

**FILED**  
FIFTH JUDICIAL DISTRICT

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Elizabeth A. Brown, Deputy  
Clerk of Supreme Court

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11 **IN THE FIFTH JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
12 **IN AND FOR THE COUNTY OF NYE**

13 TONOPAH SOLAR ENERGY, LLC, a Delaware  
14 limited liability company,

15 Movant,

16 vs.

17 BRAHMA GROUP, INC., a Nevada corporation,

18 Respondent.

19 BRAHMA GROUP, INC., a Nevada corporation,

20 Counterclaimant,

21 vs.

22 TONOPAH SOLAR ENERGY LLC, a Delaware  
23 limited liability company; BOE BONDING  
24 COMPANIES I through X; DOES I through X;  
25 ROE CORPORATIONS I through X; and TOE  
26 TENANTS I through X, inclusive,

27 Counterdefendant.

28 BRAHMA GROUP, INC., a Nevada corporation,

Third-Party Plaintiff,

Case No. CV 39348  
Consolidated with  
Case No. CV 39799  
Dept. No. 2

**TSE'S NOTICE OF APPEAL**



1 vs.

2 COBRA THERMOSOLAR PLANTS, INC., a  
3 Nevada corporation; AMERICAN HOME  
4 ASSURANCE COMPANY, a surety; BOE  
5 BONDING COMPANIES I through X; DOES I  
6 through X; ROE CORPORATIONS I through X,  
7 inclusive,

8 Third-Party Defendants.

9 H&E EQUIPMENT SERVICES, INC., a  
10 Delaware corporation,

11 Plaintiff-In-Intervention,

12 vs.

13 BRAHMA GROUP, INC., a Nevada corporation,  
14 TONOPAH SOLAR ENERGY LLC, a Delaware  
15 limited liability company, COBRA  
16 THERMOSOLAR PLANTS, INC., a Nevada  
17 corporation; AMERICAN HOME ASSURANCE  
18 COMPANY, a surety; BOE BONDING  
19 COMPANIES I through X; DOES I through X;  
20 ROE CORPORATIONS I through X, and TOE  
21 TENANTS I through X, inclusive,

22 Defendants-In-Intervention.

23 BRAHMA GROUP, INC., a Nevada corporation,

24 Plaintiff,

25 vs.

26 COBRA THERMOSOLAR PLANTS, INC., a  
27 Nevada corporation; AMERICAN HOME  
28 ASSURANCE COMPANY, a surety; BOE  
BONDING COMPANIES I through X; DOES I  
through X; ROE CORPORATIONS I through X,  
inclusive,

Defendants.


Tonopah Solar Energy, LLC ("TSE"), by and through its undersigned counsel, hereby  
files this Notice of Appeal. TSE appeals to the Supreme Court of Nevada the following orders  
entered by this Court in Case No. CV 39348:



1 • Order Denying Tonopah Solar Energy, LLC's Motion to Expunge Brahma Group,  
2 Inc.'s Mechanic's Lien, Notice of Entry served November 1, 2018, attached hereto as **Exhibit 1**.

3 • Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS  
4 108.2275(6)(C), Notice of Entry served January 9, 2019, attached hereto as **Exhibit 2**.

5 DATED this 5<sup>th</sup> day of February 2019.

6  
7   
8 D. Lee Roberts, Jr., Esq.  
9 Colby L. Balkenbush, Esq.  
10 Ryan T. Gormley, Esq.  
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15 *Attorneys for Tonopah Solar Energy, LLC*  
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February 2019, a true and correct copy of the foregoing **TSE'S NOTICE OF APPEAL** was served by mailing a copy of the foregoing document via US Mail, to the following:

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Cynthia S. Bonman  
An employee of WEINBERG, WHEELER, HUDGINS  
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**EXHIBIT 1**

**EXHIBIT 1**

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9 *Attorneys for Brahma Group, Inc.*

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

12 TONOPAH SOLAR ENERGY, LLC, a Delaware  
13 limited liability company,

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

18  
19 BRAHMA GROUP, INC., a Nevada corporation,

20 Counterclaimant/Lien Claimant,

21 vs.

22 TONOPAH SOLAR ENERGY LLC, a Delaware  
23 limited liability company; BOE BONDING  
24 COMPANIES I through X; DOES I through X;  
25 ROE CORPORATIONS I through X; and TOE  
TENANTS I through X, inclusive,

26 Counterdefendant,  
27  
28

CASE NO. : CV 39348

DEPT. NO. : 2

**NOTICE OF ENTRY OF ORDER**

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(702) 990-7272 • FAX (702) 990-7273

1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

4 COBRA THERMOSOLAR PLANTS, INC., a  
5 Nevada corporation; AMERICAN HOME  
6 ASSURANCE COMPANY, a surety; BOE  
7 BONDING COMPANIES I through X; DOES I  
through X; ROE CORPORATIONS I through X,  
inclusive,

8 Third-Party Defendants.  
9

10  
11 **NOTICE OF ENTRY OF ORDER**

12 PLEASE TAKE NOTICE that an Order Denying Tonopah Solar Energy, LLC's Motion to  
13 Expunge Brahma Group, Inc.'s Mechanic's Lien was filed on **October 29, 2018** a copy of which  
14 is attached as Exhibit A.

15 **AFFIRMATION PURSUANT TO NRS 239B.030**

16 The undersigned does hereby affirm that the proceeding document does not contain the  
17 social security number of any persons.

18 Dated this 30<sup>th</sup> day of October, 2018.

19 **PEEL BRIMLEY LLP**

20 

21 RICHARD L. PEEL, ESQ.

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28 Henderson, Nevada 89074-6571

*Attorneys for Brahma Group, Inc.*

1 CERTIFICATE OF SERVICE

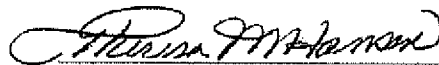
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP  
3 and that on this 1st day of November, 2018, I caused the above and foregoing document entitled  
4 **NOTICE OF ENTRY OF ORDER** to be served as follows:

- 5 ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed  
6 envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or  
7 ☐ Wiznet, the Court's electronic filing system;  
8 ☐ pursuant to EDCR 7.26, to be sent via facsimile;  
9 ☐ to be hand-delivered; and/or  
10 ☒ other – electronic mail

11 to the party(ies) and/or attorney(s) listed below at the address and/or facsimile number indicated  
12 below:

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24 An Employee of Peel Brimley LLP



# **EXHIBIT A**

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16 Attorneys for Brahma Group, Inc.

**FILED**  
FIFTH JUDICIAL DISTRICT

OCT 29 2018

Nye County Clerk  
**AMY DOWERS** Deputy

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company,

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

CASE NO. : CV 39348  
DEPT. NO. : 2

**ORDER DENYING TONOPAH  
SOLAR ENERGY, LLC'S MOTION  
TO EXPUNGE BRAHMA GROUP,  
INC.'S MECHANIC'S LIEN**

This matter came on for hearing September 12, 2018 (the "Hearing") before the Honorable Senior Judge Steven Elliott on the Motion to Expunge ("Motion") filed by Plaintiff TONOPAH SOLAR ENERGY, LLC ("TSE"). D. Lee Roberts, Esq., and Colby L. Balkenbush, Esq. of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC appeared on behalf of TSE. Eric B. Zimbelman, Esq., Richard Peel, Esq. and Ronnie Cox, Esq. of PEEL BRIMLEY LLP appeared on behalf of BRAHMA GROUP, INC. ("Brahma").

The Court having considered all the pleadings and papers on file, and having heard argument of counsel, hereby ORDERS as follows, having rendered its oral decision from the bench on September 12, 2018:

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///

///

1     **I. SUMMARY OF STANDARD OF PROOF.**

2             TSE commenced this proceeding by filing the present motion pursuant to NRS 108.2275  
3 seeking an order to expunge Brahma's original notice of lien and the several amendments thereto  
4 (collectively, the "Notice of Lien"), recorded by Brahma against the Crescent Dunes Solar  
5 Energy Facility in Tonopah, Nevada (the "Work of Improvement"). NRS 108.2275(6) requires  
6 the Court to "make an order releasing the lien" if the Court determines "the notice of lien is  
7 frivolous and was made without reasonable cause." Because the Court finds the Notice of Lien  
8 (i) was not frivolous, and (ii) was made with reasonable cause, the Court denies the Motion.

9     **II. THE COURT'S DECISION.**

10            In its moving papers and at the Hearing, TSE made the following arguments in support  
11 of its Motion, each of which the Court rejects for the following reasons:

12            A.     **Brahma's Notice of Right to Lien was Properly Given.**

13                1.     NRS 108.245 generally requires a lien claimant who claims the benefit of  
14 NRS 108.221 to 108.246, inclusive (hereinafter, the "Lien Statute" or the "Statute") to deliver in  
15 person or by certified mail to the owner of the property a notice of right to lien in the form  
16 prescribed by the Statute.

17                2.     In its briefing and at the Hearing TSE argued that:

- 18                   • Brahma failed to give a Notice of Right to Lien to the Bureau of Land
- 19 Management ("BLM"); and
- 20                   • Brahma's Notice of Right to Lien is void because Brahma identified
- 21 Solar Reserve as the party with whom it contracted, rather than TSE.

22                3.     In its Supplement to its Opposition, Brahma provided copies of and  
23 demonstrated that it timely gave its Notice of Right to Lien (by certified mail, return receipt  
24 requested) to: (i) the BLM, the fee simple interest owner of certain parcels of land on which the  
25 Work of Improvement was constructed, and (ii) TSE, the fee simple interest owner of certain  
26 other parcels of land that comprise the Work of Improvement, as well as owner of the Work of  
27 Improvement.

28     ///

1           4.     At the Hearing, (i) TSE's counsel admitted that Solar Reserve (identified  
2     on the Notice of Right to Lien as the "person who contracted such labor, services, equipment or  
3     material") has an indirect ownership interest in TSE and shared the same address as TSE in Santa  
4     Monica, California to which the Notice of Right to Lien was mailed by certified mail, return  
5     receipt requested,<sup>1</sup> and (ii) the Court confirmed that the Notice of Right to Lien identifies the  
6     "Project Owner" of the Work of Improvement as "Tonopah Solar Energy c/o Solar Reserve" at  
7     that same address.

8           5.     Based on the foregoing, Brahma demonstrated that it timely and properly  
9     caused it's Notice of Right to Lien to be given as required by the Statute.

10           B.     Brahma's Notice of Lien is not Barred by the Statute.

11           1.     NRS 108.22188 identifies a "work of improvement" as: "[T]he entire  
12     structure or scheme of improvement as a whole, including, without limitation, all work, materials  
13     and equipment to be used in or for the construction, alteration or repair of the property or any  
14     improvement thereon, whether under multiple prime contracts or a single prime contract."

15           2.     NRS 108.229(1) permits a lien claimant to "record an amended notice of  
16     lien to correct or clarify the lien claimant's notice of lien" "at any time before or during the trial  
17     of any action to foreclose a lien." The Statute further provides that a "variance between a notice  
18     of lien and an amended notice of lien does not defeat the lien and shall not be deemed material  
19     unless the variance: (a) Results from fraud or is made intentionally; or (b) Misleads an adverse  
20     party to the party's prejudice, but then only with respect to the adverse party who was  
21     prejudiced." NRS 108.229(1).

22           3.     In its Motion, TSE initially argued that "[t]he Property on which the  
23     [Work of Improvement] is located consists of the following parcels: 012-031-04, 012-131-03,  
24     012-131-04, 012-140-01, 012-141-01, 012-150-01, 012-151-01, 012-431-06, 612-141-01." In its  
25     supplemental briefing and at the Hearing, TSE then argued that the Property on which the Work  
26     of Improvement is located consists of the following two BLM owned parcels: 012-141- 01, 012-  
27     151-01, and without providing any proof (ii), that the remaining Assessor's Parcel Numbers

28     <sup>1</sup> The address to which notice was sent is the address identified in the TSE/BGI Services Agreement to which BGI  
   was to send notices.

1 ("APNs") against which Brahma's Lien were recorded were a) parcels owned by TSE purely for  
2 water rights on which Brahma never performed any work, and/or b) not parcels of land on which  
3 the Work of Improvement was constructed, but rather APNs associated with rights of  
4 way/easements, and/or c) parcels of land on which Brahma never performed any work that were  
5 owned by third parties.

6 4. In its Motion and at the Hearing, TSE also argued that:

7 • Brahma's Notice of Lien was "void" and cannot be amended because  
8 it attempted to illegally lien federally owned land (specifically land owned by the BLM), on  
9 which some of the improvements that are the subject of the Work of Improvement were  
10 constructed;

11 • Because Brahma "intentionally" liened BLM land, its Notice of Lien  
12 could not be amended. Specifically, TSE relies on the fact that the original Notice of Lien,  
13 identifies one of the "owners of the property" to be liened as "Bureau of Land Management and  
14 Tonopah Solar Energy, LLC" and Exhibit A to the Notice of Lien, identifies the Land to be  
15 encumbered as including APNs 012-141-01, 012-015-01, which belong to the BLM; and

16 • Brahma had no right to lien three parcels owned by TSE to which,  
17 TSE contends, Brahma furnished no work, materials, or equipment.

18 5. In response, Brahma:

19 • Disputed that its original Notice of Lien was intended to attach to  
20 BLM land and that it simply completed the statutory form required in NRS 108.226;

21 • Argued that its Notice of Lien (i) also attached to land owned by TSE,  
22 and (ii) to the Work of Improvement, including improvements constructed on land owned by the  
23 BLM;

24 • The Notice of Lien also identifies the "property to be charged with the  
25 lien" as "Crescent Dunes Solar Energy Project more fully described in Exhibit A." Further, as  
26 Brahma argued at Hearing, the Exhibit A more specifically identifies the improvements as  
27 follows: "The Crescent Dunes Solar Energy Project is a 110 MW plant constructed on the Land  
28 in Tonopah, Nevada." By necessity, the "Land" on which the Project was constructed is then

1 identified by parcel number and legal description; and

2 • Demonstrated that it caused its original Notice of Lien to be amended  
3 several times to, among other things, clarify that Brahma's lien did not attach BLM land.

4 6. The Court concludes as follows:

5 • Brahma did not "intentionally" attach BLM land such that it is  
6 precluded from amending its Notice of Lien;

7 • TSE is estopped from arguing that the Notice of Lien is void simply  
8 because the BLM's land was allegedly implicated in the Notice of Lien; and

9 • Whether or not Brahma worked on the TSE-owned parcels is  
10 irrelevant because the Statute permits a lien claimant to record a notice of lien against the Work  
11 of Improvement as a whole.

12 C. Brahma's Notice of Lien is not Barred by Sovereign Immunity.

13 1. At the Hearing, TSE contended that:

14 • Brahma's Notice of Lien is barred by the doctrine of sovereign  
15 immunity because the United States Department of Energy ("DOE") provided a \$737 Million  
16 loan guarantee, and is, through PNC Bank as its collateral agent, the beneficiary of a  
17 Construction Deed of Trust pledging all of TSE's right, title, and interest in the Project, and  
18 therefore, the DOE has a financial stake in the Project's continued successful operation by TSE;  
19 • "[A] proceeding against property in which the United States has an  
20 interest is a suit against the United States." *United States v. Alabama*, 313 U.S. 274, 282, 61 S.Ct.  
21 1011 (1941).

22 2. In response, Brahma demonstrated that:

23 • "[N]ot every lien or action will be void/barred just because it  
24 tangentially affects a federal government security interest." *United States v. Rural Elec.*  
25 *Convenience Co-op. Co.*, 922 F.2d 429, 436 (7th Cir. 1991); and

26 • Nevada law (among other states) recognizes that governmental  
27 immunity does not preclude a mechanic's lien against a leasehold interest on land owned by the  
28 federal government. *Basic Refractories, Inc. v. Bright*, 72 Nev. 183, 298 P.2d 810, 59 A.L.R.2d

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1 457 (1956). See also *Crutcher v. Block*, 19 Okl. 246, 91 P. 895, 14 Ann.Cas. 1029 ("it is  
2 immaterial that the legal title to the land in question is in the United States").

3 3. The Court concludes that:

4 • No-one is suing the United States in this action and neither the BLM's  
5 fee simple interest in certain parcels that comprise the Work of Improvement, nor is the DOE's  
6 security interest impaired by Brahma asserting a Notice of Lien; especially if (as TSE contends)  
7 the DOE has first priority over Brahma's Notice of Lien;

8 • Even if Brahma were to eventually foreclose on its Notice of Lien, the  
9 Work of Improvement could still be operated as a solar electric facility; and

10 • The doctrine of sovereign immunity does not bar Brahma's Notice of  
11 Lien.

12 **III. CONCLUSION.**

13 1. Based on the foregoing, the Court concludes that Brahma's Notice of Lien is not  
14 frivolous nor was it made without reasonable cause and therefore denies TSE's Motion.


15 2. Nothing in this Order shall prevent or preclude Brahma from applying for an  
16 award of attorney's fees and costs pursuant to NRS 108.2275(6)(c).

17 **NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**  
18 **that TSE's Motion to Expunge Brahma's Notice of Lien is DENIED.**

19 Dated this 17 day of October, 2018.

20  
21   
22 Senior Judge Steven Elliott

23 Respectfully submitted by:  
24 **PEEL BRIMLEY LLP**

25   
26 **RICHARD L. PEEL, ESQ. (NV Bar No. 4359)**  
27 **ERIC D. ZIMBELMAN, ESQ. (NV Bar No. 9407)**  
28 **RONALD J. COX, ESQ. (NV Bar No. 12723)**  
**3333 E. Serene Avenue, Suite 200**  
**Henderson, Nevada 89074-6571**  
**Attorneys for Brahma Group, Inc.**

**EXHIBIT 2**

**EXHIBIT 2**



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9 *Attorneys for Brahma Group, Inc.*

10  
11 **FIFTH JUDICIAL DISTRICT COURT**

12 **NYE COUNTY, NEVADA**

13 TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company,

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

18 BRAHMA GROUP, INC., a Nevada corporation,

19 Counterclaimant/Lien Claimant,

20 vs.

21 TONOPAH SOLAR ENERGY LLC, a Delaware  
22 limited liability company; BOE BONDING  
COMPANIES I through X; DOES I through X;  
23 ROE CORPORATIONS I through X; and TOE  
TENANTS I through X, inclusive,

24 Counter-Defendant.

CASE NO. : CV 39348  
DEPT. NO. : 2

**NOTICE OF ENTRY OF ORDER**

25 ///

26 ///

27 ///

28

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1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

4 COBRA THERMOSOLAR PLANTS, INC., a  
5 Nevada corporation; AMERICAN HOME  
6 ASSURANCE COMPANY, a surety; BOE  
7 BONDING COMPANIES I through X; DOES I  
8 through X; ROE CORPORATIONS I through X,  
9 inclusive,

10 Third-Party Defendants.

11 **NOTICE OF ENTRY OF ORDER**

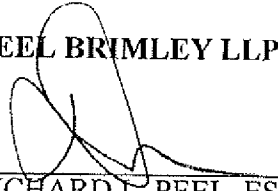
12 PLEASE TAKE NOTICE that an **Order Granting Brahma's Motion for Attorney's Fees**  
13 **and Costs Pursuant to NRS 108.2275(6)(C)** was filed on January 8, 2019, a copy of which is  
14 attached as Exhibit1.

15 **AFFIRMATION PURSUANT TO NRS 239B.030**

16 The undersigned does hereby affirm that the proceeding document does not contain the  
17 social security number of any persons.

18 Dated this 9 day of January, 2019.

19 **PEEL BRIMLEY LLP**

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21 RICHARD L. PEEL, ESQ. (4359)  
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27 *Attorneys for Brahma Group, Inc.*  
28

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 9th day of December 2018, I caused the above and foregoing document entitled

**NOTICE OF ENTRY OF ORDER** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ Wiznet, the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other – electronic mail

to the party(ies) and/or attorney(s) listed below at the address and/or facsimile number indicated below:

D. Lee Roberts, Jr., Esq.  
Colby L. Balkenbush, Esq.  
WEINBERG, WHEELER, HUDGINS  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, NV 89118  
[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
[cbalkenbush@wwhgd.com](mailto:cbalkenbush@wwhgd.com)  
*Attorneys for Tonopah Solar Energy, LLC*

Geoffrey Crisp, Esq.  
WEIL & DRAGE  
2500 Anthem Village Drive  
Henderson, NV 89052  
[gcrisp@weildrage.com](mailto:gcrisp@weildrage.com)  
*Attorneys for Cobra Thermosolar Plants, Inc.*



An Employee of Peel Brimley LLP

# **EXHIBIT 1**

ORIGINAL

FILED  
FIFTH JUDICIAL DISTRICT

JAN 08 2019

Nye County Clerk  
Deputy

1 **ORDER**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 ERIC B. ZIMBELMAN, ESQ.  
5 Nevada Bar No. 9407  
6 RONALD J. COX, ESQ.  
7 Nevada Bar No. 12723  
8 **PEEL BRIMLEY LLP**  
9 3333 E. Serene Avenue, Suite 200  
10 Henderson, Nevada 89074-6571  
11 Telephone: (702) 990-7272  
12 Facsimile: (702) 990-7273  
13 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
14 [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
15 [rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)  
16 Attorneys for Brahma Group, Inc.

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

17 TONOPAH SOLAR ENERGY, LLC, a Delaware  
18 limited liability company,

19 Plaintiff,

20 vs.

21 BRAHMA GROUP, INC., a Nevada corporation,

22 Defendant.

CASE NO. : CV 39348  
DEPT. NO. : 2

**ORDER GRANTING BRAHMA'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS PURSUANT TO NRS  
108.2275(6)(C)**

23 This matter came on for hearing December 11, 2018 (the "Hearing") before the  
24 Honorable Senior Judge Steven Elliott on the Motion For Attorney's Fees And Costs Pursuant To  
25 NRS 108.2275(6)(c) ("Fee Motion") filed by BRAHMA GROUP, INC. ("Brahma"). Eric B.  
26 Zimbelman, Esq. of PEEL BRIMLEY LLP appeared on behalf of Brahma. D. Lee Roberts,  
27 Esq. of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC appeared on behalf of  
28 Plaintiff TONOPAH SOLAR ENERGY, LLC ("TSE").

The Court having considered all the pleadings and papers on file, and having heard  
argument of counsel, hereby ORDERS as follows, having rendered its oral decision from the  
bench on December 11, 2018:

**I. STATUTORY BASIS FOR AWARD OF FEES AND COSTS.**

On October 17, 2018, this Court signed an Order<sup>1</sup> Denying TSE's Motion to Expunge

<sup>1</sup> The Order Denying the Underlying Motion was entered by the Clerk on October 29, 2018.

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1 Brahma's mechanic's lien pursuant to NRS 108.2275 ("Underlying Motion"). As part of the  
2 Order Denying the Underlying Motion, the Court concluded that Brahma's Notice of Lien is  
3 not frivolous nor was it made without reasonable cause. NRS 108.2275(6)(c) states in relevant  
4 part:

5 (6) If, after a hearing on the matter, the court determines that:

6 \*\*\*

7 (c) The notice of lien is *not frivolous* and was made *with reasonable*  
8 *cause*...the court *shall* make an order awarding costs and reasonable  
9 attorney's fees to the lien claimant for defending the motion.

10 Accordingly, once the Court determines that a lien is not frivolous or excessive and  
11 made with reasonable cause, an award of attorneys' fees is mandatory. In Nevada, the method  
12 upon which a reasonable fee is determined is subject to the discretion of the court, which is  
13 tempered only by reason and fairness. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,  
14 864-65, 124 P.3d 530, 548-49 (2005).

## 15 II. BRAHMA'S APPLICATION FOR AWARD OF FEES AND COSTS.

16 Pursuant to NRS 108.2275(6)(c), Brahma applied to the Court by way of the Fee  
17 Motion for an award of \$77,937.50 in attorney's fees and \$479.84 in costs plus additional  
18 sums, discussed below, for work performed on the Reply, at oral argument on the Fee Motion  
19 and in preparation of this Order. In support of its Fee Motion, Brahma submitted the  
20 Declaration of Richard L. Peel, Esq. and supporting documentation including invoicing and  
21 time records relating to Peel Brimley LLP's work performed on Brahma's behalf in defending  
22 the Underlying Motion. Brahma's motion addressed the factors identified in *Brunzell v.*  
23 *Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969) that the District Court is  
24 required to consider in reviewing any application for reasonable attorney's fees ("the *Brunzell*  
25 *Factors*"). See *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d  
26 730, 736 (2008).<sup>2</sup>

27 <sup>2</sup> The *Brunzell* factors are:

- 28
- 1) The advocate's qualities, including ability, training, education, experience, professional standing, and skill;
  - 2) The character of the work, including its difficulty, intricacy, importance, as well as the time and skill required, the responsibility imposed, and the prominence and character of the parties when affecting the importance of the litigation;
  - 3) The work performed, including the skill, time, and attention given to the work; and

1 TSE opposed the Fee Motion on multiple grounds and asserted that the fees requested  
2 were excessive for work performed in response to a "single motion." [TSE Opposition p. 2].  
3 Among other things, TSE contends that (i) PB's rates are higher than the "prevailing rate," (ii)  
4 PB engaged in "block billing," and (iii) PB "overstaffed" the work on the Underlying Motion  
5 and its invoices contain duplicative work or billings. On Reply, Brahma argued, among other  
6 things, that (i) the Underlying Motion was an existential threat to Brahma's lien rights – its sole  
7 source of security<sup>3</sup> for the \$12,859,577.74 Brahma claims to be owed for its work on TSE's  
8 Crescent Dunes Solar Energy Project (the "Project"),<sup>4</sup> (ii) involved multiple complex issues,  
9 and (iii) the work successfully performed by Brahma's attorneys was reasonable and necessary  
10 under the circumstances.

11 Having received and reviewed the Fee Motion, TSE's Opposition, Brahma's Reply,  
12 having heard and considered oral argument counsel at hearing on December 11, 2018, and  
13 having considered the *Brunzell* Factors, the Court makes the following findings and  
14 conclusions:

15 **III. FINDINGS.**

16 In general, and while the attorney hours expended and resulting amount sought by way of  
17 the Fee Motion are substantial, the hour and amounts are reasonable and not excessive in light  
18 of (i) the size and importance of Brahma's lien, (ii) the complex and varied issues presented to  
19 the Court, (iii) the high quality counsel on both sides of the case, (iv) higher quality work  
20 product than seen in ordinary cases and (v) the clients' reasonable expectations for superior  
21 intellectual ability and work product on both sides. In addition, the Court is satisfied that the  
22 rates charged by Brahma's counsel, including associate and partner rates, are reasonable and  
23 justified.

24  
25 4) The result—whether the attorney was successful and what benefits were derived.  
See *Brunzell*, 85 Nev. at 349; *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. at 829.

26 <sup>3</sup> A mechanic's lien is a statutory creature established to help ensure payment of work, materials and/or equipment  
provided for the construction or improvements on real property (*In re Fontainebleau Las Vegas Holdings*, 289 p.3D  
1199, 1210 (Nev. 2012)).

27 <sup>4</sup> Underlying Nevada's public policy of securing payment to contractors by way of mechanics' liens is that  
28 "contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time,  
labor, and materials into a project; and have any number of workers vitally depend upon them for eventual payment."  
*Id.*

1 As to the *Brunzell* Factors, the Court finds, without limitation, as follows:

- 2 1. Advocate's Qualities: Brahma's counsel are highly experienced, knowledgeable and  
3 competent, especially relating to the Nevada Mechanics' Lien Statute and construction  
4 law;
- 5 2. Character of the Work: Brahma's lien claim of nearly \$13 million is substantial and the  
6 Underlying Motion presented big stakes. In addition, the Court enjoyed the benefit of  
7 high-quality briefing and argument on atypical, challenging and varied subject matter;
- 8 3. The Work Performed: The Underlying Motion presented the Court with a lot to  
9 consider; and
- 10 4. The Result: The arguments presented by Brahma's attorneys were persuasive to the  
11 Court and the Court ruled in favor of Brahma on the Underlying Motion.

12  
13 **III. CONCLUSION.**

14 Based on the foregoing, and having considered the *Brunzell* Factors, the Court  
15 concludes that the time expended and amounts incurred by Brahma's counsel in defending the  
16 Underlying Motion were reasonable and appropriate and, pursuant to NRS 108.2275(6)(c),  
17 Brahma is awarded reasonable attorneys fees and costs as follows:

18 1. As presented by way of the Declaration of Richard L. Peel, Esq., for fees and  
19 costs incurred in defending the Underlying Motion and submitting the Fee Motion the sum of  
20 \$78,417.34; and

21 2. As agreed by the parties by a separate Stipulation attached hereto as Exhibit A,  
22 for fees incurred in preparing Brahma's Reply to TSE's Opposition to the Fee Motion, for  
23 appearance of counsel at oral argument and preparation of this Order, the additional sum of  
24 \$10,000.00.

25 ///

26 ///

27 ///

28 ///




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HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

1  
2 NOW THEREFORE, IT IS HEREBY ORDERED that Brahma's Motion For  
3 Attorney's Fees And Costs Pursuant To NRS 108.2275(6)(c) is GRANTED and Brahma is  
4 awarded the sum of \$88,417.34 which shall be due and payable by TSE within ten (10) days of  
5 a notice of entry of this order being filed.

6 Dated this 31 day December 2018.

7  
8   
9 Senior Judge Steven Elliott

10 Submitted by:  
11 PEEL BRIMLEY LLP

12   
13 RICHARD L. PEEL, ESQ. (NV Bar No. 4359)  
14 ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)  
15 RONALD J. COX, ESQ. (NV Bar No. 12723)  
16 3333 E. Serene Avenue, Suite 200  
17 Henderson, Nevada 89074-6571  
18 Attorneys for Brahma Group, Inc.  
19  
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Dated this \_\_\_\_\_ day December 2018.

Submitted by:  
**PEEL BRIMLEY LLP**

Page 5 of 5

# **EXHIBIT A**

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

1 **ORDER**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 ERIC B. ZIMBELMAN, ESQ.  
5 Nevada Bar No. 9407  
6 RONALD J. COX, ESQ.  
7 Nevada Bar No. 12723  
8 **PEEL BRIMLEY LLP**  
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14 [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
15 [rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)  
16 Attorneys for Brahma Group, Inc.

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

12 TONOPAH SOLAR ENERGY, LLC, a Delaware  
13 limited liability company,

CASE NO. : CV 39348  
DEPT. NO. : 2

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

**STIPULATION REGARDING  
AMOUNT OF ADDITIONAL FEES  
AWARDED TO BRAHMA**

17 Defendant BRAHMA GROUP, INC. ("Brahma") and Plaintiff TONOPAH SOLAR  
18 ENERGY, LLC ("TSE") by and through their respective counsel stipulate and agree as follows:

19 **WHEREAS**, on October 29, 2018, the Court entered an Order Denying Tonopah Solar  
20 Energy, LLC's Motion to Expunge Brahma Group, Inc.'s Mechanic's Lien ("Underlying  
21 Order");

22 **WHEREAS**, Brahma thereafter filed a Motion for Order Granting Fees and Costs  
23 Pursuant to NRS 108.2275(6)(c) ("Fee Motion");

24 **WHEREAS**, at a hearing on December 11, 2018 the Court orally ruled that Brahma was  
25 entitled to an award of fees and costs of \$78,417.34 plus additional fees incurred for appearance  
26 of counsel at oral argument and preparation of the Order ("Additional Fees") and directed  
27 counsel for Brahma to submit a declaration in support of such Additional Fees; and

28 **WHEREAS**, the Parties have stipulated and agreed that the amount of the Additional

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HENDERSON, NEVADA 89074  
(702) 990-7272 + FAX (702) 990-7273

1 Fees shall be \$10,000.00 (Ten Thousand U.S. Dollars);

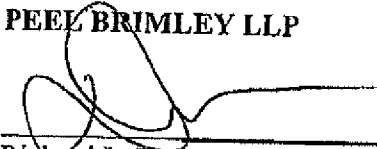
2 Now therefore,

3 **IT IS STIPULATED AND AGREED** that Brahma shall be awarded additional fees  
4 incurred for appearance of counsel at oral argument and preparation of the Order Granting  
5 Motion for Fees and Costs Pursuant to NRS 108.2275(6)(c) in the amount of \$10,000.00 (Ten  
6 Thousand U.S. Dollars) such that the total amount of fees and costs awarded to Brahma is and  
7 shall be a total of \$88,417.34 (Eighty Eight Thousand Four Hundred Seventeen U.S. Dollars and  
8 Thirty-Four Cents).

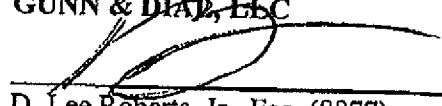
9 This stipulation is to the amount of additional fees in light of the court's ruling on  
10 entitlement. TSE reserves its right to appeal the decision on expungment and entitlement to fees.

11 IT IS SO STIPULATED this 27<sup>th</sup> day of December, 2018.

12  
13 **PEEL BRIMLEY LLP**

14   
15 Richard L. Peel, Esq. (4359)  
16 Eric B. Zimbelman, Esq. (9407)  
17 Cary B. Domina, Esq. (10567)  
18 3333 E. Serene Avenue, Suite 200  
19 Henderson, NV 89074-6571  
20 Telephone: (702) 990-7272  
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23 [cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)  
24 Attorneys for Defendant Brahma Group,  
25 Inc.

13 **WEINBERG, WHEELER, HUDGINS,  
14 GUNN & DIAP, LLC**

15   
16 D. Lee Roberts, Jr., Esq. (8877)  
17 Colby L. Balkenbush, Esq. (13066)  
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25 Attorneys for Plaintiff Tonopah Solar Energy,  
26 LLC

FEB 07 2019  
Nye County Clerk  
Deputy

1 D. Lee Roberts, Jr., Esq.  
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Colby L. Balkenbush, Esq.  
3 Nevada Bar No. 13066  
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4 Ryan T. Gormley, Esq.  
Nevada Bar No. 13494  
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6 GUNN & DIAL, LLC  
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7 Las Vegas, Nevada 89118  
Telephone: (702) 938-3838  
8 Facsimile: (702) 938-3864  
9 *Attorneys for Tonopah Solar Energy, LLC*

10  
11 **IN THE FIFTH JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
12 **IN AND FOR THE COUNTY OF NYE**

13 TONOPAH SOLAR ENERGY, LLC, a Delaware  
14 limited liability company,

15 Movant,

16 vs.

17 BRAHMA GROUP, INC., a Nevada corporation,

18 Respondent.

19 BRAHMA GROUP, INC., a Nevada corporation,

20 Counterclaimant,

21 vs.

22 TONOPAH SOLAR ENERGY LLC, a Delaware  
23 limited liability company; BOE BONDING  
24 COMPANIES I through X; DOES I through X;  
25 ROE CORPORATIONS I through X; and TOE  
TENANTS I through X, inclusive,

26 Counterdefendant.

27 BRAHMA GROUP, INC., a Nevada corporation,

28 Third-Party Plaintiff,

Case No. CV 39348  
*Consolidated with*  
Case No. CV 39799  
Dept. No. 2

**TSE'S CASE APPEAL STATEMENT**

WEINBERG WHEELER  
HUDGINS GUNN & DIAL





vs.

COBRA THERMOSOLAR PLANTS, INC., a  
Nevada corporation; AMERICAN HOME  
ASSURANCE COMPANY, a surety; BOE  
BONDING COMPANIES I through X; DOES I  
through X; ROE CORPORATIONS I through X,  
inclusive,

Third-Party Defendants.

H&E EQUIPMENT SERVICES, INC., a  
Delaware corporation,

Plaintiff-In-Intervention,

vs.

BRAHMA GROUP, INC., a Nevada corporation,  
TONOPAH SOLAR ENERGY LLC, a Delaware  
limited liability company, COBRA  
THERMOSOLAR PLANTS, INC., a Nevada  
corporation; AMERICAN HOME ASSURANCE  
COMPANY, a surety; BOE BONDING  
COMPANIES I through X; DOES I through X;  
ROE CORPORATIONS I through X, and TOE  
TENANTS I through X, inclusive,

Defendants-In-Intervention.

BRAHMA GROUP, INC., a Nevada corporation,

Plaintiff,

vs.

COBRA THERMOSOLAR PLANTS, INC., a  
Nevada corporation; AMERICAN HOME  
ASSURANCE COMPANY, a surety; BOE  
BONDING COMPANIES I through X; DOES I  
through X; ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Tonopah Solar Energy, LLC, by and through its undersigned counsel, hereby files this  
Case Appeal Statement.



1           **1. Name of appellant filing this case appeal statement:**

2           Tonopah Solar Energy, LLC ("TSE").

3           **2. Identify the judge issuing the decision, judgment, or order appealed from:**

4           The Honorable Steven P. Elliott, Senior Judge

5           **3. Identify each appellant and the name and address of counsel for each**  
6           **appellant:**

7           TSE is the sole appellant. TSE is represented by D. Lee Roberts, Jr., Esq., Colby L.  
8           Balkenbush, Esq., and Ryan T. Gormley, Esq. of Weinberg, Wheeler, Hudgins, Gunn & Dial,  
9           LLC, 6385 S. Rainbow Blvd., Suite 400, Las Vegas, Nevada 89118.

10          **4. Identify each respondent and the name and address of appellate counsel, if**  
11          **known, for each respondent:**

12          Brahma Group, Inc. ("Brahma") is the sole respondent. It is unknown if Brahma will  
13          retain separate appellate counsel. TSE anticipates that Brahma will be represented on appeal by  
14          its district court counsel Richard L. Peel, Esq., Eric B. Zimbelman, Esq., Cary B. Domina, Esq.,  
15          and Ronald J. Cox, Esq. of Peel Brimley, LLP, 3333 E. Serene Avenue, Suite 200, Henderson,  
16          Nevada 89074.

17          **5. Indicate whether any attorney identified above in response to question 3 or 4**  
18          **is not licensed to practice law in Nevada and, if so, whether the district court**  
19          **granted that attorney permission to appear under SCR 42.**

20          Upon information and belief, all attorneys identified above are licensed to practice law in  
21          Nevada.

22          **6. Indicate whether appellant was represented by appointed or retained counsel**  
23          **in the district court:**

24          TSE was and is represented by retained counsel in the district court.

25          **7. Indicate whether appellant is represented by appointed or retained counsel**  
26          **on appeal:**

27          TSE is represented by retained counsel on appeal.

28          ///





- 1           **8.       Indicate whether appellant was granted leave to proceed in forma pauperis,**  
2                           **and the date of entry of the district court order granting such leave:**

3           TSE was not granted leave to proceed in forma pauperis.

- 4           **9.       Indicate the date the proceedings commenced in the district court (e.g., date**  
5                           **complaint, indictment, information, or petition was filed):**

6           TSE filed its Motion to Expunge Brahma's Mechanic's Lien on June 11, 2018, which  
7           resulted in the opening of a special proceeding, case number CV 39348.

- 8           **10.     Provide a brief description of the nature of the action and result in the**  
9                           **district court, including the type of judgment or order being appealed and**  
10                          **the relief granted by the district court:**

11           TSE moved to expunge a mechanic's lien recorded by Brahma. The district court denied  
12           the motion to expunge. Brahma then moved for attorney fees and costs. The district court  
13           granted the motion for attorney fees and costs. TSE is appealing both the denial of its motion to  
14           expunge and the grant of Brahma's motion for attorney fees and costs.

- 15           **11.     Indicate whether the case has previously been the subject of an appeal to or**  
16                           **original writ proceeding in the Supreme Court and, if so, the caption and**  
17                          **Supreme Court docket number of the prior proceeding:**

18           This case has not previously been the subject of an appeal to or original writ proceeding  
19           in the Supreme Court of Nevada. TSE, however, anticipates filing a writ petition in the Supreme  
20           Court of Nevada in the near future.

- 21           **12.     Indicate whether this appeal involves child custody or visitation:**

22           This appeal does not involve child custody or visitation.

23           ///

24           ///

25           ///

26           ///

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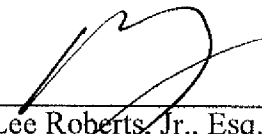


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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This appeal involves the possibility of settlement. In fact, the parties to this appeal are participating in a mediation on April 10, 2019.

DATED this 9<sup>th</sup> day of February 2019.

  
\_\_\_\_\_  
D. Lee Roberts, Jr., Esq.  
Colby L. Balkenbush, Esq.  
Ryan T. Gormley, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, NV 89118  
*Attorneys for Tonopah Solar Energy, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February 2019, a true and correct copy of the foregoing **TSE'S CASE APPEAL STATEMENT** was served by mailing a copy of the foregoing document via US Mail, to the following:

Richard L. Peel, Esq.  
Eric B. Zimbelman, Esq.  
Cary B. Domina, Esq.  
Ronald J. Cox, Esq.  
Peel Brimley, LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
*Attorneys for Brahma Group, Inc.*

Richard E. Haskin, Esq.  
Daniel M. Hansen, Esq.  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
*Attorneys for H&E Equipment Services, Inc.*

Geoffrey Crisp, Esq.  
Weil & Drage  
2500 Anthem Village Drive  
Henderson, NV 89052  
*Attorneys for Cobra Thermosolar Plants, Inc.*

Cynthia S. Bowman  
An employee of WEINBERG, WHEELER, HUDGINS  
GUNN & DIAL, LLC

Case #: CV-0039348

Judge: ELLIOTT, STEVEN P

Date Filed: 06/11/18 Department: 02

Case Type: RP OTH REAL PROP/OTHER TITLE TO PROP

Title/Caption: TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company,  
Plaintiff  
VS  
BRAHMA GROUP, INC., a Nevada Corp.  
Defendant

Comments: FILE IN PAHRUMP/SENIOR JUDGE ELLIOTT

<b>Defendant(s)</b> BRAHMA GROUP INC	<b>Attorney(s)</b> PEEL, RICHARD
<b>Defendant(s)</b> H&E EQUIPMENT SERVICES, INC.	<b>Attorney(s)</b> HANSEN, DANIEL M.
<b>Plaintiff(s)</b> TONOPAH SOLAR ENERGY LLC	<b>Attorney(s)</b> ROBERTS JR., D. LEE BALKENBUSH, COLBY L.

**Filings:**

Date	Pty	Filing	Fees
6/11/18	P	TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP INC.'S MECHANIC'S LIEN	245.00
7/02/18	C	STIPULATION AND ORDER TO CONTINUE HEARING DATE FOR TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANICS LIEN	
7/16/18	P	NOTICE OF HEARING OF TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN	
7/25/18	D	BRAHMA GROUP, INC.'S OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN	
7/31/18	P	TONOPAH SOLAR ENERGY, LLC'S REPLY TO BRAHMA GROUP, INC.'S OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN	
8/03/18	D	BRAHMA GROUP, INC.'S SUPPLEMENT TO ITS OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN	198.00
8/10/18	C	ORDER SETTING HEARING (9/12/18)	
8/14/18	C	ORDER OF REASSIGNMENT (SENIOR JUDGE ELLIOTT)	
8/15/18	P	TONOPAH SOLAR ENERGY, LLC'S ERRATA TO ITS REPLY TO BRAHMA GROUP, INC.'S OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANICS LIEN	
8/17/18	D	BRAHMA GROUP, INC.'S STATEMENT OF SUPPLEMENTAL AUTHORITIES IN SUPPORT OF ITS OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN	
9/07/18	P	TONOPAH SOLAR ENERGY, LLC'S RESPONSE TO BRAHMA GROUP, INC.'S STATEMENT OF SUPPLEMENTAL AUTHORITIES IN SUPPORT OF ITS OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE	

BRAHMA GROUP, INC.'S MECHANIC'S LIEN (HRG 9/12/18)

\*\*\*\*\* END OF FILE # 1 \*\*\*\*\*

9/21/18 D BRAHMA GROUP, INC.'S MECHANIC'S LIEN FORECLOSURE COMPLAINT  
9/21/18 D NOTICE OF FORECLOSURE  
9/21/18 D NOTICE OF LIS PENDENS  
9/21/18 D CERTIFICATE OF SERVICE  
9/21/18 D BRAHMA GROUP, INC.'S (I) PETITION TO EXCEPT TO THE  
SUFFICIENCY OF SURETY BOND; AND (II) PETITION TO  
COMPEL THE INCREASE OF THE AMOUNT OF THE SURETY  
BOND, OR ALTERNATIVELY, THE PROVISION OF ADDITIONAL  
SECURITY/ NOTICE OF PETITION (DATE TBD)  
9/25/18 D BRAHMA GROUP, INC.'S: (I) FIRST AMENDED COUNTER-COMPLAINT;  
AND (II) THIRD-PARTY COMPLAINT  
9/25/18 C SUMMONS (ISSUED) (COBRA THERMOSOLAR PLANTS, INC.)  
9/25/18 C SUMMONS (ISSUED) (AMERICAN HOME ASSURANCE COMPANY)  
9/25/18 D AMENDED CERTIFICATE OF SERVICE  
9/25/18 D RECEIPT OF COPY  
9/25/18 D RECEIPT OF COPY  
9/26/18 C SUMMONS ON FIRST AMENDED COUNTER-COMPLAINT (ISSUED -  
SOLAR ENERGY, LLC)  
9/26/18 C SUMMONS (2ND ISSUED - TONOPAH SOLAR ENERGY, LLC)  
9/26/18 C SUMMONS (2ND ISSUED - COBRA THERMOSOLAR PLANTS INC.)  
10/11/18 O CERTIFICATE OF SERVICE  
10/11/18 O AFFIDAVIT OF SERVICE TO BRAHMA GROUP, INC  
10/11/18 O AFFIDAVIT OF SERVICE TO H&E EQUIPMENT SERVICES, INC.  
10/11/18 D RECEIPT OF COPY  
10/11/18 D SUMMONS-SERVED (FRANCES GUTIERREZ)  
10/11/18 D SUMMONS-SERVED (GALINA HILLS)  
10/11/18 D SUMMONS-SERVED (COBRA THERMOSOLAR PLANTS)  
10/11/18 D RECEIPT OF COPY  
10/11/18 D AFFIDAVIT/DECLARATION OF SERVICE AMERICAN HOME ASSURANCE  
COMPANY  
10/11/18 D AFFIDAVIT/DECLARATION OF SERVICE TONOPAH SOLAR ENERGY, LLC  
10/11/18 D AFFIDAVIT/DECLARATION OF SERVICE - COBRA THERMOSOLAR  
PLANTS, INC  
10/11/18 D RECEIPT OF COPY  
10/11/18 C ORDER SETTING HEARING (11/02/18)  
10/18/18 P TONOPAH SOLAR ENERGY, LLC'S MOTION TO STRIKE BRAHMA GROUP,  
INC.'S FIRST AMENDED COUNTER-COMPLAINT, OR, IN THE  
ALTERNATIVE, MOTION TO DISMISS COUNTER-COMPLAINT, OR,  
IN THE ALTERNATIVE, MOTION TO STAY THIS ACTION UNTIL THE  
CONCLUSION OF THE PROCEEDINGS IN FEDERAL COURT  
10/19/18 D NOTICE OF VACATING HEARING AND WITHDRAWING (I) PETITION  
TO EXCEPT TO THE SUFFICIENCY OF SURETY BOND AND  
(II) PETITION TO COMPEL THE INCREASE OF THE AMOUNT OF  
THE SURETY BOND, OR ALTERNATIVELY, THE PROVISION OF  
ADDITIONAL SECURITY  
10/19/18 D BRAHMA GROUP, INC.'S MOTION FOR LEAVE TO AMEND ITS FIRST  
AMENDED COUNTERCOMPLAINT AND THIRD-PARTY COMPLAINT  
10/29/18 C ORDER DENYING TONOPAH SOLAR ENERGY, LLC'S MOTION TO  
EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN  
11/01/18 D NOTICE OF ENTRY OF ORDER  
11/01/18 D PROOF OF SERVICE (SUMMONS, FIRST AMENDED COUNTER-COMPLAINT;  
AND THIRD-PARTY COMPLAINT, & PETITION TO EXCEPT..-DEFENDANT  
AMERICAN HOME ASSURANCE COMPANY)  
11/01/18 D BRAHMA GROUP, INC.'S MOTION FOR ATTORNEY'S FEES AND COSTS  
PURSUANT TO NRS 108.2275(6) (C)

\*\*\*\*\* END OF FILE # 2 \*\*\*\*\*

11/05/18	P	TONOPAH SOLAR ENERGY, LLC'S OPPOSITION TO BRAHMA GROUP, INC.'S MOTION FOR LEAVE TO AMEND ITS FIRST AMENDED COUNTER-COMPLAINT AND THIRD-PARTY COMPLAINT	
11/05/18	D	BRAHMA GROUP, INC.'S OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO STRIKE, MOTION TO DISMISS OR MOTION FOR STAY	
11/05/18	D	AFFIDAVIT OF PUBLICATION	
11/05/18	D	RECEIPT OF COPY (ATTORNEYS FOR COBRA THERMOSOLAR PLANTS, INC - 1. BRAHMA GROUP, INC.'S MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 108.2275(6)(C); 2. NOTICE OF ENTRY OF ORDER DENYING TONOPAH'S MOTION TO EXPUNGE; AND PROOF OF SERVICE)	
11/05/18	D	RECEIPT OF COPY (ATTORNEY'S FOR COUNTER-DEFENDANT, TONOPAH SOLAR ENERGY, LLC - 1. BRAHMA GROUP, INC.'S MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 108.2275(6)(C); 2. NOTICE OF ENTRY OF ORDER DENYING TONOPAH'S MOTION TO EXPUNGE; AND 3. PROOF OF SERVICE)	
11/13/18	D	AFFIDAVIT/DECLARATION OF SERVICE COBRA THERMOSOLAR PLANTS, INC	
11/13/18	D	AFFIDAVIT/DECLARATION OF SERVICE AMERICAN HOME ASSURANCE COMPANY	
11/16/18	O	H&E EQUIPMENT SERVICES, INC. MOTION TO INTERVENE/NOTICE OF MOTION	198.00
11/26/18	P	TONOPAH SOLAR ENERGY, LLC'S OPPOSITION TO BRAHMA GROUP, INC.'S MOTION FOR ATTORNEY FEES AND COTS PURSUANT TO NRS 108.2275(6)(C) *****END OF FILE #3*****	
11/30/18	P	TONOPAH SOLAR ENERGY LLC'S REPLY TO BRAHMA GROUP INC'S OPPOSITION TO TONOPAH SOLAR ENERGY LLC'S MOTION TO STRIKE BRAHMA GROUP INC'S FIRST AMENDED COUNTER-COMPLAINT OR IN THE ALTERNATIVE MOTION TO DISMISS COUNTER-COMPLAINT OR IN THE ALTERNATIVE MOTION TO STAY THIS ACTION UNTIL THE CONCLUSION OF THE PROCEEDINGS IN FEDERAL COURT	
12/03/18	D	NOTICE OF HEARING	
12/03/18	D	AFFIDAVIT/DECLARATION OF SERVICE AMERICAN HOME ASSURANCE COMPANY	
12/03/18	D	AFFIDAVIT/DECLARATION OF SERVICE AMERICAN HOME ASSURANCE COMPANY (2ND DOC)	
12/03/18	D	BRAHMA GROUP INC'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO AMEND ITS FIRST AMENDED COUNTER-COMPLAINT AND THIRD PARTY COMPLAINT	
12/04/18	D	BRAHMA GROUP, INC.'S REPLY TO TONOPAH SOLAR ENERGY LLC'S OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 108.2275(6)(C)	
12/11/18	C	STIPULATION AND ORDER TO CONTINUE HEARING DATE FOR H&E EQUIPMENT SERVICES, INC.'S MOTION TO INTERVENE ONLY (HEARING 1/03/2019 10:00AM)	
12/14/18	D	AFFIDAVIT/DECLARATION OF SERVICE AMERICAN HOME ASSURANCE COMPANY	
12/14/18	D	AFFIDAVIT/DECLARATION OF SERVICE AMERICAN HOME ASSURANCE COMPANY	
12/17/18	D	BRAHMA GROUP, INC.'S MOTION TO CONSOLIDATE CASE NO. CV39799 WITH CASE NUMBER CV39348	
12/17/18	D	NOTICE OF HEARING(1/3/19)	
12/18/18	P	NOTICE OF HEARING OF H&E EQUIPMENT SERVICES INC.'S MOTION TO INTERVENE (HEARING 1/03/2019 10:00 AM)	
12/20/18	C	ORDER RE-SETTING HEARING (1/3/19 @ 10AM TO 1/24/19 @ 9AM)	

12/28/18 D STIPULATION REGARDING AMOUNT OF ADDITIONAL FEES AWARDED  
TO BRAHMA (TOTAL OF \$88,417.34)

1/04/19 D RECEIPT OF COPY (MOTION TO CONSOLIDATE AND NOTICE OF HEARING  
TO WEIL & DRAGE - 12/21/18)

1/04/19 D RECEIPT OF COPY (MOTION TO CONSOLIDATE AND NOTICE OF HEARING  
TO WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC - 12/21/18)

1/04/19 D AFFIDAVIT/DECLARATION OF SERVICE - WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC, D. LEE ROBERTS, JR., ESQ.,  
COLBY L. BALKENBUSH, ESQ., ATTORNEYS FOR DEFENDANT  
TONOPAH SOLAR ENERGY, LLC (12/21/18)

1/04/19 D AFFIDAVIT/DECLARATION OF SERVICE - WEIL & DRAGE, GEOFFREY  
CRISP, ESQ., ATTORNEYS FOR COBRA THERMOSOLAR PLANTS, INC.  
(12/21/18)

1/07/19 P TSE'S OPPOSITION OT BRAHMA'S MOTION TO CONSOLIDATE CASE NO.  
CV 39799 WITH CASE NO. CV 39348

1/08/19 C ORDER GRANTING BRAHMA'S MOTION FOR ATTORNEY'S FEES AND COSTS  
PURSUANT TO NRS 108.2275(6)(C)

1/09/19 D NOTICE OF ENTRY OF ORDER(ORDER GRANTING BRAHMA'S MOTION FOR  
ATTORNEY'S FEES AND COSTS)

1/14/19 D BRAHMA GROUP, INC.'S REPLY TO TONOPAH SOLAR ENERGY, LLC'S  
OPPOSITION TO MOTION TO CONSOLIDATE CASE NO. CV 39799 WITH  
CASE NO. CV 39348 (HEARING 01/24/19)

1/14/19 P TSE'S OPPOSITION TO H& E EQUIPMENT SERVICES, INC.'S MOTION T  
TO INTERVENE (HEARING 1/24/2019 9:00 AM)

1/22/19 P H&E EQUIPMENT SERVICES, INC. REPLY IN SUPPORT OF MOTION TO  
INTERVENE

1/24/19 C ORDER:DENYING TONOPAH SOLAR ENERGY,LLC'S MOTION TO STRIKE  
AND DISMISS;AND GRANTING IN PART TONOPAH SOLAR ENERGY LLC'S  
MOTION FOR STAY; GRANTING BRAHMA GROUP, INC'S MOTION TO  
AMEND

1/28/19 D NOTICE OF ENTRY OF ORDER (1) DENYING TONOPAH SOLAR ENERGY,  
LLC'S MOTION TO STRIKE AND DISMISS; AND (II) GRANTING  
IN PART TONOPAH SOLAR ENERGY, LLC'S MOTION FOR STAY,  
(III) GRANTING BRAHMA GROUP, INC'S MOTION TO AMEND

1/30/19 C ORDER ON H&E EQUIPMENT SERVICES, INC.'S MOTION TO INTERVENE

FILED  
FIFTH JUDICIAL DISTRICT

JAN 08 2019

Nye County Clerk  
Deputy

1 **ORDR**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 ERIC B. ZIMBELMAN, ESQ.  
5 Nevada Bar No. 9407  
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Attorneys for Brahma Group, Inc.

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

11 TONOPAH SOLAR ENERGY, LLC, a Delaware  
12 limited liability company,

13 Plaintiff,

14 vs.

15 BRAHMA GROUP, INC., a Nevada corporation,

16 Defendant.

CASE NO. : CV 39348  
DEPT. NO. : 2

**ORDER GRANTING BRAHMA'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS PURSUANT TO NRS  
108.2275(6)(C)**

17 This matter came on for hearing December 11, 2018 (the "Hearing") before the  
18 Honorable Senior Judge Steven Elliott on the Motion For Attorney's Fees And Costs Pursuant To  
19 NRS 108.2275(6)(c) ("Fee Motion") filed by BRAHMA GROUP, INC. ("Brahma"). Eric B.  
20 Zimbelman, Esq. of PEEL BRIMLEY LLP appeared on behalf of Brahma. D. Lee Roberts,  
21 Esq. of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC appeared on behalf of  
22 Plaintiff TONOPAH SOLAR ENERGY, LLC ("TSE").

23 The Court having considered all the pleadings and papers on file, and having heard  
24 argument of counsel, hereby ORDERS as follows, having rendered its oral decision from the  
25 bench on December 11, 2018:

26 **I. STATUTORY BASIS FOR AWARD OF FEES AND COSTS.**

27 On October 17, 2018, this Court signed an Order<sup>1</sup> Denying TSE's Motion to Expunge  
28

<sup>1</sup> The Order Denying the Underlying Motion was entered by the Clerk on October 29, 2018.



1 Brahma's mechanic's lien pursuant to NRS 108.2275 ("Underlying Motion"). As part of the  
2 Order Denying the Underlying Motion, the Court concluded that Brahma's Notice of Lien is  
3 not frivolous nor was it made without reasonable cause. NRS 108.2275(6)(c) states in relevant  
4 part:

5 (6) If, after a hearing on the matter, the court determines that:

6 \*\*\*

7 (c) The notice of lien is *not frivolous* and was made *with reasonable*  
8 *cause*...the court *shall* make an order awarding costs and reasonable  
9 attorney's fees to the lien claimant for defending the motion.

10 Accordingly, once the Court determines that a lien is not frivolous or excessive and  
11 made with reasonable cause, an award of attorneys' fees is mandatory. In Nevada, the method  
12 upon which a reasonable fee is determined is subject to the discretion of the court, which is  
13 tempered only by reason and fairness. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,  
14 864-65, 124 P.3d 530, 548-49 (2005).

## 15 II. BRAHMA'S APPLICATION FOR AWARD OF FEES AND COSTS.

16 Pursuant to NRS 108.2275(6)(c), Brahma applied to the Court by way of the Fee  
17 Motion for an award of \$77,937.50 in attorney's fees and \$479.84 in costs plus additional  
18 sums, discussed below, for work performed on the Reply, at oral argument on the Fee Motion  
19 and in preparation of this Order. In support of its Fee Motion, Brahma submitted the  
20 Declaration of Richard L. Peel, Esq. and supporting documentation including invoicing and  
21 time records relating to Peel Brimley LLP's work performed on Brahma's behalf in defending  
22 the Underlying Motion. Brahma's motion addressed the factors identified in *Brunzell v.*  
23 *Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969) that the District Court is  
24 required to consider in reviewing any application for reasonable attorney's fees ("the *Brunzell*  
25 Factors"). See *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d  
26 730, 736 (2008).<sup>2</sup>

27 <sup>2</sup> The *Brunzell* factors are:

- 28 1) The advocate's qualities, including ability, training, education, experience, professional standing, and skill;
- 2) The character of the work, including its difficulty, intricacy, importance, as well as the time and skill required, the responsibility imposed, and the prominence and character of the parties when affecting the importance of the litigation;
- 3) The work performed, including the skill, time, and attention given to the work; and

1 TSE opposed the Fee Motion on multiple grounds and asserted that the fees requested  
2 were excessive for work performed in response to a “single motion.” [TSE Opposition p. 2].  
3 Among other things, TSE contends that (i) PB’s rates are higher than the “prevailing rate,” (ii)  
4 PB engaged in “block billing,” and (iii) PB “overstaffed” the work on the Underlying Motion  
5 and its invoices contain duplicative work or billings. On Reply, Brahma argued, among other  
6 things, that (i) the Underlying Motion was an existential threat to Brahma’s lien rights – its sole  
7 source of security<sup>3</sup> for the \$12,859,577.74 Brahma claims to be owed for its work on TSE’s  
8 Crescent Dunes Solar Energy Project (the “Project”),<sup>4</sup> (ii) involved multiple complex issues,  
9 and (iii) the work successfully performed by Brahma’s attorneys was reasonable and necessary  
10 under the circumstances.

11 Having received and reviewed the Fee Motion, TSE’s Opposition, Brahma’s Reply,  
12 having heard and considered oral argument counsel at hearing on December 11, 2018, and  
13 having considered the *Brunzell* Factors, the Court makes the following findings and  
14 conclusions:

15 **III. FINDINGS.**

16 In general, and while the attorney hours expended and resulting amount sought by way of  
17 the Fee Motion are substantial, the hour and amounts are reasonable and not excessive in light  
18 of (i) the size and importance of Brahma’s lien, (ii) the complex and varied issues presented to  
19 the Court, (iii) the high quality counsel on both sides of the case, (iv) higher quality work  
20 product than seen in ordinary cases and (v) the clients’ reasonable expectations for superior  
21 intellectual ability and work product on both sides. In addition, the Court is satisfied that the  
22 rates charged by Brahma’s counsel, including associate and partner rates, are reasonable and  
23 justified.

24  
25 4) The result—whether the attorney was successful and what benefits were derived.  
See *Brunzell*, 85 Nev. at 349; *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. at 829.

26 <sup>3</sup> A mechanic’s lien is a statutory creature established to help ensure payment of work, materials and/or equipment  
provided for the construction or improvements on real property (*In re Fontainebleau Las Vegas Holdings*, 289 p.3D  
1199, 1210 (Nev. 2012)).

27 <sup>4</sup> Underlying Nevada’s public policy of securing payment to contractors by way of mechanics’ liens is that  
28 “contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time,  
labor, and materials into a project; and have any number of workers vitally depend upon them for eventual payment.”  
*Id.*

As to the *Brunzell* Factors, the Court finds, without limitation, as follows:

1. Advocate's Qualities: Brahma's counsel are highly experienced, knowledgeable and competent, especially relating to the Nevada Mechanics' Lien Statute and construction law;
2. Character of the Work: Brahma's lien claim of nearly \$13 million is substantial and the Underlying Motion presented big stakes. In addition, the Court enjoyed the benefit of high-quality briefing and argument on atypical, challenging and varied subject matter;
3. The Work Performed: The Underlying Motion presented the Court with a lot to consider; and
4. The Result: The arguments presented by Brahma's attorneys were persuasive to the Court and the Court ruled in favor of Brahma on the Underlying Motion.

### III. CONCLUSION.

Based on the foregoing, and having considered the *Brunzell* Factors, the Court concludes that the time expended and amounts incurred by Brahma's counsel in defending the Underlying Motion were reasonable and appropriate and, pursuant to NRS 108.2275(6)(c), Brahma is awarded reasonable attorneys fees and costs as follows:

1. As presented by way of the Declaration of Richard L. Peel, Esq., for fees and costs incurred in defending the Underlying Motion and submitting the Fee Motion the sum of \$78,417.34; and

2. As agreed by the parties by a separate Stipulation attached hereto as Exhibit A, for fees incurred in preparing Brahma's Reply to TSE's Opposition to the Fee Motion, for appearance of counsel at oral argument and preparation of this Order, the additional sum of \$10,000.00.

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PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

NOW THEREFORE, IT IS HEREBY ORDERED that Brahma's Motion For Attorney's Fees And Costs Pursuant To NRS 108.2275(6)(c) is **GRANTED** and Brahma is awarded the sum of \$88,417.34 which shall be due and payable by TSE within ten (10) days of a notice of entry of this order being filed.

Dated this 31 day December 2018.

  
Senior Judge Steven Elliott

Submitted by:  
**PEEL BRIMLEY LLP**

  
RICHARD L. PEEL, ESQ. (NV Bar No. 4359)  
ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)  
RONALD J. COX, ESQ. (NV Bar No. 12723)  
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Dated this \_\_\_\_\_ day December 2018.

**Senior Judge Steven Elliott**

**PEEL BRIMLEY LLP**

RICHARD L. PEEL, ESQ. (NV Bar No. 4359)  
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Henderson, Nevada 89074-6571  
*Attorneys for Brahma Group, Inc.*

# **EXHIBIT A**

**ORDR**

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*Attorneys for Brahma Group, Inc.*

**FIFTH JUDICIAL DISTRICT COURT**

**NYE COUNTY, NEVADA**

TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company,

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

CASE NO. : CV 39348

DEPT. NO. : 2

**STIPULATION REGARDING  
AMOUNT OF ADDITIONAL FEES  
AWARDED TO BRAHMA**

Defendant BRAHMA GROUP, INC. ("Brahma") and Plaintiff TONOPAH SOLAR ENERGY, LLC ("TSE") by and through their respective counsel stipulate and agree as follows:

**WHEREAS**, on October 29, 2018, the Court entered an Order Denying Tonopah Solar Energy, LLC's Motion to Expunge Brahma Group, Inc.'s Mechanic's Lien ("Underlying Order");

**WHEREAS**, Brahma thereafter filed a Motion for Order Granting Fees and Costs Pursuant to NRS 108.2275(6)(c) ("Fee Motion");

**WHEREAS**, at a hearing on December 11, 2018 the Court orally ruled that Brahma was entitled to an award of fees and costs of \$78,417.34 plus additional fees incurred for appearance of counsel at oral argument and preparation of the Order ("Additional Fees") and directed counsel for Brahma to submit a declaration in support of such Additional Fees; and

**WHEREAS**, the Parties have stipulated and agreed that the amount of the Additional

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HENDERSON, NEVADA 89074  
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1 Fees shall be \$10,000.00 (Ten Thousand U.S. Dollars);

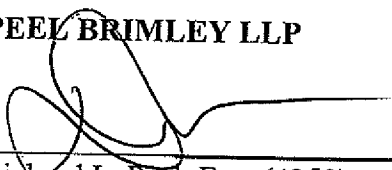
2 Now therefore,

3 **IT IS STIPULATED AND AGREED** that Brahma shall be awarded additional fees  
4 incurred for appearance of counsel at oral argument and preparation of the Order Granting  
5 Motion for Fees and Costs Pursuant to NRS 108.2275(6)(c) in the amount of \$10,000.00 (Ten  
6 Thousand U.S. Dollars) such that the total amount of fees and costs awarded to Brahma is and  
7 shall be a total of **\$88,417.34** (Eighty Eight Thousand Four Hundred Seventeen U.S. Dollars and  
8 Thirty-Four Cents).

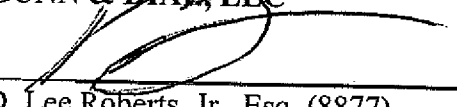
9 This stipulation is to the amount of additional fees in light of the court's ruling on  
10 entitlement. TSE reserves its right to appeal the decision on expungment and entitlement to fees.

11 IT IS SO STIPULATED this 27<sup>th</sup> day of December, 2018.

12  
13 **PEEL BRIMLEY LLP**

14   
15 Richard L. Peel, Esq. (4359)  
16 Eric B. Zimbelman, Esq. (9407)  
17 Cary B. Domina, Esq. (10567)  
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20 *Attorneys for Defendant Brahma Group,*  
21 *Inc.*

**WEINBERG, WHEELER, HUDGINS,  
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*LLC*




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1  
2       **NOW THEREFORE, IT IS HEREBY ORDERED** that Brahma's Motion For  
3 Attorney's Fees And Costs Pursuant To NRS 108.2275(6)(c) is **GRANTED** and Brahma is  
4 awarded the sum of \$88,417.34 which shall be due and payable by TSE within ten (10) days of  
5 a notice of entry of this order being filed.

6       Dated this 31 day December 2018.

7  
8         
9       Senior Judge Steven Elliott

10       Submitted by:  
11       **PEEL BRIMLEY LLP**

12         
13       RICHARD L. PEEL, ESQ. (NV Bar No. 4359)  
14       ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)  
15       RONALD J. COX, ESQ. (NV Bar No. 12723)  
16       3333 E. Serene Avenue, Suite 200  
17       Henderson, Nevada 89074-6571  
18       Attorneys for Brahma Group, Inc.

## **CERTIFICATION OF COPY**

**STATE OF NEVADA  
COUNTY OF NYE**

I, **SANDRA L. MERLINO**, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

**Documents Filed and of record in CV39348:** Case Appeal Statement, filed 02/07/2019; Notice of Appeal filed 02/07/2019; District Court Docket entries; Court Order filed 01/08/2019; and District Court Minutes.

<b>TONOPAH SOLAR ENERGY,</b>	)	
Appellant,	)	
	)	
<b>VS</b>	)	
	)	
<b>BRAHMA GROUP, INC.,</b>	)	<b>DC Case # CV39348</b>
	)	
Respondent.	)	
_____	)	

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto set my hand and affixed The Seal of the Court at my office, Pahrump, Nevada, this 7 day of February, 2019.

**SANDRA L. MERLINO  
CLERK OF THE COURT**

By:   
Veronica Aguilar, Deputy Clerk

Case #: CV-0039348

Judge: ELLIOTT, STEVEN P

Date Filed: 06/11/18 Department: 02

Case Type: RP OTH REAL PROP/OTHER TITLE TO PROP

Title/Caption: TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company,  
Plaintiff  
VS  
BRAHMA GROUP, INC., a Nevada Corp.  
Defendant

Comments: FILE IN PAHRUMP/SENIOR JUDGE ELLIOTT

Defendant(s)  
BRAHMA GROUP INC

Attorney(s)  
PEEL, RICHARD

Defendant(s)  
H&E EQUIPMENT SERVICES, INC.

Attorney(s)  
HANSEN, DANIEL M.

Plaintiff(s)  
TONOPAH SOLAR ENERGY LLC

Attorney(s)  
ROBERTS JR., D. LEE  
BALKENBUSH, COLBY L.

Hearings:

Date	Time	Hearing	Reference
8/06/18	9:00	MOTION TO EXPUNGE MECHANICS LIEN	7/23ORDER

JUDGE: ROBERT W. LANE; CLERK: VERONICA AG UILAR; BAILIFF: JAMELE TAYLOR; APP: D. LEE ROBERTS, ESQ., IS PRESENT ON BEHALF OF PLAINTIFF, TONOPAH SOLAR ENERGY; RICHARD PEEL, ESQ., AND RONNIE COX, ESQ., ARE PRESENT WITH DAVID ZIMMERMAN. MR. ROBERTS ADDRESSES THE RECUSAL FROM DEPARTMENT 1; STATES HE IS READY TO PROCEED. THE COURT STATES HE IS INCLINED TO TRANSFER THE MATTER TO SENIOR JUDGE ELLIOT SINCE HE IS AWARE OF THE MATTER AND EXPLAINS HE WILL NOTIFY COUNSELS IF THE CASE IS TRANSFERRED.

9/12/18 1:15 MOTION HEARING  
SENIOR JUDGE: STEVEN ELLIOTT  
CLERK: SARAH WESTFALL  
BAILIFF: JAMELE TAYLOR  
APPS: D. LEE ROBERTS JR. & COLBY L. BALKENBUSH PRESENT ON BEHALF OF PLAINTIFF; RICHARD L. PEEL, ERIC B. ZIMBELMAN, & RONNIE J. COX PRESENT ON BEHALF OF DEFENDANT, WITH CLIENT REPRESENTATIVE DAVID ZIMMERMAN.  
COURT CALLS THE MATTER; CALENDARERD TODAY ON PLAINTIFF, TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN. COURT INFORMS COUNSEL HE HAS REVIEWED THE PLEADINGS ON FILE IN RELATION TO THE INSTANT MOTION AND HANDS THE MATTER OVER TO COUNSEL FOR ARGUMENT. MR. ROBERTS PRESENTS ARGUMENT IN SUPPORT OF PLAINTIFF'S MOTION AND SUBMITS FOR THE COURT'S REVIEW CASE LAW CONCERNING BURDEN OF PROOF. MR. ZIMBELMAN RESPONDS AND PRESENTS ARGUMENT IN OPPOSITION OF PLAINTIFF'S MOTION. COURT RAISES QUESTIONS WITH REGARD TO ANOTHER CASE, NUMBER CV39237. MR. PEEL ADDRESSES THE COURT REGARDING CV39237 AND NOTES IT WAS DISMISSED VOLUNTARILY WITHOUT PREJUDICE BY HIS CLIENT DUE TO PROVISIONS WITHIN THE CONTRACT BETWEEN THE PARTIES. MR. ZIMBELMAN CONTINUES WITH OPPOSING ARGUMENT AND SUBMITS TO THE COURT. COURT TAKES A BRIEF RECESS. COURT RETURNS TO SESSION. MR.

ZIMBELMAN ADDRESSES THE COURT'S CONCERNS WITH REGARD TO BRAHMA GROUP, INC.'S LIEN. MR. PEEL INTERJECTS, REVIEWS STATUTES PERTAINING TO LIENS AND PRESENTS ARGUMENT SUPPORTING BRAHMA GROUP, INC.'S LIEN. MR. ROBERTS PRESENTS REBUTTAL ARGUMENT. MR. PEEL PROCEEDS WITH SOME FINAL POINTS. MR. ROBERTS RESPONDS AND MOVES TO STRIKE MR. PEEL'S COMMENTS AS TO THE ORIGINAL INTENT AT THE TIME THE LIEN WAS FILED. COURT RULES AGAINST TONOPAH SOLAR ENERGY, LLC AND FINDS THE LIEN STANDS. COURT OUTLINES HIS CONCLUSIONS FOR COUNSEL. COURT ORDERS PLAINTIFF, TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN DENIED. MR. PEEL IS TO PREPARE THE ORDER FROM TODAY'S HEARING AND RUN BY OPPOSING COUNSEL FOR REVIEW PRIOR TO SUBMISSION. COURT IS ADJOURNED.

10:00 MOTION HEARING  
12/11/18 10:00 MOTION TO STRIKE .. (TSE)

11/2/18GERIE  
GERIE

JUDGE:STEVEN P ELLIOTT

CLERK:DEBRA BENNETT;COURT REPORTER:DEBBIE HINES

BAILIFF:JAMELE TAYLOR

APPEAR:RICHARD PEEL;ERIC B. ZIMBELMAN AND CARY DOMINA PRESENT ON BEHALF OF BRAHMA GROUP INC.; D.LEE ROBERTS JR AND RYAN GORMLEY PRESENT ON BEHALF OF TONOPAH SOLAR ENERGY LLC;DANIEL M HANSEN PRESENT ON BEHALF OF H&E EQUIPMENT SERVICES, INC. ATTORNEY JEREMY KILBER FROM WEIL & DRAGE PRESENT ON BEHALF OF COBRA.COURT OPENS ADDRESSING MOTIONS AND BEGINNING WITH H&E EQUIPMENTS MOTION TO INTERVENE.PARTIES HAVE STIPULATED TO CONTINUE HEARING DATE ON H&E EQUIPMENTS MOTION TO INTERVENE.COURT STATES STIP AND ORDER HAS BEEN SIGNED TODAY SO THAT CAN BE MOVED ON.MR ZIMBELMAN ON BEHALF OF BRAHMA GROUP INC PRESENTS THE MOTION ADDRESSING ATTORNEYS FEES THAT THEY ARE REQUESTING.MR ROBERTS ON BEHALF OF TONOPAH SOLAR ARGUES THAT THE RATES ARE TOO HIGH AND OBJECTS TO THE BLOCK BILLING USED BY BRAHMA AS LACKING IN TRANSPARENCY.COURT PRESENTS VIEW THAT ULTIMATELY BRAHMA IS JUSTIFIED AND RULES IN FAVOR OF BRAHMAS MOTION AND GRANTS THE MOTION FOR ATTORNEYS FEES AND COSTS.COURT STATES MR ZIMBELMAN CAN SUBMIT SOMETHING IN WRITING TO ADDRESS ADDITONAL FEES AND COSTS TO COVER TODAYS HEARING. MR ZIMBELMAN STATES IF THE COURT COULD MAKE AN AWARD UP THROUGH THE AMOUNT SUBMITTED INITIALLY AND THEN HE COULD PREPARE A SUPPLEMENTAL DECLARATION, RUN IT BY MR ROBERTS. MR ROBERTS AGREES TO STIP TO THIS.COURT MOVES TO TAKE A SHORT RECESS.COURT BACK IN SESSION.COURT ADDRESSES NEXT MOTION, TONOPAH SOLARS MOTION TO STRIKE, DISMISS OR STAY. MR ROBERTS PRESENTS HIS ARGUMENT FOR EACH MOTION AND THE FEDERAL COURTS JURISDICTION ON THIS CASE. MR ROBERTS STATES IF THE COURT WILL NOT STRIKE OR DISMISS THEN HE WOULD REQUEST A STAY UNTIL THE FEDERAL COURT HAS RULED OR WEIGHED IN ON THE CASE BEFORE THEM. THIS CASE AT FEDERAL COURT HAS JURISDICTION AND MR ROBERTS BELEIVES THEY WILL PROCEED WITH THIS CASE.FEDERAL COURT SHOULD TAKE PRECEDENCE OVER THE STATE.COURT ADDRESSES MR ROBERTS AS TO FEDERAL COURTS OBLIGATION TO TAKE THIS CASE.MR ROBERTS STATES JURISDICTION IS DIVESTED. A REMAND HAS NOT BEEN REQUESTED.COURT STATES IT IS NOT A SURE THING. MR. ROBERTS ARGUES THIS IS WHY THEY ARE REQUESTING THE COURT GRANT ITS MOTION FOR A STAY UNTIL THEY HEAR BACK ON WHAT FEDERAL COURT DECIDES TO DO WITH THIS CASE. MR. ROBERTS CONCLUDES HIS ARGUMENT.MR DOMINA ON BEHALF OF BRAHMA GROUP BEGINS HIS REBUTTAL.MR DOMINA STATES TONOPAH SOLAR IS TRYING TO DRAG OUT THE CASE IN FEDERAL COURT TO DELAY PAYING BRAHMA GROUP WHILE AT THE SAME TIME COLLECTING INTEREST ON THIS MONEY. MR DOMINA ARGUES THAT THE FEDERAL COURT HAS LIMITED JURISDICTION AND CAN ONLY HEAR CASES WHERE IT HAS SPECIFIC STATUTORY AUTHORIZATION TO DO SO. ONE EXAMPLE IS DIVERSITY. THIS COURT IS A COURT OF GENERAL JURISDICTION. MR DOMINA STATES HIS CONCERNS WITH THE BOND CLAIMS AND FEDERAL COURT NOT BEING ABLE TO AWARD THE ATTORNEYS FEES AND COSTS IF THE BOND CLAIM HAS A STAY WITH THIS COURT IN NYE COUNTY. COURT ADDRESSES MR DOMINA AS TO THE CLAIM BOND BEING FILED WITH THE FEDERAL

COURT. MR DOMINA STATES IT WAS NOT FILED IN CLARK COUNTY AND WILL PROCEED TO CLARIFY THIS ISSUE. MR DOMINA CONTINUES TO STATE HIS REASONS FOR THE CASE TO BE HEARD HERE IN NYE COUNTY. COURT STATES THAT TONOPAH SOLAR HAS THE RIGHT TO TAKE THIS UP TO FEDERAL COURT IF THEY ARE WITHIN THE LAW AND YOU MIGHT LOOK AT THIS AS DENY, DELAY, DONT PAY BUT UNFORTUNATELY IT IS NOT WHAT IS THE RIGHT THING TO DO BUT WHAT IS THE LAWFUL THING TO DO. MR DOMINA CONTINUES TO ARGUE AND FEELS THAT FEDERAL COURT WILL DISMISS THE CASE AND IT WILL BE ABLE TO CONTINUE ON IN NYE COUNTY. COURT BREAKS FOR LUNCH. COURT BACK IN SESSION. MR ZIMBELMAN ON BEHALF OF BRAHMA GROUP COVERS THE CLAIMS IN FEDERAL COURT AND THE CLAIMS IN DISTRICT COURT NYE COUNTY. MR ZIMBELMAN IS REQUESTING THE BOND CLAIM TO PROCEED IN DISTRICT COURT ALLOW THEM TO AMEND THEIR COMPLAINT. MR ROBERTS ADDRESSES THE DENY, DELAY, DONT PAY. TONOPAH SOLARS POSITION IS THAT BRAHMA HAS REFUSED TO GIVE THEM BACKUP INVOICES THEY REQUESTED AFTER IT WAS BROUGHT TO THEIR ATTENTION THEY HAD BEEN OVERPAYING. MR ROBERTS STATES THAT THEY ARE NOT THE ONES TRYING TO DELAY THIS CASE. MR ROBERTS CONTINUES TO ARGUE THE FORUM SHOPPING ISSUE AND THE FILING OF BRAHMAS ROGUE DOCUMENT (COUNTER-COMPLAINT). COURT MAINTAINS THE DOCUMENT IS CONSIDERED A VALID DOCUMENT AND FILING. COURT ADDRESSES ALL PARTIES AND STATES IT IS DENYING TONOPAH SOLARS MOTION TO STRIKE AND DISMISS; WILL STAY THE THREE CAUSES OF ACTION, WAIT AND SEE WHAT FEDERAL COURT WILL DO. COURT ADDRESSES THE ACTION AGAINST THE BOND NOT FORECLOSURE, IF BRAHMA CAN GET SATISFACTION FROM THE BOND THEN THE OTHER PART IS MOOT. COURT STATES MR PEEL IS TO PREPARE THE ORDER. MR PEEL CLARIFIES AND OUTLINES THE DETAILS THAT WILL MAKE UP THE ORDER. MR ROBERTS TAKES EXCEPTION TO COURTS RULING BUT HAVING SAID THAT, WHAT HAS BEEN PROPOSED BY MR PEEL IS AS GOOD AS ANYTHING I COULD COME UP WITH TO IMPLEMENT THE COURTS ORDER. COURT ACCEPTS THE ARGUMENT PRESENTED BY MR ROBERTS BUT DOES NOT APPROVE OF IT. COURT UNDERSTANDS THAT HE HAS THAT POSITION. JEREMY KILBER ON BEHALF OF COBRA, REQUESTS CLARIFICATION ON WHEN TO FILE ANSWER. MR ZIMBELMAN STATES HE SHOULD FILE HIS ANSWER AFTER BRAHMA GROUP HAS FILED THE AMENDED COMPLAINT. COURT SETS A HEARING DATE FOR H & E EQUIPMENT SERVICES MOTION TO INTERVENE FOR JANUARY 3RD 2019 AT 10AM. MR. PEEL IS TO PREPARE THE ORDER. TRANSCRIPTS FOR THIS HEARING WILL BE PREPARED AND FILED BY COURT REPORTER DEBBIE HINES. COURT IS ADJOURNED.

12/11/18 10:00 MOTION FOR LEAVE TO AMEND .. (BRAHMA) GERIE  
SEE MINUTES ABOVE

12/11/18 10:00 MOTION FOR ATTORNEY'S FEES .. (BRAHMA) GERIE  
SEE MINUTES ABOVE

12/11/18 10:00 MOTION TO INTERVENE PENDING HEARING DATE GERIE  
SEE MINUTES ABOVE

1/24/19 9:00 MOTION TO INTERVENE 1/3 ORD

JUDGE: STEPHEN ELLIOT

CLERK: DEBRA BENNETT; COURT REPORTER: DEBBIE HINES

BAILIFF: JAMELE TAYLOR

APPEAR: ERIC ZIMBELMAN PRESENT ON BEHALF OF BRAHMA; DANIEL HANSEN PRESENT ON BEHALF OF H & E.

COLBY BALKENBUSH PRESENT ON BEHALF OF TONOPAH SOLAR.

COURT ADDRESSES ALL PARTIES. MR ZIMBELMAN PRESENTS ARGUMENT IN SUPPORT OF HIS MOTION TO CONSOLIDATE.

CV 39799 INTO CV 39348 MAKES LOGICAL AND JUDICIAL SENSE TO CONSOLIDATE.

MR BALKENBUSH PRESENTS CASE OPPOSING MOTION TO CONSOLIDATE. THE IDENTICAL CLAIMS; 2 SEPARATE ACTIONS; AGAINST RULE 15 AND CLAIM SPLITTING. TSE WANTS EVERYTHING MOVED TO FEDERAL COURT. DENY MOTION AND DISMISS

REDUNDANT IDENTICAL CLAIM THAT HAS BEEN FILED. MR ZIMBELMAN PRESENTS REBUTTAL ARGUMENT; REQUESTS CASES BE HEARD IN TOTAL ALL CONSOLIDATED; HEARD TOGETHER IN EITHER JURISDICTION. COURT DOES NOT FEEL THERE IS A VIOLATION OF RULE 15. COURT GRANTS MOTION TO CONSOLIDATE. COURT ADDRESSES THE PROPOSED ORDER AND PROBLEMS WITH SOME OF THE WORDING; CHANGES TO SOME OF THE VERBAGE USED. MR BALKENBUSH AGREES WITH THE COURTS VIEWS ON THE PROPOSED ORDER. MR ZIMBLEMAN EXPLAINS THE REASONING BEHIND THE PROPOSED ORDER AND HOW IT WAS WORDED. COURT REFERS TO LEON MEAD AND HIS TREATISE. COURT WILL DELINEATE AND SIGN ORDER. BOTH ATTORNEYS AGREE WITH THE COURT. MR HANSEN PRESENTS HIS ARGUMENT ON HIS MOTION TO INTERVENE AND JOIN THIS CASE ON BREACH OF FORECLOSURE.

MR ZIMBLEMAN PRESENTS ARGUMENT ON SEPARATE LIEN ACTIONS. MR BALKENBUSH OPPOSES THE MOTION TO INTERVENE. COURT FINDS GOOD CAUSE ON MOTION TO INTERVENE AND GRANTS H & E'S MOTION TO INTERVENE. H & E WILL SUBMIT COMPLAINT AND ORDER. NOTHING FURTHER. COURT IS ADJOURNED. DEBBIE HINES WILL PREPARE AND FILE TRANSCRIPTS FOR THIS HEARING.

1/24/19 9:00 MOTION TO CONSOLIDATE CASE  
SEE MINUTES ABOVE

1/3 ORD

**OFFICE OF THE NYE COUNTY CLERK  
SANDRA L. MERLINO**

**Tonopah Office**  
Nye County Courthouse  
P.O. Box 1031  
101 Radar Road  
Tonopah, Nevada 89049  
Phone (775) 482-8127  
Fax (775) 482-8133



**Pahrump Office**  
Government Complex  
1520 East Basin Avenue  
Pahrump, Nevada 89060  
Phone (775) 751-7040  
Fax (775) 751-7047

February 7, 2019

***VIA E-FILE***

Ms. Elizabeth Brown  
Supreme Court Clerk  
201 South Carson Street, #201  
Carson City, NV 89701-4702

Re: District Court Case No.: CV39348, Tonopah Solar Energy, LLC vs Brahma Group, Inc., & et al.

Dear Ms. Brown:

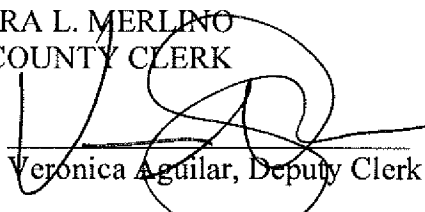
I am submitting a Notice of Appeal filed on February 7, 2019, in the above referenced matter. I have included the supporting documents required on this appeal. No filings fees have been paid on this matter at this time, the Law Firm of Weinberg, Wheeler, Hudgins, Gun & Dial has been notified an will be submitting payment.

If you have any questions or need any additional information, please contact the Pahrump office at the number above.

Sincerely,

SANDRA L. MERLINO  
NYE COUNTY CLERK

By:

  
Veronica Aguilar, Deputy Clerk

cc: D. Lee Roberts, Jr., Esq., on behalf of Appellant  
The Honorable Judge Steven Elliott  
Richard L. Peel, Esq., on behalf of Brahma Group, Inc.  
Richard E. Haskin, Esq., on behalf of H&E Equipment Services, Inc.  
Geoffrey Crisp, Esq., on behalf of Cobra Thermosolar Plants, inc.