percent (20%) if the purchase price exceeds any insurance proceeds payable, if any; and

10.1.2 A secured promissory note providing for payment of principal in sixty equal monthly installments with interest on the unpaid balance at the Wall Street Journal Prime Rate as of the date the event giving rise to the purchase, with full privilege of prepayment of all or any part of the principal at any time without penalty or bonus.

The note shall provide that, in case of default, at the election of the holder, the entire sum of principal and interest will immediately be due and payable, and that the makers shall pay reasonable attorney's fees to the holder in the event suit is commenced because of default. The note shall be secured by a pledge of the Membership Interest being purchased in the transaction to which the note relates. The pledge holder shall be as agreed by the parties, and the pledge agreement shall contain such other terms and provisions as may be agreed. As long as no default occurs in payments on the note, the purchasers shall be entitled to vote the Membership Interest and to receive dividends thereon. The purchasers shall expressly waive demand, notice of default, the notice of sale, and shall consent to public or private sale of the shares in the event of default, in mass or in lots at the option of the pledge holder, and the seller shall have the right to purchase at the sale.

## **Article 11. Dissolution of Company**

**Section 11.1 Withdrawal.** Except as expressly provided in this agreement to the contrary, or as limited by applicable law, no change in the status of a Member resulting from the death, disability, bankruptcy or other event affecting a Member shall result in the disassociation of the Member from the Company or require the winding up of the Company.

**Section 11.2 Dissolution.** The Company shall be dissolved and its business wound up only upon the occurrence of any of the following events:

11.2.1 Upon the expiration of its period of existence;

11.2.2 Following the affirmative vote of 75 percent in interest of the Company;

11.2.3 Following the affirmative vote of a majority in interest in the Company following the sale of all or substantially all of the assets of the Company if the proceeds are not reinvested within three (3) months following sale.

**Section 11.3 Application of Company Assets After Dissolution.** In winding up the affairs of the Company and liquidating the Company, the Company assets shall be applied in the following order:

11.3.1 To the payment of all debts and liabilities of the Company owing to creditors other than Members, and to the payment of the expenses of liquidation;

11.3.2 To the payment of loans owed to Members;

11.3.3 To the payment of ordinary debts owing to the Members including accrued but unpaid salary but excluding amounts owed to the Members for capital and profits;

- 11.3.4 To the payment of all balances owed to deceased, withdrawn or former Members for the acquisition or retirement of their Membership Interests;
- 11.3.5 To the payment of any Preferred Distributions owed in connection with Class B Units of the Company.
- 11.3.6 To the Class B Members proportionately in an amount up to \$10,000 per Unit.
- 11.3.7 To the Class Members having positive Capital Accounts, in proportion to and to the extent of their respective Capital Accounts.
- 11.3.8 To the Class A Members in proportion to their Percentage Interest in the Company.

**Section 11.4 Reserves for Taxes and Contingent Liabilities.** Upon dissolution, the independent accountant for the Company shall estimate the amount of cash reserves necessary for the prompt payment of all taxes and of all estimated and contingent liabilities which may become due or mature after dissolution of the Company. Cash reserves in the amount so estimated shall be set aside and deposited in a separate bank account as determined by the Members. Final distribution to any of the Members shall not be made until such taxes and contingent liabilities have been paid in full.

**Section 11.5 Final Accounting.** The determination of the amount to be paid to any of the Members shall be determined by the Company's accountant, and such computation shall be final and binding upon all Members. Should any Member owe the Company any sums, the Company is authorized to make an offsetting credit from any amounts otherwise payable to such Member by the Company. Unless otherwise agreed, in the event of any winding up of the Company, the books and records of the Company shall be deposited with the accountants regularly employed by the Company and such books and records shall be retained for inspection and use by the Members for a period of not fewer than seventy-six (76) months following the termination of the Company.

## **Article 12. Indemnification**

**Section 12.1 Indemnification.** The Company shall indemnify its managers and Members, acting in their capacity as Governors, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as required or permitted by the North Dakota Limited Liability Company Act, as amended from time to time, or as required or permitted by other provisions of law.

**Section 12.2 Insurance.** The Company may purchase and maintain insurance on behalf of any person in such person's official capacity against any liability asserted against and incurred by such person in or arising from that capacity, whether or not the Company would otherwise be required to indemnify the person against the liability.

## Article 13. Amendments

**Section 13.1 Amendment of Agreement.** No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing signed by a majority of the Voting Interests.

## Article 14. Miscellaneous

**Section 14.1 Governing Law.** This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of North Dakota.

**Section 14.2 Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Members and their respective distributees, successors and assigns.

**Section 14.3 Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provisions had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid or enforceable.

**Section 14.4 Multiple Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged.

**Section 14.5 Additional Documents and Acts.** Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

**Section 14.6 No Third Party Beneficiary.** This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder and be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

**Section 14.7 Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service

if served personally on the party to whom notice is to be given, or within seventy-two (72) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed to the party at its address set forth in this Agreement, or any other address that the party has designated by written notice to the others as proper.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date set forth opposite their signatures.

Dated this 1st day of February, 2007.

**COMPANY**

THARALDSON ETHANOL PLANT I, LLC

By: *Matt Tom*  
Its: President

**MEMBERS**

THARALDSON ENERGY GROUP, LLC

By: *Gary Tharaldson*  
Its: President

EMANAGER, LLC

By: *Kyle Neuman*  
Its: President

SCHEDULE 1

THARALDSON ETHANOL PLANT I, LLC

| Name of Member               | Type of Units | Percentage Interest | Number of Units | Voting Interest |
|------------------------------|---------------|---------------------|-----------------|-----------------|
| Tharaldson Energy Group, LLC | Class A       | 95%                 | NA              | 95%             |
| EManager, LLC                | Class A       | 5%                  | NA              | 5%              |
| Tharaldson Energy Group, LLC | Class B       | 100%                |                 | 0%              |