

City of Scottsbluff, Nebraska

Monday, February 3, 2020

Regular Meeting

Item Reports3

Council to review, discuss, and consider action on the Estoppel Certificate (Solar Facilities Lease Agreement – Scottsbluff Project) and authorize the Mayor to sign the Certificate.

Staff Contact: Nathan Johnson, City Manager

ESTOPPEL CERTIFICATE
(Solar Facilities Lease Agreement – Scottsbluff Project)

This Estoppel Certificate (this “Estoppel Certificate”) is dated as of February, ~~20~~2020, by the CITY OF SCOTTSBLUFF, NEBRASKA, (“Landlord”), in favor of Antrim Corporation, a Delaware corporation (“Investor”), Tenant (as defined below), CapDyn Investor (as defined below) and Title Company (as defined below), with reference to that certain Solar Facilities Lease Agreement dated as of November 5, 2018, as amended by that certain First Amendment to Solar Facilities Lease Agreement and Estoppel dated as of August 19, 2019, as assigned by Assignment and Assumption Agreement dated May 3, 2019, as further assigned by Assignment and Assumption Agreement dated August 19, 2019 and as evidenced by Memorandum of Solar Facilities Lease Agreement dated August 21, 2019 and recorded in the Official Records of Scottsbluff County, Nebraska on September 23, 2019 as Instrument No. 20194026, as it may be modified or amended from time to time (collectively, the “Lease”), between WESTERN MEADOWLARK SOLAR SCS NE 1, LLC, a Delaware limited liability company, by assignment (“Tenant”), and Landlord, which is for a portion (the “Premises”) of that certain real estate in Scottsbluff, Nebraska, as more particularly described in the Lease (the “Property”) to be utilized for the development and operation of a solar power facility (the “Project”).

This Estoppel Certificate is being entered into and delivered pursuant to that certain Equity Capital Contribution Agreement (the “ECCA”), by and between Investor and Thor Solar 1 InvestCo, LLC, a Delaware limited liability company (“CapDyn Investor”). In connection with Investor’s indirect investment in Tenant pursuant to the ECCA (the “Transaction”), Investor has required that CapDyn Investor obtain the confirmation and agreement of Landlord as to certain matters related to the Lease. Capitalized terms used and not defined herein have the meanings specified in the Lease.

Based on the foregoing, and recognizing that Investor, Tenant, CapDyn Investor and Stewart Title Guaranty Company, a Texas Corporation (“Title Company”), and their respective lenders and affiliates, successors and assigns will rely hereon, Landlord hereby states, confirms certifies, represents, covenants, warrants and agrees as follows, as of the date first set forth above.

1. The execution, delivery, and performance by Landlord of this Estoppel Certificate and Lease have been duly authorized by all necessary corporate, partnership, limited liability, municipal, governmental, or other action on the part of Landlord and do not require any approvals, resolutions, filings with, or consents of any entity or person which have not previously been obtained or made.
2. The copy of the Lease attached hereto as Exhibit A constitutes a true, correct, and complete copy of the Lease, and the Lease has not been modified or amended in any way except as shown on the

1

Scottsbluff

~~WEST\288602877.3~~

~~WEST\289221596.1~~WEST\289221596.2

instruments attached hereto. The Lease is in full force and effect and constitutes the entirety of the agreements between Landlord and Tenant relating to the matters set forth therein. The Lease has not been waived, modified, cancelled, surrendered, abandoned or terminated.

3. All payments due and payable as of the date hereof, either by or to Landlord under the Lease, have been paid in full.
4. All representations and warranties made by Landlord in the Lease are true and correct as of the date hereof.
5. There are no actions pending against Landlord under the bankruptcy or any similar laws of the United States or any state. There are no proceedings pending or threatened against or affecting Landlord in any court or by or before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Landlord to perform its obligations under the Lease. To the best of Landlord's knowledge, there are no disputes or proceedings currently in existence between Landlord, on the one hand, and Tenant, on the other.
6. Landlord is not aware of any event, act, circumstance, or condition constituting an event of *force majeure* or otherwise excusing the performance of any party under the Lease. Landlord has not received written notice nor has knowledge of any pending eminent domain proceedings, condemnation or threatened condemnation, or other governmental actions or any judicial actions of any kind against Landlord's interest in the Property.
7. To the best of Landlord's knowledge, Tenant does not owe any indemnity payments to Landlord, and to the best of Landlord's knowledge, Landlord has no existing counterclaims, offsets, or defenses against Tenant, under the Lease. Tenant has not received or claimed any amounts under the indemnification obligations of Landlord set forth in the Lease.
8. As of the date hereof, Landlord (A) is the 100% fee simple owner of the Property, and (B) holds the entire interest of "Landlord" under the Lease. Landlord has not transferred, pledged, or assigned, in whole or in part, any of its right, title or interest in, to, or under the Lease or any of its right, title, or interest in or to the Property, and has not executed, assumed or taken subject to any mortgage, deed of trust or other consensual lien encumbering Landlord's interest in the Property or the Lease. There are no leases, easements, licenses, use or occupancy agreements by Landlord of any portion of the Premises, except the Lease.
9. Landlord has no knowledge of any right of possession or claim of right of possession to the Premises, or portion thereof by any party other than Tenant or of any party claiming a right pursuant to a lien or encumbrance.
10. Landlord has no option to terminate or otherwise modify the terms and conditions of the Lease other than as specifically provided in the Lease.

11. Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and its operation thereon, including, without limitation, any environmental laws, and has no reason to believe that there are grounds for any claim of any such violation.
12. All obligations and covenants under the Lease to be performed or observed by Landlord and Tenant to date have been fully performed, observed, and satisfied, no default by any party exists under the Lease, nor has any act or omission occurred which, solely as a result of the giving of notice or passage of time, or both, would constitute a default.
13. There is no current production of oil, gas and/or minerals on the Property or oil and gas, mineral, or mining exploration activities on the Property and no such exploration activities are contemplated by any party. No portion of the Property is subject to any conservation reserve program or other agricultural preserve program.
14. Landlord agrees that Investor has the rights to notice and cure provided to a Lender in Section 12.2 the Lease. Landlord further agrees to provide to the Investor, at the address set forth in this Estoppel Certificate (or to such different addresses as Investor may specify), a copy of any notice of default given under the Lease by Landlord, in accordance with the notice provisions thereof.
15. Investor address for notice pursuant to the Lease and this Estoppel Certificate:

Antrim Corporation
c/o State Street Bank and Trust Company
1 Lincoln Street SUM 304
Boston MA 02111
Attention: Dave Levy, President
Telephone: (617) 664-0779
Facsimile: (617) 664-9494
Email: DLevy@StateStreet.com

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____
Name: _____
Title: Mayor

[Signature Page to Ground Lease Agreement Estoppel Certificate – Scottsbluff Project]

| ~~WEST\289221596.1~~ [WEST\289221596.2](#)

Exhibit A

(Solar Facilities Lease Agreement)
(First Amendment to Solar Facilities Lease Agreement and Estoppel)
(Assignment and Assumption Agreement Dated May 3, 2019)
(Assignment and Assumption Agreement Dated August 19, 2019)
(Memorandum of Solar Facilities Lease Agreement Dated August 21, 2019)

See attached.

Summary report: Litéra® Change-Pro TDC 10.1.0.700 Document comparison done on 1/30/2020 9:27:42 AM	
Style name: DLA Piper	
Intelligent Table Comparison: Active	
Original DMS: iw://USDMS.PIPER.ROOT.LOCAL/WEST/289221596/1	
Modified DMS: iw://USDMS.PIPER.ROOT.LOCAL/WEST/289221596/2	
Changes:	
<u>Add</u>	6
Delete	7
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	13

ESTOPPEL CERTIFICATE
(Solar Facilities Lease Agreement – Scottsbluff Project)

This Estoppel Certificate (this “Estoppel Certificate”) is dated as of February __, 2020, by the CITY OF SCOTTSBLUFF, NEBRASKA, (“Landlord”), in favor of Antrim Corporation, a Delaware corporation (“Investor”), Tenant (as defined below), CapDyn Investor (as defined below) and Title Company (as defined below), with reference to that certain Solar Facilities Lease Agreement dated as of November 5, 2018, as amended by that certain First Amendment to Solar Facilities Lease Agreement and Estoppel dated as of August 19, 2019, as assigned by Assignment and Assumption Agreement dated May 3, 2019, as further assigned by Assignment and Assumption Agreement dated August 19, 2019 and as evidenced by Memorandum of Solar Facilities Lease Agreement dated August 21, 2019 and recorded in the Official Records of Scottsbluff County, Nebraska on September 23, 2019 as Instrument No. 20194026, as it may be modified or amended from time to time (collectively, the “Lease”), between WESTERN MEADOWLARK SOLAR SCS NE 1, LLC, a Delaware limited liability company, by assignment (“Tenant”), and Landlord, which is for a portion (the “Premises”) of that certain real estate in Scottsbluff, Nebraska, as more particularly described in the Lease (the “Property”) to be utilized for the development and operation of a solar power facility (the “Project”).

This Estoppel Certificate is being entered into and delivered pursuant to that certain Equity Capital Contribution Agreement (the “ECCA”), by and between Investor and Thor Solar 1 InvestCo, LLC, a Delaware limited liability company (“CapDyn Investor”). In connection with Investor’s indirect investment in Tenant pursuant to the ECCA (the “Transaction”), Investor has required that CapDyn Investor obtain the confirmation and agreement of Landlord as to certain matters related to the Lease. Capitalized terms used and not defined herein have the meanings specified in the Lease.

Based on the foregoing, and recognizing that Investor, Tenant, CapDyn Investor and Stewart Title Guaranty Company, a Texas Corporation (“Title Company”), and their respective lenders and affiliates, successors and assigns will rely hereon, Landlord hereby states, confirms certifies, represents, covenants, warrants and agrees as follows, as of the date first set forth above.

1. The execution, delivery, and performance by Landlord of this Estoppel Certificate and Lease have been duly authorized by all necessary corporate, partnership, limited liability, municipal, governmental, or other action on the part of Landlord and do not require any approvals, resolutions, filings with, or consents of any entity or person which have not previously been obtained or made.
2. The copy of the Lease attached hereto as Exhibit A constitutes a true, correct, and complete copy of the Lease, and the Lease has not been modified or amended in any way except as shown on the instruments attached hereto. The Lease is in full force and effect and constitutes the entirety of the agreements between Landlord and Tenant relating to the matters set forth therein. The Lease has not been waived, modified, cancelled, surrendered, abandoned or terminated.

1

Scottsbluff

WEST\289221596.2

3. All payments due and payable as of the date hereof, either by or to Landlord under the Lease, have been paid in full.
4. All representations and warranties made by Landlord in the Lease are true and correct as of the date hereof.
5. There are no actions pending against Landlord under the bankruptcy or any similar laws of the United States or any state. There are no proceedings pending or threatened against or affecting Landlord in any court or by or before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Landlord to perform its obligations under the Lease. To the best of Landlord's knowledge, there are no disputes or proceedings currently in existence between Landlord, on the one hand, and Tenant, on the other.
6. Landlord is not aware of any event, act, circumstance, or condition constituting an event of *force majeure* or otherwise excusing the performance of any party under the Lease. Landlord has not received written notice nor has knowledge of any pending eminent domain proceedings, condemnation or threatened condemnation, or other governmental actions or any judicial actions of any kind against Landlord's interest in the Property.
7. To the best of Landlord's knowledge, Tenant does not owe any indemnity payments to Landlord, and to the best of Landlord's knowledge, Landlord has no existing counterclaims, offsets, or defenses against Tenant, under the Lease. Tenant has not received or claimed any amounts under the indemnification obligations of Landlord set forth in the Lease.
8. As of the date hereof, Landlord (A) is the 100% fee simple owner of the Property, and (B) holds the entire interest of "Landlord" under the Lease. Landlord has not transferred, pledged, or assigned, in whole or in part, any of its right, title or interest in, to, or under the Lease or any of its right, title, or interest in or to the Property, and has not executed, assumed or taken subject to any mortgage, deed of trust or other consensual lien encumbering Landlord's interest in the Property or the Lease. There are no leases, easements, licenses, use or occupancy agreements by Landlord of any portion of the Premises, except the Lease.
9. Landlord has no knowledge of any right of possession or claim of right of possession to the Premises, or portion thereof by any party other than Tenant or of any party claiming a right pursuant to a lien or encumbrance.
10. Landlord has no option to terminate or otherwise modify the terms and conditions of the Lease other than as specifically provided in the Lease.
11. Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and its operation thereon, including, without limitation, any environmental laws, and has no reason to believe that there are grounds for any claim of any such violation.

12. All obligations and covenants under the Lease to be performed or observed by Landlord and Tenant to date have been fully performed, observed, and satisfied, no default by any party exists under the Lease, nor has any act or omission occurred which, solely as a result of the giving of notice or passage of time, or both, would constitute a default.
13. There is no current production of oil, gas and/or minerals on the Property or oil and gas, mineral, or mining exploration activities on the Property and no such exploration activities are contemplated by any party. No portion of the Property is subject to any conservation reserve program or other agricultural preserve program.
14. Landlord agrees that Investor has the rights to notice and cure provided to a Lender in Section 12.2 the Lease. Landlord further agrees to provide to the Investor, at the address set forth in this Estoppel Certificate (or to such different addresses as Investor may specify), a copy of any notice of default given under the Lease by Landlord, in accordance with the notice provisions thereof.
15. Investor address for notice pursuant to the Lease and this Estoppel Certificate:

Antrim Corporation
c/o State Street Bank and Trust Company
1 Lincoln Street SUM 304
Boston MA 02111
Attention: Dave Levy, President
Telephone: (617) 664-0779
Facsimile: (617) 664-9494
Email: DLevy@StateStreet.com

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____
Name: _____
Title: Mayor

[Signature Page to Ground Lease Agreement Estoppel Certificate – Scottsbluff Project]

WEST\289221596.2

Exhibit A

(Solar Facilities Lease Agreement)

(First Amendment to Solar Facilities Lease Agreement and Estoppel)

(Assignment and Assumption Agreement Dated May 3, 2019)

(Assignment and Assumption Agreement Dated August 19, 2019)

(Memorandum of Solar Facilities Lease Agreement Dated August 21, 2019)

See attached.