

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: )  
 ) Case No. 08-12606 (BLS)  
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VERASUN ENERGY CORPORATION, et al., ) *Chapter 11*  
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Debtors.<sup>1</sup> ) Joint Administration Pending  
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**DECLARATION OF DANNY HERRON IN SUPPORT  
OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Danny C. Herron, being duly sworn, deposes and says:

1. I am the President and Chief Financial Officer of VeraSun Energy Corporation ("VeraSun" or the "Company"), a company incorporated under the laws of the state of South Dakota, and of each of the other debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"). I am authorized to submit this declaration (the "Declaration") on behalf of the Debtors. As a result of my tenure with the Debtors, my review of relevant documents, and my discussions with other members of the Debtors' management teams, I am familiar with the Debtors' day-to-day operations, business affairs, and books and records.

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<sup>1</sup> The Debtors consist of: VeraSun Energy Corporation (EIN: 20-3430241); ASA Albion, LLC (EIN: 55-0907221); ASA Bloomingburg, LLC (EIN: 55-0907224); ASA Linden, LLC (EIN: 55-0907228); ASA OpCo Holdings, LLC (EIN: 68-0609122); US Bio Marion, LLC (EIN: 20-34377343); US BioEnergy Corporation (EIN: 20-1811472); VeraSun Albert City, LLC (EIN: (20-2264707); VeraSun Aurora Corporation (EIN: 40-0462174); VeraSun BioDiesel, LLC (EIN: 20-3790860); VeraSun Central City, LLC (EIN: (55-0816855); VeraSun Charles City, LLC (EIN: 20-3735184); VeraSun Dyersville, LLC (20-5765890); VeraSun Fort Dodge, LLC (EIN: 42-1630527); VeraSun Granite City, LLC (EIN: 20-5909621); VeraSun Hankinson, LLC (90-0287129); VeraSun Hartley, LLC (EIN: 20-5381200); VeraSun Janesville, LLC (EIN: 20-4420290); VeraSun Litchfield, LLC (EIN: 20-8621370); VeraSun Marketing, LLC (EIN: 20-3693800); VeraSun Ord, LLC (75-3204878); VeraSun Reynolds, LLC (EIN: 20-5914827); VeraSun Tilton, LLC (EIN: 26-1539139); VeraSun Welcome, LLC (EIN: 20-4115888); VeraSun Woodbury, LLC (20-0647425).

Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.

2. To enable the Debtors to minimize the adverse effects of these Chapter 11 Cases (as defined below) on their business, the Debtors intend to request various types of relief in "first day" applications and motions (collectively, the "First Day Motions"). I submit this Declaration in support of the Debtors' First Day Motions.<sup>2</sup> Except as otherwise stated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with other members of the Debtors' senior management, managers, and members, my review of relevant documents, or my opinion, based on my experience and knowledge of the Debtors' operations and financial conditions.

3. Part I of this Declaration describes the Debtors' businesses and the circumstances surrounding the commencement of their Chapter 11 Cases. Part II of this Declaration sets forth the relevant facts in support of the First Day Motions filed concurrently herewith.

## **I. BACKGROUND**

### **A. The Chapter 11 Filing**

4. On October 31, 2008 (the "Petition Date"), VeraSun Energy Corporation ("VeraSun") and 24 of its subsidiaries and affiliates (together with VeraSun, the "Company" or the "Debtors") each commenced a case by filing a petition for relief under chapter 11 of the title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The

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<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the relevant First Day Motion.

Debtors have requested that these chapter 11 cases (the "Chapter 11 Cases") be jointly administered.

5. No creditors' committee has been appointed in these Chapter 11 Cases by the United States Trustee. No trustee or examiner has been appointed in any of the Debtors' Chapter 11 Cases.

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

## **B. Background and Current Business Operations**

7. Founded in 2001, VeraSun is headquartered in Sioux Falls, South Dakota and, together with the other Debtors, is a leading producer and marketer of ethanol. Ethanol is a type of alcohol produced principally from corn that is used as a blend component in the U.S. gasoline fuel market to increase octane and reduce tailpipe emissions. Ethanol is mandated to go into the fuel stream by the federal government through the Renewable Fuel Standard (the "RFS"). The RFS calls for escalating volumes of ethanol to be purchased and blended into gasoline. By 2015, the RFS standards will require 15 billion gallons of ethanol a year. The Company also markets E85, a branded fuel blend consisting of 85 percent ethanol and 15 percent gasoline for use in "Flexible Fuel Vehicles."

8. The Company has 14 production facilities in eight states with a current combined ethanol production capacity of more than 1.4 billion gallons per year. According to the Renewable Fuels Association this is approximately 14% of the total ethanol production capacity in the U.S. The Company also has a production facility in Welcome, MN that has been

completed but is not in operation, and a production facility in Janesville, MN that is under construction and expected to be completed during the fourth quarter of 2008.

9. The Company's facilities are designed to operate on a continuous basis and use current dry-milling technology, a production process that results in increased ethanol yield and reduced capital costs compared to wet-milling facilities. In addition to producing ethanol, the Company also produces and sells wet and dry distillers grains as ethanol co-products, which serve to partially offset the Company's corn costs.

10. VeraSun has had two major acquisitions since August 2007. On August 17, 2007, VeraSun acquired all of the equity interests in ASA Opco Holdings, LLC ("ASA Holdings") for an aggregate purchase price of approximately \$405.6 million, consisting of cash, and common stock, and subject to approximately \$233.4 million of indebtedness (the "ASA Acquisition"). Through the ASA Acquisition, VeraSun acquired ethanol production facilities in Linden, Indiana; Albion, Nebraska; and Bloomingburg, Ohio (the "ASA Facilities") with an aggregate production capacity of 330 million gallons per year ("MMGY"). The ASA Facilities are subject to long-term agreements with Cargill Incorporated ("Cargill") under which Cargill is responsible for supplying all corn and natural gas to the ASA Facilities as well as providing commodities risk management services.

11. On April 1, 2008, VeraSun acquired 100% of the outstanding common stock of US BioEnergy Corporation ("US BioEnergy") for an aggregate purchase price of approximately \$756.9 million, consisting of common stock and stock options, and subject to approximately \$525.1 million of indebtedness (the "US BioEnergy Acquisition"). The US BioEnergy Acquisition represented an opportunity for the Company to execute its growth strategy of becoming a large-scale, low cost ethanol producer while capitalizing on synergies and creating a

stronger business platform. The US BioEnergy Acquisition increased the Company's overall production capacity by 640 MMGY with the addition of ethanol production facilities in Albert City, Iowa; Central City, Nebraska; Dyersville, Iowa; Hankinson, North Dakota; Marion, South Dakota; Ord, Nebraska; and Woodbury, Michigan. VeraSun also acquired the ethanol production facility located in Janesville, Minnesota, which, as noted above, began construction in January 2007 and is scheduled to be completed during the fourth quarter 2008. With the exception of ethanol produced at the Marion, South Dakota facility, which is sold to exclusively to Archer Daniels Midland, until August 31, 2008, all ethanol produced by the US BioEnergy facilities was sold to Provista Renewable Fuels Marketing, LLC ("Provista"). Effective August 31, 2008, VeraSun terminated the marketing agreement with Provista and begin to market and sell ethanol through VeraSun Marketing, LLC, the entity housing the Company's national marketing, distribution and sales force.

12. The Company is subject to significant market risk with respect to the price of ethanol, the Company's principal product, as well as the price and availability of corn, the Company's principal commodity used in its ethanol production process. Ethanol prices are generally influenced by the supply and demand for gasoline, the availability of substitutes and the effect of related laws and regulations. Likewise, the availability and price of corn are subject to wide fluctuations due to unpredictable factors such as weather conditions during the corn growing season, carry-over from the previous crop year and current crop yield, governmental policies with respect to agriculture and international supply and demand. Historically, the Company has not been able to pass along increased corn costs to its customers and such higher corn prices have resulted in lower profit margins. Although corn is the Company's most

significant raw material production cost, other major costs to the Company include natural gas, transportation costs and the purchase price of ethanol from other producers.

### **C. Prepetition Capital Structure**

13. As of the Petition Date, the Company's total consolidated funded debt obligations were approximately \$1.5 billion and consisted of, among other things, revolving credit, institutional term loans, secured and unsecured notes payable and secured construction/project financing. The major components of the Company's consolidated funded debt obligations are described in greater detail below.

14. Revolving Credit Facility. On May 30, 2008, VeraSun entered into that certain Credit Agreement (the "UBS Credit Facility") with UBS Securities LLC, UBS AG, Stamford Branch and UBS Loan Finance LLC, providing for a revolving credit facility of up to \$125 million, subject to a borrowing base. VeraSun and certain of its subsidiaries (collectively, the "VeraSun UBS Subsidiaries")<sup>3</sup> are co-borrowers and guarantors under this facility. The UBS Credit Facility is secured by substantially all of the inventory and accounts receivable of VeraSun and the VeraSun UBS Subsidiaries. As of the Petition Date, outstanding principal obligations under the UBS Credit Facility were approximately \$81.7 million.

15. Senior Secured Notes. In December 2005, VeraSun 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 certain subsidiaries, excluding ASA Holdings and its subsidiaries and US BioEnergy and its subsidiaries (collectively, the "VeraSun

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<sup>3</sup> The VeraSun UBS Subsidiaries include: VeraSun Aurora Corporation; VeraSun Charles City, LLC; VeraSun Marketing, LLC; VeraSun Welcome, LLC; VeraSun Fort Dodge, LLC; and VeraSun Hartley, LLC.

Subsidiaries").<sup>4</sup> The Senior Secured Notes are secured on a first priority basis by liens on substantially all of the assets of VeraSun and the VeraSun Subsidiaries other than accounts receivable, inventory, commodities accounts, and the cash proceeds therefrom.

16. Senior Unsecured Notes: In May 2007, VeraSun issued 9.375% senior unsecured notes in the aggregate principal amount of \$450 million, maturing in 2017 (the "Senior Unsecured Notes"). The Senior Unsecured Notes are guaranteed by the VeraSun Subsidiaries.

17. ASA Senior Credit Facility. The entities acquired in the ASA Acquisition are co-borrowers and guarantors under the ASA Holdings senior credit facility, which provided for aggregate borrowings of up to \$275 million in two tranches: (a) Tranche A (\$175 million) and (b) Tranche B (\$100 million) (the "ASA Senior Credit Facility"). VeraSun is a guarantor under the ASA Senior Credit Facility. Borrowings under the ASA Senior Credit Facility were to be used for the development, engineering, construction and operation of the Linden, Albion and Bloomingburg plants. The obligations under the ASA Senior Credit Facility are secured by the assets of ASA Holdings and its subsidiaries and a pledge made by VeraSun of all of the equity interest in ASA Holdings. As of the Petition Date, approximately \$266.7 million was outstanding under the ASA Senior Credit Facility.

18. AgStar Credit Facilities. Each direct operating subsidiary of US BioEnergy Corporation has its own individual credit agreement with a combination of both revolving and term loans, secured by mortgages on real property and liens on all personal property at each operating entity. With the exception of US Bio Marion, LLC (discussed in further detail below), the entities acquired in the US BioEnergy Acquisition are parties to various credit facilities with

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<sup>4</sup> The VeraSun Subsidiaries include: VeraSun Aurora Corporation, VeraSun Biodiesel, LLC; VeraSun Charles City, LLC; VeraSun Granite City, LLC; VeraSun Fort Dodge, LLC; VeraSun Hartley, LLC; VeraSun Litchfield, LLC; VeraSun Marketing, LLC; VeraSun Tilton, LLC; VeraSun Reynolds and VeraSun Welcome, LLC.

AgStar Financial Services, PCA ("Agstar"), as administrative agent and lender, and the other lenders party thereto (collectively, the "AgStar Credit Facilities"). As of the Petition Date, aggregate outstanding debt obligations under the AgStar Credit Facilities were approximately \$464.9 million.

19. Marion Construction Loan. US Bio Marion, LLC, which became a subsidiary of VeraSun as a result of the US BioEnergy Acquisition, has outstanding construction loans from Dougherty Funding LLC ("Dougherty") relating to the Marion, South Dakota facility ("Marion"). On June 1, 2008, the outstanding Marion construction loans were converted into a \$90 million term note maturing on March 31, 2013 (the "Marion Loan"). The Marion Loan is secured by substantially all of the assets of US Bio Marion, LLC.

**D. Events Leading to a Chapter 11 Filing**

20. As noted above, the Company's liquidity is materially affected by uncertain commodity prices for corn, natural gas and ethanol. Corn and ethanol prices have been highly volatile during 2008 and are impacted by a number of factors beyond the Company's control. In addition, the Company has expanded production capacity substantially over the last year through the ASA Acquisition and the US BioEnergy Acquisition. Ultimately, sizeable fluctuations in the price of corn, natural gas and ethanol, coupled with obligations to service the Company's debt in the face of continued lack of liquidity in the credit markets and the inability to raise additional investment capital from depressed equity markets, have precipitated these Chapter 11 Cases.

21. Ethanol to Corn Spread. The Company's gross margin depends principally on the spread between ethanol and corn prices (the "Crush Spread"). As noted above, corn is the predominant feedstock used in ethanol production. However, corn prices do not necessarily correlate with the price of ethanol since each market is affected by unique supply and demand

conditions. Factors affecting the grain markets, such as weather, crop conditions, and international trade, are distinct from those that affect ethanol, such as crude oil and gasoline supply and demand factors, the regulatory climate, and the availability of other fuel oxygenates. In early 2006 the Crush Spread was at historically high levels in excess of \$2.50, driven in large part by oil companies removing a competitive product, MTBE, from the fuel stream and replacing it with ethanol. However, the Crush Spread has narrowed significantly throughout the fourth quarter of 2007 and 2008. Since September 2007, Crush Spreads have averaged less than \$.50. Such sustained narrow Crush Spreads have adversely affected the Company's results.

22. Hedging Activities. Historically, VeraSun has employed short financial positions to hedge purchases of corn. In July 2008, after corn prices had risen from approximately \$6.00 per bushel at the end of May 2008 to almost \$8.00 per bushel due to extraordinary weather conditions and broader commodity market trends, VeraSun elected to exit such short financial positions in corn to mitigate what was considered to be unacceptable margin exposure in futures positions. Upon termination of these short financial positions, the Company priced corn purchases at then-current market prices which turned out to be higher than the present market prices for corn. Based on market forecasts that corn prices would continue to rise, the Company entered into a number of "accumulator" contracts to meet their corn requirements for the third and fourth quarters of 2008. These contracts enabled VeraSun to purchase a specified volume of corn at prices below then-prevailing market rates and insured that the Company would be able to purchase corn at these prices even if corn prices continued to rise within a certain price range. The contracts, however, also required the Company to purchase corn at that price if market prices declined below the price set in the contracts. Shortly after the Company entered into these "accumulator contracts", corn prices declined sharply from almost \$8.00 per bushel to under

\$5.00 per bushel in mid-August 2008 and the Company was required to purchase corn at prices well above prevailing market rates. On September 16, 2008, the Company reported that it expected to post a wider than forecasted net loss in the third quarter of 2008 in the range between \$63 million and \$103 million largely as a result of the hedging strategies described above.

23. Facing declining liquidity, the Company attempted to raise cash via a number of different transactions. A public equity offering failed. Efforts to raise debt or equity financing from private parties in sufficient amounts to sustain the Debtors' businesses also failed. During October 2008, the Company's cash deteriorated rapidly primarily as a result of a significant constriction of trade credit.

24. Essentially out of cash to sustain operations, these Chapter 11 Cases were commenced to access the only available source of funds to keep operations alive and maximize the value of the Debtors' assets – debtor-in-possession financing. The debtor-in-possession financing, if approved by the Court, will allow the Debtors an opportunity to continue operations, maximize the value of the estates, and reorganize successfully.

## **II. FIRST DAY MOTIONS**

25. In furtherance of these objectives, the Debtors expect to file a number of First Day Motions and proposed orders and respectfully request that the Court consider entering the proposed orders granting such First Day Motions. I have reviewed each of the First Day Motions and Orders (including the exhibits thereto) and the facts set forth therein are true and correct to the best of my knowledge, information and belief. Moreover, I believe that the relief sought in each of the First Day Motions and Orders (a) is vital to enable the Debtors to make the transition to, and operate in, chapter 11 with a minimum interruption or disruption to their

businesses or loss of productivity or value and (b) constitutes a critical element in achieving the Debtors' successful reorganization.

**A. Administrative and Procedural Matters**

Joint Administration of Cases

26. VeraSun Energy Corporation is the direct or indirect parent or owner of the 24 subsidiary and affiliate debtors (the "Affiliate Debtors"). Each Affiliate Debtor is wholly-owned by the ultimate parent, VeraSun Energy Corporation.

27. I anticipate that the notices, applications, motions, other pleadings, hearings and orders in these cases will affect each of the Debtors. Thus, I believe that the joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders and other pleadings, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates. I also believe that such duplication of substantially identical documents would be extremely wasteful and would unnecessarily overburden the Clerk of the Court with voluminous filings. Finally, I believe that the use of a simplified caption for the jointly administered cases will enable parties-in-interest in each of the above-captioned cases to be apprised of the various matters before the Court.

Notification of Creditors

28. The Debtors have in excess of 1,700 creditors, potential creditors, and parties in interest to whom the Debtors and/or the office of the Clerk of the Bankruptcy Court for the District of Delaware (the "Clerk's Office") must serve various notices, pleadings, and other documents filed in these cases. Such parties in interest will produce thousands of proofs of claim that must be docketed and administered. I believe that the size of the Debtors' creditor body

makes it impracticable for the Debtors to, without assistance, undertake the task of sending notices and dealing with claims.

29. In light of the number of anticipated claimants and parties in interest, I believe that appointing Kurtzman Carson Consultants, LLC ("KCC"), 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. The Debtors believe that KCC is capable of handling the requisite claims, noticing, soliciting and balloting responsibilities, thereby relieving the Clerk, or in the alternative the Debtors, of such burden. I believe that such assistance will expedite service of notices, streamline the case administration process and permit the Debtors to focus on their reorganization efforts. I believe that KCC is well-qualified to provide such services, expertise, consultation and assistance.

## **B. Business Operations of the Debtors**

### Cash Management, Bank Accounts and Business Forms

30. Cash Management. Before the commencement of these Chapter 11 Cases, the Debtors used independent cash management systems to collect, transfer and disburse funds generated by their operations and to accurately record all such transactions as they are made (collectively, the "Cash Management System") in the ordinary course of business. Importantly, the Debtors' 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 to be collected and paid. In this regard, all cash disbursements and receipts are controlled and monitored by the Debtors' financial personnel located at the Debtors' headquarters in Sioux Falls, South Dakota. By centralizing control over the Cash Management System, the

Debtors are able 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.

31. I believe that the use of the Cash Management System is essential to enable the Debtors to control and monitor funds, ensure cash availability and liquidity, comply with the requirements of their financing agreements, and reduce administrative expenses by facilitating the movement of funds and enhancing the development of accurate account balance and presentment information. These controls are crucial given the number of cash transactions managed through the Cash Management System.

32. Overall, the Cash Management System consists primarily of 53 bank accounts utilized by the Debtors through which the Debtors are able to manage cash receipts and disbursements (the "Bank Accounts"). The Bank Accounts are generally 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.

33. As indicated above, since August 2007 the Debtors have completed two major acquisitions. The Debtors are currently in the process of streamlining their Cash Management System to eliminate duplicative or unnecessary Bank Accounts. However, at this time the Debtors' 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"). Each of these "subsystems" comprising the overall Cash Management System are discussed in further detail below.

34. VeraSun Cash System.<sup>5</sup> The VeraSun Cash System consists of 13 active<sup>6</sup> Bank Accounts held at the First National Bank of Omaha. Funds are disbursed from the main VEC O&M Account (Account No. 1101193438, the "VeraSun Master O&M Account") to the individual O&M Accounts of each subsidiary in the VeraSun Cash System (the "VeraSun Subsidiary O&M Accounts") based on daily funding requests for disbursements to conduct operations. Each of the VeraSun Subsidiary O&M Accounts are zero balance accounts that are automatically swept each evening to the VeraSun master sweep account (Account No. 110203933, the "VeraSun Sweep Account") and then back again each morning based on funding needs. Each of the VeraSun Subsidiary O&M Accounts process all disbursements for purchases of corn and other expenditures necessary to operate the Debtors' facilities, as well as certain de minimis cash receipts. All payroll disbursements made through the VeraSun Cash System are pre-funded to Automatic Data Processing Inc. ("ADP") from the VeraSun Master O&M Account and the O&M Account established for VeraSun Marketing, LLC (Account No. 110203690). The majority of cash receipts from customers, generated primarily from the sale of ethanol and its co-products such as wet and dry distillers grains, are deposited directly into the VML Revenue

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<sup>5</sup> The VeraSun Cash System services the following legal entities: VeraSun Energy Corporation; VeraSun Aurora Corporation; VeraSun Biodiesel, LLC; VeraSun Charles City; VeraSun Charles City, LLC; VeraSun Fort Dodge LLC; VeraSun Granite City, LLC; VeraSun Hartly, LLC; VeraSun Marketing, LLC; VeraSun Reynolds, LLC; and VeraSun Welcome, LLC.

<sup>6</sup> The Debtor's VeraSun Biodiesel, LLC O&M Account (Account No. 110193548) is currently inactive and is expected to be closed in the near future. The VFD Revenue Account (Account No. 110118170), the VAC Revenue Account (Account No. 110197780), and the VeraSun Charles City, LLC Construction Account (Account No. 110193441) were each closed on August 6, 2008.

Account (Account No. 110203784). The VeraSun Cash System is also comprised of a money market account (Account No. 20165176620, the "Money Market Account") which is used to hold funds sufficient to cover outstanding letters of credit with Indiana Gas Company and Vectren Energy to secure purchases of natural gas in the amounts of \$150,000 and \$1,375,000, respectively.

35. ASA Cash System.<sup>7</sup> The ASA Cash System consists of 22 Bank Accounts held at the First National Bank of Omaha. Each legal entity in the ASA Cash System maintains its own O&M Account, which processes all cash receipts and disbursements for each such legal entity. Funds deposited into the O&M Accounts at the Bloomingburg, Albion and Linden facilities are generated primarily from the sale of ethanol and its co-products to customers. On a nightly basis, cash balances in each such O&M Account not necessary to cover outstanding checks are swept to the main ASA Opco Holdings Account (Account No. 110118510). Each of the O&M Accounts is then funded on a daily basis, as necessary, with additional amounts to cover payments to various vendors and suppliers and to fund employee-related obligations. The ASA Cash System is also comprised of a stand alone 401(k) account and a flexible spending account. The 401(k) account currently contains no funds and is in the process of being closed. Likewise, the flexible spending account, which maintains monies withheld from former ASA employees for flexible spending programs provided by the Company, has a balance of less than \$5,000 and has had no activity since March 31, 2008. The Debtors plan to close the flexible spending account in the near future. Except for the "Debt Service Account," the remaining accounts comprising the ASA Cash System have little or no activity and are comprised of various project

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<sup>7</sup> The ASA Cash System services the following legal entities: ASA Albion, LLC; ASA Bloomingburg, LLC; ASA Opco Holdings; and ASA Linden, LLC.

accounts that the Debtors are required to maintain under that certain Credit Agreement dated as of February 6, 2007 among ASA Opco Holdings, LLC, ASA Albion, LLC, ASA Bloomingburg, LLC, WestLB AG, New York Branch, as Administrative Agent and the various financial institutions party thereto. As of the Petition Date, the Debt Service Reserve Account (Account No. 110118617) held a balance of \$3.4 million to cover approximately one-half of the anticipated principal and interest payments due over the next six months.

36. US BioEnergy Cash System.<sup>8</sup> The US BioEnergy Cash System consists of 18 Bank Accounts held at Wells Fargo Bank. Each legal entity in the US BioEnergy Cash System maintains its own O&M Account, which processes all cash receipts and disbursements for each such legal entity. Funds deposited into the O&M Accounts are generated primarily from the sale of ethanol and its co-products to customers. On a nightly basis at the close of business, the cash balance in each O&M Account is swept to a separate sweep account maintained for each individual legal entity that is designated with an account number identical to each entities representative O&M Account. As funding requirements dictate, each of the O&M Accounts is funded on a daily basis with the amount necessary to cover payments to various vendors and suppliers and to fund employee-related obligations from the master US BioEnergy account (Account No. 4121455620).

37. I believe that the Debtors' Cash Management System allows for (a) overall corporate control of funds, (b) cash availability when and where needed among the Debtors and (c) the reduction of administrative costs through a method of coordinating funds collection and movement. I believe the Debtors' smooth transition into, and out of, chapter 11 depends on their

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<sup>8</sup> The US BioEnergy Cash System services the following legal entities: U.S. BioEnergy Corporation; VeraSun Albert City, LLC; VeraSun Dyersville, LLC; VeraSun Hankinson, LLC; VeraSun Janesville LLC; US BioMarion, LLC; VeraSun Ord, LLC; VeraSun Central City LLC; and VeraSun Woodbury, LLC.

ability to maintain these Bank Accounts and operate this Cash Management System without interruption. The Cash Management System allows the Debtors to manage all of their cash flow needs and includes the necessary accounting controls to enable the tracing of funds through the system to ensure that all transactions are adequately documented and readily ascertainable. The Debtor will continue to maintain detailed records reflecting all transfers of funds.

38. I believe that the operation of the Debtors' businesses requires that the Cash Management System continue during the pendency of these Chapter 11 Cases. Furthermore, I believe that adopting new, segmented cash management systems would be expensive, would create unnecessary administrative burdens and would be disruptive to the Debtors' business operations. Consequently, I believe that the maintenance of the existing Cash Management System is in the best interests of all creditors and other parties-in-interest.

39. Bank Accounts. As noted above, before the Petition Date, the Debtors maintained Bank Accounts, out of which they managed cash receipts and disbursements. The Debtors routinely deposit, withdraw and otherwise transfer funds to, from and among the Bank Accounts by various methods, including check, wire transfer, automated clearing house transfer, internal bank transfer and electronic funds transfer. The Debtors complete numerous transactions per month through the Bank Accounts.

40. I understand that the United States Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of chapter 11 cases. I believe that under the circumstances, a waiver of the United States Trustee's requirement that the Bank Accounts be closed and that new post-petition bank accounts be opened is warranted. If enforced in these cases, I believe that such requirements would cause significant and

unnecessary disruption in the Debtors' businesses, thereby impairing their efforts to reorganize and pursue other alternative to maximize the value of their estates.

41. The Debtors' Bank Accounts are a part of a carefully-constructed cash management system that permits the Debtors to fund their ongoing operations in a streamlined and cost-efficient manner. In order to avoid delays in payments to administrative creditors and to ensure as smooth a transition into chapter 11 as possible with minimal disruption, I believe that it is important that the Debtors be permitted to maintain their existing Bank Accounts and, when necessary, open new accounts. I also believe that this relief is necessary to aid the Debtors in their collective efforts to successfully and rapidly complete a restructuring of their businesses.

42. Business Forms. In the ordinary course of business the Debtors used numerous business forms including, but not limited to, letterhead, purchase orders, invoices, contracts and checks (collectively, the "Business Forms") prior to the Petition Date. In order to minimize expenses to the Debtors' estates, the Debtors are requesting authorization to continue to use all Business Forms subsequent to the Petition Date, without reference to the Debtors' status as debtors-in-possession.

43. I believe that a requirement that the Debtors change their Business Forms would be expensive and burdensome to the Debtors' estate and extremely disruptive to the Debtors' business operations. Consequently, I believe that the costs and potential disruption are not justified in this case.

44. Intercompany Transactions. In the ordinary course of the Debtors' businesses, the Debtors have provided a number of services to and engaged in intercompany transactions to each other (collectively, the "Intercompany Transactions"). The Intercompany Transactions cover a variety of items, depending on the entity, including, without limitation, payroll transactions,

management fees, allocation of insurance premiums and other general corporate transactions as well as occasional machinery parts and raw material purchases made by one operating entity on behalf of another. The Intercompany Transactions are reflected in each individual debtor entities' books and records. The Debtors maintain records of all Intercompany Transactions and can ascertain, trace, and account for all Intercompany Transactions. Intercompany Transactions between VeraSun, ASA Opco Holdings, LLC and US BioEnergy are generally settled in cash at the time of the transaction. Other Intercompany Transactions are either settled in cash or reflected in each entities books and records at the time of the transaction.

45. I believe that the Intercompany Transactions are integral to the Debtors' businesses and the function of their Cash Management System and reduce the Debtors' administrative costs. In order to ensure that the businesses of the Debtors and their non-debtor affiliates are not interrupted by these Chapter 11 Cases, I believe it is necessary for the Debtors to continue to undertake the Intercompany Transactions in the ordinary course and consistent with past practice.

#### Waiver of Investment and Deposit Requirements

46. I am advised by counsel that section 345 of the Bankruptcy Code establishes certain investment and deposit restrictions. I believe that the Debtors' use of the Bank Accounts substantially conforms with the approved investment practices identified in Bankruptcy Code section 345, and that all deposits and investments into the Bank Accounts are safe, prudent and designed to yield the maximum reasonable net return on the funds invested.

47. As described above, the Debtors' 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. 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. Further, the Debtors do not make any short-term or long-term investments given their current Cash Management System. To the extent that any account is construed to have a balance substantial enough to fall within the ambit of the Bankruptcy Code section 345 protections, I believe that the safety presented by the financially stable banking institutions with whom the Debtors bank constitutes sufficient cause to allow the Debtors to deviate from approved investment and deposit practices established by the Bankruptcy Code. Consequently, in my opinion, a waiver of the section 345 requirements is in the best interests of the estates, all creditors and other parties-in-interest.

#### Employee Wages, Salaries and Benefits

48. To minimize the personal hardship the Employees will suffer if Prepetition Date Employee Obligations (as defined below) are not paid when due and to maintain the Employees' morale during this critical time, I believe it is important to (i) 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"); (ii) continue the Debtors' various non-working day policies, employee benefit plans and programs (and to pay all fees and costs in connection therewith) except as otherwise set forth herein (collectively, the "Employee Benefit Obligations"), the most significant of which are described below; (iii) reimburse Employees for prepetition expenses, including corporate credit cards, Employees incurred on behalf of the Debtors in the ordinary course of business (the "Employee Expense Obligations"); and (iv) 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.

49. Wages and Salaries. On April 1, 2008, VeraSun acquired US BioEnergy. The Debtors are currently in the process of consolidating and streamlining the two companies' various employee related programs and benefits. The Debtors expect to complete this consolidation by December 31, 2008. In the meantime, the Debtors maintain two separate benefit programs, one program for employees who were part of VeraSun ("Vera Sun Employees") and one program for employees who were part of US BioEnergy (the "US BioEnergy Employees") prior to the acquisition of US BioEnergy. The Debtors employ approximately 932 Employees, the majority of whom are full-time. Approximately 67% of all employees are hourly wage earners (collectively, the "Hourly Employees") and the remaining 33% are salaried personnel (collectively, the "Salaried Employees").

50. The average gross monthly payroll for the Debtors' Employees, is approximately \$5 million, including payroll taxes. All payroll disbursements, except for deductions on account of benefits, are pre-funded to Automatic Data Processing Inc. ("ADP") by the Debtors. Both Salaried and Hourly Employees are paid every other Friday.<sup>9</sup> As of the Petition Date, the Debtors estimate that they owe approximately \$1.005 million to Employees, or approximately \$1,078.00 per Employee on account of accrued, unpaid wages and salaries, including payroll taxes. There are presently no Employees who are owed in excess of \$10,950 for prepetition salaries.

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<sup>9</sup> On October 30, 2008, Salaried and Hourly Employees were paid for the period ending October 25, 2008.

51. I believe it is paramount that the Debtors continue to pay the outstanding amounts owed as of the Petition Date for accrued and unpaid salaries and wages of Employees. I believe that if such payments are not made, Employees may terminate their employment with the Debtors, causing significant disruption to operations.

52. Other Compensation: Vacation, Personal, Holiday, Sick, Severance, and Business Expenses. The Debtors offer their Employees other forms of compensation, including vacation time, overtime pay, paid holidays, other earned time off, severance, and reimbursement of certain business expenses (the "Employee Compensation Obligations"). These forms of compensation are usual, customary and necessary if the Debtors are to retain qualified employees to operate their businesses. As mentioned above, the forms of "other compensation" vary depending on whether an Employee was historically employed by VeraSun or US BioEnergy.

53. Vacation Time. All full-time<sup>10</sup> and certain part-time<sup>11</sup> Employees are eligible to accrue paid vacation time, holiday time, and sick time.

54. VeraSun Employees. For VeraSun Full-time and Regular Part-time Employees, vacation time off is based on an Employee's length of service to the company and position within the company ("Vacation Time"). VeraSun vacation policies permit the carryover of unused

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<sup>10</sup> Full-time VeraSun Employees are those who are not in a temporary status and who are regularly scheduled to work a full-time schedule (the "VeraSun Full-time"). Full-time US BioEnergy Employees are those who are authorized and schedule to work 40 hours per work week on a regular and consistent basis, without any defined termination date and are eligible for benefits (the "US BioEnergy Full-time").

<sup>11</sup> Regular part-time VeraSun Employees are those who are not in a temporary status and who are regularly scheduled to work less than the full-time schedule, but at least 30 hours per week (the "VeraSun Regular Part-time"). Part-time VeraSun Employees are those who are not assigned to a temporary status and who are regularly schedule to work less than 30 hours per week ("VeraSun Part-time"). VeraSun Part-time Employees receive legally mandated benefits, but are ineligible for all other VeraSun benefit programs. Regular part-time US Bio Energy Employees are those who are authorized and scheduled to work less than 30 hours each work week on a regular and consistent basis with any defined termination date and are eligible for limited company benefits (the "US BioEnergy Part-time"). Additionally, the Debtors contract through various temporary service companies in order to employ a variety of at-will temporary contract workers.

Vacation Time until the Employee reaches a "cap" equal to two times the annual Vacation Time amount. The vacation policies also permit the cash-out of accrued Vacation Time upon an Employee's termination. Vacation Time is calculated as follows in the chart below:

Years of Employment	Process Operators <sup>12</sup>		Full and Regular Part-time Employees	
	Total Hours	Hours Per Pay Period	Total Hours	Hours Per Pay Period
0-4 years	84	3.23	80	3.08
Beginning year 5	120	4.62	120	4.62
Beginning year 10	168	6.46	160	6.16

55. US BioEnergy Employees. US BioEnergy Employees are given paid time off ("PTO") which is intended to be used for vacations, illness, and personal business and is based on an Employee's length of service to the company and pay grade within the company. US BioEnergy Full-time Employees are permitted to carryover unused PTO until the Employee reaches a "cap" equal to the maximum hours for the Employee's salary grade. The PTO policy also permits the cash-out of accrued PTO upon an Employee's termination. PTO is calculated as follows in the chart below:

Salary Grade	Under 5 yrs		5 to < 10 yrs		10+ yrs	
	day/yr	hr/mo	day/yr	hr/mo	day/yr	hr/mo
Grades 1-5	18	12	21	14	24	16
Grades 6-10	21	14	24	16	27	18
Exec. Team	24	16	27	18	30	20

56. In total, prior to the Petition Date, Employees collectively accrued approximately \$1.7 million, of Vacation Time and PTO.

57. Holiday Time. Holiday time is provided to certain Employees for various nationally observed holidays (the "Holiday Time"). Holiday Time is provided to all VeraSun

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<sup>12</sup> The full-time work schedule for process operators (the "Process Operators") is 12 hours per day, 7 days per pay period, 52 weeks per year.

Full-time and Regular Part-time Employees and all US BioEnergy Full-time Employees starting with an Employee's first year of service.

58. Sick Time. Time off for illness ("Sick Time") is provided to VeraSun Full-time and Regular Part-time Employees. VeraSun Process Operator Employees are entitled to 72 hours of Sick Time every calendar year and All Other VeraSun Employees are entitled to 48 hours of Sick Time every calendar year. VeraSun Employees may accumulate up to a maximum of thirty (30) days of Sick Time. VeraSun Employees are not paid for accrued but unused Sick Time upon termination of their relationship with the Debtors. As mentioned above, Sick Time for US BioEnergy Full-time Employees is included in each such Employee's PTO.

59. Expense Reimbursement. The Debtors routinely reimburse Employees for certain expenses incurred within the scope of their employment, including expenses for travel, lodging, professional seminars and conventions, ground transportation, meals, supplies and miscellaneous business expenses (collectively, the "Reimbursable Expenses"). The Debtors process expense reports on a weekly basis. As of the Petition Date, certain Employees have not yet been reimbursed for Reimbursable Expenses incurred prior to the Petition Date. Approximately \$160,000 is paid to Employees with respect to Reimbursable Expenses each month. I believe that if such reimbursable business expenses are not paid, Employees will discontinue performing aspects of their jobs which cause them to incur expenses. The non-performance of these tasks will disrupt the business and cause the Debtors to find alternative ways to accomplish the same.

60. Corporate Credit Cards. The Debtors have entered into agreements for corporate credit cards (the "Corporate Cards") with First National Bank of Omaha ("Bank of Omaha"), for VeraSun Employees, and First Bank & Trust ("First Bank", together with Bank of Omaha "Credit Card Companies"), for US BioEnergy Employees. Employees are permitted to incur

business-related charges with the Corporate Cards. On a monthly basis, the Debtors pay the Credit Card Companies directly on behalf of Employees. The Debtors and the respective employees are jointly liable for the business related charges. I believe that if the Debtors do not pay the Corporate Card Companies, the Corporate Card Companies may proceed against the Employees.

61. Relocation Expense. The Debtors from time to time have reimbursed relocation expense for certain Employees. Within the last year, the Debtors have paid relocation expenses to Employees who relocated as a result of the acquisition of US BioEnergy and who relocated as a result of the Debtors' headquarters moving from Brookings, South Dakota to Sioux Falls, South Dakota. Additionally, the Debtors have offered Employees limited relocation expenses to those employees who relocated from the Debtors' Welcome, Minnesota site. The Debtors estimate that approximately \$300,000 is still owed to Employees as of the Petition Date.

62. The Debtors seek authority to honor in the ordinary course of business all Employee Compensation Obligations arising under the Debtors' various policies or practices existing prior to the Petition Date. I believe that the Debtors' Employees will continue to utilize the benefits afforded by such policies in the ordinary course of business without impacting material cash flow requirements beyond the Debtors' normal payroll obligations. In addition, I am concerned that Employee morale, already adversely affected by the filing of these Chapter 11 Cases, will further erode if the Debtors are unable to provide a mechanism for the prompt payment of the Employee Compensation Obligations.

#### Utilities

63. Employee Benefit Plans. The Debtors offer their Employees a variety of medical benefits, including life insurance options. (the "Employee Benefit Plans").

64. Medical Plans. The Debtors provide a number of their Employees and their dependents with medical benefits pursuant to two (2) different Blue Cross & Blue Shield ("BCBS") medical plans (collectively, the "Medical Plans"). VeraSun Full-time and Regular Part-time Employees and US BioEnergy Full-time Employees and their dependents are afforded benefits through the Medical Plans<sup>13</sup>. The Debtors pay 90% of eligible Employees health premium and, initially, 25% of the Employee's dependant's premium. The Debtors' contribution to an Employee's dependants' premiums 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. The flexible spending benefits are administered by Wellmark Blue Cross & Blue Shield on behalf of VeraSun Employees and Administration Resources Corporation on behalf of US BioEnergy Employees. 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 \$380,000.00. Medical Plan premiums are pre-paid by the Debtors on a monthly basis and no amounts are currently outstanding.

65. Dental Plan. The Debtors also offer their Employees dental benefits (the "Dental Plan"). VeraSun Full-time and Regular Part-time Employees and US BioEnergy Full-time are offered a Dental Plan through Delta Dental of South Dakota. The Dental Plan is funded through contributions by participating Employees and by the Debtors. Employee contributions are deducted from bi-weekly paychecks to pay for that month's coverage. A total of 853 Employees

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<sup>13</sup> The Debtors use a third-party administrator in connection with former Employees with COBRA coverage. The Debtors pre-pay approximately \$1900 to the third-party administrator each month for its services.

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.

66. Life and Disability Insurance. Certain of the Debtors' Employees also have the option to purchase, and in some cases the Debtors provide, life and disability insurance (collectively, the "Life and Disability Insurance Plans"). VeraSun Full and Regular Part-time Employees and US BioEnergy Full-time Employees are provided with a basic life insurance plan ("Basic Life Insurance") and accidental death & dismemberment insurance ("Accidental Death and Dismemberment Insurance", together with Basic Life Insurance, the "Life Insurance Plans"). The Basic Life Insurance for VeraSun Employees is pursuant to policies issued by Lincoln Financial Group, Inc. and for US BioEnergy Employees is pursuant to policies issued by The Hartford Financial Services Group, Inc. The premiums for the Life Insurance Plans are paid by a combination of employer contributions and voluntary payroll deductions. In addition, full time US BioEnergy Employees may purchase (with shared contributions from the Debtors) disability coverage. The monthly cost of the Life and Disability Insurance Plans to the Debtors is approximately \$17,000.00. The premiums are pre-paid by the Debtors on a monthly basis and no amounts are currently outstanding.

67. Savings and Retirement Plans. The Debtors offer certain Employees a 401(k) savings and retirement plan (the "401(k) Plan"). Eligible Employees each year may contribute up to \$16,000 for 2008 of their pre-tax compensation for investment in their 401(k) Plan. Monies are collected from Employees for payment into the 401(k) accounts. The Debtors believe that such withheld funds, to the extent that they remain in the Debtors' possession, constitute moneys held in trust and therefore are not property of the Debtors' bankruptcy estates.

68. VeraSun Employees. Employees who participate in the 401(k) Plan ("VeraSun 401(k) Plan") are eligible to receive a 100% matching contribution from the Debtors, up to a maximum of 3% of their salary. All Employees over the age of eighteen (18) are eligible to participate in the VeraSun 401(k) Plan. The VeraSun 401(k) Plan has no service requirements. The VeraSun 401(k) Plan is managed by First Bank. The Debtors make one bi-weekly deposit to the VeraSun 401(k) Plan administrator. A total of 555 VeraSun Employees participate in the VeraSun 401(k) Plan at an average monthly cost to the Debtors of approximately \$72,000.00.

69. US BioEnergy Employees. Employees who participate in the 401(k) Plan (the "US BioEnergy 401(k) Plan") are eligible to receive a 100% matching contribution from the Debtors, up to a maximum of 3% of their salary. Most Employees over the age of eighteen (18) are eligible to participate in the 401(k) Plan. The US BioEnergy 401(k) Plan has a one month service requirement. The US BioEnergy 401(k) Plan is managed by Wells Fargo Bank. Automatic deposits are made on a bi-weekly basis by ADP directly to the US BioEnergy 401(k) Plan administrator. 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 \$56,000.00.

70. I believe the Employee Benefit Plans are an important part of the overall compensation that Employees receive and depend upon. If these benefits are discontinued, I believe that Employees may leave the Debtors' employ, thereby causing a significant disruption to ongoing operations. Therefore, I believe it is important that the Debtors be permitted to continue to pay the costs and expenses associated with the maintenance of such Employee Benefit Plans in the ordinary course of business.

71. Workers' Compensation Obligations. The Debtors provide workers' compensation benefits to all Employees. These benefits are covered under the Debtors' workers'

compensation insurance program administered by the Debtors and its designated third-party workers' compensation administrator, Liberty Mutual Insurance ("Liberty Mutual") and state funded programs in North Dakota and Ohio ("State Workers' Compensation Programs", together with Liberty Mutual, "Workers' Compensation Programs").

72. I believe that it is critical that the Debtors be permitted to continue their workers' compensation program and to pay any premiums for the current policy year, because alternative arrangements for workers' compensation coverage would most certainly be more costly and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties. In addition, the failure to pay workers' compensation claims may result in Employee attempts to compel payment through litigation or similar means and thereby jeopardize the Debtors' ability to conduct business in certain jurisdictions.

73. In sum, I believe that if the Debtors fail to pay or honor the Employees' prepetition compensation, reimbursement procedures and Employee benefits, the Employees will suffer extreme personal hardship and in many cases will be unable to pay their basic living expenses. This clearly would destroy Employee morale and result in unmanageable Employee turnover during the critical stages of the Debtors' Chapter 11 Cases. The Debtors submit that any significant deterioration in morale at this time will substantially and adversely impact the Debtors and their ability to reorganize, thereby resulting in immediate and irreparable harm to the Debtors and their estates. The Debtors further submit that the amounts to be paid to Employees pursuant to the Debtors' Motion are reasonable when compared with the importance and necessity of preserving Employee loyalty and morale and with the difficulties and losses the Debtors will likely suffer if those amounts are not paid.

## Utilities

74. Uninterrupted utility services are critical to the Debtors' ability to sustain their operations during the pendency of their Chapter 11 Cases. In connection with the operation of their business and management of their properties, the Debtors obtain services ("Utility Services") from various providers of Utility Services (each a "Utility Company" and, collectively, the "Utility Companies").

75. The Debtors' facilities are dependent on electricity to power their plants as well as for lighting and general office use. In addition, telephone service is necessary to permit the Debtors to conduct sales and marketing functions and to communicate with vendors and corporate headquarters. Continued water service is necessary to maintain sanitary lavatory facilities for employees. Maintenance of gas service is essential to provide heat for the Debtors' facilities. Any interruption of these services would severely disrupt the Debtors' day-to-day operations.

76. As of the Petition Date, over 75 Utility Companies provide Utility Services to the Debtors at their various operational facilities and corporate headquarters. On average, prior to the Petition Date, the Debtors spent approximately \$3.64 million each month on utility costs and had a consistent history of making timely payment for Utility Services.

77. Based on discussions with counsel, I understand that a utility may not discontinue service to a debtor following the 20-day period after the Petition Date solely on the basis of the entry of an order for relief or failure of the debtor to pay a pre-Petition Date debt. It is also my understanding that utilities arguably may discontinue service to a debtor if the debtor does not provide adequate assurance of being able to satisfy its post-Petition Date obligations.

78. I am also advised by counsel that Utility Companies have a right, under section 366 of the Bankruptcy Code, to request adequate assurance of payment. However, the Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner using operating revenue. Moreover, the Debtors expect that availability under their proposed debtor in possession financing facility will be more than sufficient to pay such postpetition utility obligations. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors will deposit \$3,640,000, equal to approximately the Debtors' estimated cost of their monthly Utility Services, into a newly created, segregated, interest-bearing account, within twenty (20) business days of the Petition Date (the "Adequate Assurance Deposit"). The Adequate Assurance Deposit shall be maintained with a minimum balance equal to the Debtors' estimated monthly cost of Utility Services, which may be adjusted by the Debtors to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with a Utility Company.

79. 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 (the "Delinquency Notice") with the Court and serve such notice on (a) the Debtors, (b) counsel to the Debtors, (c) counsel to the official committee of unsecured creditors, if one is appointed, and (d) counsel to the United States Trustee (collectively, the "Parties In Interest"). If the Debtors have not cured such delinquency or no Party In Interest has objected to the Delinquency Notice within ten (10) 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.

80. I believe that the Adequate Assurance Deposit, coupled with the Debtors' ability to pay for future utility services in the ordinary course of business, based upon their debtor in possession financing facility and cash flow from operations, provides protection well in excess of that required to grant sufficient adequate assurance to the Utility Companies.

Prepetition Sales and Use and Other Trust Fund Taxes

81. 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 product 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.

82. Commercial Feed Inspection Fee. An Inspection Fee is levied based on the tonnage of distiller grain products shipped by the Debtors. The Inspection Fees percentages vary between states. The Debtors currently ship distiller products in approximately 40 different states. The Inspection fees are paid in arrears to various state department of agricultures on a monthly, quarterly or annual basis, depending on the state. On average, the Debtors pay approximately \$4,000.00 per month to various authorities for Inspection Fees.

83. Ethanol Motor Fuel/Excise Tax. An Excise Tax is levied by most states, excluding Maryland and New York, for the sale of ethanol fuel. The Excise Tax is collected by the Debtors from the consumer and is paid to various state taxing authorities on a monthly basis. The Debtors pay Excise Tax in arrears in approximately 30 different states. On average, the Debtors pay approximately \$500,000.00 per month in Excise Taxes.

84. Sales and Use Tax. Sales and Use Taxes are levied by each state on a monthly basis and is paid in arrears. The Debtors pay approximately \$205,000.00 per month in Sales and Use Taxes.

85. Inventory Tax. The State of New York levies a special inventory tax on ethanol which is a "Sales Tax Prepayment on Motor Fuel/Diesel Motor Fuel" on top of the Sales and Use Tax. The Inventory Tax is pre-paid by the Debtors on a monthly basis on the 20th of every month. Once the ethanol gas is sold, the Debtors are reimbursed for the Inventory Tax by either the customer if sold to a non-exempt customer or by the state if sold to an exempt customer. On average, the Debtors pay approximately \$325,000 per month to the New York Taxing Authority.

86. Prior to the Petition Date, the Debtors were current on their obligations with respect to these Taxes. The only obligations outstanding represent Taxes that have accrued, but are not yet legally due.

87. I have been advised that the federal government and many states in which the Debtors operate have laws providing that, because Taxes constitute "trust fund" taxes, the Debtors' officers and directors or other responsible employees could, under certain circumstances, be held personally liable for payment of such taxes. To the extent any accrued Taxes of the Debtors were unpaid as of the Petition Date in these jurisdictions, the Debtors' officers, directors and directors or other responsible employees could be subject to lawsuits during the pendency of

these Chapter 11 Cases. I believe that this would be extremely distracting for the Debtors' directors and officers, whose full-time focus must be on successfully reorganizing the Debtors. Consequently, I believe it is in the Debtors' best interests and the best interests of their creditors to eliminate the possibility of such time-consuming and potentially damaging distractions by authorizing the Debtors to pay any undisputed prepetition Taxes to the respective Taxing Authorities in the ordinary course of business.

#### Procedures for Trading in Claims and Equity Securities

88. The Debtors seek authorization to protect and preserve valuable tax attributes, including net operating loss carryforwards ("NOLs") of approximately \$430 million (the "Tax Attributes") by establishing notice and hearing procedures regarding the trading of VeraSun Equity Securities that must be complied with as a precondition to the effectiveness of such trades or transfers. In addition, the Debtors seek to establish notice and sell-down procedures regarding claims of the Debtors. If no trading restrictions regarding equity securities and no sell-down procedures regarding claims are imposed by this Court, unrestricted trading or transfers of equity securities and claims could severely limit or even eliminate the Debtors' ability to use their Tax Attributes, a valuable asset of the Debtors' estates, and could have significant negative consequences for the Debtors, their estates and the overall reorganization process. To preserve to the fullest extent possible the flexibility to craft a plan of reorganization that maximizes the use of their Tax Attributes, the Debtors seek limited relief that will enable them to closely monitor certain transfers of VeraSun equity securities, and, if necessary, require a sell-down of claims, so as to be in a position to act expeditiously to preserve their Tax Attributes.

89. By establishing procedures for continuously monitoring equity-securities-trading and for notice and sell-down of claims, the Debtors can preserve their ability to seek substantive

relief at the appropriate time if it appears that additional trading of equity securities or prior trading of claims may jeopardize the use of their Tax Attributes. I believe that the requested relief imposes a minimal burden to achieve a substantial benefit. Accordingly, I believe that the relief requested herein is in the best interests of the Debtors, their estates, and creditors and should be approved.

Prepetition Shipping, Delivery and Warehousing Charges

90. 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<sup>14</sup>. 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 \$833,800.00.

91. I believe the services provided by the Shippers are critical to the Debtors' day to day operations as the Debtors depend upon the Shippers for timely, consistent deliveries of ethanol to their customers and corn and other materials to their plants. Similarly, the storage of ethanol by Warehousemen, pending distribution to the Debtors' customers, is equally essential to the Debtors' business operations.

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<sup>14</sup> Generally, barge companies contracted to provided services on a "time charter" basis require payment one month in advance. Therefore, the Debtors believe there are no prepetition amounts outstanding. Out of an abundance of caution, however the Debtors are seeking authority to pay such Shippers.

92. If the Shipping and Warehouse Charges are not paid, I believe 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. The Debtors' customers rely on the timely delivery of ethanol and distiller grains. If shipments are not made promptly and regularly, I believe the Debtors will frustrate the expectations of their customers and cause a loss of customer goodwill. I believe such an outcome could be potentially devastating to the Debtors' reorganization efforts.

93. Further, 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 effect the release of any the Goods.

#### Section 503(b)(9) Claims and Other Administrative Claims

94. In the ordinary operation of the Debtors' businesses, 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 commencement of these Chapter 11 Cases, 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 (60) days.

95. Because the Debtors rely so heavily on perishable inventory, timely delivery is critical to the Debtors' production of ethanol and distiller grains. Many Vendors may not be sophisticated in the complexities of chapter 11 cases and may require additional confirmation that payment for Goods and Services provided will occur in a timely manner. Should one of these Vendors decide not to deliver Goods during the course of these Chapter 11 Cases out of fear that it will not be paid, I believe the Debtors may have to shut down, or reduce production at one or more of their manufacturing plants. This, in turn, could cause a disruption of shipments to customers, resulting in irreparable harm to the Debtors and their estates. If the Debtors do not timely pay the Vendors and maintain the goodwill, I believe the Debtors' relationship with the Vendors could be damaged and its business relationships could be undermined, thus, jeopardizing a successful reorganization.

96. In return for receiving payment on account of obligations arising with respect to any 20-Day Goods, the Vendors receiving payment on account of such claims shall be deemed to have agreed to continue supplying Goods and Services to the Debtors on payment terms and conditions in effect between such supplier and the Debtors in the twelve months prior to the Petition Date, or such other terms and conditions as are agreed to by the Debtors and the applicable Vendor.

97. In addition, the continued supply of postpetition Goods (the "Postpetition Goods") and postpetition Services (the "Postpetition Services") is crucial to the Debtors' business. Without a continuous supply of Postpetition Goods and Postpetition Services, the Debtors'

ethanol production, marketing, and distribution operations cannot continue to operate. I believe that any interruption or disruption in the relationship between the Debtors and Vendors would be harmful and detrimental to the Debtors' business and could fundamentally undermine the Debtors' reorganization efforts.

98. The Debtors' relationships with their Vendors are so essential and their need for Goods to be shipped and Services provided on a timely basis is so acute that I believe it is crucial to reassure the Vendors that their valid claims will be paid by the Debtors in the ordinary course of business. The Debtors believe that payment of claims for 20-Day Goods and Postpetition Goods and Services are essential to enabling the Debtors to continue its business and for the Debtors to successfully reorganize. Therefore, the Debtors seek to pay these administrative expenses in the ordinary course of business.

### **III. CONCLUSION**

99. The Debtors' ultimate goal is to reorganize their financial affairs under the terms of a confirmed chapter 11 plan. In the near term, however, to minimize any loss of value of their business during their restructuring, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the pendency of these Chapter 11 Cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First Day Motions, the prospect for achieving these objectives and completing a successful, rapid reorganization of the Debtors' business will be substantially enhanced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of October, 2008.

By: /s/ Danny C. Herron

Danny C. Herron  
President and Chief Financial Officer of  
VeraSun Energy Corporation