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 McLEAN, VA 22102  
 PHONE 703.905.2800  
 FAX 703.905.2820

www.wileyrein.com

AOR 2011-10

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2011 MAY -6 PM 1:47

FEC MAIL CENTER

May 6, 2011

Michael E. Toner  
 202.719.7545  
 mtoner@wileyrein.com

**BY HAND DELIVERY**

Federal Election Commission  
 Office of the General Counsel  
 999 E Street, NW  
 Washington, DC 20463

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of POET, LLC, Sioux River Ethanol, LLC, d/b/a POET Biorefining – Hudson and POET PAC (collectively “POET Entities”), we respectfully request an advisory opinion from the Federal Election Commission (“FEC” or “Commission”) pursuant to 2 U.S.C. § 437f regarding the application of the Commission’s solicitation and disclaimer rules to proposed POET PAC fundraising activities.

In summary, the POET Entities wish to confirm that the Commission’s regulations permit POET PAC to raise funds from corn farmers through its proposed POET PAC Cultivator Club (“the Club”) as outlined in further detail below. The POET Entities wish to ensure that the proposed fundraising program complies with the Federal Election Campaign Act of 1971, as amended (“FECA” or “Act”). The POET Entities also request confirmation that POET LLC’s corn contract and terms and conditions document that is provided to corn farmers can be considered one document for purposes of FECA’s disclaimer requirements.

**FACTS**

**I. POET LLC and the JT Broin Trust**

POET LLC is the nation’s largest producer of ethanol. POET LLC was founded as Broin Companies, LLC in 2006 and was renamed POET LLC in 2007.<sup>1</sup> POET’s website can be found at www.poet.com.

POET LLC is a privately-held single-member limited liability company organized under the laws of South Dakota. POET LLC has not affirmatively elected treatment as

<sup>1</sup> Although POET is generally capitalized, it is not an acronym.

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 OFFICE OF GENERAL  
 COUNSEL

Federal Election Commission

May 6, 2011

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a corporation for tax purposes and is treated as a "disregarded entity" by the Internal Revenue Service ("IRS"). "[A] non-publicly traded LLC that does not affirmatively elect treatment for tax purposes as a corporation is treated by the Commission as a partnership." FEC Advisory Opinion 2004-42 (Pharanavite LLC) at 3 (citing 11 C.F.R. § 110.1(g)(2) and (3)). POET LLC's 2006 Articles of Organization and 2007 Amendment to its Articles of Organization are attached hereto as Exhibit 1.

POET LLC is 100% owned by the JT Broin Trust, a revocable South Dakota trust established by Jeff and Tami Broin for the benefit of the Broin family. POET LLC holds 100% ownership or majority ownership in several other entities, including POET Research, POET Plant Management, LLC, and POET Investments. A total of 27 ethanol production plants are part of the POET company family, which includes companies that are owned or partially owned, directly or indirectly, by Jeff Broin or the JT Broin Trust. Jeff Broin indirectly owns 100% of POET Research Center but does not own a majority of any POET Plant. Each POET plant is organized as a partnership under the laws of the state in which the plant is based.<sup>2</sup> A listing of the various POET plants is attached hereto as Exhibit 2.

Each POET plant purchases corn from corn farmers which is used to produce ethanol. Corn farmers may be individuals, partnerships, or LLCs electing either corporate or partnership treatment for tax purposes under the Internal Revenue Code. In total, approximately 30,000 farmers sell corn to POET's 27 plants. Of these farmers, approximately 10,000 are also POET investors.

## II. POET PAC

POET PAC registered with the FEC as a nonconnected committee on May 27, 2008. A copy of POET PAC's Statement of Organization is attached as Exhibit 3.<sup>3</sup> A copy of POET PAC's bylaws are attached as Exhibit 4.

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<sup>2</sup> The POET plants are located in Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and South Dakota.

<sup>3</sup> The Statement of Organization attached as Exhibit 3 is an amendment filed on March 27, 2009. POET PAC has not filed any other amendments to its Statement of Organization.



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May 6, 2011

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### **III. Proposed POET PAC Cultivator Club**

POET PAC has proposed a program that would allow corn farmers that are individuals, partnerships, or LLCs electing partnership tax status to make contributions to POET PAC subject to their annual \$5,000 contribution limit to POET PAC.<sup>4</sup> Under the proposed POET PAC Cultivator Club ("Club") fundraising program, the corn farmers would check off a box on their POET corn sales contracts if they wanted to make a voluntary contribution to POET PAC.<sup>5</sup> A corn contract with a proposed POET PAC contribution checkoff box is attached as Exhibit 5. The corn contracts vary in length from a couple of weeks to a year. POET PAC deductions would be made based on a farmer's election for each particular contract.<sup>6</sup>

Solicitation materials for the Club would include the disclaimers required by 11 C.F.R. § 110.11, 11 C.F.R. § 102.5(a)(2), and 11 C.F.R. § 104.7.<sup>7</sup> POET PAC would retain copies of corn contracts with the Club checkoff box for three years after POET PAC files FEC disclosure reports containing contributions from corn farmers designated through the Club as required by 11 C.F.R. § 102.9(c) and 11 C.F.R. § 104.14(b). Contributions received through the Club would be duly reported on POET PAC's FEC disclosure reports as required by 11 C.F.R. § 104.3(a). Contributions received from partnerships or LLCs electing partnership treatment would include the required partnership attribution information. See 11 C.F.R. § 110.1(e).

Under the proposed POET PAC fundraising program, contributions would be deducted on a per-bushel basis from funds due and owing to the corn farmers. Farmers that participated in the Club could choose to contribute a certain amount per bushel to POET PAC, including 1/4, 1/2, or one cent per bushel. Over the last year, the average corn farmer has sold 35,000 bushels of corn to POET. A 1/4 cent per bushel contribution to POET PAC from a corn farmer selling 35,000 bushels of corn would result in a total POET PAC contribution of \$87.50, while a 1/2 cent per bushel

<sup>4</sup> The vast majority of the corn farmers are individuals, partnerships, or LLCs electing partnership tax status. Approximately one percent of the corn farmers are LLCs electing corporate tax status.

<sup>5</sup> Farmers and individual POET plants are parties to the contracts.

<sup>6</sup> For example, if a farmer elected to participate in the program on one contract, but did not check off a box on a second contract, POET PAC funds would not be deducted from payments made pursuant to the second contract.

<sup>7</sup> On average, individual POET plants generate just over 300 corn contracts per month. However, some POET plants occasionally generate in excess of 500 contracts in a month. In order to ensure compliance with FECA's disclaimer requirements, POET PAC intends to include all disclaimers required for public communications even though some corn contracts will not qualify as public communications in certain months.



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contribution from a corn farmer selling the same amount of corn would result in a total contribution of \$175.00 to POET PAC. Contributions would be transferred from the POET plants to POET PAC on a weekly basis. Funds would be held in the POET plants' general bank accounts until transferred to the PAC. Under the proposed fundraising program, a farmer could modify or terminate deductions by providing a written amendment to the contract to the POET plant and modifying or terminating the deductions through a computer system that is used to administer the corn contracts.

To the best of the POET Entities' knowledge, none of the POET corn farmers are foreign nationals or federal government contractors. All Club solicitations would clearly indicate that contributions from foreign nationals, federal government contractors, and corporations are strictly prohibited. In administering the Club, the POET Entities would implement compliance safeguards to ensure that POET PAC did not accept any contributions from farmers that are LLCs that elect corporate tax treatment and that POET PAC did not accept any contributions from corn farmers in excess of \$5,000 per calendar year.<sup>8</sup> In addition, the POET Entities would ensure that no funds were transferred to POET PAC prior to payment from the POET plant to the farmers.

POET PAC would also pay in advance each POET plant and POET LLC the usual and normal charge for the costs of implementing and administering the Club in order to prevent receiving any excessive contributions from the POET plants and POET LLC. See 11 C.F.R. § 100.52(d).<sup>9</sup> These costs would be estimated based on staff compensation and the time involved in administering the fundraising program. POET PAC would make payments to the POET plants and POET LLC on a monthly basis. The POET plants propose a quarterly reconciliation of actual time to amounts paid and requests confirmation from the Commission that a quarterly reconciliation would be permissible.

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<sup>8</sup> POET PAC has historically used FECfile to prepare its FEC reports. POET PAC recently purchased software from Vocus, which will assist POET PAC compliance personnel in preventing the receipt of excessive contributions through the Club fundraising program if it is approved by the Commission.

<sup>9</sup> POET PAC payments to POET LLC would cover the cost of any POET LLC staff time spent ensuring that activities in connection with the Club comply with the Act and FEC regulations. POET PAC payments to POET plants would cover the cost of administering the Club, such as the cost of deducting funds from payments to corn producers and transferring the funds to POET PAC.



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### **QUESTIONS PRESENTED**

1. Is the POET PAC Cultivator Club permissible under the Act and Commission regulations?
2. Can POET PAC include required disclaimers on a separate "terms and conditions" page rather than on the page with the actual checkoff box for the POET PAC Cultivator Club?
3. Is a quarterly reconciliation of the actual staff time spent administering the POET PAC Cultivator Club by POET plant and POET LLC employees to the amounts paid in advance by POET PAC permissible?

### **DISCUSSION**

#### **I. POET PAC's Proposed Fundraising Program is Permissible Under FEC Regulations and Precedent**

FEC regulations and past Commission advisory opinions and enforcement cases do not directly address whether a fundraising program such as the one proposed by POET PAC would be permissible. FEC Advisory Opinion 1986-7 (American Crystal Sugar Company) addressed a checkoff program which is similar in some respects to POET PAC's proposed Club. In Advisory Opinion 1986-7, the Commission approved a proposal by the requestor, an incorporated agricultural cooperative, to collect contributions for the cooperative's PAC by deducting funds from payments that the cooperative made to its noncorporate shareholder growers and transferring the funds to the cooperative's PAC.

In concluding that the proposed PAC fundraising plan was permissible, the Commission stated that

[b]ecause the guideline contained in the combined solicitation and authorization form meets the requirements of 114.5(a), and because the deduction system applies to amounts that are due and payable by [the requestor] to the shareholders for their crops, the proposed contribution deduction method is permissible.

Advisory Opinion 1986-7 at 3. The Commission emphasized that "[t]here is no limitation on a cooperative's method of soliciting voluntary contributions or on its

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method facilitating the making of voluntary contributions.” Id. at 2. The FEC noted that

regardless of the number of preferred shares owned by an individual shareholder, a shareholder’s contributions to the political committee may not exceed the \$5,000 per year limit set forth at 2 U.S.C. 441a(a)(1)(C) and may not, when aggregated with the shareholder’s contributions to other political committees, exceed the \$25,000 per calendar year limit set forth at 2 U.S.C. 441a(a)(3).

Id. at 3.

The checkoff program addressed in Advisory Opinion 1986-7 was administered by an incorporated agricultural cooperative on behalf of its separate segregated fund, while POET LLC and the POET plants would administer the proposed fundraising program on behalf of POET PAC, which is a nonconnected committee. However, this distinction is not an impediment to determining that POET PAC’s proposed Club is permissible given that: (1) all contributions to POET PAC would be made out of funds due and owing to the corn farmers; (2) all contributing corn farmers would be individuals, partnerships, or LLCs electing partnership status; (3) no contributions would be accepted from foreign nationals, federal government contractors, or anyone else prohibited from contributing to POET PAC under the Act; (4) POET PAC would not accept more than \$5,000 per calendar year from each farmer; and (5) POET PAC would defray all of the costs associated with administering the fundraising program.

In light of the foregoing, the POET Entities request confirmation that the proposed fundraising program would be permissible under Commission regulations, provided that the compliance safeguards and procedures outlined above are followed.

**II. POET LLC’s “Terms and Conditions” and Contract Pages Should Be Considered One Document for POET PAC Solicitation Disclaimer Purposes**

The POET Entities also request guidance on the placement of required “paid for by” disclaimers, best efforts disclaimers, and federal election purpose disclaimers in connection with POET PAC solicitations made through the proposed fundraising

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May 6, 2011

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program.<sup>10</sup> The POET Entities seek guidance from the Commission on whether the required FEC disclaimers may be included on a "terms and conditions" page rather than on the page with the actual contribution checkoff box for the Club. A sample contract and a sample terms and conditions package is attached hereto as Exhibit 5.

FEC regulations require certain disclaimers on public communications and solicitations. Specifically, political committee mass mailings of more than 500 pieces of mail matter of an identical or substantially similar nature disseminated within a 30-day period must include a disclaimer. See 11 C.F.R. § 110.11(a). Specifically, such political committee communications must include the committee's "full name and permanent street address, telephone number or World Wide Web address...and [must indicate] that the communication is not authorized by any candidate or candidate's committee." 11 C.F.R. § 110.11(b)(3). FEC regulations require that this disclaimer be clear and conspicuous and appear in a printed box. See 11 C.F.R. § 110.11(c)(2).

Commission regulations also require the inclusion of additional disclaimers on communications that constitute solicitations. In order for a political committee such as POET PAC to accept and deposit undesignated contributions, the political committee must inform donors that their contributions will be used in connection with federal elections or that the contributions that are received are subject to the limits and prohibitions of the Act. See 11 C.F.R. § 102.5(a)(2)(ii). To satisfy the Commission's "best efforts" requirements, political committee solicitations also must include "a clear request for the contributor's full name, mailing address and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications." 11 C.F.R. § 104.7 (b)(1)(i).

Commission regulations provide that "a communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer." 11 C.F.R. § 110.11(c)(2)(v). In its 1995 Explanation and Justification for this regulation, the Commission stated that "[a]ll items intended for separate distribution (e.g., a campaign poster included in a mailing of campaign literature) are covered by this requirement." Explanation and Justification on Communications Disclaimer Requirements, 60 Fed. Reg. 52069, 52071 (Oct. 5, 1995).

However, Commission regulations further provide that a disclaimer "need not appear on the front or cover page of the communication as long as it appears within the communication..." 11 C.F.R. § 110.11(c)(2)(iv). In previous enforcement cases, the

<sup>10</sup> The POET Entities note that disclaimer requirements regarding the non-deductibility of political contributions are under the jurisdiction of the IRS rather than the FEC.

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Commission has used a number of factors to determine whether separate pieces may be considered one communication for purposes of the disclaimer requirements. For example, in MUR 5493 (Friends of Jeff Smith), the Commission identified the following reasons why materials disseminated together by a political committee should be considered separate communications for disclaimer purposes:

it is not clear that the flyers were physically attached to a disclaimer contained on the press packet. Second, even if, arguendo, they were, the distribution was in a manner and setting that makes it likely that the disclaimer could be separated from the flyers...Each flyer also appears to have been prepared as a stand alone document. These factors underline the separateness of the three communications and the need for individual disclaimers.

MUR 5493 First General Counsel's Report at 12.

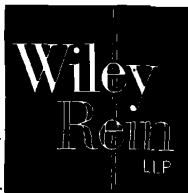
Unlike the materials that were at issue in MUR 5493, POET LLC's contract and terms and conditions package are not intended for separate distribution and are only provided to corn farmers together. The materials are printed together in a double-sided format, with the contract on the front and the terms and conditions on the back.<sup>11</sup> When a farmer signs a contract, the entire contract and terms and conditions package is returned, although the farmer may request a copy. No other documents are provided to corn producers at the time that the contract and terms and conditions package is distributed. POET LLC prepares these materials for distribution as one document. In light of the foregoing, the POET Entities request confirmation from the Commission that they may consider the contract and terms and condition package as one document and include the disclaimers required by FEC regulations only on the terms and conditions page.

The POET Entities also request confirmation from the Commission that the phrase "Administration costs and solicitations made on behalf of POET PAC are paid for by POET PAC" may be used as the required "paid for by" disclaimer under FEC regulations on the terms and conditions page. As was noted above, POET PAC will pay POET LLC and the POET plants the usual and normal charge for implementing and administering the POET PAC Cultivator Club. However, the usual and normal

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<sup>11</sup> The terms and conditions document and the purchase contract included as Exhibit 5 are each two pages. Accordingly, if the specific documents included as Exhibit 5 were provided to corn farmers, the first page of the terms and oonditions document and the first page of the purchase contract would be on two sides of the same page. The second page of the terms and conditions document and the second page of the purchase contract would also be on two sides of the same page.





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charge may not cover the full cost of producing the terms and conditions document as only a portion of the document pertains to POET PAC activity.

If the Commission determines that the phrase "Administration costs and solicitations made on behalf of POET PAC are paid for by POET PAC" should not be used as the appropriate disclaimer, the POET Entities request confirmation that the phrase "Paid for by POET PAC" may be used instead.

In sum, the POET Entities respectfully request an advisory opinion confirming the above.

Sincerely,

A handwritten signature in black ink that reads "Michael E. Toner".

Michael E. Toner

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**EXHIBIT 1**

343 5918 02/14/2006

Receipt Number: 1522496

File Number DL010701



**ARTICLES\_OF\_ORGANIZATION**

For

**BROIN COMPANIES, LLC**

Filed at the request of:

**WOODS FULLER SHULTZ & SMITH  
JAMES M WIEDERRICH  
PO Box 5027  
SIOUX FALLS SD 57117**

*State of South Dakota  
Office of the Secretary of State*

Filed in the office of the Secretary of State on: **Friday, February 10, 2006**

*Chi Nelson*

Secretary of State

Fee Received: \$125.00

343 5911 02/14/2006

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

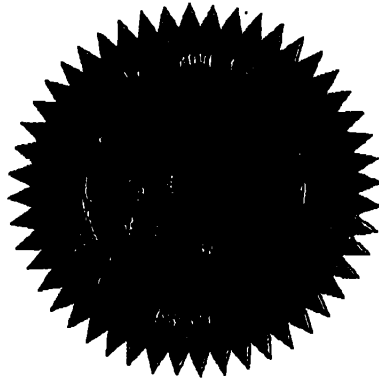
### Certificate of Organization Limited Liability Company

ORGANIZATIONAL ID #: DL010701

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **BROIN COMPANIES, LLC** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

**ACCORDINGLY** and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this February 10, 2006.



*Chris Nelson*

**Chris Nelson  
Secretary of State**

Cert of Organization LLC Merge

Printed in U.S.A.

© GOES 240  
All Rights Reserved

343 5912 02/14/2006

Filed this 10th day of Feb, 2006  
*Chris Nelson*  
SECRETARY OF STATE

ARTICLES OF ORGANIZATION  
OF  
BROIN COMPANIES, LLC

RECEIVED  
FEB 10 '06  
S.D. SEC. OF STATE

RECEIVED  
FEB 6 '06  
S.D. SEC. OF STATE

The undersigned individuals hereby form a limited liability company under the South Dakota Limited Liability Company Act, and adopt as Articles of Organization for such limited liability company, the following:

ARTICLE I

The name of the limited liability company is **Broin Companies, LLC** (the "Company").

ARTICLE II

The address of the initial designated office of the Company is 2209 East 57th Street North, Sioux Falls, South Dakota 57104.

ARTICLE III

The street address of the initial registered office of the Company is 2209 East 57th Street North, Sioux Falls, South Dakota 57104, and the name of its initial registered agent at such office is Dan Loveland.

ARTICLE IV

The name and address of the organizer is:

<u>Name</u>	<u>Address</u>
Jeff Broin	2209 East 57th Street North Sioux Falls, South Dakota 57104

ARTICLE V

The period of duration of the Company is perpetual.

*2010701*

ARTICLE VI

The day-to-day operations of the Company shall be subject initially to the control of its managers, as further provided in the Company's Operating Agreement. The initial managers shall be as follows:

Jeff Broin	2209 East 57th Street North Sioux Falls, South Dakota 57104
Rob Broin	2209 East 57th Street North Sioux Falls, South Dakota 57104
Todd Broin	2209 East 57th Street North Sioux Falls, South Dakota 57104
Jeff Lauth	2209 East 57th Street North Sioux Falls, South Dakota 57104
Dan Loveland	2209 East 57th Street North Sioux Falls, South Dakota 57104
Mike Muston	11321 Riverview Road Eden Prairie, Minnesota 55347

ARTICLE VII

The members shall not be liable for the debts and obligations of the limited liability company under Section 303(c) of the South Dakota Limited Liability Company Act.

Dated this 1<sup>st</sup> day of February, 2006.

  
Jeff Broin - Organizer

343 5914 02/14/2006

**LETTER OF CONSENT TO USE SIMILAR NAME**

The undersigned Officer of Broin and Associates, Inc. hereby grants consent to the use of the name of Broin Companies, LLC.

Dated this 8<sup>th</sup> day of February, 2006.

**BROIN AND ASSOCIATES, INC.**

By  \_\_\_\_\_  
Jeff Broin, Its President

350 6583 04/02/2007

Receipt Number: 1657845

File Number DL010701



**STATEMENT\_OF\_CHANGE**

For

**POET, LLC**

Filed at the request of:

**WOODS FULLER SHULTZ & SMITH P.C.  
DIANE C. BONERTZ  
PO BOX 5027  
SIOUX FALLS SD 57117**

*State of South Dakota  
Office of the Secretary of State*

Filed in the office of the Secretary of State on: **Friday, March 30, 2007**



Secretary of State

Fee Received: \$10



350 6584 04 02/2007

SECRETARY OF STATE  
STATE CAPITOL  
30 E. CAPITOL AVE.  
SIOUX FALLS, S.D. 57501  
73-4845

**LIMITED LIABILITY  
STATEMENT OF CHANGE OF REGISTERED OFFICE,  
OR REGISTERED AGENT, OR BOTH**  
FILING FEE: \$10

RECEIVED  
MAR 30 2007  
S.D. SEC. OF STATE

The undersigned Limited Liability Company submits the following statement for the purpose of changing its registered office and/or its registered agent in the state of South Dakota.

*Filed this 30th day of March 2007*  
*Ch. Nelson*  
SECRETARY OF STATE

- 1. The name of the limited liability company is POET, LLC
- 2. The previous address of its registered office is 2208 East 57th Street North  
Sioux Falls, SD ZIP 57104
- 3. The address to which the registered office is to be changed (including street address) is 4615 North Lewis Avenue  
Sioux Falls, SD ZIP 57104
- 4. The name of its previous registered agent is N/A
- 5. The name of its successor registered agent is \* N/A

\* The Consent of Registered Agent below must be completed by the new agent.

- 6. The address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- 7. This change was authorized by affirmative vote of a majority of the members of the limited liability company.

This statement shall be verified by one or more of its managers if manager-managed, or by any trustee if trustee-managed.

Date 3-14-07

*Jeff Broin*  
(Signature)  
Jeff Broin  
(Printed Name)  
President  
(Title)

**CONSENT OF APPOINTMENT BY THE REGISTERED AGENT**

I, N/A, hereby give my consent to serve as the  
(name of registered agent)

registered agent for N/A  
(limited liability company name)

Dated N/A \_\_\_\_\_  
(signature)

*d/10/07/07*

350 6585 04/02/2007

Receipt Number: \_\_\_\_\_

*1657845*

File Number DL010701



ARTICLES\_OF\_AMENDMENT

For

**BROIN COMPANIES, LLC changing its name to POET, LLC**

Filed at the request of:

**WOODS FULLER SHULTZ & SMITH P.C.  
DIANE C. BONERTZ  
PO BOX 5027  
SIOUX FALLS SD 57117**

*State of South Dakota  
Office of the Secretary of State*

Filed in the office of the Secretary of State on: **Friday, March 30, 2007**

*Chi Nelson*

Secretary of State

Fee Received: \$50

350 6586 04/02/2007

# State of South Dakota



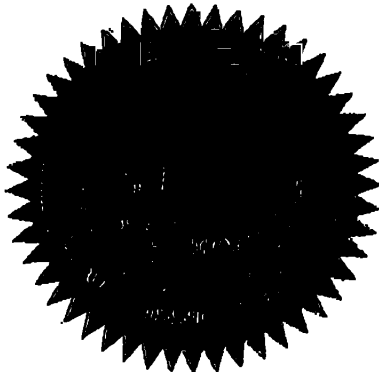
## OFFICE OF THE SECRETARY OF STATE Certificate of Amendment Limited Liability Company

ORGANIZATIONAL ID #: DL010701

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Articles of Amendment to the Articles of Organization of **BROIN COMPANIES, LLC** changing its name to **POET, LLC** duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Amendment to the Articles of Organization and attach hereto a duplicate of the Articles of Amendment.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this March 30, 2007.



*Chris Nelson*

**Chris Nelson**  
Secretary of State

350 6587 04/02/2007

SECRETARY OF STATE  
STATE CAPITOL  
500 E. CAPITOL AVE.  
PIERRE, S.D. 57501  
(605)773-4845  
FAX (605)773-4550

### AMENDED ARTICLES OF ORGANIZATION

RECEIVED  
MAR 30 2007  
S.D. SEC. OF STATE

FILING FEE: \$50

The Limited Liability Company named below, adopts the following Amended Articles of Organization pursuant to SDCL 47-24-604.

Filed this 30<sup>th</sup> day of March, 2007  
*Chris Nelson*  
SECRETARY OF STATE

1. The name of the limited liability company is: Broin Companies, LLC

2. The date of filing the articles of organization is February 10, 2008

3. The amendment to the articles is:

Article 1 of the Articles of Organization is hereby amended by striking the text, "Broin Companies, LLC" and replacing it with "POET, LLC".

The application must be signed by a member if the company is a member-managed company or by a manager if its a manager-managed company.

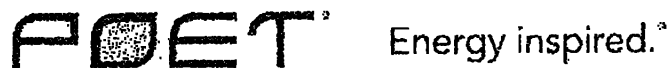
Date: 3-14-07

*Jeff Broin*  
Name and title Jeff Broin, Member

domesticllcamendmentarticles July 2005

d/1010701

## EXHIBIT 2



Home > Inspiration > Our Plants

[Who is POET?](#) | [Company Structure](#) | [Our Plants](#) | [Corporate Offices](#) | [For Investors](#) | [History](#) | [Careers](#) | [C](#)

## **POET Biorefining Plant**

### **Locations**

- > Alexandria, IN
- > Ashton, IA
- > Big Stone, SD
- > Bingham Lake, MN
- > Caro, MI
- > Chancellor, SD
- > Cloverdale, IN
- > Coon Rapids, IA
- > Corning, IA
- > Emmetsburg, IA
- > Fostoria, OH
- > Glenville, MN
- > Gowrie, IA
- > Groton, SD
- > Hanlontown, IA
- > Hudson, SD
- > Jewell, IA
- > Laddonia, MO
- > Lake Crystal, MN
- > Leipsic, OH
- > Macon, MO
- > Marion, OH
- > Mitchell, SD
- > North Manchester, IN
- > Poet Research Center
- > Portland, IN
- > Preston, MN

# EXHIBIT 3

FEC  
FORM 1

STATEMENT OF  
ORGANIZATION

RECEIVED  
FEC MAIL CENTER  
2009 MAR 27 P 12:25  
Office Use Only

1. NAME OF  
COMMITTEE (in full)

(Check if name  
is changed)

Example: If typing, type  
over the lines.

12FE4M5

POET PAC

ADDRESS (number and street)

4615 NORTH LEUIS AVENUE

(Check if address  
is changed)

SIOUX FALLS SD 57104

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

(Check if address  
is changed)

PAC@POETPAC.COM

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address  
is changed)

2. DATE

03 27 2009

3. FEC IDENTIFICATION NUMBER

C00450692

4. IS THIS STATEMENT

NEW (N)

OR

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

DAN LOVELAND

Signature of Treasurer

Date

03 25 2009

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office  
Use  
Only

For further information contact:  
Federal Election Commission  
Toll Free 800-424-9530  
Local 202-694-1100

FEC FORM 1  
(Revised 02/2009)

29030060789



5. TYPE OF COMMITTEE

Candidate Committee:

- (a)  This committee is a principal campaign committee. (Complete the candidate information below.)
- (b)  This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate \_\_\_\_\_

Candidate Party Affiliation \_\_\_\_\_ Office Sought: \_\_\_\_\_ House \_\_\_\_\_ Senate \_\_\_\_\_ President \_\_\_\_\_ State \_\_\_\_\_ District \_\_\_\_\_

- (c)  This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate \_\_\_\_\_

Party Committee:

- (d)  This committee is a \_\_\_\_\_ (National, State or subordinate) committee of the \_\_\_\_\_ (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e)  This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:

Corporation  Corporation w/o Capital Stock  Labor Organization

Membership Organization  Trade Association  Cooperative

In addition, this committee is a Lobbyist/Registrant PAC.

- (f)  This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)

In addition, this committee is a Lobbyist/Registrant PAC.

In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g)  This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h)  This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1. \_\_\_\_\_ FEC ID number C \_\_\_\_\_

2. \_\_\_\_\_ FEC ID number C \_\_\_\_\_

3. \_\_\_\_\_ FEC ID number C \_\_\_\_\_

4. \_\_\_\_\_ FEC ID number C \_\_\_\_\_

29030060790

Write or Type Committee Name

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

NONE

Mailing Address
CITY STATE ZIP CODE

Relationship: Connected Organization Affiliated Committee Joint Fundraising Representative Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address (phone number - optional) and position of the person in possession of committee books and records.

Full Name T.R.E.A.S.U.R.E.R.
Mailing Address
CITY STATE ZIP CODE
Telephone number

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer DAN, LOVELAND
Mailing Address 14615 NORTH LEWIS AVENUE
SILVER FALLS SD 57104
CITY STATE ZIP CODE
Title or Position CHIEF FINANCIAL OFFICER
Telephone number 605-965-2200

29030060791

Full Name of Designated Agent

LEZLEE HERDINA

Mailing Address

4615 NORTH LEWIS AVENUE

SIOUX FALLS

CITY

SD

STATE

57104

ZIP CODE

Title or Position

ASSISTANT TREASURER

Telephone number

605-965-1200

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

WELLS FARGO BANK NA

Mailing Address

101 NORTH PHILLIPS AVE

SIOUX FALLS

CITY

SD

STATE

57104

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY

STATE

ZIP CODE

29030060792

**EXHIBIT 4**

**BY-LAWS  
OF  
POET  
POLITICAL ACTION COMMITTEE**

**ARTICLE I**

**GENERAL**

Section 1. Name. The name of this political action committee is POET Political Action Committee ("POET PAC" or the "PAC").

Section 2. Organization. The PAC is a voluntary, tax-exempt, unincorporated political committee organized pursuant to 2 U.S.C. § 431, *et. seq.* and 26 U.S.C. § 527. It will be independent of any political party, candidate, political cause or organization, except that POET, LLC (the "Sponsor") will sponsor the PAC. If the Sponsor defrays administrative, overhead, and solicitation costs of the PAC, it will do so subject to the Sponsor's \$5,000 per-year contribution limit to the PAC.

Section 3. Purpose. The PAC is organized for the purpose of promoting the American political process. To achieve these purposes, the PAC is empowered to solicit and accept voluntary contributions from certain individuals and, as a primary purpose, to expend such contributions to influence the selection, nomination, election, or appointment of individuals to public office (federal, state, or local). In carrying out the foregoing, the PAC is empowered to do all actions permitted by law for a political committee of the type here organized, including but not limited to making contributions, within limits approved by law, to candidates for public office and to national, state, and local committees of national political parties and congressional campaign committees.

Section 4. General Powers: Contribution Committee. The financial affairs, including particularly the making of any contributions to candidates or political committees, will be supervised and directed by the Contribution Committee (the "Committee"). In furtherance of the purposes of the PAC, the Committee may delegate such responsibilities as it desires to any other entity or person.

Section 5. Quorum. A quorum of the Committee for the transaction of business will consist of a majority of its members. A majority of Committee members present at a duly constituted Committee meeting will decide the Committee's action, unless the act of a greater number is required by law or by these Bylaws.

Section 6. Regular Meetings. Regular meetings of the Committee will be held at the date, time, and place designated by the Chair, who may fix any place as the place for holding any such regular meeting. Meetings may be conducted by telephone or other form of electronic communication.

Section 7. Special Meetings. The Committee may be called into session by any of its members whenever such member or members deem it necessary that a question relating to the affairs of the PAC be considered.

Section 8. Notice. Notice of any regular or special meeting of the Committee must be given at least one (1) day before such meeting.

Section 9. Office Location. The principal office of the PAC will be located in Sioux Falls, South Dakota and its address will be 4615 North Lewis Avenue. The PAC may have other offices at such other locations as may be required from time to time.

## ARTICLE II OFFICERS

Section 1. Positions. The officers of the PAC will be a Chair, Vice Chair, and Treasurer. The Chair, Vice Chair, and Treasurer will be appointed, from time to time, by the Chairman of the Board of the Sponsor. The Assistant Treasurer and Parliamentarian will serve in an *ex officio* capacity and will be appointed by the Chair. All officers of the PAC must be United States citizens. Initially, the officers of the PAC will be as follows:

Jeff Broin	Chair
Rob Skjoneberg	Vice Chair
Dan Loveland	Treasurer
Lezlee Herdina	Assistant Treasurer
David Bearden	Parliamentarian

Section 2. Tenure. Each officer will continue to serve in his or her office until his or her successor is appointed and qualified, except that any officer may be terminated as an officer at any time by the Chairman of the Board of the Sponsor, at which time such person will no longer act in the office to which he or she was previously appointed. No contributions will be accepted, and no expenditures will be made at a time when there is a vacancy in the office of the Treasurer. New offices may be created and filled at the discretion of the Chairman of the Board of the Sponsor.

Section 3. Chair. The Chair will be the chief executive officer of the PAC and will administer and oversee the financial affairs of the PAC. The Chair will preside at all meetings of the PAC.

Section 4. Vice Chair. During the absence or incapacity of the Chair, the Vice Chair will automatically assume the duties and exercise the powers of the office of the Chair and will for all purposes be deemed the Chair. The Vice Chair will perform such other duties as may be assigned to him by these Bylaws or by the Chair. Upon the resignation, termination, or death of the Chair, the Vice Chair will automatically become the Chair until such time as a new Chair may be appointed by the Chairman of the Board of the Sponsor.

Section 5. Treasurer. The Treasurer will be the chief financial officer of the PAC. The Treasurer, subject to the provisions of these Bylaws, will have general responsibility for all funds collected and will cause all funds to be deposited and all books of account to be kept in accordance with law and with the directives and in a manner authorized by the Committee. The Treasurer will also cause all filings and reports required by law to be prepared, signed, filed and maintained.

Section 6. Assistant Treasurer. The Assistant Treasurer will serve *ex officio*, without voting rights, and will perform the duties and functions and exercise the powers of the

Treasurer during the absence or incapacity of the Treasurer. The Assistant Treasurer will also perform the duties and functions and exercise the powers of the Treasurer when designated to do so by the Treasurer.

Section 7. Parliamentarian. The Parliamentarian will serve *ex officio*, without voting rights and will be responsible for ensuring adherence to the By-Laws of the PAC. The Parliamentarian will report any non-adherence to the By-Laws by the Committee to the officers of the PAC.

Section 8. Removal. The Chairman of the Board of the Sponsor may remove any officer whenever in his or her judgment the best interests of the Committee or the PAC would be served thereby.

Section 9. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Chairman of the Board of the Sponsor.

### ARTICLE III MEMBERS

Section 1. Number, Tenure, and Qualifications. The Chair, Vice Chair, and Treasurer of the PAC will always serve as members of the Committee. The initial members of the Committee will be Jeff Broin, Rob Skjonsberg, and Dan Loveland. Members of the Committee will be designated and appointed, from time to time, by the Chairman of the Board of the Sponsor. All members of the Committee will be United States citizens. The Committee will be composed of an odd number of members and will not be less than three (3).

Section 2. Tenure. Appointment as a member may be for definite or indefinite terms. Failure to designate a definite term will be construed as an appointment for an indefinite term.

Section 3. Voting Rights. Each member will have one vote on matters that come before the PAC.

Section 4. Removal. The Chairman of the Board of the Sponsor may remove any member whenever in his or her judgment the best interests of the Committee or PAC would be served thereby. A member may resign at any time by giving written notice of his or her resignation to the remaining members, at which time the resignation will be immediately effective.

Section 5. Vacancies. Any vacancy occurring in the Committee and any membership to be filled by reason of an increase in the number of members will be filled by appointment by the Chairman of the Board of the Sponsor. A member appointed to fill a vacancy will be appointed for the unexpired term of his or her predecessor in office, or such other term as the Chairman of the Board of the Sponsor so designates. No contribution to the PAC will be accepted, and no expenditure will be made from the PAC by or on behalf of the PAC at any time when there is a vacancy in either the office of its Chairman or Treasurer.

Section 6. Consent to Action Without Meeting. Any action required by law to be taken at a meeting of members of the Committee, or any action which may be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members of the Committee.

ARTICLE IV  
ADVISORS TO THE PAC

The Committee may elect or appoint any person or persons to act in an advisory capacity to the Committee or in an honorary capacity with respect to the Committee.

ARTICLE V  
USE OF FUNDS

Section 1. Receipt of Funds. All monies received by or for the PAC will be held as funds of the PAC. Such funds will be expended exclusively for the purposes for which this PAC was organized within the general terms as enumerated in these Bylaws, including the payment of the expenses of the PAC to carry out such purposes.

Section 2. Compensation. The Committee members, officers, employees, agents, advisors, and consultants of or to the PAC may not receive compensation for their services rendered. Nothing herein will prevent the payment of services required or advisable in the management and implementation of the PAC and Committee, such as legal or accounting services.

ARTICLE VI  
SOLICITATION OF CONTRIBUTIONS

Section 1. Prohibited Contributions. The PAC may accept contributions from any person otherwise permitted by law to make contributions. The PAC will not accept contributions known by it to be from a corporation, a labor organization, a foreign national, or a federal contractor, or in the name of a person not actually making the contribution, or in excess of contribution limits, or in any other way not permitted by law.

Section 2. Excessive Contributions. Contributions that on their face exceed the contribution limitations and contributions that do not appear to be excessive on their face but exceed the contribution limits when aggregated with other contributions from the same contributor may be either returned to the contributor or deposited into the PAC's accounts. If the contribution is deposited, the custodian (if made through a custodial account) or the Treasurer may request redesignation or reattribution of the contribution by the contributor. If appropriate redesignation or reattribution is not obtained, the custodian (if made through a custodial account) or Treasurer must, within sixty days of the receipt of the contribution, refund the contribution to the contributor.

Section 3. Receipt of Illegal Funds. Any contribution that appears to be illegal and that is deposited into the account of the PAC must not be used for any disbursements by the PAC until the contribution has been determined to be legal. The PAC must either establish a separate account for such suspected illegal contributions or maintain sufficient funds to make all refunds.

Section 4. Books and Records. The Treasurer of the PAC will cause to be maintained records of all contributions made in accordance with law, including those contributions made through a custodial arrangement or otherwise. The PAC will keep correct and complete books and records.



**ARTICLE VII**  
**RECEIPT OF VOLUNTARY CONTRIBUTIONS**

Section 1. Voluntary Contributions. All contributions to the PAC must be voluntary, and the PAC must not use any physical force, job discrimination, financial reprisal, or the threat of physical force, job discrimination, or financial reprisal to obtain contributions. Additionally, no dues, fees or other monies are to be obtained by the PAC as a requirement or condition of employment or obtained in any commercial transaction.

Section 2. Guidelines for Contributions. A guideline for contributions may be suggested by the PAC provided that the person soliciting or the solicitation informs the persons being solicited:

- (a) that the guidelines are merely suggestions; and
- (b) that an individual is free to contribute more or less than the guidelines suggested and there will not be any favor or disadvantage to anyone by reason of the amount of their contribution or their decision not to contribute.

The PAC will do nothing to enforce any guidelines for contributions.

Section 3. Notification. All solicitations will include a notice of the political purposes of the fund at the time of the solicitation. Furthermore, the PAC will inform any persons solicited of his or her right to refuse to contribute without any reprisal.

Section 4. Inducements to Contribute. The PAC will not accept any contribution when it is known to it that the contributor has been paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation.

**ARTICLE VIII**  
**USE OF CONTRIBUTIONS**

Decisions regarding use of PAC contributions will be supervised by the Chair, Vice Chair, and other members of the Committee. Contribution decisions will be made based on certain factors, including, but not limited to, whether a particular candidate resides in a state where the Sponsor's facilities and offices, or either of them, reside; whether a particular candidate holds a leadership position or seat on a committee of the United States House of Representatives or United States Senate important to the Sponsor's and its employees' economic vitality; whether the candidate holds a leadership position within his or her political party; or any other factor the Committee may deem important. Nothing in this Article will be construed to restrict the ability of the PAC to make contributions to non-incumbents or to state or local candidates consistent with state law.

**ARTICLE IX**  
**REPORTS**

The Chair and the Treasurer will be responsible for making all reports and other filings as required by law.

ARTICLE X  
COMMUNICATIONS TO THE PUBLIC

In accordance with the purposes of the PAC, the PAC may, using voluntary contributions, communicate with the general public. Such communications will comply with any laws that may be applicable, including any filing or other reporting or disclosure obligations such communications may entail.

ARTICLE XI  
CONTRIBUTION LIMITS

Section 1. Limitations on Contributions Received. The PAC must not accept contributions that are in excess of what is allowable by law, as those amounts are determined from time to time.

Section 2. Contributions Made by the PAC. The PAC must not make contributions that are in excess of what is allowable by law, as those amounts are determined from time to time.

ARTICLE XIII  
CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Committee may authorize any officer or officers, agent or agents of the PAC, in addition to the officers so authorized by these Bylaws, to enter into any contract, including contracts with related individuals or entities, or execute and deliver any instrument in the name of and on behalf of the PAC, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the PAC may be signed by any of the following persons: the Chair, Vice Chair, or Treasurer of the PAC.

Section 3. Deposits. Funds of the PAC will be deposited in a separate segregated bank account or accounts maintained in the name of the PAC. All PAC expenditures in support of any candidate or political committee must be made from such bank account or accounts and from no other source.

Section 4. Gifts. The Committee may accept on behalf of the PAC any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the PAC. This is provided, however, that the acceptance of such contribution, gift, bequest, or devise is lawful.

ARTICLE XIV  
FISCAL YEAR

The fiscal year of the PAC will commence on January 1 and will end on December 31 of each year.

ARTICLE XV  
WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the Bylaws of the PAC, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, will be deemed equivalent to the giving of such notice.

ARTICLE XVI  
PERIODIC REVIEW

The Committee may conduct or designate a qualified person or persons to conduct a review or audit of PAC activities to ensure PAC operations and activities are in compliance with the law. Such reviews may be conducted at the discretion of the Committee and may be conducted annually, biannually, or at such times as the Committee determines are necessary or prudent.

ARTICLE XVII  
INDEMNIFICATION

Any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (including actions by or in the right of the PAC), by reason of the fact that he or she is or was a Committee member, officer, *ex officio* member, employee, or agent of the PAC, will be indemnified by the PAC against expenses incurred in connection with such action, suit, or proceeding. Expenses must be actually and reasonably incurred, and will include attorney's fees, judgments, fines, and amounts paid in settlement. The individual indemnified must have acted in good faith, and in a manner he reasonably believed to be in or not opposed to the best interest of the PAC, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, will not, of itself, create a presumption that a person did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interest of the PAC, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Any indemnification (unless entered by a court) will be made by the PAC only as authorized in the specific case upon the determination that indemnification of the Committee member, officer, employee, or agent is proper because he has met the applicable standard of conduct set forth above. Such determination will be made by a majority of the Committee.

The indemnification provided herein will not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of disinterested Committee members, or otherwise, both as to action in his or her official capacity, and as to actions in another capacity while holding such office. Indemnification will extend to any person who has ceased to be a Committee member, officer, employee, or agent and will inure to the benefit of the heirs, executors, and administrators of such person.

The officers of the PAC may review, analyze, and enter into any insurance contract to provide for the indemnification of the Committee members, officers, employees, and agents (or any of them) of this PAC.

**ARTICLE XVIII**  
**AMENDMENTS TO BYLAWS**

These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted by a majority of the members present at any regular meeting or at any special meeting except that no alteration, amendment, or repeal of these Bylaws that is contrary to the applicable rules, regulations, and laws pertaining to the establishment and operation of political action committees and custodial accounts will be effective. These Bylaws are to be interpreted in accordance with all applicable federal law and regulations and all provisions herein will conform with such federal law and regulations and where in conflict, the federal law and regulations will control.

**ARTICLE XIX**  
**DURATION AND DISSOLUTION**

The duration of the PAC is to be perpetual. The PAC may be dissolved at any time upon written notice from the Chairman of the Board of the Sponsor. In the event of such dissolution, all surplus funds of the PAC must be promptly distributed to candidates or committees in a manner consistent with the purposes set forth in these Bylaws or to a qualified charitable organization. In no event may any contributor have a right to share personally in any funds or other assets of the PAC upon its dissolution.

Adopted by POET PAC

By: 

Name: Jeff Broin

Title: Chair of POET PAC

Date: June 9, 2008

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EXHIBIT 5

# AOET

## ADDITIONAL TERMS AND CONDITIONS

1. Seller warrants that the commodity which is the subject matter of this confirmation is free and clear of any penalty, lien, charge of encumbrances, security interests, and claims of any kind or nature.
2. Seller warrants to Buyer that the commodity delivered under this confirmation has been grown within the boundaries of the continental United States. The commodity named herein is intended for interstate commerce.
3. Any increase in freight rates shall be for Seller's account. This contract made on the basis of freight rates in effect on the date of this Confirmation.
4. Buyer reserves the right to reject off-grade grain, unload same, or apply off-grade grain at market difference without notifying Seller.
5. To the extent not inconsistent with the terms and conditions stated herein, this Contract shall be governed by the rules and regulations of the exchange, board or association designated above. If the seller is not a member of the exchange, board, or association, then the rules and regulations of the National Grain and Feed Association shall govern, and to the extent not inconsistent therewith, the applicable provisions of the Uniform Commercial Code. Buyer and Seller agree that all disputes and controversies between them with respect to the Confirmation shall be arbitrated according to the said rules and regulations in effect on the date of this Confirmation and that judgment may be entered on the arbitration in any court of competent jurisdiction.
6. This Contract is subject to reciprocal margins. Buyer may require Seller to place the market difference in escrow.
7. Buyer's performance under this contract, or any delay in such performance, including acceptance of delivery on the date(s) stated above, shall be contingent upon conditions beyond the Buyer's control including, but not limited to, labor disputes, transportation difficulties, lack of available storage space, embargoes, accidents, fire, delay or non-performance of carriers, civil disturbances, governmental regulation, acts of God, war, or equipment failure.
8. Seller warrants that all grain sold and delivered hereunder will be of good, sound, dry and merchantable quality in accordance with the grade specified above; that it will not be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, nor be a commodity which may not be introduced into interstate commerce under provisions of Section 404 or 505 of the Act; that neither any such commodity nor the shipment thereof will be in violation or subject to penalty, seizure, tagged, condemnation, declared unfit, or is otherwise actionable by any federal, state, or local agency, law, ordinance, regulation, quota, or order, any commodity not in compliance with the foregoing warranties shall not be applicable on contract and shall remain the ownership of the Seller. All costs associated with the foregoing incurred by the Buyer, shall be for the account of the Seller.
9. The Equal Opportunity Clauses set forth in 41 C.F.R. para. 60-1.4 (a), 41 C.F.R. para. 60-250.4 and 41 C.F.R. para. 60-741.4 to the extent the incorporation is required by or necessary for compliance with applicable federal laws, regulations, or orders. As used in such clauses, contractor shall mean the Seller herein.
10. This confirmation covers Buyer's understanding of all the terms and conditions of the parties' agreement. Buyer objects to the inclusion of any different or additional terms proposed by Seller.
11. If price of grain is on a Basis, contract to be priced or spread prior to the last trading day preceding the first delivery day of the applicable futures contract.
12. Acceptance of any delivery by Buyer after breach of the terms and conditions of this confirmation by Seller shall not waive any rights or remedies accruing to the Buyer as a result of such breach.
13. Buyer may designate any reasonable alternate delivery point if necessary to expedite Seller's performance of the Contract by Seller, but shall have no obligation to do so. Any increased shipping charges incurred under this provision shall be for Seller's account.
14. Loading of rail cars, trucks, or barges below minimum or over maximum weights, as well as excess freight or other charges caused by shippers erroneous billing and/or routing, will be for Seller's account.
15. Grain guaranteed cool and sweet and free of crotalaria, mycotoxins, rodent excreta, and seed treatment upon arrival at destination.
16. The undersigned certifies that, to the best of the undersigned's knowledge and belief, all feed and or feed ingredients distributed and/or delivered by the undersigned are in compliance with the requirements of 21 CFR 589.2000.

# POET

**17. Any seller that would like to participate in the POET PAC Cultivator Club and make a voluntary contribution to POET PAC agrees to and understands the following:**

Contributions to POET PAC are not tax deductible for federal income tax purposes. Contributions to POET PAC will be used in connection with federal elections and are subject to the limitations and prohibitions of federal law. The maximum an individual may contribute is \$5,000 per calendar year. Corporate and foreign national contributions are not permitted under federal law. Contributions from federal government contractors are prohibited.

No seller will be advantaged or disadvantaged by buyer, POET, LLC, or POET PAC by the decision to contribute more or less than the suggested amount, or not at all.

Federal law requires POET PAC to use best efforts to obtain and report the name, address, occupation and employer of individuals whose contributions aggregate in excess of \$200 in a calendar year.

Administration costs and solicitations made on behalf of POET PAC are paid for by POET PAC, 4615 North Lewis Ave., Sioux Falls, SD 57104. Not authorized by any candidate or candidate's committee.

# PURCHASE CONTRACT - BASIS

REPRINTED: 8/27/2010 12:11:45

Poet Biorefining - Groton  
 40425 133rd Street  
 GROTON, SD 57445  
 USA  
 Phone: 605-397-2726  
 FAX: 605-397-2754

Contract No. : 8583  
 Contract Date : 5/5/2010  
 Reference :  
 Our Trader : VICKY SMITH  
 Your Contact : Roslyn Elevator  
 Contact Phone No. : 605-486-4551  
 Contact FAX No. :

**Purchased From : Roslyn Elevator**  
 PO Box 166  
 Roslyn, SD 57261  
 USA

Commodity : CN US #2 YELLOW CORN Grade: US#2  
 SPECS: Max MST 15.0%, Min TW 54 lb  
 Quantity : 150,000.000 BU

Pricing/BU	BU	Futures	Basis	Opt. Mth.	Price
	35,000.000		-0.4200	Jul/10 CBOT	
	10,000.000	3.7100	-0.4200	Jul/10 CBOT	3.2900
	10,000.000	3.5400	-0.4200	Jul/10 CBOT	3.1200
	10,000.000	3.3700	-0.4200	Jul/10 CBOT	2.9500
	10,000.000	3.3900	-0.4200	Jul/10 CBOT	2.9700
	10,000.000	3.4900	-0.4200	Jul/10 CBOT	3.0700
	10,000.000	3.4700	-0.4200	Jul/10 CBOT	3.0500
	5,000.000	3.2800	-0.4200	Jul/10 CBOT	2.8600
	35,000.000	3.5300	-0.4200	Jul/10 CBOT	3.1100
	10,000.000	3.8600	-0.4200	Jul/10 CBOT	3.4400
	5,000.000	4.0400	-0.4200	Jul/10 CBOT	3.6200

Shipment Period : May 2010 START: 5/1/2010 END: 9/30/2010  
 Ship Mode : Truck  
 Weight To Govern : Destination  
 Grades To Govern : Destination  
 Del. Basis/POB Point : Groton, SD

**Discount Schedule Notes:**

POET Biorefining - Groton scale of discounts at time of delivery to apply. POET Biorefining - Groton reserves the right to reject any corn that is found to be musty, heat damaged, sour, COFO or containing mycotoxins.

**Contract Notes:**

\*TITLE OF GRAIN PASSES TO BUYER AT DELIVERY  
 \*ADDITIONAL TERMS AND CONDITIONS: SEE REVERSE  
 \*Settlement for under-delivery or non-delivery of grain shall be made on the difference between market price on delivery date and the contract price plus \$ .20 cents per bushel handling charge to be paid to buyer upon such settlement. \*Futures must be set or rolled by noon on : \_\_\_\_\_ Rolling basis results in 1 cent per bushel fee.  
 \*This contract not protected by South Dakota statutory bond coverages.

Trade Rules To Govern: National Grain And Feed Association

Please sign and return this document (white copy, if in triplicate) within 7 days

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

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



**PURCHASE CONTRACT - BASIS**

REPRINTED: 8/27/2010 12:11:45

Poet Biorefining - Groton  
40425 133rd Street  
GROTON, SD 57445  
USA  
Phone: 605-397-2726  
FAX: 605-397-2754

Contract No. : 8583  
Contract Date : 5/5/2010  
Reference :  
Our Trader : VICKY SMITH  
Your Contact : Roslyn Elevator  
Contact Phone No. : 605-486-4551  
Contact FAX No. :

Date: \_\_\_\_\_

Please check below if you would like to make a voluntary contribution to POET PAC  
(see Terms and Conditions pages for further legal compliance information.)

- ¼ cent per bushel
- ½ cent per bushel
- 1 cent per bushel
- Other: \_\_\_\_\_

If you are making a contribution to POET PAC, please provide the following information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Employer: \_\_\_\_\_

If you are a partnership or an LLC electing partnership treatment for tax purposes under the Internal Revenue Code, please provide a list of partners to whom your contribution should be attributed.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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