

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78092

Tonopah Solar Energy, LLC,
Appellant

v.

Brahma Group, Inc.,
Respondent

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Elizabeth A. Brown
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Appeal
Fifth Judicial District Court
The Honorable Steven P. Elliott
Case No. CV 39348

**APPELLANT'S APPENDIX
VOLUME 1**

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FILED
FIFTH JUDICIAL DISTRICT

JUN -11 2018

Nye County Clerk
DEBRA BENNETT Deputy

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

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

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

Case No. *CV 39348*
Dept. No. *2*

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

19 Defendant **TONOPAH SOLAR ENERGY, LLC** (hereinafter "TSE" or "Plaintiff"), by
20 and through its attorneys of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN &
21 DIAL, LLC, hereby requests that the Court expunge the mechanic's lien recorded against certain
22 real property and improvements in Tonopah, Nevada by Brahma Group, Inc. (hereinafter "BGI"
23 or "Defendant"). The mechanic's lien is invalid because BGI has failed to follow Nevada's
24 statutory scheme by not giving proper notice to the owner of the land (the BLM). In addition, or
25 in the alternative, the lien is invalid because a lien that attempts to attach federally owned land is
26 invalid on its face and cannot be saved by a later amendment.



1 This Motion is made and based upon the following Memorandum of Points and
2 Authorities, the exhibits attached hereto, the pleadings and papers on file herein, and any
3 argument presented at the time of hearing on this matter.

4 DATED this 1st day of June, 2018.



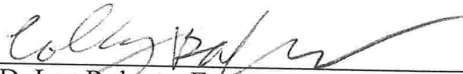
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11 **NOTICE OF MOTION**

12
13 PLEASE TAKE NOTICE that **TONOPAH SOLAR ENERGY, LLC'S MOTION TO**
14 **EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN** will come on for hearing in
15 Department No. 2 of the above-entitled Court on the 23rd day of JULY 2018,
16 at 9:00 a.m./p.m.

17 DATED this 1st day of June, 2018.



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

TSE is the project developer for the Crescent Dunes Solar Energy Facility located outside Tonopah, Nevada ("Project"). The Project is significant, employing over 1,000 construction workers at one point (most from Nevada) and creating over 4,000 direct and indirect jobs in the region. The Project is designed to have a 110 megawatt output, which is enough renewable clean energy to power 75,000 homes in Nevada. While TSE is the project developer and oversees construction efforts, the land the Project is located on belongs to the Bureau of Land Management ("BLM").

In February 2017, TSE contracted with BGI to perform certain warranty work on the Project. The Parties are currently in the midst of a dispute over the sufficiency of certain invoices BGI has submitted to TSE for payment. TSE has informed BGI that it needs additional backup documentation to assess the validity of the invoices before they can be paid. Rather than provide the documentation, BGI has become belligerent, recording a mechanic's lien against the real property on which the Project is located, filing a lawsuit and recording a lis pendens against the property in an improper attempt to pressure TSE to make payment before TSE has verified the expenses BGI claims to have incurred in performing the work.

As a result of BGI's actions, TSE sent BGI a letter pointing out that BGI's lawsuit, lis pendens and mechanic's lien were all improper under Nevada's mechanic's lien statute and requesting that they be dismissed/released. In response, BGI dismissed its lawsuit and released the lis pendens. However, BGI continues to refuse to release the mechanic's lien and has instead attempted to fix the errors in the lien via amendment.

Through this Motion, TSE asks the Court to expunge the mechanic's lien recorded by BGI. First, BGI's mechanic's lien is invalid because BGI failed to give the BLM notice of its right to lien the land before recording the lien, as required by NRS 108.245. BGI also failed to give the BLM notice of its amendments to the lien, as required by NRS 108.229(1).

Second, TSE's original lien and the first two amendments to that lien improperly attach to real property owned by the BLM. Extensive case law holds that mechanic's liens may not be



1 recorded against federally owned land thus making the original lien invalid. BGI has attempted
2 to remedy this error by recording a third amendment that purports to only attach TSE's interest in
3 the Project rather than the BLM land. However, a void lien cannot be amended. Thus, BGI's
4 lien must be expunged.

5 Finally, TSE requests that the Court require BGI to reimburse TSE for the reasonable
6 fees and costs it has incurred in bringing this Motion. Under NRS 108.2275, the Court must
7 award fees and costs if it expunges a mechanic's lien. Unlike with most attorneys' fees statutes,
8 the Court does not have discretion to deny a request for fees if it finds that a mechanic's lien is
9 invalid.

10 **II. STATEMENT OF FACTS**

11 **A. Background on the Project and the Parties' Dispute**

12 On February 1, 2017, TSE and BGI entered into a Services Agreement ("Agreement")
13 whereby BGI agreed to perform work on the Project for TSE. **Exhibit 1** (Agreement). The
14 Agreement provides that BGI's work will be defined in Work Orders issued by TSE and that
15 BGI will be paid on a time and materials basis, subject to certain additional conditions. *Id.* at pp.
16 1-2, 10.

17 Importantly for purposes of this Motion, TSE is the project developer and oversees BGI's
18 work on the Project but the land the Project is located on belongs to the BLM (hereinafter the
19 "Property").¹ A dispute has now broken out between the Parties over the sufficiency of certain
20 invoices BGI has submitted and TSE's refusal to pay those invoices without first receiving and
21 considering additional backup documentation from BGI. As a result of the dispute, BGI has
22 recently recorded a mechanic's lien and three separate amendments to that lien.

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26
27 ¹ The Property on which the Project is located consists of the following parcels: 012-031-04,
28 012-131-03, 012-131-04, 012-140-01, 012-141-01, 012-150-01, 012-151-01, 012-431-06, 612-
141-01.



1 **B. BGI Did Not Give the BLM Notice of BGI's Alleged Right to Lien the Project**
2 **Before Recording its Mechanic's Lien Against the Property**

3 NRS 108.245 requires that lien claimants give notice of their right to lien to the owner of
4 the real property prior to recording any mechanic's liens against the property. It is undisputed
5 that BGI never gave the BLM notice of its alleged right to lien the BLM's Property. Indeed, BGI
6 has never made any attempt to put the BLM on notice that the BLM's rights to the Property the
7 Project sits on could be impaired due to TSE's alleged withholding of payment to BGI.

8 Despite not giving the BLM any notice of BGI's alleged lien rights, BGI has now
9 recorded a mechanic's lien against the Property on which the Project is located, as well as three
10 amendments to that lien, as set forth below:

- 11 • On April 9, 2018, BGI recorded a notice of lien against the Property in the amount of
12 \$6,982,186.24. **Exhibit 2.**
- 13 • On April 16, 2018, BGI recorded a first amended and restated lien against the Property in
14 the amount of \$7,178,376.94. **Exhibit 3.**
- 15 • On April 18, 2018, BGI recorded a first amended and restated lien to correct its failure to
16 attach an exhibit that describes the Property on which the Project is located. **Exhibit 4.**
- 17 • On April 24, 2018, BGI record a second amended and restated lien (in actuality, this was
18 the third time BGI attempted to amend the original lien). This lien changed the
19 description of the property attached by the lien by stating that the lien only attached to
20 TSE's interest in the Project and did not attach to any BLM owned property. **Exhibit 5.**

21 BGI's failure to give notice to the BLM prior to recording the above lien and lien amendments²
22 should result in the liens being expunged.

23
24
25
26
27 ² NRS 108.229 requires that lien claimant give notice to the "owner of the property" of any
28 amendments to the lien within 30 days after recording the amended notice of lien. BGI failed to
 give the BLM notice of the original lien and the amendments to the original lien.



1 **C. Upon Learning of the Mechanic's Lien, TSE Sent BGI a Letter Demanding**
2 **the Lien be Released. TSE Responded by Seeking to Cure Errors in its Lien**
3 **Via an Amendment.**

4 Upon receiving notice of BGI's mechanic's lien, TSE sent BGI a letter requesting that,
5 among other things,³ the lien be released. TSE pointed out that the lien was invalid because BGI
6 had failed to give notice to the BLM as required by NRS 108.245 and had illegally recorded the
7 lien against federally owned land. Rather than release the lien, BGI recorded a third amendment
8 on April 24, 2018 in an attempt to cure the lien's deficiencies. **Exhibit 5.** Since that date, TSE
9 has repeatedly requested that BGI withdraw the invalid lien to no avail, thus making this Motion
10 necessary.

11 **D. The Mechanic's Lien is an Improper Attempt by BGI to Maximize its**
12 **Leverage in Advance of an Upcoming Contractually Required Mediation**

13 Under NRS 108.226(1), BGI has 90 days from the date it last performed work on the
14 Project to record a mechanic's lien. Given that BGI was still working on the Project within the
15 last month, there was no need for BGI to immediately record the lien. The real reason behind
16 BGI's expedited recording of the lien is that it is seeking to exert leverage over TSE to force
17 payment of the disputed invoices. While BGI's attempt to use the lien as leverage is
18 unfortunately quite common in the construction industry, it is an abuse that this Court need not
19 permit to continue since BGI has failed to comply with Nevada's statutory scheme.

20 In addition to being legally insufficient, BGI's recording of the mechanic's lien is a
21 breach of the Parties' Agreement. The Agreement requires that mediation occur prior to
22 litigation. **Exhibit 1** at p. 8. BGI has now breached this condition by recording the mechanic's
23 lien.

24 ³ TSE also requested that BGI dismiss the lien foreclosure lawsuit and release a lis pendens
25 related to that suit that BGI had recorded against the Property. The lawsuit was improper as
26 NRS 108.244 requires a lien claimant wait 30 days after recording a lien before filing a lien
27 foreclosure suit and BGI had only waited 8 days to file its lawsuit. The lis pendens was
28 improper as it was based on an invalid lawsuit and being used to harass TSE. On April 24, 2018,
 BGI tacitly acknowledged the impropriety of its actions and complied with this aspect of TSE's
 request. *See Exhibit 6* (notice of voluntary dismissal and release of lis pendens). Although not
 directly relevant to the instant Motion, BGI's now withdrawn lien foreclosure suit and lis
 pendens illustrate the cavalier way in which BGI has approached the Nevada mechanic's lien
 statutes. BGI has violated the statute at every turn.



III. BGI'S MECHANIC'S LIEN SHOULD BE EXPUNGED

A. Nevada Law Provides a Process for Expunging Improper Liens Via Motion and Requires that Attorneys' Fees and Costs be Awarded to the Prevailing Party

Under NRS 108.2275, the debtor of a mechanic's lien claimant may bring a motion to remove the lien on the property. The only requirements for such a motion are (1) that it set forth in detail the legal and factual grounds upon which the relief is requested and (2) that it include a notarized affidavit signed by the applicant setting forth a concise statement of the facts upon which the motion is based. NRS 108.2275(2). The required affidavit is attached hereto as **Exhibit 7**. Once the motion to expunge the lien is filed, the court must conduct a hearing within not less than 15 days or more than 30 days after the court issues the order for a hearing. NRS 108.2275(4).

"After a hearing [on the motion to expunge], the district court shall make one of three determinations: (1) that the notice of lien is frivolous and made without reasonable cause, (2) that the lien amount is excessive, or (3) that the notice of lien is not frivolous or excessive and made with reasonable cause." *J.D. Constr. v. IBEX Int'l Grp.*, 126 Nev. 366, 372, 240 P.3d 1033, 1038 (2010); *see also* NRS 108.2275(6).

In contrast to most statutes which give the district court discretion to award or deny requests for attorneys' fees and costs,⁴ NRS 108.2275 requires that the losing party on any motion to expunge be forced to pay the winning party's fees and costs. *One Trop LLC v. Verma*, No. 68756, 2016 WL 3896347, at *2 (Nev. App. July 13, 2016). In *One Trop*, the district court granted a motion to expunge a mechanic's lien but denied the movant's request for attorneys' fees and costs. *Id.* at *1. In denying the motion for fees, the district court reasoned that, although it was expunging the lien, it had not found the lien to be frivolous. The Court of Appeals reversed and remanded for an award of fees because, under NRS 108.2275(6), frivolity

⁴ *See e.g.*, Nev. R. Civ. P. 37(a)(4) (providing that even if a motion to compel is granted, the court does not have to award fees if its finds that the non-moving party's conduct was "substantially justified."). In contrast, NRS 108.2275(6) requires that fees and costs be awarded even in close cases where the person recording the mechanic's lien acted in good faith.



1 is the only permissible reason to expunge a lien. Stated another way, if a mechanic's lien is
2 found to have been improperly asserted, it is by definition frivolous under NRS 108.2275(6) and
3 requires an award of fees and costs to the project owner.

4 **B. BGI's Lien Must be Expunged Because BGI Failed to Give the BLM Notice**
5 **of its Right to Lien**

6 NRS 108.245(1) requires that lien claimants deliver a written notice of right to lien to the
7 "owner of the property" after they first perform work on a project. The form of the notice is
8 specifically set forth in the statute. This notice can be delivered in person or by certified mail.
9 NRS 108.245(1). The statute further provides that a lien may not be "perfected" or "enforced"
10 unless the written notice of right to lien has been given. NRS 108.245(3). NRS 108.226 defines
11 "perfection" of a lien as, among other things, the recording of the lien with the county recorder.

12 If a lien claimant substantially complies with NRS 108.245(1), the recorded lien will still
13 be valid. *Iliescu v. Steppan*, 394 P.3d 930, 934 (Nev. 2017). "However, failure to either fully or
14 substantially comply with the mechanic's lien statute will render a mechanic's lien invalid as a
15 matter of law." *Id.* (internal citations and quotations omitted) (emphasis added). Indeed, the
16 Nevada Supreme Court recently reiterated that "[n]o lien for materials or labor can be perfected
17 or enforced unless the claimant gives the property owner the required notice." *Id.* (emphasis
18 added).

19 Here, it is undisputed that BGI failed to give the BLM (the property owner) written notice
20 of BGI's alleged right to lien the Property as required by NRS 108.245(1). Upon information
21 and belief, the BLM also did not have actual notice that BGI was performing work on the Project
22 for TSE as BGI did not have a contract with the BLM. Thus, BGI has not actually or
23 substantially complied with NRS 108.245's notice requirements and its lien should be expunged.

24 BGI may argue that its failure to serve a pre-lien notice on the property owner should be
25 excused as BGI's April 24, 2018 third amendment to its lien (**Exhibit 5**) seeks to only attach
26 TSE's interest in the improvements on the land rather than the land itself. This argument fails.
27 First, BGI's amendments are invalid for failure to comply with NRS 108.229's requirement that
28 notice of any lien amendment be given to the property owner within 30 days.



1 Second, even assuming, *arguendo*, that notice of the lien amendment was given to the
2 BLM, this would still not save BGI's lien. Not giving notice to the real property owner flies in
3 the face of NRS 108.245's clear language requiring a pre-lien notice to the "owner of the
4 property" regardless of the particular property interest on the land that the claimant seeks to
5 affect. Nevada's mechanic's lien statutes are designed to ensure that property owners are made
6 aware that their property rights could be affected, whether directly or indirectly, due to work
7 being performed by contractors on their property. BGI's failure to give the required pre-lien
8 notice to the BLM frustrates the statute's intent and requires that its lien be expunged.⁵

9 **C. BGI's Original Lien Impermissibly Liened Federally Owned Land**

10 The United States Federal Government enjoys sovereign immunity from lawsuits unless
11 it has expressly waived that immunity via a federal statute. *Price v. United States*, 174 U.S. 373,
12 376, 19 S. Ct. 765, 766, 43 L. Ed. 1011 (1899) ("It matters not what may seem to this court
13 equitable, or what obligation we may deem ought to be assumed by the government . . . it is an
14 axiom of our jurisprudence [that] [t]he government is not liable to suit unless it consent thereto,
15 and its liability in suit cannot be extended beyond the plain language of the statute authorizing
16 it.").

17 Since there is no federal law that waives the government's immunity from mechanic's
18 liens and lien foreclosure actions, courts have universally held that federally owned land is not
19 subject to mechanic's liens that arise under state statutes. *F. D. Rich Co., Inc. v. U. S. for Use of*
20 *Indus. Lumber Co., Inc.*, 417 U.S. 116 (1974) ("Ordinarily, a supplier of labor or materials on a
21 private construction project can secure a mechanic's lien against the improved property under
22 state law. But a lien cannot attach to Government property . . ."); *United States v. Lewis Cty.*, 175
23 F.3d 671, 678 (9th Cir. 1999) ("Foreclosure against federally-owned property is a suit against the
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26 ⁵ Importantly, granting TSE's Motion would not necessarily bring about a harsh result. BGI
27 continues to have the option to (1) release the current mechanic's lien, (2) give the statutorily
28 required pre-lien notice to the BLM and then (3) record a new mechanic's lien. However, to
date, BGI has failed to take this path and instead continues to defend a lien that has been invalid
from the start.



1 United States, which cannot be prosecuted without its consent.”); *Guild Mortg. Co. v. Prestwick*
2 *Court Tr.*, No. 215CV258JCMVCF, 2018 WL 894609, at *9 (D. Nev. Feb. 14, 2018)
3 (“Foreclosure on federal property is prohibited where it interferes with the statutory mission of a
4 federal agency.”); *Best Assets, Inc. v. Dep’t of Hous. & Urban Dev.*, No. 09 C 4259, 2009 WL
5 3719212, at *3 (N.D. Ill. Nov. 5, 2009) (Sovereign immunity, however, bars the imposition of
6 liens on federally owned property.”); *U.S. for the Use & Benefit of Daniel H. Hill v. Am. Sur.*
7 *Co.*, 200 U.S. 197, 203, 26 S. Ct. 168, 170, 50 L. Ed. 437 (1906) (“As against the United States,
8 no lien can be provided upon its public buildings or grounds.”).⁶

9 Here, this is no dispute that BGI’s original April 9, 2018 lien (**Exhibit 2**) attached to real
10 property owned by the BLM and is thus invalid. The first two amendments to that lien also
11 attached to BLM Land (**Exhibits 3-4**) and are also invalid. The third amendment (**Exhibit 5**)
12 attempts to only attach TSE’s improvements to the land, but, as discussed below, this also fails
13 because a lien on federal land is void and cannot be saved via amendment.

14
15 **D. BGI’s Lien Must be Expunged Because a Lien that Improperly Attaches to**
16 **Federally Owned Land Cannot be Cured by Amendment.**

17 Nevada law generally permits minor errors in mechanic’s liens to be remedied via
18 amendment so long as they are not “material.” NRS 108.229; *see also Fondren v. K/L Complex*
19 *Ltd.*, 106 Nev. 705, 712, 800 P.2d 719, 723 (1990) (“A minor error in a lien claim does not
20 invalidate the lien.”). However, an error that goes to the heart of the original lien cannot be
21 corrected with an amendment. *Sequatchie Concrete Serv., Inc. v. Cutter Labs.*, 616 S.W.2d 162,

22 ⁶ *See also United States v. Munsey Tr. Co. of Washington, D.C.*, 332 U.S. 234, 241, 67 S. Ct.
23 1599, 1602, 91 L. Ed. 2022 (1947) (“[N]othing is more clear than that laborers and materialmen
24 do not have enforceable rights against the United States for their compensation. They cannot
25 acquire a lien on public buildings, and as a substitute for that more customary protection, the
26 various statutes were passed which require that a surety guarantee their payment.”) (internal
27 citations omitted); *Equitable Sur. Co. v. U.S., to Use of W. McMillan & Son*, 234 U.S. 448, 456,
28 34 S. Ct. 803, 805–06, 58 L. Ed. 1394 (1914) (stating that without the federal laws requiring
performance and payment bonds on federal projects, “laborers and materialmen (being without
the benefit of a mechanic’s lien in the case of public buildings) would . . . be subject to great
losses.”).



1 165 (Tenn. Ct. App. 1980) (“[W]here there is a positive or unambiguous description of the
2 wrong piece of property and not of property which the lien may properly attach, the description
3 is obviously insufficient to create or preserve a lien.”).

4 Importantly, the case law cited in the previous section shows that BGI’s original April 9,
5 2018 lien was invalid on its face because it attempted to attach federally owned land. Realizing
6 its error, BGI attempted to amend the lien on April 24, 2018 so that it would only attach to TSE
7 owned improvements on the federal land. However, Nevada law and logic dictates that one
8 cannot amend a lien that never existed in the first place. Thus, Brahma’s lien remains fatally
9 flawed since it attempted to attach federal land and must be expunged.⁷

10 **E. TSE is Entitled to Recover its Reasonable Attorneys’ Fees and Costs**

11 As explained above, if the Court expunges BGI’s mechanic’s lien it must also require
12 BGI to pay TSE’s reasonable attorney’s fees and costs incurred in bringing this Motion. The
13 Court does not have discretion to expunge BGI’s lien and not award fees and costs to TSE under
14 NRS 108.2275(6). This is so even if the Court believes that BGI and its attorneys acted in good
15 faith when recording the mechanic’s lien and attempting to amend it. If this Motion is granted,
16 TSE will submit a redacted memorandum of fees and costs for the Court’s review to enable the
17 Court to determine the reasonableness of TSE’s fees under *Brunzell v. Golden Gate Nat. Bank*,
18 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

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27 ⁷ Again, BGI is free to release the invalid lien and record a new lien that does not attach to any
28 federal land. However, BGI has failed to do so.



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V. CONCLUSION

For the foregoing reasons, TSE requests that the Court enter an order granting TSE the following relief:

- 1.) Expunge the mechanic's lien attached hereto as **Exhibits 2-5**;
- 2.) Require BGI to reimburse TSE for the reasonable fees and costs it has incurred in bringing this Motion.

DATED this 1st day of June, 2018.

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

*Attorneys for Plaintiff
Tonopah Solar Energy, LLC*



CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2018, a true and correct copy of the foregoing
**TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP,
INC.'S MECHANIC'S LIEN** was served by mailing a copy of the foregoing document in the
United States Mail, postage fully prepaid, to the following:

Justin C. Jones, Esq.
Nicole Lovelock, Esq.
JONES LOVELOCK
400 S. Fourth Street, Suite 500
Las Vegas, NV 89101

Kevin E. Helm, Esq.
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Las Vegas, NV 89102

Attorneys for Defendant Brahma Group, Inc.

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

EXHIBIT 1

EXHIBIT 1

SERVICES AGREEMENT

This SERVICES AGREEMENT is made as of February 1, 2017 between:

Tonopah Solar Energy, LLC
("TSE")

AND

Brahma Group, Inc.
("Contractor")

In this Services Agreement (the "**Agreement**"), "TSE Affiliate" means any parent or affiliate of TSE.

1. Mandate and Role of Contractor. TSE agrees to contract with Contractor as an independent contractor and Contractor agrees to contract with TSE as an independent contractor for the Term (as defined below). Contractor shall act hereunder as an independent contractor and no partnership, joint venture, employment or other association shall exist or be implied by reason of this Agreement or the provision of the Services (as defined below).
2. Services. During the Term, Contractor agrees to render to TSE such services as are reasonably necessary to perform the work described in **Exhibit A**, attached hereto and made a part hereof (the "**Services**"). Contractor shall perform the Services and deliver the deliverables, as required by and in accordance with the specifications and standards set forth in **Exhibit A**; if no specifications or standards are indicated, the performance and delivery will be in accordance with industry and professional standards.
3. Term of Contract. The term of this Agreement shall commence on February 7, 2017 and shall end on November 14, 2018, unless extended by TSE in writing, or sooner terminated at any time in writing by TSE at its sole discretion and without any requirement for advance notice (the "**Term**").
4. Services Fees and Reimbursement of Expenses.
 - (a) For all Services rendered by Contractor during the Term, Contractor will receive solely the following fees, and will have no other rights or privileges whatsoever, including without limitation in any employee benefits or plans of TSE or any TSE Affiliate: In full and sole consideration for the Services provided hereunder, TSE shall pay Contractor at an hourly rate, Not to Exceed the aggregate amount specified in **Exhibit A**, at the applicable billing rates detailed in **Exhibit C**.
 - (b) **Exhibit C** contains both Prevailing and Non-Prevailing billing rates. Prior to execution of the work described in **Exhibit A**, the distinction shall be made in writing as to which billing rate is applicable.

- (c) Contractor shall provide to TSE on the 5th day of each calendar month an invoice for Services rendered by the Contractor during the relevant monthly period terminating five (5) days prior to the date of such invoice. Except with respect to disputed amounts, each invoice shall be due and payable within forty-five (45) days following TSE's receipt of such invoice accompanied by all applicable Payment Deliverables (as defined in **Exhibit D**).
- (d) TSE will reimburse the Contractor for its reasonable out-of-pocket incidental expenses that are necessary and reasonable for performance of the Services, provided such expenses are approved in advance by TSE's Authorized Representative (designated in **Exhibit A**). Contractor shall provide TSE within five (5) days after the end of each calendar month a written request for reimbursement of such expenses for that month, using a format acceptable to TSE, together with all documentation and receipts supporting each individual expense item. TSE is under no obligation to reimburse the Contractor for any requests for reimbursement not meeting the conditions of this paragraph.

5. Work Policy, Personnel.

- (a) The scope of the Services to be performed hereunder by Contractor shall be coordinated with the Authorized Representative at all times. TSE is interested only in the results to be achieved, and the conduct and control of the Services and Contractor's workmen will lie solely with Contractor. Though Contractor, in performance of the Services, is an independent contractor with the sole authority and responsibility to control and direct the performance of the details of the Services, the final product and result of the Services must meet the approval of TSE and shall be subject to TSE's general rights of inspection and supervision to secure the satisfactory completion of the Services. TSE may change the Authorized Representative at any time upon written notice to Contractor.
- (b) Contractor shall observe and comply with TSE's and applicable TSE Affiliate's security procedures, rules, regulations, policies, working hours and holiday schedules. Contractor shall use commercially reasonable efforts to minimize any disruption to TSE's and any TSE Affiliate's normal business operations at all times.
- (c) Contractor agrees to comply with TSE's safety programs and all safety requirements promulgated by any local or Federal governmental authority, including without limitation, the requirements of the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all standards and regulations which have been and shall be promulgated by the agencies which administer such or similar acts. Contractor shall prevent the use, planned release, or other introduction onto the Plant site, or the exposure to persons and property, of any toxic or hazardous substance, whether subject to regulation or not. Contractor shall clean up and abate any spills or contamination, and restore the affected area to its prior condition and as required by applicable governmental authorities. To the fullest extent allowed by law (and no further),

Contractor shall be solely responsible for and shall indemnify and hold harmless TSE from and against any and all claims, damages, liabilities, costs or expense (including the fees of counsel and other expenses of litigation) suffered or incurred as a result of Contractor's use or introduction onto the Crescent Dunes plant site of any hazardous or toxic substance, whether subject to regulation or not, or Contractor's failure to otherwise abide by the provision of this paragraph. At the completion of the Services, Contractor shall remove all waste materials and rubbish from the Plant site as well as all tools, construction equipment, machinery and surplus materials.

6. Representations and Warranties: Undertakings.

- (a) Contractor represents and warrants that it has the knowledge, skill and experience to provide the Services, that it is a contractor licensed in the State of Nevada, and that all Services will be performed in a good and professional manner in accordance with industry standards and all applicable laws, statutes, regulations or ordinances.
- (b) Contractor represents and warrants that this Agreement and the Services are not in conflict with any other agreement to which Contractor is a party or by which it may be bound.
- (c) Contractor agrees to be solely responsible for payment of compensation, workman's compensation, social security, disability, medical, savings, pension, fringe and other benefits, unemployment insurance and employment tax withholding in relation to its employees (all being the "**Payments**"). Contractor further agrees to pay, on a monthly basis for the duration of any such claim, TSE's attorney's fees and costs if Contractor, one of Contractor's employees, or someone acting on their behalf, alleges that Contractor, was an employee of TSE or any TSE Affiliate.
- (d) Contractor is and will be an independent contractor. In the event that the Contractor chooses to subcontract a portion of the services described in **Exhibit A**, Contractor shall be fully responsible for any work in accordance with the terms of this agreement.
- (e) If a natural person, the Contractor additionally agrees to be solely responsible for self-employment taxes, unincorporated business taxes, other taxes and payments related to the Services (the "**Self-Employment Payments**"), and agrees to otherwise not be or try to be deemed an employee of TSE or any TSE Affiliate in any way, with respect to Payments, Self-Employment Payments or otherwise.
- (f) Contractor will cooperate in the defense of TSE or any TSE Affiliate against any governmental or other claim made for taxes of any kind related to the Services or this Agreement, or any payment made to Contractor or any person assigned by Contractor. Further, Contractor agrees to indemnify TSE and any TSE Affiliate for the amount of any employment taxes required to be paid by TSE or TSE Affiliate as the result of Contractor not paying any federal, state or local income taxes with respect to the fees or any other payment or benefit received by Contractor with respect to the Services.

7. Intellectual Property Rights.

- (a) If Contractor (alone or with others) during this Agreement or its performance (whichever is longer) or based on information acquired during the same, makes, creates, or otherwise contributes to an idea, concept, improvement, method, invention, discovery, writings, programming, documentation, source code, object code, compilations, design or other work or intellectual property, tangible or intangible, that relates to, affects or is capable of being used in the business of TSE or a TSE Affiliate (all of the above, the specifications and the deliverables, being the "**Work**"), Contractor will disclose promptly full details of the Work to TSE and, irrespective of such disclosure, hereby assigns and agrees to assign all rights in any patents, patent applications, copyrights, disclosures, or trade secrets, to TSE or such TSE Affiliates as TSE may direct.
- (b) Contractor agrees that the Work shall be deemed "works made for hire" and that TSE or the applicable TSE Affiliate shall be deemed the author and sole, exclusive owner thereof, including all copyrights therein. Contractor hereby transfers, assigns, sells, and conveys to TSE, or to the applicable TSE Affiliate, all of Contractor's right, title and interest in the Work, and in all property of any nature, whether patentable or not, pertaining to the Work, including Contractor's interest in any and all worldwide trade secret, patent, copyright and other intellectual property. All records of or pertaining to the Work shall also be the property of TSE, or the applicable TSE Affiliate. Contractor will not do any act that would or might prejudice TSE or any TSE Affiliate.
- (c) Contractor agrees to execute all documents necessary or desirable in TSE's judgment to confirm TSE's or TSE Affiliate's, as the case may be, ownership interest in the Work, or to document, perfect, record or confirm the rights given to TSE and TSE Affiliates hereunder.
- (d) The Contractor also agrees to assist TSE, at TSE's request and expense, in preparing, prosecuting, perfecting and enforcing the rights of TSE, or of such TSE Affiliate as TSE may direct, in, and its ownership of, any intellectual property including without limitation, U.S. or foreign patents, copyrights, or patent applications for which Contractor may be named as an inventor (including any continuation, continuation-in-part, divisional applications, reissue, or reexamination applications).

8. Confidentiality Provisions.

- (a) Contractor acknowledges that, in the course of performing the Services, Contractor may receive or have access to non-public, proprietary and confidential information from or about TSE and TSE Affiliates, including but not limited to financial, business and technical information and models, names of potential and actual customers or partners, and their affiliates, proposed and actual business deals, transactions, processes, reports, plans, products, strategies, market projections, software programs, data or any other information. All such information, as well as the Work defined above, in whatever form or medium (including without limitation, paper, electronic, voice,

audio, and computer) are collectively referred to herein as "**Confidential Information**".

- (b) Contractor shall keep the Confidential Information confidential and shall not disclose or show such information, in whole or in part to any person, and will make no use of it except for, the sole purpose of performing the Services. Confidential Information shall not in any event be used for Contractor's own benefit or for any purpose detrimental to the interests of TSE or any TSE Affiliate.
 - (c) Without limiting the generality of the foregoing, Contractor agrees that it will not disclose or use TSE's or any TSE Affiliate's customer information provided to it under this Agreement or to which Contractor has access in performing the Services in any way, except for the purpose for which TSE or TSE Affiliates provided it. Contractor also agrees that it will implement information security measures to ensure that it, its employees and any service provider used by it will protect customer information. Contractor further agrees that, upon the reasonable request of TSE, it will provide TSE with copies of audits, test result information, or other measures that will enable TSE to assess whether it is in compliance with this Section 8.
 - (d) No license to Contractor or any other person, under any trademark, patent, copyright, or any other intellectual property right, is either granted or implied by the conveying of any Confidential Information. Within ten (10) days following the receipt of a request from TSE, Contractor will deliver to TSE all tangible materials containing or embodying Confidential Information, together with a certificate of Contractor certifying that all such materials in Contractor's possession or control have been delivered to TSE or the specified TSE Affiliate or destroyed. Contractor shall not assert directly or indirectly any right with respect to the Confidential Information which may impair or be adverse to TSE's or any TSE Affiliate's ownership thereof.
 - (e) Contractor agrees to comply with the confidentiality covenants contained in any other transactional documents to which TSE becomes bound in connection with this Agreement, in each case to the extent more restrictive than the confidentiality provisions otherwise contained in this Section 8.
 - (f) It is expressly understood and agreed that this Section 8 shall survive the termination of this Agreement.
9. No Infringement. Contractor covenants and agrees that the Work does not and will not infringe upon the intellectual property or confidentiality rights of any third party. Contractor will at its cost defend TSE and applicable TSE Affiliates against any claim that the Services, Work, or products used by Contractor so infringe.
10. No Liens.
- (a) Contractor shall not voluntarily permit any laborer's, materialmen's, mechanic's or other similar lien, claim or encumbrance (collectively, "Lien") to be filed or otherwise

imposed on any part of the Services, the materials and equipment necessary for the performance of the Services, or the Crescent Dunes plant site (except to the extent that such Lien arises from TSE wrongfully withholding payment from Contractor). If any such Lien or claim therefor is filed or otherwise imposed, then, in such event, Contractor shall, at the request of TSE, cause such Lien promptly to be released and otherwise discharged. If any Lien is filed and Contractor does not promptly cause such Lien to be released, discharged, or if a bond is not filed to indemnify against or release such Lien, then, TSE shall have the right to pay all sums necessary to obtain such release and discharge and to deduct all amounts so paid by it from any payment owing to Contractor. Contractor shall indemnify and hold harmless TSE from all claims, losses, demands, causes of action or suits of whatever nature arising out of any Lien or claim therefor (except to the extent that such Lien arises from TSE wrongfully withholding payment from Contractor).

- (b) Upon TSE's request at any time, Contractor agrees promptly to furnish such statements, certificates and documents in form and substance satisfactory to TSE, in its sole discretion, which statements, certificates and/or other documents shall include, without limitation, names of Contractor's any permitted subcontractors and suppliers, their addresses, amounts due or to become due or previously paid to such subcontractors and suppliers, information concerning any Lien claims, Lien releases and/or Lien waivers or receipted bills evidencing payment, estimates of the cost of the Services performed to the date of such certificate, and estimates of the cost of completing such Services.
11. Remedies for Breach. Contractor understands and agrees that money damages would not be sufficient remedy for any breach of this Agreement and that TSE or applicable TSE Affiliate shall be entitled to seek injunctive or otherwise equitable relief to remedy or forestall any such breach or threatened breach. Such remedy shall be in addition to all other rights and remedies available at law or in equity.
12. No Consequential Damages. Notwithstanding any other provision in this Agreement, under no circumstances will either party or any affiliate of a party be liable to the other for any consequential, indirect, special, punitive or incidental damages. Each party hereby waives and releases any and all rights which it has, or may have in the future which arises out of or relates to the non-continuation or termination of this Agreement by TSE for any reason, except, however for any rights which Contractor may have for compensation due and payable in accordance with the terms of this Agreement.
13. Right of Publicity. Contractor may not use the name, logo, trademarks or service marks of TSE or TSE Affiliates or any part thereof in any publicity, advertisement or brochure without their prior written consent.
14. Equal Employment. TSE does not discriminate in employment on the basis of sex, age, race, creed, color, religion, sexual orientation, national origin, marital status, disability or any other basis that is prohibited by law. Contractor agrees in providing the Services not to discriminate on any basis and, if an entity, represents that it is an equal employment opportunity firm.

15. Compliance with laws and with advisory guidelines. Contractor will comply with all laws applicable to its business, the Services, and goods and products it provides in the Services.
16. Indemnification.
- (a) Contractor will take proper safeguards for the prevention of accidents or injury to persons or property. Property as used in this Agreement includes money. Money includes, but is not limited to, currency, coin, checks, and/or securities and any other documents or items of value or documents which represent value.
 - (b) Contractor will to the fullest extent permitted by law, indemnify and hold harmless TSE from and against all direct and indirect loss, whether suffered by TSE or others, liability, damages, suits, settlements, judgments, costs and expenses (including without limitation, reasonable attorneys' fees and court costs) (collectively, "**Losses**"), resulting from any claims, actions or legal proceedings arising from or related to any (i) injury to persons, including death, (ii) damage to property, including loss of property, (iii) loss of use of property, (iv) fidelity or crime loss, or (v) professional services liability, error or omission, in each case of the foregoing (i) through and including (v) arising in connection with the Services, and/or materials or premises supplied by Contractor, or any of its employees, agents, subcontractors, servants or invitees to TSE or which may be caused by any act, negligence, or default whatever of Contractor, its employees, agents, servants or invitees, except to the extent caused by TSE's gross negligence or intentional misconduct.
 - (c) As respects any services provided by Contractor under this Agreement related to money, Contractor assumes liability for all risk of loss or damage should money, in any form, come into its care.
 - (d) It is expressly understood and agreed that the foregoing provisions of this Section 15 shall survive the termination of this Agreement.
 - (e) The term TSE as used in this Section 15 include any of TSE's subsidiaries, affiliates, as well as its and their respective shareholders, directors, officers, agents, representatives, and employees.
17. Insurance. Contractor shall obtain and maintain the insurance requirements outlined in Exhibit B, attached hereto and made a part hereof. Each of the insurances that Contractor is required to obtain and maintain under the Agreement shall be with recognized reputable companies acceptable to TSE. Upon request from TSE from time to time, Contractor shall furnish TSE with insurance certificates evidencing that Contractor has complied with the foregoing insurance requirements. In the event that Contractor performs any Services on the site of TSE's Crescent Dunes project in Tonopah, Nevada, Contractor shall comply with the insurance requirements provided by TSE to Contractor.

18. Waiver. If TSE fails or delays in exercising any right, power, or privilege hereunder, this shall not be deemed a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege hereunder.
19. Amendment. No part of this Agreement may be modified, waived, or amended except in a writing signed by the party to be charged, and solely as to the matters specified in such writing.
20. Successor Provision. This Agreement shall be binding upon and inure to the benefit of Contractor and TSE, and their respective successors, heirs, executors, administrators and assigns, except that neither party hereto may assign or delegate any of its rights or obligations hereunder without the prior written consent of the other party hereto; provided, however, that TSE may assign and delegate to one or more TSE Affiliates.
21. Severability-Survival. If any of the provisions of this Agreement are held invalid, illegal or unenforceable, the remaining provisions shall be unimpaired. The provisions of this Agreement expressly provided as being or intended by their meaning to be of unlimited duration shall survive termination of this Agreement.
22. Headings. Headings are for reference and shall not affect the meaning of any provision of this Agreement.
23. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof.
24. Governing Law-Submission to Jurisdiction-Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of Nevada. Contractor submits to the jurisdiction of the courts in such State, with a venue in Las Vegas, Nevada, for any action or proceeding directly or indirectly arising out of this Agreement, and agrees that service on Contractor in such action shall be valid when mailed to Contractor at Contractor's address below. Mediation is a condition precedent to the institution of legal proceedings arising from or relating to this Agreement; provided, however, that either party may file a legal proceeding in advance of mediation if necessary to protect or preserve a legal right, and any such proceeding filed in advance of mediation must be stayed pending mediation for a period of sixty (60) days from the date of filing or for such longer period as the parties may agree or a court may order. Contractor and TSE, on behalf of itself and of applicable TSE Affiliates hereby irrevocably waive any and all right to trial by jury in any action or proceeding arising out of or relating to this Agreement.
25. Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given to a Party when delivered personally to such Party or sent to such Party by reputable express courier service (charges prepaid), or mailed to such Party by certified or registered mail, return receipt requested and postage prepaid, to such Party's address

stated in the caption of this Agreement or any other address that such Party has identified as the address for notices by written notice hereunder to the other Party at least thirty (30) days prior to such other Party's notice. Such notices, demands and other communications shall be addressed to each Party at their address provided below.

[Signature page follows]

IN WITNESS WHEREOF, TSE and Contractor have caused this Agreement to be executed by a duly authorized officer, or if Contractor is a natural person, Contractor hereby signs in its individual capacity. This Agreement may be executed in counterparts, which, when taken together, will constitute one agreement.

TONOPAH SOLAR ENERGY, LLC

By: 
Name: Kevin B. Smith
Title: President
Address: 520 Broadway
6th Floor
Santa Monica, CA 90401
Email: legal@solarreserve.com
Fax: (310) 315-2201

BRAHMA GROUP, INC.


By: 
Name: David K. Zimmerman
Title: VPT General Counsel
Address: 1132 South 500 West
Salt Lake City, UT 84101
Email: david.z@bgi.email
Fax: _____

EXHIBIT A

Start Date: February 7, 2017

End Date: November 14, 2018

Hourly Rate: See Exhibit C

Total Not to Exceed (NTE) amount: \$5,000,000

Authorized Representative: Rob Howe, Project Director

Scope of Work

Brahma Group, Inc. will perform work for as directed by TSE which will be described in Work Orders issued by TSE as necessary.

EXHIBIT B

INSURANCE REQUIREMENTS

Insurance Requirements

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by Contractor, its permitted agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 12 07 (CG 00 01 04 13, if available) or carrier equivalent covering CGL on an "occurrence" basis, including premises, products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than One Million (\$1,000,000) per occurrence; Two Million (\$2,000,000) general in the aggregate. Coverage shall include Sudden & Accidental Pollution. Coverage shall be provided on a per-location or per-project basis. If coverage is written on a "claims-made" basis, the policy shall have a three-year (3) extended reporting period following the completion of Services or expiration of the Agreement;
2. **Business Automobile Liability:** Insurance Services Official Form Number CA 00 01 or carrier equivalent covering all owned (if any), hired, and non-owned vehicles with a limit of no less than One Million (\$1,000,000) per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State in which work is being performed, with Statutory Limits, and **Employer's Liability** Insurance with a limit of no less than One Million (\$1,000,000) per accident; One Million (\$1,000,000) disease-each employee; One Million (\$1,000,000) disease-policy limit.
4. **Umbrella or Excess Liability** coverage with a limit of no less than Five Million (\$5,000,000) for each occurrence with an annual aggregate of Five Million (\$5,000,000). Policy shall follow the CGL regarding per location or per project coverage basis and shall include (i) Commercial General Liability, (ii) the Business Auto Liability, and (iii) Employers Liability coverage limit of no less than Five Million Dollars (\$5,000,000) (following CGL or a separate policy shall be an underlyer to this policy). If coverage is written on a "claims-made" basis, the policy shall have a three-year (3) extended reporting period following the completion of Services or expiration of the Agreement.

Insurance Policy Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured

SolarReserve, LLC ("SolarReserve") and TSE, their subsidiaries, sub-subsidiaries, divisions, and members of limited liability company and any affiliated, associated, allied, controlled or interrelated entity over which SolarReserve has control, The United States Department of Energy ("DOE"), and PNC Bank, National Association doing business as Midland Loan Services, a division of PNC Bank, National Association ("PNC") and their respective officers and employees shall be named as additional insured on all policies (except Workers' Compensation/Employer's Liability and Professional Liability) with respect to liability arising out of Services or operations performed by or on behalf of Contractor, including Goods, materials, parts, or equipment furnished in connection with such Services or operations. Additional Insured coverage shall be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 "ongoing operations" and CG 20 37 "completed operations" forms (or later versions of or a carrier equivalent of such forms)).

Primary and Non-Contributory Coverage

The insurance shall be primary and non-contributory with respect to the insurance provided for the benefit of TSE, SolarReserve, DOE and PNC and their respective officers and employees. Each insurance policy required above shall be included in coverage form or be endorsed to provide Separation of Insureds. Each of the insurances that Contractor is required to obtain and maintain under the Agreement shall be with recognized reputable companies with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to TSE.

Separation of Insureds

Each insurance policy required above shall include in coverage form or be endorsed to provide Separation of Insureds.

Notice of Cancellation

The insurance policies may not be cancelled, non-renewed or materially changed by Contractor or its subcontractor without giving 30 days or, in the case of cancellation for non-payment of premiums, 10 days, prior written notice. The policies shall be endorsed to provide notice to TSE, SolarReserve, DOE and PNC and their respective officers and employees.

Waiver of Subrogation

All such insurance shall include a waiver of any rights of subrogation of the insurer as against

SolarReserve, and TSE, their subsidiaries, sub-subsidiaries, divisions, and members of limited liability company and any affiliated, associated, allied, controlled or interrelated entity over which SolarReserve has control, DOE, and PNC and their respective officers and employees; and shall waive the right of insurer to any set-off, counterclaim, or other deduction of any sort.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to TSE.

Verification of Coverage

Contractor shall furnish TSE, SolarReserve, the DOE, the Collateral Agent and the Loan Servicer with its own original certificates including carrier-issued endorsements with policy numbers referenced or copies of the applicable policy language effecting coverage required evidencing that Contractor has complied with the foregoing insurance requirements. All certificates and endorsements are to be received and approved by TSE before Contractor commences performing the Services. Failure to obtain the required documents prior to commencement of the Services shall not waive Contractor's obligation to provide them. TSE reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

EXHIBIT C
BILLING RATES



CRAFT LABOR RATES

General Conditions • Support

Crescent Dunes Solar Energy Project

Tonopah, NV

CLASSIFICATION	Straight Time	Overtime	Double Time
Project Manager	\$ 150.26	\$ 199.83	
Field Engineer	\$ 134.73	\$ 179.19	
Cost Scheduler	\$ 134.73	\$ 179.19	
Superintendent	\$ 134.73	\$ 179.19	
QA/QC Manager	\$ 95.89	\$ 127.53	
Safety Manager	\$ 95.89	\$ 127.53	
Field Safety	\$ 68.91	\$ 91.65	
CWI	\$ 68.91	\$ 91.65	
Admin	\$ 57.05	\$ 75.86	

- Per Diem: Will be billed in addition to rates noted above.

11-Nov-16



CRAFT LABOR RATES

Field

Crescent Dunes Solar Energy Project

Tonopah, NV

CLASSIFICATION	Straight Time	Overtime	Double Time
General Foreman	\$ 94.26	\$ 125.36	
Foreman	\$ 90.36	\$ 120.18	
Iron Worker	\$ 85.43	\$ 113.62	
Carpenter	\$ 73.92	\$ 98.32	
Electrician	\$ 83.91	\$ 111.60	
Operator	\$ 79.52	\$ 105.76	
Millwright	\$ 85.43	\$ 113.62	
Pipe Fitter	\$ 86.36	\$ 114.99	
Laborer	\$ 55.62	\$ 73.97	

- Per Diem - Will be billed in addition to rates noted above.
- Small hand tools are included in the rate noted above.
- Equipment - Will be billed in addition to the rates noted above according to our current rates.
- Third Party Costs - Will be billed in addition to the rates noted above with 10% mark up.

11-Nov-16



BRAHMA

GROUP, INC.

CRAFT LABOR RATES

General Conditions - Support

Crescent Dunes Solar Energy Project

Tenopah, NV

Per 2017 Prevailing Wage Rates Nye County Effective 10/1/16 through 9/30/17

CLASSIFICATION	Straight Time	Overtime	Double Time
Project Manager	\$ 176.28	\$ 235.12	
Field Engineer	\$ 158.50	\$ 210.81	
Cost Scheduler	\$ 158.50	\$ 210.81	
Superintendent	\$ 158.50	\$ 210.81	
QA/QC Manager	\$ 112.81	\$ 150.04	
Safety Manager	\$ 112.81	\$ 150.04	
Field Safety	\$ 81.07	\$ 107.83	
CWI	\$ 81.07	\$ 107.83	
Admin	\$ 67.12	\$ 89.27	

- Per Diem - Will be billed in addition to rates noted above.

11-Nov-16



CRAFT LABOR RATES

Field

Crescent Dunes Solar Energy Project

Tonopah, NV

Per 2017 Prevailing Wage Rates Nye County Effective 10/1/16 through 9/30/17

CLASSIFICATION		Straight Time	Overtime	Double Time
General Foreman	\$	110.89	\$	147.48
Foreman	\$	106.31	\$	141.39
Iron Worker	\$	100.50	\$	133.67
Carpenter	\$	86.97	\$	115.67
Electrician	\$	98.72	\$	131.30
Operator	\$	93.55	\$	124.42
Millwright	\$	101.50	\$	133.67
Pipe Fitter	\$	101.72	\$	135.29
Labourer	\$	65.43	\$	87.92

- Per Diem - Will be billed in addition to rates noted above.
- Small hand tools are included in the rate noted above.
- Equipment - Will be billed in addition to the rates noted above according to our current rates.
- Third Party Costs - Will be billed in addition to the rates noted above with 10% mark up.

11-Nov-16

EXHIBIT D
Payment Deliverables

Each of Contractor's invoices shall be accompanied by the following documents (collectively, "Payment Deliverables"):

1. with regard to payments sought for work (labor and materials) furnished by subcontractors or suppliers (which may be used only if consented to by TSE), Contractor must identify all subcontractors and suppliers for whose work or materials payment is being sought in the invoice and, in addition to providing such supporting documentation as may be reasonably required or requested by TSE, provide, for each such subcontractor the following information: (a) a brief description of the Services performed for which payment is being sought, (b) the agreed upon price or value of the Services, (c) the amount to be retained or withheld from the subcontractor, and (d) the amount requested for payment to the subcontractor;

2. a duly executed Waiver/Release of Mechanic's Lien from the Contractor and each of the Contractor's subcontractors and suppliers for whom payment is sought, in the form required by TSE, unconditionally waiving and releasing all contractual, statutory and constitutional liens or all claims for payment for the work covered by previously paid invoices;

3. a duly executed Waiver/Release of Mechanic's Lien from the Contractor and each of the Contractor's Subcontractors and Suppliers for whom payment is sought, in the form required by TSE, waiving and releasing all contractual, statutory and constitutional liens or all claims for payment for the work covered by the invoices being submitted, conditioned only upon receipt of the requested payment;

4. In the case of a request for final payment:

(A) a "Bills Paid Affidavit" by Contractor that states, under oath and in a form acceptable to TSE, that all bills or obligations incurred by Contractor through the final completion of the Services have been paid or are as set forth in the affidavit. Amounts unpaid or claimed to be owed by Contractor (including claims asserted by Subcontractors, whether or not disputed by Contractor), including such amounts to be paid to Subcontractors from the final payment requested by Contractor, shall be fully identified in the Affidavit (by name of person to whom payment is owed or who is claiming payment and the amount owed or claimed to be due);

(B) a duly executed Final Waiver/Release of Mechanic's Lien from Contractor and each of the Contractor's subcontractors for whom payment is sought, in the form required by TSE, unconditionally waiving and releasing all contractual, statutory and constitutional liens or all claims for payment for the work covered by previously paid Requests for Payment; and

(C) a duly executed Final Waiver/Release of Mechanic's Lien from Contractor and each of the Contractor's subcontractors and suppliers for whom payment is sought, in the form required by TSE, waiving and releasing all contractual, statutory and constitutional liens or all claims for payment for the work through final completion, conditioned only upon receipt of payment of the amount stated therein, conditioned only upon receipt of the requested payment, which amount must match the amount set forth as

due and owing in the Contractor's Bills Paid Affidavit required under subparagraph (A) above.

5. Contemporaneous with receipt of the final payment (or, at TSE's sole option, after final payment) Contractor shall furnish a duly executed Full and Final Waiver/Release of Mechanic's Lien from the Contractor in the form required by TSE, unconditionally waiving all contractual, statutory and constitutional liens or all claims for payment for the work through final completion thereof. At TSE's option, contemporaneous receipt of such Full and Final Unconditional Lien Waiver shall be a condition to actual payment of the final payment to the Contractor.

EXHIBIT 2

EXHIBIT 2

APN: 012-031-04, 012-131-03,
012-131-04, 012-140-01, 012-141-01,
012-150-01, 012-151-01, 012-431-06,
612-141-01

DOC # 890822
Official Records Nye County Nevada
Deborah Beatty - Recorder
04/09/2018 01:09:15 PM
Requested By: JONES LOVELOCK
Recorded By: kd RPTT:\$0
Recording Fee: \$35.00
Page 1 of 7



WHEN RECORDED, MAIL TO:

Jones Lovelock
Nicole Lovelock
400 South 4th Street, Suite 500
Las Vegas, NV 89101

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property and does hereby reserve the right to further amend this Notice of Lien or to record a new notice of lien with respect to the work, material or equipment it has furnished or may furnish for which it is not paid and does not cancel, withdraw, discharge or release and expressly reserves any and all rights, remedies and claims that it may possess with respect to the work, material or equipment it has furnished or may furnish:

1. The amount of the original contract is: this is a time and material contract with no specified original contract amount
2. The total amount of all additional or changed work, materials and equipment, if any, is: not applicable
3. The total amount of all payments received to date is: \$13,818,882.29
4. The amount of the lien, after deducting all just credits and offsets, is:
\$6,982,186.24

5. The name of the owner, if known, of the property is: Bureau of Land Management and Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities

6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Tonopah Solar Energy, LLC

7. A brief statement of the terms of payment of the lien claimant's contract is: amounts attributable to time and materials provided to the Crescent Dunes Solar Energy Project and, payment as required by Nevada law, but in no event later than 45 days after the submission of an invoice

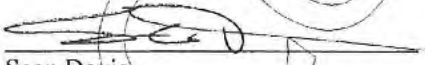
///

///

8. A description of the property to be charged with the lien is: Crescent Dunes Solar Energy Project more particularly described in Exhibit A.

Dated: April 6, 2018.

Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

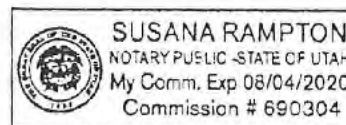
State of Utah)
) ss.
County of Salt Lake)

Sean Davis, being first duly sworn on oath according to law, deposes and says:

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


Sean Davis

Subscribed and sworn to before me this
6th day of the month of April
of the year 2018



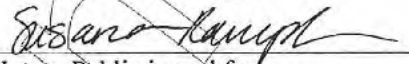

Notary Public in and for
the County of Salt Lake and State of Utah

EXHIBIT A

Improvement:

The Crescent Dunes Solar Energy Project is a 110 MW plant constructed on the Land in Tonopah, Nevada.

Land:

Nye County Assessor Parcels: APN 012-031-04, APN 012-131-03, APN 012-131-04, APN 012-140-01, APN 012-150-01, APN 012-141-01, APN 012-431-06, APN 012-151-01, AND 612-141-01

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

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

PARCEL 1: GEN-TIE LINE (NVN-087933)

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

- Section 33: The SE $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{2}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Section 34: The W $\frac{1}{2}$, the SE $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;
- Section 35: The SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

- Section 2: The E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
- And

A TRACT OF LAND SITUATED IN LOT 2 OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 41 EAST, M.D.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST,
331.44 FEET TO THE CORNER OF THE EAST HALF (E ½) OF THE
NORTHEAST QUARTER (NE ¼) OF THE SOUTHWEST QUARTER (SW ¼)
OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 2;
THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST
LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET, THENCE SOUTH
88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2;
THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85
FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North one Half (N ½) of the Southeast Quarter (SE ¼) and the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

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

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW ¼) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 3

EXHIBIT 3

APN: 012-031-04, 012-131-03,
012-131-04, 012-140-01, 012-141-01,
012-150-01, 012-151-01, 012-431-06,
612-141-01

DOC # 891073
Official Records Nye County Nevada
Deborah Beatty - Recorder
04/16/2018 04:31:46 PM
Requested By: JONES LOVELOCK
Recorded By: lc RPTT:\$0
Recording Fee: \$35.00
Page 1 of 3



WHEN RECORDED, MAIL TO:

Jones Lovelock
Nicole Lovelock
400 South 4th Street, Suite 500
Las Vegas, NV 89101

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

NOTICE OF FIRST AMENDED AND RESTATED LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property and does hereby reserve the right to further amend this Notice of First Amended and Restated Lien, which has amended and/or restated the Notice of Lien that was recorded April 9, 2018 as Document No. 890822 in the Office of the Nye County Recorder, or to record a new notice of lien with respect to the work, material or equipment it has furnished or may furnish for which it is not paid and does not cancel, withdraw, discharge or release and expressly reserves any and all rights, remedies and claims that it may possess with respect to the work, material or equipment it has furnished or may furnish:

1. **The amount of the original contract is:** this is a time and material contract with no specified original contract amount
2. **The total amount of all additional or changed work, materials and equipment, if any, is:** not applicable
3. **The total amount of all payments received to date is:** \$13,818,882.29

4. **The amount of the lien, after deducting all just credits and offsets, is:**
\$7,178,376.94

5. **The name of the owner, if known, of the property is:** Bureau of Land Management and Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities

6. **The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:**
Tonopah Solar Energy, LLC

7. **A brief statement of the terms of payment of the lien claimant's contract is:**
amounts attributable to time and materials provided to the Crescent Dunes Solar Energy Project and, payment as required by Nevada law, but in no event later than 45 days after the submission of an invoice


///

///

8. A description of the property to be charged with the lien is: Crescent Dunes Solar Energy Project more particularly described in Exhibit A.

Dated: April 13, 2018.

Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

State of Utah)
) ss.
County of Salt Lake)

Sean Davis, being first duly sworn on oath according to law, deposes and says:

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

Sean Davis

Subscribed and sworn to before me this
13 day of the month of April
of the year 2018

Notary Public in and for
the County of CL and State of Utah

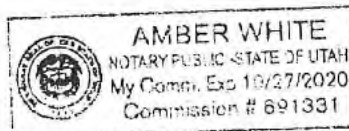


EXHIBIT 4

EXHIBIT 4

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

APN 012-140-01, 012-141-01, 012-150-01,

APN 012-151-01, 012-431-06, 612-141-01

APN _____

Recording Requested By:

Name Jones Lovelock, Nicole Lovelock

Address 400 S. 4th Street, Suite 500

City / State / Zip Las Vegas, Nevada 89101

DOC # 891507

Official Records Nye County Nevada

Deborah Beatty - Recorder

04/18/2018 10:32:56 AM

Requested By: JONES LOVELOCK

Recorded By: kd RPTT:\$0

Recording Fee: \$35.00

Page 1 of 9



Notice of First Amended and Restated Lien

Title of Document (required)
Only use below if applicable

This document is being re-recorded to correct document number 891073
and is correcting attaching Exhibit A.

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

- ☐ Affidavit of Death - NRS 440.380(1)(A) & NRS 40.525(5)
- ☐ Judgment - NRS 17.150(4)
- ☐ Military Discharge - NRS 419.020(2)
- ☐ Other _____

Signature _____

Name Typed or Printed _____

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

AA000049

APN: 012-031-04, 012-131-03,
012-131-04, 012-140-01, 012-141-01,
012-150-01, 012-151-01, 012-431-06,
612-141-01

DOC # 891073
Official Records Nye County Nevada
Deborah Beatty - Recorder
04/16/2018 04:31:46 PM
Requested By: JONES LOVELOCK
Recorded By: tc RPTT:\$0
Recording Fee: \$35.00
Page 1 of 3



WHEN RECORDED, MAIL TO:

Jones Lovelock
Nicole Lovelock
400 South 4th Street, Suite 500
Las Vegas, NV 89101

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

NOTICE OF FIRST AMENDED AND RESTATED LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property and does hereby reserve the right to further amend this Notice of First Amended and Restated Lien, which has amended and/or restated the Notice of Lien that was recorded April 9, 2018 as Document No. 890822 in the Office of the Nye County Recorder, or to record a new notice of lien with respect to the work, material or equipment it has furnished or may furnish for which it is not paid and does not cancel, withdraw, discharge or release and expressly reserves any and all rights, remedies and claims that it may possess with respect to the work, material or equipment it has furnished or may furnish:

1. **The amount of the original contract is:** this is a time and material contract with no specified original contract amount
2. **The total amount of all additional or changed work, materials and equipment, if any, is:** not applicable
3. **The total amount of all payments received to date is:** \$13,818,882.29

4. **The amount of the lien, after deducting all just credits and offsets, is:**

\$7,178,376.94

5. **The name of the owner, if known, of the property is:** Bureau of Land Management and Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities

6. **The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:** Tonopah Solar Energy, LLC

7. **A brief statement of the terms of payment of the lien claimant's contract is:** amounts attributable to time and materials provided to the Crescent Dunes Solar Energy Project and, payment as required by Nevada law, but in no event later than 45 days after the submission of an invoice


///

///

8. A description of the property to be charged with the lien is: Crescent Dunes
Solar Energy Project more particularly described in Exhibit A.

Dated: April 13, 2018.


Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

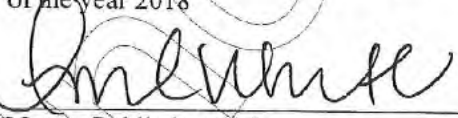
State of Utah)
) ss.
County of Salt Lake)

Sean Davis, being first duly sworn on oath according to law, deposes and says:

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


Sean Davis

Subscribed and sworn to before me this
13 day of the month of April
of the year 2018



Notary Public in and for
the County of CL and State of Utah

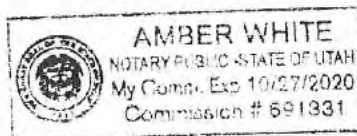


EXHIBIT A

Unofficial Copy

EXHIBIT A

Improvement:

The Crescent Dunes Solar Energy Project is a 110 MW plant constructed on the Land in Tonopah, Nevada.

Land:

Nye County Assessor Parcels: APN 012-031-04, APN 012-131-03, APN 012-131-04, APN 012-140-01, APN 012-150-01, APN 012-141-01, APN 012-431-06, APN 012-151-01, AND 612-141-01

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

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

PARCEL 1: GEN-TIE LINE (NVN-087933)

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

- Section 2: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$;
- Section 11: The W $\frac{1}{2}$ NE $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$;
- Section 14: The NE $\frac{1}{4}$ NW $\frac{1}{4}$, the W $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Section 15: The E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 22: The NE $\frac{1}{4}$ NE $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 27: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$;
- Section 28: The SE $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 33: The NW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

- Section 33: The SE $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{2}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Section 34: The W $\frac{1}{2}$, the SE $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;
- Section 35: The SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

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

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

PARCEL 3:**ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)**

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

- Section 2: The E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
- And

A TRACT OF LAND SITUATED IN LOT 2 OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 41 EAST, M.D.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE CORNER OF THE EAST HALF (E ½) OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 2;
THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2;
THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North one Half (N ½) of the Southeast Quarter (SE ¼) and the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

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

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW ¼) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 5

EXHIBIT 5

APN: 012-031-04, 012-131-03,
012-131-04, 012-140-01, 012-141-01,
012-150-01, 012-151-01, 012-431-06,
612-141-01

DOC # 891766
Official Records Nye County Nevada
Deborah Beatty - Recorder
04/24/2018 03:17:22 PM
Requested By: JONES LOVELOCK
Recorded By: tc RPTT:\$0
Recording Fee: \$35.00
Page 1 of 9



WHEN RECORDED, MAIL TO:

Jones Lovelock
Nicole Lovelock
400 South 4th Street, Suite 500
Las Vegas, NV 89101

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

NOTICE OF SECOND AMENDED AND RESTATED LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property and does hereby reserve the right to further amend this Notice of Second Amended and Restated Lien, which has amended and/or restated the Notice of Lien that was recorded April 9, 2018 as Document No. 890822 in the Office of the Nye County Recorder and the Notice of First Amended and Restated Lien that was recorded on April 16, 2018 as Document No. 891073 in the Office of the Nye County Recorder, or to record a new notice of lien with respect to the work, material or equipment it has furnished or may furnish for which it is not paid and does not cancel, withdraw, discharge or release and expressly reserves any and all rights, remedies and claims that it may possess with respect to the work, material or equipment it has furnished or may furnish:

1. The amount of the original contract is: this is a time and material contract with no specified original contract amount
2. The total amount of all additional or changed work, materials and equipment, if any, is: not applicable
3. The total amount of all payments received to date is: \$13,818,882.29

4. **The amount of the lien, after deducting all just credits and offsets, is:**
\$7,178,376.94.

5. **The name of the owner, if known, of the property is:** Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities, is the owner of the real property and leasehold property subject to this lien; upon information and belief, this lien extends, without limitation, to property on which Tonopah Solar Energy, LLC has an interest in property owned by the Bureau of Land Management

6. **The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:**
Tonopah Solar Energy, LLC

7. **A brief statement of the terms of payment of the lien claimant's contract is:**
amounts attributable to time and materials provided to the Crescent Dunes Solar Energy Project and, payment as required by Nevada law, but in no event later than 45 days after the submission of an invoice

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8. A description of the property to be charged with the lien is: Tonopah Solar Energy, LLC's interest in the Crescent Dunes Solar Energy Project more particularly described in Exhibit A; the real property owned by the Bureau of Land Management is not charged with this lien

Dated: April 23, 2018.

Brahma Group, Inc.

By: 


Name: Sean Davis

Title: President

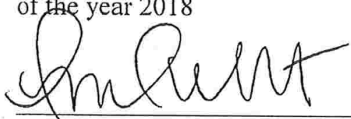
State of Utah)
) ss.
County of Salt Lake)

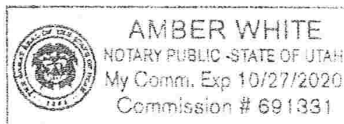
Sean Davis, being first duly sworn on oath according to law, deposes and says:

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


Sean Davis

Subscribed and sworn to before me this
23rd day of the month of April
of the year 2018





Notary Public in and for
the County of CL and State of Utah

EXHIBIT A

EXHIBIT A

Improvement:

The Crescent Dunes Solar Energy Project is a 110 MW plant constructed on the Land in Tonopah, Nevada.

Land:

Nye County Assessor Parcels: APN 012-031-04, APN 012-131-03, APN 012-131-04, APN 012-140-01, APN 012-150-01, APN 012-141-01, APN 012-431-06, APN 012-151-01, AND 612-141-01

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

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

PARCEL 1: GEN-TIE LINE (NVN-087933)

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

- Section 2: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$;
- Section 11: The W $\frac{1}{2}$ NE $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$;
- Section 14: The NE $\frac{1}{4}$ NW $\frac{1}{4}$, the W $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Section 15: The E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 22: The NE $\frac{1}{4}$ NE $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 27: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$;
- Section 28: The SE $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 33: The NW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

Section 2: The E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$

And

A TRACT OF LAND SITUATED IN LOT 2 OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 41 EAST, M.D.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE CORNER OF THE EAST HALF (E ½) OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 2;
THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2;
THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North one Half (N ½) of the Southeast Quarter (SE ¼) and the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

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

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW ¼) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 6

EXHIBIT 6

JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV 89101

1 Nicole Lovelock, Esq.
Nevada State Bar No. 11187
2 Justin C. Jones, Esq.
Nevada State Bar No. 8519
3 **JONES LOVELOCK**
400 S. 4th St., Ste. 500
4 Las Vegas, Nevada 89101
Telephone: (702) 805-8450
5 Fax: (702) 805-8451
Email: nlovelock@joneslovelock.com
6 Email: jjones@joneslovelock.com

FILED
FIFTH JUDICIAL DISTRICT COURT
APR 24 2018
NYE COUNTY DEPUTY CLERK
DEBRA BENNETT

7
8 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF NYE**

10 BRAHMA GROUP, INC. a Nevada
corporation;

CASE NO.: CV39237
DEPT. NO.: 1

11 Plaintiff,

12 v.

13 TONOPAH SOLAR ENERGY, LLC; a
14 Delaware limited liability company; BUREAU
OF LAND MANAGEMENT, a federal agency;
15 and DOES 1 through 100, inclusive;

NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE

16 Defendants.

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JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV 89101

1 Pursuant to 41(a)(1)(A)(i) of the Nevada Rules of Civil Procedure, Plaintiff Brahma Group,
2 Inc. hereby gives notice that the above-captioned action is voluntarily dismissed without prejudice.
3 DATED this 24th day of April 2018.

4 JONES LOVELOCK

5
6 By: 

Nicole Lovelock, Esq.
Nevada State Bar No. 11187
Justin C. Jones, Esq.
Nevada State Bar No. 8519
400 S. 4th St., Ste. 500
Las Vegas, Nevada 89101

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10 Attorneys for *Brahma Group, Inc.*
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APN 012-031-04, 012-131-03, 012-131-04, 012-140-01,
APN 012-141-01, 012-150-01, 012-151-01, 012-431-06,
APN 012-141-01
APN _____
Recording Requested By:
Name Jones Lovelock, Nicole Lovelock

Address 400 S. 4th Street, Suite 500
City / State / Zip Las Vegas, Nevada 89101

DOC # 891765
Official Records Nye County Nevada
Deborah Beatty - Recorder
04/24/2018 03:17:22 PM
Requested By: JONES LOVELOCK
Recorded By: tc RPTT:\$0
Recording Fee: \$35.00
Page 1 of 8


Release of Lis Pendens

Title of Document (required)
Only use below if applicable

This document is being re-recorded to correct document number _____,
and is correcting _____

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

- ☐ Affidavit of Death - NRS 440.380(1)(A) & NRS 40.525(5)
- ☐ Judgment - NRS 17.150(4)
- ☐ Military Discharge - NRS 419.020(2)
- ☐ Other _____

Signature _____

Name Typed or Printed _____

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

JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV 89101

1 Nicole Lovelock, Esq.
Nevada State Bar No. 11187
2 Justin C. Jones, Esq.
Nevada State Bar No. 8519
3 **JONES LOVELOCK**
400 S. 4th St., Ste. 500
4 Las Vegas, Nevada 89101
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5 Fax: (702) 805-8451
Email: jjones@joneslovelock.com
6 Email: nlovelock@joneslovelock.com

7 *Attorney for Plaintiff*
8 *Brahma Group, Inc.*

9 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF NYE**

11 BRAHMA GROUP, INC. a Utah corporation;
12 Plaintiff,

13 v.

14 TONOPAH SOLAR ENERGY, LLC; a
Delaware limited liability company; BUREAU
15 OF LAND MANAGEMENT, a federal agency;
and DOES 1 through 100, inclusive;

16 Defendants.
17

CASE NO.: CV39237
DEPT. NO.: 1

RELEASE OF LIS PENDENS

18
19 PLEASE TAKE NOTICE that the LIS PENDENS recorded on April 17, 2018 as
20 Instrument No. 891360 in the Nye County Recorder's office, Official Records IS HEREBY
21 RELEASED AND DISCHARGED against that certain real property described in **Exhibit A**.

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JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV 89101

NRS 239B.030 CERTIFICATION

Pursuant to Nevada Revised Statute 239B.030, the undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 24th day of April 2018.

JONES LOVELOCK

By: 

Nicole Lovelock, Esq.
Nevada State Bar No. 11187
Justin C. Jones, Esq.
Nevada State Bar No. 8519
400 S. 4th St., Ste. 500
Las Vegas, Nevada 89101

Attorneys for *Brahma Group, Inc.*

EXHIBIT A

EXHIBIT A

Improvement:

The Crescent Dunes Solar Energy Project is a 110 MW plant constructed on the Land in Tonopah, Nevada.

Land:

Nye County Assessor Parcels: APN 012-031-04, APN 012-131-03, APN 012-131-04, APN 012-140-01, APN 012-150-01, APN 012-141-01, APN 012-431-06, APN 012-151-01, AND 012-141-01

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

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

PARCEL 1: GEN-TIE LINE (NVN-087933)

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

- Section 2: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$;
- Section 11: The W $\frac{1}{2}$ NE $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$;
- Section 14: The NE $\frac{1}{4}$ NW $\frac{1}{4}$, the W $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Section 15: The E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 22: The NE $\frac{1}{4}$ NE $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 27: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$;
- Section 28: The SE $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 33: The NW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

- Section 33: The SE $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{2}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Section 34: The W $\frac{1}{2}$, the SE $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;
- Section 35: The SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

- Section 2: The E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$

And

A TRACT OF LAND SITUATED IN LOT 2 OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 41 EAST, M.D.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE CORNER OF THE EAST HALF (E ½) OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 2;
THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2;
THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North one Half (N ½) of the Southeast Quarter (SE ¼) and the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

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

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW ¼) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 7

EXHIBIT 7



1 D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
droberts@wwhgd.com
2 Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
3 WEINBERG, WHEELER, HUDGINS,
4 GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
5 Las Vegas, Nevada 89118
Telephone: (702) 938-3838
6 Facsimile: (702) 938-3864
7 Attorneys for Plaintiff
Tonopah Solar Energy, LLC
8
9

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

12 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company,
13
14 Plaintiff,
15 vs.
16 BRAHMA GROUP, INC., a Nevada corporation,
17 Defendant.

Case No.
Dept. No.

AFFIDAVIT OF JUSTIN PUGH IN
SUPPORT OF TONOPAH SOLAR
ENERGY, LLC'S MOTION TO
EXPUNGE BRAHMA GROUP INC.'S
MECHANIC'S LIEN

18
19 AFFIDAVIT OF JUSTIN PUGH

20 STATE OF NEVADA)
21 COUNTY OF NYE)

22 Justin Pugh., being first duly sworn, deposes and says:

23 1. I am an adult resident of Hennepin County, Minnesota, over 18 years of
24 age, and I have personal knowledge of the matters set forth herein, except as stated
25 upon belief, which matters I believe to be true.

26 2. I am a Managing Director at FTI Consulting ("FTI") in the Corporate
27 Finance and Restructuring Division.
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3. FTI is the project manager for Tonopah Solar Energy, LLC ("TSE") on the Crescent Dunes Solar Energy Project ("Project") located outside Tonopah, Nevada.

4. I submit this affidavit in support of TSE's Motion to Expunge and to satisfy the requirements of NRS 108.2275(2)(b)(1).

5. TSE is the developer of the Project and oversees construction activities. However, the real property on which the Project is located ("Property") is owned by the Bureau of Land Management ("BLM").

6. TSE entered into a contract with Brahma Group, Inc. ("BGI") in February 2017 to have BGI perform work on the Project. A true and correct copy of the contract is attached as Exhibit 1 to the Motion. Since then, BGI has submitted certain invoices for which TSE has been unable to determine if payment is appropriate.

7. To resolve the issues with certain BGI invoices, TSE has requested that BGI produce documentation that will allow TSE to verify the accuracy and appropriateness of the invoices.

8. To date, BGI has not produced sufficient documentation which has resulted in a payment dispute between the Parties.

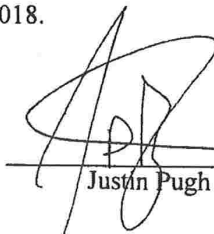
9. Upon information and belief, BGI does not have a contract with the BLM and has never given the BLM written notice or actual notice that BGI is performing construction work as a general contractor for TSE and may have a right to record a mechanic's lien against the Property.

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1 10. On April 9, 2018, BGI recorded a mechanic's lien against the Property
2 with the Nye County Recorder. BGI then recorded amendments to that lien on April
3 16, 2018, April 18, 2018 and April 24, 2018.

4 DATED this 31st day of May, 2018.

5
6 
 Justin Pugh

7 SUBSCRIBED AND SWORN to before
8 me this 31st day of May, 2018.

9 
10 NOTARY PUBLIC

11
12 Yolanda LaGuerra
13 Notary Public, State of New York
14 No. 01147700000
15 Certificate Filed in Eugene County
16 Commission Expires May 15, 2022

BANK TRANSIT NO.	\$ CHECKS	\$ CASH	CASE NUMBER	DATE	FROM WHOM RECEIVED	DESCRIPTION	RECEIVED BY
	245.00		039348	9/11	WINTERBERRY	NEW CIVIL	JDB

IF (ENCIRCLED) INDICATES CASH RETURNED FOR ADJUSTMENT TO NET AMOUNT OF ACTUAL PAYMENT

NYE COUNTY CLERK
P.O. BOX 1031
TONOPAH, NEVADA 89049
TELEPHONE 775-482-8127

80469

INVALID WITHOUT SIGNATURE

- ☐ Docket - Civil
- ☐ Fees County - Civil
- ☐ Fees State - Civil
- ☐ Docket - Probate
- ☐ Fees - Probate

- ☐ Clerk's Certificates
- ☐ Acknowledgements
- ☐ Corporations
- ☐ Notarial Records

- ☐ Marriage License - County
- ☐ Marriage License - State
- ☐ Juvenile Fees
- ☐ Domestic Violence Fees
- ☐ Adult Fines
- ☐ Other

RETAIN THIS RECEIPT
FOR YOUR RECORDS

SIGNATURE

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

1 **OPP**
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
15 rcox@peelbrimley.com
16 *Attorneys for Brahma Group, Inc.*

FILED
FIFTH JUDICIAL DISTRICT

JUL 25 2018

Nye County Clerk
~~Debra L. Melott~~ Deputy

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

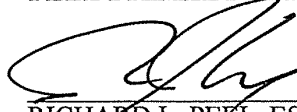
CASE NO. : CV 39348
DEPT. NO. : 2

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

Defendant, BRAHMA GROUP, INC. ("Brahma"), by and through its counsel of record, the law firm of Peel Brimley LLP, hereby files its Opposition to the Motion to Expunge ("Motion") filed by Plaintiff TONOPAH SOLAR ENERGY, LLC ("TSE"). This Opposition is supported by the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court may entertain.

Dated this 24th day of July, 2018.

PEEL BRIMLEY LLP



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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Without providing any evidence that the Bureau of Land Management (“BLM”) owns the real property upon which TSE has caused the Crescent Dunes Solar Energy Facility (“Work of Improvement” or “Project”) to be constructed, TSE asks this Honorable Court to expunge Brahma’s Notice of Lien (“Lien”) in its Motion.

In support of the foregoing argument, TSE claims (at footnote 1 on Page 4 of the Motion) that the “Property on which the Project [or Work of Improvement] is located consists of the following parcels: 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-141-01, 012-150-01, 012-151-01, 012-431-06, 612-141-01.” However, TSE is the record owner of at least four of these parcels. As such, Brahma’s Lien was properly recorded and has attached to these parcels.

In its Motion, TSE also claims that the Work of Improvement cannot be encumbered because it is federally owned. However, on October 26, 2011, TSE, as Grantor, permitted a Construction and Permanent Deed of Trust With Assignment of Rents, Security Agreement, and Fixture Filing (“Deed of Trust”) to be recorded against the very same parcels of land (that are the subject of Brahma’s Lien), to secure financing for the construction and operation of the Work of Improvement.

Assuming *arguendo* that all the real property (upon which the Work of Improvement was constructed) is owned by the BLM (which Brahma will demonstrate is not the case), Nevada law allows a lien claimant (such as Brahma) to lien the improvements made to such real property.

For the foregoing reasons, TSE’s Motion must be denied.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.

On or about May 24, 2011, TSE acquired APNs 012-031-04, 012-131-03 and 012-131-04 and 612-141-01 (collectively, the “TSE Parcels”). APNs 012-031-04, 012-131-03 and 012-131-04 were acquired on that date by TSE by way of a Grant, Bargain and Sale Deed (the “Grant Deed”),¹ and the Nye County Assessor’s Office identifies APN 612-141-01 as being acquired by TSE on this same date.² The Grant Deed identifies the property being conveyed to TSE as follows (collectively, the “Grant Deed Legal Description”):

¹ A copy of the Grant Deed is attached hereto as **Exhibit 1.**

² A copy of the Nye County Assessor’s Parcel Detail printout for APN 612-141-01 is attached hereto as **Exhibit 2.**

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

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

3 **PARCEL 1:**

4 The North One-Half (N1/2) of the Southeast Quarter (SE 1/4) and the
5 Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of Section
6 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the
7 Official Plat of said Land on file in the office of the Bureau of Land
8 Management. Said land is also known as Parcel Four (4) of Parcel Map
9 recorded July 25, 1980 as File No. 26731, Nye County, Nevada records.

10 **PARCEL 2:**

11 Lots One (1) and Two (2) in the Northwest Quarter (NW 1/4) of Section
12 18, Township 6 North, Range 41 East, M.D.B.&M., according to the
13 Official Plat of said land on file in the Office of the Bureau of Land
14 Management. Said land is also known as Parcel Two (2) of Parcel Map
15 recorded July 25, 1980 as File No. 26731, Nye County, Nevada records.

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

18 Commencing at the Northeast corner of Section 13, Township 6 North,
19 Range 40 East, M.D.B.&M., thence South 200 feet at the true point of
20 beginning; continuing South for 50 feet; thence Westerly for 20 feet,
21 thence Northerly for 50 feet, thence Easterly for 20 feet, at the true point
22 of beginning.

23 **PARCEL 3:**

24 East Half (E 1/2) of the Northwest Quarter (NW 1/4) of Section 18,
25 Township 6 North, Range 41 East, M.D.B.&M., according to the Official
26 Plat of said land on file in the Office of the Bureau of Land Management.
27 Said land is also known as Parcel One (1) of Parcel Map recorded July 25,
28 1980 as File No. 26731, Nye County, Nevada records.

On or about September 23, 2011, TSE caused a Right-of-Way Lease/Grant ("Ground Lease")
to be recorded.³ By way of the Ground Lease, the BLM leased APNs 012-151-01 and 012-141-01
(collectively, the "BLM Parcels") to TSE allowing it to "construct, operate, maintain, and terminate
one 110 MW Concentrated Solar Power (CSP) plant with storage capacity, including associated
facilities...". The Ground Lease identifies the following real property (collectively, the "Ground Lease
Legal Description"):

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///

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³ A copy of the Right-of-Way Lease/Grant is attached hereto as **Exhibit 3.**

T. 5 N., R. 41 E.,
Sec. 33, SE1/4, E1/2SW1/4, E1/2SW1/4SW1/4, E1/2SE1/4NW1/4,
S1/2NE1/4, NE1/4NE1/4, SE1/4NW1/4NE1/4;
Sec. 34, W1/2, SE1/4, W1/2NE1/4, SE1/4NE1/4, SW1/4NE1/4NE1/4;
Sec. 35, SW1/4SW1/4NW1/4, SW1/4SW1/4, SE1/4NW1/4SW1/4,
W1/2NW1/4SW1/4.

T. 4 N., R. 41 E.,
Sec. 2, LOT 4, W1/2SW1/4NW1/4;
Sec. 3, N1/2, NW1/4SE1/4, N1/2NE1/4SE1/4, SW1/4NE1/4SE1/4,
NW1/4SW1/4SE1/4, N1/2SW1/4, N1/2S1/2SW1/4,
SW1/4SW1/4SW1/4;
Sec. 4, NE1/4, N1/2SE1/4, E1/2SE1/4SE1/4, NW1/4SE1/4SE1/4,
NE1/4SW1/4SE1/4, NE1/4NE1/4SW1/4, E1/2NW1/4,
E1/2 LOT 4, NE1/4SW1/4NW1/4.

On October 26, 2011, TSE caused a Deed of Trust⁴ to be recorded with the Nye County Recorder's Office against most of the parcels upon which the Work of Improvement was constructed,⁵ to secure approximately \$790 Million in financing for the construction and operation of the Work of Improvement. By way of the Deed of Trust, TSE granted a security interest in and to "[a]ll the estate, right, title, and interest of [TSE] now or hereafter acquired in the real property described in Exhibit A-1 attached hereto...". Exhibit A-1 to the Deed of Trust identifies the Deed Legal Description, the Ground Lease Legal Description, and the following property (collectively, the "Deed of Trust Legal Description"):

PARCEL 1:

GEN-TIE LINE (NVN-087933)

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

Section 2: The SW1/4NE1/4 and the W1/2SE1/4;

Section 11: The W1/2NE1/4, the W1/2SE1/4 and the
E1/2SW1/4;

Section 14: The NE1/4NW1/4, the W1/2NW1/4 and the
NW1/4SW1/4;

Section 15: The E1/2SE1/4 and the SW1/4SE1/4;

⁴ A copy of the Deed of Trust is attached hereto as **Exhibit 4**.

⁵ At footnote 1 of its Motion, TSE claims the "Property on which the Project [or Work or Improvement] is located consists of the following parcels: 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-141-01, 012-150-01, 012-151-01, 012-431-06, 612-141-01." By TSE's own admission, these parcels are the TSE Parcels, the BLM Parcels and three other parcels owned by third parties (the "Third-Party Parcels") which, according to TSE, make up the Work of Improvement. Out of the Third-Party Parcels, only APN 112-431-06 was included in the Deed of Trust Legal Description.

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Section 22: The NE1/4NE1/4, the W1/2NE1/4, the SE1/4NW1/4, the E1/2SW1/4, the SW1/4SW1/4 and the NW1/4SE1/4;
Section 27: The NE1/4NW1/4, and the W1/2NW1/4;
Section 28: The SE1/4NE1/4, the E1/2SE1/4 and the SW1/4SE1/4;
Section 33: The NW1/4NE1/4.

PARCEL 2:
SOLAR ENERGY PROJECT (NVN-086292)
[Ground Lease Legal Description]

PARCEL 3:
ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

Section 2: The E1/2NE1/4SW1/4NE1/4.
And

A TRACT OF LAND SITUATED IN LOT 2 OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 41 EAST, M.D.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE NORTHWEST CORNER OF THE EAST HALF (E1/2) OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION 2; THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2; THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4:
[Deed Legal Description]

PARCEL 5:
All land defined as "Servient Property", described and depicted in that certain document entitled "Grant of Generation-Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section 2, Township 5 North, Range 41 East, M.D.B. & M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 36411 of Official Records, Nye County, Nevada.

Subsequently, TSE, as owner of the Project, began construction of the Work of Improvement (i.e., the Crescent Dunes Solar Energy Facility).

1 On or about February 1, 2017, TSE entered a Services Agreement (“Agreement”) with
2 Brahma,⁶ whereby Brahma agreed to provide on a time and material basis, certain work, materials and
3 equipment (collectively, the “Work”) for the Work of Improvement. By way of Section 10 of the
4 Agreement, TSE clearly recognized that the Work of Improvement would be subject to mechanic’s
5 liens. In pertinent part, Section 10 states:

6 10. No Liens.

7 (a) Brahma] shall not voluntarily permit any laborer’s, materialmen’s,
8 mechanic’s or other similar lien, claim or encumbrance (collectively,
9 “Lien”) to be filed or otherwise imposed on any part of the Services, the
10 materials and equipment necessary for the performance of the Services, or
11 the Crescent Dunes plant site (except to the extent that such Lien arises
12 from TSE wrongfully withholding payment from [Brahma]). If any such
13 Lien or claim therefor is filed or otherwise imposed, then, in such event,
14 [Brahma] shall, at the requires of TSE, cause such Lien promptly to be
15 released and otherwise discharged. If any Lien is filed and [Brahma] does
16 not promptly cause such Lien to be released, discharged, or if a bond is not
17 filed to indemnify against or release such lien, then, TSE shall have the right
18 to pay all sums necessary to obtain such release and discharge and to deduct
19 all amounts so paid by it from any payment owing to [Brahma]. [Brahma]
20 shall indemnify and hold harmless TSE from all claims, losses, demands,
21 causes of action or suits of whatever nature arising out of any Lien or claim
22 therefor (except to the extent that such Lien arises from TSE wrongfully
23 withholding payment from [Brahma]).

24 (b) Upon TSE’s request at any time, [Brahma] agrees promptly to furnish
25 such statements, certificates and documents in form and substance
26 satisfactory to TSE, in its sole discretion, which statement, certificates
27 and/or other documents shall include, without limitation, names of
28 [Brahma’s] any permitted subcontractors and suppliers, their addresses,
amounts due or to become due or previously paid to such subcontractors and
suppliers, information concerning any Lien claims, Lien releases and/or
Lien waivers or receipted bills evidencing payment, estimates of the costs
of the Services performed to the date of such certificate, and estimates of the
cost of completing such Services. [Emphasis added].

23 Brahma provided the Work for the Work of Improvement and TSE has failed to fully pay
24 Brahma for such Work.

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⁶ A copy of the Agreement is attached hereto as Exhibit 5.

1 On or about April 9, 2018, Brahma recorded its original Notice of Lien ("Original Lien"), in
2 the amount of \$6,982,186.24,⁷ against the Crescent Dunes Solar Energy Project or the Work of
3 Improvement.

4 On or about April 16, 2018, Brahma recorded its Notice of First Amended and Restated Lien
5 ("First Amended Lien")⁸ against the Crescent Dunes Solar Energy Project or Work of Improvement.
6 The First Amended Lien increased the amount of the Original Lien from \$6,982,186.24 to
7 \$7,178,376.94, as the result of additional Work provided.⁹

8 On or about April 24, 2018, Brahma recorded a Notice of Second Amended and Restated Lien
9 ("Second Amended Lien")¹⁰ against the Crescent Dunes Solar Energy Project or Work of
10 Improvement. The Second Amended Lien (i) increased the amount of the First Amended Lien from
11 \$7,178,376.94 to \$13,818,882.29, and (ii) clarified that the Second Amended Lien was intended to
12 attach to the "Tonopah Solar Energy, LLC's interest in the Crescent Dunes Solar Energy Project" or
13 Work of Improvement, and that "the real property owned by the Bureau of Land Management [was
14 not being] charged with this lien."

15 On or about July 19, 2018, Brahma caused its Third Amended and/or Restated Notice of Lien
16 ("Third Amended Lien") to be recorded against the Crescent Dunes Solar Energy Project or Work of
17 Improvement.¹¹ By way of its Third Amended Lien, Brahma, among other things, (i) adjusted the
18 amount of its Lien to \$11,902,474.75, and (ii) further clarified that Brahma's claim of lien, a) extends
19 to the real property and improvements constructed thereon that comprise the TSE Parcels, and b) did
20 not extend to the real property that was the subject of the BLM Parcels or certain of the Third-Party
21

22
23
24 ⁷ A copy of the Original Lien is attached hereto as Exhibit 6.

25 ⁸ A copy of the First Amended Lien is attached hereto as Exhibit 7.

26 ⁹ Brahma failed to attach Exhibit A to the First Amended Lien and therefor it caused the First Amended Lien to be re-
27 recorded on or about April 18, 2018 and included Exhibit A thereto. Exhibit A to the re-recorded First Amended Lien
28 identifies the real property that is the subject of the First Amended Lien to be the same as that identified in Exhibit A
to the Original Lien. A copy of the re-recorded First Amended Lien is attached hereto as Exhibit 8.

¹⁰ A copy of the Second Amended Lien is attached hereto as Exhibit 9.

¹¹ A copy of the Third Amended Lien is attached hereto as Exhibit 10. The Original Lien, the First Amended Lien, the
Second Amended Lien and the Third Amended Lien are collectively referred to herein as the "Lien."

1 Parcels, but did extend to the improvements constructed thereon.¹²

2 As discussed above, (i) TSE is the record owner of the TSE Parcels,¹³ and (ii) by way of the
3 Ground Lease, the BLM granted to TSE less than a fee simple estate in the BLM Parcels.¹⁴

4
5 **III. LEGAL ARGUMENT.**

6 **A. Nevada's Mechanic's Liens.**

7 The Nevada Supreme Court:

8 • Has long held that a mechanic's lien is a statutory creature established to help ensure
9 payment of work, materials and/or equipment provided for the construction or improvements on real
10 property (*In re Fontainebleau Las Vegas Holdings*, 289 p.3D 1199, 1210 (Nev. 2012));

11 • Has confirmed that Nevada's public policy is to secure payment for those who provide
12 work, material or equipment for a work of improvement. *Lehrer McGovern Bovis, Inc. v. Bullock*
13 *Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008) ([u]nderlying the policy in
14 favor of preserving laws that provide contractors secured payment for their work and materials is the
15 notion that contractors are generally in a vulnerable position because they extend large blocks of credit;
16 invest significant time, labor, and materials into a project; and have any number of workers vitally
17 depend upon them for eventual payment"); and

18
19 • Has consistently held that the lien statutes (NRS 108.222 to 108.246—the "Lien
20 Statute") are remedial in character and should be liberally construed in favor of lien claimants. *Id.* See
21 also, *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528 and 538 (2010) (citing Hearing on S.B.
22 343 Before the Assembly Comm. On Judiciary, 73d Leg. (Nev., May 13, 2005)) (emphasis added).

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¹² See, Exhibit 10.

28 ¹³ See, Exhibit 1. See also, Parcel Detail printouts from the Nye County Assessor's Website attached hereto as Exhibit 11.

¹⁴ See, Exhibit 3.

1 Due to the remedial nature of Nevada's lien laws, Nevada's public policy, and the
2 interpretations ascribed to such laws by the Nevada Supreme Court and the Nevada Legislature, along
3 with the reasons provided below, TSE's Motion must be denied as Brahma has a valid and enforceable
4 Lien.

5 Without providing any evidence in support of its position, TSE argues in its Motion that
6 Brahma's Lien must be expunged because it was recorded against real property owned by the BLM.
7 Contrary to TSE's assertions otherwise and as demonstrated in Section II above and in this Section
8 below, Brahma's Lien was validly recorded against (i) the TSE Parcels, and (ii) improvements owned
9 by TSE that were constructed on the BLM Parcels and real property owned by others.
10

11 Despite the foregoing, TSE does not dispute – and appears to agree – that Brahma may lien
12 improvements owned by TSE, even if such improvements exist, in whole or in part, on federally owned
13 land. [See TSE Motion p. 11].¹⁵ TSE's only contention (which is incorrect) is that Brahma's Lien
14 attaches to federal land (it does not) and may not be amended. [See *Id.*].¹⁶ TSE is wrong on both
15 accounts.
16

17 **B. The Lien Statute Plainly Permits Mechanics Liens on the Property and**
18 **Improvements of this Work of Improvement.**

19 Since at least 1970 (well before the Lien Statute was substantially amended in 2003 and 2005,
20 at which time the Nevada Legislature provided definitions for key terms used throughout the Statute,
21 including the word "improvements"), the Nevada Supreme Court has recognized that the Lien Statute
22 gives a lien claimant a lien against improvements constructed upon publicly owned land.

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27 ¹⁵ See, Discussion, *infra* and NRS 108.222. See also, *Red Mountain Machinery Co. v. Grace Inv. Co.*, 29 F.3d 1408
(acknowledging right of state mechanic's liens to attach to improvements on federal land).

28 ¹⁶ TSE nonetheless acknowledges, as it must, that Brahma's Lien could be released and re-recorded provided it does
not attach to federal land. [Id. n. 7]. Furthermore, because the Work of Improvement is not complete, Brahma has up
to 90 days after the completion of the Work of Improvement to record a new notice of lien. See NRS 108.226(1)(a).

1 In *Young Electric Sign Co. v. Erwin Electric Co.*, 477 P.2d 864 (1970), the Nevada Supreme
2 Court held that a sign securely attached to real property owned by a state agency could be liened
3 pursuant to the then-current version of NRS 108.222 allowing a lien on “any other structure ... upon
4 such premises and the buildings, structures and improvements thereon”. *Id.* The Nevada Supreme
5 Court provided even more clarification by stating:

6 The appellant’s contention that one who supplies labor or materials for an
7 improvement or structure cannot lien the appurtenance without liening the
8 real property upon which it is located is unsupported in the law. NRS
9 108.222 specifically authorizes a lien upon the structure as well as the
premises.

10 And in *Western Electric Co. v. Cooley*, 79 Cal.App. 770, 251 P. 331
11 (1926), that court held that an electrical power line was a ‘structure’ within
12 their mechanic’s lien statutes, and one who furnished material to such
13 power line was entitled to a lien against it, although the real property
14 upon which the line was located was a public highway owned and
15 controlled by the state. In *English v. Olympic Auditorium*, 217 Cal. 631,
16 20 p.2d 946, 87 A.L.R. 1281 (1933), the California Supreme Court quoting
17 with approval from *Western Electric Co. v. Cooley*, *supra*, said: ‘Under
these statutory provisions, the lien on the building, or other structure, is
the primary thing, and the lien in the land is merely an incident to it. No
lien can be acquired on the land, if none is acquired on the building, but a
lien may exist on the building without attaching to the land. Hence it is
not essential to the existence of a mechanic’s lien on a building that the
person causing its erection should have owned or had any interest in the
real property on which it is located.’ [Emphasis added].

18 *Id.* at 868.

19 Thus, by 1970, the Nevada Supreme Court interpreted the Nevada Lien statute consistent with its
20 remedial purpose and recognized the rights of lien claimants to lien works of improvements despite the fact
21 that the work of improvement was constructed on publicly owned land. Moreover, the following statutory
22 modifications (after the ruling issued by the Nevada Supreme Court in *Young Electric Sign* have
23 continued to confirm the rights of lien claimants to lien improvements constructed on publicly owned
24 land. See, NRS 108.22148. For example:

25 NRS 108.222 states that “a lien claimant has a lien upon the property” and “any improvements
26 for which the work, materials and equipment were furnished or to be furnished...”
27
28

1 NRS 108.2214 defines “lien claimant” as:

2 [A]ny person who provides work, material or equipment with a value of
3 \$500 or more to be used in or for the construction, alteration or repair of
any improvement, property or work of improvement. [Emphasis added].

4 NRS 108.22128 defines “Improvement” as:

5 [T]he development, enhancement or addition to property, by the provision
6 of work, materials or equipment. [Emphasis added].

7 NRS 108.22128 defines “Property” as:

8 [T]he land, real property or mining claim of an owner for which a work
9 of improvement was provided, including all buildings, improvements and
10 fixtures thereon, and a convenient space on, around and about the same,
or so much as may be required for the convenient use and occupation
thereof. [Emphasis added].

11 NRS 108.22148 defines “Owner” to include, among other things:

12 (a) The record owner or owners of the property or an improvement to the
13 property as evidenced by a conveyance or other instrument which
14 transfers that interest to the record owner or owners and is recorded in the
office of the county recorder in which the improvement or property is
located.

15 (b) The reputed owner or owners of the property or an improvement to
16 the property;

17 (c) The owner or owners of the property or an improvement to the
property, as shown on the records of the county assessor for the county
where the property or improvement is located;

18 (d) A person who claims an interest in or possesses less than a fee simple
19 estate in the property. [Emphasis added].

20 NRS 108.22188 defines “Work of Improvement” as:

21 [T]he entire structure or scheme of improvement as a whole, including,
22 without limitation, all work, materials and equipment to be used in or for
the construction, alteration or repair of the property or any improvement
23 thereon, whether under multiple prime contracts or a single prime contract.
[Emphasis added].

24 Despite TSE’s claims otherwise, a lien will attach to improvements constructed on real
25 property owned by a government agency. Therefore, Brahma’s Lien is not invalid simply because
26 some of the real property upon which the improvements were constructed are located on the BLM
27 Parcels. Instead, Braham’s Lien extends to all improvements that make up the Work of
28 Improvement, including the improvements owned by TSE and constructed on the BLM Parcels

1 and the TSE Parcels.

2 **C. TSE is a Statutory “Owner” by way of the Grant Deed, the Ground Lease and**
3 **Other Public and Recorded Documents.**

4 Multiple public records (recorded by or at the behest of TSE) demonstrate unequivocally that
5 TSE is an “owner” as defined by the Statute whose “property” and “improvements” (as those terms
6 are defined in the Statute), are subject to Brahma’s Lien. This list includes, without limitation, the
7 Grant Deed, the Ground Lease, and the Deed of Trust.

8 **1. The Grant Deed makes TSE an “owner.”**

9 As demonstrated by the Grant Deed alone, TSE is an “owner” pursuant to NRS 108.22148(1).¹⁷
10 Specifically, but without limitation, the Grant Deed proves that TSE acquired the TSE Parcels by way
11 of the Grant Deed and is, therefore a “record owner” of the property “as evidenced by a conveyance or
12 other instrument.” *See* NRS 108.22148(1)(a). In addition, by way of the Grant Deed’s recording, TSE
13 is an owner as “shown on the records of the [Nye] county assessor” for the TSE Parcels. *See* NRS
14 108.22148(1)(c).¹⁸

15 **2. The Ground Lease makes TSE an “owner.”**

16 The Ground Lease also demonstrates that TSE is an owner pursuant to NRS 108.22148(1). As
17 discussed more fully above, the Ground Lease reflects BLM’s lease of the BLM Parcels to TSE to
18 “construct, operate, maintain, and terminate one 110 MW Concentrated Solar Power (CSP) plant with
19 storage capacity, including associated facilities...”.¹⁹ Specifically, but without limitation, the Ground
20 Lease proves that TSE:

- 21 • Is the owner of the Project, which is “an improvement to the property” “as evidenced
22 by a conveyance or other instrument.” *See* NRS 108.22148(1)(a);
- 23 • Is the owner or reputed owner of an improvement to the property. *See* NRS
24 108.22148(1)(b); and

25 ¹⁷ *See*, Exhibit 1.

26 ¹⁸ *See*, Exhibit 11.

27 ¹⁹ *See*, Exhibit 3.

1 • “[C]laims an interest in or possesses less than a fee simple estate” in the BLM Parcels.
2 See NRS 108.22148(1)(d).

3 **3. The Deed of Trust makes TSE an “owner.”**

4 TSE received approximately \$790 Million to finance the construction and operation of the
5 Project, which financing is secured by the Deed of Trust. In the Deed of Trust, TSE granted to a third-
6 party security interest in and to “[a]ll the estate, right, title, and interest of [TSE] now or hereafter
7 acquired” to the TSE Parcels, the BLM Parcels and one of the Third-Party Parcels, all of which are
8 identified in the Deed of Trust Legal Description. The legal description in the Deed of Trust Legal
9 Description is the same legal description identified in the Lien. By way of the Deed of Trust, TSE
10 acknowledged to the world that it has (i) rights in and to the improvements, the Work of Improvement
11 and the TSE Parcels, the BLM Parcels and one of the Third-Party Parcels, and (ii) granted a security
12 interest to its lender.
13

14 By allowing the Deed of Trust to be recorded against and granting a security interest in TSE’s
15 interest in the improvements constructed on the BLM Parcels (that were leased to TSE by the BLM
16 and which were the subject of the Ground Lease), both TSE and BLM acknowledge that TSE has the
17 right to encumber such BLM Parcels (at least the improvements to be constructed thereon as part of
18 the Work of Improvement). To the extent the court finds that Brahma does not possess lien rights with
19 respect to the BLM Parcels, it must necessarily find that (i) Brahma possesses lien rights with respect
20 to the improvements constructed on the BLM Parcels, or (ii) the Deed of Trust was also improperly
21 recorded against BLM Parcels and the improvements constructed thereon.
22

23 **D. TSE Acknowledged Brahma’s Right to Lien its Property and Improvements.**

24 The Agreement itself is an instrument and evidences TSE’s position as owner or reputed owner
25 of the Work of Improvement, whether owned in whole or in part by TSE, the BLM or other Third-
26 Parties. The Agreement also evidences TSE’s acknowledgement, contemplation and agreement that
27 Brahma, and Brahma’s subcontractors and suppliers, possessed lien rights for the Work furnished or
28

1 to be furnished for the Project. For example, TSE and Brahma agreed that Brahma would not allow a
2 lien to be recorded or otherwise imposed on any part of the Work or the Work of Improvement,
3 “(except to the extent that such lien arises from TSE wrongfully withholding payment from
4 [Brahma].”²⁰

5 By recording its Lien (based on TSE’s failure to pay it more than \$11 Million,²¹ Brahma did
6 precisely what the Agreement expressly contemplated and permitted.²²

7 TSE also required Brahma to submit to TSE “information concerning any Lien claims, Lien
8 releases and/or Lien Waivers...”²³ By way of this provision, and because TSE owns the Work of
9 Improvement, including the TSE Parcels, TSE sought to protect itself from lien claims by requiring
10 lien releases and/or waivers. Had TSE believed that the Work of Improvement (including the real
11 property upon which it was constructed) was not susceptible to mechanic’s liens (because such real
12 property was the subject of the BLM Parcels and was owned by the BLM or otherwise), there would
13 be no reason for this provision to be included in the Agreement.
14

15 Additionally, TSE required Brahma to provide TSE with its payment applications, “a duly
16 executed Waiver/Release of Mechanic’s Lien from [Brahma] and each of [Brahma’s] Subcontractors
17 and Suppliers for whom payment is sought...”²⁴ Consistent with the Statute, the Agreement requires
18 Brahma to provide such lien releases conditionally and unconditionally for both progress and final
19 payments.²⁵ See e.g., NRS 108.2457 (setting forth the only enforceable forms for waiver and release
20 of liens for progress payments and final payment).
21

22 ///

23 ///

24
25 ²⁰ See, Exhibit 5, ¶ 10(a) (emphasis added).

26 ²¹ As of this writing, TSE has now wrongfully withheld payments from Brahma exceeding \$11,900,000.00.

27 ²² As discussed more fully below, the Agreement’s attempt to restrict Brahma’s right to lien contrary to Nevada law is
28 void and unenforceable. See Discussion *infra* and, without limitation, NRS 108.2453(2).

²³ See, Exhibit 5, ¶ 10(b).

²⁴ See, Exhibit 5, Ex. D ¶¶2-5.

²⁵ See, *Id.*

1 Finally, but importantly, the Agreement adopts and applies Nevada law. Paragraph 24 of the
2 Agreement states that “[t]his Agreement shall be governed by the laws of the State of Nevada”.²⁶

3 Pursuant to Nevada law:

- 4 • NRS 108.2457(1): “Any term of a contract that attempts to waive or impair the
5 lien rights of a contractor, subcontractor or supplier is void”;
- 6 • NRS 108.2453(1): “A person may not waive or modify a right, obligation or
7 liability set forth in the provisions of [the Statute]”;
- 8 • NRS 108.2453(2): “A condition stipulation or provision in a contract or other
9 agreement for the improvement of property or for the construction, alteration or
10 repair of a work of improvement in this State that attempts to do any of the
11 following is contrary to public policy and is void and unenforceable:
 - 12 (a) Require a lien claimant to waive rights provided by law to lien claimants or to
13 limit the rights provided to lien claimants, other than as expressly provided in
14 [the Statute], inclusive;
 - 15 (b) Relieve a person of an obligation or liability imposed by the provisions of [the
16 Statute];
 - 17 (c) Make the contract or other agreement subject to the laws of a state other than
18 this State;
 - 19 (d) Require any litigation, arbitration or other process for dispute resolution on
20 disputes arising out of the contract or other agreement to occur in a state other
21 than this State; or
 - 22 (e) Require a prime contractor or subcontractor to waive, release or extinguish a
23 claim or right that the prime contractor or subcontractor may otherwise possess
24 or acquire for delay, acceleration, disruption or impact damages or an
25 extension of time for delays incurred, for any delay, acceleration, disruption
26 or impact event which was unreasonable under the circumstances, not within
27 the contemplation of the parties at the time the contract was entered into, or
28 for which the prime contractor or subcontractor is not responsible.”

20 In other words, if a condition, stipulation, or provision in the Agreement is inconsistent with
21 the Statute, such condition, stipulation, or provision is void and unenforceable. Because the Statute
22 governs all work, materials and equipment provided for a work of improvement in this State, Brahma’s
23 Lien is valid and enforceable.

24 Therefore, pursuant to the Agreement, and for the benefit of TSE, Brahma provided the Work
25 to the Project, and therefore has a Lien against (i) the TSE Parcels and the improvements constructed
26 thereon, (ii) the Work of Improvement owned by TSE (which is the Project itself), and (iii) TSE’s
27

28 ²⁶ See, Exhibit 5, ¶24.

1 interest in the BLM Parcels and the Third Party Parcels, or improvements constructed thereon. See
2 *Young Electric Sign Co.*, 477 P.2d at 868 (“a lien may exist on the building without attaching to the
3 land”).

4 Despite TSE’s claims otherwise, while a lien may not attach to real property owned by a
5 government agency, a lien will still attach to improvements constructed on such government owned
6 land. Therefore, Brahma’s Lien is not invalid simply because some of the real property upon which
7 the improvements were constructed are located on the BLM Parcels. Instead, Brahma’s Lien extends
8 to all improvements that make up the Work of Improvement, including the improvements constructed
9 on the BLM Parcels and the real property and improvements owned by TSE.
10

11 **E. Brahma’s Lien Has Been Properly Amended to Confirm That it is Limited to the**
12 **TSE Property and the Improvements to the Work of Improvement.**

13 The Lien has now been amended multiple times to adjust the amount of the Lien and to make
14 abundantly clear that it does not attach to the real property that comprises the BLM Parcels.²⁷ TSE
15 asserts, incorrectly and without any support, that the Lien cannot be so amended. [See Motion p. 11].
16 To the contrary, even if the Original Lien or First Amended Lien could be interpreted to attach to the
17 BLM Parcels, NRS 108.229(1) expressly allows Brahma to amend its Lien “[a]t any time before or
18 during the trial of any action to foreclose a lien to correct or clarify the lien claimant’s notice of lien.”
19 In fact, under NRS 108.229(1), “[a] variance between a notice of lien and an amended notice of lien
20 does not defeat the lien and shall not be deemed material unless the variance: (a) Results from fraud or
21 is made intentionally; or (b) Misleads an adverse party to the party’s prejudice, but then only with
22 respect to the adverse party who was prejudiced.” Because neither of these conditions exist, Brahma’s
23 amendments to its Lien are valid and proper.
24

25 Moreover, the Lien (even in the Original Lien and the First Amended Lien) identifies and
26 attaches to those parcels and legal description identified in the Deed of Trust Legal Description. As
27 noted above, if the legal description of the Deed of Trust attaches to the real property that comprises
28

²⁷ See, e.g., Exhibit 9, Second Amended Lien and Exhibit 10, Third Amended Lien.

1 the BLM Parcels, TSE would not have been able to convey a secured interest to its lender in that same
2 land by way of the Deed of Trust Legal Description.

3 Furthermore, the Third Amended Lien declares that:

4 To the extent allowed by law and to the extent the statutory period to
5 record a notice of lien against the Work of Improvement (defined below)
6 has not expired, [the Third Amended Lien] shall act as a newly recorded
notice of lien, which replaces and supersedes [all prior liens].²⁸

7 Accordingly, and even if Brahma's prior notices of lien were somehow defective (which they
8 were not), and because the period for recording a new notice of lien has not expired, the Third Amended
9 Lien acts as a newly recorded lien, irrespective of any amendments. For this additional reason, the Lien
10 is valid.

11 **F. Brahma Was Not Required to Give a Notice of Right to Lien.**

12 TSE claims that Brahma's Lien is invalid because Brahma failed to give the BLM a Notice of
13 Right to Lien.²⁹ In making this argument, TSE ignores the first part of NRS 108.245(1) which provides,
14 "[e]xcept as otherwise provided in subsection 5...". NRS 108.245(5) provides that a "prime contractor
15 or other person who contracts directly with an owner or sells materials directly to an owner is not
16 required to give notice pursuant to this section." As discussed above, the term "owner," as defined in
17 NRS 108.22148(1), includes:³⁰

- 18 • "The record owner or owners of the property or an improvement to the property
19 ...". See, NRS 108.22148(1)(a).
- 20 • "The reputed owner or owners of the property or an improvement to the property."
21 See, NRS 108.22148(1)(b).
- 22 • "The owner or owners of the property or an improvement to the property, as shown
23 on the records of the county assessor ..." (i.e., the "assessor owner"). See, NRS
24 108.22148(1)(c).
- 25 • "A person who claims an interest in or possesses less than a fee simple estate in
the property" (i.e., a "lessee"). See, NRS 108.22148(1)(e).

26 ²⁸ See, **Exhibit 10**.

27 ²⁹ TSE does not claim that Brahma failed to give TSE a Notice of Right to Lien, presumably because it knows that
Nevada law does not require such notice for the reasons discussed below.

28 ³⁰ It is also important to note that under NRS 108.22148(1), TSE is "an owner" and not "the owner." The reason for
this distinction is that NRS 108 has different definitions for "owner" which are not confined to the owner of a fee
simple interest in real property.

1 Because TSE is the record owner, reputed owner and assessor owner of the TSE Parcels and
2 contracted directly with Brahma for the Work, a notice of right to lien was not required to be given
3 pursuant to NRS 108.245(5).

4 Because TSE is (i) the ground lessee of the BLM Parcels under the Ground Lease (possessing
5 less than a fee simple estate), and (ii) is the reputed owner of the improvements constructed on the BLM
6 Parcels, a notice of right to lien was not required to be given pursuant to NRS 108.245(5).

7 Further, because Brahma's Lien only attaches to the improvements constructed on the BLM
8 Parcels and not the BLM's fee simple interest in such real property that comprises the BLM Parcels,
9 Brahma had no obligation to provide a notice of right to lien to the BLM under NRS 108.245(1), nor
10 does the BLM have any cause to complain about the same.

11 In addition, and to the extent the Court determines that NRS 108.245(1) applies and required a
12 notice of right to lien to be served on the BLM, the Nevada Supreme Court has repeatedly held that an
13 owner's "actual knowledge of potential lien claims on the property" constitutes substantial compliance
14 with NRS 108.245(1). *See Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 539, 245 P.3d
15 1149, 1157 (2010) *citing Fondren v. K/L Complex, Ltd.*, 106 Nev. 705, 709, 800 P.2d 719 (1990) ("a
16 property owner who negotiates a lease with knowledge that substantial improvements need to be made
17 to the property has actual knowledge of potential lien claims on the property"). Further, if an owner
18 fails to file a notice of non-responsibility after knowledge of the construction, "the statute provides that
19 the construction is at the instance of the owner." *Id.* quoting *Matter of Stanfield*, 6 B.R. 265, 268
20 (Bankr.D.Nev.1980). Here, by way of the Ground Lease, the BLM acknowledged and agreed that TSE
21 would "construct, operate, maintain and terminate one 110 MW Concentrated Solar Power (CSP) plant
22 with storage capacity, including associated facilities."³¹ This is the reason the BLM has not objected
23 to the recordation of the Deed of Trust in favor of TSE's lender.

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³¹ *See, Exhibit 3.*

1 **G. TSE Failed to Meet Its Burden Under NRS 108.2275.**

2 Notably, TSE has filed its Motion seeking to expunge Brahma's Lien, not to simply reduce the
3 same. This is important because the Nevada Supreme Court has held that where a party seeks to
4 expunge a lien, the moving party (i.e., TSE) bears the burden of establishing that Brahma's Lien is
5 frivolous and recorded without reasonable cause. *J.D. Const., Inc. v. IBEX Int'l Group, LLC*, 240 P.3d
6 1033, 1042-43 (Nev. 2010) (The plain language of NRS 108.2275(6) is clear that if the district court
7 determines that a mechanic's lien was made "without reasonable cause," then the lien is frivolous and
8 the district court may expunge the lien").³²

9
10 As such, TSE, not Brahma, bears the burden of proving that the Lien is frivolous and there is
11 "**absolutely no basis for a claim.**" Given the fact that (i) NRS 108 permits a lien claimant to have a
12 lien against real property, improvements, the work of improvement, etc., and (ii) Brahma's Lien is
13 properly recorded against a) the TSE Parcels and the improvements constructed thereon, and b) only
14 the improvements constructed on the BLM Parcels, Brahma had/has a reasonable basis for recording
15 its Lien. As such, TSE has failed to meet its burden and its Motion must be denied.

16 **H. Brahma Is Entitled To Recover Its Attorney's Fees And Costs.**

17 NRS 108.2275(6)(c) provides that if a court determines the "notice of lien is not frivolous and
18 was made with reasonable cause or that the amount of the notice of lien is not excessive, the court shall
19 make an order awarding costs and reasonable attorney's fees to the lien claimant for defending the
20 motion."

21
22 As provided herein, Brahma's Lien is valid and has properly attached to the whole of the Work
23 of Improvement, including the real property and improvements constructed thereon by TSE, and the
24 improvements that TSE owns which were constructed on real property owned by the BLM. As such it
25 is not frivolous. Therefore, TSE's Motion must be denied and Brahma is entitled to be awarded its
26

27 ³² While interpreting the legislative history of NRS 108.2275, the *J.D. Const., Inc.* Court found:
28 The minutes also note that "[l]ooking to the level of proof required to show the claim is frivolous,
 Senator Adler pointed out the burden is such that the plaintiff **must show there is absolutely no basis**
 for a claim. If there is any showing of good faith, the court will not dismiss the lien." Hearing on S.B.
 434 Before the Assembly Comm. On Judiciary, 68th Leg (Nev., June 26, 1995). *Id.* (emphasis added).

1 reasonable attorney's fees and costs in defending against TSE's Motion. Brahma reserves its right to
2 file with this Court a motion for attorney's fees and costs after the hearing on TSE's Motion.

3 **IV. CONCLUSION.**

4 For the foregoing reasons, Brahma respectfully requests the Court to:

- 5 • Deny TSE's Motion;
- 6 • Rule that Brahma is entitled to an award of reasonable attorney's fees pursuant to NRS
- 7 108.2275(6)(c), and
- 8 • Grant Brahma leave to submit an application for fees by way of a separate motion.

9 **AFFIRMATION**

10 The undersigned does hereby affirm that the preceding document, filed in the Fifth Judicial
11 Court of the State of Nevada, Nye County, does not contain the social security number of any person.

12 Dated this 21st day of July, 2018.

13 **PEEL BRIMLEY LLP**

14 

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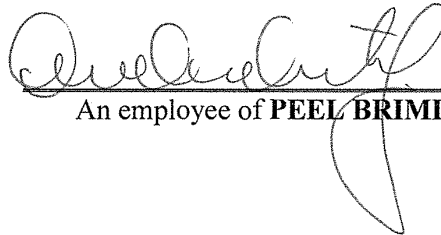
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 24 day of July, 2018, I caused the above and foregoing document, **BRAHMA GROUP, INC.'S OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIEN** 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
- ☐ pursuant to NEFCR 9, upon all registered parties via 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 attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

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