

Appendix A

Docketing Statement, Nevada Supreme Court Case No. 78092

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

This is a consolidated action featuring Case No. CV 39248 and Case No. CV 39799. In Case No. CV 39248, Brahma has asserted claims against TSE for breach of contract, breach of the implied covenant of good faith, and violation of NRS Chapter 624. Brahma has asserted a surety bond claim against Cobra and the Surety. H&E has asserted claims against Brahma for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of NRS Chapter 624. H&E has asserted a surety bond claim against Cobra and the Surety and a lien foreclosure claim against TSE. In Case No. CV 39799, Brahma has asserted a surety bond claim against Cobra and the Surety and the following claims against Cobra: breach of settlement agreement, breach of the implied covenant of good faith, and unjust enrichment.

**27. Attach file-stamped copies of the following documents:**

- **The latest-filed complaint, counterclaims, cross-claims, and third-party claims**
- **Any tolling motion(s) and order(s) resolving tolling motion(s)**
- **Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal**
- **Any other order challenged on appeal**
- **Notices of entry for each attached order**

Exhibit 1: Brahma's First Amended Counter-Complaint and Third-Party Complaint in Case No. CV 39348, dated September 25, 2018

Exhibit 2: Brahma's First Amended Complaint for (Among Other Things): (I) Foreclosure of Notice of Lien Against Surety Bond; and (II) Breach of Settlement Agreement in Case No. CV 39799, dated January 11, 2019

Exhibit 3: H&E's Complaint in Intervention in Case No. CV 39348, dated November 14, 2018.

## Appendix A

Docketing Statement, Nevada Supreme Court Case No. 78092

Exhibit 4: Notice of Entry of Order Denying TSE's Motion to Expunge, served November 1, 2018, with the Order Denying TSE's Motion to Expunge attached thereto as Exhibit A.

Exhibit 5: Notice of Entry of Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS 108.2275(6)(C), served January 9, 2019, with the Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS 108.2275(6)(C) attached thereto as Exhibit 1.

### **Certificate of Service Addresses**

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Appendix A  
Docketing Statement, Nevada Supreme Court Case No. 78092

Lansford W. Levitt  
32072 Sea Island Drive  
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*Rule 16 Settlement Judge*

# **EXHIBIT 1**

**Brahma's First Amended Counter-Complaint and Third-Party  
Complaint in Case No. CV 39348, dated September 25, 2018**

**EXHIBIT 1**

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

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

15 Plaintiff,

16 vs.

17  
18 BRAHMA GROUP, INC., a Nevada corporation,

19 Defendant.

20  
21 BRAHMA GROUP, INC., a Nevada corporation,

22 Counterclaimant/Lien Claimant,

23 vs.

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

27 Counterdefendant,  
28

FILED  
FIFTH JUDICIAL DISTRICT

SEP 25 2010

Terri Pemberton, Clerk  
Deputy

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

**BRAHMA GROUP, INC.'S:**  
(I) **FIRST AMENDED COUNTER-**  
**COMPLAINT; AND**  
(II) **THIRD-PARTY COMPLAINT.**

**[Arbitration Exemption: Action  
Concerning Title to Real Estate]**

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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  
through X; ROE CORPORATIONS I through X,  
inclusive,

8 Third-Party Defendants.  
9  
10

11 **FIRST AMENDED COUNTER-COMPLAINT**

12 Counterclaimant/Lien Claimant/Third-Party Claimant, BRAHMA GROUP, INC.  
13 ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, hereby  
14 amends in this action (the "Action"), that certain Mechanic's Lien Foreclosure Complaint  
15 ("Original Counter-Complaint") by way of this First Amended Counter-Complaint ("Amended  
16 Counter-Complaint"), which is brought against the above-named Counterdefendants. Brahma  
17 complains, avers and alleges as follows:

18 **THE PARTIES**

19 1. Brahma is and was at all times relevant to this Action:

20 a. A Nevada corporation, duly authorized and qualified to do business in the  
21 State of Nevada; and

22 b. A duly licensed contractor holding a Nevada State Contractor's License,  
23 which license is in good standing.

24 ///

25 ///

26 ///

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28

1           2.     Brahma is informed and believes and therefore alleges that the U.S.  
2     DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and  
3     was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or  
4     portions of real property located in Nye County, Nevada, and more particularly described as Nye  
5     County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").<sup>1</sup>

6           3.     Brahma is informed and believes and therefore alleges that LIBERTY MOLY,  
7     LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this  
8     Action, an owner or reputed owner of the fee simple title to all or portions of real property located  
9     in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-  
10    06 (the "Liberty Parcel").<sup>2</sup>

11          4.     Counterdefendant TONOPAH SOLAR ENERGY, LLC ("TSE") is and was at all  
12    times relevant to this Action:

13               a.     A Delaware limited liability company authorized to do business in Nye  
14    County, Nevada;

15               b.     An owner or reputed owner of the fee simple title to all or portions of real  
16    property located in Nye County, Nevada, and more particularly described as Nye County Parcel  
17    Numbers 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-150-01 and 612-141-01  
18    (collectively, the "TSE Parcels");

19               c.     The lessee, tenant or the person, individual and/or entity who claims a  
20    license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and

21               d.     The owner of those certain improvements and/or leasehold estate (the  
22    "Project"):

23                     i.     Commonly known as the *Crescent Dunes Solar Energy Project*; and

24                     ii.    Constructed on the BLM Parcels, the TSE Parcels, and the Liberty  
25    Parcels.<sup>3</sup>

26    <sup>1</sup> The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of  
27    the BLM Parcels by way of this Action.

27    <sup>2</sup> Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the  
28    Liberty Parcel by way of this Action.

28    <sup>3</sup> The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels  
and the Liberty Parcels.

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5. The TSE Parcels, along with the Project, are collectively referred to herein as the "Work of Improvement," and include all leasehold estates, easements, rights-of-way, common areas and appurtenances related thereto, and the surrounding space as may be required for the convenient use and occupation of the Work of Improvement.

6.       Brahma does not know the true names of the individuals, corporations, partnerships and entities identified and named as Counterdefendants by the fictitious names of (collectively, the "Doe Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that such Doe Defendants claim a) an interest in or to the TSE Parcels and/or the Work of Improvement, or b) damages arising from the construction of the Work of Improvement, as more fully discussed under the claims for relief set forth below. Brahma will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Brahma discovers such information.

7. TSE and the Doe Defendants are collectively referred to in this Amended Counter-Complaint as the “Counterdefendants.”

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

8. Brahma repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Counter-Complaint, incorporates them by reference, and further alleges as follows:

9. On or about February 1, 2017, BGI entered a Services Agreement (the "Agreement") with TSE, wherein BGI agreed to provide a portion of the work, materials and/or equipment (the "Work") for or relating to Work of Improvement.

10. BGI furnished the Work for the benefit of and/or at the specific instance and request of TSE and the Work of Improvement and has otherwise performed its duties and obligations as required by the Agreement.

///

///



1 11. As required by the Agreement, BGI has, and in the form and manner required by  
2 the Agreement, provided monthly invoices or payment applications (collectively, "Payment  
3 Applications") to TSE for the Work in an amount totaling more than Twenty-Six Million U.S.  
4 Dollars (\$26,000,000.00).

5 12. Pursuant to the Agreement and Nevada law, TSE agreed to and is obligated to pay  
6 BGI for its Work within no more than 45 days after TSE's receipt of BGI's Payment Applications.

7 13. TSE breached the Agreement by, among other things:

- 8 a. Failing and/or refusing to pay monies owed to BGI for the Work; and  
9 b. Otherwise failing and/or refusing to comply with the Agreement and  
10 Nevada law.

11 14. BGI is owed Twelve Million Eight Hundred Fifty-Nine Thousand Five Hundred  
12 Seventy-Seven and 74/100 Dollars (\$12,859,577.74—"Outstanding Balance") from TSE for the  
13 Work.

14 15. BGI has been required to engage the services of an attorney to collect the  
15 Outstanding Balance, and BGI is entitled to recover its reasonable costs, attorney's fees and  
16 interest therefor.

17 **SECOND CAUSE OF ACTION**

18 **(Breach of Implied Covenant of Good Faith & Fair Dealing)**

19 16. Brahma repeats and realleges each and every allegation contained in the preceding  
20 paragraphs of the Amended Counter-Complaint, incorporates them by reference, and further  
21 alleges as follows:

22 17. There is a covenant of good faith and fair dealing implied in every agreement,  
23 including the Agreement between BGI and TSE.

24 18. TSE breached its duty to act in good faith by performing the Agreement in a manner  
25 that was unfaithful to the purpose of the Agreement, thereby denying BGI's justified expectations.

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28 ///

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1 19. Specifically, but without limitation, TSE breached its duty to act in good faith by:

2 a. Asserting pre-textual, extra-contractual and inaccurate reasons for  
3 withholding payment long after the time required by the Agreement and Nevada law had elapsed.

4 b. TSE has improperly withheld moneys totaling more than One Million U.S.  
5 Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1). While that statutory  
6 provision permits withholding (on a payment-by-payment basis) a retention amount, not to exceed  
7 five percent (5%), such retention must be authorized pursuant to the Agreement, which it is not.

8 c. Furthermore, and even if the Agreement allowed TSE to withhold retention  
9 from monthly payments (which it does not), TSE's withholding of retention amounts retroactively  
10 aggregated from Payment Applications issued (and, in some cases, payments previously made)  
11 long ago constitutes extreme bad faith.

12 20. Due to the actions of TSE, BGI suffered damages in the amount of or exceeding  
13 the Outstanding Balance for which BGI is entitled to judgment in an amount to be determined at  
14 trial.

15 21. BGI has been required to engage the services of an attorney to collect the  
16 Outstanding Balance, and BGI is entitled to recover its reasonable costs, attorney's fees and  
17 interest therefor.

18 **THIRD CAUSE OF ACTION**  
19 **(Foreclosure of Notice of Lien)**

20 22. Brahma repeats and realleges each allegation contained in the preceding paragraphs  
21 of this Amended Counter-Complaint, incorporates them by reference, and further alleges as  
22 follows:

23 23. Brahma provided the Work for the Work of Improvement and is owed the  
24 Outstanding Balance for the Work.

25 24. As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right  
26 to Lien on:

27 a. The BLM; and

28 b. TSE, even though it had no statutory duty to do so.

1           25.     The Work was provided for the whole of the Work of Improvement, at the special  
2 instance and/or request of TSE.

3           26.     On or about April 09, 2018, Brahma timely recorded a Notice of Lien in the Official  
4 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of  
5 \$6,982,186.24.

6           27.     On or about April 16, 2018 and as allowed by NRS 108.229(1), Brahma recorded  
7 a Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as  
8 Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada  
9 on April 18, 2018, as Document No. 891507, in the amount of \$7,178,376.94 (the "First Amended  
10 Lien").

11          28.     On or about April 24, 2018 and allowed by NRS 108.229(1), Brahma recorded a  
12 Notice of Second Amended and Restated Lien in the Official Records of Nye County, Nevada, as  
13 Document 891766, in the amount of \$7,178,376.94 (the "Second Amended Lien").

14          29.     On or about July 19, 2018 and as allowed by NRS 108.229(1), Brahma recorded a  
15 Third Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,  
16 as Document 896269, in the amount of \$11,902,474.75 (the "Third Amended Lien").

17          30.     On or about September 14, 2018, Brahma recorded a Fourth Amended and/or  
18 Restated Notice of Lien in the Official Records of Nye County, Nevada, as Document 899351 in  
19 the amount of \$12,859,577.74 (the "Fourth Amended Lien").

20          31.     The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)  
21 Third Amended Lien, and (iv) Fourth Amended Lien, collectively, the "Lien," were:

- 22               a.     In writing;
- 23               b.     Recorded against the Work of Improvement; and
- 24               c.     Were given or served on the authorized agents of the BLM and TSE, or the  
25 BLM and/or TSE knew of the existence of the Lien.

26          32.     The Lien is in the amount of the Outstanding Balance, which is the amount due and  
27 owing Brahma as of the date of this Amended Counter-Complaint.

28

1           33.     In addition to an award of the Outstanding Balance, Brahma is entitled to an award  
2     of its attorney's fees, costs, and interest, as provided in Chapter 108 of the Nevada Revised  
3     Statutes.

34. Brahma repeats and realleges each allegation contained in the preceding paragraphs of this Amended Counter-Complaint, incorporates them by reference, and further alleges as follows:

35. NRS 624.609 and NRS 624.610 (the "Statute") requires owners (such as TSE as defined by the Statute) to, among other things, (i) timely pay their prime contractors (such as BGI as defined by the Statute), and (ii) respond to payment applications and change order requests, as provided in the Statute.

36. TSE violated the Statute by failing or refusing to comply with the requirements set forth therein.

37. By reason of the foregoing, BGI is entitled to a judgment against TSE in the amount of the Outstanding Balance as well as other remedies as defined by the applicable statutes.

38. BGI has been required to engage the services of an attorney to collect the Outstanding Balance due and owing for the Work, and BGI is entitled to recover its reasonable costs, attorney's fees and interest therefore.

WHEREFORE, Brahma prays that this Honorable Court:

1. Enters judgment against the Counterdefendants, and each of them, jointly and severally and to the extent of their interest in the Work of Improvement, in the amount of the Outstanding Balance;

2. Enters a judgment against the Counterdefendants, and each of them, jointly and severally and to the extent of their interest in the Work of Improvement, for Brahma's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

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1           3.       Enters judgment declaring that Brahma has a valid and enforceable notice of lien  
2 against the Work of Improvement, in the amount of the Outstanding Balance together with costs,  
3 attorneys' fees and interest in accordance with NRS Chapter 108;

4           4.       Adjudge a lien upon the Work of Improvement for the Outstanding Balance, plus  
5 reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court enter an Order  
6 that the Work of Improvement, and improvements, such as may be necessary, be sold pursuant to  
7 the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of  
8 sums due Brahma herein;

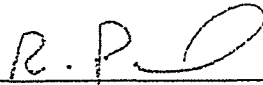
9           5.       For such other and further relief as this Honorable Court deems just and proper in  
10 the premises.

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

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

14           Dated this 24 day of September 2018.

15                               **PEEL BRIMLEY LLP**

16                                 
17                               \_\_\_\_\_  
18                               RICHARD L. PEEL, ESQ.  
19                               Nevada Bar No. 4359  
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**BRAHMA GROUP, INC.'S THIRD-PARTY COMPLAINT**

Third-Party Plaintiff, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, brings this Third-Party Complaint ("Third-Party Complaint") in the action (the "Action") against the above-named Third-Party Defendants. Brahma complains, avers and alleges as follows:

**THE PARTIES**

1. Brahma is and was at all times relevant to this Third-Party Action:

a. A Nevada corporation, duly authorized and qualified to do business in the State of Nevada; and

b. A duly licensed contractor holding a Nevada State Contractor's License, which license is in good standing.

2. Brahma is informed and believes and therefore alleges that the U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and was at all times relevant to this Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").<sup>4</sup>

3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY, LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-06 (the "Liberty Parcel").<sup>5</sup>

4. TONOPAH SOLAR ENERGY, LLC ("TSE")<sup>6</sup> is and was at all times relevant to this Third-Party Action:

a. A Delaware limited liability company authorized to do business in Nye County, Nevada;

<sup>4</sup> The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of the BLM Parcels by way of this Action.

<sup>5</sup> Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the Liberty Parcel by way of this Action.

<sup>6</sup> While TSE is a party to Brahma's Counterclaim, TSE is not a party to the Third-Party Action.

1           b.     An owner or reputed owner of the fee simple title to all or portions of real  
2 property located in Nye County, Nevada, and more particularly described as Nye County Parcel  
3 Numbers 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-150-01 and 612-141-01  
4 (collectively, the "TSE Parcels");

5           c.     The lessee, tenant or the person, individual and/or entity who claims a  
6 license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and

7           d.     The owner of those certain improvements and/or leasehold estate (the  
8 "Project"):

9                   i.     Commonly known as the *Crescent Dunes Solar Energy Project*; and

10                   ii.    Constructed on the BLM Parcels, the TSE Parcels, and the Liberty  
11 Parcels.<sup>7</sup>

12           5.     The TSE Parcels, along with the Project, are collectively referred to herein as the  
13 "Work of Improvement," and include all leasehold estates, easements, rights-of-way, common  
14 areas and appurtenances related thereto, and the surrounding space as may be required for the  
15 convenient use and occupation of the Work of Improvement.

16           6.     Brahma is informed, believes and therefore alleges that Third-Party Defendant  
17 AMERICAN HOME ASSURANCE COMPANY ("AHAC"):

18                   a.     Is and was at all times relevant to this Third-Party Action a bonding  
19 company duly licensed and qualified to do business as a surety in Nevada; and

20                   b.     Issued Bond No. 854481 ("Surety Bond") pursuant to NRS 108.2413 as  
21 discussed more fully below.

22           7.     Brahma is informed, believes and therefore alleges that Third-Party Defendant  
23 COBRA THERMOSOLAR PLANTS, INC. ("Cobra"):

24                   a.     Is and was at all times relevant to this Third-Party Action a Nevada  
25 corporation; and

26                   b.     Is the principal on the Surety Bond.

27  
28 <sup>7</sup> The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels and the Liberty Parcels.

1           8.       Brahma does not know the true names of the individuals, corporations, partnerships  
2       and entities identified and named as Third-Party Defendants by the fictitious names of  
3       (collectively, the "Doe Defendants"), (i) BOE BONDING COMPANIES I through X, (ii) DOES  
4       I through X, and (iii) ROE CORPORATIONS I through X. Brahma alleges that such Doe  
5       Defendants claim damages (as an offset) arising from the construction of the Work of  
6       Improvement, as more fully discussed under the claims for relief set forth below. Brahma will  
7       request leave of this Honorable Court to amend this Third-Party Complaint to show the true names  
8       and capacities of each such fictitious Doe Defendants when Brahma discovers such information.

**FIRST CAUSE OF ACTION**  
(Claim Against Surety, Surety Bond and Principal thereon)

11. On or about February 1, 2017, Brahma entered a Services Agreement (the "Agreement") with TSE wherein Brahma agreed to provide certain construction related work, materials and/or equipment (the "Work") for the Work of Improvement.

- a. The BLM; and
- b. TSE, even though it had no statutory duty to do so.

14. On or about April 09, 2018, Brahma timely recorded a Notice of Lien in the Official Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of \$6,982,186.24.

15. On or about April 16, 2018 and as allowed by NRS 108.229(1), Brahma recorded a Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as



1 Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada  
2 on April 18, 2018, as Document No. 891507, in the amount of \$7,178,376.94 (the "First Amended  
3 Lien").

4 16. On or about April 24, 2018 and allowed by NRS 108.229(1), Brahma recorded a  
5 Notice of Second Amended and Restated Lien in the Official Records of Nye County, Nevada, as  
6 Document 891766, in the amount of \$7,178,376.94 (the "Second Amended Lien").

7 17. On or about July 19, 2018 and as allowed by NRS 108.229(1), Brahma recorded a  
8 Third Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,  
9 as Document 896269, in the amount of \$11,902,474.75 (the "Third Amended Lien").

10 18. On or about September 14, 2018, Brahma recorded a Fourth Amended and/or  
11 Restated Notice of Lien in the Official Records of Nye County, Nevada, as Document 899351 in  
12 the amount of \$12,859,577.74 (the "Fourth Amended Lien").

13 19. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)  
14 Third Amended Lien, and (iv) Fourth Amended Lien, collectively, the "Lien," were:

- 15 c. In writing;  
16 d. Recorded against the Work of Improvement; and  
17 e. Were given or served on the authorized agents of the BLM and TSE, or the  
18 BLM and/or TSE knew of the existence of the Lien.

19 20. The Lien is in the amount Twelve Million Eight Hundred and Fifty-Nine Thousand,  
20 Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents. (\$12,859,577.74), which is the  
21 amount due and owing Brahma as of the date of this Third-Party Complaint (the "Outstanding  
22 Balance").

23 39. On or about September 6, 2018, pursuant to NRS 108.2413, Cobra (as principal)  
24 and AHAC (as surety) caused a Surety Bond to be recorded in the Official Records of Nye County,  
25 Nevada as Document No. 898975.

26 40. The Surety Bond fails to meet the requirements of NRS 108.2415(1), because it is  
27 not in an amount that is 1 ½ times the amount of Brahma's Lien.  
28

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1 41. NRS 108.2421 authorizes Brahma, as lien claimant, to bring an action against the  
2 principal (Cobra) and the surety (AHAC) on the Surety Bond within this Court.

3 42. Brahma makes claim against and Cobra and AHAC are obligated to Brahma for the  
4 Outstanding Balance plus interest, costs and attorney's fees up to the penal sum<sup>8</sup> of the Surety  
5 Bond as provided in Chapter 108 of the Nevada Revised Statutes.

6 **WHEREFORE**, Brahma prays that this Honorable Court:

7 6. Enters judgment against the Third-Party Defendants, and each of them, jointly and  
8 severally in the amount of the Outstanding Balance;

9 7. Enters a judgment against the Third-Party Defendants and each of them, jointly and  
10 severally, for Brahma's reasonable costs and attorney's fees incurred in the collection of the  
11 Outstanding Balance, as well as an award of interest thereon;

12 8. Enters judgment against AHAC up to the penal sum of the Surety Bond.


13 9. For such other and further relief as this Honorable Court deems just and proper in  
14 the premises.

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 2<sup>nd</sup> day of September 2018.

19 **PEEL BRIMLEY LLP**

20  
21   
22 RICHARD L. PEEL, ESQ.  
23 Nevada Bar No. 4359  
24 ERIC ZIMBELMAN, ESQ.  
25 Nevada Bar No. 9407  
26 RONALD J. COX, ESQ.  
27 Nevada Bar No. 12723  
28 3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074-6571  
*Attorneys for Brahma Group, Inc.*

<sup>8</sup> Brahma has separately excepted to the sufficiency of the penal sum of the Surety Bond under NRS 108.2425. Nothing herein shall be deemed a waiver of any rights and claims that Brahma may possess under contract, at law or in equity.

## **EXHIBIT 2**

**Brahma's First Amended Complaint for (Among Other Things): (I) Foreclosure of Notice of Lien Against Surety Bond; and (II) Breach of Settlement Agreement in Case No. CV 39799, dated January 11, 2019**

**EXHIBIT 2**

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1 RICHARD L. PEEL, ESQ.  
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11 *Attorneys for Brahma Group, Inc.*

12  
13 FIFTH JUDICIAL DISTRICT COURT  
14 NYE COUNTY, NEVADA

15 BRAHMA GROUP, INC., a Nevada corporation,  
16  
17 Plaintiff,

18 vs.

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

23 Defendants,  
24  
25  
26  
27  
28

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BY         
DEPUTY

CASE NO. : CV39799  
DEPT. NO. : 1

BRAHMA GROUP, INC.'S FIRST  
AMENDED COMPLAINT FOR  
(AMONG OTHER THINGS):

(I) FORECLOSURE OF NOTICE OF  
LIEN AGAINST SURETY BOND;  
AND

(II) BREACH OF SETTLEMENT  
AGREEMENT.

[Arbitration Exemption: Amount in  
Controversy in Excess of \$50,000]

1 This First Amended Complaint for (Among Other Things) (i) Foreclosure of Notice of Lien  
2 Against Surety Bond, and (ii) Breach of Settlement Agreement ("Amended Complaint"), amends  
3 that certain Mechanic's Lien Foreclosure Complaint Against Surety Bond ("Original Complaint")  
4 filed with the Court on December 14, 2018 in this action (the "Action"), by Plaintiff, BRAHMA  
5 GROUP, INC. ("Brahma").

6 By way of this Amended Complaint against the above-named Defendants, Brahma, by and  
7 through its attorneys of record, the law firm of PEEL BRIMLEY LLP, complains, avers, and alleges  
8 as follows:

9 **THE PARTIES**

10 1. Brahma is and was at all times relevant to this Action:

11 a. A Nevada corporation, duly authorized and qualified to do business in the  
12 State of Nevada; and

13 b. A duly licensed contractor holding a Nevada State Contractor's License,  
14 which license is in good standing.

15 2. Brahma is informed and believes and therefore alleges that the U.S.  
16 DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and  
17 was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or  
18 portions of real property located in Nye County, Nevada, and more particularly described as Nye  
19 County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").<sup>1</sup>

20 3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY,  
21 LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this  
22 Action, an owner or reputed owner of the fee simple title to all or portions of real property located  
23 in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-  
24 06 (the "Liberty Parcel").<sup>2</sup>

25  
26  
27 <sup>1</sup> The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of  
the BLM Parcels by way of this Action.

28 <sup>2</sup> Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the  
Liberty Parcel by way of this Action.

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1           4.     TONOPAH SOLAR ENERGY, LLC ("TSE")<sup>3</sup> is and was at all times relevant to  
2 this Action:

3               a.     A Delaware limited liability company authorized to do business in Nye  
4 County, Nevada;

5               b.     An owner or reputed owner of the fee simple title to all or portions of real  
6 property located in Nye County, Nevada, and more particularly described as Nye County Parcel  
7 Numbers 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-150-01 and 612-141-01  
8 (collectively, the "TSE Parcels");

9               c.     The lessee, tenant or the person, individual and/or entity who claims a  
10 license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and

11              d.     The owner of those certain improvements and/or leasehold estate (the  
12 "Project"):

13                   i.     Commonly known as the *Crescent Dunes Solar Energy Project*; and

14                   ii.    Constructed on the BLM Parcels, the TSE Parcels, and the Liberty  
15 Parcels.<sup>4</sup>

16           5.     The TSE Parcels, along with the Project, are collectively referred to herein as the  
17 "Work of Improvement," and include all leasehold estates, easements, rights-of-way, common  
18 areas and appurtenances related thereto, and the surrounding space as may be required for the  
19 convenient use and occupation of the Work of Improvement.

20           6.     Brahma is informed, believes and therefore alleges that Defendant AMERICAN  
21 HOME ASSURANCE COMPANY ("AHAC"):

22               a.     Is and was at all times relevant to this Action a company duly licensed and  
23 qualified to issue surety bonds and do business in Nevada;

24               b.     Issued Bond No. 854481 ("Surety Bond") pursuant to NRS 108.2413 as  
25 discussed more fully below; and

26               c.     Issued a Surety Rider to the Surety Bond as discussed more fully below.

27     <sup>3</sup> While TSE is not a party to this Case, it is a party to Case No. CV 39348 in the Fifth Judicial District Court of Nye  
County, which Case Brahma will seek to consolidate this Action into.

28     <sup>4</sup> The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels  
and the Liberty Parcels.

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7. Brahma is informed, believes and therefore alleges that Defendant COBRA THERMOSOLAR PLANTS, INC. ("Cobra"):

- a. Is and was at all times relevant to this Action a Nevada corporation;
- b. Is the principal on the Surety Bond and the Rider; and
- c. Is a party to a negotiated settlement between Cobra and Brahma for the payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra Work") at the Project.

8. Brahma does not know the true names of the individuals, corporations, partnerships and entities identified and named as Defendants by the fictitious names of (collectively, the "Doe Defendants"), (i) BOE BONDING COMPANIES I through X, (ii) DOES I through X, and (iii) ROE CORPORATIONS I through X. Brahma alleges that such Doe Defendants may be liable to Brahma for damages arising from the construction of the Work of Improvement, as more fully discussed under the claims for relief set forth below. Brahma will request leave of this Honorable Court to amend this Amended Complaint to show the true names and capacities of each such fictitious Doe Defendants when Brahma discovers such information.

9. Cobra, AHAC and the Doe Defendants, are sometimes referred to in the First Cause of Action of this Amended Complaint (below), (i) individually, as a "Defendant," and (ii) collectively, as the "Defendants".

10. Cobra and the Does Defendants, are sometimes referred to in the Second through Fourth Causes of Action (below), (i) individually, as a "Defendant," and (ii) collectively, as the "Defendants".

**FIRST CAUSE OF ACTION**  
**(Claim Against Surety, Surety Bond and Principal thereon)**

11. Brahma repeats and realleges each allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

12. On or about February 1, 2017, Brahma entered a Services Agreement with TSE (the "TSE Agreement") wherein Brahma agreed to provide certain work, materials and/or equipment (the "TSE Work") for the Work of Improvement.

1           13.    As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right  
2 to Lien on:

- 3                   a.    The BLM; and  
4                   b.    TSE, even though it had no statutory duty to do so.

5           14.    The TSE Work was provided for the whole of the Work of Improvement, at the  
6 special instance and/or request of TSE.

7           15.    On or about April 9, 2018, Brahma timely recorded a Notice of Lien in the Official  
8 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of  
9 \$6,982,186.24.

10          16.    On or about April 16, 2018 (as allowed by NRS 108.229(1)) Brahma recorded a  
11 Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as  
12 Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada  
13 on April 18, 2018, as Document No. 891507, in the amount of \$7,178,376.94 (the "First Amended  
14 Lien").

15          17.    On or about April 24, 2018 (as allowed by NRS 108.229(1)) Brahma recorded a  
16 Notice of Second Amended and Restated Lien in the Official Records of Nye County, Nevada, as  
17 Document 891766, in the amount of \$7,178,376.94 (the "Second Amended Lien").

18          18.    On or about July 19, 2018 (as allowed by NRS 108.229(1)) Brahma recorded a  
19 Third Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,  
20 as Document 896269, in the amount of \$11,902,474.75 (the "Third Amended Lien").

21          19.    On or about September 14, 2018 (as allowed by NRS 108.229(1)) Brahma recorded  
22 a Fourth Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,  
23 as Document 899351 in the amount of \$12,859,577.74 (the "Fourth Amended Lien").

24          20.    The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)  
25 Third Amended Lien, and (iv) Fourth Amended Lien, collectively, referred to herein as the "Lien,"  
26 were:

- 27                   a.    in writing;  
28                   b.    recorded against the Work of Improvement; and



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1 c. given or served on the authorized agents of the BLM and TSE, or the BLM  
2 and/or TSE knew of the existence of the Lien.

3 21. The Lien (as amended) is in the amount Twelve Million Eight Hundred and Fifty-  
4 Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents.  
5 (\$12,859,577.74 — "Lienable Amount").

6 22. The Lienable Amount is due and owing Brahma as of the date of this Amended  
7 Complaint.

8 23. On or about September 6, 2018, pursuant to NRS 108.2413, Cobra (as principal)  
9 and AHAC (as surety) caused the Surety Bond to be recorded in the Official Records of Nye  
10 County, Nevada as Document No. 898975.

11 24. On or about October 9, 2018, Cobra (as principal) and AHAC (as surety) caused a  
12 Surety Rider ("Rider") to be recorded in the Official Records of Nye County, Nevada as Document  
13 No. 900303.

14 25. The Rider increased the penal sum of the Surety Bond to \$19,289,300.61.

15 26. NRS 108.2421(1) authorizes Brahma, as lien claimant, to bring an action against  
16 the principal (Cobra) and the surety (AHAC) on the Surety Bond and Rider within this Court.

17 27. Brahma makes claim against the Defendants and AHAC is obligated to Brahma for  
18 the Lienable Amount plus interest, costs, and attorney's fees up to the penal sum of the Surety  
19 Bond and Rider as provided in Chapter 108 of the Nevada Revised Statutes.

20 **SECOND CAUSE OF ACTION**

21 **(Breach of Settlement Agreement Against Cobra)**

22 28. Brahma repeats and realleges each allegation contained in the preceding paragraphs  
23 of this Amended Complaint, incorporates them by reference, and further alleges as follows:

24 29. Prior to the commencement of the Work of Improvement, Brahma previously  
25 contracted directly with Cobra to perform the Cobra Work at the Project.

26 30. Brahma performed the Cobra Work and a dispute over payment arose between  
27 Brahma and Cobra (the "Cobra Dispute").  
28

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1           31.     Brahma and Cobra (i) negotiated a resolution of the Cobra Dispute, and (ii) agreed  
2     to certain terms, which terms were memorialized in writing ("Settlement Agreement").

3           32.     Pursuant to the Settlement Agreement, Cobra was to make (i) a first payment to  
4     Brahma in the amount of \$2,881,397.67 ("First Payment") upon Brahma providing certain  
5     documentation/information concerning the Cobra Work (the "Documentation"), and (ii) a second  
6     payment to Brahma in the amount of \$412,224.62 ("Second Payment") upon Brahma providing  
7     additional documentation/information ("Additional Documentation").

8           33.     Brahma provided the Documentation and Cobra paid Brahma the First Payment.

9           34.     Brahma tendered and/or provided Cobra the Additional Documentation to receive  
10    the Second Payment, but Cobra has failed to pay Brahma the Second Payment.

11          35.     Brahma has tendered and/or performed its duties and obligations as required by the  
12    Settlement Agreement.

13          36.     The Defendants have breached the Settlement Agreement by failing to tender  
14    payment of the Second Payment to Brahma, which Second Payment is due and owing.

15          37.     Brahma has been required to engage the services of an attorney to collect the  
16    Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees, and  
17    interest therefore.

18                   **THIRD CAUSE OF ACTION**

19                   **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Cobra)**

20          38.     Brahma repeats and realleges each allegation contained in the preceding paragraphs  
21    of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22          39.     There is a covenant of good faith and fair dealing implied in every agreement,  
23    including the Settlement Agreement.

24          40.     The Defendants breached their duty to act in good faith by performing the  
25    Settlement Agreement in a manner that was unfaithful to the purpose of the Settlement Agreement,  
26    thereby denying Brahma's justified expectations.

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1           41.     Due to the actions of the Defendants, Brahma suffered damages in an amount more  
2     than the Second Payment, for which Brahma is entitled to judgment in an amount to be determined  
3     at trial.

4           42.     Brahma has been required to engage the services of an attorney to collect the  
5     Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees, and  
6     interest therefore.

7                                 **FOURTH CAUSE OF ACTION**  
8                                 **(Unjust Enrichment Against Cobra)**

9           43.     Brahma repeats and realleges each allegation contained in the preceding paragraphs  
10    of this Amended Complaint, incorporates them by reference, and further alleges as follows:

11           44.     This cause of action is being pled in the alternative.

12           45.     Brahma tendered and/or provided the Additional Documentation for the benefit  
13    and/or at the specific instance and request of the Defendants.

14           46.     The Defendants accepted, used, and enjoyed the benefit of the Additional  
15    Documentation.

16           47.     Brahma has demanded payment of the Second Payment.

17           48.     To Date, the Defendants have failed, neglected, and/or refused to pay the Second  
18    Payment.

19           49.     The Defendants have been unjustly enriched, to the detriment of Brahma.

20           50.     Brahma has been required to engage the services of an attorney to collect the  
21    Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees, and  
22    interest therefore.

23           **WHEREFORE**, with respect to the First Cause of Action, Brahma prays that this  
24    Honorable Court:

25           1.     Enters judgment against the Defendants, and each of them, jointly and severally in  
26    the Liable Amount;

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2. Enters a judgment against the Defendants and each of them, jointly and severally, for Brahma's reasonable costs and attorney's fees incurred in the collection of the Liable Amount, as well as an award of interest thereon;

3. Enters judgment against AHAC up to the penal sum of the Surety Bond and Rider; and

4. For such other and further relief as this Honorable Court deems just and proper in the premises.

**WHEREFORE**, with respect to the Second through Fourth Causes of Action, Brahma prays that this Honorable Court:

1. Enters judgment against the Defendants and each of them, jointly and severally, in the amount of the Second Payment, plus Brahma's reasonable costs and attorney's fees incurred in the collection of the Second Payment; and

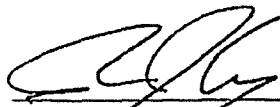
2. For such other and further relief as this Honorable Court deems just and proper in the premises.

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

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

Dated this 11<sup>th</sup> day of January 2019.

**PEEL BRIMLEY LLP**



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

ERIC ZIMBELMAN, ESQ.

Nevada Bar No. 9407

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*Attorneys for Brahma Group, Inc.*

# **EXHIBIT 3**

**H&E's Complaint in Intervention in Case No. CV 39348, dated  
November 14, 2018.**

**EXHIBIT 3**

**COMP**

Richard E. Haskin, Esq.  
 Nevada State Bar # 11592  
 Daniel M. Hansen, Esq.  
 Nevada State Bar # 13886  
**GIBBS GIDEN LOCHER TURNER  
 SENET & WITTBRODT LLP**  
 1140 N. Town Center Drive, Suite 300  
 Las Vegas, Nevada 89144-0596  
 (702) 836-9800

Attorneys for Plaintiff-In-Intervention  
 H&E Equipment Services, Inc.

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

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

Case No.: CV 39348  
 Dept. No.: 2

Plaintiff,

**COMPLAINT IN INTERVENTION**

v.

BRAHMA GROUP, INC., a Nevada Corporation,  
 Defendants.

**EXEMPTION FROM ARBITRATION:  
 Action Concerning Title to Real Estate**

BRAHMA GROUP, INC., a Nevada Corporation,  
 Counterclaimant/Lien Claimant,

v.

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

Counterdefendant.

BRAHMA GROUP, INC., a Nevada Corporation,  
 Third-Party Plaintiff,

v.

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,

v.

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.

COMES NOW, Plaintiff H&E EQUIPMENT SERVICES, INC. (hereinafter referred to as "Plaintiff" or "H&E"), by and through its attorneys of the law firm Gibbs Giden Locher Turner Senet & Wittbrodt LLP, and for cause against Defendants, alleges as follows:

### PARTIES

1. At all times mentioned herein, H&E was and is a Delaware corporation duly authorized and qualified to do business in Nevada.

2. H&E is informed and believes and therefore alleges that the U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").<sup>1</sup>

<sup>1</sup> The BLM is not a party to this Action and H&E is not making a claim against the BLM or the fee simple title of the

3. H&E is informed and believes and therefore alleges that LIBERTY MOLY, LLC, a Delaware Limited Liability Company ("Liberty"), is and was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-06 (the "Liberty Parcel").<sup>2</sup>

4. Defendant BRAHMA GROUP, INC. ("BGI") is and was at all times relevant to this action a Nevada corporation authorized to do business in Nye County, Nevada.

5. Defendant TONOPAH SOLAR ENERGY, LLC ("TSE") is and was at all times relevant to this Action:

- a. A Delaware Limited Liability Company authorized to do business in Nye County, Nevada;
- b. An owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-031-04, 012-131-03, 012-140-01, 012-150-01 and 612-141-01 (collectively, the "TSE Parcels");
- c. The lessee, tenant or the person, individual and/or entity who claims a license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and
- d. The owner of those certain improvements and/or leasehold estate (the "Project")
  - i. Commonly known as the *Crescent Dunes Solar Energy Project*; and
  - ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty Parcels.<sup>3</sup>

6. The TSE Parcels, along with the Project, are collectively referred to herein as the "Work of Improvement," and include all leasehold estates, easements, rights-of-way, common areas

---

BLM Parcels by way of this Action.

<sup>2</sup> Liberty is not a party to this Action and H&E is not making a claim against Liberty or the fee simple title of the Liberty Parcel by way of this Action.

<sup>3</sup> The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels and the Liberty Parcels.



1 and appurtenances related thereto, and the surrounding space as may be required for the convenient  
2 use and occupation of the Work of Improvement.

3 7. H&E is informed, believes and therefore alleges that Defendant AMERICAN HOME  
4 ASSURANCE COMPANY ("AHAC"):

5 a. Is and was at all times relevant to this action a bonding company duly licensed  
6 and qualified to do business as a surety in Nevada; and

7 b. Issued Bond No. 854481 ("Surety Bond") pursuant to NRS 108.2413 as  
8 discussed more fully below.

9 8. H&E is informed, believes and therefore alleges that Defendant COBRA  
10 THERMOSOLAR PLANTS, INC. ("Cobra"):

11 a. Is and was at all times relevant to this action a Nevada corporation; and

12 b. Is the principal on the Surety Bond.

13 9. H&E does not know the true names of the individuals, corporations, partnerships and  
14 entities identified and named as Defendants by the fictitious names of (collectively, the "Doe  
15 Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE BONDING  
16 COMPANIES I through X, and (iv) TOE TENANTS I through X. H&E alleges that such Doe  
17 Defendants claim (a) an interest in or to the TSE Parcels and/or the Work of Improvement, or (b)  
18 damages arising from the construction of the Work of Improvement, as more fully discussed under  
19 the claims for relief set forth below. H&E will request leave of this Honorable Court to amend this  
20 Complaint to show the true names and capacities of each such fictitious Defendant when H&E  
21 discovers such information.

22 10. TSE and the Doe Defendants are collectively referred to in this Complaint as  
23 "Defendants."

### 24 **FIRST CAUSE OF ACTION**

#### 25 **(Breach of Contract)**

26 11. H&E alleges, and incorporates by reference, paragraphs 1 through 10, inclusive, as  
27 though fully set forth herein.

28 12. Upon information and belief, on or about February 1, 2017, TSE entered a Services

1 Agreement with Brahma Group, Inc. to provide a portion of the work, materials and/or equipment  
2 for or relating to Work of Improvement.

3 13. BGI then contracted with H&E to provide materials and equipment for the Project.

4 14. Under the contract, BGI agreed to pay H&E \$5,388,973.58 for the materials and  
5 equipment it provided for the Project.

6 15. To date, BGI has only paid H&E \$4,911,142.18, and is delinquent in its payment of  
7 the remaining \$477,831.40.

8 16. H&E sent BGI timely invoices for all material and equipment provided to BGI, and  
9 the terms of the invoices required BGI to make payment in full by 30 days after the date on each  
10 invoice.

11 17. Pursuant to the contract and Nevada law, BGI agreed to and is obligated to pay H&E  
12 for the materials and equipment it supplied to BGI.

13 18. BGI breached the contract by, among other things:

14 a. Failing and/or refusing to pay monies owed to H&E for the materials and  
15 equipment provided by H&E for the Project; and

16 b. Otherwise failing and/or refusing to comply with the contract and Nevada law.

17 19. On or around June 27, 2018, H&E recorded a Notice of Lien on the TSE parcels to  
18 secure its claim for payment for the materials and equipment it has supplied.

19 20. Upon information and belief, BGI furnished the work for the benefit of and/or at the  
20 specific instance and request of TSE and the Work of Improvement and has otherwise performed its  
21 duties and obligations as required by the BGI and TSE agreement.

22 21. Upon information and belief, as required by the BGI and TSE agreement, BGI  
23 provided monthly invoices or payment applications to TSE for the work it had done in an amount  
24 totaling Twenty-Six Million Dollars (\$26,000,000.00).

25 22. Upon information and belief, pursuant to the BGI and TSE agreement and Nevada  
26 law, TSE agreed and is obligated to pay BGI for its work within no more than 45 days after TSE's  
27 receipt of BGI's payment applications.

28 23. Upon information and belief, TSE has failed to timely provide payment to BGI.

24. Upon information and belief, BGI is owed Twelve Million Eight Hundred Fifty-Nine Thousand Five Hundred Seventy-Seven and 74/100 Dollars (\$12,859,577.74) from TSE for the work performed by BGI.

25. As a material and equipment supplier, H&E is entitled to place a lien on the TSE Property to secure its interest in the Project and collect payment directly from TSE.

26. H&E has fully performed all of its obligations under the contract.

27. As a direct and proximate result of Defendants' breach of contract, H&E has been damaged in excess of fifteen thousand (\$15,000.00), the total amount to be proved at the time of trial in this matter.

28. H&E has been required to engage the services of an attorney to collect the outstanding balance, and H&E is entitled to recover its reasonable costs, attorney's fees and interest therefor.

### **SECOND CAUSE OF ACTION**

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

29. H&E alleges, and incorporates by reference, paragraphs 1 through 28, inclusive, as though fully set forth herein.

30. Every contract in Nevada contains an implied covenant to act in good faith in performance and enforcement of the contract.

31. H&E and BGI entered into a valid contract wherein H&E supplied materials and equipment to BGI, and BGI agreed to compensate H&E for the materials and equipment supplied.

32. H&E performed its obligations under the contract and had a justifiable expectation to receive certain benefits consistent with the spirit of the contract.

33. BGI has performed in a manner that is in violation of the terms of the contract by failing to provide payment to H&E for the materials and equipment.

34. As a direct and proximate result of BGI's breach of contract, H&E has been damaged in excess of fifteen thousand (\$15,000.00), the total amount to be proved at the time of trial in this matter.

35. H&E has been required to engage the services of an attorney to collect the

1 outstanding balance, and H&E is entitled to recover its reasonable costs, attorney's fees and interest  
2 therefor.

3 **THIRD CAUSE OF ACTION**

4 **(Foreclosure of Notice of Lien)**

5 36. H&E alleges, and incorporates by reference, paragraphs 1 through 35, inclusive, as  
6 though fully set forth herein.

7 37. H&E provided the materials and equipment to BGI for work performed on the project  
8 on the TSE parcels.

9 38. There is an outstanding balance owed to H&E for the materials and equipment  
10 supplied for work done on the TSE parcels.

11 39. As provided in NRS 108.245, H&E gave or served a copy of its Notice of Right to  
12 Lien on:

- 13 a. The BLM; and
- 14 b. TSE.

15 40. The materials and equipment were supplied for the project at the special instance  
16 and/or request of BGI to complete the work it had agreed to perform for TSE.

17 41. On or about June 27, 2018, H&E timely recorded a Notice of Lien in the Official  
18 Records of Nye County, Nevada, as Document No. 895149, in the amount of \$477,831.40 ("Lien  
19 Amount") against the leasehold interest of TSE in the TSE parcels.

20 42. The Lien was in writing, recorded against the TSE leasehold interest in the Work of  
21 Improvement on the Property; and was given or served on the authorized agents of the BLM and  
22 TSE, or the BLM and/or TSE knew of the existence of the Lien.

23 43. The Lien Amount is the outstanding balance, which is the amount due and owing to  
24 H&E as of the date of this Complaint.

25 44. In addition to an award of the outstanding balance, H&E is entitled to an award of its  
26 attorney's fees, costs, and interest, as provided in Chapter 108 of the Nevada Revised Statutes.

27 ///

28 ///

**FOURTH CAUSE OF ACTION**

**(Violation of NRS 624 against BGI)**

45. H&E alleges, and incorporates by reference, paragraphs 1 through 44, inclusive, as though fully set forth herein.

46. NRS 624.624 and NRS 624.626 require higher-tiered contractors (such as BGI) to, among other things, (i) timely pay their lower-tiered subcontractors (such as H&E), and (ii) respond to invoices and payment applications and change order requests, as provided by statute.

47. BGI violated the Statute by failing or refusing to comply with the requirements set forth therein.

48. By reason of the foregoing, H&E is entitled to a judgment against BGI in the amount of the \$477,831.40 as well as other remedies as defined by the applicable statutes.

49. H&E has been required to engage the services of an attorney to collect the outstanding balance, and H&E is entitled to recover its reasonable costs, attorney's fees and interest therefor.

**FIFTH CAUSE OF ACTION**

**(Claim Against Surety, Surety Bond and Principal thereon)**

50. H&E alleges, and incorporates by reference, paragraphs 1 through 49, inclusive, as though fully set forth herein.

51. Upon information and belief, on or about February 1, 2017, TSE entered a Services Agreement with Brahma Group, Inc. to provide a portion of the work, materials and/or equipment for or relating to Work of Improvement.

52. BGI then contracted with H&E to provide materials and equipment for the Project.

53. As provided in NRS 108.245, H&E gave or served a copy of its Notice of Right to Lien on:

- a. The BLM; and
- b. TSE.

54. The materials and equipment supplied for the project at the special instance and/or request of BGI to complete the work it had agreed to perform for TSE.

1           55.     The materials and equipment supplied were provided for the whole of the Work of  
2 Improvement.

3           56.     On or about June 27, 2018, H&E timely recorded a Notice of Lien in the Official  
4 Records of Nye County, Nevada, as Document No. 895149, in the amount of \$477,831.40 ("Lien  
5 Amount") against the leasehold interest of TSE in the TSE parcels.

6           57.     The Lien was in writing, recorded against the TSE leasehold interest in the Property;  
7 and were given or served on the authorized agents of the BLM and TSE, or the BLM and/or TSE  
8 knew of the existence of the Lien.

9           58.     The Lien Amount is the outstanding balance, which is the amount due and owing to  
10 H&E as of the date of this Complaint.

11           59.     On or about September 6, 2018, pursuant to NRS 108.2413, Cobra (as principal) and  
12 AHAC (as surety) caused a Surety Bond to be recorded in the Official Records of Nye County,  
13 Nevada as Document No. 898975.

14           60.     NRS 108.2421 authorizes H&E, as lien claimant, to bring an action against the  
15 principal (Cobra) and the surety (AHAC) on the Surety Bond within this Court.

16           61.     Therefore, H&E makes claim against Cobra and AHAC, and Cobra and AHAC are  
17 obligated to H&E for the outstanding balance plus interest, costs and attorney's fees up to the penal  
18 sum of the Surety Bond as provided in Chapter 108 of the Nevada Revised Statutes.

19           WHEREFORE, H&E prays that this Honorable Court:

20           1.     Enters judgment against the Defendants, and each of them, jointly and severally for  
21 the materials and equipment supplied by H&E for the Project;

22           2.     Enters a judgment against the Defendants, and each of them, jointly and severally for  
23 H&E's reasonable costs and attorney's fees incurred in the collection of the outstanding balance;

24           3.     Enters judgment against BGI declaring that BGI has breached its contract with H&E  
25 and breached its obligation of good faith and fair dealing;

26           4.     Enters judgment declaring that H&E has a valid and enforceable notice of lien against  
27 TSE's leasehold interest in the Property, in the amount of the outstanding balance together with  
28 costs, attorneys' fees and interest in accordance with NRS Chapter 108;

5. Adjudge a lien upon TSE's leasehold interest in the Property, plus reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court enter an Order allowing H&E for foreclose on TSE's interest in the Property, pursuant to the laws of the State of Nevada, and that the proceeds of a foreclosure sale be applied to the payment of sums due H&E herein; and

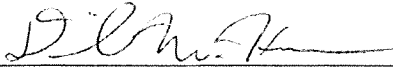
6. For such other and further relief as the Court deems just and proper.

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

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

DATED: November 14, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By:   
Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Daniel M. Hansen, Esq.  
Nevada State Bar # 13886  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596  
Attorneys for Plaintiff-In-Intervention  
H&E EQUIPMENT SERVICES, INC.

## **EXHIBIT 4**

**Notice of Entry of Order Denying TSE's Motion to Expunge, served  
November 1, 2018, with the Order Denying TSE's Motion to  
Expunge attached thereto as Exhibit A.**

**EXHIBIT 4**



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

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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.

BRAHMA GROUP, INC., a Nevada corporation,

Counterclaimant/Lien Claimant,

vs.

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

Counterdefendant,

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

**NOTICE OF ENTRY OF ORDER**

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(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.

22 Nevada Bar No. 4359

23 ERIC ZIMBELMAN, ESQ.

24 Nevada Bar No. 9407

25 RONALD J. COX, ESQ.

26 Nevada Bar No. 12723

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28 Henderson, Nevada 89074-6571

*Attorneys for Brahma Group, Inc.*

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
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**CERTIFICATE OF SERVICE**

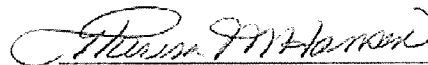
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP  
and that on this 1st day of November ~~October~~, 2018, I caused the above and foregoing document entitled  
**NOTICE OF ENTRY OF ORDER** to be served as follows:

- ☒ 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.  
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*Attorneys for Cobra Thermosolar  
Plants, Inc.*



An Employee of Peel Brimley LLP

# EXHIBIT A

PEEL BRIMLEY LLP  
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(702) 990-7272 • FAX (702) 990-7273

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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7 **Nevada Bar No. 12723**  
8 **PEEL BRIMLEY LLP**  
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13 **rpeel@peelbrimley.com**  
14 **ezimbelman@peelbrimley.com**  
15 **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 DENYING TONOPAH**  
**SOLAR ENERGY, LLC'S MOTION**  
**TO EXPUNGE BRAHMA GROUP,**  
**INC.'S MECHANIC'S LIEN**

23 This matter came on for hearing September 12, 2018 (the "Hearing") before the  
24 Honorable Senior Judge Steven Elliott on the Motion to Expunge ("Motion") filed by Plaintiff  
25 TONOPAH SOLAR ENERGY, LLC ("TSE"). D. Lee Roberts, Esq., and Colby L. Balkenbush, Esq.  
26 of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC appeared on behalf of TSE. Eric  
27 B. Zimbelman, Esq., Richard Peel, Esq. and Ronnie Cox, Esq. of PEEL BRIMLEY LLP  
28 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:

///

///

///

FILED  
FIFTH JUDICIAL DISTRICT

007 20 2018

Nye County Clerk  
**AMY DOWERS**  
Deputy

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.

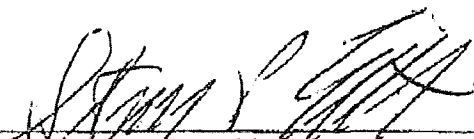
12 **III. CONCLUSION.**

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.

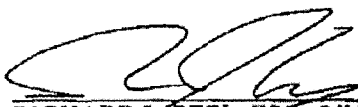
15 2. Nothing in this Order shall prevent or preclude Brahma from applying for an  
16 award of attorney's fees and costs pursuant to NRS 108.2275(6)(c).

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 5**

**Notice of Entry of Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS 108.2275(6)(C), served January 9, 2019, with the Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS 108.2275(6)(C) attached thereto as Exhibit 1**

# **EXHIBIT 5**

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RICHARD L. PEEL, Esq.  
Nevada Bar No. 4359  
ERIC B. ZIMBELMAN, ESQ.  
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CARY B. DOMINA, ESQ.  
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[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)  
*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.

BRAHMA GROUP, INC., a Nevada corporation,

Counterclaimant/Lien Claimant,

vs.

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

Counter-Defendant.

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

**NOTICE OF ENTRY OF ORDER**

///

///

///

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HENDERSON, NEVADA 89074  
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BRAHMA GROUP, INC., a Nevada corporation,

Third-Party 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,

Third-Party Defendants.

**NOTICE OF ENTRY OF ORDER**


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

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

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

Dated this 9 day of January, 2019.

**PEEL BRIMLEY LLP**

  
\_\_\_\_\_  
RICHARD L. PEEL, ESQ. (4359)  
ERIC ZIMBELMAN, ESQ. (9863)  
CARY B. DOMINA, ESQ. (10567)  
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*Attorneys for Brahma Group, Inc.*

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**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  
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Geoffrey Crisp, Esq.  
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[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 **ORDR**

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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13 rpeel@peelbrimley.com

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15 rcox@peelbrimley.com

16 Attorneys for Brahma Group, Inc.

17 **FIFTH JUDICIAL DISTRICT COURT**

18 **NYE COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

23 BRAHMA GROUP, INC., a Nevada corporation,

24 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)**

25 This matter came on for hearing December 11, 2018 (the "Hearing") before the  
26 Honorable Senior Judge Steven Elliott on the Motion For Attorney's Fees And Costs Pursuant To  
27 NRS 108.2275(6)(c) ("Fee Motion") filed by BRAHMA GROUP, INC. ("Brahma"). Eric B.  
28 Zimbelman, Esq. of PEEL BRIMLEY LLP appeared on behalf of Brahma. D. Lee Roberts,  
Esq. of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC appeared on behalf of  
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 4) The result—whether the attorney was successful and what benefits were derived.  
25 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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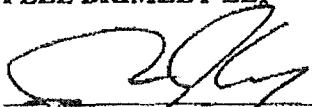
1  
2       **NOW THEREFORE, IT IS HEREBY ORDERED** that Brahma's Motion For  
3 Attorney's Fees And Costs Pursuant To NRS 108.2275(6)(c) is **GRANTED** and Brahma is  
4 awarded the sum of \$88,417.34 which shall be due and payable by TSE within ten (10) days of  
5 a notice of entry of this order being 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)  
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17       Henderson, Nevada 89074-6571  
18       Attorneys for Brahma Group, Inc.

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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 \_\_\_\_\_ day December 2018.

7  
8  
9 Senior Judge Steven Elliott

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

12 

13 RICHARD I. 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.*

# EXHIBIT A

PEEL BRIMLEY LLP  
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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.

17 **FIFTH JUDICIAL DISTRICT COURT**

18 **NYE COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

23 BRAHMA GROUP, INC., a Nevada corporation,

24 Defendant.

CASE NO. : CV 39348

DEPT. NO. : 2

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

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

27 **WHEREAS**, on October 29, 2018, the Court entered an Order Denying Tonopah Solar  
28 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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1 Fees shall be \$10,000.00 (Ten Thousand U.S. Dollars);

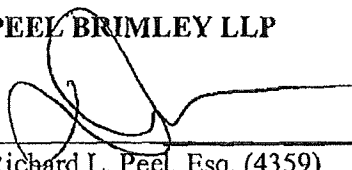
2 Now therefore,

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).

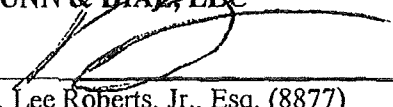
9 This stipulation is to the amount of additional fees in light of the court's ruling on  
10 entitlement. TSE reserves its right to appeal the decision on expungment and entitlement to fees.

11 IT IS SO STIPULATED this 21<sup>st</sup> day of December, 2018.

12  
13 **PEEL BRIMLEY LLP**

14   
15 \_\_\_\_\_  
16 Richard L. Peel, Esq. (4359)  
17 Eric B. Zimbelman, Esq. (9407)  
18 Cary B. Domina, Esq. (10567)  
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25 *Attorneys for Defendant Brahma Group,*  
26 *Inc.*

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

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



IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Tonopah Solar Energy, LLC, a Delaware  
limited liability company,  
Appellant,  
vs.  
Brahma Group, Inc. a Nevada corporation,  
Respondent.

No. 78092

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Mar 05 2019 09:54 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Fifth Department 2  
County Nye Judge Steven Elliott  
District Ct. Case No. CV 39348

**2. Attorney filing this docketing statement:**

Attorney Ryan T. Gormley Telephone (702) 938-3838  
Firm Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
Address 6385 S. Rainbow, Blvd., Suite 400, Las Vegas, Nevada 89118

Client(s) Appellant Tonopah Solar Energy, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Richard L. Peel, Eric Zimbelman Telephone (702) 990-7272  
Firm Peel Brimley, LLP  
Address 3333 E. Serene Avenue, Suite 200, Henderson, Nevada 89074

Client(s) Respondent Brahma Group, Inc.

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____   |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                 |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>NRS 108.2275(6)</u> |

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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

None at this time, but Tonopah Solar Energy, LLC plans to file a writ petition arising out of the same case, Case No. CV 39348.

**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:

(1) Brahma Group, Inc. v. Cobra Thermosolar Plants, Inc., et. al., Case No. CV 39799, in the Fifth Judicial District, Nye County is consolidated with the case from which this appeal arises, Case No. CV 39348.

(2) Brahma Group, Inc. v. Tonopah Solar Energy, LLC, et. al., Case No. CV 39237, in the Fifth Judicial District, Nye County was previously voluntarily dismissed by Brahma.

(3) Brahma Group, Inc. v. Tonopah Solar Energy, LLC, Case No. A-18-777815-C, in the Eighth Judicial District, Clark County was removed to the United States District Court for the District of Nevada and is currently pending there as Case No. 2-18-CV-01747.

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

Appellant Tonopah Solar Energy, LLC ("TSE") moved to expunge a mechanic's lien recorded by Respondent Brahma Group, Inc. ("Brahma") under NRS 108.2275(1). The district court denied the motion to expunge. Brahma then moved for attorney fees and costs under NRS 108.2275(6). The district court granted the motion for attorney fees and costs. TSE is appealing both the denial of its motion to expunge and the grant of Brahma's motion for attorney fees and costs under NRS 108.2275(8).

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

- (1) Whether the district court erred by denying TSE's motion to expunge.
- (2) Whether the district court abused its discretion in determining the amount of attorney fees and costs to award Brahma.

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

I am not aware of any proceedings presently pending before this court which raise the same or similar issues raised in this appeal.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain:

Whether a mechanic's lien that liens federally owned land is void and cannot be amended.

Whether a person can maintain a mechanic's lien against improvements in which the federal government has a security interest/financial interest.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal is presumptively assigned to the Court of Appeals because it involves statutory lien matters arising under NRS Chapter 108. NRAP 17(b)(8). The Supreme Court, however, should retain this appeal due to the issues of first impression identified in response to question 12. NRAP 17(a)(11). The questions posed are important and significant because they concern the intersection of Nevada's mechanic's lien law with sovereign immunity and will help to further define the contours of Nevada's mechanic's lien law when it comes to projects involving federally owned land and federally subsidized projects.

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

Was it a bench or jury trial? N/A

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

No

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Jan 8, 2019

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

**17. Date written notice of entry of judgment or order was served** Jan 9, 2019

Was service by:

☒ Delivery

☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59          Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Feb 7, 2019

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

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

NRAP 4(a)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                     | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                     | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                     | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 108.2275(8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 108.2275(8) provides that "[a]n appeal may be taken from an order made pursuant to subsection 6." The orders appealed from, the district court's denial of TSE's motion to expunge and the district court's grant of Brahma's motion for attorney fees, were made pursuant to subsection 6-NRS 108.2275(6).



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Tonopah Solar Energy, LLC ("TSE")  
Brahma Group, Inc. ("Brahma")  
Cobra Thermosolar Plants, Inc. ("Cobra")  
American Home Assurance Company ("Surety")  
H&E Equipment Services, Inc. ("H&E")

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

This appeal arises out of the district court's denial of TSE's motion to expunge and grant of Brahma's motion for attorney fees under NRS 108.2275(6). These motions did not involve Cobra, the Surety, or H&E. Thus, they are not parties to this appeal.

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

See Appendix A.

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

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

All of the claims identified in response to question no. 23.

(b) Specify the parties remaining below:

All of the parties identified in response to question no. 22.

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

☐ 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

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The orders appealed from are appealable under NRS 108.2275(8).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

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

Tonopah Solar Energy, LLC  
Name of appellant

Ryan T. Gormley  
Name of counsel of record

Mar 4, 2019  
Date

/s/ Ryan T. Gormley  
Signature of counsel of record

Nevada, Clark County  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 4th day of March, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Settlement Judge; Peel Brimley, LLP; Gibbs Giden Locher Turner; Weil & Drage; See Appendix A

Dated this 4th day of March, 2019

/s/ Cindy S. Bowman  
Signature