

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 7**

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9 *Attorneys for Brahma Group, Inc.*

10
11 **FIFTH JUDICIAL DISTRICT COURT**

12 **NYE COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

18 BRAHMA GROUP, INC., a Nevada corporation,

19 Counterclaimant/Lien Claimant,

20 vs.

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

24 Counterdefendant.

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

**BRAHMA GROUP, INC.'S MOTION
FOR ATTORNEY'S FEES AND
COSTS PURSUANT TO NRS
108.2275(6)(C)**

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26 ///

27 ///

28

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1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

10 Third-Party Defendants.

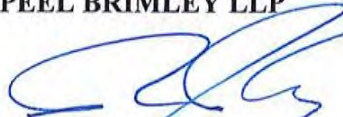
11 **BRAHMA GROUP, INC.'S MOTION FOR ATTORNEY'S FEES**
12 **AND COSTS PURSUANT TO NRS 108.2275(6)(C)**

13 Defendant, Counterclaimant/Lien Claimant and Third-Party Plaintiff, BRAHMA GROUP,
14 INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP,
15 hereby (i) submits its Motion for Attorney's Fees and Costs ("Fee Motion"), and (ii) moves the
16 Court for an award of attorney's fees and costs pursuant to NRS 108.2275(6)(c).

17 This Fee Motion is made and based upon (i) the papers and documents on file in this matter,
18 (ii) the accompanying points and authorities, declaration and exhibits, and (iii) the arguments of
19 counsel at the hearing of this Fee Motion.

20 Respectfully submitted this 31ST of October, 2018.

21 **PEEL BRIMLEY LLP**

22 
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

TONOPAH SOLAR ENERGY, LLC (“TSE”) has aggressively contested Brahma’s Lien (defined below) and repeatedly denied liability for payment for the work, materials and equipment (collectively, the “Work”) that Brahma provided at the direction of TSE for the Crescent Dunes Solar Energy Project (the “Work of Improvement”), which is owned by TSE.¹

At the time of the September 12, 2018 hearing (the “Hearing”) on TSE’s Motion to Expunge Brahma’s Lien (“Motion to Expunge”), Brahma presented evidence and argument and successfully persuaded the Court that its Lien is not frivolous and was recorded with reasonable cause.

In defending the Brahma Lien, Brahma has incurred (i) Seventy-Seven Thousand Nine Hundred Thirty-Seven and 50/100 Dollars (\$77,937.50) in attorney’s fees, and (ii) costs of Four Hundred Seventy-Nine and 84/100 Dollars (\$479.84), totaling Seventy-Eight Thousand Four Hundred Seventeen and 34/100 Dollars (\$78,417.34) (collectively, the “Brahma Fees”) to:²

- Review, research and analyze the factual and legal arguments contained in the various TSE moving papers, including, but not limited to its (i) Motion to Expunge, (ii) Reply to Brahma’s Opposition (the “Reply”), (iii) Errata to its Reply (“Errata”), and (iv) Response to Brahma’s Statement of Supplemental Authorities (“Response”);³

- Research and identify factual and legal arguments in opposition to those facts and legal authorities cited in TSE’s Moving Papers;⁴

- Research and analyze the ownership of the Work of Improvement to demonstrate that (i) TSE mostly owns the real property upon which the Work of Improvement was constructed, and (ii) TSE owns the Work of Improvement, contrary to TSE’s arguments otherwise;⁵

¹ After the Hearing (defined below), Brahma submitted additional payment applications to TSE and recorded its Fourth Amended and/or Restated Notice of Lien, increasing the amount of Brahma’s Lien by \$957,102.99 or to \$12,859,577.74.

² See Exhibit 1 at ¶ 4.

³ TSE’s Motion to Expunge, Reply, Errata and Response are collectively referred to herein as the “TSE Moving Papers.” See also *Id.* at ¶ 18.

⁴ See *Id.* at ¶ 18.

⁵ See *Id.* at ¶ 18.

1 • Prepare and file Brahma's (i) Opposition to the Motion to Expunge ("Brahma
2 Opposition"), (ii) Supplement to its Opposition to TSE's Motion to Expunge ("Brahma
3 Supplement"), and (iii) Statement of Supplemental Authorities in Support of its Opposition
4 ("Brahma Statement");⁶

5 • Travel to Nye County to attend two separate hearings (one before Judge Lane and
6 the other before Judge Elliott) with respect to the TSE Motiving Papers;⁷ and

7 • Prepare and submit to TSE's counsel for their consideration Brahma's proposed
8 order denying TSE's Motion to Expunge ("Proposed Order"). Then, upon receipt of TSE's
9 requested changes, revise and resubmit the Proposed Order to TSE's counsel for their
10 consideration ("Revised Proposed Order"). Upon TSE's rejection of the Revised Proposed Order,
11 the submission of the Revised Proposed Order to the Court for its consideration, which form of
12 order was ultimately accepted and entered by the Court on October 29, 2018 (the "Order").⁸

13 Because the Court found (i) Brahma's Lien is not frivolous, and (ii) was made with
14 reasonable cause, the Court is required (pursuant to NRS 108.2275(6)(c)) to issue an Order
15 awarding Brahma the Brahma Fees, which amount represents the reasonable attorney's fees and
16 costs incurred by Brahma to defend its Lien.

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23 _____
24 ⁶ The Brahma Opposition, the Brahma Supplement and the Brahma Statement are collectively referred to herein as the
"Opposition."

25 ⁷ The three attorneys from Peel Brimley that attended the two Hearings in support of Brahma's Opposition had different
26 knowledge of the documents, the law, and the arguments to be made. For example, (i) attorney Ronnie Cox had
27 reviewed and understood (in detail) the documents that TSE had presented in support of its Motion to Expunge, and
28 that Brahma had presented in support of its Opposition, (ii) attorneys Ronnie Cox, Eric Zimbelman and Richard Peel
jointly drafted the Opposition related documents, (iii) attorneys Richard Peel and Eric Zimbelman both argued at the
Hearing, and (iv) attorney Richard Peel drafted the 2003 and 2005 amendments to Nevada's Mechanics' Lien Statute,
which was at issue during the Hearing. *See*, Declaration of Richard L. Peel, Esq. ("Declaration") attached hereto as
Exhibit 1 at ¶ 19.

⁸ A copy of the Order is attached hereto as Exhibit 2. *See also* Exhibit 1 at ¶ 22.

1 **II. STATEMENT OF FACTS**

2 TSE is the owner of the Work of Improvement and the fee simple owner of several the parcels
3 of real property (the "TSE Parcels"). The Work of Improvement is also constructed on and
4 encompasses real property owned by (i) the Bureau of Land Management ("BLM") (the "BLM
5 Parcels"), and (ii) Liberty Moly, LLC ("Liberty") (the "Liberty Moly Parcels"), which BLM Parcels
6 and Liberty Moly Parcels were leased to TSE for TSE's use.⁹

7 On or about February 1, 2017, TSE entered a Services Agreement ("Agreement") with Brahma,
8 whereby (i) Brahma agreed to provide (on a time and material basis) the Work for the Work of
9 Improvement, and (ii) TSE agreed to pay Brahma for the same in accordance with the applicable rates
10 identified in the Agreement.

11 When TSE failed and refused to pay Brahma for the Work that it had provided for the Work of
12 Improvement, Brahma caused a notice of lien ("Original Lien") to be recorded on April 9, 2018
13 with the Nye County Recorder as Document No. 890822 against the Work of Improvement.

14 Thereafter, the Original Lien was amended and/or restated on several occasions and
15 ultimately increased to \$12,859,577.74, when Brahma caused its Fourth Amended Notice of Lien
16 ("Fourth Amended Lien") to be recorded on September 14, 2018 with the Nye County Recorder
17 as Document No. 899351.

18 Brahma's Original Lien and the amendments and restatements thereto, including the Fourth
19 Amended Lien are referred to collectively herein as "Brahma Lien" or the "Lien".

20 On or about June 1, 2018, TSE filed its Motion to Expunge seeking to expunge Brahma's Lien
21 and argued therein that, (i) Brahma failed to give a notice of right to lien to the BLM, and (ii) Brahma
22 could not record a Lien against real property owned by the BLM.

23 On or about July 25, 2018, Brahma filed its detailed Opposition and demonstrated, through a
24 very thorough explanation of NRS 108 (Nevada's Mechanics Lien Statute), that (i) Brahma was not
25 required to serve the BLM with a Notice of Right to Lien, and (ii) as expressly stated in the Lien,
26 Brahma's Lien attached to the Work of Improvement and the real property owned by TSE, not those
27 parcels of land owned by the BLM and Liberty Moly.

28 ⁹ The Work of Improvement includes the improvements constructed by TSE (i) on the TSE Parcels, (ii) the BLM
Parcels, and (iii) the Liberty Moly Parcels.

1 In its Reply, TSE acknowledged ownership of the Work of Improvement and the TSE Parcels,
2 but raised new arguments, including (i) the Work of Improvement was not located on the TSE Parcels
3 (despite admitting to the same in its original Motion to Expunge), and (ii) the Lien could not attach to
4 the improvements owned by TSE because the federal government had a “financial stake” in the Work
5 of Improvement and a lien would “endanger the public fisc.” TSE went to great lengths in a failed
6 attempt to demonstrate what might happen should the Lien not be expunged.

7 On or about August 3, 2018, Brahma filed a Supplement to its Opposition, wherein Brahma
8 provided proof that it had given a notice of right to lien to the BLM.

9 On or about August 15, 2018, Brahma filed a Statement of Supplemental Authorities wherein
10 Brahma cited case law from Nevada and other states where the higher courts specifically allowed lien
11 claimants to record liens against leasehold interests and private improvements constructed on publicly
12 and federally owned land.

13 On or about September 6, 2018, TSE filed its Response to Brahma’s Supplement and continued
14 to argue, despite the existence of case law to the contrary, that Brahma’s Lien must be expunged.

15 After attending two separate hearings (one before Judge Lane and one before Judge Elliott)
16 and participating in approximately two hours of oral argument at the Hearing, the Court (i) denied
17 TSE’s Motion to Expunge, and (ii) correctly found that Brahma’s Lien was not frivolous.

18 Having made that determination, the Court must now grant Brahma its reasonable attorney’s
19 fees and costs under NRS 108.2275(6)(c).

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1 **III. LEGAL ARGUMENTS**

2 **A. Under NRS 108.2275(6)(C) TSE Must Be Ordered to Pay the Brahma Fees**
3 **Brahma Incurred to Defend Its Lien.**

4 Because Brahma successfully defeated TSE's Motion to Expunge, pursuant to NRS
5 108.2275(6)(c), TSE is statutorily required to pay the Brahma Fees that Brahma incurred to defend
6 its Lien.

7 NRS 108.2275(6)(c) states in relevant part:

8 (6) If, after a hearing on the matter, the court determines that:
9 ***

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

12 Accordingly, once the Court determines that a lien is not frivolous or excessive and made
13 with reasonable cause, an award of attorney's fees is mandatory, not permissive.

14 At the Hearing and in its subsequent Order, the Court found that Brahma's Lien was not
15 frivolous and was recorded with reasonable cause.¹⁰ In defending its Lien, Brahma has incurred
16 the Attorney's Fees.¹¹ Accordingly, because the Court has already denied TSE's Motion to
17 Expunge and found Brahma's Lien was not frivolous or excessive and was recorded with
18 reasonable cause, the Court must now grant Brahma an award of the Brahma Fees it incurred to
19 defend itself against TSE's Motion to Expunge.

20 **I. *The Brahma Fees are Reasonable.***

21 While the award of the Brahma Fees to Brahma under NRS 108.2275(6)(c) is mandatory,
22 such attorney's fees must be reasonable. *See Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172, 176
23 n. 4 (1999). In *Brunzell v. Golden Gate Nat'l Bank* and *Shuette v. Beazer Homes Holding Corp.*,
24 the Nevada Supreme Court enumerated the factors that the district court should consider in
25 awarding attorney fees. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829,
26 192 P.3d 730, 736 (2008). Specifically, this Court must consider the following factors, with no
27 one factor controlling:

28 ¹⁰ *See, Exhibit 2*, Section III.

¹¹ *See, Exhibit 1*, at ¶ 4, and (ii) Peel Brimley's invoices attached hereto as *Exhibit 3*.

- 1) The advocate's qualities, including ability, training, education, experience, professional standing, and skill;
- 2) The character of the work, including its difficulty, intricacy, importance, as well as the time and skill required, the responsibility imposed, and the prominence and character of the parties when affecting the importance of the litigation;
- 3) The work performed, including the skill, time, and attention given to the work; and
- 4) The result—whether the attorney was successful and what benefits were derived.

More recently, the Nevada Supreme Court recognized the continued applicability of these factors and required the district court to provide sufficient reasoning and findings in support of its ultimate determination. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d 730, 736 (2008).

In support of its claim that the Brahma Fees are reasonable, Brahma has submitted among other things, the invoices and declaration of Brahma's attorneys. These documents demonstrate that:

- The amount of time and labor Brahma's attorneys were required to spend to defeat TSE's Motion to Expunge was reasonable;
- Brahma's attorneys possess the requisite skills to perform the legal service properly;
- The hourly rates of Brahma's attorneys are customary;
- Brahma's overall attorney's fees were consistent with a case of this nature;
- Brahma's attorneys held a high level of experience, reputation, and abilities with respect to cases of this nature; and
- The Brahma Fees represent less than one-half percent of the \$12.8 Million Lien Claim against TSE.

Under the circumstances and given the complex nature of the instant Case, the Brahma Fees are reasonable.

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1 The partners at Peel Brimley have drafted and lobbied for (i) Nevada's public works
2 prompt pay statute (NRS 338.400 through 338.645), which passed in 1999, (ii) Nevada's new
3 private right to stop work legislation (NRS 624.606 through 624.630), which became effective
4 October 1, 2001 and was amended in 2003 and 2005, and (iii) extensive modifications, changes,
5 and additions to Nevada's existing mechanic's lien statutes (NRS 108.221 through 108.246),
6 which became effective in the 2003 and 2005, including some of the very provisions Brahma relied
7 upon in its Opposition to TSE's Motion to Expunge.¹⁸

8 The firm's partners have been extensively involved and have taken lead roles in almost
9 every major construction litigation in Las Vegas, Nevada over the past 22 years, including:

- 10 • The City Center Litigation;
- 11 • The Fontainebleau Litigation;
- 12 • The Westgate Planet Hollywood Litigation;
- 13 • The Resort at Summerlin Litigation;
- 14 • The Venetian Litigation;
- 15 • The Aladdin Hotel & Casino Litigation;
- 16 • The Lied Library Litigation;
- 17 • The Flamingo Hilton Phase VI Litigation;
- 18 • The Hilton Sign Litigation;
- 19 • The Red Rock Hotel & Casino Litigation;
- 20 • The Las Vegas Hilton Sky Villa Suites Litigation;
- 21 • The Stratosphere Tower Construction Litigation;
- The Allstar Café Litigation;
- The VA Ambulatory Care Facility Litigation;
- The Federal Courthouse Litigation;
- The Southern Nevada Veteran's Administration Litigation;
- The Regional Justice Center Litigation; and
- Several others.¹⁹

22 In addition to the partners, Peel Brimley has hired qualified and experienced associates,
23 most of which have established backgrounds in construction law. Peel Brimley's associates have
24 access to a variety of construction materials and resources gathered by the firm, access to partners
25 and senior associates experienced in the construction industry, and ample opportunities to
26 participate in construction related training classes and seminars inside and outside of the firm.²⁰

27 ¹⁸ *Id.* at ¶ 11.

28 ¹⁹ *Id.* at ¶ 12.

²⁰ *Id.* at ¶ 13.

1 *b. Peel Brimley's Rates.*

2 Brahma's attorney's billing rates are reasonable. Peel Brimley provided its legal services
3 under an hourly rate contract with Brahma, charging the following hourly rates:

- 4 • Richard Peel, Managing Partner: \$425/hr.
5 • Eric Zimbelman, Partner: \$400/hr.
6 • Jefferson Boswell, Partner: \$375/hr.
7 • Ronald Cox, Associate: \$350/hr.
8 • Blayne Grondel, Law Clerk: \$175/hr.
9 • Terri Hansen, Paralegal: \$145/hr.
10 • Amanda Armstrong, Project Assistant: \$125/hr.²¹

11 The rates Brahma paid are comparable to the rates charged by other similarly situated
12 attorneys who practice construction law and have the same or similar level of skill.²²

13 *c. The difficulty of the Work.*

14 TSE's arguments in support of its Motion to Expunge constantly changed and drastically
15 expanded from the date it filed its Motion to Expunge until the date of the Hearing, requiring
16 Brahma to respond to TSE's ever-changing arguments by way of the Brahma Opposition, the
17 Brahma Supplement, and the Brahma Statement.²³ TSE originally argued that Brahma's Lien
18 should be expunged because Brahma (i) failed to provide the BLM with a Notice of Right to Lien,
19 and (ii) could not Lien real property owned by the BLM.²⁴

20 Brahma's attorneys had to review, research, and analyze highly technical aspects of the
21 statute, case law, project documents, and recorded documents (i.e., Deed of Trust, BLM Grant to
22 TSE, etc.) to demonstrate the validity of Brahma's Lien.²⁵

23 ///

24 ///

25 ²¹ It is important for the Court to note that contractually, Peel Brimley was entitled to bill the following hourly rates
26 for its time during the calendar year 2018, but in most instances billed Brahma a lower hourly rate:

- 27 • Partners: \$350 to \$500
28 • Associates: \$200 to \$350
• Law Clerks: \$120 to \$200
• Paralegals: \$125 to \$175
• Legal/Project Assistants: \$65 to \$125

²² *Id.* at ¶ 14.

²³ *Id.* at ¶ 15.

²⁴ *Id.* at ¶ 16.

²⁵ *Id.* at ¶ 17.

²⁶ *Id.* at ¶ 18.

1 Based on arguments included in Brahma's 20-page Opposition, Statement of Supplemental
2 Authorities, and presented during the Hearing, the Court correctly found that Brahma's Lien is not
3 frivolous and was recorded with reasonable cause.²⁶

4 All these arguments proved persuasive to the Court and ultimately led to the positive result
5 Brahma obtained as discussed further below.

6 *d. Peel Brimley's Results.*

7 TSE aggressively contested Brahma's Lien. Nevertheless, Peel Brimley successfully
8 persuaded the Court that Brahma's Lien was not frivolous and was recorded with reasonable
9 cause.²⁷

10 The result obtained reflects the legal skill employed in obtaining the result.²⁸ Peel
11 Brimley's skill and hard work in briefing the relevant issues, providing persuasive argument before
12 the Court in the face of TSE's vigorous opposition, and its ability to gather, organize, and use the
13 statutes and documents in a persuasive manner to obtain a favorable award, all support Brahma's
14 claim for Attorney's Fees.²⁹ Brahma has established that its Lien is not frivolous and that it was
15 justified in recording its Lien against the Work of Improvement. Brahma should not be penalized
16 by having to pay it's the Brahma Fees (or any portion thereof) when all such fees were reasonable
17 and would have been avoided had TSE (i) timely paid the amounts owed to Brahma, or (ii) not
18 brought its Motion to Expunge.

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27 ²⁶ *Id.* at ¶ 20.

28 ²⁷ *Id.* at ¶ 21.

29 ²⁸ *Id.* at ¶ 23.

²⁹ *Id.* at ¶ 24.

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1 **IV. CONCLUSION**

2 Based on the foregoing and as required by NRS 108.2275(6)(c), Brahma is entitled to an
3 award of the Brahma Fees (or Seventy-Eight Thousand Four Hundred Seventeen and 34/100
4 Dollars (\$78,417.34)).

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

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

8 RESPECTFULLY SUBMITTED this 31st day of October 2018.

9 **PEEL BRIMLEY LLP**

10 

11 RICHARD L. PEEL, ESQ. (4359)
12 ERIC ZIMBELMAN, ESQ. (9407)
13 CARY B. DOMINA, ESQ. (10567)
14 RONALD J. COX, ESQ. (12723)
15 3333 E. Serene Avenue, Suite 200
16 Henderson, Nevada 89074-6571
17 *Attorneys for Brahma Group, Inc.*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 15th November day of ~~October~~ 2018, I caused the above and foregoing document entitled **BRAHMA GROUP, INC.'S MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 108.2275(6)(C)** to be served as follows:

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

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

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Colby L. Balkenbush, Esq.
WEINBERG, WHEELER, HUDGINS
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cbalkenbush@wwhgd.com
Attorneys for Tonopah Solar Energy, LLC

Geoffrey Crisp, Esq.
WEIL & DRAGE
2500 Anthem Village Drive
Henderson, NV 89052
gcrisp@weildrage.com
Attorneys for Cobra Thermosolar Plants, Inc.



An Employee of Peel Brimley LLP

EXHIBIT 1

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RICHARD L. PEEL, Esq.
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ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
RONALD J. COX, ESQ.
Nevada Bar No. 12723
PEEL BRIMLEY LLP
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ezimbelman@peelbrimley.com
rcox@peelbrimley.com
Attorneys for Brahma Group, Inc.

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

BRAHMA GROUP, INC., a Nevada corporation,

Counterclaimant/Lien Claimant,

vs.

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

Counterdefendant,

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

**DECLARATION OF RICHARD L.
PEEL, ESQ. IN SUPPORT OF
BRAHMA GROUP, INC.'S MOTION
FOR ATTORNEY'S FEES AND
COSTS PURSUANT TO NRS
108.2275(6)(C)**

1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

10 Third-Party Defendants.

11 I, Richard L. Peel, declare as follows:

12 1. I am the Managing Partner with the law firm of Peel Brimley LLP ("Peel
13 Brimley"); I have personal knowledge of the facts stated herein, except as otherwise stated upon
14 information and belief, and I am competent to testify to their truthfulness if called upon to do so.

15 2. I make this Declaration in Support of Brahma Group, Inc.'s ("Brahma") Motion
16 for Attorneys' Fees and Costs Pursuant to NRS 108.2275(6)(c) ("Fee Motion").¹

17 3. At the September 12, 2018 hearing ("Hearing") regarding Tonopah Solar Energy,
18 LLC's ("TSE") Motion to Expunge ("Motion to Expunge") and in the Court's subsequent October
19 29, 2018 Order, the Court found that Brahma's Lien was not frivolous and was recorded with
20 reasonable cause.²

21 4. In defending the Brahma Lien, Brahma has incurred (i) Seventy-Seven Thousand
22 Nine Hundred Thirty-Seven and 50/100 Dollars (\$77,937.50) in attorney's fees, and (ii) costs of
23 Four Hundred Seventy-Nine and 84/100 Dollars (\$479.84), totaling Seventy-Eight Thousand Four
24 Hundred Seventeen and 34/100 Dollars (\$78,417.34) (collectively, the "Brahma Fees").³

25 5. Peel Brimley (i) is a Henderson, Nevada based law firm currently consisting of
26 nine attorneys and one paralegal, and (ii) is experienced and qualified to handle this type of case.

27 ¹ The capitalized words and phrases used herein are ascribed the same meanings and definitions as those used in the
28 Fee Motion.

² See, **Exhibit 2** to the Fee Motion, Section III.

³ See, **Exhibit 3** to the Fee Motion.

1 6. Peel Brimley's primary practice is construction law, and although the majority of
2 Peel Brimley's clients are subcontractors, Peel Brimley also represents owners, engineers,
3 architects, general contractors and suppliers in a variety of construction related matters.

4 7. Peel Brimley's clientele has consisted of some of the largest and most respected
5 project owners and construction related companies operating in Nevada.

6 8. Peel Brimley and its partners have taken a lead role in instructing and teaching the
7 construction community in a wide range of construction related classes and seminars sponsored
8 by various trade, professional, and educational organizations (e.g., Lorman Education Services,
9 Associated General Contractors, National Business Institute, The Seminar Group, and various
10 local construction trade organizations).

11 9. The partners at Peel Brimley ("Partners" have lectured and presented materials at
12 many construction-related seminars and classes in Las Vegas and Seattle addressing the following
13 topics: advanced construction law, construction payment remedies, mechanic's lien law and
14 strategies, construction law and practice, Nevada construction law, Nevada construction issues,
15 construction defects, and other related topics.

16 10. Additionally, Peel Brimley is and has been extensively involved in drafting and
17 passing construction related legislation sponsored by construction organizations such as:

- 18 • The Sheet Metal & Air Conditioning Contractors Nat'l Assoc. (SMACNA) of
19 Southern Nevada;
- 20 • The Associated General Contractors (AGC);
- 21 • The Plumbing & Mechanical Contractors of Nevada;
- 22 • The Associated Building Contractors (ABC);
- 23 • The National Electrical Contractors Association (NECA);
- 24 • The Mechanical Contractors Association (MCA);
- 25 • The Nevada Association of Mechanical Contractors;
- 26 • Among others.

27 11. Peel Brimley's Partners have drafted and lobbied for the passage of:

- 28 • Nevada's Prompt Pay Statute for Public Works (NRS 338.400 through
338.645), which passed in 1999;
- Nevada's Right to Stop Work Statute (NRS 624.606 through 624.630), which
became effective October 1, 2001 and was amended in 2003 and 2005; and

- Extensive modifications, changes, and additions to Nevada's existing Mechanic's Lien Statute (NRS 108.221 through 108.246), which became effective in the 2003 and 2005, including some of the very provisions Brahma relied upon in its Opposition to TSE's Motion to Expunge.

12. The Partners have been extensively involved and have taken lead roles in almost every major construction litigation in Las Vegas, Nevada over the past 22 years, including:

- The City Center Litigation;
- The Fontainebleau Litigation;
- The Westgate Planet Hollywood Litigation;
- The Resort at Summerlin Litigation;
- The Venetian Litigation;
- The Aladdin Hotel & Casino Litigation;
- The Lied Library Litigation;
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- The Allstar Café Litigation;
- The VA Ambulatory Care Facility Litigation;
- The Federal Courthouse Litigation;
- The Southern Nevada Veteran's Administration Litigation;
- The Regional Justice Center Litigation; and
- Several others.

13. Additionally, Peel Brimley has hired qualified and experienced associates, (i) most of whom have established backgrounds in construction law, and (ii) have access to a variety of construction materials and resources gathered by the firm, access to partners' and senior associates' experience in the construction industry, and ample opportunity to participate in construction related training classes and seminars inside and outside of the firm.

14. Brahma's billing rates are reasonable. Peel Brimley provided its legal services under an hourly rate contract with Brahma, charging the following hourly rates, effective for the calendar year 2018:

- | | |
|-----------------------------------|-----------|
| • Richard Peel, Managing Partner: | \$425/hr. |
| • Eric Zimbelman, Partner: | \$400/hr. |
| • Jefferson Boswell, Partner: | \$375/hr. |
| • Ronald Cox, Associate: | \$350/hr. |
| • Blayne Grondel, Law Clerk: | \$175/hr. |
| • Terri Hansen, Paralegal: | \$145/hr. |

- Amanda Armstrong, Project Assistant: \$125/hr.⁴

15. The rates that Peel Brimley has billed Brahma for the legal services attributable to the defense of TSE's Motion to Expunge, are comparable to the rates charged by other similarly situated attorneys who practice construction law and have the same or similar level of skill in the Nevada market.

16. TSE's arguments in support of its Motion to Expunge constantly changed and drastically expanded from the date it filed its Motion to Expunge (June 1, 2018) until the date of the Hearing (September 12, 2018), requiring Brahma to respond to TSE's ever-changing arguments by way of the Brahma Opposition, the Brahma Supplement, and the Brahma Statement (collectively, "Brahma's Opposition").

17. TSE originally argued that Brahma's Lien should be expunged because Brahma (i) failed to provide the BLM with a Notice of Right to Lien, and (ii) could not Lien real property owned by the BLM.

18. Brahma's attorneys had to review, research, and analyze highly technical aspects of the statutes, case law, project documents, and recorded documents (i.e., Deed of Trust, BLM Grant to TSE, etc.) to research, analyze, demonstrate and identify (i) the property TSE owned, in comparison to what TSE claimed to own, (ii) the factual and legal arguments in opposition to those facts and legal authorities cited in TSE's Moving Papers, and (iii) the validity of Brahma's Lien.

19. The three attorneys from Peel Brimley that attended the two Hearings in support of Brahma's Opposition had differing knowledge of the documents, the law, and the arguments to be made. For example, (i) Ronnie Cox had reviewed and understood (in detail) the documents that TSE had presented in support of its Motion to Expunge, and that Brahma had presented in support

⁴ It is important for the Court to note that contractually, Peel Brimley was entitled to bill the following hourly rates for its time, but in most instances billed Brahma a lower hourly rate:

- Partners: \$350 to \$500
- Associates: \$200 to \$350
- Law Clerks: \$120 to \$200
- Paralegals: \$125 to \$175
- Legal/Project Assistants: \$65 to \$125

1 of its Opposition, (ii) myself, Ronnie Cox, and Eric Zimbelman drafted portions of Brahma's
2 Opposition, (iii) Eric Zimbelman and myself both argued at the Hearing, and (iv) I drafted the
3 2003 and 2005 amendments to Nevada's Mechanic's Lien Statute, which was at issue during the
4 Hearing.

5 20. Based on arguments included in Brahma's Opposition and presented during the
6 Hearing, the Court correctly found that Brahma's Lien is not frivolous and was recorded with
7 reasonable cause.

8 21. TSE aggressively contested Brahma's Lien. Nevertheless, Peel Brimley
9 successfully persuaded the Court that Brahma's Lien was not frivolous and was recorded with
10 reasonable cause.

11 22. In fact, TSE contested undisputed facts reflected in Brahma's proposed order
12 denying TSE's Motion to Expunge ("Proposed Order"), requiring Brahma to revise and resubmit
13 the Proposed Order to TSE's counsel for its consideration ("Revised Proposed Order"), then
14 submitting the same to the Court for its consideration, which form of order was ultimately
15 accepted and entered by the Court on October 29, 2018 (the "Order").

16 23. The results obtained reflect the legal effort and skill employed to obtain the result.

17 24. Peel Brimley's skill and hard work in briefing the relevant issues, providing
18 persuasive argument before the Court in the face of TSE's vigorous opposition, and its ability to
19 gather, organize, and use the statutes and documents in a persuasive manner to obtain a favorable
20 award, all support Brahma's claim for an award of the Brahma Fees.

21 I declare under penalty of perjury as provided under the laws of the State of Nevada that the
22 foregoing is true and correct and if called upon to testify, would do so.

23 Dated this 31st day of October 2018.

24
25 
26 Richard L. Peel, Esq.
27
28

EXHIBIT 2

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1 **ORDR**
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6 RONALD J. COX, ESQ.
7 Nevada Bar No. 12723
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Attorneys for Brahma Group, Inc.

FILED
FIFTH JUDICIAL DISTRICT

OCT 29 2018

Nye County Clerk
AMY DOWERS Deputy

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

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

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

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

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

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///

///

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

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

9 **II. THE COURT'S DECISION.**

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

18 5. In response, Brahma:

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

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

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

1 identified by parcel number and legal description; and

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

4 6. The Court concludes as follows:

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

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

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

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

13 1. At the Hearing, TSE contended that:

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

22 2. In response, Brahma demonstrated that:

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

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

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

3 3. The Court concludes that:

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

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

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

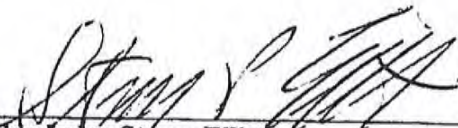
12 **III. CONCLUSION.**

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

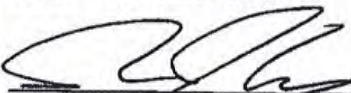
15 2. Nothing in this Order shall prevent or preclude Brahma from applying for an
16 award of attorney's fees and costs pursuant to NRS 108.2275(6)(c).

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

19 Dated this 17 day of October, 2018.

20
21 
22 Senior Judge Steven Elliott

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

25 

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

EXHIBIT 3

PEEL BRIMLEY, LLP
3333 E Serene Avenue, Suite 200
Henderson, Nevada 89074
(702) 990-7272

Brahma Group Inc.
1132 South 500 West
Salt Lake City, Utah 84101

October 31, 2018

Invoice #: 0630-003a154367

Attention: David Zimmerman

RE: File No. 0630-003a adv. Tonopah Solar Energy, LLC's Motion to Expunge

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-13-18	Review correspondence from Ronnie regarding Motion to Expunge; conference with Ronnie regarding same;	0.40	170.00	RLP
	Phone conversation with David regarding facts of the case; receive and review email from David with previously recorded Mechanic's Lien; receive and review Motion to Expunge and prepare and send email to Richard; phone conversation with David and Kevin Helm; send out calendar invite for conference call; download, print and review other liens recorded against the project in anticipation of conference call; review liens recorded by Brahma and all amendments thereto; research Nye County Assessor's website and print off information for various parcels;	4.20	1,470.00	RON
Jun-14-18	Prepare for and participate in telephone call among Kevin Helm and David Zimmerman to discuss facts of the case; conference with Ronnie regarding things to do;	1.40	595.00	RLP
	Prepare for and participate in Conference call; prepare and send email to David;	1.50	525.00	RON
Jun-15-18	Receive, review and respond to email from attorney Balkenbush; receive and review emails exchanged between Kevin Helm and Nicole Lovelock; phone conversation with Kevin Helm; phone conversation with attorney Balkenbush; prepare and send confirming	0.50	175.00	RON

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email to attorney Balkenbush; give instruction to Rosey as to things to do; receive, review and respond to email from attorney Roberts;

Jun-18-18	Receipt, review correspondence exchanged between Ronnie and opposing counsel regarding continuation of hearing date; Conference with Ronnie regarding most recent events and things to do;	0.50	212.50	RLP
	Receive and review Mechanic's Lien Information Form; discussion with Rosey regarding her conversation with Court; phone conversation with David and send out on calendar invite for conference call	0.90	315.00	RON
Jun-19-18	Telephone conference with David and Kevin regarding additional facts of the case and things to do; conference with Ronnie and Jefferson to assign tasks to do; exchange correspondence with Kevin Helm;	0.80	340.00	RLP
	In depth review of Services Agreement and interlineation of comments and arguments to support Lien;	2.90	1,087.50	JEF
	Participate in conference call with Richard and David; discussion with Richard regarding things to do;	0.80	280.00	RON
Jun-20-18	Receipt, review memo from Jefferson regarding outcome of his review of contract; prepare for and participate in conference call with David and Kevin to discuss analysis of contract and options;	1.50	637.50	RLP
	Conduct legal research regarding susceptibility of land owned by federal government but leased for a long-term, private purpose to mechanic's liens; compare various case law and prior disputes on same project; emails with team regarding same; office conference with R. Peel and R. Cox to discuss strategy and things to do; participate in telephone conference with R. Peel, R. Cox. and David to discuss matter and contractual and statutory arguments;	2.90	1,087.50	JEF

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	Participate in call with Richard and David; exchange various emails with David;	0.80	280.00	RON
Jun-21-18	Telephone call with David regarding various matters relating to lien, motion to expunge; conference call with Ronnie, then Eric regarding things to do; receipt and summarily review documents from Loreto; forward same to Ronnie for his review;	0.80	340.00	RLP
	Phone conversation with attorney Balkenbush regarding items needed to move hearing.	0.10	35.00	RON
Jun-25-18	Prepare and send email to attorney Balkenbush to follow-up on status of Stipulation to Move Hearing; phone conversation with David and Loreto regarding legal description on Lien as compared to Construction Deed of Trust; prepare and send email to David with copies of printouts from Nye County Assessor's office; receive, review and revise Stipulation and Order to move Hearing; send back to attorney Balkenbush; sign final Stipulation and Order; give instruction to staff as to things to do; exchange emails with David regarding legal descriptions;	1.90	665.00	RON
Jun-26-18	Office Conference with Jefferson and Richard regarding motion to expunge and response to same; participate in conference call with Richard and David regarding same;	2.50	875.00	RON
Jun-28-18	Receive and review correspondence from David and forward the same to Richard; phone conversation with Eric; discussion with Richard; receive, review and respond to email from Loreto at the Court;	0.50	175.00	RON
Jul-02-18	Participate in conference call with Ronnie to prepare for call with David; give him direction as to things to do; participate in call with David to discuss status of the case; exchange a number of correspondence with attorney Lee Roberts regarding possible conference call;	1.40	595.00	RLP
	Exchange emails with attorney Balkenbush regarding status of Stip and Order; follow-up with Eric regarding status of his conversation with Lee Roberts; participate in call with Richard and David to discuss status of case;	1.00	350.00	RON

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Jul-03-18	Telephone call with Lee Roberts concerning (i) extension to Oppose motion and (ii) possibility of flipping case to Clark County; give direction to Ronnie regarding things to do; receipt, review Ronnie's email to David; conference with Jefferson regarding same and things to do;	1.40	595.00	RLP
Jul-06-18	Receive and review various property documents;	1.20	420.00	RON
Jul-09-18	Phone conversation with David regarding various items; prepare and send email to Richard; prepare and send email to attorney Balkenbush to follow-up on date for hearing;	0.30	105.00	RON
Jul-10-18	Telephone conference with David Zimmerman regarding status of court action and other issues; receipt, review correspondence exchanged between Ronnie and David concerning the court order rescheduling the hearing;	0.50	212.50	RLP
	Receive, review and respond to email from attorney Balkenbush regarding hearing; instruct Rosey to call court to see if date has been set for hearing; participate in conference call with Richard and David regarding status; phone conversation with David regarding parcels;	0.80	280.00	RON
Jul-11-18	Receipt, review correspondence from Lee Roberts; send correspondence to David Zimmerman regarding same; exchange correspondence with David regarding conference call; send calendar event for call; follow-up with Jefferson regarding status of legal research; conference with Eric to prepare for call with client; participate in call with David Zimmerman and Sean Davis to discuss options;	1.40	595.00	RLP
	Multiple teleconferences and emails regarding Tonopah Solar's Petition to Discharge Lien, strategy for response to same; Prepare for and participate in conference call with David Zimmerman and Sean Davis regarding same and direction to proceed; Analyze motion to	2.80	1,120.00	EBZ

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	expunge and exchange emails regarding outline of arguments in response to same			
	File review; Research Nye County Recorder's Office records;	0.50	72.50	TH
Jul-12-18	Review Motion to Expunge and cases cited therein; prepare outline for Opposition and begin drafting the same;	4.20	1,470.00	RON
Jul-13-18	Continue working on draft Opposition	2.00	700.00	RON
Jul-16-18	Exchange emails with David and Kevin Helmer; Association of Counsel; receive and review Notice of Hearing with new date; continue drafting Opposition and send draft to Richard and Eric for review and comment;	7.60	2,660.00	RON
Jul-17-18	Work on changes to draft of opposition; receipt, review correspondence exchanged between Ronnie and Eric;	0.70	297.50	RLP
	Work on Opposition to Motion to Expunge Lien;	4.80	1,920.00	EBZ
	Exchange emails with Eric regarding factual assertions in Opposition and support for the same;	0.70	245.00	RON
	Receive and process Notice of Hearing on Tonopah's Motion to Expunge Brahma's Mechanic's Lien;	0.20	29.00	TH
Jul-18-18	Continue working on revisions to Opposition to Motion to Expunge; conference with Eric regarding further changes to same; exchange correspondence with Lee Roberts regarding extension; exchange correspondence with David concerning same;	3.30	1,402.50	RLP
	Continue work on opposition to motion to expunge lien; Receive and incorporate Richard's revisions in same; Conduct additional legal research for same	1.50	600.00	EBZ
	Conduct online legal research to identify case law that permits a non-fee-simple lien to attach to property owned by federal government; review and markup various cases, including Freedom Mortg. v. Las Vegas Dev. Group	1.80	675.00	JEF

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LLC, Red Mtn. Mach. Co. v. Grace Inv. Co., as well as secondary legal resources regarding quasi public/quasi private construction projects; prepare email memorandum to E. Zimbelman for his review; discuss case strategy and things to do with team;

	Review past TSE Filings in an effort to find certain judicial admissions; review various documents to find further evidence that TSE is the owner of Project and provide Eric findings for the same; work with Richard on revisions to Opposition;	3.80	1,330.00	RON
Jul-19-18	Review Eric's revisions to Opposition; work on further revisions to the same;	2.00	850.00	RLP
	Continue work on Opposition to Motion to Expunge Lien and revisions to same	2.50	1,000.00	EBZ
	Office conference with R. Peel and R. Cox regarding research related to susceptibility of federal lands to mechanic's liens when property is put to private, commercial use and such liens attach to less than fee-simple estate in land (i.e., to leasehold estate or on such improvements); emails regarding same;	0.50	187.50	JEF
	Discussion with Jefferson regarding his legal research; receive and review cases found by Jefferson;	0.70	245.00	RON
Jul-20-18	Continue working on changes to Eric's revisions;	2.40	1,020.00	RLP
Jul-23-18	Teleconferences and emails regarding opposition to motion to expunge lien and revisions to same	0.60	240.00	EBZ
Jul-24-18	Receipt, review several emails from David concerning changes David made to Opposition; work on changes to Opposition; give direction to staff regarding things to do;	1.30	552.50	RLP
	Receive and review client's revisions to Opposition to Motion to Expunge; Carefully review and edit same, including legal descriptions; Exchange email regarding same ,finalizing and submitting same;	2.20	880.00	EBZ

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	Assist Richard in reviewing draft Opposition; finalize Opposition and attach Exhibits and instruct Staff to file and serve the same; prepare and send email to TSE's attorneys with electronic copy of Opposition;	2.70	945.00	RON
	Prepare Certificate of Service for Opposition to Motion to Expunge; served the same on all interested parties; contact Nye County Clerk regarding fees for filing of the Opposition; Prepare Federal Express and sent to Nye County Clerk for filing;	0.70	87.50	AEA
Jul-26-18	Receipt, review correspondence from David and Eric's response to same; prepare and send David additional thoughts;	0.30	127.50	RLP
Jul-27-18	Receipt, review and respond to correspondence exchanged between Ronnie and Eric; receipt, review correspondence exchanged between David and Ronnie and Jefferson and David; receipt, review and respond to correspondence from Ronnie concerning TSE's request for an extension to file its Reply;	0.20	85.00	RLP
	Exchange multiple emails regarding hearing preparations regarding motion to expunge; Receive and review Ronnie's research regarding location of parcels; Exchange email with team regarding same	1.00	400.00	EBZ
	Exchange emails with attorney Balkenbush; further research regarding location of parcels and prepare and send email to Richard and Eric regarding findings in the same;	1.70	595.00	RON
Jul-30-18	Prepare and send email to David;	0.20	70.00	RON
Aug-01-18	Receipt, review and respond to Ronnie's email concerning his review of TSE's Reply; follow up with Ronnie to see if he sent a copy of the Reply to David; telephone call with David regarding arguments to be made and participation in 8/2 meeting;	0.60	255.00	RLP
	Receive and review TSE's Reply; prepare and send email to Richard and Eric with thoughts on the same; discussion with Eric and Richard regarding thoughts;	1.50	525.00	RON

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Aug-02-18	Prepare for and attend meeting with Eric and Ronnie (with David on the telephone) to discuss strategy and arguments to be made at upcoming hearing;	1.30	552.50	RLP
	Review and analyze TSE's Reply Brief regarding Motion to Expunge; Begin outline of oral argument and preparation for hearing; Office conference with Richard, Ronnie and David regarding same	3.50	1,400.00	EBZ
	Conduct additional legal research regarding: Federal Land & Liens;	1.60	560.00	RON
	Assist EBZ in preparing for upcoming Hearing;	0.80	100.00	AEA
Aug-03-18	Work on outline and preparation for oral argument regarding Motion to Expunge Lien; Receive and review Notice of Right to Lien and mailing certificates regarding same; Exchange multiple emails regarding same, preparation of Supplement to Opposition; Review and approve same	4.50	1,800.00	EBZ
	Exchange several emails with Eric regarding Supplement and phone conversation with Eric regarding the same; prepare Supplement and give instructions to Terri regarding the same;	1.40	490.00	RON
	Conversation with Nye County Clerk regarding SUPP to OPP & 1st Appearance fee;	0.20	25.00	AEA
Aug-06-18	Review Eric's oral argument and provide comments/suggestions concerning same; prepare for, travel to and attend hearing in Pahrump; conference with David to obtain his approval to stipulate to removal of Judge Lane for Judge Elliott; conference with staff regarding things to do; conference with Eric and Ronnie regarding case law to look at;	5.10	2,167.50	RLP
	Prepare for, drive to Pahrump and appear for hearing on motion to expunge lien; Case transferred to senior judge; Work on supplemental statement of authorities and analysis of same	6.20	2,480.00	EBZ
	Prepare for, travel to and attend hearing on	4.50	1,575.00	RON

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	Motion to Expunge; discussions with Richard and Eric regarding case law and things to do;			
Aug-07-18	Receipt, review and revise draft of Statement of Supplemental Authorities; telephone call with David regarding procedural issues and scheduling of hearing;	0.80	340.00	RLP
	Revise and finalize supplemental statement of authorities; Exchange email with David regarding same	0.40	160.00	EBZ
	Receive, review and provide comments to Supplement;	0.50	175.00	RON
Aug-08-18	Receipt, review and send correspondence to Eric regarding coordinating hearing dates with attorney Roberts;	0.30	127.50	RLP
	Receive and review notice of re-assignment to Senior Judge Elliot; Exchange multiple emails with clerk, opposing counsel and team regarding same and re-scheduling hearing on Motion to Expunge	0.20	80.00	EBZ
	Compile Supplemental Brief, sign the same and give instruction to Rosey as to things to do;	0.30	105.00	RON
Aug-09-18	Exchange multiple emails regarding rescheduling the Hearing on Motion to Expunge Lien	0.20	80.00	EBZ
	Receive and review Memorandum of Temporary Assignment;	0.10	14.50	TH
Aug-10-18	Exchange multiple emails regarding new date for hearing on Motion to Expunge.	0.20	80.00	EBZ
Aug-14-18	Exchange emails regarding supplemental authorities and strategy	0.20	80.00	EBZ
Aug-15-18	Receive and process file-stamped copy of Brahma's Supplement to its Opposition to Tonopah's Motion to Expunge Brahma's Mechanic's Lien; Receive and process invoice from LPS;	0.20	29.00	TH
Aug-23-18	Receipt, review and respond to correspondence from Loreto requesting copies of documents;	0.20	85.00	RLP

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Aug-27-18	Receipt, review correspondence from Loreto; give direction to staff regarding things to do;	0.20	85.00	RLP
Aug-28-18	Receipt, review TSE's Errata; send same to David with correspondence; give direction to Eric and Ronnie regarding things to do;	0.30	127.50	RLP
	Receive and review TSE's Errata regarding Motion to Expunge; Review and analyze deed of trust and exchange email with team and client regarding same	0.40	160.00	EBZ
	Receive and review Errata to TSE's Reply Brief;	0.30	105.00	RON
	Receive and review Tonopah's Errata to its Reply to Brahma's Opposition to Motion to Expunge;	0.20	29.00	TH
Aug-29-18	Receipt, review emails exchanged between David and Eric concerning TSE's Errata;	0.20	85.00	RLP
Sep-06-18	Receipt, review correspondence from David; conference with Eric regarding PNC Bank's Deed of Trust; review PNC Bank's Deed of Trust; telephone call to David to discuss same; telephone call with David regarding PNC Bank's Deed of Trust;	0.70	297.50	RLP
	Receive and review email from David Zimmerman regarding deed of trust issues. Prepare for and participate in telephone calls and emails with David Zimmerman and Richard Peel regarding same.	0.60	240.00	EBZ
Sep-10-18	Receipt, review TSE's Supplemental Reply; give direction to staff regarding same; receipt, review correspondence from attorney Roberts regarding same; review Eric's analysis of TSE's Supplemental Reply and case law in support thereof; receipt, review correspondence from David; give direction to staff regarding same;	0.80	340.00	RLP
	Receive and review TSE's supplemental brief. Conduct additional legal research and prepare analysis and outline of same and response to same for oral argument.	6.50	2,600.00	EBZ
	Receive and review TSE's Supplement and forward the same to Richard and Eric; receive	1.10	385.00	RON

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	and review Eric's analysis of Supplement; review pages of Loan Guarantee Agreement attached to Supplement and prepare and send email to Richard and Eric regarding thoughts on the same;			
Sep-11-18	Receipt, review Ronnie's thoughts concerning documents that TSE provided; exchange correspondence with David regarding whether the hearing will proceed; give direction to staff regarding things to do; conference with Eric and Ronnie regarding need for Affidavit; sign Affidavit;	0.50	212.50	RLP
	Work on Affidavit and Request for Discovery. Review and approve revisions to same. Work on preparations for oral argument for hearing on Motion to Expunge.	6.80	2,720.00	EBZ
	Discussion with Richard regarding things to do; call and leave message for attorney Roberts; receive, review, revise and finalize Affidavit and give instruction to staff as to things to do;	1.70	595.00	RON
Sep-12-18	Prepare for, travel to and attend hearing in Pahrump; conference with client regarding same and things to do;	6.30	2,677.50	RLP
	Continue preparations for oral arguments regarding TSE Motion to Expunge. Travel to Pahrump and participate in same. Meeting with client regarding decision, status and things to do. Office conference with Richard and Ronnie regarding same.	8.50	3,400.00	EBZ
	Discussions with Richard and Eric regarding hearing; travel to and attend hearing and discussion with Richard and Eric regarding things to do;	6.30	2,205.00	RON
Sep-13-18	Begin work on Order Denying Motion to Expunge	0.50	200.00	EBZ
Sep-14-18	Work on Order Denying Motion to Expunge Notice of Lien.	5.00	2,000.00	EBZ
	Discussion with Blayne regarding Motion For Fees;	0.30	105.00	RON

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	Draft Motion for Fees and Costs;	3.60	630.00	BNG
Sep-17-18	Receipt, review and revise draft of Order Denying Motion to Expunge; review Eric's and David's additional changes to draft of Order, incorporate same and send to attorney Roberts for his consideration; receipt and review response from attorney Roberts	1.70	722.50	RLP
	Work on revisions to Order Denying Motion to Expunge and exchange email with team regarding same.	0.60	240.00	EBZ
	Review and edit draft Motion for Fees and Costs; provide same to Ronnie;	1.10	192.50	BNG
Sep-18-18	Discussion with Blayne regarding Motion For Fees;	0.20	70.00	RON
Sep-19-18	Receive and review email from attorney Balkenbush with redline revisions to proposed Order; prepare and send email to Richard and Eric regarding thoughts on the same;	0.40	140.00	RON
Sep-20-18	Receipt, review and respond to correspondence received from attorney Roberts' office concerning changes to form of Order; send several correspondence to David concerning attorney Roberts' requested changes to form of Order;	0.60	255.00	RLP
	Receive and review TSE's proposed edits to Order Denying Motion to Expunge;	0.30	120.00	EBZ
Sep-21-18	Review attorney Roberts' requested changes to form of Order; telephone call with David regarding the same; revise draft of Order and send to David, Eric and Ronnie for their review and comment; receipt, review Ronnie's suggested changes; make same to form of Order	1.10	467.50	RLP
	Review revisions to proposed Order Denying Motion to Expunge	0.20	80.00	EBZ
	Review and further revise proposed Order; send the same to Richard and Eric;	0.50	175.00	RON

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Sep-27-18	Review and substantially revise draft Motion for Attorney's Fees and Costs pursuant to NRS 108.2275; provide the same to Richard and Eric;	4.90	1,715.00	RON
	Correct certain formatting issues on Motion for Attorney's Fees and Costs;	0.30	43.50	TH
Oct-03-18	Review and revise draft of Order Denying Motion to Expunge; send same to attorneys Roberts and Balkenbush for their consideration;	0.50	212.50	RLP
	Work with Richard on revisions to draft Order	0.50	175.00	RON
	Left message for Louise in Dept. 2 advising Brahma will be submitting its proposed Order to the Motion to Expunge; Telephone call with Louise in Dept. 2 advising she has not received a proposed Order from Tonopah and acknowledging Brahma will be submitting a proposed Order;	0.20	29.00	TH
Oct-04-18	Work on motion for award of attorney's fees.	2.50	1,000.00	EBZ
Oct-10-18	Send correspondence to attorney Roberts concerning final draft of Order Denying Motion to Expunge; give directions to Ronnie regarding things to do;	0.20	85.00	RLP
Oct-12-18	Exchange correspondence with Ronnie regarding Order regarding Motion to Expunge and letter to attorney Roberts;	0.30	127.50	RLP
	Exchange correspondence with Richard regarding Order and letter to Court; prepare letter to Court with proposed Order and instruct staff to serve letter and proposed Order on attorney Roberts;	0.80	280.00	RON
	Receive instructions from Attorney Cox regarding letter to Nye County Court - Dept. 2; Make arrangements Nationwide Legal for letter and Order to be delivered to same; Instruct Project Assistant Armstrong to serve same on Attorney D. Lee Roberts via e-mail;	0.30	43.50	TH
	Compare revised Order Denying Tonopah Solar Energy, LLC's Motion to Expunge	0.40	70.00	BNG

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	Brahama Group, Inc.s Mechanic's Lien with redline correction made by Richard Peel;			
Oct-13-18	Receipt, review correspondence from attorney Balkenbush; give direction to Cary and Ronnie regarding things to do;	0.40	170.00	RLP
	Receive, review and respond to email from attorney Balkenbush regarding Order and correspondence to the Court	0.20	70.00	RON
Oct-15-18	Exchange correspondence with David regarding status of our submission of Order concerning Motion to Expunge; forward to David correspondence from attorney Balkenbush to the Court; exchange correspondence with Cary and Ronnie regarding things to do with respect to same;	0.60	255.00	RLP
Oct-16-18	Work on comparison for proposed order denying expungement motion; send same to David with detailed email; review and revise draft of letter to Judge Elliott concerning TSE's proposed Order; sign letter and cause same to be filed with the court and emailed to counsel;	0.90	382.50	RLP
Oct-29-18	Receipt, review several correspondence exchanged among Ronnie, Cary and Eric regarding form of Order executed by Judge Elliott; work on revisions to Motion for Attorney's Fees and Costs; participate in several telephone calls with Cary to discuss same; work with Ronnie on several issues affecting same; prepare and send correspondence to David concerning Judge Elliott's Order and draft of Motion for Attorney's Fees and Costs; telephone call with David regarding same; receipt, review David's requested changes to Motion for Attorney's Fees/Costs; make same and send correspondence back to David regarding same;	4.20	1,785.00	RLP
	Receive and review correspondence from the Court with filed Order and forward the same to Richard and Eric; work with Richard on Motion for Fees;	0.80	280.00	RON
Oct-30-18	Discussions with Richard regarding Motion for Fees and things to do; prepare Declaration of Richard L. Peel in Support of Motion for Fees;	4.80	1,680.00	RON

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	make further revisions to Motion for Fees and send the same to Richard;			
Oct-31-18	Work on further changes to Motion for Fees; work on revisions to Declaration; telephone call with David regarding various issue affecting Motion for Fees;	3.50	1,487.50	RLP
	Conferences with Richard and Afton regarding Motions for Fees; discussions with staff regarding various costs incurred in defending against Motion and prepare and send email to Richard regarding the same; further revise Motion and Declaration;	2.50	875.00	RON
	Totals	206.90	\$77,937.50	

Other	Costs	Receipts
Copies	12.00	
E Filing Fees	281.60	
Federal express	30.49	
Postage	5.75	
Courier/Delivery	150.00	
Totals	\$479.84	\$0.00
Total Fees & Costs		\$78,417.34
Previous Balance		\$0.00
Previous Payments		\$0.00
Balance Due Now		\$78,417.34
Retainer Balance	\$0.00	

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