

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78092

Tonopah Solar Energy, LLC,
Appellant

v.

Brahma Group, Inc.,
Respondent

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

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

**APPELLANT'S APPENDIX
VOLUME 14**

D. LEE ROBERTS, JR., ESQ.
Nevada Bar No. 8877
COLBY L. BALKENBUSH, ESQ.
Nevada Bar No. 13066
RYAN T. GORMLEY, ESQ.
Nevada Bar No. 13494
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
rgormley@wwhgd.com

*Attorneys for Appellant
Tonopah Solar Energy, LLC*

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

RICHARD L. PEEL, Esq.
Nevada Bar No. 4359
ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
RONALD J. COX, ESQ.
Nevada Bar No. 12723
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
Facsimile: (702) 990-7273
rpeel@peelbrimley.com
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,

Counter-Defendant.

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

NOTICE OF ENTRY OF ORDER

///

///

///

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

1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

10 Third-Party Defendants.

11 **NOTICE OF ENTRY OF ORDER**

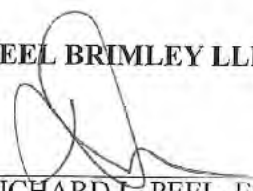
12 PLEASE TAKE NOTICE that an **Order Granting Brahma's Motion for Attorney's Fees**
13 **and Costs Pursuant to NRS 108.2275(6)(C)** was filed on January 8, 2019, a copy of which is
14 attached as Exhibit 1.

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

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

18 Dated this 9 day of January, 2019.

19 **PEEL BRIMLEY LLP**

20 
21 RICHARD L. PEEL, ESQ. (4359)
22 ERIC ZIMBELMAN, ESQ. (9863)
23 CARY B. DOMINA, ESQ. (10567)
24 RONALD J. COX, ESQ. (12723)
25 3333 E. Serene Avenue, Suite 200
26 Henderson, Nevada 89074-6571
27 *Attorneys for Brahma Group, Inc.*
28

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

CERTIFICATE OF SERVICE

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

NOTICE OF ENTRY OF ORDER to be served as follows:

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

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

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
WEINBERG, WHEELER, HUDGINS
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
lroberts@wwhgd.com
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

ORIGINAL

FILED
FIFTH JUDICIAL DISTRICT

JAN 08 2019

Nye County Clerk
Deputy

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

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

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

19 Plaintiff,

20 vs.

21 BRAHMA GROUP, INC., a Nevada corporation,

22 Defendant.

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

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

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

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

I. STATUTORY BASIS FOR AWARD OF FEES AND COSTS.

On October 17, 2018, this Court signed an Order¹ Denying TSE's Motion to Expunge

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

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

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

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

6 ***

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

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

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

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

27 ² The *Brunzell* factors are:

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

1 TSE opposed the Fee Motion on multiple grounds and asserted that the fees requested
2 were excessive for work performed in response to a "single motion." [TSE Opposition p. 2].
3 Among other things, TSE contends that (i) PB's rates are higher than the "prevailing rate," (ii)
4 PB engaged in "block billing," and (iii) PB "overstaffed" the work on the Underlying Motion
5 and its invoices contain duplicative work or billings. On Reply, Brahma argued, among other
6 things, that (i) the Underlying Motion was an existential threat to Brahma's lien rights – its sole
7 source of security³ for the \$12,859,577.74 Brahma claims to be owed for its work on TSE's
8 Crescent Dunes Solar Energy Project (the "Project"),⁴ (ii) involved multiple complex issues,
9 and (iii) the work successfully performed by Brahma's attorneys was reasonable and necessary
10 under the circumstances.

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

15 **III. FINDINGS.**

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

24 4) The result—whether the attorney was successful and what benefits were derived.

25 See *Brunzell*, 85 Nev. at 349; *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. at 829.

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

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

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

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

III. CONCLUSION.

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

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

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

///

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///


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

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

6 Dated this 31 day December 2018.

7
8 
9 Senior Judge Steven Elliott

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

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

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Dated this _____ day December 2018.

Submitted by:
PEEL BRIMLEY LLP

AA001015

EXHIBIT A

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

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

10 **FIFTH JUDICIAL DISTRICT COURT**

11 **NYE COUNTY, NEVADA**

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

13 Plaintiff,

14 vs.

15 BRAHMA GROUP, INC., a Nevada corporation,

16 Defendant.

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

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

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

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

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

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

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

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

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

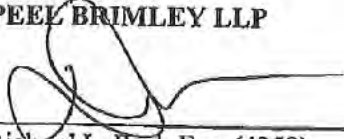
2 Now therefore,

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

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

11 IT IS SO STIPULATED this 27th day of December, 2018.

12
13 **PEEL BRIMLEY LLP**

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

**WEINBERG, WHEELER, HUDGINS,
GUNN & DIAZ, LLC**

14 
15 D. Lee Roberts, Jr., Esq. (8877)
16 Colby L. Balkenbush, Esq. (13066)
17 Ryan T. Gormley, Esq. (13494)
18 6385 S. Rainbow Blvd., Suite 400
19 Las Vegas, NV 89118
20 Telephone: (702) 938-3838
21 lroberts@wwhgd.com
22 cbalkenbush@wwhgd.com
23 rgormley@wwhgd.com
24 *Attorneys for Plaintiff Tonopah Solar Energy,*
25 *LLC*

1 D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
2 *lroberts@wwhgd.com*
Colby L. Balkenbush, Esq.
3 Nevada Bar No. 13066
cbalkenbush@wwhgd.com
4 Ryan T. Gormley, Esq.
Nevada Bar No. 13494
5 *rgormley@wwhgd.com*
WEINBERG, WHEELER, HUDGINS,
6 GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
7 Las Vegas, Nevada 89118
Telephone: (702) 938-3838
8 Facsimile: (702) 938-3864
Attorneys for Tonopah Solar Energy, LLC
9

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

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

15 Movant,

16 vs.

17 BRAHMA GROUP, INC., a Nevada corporation,

18 Respondent.

19 BRAHMA GROUP, INC., a Nevada corporation,

20 Counterclaimant,

21 vs.

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

26 Counterdefendant.

27 BRAHMA GROUP, INC., a Nevada corporation,

28 Third-Party Plaintiff,

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

TSE'S NOTICE OF APPEAL



vs.

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

Third-Party Defendants.

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

Plaintiff-In-Intervention,

vs.

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

Defendants-In-Intervention.

BRAHMA GROUP, INC., a Nevada corporation,

Plaintiff,

vs.

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


Defendants.

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

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- Order Denying Tonopah Solar Energy, LLC's Motion to Expunge Brahma Group, Inc.'s Mechanic's Lien, Notice of Entry served November 1, 2018, attached hereto as **Exhibit 1**.
- Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS 108.2275(6)(C), Notice of Entry served January 9, 2019, attached hereto as **Exhibit 2**.

DATED this 5th day of February 2019.



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



CERTIFICATE OF SERVICE

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

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

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

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

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

EXHIBIT 1

EXHIBIT 1

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

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

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

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

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

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

20 Counterclaimant/Lien Claimant,

21 vs.

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

26 Counterdefendant,
27
28

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

NOTICE OF ENTRY OF ORDER

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

1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

10 Third-Party Defendants.

11 **NOTICE OF ENTRY OF ORDER**

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

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

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

18 Dated this 30th day of October, 2018.

19 **PEEL BRIMLEY LLP**

20 

21 RICHARD L. PEEL, ESQ.

22 Nevada Bar No. 4359

23 ERIC ZIMBELMAN, ESQ.

24 Nevada Bar No. 9407

25 RONALD J. COX, ESQ.

26 Nevada Bar No. 12723

27 3333 E. Serene Avenue, Suite 200

28 Henderson, Nevada 89074-6571

Attorneys for Brahma Group, Inc.

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

CERTIFICATE OF SERVICE


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

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

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

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
WEINBERG, WHEELER, HUDGINS
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
lroberts@wwhgd.com
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 A

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

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

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

13 Plaintiff,

14 vs.

15 BRAHMA GROUP, INC., a Nevada corporation,

16 Defendant.

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

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

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

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

26 ///

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28 ///

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

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

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**

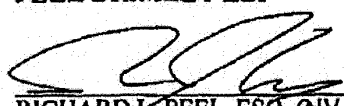
25 
26 **RICHARD L. PEEL, ESQ.** (NV Bar No. 4359)
27 **ERIC B. ZIMBELMAN, ESQ.** (NV Bar No. 9407)
28 **RONALD J. COX, ESQ.** (NV Bar No. 12723)
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Brahma Group, Inc.

EXHIBIT 2

EXHIBIT 2

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

1 RICHARD L. PEEL, Esq.
Nevada Bar No. 4359
2 ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
3 CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
4 RONALD J. COX, ESQ.
Nevada Bar No. 12723
5 **PEEL BRIMLEY LLP**
3333 E. Serene Avenue, Suite 200
6 Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
7 Facsimile: (702) 990-7273
rpeel@peelbrimley.com
8 ezimbelman@peelbrimley.com
rcox@peelbrimley.com
9 *Attorneys for Brahma Group, Inc.*

10 **FIFTH JUDICIAL DISTRICT COURT**

11 **NYE COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

18 BRAHMA GROUP, INC., a Nevada corporation,

19 Counterclaimant/Lien Claimant,

20 vs.

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

24 Counter-Defendant.

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

NOTICE OF ENTRY OF ORDER

25 ///

26 ///

27 ///

28

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

1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

10 Third-Party Defendants.

11 **NOTICE OF ENTRY OF ORDER**


12 PLEASE TAKE NOTICE that an **Order Granting Brahma's Motion for Attorney's Fees**
13 **and Costs Pursuant to NRS 108.2275(6)(C)** was filed on January 8, 2019, a copy of which is
14 attached as Exhibit 1.

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

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

18 Dated this 9 day of January, 2019.

19 **PEEL BRIMLEY LLP**

20 
21 RICHARD L. PEEL, ESQ. (4359)
22 ERIC ZIMBELMAN, ESQ. (9863)
23 CARY B. DOMINA, ESQ. (10567)
24 RONALD J. COX, ESQ. (12723)
25 3333 E. Serene Avenue, Suite 200
26 Henderson, Nevada 89074-6571
27 *Attorneys for Brahma Group, Inc.*
28

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

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP
and that on this 21st day of December 2018, I caused the above and foregoing document entitled

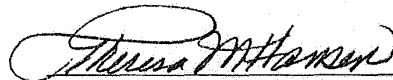
NOTICE OF ENTRY OF ORDER to be served as follows:

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

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

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

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



An Employee of Peel Brimley LLP

EXHIBIT 1

ORIGINAL

FILED
FIFTH JUDICIAL DISTRICT

JAN 08 2019

Nye County Clerk
Deputy

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

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

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

16 Plaintiff,

17 vs.

18 BRAHMA GROUP, INC., a Nevada corporation,

19 Defendant.

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

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

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

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

I. STATUTORY BASIS FOR AWARD OF FEES AND COSTS.

On October 17, 2018, this Court signed an Order¹ Denying TSE's Motion to Expunge

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

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

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

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

6 ***

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

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

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

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

27 ² The *Brunzell* factors are:

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

1 TSE opposed the Fee Motion on multiple grounds and asserted that the fees requested
2 were excessive for work performed in response to a "single motion." [TSE Opposition p. 2].
3 Among other things, TSE contends that (i) PB's rates are higher than the "prevailing rate," (ii)
4 PB engaged in "block billing," and (iii) PB "overstaffed" the work on the Underlying Motion
5 and its invoices contain duplicative work or billings. On Reply, Brahma argued, among other
6 things, that (i) the Underlying Motion was an existential threat to Brahma's lien rights – its sole
7 source of security³ for the \$12,859,577.74 Brahma claims to be owed for its work on TSE's
8 Crescent Dunes Solar Energy Project (the "Project"),⁴ (ii) involved multiple complex issues,
9 and (iii) the work successfully performed by Brahma's attorneys was reasonable and necessary
10 under the circumstances.

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

15 **III. FINDINGS.**

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

24 4) The result—whether the attorney was successful and what benefits were derived.

25 See *Brunzell*, 85 Nev. at 349; *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. at 829.

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

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

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

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

12
13 **III. CONCLUSION.**

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

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

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

25 ///

26 ///

27 ///

28 ///

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

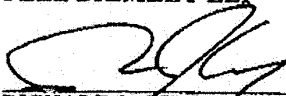
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NOW THEREFORE, IT IS HEREBY ORDERED that Brahma's Motion For Attorney's Fees And Costs Pursuant To NRS 108.2275(6)(c) is **GRANTED** and Brahma is awarded the sum of \$88,417.34 which shall be due and payable by TSE within ten (10) days of a notice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

Dated this 31 day December 2018.


Senior Judge Steven Elliott

Submitted by:
PEEL BRIMLEY LLP


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

Dated this _____ day December 2018.

Submitted by:

RICHARD I. 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.

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

EXHIBIT A

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

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

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

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

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

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

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

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

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

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

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

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

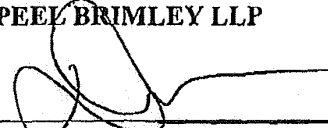
2 Now therefore,

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

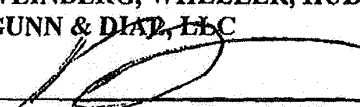
9 This stipulation is to the amount of additional fees in light of the court's ruling on
10 entitlement. TSE reserves its right to appeal the decision on expungment and entitlement to fees.

11 IT IS SO STIPULATED this 27th day of December, 2018.

12
13 **PEEL BRIMLEY LLP**

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

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

15 
16 D. Lee Roberts, Jr., Esq. (8877)
17 Colby L. Balkenbush, Esq. (13066)
18 Ryan T. Gormley, Esq. (13494)
19 6385 S. Rainbow Blvd., Suite 400
20 Las Vegas, NV 89118
21 Telephone: (702) 938-3838
22 lroberts@wwhgd.com
23 cbalkenbush@wwhgd.com
24 rgormley@wwhgd.com
25 *Attorneys for Plaintiff Tonopah Solar Energy,*
26 *LLC*