

Thursday, November 4, 2021  
9:30 AM – 10:45 AM

**Workshop 11**

***Paradise Reclaimed:  
Placing [Solar] Panels in the Paved Parking Lot (and Up on the Roof)***

**Jon Schuyler Brooks, Esq.**  
FREEBORN & PETERS LLP  
1155 Avenue of the Americas  
New York, NY 10036  
[jbrooks@freeborn.com](mailto:jbrooks@freeborn.com)

**Donald S. Simon, Esq.**  
Wendel Rosen LLP  
1111 Broadway, 24th Fl  
Oakland, CA 94607  
[dsimon@wendel.com](mailto:dsimon@wendel.com)

- I. Introduction (“Getting to Know You.”)**
  - A. Who are We?
  - B. Who are You? (Yes, we really want to know!)
  - C. What is the Topic? (“Here Comes the Sun”)
  
- II. Solar – Why Do It?**
  - A. Energy Independence
    - 1. Reduce energy costs
    - 2. Hedge against cost increases
    - 3. Net metering
  - B. Enhance LEED certification
  - C. Marketing & PR
    - 1. Attract tenants and customers
    - 2. Command higher rents
  - D. Grants, Subsidies, and Tax Credits
  - E. Revenue from “Non-Productive” Areas
    - 1. Parking Lot
    - 2. Rooftops
  
- III. Your Solar Team (“Once I built a tower to the sun ...”)**
  - A. Solar Contractor
    - 1. Feasibility and Financial Analysis
    - 2. Design
    - 3. Installation
      - a. Whose Roofing Contractor?

- B. Architect
- C. Lawyer(s) (Possible suspects: Real Estate, Construction, Enviro, Zoning)
- D. Tax Specialist (CPA)
- E. Insurance Broker

**IV. Where to Do It? (“Why don’t we do it in the road?”)**

- A. Parking Lots
  - 1. Carports
  - 2. EV Charging Stations
- B. Rooftops
- C. Undeveloped Grounds

**V. How to Do It (“To b[uy], or not to b[uy]. That is the question.”)**

- A. Buy the Solar Power System
- B. Lease the Solar Power System
- C. Buy the Solar Power from Someone Else’s System – Power Purchase Agreement (PPA)
  - 1. On-site installation (more common)
  - 2. Off-site installation.

**VI. Contractual Terms 1 – [Solar] Developer and Solar Supplier/Installer**

- A. Installation/Construction issues
  - 1. Access
  - 2. Roof Work / Impact on Roof warranty
  - 3. Insurance (including post-installation damage)
  - 4. Tenant Disruption
- B. O&M issues
- C. Performance Guaranty
- D. Tax Credits/Renewable Energy Credits
- E. Warranties
  - 1. Solar System warranty
  - 2. Solar System effect on roof warranty

F. Additional Considerations for PPA or Lease:

1. Price escalators
2. Purchase Options

3. Remedies for Default

**VII. Contractual Terms 2 – Landlord and Tenant**

A. Is this Space Taken?

1. Who owns the rights?
  - a. Owner/Landlord
  - b. Tenant
2. Are those rights exclusive?
  - a. Roof
  - b. Parking Lot

B. Tax Assessments/Impositions

C. Traps for the Unwary

1. Green Eggs and CAM
2. ... and now it's Premium
3. Purse (with) Strings
4. Shape Shifter (Landlord as Utility)

D. Someone Call Security!

E. And, in the End ....

1. Who owns what?
2. Removal costs

F. Additional Resources:

1. Additional template agreements published by the Solar Energy Industries Association: [www.seia.org/research-resources/model-leases-and-ppas](http://www.seia.org/research-resources/model-leases-and-ppas)
2. National network of O&M providers: [www.amicusom.com](http://www.amicusom.com)