

MEMORANDUM

March 3, 2009

To: Official Committee of Unsecured Creditors (the “Committee”) of VeraSun Energy Corporation, et al. (the “Debtors”)
From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)
Re: VeraSun Energy Corporation, et al. – Summary of Recently Filed Pleading

Motion of Debtors for Order Under Bankruptcy Code Section 363 Authorizing the Debtors to Consensually Modify the Terms of CIT Railcar Leases (the “Motion”)

On February 19, 2009, the Debtors filed a motion (the “Railcar Motion”) seeking an order (a) authorizing the Debtors to consensually modify the terms of certain railcar leases with Trinity Industry Leasing Company (“Trinity”) and GE Electric Railcar Services Corporation (“GE Railcar”), and (b) clarifying that any modified railcar leases will remain prepetition leases subject to assumption or rejection under section 365 of the Bankruptcy Code. By this Motion, the Debtors seek to similarly modify the terms of their railcar lease with The CIT Group/Equipment Financing, Inc. (“CIT”). Specifically, the Debtors seek an order (i) authorizing the Debtors to modify the terms of a railcar lease with CIT Rail (the “CIT Modified Lease”), and (ii) confirming that the CIT Modified Lease will remain a prepetition lease subject to assumption and rejection under section 365 of the Bankruptcy Code.

The Debtors assert that, given that a buyer may emerge for the US BioEnergy production facilities,¹ additional railcar leases with competitive terms may enhance the Debtors’ ability to sell the US BioEnergy production facilities. Accordingly, the Debtors accepted a revised proposal submitted by CIT (the “Revised Proposal”), subject to Bankruptcy Court approval, which (i) reduces the monthly lease rate on tanker cars contained in CIT’s previous proposal from \$400 to \$325 per car per month and shortened the terms of the leases from 30 months to 24 months, (ii) fixes CIT’s prepetition general unsecured claim at \$487,418.90 (the previous proposal contained no cap on prepetition general unsecured claims), and (iii) adds language not contained in the previous proposal that the fixed amount of the prepetition general unsecured claim included any claims with respect to the return of the railcars. The parties have agreed that

¹ The US BioEnergy production facilities consist of: VeraSun Albert City, LLC; VeraSun Central City, LLC; VeraSun Dyersville, LLC; VeraSun Hankinson, LLC; VeraSun Janesville, LLC; VeraSun Ord, LLC; and VeraSun Woodbury, LLC.

the Debtors will return CIT's 53 hopper cars and reject the related railcar leases.² The Debtors contend that by accepting the Revised Proposal, together with the proposals from Trinity and GE Rail, and rejecting the railcar leases with other vendors, the Debtors will save an additional \$2.1 million (before allocation) each month on their total railcar lease expenses, or approximately \$25 million annually.

² The Revised Proposal pertains only to CIT Rail's tanker cars and not its hopper cars