



## **SolMarket Presents:**

Developing a Solar Lease  
with  
Yuri Horwitz, Sol Systems,  
Jack Lavoie, Cooley LLP  
Stephanie Smith, Cooley LLP

# Agenda

Part 1: Introductions

Part 2: Sol Systems & SolMarket Overview

Part 3: Developing a Solar Lease

Part 4: Q&A

# Introductions

# Speakers



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# **Sol Systems & Sol Market Overview**

# Sol Systems Overview

## Solar Finance Firm

- Founded in 2008 with a mission to make solar energy more affordable and accessible
- Oldest and largest SREC aggregator in the U.S.
- 2,500+ customers in 13 states
- 250+ partnerships with solar installers and developers, 170 of which are exclusive
- Manage 30 MW+ of solar capacity
- Facilitated over \$100 million in project financing through SREC business

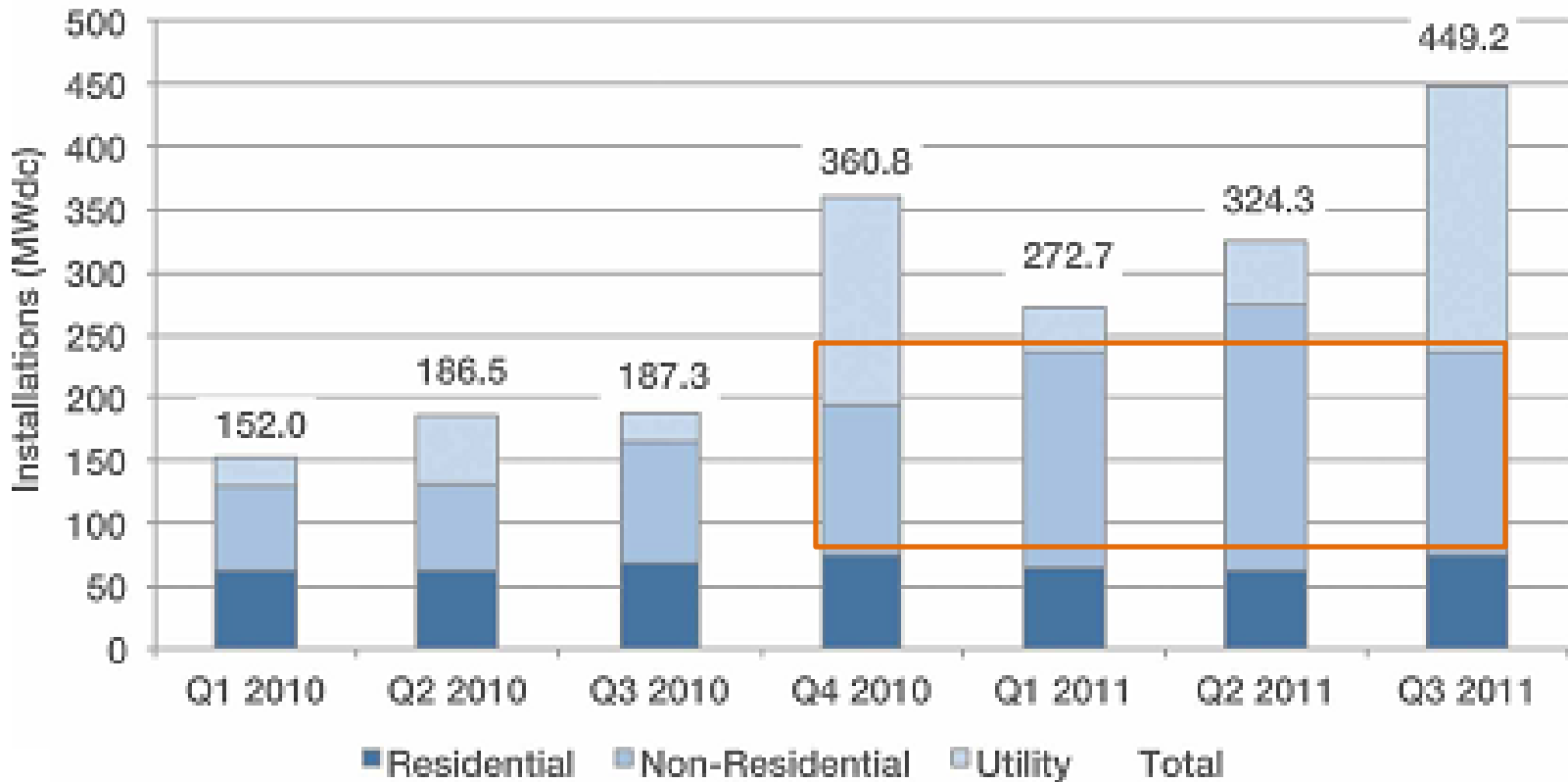
# Why SolMarket

## For the Solar industry to scale we must...

- **Build an Ecosystem:** Provide an ecosystem in which multiple new developers and players can thrive and innovate. Competition is healthy.
- **Reduce overall transaction costs:** Bring down costs of developing, investing and architecting portfolios. Uniformity in the origination and vetting process, standardization in documentation.
- **Create a standardized asset class:** We must provide a level of standardization across the industry to create secondary markets, reducing initial investment risk and creating an opportunity for more advanced investment vehicles.

# The SolMarket Focus

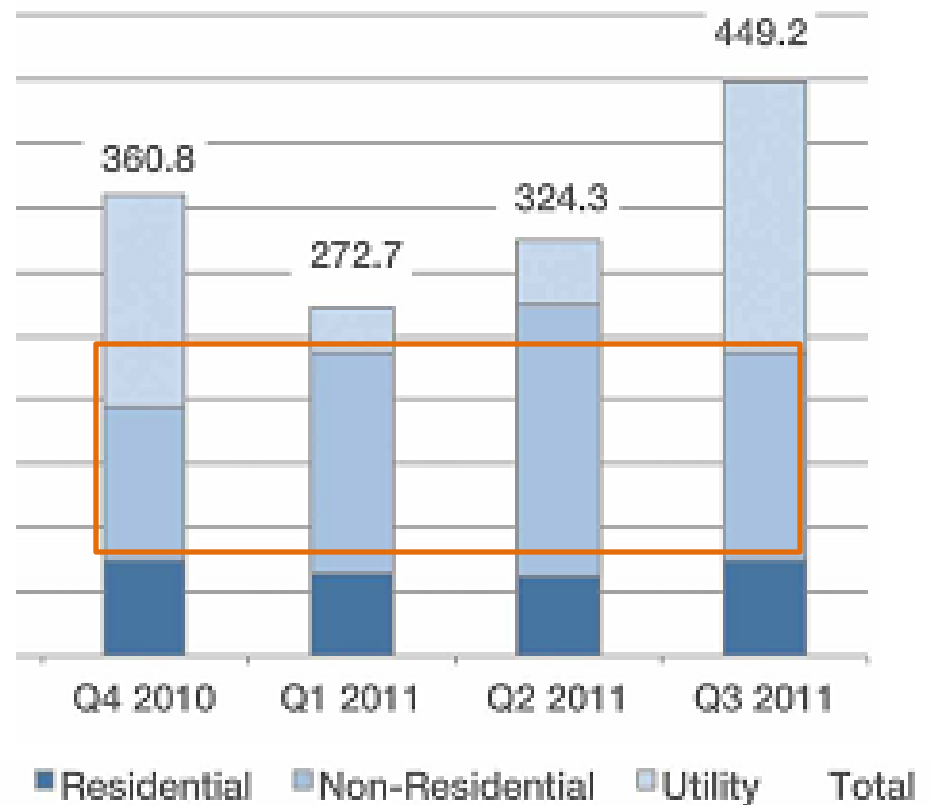
## U.S. PV Installations, 2010-Q3 2011





# The SolMarket Focus

The vast majority of solar (in volume) is built in not utility and non-residential space. These developers must succeed if the solar industry is to continue to scale. Providing them with the appropriate resources and information will be critical to this success.



# SolMarket Explained



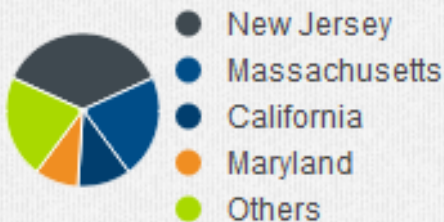
# SolMarket Vision

- Transaction driven community for solar
- Project origination platform for investors
- Financing conduit for developers
- Transaction resources for solar development
- Collaborative development knowledge center
- Group purchase opportunities
- Development services

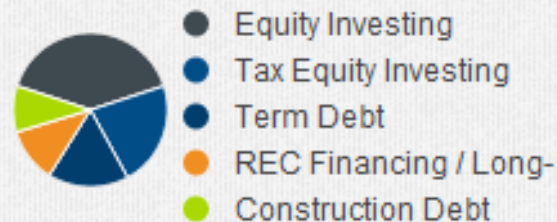
# SolMarket Current Snapshot

- Over 400 users
- 300+ MW of project pipeline
- \$1.9 Billion in available investment dollars for qualified solar projects
- Current investor preferences posted on dashboard

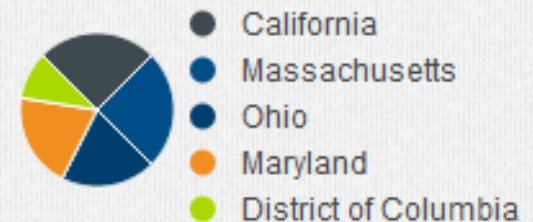
### Projects By State



### Financial Needs



### High Demand States



# Contact Info

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# Developing a Solar Lease



# Disclaimer

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# Purpose

- General considerations in Solar Leases
- Issues discussed from a developer's perspective
- Issues often vary depending on the project. Please consult the Resources page (at [www.solmarket.com](http://www.solmarket.com)) if you would like to discuss any particular issues with your contract, project, or this presentation with a recommended attorney.



# Major Issues

- Project Characteristics
- Lessee Rights
- Rent
- Title
- Other Considerations

# Project Characteristics

- The project characteristics will shape the scope and provisions of the lease, including:
  - Rooftop or ground lease specific provisions
  - Term of lease (should cover at minimum duration of off-take agreement)
  - How much land/roof area is required
  - Applicable environmental attributes
  - Interconnection to transmission lines/power grid

# Lessee Rights

- Solar/Site Lease Agreement
- Solar/Site Easement Agreement
- Solar/Site License (not preferred)

# Lessee Rights

- Exclusive rights for solar energy conversion
- Stand alone easement for construction/ installation of project, removing solar intrusions (trees, structures, etc.)
- Right of ingress and egress
- Right to upgrade facilities
- Right to cure lessor's default of site-related obligations
- Storage requirements?

# Rent

- Lease could include nominal payment or onerous provision
- Amount and frequency of payments to be considered in project modeling
- Rent may be tied to amount of power production

# Title

- Lessor to warrant authority to sign lease and rights over site
- Lessor to warrant quiet enjoyment
- Lessor to obtain any necessary non-disturbance agreements from third party lienholders
- Lessor to waive any rights over solar facility or any other improvement related to solar project

# Other Considerations

- Lender accommodations
- Zoning considerations
- Protection of solar access
- Hazardous materials
- Waiver of nuisance
- Taxes

# Agreement to Lease

Lessor hereby leases the Premises to Lessee for the Term, on an exclusive basis, for the sole purpose of installing, operating and maintaining the Solar Project, including the following activities (collectively, the "Operations"):

A. Conducting studies of solar radiation, solar energy, and other meteorological data;

B. Constructing, installing, replacing, repairing, removing, maintaining, monitoring and operating: (i) solar energy collection cells, panels, mirrors, lenses, and associated support structures, braces, wiring and plumbing; (ii) electrical transmission and distribution facilities, including collector lines, circuit breakers, meters and conduit; (iii) control, communications and radio relay systems; (iv) interconnection and/or switching facilities and electric transformers and transformer pads; (v) energy storage facilities; (vi) meteorological and solar energy measurement equipment; (vii) control buildings, control boxes and computer monitoring hardware; (viii) utility installation; (ix) safety protection facilities, fences, gates and signage; and (x) related improvements, fixtures and equipment (collectively the "Solar Project"); provided, however, the Solar Project shall not include land, improvements, equipment and/or chattels owned by Lessor;



# Agreement to Lease (cont'd)

C. A non-exclusive easement to use such portions of the Building's equipment rooms and building risers and raceways as may be reasonably necessary for the purpose of connecting the Solar Project to the [public utility system] [Lessor's electrical system];

D. A non-exclusive easement for access to the Building and Premises, and the use of any utility, transmission or other easements, rights of way or licenses held by Lessor with respect to the Building or use or occupancy thereof, for purposes related to or associated with the Solar Project;

E. A non-exclusive right to conduct tests, inspections and analysis of the Building and Premises, including load bearing tests, as Lessee deems necessary or appropriate; and

F. Undertaking any other lawful activities that Lessee determines are necessary or appropriate in connection with the foregoing purposes.

# Term

Termination of Power Purchase Agreement. In the event the Solar Power Purchase and Sale Agreement between the Parties executed concurrently herewith is terminated prior to the expiration of the Term, then this Lease shall also automatically terminate.

# Payments to Lessor

- A. Annual Lease Payments. Commencing with the Operations Date, Lessee shall pay to Lessor the Annual Lease Payments
- B. Operations Date. For purposes of this Lease, the “Operations Date” shall mean the date on which net electricity is regularly generated, delivered and sold (excluding start-up and testing of the Solar Project) by the Solar Project to purchasers of generated electricity or used in-house. This Lease shall not be construed as imposing upon Lessee any obligation to commence or continue generating any particular quantity of electricity or derive any particular amount of receipts therefrom at any time.

# Use of Premises

- A. Lessee's Rights to Upgrade Facilities. The Parties agree that solar energy technologies are improving at a rapid rate and that it is probable that, Lessee may (although Lessee shall not be required to) replace from time to time the existing Solar Project's equipment with newer model or design equipment which have increased energy capture and efficiency.
- B. Uses by Multiple Solar Projects. Lessee may use the Premises for one Solar Project or Lessee may divide the Premises into multiple Solar Projects or Lessee may combine the Solar Project located on the Premises with such facilities located adjacent to or in the vicinity of the Building to form a single Solar Project.
- C. Exclusive Use. Lessee shall have the sole and exclusive right to convert all of the solar resources of and to conduct Operations at the Building. Lessor shall not grant any rights in the Building purporting to permit others to conduct Operations on the Premises or with respect to the Building in derogation of Lessee's sole and exclusive right to conduct Operations on the Premises. Lessor shall not materially interfere with the solar resource or otherwise construct or permit to be constructed any structure that blocks, inhibits or impairs the solar resource over the Premises.

# Access to Premises

Lessor agrees that Lessee and its authorized representatives shall have access to the Building, the Building's rooftop, equipment rooms and risers at all times during the Term of this Lease for the purposes of installing, maintaining, operating, and repairing the Solar Project as more particularly set forth in this Lease. It is agreed, however, that only authorized engineers, employees or properly authorized contractors, subcontractors, and agents of Lessee, other authorized regulatory inspectors, or persons under their direct supervision and control will be permitted to enter the Building's rooftop, equipment rooms and risers. Except in the event of an emergency, Lessee agrees to give at least twenty-four (24) hours prior notice to Lessor of its intent to enter the Building's rooftop, equipment rooms and risers. In the event of an emergency, Lessee shall give to Lessor as much advance notice as reasonably possible.

# Temporary Storage

A. Temporary Storage Space During Installation. Lessor will use commercially reasonable efforts to provide sufficient space adjacent to the Premises, if needed, for the temporary storage and staging of tools, materials and equipment reasonably necessary during the installation of the Solar Project. Lessor will also provide Lessee a reasonable area adjacent to the Premises, if needed, for construction type lay-down and staging. Lessor and Lessee will coordinate and cooperate in determining the amount of space required for such purposes.

B. Temporary Storage Space During Maintenance. Lessor will use commercially reasonable efforts to provide sufficient space adjacent to the Premises, if needed, for the temporary storage and staging of tools, materials and equipment during any maintenance of the Solar Project. Lessor and Lessee will coordinate and cooperate in determining the amount of space required for such purposes.

# Leasehold Financing

A. Right to Encumber. Lessee, any assignee or any holder of a sublease or license (each, an "Obligor") may at any time assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of its right, title or interest under this Lease and/or in the Solar Project (which collectively shall hereinafter be referred to as the "Solar Energy Estate") to any Lender. As used herein "Lender" shall mean (i) any person or entity providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Solar Project, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing provided to a member or other direct or indirect owner of Lessee), including any equity and tax investor directly or indirectly providing financing or refinancing for the Solar Project or purchasing equity ownership interests of Lessee and/or its affiliates, and any trustee or agent acting on their behalf, (ii) any person or entity providing interest rate protection agreements to hedge any of the foregoing obligations, and/or (iii) any person or entity entering into a sale leaseback or leveraged lease structure with respect to the Solar Project. Moreover, Lessor shall enter into any reasonable consent and non-disturbance agreement with any Lender within ten (10) Days following a request therefor, stating that Lessor shall recognize the rights of the Lender and not disturb its possession of the Premises so long as no Event of Default exists under this Lease, and stating such other

# Leasehold Financing (continued)

things as such Lender may reasonably request. Lessor agrees to execute or cause its mortgagee to execute any further documentation that may be requested by Lessee or a Lender of any of the foregoing to evidence any non-disturbance as provided for in Section \_\_\_\_\_. From time to time, Lessor, within ten (10) Days after written request from Lessee or any Lender, shall execute and deliver an estoppel certificate certifying the status of this Lease, Lessee's and Lessor's performance hereunder, and any other matter reasonably requested by Lessee or such Lender.

B. Covenants for Lenders' Benefit. Should an Obligor mortgage any of its interest as provided in Section \_\_\_\_ above, Lessor expressly agrees for the benefit of Lessee and any Lenders as follows:

- (1) Lessor will not amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender.
- (2) Lender shall have the right to do any act or thing required to be performed by Obligor under this Lease, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Lease and/or a forfeiture of any of Obligor's rights under this Lease as if done by Obligor itself.



# Cooley Contact Info

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# Upcoming Webinars with Cooley

Future webinars will be announced on <https://www.solmarket.com/events>

The screenshot shows the SolMarket website interface. At the top left is the SolMarket logo with the tagline "A Sol Systems company". To the right of the logo are navigation links: "sign out as developer", "my profile", "my company", and "blog". Below this is a dark blue navigation bar with buttons for "Dashboard", "Manage Projects", "Research", "Resources", "SolPurchase", and "Events". The "Events" button is highlighted. Below the navigation bar is a large orange header with the word "Events". Underneath, there is a section titled "Upcoming Events" with a sub-heading "Webinar Series with Cooley on Bankable Solar Contracts". The main content area contains a paragraph of text: "Sol Systems and Cooley are pleased to announce a webinar series on bankable solar contracts for solar installers, developers and investors. Each webinar in the series will lead participants through key terms and issues of a different contract and will provide an opportunity for Q&A. The webinars will be hosted by Sol Systems' CEO, Yuri Horwitz, Cooley Clean Energy and Technologies group attorneys and guest panelists."

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## Events

### Upcoming Events

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