

Bench Filed  
1/8/09

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  
 )  
 ) Jointly Administered  
 Debtors.<sup>1</sup> )  
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**AMENDED FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL  
OF, AND PROVIDING ADEQUATE PROTECTION TO, UBS AG,  
STAMFORD BRANCH UNDER 11 U.S.C. §§ 105, 361 AND 363**

This matter having come before the Court upon the motion dated November 3, 2008 (the "Motion") of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for entry of interim orders and final orders, under sections 105, 361, 362, 363 and 364 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware

<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).



(the "Local Rules"), (i) authorizing the Debtors to obtain postpetition financing, (ii) authorizing the Debtors to utilize cash collateral, (iii) granting adequate protection to certain prepetition secured lenders, and (iv) scheduling a final hearing on the Motion; and upon the hearing that took place on November 3 and 4, 2008 (the "Interim Hearing"), following which Interim Hearing this Court entered that certain Order Authorizing Use of UBS' Cash Collateral and Providing Adequate Protection Under 11 U.S.C. §§ 105, 361 and 363 (the "Interim Order"); and upon the hearing that took place on December 2, 2008 (the "December 2 Hearing"), following which December 2 Hearing this Court entered that certain Final Order Authorizing Use of Cash Collateral of, and Providing Adequate Protection to, UBS AG, Stamford Branch under 11 U.S.C. §§ 105, 361 and 363 (the "December 4 Final Order"); and upon the hearing that took place on January 8, 2008 ("January 8 Hearing" and, together with the December 2 Final Hearing, the "Final Hearing"); and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND ORDERED THAT:

1. Petition Date. On October 31, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (together, the "Chapter 11 Cases"). The Debtors are now operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request has been made for the appointment of a trustee or examiner. On November 14, 2008, the Office of the United States Trustee appointed an official committee of unsecured creditors in the Chapter 11 Cases (the "Committee").

2. Jurisdiction. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. VeraSun Debtors. VeraSun Energy Corporation, VeraSun Aurora Corporation, VeraSun Charles City, LLC, VeraSun Marketing, LLC, VeraSun Welcome, LLC, VeraSun Fort Dodge, LLC, and VeraSun Hartley, LLC, debtors and debtors in possession, are each referred to herein as a "VeraSun Debtor" and are collectively referred to herein as the "VeraSun Debtors." The VeraSun Debtors comprise some, but not all, of the debtors in the Chapter 11 Cases.

4. UBS Prepetition Credit Agreement. The VeraSun Debtors, as borrowers, are party to that certain Credit Agreement dated as of May 30, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the "UBS Prepetition Credit Agreement" and, collectively with the related pledge and security agreements, mortgages, deeds of trust, security documents, consent and agreement documents, and other loan documentation, the "UBS Prepetition Credit Documents") with UBS AG Stamford Branch, as Administrative Agent (in such capacity, on behalf of itself and the Secured Parties (as defined below), the "Agent"), Issuing Bank, and Co-Collateral Agent to the Lenders (as defined in the UBS Prepetition Credit Agreement), each of the Lenders from time to time party thereto, the Agent, UBS Loan Finance LLC, as Swingline Lender and UBS Securities LLC, as Syndication Agent, Documentation Agent and Arranger. "Secured Parties" has the meaning ascribed to such term in the UBS Prepetition Credit Agreement. Under the UBS Prepetition Credit Documents, the VeraSun Debtors granted to the Agent, for the benefit of the Secured Parties, first-priority and the only security interests in and liens upon (i) all of their accounts receivable and inventory, and all cash proceeds (including cash insurance proceeds thereof), products, accessions, rents and profits of or in respect of any and all of the foregoing, and (ii) all deposit accounts and securities accounts into which the cash proceeds of the accounts receivable and inventory are deposited, in each case

whether then owned or existing or thereafter acquired or arising (collectively, the “UBS Prepetition Collateral”).

5. VeraSun DIP Financing. As set forth in the Motion, the VeraSun Debtors and the lenders under the 2012 Senior Secured Notes Indenture, dated as of December 21, 2005, relating to the 9-7/8% Senior Secured Notes due 2012 (the “Secured Bondholders”) have agreed that certain of the Secured Bondholders (the “VeraSun DIP Lenders”) will provide a debtor-in-possession financing facility (the “VeraSun DIP Financing”) to the VeraSun Debtors on the terms and conditions set forth in that certain final order dated as of the date of the December 4 Final Order pertaining to the VeraSun DIP Financing (the “VeraSun Final DIP Order”) and in that certain debtor-in-possession credit agreement (together with all documents, agreements and certificates related thereto, the “VeraSun DIP Credit Agreement” and, collectively with the VeraSun Final DIP Order, the “VeraSun Final DIP Documents”). The VeraSun Debtors, the VeraSun DIP Lenders, the Secured Bondholders and the Agent have agreed that the schedule of revenues and expenditures (the “Budget”) attached hereto as Exhibit A and attached to the VeraSun Final DIP Order shall apply to the use of UBS Cash Collateral (as defined herein) under this Amended Final Order Authorizing Use of Cash Collateral of, and Providing Adequate Protection to, UBS AG, Stamford Branch under 11 U.S.C. §§ 105, 361 and 363 (this “Final Order”)<sup>2</sup> and to the VeraSun DIP Financing pursuant to the terms and conditions set forth herein and in the VeraSun Final DIP Documents.

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<sup>2</sup> This Final Order amends and restates the December 4 Final Order; in the event of any conflict between this Final Order and the December 4 Final Order, this Final Order shall control.

6. Certain Findings.

(a) A need exists for the VeraSun Debtors to be permitted access to funds in order to continue to operate their businesses. Without such funds, the VeraSun Debtors will not be able to pay their direct operating expenses. As a result, there is a risk that the going concern value of the VeraSun Debtors' businesses will decline if they cannot simultaneously make use of UBS Cash Collateral (as hereinafter defined) and access the VeraSun DIP Financing.

(b) On December 23, 2008, AgStar Financial Services, PCA ("AgStar") filed that certain Complaint for Declaratory Judgment and Other Relief (the "AgStar Complaint") pursuant to which AgStar, inter alia, challenged the Agent's lien upon the UBS Cash Collateral and UBS Prepetition Collateral (as each such term is defined in the December 4 Final Order). The filing of the AgStar Complaint constitutes an Event of Default under the December 4 Final Order. In the "Cash in Bank" line item in borrowing base certificates dated December 17, 2008, December 18, 2008 and December 19, 2008, the VeraSun Debtors, in violation of Section 10(d)(II)(yy)(II) of the December 4 Final Order, included funded, undisbursed proceeds of the VeraSun DIP Financing. The inclusion of such proceeds in the "Cash in Bank" line item in such borrowing base certificates constitute Events of Default under the December 4 Final Order.<sup>3</sup> In accordance with Section 17 of the December 4 Final Order, the Agent notified the VeraSun

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<sup>3</sup> The Events of Default described in this Section 6(b) are referred to herein as the "Existing Events of Default".

Debtors of the existence and occurrence of the Existing Events of Default by letter dated December 29, 2008.

(c) On December 31, 2008, the Debtors filed that certain Debtors' Motion for Allowance of Certain Intercompany Administrative Expense Claims (the "Intercompany Claims Motion"). At the January 8 Hearing, counsel for the VeraSun Debtors confirmed, and counsel for AgStar stated on the record that based on facts and information known to AgStar as of the date of this Final Order AgStar does not presently dispute, that \$17,517,000 is the maximum amount of all claims for ethanol sold after the Petition Date by the US BioEnergy Debtors (as defined in the Intercompany Claims Motion) to the VeraSun Debtors that are held or that could be held by the US BioEnergy Debtors or AgStar. At the January 8 Hearing, counsel for the VeraSun Debtors and counsel for the Agent advised the Court that the Agent, subject to the entry of this Final Order and to finalized arrangements for a collateral audit by the Agent and a site visit by designees of the Agent on terms and conditions consistent with the UBS Prepetition Credit Documents and/or as otherwise acceptable to the Debtors and the Agent, will waive the Existing Events of Default. Finally, at the January 8 Hearing, counsel for the VeraSun DIP Lenders and counsel for the indenture trustee for the Secured Bondholders advised the Court that their respective clients consent to the entry of this Final Order.

(d) Notice of the Final Hearing and the relief requested in the Motion provided by the VeraSun Debtors constitutes due and sufficient notice of the Motion and Final Hearing.

(e) Good cause has been shown for the entry of this Final Order. Among other things, entry of this Final Order and of the VeraSun Final DIP Order will minimize disruption of the VeraSun Debtors' businesses and operations and permit them to meet

operating expenses. The UBS Cash Collateral use arrangement authorized hereunder and the VeraSun DIP Financing authorized under the VeraSun Final DIP Order are vital to the VeraSun Debtors' estates. Absent the use of the UBS Cash Collateral and the availability of the VeraSun DIP Financing, the VeraSun Debtors' estates would not have necessary funds to satisfy their obligations. Allowing the use of UBS Cash Collateral and the VeraSun DIP Financing therefore is in the best interests of the VeraSun Debtors' estates and creditors.

(f) The UBS Cash Collateral use and adequate protection arrangements authorized hereunder, and the terms of such UBS Cash Collateral use and adequate protection arrangements, are fair and reasonable under the circumstances, reflect, in conjunction with securing the VeraSun DIP Financing, the VeraSun Debtors' exercise of prudent business judgment and are supported by reasonably equivalent value and fair consideration.

(g) The Court concludes that entry of this Final Order is in the best interests of the VeraSun Debtors and their estates and creditors as its implementation will, in conjunction with securing the VeraSun DIP Financing, among other things, allow for the continued operation of the VeraSun Debtors' existing businesses.

7. Stipulations. Without prejudice to the rights of any party other than the VeraSun Debtors, the VeraSun Debtors have stipulated and agreed that:

(a) pursuant to the UBS Prepetition Credit Documents and as of the date hereof, the VeraSun Debtors were truly and justly indebted and liable to the Secured Parties, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of approximately \$94,968,266.92 in respect of loans made by the Secured Parties and letters of credit issued by the Secured Parties for the account of the VeraSun Debtors pursuant to the UBS

Prepetition Credit Documents, plus interest thereon and fees, costs and expenses incurred in connection therewith as provided in the UBS Prepetition Credit Documents (collectively, together with any other amounts outstanding under the UBS Prepetition Credit Documents, the "Prepetition Debt");

(b) the Prepetition Debt is not subject to subordination or recharacterization for any reason; and

(c) the liens and security interests granted to the Secured Parties pursuant to the UBS Prepetition Credit Documents, are valid, duly authorized, perfected, enforceable, non-voidable, first-priority liens and security interests in the UBS Prepetition Collateral.

8. The UBS Cash Collateral. The Agent's security interests and liens have attached to all funds and property of the VeraSun Debtors consisting of the UBS Prepetition Collateral including the product, issues, rents, profits and other proceeds of the UBS Prepetition Collateral and UBS has asserted will, notwithstanding the commencement of the Chapter 11 Cases, as of the Petition Date and thereafter attach to product, issues, rents, profits and other proceeds of the UBS Prepetition Collateral, including, without limitation, those consisting of (i) all of the VeraSun Debtors' accounts receivable and inventory, and all cash proceeds (including cash insurance proceeds thereof), products, accessions, rents and profits of or in respect of any and all of the foregoing, (ii) all deposit accounts and securities accounts into which the cash proceeds of the accounts receivable and inventory are deposited, in each case whether owned or in existence as of the Petition Date or thereafter acquired or arising, and (iii) all proceeds of the VeraSun DIP Financing which, on or after the date hereof, are on deposit in or are



deposited into any one or more of the Subject Accounts (as defined in Section 10(d)(II)(yy)(I) hereof) (collectively, the “UBS Cash Collateral”); provided, however, that, for the avoidance of doubt, neither the UBS Cash Collateral nor the Prepetition UBS Cash Collateral includes that certain Commercial Money Market Deposit Account #201651766-20 of the VeraSun Debtors (the “Money Market Account”) maintained at First National Bank of Omaha (“FNBO”), and neither the Agent nor the Secured Parties have any security interest, prepetition or otherwise, in such Money Market Account, which is security for outstanding letters of credit issued by FNBO with Indiana Gas Company and Vectren Energy to secure purchases of natural gas in the amounts of \$150,000 and \$1,375,000, respectively. All of the VeraSun Debtors’ cash, including the cash and other items located in accounts constituting a portion of the UBS Prepetition Collateral, wherever located, whether as original collateral or cash proceeds of the UBS Prepetition Collateral also constitute and are included within the definition of the term “UBS Cash Collateral.” In addition, for the avoidance of doubt, in accordance with Section 10(a)(3) of this Final Order and notwithstanding any provision of the Final VeraSun Final DIP Documents to the contrary, any lien in favor of the VeraSun DIP Lenders against any proceeds of the VeraSun DIP Financing which, on or after the date hereof, are on deposit in or are deposited into one or more of the Subject Accounts shall be silent and junior to the liens of the Agent against such proceeds. Moreover, for the avoidance of doubt, the term “UBS Cash Collateral” shall exclude the funded, undisbursed proceeds of the VeraSun DIP Financing. Finally, for the avoidance of doubt, the term “funded, undisbursed proceeds of the VeraSun DIP Financing” shall mean all proceeds of the VeraSun DIP Financing other than those constituting clause (iii) of the

definition of "UBS Cash Collateral" and shall include all proceeds of the VeraSun DIP Financing funded by the VeraSun DIP Lenders into any account of the Debtors other than the Subject Accounts unless and until the one or more of the Debtors deposit such proceeds into one or more of the Subject Accounts.

9. Use of UBS Cash Collateral. Subject to the terms and conditions set forth in this Final Order, the Debtor is, through and including the earlier to occur of (a) March 31, 2009 or such other date as UBS and the VeraSun Debtors may agree (without the need of further order of the Court), (b) termination of this Final Order following issuance of a Remedies Notice as set forth in Section 17 below, authorized to use UBS Cash Collateral solely in accordance with the Budget. Compliance with the Budget shall be determined in accordance with the terms and conditions for compliance with the Budget set forth in the VeraSun Final DIP Documents; provided, however, that the Agent and the Secured Parties shall receive no less than five (5) business days prior written notice of any amendment or modification of such terms and conditions, as well as such notice of any amendment or modification of the Budget itself; provided, further, that the Agent and the Secured Parties reserve the right to object in writing (with notice to the Debtors, the Committee and the VeraSun DIP Lenders) to any amendment or modifications of such terms and conditions and/or to any amendment or modification of the Budget itself within three (3) business days of their receipt of notice thereof; provided, further, that any dispute regarding such objection shall be heard by the Court on three (3) business days notice or as soon thereafter as the Court's schedule permits; provided, further, that the Agent and the Secured Parties shall receive such prior written notice of any proposed roll-forward or replacement of the Budget as the VeraSun Debtors and the VeraSun DIP Lenders have agreed that the VeraSun Debtors will provide to the VeraSun DIP Lenders; provided, further, that the

Agent and the Secured Parties reserve the right to object in writing (with notice to the Debtors, the Committee and the VeraSun DIP Lenders) to the proposed roll-forward or replacement of the Budget within such period of time as the VeraSun DIP Lenders have to object thereto; provided, further, that any dispute regarding the proposed roll-forward or replacement of the Budget shall be heard by the Court on three (3) business days notice or as soon thereafter as the Court's schedule permits.

10. Adequate Protection. The Secured Parties are entitled, pursuant to Bankruptcy Code sections 361 and 363(e), to adequate protection of their interest in the UBS Prepetition Collateral, including the UBS Cash Collateral, for any diminution in value of the Secured Parties' interests in the UBS Prepetition Collateral, including, without limitation, any such diminution resulting from the use by the VeraSun Debtors of UBS Cash Collateral and any other UBS Prepetition Collateral and the imposition of the automatic stay pursuant to Bankruptcy Code section 362.

(a) Liens. As adequate protection for any diminution in value of the Secured Parties' interests in the UBS Prepetition Collateral from and after the Petition Date, effective upon the date of this Final Order and without the necessity of the execution by the VeraSun Debtors of any mortgages, security agreements, pledge agreements, financing statements or otherwise, and subject to the Carve Out (defined below), the following replacement security interests and liens are hereby granted to the Agent:

(1) a perfected first-priority senior security interest in and lien upon all UBS Cash Collateral of the VeraSun Debtors, whether existing on the Petition Date or thereafter acquired, including the proceeds thereof;

(2) a perfected first-priority senior security interest in and lien upon the UBS Prepetition Collateral in existence on the Petition Date and, to the extent of any diminution in value, thereafter acquired; and

(3) a silent perfected security interest in and lien upon all property of the VeraSun Debtors other than the UBS Cash Collateral or the UBS Prepetition Collateral, whether existing on the Petition Date or thereafter acquired, junior to the security interests and liens of the Secured Bondholders and the DIP financing liens and adequate protection liens, as applicable, granted to the VeraSun DIP Lenders and/or the Secured Bondholders under the VeraSun Final DIP Order (excluding causes of action to recover preferences, fraudulent transfers or other avoidance claims under Chapter 5 of the Bankruptcy Code or any amounts recovered as a result of any such cause of action (other than claims or causes of action under section 549 of the Bankruptcy Code and amounts received on account thereof)).

(b) Section 507(b) Claim. The Agent and the Secured Parties are hereby granted (subject to the Carve Out) a superpriority claim in the VeraSun Debtors' Chapter 11 Cases as provided for in Bankruptcy Code section 503(b) and/or 507(b) with priority over any and all other administrative expenses in the VeraSun Debtors' Chapter 11 Cases of any kind payable or allowed pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 365, 503(a) 503(b), 507(a), 507(b), 546, 726(d), 1113 and/or 1114; provided, however, that such claim shall be *pari passu* with any superpriority adequate protection claim granted to the Secured Bondholders pursuant to the VeraSun Final DIP Order; provided, further, that such claim shall be junior to the claim under section 364(c)(1) of the Bankruptcy Code granted under the VeraSun Final DIP Order to the VeraSun DIP Lenders; provided, further, that such claim shall not be satisfied or payable from

causes of action to recover preferences, fraudulent transfers or other avoidance claims under Chapter 5 of the Bankruptcy Code or any amounts recovered as a result of any such cause of action (other than claims or causes of action under section 549 of the Bankruptcy Code and amounts received on account thereof).

(c) Interest, Fees and Expenses. Subject to the reservation of the right of any interested party to later assert that such payments should be re-allocated to principal in accordance with section 506 of the Bankruptcy Code, the Agent and the Secured Parties shall receive, monthly in arrears, as additional adequate protection, (i) cash payments in an amount equal to accrued or accruing prepetition and post-petition unpaid interest at the non-default rate and at the time or times and pursuant to the terms and conditions provided for in the UBS Prepetition Credit Documents, and any letter of credit participation fees for the benefit of the lenders or issuing lenders, as well as fronting or other customary fees payable for the benefit of the issuing lenders in connection with letters of credit payable under the UBS Prepetition Credit Agreement, and all other accrued and unpaid expenses incurred prior to the Petition Date owing under the UBS Prepetition Credit Documents, including but not limited to, the reasonable fees and expenses of counsel for the Agent provided for thereunder, (ii) current cash payments from the VeraSun Debtors of all fees and expenses payable to the Agent under the UBS Prepetition Credit Documents, including but not limited to, the reasonable fees and expenses of counsel for the Agent, in each case as provided for in the UBS Prepetition Credit Documents, provided that, without prejudice to the rights of any other party to contest such assertion, the Agent and the Secured Parties reserve their rights to assert claims for the payment of additional interest calculated at any other applicable rates of interest, or on any other basis, provided for in the UBS Prepetition Credit Documents. The Agent shall submit invoices (from which privileged

information may be redacted) to the VeraSun Debtors for reasonable professional fees and expenses (with copies to the Committee), and the VeraSun Debtors agree to pay all unobjected amounts related thereto upon receipt of each such invoice.<sup>4</sup>

(d) Additional Adequate Protection. As additional adequate protection for the Agent and the Secured Parties: (I) the VeraSun Debtors shall continue to prepare and deliver to the Agent all documents and reports required to be prepared and delivered to the Agent under the UBS Prepetition Credit Documents, in each case at the times and in the manner and form set forth therein; (II) the VeraSun Debtors shall deliver to the Agent (xx) all documents, notices and reports required to be prepared and delivered to the VeraSun DIP Lenders under the VeraSun Final DIP Facility Documents, and (yy) consistent with the practice of the VeraSun Debtors prior to the Petition Date (as modified in this subsection (d)(II)(yy), a daily borrowing base report, which report shall include a schedule with respect to the composition by category of inventory in the form used by the Debtors prior to the Petition Date and a line item entitled "Cash in Bank" that reflects cash constituting either UBS Cash Collateral and/or the proceeds of UBS Prepetition Collateral that (I) is located in an account or accounts subject to that certain Control Agreement Regarding Deposit Accounts dated as of July 30, 2008 among the VeraSun Debtors, the Agent and FNBO (the "FNBO Control Agreement") upon which the Agent has a first priority senior security interest and lien pursuant thereto and to this Final Order (collectively, the "Subject Accounts"), and (II) is not located in any other account other than a Subject Account (including,

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<sup>4</sup> Any objection as to professional fees not resolved after good faith discussions by the parties shall be resolved by the Court.

without limitation, any account against which the Secured Bondholders (in their capacity as VeraSun DIP Lenders or otherwise) have a security interest or lien senior to that of the Agent); (III) subject to the terms and conditions of the UBS Prepetition Credit Documents, the Agent shall retain and is hereby authorized to exercise all monitoring, access, field examination, appraisal and inspection rights with respect to the UBS Prepetition Collateral and the UBS Cash Collateral; (IV)(XX) the VeraSun Debtors and the Agent shall continue to calculate the Borrowing Base (as defined in the UBS Prepetition Credit Agreement) in the manner (*i.e.*, as to, *inter alia*, eligibility standards and methodology for establishing reserves) as the Borrowing Base was calculated as of the Petition Date, and (YY) until such time as the adversary proceeding initiated by the filing of the AgStar Complaint (Adv. Proc. No. 08-51897) has been resolved by entry of a final order or orders which final order or orders are neither the subject of an appeal nor for which the time for filing an appeal has not expired or has been stayed, the sum of the Borrowing Base (as calculated in accordance with the foregoing clause (IV)(XX) plus the VeraSun Debtors' "Cash in Bank"(as calculated in accordance with Section 10(d)(II)(yy) of this Final Order) shall not be less than \$114,968,266.92; (V) purchases of inventory by VeraSun Marketing from any Debtor shall continue to be made on the same basis as immediately prior to the Petition Date; (VI) the VeraSun Debtors shall maintain with respect to the UBS Prepetition Collateral and the UBS Cash Collateral insurance of the type and in the amount (xx) as the VeraSun Debtors maintained as of the Petition Date, and (yy) as required under the UBS Prepetition Credit Documents; and (VII) the Court shall have entered, on or before the date hereof, an order, in form and substance satisfactory to the Agent, setting forth a schedule for the briefing of motions to dismiss the AgStar Complaint.

11. Perfection of Adequate Protection Liens. Neither the Agent nor any Secured Party shall be required to file or record financing statements, mortgages, notices of lien, or similar instruments in any jurisdiction or take any other action in order to validate and perfect the security interests and liens granted to them pursuant to this Final Order. If the Agent shall, in its sole discretion, choose to file such financing statements, mortgages, notices of lien or similar instruments or otherwise confirm perfection of such security interests and liens, the liens and security interests granted herein shall be deemed perfected at the time and on the date of entry of this Final Order. Upon request by the Agent, the VeraSun Debtors are authorized, without the further consent of any party, to take any actions and to execute and deliver such instruments (in each case without representation or warranty of any kind) as may be necessary to enable the Agent to further perfect, preserve and enforce the security interests and liens granted to the Agent by this Final Order.

12. Limitation on Charging Expenses Against Collateral. From and after entry of this Final Order, no expenses of administration of these Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the UBS Prepetition Collateral or the UBS Cash Collateral, pursuant to Bankruptcy Code section 506(c) or any similar principal of law, without the Agent's prior written consent, and no such consent will be implied from any action, inaction, or acquiescence by the Agent or the Secured Parties.

13. Limitations on Use of UBS Cash Collateral. Notwithstanding anything herein to the contrary, no UBS Cash Collateral may be used to (i) object, contest or raise any defense to, the validity, authorization perfection, priority, extent, or enforceability of the Prepetition Debt, the liens securing the Prepetition Debt, or the liens granted to the Agent and the Secured Parties



by this Final Order, (ii) assert any claims or causes of action against the Agent or the Secured Parties, or (iii) as long as the VeraSun Debtors are authorized or able to continue to use UBS Cash Collateral pursuant to the terms of this Final Order, attempt to obtain, without the consent of the Agent, or over the objection of the Agent, the Court's authorization to use UBS Cash Collateral under terms other than those provided herein or the Court's authorization to grant any priming, senior or *pari passu* security interest in or lien on the UBS Prepetition Collateral or the UBS Cash Collateral.

14. Automatic Stay. The automatic stay extant under Bankruptcy Code section 362(a) shall be, and it hereby is, modified to the extent necessary to permit (i) the Agent to apply payments made pursuant to this Final Order in accordance with the terms and provisions of this Final Order and (ii) the Secured Parties and Agent to send the Remedies Notice (defined below) and exercise any rights and remedies hereunder as set forth herein.

15. Reservation of Rights of Secured Parties. The Agent and the Secured Parties reserve the right to request further or different adequate protection in the future, and the VeraSun Debtors or any other party may contest any such request. Any such request shall be heard by the Court on three (3) business days notice or as soon thereafter as the Court's schedule permits. In addition, the Agent and the Secured Parties reserve all rights and defenses, including, without limitation, with respect to any final order or final relief pertaining to the UBS Cash Collateral, the UBS Prepetition Collateral and/or the VeraSun DIP Financing.

16. Events of Default. Each of the following shall constitute an "Event of Default" hereunder: (i) use of UBS Cash Collateral other than as set forth herein; (ii) the VeraSun Debtors or any other party applies to the Court for an order authorizing the use of UBS

Cash Collateral or that seeks approval of a priming, senior or *pari passu* security interest in or lien upon UBS Cash Collateral or the UBS Prepetition Collateral; (iii) the filing by the VeraSun Debtors or any other party of any pleading seeking to challenge the Agent's lien upon UBS Cash Collateral or the UBS Prepetition Collateral or otherwise asserting rights, claims or causes of action against the Agent and/or the Secured Parties with respect to the Prepetition Debt; (iv) the breach by the VeraSun Debtors of their obligations under this Final Order; (v) any stay, reversal, vacatur or rescission of this Final Order or the VeraSun Final DIP Order; (vi) the dismissal of, conversion of or appointment of an examiner with expanded powers in the VeraSun Debtors' Chapter 11 Cases; (vii) the sale of a controlling interest in any of the VeraSun Debtors; (viii) the issuance of a Remedies Notice (or its analog) under the VeraSun Final DIP Documents; or (ix) either the US BioEnergy Debtors or AgStar asserts a claim in an amount exceeding \$17,517,000 for ethanol sold after the Petition Date by the US BioEnergy Debtors to the VeraSun Debtors.

17. Remedies Notice. Immediately upon the occurrence or existence of an Event of Default, the Agent shall be authorized to issue a notice (a "Remedies Notice") (which Remedies Notice may be delivered by electronic mail) thereof to the Debtors, their counsel, counsel to the Committee, the U.S. Trustee, counsel to the VeraSun DIP Lenders and counsel to the Secured Bondholders. Unless, within three (3) business days after the issuance of such notice, the Court determines that the applicable Event of Default has not occurred or does not exist, the VeraSun Debtors' authority under this Final Order to use UBS Cash Collateral shall terminate. Notwithstanding anything herein to the contrary, following the issuance of a Remedies Notice, the Debtors, subject to further order of the Court, may use Cash Collateral

only to pay payroll, payroll-related items and other essential operating expenses to the extent, in any event, set forth in the Budget.

18. VeraSun Carve Out. The replacement liens and superpriority claims granted hereunder shall be junior and subordinate to (a) all accrued but unpaid fees and expenses (the "Professional Fees and Expenses") of the attorneys, accountants or other professionals retained by the VeraSun Debtors and the Committee (collectively, the "Professionals"), allocable to the VeraSun Debtors under and to the extent set forth in the Budget and incurred prior to the delivery of a Remedies Notice, plus, (b) Professional Fees and Expenses in the amount of \$750,000 incurred after delivery of a Remedies Notice and allocable to the VeraSun Debtors, plus, (c) the payment of fees pursuant to 28 U.S.C. § 1930 to the extent related to the Chapter 11 Cases of the VeraSun Debtors (the amounts constituting, subject to the terms and conditions of this Final Order (including, without limitation, this sentence), such clauses (a), (b) and (c), collectively, the "Carve Out") provided that all such fees and expenses shall be subject to approval by a final order of the Court pursuant to sections 326, 328, 330, 331 or 363 of the Bankruptcy Code. The Debtors and the Committee shall provide to UBS current information as to accrued but unpaid Professional Fees and Expenses on the first and fifteenth business days of each month.

19. Parties in Interest Bound.

(a) The admissions contained in paragraph 7 of this Final Order shall be binding on the VeraSun Debtors under all circumstances and shall be binding upon all other parties in interest, including, without limitation, the Committee and any chapter 7 or chapter 11 trustee that may be appointed or elected on behalf of the estates of the VeraSun Debtors, except

to the extent that (i) a party in interest has filed an adversary proceeding or contested matter challenging the extent, validity, perfection, enforceability or priority of the Prepetition Debt or the liens on the UBS Prepetition Collateral in respect thereof, or otherwise asserting any claims or causes of action against the Agent or the Secured Parties on behalf of the VeraSun Debtors' estates, no later than February 12, 2009, the date that is ninety (90) days after the appointment of the Committee. If any such adversary proceeding or contested matter is timely commenced as of such date, the admissions contained in this Final Order shall nonetheless remain binding and preclusive (as provided in this paragraph) except to the extent that such acknowledgments and agreements are expressly challenged in such adversary proceeding or contested matter.

(b) If no such adversary proceeding or contested matter is commenced as of such date, then (i) the Prepetition Debt shall constitute allowed secured claims, not subject to subordination and otherwise unavoidable, for all purposes in these Chapter 11 Cases and any subsequent chapter 7 cases, (ii) the liens securing the Prepetition Debt on the UBS Prepetition Collateral shall be deemed legal, valid, binding, duly authorized, perfected, not subject to defense, counterclaim, recharacterization, offset of any kind, subordination and otherwise unavoidable, and (iii) the Agent, the Secured Parties, the Prepetition Debt and the liens on the UBS Prepetition Collateral securing the Prepetition Debt shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto.

(c) Successors and Assigns. The provisions of this Final Order shall be binding upon the Agent, the Secured Parties, the VeraSun Debtors, and their respective successors and assigns (including any trustee hereinafter appointed or elected for the VeraSun Debtors' estates) and inure to the benefit of the Agent, the Secured Parties and the VeraSun

Debtors and (except with respect to any trustees hereinafter appointed or elected for the estates of the Debtors) their respective successors and assigns.

20. Except as provided in paragraph 10(a) hereof, the replacement liens granted to the Agent and the Secured Parties by this Final Order shall not be deemed to prime any preexisting, valid, and perfected liens or security interest in or against any assets of the VeraSun Debtors, subject to further order of this Court. None of the liens, claims or rights granted to the Secured Bondholders and/or the VeraSun DIP Lenders with respect to the UBS Cash Collateral or the Prepetition UBS Cash Collateral under the VeraSun Final DIP Order shall prime, be senior to or have a higher priority than the liens, claims or rights of the Agent and Secured Parties with respect to the UBS Cash Collateral or the UBS Prepetition Collateral. Further, none of the liens, claims or rights granted to the Secured Bondholders and/or the VeraSun DIP Lenders with respect to the UBS Cash Collateral or the Prepetition UBS Cash Collateral under the VeraSun Interim or Final DIP Orders shall prime, be senior to or have a higher priority than (i) the preexisting, valid and perfected first priority lien and security interest of the FNBO in the Money Market Account, or (ii) any of FNBO's preexisting, valid and perfected second priority liens on and security interests in the Subject Accounts.

21. Letters of Credit Issued by FNBO. In accordance with that certain Promissory Note and Continuing Letter of Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "LOC Agreement"), by and between FNBO and VeraSun Energy Corporation, dated June 16, 2006, FNBO has issued certain letters of credit on behalf of the VeraSun Debtors outstanding in the approximate amount of \$11.9 million as of the Petition Date.

(a) Security Interests of FNBO. As security for the payment of performance of any and all of the VeraSun Debtors' obligations and/or liabilities under the LOC Agreement, the VeraSun Debtors pledged to FNBO, *inter alia*, (a) a perfected first priority lien and security interest in the funds held in the Money Market Account, which secures outstanding letters of credit issued by FNBO with Indiana Gas Company and Vectren Energy to secure purchases of natural gas in the amounts of \$150,000 and \$1,375,000, respectively; and (b) a general security interest in and/or right of set-off against, all right, title and interest of the VeraSun Debtors in and to the balance of the Subject Accounts, subordinated only to the security interests of the Agent and the Secured Parties pursuant to the FNBO Control Agreement and this Final Order.

(b) FNBO's Superpriority Claim. All obligations incurred by FNBO from its participation in the VeraSun Debtors' cash management system (the "Cash Management Bank") that result from ordinary course transactions under the VeraSun Debtors' cash management system (the "Cash Management Claims"), or in connection with letters of credit payable under the LOC Agreement (collectively, with the Cash Management Claims, the "FNBO Claims") shall give rise to a superpriority (subject to the Carve Out) claim in the VeraSun Debtors' Chapter 11 Cases as provided for in Bankruptcy Code section 503(b) and/or 507(b) with priority over any and all other administrative expenses in the VeraSun Debtors' Chapter 11 Cases of any kind payable or allowed pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 365, 503(a) 503(b), 507(a), 507(b), 546, 726(d), 1113 and/or 1114; provided, however, that such claim shall be *pari passu* with any superpriority adequate protection claims granted to (x) the Secured Bondholders pursuant to the VeraSun Final DIP Order and (y) the Agent and Secured Parties pursuant to this Final Order;

provided, further, that such claim shall be junior to the claim under section 364(c)(1) of the Bankruptcy Code granted under the VeraSun Final DIP Order to the VeraSun DIP Lenders.

(c) Interest, Fees and Expenses Payable to FNBO. FNBO shall receive, monthly in arrears, as adequate protection of their interest in the Money Market Account and the Subject Accounts, (i) cash payments in an amount equal to accrued or accruing prepetition and post-petition unpaid interest at the non-default rate and at the time or times and pursuant to the terms and conditions provided for in the LOC Agreement, and any letter of credit participation fees for the benefit of FNBO in connection with letters of credit payable under the LOC Agreement, and all other accrued and unpaid expenses incurred prior to the Petition Date owing under the LOC Agreement, including, but not limited to, the reasonable fees and expenses of counsel for FNBO provided for thereunder; and (ii) current cash payments from the VeraSun Debtors of all fees and expenses payable to FNBO under the LOC Agreement as such become due, including, but not limited to, the reasonable fees and expenses of counsel for FNBO, in each case as provided for in the LOC Agreement, provided that, without prejudice to the rights of any other party to contest such assertion, FNBO reserves its right to assert claims for payment of additional interest calculated at any other applicable rates of interest, or on any other basis, provided for in the LOC Agreement. FNBO shall submit invoices (from which privileged information may be redacted) to the VeraSun Debtors for reasonable professional fees and expenses (with copies to the Committee), and the VeraSun Debtors agree to pay all amounts to

which no objection was received upon receipt of each such invoice and without the necessity of further approval of this Court; provided however, that any objections to professional fees that cannot be resolved, shall be resolved by the Court.

Dated:           Wilmington, Delaware  
                  January 9, 2009

  
UNITED STATES BANKRUPTCY JUDGE