

# **Exhibit 1E**

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10 *Attorneys for Defendant The Insurance Company of the State of Pennsylvania;*

*Defendants/Crossclaimants Tonopah Solar Energy, LLC and*

11 *Cobra Thermosolar Plants, Inc.*

12 **FIFTH JUDICIAL DISTRICT COURT**

13 **NYE COUNTY, NEVADA**

14 PROIMTU MMI LLC, a Nevada limited liability  
15 company,

16 Plaintiff,

17 vs.

18 TRP INTERNATIONAL, INC., a Delaware corporation;  
19 TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company; COBRA THERMOSOLAR  
20 PLANTS, INC., a Nevada corporation; STATE OF  
NEVADA ex rel. the NEVADA STATE  
21 CONTRACTORS BOARD, THE INSURANCE  
COMPANY OF THE STATE OF PENNSYLVANIA, a  
22 Pennsylvania corporation, DOES I-X, ROE  
COMPANIES I-X,

23 Defendants.

24 COBRA THERMOSOLAR PLANTS, INC. a Nevada  
25 corporation; and TONOPAH SOLAR ENERGY, LLC, a  
Nevada limited liability company,

26 Crossclaimants,

27 vs.  
28

Case No. CV36747

Dept. No. 1

**NOTICE OF ENTRY OF ORDER.**

1 TRP INTERNATIONAL, INC., a foreign corporation;  
2 DOES 1 through 50, inclusive, and ROE  
3 CORPORATIONS 51 through 101, inclusive,

4  
5 Crossdefendants.

6 YOU AND EACH OF YOU will please take notice that an Order Granting Defendants  
7 Tonopah Solar Energy, LLC, Cobra Thermosolar Plants, Inc. and The Insurance Company of the  
8 State of Pennsylvania's Motion for Summary Judgment was entered on the 16<sup>th</sup> day of February,  
9 2016, a copy of which is attached hereto.

10 DATED this 27<sup>th</sup> day of June, 2016. **HOLLEY DRIGGS WALCH**  
11 **FINE WRAY PUZEY & THOMPSON**

12 By

13 WILLIAM J. WRAY, ESQ. (NV Bar No. 005834)  
14 GLENN F. MEIER, ESQ. (NV Bar No. 006059)  
15 RACHEL E. DONN, ESQ. (NV Bar No. 10568)  
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19 *Attorneys for Defendant The Insurance Company of*  
20 *the State of Pennsylvania; and*  
21 *Defendants/Crossclaimants Tonopah Solar Energy,*  
22 *LLC and Cobra Thermosolar Plants, Inc.*

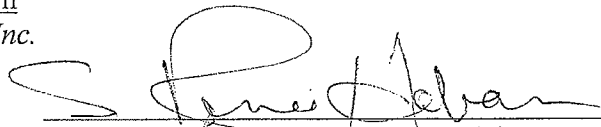
**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of June, 2016, I served a copy of the foregoing

**NOTICE OF ENTRY OF ORDER** upon each of the parties by e-mail and regular U.S. Mail,  
addressed as follows:

Christopher H. Byrd, Esq.  
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 6/28/16  
An employee of Holley Driggs Walch  
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1 **ORDR**

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21 *Defendants/Crossclaimants Tonopah Solar Energy, LLC and*

22 *Cobra Thermosolar Plants, Inc.*

23 **FIFTH JUDICIAL DISTRICT COURT**

24 **NYE COUNTY, NEVADA**

25 PROIMTU MMI LLC, a Nevada limited liability  
26 company,

27 Plaintiff,

28 vs.

29 TRP INTERNATIONAL, INC., a Delaware corporation;  
30 TONOPAH SOLAR ENERGY, LLC, a Delaware  
31 limited liability company; COBRA THERMOSOLAR  
32 PLANTS, INC., a Nevada corporation; STATE OF  
33 NEVADA ex rel. the NEVADA STATE  
34 CONTRACTORS BOARD, THE INSURANCE  
35 COMPANY OF THE STATE OF PENNSYLVANIA, a  
36 Pennsylvania corporation, DOES I-X, ROE  
37 COMPANIES I-X,

38 Defendants.

39 COBRA THERMOSOLAR PLANTS, INC. a Nevada  
40 corporation; and TONOPAH SOLAR ENERGY, LLC, a  
41 Nevada limited liability company,

42 Crossclaimants,

43 vs.

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Case No. CV36747

Dept. No. 1

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER GRANTING  
DEFENDANTS TONOPAH  
SOLAR ENERGY, LLC, COBRA  
THERMOSOLAR PLANTS, INC.  
AND THE INSURANCE  
COMPANY OF THE STATE OF  
PENNSYLVANIA'S MOTION  
FOR SUMMARY JUDGMENT

1 TRP INTERNATIONAL, INC., a foreign corporation;  
2 DOES 1 through 50, inclusive, and ROE  
3 CORPORATIONS 51 through 101, inclusive,

4 Crossdefendants.

5 Defendants, TONOPAH SOLAR ENERGY, LLC ("TSE"), COBRA THERMOSOLAR  
6 PLANTS, INC. ("Cobra") and THE INSURANCE COMPANY OF THE STATE OF  
7 PENNSYLVANIA'S ("ICSP"), (collectively, the "Cobra Defendants") Motion to for Summary  
8 Judgment (the "Motion") came on for hearing before this Court on November 12, 2015. Donna  
9 DiMaggio, Esq., William J. Wray, Esq., James W. Puzey, Esq. and Rachel E. Donn, Esq. of the  
10 law firm of Holley Driggs Walch Fine Wray Puzey & Thompson appeared on behalf of the  
11 Cobra Defendants, Brenoch Wirthlin, Esq. of the law firm of Fennemore Craig, P.C., on behalf  
12 of Plaintiff, PROIMTU MMI LLC ("Proimtu") and Becky A. Pintar, Esq. of the law firm of  
13 Pintar Albiston LLP on behalf of Defendant TRP INTERNATIONAL, INC. ("TRP").

14 The Court having reviewed the pleadings, briefs and papers on file, and having  
15 considered the arguments of Counsel at the time of the hearing, the Court makes the following  
16 Findings of Fact, Conclusions of Law and Order.

17 **FINDINGS OF FACT**

18 1. Cobra entered into a contract with TRP, wherein TRP agreed to perform  
19 construction services at the Crescent Dunes Thermosolar Power Plant in Tonopah, Nevada (the  
20 "Project").

21 2. TRP and Cobra entered into a contract that contained an arbitration provision,  
22 which stated that any dispute would be subject to arbitration in Madrid, Spain, in the Spanish  
23 language, under Spanish law and subject to the rules of the Civil and Mercantile Court of  
24 Arbitration ("CIMA").

25 3. The provision in the contract between Cobra and TRP further stated that the  
26 parties agreed to waive any other legal forum to which they might have been entitled.

27 4. In order to fulfill its contractual responsibilities to Cobra, TRP entered into a  
28 subcontract with Proimtu that also contained an arbitration provision, which stated that any

1 dispute would be subject to arbitration in Madrid, Spain, in the Spanish language, under Spanish  
2 law and subject to the rules of CIMA.

3 5. The provision in the contract between TRP and Proimtu further stated that the  
4 parties agreed to waive any other legal forum to which they might have been entitled.

5 6. Proimtu is a division of a Spanish company.

6 7. Proimtu entered into a contract with TRP with full knowledge that it agreed that  
7 any and all disputes would be litigated in Spain.

8 8. Cobra and TRP relied upon a forum in the contracts that was for greater  
9 convenience and that forum should be honored.

### 10 CONCLUSIONS OF LAW

11 1. There are no issues of material fact and judgment should enter as a matter of law  
12 in favor of Cobra, TSE and ICSP. *See Wood v. Safeway, Inc.*, 121 Nev. 724 (2005).

13 2. A contractual forum selection clause is *prima facie* valid and enforceable. *See*  
14 *Docksider, Ltd. v. Sea Technology, Ltd.*, 875 F.3d 762 (9<sup>th</sup> Cir.1989).

15 3. When the provision is specified with mandatory language, the clause will be  
16 enforced. *See id.*

17 4. The forum selection clause in the contract between Cobra and TRP and TRP and  
18 Proimtu was mandatory and therefore, enforceable.

19 5. Pursuant to the doctrine of *forum non conveniens*, this Court will not exercise  
20 jurisdiction over this matter. *See Contact Lumber Co. v. P.T. Moges Shipping, Co.*, 918 F.2d  
21 1446 (9<sup>th</sup> Cir.1990).

22 6. Proimtu will not suffer irreparable harm if this matter is dismissed and litigated in  
23 Spain pursuant to the contract. *See id.*

24 7. An adequate alternative forum exists for this case to be litigated. *See id.*

25 8. Both private and public interests factors favor dismissal of this action. *See id.*

26 9. Proimtu is not a lien claimant and therefore, does not have standing to claims the  
27 protections afforded under NRS 108.2453. *See* NRS 108.2453.

**THEREFORE, IT IS HEREBY ORDERED** that the Cobra Defendants' Motion for Summary Judgment is hereby **GRANTED** in favor of Cobra, TSE and ICSP for the reasons stated.

DATED this 16 day of FEBRUARY 2016.

Steven Elliott  
DISTRICT COURT JUDGE

Submitted By:

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FINE WRAY PUZEY & THOMPSON

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*The Insurance Company of the State of Pennsylvania*  
*Defendants/Crossclaimants Tonopah Solar Energy, LLC*  
*and Cobra Thermosolar Plants, Inc.*



# Exhibit 1D

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10 *Attorneys for Defendants/Crossclaimants*  
*Tonopah Solar Energy, LLC and Cobra Thermosolar Plants, Inc.*

11 **FIFTH JUDICIAL DISTRICT COURT**

12 **NYE COUNTY, NEVADA**

13  
14 PROIMTU MMI LLC, a Nevada limited liability  
company,

15  
16 Plaintiff,

17 vs.

18 TRP INTERNATIONAL, INC., a Delaware corporation;  
TONOPAH SOLAR ENERGY, LLC, a Delaware  
19 limited liability company; COBRA THERMOSOLAR  
PLANTS, INC., a Nevada corporation; STATE OF  
20 NEVADA ex rel. the NEVADA STATE  
CONTRACTORS BOARD, THE INSURANCE  
COMPANY OF THE STATE OF PENNSYLVANIA, a  
21 Pennsylvania corporation, DOES I-X, ROE  
COMPANIES I-X,

22 Defendants.  
23

24 COBRA THERMOSOLAR PLANTS, INC. a Nevada  
corporation; and TONOPAH SOLAR ENERGY, LLC, a  
25 Nevada limited liability company,

26 Crossclaimants,

27 vs.

28 TRP INTERNATIONAL, INC., a foreign corporation:

Case No. CV36747  
Dept. No. 1

**DEFENDANTS TONOPAH  
SOLAR ENERGY, LLC AND  
COBRA THERMOSOLAR  
PLANTS, INC.'S ANSWER TO  
PLAINTIFF PROIMTU MMI  
LLC'S FIRST AMENDED  
COMPLAINT AND  
CROSSCLAIM AGAINST TRP  
INTERNATIONAL, INC.**

1 DOES 1 through 50, inclusive, and ROE  
2 CORPORATIONS 51 through 101, inclusive,  
3 Crossdefendants.

4 COMES NOW, Defendants, TONOPAH SOLAR ENERGY, LLC, a Delaware limited  
5 liability company, and COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation  
6 (hereinafter sometimes referred to as "Defendants"), by and through their attorneys of record,  
7 Holley Driggs Walch Fine Wray Puzey & Thompson, and submits their Answer to Plaintiff  
8 PROIMTU MMI LLC'S ("Plaintiff") First Amended Complaint as follows:

9 **ANSWER TO FIRST AMENDED COMPLAINT**

10 **THE PARTIES**

11 1. In response to Paragraph 1 of Plaintiff's First Amended Complaint (hereinafter  
12 referred to as "First Amended Complaint") on file herein, Defendants are without sufficient  
13 information and knowledge to form a belief as to the truth and accuracy of the allegations  
14 contained therein, and therefore deny the same.

15 2. In response to Paragraph 2 of Plaintiff's First Amended Complaint on file herein,  
16 Defendants are without sufficient information and knowledge to form a belief as to the truth and  
17 accuracy of the allegations contained therein, and therefore deny the same

18 3. In response to Paragraph 3 of Plaintiff's First Amended on file herein, Defendants  
19 are without sufficient information and knowledge to form a belief as to the truth and accuracy of  
20 the allegations contained therein, and therefore deny the same

21 4. In response to Paragraph 4 of the First Amended Complaint on file herein,  
22 Defendants admit the allegations contained therein.

23 5. In response to Paragraph 5 of the First Amended Complaint on file herein,  
24 Defendants admit the allegations contained therein.

25 6. In response to Paragraph 6 of the First Amended Complaint on file herein,  
26 Defendants admit that the Nevada State Contractors' Board is an agency of the State of Nevada,  
27 otherwise, Defendants are without sufficient information and knowledge to form a belief as to  
28

1 the truth and accuracy as to the remainder of the allegations.

2 7. In response to Paragraph 7 of the First Amended Complaint on file herein,  
3 Defendants admit the allegations contained therein.

4 8. In response to Paragraph 8 of the First Amended Complaint on file herein,  
5 Defendants state the allegations contained in this paragraph contain conclusions of law to which  
6 no response is required. To the extent a response is required, Defendants deny said allegations.

7 **FACTUAL BACKGROUND**

8 9. In response to Paragraph 9 of the First Amended Complaint on file herein,  
9 Defendants are without sufficient information and knowledge to form a belief as to the truth and  
10 accuracy of the allegations contained therein, and therefore deny the same.

11 10. In response to Paragraph 10 of the First Amended Complaint on file herein,  
12 Defendants admit the allegations contained therein.

13 11. In response to Paragraph 11 of the First Amended Complaint on file herein,  
14 Defendants admit the allegations contained therein.

15 12. In response to Paragraph 12 of the First Amended Complaint on file herein,  
16 Defendants state the allegations contained in these paragraphs contain conclusions of law to  
17 which no response is required. To the extent a response is required, Defendants deny said  
18 allegations.

19 13. In response to Paragraph of the First Amended Complaint on file herein,  
20 Defendants state the allegations contained in these paragraphs contain conclusions of law to  
21 which no response is required. To the extent a response is required, Defendants deny said  
22 allegations.

23 **FIRST CLAIM FOR RELIEF**

24 **(Breach of Contract- Against TRP)**

25 14. In response to Paragraph 14 of the First Amended Complaint on file herein,  
26 Defendants repeat and reallege each and every response to Paragraphs 1 through 13 of the First  
27 Amended Complaint as though fully set forth herein.

1           15.     In response to Paragraphs 15 through 34 of the First Amended Complaint on file  
2 herein, Defendants state the allegations therein pertain to another Defendant, therefore, no  
3 response is required. To the extent a response is required, Defendants are without sufficient  
4 information and knowledge to form a belief as to the truth and accuracy of the allegations  
5 contained therein, and therefore deny the same.

6                               **SECOND CLAIM FOR RELIEF**

7                               **(Violations of NRS 624 Against TRP)**

8           16.     In response to Paragraph 35 of the First Amended Complaint on file herein,  
9 Defendants repeat and reallege each and every response to Paragraphs 1 through 34 of the First  
10 Amended Complaint as though fully set forth herein.

11           17.     In response to Paragraphs 36 through 43 of the First Amended Complaint on file  
12 herein, Defendants state the allegations therein pertain to another Defendant, therefore, no  
13 response is required. To the extent a response is required, Defendants are without sufficient  
14 information and knowledge to form a belief as to the truth and accuracy of the allegations  
15 contained therein, and therefore deny the same.

16                               **THIRD CLAIM FOR RELIEF**

17                               **(Breach of Good Faith and Fair Dealing Against TRP)**

18           18.     In response to Paragraph 44 of the First Amended Complaint on file herein,  
19 Defendants repeat and reallege each and every response to Paragraphs 1 through 43 of the First  
20 Amended Complaint as though fully set forth herein.

21           19.     In response to Paragraphs 45 through 48 of the First Amended Complaint on file  
22 herein, Defendants state the allegations therein pertain to another Defendant, therefore, no  
23 response is required. To the extent a response is required, Defendants are without sufficient  
24 information and knowledge to form a belief as to the truth and accuracy of the allegations  
25 contained therein, and therefore deny the same.

26     ///

27     ///

28     ///



28. In response to Paragraph 64 of the First Amended Complaint on file herein, Defendants state the allegations contained in these paragraphs contain conclusions of law to which no response is required. To the extent a response is required, Defendants deny said allegations.

### SIXTH CLAIM FOR RELIEF

(Quantum Meruit/Cardinal Change Against TRP)

29. In response to Paragraph 65 of the First Amended Complaint on file herein, Defendants repeat and reallege each and every response to Paragraphs 1 through 64 of the First Amended Complaint as though fully set forth herein.

30. In response to Paragraphs 66 through 68 of the First Amended Complaint on file herein, Defendants state the allegations therein pertain to another Defendant, therefore, no response is required. To the extent a response is required, Defendants are without sufficient information and knowledge to form a belief as to the truth and accuracy of the allegations contained therein, and therefore deny the same.

### SEVENTH CLAIM FOR RELIEF

(Recovery of Bond Amount Against the Board)

31. In response to Paragraph 69 of the First Amended Complaint on file herein, Defendants repeat and reallege each and every response to Paragraphs 1 through 68 of the First Amended Complaint as though fully set forth herein.

32. In response to Paragraphs 70 through 73 of the First Amended Complaint on file herein, Defendants state the allegations therein pertain to another Defendant, therefore, no response is required. To the extent a response is required, Defendants are without sufficient information and knowledge to form a belief as to the truth and accuracy of the allegations contained therein, and therefore deny the same.

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**EIGHTH CLAIM FOR RELIEF**

**(Claim Against Bond)**

33. In response to Paragraph 74 of the First Amended Complaint on file herein, Defendants repeat and reallege each and every response to Paragraphs 1 through 73 of the First Amended Complaint as though fully set forth herein.

34. In response to Paragraph 75 of the First Amended Complaint on file herein, Defendants state the allegations contained in this paragraph contain conclusions of law to which no response is required. To the extent a response is required, Defendants deny said allegations.

35. In response to Paragraph 76, 78 and 82 of the First Amended Complaint on file herein, Defendants deny each and every allegation contained therein.

36. In response to Paragraph 77 of the First Amended Complaint on file herein, Defendants admit a document titled Notice of Lien was recorded in the official records of Nye County on or about November 12, 2014 as Instrument No. 823637, otherwise, Defendants deny the remainder of the allegations contained therein.

37. In response to Paragraph 78 of the First Amended Complaint on file herein, Defendants deny each and every allegation contained therein.

38. In response to Paragraph 79 of Plaintiff's First Amended Complaint on file herein, Defendants are without sufficient information and knowledge to form a belief as to the truth and accuracy of the allegations contained therein, and therefore deny the same.

39. In response to Paragraph 80 of the First Amended Complaint on file herein, Defendants admit the allegations contained therein.

40. In response to Paragraphs 81 of the First Amended Complaint on file herein, Defendants admit the allegations contained therein.

41. In response to Paragraph 82 of the First Amended Complaint on file herein, Defendants deny each and every allegation contained therein.

42. In response to Paragraph 83 of the First Amended Complaint on file herein, Defendants state the allegations contained in this paragraph contain conclusions of law to which no response is required. To the extent a response is required, Defendants deny said allegations.



1 AFFIRMATIVE DEFENSES

2 FIRST AFFIRMATIVE DEFENSE

3 Defendants are informed and believe, and thereupon allege, that each of the purported  
4 claims for relief in the First Amended Complaint fail to state a claim for relief against  
5 Defendants. This defense is alleged in the alternative and does not admit any of the allegations  
6 contained in the First Amended Complaint.

7 SECOND AFFIRMATIVE DEFENSE

8 Defendants are informed and believe, and thereupon allege that each and every purported  
9 claim for relief contained in the First Amended Complaint is barred by the applicable statute of  
10 limitations including, but not limited to, §§ 11.030, 11.070, 11.080, *et seq.* of the Nevada  
11 Revised Statutes. This defense is alleged in the alternative and does not admit any of the  
12 allegations contained in the First Amended Complaint.

13 THIRD AFFIRMATIVE DEFENSE

14 Defendants are informed and believe, and thereupon allege that Plaintiff, by virtue of its  
15 own acts and/or the acts or omissions of others chargeable to it, have unjustly delayed in  
16 commencing this action, that said delay has prejudiced the rights of these Defendants and,  
17 therefore, the First Amended Complaint should be barred under the doctrine of laches. This  
18 defense is alleged in the alternative and does not admit any of the allegations contained in the  
19 First Amended Complaint.

20 FOURTH AFFIRMATIVE DEFENSE

21 Defendants are informed and believe, and thereupon allege, that Plaintiff, by virtue of its  
22 own acts and/or the acts or omissions of others chargeable to it is estopped and/or should be  
23 equitably estopped from obtaining relief sought from these Defendants. This defense is alleged in  
24 the alternative and does not admit any of the allegations contained in the First Amended  
25 Complaint.

26 FIFTH AFFIRMATIVE DEFENSE

27 Defendants are informed and believe, and thereupon allege, that injury, if any, suffered  
28 by Plaintiff was caused by the acts, omissions and wrongdoing of Plaintiff, by virtue of its own

1 acts and/or the acts or omissions of others chargeable to it, and not any acts, omissions or  
2 wrongdoing by these answering Defendants. This defense is alleged in the alternative and does  
3 not admit any of the allegations contained in the First Amended Complaint.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 Defendants are informed and believe, and thereupon allege, that at all times alleged in the  
6 First Amended Complaint, Plaintiff, by virtue of its own acts and/or the acts or omissions of  
7 others chargeable to it, failed to exercise ordinary and reasonable care on Plaintiff's own behalf,  
8 in the management and maintenance of his person and property, and negligently and carelessly  
9 was the proximate cause of some portion, up to and including the whole thereof, of Plaintiff's  
10 alleged injuries and damages, if any, and therefore Plaintiff's recovery, if any, should be barred  
11 and/or reduced according to law, up to and including the whole thereof, and these Defendants are  
12 entitled to an apportionment among all such parties according to their responsibility for injuries  
13 and damages, if any, suffered by Plaintiff. This defense is alleged in the alternative and does not  
14 admit any of the allegations contained in the First Amended Complaint.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 Defendants are informed and believe, and thereupon allege that injury, if any, suffered by  
17 Plaintiff was proximately caused and contributed to by the conduct, acts, omissions and  
18 wrongdoing or conduct, acts, omissions and/or activities of a third party and/or parties either  
19 named or unnamed, and any recovery obtained by Plaintiff should be barred and/or reduced  
20 according to law, up to and including the whole thereof. This defense is alleged in the  
21 alternative and does not admit any of the allegations contained in the First Amended Complaint.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Defendants are informed and believe, and thereupon allege, that if these Defendants are  
24 subjected to any liability to Plaintiff herein it will be due in whole and/or in part to the conduct,  
25 acts, omissions and/or activities of a party and/or parties unknown to these Defendants at this  
26 time, and any recovery obtained by Plaintiff should be barred and/or reduced according to law,  
27 up to and including the whole thereof. This defense is alleged in the alternative and does not  
28 admit any of the allegations contained in the First Amended Complaint.



1 allegations contained in the First Amended Complaint.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 Defendants are informed and believe, and thereupon allege that the damages claimed by  
4 Plaintiff in the First Amended Complaint are uncertain and thereby preclude calculation and  
5 recovery thereof. This defense is alleged in the alternative and does not admit any of the  
6 allegations contained in the First Amended Complaint.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 Defendants are informed and believe, and thereupon allege, that Plaintiff's damages, if  
9 any, are or will be set-off by Plaintiff's recovery of damages from other parties. Thus, any  
10 judgment obtained by Plaintiff against these Defendants should be barred and/or reduced  
11 according to law, up to and including the whole thereof. This defense is alleged in the  
12 alternative and does not admit any of the allegations contained in the First Amended Complaint.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 Defendants are informed and believe, and thereupon allege, that the First Amended  
15 Complaint fails to state facts sufficient to warrant an award of attorneys' fees. This defense is  
16 alleged in the alternative and does not admit any of the allegations contained in the First  
17 Amended Complaint.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 Defendants are informed and believe, and thereupon allege, that Plaintiff, by virtue of its  
20 own acts and/or the acts or omissions of others chargeable to it, voluntarily and knowingly failed  
21 to take action to protect Plaintiff's rights and thus have waived such rights. This defense is  
22 alleged in the alternative and does not admit any of the allegations contained in the First  
23 Amended Complaint.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 Defendants are informed and believe, and thereupon allege, that Plaintiff, by virtue of its  
26 own acts and/or the acts or omissions of others chargeable to it, at all times gave its consent,  
27 express or implied, to the acts, omissions and conduct alleged of these Defendants in the First  
28

1 Amended Complaint. This defense is alleged in the alternative and does not admit any of the  
2 allegations contained in the First Amended Complaint.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 Defendants are informed and believe, and thereupon allege, that Plaintiff, by virtue of its  
5 own acts and/or the acts or omissions of others chargeable to it, ratified the alleged acts of these  
6 Defendants. This defense is alleged in the alternative and does not admit any of the allegations  
7 contained in the First Amended Complaint.

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 Defendants are informed and believe, and thereupon allege, that Plaintiff, by virtue of its  
10 own acts and/or the acts or omissions of others chargeable to it, expressly, impliedly and/or  
11 equitably released all rights against these Defendants in connection with the transaction giving  
12 rise to the allegations set forth in the First Amended Complaint. This defense is alleged in the  
13 alternative and does not admit any of the allegations contained in the First Amended Complaint.

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 Answering Defendants are informed and believe, and thereupon allege, that Plaintiff, by  
16 virtue of its own acts and/or the acts and omissions of others chargeable to it, expressly,  
17 impliedly and/or equitably waived its rights to equitable remedies. This defense is alleged in the  
18 alternative, and does not admit any of the allegations contained in the First Amended Complaint.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 Defendants are informed and believe, and thereupon allege, that any conduct on the part  
21 of these Defendants, or representations made by these Defendants, were made in good faith. This  
22 defense is alleged in the alternative and does not admit any of the allegations contained in the  
23 First Amended Complaint.

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 Defendants are informed and believe, and thereupon allege, that they have fully complied  
26 with all applicable governmental regulations and requirements in connection with the events,  
27 transactions and occurrences, as alleged in the First Amended Complaint, and therefore, any  
28 recovery by Plaintiff should be barred. This defense is alleged in the alternative and does not

1 admit any of the allegations contained in the First Amended Complaint.

2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 Defendants are informed and believe, and thereupon allege, that these Defendants at all  
4 material times, complied with the standard of care applicable to Defendants and therefore, any  
5 recovery by Plaintiff should be barred. This defense is alleged in the alternative and does not  
6 admit any of the allegations contained in the First Amended Complaint.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 Defendants are informed and believe, and thereupon allege, that Plaintiff and/or  
9 Plaintiff's agents, by virtue of its own acts and/or the acts or omissions of others chargeable to it,  
10 were provided with proper statutory notice. This defense is alleged in the alternative and does not  
11 admit any of the allegations contained in the First Amended Complaint.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 Defendants are informed and believe, and thereupon allege, that they have fully and  
14 completely disclosed all material and appropriate facts in connection with the events,  
15 transactions and occurrences, as alleged in the First Amended Complaint. This defense is  
16 alleged in the alternative and does not admit any of the allegations contained in the First  
17 Amended Complaint.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 Defendants are informed and believe, and thereupon allege, that the individuals or entities  
20 responsible for any alleged wrongful conduct were not the agents of these Defendants and as  
21 such, answering Defendants are not liable for its conduct. This defense is alleged in the  
22 alternative and does not admit any of the allegations contained in the First Amended Complaint.

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 Defendants are informed and believe, and thereupon allege, that the right of Plaintiff to  
25 recover herein, if any right exists, is reduced and limited to the percentage of negligence  
26 attributable to these Defendants. This defense is alleged in the alternative and does not admit  
27 any of the allegations contained in the First Amended Complaint.

1                                    **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2            Defendants are informed and believe, and thereupon allege, that Plaintiff's claims are  
3    barred as a result of the failure to satisfy conditions precedent to asserting the claims. This  
4    defense is alleged in the alternative and does not admit any of the allegations contained in the  
5    First Amended Complaint.

6                                    **TWENTY-NINTH AFFIRMATIVE DEFENSE**

7            Defendants are informed and believe, and thereupon allege, that Plaintiff's claims are off  
8    set in full or in part by Plaintiff's own breach of contract and/or negligence and/or deficient  
9    performance, defective work, delays, impacts and damages to the work caused by Plaintiff. This  
10   defense is alleged in the alternative and does not admit any of the allegations contained in the  
11   First Amended Complaint.

12                                   **THIRTIETH AFFIRMATIVE DEFENSE**

13           Defendants are informed and believe, and thereupon allege, that Plaintiff's equitable  
14   claims are barred inasmuch as Plaintiff has a remedy at law. This defense is alleged in the  
15   alternative and does not admit any of the allegations contained in the Second Amended  
16   Complaint-in-Intervention.

17                                   **THIRTY-FIRST AFFIRMATIVE DEFENSE**

18           Defendants are informed and believe, and thereupon allege, that Plaintiff's lien claims are  
19   barred by Plaintiff's failure to properly perfect a lien pursuant to NRS Chapter 108. This defense  
20   is alleged in the alternative and does not admit any of the allegations contained in the First  
21   Amended Complaint.

22                                   **THIRTY-SECOND AFFIRMATIVE DEFENSE**

23           Defendants are informed and believe, and thereupon allege, that Plaintiff's lien claims are  
24   barred and/or substituted by the posting of a surety bond pursuant to NRS 108.2413 *et seq.* This  
25   defense is alleged in the alternative and does not admit any of the allegations contained in the  
26   First Amended Complaint.

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1 CROSSCLAIM

2 COME NOW, Defendants/Crossclaimants, COBRA THERMOSOLAR PLANT, INC.  
3 ("Cobra") and TONOPAH SOLAR ENERGY, LLC ("TSE") (hereinafter collectively referred to  
4 as "Crossclaimants"), by and through their attorneys of record Holley Driggs Walch Fine Wray  
5 Puzey & Thompson, and for their Crossclaims against Defendant/Crossdefendant TRP  
6 INTERNATIONAL, INC. ("TRP" or "Crossdefendant"), hereby respectively allege and  
7 complain as follows:

8 GENERAL ALLEGATIONS

9 1. Crossclaimants repeat and reallege each and every answer therein contained in their  
10 responses to Proimtu MMI, LLC's ("Proimtu") First Amended Complaint as though fully set  
11 forth herein and incorporate them herein by reference.

12 2. At all times relevant herein, Cobra is and was a Nevada corporation licensed to do  
13 business in the State of Nevada.

14 3. At all times relevant herein, TSE is and was a limited liability company and is the  
15 owner of the Crescent Dunes Thermosolar Power Plant, located in Tonopah, Nevada.

16 4. Upon information and belief, at all times relevant herein, Crossdefendant is and  
17 was a foreign corporation, licensed to do business in the State of Nevada.

18 5. The true names and capacities, whether individual, corporate, associate or  
19 otherwise of the Counterdefendants designated herein as Doe Defendants 1 through 50 and Roe  
20 Corporations 51 through 101, and each of them, are responsible to Counterclaimant on the facts  
21 and theories herein alleged and Counterclaimant will seek leave of Court to amend its  
22 Counterclaim to allege the true names and capacities after same have been ascertained.

23  
24 6. On or about March 30, 2012, Cobra, as prime contractor and Tecnologia Y  
25 Robotica De Proceses S.L. ("TRP S.L."), as a subcontractor, entered into a written contract for  
26 materials and services to be provided by TRP S.L. related to the assembly line and heliostat  
27 erection, identified as CDS-COM-OC-CPI-041 Rev 0 (the "Heliostat Erection Agreement") in  
28 connection with a construction project known generally as Crescent Dunes Thermosolar Power

1 Plant and corresponding works of improvements (the "Project") located near Tonopah, Nevada.

2 7. Pursuant to Section 28 of the Heliostat Erection Agreement, on or about June 20,  
3 2012, Cobra and TRP S.L. executed an addendum to the Heliostat Erection Agreement,  
4 identified as CSD-COM-OC-CPI-041 Rev 1 (the "First Amendment"), wherein TRP S.L.  
5 assigned all of its rights and obligations under the Heliostat Erection Agreement to  
6 Crossdefendant.

7 8. Pursuant to the First Amendment, Crossdefendant assumed any right and  
8 obligation out of or in connection with the Heliostat Erection Agreement.

9 9. In its First Amended Complaint, Plaintiff, Proimtu alleges that it has not been  
10 paid for the services it provided to Crossdefendant at the Project and as a result, on or about  
11 November 12, 2014, Plaintiff recorded a document entitled "Notice of Lien" in the official  
12 records of Nye County, Nevada, as Instrument No. 823637.

13 9. Pursuant to the terms of the Heliostat Erection Agreement, Crossdefendant was to  
14 keep the Project lien free.

15 10. Pursuant to the terms of the Heliostat Erection Agreement, Crossdefendant agreed  
16 to defend, indemnify and hold Crossclaimants harmless.

17 11. Upon information and belief, Crossdefendant has failed and refused to pay its  
18 subcontractor, Proimtu, which has resulted in Proimtu filing a lien claim seeking payment for  
19 monies allegedly owed for work and services performed pursuant to its agreement with  
20 Crossdefendant.

21 12. As a result of said lien claim and pursuant to the Heliostat Erection Agreement,  
22 Crossdefendant has a duty to defend, indemnify and hold Crossclaimants harmless from any and  
23 all actions.

24 **FIRST CLAIM FOR RELIEF**

25 **(Breach of Contract)**

26 12. Crossclaimants repeat and reallege the allegations contained in paragraphs 1  
27 through 11 as though fully set forth herein and incorporate them herein by reference.

28 13. Cobra entered into an agreement with Crossdefendant.

14. Cobra performed all conditions, covenants and promises to be performed under the contract, except for those acts, covenants and conditions excused by Crossdefendant's breach of contract.

15. Crossdefendant further breached its agreement by failing to keep the Project lien free and failing to defend and indemnify Crossclaimants.

16. As an actual and proximate result of Crosseffendant's breach of duty, Crossclaimants suffered damages in excess of \$10,000, plus interest, and any additional damages that may be proven at trial.

17. Crossclaimants retained the services of Holley Driggs Walch Fine Wray Puzey & Thompson to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

## SECOND CLAIM FOR RELIEF

**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

18. Crossclaimants repeat and reallege the allegations contained in paragraphs 1 through 17 as though fully set forth herein and incorporate them herein by reference.

19. Every agreement contains an implied covenant of good faith and fair dealing.

20. Cobra and Crossdefendant were parties to an agreement.

21. Crossdefendant owed Crossclaimants a duty of good faith and fair dealing.

22. Crossdefendant breached its duty by failing to comply with the contract requirements for the Project.

23. As an actual and proximate result of Crossdefendant's breach of duty, Crossclaimants suffered damages in excess of \$10,000, plus interest, and any additional damages that may be proven at trial.

24. Crossclaimants retained the services of Holley Driggs Walch Fine Wray Puzey & Thompson to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

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1 THIRD CLAIM FOR RELIEF

2 (Express Indemnity)

3 25. Crossclaimants repeat and reallege the allegations contained in paragraphs 1  
4 through 24 as though fully set forth herein and incorporate them herein by reference.

5 26. Cobra and Crossdefendant entered into a written agreement wherein  
6 Crossdefendant agreed to provide certain construction materials and services at the Project.

7 27. Pursuant to the terms of that agreement, Crossdefendant had a duty to indemnify,  
8 defend and hold Crossclaimants harmless against any Third-Party actions. Crossdefendant has  
9 refused to indemnify and defend Crossclaimants.

10 28. As an actual and proximate result of Crossdefendant's breach of duty,  
11 Crossclaimants suffered damages in excess of \$10,000, plus interest, and any additional damages  
12 that may be proven at trial.

13 29. Crossclaimants retained the services of Holley Driggs Walch Fine Wray Puzey &  
14 Thompson to prosecute this action and are entitled to recover reasonable attorneys' fees and  
15 costs of suit incurred herein.

16 FOURTH CLAIM FOR RELIEF

17 (Implied Indemnity)

18 30. Crossclaimants repeat and reallege the allegations contained in paragraphs 1  
19 through 29 as though fully set forth herein and incorporate them herein by reference.

20 31. Cobra entered into written, oral and implied agreements with Crossclaimants to  
21 provide certain construction materials and services at the Project.

22 32. An action has been filed by a sub-contractor or supplier of Crossdefendant, that  
23 performed work at the Project pursuant to an agreement with Crossdefendant.

24 33. Crossclaimants deny the allegations contained in said action; however, without  
25 admitting the allegations contained therein, equity and good conscience requires that  
26 Crossdefendant defend and indemnify Crossclaimants from any and all sums paid by way of  
27 settlement, or in the alternative, judgment rendered against Crossclaimants in favor of any sub-  
28 contractor of Crossdefendant.

34. As an actual and proximate result of Crossdefendant's breach of duty, Crossclaimants suffered damages in excess of \$10,000, plus interest, and any additional damages that may be proven at trial.

35. Crossclaimants retained the services of Holley Driggs Walch Fine Wray Puzey & Thompson to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

### FIFTH CLAIM FOR RELIEF

(Equitable Indemnity)

36. Crossclaimants repeat and reallege the allegations contained in paragraphs 1 through 35 as though fully set forth herein and incorporate them herein by reference.

37. An action has been filed by a sub-contractor of Crossdefendant that performed work or provided materials at the Project pursuant to an agreement with Crossdefendant.

38. Crossclaimants deny the allegations contained in the said action; however, without admitting the allegations contained therein, equity and good conscience requires that if the sub-contractor recover against Crossclaimants, then Crossclaimants are entitled to equitable indemnity from Crossdefendant for Crossdefendant's respective fault for the injuries and damages allegedly sustained by said sub-contractor or supplier, if any, by way of sums paid by settlement, or in the alternative, judgment rendered against Crossclaimants in favor of any sub-contractor of Crossdefendant.

39. As an actual and proximate result of Crossdefendant's breach of duty, Crossclaimants suffered damages in excess of \$10,000, plus interest, and any additional damages that may be proven at trial.

40. Crossclaimants retained the services of Holley Driggs Walch Fine Wray Puzey & Thompson to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

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41. Crossclaimants repeat and reallege the allegations contained in paragraphs 1 through 40 as though fully set forth herein and incorporate them herein by reference.

43. As an actual and proximate result of Crossdefendant's breach of duty, Crossclaimants suffered damages in excess of \$10,000, plus interest, and any additional damages that may be proven at trial.

44. Crossclaimants retained the services of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Crossclaimants pray for judgment against Crossdefendant as follows:

- 3 1. For an award of damages in favor of Crossclaimants;
- 4 2. For an award of reasonable attorneys' fees and costs of suit to Crossclaimants
- 5 incurred in the prosecution of this action; and
- 6 3. For such other and further relief as this Court may deem just and proper in the
- 7 premises.

8 DATED this 17<sup>th</sup> day of August, 2015.

**HOLLEY DRIGGS WALCH**  
**FINE WRAY PUZEY & THOMPSON**

10 By

11 ~~WILLIAM L. WRAY, ESQ. (NV Bar No. 005834)~~  
12 ~~GLENN F. MEIER, ESQ. (NV Bar No. 006059)~~  
13 ~~RACHEL E. DONN, ESQ. (NV Bar No. 10568)~~  
14 ~~DONNA DIMAGGIO, ESQ. (NV Bar No. 009794)~~  
15 400 South Fourth Street, 3<sup>rd</sup> Floor  
16 Las Vegas, Nevada 89101  
17 Attorneys for Defendants/Crossclaimants  
18 *Tonopah Solar Energy, LLC and Cobra*  
19 *Thermosolar Plants, Inc.*

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*Attorneys for Plaintiff*

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# Exhibit 1C

1 WILLIAM J. WRAY, ESQ.  
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7 **HOLLEY DRIGGS WALCH**  
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8 400 South Fourth Street, Third Floor  
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9 Telephone: 702/791-0308  
Facsimile: 702/791-1912  
10 *Attorneys for The Insurance*  
*Company of the State of Pennsylvania*

11 **FIFTH JUDICIAL DISTRICT COURT**

12 **NYE COUNTY, NEVADA**

13  
14  
15 PROIMTU MMI LLC, a Nevada limited liability  
company,

16 Plaintiff,

17 vs.

18 TRP INTERNATIONAL, INC., a Delaware corporation;  
19 TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company; COBRA THERMOSOLAR  
20 PLANTS, INC., a Nevada corporation; STATE OF  
NEVADA ex rel. the NEVADA STATE  
21 CONTRACTORS BOARD, THE INSURANCE  
COMPANY OF THE STATE OF PENNSYLVANIA, a  
22 Pennsylvania corporation, DOES I-X, ROE  
COMPANIES I-X,

23 Defendants.

Case No. CV36747  
Dept. No. 1

**DEFENDANT THE INSURANCE  
COMPANY OF THE STATE  
OF PENNSYLVANIA' ANSWER  
TO PLAINTIFF PROIMTU  
MMI LLC'S COMPLAINT**

24 COMES NOW, Defendant, THE INSURANCE COMPANY OF THE STATE OF  
25 PENNSYLVANIA, a Pennsylvania corporation (hereinafter sometimes referred to as  
26 "Defendant"), by and through its attorneys of record, Holley Driggs Walch Fine Wray Puzey &  
27 Thompson, and submits its Answer to Plaintiff PROIMTU MMI LLC'S First Amended  
28

1 Complaint as follows:

2 **ANSWER TO FIRST AMENDED COMPLAINT**

3 **THE PARTIES**

4 1. In response to Paragraph 1 of Plaintiff's First Amended Complaint (hereinafter  
5 referred to as "First Amended Complaint") on file herein, Defendant is without sufficient  
6 information and knowledge to form a belief as to the truth and accuracy of the allegations  
7 contained therein, and therefore deny the same.

8 2. In response to Paragraph 2 of Plaintiff's First Amended Complaint on file herein,  
9 Defendant is without sufficient information and knowledge to form a belief as to the truth and  
10 accuracy of the allegations contained therein, and therefore deny the same

11 3. In response to Paragraph 3 of Plaintiff's First Amended on file herein, Defendant  
12 is without sufficient information and knowledge to form a belief as to the truth and accuracy of  
13 the allegations contained therein, and therefore deny the same

14 4. In response to Paragraph 4 of the First Amended Complaint on file herein,  
15 Defendant admits the allegations contained therein.

16 5. In response to Paragraph 5 of the First Amended Complaint on file herein,  
17 Defendant admits the allegations contained therein.

18 6. In response to Paragraph 6 of the First Amended Complaint on file herein,  
19 Defendant admits that the Nevada State Contractors' Board is an agency of the State of Nevada,  
20 otherwise, Defendant is without sufficient information and knowledge to form a belief as to the  
21 truth and accuracy as to the remainder of the allegations.

22 7. In response to Paragraph 7 of the First Amended Complaint on file herein,  
23 Defendant admits the allegations contained therein.

24 8. In response to Paragraph 8 of the First Amended Complaint on file herein,  
25 Defendant states the allegations contained in this paragraph contain conclusions of law to which  
26 no response is required. To the extent a response is required, Defendant denies said allegations.

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1 **FACTUAL BACKGROUND**

2 9. In response to Paragraph 9 of the First Amended Complaint on file herein,  
3 Defendant is without sufficient information and knowledge to form a belief as to the truth and  
4 accuracy of the allegations contained therein, and therefore deny the same.

5 10. In response to Paragraph 10 of the First Amended Complaint on file herein,  
6 Defendant admits the allegations contained therein.

7 11. In response to Paragraph 11 of the First Amended Complaint on file herein,  
8 Defendant admits the allegations contained therein.

9 12. In response to Paragraph 12 of the First Amended Complaint on file herein,  
10 Defendant states the allegations contained in these paragraphs contain conclusions of law to  
11 which no response is required. To the extent a response is required, Defendant denies said  
12 allegations.

13 13. In response to Paragraph of the First Amended Complaint on file herein,  
14 Defendant states the allegations contained in these paragraphs contain conclusions of law to  
15 which no response is required. To the extent a response is required, Defendant denies said  
16 allegations.

17 **FIRST CLAIM FOR RELIEF**

18 **(Breach of Contract- Against TRP)**

19 14. In response to Paragraph 14 of the First Amended Complaint on file herein,  
20 Defendant repeats and realleges each and every response to Paragraphs 1 through 13 of the First  
21 Amended Complaint as though fully set forth herein.

22 15. In response to Paragraphs 15 through 34 of the First Amended Complaint on file  
23 herein, Defendant states the allegations therein pertain to another Defendant, therefore, no  
24 response is required. To the extent a response is required, Defendant is without sufficient  
25 information and knowledge to form a belief as to the truth and accuracy of the allegations  
26 contained therein, and therefore denies the same.

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1                                   **SECOND CLAIM FOR RELIEF**

2                                   **(Violations of NRS 624 Against TRP)**

3           16.     In response to Paragraph 35 of the First Amended Complaint on file herein,  
4 Defendant repeats and realleges each and every response to Paragraphs 1 through 34 of the First  
5 Amended Complaint as though fully set forth herein.

6           17.     In response to Paragraphs 36 through 43 of the First Amended Complaint on file  
7 herein, Defendant states the allegations therein pertain to another Defendant, therefore, no  
8 response is required. To the extent a response is required, Defendant is without sufficient  
9 information and knowledge to form a belief as to the truth and accuracy of the allegations  
10 contained therein, and therefore denies the same.

11                                   **THIRD CLAIM FOR RELIEF**

12                                   **(Breach of Good Faith and Fair Dealing Against TRP)**

13           18.     In response to Paragraph 44 of the First Amended Complaint on file herein,  
14 Defendant repeats and realleges each and every response to Paragraphs 1 through 43 of the First  
15 Amended Complaint as though fully set forth herein.

16           19.     In response to Paragraphs 45 through 48 of the First Amended Complaint on file  
17 herein, Defendant states the allegations therein pertain to another Defendant, therefore, no  
18 response is required. To the extent a response is required, Defendant is without sufficient  
19 information and knowledge to form a belief as to the truth and accuracy of the allegations  
20 contained therein, and therefore denies the same.

21                                   **FOURTH CLAIM FOR RELIEF**

22                                   **(Negligent Misrepresentation Against TRP)**

23           20.     In response to Paragraph 49 of the First Amended Complaint on file herein,  
24 Defendant repeats and realleges each and every response to Paragraphs 1 through 48 of the First  
25 Amended Complaint as though fully set forth herein.

26           21.     In response to Paragraphs 50 through 57 of the First Amended Complaint on file  
27 herein, Defendant states the allegations therein pertain to another Defendant, therefore, no  
28 response is required. To the extent a response is required, Defendant is without sufficient

1 information and knowledge to form a belief as to the truth and accuracy of the allegations  
2 contained therein, and therefore denies the same.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Unjust Enrichment Against TRP, TSE and Cobra)**

5 22. In response to Paragraph 58 of the First Amended Complaint on file herein,  
6 Defendant repeats and realleges each and every response to Paragraphs 1 through 57 of the First  
7 Amended Complaint as though fully set forth herein.

8 23. In response to Paragraph 59 of the First Amended Complaint on file herein,  
9 Defendant denies each and every allegation contained therein.

10 24. In response to Paragraph 60 of the First Amended Complaint on file herein,  
11 Defendant denies each and every allegation contained therein.

12 25. In response to Paragraph 61 of the First Amended Complaint on file herein,  
13 Defendant denies each and every allegation contained therein.

14 26. In response to Paragraph 62 of the First Amended Complaint on file herein,  
15 Defendant denies each and every allegation contained therein.

16 27. In response to Paragraph 63 of the First Amended Complaint on file herein,  
17 Defendant states the allegations contained in these paragraphs contain conclusions of law to  
18 which no response is required. To the extent a response is required, Defendant denies said  
19 allegations.

20 28. In response to Paragraph 64 of the First Amended Complaint on file herein,  
21 Defendant states the allegations contained in these paragraphs contain conclusions of law to  
22 which no response is required. To the extent a response is required, Defendant denies said  
23 allegations.

24 **SIXTH CLAIM FOR RELIEF**

25 **(Quantum Meruit/Cardinal Change Against TRP)**

26 29. In response to Paragraph 65 of the First Amended Complaint on file herein,  
27 Defendant repeats and realleges each and every response to Paragraphs 1 through 64 of the First  
28 Amended Complaint as though fully set forth herein.

1           30. In response to Paragraphs 66 through 68 of the First Amended Complaint on file  
2 herein, Defendant states the allegations therein pertain to another Defendant, therefore, no  
3 response is required. To the extent a response is required, Defendant is without sufficient  
4 information and knowledge to form a belief as to the truth and accuracy of the allegations  
5 contained therein, and therefore denies the same.

6                                   **SEVENTH CLAIM FOR RELIEF**

7                                   **(Recovery of Bond Amount Against the Board)**

8           31. In response to Paragraph 69 of the First Amended Complaint on file herein,  
9 Defendant repeats and realleges each and every response to Paragraphs 1 through 68 of the First  
10 Amended Complaint as though fully set forth herein.

11           32. In response to Paragraphs 70 through 73 of the First Amended Complaint on file  
12 herein, Defendant states the allegations therein pertain to another Defendant, therefore, no  
13 response is required. To the extent a response is required, Defendant is without sufficient  
14 information and knowledge to form a belief as to the truth and accuracy of the allegations  
15 contained therein, and therefore denies the same.

16                                   **EIGHTH CLAIM FOR RELIEF**

17                                   **(Claim Against Bond)**

18           33. In response to Paragraph 74 of the First Amended Complaint on file herein,  
19 Defendant repeats and realleges each and every response to Paragraphs 1 through 73 of the First  
20 Amended Complaint as though fully set forth herein.

21           34. In response to Paragraph 75 of the First Amended Complaint on file herein,  
22 Defendant states the allegations contained in this paragraph contain conclusions of law to which  
23 no response is required. To the extent a response is required, Defendant denies said allegations.

24           35. In response to Paragraph 76, 78 and 82 of the First Amended Complaint on file  
25 herein, Defendant denies each and every allegation contained therein.

26           36. In response to Paragraph 77 of the First Amended Complaint on file herein,  
27 Defendant admits a document titled Notice of Lien was recorded in the official records of Nye  
28 County on or about November 12, 2014 as Instrument No. 823637, otherwise, Defendant denies

1 the remainder of the allegations contained therein.

2 37. In response to Paragraph 78 of the First Amended Complaint on file herein,  
3 Defendant denies each and every allegation contained therein.

4 38. In response to Paragraph 79 of Plaintiff's First Amended Complaint on file  
5 herein, Defendant is without sufficient information and knowledge to form a belief as to the truth  
6 and accuracy of the allegations contained therein, and therefore deny the same.

7 39. In response to Paragraph 80 of the First Amended Complaint on file herein,  
8 Defendant admits the allegations contained therein.

9 40. In response to Paragraphs 81 of the First Amended Complaint on file herein,  
10 Defendant admits the allegations contained therein.

11 41. In response to Paragraph 82 of the First Amended Complaint on file herein,  
12 Defendant denies each and every allegation contained therein.

13 42. In response to Paragraph 83 of the First Amended Complaint on file herein,  
14 Defendant states the allegations contained in this paragraph contain conclusions of law to which  
15 no response is required. To the extent a response is required, Defendant denies said allegations.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 Answering Defendant is informed and believes, and thereupon alleges, that each of the  
19 purported claims for relief in the First Amended Complaint fail to state a claim for relief against  
20 answering Defendant. This defense is alleged in the alternative and does not admit any of the  
21 allegations contained in the First Amended Complaint.

22 **SECOND AFFIRMATIVE DEFENSE**

23 Answering Defendant is informed and believes, and thereupon alleges that each and  
24 every purported claim for relief contained in the First Amended Complaint is barred by the  
25 applicable statute of limitations including, but not limited to, §§ 11.030, 11.070, 11.080, *et seq.*  
26 of the Nevada Revised Statutes. This defense is alleged in the alternative and does not admit any  
27 of the allegations contained in the First Amended Complaint.

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1 responsibility for injuries and damages, if any, suffered by Plaintiff. This defense is alleged in  
2 the alternative and does not admit any of the allegations contained in the First Amended  
3 Complaint.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 Answering Defendant is informed and believe, and thereupon alleges that injury, if any,  
6 suffered by Plaintiff was proximately caused and contributed to by the conduct, acts, omissions  
7 and wrongdoing or conduct, acts, omissions and/or activities of a third party and/or parties either  
8 named or unnamed, and any recovery obtained by Plaintiff should be barred and/or reduced  
9 according to law, up to and including the whole thereof. This defense is alleged in the  
10 alternative and does not admit any of the allegations contained in the First Amended Complaint.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Answering Defendant is informed and believes, and thereupon alleges, that if this  
13 answering Defendant is subjected to any liability to Plaintiff herein it will be due in whole and/or  
14 in part to the conduct, acts, omissions and/or activities of a party and/or parties unknown to  
15 answering Defendant at this time, and any recovery obtained by Plaintiff should be barred and/or  
16 reduced according to law, up to and including the whole thereof. This defense is alleged in the  
17 alternative and does not admit any of the allegations contained in the First Amended Complaint.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Answering Defendant is informed and believes, and thereon alleges, that answering  
20 Defendant is not liable for the independent acts of third parties and Plaintiff's injuries or  
21 damages, if any, are attributable to acts of third parties. This defense is alleged in the alternative  
22 and does not admit of any of the allegations contained in the First Amended Complaint.

23 **TENTH AFFIRMATIVE DEFENSE**

24 Answering Defendant is informed and believes, and thereupon alleges, that if answering  
25 Defendant is subjected to any liability to Plaintiff herein it will be due in whole and/or in part to  
26 the conduct, acts, omissions and/or activities of third parties, other than this answering  
27 Defendant, who legally caused and/or contributed to the events leading up to the incidents which  
28 form the basis for the allegations contained in the Amended Complaint and therefore, this

1 answering Defendant is entitled to a judicial determination of the percentage of fault of each  
2 party who is a legal cause of the injuries and damages, if any, sustained by Plaintiff. This  
3 defense is alleged in the alternative and does not admit any of the allegations contained in the  
4 First Amended Complaint.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 Answering Defendant is informed and believes, and thereupon alleges, that such parties  
7 exist who are subject to service of process, that such parties' joinder would not deprive the Court  
8 of subject matter jurisdiction, that such parties' joinder is indispensable and/or necessary to  
9 provide complete relief to Plaintiff and/or may adversely affect the obligations, if any, of this  
10 answering Defendant, and that Plaintiff, by virtue of its own acts and/or the acts or omissions of  
11 others chargeable to it, failed to join all such indispensable parties as Defendant to the First  
12 Amended Complaint. This defense is alleged in the alternative and does not admit any of the  
13 allegations contained in the First Amended Complaint.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 Answering Defendant is informed and believes, and thereupon alleges, that any recovery  
16 by Plaintiff is barred by its failure to mitigate damages, or that any recovery must be reduced by  
17 those damages that Plaintiff, by virtue of its own acts and/or the acts or omissions of others  
18 chargeable to it, failed to mitigate. This defense is alleged in the alternative and does not admit  
19 any of the allegations contained in the First Amended Complaint.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 Answering Defendant is informed and believes, and thereupon alleges that the damages  
22 claimed by Plaintiff in the First Amended Complaint are uncertain and thereby preclude  
23 calculation and recovery thereof. This defense is alleged in the alternative and does not admit  
24 any of the allegations contained in the First Amended Complaint.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff's  
27 damages, if any, are or will be set-off by Plaintiff's recovery of damages from other parties.  
28 Thus, any judgment obtained by Plaintiff against this answering Defendant should be barred

1 and/or reduced according to law, up to and including the whole thereof. This defense is alleged  
2 in the alternative and does not admit any of the allegations contained in the First Amended  
3 Complaint.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Answering Defendant is informed and believes, and thereupon alleges, that the First  
6 Amended Complaint fails to state facts sufficient to warrant an award of attorneys' fees. This  
7 defense is alleged in the alternative and does not admit any of the allegations contained in the  
8 First Amended Complaint.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff, by  
11 virtue of its own acts and/or the acts or omissions of others chargeable to it, voluntarily and  
12 knowingly failed to take action to protect Plaintiff's rights and thus have waived such rights.  
13 This defense is alleged in the alternative and does not admit any of the allegations contained in  
14 the First Amended Complaint.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff, by  
17 virtue of its own acts and/or the acts or omissions of others chargeable to it, at all times gave its  
18 consent, express or implied, to the acts, omissions and conduct alleged of this answering  
19 Defendant in the First Amended Complaint. This defense is alleged in the alternative and does  
20 not admit any of the allegations contained in the First Amended Complaint.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff, by  
23 virtue of its own acts and/or the acts or omissions of others chargeable to it, ratified the alleged  
24 acts of answering Defendant. This defense is alleged in the alternative and does not admit any of  
25 the allegations contained in the First Amended Complaint.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff, by  
28 virtue of its own acts and/or the acts or omissions of others chargeable to it, expressly, impliedly

1 and/or equitably released all rights against this answering Defendant in connection with the  
2 transaction giving rise to the allegations set forth in the First Amended Complaint. This defense  
3 is alleged in the alternative and does not admit any of the allegations contained in the First  
4 Amended Complaint.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff, by  
7 virtue of its own acts and/or the acts and omissions of others chargeable to it, expressly,  
8 impliedly and/or equitably waived its rights to equitable remedies. This defense is alleged in the  
9 alternative, and does not admit any of the allegations contained in the First Amended Complaint.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 Answering Defendant is informed and believes, and thereupon alleges, that any conduct  
12 on the part of this answering Defendant, or representations made by this answering Defendant,  
13 were made in good faith. This defense is alleged in the alternative and does not admit any of the  
14 allegations contained in the First Amended Complaint.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

16 Answering Defendant is informed and believes, and thereupon alleges, that they have  
17 fully complied with all applicable governmental regulations and requirements in connection with  
18 the events, transactions and occurrences, as alleged in the First Amended Complaint, and  
19 therefore, any recovery by Plaintiff should be barred. This defense is alleged in the alternative  
20 and does not admit any of the allegations contained in the First Amended Complaint.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 Answering Defendant is informed and believes, and thereupon alleges, that this  
23 answering Defendant at all material times, complied with the standard of care applicable to  
24 answering Defendant and therefore, any recovery by Plaintiff should be barred. This defense is  
25 alleged in the alternative and does not admit any of the allegations contained in the First  
26 Amended Complaint.

27 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

28 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff

1 and/or Plaintiff's agents, by virtue of its own acts and/or the acts or omissions of others  
2 chargeable to it, were provided with proper statutory notice. This defense is alleged in the  
3 alternative and does not admit any of the allegations contained in the First Amended Complaint.

4 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

5 Answering Defendant is informed and believes, and thereupon alleges, that they have  
6 fully and completely disclosed all material and appropriate facts in connection with the events,  
7 transactions and occurrences, as alleged in the First Amended Complaint. This defense is  
8 alleged in the alternative and does not admit any of the allegations contained in the First  
9 Amended Complaint.

10  
11 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

12 Answering Defendant is informed and believes, and thereupon alleges, that the  
13 individuals or entities responsible for any alleged wrongful conduct were not the agents of this  
14 answering Defendant and as such, answering Defendant is not liable for its conduct. This  
15 defense is alleged in the alternative and does not admit any of the allegations contained in the  
16 First Amended Complaint.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 Answering Defendant is informed and believes, and thereupon alleges, that the right of  
19 Plaintiff to recover herein, if any right exists, is reduced and limited to the percentage of  
20 negligence attributable to this answering Defendant. This defense is alleged in the alternative  
21 and does not admit any of the allegations contained in the First Amended Complaint.

22 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

23 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff's  
24 claims are barred as a result of the failure to satisfy conditions precedent to asserting the claims.  
25 This defense is alleged in the alternative and does not admit any of the allegations contained in  
26 the First Amended Complaint.

27 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

28 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff's

1 claims are off set in full or in part by Plaintiff's own breach of contract and/or negligence and/or  
2 deficient performance, defective work, delays, impacts and damages to the work caused by  
3 Plaintiff. This defense is alleged in the alternative and does not admit any of the allegations  
4 contained in the First Amended Complaint.

5 **THIRTIETH AFFIRMATIVE DEFENSE**

6 Answering Defendants are informed and believe, and thereupon allege, that Plaintiff's  
7 equitable claims are barred inasmuch as Plaintiff has a remedy at law. This defense is alleged in  
8 the alternative and does not admit any of the allegations contained in the Second Amended  
9 Complaint-in-Intervention.

10 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

11 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff's  
12 lien claims are barred by Plaintiff's failure to properly perfect a lien pursuant to NRS Chapter  
13 108. This defense is alleged in the alternative and does not admit any of the allegations  
14 contained in the First Amended Complaint.

15 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

16 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff's  
17 lien claims are barred and/or substituted by the posting of a surety bond pursuant to NRS  
18 108.2413 *et seq.* This defense is alleged in the alternative and does not admit any of the  
19 allegations contained in the First Amended Complaint.

20 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

21 Answering Defendant is informed and believes, and thereupon alleges, that all claims  
22 asserted against any bond and/or bond surety, including any lien bond secured posted in this  
23 case, are limited to the penal sum of the bond. This defense is alleged in the alternative and does  
24 not admit any of the allegations contained in the First Amended Complaint-in-Intervention.

25 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

26 Answering Defendant is informed and believes, and thereupon alleges, that Plaintiff has  
27 been fully paid for its work of improvement. This defense is alleged in the alternative and does  
28 not admit any of the allegations contained in the First Amended Complaint.

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GLENN F. MEIER, ESQ. (NV Bar No. 006059)

RACHEL E. DONN, ESQ. (NV Bar No. 10568)

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*Attorneys for Defendant The Insurance Company of  
the State of Pennsylvania*

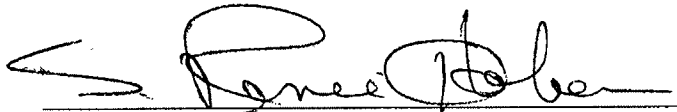


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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the 12<sup>th</sup> day of August, 2015, I served a copy of **DEFENDANT**  
5 **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA' ANSWER TO**  
6 **PLAINTIFF PROIMTU MMI LLC'S COMPLAINT** upon each of the parties by e-mail and  
7 regular U.S. Mail, addressed as follows:

8 Christopher H. Byrd, Esq.  
9 Brenoch Wirthlin, Esq.  
10 Fennemore Craig, PC  
11 300 South Fourth Street, Suite 1400  
12 Las Vegas, Nevada 89101  
13 Emails: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
14 [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
15 *Attorneys for Plaintiff*

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S. Renee Hoban, an employee of Holley Driggs Walch  
Fine Wray Puzey & Thompson

# **Exhibit 1B**

1 **ACOM**

2 FENNEMORE CRAIG, P.C.

3 Christopher H. Byrd, Esq. (No. 1633)

4 Brenoch Wirthlin, Esq. (No. 10282)

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6 Las Vegas, Nevada 89101

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9 [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

10 *Attorneys for Plaintiff Proimtu MMI LLC*

11 **FIFTH JUDICIAL DISTRICT COURT**

12 **NYE COUNTY, NEVADA**

13 PROIMTU MMI LLC, a Nevada limited  
14 liability company,

15 Plaintiff,

16 v.

17 TRP INTERNATIONAL, INC., a Delaware  
18 corporation; TONOPAH SOLAR ENERGY,  
19 LLC, a Delaware limited-liability company;  
20 COBRA THERMOSOLAR PLANTS, INC., a  
21 Nevada corporation; STATE OF NEVADA ex  
22 rel. the NEVADA STATE CONTRACTORS  
23 BOARD, THE INSURANCE COMPANY OF  
24 THE STATE OF PENNSYLVANIA, a  
25 Pennsylvania corporation, DOES I-X, ROE  
26 COMPANIES I-X

27 Defendants.

Case No.: CV36747

Dept. No.: 1

**FIRST AMENDED COMPLAINT**

**EXEMPT FROM ARBITRATION**  
**ACTION CONCERNING TITLE TO**  
**REAL ESTATE PURSUANT TO NAR3(A)**

28 Plaintiff Proimtu MMI LLC ("Proimtu" or "Plaintiff"), hereby submits its First Amended  
29 Complaint and claims for relief against the above-named Defendants, and each of them, without  
30 waiving its right to compel arbitration in Nevada, as to some or all of the Defendants, for the  
31 claims asserted, and alleges as follows:

32 **PARTIES**

33 1. Plaintiff Proimtu is a Nevada limited-liability corporation organized and existing  
34 under the laws of the State of Nevada, with its principal place of business in Clark County,

1 Nevada.

2       2. Proimtu is now a licensed Nevada contractor. However, at all relevant times herein,  
3 Proimtu was exempt from licensing as a contractor for the work performed at the Crescent Dunes  
4 Solar Energy Project ("Project") under contract ("Contract") with Defendant TRP International,  
5 Inc. ("TRP").

6       3. On information and belief Defendant TRP is a Delaware corporation authorized to  
7 conduct business in Nevada. On information and belief TRP was a licensed Nevada contractor at  
8 all relevant times herein.

9       4. On information and belief, Defendant Tonopah Solar Energy, LLC ("TSE" or  
10 Owner/Lessee") is a Delaware entity, and is the owner of the ground lease to the property of the  
11 BUREAU OF LAND MANAGEMENT, (the "BLM"), an unnamed party to this action, described  
12 as tax parcels APN 012-031-04, APN 012-131-03, APN 012-131-04, APN 012-141-01 and APN  
13 012-151-01 ("Property"), located in Nye County Nevada, and the developer of the Project  
14 constructed on the Property.

15       5. On information and belief, Defendant Cobra Thermosolar Plants, Inc. ("Cobra") is a  
16 Nevada corporation. On information and belief, Cobra was a licensed Nevada contractor at all  
17 relevant times herein.

18       6. The Nevada State Contractors' Board is an agency of the State of Nevada. On  
19 information and belief TRP posted a cash bond with the Nevada State Contractors Board  
20 ("Board") in the amount of \$100,000 as a condition for the issuance of TRP's contractor license.

21       7. On information and belief, Defendant The Insurance Company of the State of  
22 Pennsylvania ("Surety") is a Pennsylvania corporation doing business in Nevada.

23       8. Proimtu does not know the true names and capacities of Defendants sued herein as  
24 DOES I through X, and ROE COMPANIES I through X, inclusive, and therefore sue these  
25 Defendants by such fictitious names. Plaintiffs are informed and believed, and thereupon allege,  
26 that each of these so fictitiously named Defendants is responsible in some manner for the non-

1 payment of Proimtu, has benefited from the work of Proimtu without payment for such work or  
2 has an interest in the Project, the Property or the Work of Improvement. Proimtu will seek leave  
3 to amend this Complaint when the true names and capacities of such Defendants are ascertained.

4 **FACTUAL BACKGROUND**

5 9. Proimtu seeks recovery for the labor costs to assemble and install heliostats at the  
6 Project located on 1,600 acres of BLM land in Tonopah, Nevada.

7 10. On information and belief TSE hired Cobra as the general contractor for the Project.

8 11. Cobra hired TRP as its subcontractor for a portion of the work on the Project.

9 12. Proimtu is informed and believes that TSE caused or allowed to be constructed  
10 certain improvements ("Work of Improvement") on the Property.

11 13. The entire leasehold estate of TSE is reasonably necessary for the convenient use  
12 and occupation of the Work of Improvement.

13 **FIRST CLAIM FOR RELIEF**  
14 **(Breach of Contract Against TRP)**

15 14. Proimtu incorporates by reference each and every allegation contained in the  
16 preceding paragraphs.

17 15. On October 14, 2012, TRP and Proimtu executed the Contract, pursuant to which  
18 Proimtu was required to provide the labor to assemble and erect the heliostats around the solar-  
19 power tower at the Project.

20 16. The Contract specified certain dates by which Proimtu had to begin assembly and  
21 complete installation of the heliostats.

22 17. The Contract required TRP to among other things (i) supply all materials and the  
23 equipment for the assembly line for Proimtu to assemble the heliostats; and (ii) to maintain the  
24 assembly line for Proimtu's work.

25 18. At the time specified in the Contract for the start of Proimtu's work TRP failed to  
26 have the necessary equipment and materials available, even though Proimtu had hired and brought

1 sufficient skilled employees to the site of the Project to start assembly and installation work.

2 19. The Contract required that Proimtu assemble a number of heliostats each day and to  
3 complete assembly and installation of the heliostats by a specified date. TRP was required to  
4 provide, as needed, all of the materials for the heliostats and a fully operational and properly  
5 maintained assembly line to permit Proimtu to comply with the production schedule. TRP was  
6 also required to not intentionally interfere or engage in grossly negligent conduct that would  
7 interfere with Proimtu's efforts to assemble and install the heliostats in a timely manner.

8 20. During the course of Proimtu's work, the production schedule was delayed and or  
9 extended by TRP's conduct, including but not limited to TRP's repeated failure to have the  
10 necessary raw materials on site, failure to properly design and maintain the assembly line and  
11 providing Proimtu with an inadequate/defective bolt tightening design for assembly of the  
12 heliostats.

13 21. As a the direct result of TRP's misconduct and breach of their contractual  
14 obligations, the assembly line was shut down on a regular basis, materials were not available,  
15 shifts had to be reduced and Proimtu could not assemble and install sufficient heliostats to meet  
16 the Contract's production schedule. As a direct result, Proimtu incurred damages from the  
17 delays and disruptions in an amount not less than \$2,348,629 ("Additional Production Costs").  
18 TRP recognized its responsibility for the Additional Production Costs, which Proimtu is entitled to  
19 recover under the terms of the Contract, by paying Proimtu \$600,000.

20 22. Proimtu submitted a written change order to TRP for the unpaid balance of the  
21 Additional Production Costs. TRP refused to issue the change order, pay the invoices submitted  
22 for this work, or provide any written explanation for refusing to issue the change order or pay as  
23 required by Nevada law and/or the Contract. As a proximate result of TRP's breaches of Nevada  
24 law and/or the Contract, the agreed upon price for Proimtu's work under the Contract was  
25 increased by the unpaid Additional Production Costs.

26 23. Proimtu also provided additional labor for the Project at TRP's request. Under the

1 terms of the Contract TRP agreed to pay for such work at \$62 per hour (the T&M Work”).

2 24. TRP signed time and material sheets to approve and accept the T&M Work, but  
3 refused to pay Proimtu at the agreed upon rate for the T&M Work. TRP owes a balance to  
4 Proimtu for the approved T&M Work in the amount of not less than \$56,527.34.

5 25. TRP refused to pay for this approved T&M Work for which Proimtu presented  
6 invoices to TRP or to provide any written explanation for refusing to pay the agreed upon contract  
7 rate as required by Nevada law and or the Contract.

8 26. Under the terms of the Contract Proimtu agreed to pay for damage to heliostats that  
9 it caused during assembly and installation. The Contract provided a per unit backcharge cost for  
10 the breakage.

11 27. TRP unilaterally increased the backcharge cost per unit for damaged heliostats and  
12 unilaterally deducted the increased amount from the invoices submitted for payment by Proimtu in  
13 the amount of not less than \$30,153.93.

14 28. Under the terms of the Contract Proimtu is entitled to payment of its retention upon  
15 completion of the work and submission of certain required documents. Proimtu satisfied all of the  
16 conditions of the Contract, but TRP refused to pay the retention in an amount not less than  
17 \$445,889.92.

18 29. The worker classification specified by TRP in the Contract for Proimtu’s laborers  
19 was not correct. After the Contract was signed, the Department of Labor reclassified the workers  
20 resulting in additional wages and withholding becoming due. TRP admitted it was responsible for  
21 the increased costs of the labor and agreed to pay the additional hourly rate for Proimtu’s workers.  
22 TRP refused to pay the additional withholding for Proimtu’s workers based upon the re-  
23 classification, which totaled not less than \$131,628.33, despite demand by Proimtu.

24 30. As the further direct result of TRP’s misconduct and breach of the Contract,  
25 Proimtu incurred additional costs for engineering staff and extended office and related costs in an  
26 amount in excess of \$2,000,000.

31. TRP breached the Contract by unilaterally changing terms of the Contract, materially altering the schedule and interfering with Proimtu's ability to perform, refusing to issue legitimate change orders as required by the Contract and Nevada law, refusing to pay for T&M Work at the agreed price, unilaterally deducting amounts from invoices and refusing to pay the increased Contract amount for the work, including the retention.

32. Proimtu satisfactorily rendered its promised performance throughout the Contract period and satisfied all conditions precedent to payment or such conditions were waived by TRP.

33. As a direct and foreseeable result of TRP's breach of the Contract, Proimtu was damaged in an amount in excess of \$10,000.00, the exact amount to be proven at the time of trial.

34. Proimtu has been required to retain the services of an attorney to collect the amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to interest thereon.

**SECOND CLAIM FOR RELIEF**  
**(Violation of NRS 624 Against TRP)**

35. Proimtu incorporates by reference each and every allegation contained in the preceding paragraphs.

36. NRS 624.606 to NRS 624.630 et. seq. (the "Statute") requires higher tiered contractors such as TRP to timely pay lower tiered subcontractors such as Proimtu and (i) to timely provide written notice to the lower tiered subcontractor of amounts withheld providing a reasonably detailed explanation of the condition or the reason for such withholding; and (ii) timely issue change orders to lower tiered subcontractors such as Proimtu or if the request for a change order is unreasonable, timely give written notice to the lower tiered subcontractor of the reasons why the change order is unreasonable.

37. In violation of the Statue, TRP.

38. In violation of the Statue TRP: (i) failed and or refused to timely pay Proimtu monies due and owing (ii) failed to provide written notice for the amounts withheld providing



1 among other things a reasonably detailed explanation of the condition or reason for such  
2 withholding; (iii) failed to timely issue change orders; (iv) failed to give written notice to Proimtu  
3 of the reasons why its written requests for change orders were unreasonable; (v) unilaterally  
4 deducted amounts from approved invoices; and (vi) refused to pay the agreed upon rate for T&M  
5 Work and final retention under the Contract.

6 39. TRP's violation of the Statute constituted negligence per se.

7 40. By reason of the foregoing Proimtu is entitled to a judgment against TRP in an  
8 amount in excess of \$10,000.00, the exact amount to be proven at trial herein, including but not  
9 limited to the amounts for the unpaid Additional Production Costs and all payment applications  
10 made, for which TRP has failed to make timely or full payment, as required by the Statute and the  
11 Contract.

12 41. By reason of the foregoing Proimtu is also entitled to have all signed T&M sheets  
13 and written requests for change order be deemed approved as to price and time extension as  
14 provided in the Statute and the amounts added to Contract price.

15 42. Proimtu is also entitled to such other rights and remedies it is afforded under the  
16 Statute.

17 43. Proimtu has been required to retain the services of an attorney to collect the  
18 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
19 interest thereon.

20 **THIRD CLAIM FOR RELIEF**  
21 **(Breach of Good Faith and Fair Dealing against TRP)**

22 44. Proimtu incorporates by reference each and every allegation contained in the  
23 preceding paragraphs.

24 45. Under Nevada law, implied in all contracts is the covenant of good faith and fair  
25 dealing. Such covenant requires TRP to perform and/or refrain from engaging in conduct which  
26 would deprive Proimtu of its rights under the Contract.

46. TRP breached the implied covenant of good faith and fair dealing in the Contract by performing the Contract in manner that was unfaithful to the purposes of the Contract thereby depriving Proimtu's justified expectations, as set forth herein.

47. As a direct and proximate result of TRP's breach of the implied covenant of good faith and fair dealing, Proimtu has suffered damages in an amount in excess of \$10,000 the specific amount to be proved at trial.

48. Proimtu has been required to retain the services of an attorney to collect the amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to interest thereon.

**FOURTH CLAIM FOR RELIEF**  
**(Negligent Misrepresentation against TRP)**

49. Proimtu incorporates by reference each and every allegation contained in the preceding paragraphs.

50. To induce Proimtu to sign the Contract and perform the work for the Contract price, TRP failed to use reasonable care or competence in obtaining and communicating information necessary for Proimtu to set its bid price and agree to the Contract's classification of Proimtu's workers.

51. On information and belief, because the Project was financed with a loan guaranteed by the Department of Energy, the pay rates of Proimtu's workforce had to conform with the prevailing rates set by the U.S. Labor Department.

52. During negotiations leading up to the Contract Proimtu and TRP agreed, based upon information provided by TRP, that Proimtu's contract price would be based on its workforce being classified as "general laborers." The workers' classification determines the hourly rate of payment.

53. The worker classification specified by TRP in the Contract for Proimtu's laborers was not correct. After the Contract was signed, the Department of Labor reclassified the workers

1 resulting in additional wages and withholding becoming due. TRP agreed to pay the additional  
2 hourly rate for Proimtu's workers. TRP refused, however, to pay the additional withholding for  
3 Proimtu's workers based upon the re-classification, which totaled not less than \$131,628.33,  
4 despite demand by Proimtu.

5 54. In addition, TRP represented to Proimtu that TRP had the expertise to build, equip  
6 and maintain the assembly line for the heliostats so as to not interfere with Proimtu's production  
7 schedule, when in fact TRP had never done a prior project of a similar scope or nature.

8 55. Proimtu justifiably relied on TRP's representations in making its bid to perform the  
9 work on the Project for the Contract price in accordance with the schedule for production required  
10 by TRP.

11 56. As a direct and proximate result of the negligent misrepresentation of TRP, Proimtu  
12 has suffered damages in an amount in excess of \$10,000 in amount to be proved at trial.

13 57. Proimtu has been required to retain the services of an attorney to collect the  
14 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
15 interest thereon.

16 **FIFTH CLAIM FOR RELIEF**  
17 **(Unjust Enrichment against TRP, TSE and Cobra)**

18 58. Proimtu incorporates by reference each and every allegation contained in the  
19 preceding paragraphs.

20 59. Proimtu furnished the labor for the benefit of and or at the specific instance of TRP,  
21 Cobra and TSE.

22 60. TRP, Cobra and TSE accepted used and enjoyed the benefit of the labor furnished  
23 by Proimtu

24 61. TRP, Cobra and TSE knew or should have known that Proimtu expected to be paid  
25 for the labor furnished to the Project.

26 62. Proimtu demanded payment for the labor furnished, including the retention amount

1 withheld from approved invoices.

2 63. Cobra TRP and TSE have been unjustly enriched to the detriment of Proimtu in an  
3 amount in excess of \$10,000, the exact amount to be proven at trial herein.

4 64. Proimtu has been required to retain the services of an attorney to collect the  
5 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
6 interest thereon.

7 **SIXTH CLAIM FOR RELIEF**  
8 **(Quantum Meruit/Cardinal Change against TRP)**

9 65. Proimtu incorporates by reference each and every allegation contained in the  
10 preceding paragraphs.

11 66. TRP failed to disclose all known information concerning the Project and the work  
12 of Proimtu. In addition, TRP controlled the method and means for Proimtu's performance of the  
13 assembly and installation work. TRP failed to provide the necessary materials and equipment and  
14 forced Proimtu to perform the work in a manner materially different from the manner bargained  
15 for initially and contemplated by the parties in the Contract such that the Contract was abandoned.

16 67. As a result of the abandonment of the Contract and TRP's prevention of Proimtu's  
17 performance under the Contract, Proimtu is entitled to recover the reasonable value of the work  
18 provided, plus overhead and profit, in an amount in excess of \$10,000, the exact amount to be  
19 proven at trial.

20 68. Proimtu has been required to retain the services of an attorney to collect the  
21 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
22 interest thereon.

23 **SEVENTH CLAIM FOR RELIEF**  
24 **(Recovery of Bond Amount against the Board)**

25 69. Proimtu incorporates by reference each and every allegation contained in the  
26 preceding paragraphs.

1           70. On information and belief, the Board retains the \$100,000 cash bond posted by  
2 TRP.

3           71. Proimtu is within the class of persons entitled to protection from the bond posted by  
4 TRP because of the unlawful actions of TRP, including but not limited to diversion of funds and  
5 material misrepresentations of fact.

6           72. Proimtu is entitled to recover from the Board up to the full amount of the penal sum  
7 of the bond for TRP's unlawful actions and refusal to pay Proimtu under the terms of the Contract.

8           73. Proimtu has been required to retain the services of an attorney to collect the  
9 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
10 interest thereon.

11                                   **EIGHTH CLAIM FOR RELIEF**  
12                                   **(Claim against Bond)**

13           74. Proimtu incorporates by reference each and every allegation contained in the  
14 preceding paragraphs.

15           75. Proimtu was exempt from the requirements of NRS 108.245(1) because it provided  
16 only labor, or, in the alternative, Cobra and TSE knew or should have known that Proimtu was  
17 providing labor to install the heliostats for the Work of Improvement.

18           76. Proimtu demanded payments of amounts due for the work on the Project.

19           77. On or about November 12, 2014 Proimtu timely recorded a Notice of Lien in the  
20 Official Records of Nye County as Instrument no. 823637 (the "Lien"). A copy of the Lien is  
21 attached hereto as **Exhibit 1**.

22           78. The Lien was in writing and was recorded against the work of improvement for the  
23 outstanding balance due Proimtu in the amount of \$2,357,977.00.

24           79. As applicable, the liens were served upon the Owner/Lessee and or their authorized  
25 representative and upon Cobra.

26           80. On or around January 2, 2015, Cobra provided a bond to release the Property from

1 Proimtu's Lien ("Cobra Bond"). A copy of the Cobra Bond is attached hereto as **Exhibit 2.**

2 81. The Cobra Bond obligated Cobra and the Surety to Proimtu under the conditions  
3 prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$3,536,965.50 from which sum  
4 Cobra and the Surety agreed to pay Proimtu that amount as a court of competent jurisdiction may  
5 adjudge to have been secured by the Lien, including the total amount awarded pursuant to NRS  
6 108.237.

7 82. Cobra and Surety have failed, neglected, and refused to pay the amounts due to  
8 Proimtu.

9 83. Proimtu is entitled to an award of its attorneys' fees, costs and interest on the  
10 amounts owed, as provided in Chapter 108 of the Nevada Revised Statutes.

11 **WHEREFORE**, Plaintiff demands judgment as follows:

12 A. Against all Defendants, jointly and severally in an amount in excess of \$10,000,  
13 the exact amount to be proven at trial herein;

14 B. Declaring a valid lien upon the work of improvement with priority over all others  
15 for the amount owed to Proimtu, plus reasonable attorney's fees costs and interest thereon;

16 C. For foreclosure against the bond posted with the Nevada Contractors' Board in full  
17 penal sum of the bond;

18 D. For foreclosure against the Cobra Bond, the surety and the bond principal in an  
19 amount in excess of \$10,000, the exact amount to be proven at trial herein;

20 E. For pre-judgment and post-judgment interest as provided by the law;

21 F. For an award of attorneys' fees and costs as provided by Contract or statute; and

22 ///

23 ///

24 ///

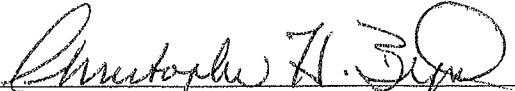
25 ///

26 ///

1 G. For such other relief as the court deems just and proper.

2 DATED this 10 day of July, 2015.

3 **FENNEMORE CRAIG, P.C.**

4 

5 Christopher H. Byrd, Esq. (No. 1633)

6 Brenoch Wirthlin, Esq. (No. 10282)

7 300 South Fourth Street, Suite 1400

8 Las Vegas, Nevada 89101

9 *Attorneys for Plaintiff Proimtu MMI LLC*

# EXHIBIT 1

# EXHIBIT 1



**DOC # 823637**

Official Records Nye County Nevada  
Deborah Beatty - Recorder  
11/12/2014 12:16:06 PM  
Requested By: FENNEMORE  
Recorded By: to RPTT:\$0  
Recording Fee: \$20.00  
Non Conformity Fee: \$0.00  
Page 1 of 7



APN 012-031-04, 012-131-03,  
APN 012-131-04, f  
APN , 012-141-01,  
APN , 012-151-01, and 612-141-01

Recording Requested By:

Name Fennemore Craig Jones Vargas

Address 300 South Fourth St, 14th Floor

City / State / Zip Las Vegas, NV 89101

Notice of Lien

(Print Name Of Document On The Line Above)

☐ I the undersigned hereby affirm that this document submitted for recording contains personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statue (NRS), public program or grant referenced is:

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.  
This cover page must be typed or printed. Additional recording fee applies.

APN: # 012-141-01, 012-151-01  
612-141-01, 012-031-04  
012-131-03, 012-131-04

Recording requested by and mail documents to:

Proimtu MMI LLC  
c/o Christopher H. Byrd, Esq.  
Fennemore Craig Jones Vargas  
300 South Fourth St. 14<sup>th</sup> Floor  
Las Vegas, NV 89101

---

NOTICE OF LIEN  
(Mechanic Lien)

Notice is Hereby Given:

1. That PROIMTU MMI, LLC, hereinafter known as "Claimant," hereby claims a lien pursuant to the provisions of N.R.S. 108.221 to 108.246 inclusive, on the property located in Nevada described in Exhibit "A" (the "Land") and upon any improvements constructed on the Land, including but not limited to the improvements identified as the assembly line and heliostats (the "Improvement") for the Crescent Dunes Solar Project.
2. The amount of the original contract is: \$8,746,125.
3. The total amount of all charges and additions, if any, is \$3,792,104
4. The total amount of payments received to date is \$10,180,252
5. The total amount of the lien, after deducting all credits and offsets is \$2,357,977
6. The name of the owner of the Improvement is: Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (the "Owner"). Upon information and belief the Owner's principal address is believed to be 2425 Olympic Boulevard, Suite 500 East, Santa Monica, California, 90404. The interest of the Owner in the Improvement is as a lessee of a leasehold estate.
7. The name of the owner of the Land is: Bureau of Land Management ( "BLM"). Upon information and belief the BLM's principal address is 1340 Financial Blvd., Reno, Nevada, 89502.
8. The name of the person whom the lien claimant was employed or to whom the lien claimant furnished work, material, or equipment is TRP International, Inc. ("TRP"). Upon information and belief TRP's principal address is 9550 S. Eastern Ave, Suite 253, Las Vegas, Nevada, 89123.

9. Terms of payment of the lien claimant's contract: In accordance with Nevada law but no later than 90 days after receipt of the invoice and the approved application.

10. That the claimant herein is entitled to a reasonable attorney's fee, collections costs, bank fees, statutory interest on the amount of this lien claim, and costs incurred in perfecting this lien claim.

11. A description of the Improvement and Land to be charged: See Exhibit "A".

In Witness Whereof, I/We have hereunto set my hand/our hands this 11<sup>th</sup> day of November, 2014.

666  
\_\_\_\_\_  
PROIMTUMM, LLC

By: 

\_\_\_\_\_  
Authorized Signature - Gabriel Gonzalez

STATE OF NEVADA)  
COUNTY OF CLARK)

PROMTU MMI LLC, being first duly sworn on oath according to law, deposes  
and says:

I have read the foregoing Notice of Lien claim, know the contents thereof and state the same is  
true of my own personal knowledge, except those matters stated upon information and belief,  
and, as to those matters, I believe them to be true.

[Signature]  
Authorized Signature of Claimant - Gabriel Gonzalez

Subscribed and sworn to before me this 11<sup>th</sup> day of NOVEMBER, 2014.

[Signature]  
NOTARY PUBLIC

My Commission expires: 3-15-16

Notice of Lien  
Initials 666

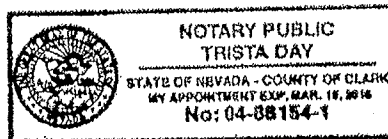


EXHIBIT A

(Legal Description of the Property)

Nye County Assessor Parcels: APN 012-141-01, APN 012-151-01, APN 612-141-01, APN 012-031-04, APN 012-131-03, and APN 012-131-04

AND MORE PARTICULARLY DESCRIBED BY DOCUMENTS PREPARED BY OR FOR TONOPAH SOLAR ENERGY, LLC AS FOLLOWS:

All that land situated in the County of Nye, State of Nevada, more particularly described as follows:

PARCEL 1:

GEN-TIE LINE (NVN-087933)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the official Plat thereof, described as follows:

Section 2: The SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ ;

Section 11: The W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ;

Section 14: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;

Section 15: The E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 22: The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 27: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$ ;

Section 28: The SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 33: The NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

PARCEL 2:

SOLAR ENERGY PROJECT (NVN-086292)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 33: The SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

Section 34: The W  $\frac{1}{2}$ , the SE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

Section 35: The SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

All that property lying within Township 4 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 2: Lot 4 and the W  $\frac{1}{2}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

Section 3: The N  $\frac{1}{2}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{2}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the N  $\frac{1}{2}$  S  $\frac{1}{2}$  SW  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;

Section 4: The NE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  of Lot 4 and the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

PARCEL 4-1:

The North one Half (N  $\frac{1}{2}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) and the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 12 in Township 6 North, Range 40 East, M.D.B. & M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel 4 of Parcel Map recorded July 25, 1980, as File No. 26731, Nye County, Nevada Records.

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section 18, Township 6 North, Range 41 East, M.D.B. & M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel Two (2) of Parcel Map recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

Together with an easement for the purpose of installing and maintaining an irrigation well, more particularly described as follows:

Commencing at the Northeast corner of Section 13, Township 6 North, Range 40 East, M.D.B. & M.,;

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

Thence Easterly for 20 feet, at the true point of beginning.

PARCEL 4-3:

East Half (E ½) of the Northwest Quarter (NW ¼) of Section 18, Township 6 North Range 41 East, M.D.B. & M., according of the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel One (1) of Parcel Maps, recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

PARCEL 5:

All land defined as "Servient Property," described and depicted in that certain document entitled "Grant of Generation Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE 1/3), of the Northeast Quarter (NE ¼) of Section 2, Township 5 North, Range 41 East, M.D.B. & M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 36411 of Official Records, Nye County, Nevada.

# **Exhibit 2**

# **Exhibit 2**



DOC # 825596

Official Records Nye County Nevada  
Deborah Beatty - Recorder  
01/02/2015 09:46:38 AM  
Requested By: COBRA THERMOSOLAR  
Recorded By: dg RPTT:\$0  
Recording Fee: \$16.00  
Non Conformity Fee: \$25.00  
Page 1 of 3



APN 012-140-01, 012-150-01

APN 612-141-01, 012-131-04

APN 012-131-03, 012-031-04

APN \_\_\_\_\_

Recording Requested By:

Name COBRA THERMOSOLAR PLANTS, INC

Address 7380 W SAHARA AVE SUITE 160

City / State / Zip LAS VEGAS, NV, 89117

BOND LIEN DOC NUMBER 823637

(Print Name Of Document On The Line Above)

☐

I the undersigned hereby affirm that this document submitted for recording contains personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

\_\_\_\_\_  
(Insert The NRS, public program or grant referenced on the line above.)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.  
This cover page must be typed or printed. Additional recording fee applies.

Bond No. 915209

Assessor's Parcel Number(s) 012-140-01, 012-150-01, 612-141-01, 012-131-04, 012-131-03 and 012-031-04

(Title of court and cause, if action has been commenced)

WHEREAS, Cobra Thermosolar Plants, Inc. (name of principal), located at 7380 W. Sahara, Suite 60, Las Vegas, NV 89117 (address of principal), desires to give a bond for releasing the following described property owned by United States Department of the Interior, Bureau of Land Management, Tonopah Solar Energy LLC, 2425 Olympic Blvd., Suite 500, E. Santa Monica, CA 90404 (name of owner) from that certain notice of lien in the sum of \$2,357,977.00 recorded November 12, 2014, in the office of the recorder in Nye County.

Crescent Dunes Solar Energy Project  
(Legal Description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, Proimfu MMI, LLC, under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$3,536,965.50 (1.2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by the lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

IN TESTIMONY WHEREOF, the principal and surety have executed this bond at Houston, Texas, on the 17th day of the month of December of the year 2014.

Cobra Thermosolar Plants, Inc.

(Principal)

By: [Signature]

XAVIER PEREDA (Signature of Principal)

The Insurance Company of the State of Pennsylvania

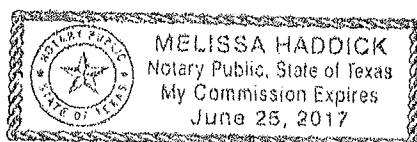
(Surety Corporation)

By: [Signature]

Tannis N. Mattson, Attorney-in-Fact

State of Texas  
County of Harris

On 12/17/2014, before me, the undersigned, a notary public of this County and State, personally appeared Tannis N. Mattson, known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he or she acknowledged to me that the surety executed the foregoing instrument.



[Signature]  
Melissa Haddick, Notary Public

## POWER OF ATTORNEY

The Insurance Company of the State of Pennsylvania  
Principal Bond Office: 175 Water Street, New York, NY 10038

Power No. 26556

No. 31-B-02348

### KNOW ALL MEN BY THESE PRESENTS:

That The Insurance company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

---Sandra R. Parker, Melissa A. Haddick, Tamis N. Mattson, Terri L. Morrison,  
Mary A. Peña, Gina A. Rodríguez: of Houston, Texas---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents

this 6th day of August, 2014



*Michael Yang*

Michael Yang, Vice President

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.

On this 6th day of August, 2014 before me came the above named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporation thereto by authority of his office.

*Juliana Hallenbeck*

**JULIANA HALLENBECK**  
Notary Public - State of New York  
No. 01HA6125871  
Qualified in Bronx County  
My Commission Expires April 18, 2017

### CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED; that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Denis Butkovic, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation



this 17th day of December, 2014

*Denis Butkovic*

Denis Butkovic, Secretary

# **Exhibit 1A**

FILED

2015 MAY -7 P 3:59  
TANNER DAVIS  
NYE COUNTY CLERK  
BY ELPY

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*Attorneys for Plaintiff Proimtu MMI LLC*

**FIFTH JUDICIAL DISTRICT COURT  
NYE COUNTY, NEVADA**

PROIMTU MMI LLC, a Nevada limited  
liability company,

Plaintiff,

v.

TRP INTERNATIONAL, INC., a Delaware  
corporation; TONOPAH SOLAR ENERGY,  
LLC, a Delaware limited-liability company;  
COBRA THERMOSOLAR PLANTS, INC., a  
Nevada corporation; STATE OF NEVADA ex  
rel. the NEVADA STATE CONTRACTORS  
BOARD, DOES I-X, ROE COMPANIES I-X

Defendants.

Case No.: *CV36747*

Dept. No.: *1*

**COMPLAINT**

**EXEMPT FROM ARBITRATION  
ACTION CONCERNING TITLE TO  
REAL ESTATE PURSUANT TO NAR3(A)**

Plaintiff Proimtu MMI LLC ("Proimtu" or "Plaintiff"), hereby submits its Complaint and claims for relief against the above-named Defendants, and each of them, without waiving its right to compel arbitration in Nevada, as to some or all of the Defendants, for the claims asserted, and alleges as follows:

**PARTIES**

1. Plaintiff Proimtu is a Nevada limited-liability corporation organized and existing under the laws of the State of Nevada, with its principal place of business in Clark County, Nevada.

2. Proimtu is now a licensed Nevada contractor. However, at all relevant times herein,

1 Proimtu was exempt from licensing as a contractor for the work performed at the Crescent Dunes  
2 Solar Energy Project ("Project") under contract with Defendant TRP International, Inc. ("TRP").

3 3. On information and belief Defendant TRP is a Delaware corporation authorized to  
4 conduct business in Nevada. On information and belief TRP was a licensed Nevada contractor at  
5 all relevant times herein.

6 4. On information and belief, Defendant Tonopah Solar Energy, LLC ("TSE" or  
7 Owner/Lessee") is a Delaware entity, and is the owner of the ground lease to the property of the  
8 BUREAU OF LAND MANAGEMENT, (the "BLM"), an unnamed party to this action, described  
9 as tax parcels APN 012-031-04, APN 012-131-03, APN 012-131-04, APN 012-141-01 and APN  
10 012-151-01 ("Property"), located in Nye County Nevada, and the developer of the Project  
11 constructed on the Property.

12 5. On information and belief, Defendant Cobra Thermosolar Plants, Inc. ("Cobra") is a  
13 Nevada corporation. On information and belief, Cobra was a licensed Nevada contractor at all  
14 relevant times herein.

15 6. The Nevada State Contractors' Board is an agency of the State of Nevada. On  
16 information and belief TRP posted a cash bond with the Nevada State Contractors Board  
17 ("Board") in the amount of \$100,000 as a condition for the issuance of TRP's contractor license.

18 7. Proimtu does not know the true names and capacities of Defendants sued herein as  
19 DOES I through X, and ROE COMPANIES I through X, inclusive, and therefore sue these  
20 Defendants by such fictitious names. Plaintiffs are informed and believed, and thereupon allege,  
21 that each of these so fictitiously named Defendants is responsible in some manner for the non-  
22 payment of Proimtu, has benefited from the work of Proimtu without payment for such work or  
23 has an interest in the Project, the Property or the Work of Improvement. Proimtu will seek leave  
24 to amend this Complaint when the true names and capacities of such Defendants are ascertained.

25 **FACTUAL BACKGROUND**

26 8. Proimtu seeks recovery for the labor costs to assemble and install heliostats at the

1 Project located on 1,600 acres of BLM land in Tonopah, Nevada and to foreclose its lien on the  
2 Work of Improvement.

3 9. On information and belief TSE hired Cobra as the general contractor for the Project.

4 10. Cobra hired TRP as its subcontractor for a portion of the work on the Project.

5 11. Proimtu is informed and believes that TSE caused or allowed to be constructed  
6 certain improvements ("Work of Improvement") on the Property.

7 12. The entire leasehold estate of TSE is reasonably necessary for the convenient use  
8 and occupation of the Work of Improvement.

9  
10 **FIRST CLAIM FOR RELIEF**  
**(Breach of Contract Against TRP)**

11 13. Proimtu incorporates by reference each and every allegation contained in the  
12 preceding paragraphs.

13 14. On October 14, 2012, TRP and Proimtu executed a contract pursuant to which  
14 Proimtu was required to provide the labor to assemble and erect the heliostats around the solar-  
15 power tower at the Project.

16 15. The Contract specified certain dates by which Proimtu had to begin assembly and  
17 complete installation of the heliostats.

18 16. The Contract required TRP to (i) supply all materials and the equipment for the  
19 assembly line for Proimtu to assemble the heliostats; and (ii) to maintain the assembly line for  
20 Proimtu's work.

21 17. At the time specified in the Contract for the start of Proimtu's work TRP failed to  
22 have the necessary equipment and materials available, even though Proimtu had hired and brought  
23 sufficient skilled employees to the site of the Project to start assembly and installation work.

24 18. The Contract required that Proimtu assemble a number of heliostats each day and to  
25 complete assembly and installation of the heliostats by a specified date. TRP was required to  
26 provide, as needed, all of the materials for the heliostats and a fully operational and properly

1 maintained assembly line to permit Proimtu to comply with the production schedule. TRP was  
2 also required to not intentionally interfere or engage in grossly negligent conduct that would  
3 interfere with Proimtu's efforts to assemble and install the heliostats in a timely manner.

4 19. During the course of Proimtu's work, the production schedule was delayed and or  
5 extended by TRP's conduct, including but not limited to TRP's repeated failure to have the  
6 necessary raw materials on site, failure to properly design and maintain the assembly line and  
7 providing Proimtu with an inadequate/defective bolt tightening design for assembly of the  
8 heliostats.

9 20. As a the direct result of TRP's misconduct and breach of their contractual  
10 obligations, the assembly line was shut down on a regular basis, materials were not available,  
11 shifts had to be reduced and Proimtu could not assemble and install sufficient heliostats to meet  
12 the Contract's production schedule. As a direct result, Proimtu incurred damages from the  
13 delays and disruptions in an amount not less than \$2,348,629 ("Additional Production Costs").  
14 TRP recognized its responsibility for the Additional Production Costs, which Proimtu is entitled to  
15 recover under the terms of the Contract, by paying Proimtu \$600,000.

16 21. Proimtu submitted a written change order to TRP for the unpaid balance of the  
17 Additional Production Costs. TRP refused to issue the change order, pay the invoices submitted  
18 for this work, or provide any written explanation for refusing to issue the change order or pay as  
19 required by Nevada law and/or the Contract. As a proximate result of TRP's breaches of Nevada  
20 law and/or the Contract, the agreed upon price for Proimtu's work under the Contract was  
21 increased by the unpaid Additional Production Costs.

22 22. Proimtu also provided additional labor for the Project at TRP's request. Under the  
23 terms of the Contract TRP agreed to pay for such work at \$62 per hour (the T&M Work").

24 23. TRP signed time and material sheets to approve and accept the T&M Work, but  
25 refused to pay Proimtu at the agreed upon rate for the T&M Work. TRP owes a balance to  
26 Proimtu for the approved T&M Work in the amount of not less than \$56,527.34.



1           24. TRP refused to pay for this approved T&M Work for which Proimtu presented  
2 invoices to TRP or to provide any written explanation for refusing to pay the agreed upon contract  
3 rate as required by Nevada law and or the Contract.

4           25. Under the terms of the Contract Proimtu agreed to pay for damage to heliostats that  
5 it caused during assembly and installation. The Contract provided a per unit backcharge cost for  
6 the breakage.

7           26. TRP unilaterally increased the backcharge cost per unit for damaged heliostats and  
8 unilaterally deducted the increased amount from the invoices submitted for payment by Proimtu in  
9 the amount of not less than \$30,153.93.

10          27. Under the terms of the Contract Proimtu is entitled to payment of its retention upon  
11 completion of the work and submission of certain required documents. Proimtu satisfied all of the  
12 conditions of the Contract, but TRP refused to pay the retention in an amount not less than  
13 \$445,889.92.

14          28. The worker classification specified by TRP in the Contract for Proimtu's laborers  
15 was not correct. After the Contract was signed, the Department of Labor reclassified the workers  
16 resulting in additional wages and withholding becoming due. TRP admitted it was responsible for  
17 the increased costs of the labor and agreed to pay the additional hourly rate for Proimtu's workers.  
18 TRP refused to pay the additional withholding for Proimtu's workers based upon the re-  
19 classification, which totaled not less than \$131,628.33, despite demand by Proimtu.

20          29. As the further direct result of TRP's misconduct and breach of the Contract,  
21 Proimtu incurred additional costs for engineering staff and extended office and related costs in an  
22 amount in excess of \$2,000,000.

23          30. TRP breached the Contract by unilaterally changing terms of the Contract,  
24 materially altering the schedule and interfering with Proimtu's ability to perform, refusing to issue  
25 legitimate change orders as required by the Contract and Nevada law, refusing to pay for T&M  
26 Work at the agreed price, unilaterally deducting amounts from invoices and refusing to pay the

1 increased Contract amount for the work, including the retention.

2 31. Proimtu satisfactorily rendered its promised performance throughout the Contract  
3 period and satisfied all conditions precedent to payment or such conditions were waived by TRP.

4 32. As a direct and foreseeable result of TRP's breach of the Contract, Proimtu was  
5 damaged in an amount in excess of \$10,000.00, the exact amount to be proven at the time of trial.

6 33. Proimtu has been required to retain the services of an attorney to collect the  
7 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
8 interest thereon.

9  
10 **SECOND CLAIM FOR RELIEF**  
**(Violation of NRS 624 Against TRP)**

11 34. Proimtu incorporates by reference each and every allegation contained in the  
12 preceding paragraphs.

13 35. NRS 624.606 to NRS 624.630 et. seq. (the "Statute") requires higher tiered  
14 contractors such as TRP to timely pay lower tiered subcontractors such as Proimtu and (i) to  
15 timely provide written notice to the lower tiered subcontractor of amounts withheld providing a  
16 reasonably detailed explanation of the condition or the reason for such withholding; and (ii) timely  
17 issue change orders to lower tiered subcontractors such as Proimtu or if the request for a change  
18 order is unreasonable, timely give written notice to the lower tiered subcontractor of the reasons  
19 why the change order is unreasonable.

20 36. In violation of the Statue, TRP.

21 37. In violation of the Statue TRP: (i) failed and or refused to timely pay Proimtu  
22 monies due and owing (ii) failed to provide written notice for the amounts withheld providing  
23 among other things a reasonably detailed explanation of the condition or reason for such  
24 withholding; (iii) failed to timely issue change orders; (iv) failed to give written notice to Proimtu  
25 of the reasons why its written requests for change orders were unreasonable; (v) unilaterally  
26 deducted amounts from approved invoices; and (vi) refused to pay the agreed upon rate for T&M

1 Work and final retention under the Contract.

2 38. TRP's violation of the Statute constituted negligence per se.

3 39. By reason of the foregoing Proimtu is entitled to a judgment against TRP in an  
4 amount in excess of \$10,000.00, the exact amount to be proven at trial herein, including but not  
5 limited to the amounts for the unpaid Additional Production Costs and all payment applications  
6 made, for which TRP has failed to make timely or full payment, as required by the Statute and the  
7 Contract.

8 40. By reason of the foregoing Proimtu is also entitled to have all signed T&M sheets  
9 and written requests for change order be deemed approved as to price and time extension as  
10 provided in the Statute and the amounts added to Contract price.

11 41. Proimtu is also entitled to such other rights and remedies it is afforded under the  
12 Statute.

13 42. Proimtu has been required to retain the services of an attorney to collect the  
14 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
15 interest thereon.

16 **THIRD CLAIM FOR RELIEF**  
17 **(Breach of Good Faith and Fair Dealing against TRP)**

18 43. Proimtu incorporates by reference each and every allegation contained in the  
19 preceding paragraphs.

20 44. Under Nevada law, implied in all contracts is the covenant of good faith and fair  
21 dealing. Such covenant requires TRP to perform and/or refrain from engaging in conduct which  
22 would deprive Proimtu of its rights under the Contract.

23 45. TRP breached the implied covenant of good faith and fair dealing in the Contract by  
24 performing the Contract in manner that was unfaithful to the purposes of the Contract thereby  
25 depriving Proimtu's justified expectations, as set forth herein.

26 46. As a direct and proximate result of TRP's breach of the implied covenant of good

1 faith and fair dealing, Proimtu has suffered damages in an amount in excess of \$10,000 the  
2 specific amount to be proved at trial.

3 47. Proimtu has been required to retain the services of an attorney to collect the  
4 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
5 interest thereon.

6 **FOURTH CLAIM FOR RELIEF**  
7 **(Negligent Misrepresentation against TRP)**

8 48. Proimtu incorporates by reference each and every allegation contained in the  
9 preceding paragraphs.

10 49. To induce Proimtu to sign the Contract and perform the work for the Contract price,  
11 TRP failed to use reasonable care or competence in obtaining and communicating information  
12 necessary for Proimtu to set its bid price and agree to the Contract's classification of Proimtu's  
13 workers.

14 50. On information and belief, because the Project was financed with a loan guaranteed  
15 by the Department of Energy, the pay rates of Proimtu's workforce had to conform with the  
16 prevailing rates set by the U.S. Labor Department.

17 51. During negotiations leading up to the Contract Proimtu and TRP agreed, based upon  
18 information provided by TRP, that Proimtu's contract price would be based on its workforce being  
19 classified as "general laborers." The workers' classification determines the hourly rate of  
20 payment.

21 52. The worker classification specified by TRP in the Contract for Proimtu's laborers  
22 was not correct. After the Contract was signed, the Department of Labor reclassified the workers  
23 resulting in additional wages and withholding becoming due. TRP agreed to pay the additional  
24 hourly rate for Proimtu's workers. TRP refused, however, to pay the additional withholding for  
25 Proimtu's workers based upon the re-classification, which totaled not less than \$131,628.33,  
26 despite demand by Proimtu.



1 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
2 interest thereon.

3  
4 **SIXTH CLAIM FOR RELIEF**  
**(Quantum Meruit/Cardinal Change against TRP)**

5 64. Proimtu incorporates by reference each and every allegation contained in the  
6 preceding paragraphs.

7 65. TRP failed to disclose all known information concerning the Project and the work  
8 of Proimtu. In addition, TRP controlled the method and means for Proimtu's performance of the  
9 assembly and installation work. TRP failed to provide the necessary materials and equipment and  
10 forced Proimtu to perform the work in a manner materially different from the manner bargained  
11 for initially and contemplated by the parties in the Contract such that the Contract was abandoned.

12 66. As a result of the abandonment of the Contract and TRP's prevention of Proimtu's  
13 performance under the Contract, Proimtu is entitled to recover the reasonable value of the work  
14 provided, plus overhead and profit, in an amount in excess of \$10,000, the exact amount to be  
15 proven at trial.

16 67. Proimtu has been required to retain the services of an attorney to collect the  
17 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
18 interest thereon.

19  
20 **SEVENTH CLAIM FOR RELIEF**  
**(Recovery of Bond Amount against the Board)**

21 68. Proimtu incorporates by reference each and every allegation contained in the  
22 preceding paragraphs.

23 69. On information and belief, the Board retains the \$100,000 cash bond posted by  
24 TRP.

25 70. Proimtu is within the class of persons entitled to protection from the bond posted by  
26 TRP because of the unlawful actions of TRP, including but not limited to diversion of funds and

1 material misrepresentations of fact.

2 71. Proimtu is entitled to recover from the Board up to the full amount of the penal sum  
3 of the bond for TRP's unlawful actions and refusal to pay Proimtu under the terms of the Contract.

4 72. Proimtu has been required to retain the services of an attorney to collect the  
5 amounts owed and is entitled to recover its reasonable attorneys' fees and costs in addition to  
6 interest thereon.

7 **EIGHTH CLAIM FOR RELIEF**  
8 **(Foreclosure of Mechanics' Lien on the Property)**

9 73. Proimtu incorporates by reference each and every allegation contained in the  
10 preceding paragraphs.

11 74. Cobra and TSE knew or should have known that Proimtu was providing labor to  
12 build and install the heliostats for the Work of Improvement.

13 75. Because Proimtu was providing only labor on the Project no notice of right to lien  
14 was necessary pursuant to NRS 108.245.

15 76. Proimtu demanded payments of amounts due for the work on the Project.

16 77. On or about November 12, 2014 Proimtu timely recorded a Notice of Lien in the  
17 Official Records of Nye County as Instrument no. 823637 ("Lien"). A copy of the Lien is  
18 attached as **Exhibit "1"**.

19 78. The Lien was in writing and was recorded against the work of improvement for  
20 outstanding balance due Proimtu in the amount of not less than \$2,357,977.00.

21 79. As required by applicable law, the liens were served upon the Owner/Lessee and or  
22 their authorized representative and upon Cobra.

23 80. Pursuant to NRS 108.239 the Lien should be foreclosed and interest of  
24 Owner/Lessee sold to satisfy the amounts due to Proimtu.

25 81. Proimtu is entitled to an award of its attorney's fees costs and interest on the amount  
26 owed as provide in Chapter 108 of the Nevada Revised Statutes.

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# **EXHIBIT 1**

# **EXHIBIT 1**

**DOC # 823637**

Official Records Nye County Nevada  
Deborah Beatty - Recorder  
11/12/2014 12:16:06 PM  
Requested By: FENNEMORE  
Recorded By: tc RPTT:\$0  
Recording Fee: \$20.00  
Non Conformity Fee: \$0.00  
Page 1 of 7



APN 012-031-04, 012-131-03,  
APN 012-131-04,4  
APN , 012-141-01,  
APN , 012-151-01, and 612-141-01

Recording Requested By:

Name Fennemore Craig Jones Vargas

Address 300 South Fourth St. 14th Floor

City / State / Zip Las Vegas, NV 89101

Notice of Lien

(Print Name Of Document On The Line Above)

☐ I the undersigned hereby affirm that this document submitted for recording contains personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.  
This cover page must be typed or printed. Additional recording fee applies.

APN: # 012-141-01, 012-151-01  
612-141-01, 012-031-04  
012-131-03, 012-131-04

Recording requested by and mail documents to:

Proimtu MMI LLC  
c/o Christopher H. Byrd, Esq.  
Fennemore Craig Jones Vargas  
300 South Fourth St. 14<sup>th</sup> Floor  
Las Vegas, NV 89101

---

NOTICE OF LIEN  
(Mechanic Lien)

Notice is Hereby Given:

1. That PROIMTU MMI, LLC, hereinafter known as "Claimant," hereby claims a lien pursuant to the provisions of N.R.S. 108.221 to 108.246 inclusive, on the property located in Nevada described in Exhibit "A" (the "Land") and upon any improvements constructed on the Land, including but not limited to the improvements identified as the assembly line and heliostats (the "Improvement") for the Crescent Dunes Solar Project.
2. The amount of the original contract is: \$8,746,125.
3. The total amount of all charges and additions, if any, is \$3,792,104
4. The total amount of payments received to date is \$10,180,252
5. The total amount of the lien, after deducting all credits and offsets is \$2,357,977
6. The name of the owner of the Improvement is: Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (the "Owner"). Upon information and belief the Owner's principal address is believed to be 2425 Olympic Boulevard, Suite 500 East, Santa Monica, California, 90404. The interest of the Owner in the Improvement is as a lessee of a leasehold estate.
7. The name of the owner of the Land is: Bureau of Land Management ( "BLM"). Upon information and belief the BLM's principal address is 1340 Financial Blvd., Reno, Nevada, 89502.
8. The name of the person whom the lien claimant was employed or to whom the lien claimant furnished work, material, or equipment is TRP International, Inc. ("TRP"). Upon information and belief TRP's principal address is 9550 S. Eastern Ave, Suite 253, Las Vegas, Nevada, 89123.

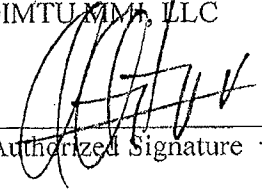
9. Terms of payment of the lien claimant's contract: In accordance with Nevada law but no later than 90 days after receipt of the invoice and the approved application.

10. That the claimant herein is entitled to a reasonable attorney's fee, collections costs, bank fees, statutory interest on the amount of this lien claim, and costs incurred in perfecting this lien claim.

11. A description of the Improvement and Land to be charged: See Exhibit "A".

In Witness Whereof, I/We have hereunto set my hand/our hands this 11<sup>th</sup> day of November, 2014.

666  
\_\_\_\_\_  
PROIMTUMM, LLC

By:   
\_\_\_\_\_  
Authorized Signature - Gabriel Gonzalez

STATE OF NEVADA)  
COUNTY OF CLARK)

PROMTU MM1 LLC, being first duly sworn on oath according to law, deposes  
and says:

I have read the foregoing Notice of Lien claim, know the contents thereof and state the same is  
true of my own personal knowledge, except those matters stated upon information and belief,  
and, as to those matters, I believe them to be true.

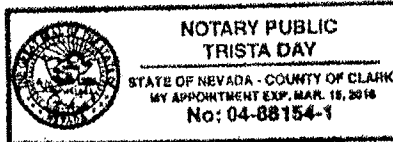
[Signature]  
Authorized Signature of Claimant - Gabriel Gonzalez

Subscribed and sworn to before me this 11<sup>th</sup> day of NOVEMBER, 2014.

[Signature]  
NOTARY PUBLIC

My Commission expires: 3-15-16

Notice of Lien  
Initials 666



## EXHIBIT A

### (Legal Description of the Property)

Nye County Assessor Parcels: APN 012-141-01, APN 012-151-01, APN 612-141-01, APN 012-031-04, APN 012-131-03, and APN 012-131-04

AND MORE PARTICULARLY DESCRIBED BY DOCUMENTS PREPARED BY OR FOR TONOPAH SOLAR ENERGY, LLC AS FOLLOWS:

All that land situated in the County of Nye, State of Nevada, more particularly described as follows:

#### PARCEL 1:

GEN-TIE LINE (NVN-087933)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the official Plat thereof, described as follows:

Section 2: The SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ ;

Section 11: The W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ;

Section 14: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;

Section 15: The E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 22: The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 27: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$ ;

Section 28: The SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 33: The NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

#### PARCEL 2:

SOLAR ENERGY PROJECT (NVN-086292)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 33: The SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

Section 34: The W  $\frac{1}{2}$ , the SE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

Section 35: The SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

All that property lying within Township 4 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 2: Lot 4 and the W  $\frac{1}{2}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

Section 3: The N  $\frac{1}{2}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{2}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the N  $\frac{1}{2}$  S  $\frac{1}{2}$  SW  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;

Section 4: The NE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  of Lot 4 and the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

PARCEL 4-1:

The North one Half (N  $\frac{1}{2}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) and the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 12 in Township 6 North, Range 40 East, M.D.B. & M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel 4 of Parcel Map recorded July 25, 1980, as File No. 26731, Nye County, Nevada Records.

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section 18, Township 6 North, Range 41 East, M.D.B. & M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel Two (2) of Parcel Map recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

Together with an easement for the purpose of installing and maintaining an irrigation well, more particularly described as follows:

Commencing at the Northeast corner of Section 13, Township 6 North, Range 40 East, M.D.B. & M.,;

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

Thence Easterly for 20 feet, at the true point of beginning.

PARCEL 4-3:

East Half (E ½) of the Northwest Quarter (NW ¼) of Section 18, Township 6 North Range 41 East, M.D.B. & M., according of the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel One (1) of Parcel Maps, recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

PARCEL 5:

All land defined as "Servient Property," described and depicted in that certain document entitled "Grant of Generation Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE 1/3), of the Northeast Quarter (NE ¼) of Section 2, Township 5 North, Range 41 East, M.D.B. & M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 36411 of Official Records, Nye County, Nevada.



1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   PROIMTU MMI LLC, a Nevada  
3   limited liability company,

4                               Appellant,

5                               vs.

6   TONOPAH SOLAR ENERGY, LLC,  
7   A       DELAWARE       LIMITED  
8   LIABILITY COMPANY; COBRA  
9   THERMOSOLAR PLANTS, INC., A  
10   NEVADA CORPORATION; AND  
11   THE INSURANCE COMPANY OF  
12   THE STATE OF PENNSYLVANIA, A  
13   PENNSYLVANIA CORPORATION, a  
14   foreign corporation,

15                               Respondents.

Case No. 70922

District Court Case No. CV-36747  
Electronically Filed  
Aug 12 2016 04:16 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**DOCKETING STATEMENT**

12   1.     Fifth Judicial District Court, Department I, Nye County, Sr. Judge  
13         Elliott, District Court Case No. CV-36747.

14   2.     **Attorney Filing this Docket Statement:**

15         Christopher H. Byrd, Esq., Nevada Bar # 1633  
16         Brenoch R. Wirthlin, Esq., Nevada Bar # 10282  
17         Fennemore Craig, P.C.  
18         300 South 4<sup>th</sup> Street, Suite 1400  
19         Las Vegas, Nevada 89101  
       Telephone: (702) 692-8000  
       Facsimile: (702) 692-8099  
       Email: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
              [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

*Attorneys for Appellant*

*PROIMTU MMI LLC, a Nevada limited liability company*

1 **3. Attorney(s) Representing Respondent:**

William J. Wray, Esq.

2 Donna DiMaggio, Esq.

Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson

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[ddimaggio@nevadafirm.com](mailto:ddimaggio@nevadafirm.com)

6 *Attorneys for Cobra Thermosolar Plants, Inc.*

*the Insurance Company of the State of Pennsylvania*

7 *and Tonopah Solar Energy, LLC*

8 **4. Nature of Disposition (check all that apply):**

9 ☐ Judgment after bench trial

☐ Dismissal:

☐ Judgment after jury verdict

☐ Lack of jurisdiction

10 ☒ Summary judgment

☐ Failure to state a claim

11 ☐ Default judgment

☐ Failure to prosecute

☐ Grant/Denial of NRCP 60(b) relief

☐ Other (specify):

12 ☐ Grant/Denial of injunction

☐ Divorce Decree:

13 ☐ Grant/Denial of declaratory relief

☐ Original ☐ Modification

14 ☐ Review of Agency determination

☐ Other disposition

(specify): \_\_\_\_\_

15 **5. Does this appeal raise issues concerning any of the following?**

16 ☐ Child Custody

☐ Venue

17 ☐ Termination of parental rights

18 **6. Pending and prior proceedings in this court.** List the case name  
19 and docket number of all appeals or original proceedings presently or  
previously pending before this court which are related to this appeal:

1. Case No. 68942. Proimtu MMI LLC, Appellant v. TRP International, Inc., Respondent.

2. Case No. 69336. Proimtu MMI LLC, Appellant v. TRP International, Inc., Respondent.

3. Case No. 70056. Proimtu MMI LLC, Appellant v. TRP International, Inc., Respondent.

7. **Pending and prior proceedings in other courts:** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Name	Number	Court	Disposition
<i>TRP International, Inc. v. Proimtu MMI, LLC</i>	CV-36431	Fifth District Court, Nye County	Petition to Expunge Mechanics' Lien. Order expunging lien entered September 9, 2015. On appeal.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Proimtu filed this action to perfect its mechanics' lien. The suit arose out of contract between Proimtu and TRP International, Inc. ("TRP"). TRP failed to pay Proimtu for all of the work on the Crescent Dunes Thermosolar Power Plant ("Project"). Subsequently, The Insurance Company of the State of Pennsylvania ("ICP") posted a surety bond to remove the lien from the property. Proimtu asserted claims against TRP, ICP, the owner, Tonopah Solar Energy, LLC ("TSE") and the general contractor, Cobra Thermosolar Plants, Inc. ("Cobra"). The district court granted summary judgment to Cobra TSE and ICP. Proimtu appeals from that Order.

In a prior order the district court also granted TRP's Motion to Dismiss, which the court certified as final pursuant to NRCP 54(b). ("Judgment"). Proimtu filed a Motion to Amend Judgment or

1 Alternatively for Reconsideration (“Motion to Amend”). There was  
2 an issue whether the Motion to Amend was timely because of the  
3 clerk’s handling of the filing. The district court ruled the Motion to  
4 Amend was timely and indicated the court would grant the Motion to  
Amend. An order granting the Motion to Amend and directing TRP  
to answer has been submitted to the district court, but that order has  
not been entered.

5 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal  
(attach separate sheets as necessary):

- 6
- 7 a. Does NRS 108.2453 prohibit the enforcement of a foreign  
forum selection clause in a contract for the construction of  
an improvement to real property?
  - 8 b. Does the public policy of Nevada render the forum selection  
clause void in this case?
  - 9 c. Did the district court err when it concluded NRS 108.2453’s  
prohibition against foreign forum selection clauses could  
10 only be enforced if there was a valid lien claim?
  - 11 d. Did the district court err when it found the forum selection  
clause was mandatory not permissive?
  - 12 e. Did the district court err by applying forum non conveniens  
principles to enforce the forum selection clause, in the  
13 absence of any evidence to support the same?

14 **10. Pending proceedings in this court raising the same or similar  
issues.** If you are aware of any proceeding presently pending before  
15 this court which raises the same or similar issues raised in this appeal,  
list the case name and docket number and identify the same or similar  
16 issues raised:

17 Case No. 70056. Proimtu MMI LLC, Appellant v TRP International,  
Inc., Respondent.

18 **11. Constitutional issues:** If this appeal challenges the constitutionality  
of a statute, and the state, any state agency, or any officer or  
19 employee thereof is not a party to this appeal, have you notified the

1 clerk of this court and the attorney general in accordance with NRAP  
2 44 and NRS 30.130?

3 ☒ N/A

4 ☐ Yes

5 ☐ No

6 If not, explain:

7 **12. Other issues.** Does this appeal involve any of the following issues?

8 ☐ Reversal of well-settled Nevada precedent (identify the case(s))

9 ☐ An issue arising under the United States and/or Nevada  
10 Constitutions

11 ☒ A substantial issue of first-impression

12 ☒ An issue of public policy

13 ☐ An issue where en banc consideration is necessary to maintain  
14 uniformity of this court's decisions

15 ☐ A ballot question

16 If so, explain: This Court has not addressed the effect of NRS  
17 108.2453 on forum selection clauses that specify a forum other than  
18 Nevada. In addition, the stated public policy in NRS 108.2453, which  
19 requires construction contract disputes to be litigated in Nevada, should not  
depend on whether there is a valid mechanics' lien.

☐ N/A

13 **13. Trial.** If this action proceeded to trial, how many days did the trial  
14 last?

15 N/A

16 Was it a bench or jury trial? N/A

17 **14. Judicial Disqualification.** Do you intend to file a motion to  
18 disqualify or have a justice recuse him/herself from participation in  
19 this appeal? If so, which Justice?

No

1 **TIMELINESS OF NOTICE OF APPEAL**

2 **15. Date of entry of written judgment or order appealed from**

3 June 26, 2016

4 **Attach a copy. If more than one judgment or order is appealed**  
5 **from, attach copies of each judgment or order from which appeal**  
6 **is taken.**

7 (a) If no written judgment or order was filed in the district court,  
8 explain the basis for seeking appellate review:

9 N/A

10 **16. Date written notice of entry of judgment or order was served**

11 June 28, 2016

12 Was service by:

13 ☐ Delivery ☐ Unknown ☒ Mail and Email.

14 **17. If the time for filing the notice of appeal was tolled by a post-**  
15 **judgment motion (NRCP 50(b), 52(b), or 59).**

16 NA.

17 **18. Date notice of appeal was filed**

18 (a) If more than one party has appealed from the judgment or  
19 order, list date each notice of appeal was filed and identify by  
name the party filing the notice of appeal:

NA.

17 **19. Specify statute or rule governing the time limit for filing the**  
18 **notice of appeal, e.g., NRAP 4(a) or other**

19 NRAP 4(a)(1)

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1 and second, granting summary judgment to the remaining defendants.  
2 The timing resulted in two appeals.

3 The Board was served but did not appear. The claim against the Board  
4 to pay over the bond of TRP was dismissed, however, by the order  
granting TRP's Motion to Dismiss, which order is now going to be set  
aside by the district court.

5 **22. Give a brief description (3 to 5 words) of each party's separate**  
6 **claims, counterclaims, cross-claims or third-party claims, and the**  
7 **date of formal disposition of each claim.**

8 Proimtu pled the following claims:

- 9 1. Breach of contract against TRP, the party that hired Proimtu for  
the project;
- 10 2. Violation of prompt payment provisions of NRS Chapter 624  
against TRP;
- 11 3. Breach of the covenant of good faith and fair dealing against  
TRP;
- 12 4. Negligent misrepresentation against TRP;
- 13 5. Unjust enrichment against TRP, Cobra, the general contractor  
and TSE, an owner;
- 14 6. Quantum meruit cardinal change against TRP;
7. Recovery of TRP's bond from the Board; and
8. Recovery from the bond posted to release the property from the  
lien against ICP.

15 Cobra and TSE brought a crossclaim against TRP for the following:

- 16 1. Breach of contract;
- 17 2. Breach of the covenant of good faith and fair dealing;
- 18 3. Implied indemnity; and
- 19 4. Equitable indemnity.

///  
19



1 **23. Did the judgment or order appealed from adjudicate ALL the**  
2 **claims alleged below and the rights and liabilities of ALL the parties to**  
3 **the action or consolidated actions below?**

4 ☐ Yes

5 ☒ No

6 **24. If you answered “No” to question 23, complete the following:**

7 (a) Specify the claims remaining pending below:

8 Following the granting of TRP’s Motion to Dismiss and entry of  
9 Judgment, the summary judgment now appealed adjudicated or  
10 rendered moot all of the remaining claims in the case. However, the  
11 district court intends to reconsider the Motion to Dismiss and allow  
12 the case to proceed against TRP and the Board; but that order has not  
13 been entered.

14 (b) Specify the parties remaining below:

15 TRP and the Board will be parties when the district court enters the  
16 order granting Proimtu’s Motion to Amend.

17 (c) Did the district court certify the judgment or order appealed  
18 from as a final judgment pursuant to NRCP 54(b)?

19 ☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant  
to NRCP 54(b), that there is no just reason for delay and an  
express direction for the entry of judgment?

☐ Yes

☒ No

**25. If you answered “No” to any part of question 24, explain the**

1 **basis for seeking appellate review (e.g., order is independently**  
2 **appealable under NRAP 3A(b)):**

3 NRAP 3A(b)(1) permits appeal from a final judgment. In  
4 conjunction with the granting of TRP's Motion to Dismiss and entry  
5 of the Judgment, the summary judgment appealed from in this appeal  
6 adjudicated or rendered moot all of the remaining claims in the case.  
The finality of the order granting summary judgment is now  
questionable, however, based upon the district court's decision to  
grant Proimtu's Motion to Amend the TRP Judgment.

7 **26. Attach copies of the last-filed version of all complaints,**  
8 **counterclaims, and/or cross claims filed in the district court, any tolling**  
9 **motion, the order challenged on appeal and written notice of entry for**  
10 **any attached orders.**

11 *See Exhibit 1.*

1 **VERIFICATION**

2 I declare under penalty of perjury that I have read this docketing  
3 statement, that the information provided in this docketing statement is true  
4 and complete to the best of my knowledge, information and belief, and that I  
5 have attached all required documents to this docketing statement.

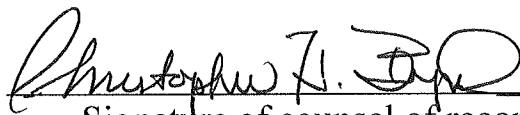
6 Name of Appellant:

7 Proimtu MMI, LLC

Name of counsel of record:

Christopher H. Byrd, Esq., NV Bar # 1633  
Brenoch R. Wirthlin, Esq., NV Bar #  
10282  
Fennemore Craig, P.C.  
300 South 4<sup>th</sup> Street, Suite 1400  
Las Vegas, Nevada 89101  
Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
Email: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

12 Dated this 12 day of August,  
13 2016.

  
Signature of counsel of record

14 State and county where  
signed:

15 Clark County, Nevada

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**TABLE OF CONTENTS OF EXHIBITS  
TO DOCKETING STATEMENT**

<b>Exhibit</b>	<b>Description</b>
1A	Complaint-Exempt from Arbitration Action Concerning Title to Real Estate Pursuant to NAR3(a) dated May 7, 2015
1B	First Amended Complaint Exempt from Arbitration Action Concerning Title to Real Estate Pursuant to NAR3(a) dated July 10, 2015
1C	Defendant The Insurance Company of Pennsylvania's Answer to Plaintiff Proimtu MMI LLC's Complaint dated August 12, 2015
1D	Defendants Tonopah Solar Energy, LLC and Cobra Thermosolar Plants, Inc.'s Answer to Plaintiff Proimtu MMI LLC's First Amended Complaint and Crossclaim against TRP International, Inc. dated August 17, 2015
1E	Notice of Entry of Order Granting Defendants Tonopah Solar Energy, LLC, Cobra Thermosolar Plants Inc. and The Insurance Company of the State of Pennsylvania's Motion for Summary Judgment dated June 27, 2016