

MEMORANDUM

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November 23, 2008

To: Official Committee of Unsecured Creditors (the “Committee”) of VeraSun Energy Corporation, et al.

From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)

Re: VeraSun Energy Corporation, et al. – Summaries of First Day Motions

This memorandum summarizes motions, applications and other pleadings (collectively, the “First Day Motions”) filed by VeraSun Energy Corporation (“VeraSun”) and 24 of its subsidiaries and affiliates (together with VeraSun, the “Debtors”) on October 31, 2008 (the “Petition Date”) or shortly thereafter in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Honorable Brendan L. Shannon has been assigned to the Debtors’ cases. Objection and/or answer deadlines for each First Day Motion are noted below, where applicable. A chart summarizing the status of the various First Day Motions is attached hereto as Appendix A.

I. FINANCING MOTIONS

1. Motions Pursuant to Bankruptcy Code Sections 105, 361, 362, 363 and 364 and Bankruptcy Rules 2002, 4001, and 9014 for Interim and Final Orders (i) Authorizing Debtors to Obtain Post-Petition Financings (ii) Authorizing Debtors to Utilize Cash Collateral, (iii) Granting Adequate Protection to Pre-Petition Secured Lenders and (iv) Scheduling Interim and Final Hearings [Docket No. 20] (the “DIP Motions”)

On November 3, 2008, the Debtors filed the DIP Motions for entry of interim and final orders authorizing the Debtors to obtain debtor in possession financing and utilize cash collateral to, among other things, fund working capital requirements at each of the Debtors’ three operating segments: VeraSun, US BioEnergy and ASA. By the DIP Motions, the Debtors request authorization to (I) (a) enter into a debtor in possession financing facility arranged by certain senior secured noteholders (the “Senior Noteholder DIP Facility”) and (b) utilize the UBS Cash

Collateral¹ (the “UBS Cash Collateral Order”), to fund the operations of the VeraSun Debtors; (II) (a) enter into six separate debtor in possession financing facilities arranged by AgStar Financial Services, PCA (collectively, the “AgStar DIP Facilities”) to fund the operations of the US BioEnergy Debtors and (b) use the Dougherty Cash Collateral (the “Dougherty Cash Collateral Order”) to fund the operations of the Marion Debtor; and (III) use the WestLB Cash Collateral (the “WestLB Cash Collateral Order”) to fund the operations of the ASA Debtors.

On November 5, 2008, the Debtors filed the WestLB DIP Motion, which requests authorization for the Debtors to enter into an additional debtor in possession financing facility arranged by WestLB (the “WestLB DIP Facility”) to fund the operations of the ASA Debtors.

Each of the foregoing debtor in possession financing facilities and/or the terms for use of cash collateral are described below.

I. The VeraSun Debtors

A. Senior Noteholder DIP Facility

(i) Prepetition Secured Financing at VeraSun

As of the Petition Date, eleven of the Debtors (collectively, the “VeraSun Debtors”)² owned and operated five ethanol production facilities. In December 2005, the holding company (“VeraSun”) of the VeraSun Debtors issued 9.875% senior secured notes in the aggregate principal amount of \$210 million, maturing in 2012 (the “Senior Secured Notes”). The Senior Secured Notes are guaranteed by the VeraSun Debtors, but are not guaranteed by US BioEnergy and its subsidiaries, or ASA Holdings and its subsidiaries. The Senior Secured Notes are secured on a first priority basis by liens on substantially all of the assets of the VeraSun Debtors other than accounts receivable, inventory, commodities accounts, and the cash proceeds therefrom (i.e. other than the assets that secure the UBS Credit Facility (as described in detail below)).

On May 30, 2008, VeraSun and certain of its subsidiaries (collectively, the “VeraSun UBS Subsidiaries”) entered into a credit agreement with UBS AG, Stamford Branch (the “Prepetition Collateral Agent”), UBS Securities LLC, and UBS Loan Finance LLC, providing for a revolving credit facility (the “UBS Credit Facility”) of up to \$125 million, subject to a borrowing base. The UBS Credit Facility is secured by substantially all of the cash, inventory and accounts receivable of VeraSun and the VeraSun UBS Subsidiaries. As of the Petition Date, outstanding

¹ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the applicable First Day Motion.

² The eleven VeraSun Debtors are VeraSun Granite City, LLC; VeraSun Reynolds, LLC; VeraSun BioDiesel, LLC; VeraSun Litchfield, LLC; VeraSun Tilton, LLC; VeraSun Aurora Corporation; VeraSun Charles City, LLC; VeraSun Marketing, LLC; VeraSun Welcome, LLC; VeraSun Fort Dodge, LLC and VeraSun Hartley, LLC.

principal obligations (including outstanding letters of credit) under the UBS Credit Facility were approximately \$95.0 million.

(ii) Key Terms of Proposed Senior Noteholder DIP Facility

Borrower: VeraSun Energy Corporation (the “VSE DIP Borrower”).

Guarantors: VeraSun Granite City, LLC; VeraSun Reynolds, LLC; VeraSun BioDiesel, LLC; VeraSun Litchfield, LLC; VeraSun Tilton, LLC; VeraSun Aurora Corporation; VeraSun Charles City, LLC; VeraSun Marketing, LLC; VeraSun Welcome, LLC; VeraSun Fort Dodge, LLC; and VeraSun Hartley, LLC (the “VSE Guarantors” and, collectively with the VSE DIP Borrower, the “VSE Obligors”).

Administrative Agent: TBD.

Lenders: Wayzata Opportunities Fund Offshore II, L.P. (“Wayzata”); Trilogy Special Situations Fund LLC (“Trilogy”); AIG Global Investments Corporation (“AIG”) (collectively, the “VSE DIP Lenders”).

Commitment: \$15 million was made available upon entry of the interim order and an additional \$10 million was to be made available on November 17, 2008 (the “Definitive Documentation Date”).³ An additional \$135.7 million is committed, with potential to increase to \$190 million (together, the “VSE DIP Loans”). The facility provides \$76.5 million of new money and \$84.2 million is to roll-up the Senior Secured Notes held by the VSE DIP Lenders into obligations under the Senior Noteholder DIP Facility.

Use of Proceeds: (a)(i) provide for the working capital requirements and general corporate purposes of the VSE Obligors (specifically excluding expenses of any other subsidiaries of the VSE Borrower that are not VSE Obligors except for certain overhead charges) and (ii) bankruptcy-related costs and expenses (subject to the Carve-Out (as defined below)), but limited to a certain percentage of the aggregate amount of the VSE Obligors’ bankruptcy-related costs and expenses, in each case in accordance with the Approved Budget and (b) the discharge of a portion of the indebtedness represented by the Senior Secured Notes beneficially held by each VSE DIP Lender.

³ The “Definitive Documentation Date” is defined as the date, which shall occur on or prior to November 17, 2008, that definitive financing documentation with respect to the VSE DIP Loans satisfactory in form to the VSE DIP Administrative Agent and the VSE DIP Lenders and approved by the Bankruptcy Court, shall be executed. This date has been extended as the parties continue to negotiate the Definitive Documentation.

Security and Priority: All VSE DIP Loans shall be:

(i) pursuant to section 364(c)(1) of the Bankruptcy Code, entitled to superpriority administrative expense claim status superior to any and all administrative expenses (and pari passu with the superpriority claims granted in respect of use of cash collateral by the Prepetition Collateral Agent) whether incurred before or after the VSE DIP Loans (but subject to the Carve-Out (as defined below));

(ii) pursuant to section 364(d) of the Bankruptcy Code, secured by a first priority, priming and senior security interest and lien granted to the VSE DIP Lenders in and on all now existing and hereafter acquired assets of any kind or nature except for the following assets (as to which the VSE DIP Lenders have a silent security interest and lien immediately junior to the Prepetition Collateral Agent Liens and the Collateral Agent Adequate Protection Liens (each as defined below) (a) all accounts receivable and inventory, and cash proceeds of the foregoing; (b) all deposit accounts and securities accounts into which the cash proceeds of the accounts receivable and inventory are deposited, in each case existing as of the Petition Date (the “Prepetition Credit Agreement Collateral”) and as to which the Prepetition Collateral Agent has a valid, perfected and unavoidable existing lien (the “Prepetition Collateral Agent Liens”); and (c) all accounts receivable and inventory, and cash proceeds of the foregoing and all deposit accounts and securities accounts into which the cash proceeds of the accounts receivable and inventory are deposited that are subject to any liens granted after the commencement of VSE’s chapter 11 cases to provide adequate protection in respect of any Prepetition Collateral Agent Liens (the “Collateral Agent Adequate Protection Liens”). All existing liens, rights and interests granted to the Senior Secured Noteholders shall be primed and made subject to and subordinate to the VSE DIP Loans.

(iii) pursuant to section 364(c) of the Bankruptcy Code, secured by a silent second priority security interest and lien not subject to subordination, in all collateral that is subject to the Prepetition Collateral Agent Liens or the Collateral Agent Adequate Protection Liens (the “Second Priority VSE DIP Liens”);

subject in each case only to permitted exceptions to be agreed upon in writing by the VSE DIP Lenders in their sole discretion, and (x) in the event of the occurrence and during the continuance of an Event of Default, the payment of allowed and unpaid professional fees incurred by the VSE Obligors and any statutory committees appointed in the VSE chapter 11 cases in an aggregate amount not in excess of (i) \$1,000,000 plus (ii) all unpaid professional fees incurred prior to the Event of Default to the extent allowed by the Bankruptcy Court and (y) the payment of fees pursuant to 28 U.S.C. § 1930 and to the extent related to the cases of the VSE Obligors (clauses (x) and (y) together, the “Carve-Out”).

Interest Rate: 16.5%

Fees and Expenses: The VSE Borrower shall pay, in connection with any prepayment of the VSE DIP Loans, in whole or in part, an amount equal to 5.00% of the amount so prepaid or the amount of the VSE DIP Loans then payable; provided, however, if the VSE DIP Loans are repaid in full on (a) within one year from the Closing Date or (b) upon the effective date of a plan of reorganization of the VSE Obligors, the amount of fee otherwise payable shall equal only 2.00% of the amount of the VSE DIP Loans then repaid.

Mandatory Prepayments: The VSE DIP Loans will have to be mandatorily prepaid from (i) 100% of the net proceeds of any sale or issuance of securities; (ii) 100% of the net proceeds of any sale or other disposition of any material assets (except the sale of inventory in the ordinary course of business); and (iii) 100% of the net proceeds of tax refunds, indemnity payments, pension reversions, acquisition purchase price adjustments and insurance proceeds.

Covenants: Numerous affirmative and negative covenants, including without limitation: compliance with an approved budget; compliance with material contractual obligations of the VSE Obligors; cooperation with VSE DIP Lenders and their affiliates in arranging any take-out financing; retention of a CRO acceptable to the VSE DIP Lenders; limitations on indebtedness; limitations on liens and further negative pledges; limitations on capital expenditures; limitations on dividends; limitations on investments, acquisitions, loans and advances; prohibition on payment of prepetition claims (other than as approved by the Bankruptcy Court and acceptable to the VSE DIP Lenders) and payment of non-budgeted items; and prohibition on consenting to the granting of adequate protection payments or liens, superpriority administrative expense claims or liens having a priority senior pari passu with the liens granted to the VSE DIP Lenders, the Prepetition Collateral Agent or the 2012 Senior Secured Notes Trustee.

Events of Default: Events of Default include, but are not limited to: (i) the occurrence of a change of control; (ii) the filing of a Plan that does not provide for payment in full in cash of the VSE DIP Loans and all other amounts owing to the VSE DIP Lenders and the VSE Administrative Agent; (iii) the appointment of a trustee or examiner; (iv) entry of an order granting relief from the automatic stay to permit foreclosure on any assets of any VSE Obligor which have an aggregate value in excess of \$1,000,000; (v) the occurrence of a “Change in Executive Management” or a change of CRO; and (vi) expiration or termination of the Debtors’ exclusive period to file a plan.

Indemnification: The VSE Borrower shall indemnify the VSE DIP Lenders against any loss or liability incurred in respect of the VSE DIP Loans.

B. UBS Cash Collateral Order

The Debtors seek entry of the UBS Cash Collateral Order authorizing the Debtors to, among other things: (i) use the UBS Cash Collateral; (ii) provide adequate protection to UBS by (a)

making postpetition cash payments to UBS equal in amount to contractual interest at the non-default rate, (b) granting replacement liens upon all of the UBS Collateral and postpetition inventory and receivables of the VeraSun Debtors, subject to the Carve-Out, in order to protect UBS against any diminution in value of the UBS Collateral, and (c) securing any such diminution in value of the UBS Collateral with perfected junior security interests in and liens upon the assets of the VeraSun Debtors that are subject to valid, perfected and non-avoidable liens (x) in existence as of the Petition Date or liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and (y) granted to secure the Senior Noteholder DIP Facility; and (iii) granting, for any diminution in value of the UBS Collateral, a superpriority claim in the VeraSun Debtors' chapter 11 cases with priority over any and all other administrative expenses in the VeraSun Debtors' chapter 11 cases; provided, however, that such claim shall be pari passu with any superpriority adequate protection claim granted to the Senior Secured Noteholders pursuant to the VeraSun DIP Order.

II. The US BioEnergy Debtors

A. AgStar DIP Facilities

(i) Prepetition Secured Financing at US BioEnergy

As of the Petition Date, nine of the Debtors (collectively, the "US BioEnergy Debtors")⁴ owned and operated eight ethanol production facilities. AgStar is the agent under seven separate prepetition credit facilities with eight of the US BioEnergy Debtors (collectively, the "AgStar Debtors"). Each of these prepetition credit facilities (the "AgStar Credit Facilities") is secured by liens on substantially all of the respective assets of the AgStar Debtors. As of the Petition Date, the aggregate outstanding debt obligations under the AgStar Credit Facilities were approximately \$464.9 million. The ninth US BioEnergy Debtor – US Bio Marion, LLC (the "Marion Debtor"), which became a subsidiary of VeraSun as a result of the US BioEnergy acquisition – is a party to two prepetition credit facilities: (i) a \$90 million term loan facility with Dougherty Funding LLC ("Dougherty") secured by the Marion Debtor's property, plant and equipment (the "Marion Term Loan"), and (ii) a \$7 million revolving credit facility with First National Bank & Trust ("First National") secured by Marion Debtor's inventory and receivables (the "First National Revolver").

(ii) Key Terms of Proposed AgStar DIP Facilities⁵

⁴ The nine US BioEnergy Debtors are US BioEnergy Corporation; US Bio Marion, LLC; VeraSun Albert City, LLC; VeraSun Central City, LLC; VeraSun Dyersville, LLC; VeraSun Hankinson, LLC; VeraSun Janesville, LLC; VeraSun Ord, LLC and VeraSun Woodbury, LLC.

⁵ While there are six separate AgStar DIP Facilities, their terms are substantially identical, except for the respective commitments thereunder. In addition, while there are eight AgStar Debtors, there are only six AgStar

Postpetition Lender: AgStar Financial Services, PCA

Guarantor: U.S. BioEnergy Corporation

Commitment: With respect to the AgStar Facilities under which VeraSun Albert City, LLC, VeraSun Central City, LLC, VeraSun Dyersville, LLC, VeraSun Hankinson, LLC are the respective Borrowers, each revolving credit facility shall be in an amount not to exceed \$3,000,000 in interim financing and, from and after entry of the Final Order, an additional \$2,000,000 of financing. With respect to the AgStar Facilities under which VeraSun Ord, LLC and VeraSun Woodbury, LLC are the respective Borrowers, each revolving credit facility shall be in an amount not to exceed \$1,500,000 in interim financing and, from and after entry of the Final Order, an additional \$1,000,000 of financing.

Purpose: To fund the respective working capital requirements of each AgStar Debtor.

Maturity Date: The interim financing shall mature on the earlier of the entry of the Final Order or December 10, 2008. The final Postpetition Loan shall mature on November 3, 2009, or on such earlier date as provided in the Interim Order, the Final Order or the Postpetition Financing Documents.

Security: Each Borrower grants to the Postpetition Lender a first priority perfected Security Interest in all of the real and personal property of the Borrower, whether now owned or hereafter acquired; provided, however, that the liens and Security Interests granted to the Postpetition Lender shall not be extended to Avoidance Actions or the proceeds thereof.

Interest Rate: LIBOR Rate plus 700 basis points.

Availability: Advances shall be limited to a Borrowing Base, which shall be equal to: 100% of Eligible Accounts Receivable and 100% of Eligible Inventory.

Adequate Protection & Interest Payments: Payment of Adequate Protection Payments (defined below) and all accrued interest on the Postpetition Loan shall be paid by the Borrower on the first day of each month, beginning on December 1, 2008, and monthly thereafter, and on the Maturity Date, to the Postpetition Lender and to the Agent. "Adequate Protection Payments" means payments made by the Borrower subject to the right of any interested party other than the Debtors to later assert that such payments should be reallocated to principal pursuant to section 506 of the Bankruptcy Code, to (i) pay accrued and unpaid interest on the prepetition indebtedness at the times and the rate specified in the Prepetition Credit Agreement, and (ii)

DIP Facilities. One of the AgStar Debtors, VeraSun Janesville, is not yet operational and does not require debtor in possession financing. The eighth AgStar Debtor, USBioEnergy Corporation, is a holding company and likewise does not require debtor in possession financing.

reimburse all pre- and postpetition reasonable costs and expenses, including but not limited to any reasonable professionals' fees.

Events of Default: (i) Failure to comply with the terms and conditions set forth in the Term Sheet, the Interim Order, the Postpetition Financing Documents, and the Prepetition Credit Agreement; and (ii) if, on or before December 10, 2008, a Final Order approving the Postpetition Financing Documents, acceptable to Postpetition Lender has not been entered.

Commitment and Administration Fees: Borrower shall pay to Postpetition Lender on the Closing Date a fee equal to one percent (1.0%) of the aggregate Postpetition Loan Commitment. In addition, Borrower shall pay to Postpetition Lender on the Closing Date an administration fee equal to one-half of one percent (0.5%) of the aggregate Postpetition Loan Commitment. The Postpetition Lender is authorized to advance from the Postpetition Loan an amount equal to such Administration Fee.

Expenses: The Borrower shall reimburse the Postpetition Lender for all reasonable costs and expenses, including legal fees, in connection with the negotiation, documentation, execution, syndication and delivery of the Postpetition Loan and the Borrower's Bankruptcy.

B. Dougherty Cash Collateral Order

We have been advised that the ninth US BioEnergy Debtor, the Marion Debtor, will seek to finance its operations, at least in the near term, by utilizing the Dougherty Cash Collateral. Under the Dougherty Cash Collateral Order, the Debtors will be authorized to use the Dougherty Cash Collateral in accordance with an approved budget and will provide adequate protection to Dougherty by (i) making postpetition cash payments to Dougherty in the amount of contractual interest at the non-default rate and (ii) granting superpriority claims and replacement liens on all of the Marion Debtor's assets, including a priming lien on the assets securing the First National Revolver, as consented to by First National.

III. The ASA Debtors

A. The WestLB DIP Facility

(i) Prepetition Secured Financing at ASA

As of the Petition Date, four of the Debtors (collectively, the "ASA Debtors")⁶ owned and operated three ethanol production facilities. The ASA Debtors are co-borrowers and guarantors

⁶ The ASA Debtors consist of the following entities: ASA Albion, LLC; ASA Bloomingburg, LLC; ASA Linden, LLC and ASA OpCo Holdings, LLC.

under a prepetition senior credit facility with a syndicate of lenders (the “WestLB Lenders”),⁷ which provides for aggregate borrowings of up to \$275 million in two tranches: (i) Tranche A (\$175 million) and (ii) Tranche B (\$100 million) (the “ASA Senior Credit Facility”). VeraSun is a guarantor under the ASA Senior Credit Facility. The obligations under the ASA Senior Credit Facility are secured by the assets of ASA Holdings and the other ASA Debtors, as well as by a pledge made by VeraSun of all of its equity interest in ASA Holdings. As of the Petition Date, approximately \$266.7 million was outstanding under the ASA Senior Credit Facilities.

Although a motion was originally filed seeking approval of the WestLB DIP Facility, no interim order authorizing the WestLB DIP Facility has been entered, and the hearing to consider the WestLB DIP Motion has been adjourned indefinitely. The Debtors are currently renegotiating the terms of the WestLB DIP Facility. We will update the Committee as the new terms of the WestLB DIP Facility are finalized and will advise the Committee accordingly.

B. WestLB Cash Collateral Order

Pursuant to a consent order authorizing the use of the WestLB Cash Collateral, the ASA Debtors are authorized to (i) use the WestLB Cash Collateral pursuant to an approved budget and (ii) provide adequate protection to WestLB by (a) making postpetition cash payments to WestLB in the amount of contractual interest at the non-default rate, such payments to begin after entry of the WestLB Final Order and (b) granting superpriority claims and replacement liens on all of the ASA Debtor assets for the amount of and to secure any diminution in value.

II. ADMINISTRATIVE MOTIONS

1. **Motion of Debtors for Administrative Order Under Bankruptcy Code Sections 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Professionals [Docket No. 128] (the “Interim Compensation Motion”)**

By the Interim Compensation Motion, the Debtors request the entry of an order authorizing and establishing procedures for compensating and reimbursing Professionals on a monthly basis. Specifically, the Debtors propose that the monthly payment of compensation for services rendered and reimbursement incurred by each of the Professionals be structured as follows:

- (a) Each Professional shall file a monthly fee application (the “Monthly Fee”

⁷ The WestLB Lenders are WestLB AG; National Bank of Omaha; Standard Chartered Bank; CIT Capital USA Inc; ING Capital LLC; Siemens Financial Services, Inc.; Bank of Nova Scotia; Mizuho Corporate Bank, Ltd; Banco Santander Central Hispano, S.A.; Greenstone Farm Credit Services ACA/FLCA; Metropolitan Life Insurance Company; Bank Midwest, N.A.; Banco Bilbao Vizcaya Argentaria, S.A.; 1st Farm Credit Services; Natexis Banques Populaires; Investec Bank (UK) Limited; Amarillo National Bank.

Application”) with the Bankruptcy Court and shall serve the same on certain parties, which include the Committee (collectively, the “Notice Parties”).

- (b) Each Notice Party shall have twenty (20) days after service of a Monthly Fee Application to object thereto (the “Objection Deadline”). Upon the expiration of the Objection Deadline, the Debtors shall be authorized to pay each Professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Application (the “Maximum Payment”) or (ii) 80% of the fees and 100% of the expenses not subject to an Objection.
- (c) If any Notice Party files a written objection (an “Objection”) and the parties are unable to reach a resolution of the Objection within 20 days after service of the Objection, the Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Payment and the Actual Interim Payment made to the affected professional (the “Incremental Amount”) or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Bankruptcy Court shall consider and dispose of the Objection, if requested by the parties.
- (d) Beginning with the full three-month period (including any prior partial month) ending on January 31, 2009, and thereafter at three-month intervals or at such other intervals as are convenient for the Bankruptcy Court (the “Interim Fee Period”), each of the Professionals shall be required to file with the Bankruptcy Court and serve on the Notice Parties an interim fee application (the “Interim Fee Application”) for compensation and reimbursement of amounts sought in the Monthly Fee Applications filed during such period. Each Professional must file its Interim Fee Application within 45 days after the end of the Interim Fee Period for which the request seeks allowance of compensation and reimbursement. The first Interim Fee Application shall cover the Interim Fee Period from the Petition Date through and including January 31, 2009.
- (e) The Debtors shall request that the Bankruptcy Court schedule a hearing on the Interim Fee Applications at least once every six months, or at such other intervals as the Bankruptcy Court deems appropriate. The Bankruptcy Court, in its discretion, may approve an uncontested Interim Fee Application without the need for a hearing, upon the Professional’s filing of a certificate of no objection. Upon allowance by the Bankruptcy Court of a Professional’s Interim Fee Application, the Debtors will be authorized to promptly pay such professional all requested fees (including the 20% holdback) and expenses not previously paid.

- (f) Any Professional that fails to file a Monthly Fee Application or an Interim Fee Application when due shall be ineligible to receive further monthly or interim payments of fees or expenses with respect to any subsequent period until such time as a Monthly Fee Application or an Interim Fee Application is filed and served by the Professional.

2. Motion of Debtors for Order Under Bankruptcy Code Sections 105(a), 327, 330, and 331 Authorizing Employment and Payment of Professionals Utilized in Ordinary Course of Business [Docket No. 129] (the “Ordinary Course Professionals Motion”)

By the Ordinary Course Professionals Motion, the Debtors seek entry of an order (i) authorizing, but not directing, the Debtors to retain the services of various attorneys, accountants, and other professionals to represent them in matters arising in the ordinary course of their businesses, unrelated to these chapter 11 cases (the “Ordinary Course Professionals”) without the necessity of a separate, formal retention application approved by the Bankruptcy Court for each Ordinary Course Professional, and (ii) authorizing, but not directing, the Debtors to pay each such Ordinary Course Professional for postpetition services rendered and expenses incurred, subject to certain limits, without the necessity of additional approval of the Bankruptcy Court.

The Debtors assert that it would severely hinder the administration of the Debtors’ estates if they were required (i) to submit to the Bankruptcy Court an application, affidavit, and proposed retention order for each Ordinary Course Professional, (ii) to wait until such order is approved before such Ordinary Course Professional continues to render services, and (iii) to withhold payment of the normal fees and expenses of the Ordinary Course Professionals until they comply with the compensation and reimbursement procedures applicable to chapter 11 Professionals. Accordingly, the Debtors propose that they be permitted to continue to employ and retain certain Ordinary Course Professionals identified in Exhibit A to the Proposed Order. The Debtors also reserve the right to supplement that list in the future. Each Ordinary Course Professional, however, shall be required to provide a declaration of proposed professionals and disclosure statement (the “Declaration”) within thirty days of the date of entry of an order granting the Ordinary Course Professionals Motion. Parties in interest will have 20 days to object to the retention of an Ordinary Course Professional.

The Debtors further propose that they be permitted to pay, without formal application to the Bankruptcy Court by any Ordinary Course Professional, one-hundred percent of the interim fees and expenses to each of the Ordinary Course Professionals upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, so long as such interim fees and expenses do not exceed \$35,000 per month for each of the Ordinary Course Professionals; provided, however, that with respect to (i) Milo Belle Consultants, LLC and (ii) Protiviti, such fees and expenses will not exceed a total of \$75,000 per month.

3. Motion of Debtors for Order Under Bankruptcy Rule 1007(c) and Local Rule 1007-1(b) Extending Time for Filing Schedules and Statements [Docket No. 130] (the “Schedules and Statements Extension Motion”)

By the Schedules and Statements Extension Motion, the Debtors seek entry of an order extending the deadline to file their (i) schedules of assets and liabilities; (ii) schedules of executory contracts and unexpired leases; and (iii) statements of financial affairs (the “Schedules and Statements”) by forty-five (45) days, from November 30, 2008, the date such Schedules and Statements are otherwise required to be filed, through and including January 14, 2009, without prejudice to the Debtors’ ability to request additional time should it become necessary.

Given the size and complexity of the Debtors’ businesses and the fact that certain prepetition obligations have not yet been identified or entered into the Debtors’ financial accounting systems, the Debtors do not believe that they will be in a position to accurately complete their Schedules and Statements within the time specified by Local Rule 1007-1(b). The Debtors assert that in light of the amount of work entailed in completing the Schedules and Statements, as well as the size of the Debtors’ cases, the substantial burdens already imposed on management by the commencement of these chapter 11 cases, the limited number of employees available to collect the required information, the competing demands upon such employees, and the time and attention the Debtors must devote to the restructuring process, “cause” exists to extend the deadline by forty-five (45) days. According to the Schedules and Statements Extension Motion, the requested extension will ensure that the Debtors’ Schedules and Statements are accurate and avoid the need for the Debtors to file subsequent amendments.

4. Motion of Debtors for Order Under Bankruptcy Rule 1015 and Local Rule 1015-1 Authorizing Joint Administration of the Debtors’ Chapter 11 cases [Docket No. 3] (the “Joint Administration Motion”)

By the Joint Administration Motion, the Debtors seek authorization of the joint administration of their chapter 11 cases for procedural purposes only. According to the Joint Administration Motion, the Debtors are affiliates as defined under section 101(2) of the Bankruptcy Code. The Debtors assert that the joint administration of their cases will promote the economical, efficient, and convenient administration of the Debtors’ estates. The Debtors further assert that their operations are closely integrated and that there will likely be numerous motions, applications, and other pleadings filed in the chapter 11 cases that will affect most or all of the Debtors. Moreover, the relief requested will simplify supervision of the administrative aspects of these cases by the Office of the United States Trustee.

III. GENERAL BUSINESS OPERATIONS MOTIONS

1. Motion of the Debtors for Interim and Final Waivers of Investment and Deposit Requirements Pursuant to Bankruptcy Code Sections 105 and 345

and Local Rule 2015-2(b) [Docket No. 6] (the “Investment and Deposit Requirements Motion”)

By the Investment and Deposit Requirements Motion, the Debtors seek entry of interim and final orders waiving the investment and deposit requirements required under section 345(b) of the Bankruptcy Code. According to the Debtors, their use of bank accounts, as described in the Cash Management Motion [Docket No. 5], substantially conforms to the approved investment and deposit practices identified under section 345(b) of the Bankruptcy Code, and that all money deposits are safe and yield, under the circumstances, the maximum reasonable net return on such money. Nonetheless, to the extent such deposits do not conform to the approved investment and deposit requirements, the Debtors seek to have such requirements waived so as to allow the applicable banking institutions to accept and hold the Debtors’ funds consistent with prepetition practices.

The Debtors assert that sufficient cause exists to allow them to deviate from the approved investment practices established by the Bankruptcy Code. The Debtors’ bank accounts are comprised of operating and maintenance accounts (“O&M Accounts”), sweep accounts, revenue accounts, a money market account and certain other miscellaneous accounts that are required to be maintained pursuant to certain credit agreements between the Debtors and the financial institutions party thereto. Most of the Debtors’ bank accounts are maintained in the ordinary course of business as minimum or zero balance accounts that do not carry significant overnight balances. Accordingly, the Debtors request authority (i) to continue depositing funds in a safe and prudent manner, in accordance with the Debtors’ prepetition practices notwithstanding that such practices may not strictly comply in all respects with the approved investment practices set forth in Bankruptcy Code section 345, and (ii) for the applicable institutions to accept and hold or invest such funds in accordance with the Debtors’ prepetition practices.

2. Motion for Order Under 11 U.S.C. §§ 105(a) and 366 (i) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (ii) Approving Deposit as Adequate Assurance of Payment, and (iii) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment [Docket No. 8] (the “Utilities Motion”)

By the Utilities Motion, the Debtors seek entry of interim and final orders (i) prohibiting utility companies from altering or discontinuing service on account of unpaid prepetition invoices, (ii) approving the adequate assurance of postpetition payment to be provided to utilities companies through the establishment of the Adequate Assurance Deposit (as defined below) and (iii) establishing procedures for resolving disputes for additional adequate assurance payments.

According to the Utilities Motion, as of the Petition Date, over 75 utility companies (collectively, the “Utility Companies”) provided utility services to the Debtors at their various operational facilities and corporate headquarters. On average, the Debtors spend approximately \$3.6 million per month on utility costs. The Debtors are not currently aware of any past due amounts.

According to the Utilities Motion, the services provided by the Utility Companies are crucial to the continued operations of the Debtors. The Debtors contend that, if the Utility Companies refuse or discontinue service, the Debtors could be forced to cease operations at their numerous ethanol production facilities, and activities at the Debtors' headquarters could be disrupted.

To provide adequate assurance of payment for future services to Utility Companies, the Debtors shall deposit \$3,640,000 (the "Adequate Assurance Deposit") – which is the Debtors' estimated cost of monthly utility services – in a newly created, segregated, interest-bearing account. The Adequate Assurance Deposit will be maintained with a minimum balance equal to the Debtors' estimated monthly cost of utility services, which may be adjusted by the Debtors, as necessary. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall file a notice of such delinquency (a "Delinquency Notice") with the Bankruptcy Court and serve such notice on various parties, including the Debtors and the Committee. If the Debtors have not cured such delinquency or no party in interest has objected to the Delinquency Notice within ten days of the receipt of the Delinquency Notice, then the Debtors shall remit to such Utility Company from the Adequate Assurance Deposit the lesser of (i) the amount allocated in the Adequate Assurance Deposit for such Utility Company's account and (ii) the amount of postpetition charges claimed as delinquent in the Delinquency Notice.

The Debtors also propose the following procedures to address additional requests for adequate assurance of payment:

- (a) A Utility Company that wishes to seek assurance of payment from the Debtors, in addition to the assurance discussed above, must make a written request (a "Request") no later than 45 days after a final order is entered granting the relief sought (the "Additional Adequate Assurance Request Deadline"). Any such request by a Utility Company must set forth the amount and nature of assurance that the Utility Company proposes.
- (b) The Debtors shall have until 45 days after the Additional Adequate Assurance Request Deadline (the "Resolution Period") to negotiate with Utility Companies that serve an Additional Adequate Assurance Request.
- (c) Without further order of the Bankruptcy Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company if the Debtors, in their discretion, determine that the Additional Adequate Assurance Request is reasonable.
- (d) If the Debtors determine that the Additional Adequate Assurance Request is unreasonable, and the parties are unable to resolve the issue within the Resolution Deadline, the Debtors will request a hearing to determine the appropriate adequate assurance to be given to the Utility Company.

- (e) Pending the decision of the Bankruptcy Court, the Utility Company shall be prohibited from altering, refusing or discontinuing services. Additionally, if a prepetition service has not been paid for, the Debtors are not required to make such payment.
3. **Motion for Order Under 11 U.S.C. §§ 105, 362 and 541 Fed. R. Bankr. P. 3001 and 3002 (i) Establishing Notification and Hearing Procedures for Trading in Equity Securities and (ii) Establishing the Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates [Docket No. 10] (the "NOL Motion")**

By the NOL Motion, the Debtors seek entry of an order establishing (i) notice and hearing procedures regarding the trading of VeraSun equity securities and (ii) notice and sell-down procedures regarding the trading of claims against the Debtors. According to the Debtors, the procedures are necessary to preserve valuable tax attributes, including net operating loss ("NOL") carry-forwards of approximately \$430 million (the "Tax Attributes"). The ability of a company to use its NOLs and certain other tax attributes to reduce future taxes is subject to certain limitations set forth in 26 U.S.C. § 382 ("Section 382"). As a general matter, if a corporation undergoes a change of ownership, Section 382 limits the corporation's ability to use its NOLs and certain other tax attributes to offset future taxable income. Under Section 382, a change of ownership occurs when the percentage of a company's equity held by one or more 5% shareholders increases by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during a three-year rolling testing period.

The Debtors anticipate that approximately \$170 million of their NOLs are not subject to any Section 382 limitation. While the Debtors believe that approximately \$260 million of the remaining NOLs are subject to a Section 382 limitation, it is anticipated that these NOLs can be used to offset taxable income of the Debtors over a period not to exceed 5 years. According to the NOL Motion, these Tax Attributes could translate into potential future tax savings for the Debtors of approximately \$150.5 million, based on a federal income tax rate of 35%.

The proposed procedures enable the Debtors to monitor, and possibly object to, changes in the ownership of VeraSun equity securities, as well as enable the Debtors to monitor, and possibly require a sell-down of claims against the Debtors. The procedures do not bar all trading of claims and stock of the Debtors, but rather, are intended to only provide the Debtors with the ability to monitor such trading.

4. Motion of Debtors for Order Under Bankruptcy Code Sections 363 and 365(a) and Fed. R. Bankr. P. 6006 and 9019 (i) Authorizing the Debtors to Reject (a) October, November, and December Corn Contracts for Idle Janesville and Welcome Plants, (B) Lincoln Oil, Osage, and Protec Sales Contracts, and (ii) Establishing Procedures for Rejecting Other Executory Contracts and Unexpired Leases [Docket No. 147] (the “Janesville/Welcome Lease Rejection and Rejection Procedures Motion”)

By the Janesville/Welcome Lease Rejection and Rejection Procedures Motion, the Debtors seek an order (i) authorizing the rejection of the Janesville and Welcome 2008 Corn Contracts and the Sales Contracts (together, the “Rejected Contracts”) and (ii) approving procedures for rejecting any of the Debtors’ other executory contracts and unexpired leases.

According to the Janesville/Welcome Lease Rejection and Rejection Procedures Motion, prior to the Petition Date, the Debtors constructed two ethanol plants in Welcome and Janesville, Minnesota. The plants are substantially complete, but not yet operational. The Debtors entered into the Janesville and Welcome 2008 Corn Contracts for the delivery of corn in anticipation of commencing operations at the Janesville and Welcome plants in the fall of 2008. In connection with the filing of the chapter 11 cases, the Debtors sought additional financial commitments from lenders that hold claims secured by liens on the Janesville and Welcome ethanol plants (the “Janesville and Welcome Lenders”) to obtain additional liquidity necessary to begin sustainable operations at the plants. To date, the Debtors do not have an agreement with the Janesville and Welcome Lenders to support operations at the Janesville and Welcome plants. The Debtors will continue to assess the economic viability of the Janesville and Welcome plants. However, according to the Debtors, it is clear that the Janesville and Welcome plants will be idle at least through the end of 2008. Because the Janesville and Welcome plants are idle, there is no need to purchase corn under the Janesville and Welcome 2008 Corn Contracts. Accordingly, the Debtors have determined that the rejection of the Janesville and Welcome 2008 Corn Contracts and the Sales Contracts will benefit the Debtors’ estates.

Moreover, prior to the Petition Date, the Debtors entered into certain sales contracts with Lincoln Oil Company, Inc., Osage, Inc., and ProTec Fuel Management, LLC, (collectively, the “Sales Contracts”). However, due to reduced production volume at the Debtors’ plants, coupled with the loss of anticipated capacity at the Welcome and Janesville plants, the Debtors no longer have the ability to profitably fulfill the requirements set forth in the Sales Contracts. Accordingly, the Debtors seek to reject the Sales Contracts.

In addition, the Debtors have proposed the following procedures for rejecting executory contract and unexpired leases:

- (a) A rejection, if any, of an executory contract or unexpired lease shall become

effective (the “Rejection Date”) as of ten days⁸ following the “issuance” by the Debtors of a notice of rejection, substantially in the form attached to the Proposed Order (a “Rejection Notice”) or such other date as the parties agree or as ordered by the Bankruptcy Court.

- (b) The Debtors shall be required to serve the Rejection Notice on (i) each contract counterparty to the executory contract or unexpired lease (each, “Counterparty”) to be rejected and certain other Notice Parties, which include the Committee.
- (c) The rejection shall become effective on the Rejection Date without further court order unless an objection (“Objection”) is served by one of the Notice Parties so as to be received within the ten business day period referenced above. In the event that a proper and timely Objection is served, the Debtors and the objecting party shall meet and confer in an attempt to negotiate a consensual resolution. If either party determines that an impasse exists, then the Debtors shall schedule a hearing on the Objection with the Bankruptcy Court and provide notice of the hearing to the objecting party and other parties-in-interest. In the event the Bankruptcy Court overrules the Objection or the Objection relates only to rejection damages, the executory contract or unexpired lease shall still be deemed rejected as of the Rejection Date.
- (d) Parties shall have until the later of the general bar date for filing prepetition general unsecured claims as may be established in these cases or 30 days from the Rejection Date to file a proof of claim for damages arising from such rejection for each rejected executory contract or unexpired lease. Any claims not timely filed shall be forever barred.
- (e) To the extent the Debtors reject an unexpired real property lease, and to the extent there is any personal property on the premises valued at a book value of \$100,000 or less in the aggregate based on the Debtors’ books and records, the Debtors shall have the authority under Bankruptcy Code section 363 and Bankruptcy Rule 9019 to convey this property to the lessor in exchange for the elimination of, or reduction in, the amount of such lessor’s claims as the Debtors and such lessor agree without further Bankruptcy Court approval. In such a case, the Debtors shall serve an additional copy of the Rejection Notice, and provide an opportunity to object, upon any party holding an interest in such property to be conveyed; provided, however, that any objection by such party shall not extend the Rejection Date.

⁸ There is an inconsistency between the Janesville/Welcome Lease Rejection and Rejection Procedures Motion and the proposed form of order as to whether the ten day period is counted in terms of business or calendar days.

5. Motion of the Debtors for Order Pursuant to Bankruptcy Code Sections 105(a) and 363 and Bankruptcy Rule 6003 Authorizing (i) Continued Use of Existing Cash Management System, (ii) Continued Use of Existing Bank Accounts, (iii) Authorizing Continued Use of Existing Bank Forms, and (iv) Authorizing Intercompany Transactions [Docket No. 5] (the “Cash Management Motion”)

By the Cash Management Motion, the Debtors seek an order authorizing (i) the continued maintenance and use of the Debtors’ existing cash management system, (ii) the continued maintenance and use of the Debtors’ existing bank accounts, (iii) continued use of existing business forms and checks, and (iv) the continuation of ordinary course intercompany transactions.

According to the Cash Management Motion, the Debtors use independent cash management systems to collect, transfer and disburse funds generated by their operations and accurately record all such transactions as they are made (the “Cash Management System”). The Cash Management System has been constructed to provide a substantially unified system for the Debtors, which allows for an integrated method of accounting for revenues and expenses. The Debtors assert that the centralized Cash Management System allows the Debtors to facilitate cash forecasting and reporting, monitor collection and disbursement of funds, reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate balance and presentment information, and administer the various bank accounts required to effect the collection, disbursement and movement of cash.

The Cash Management System consists primarily of 53 bank accounts (the “Bank Accounts”) utilized by the Debtors. The Bank Accounts are generally comprised of operating and maintenance accounts, sweep accounts, revenue accounts, a money market account and certain other miscellaneous accounts that are required to be maintained pursuant to certain credit agreements between the Debtors and the financial institutions party thereto.

The Debtors assert that, while they are currently in the process of streamlining their Cash Management System to eliminate duplicative accounts, the current Cash Management System is comprised of three separate “subsystems” consisting of (i) the existing cash management system at VeraSun prior to the acquisitions of ASA Opco Holdings, LLC and US BioEnergy Corporation (the “VeraSun Cash System”); (ii) the cash management system of ASA Holdings (the “ASA Cash System”); and (iii) the cash management system of US BioEnergy (the “US BioEnergy Cash System”). The VeraSun Cash System consists of 13 active bank accounts held at the First National Bank of Omaha, including the main operating and maintenance account (the “VeraSun Master O&M Account”) from which funds are disbursed each morning to conduct operations, and into which funds are swept each evening. The ASA Cash System consists of 22 active bank accounts held at the First National Bank of Omaha, including the main ASA Opco Holdings Account from which funds are disbursed each morning to conduct operations, and into which funds are swept each evening. Finally, the US BioEnergy Cash System consists of 18 bank

accounts held at Wells Fargo Bank.

6. Motion of the Debtors for Order Under Bankruptcy Code Sections 105(a), 363, And 507(a) And Fed. R. Bankr. P. 6003, Authorizing Debtors, Inter Alia, to Pay Prepetition Wages, Compensation, and Employee Benefits and Emergency Order Authorizing and Directing Banks to Honor Prepetition Checks for Payment of Prepetition Employee Obligations [Docket No. 7] (the “Employee Wages Motion”)

By the Employee Wages Motion, the Debtors seek an order (i) authorizing, but not directing, the Debtors to (a) pay or otherwise honor, as applicable, unpaid prepetition obligations to or for the benefit of current employees (collectively, the “Employees”), including accrued prepetition wages, salaries, and other cash and non-cash compensation claims (collectively, the “Employee Compensation Obligations”); (b) continue the Debtors’ various non-working day policies, employee benefit plans and programs (and to pay all fees and costs in connection therewith) (collectively, the “Employee Benefit Obligations”); (c) reimburse Employees for prepetition expenses, including corporate credit cards (the “Employee Expense Obligations”); and (d) pay all related prepetition withholdings and payroll-related taxes (the “Employer Taxes” and, with the Employee Compensation Obligations, the Employee Benefit Obligations and the Employee Expense Obligations, collectively, the “Prepetition Employee Obligations”) associated with the Employee Compensation Obligations and the Employee Benefit Obligations; (ii) authorizing and directing the Debtors’ banks to receive, process, honor and pay all of the Debtors’ prepetition checks and fund transfers on account of any of the Prepetition Employee Obligations; (iii) prohibiting the Debtors’ banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Prepetition Employee Obligations and (iv) authorizing the Debtors to issue new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

A. Wages and Salaries

The average gross monthly payroll for the Debtors’ Employees is approximately \$5 million, including payroll taxes. As of the Petition Date, the Debtors estimate that they owed approximately \$1.0 million to Employees, or approximately \$1,078 per Employee on account of accrued, unpaid wages and salaries, including payroll taxes.

B. Other Compensation: Vacation, Personal, Holiday, Sick, Severance, and Business Expenses

As of the Petition Date, Employees collectively accrued approximately \$1.7 million of Vacation Time.

C. *Expense Reimbursement*

As of the Petition Date, certain Employees had not yet been reimbursed for Reimbursable Expenses incurred prior to the Petition Date. According to the Employee Wages Motion, the Debtors pay approximately \$160,000 per month to Employees with respect to Reimbursable Expenses. The Debtors seek authority to reimburse all such expenses as and when reports are submitted by Employees.

D. *Relocation Expenses*

The Debtors from time to time have reimbursed relocation expenses for certain Employees. The Debtors estimate that approximately \$300,000 is still owed to Employees as of the Petition Date.

E. *Employee Benefit Plans*

- **Medical Plans:** The Debtors pay 90% of eligible Employees' health premiums and, initially, 25% of the premiums of an eligible Employee's dependent. The Debtors' contribution to the premium of an eligible Employee's dependent increases by 8% on the Employee's first and third anniversaries, and caps out at 50% on the Employee's fifth anniversary. In addition, the Debtors offer their Employees the use of flexible spending accounts for various medical claims not otherwise covered or payable under the Medical Plans. In total, over 848 persons, including Employees and their dependents, are covered under the Medical Plans at an average monthly expense to the Debtors of approximately \$380,000. Medical Plan premiums are pre-paid by the Debtors on a monthly basis and no amounts are currently outstanding.

- **Dental Plan:** A total of 853 Employees and their dependents participate in the Dental Plan at an average monthly cost to the Debtors of approximately \$40,000.00. Dental Plan premiums are pre-paid by the Debtors on a monthly basis and no amounts are currently outstanding.

- **Life & Disability Insurance:** The monthly cost of the Life and Disability Insurance Plans to the Debtors is approximately \$17,000. The premiums are pre-paid by the Debtors on a monthly basis and no amounts are currently outstanding.

F. *Savings and Retirement Plans*

The Debtors seek authority to remit all amounts that are related to the 401(k) Plans and that arose prior to the Petition Date in the ordinary course of the Debtors' business. A total of 555 VeraSun Employees participate in the VeraSun 401(k) Plan at an average monthly cost to the Debtors of approximately \$72,000. A total of 289 US BioEnergy Employees participate in the US BioEnergy 401(k) Plan at an average monthly cost to the Debtors of approximately \$56,000.

7. Motion of the Debtors for Order Pursuant to Bankruptcy Code Sections 105(a), 506(a), 507(a)(8), 541 and 1129 and Fed. R. Bankr. P. 6003 Authorizing the Debtors to Pay Prepetition Sales, Use, Trust Fund and Other Taxes and Related Obligations [Docket No. 9] (the “Tax Motion”)

By the Tax Motion, the Debtors request entry of an order authorizing, but not directing, them to pay prepetition sales, use and other similar “trust fund” taxes and similar obligations to the respective taxing or other appropriate authorities (the “Taxing Authorities”) in the approximate amount of \$1.2 million in the ordinary course of the Debtors’ businesses. The relief requested is without prejudice to the Debtors’ rights to contest the amounts of any Taxes on any grounds they deem appropriate.

According to the Tax Motion, the Debtors, in the ordinary course of their businesses, incur various Taxes, including, but not limited to, commercial feed inspection fee (the “Inspection Fee”), ethanol motor fuel/excise tax (the “Excise Tax”), and other sales and use taxes (the “Sales and Use Tax”) and inventory taxes (the “Inventory Tax”, together with the Inspection Fee, Excise Tax, and Use Tax, the “Taxes”). These Taxes accrue as the Debtors sell products or consume materials and products and are calculated on the basis of statutorily mandated percentages of the price at which the Debtors’ merchandise is sold and/or cost of merchandise consumed. In some jurisdictions, the Taxes are paid in arrears once incurred, or collected, by the Debtors. In other jurisdictions, the Debtors remit estimated Taxes and similar collections on a periodic basis during the month or quarter in which sales are made or products are produced. The Debtors or the Taxing Authority then “true up” any deficiency or surplus on the date on which the Taxes are actually due.

The Debtors assert that, prior to the Petition Date, they were current on their obligations with respect to the Taxes. The only obligations outstanding represent Taxes that have accrued, but are not yet legally due. As of the Petition Date, the Debtors have accrued approximately \$1.2 million in taxes. Additionally, certain Taxing Authorities have been sent checks for Taxes that may not have been presented or cleared as of the Petition Date. Accordingly, the Debtors seek authorization to pay the Taxes as they come due. The Debtors also seek authorization for their banks to honor prepetition checks and wires issued by the Debtors to the Taxing Authorities in payment of prepetition Taxes that, as of the Petition Date, have not cleared.

8. Motion of the Debtors for Order Pursuant to Bankruptcy Code Sections 105(a) 363(b), 503(b), 506, 1107 And 1108 and Fed. R. Bankr. P. 6003 Authorizing Payment of Certain Prepetition Shipping, Delivery, and Warehousing Charges [Docket No. 11] (the “Shipping and Warehousing Motion”)

By the Shipping and Warehousing Motion, the Debtors seek entry of an order authorizing, but not requiring them, to pay (i) prepetition shipping and delivery charges to third-party truckers, container forwarders and other shippers (collectively, the “Shippers”) and (ii) certain storage charges to terminal operators (collectively, the “Warehousemen”), in each case, that the Debtors determine in their sole discretion are necessary and appropriate. The Debtors estimate that the prepetition shipping and warehousing charges are approximately \$2 million. Prior to making a payment to a Shipper or Warehousemen, the Debtors shall be allowed to settle all or some of the prepetition claim for less than the face amount of the claim without further notice or hearing. The payment of such claims will be conditioned upon the claimant continuing to supply goods and services to the Debtors on trade terms that such vendor historically provided to the Debtors.

In addition, by the Shipping and Warehousing Motion, the Debtors seek entry of an order confirming that the Shippers and Warehousemen will have administrative expense priority claims under section 503(b) of the Bankruptcy Code for those undisputed obligations arising from prepetition purchases of goods delivered, received and accepted by the Debtors after the Petition Date, including goods in transit on or after the Petition Date. The Debtors also request that all banks and other financial institutions on which checks to the Shippers and Warehousemen are drawn be authorized and directed to receive, process, honor and pay any and all such checks, whether presented prior to or after the Petition Date, upon each such bank receiving notice of such authorization. In addition, the Debtors request authority to issue postpetition checks as necessary to replace any prepetition checks issued with respect to the Shipping and Warehouse Charges that may be dishonored.

According to the Shipping and Warehousing Motion, in the normal course of their businesses, the Debtors incur fees to certain Shippers and Warehousemen for delivery and storage of ethanol and its co-products for its customers and, to a lesser extent, for the delivery of corn and other production material to the Debtors’ plants. The Shippers and Warehousemen are generally not paid in advance, but rather invoice the Debtors for services previously rendered. At any given time, there are Shippers transporting ethanol and its co-products from the Debtors’ numerous production facilities and being held by various Warehousemen in storage terminals awaiting delivery. On a monthly basis, the Debtors’ average shipping charges are approximately \$1 million and average warehouse charges are approximately \$833,800.

The Debtors assert that, if such charges are not paid, many of the Shippers and Warehousemen may refuse to perform additional services for the Debtors. In such event, the Debtors will incur significant additional expenses (such as premium shipping costs or storage fees) to replace the Shippers and Warehousemen, which amounts will likely exceed the amount of unpaid prepetition

shipping charges that the Debtors request permission to pay hereunder. The Debtors further contend that because of the filing of these chapter 11 cases, certain Shippers and Warehousemen who hold goods for delivery to or from the Debtors may refuse to release such goods pending payment for their services, thereby disrupting the Debtors' operations. The Shippers and Warehousemen will likely assert, under applicable law, possessory liens with respect to the Debtors' property in possession of such Shippers and Warehousemen. Thus, the Debtors will have no alternative, but to pay the Shipping and Warehouse Charges in full in any event in order to affect the release of any the goods.

9. Motion for an Order Pursuant to 11 U.S.C. Sections 105 And 503(b), (i) Confirming Grant of Administrative Expense Status to Obligations Arising from Prepetition Delivery of Goods Received Within 20 Days of the Commencement Date of These Chapter 11 Cases, (ii) Confirming Grant of Administrative Expense Status to Obligations Arising from Postpetition Delivery of Goods and Services, and (III) Authorizing, but Not Directing, the Debtors to Pay Such Obligations in the Ordinary Course of Business [Docket No. 12] (the "20-Day Goods Motion")

By the 20-Day Goods Motion, the Debtors seek an order (i) confirming grant of administrative expense status to obligations arising from prepetition delivery of goods received within 20 days of the Petition Date, (ii) confirming grant of administrative expense status to obligations arising from postpetition delivery of goods, supplies, products and materials, and (iii) authorizing, but not directing, the Debtors to pay such obligations in the ordinary course of business.

According to the 20-Day Goods Motion, the Debtors require certain goods, such as corn or other high-starch grains, chemical substances, denaturants (e.g. unleaded gasoline or liquid natural gas), natural gas, among other things (collectively, the "Goods"), to produce ethanol and are provided with services (the "Services") from assorted subcontractors, suppliers, and vendors, including farmers and local grain elevators, chemical suppliers, gasoline suppliers, and natural gas suppliers (the "Vendors"). Prior to the Petition Date, the Debtors placed orders with certain Vendors for Goods. Certain of these Vendors delivered their respective Goods to the Debtors within 20 days of the filing date of these cases (the "20-Day Goods"). The Debtors estimate that approximately \$30.7 million in respect of such 20-Day Goods will become due and payable during the next sixty days.

As of the Petition Date, certain of the Vendors have not been paid for the 20-Day Goods. The Debtors contend that, since they rely so heavily on perishable inventory, timely delivery is critical to the Debtors' production of ethanol and distiller grains. The Debtors further assert that, if the Vendors decide not to deliver Goods during the course of these chapter 11 cases out of fear that they will not be paid, it would be difficult to replace such Vendors in the short term, and consequently the Debtors may have to shut down, or reduce production at one or more of their manufacturing plants. This, according to the Debtors, could cause a disruption of shipments to customers, resulting in irreparable harm to the Debtors and their estates.

10. Motion of Provista Renewable Fuels Marketing, LLC for Entry of an Order Compelling Debtor VeraSun Marketing LLC to Assume or Reject Executory Contract and, if Assumed, to Provide Adequate Assurance of Performance [Docket No. 109] (the “Provista Motion”)

By the Provista Motion, Provista Renewable Fuels Marketing, LLC (“Provista”) seeks entry of an order (i) compelling the Debtors to assume or reject certain executory, forward contracts with Provista by November 12, 2008, and (ii) if the Contracts are to be assumed, directing the Debtors to provide adequate assurance to Provista of its intended timely future performance.

According to the Provista Motion, Provista is a party to certain forward contracts with the Debtors for the purchase of ethanol that Provista, in turn, re-sells to third party buyers (the “Contracts”) Pursuant to the Contracts, the Debtors are obligated to produce over 6 million gallons of ethanol to Provista between the Petition Date and December 2008, in exchange for payments to be made in the future. Provista asserts that it has contracts under which it is obligated to provide ethanol to certain buyers, making it imperative that Provista be advised immediately whether the Debtors intend to deliver the ethanol. On November 10, 2008, Provista also filed a motion to schedule an expedited hearing. In response to the Provista Motion, VeraSun Marketing LLC informed Provista that it intended to reject the contract.

A consent order was entered by the Bankruptcy Court on November 19, 2008. Pursuant to the consent order: (1) the Debtors’ rejection of the Contracts was approved; (2) all rights and defenses of the Debtors and Provista were preserved; and (3) Provista shall be entitled to file proofs of claim arising from the rejection of the Contracts prior to the bar date established by the Bankruptcy Court for filing proofs of claim against the Debtors.

IV. RETENTION APPLICATIONS

1. Debtors’ Application for Order Under Bankruptcy Code Sections 327(a) And 329 and Bankruptcy Rules 2014 And 2016 Authorizing Employment and Retention of Skadden, Arps, Slate, Meagher & Flom LLP and Affiliated Law Practice Entities as Attorneys for Debtors-in-Possession [Docket No. 132] (the “Skadden Application”)

By the Skadden Application, the Debtors seek to employ and retain Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden”) as of the Petition Date to represent the Debtors as their bankruptcy counsel in connection with the chapter 11 cases. The Debtors and Skadden have agreed that Skadden will be compensated for services at hourly rates and reimbursed for reasonable and necessary expenses, subject to approval of the Bankruptcy Court. The Skadden

2008 fee rates for attorneys expected to work on this case range from \$665 to \$950 per hour for partners and of counsel, and \$325 to \$610 per hour for counsel, special counsel and associates.

Prior to the Petition Date, Skadden submitted invoices to the Debtors on a periodic basis for professional fees and expenses. Prior to the Petition Date, the Debtors were invoiced and rendered payment to Skadden in the aggregate sum of \$3,860,834 in the ordinary course of business on account of fees and expenses incurred between April 1, 2008 and September 30, 2008. On October 30, 2008, the Debtors rendered payment to Skadden in the amount of \$1,800,000 on account of estimated unposted fees and expenses incurred between October 1, 2008 and October 31, 2008, for which the Debtors had not yet been billed. On November 12, 2008, Skadden issued a final billing statement in the amount of \$1,749,659 (the “Final Billed Amount”) for the actual fees, charges, and disbursements for the period prior to the Petition Date. Skadden shall hold the excess payment of \$50,341 (the difference between the \$1,800,000 payment made on October 30, 2008 and the Final Billed Amount) in a retainer account to pay any fees, charges, and disbursements which remain unpaid at the end of the reorganization cases.

2. Debtors’ Motion for Order Under Bankruptcy Code Sections 105(a) And 363(b) Authorizing (i) the Employment of AP Services LLC and (ii) Designating James J. Bonsall as Chief Restructuring Officer to the Debtors [Docket No. 134] (the “Chief Restructuring Officer Application”)

By the Chief Restructuring Officer Application, the Debtors seek entry of an order (i) authorizing the employment and retention of AP Services LLC (“APS”) as their crisis managers to provide management and restructuring services in these chapter 11 cases, effective as of the Petition Date and (ii) designating James J. Bonsall as Chief Restructuring Officer to the Debtors. Mr. Bonsall, as Chief Restructuring Officer and a Senior Vice President of the Debtors, shall assist the Debtors in evaluating and implementing strategic and tactical options through the restructuring process and shall oversee the Debtors’ finance and accounting functions, as well as the commodities, operations, customer service, and logistics groups.

The Debtors propose to pay APS for Mr. Bonsall’s service as Chief Restructuring Officer at the rate of \$750 per hour. In addition, the Debtors have agreed that services provided by APS’ Temporary Staff, other than Mr. Bonsall, shall be billed to the Debtors for hours worked at hourly rates ranging from \$245 per hour to \$650 per hour. AlixPartners, an affiliate of APS, shall invoice the Debtors for \$200,000 at the beginning of each week, and the Debtors will pay the amount invoiced on that same day. A reconciliation of actual services rendered and expenses incurred to amounts invoiced and paid shall be performed monthly, and a true-up credit or charge shall be calculated. Such true-up shall be applied to the following week’s invoice resulting in an increase or decrease to such invoice. APS shall not be required to seek court approval prior to payment of the hourly fees and expenses. Instead, 100% of the fees and expenses of APS shall be paid in the ordinary course. In addition to hourly fees, APS shall have the right to earn a success fee of \$3,500,000 (the “Success Fee”) if the Debtors (i) confirm a plan of reorganization that becomes effective, or (ii) complete one or more transaction(s), that become effective or are

consummated within eighteen months of the date of the parties' engagement letter, that substantially transfer a significant portion (i.e. more than 50% of the pro forma revenues or operating assets) of the business as a going concern to another entity. Beginning in the nineteenth month after the date of the engagement letter, the Success Fee shall be reduced at the rate of \$100,000 per month until its amount is \$2,500,000, after which point it shall not be further reduced. APS shall not be required to submit quarterly fee applications pursuant to Bankruptcy Code sections 330 and 331. APS shall, however, file with the Bankruptcy Court, and provide notice to the United States Trustee and all official committees, reports of compensation earned and expenses incurred on at least a quarterly basis. Such compensation and expenses shall be subject to Bankruptcy Court review in the event an objection is filed.

By the Chief Restructuring Officer Application, the Debtors have also agreed to indemnify, hold harmless, and defend APS and its affiliates and its and their partners, directors, officers, employees, the Temporary Staff and agents from and against all claims, liabilities, losses, expenses, and damages incurred by them in the performance of their duties, other than as a result of APS's willful malfeasance, bad faith, gross negligence, or violation of law.

3. Debtors' Application for Order Under Bankruptcy Code Sections 327 and 328 Authorizing Employment and Retention of Rothschild Inc. as Financial Advisor and Investment Banker [Docket No. 141] (the "Rothschild Application")

By the Rothschild Application, the Debtors seek entry of an order authorizing (i) the employment and retention of Rothschild Inc. ("Rothschild") as the Debtors' financial advisor and investment banker, *nunc pro tunc* to the Petition Date, and (ii) the waiver of the informational requirements pursuant to Local Rule 2016-2(g). The Debtors propose to pay Rothschild as follows:

- (a) an advisory fee (the "Monthly Fee") of \$225,000 per month;
- (b) a new capital fee (the "New Capital Fee") equal to (i) 1.0% of the face amount of any debtor-in-possession financing raised, (ii) 1.5% of the face amount of any other senior secured debt raised, (iii) 2.5% of the face amount of any junior secured debt or second lien debt raised, (iv) 4% of the face amount of any unsecured debt raised, (v) 6% of the gross proceeds of any equity raised and (vi) an amount to be determined in good faith consistent with the fee scale described above for any hybrid capital raised based upon the debt and/or equity components of such hybrid capital; provided, that Rothschild initiated the transaction and secured the source of the commitment of such new capital;
- (c) a fee (the "Restructuring Fee") of \$9.0 million, payable upon the earlier of (i) the confirmation and effectiveness of a Plan and (ii) the closing of another Restructuring Transaction;

- (d) a fee (the “M&A Fee”) equal to 1.0% of the Aggregate Consideration involved in an M&A Transaction, which fee shall be payable at the closing of such M&A Transaction; provided, that the M&A Fee for each M&A Transaction consummated hereunder shall not be less than \$1.5 million per M&A Transaction until such time as the aggregate amount of M&A Fees paid hereunder equals \$4.5 million and not less than \$0.5 million for any subsequent M&A Transaction;
- (e) in the event that the closing of a Restructuring Transaction would also constitute the closing of a M&A Transaction, Rothschild shall only be entitled to payment of the higher of the Restructuring Fee or the applicable M&A Fee, as the case may be;
- (f) Rothschild shall credit, to the extent not otherwise credited hereunder, 50% of the Monthly Fees paid in excess of \$1,350,000 against the Restructuring Fee or any M&A Fee or New Capital Fee payable hereunder; provided, that the Monthly Fee Credit shall not exceed the Restructuring Fee or any M&A Fee or New Capital Fee, as applicable. In addition, Rothschild shall credit, to the extent not otherwise credited hereunder, 50% of any M&A Fees paid against the Restructuring Fee; provided that the M&A Fee Credit shall not exceed the Restructuring Fee.

By the Rothschild Application, the Debtors have also agreed to indemnify Rothschild and certain related parties.

4. Debtors’ Application for Order Under Bankruptcy Code Sections 327 And 328 Authorizing Employment and Retention of McGladrey & Pullen, LLP as Auditor of Record *Nunc Pro Tunc* to October 31, 2008 [Docket No. 148] (the “McGladrey Application”)

By the McGladrey Application, the Debtors seek entry of an order authorizing the employment and retention of McGladrey & Pullen, LLP (“McGladrey”) as the Debtors’ auditor of record, *nunc pro tunc* to October 31, 2008. McGladrey is VeraSun’s auditor of record with the Securities and Exchange Commission. McGladrey performed the first two Form 10-Q quarterly reviews of VeraSun’s consolidated financial statements in 2008 and is in process of performing the third quarter Form 10-Q quarterly review. McGladrey has also performed certain interim audit procedures related to the audit of VeraSun’s consolidated financial statements as of and for the year ending December 31, 2008 and has also performed certain interim procedures related to the audit of VeraSun’s internal controls over financial reporting as of December 31, 2008. The hourly rates for audit services to be rendered by McGladrey range from \$135 per hour to \$1,031 per hour. McGladrey shall also be entitled to seek reimbursement for necessary expenses incurred in providing professional services.

Pursuant to the terms of its engagement, McGladrey will provide the following services to the

Debtors: (i) audit VeraSun's consolidated financial statements as of and for the year ending December 31, 2008; (ii) audit VeraSun's internal control over financial reporting as of December 31, 2008; (iii) review VeraSun's interim consolidated financial information to be included in Forms 10-Q filed with the Securities and Exchange Commission for the year ending December 31, 2008; (iv) audit the consolidated financial statements of VeraSun's 401(k) plan as of and for the year ended December 31, 2008; (v) audit the financial statements of US BioEnergy Corporation's 401(k) plan as of and for the year ended December 31, 2008; and (vi) provide services associated with periodic reports and other documents filed with the Securities and Exchange Commission, including consultations on related accounting and disclosure matters.

5. Application of Debtors for Order Under 28 U.S.C. § 156(c), Bankruptcy Rule 2002 (f), and Local Rule 2002-1(f) Approving Agreement with Kurtzman Carson Consultants, LLC and Appointing Kurtzman Carson Consultants, LLC as Claims, Noticing, Soliciting, and Balloting Agent [Docket No. 4] (the "Kurtzman Application")

By the Kurtzman Application, the Debtors seek entry of an order approving the Debtors' agreement with Kurtzman Carson Consultants, LLC ("KCC") and appointing KCC as claims, noticing, soliciting, and balloting agent (the "Claims, Noticing, Soliciting, and Balloting Agent") to, among other things, (i) serve as the noticing agent to mail notices to the estates' creditors and parties in interest, (ii) provide computerized claims, objection, soliciting and balloting database services, and (iii) provide expertise, consultation, and assistance in claim and ballot processing and other administrative information with the respect to the Debtors' bankruptcy cases.

The Debtors assert that in light of the number of anticipated claimants and parties in interest, the appointment of an independent third party to act as Claims, Noticing, Soliciting, and Balloting Agent will provide the most effective and efficient means, and relieve the Debtors and/or the Clerk's Office of the administrative burden of noticing, administering claims, and soliciting and balloting votes. Pursuant to the KCC Agreement, KCC will receive a retainer in the amount of \$100,000 for services to be performed and expenses to be incurred in this matter due upon execution of the Agreement. KCC's fee structure is not disclosed in its application.