

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78092

Electronically Filed
Mar 03 2020 09:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TONOPAH SOLAR ENERGY, LLC,

Appellant,

v.

BRAHMA GROUP, INC.,

Respondent.

Appeal from Judgment
Fifth Judicial District Court
The Honorable Steven Elliott, District Court Judge
District Court Case No. **CV 39348**

RESPONDENT'S APPENDIX VOLUME 2

RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
Telephone: (702) 990-7272
Facsimile: (702) 990-7273
ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
Attorneys for Respondent
Brahma Group, Inc.

CHRONOLOGICAL APPENDIX OF EXHIBITS

<u>Date</u>	<u>Description</u>	<u>Bates Range</u>	<u>Volume</u>
10/18/2018	Tonopah Solar Energy, LLC's Motion to Strike Brahma Group, Inc.'s First Amended Counter-Complaint, or, in the Alternative, Motion to Stay this Action Until the Conclusion of the Proceedings in Federal Court	RA000001 – RA000025	1
	Exhibit 1 – Brahma Group, Inc.'s Mechanic's Lien Foreclosure Complaint	RA000026 – RA000032	1
	Exhibit 2 - Brahma Group, Inc.'s (i) First Amended Counter Complaint; and (ii) Third-Party Complaint	RA000033– RA000047	1
	Exhibit 3 – Complaint	RA000048– RA000053	1
	Exhibit 4 – Services Agreement between Tonopah Solar Energy, LLC and Brahma Group, Inc.	RA000054 - RA000075	1
	Exhibit 5 – Notice of Removal to Federal Court	RA000076– RA000085	1
	Exhibit 6 – Defendant Tonopah Solar Energy, LLC's Answer to Brahma Group, Inc.'s Complaint and Counterclaim against Brahma	RA000086– RA000105	1
	Exhibit 7 – First Amended Complaint	RA000106– RA000110	1
	Exhibit 8 – Brahma Group, Inc.'s Motion for Stay, or in the Alternative, Motion to Amend Complaint	RA000111– RA000130	1
	Exhibit 9 – Fourth Amended and/or Restated Notice of Lien recorded 9/14/18	RA000131– RA000141	1
	Exhibit 10 – Certificate of Service of Surety Rider Bond 854481 and Surety Bond 85441	RA000142– RA000153	1
11/05/18	Brahma Group, Inc.'s Opposition to Tonopah Solar Energy, LLC's Motion to Strike, Motion to Dismiss or Motion to Stay	RA000154– RA000186	1
	Exhibit 1 - Services Agreement between Tonopah Solar Energy, LLC and Brahma Group, Inc.	RA000187– RA000208	2

Exhibit 2 – Notice of Lien recorded 4/9/18	RA000209– RA000216	2
Exhibit 3 – Complaint	RA000217– RA000223	2
Exhibit 4 – Notice of Foreclosure of Mechanic’s Lien	RA000224– RA000231	2
Exhibit 5 – Notice of Lis Pendens	RA000232– RA000239	2
Exhibit 6 – Correspondence from Lee Roberts to Justin Jones re Crescent Dunes Solar Energy Project	RA000240– RA000243	2
Exhibit 7 – Tonopah Solar Energy, LLC’s Motion to Expunge Brahma Group, Inc.’s Mechanic’s Liens and Lis Pendens	RA000244– RA000256	2
Exhibit 8 – Notice of Voluntary Dismissal without Prejudice	RA000257– RA000259	2
Exhibit 9 – Notice of First Amended and Restated Lien	RA000260– RA000272	2
Exhibit 10 – Notice of Second Amended and Restated Lien	RA000273– RA000282	2
Exhibit 11 – Third Amended and/or Restated Lien	RA000283– RA000291	2
Exhibit 12 – Fourth Amended and/or Restated Notice of Lien	RA0002292– RA000300	2
Exhibit 13 – NRS 108.2415 Surety Bond 854481 Posted to Release Lien with Power of Attorney	RA000301– RA000305	2
Exhibit 14 - Certificate of Service of Surety Rider Bond 854481 and Surety Bond 85441	RA000306– RA000316	2
Exhibit 15 – Notice of Lien recorded 5/15/2018	RA000317– RA000319	2
Exhibit 16 - NRS 108.2415 Surety Bond 854482 Posted to Release Lien with Power of Attorney	RA000320– RA000324	2
Exhibit 17 – Order of Reassignment	RA000325– RA000327	2
Exhibit 18 – Complaint	RA000328– RA000333	2
Exhibit 19 – Brahma Group, Inc.’s Motion for Stay, or in the Alternative, Motion to Amend Complaint	RA000334– RA000353	2

	Exhibit 20 – Mechanic’s Lien Foreclosure Complaint	RA000354– RA000364	2
11/30/18	Tonopah Solar Energy, LLC’s Reply to Brahma Group, Inc.’s Opposition to Tonopah Solar Energy, LLC’s Motion to Strike Brahma Group, Inc.’s First Amended Counter-Complaint, or, in the Alternative, Motion to Stay this Action Until the Conclusion of the Proceedings in Federal Court	RA000365– RA000379	2
	Exhibit 1 – Tonopah Solar Energy, LLC’s First Set of Interrogatories to Brahma Group, Inc. and Tonopah Solar Energy, LLC’s First Set of Requests for Production to Brahma Group, Inc.	RA000380– RA000394	2
	Exhibit 2 – Brahma Group, Inc.’s Motion to Stay Discovery Pending Determination of Dispositive Motion	RA000395 - RA000410	3
	Exhibit 3 – Plaintiff’s Responses to Defendant Tonopah Energy, LLC’s First Request for Production of Documents and Responses to First Set of Interrogatories	RA000411– RA000426	3
	Exhibit 4 – Pages 283 – 286 from Nevada Construction Law (2016 Edition)	RA000427 – RA000437	3
	Exhibit 5 – Order re Discovery Plan [ECF No. 26]	RA000438– RA000440	3
	Exhibit 6 – Tonopah Solar Energy, LLC’s Response to Brahma’s Motion for Stay, or in the Alternative, Motion to Amend Complaint	RA000441 – RA000464	3
	Exhibit 7 – Brahma Group, Inc.’s Reply in Support of Motion for Stay, or in the Alternative, Motion to Amend Complaint	RA000465– RA000478	3
	Exhibit 8 – Tonopah Solar Energy, LLC’s Motion for an Injunction and to Strike	RA000479– RA000494	3
	Exhibit 9 – Brahma Group, Inc.’s Response to Tonopah Solar Energy, LLC’s Motion for Preliminary Injunction and Motion to Strike [ECF No.16]	RA000495– RA000520	4
	Exhibit 10 – Reply in Support of Tonopah Energy, LLC’s Motion for an Injunction and to Strike	RA000521 - RA000536	4
12/17/18	Brahma Group, Inc.’s Motion to Consolidate Case No. CV 39799 with Case No., CV 39348	RA000537 – RA000541	4

01/04/19	TSE's Opposition to Brahma's Motion to Consolidate Case No. 39799 with Case No. CV 39348	RA000542– RA000550	4
01/14/19	Brahma Group, Inc.'s Reply to Tonopah Solar Energy, LLC's Motion to Consolidate Case No. CV 39799 with Case No., CV 39348	RA000551– RA000561	4
	Exhibit A - Tonopah Solar Energy, LLC's Reply to Brahma Group, Inc.'s Opposition to Tonopah Solar Energy, LLC's Motion to Strike Brahma Group, Inc.'s First Amended Counter-Complaint, or, in the Alternative, Motion to Stay this Action Until the Conclusion of the Proceedings in Federal Court	RA000562– RA000577	4
	Exhibit B – Page 286 from Nevada Construction Law (2016 Edition)	RA000578– RA000579	4
	Exhibit C – Brahma Group, Inc.'s Mechanic's Lien Foreclosure Complaint Against Surety Bond	RA000580– RA000586	4
	Exhibit D – Notice of Entry of Order – Order Granting Brahma's Motion for Attorney's Fees and Costs Pursuant to NRS (108.2275(6)(C))	RA000587– RA000600	4
	Exhibit E - Brahma Group, Inc.'s First Amended Complaint for (Among Other Things): (i) Foreclosure of Notice of Lien Against Surety Bond; and (ii) Breach of Settlement Agreement	RA000601– RA000610	4
01/28/19	Notice of Entry of Order (i) Denying Tonopah Solar Energy, LLC's Motion to Strike and Dismiss; and (ii) Granting in Part Tonopah Solar Energy, LLC's Motion for Stay (iii) Granting Brahma Group, Inc.'s Motion to Amend	RA000611– RA000618	4
02/21/19	Defendants Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Motion to Dismiss Plaintiff Brahma Group, Inc.'s First Amended Complaint in Case No. CV 39799	RA000619– RA000628	4
	Exhibit 1 – Brahma Group, Inc.'s (i) First Amended Counter Complaint; and (ii) Third-Party Complaint	RA000629– RA000643	4
	Exhibit 2 – Brahma Group, Inc.'s First Amended Complaint for (Among Other Things): (i) Foreclosure of Notice of Lien	RA000644– RA000654	4

	Against Surety Bond; and (ii) Breach of Settlement Agreement		
	Exhibit 3 – Email Correspondence from Richard Peel to Geoffrey Crisp	RA000655 - RA000657	4
03/15/19	Notice of Entry of Order – Order Granting Brahma’s Motion to Consolidate Case No.CV 39799 with Case No. 39348	RA000658–RA000665	4
03/25/19	Brahma Group, Inc.’s Opposition to Cobra Thermosolar Plants, Inc.’s Motion to Dismiss and Countermotion for Leave to File a Single Consolidated Amended Complaint	RA000666 – RA000680	4
	Exhibit 1 – Order Granting Brahma’s Motion to Consolidate Case No. CV39799 with Case No. CV39348	RA000681–RA000684	4
	Exhibit 2 – Order (i) Denying Tonopah Solar Energy, LLC’s Motion to Strike and Dismiss, and (ii) Granting in Part Tonopah Solar Energy, LLC’s Motion for Stay (iii) Granting Brahma Group, Inc.’s Motion to Amend	RA000685 – RA000689	4
	Exhibit 3 – Petition for Writ of Prohibition, or, Alternatively, Mandamus	RA000690–RA000749	4
	Exhibit 4 – Tonopah Solar Energy, LLC’s Reply to Brahma Group, Inc.’s Opposition to Tonopah Solar Energy, LLC’s Motion to Strike Brahma Group, Inc.’s First Amended Counter-Complaint, or, in the Alternative, Motion to Stay this Action Until the Conclusion of the Proceedings in Federal Court	RA000750 – RA000765	5
	Exhibit 5 - Page 286 from Nevada Construction Law (2016 Edition)	RA000766–RA000767	5
	Exhibit 6 – Email Correspondence from Eric Zimbelman to Lee Roberts	RA000768–RA000770	5
	Exhibit 7 - Email Correspondence from Colby Balkenbush to Richard Peel	RA000771–RA000774	5
	Exhibit 8 – Defendant Tonopah Solar Energy, LLCs Answer to Brahma Group, Inc.’s Complaint and Counterclaim Against Brahma	RA000775–RA000794	5

	Exhibit 9 – TSE’s Opposition to Brahma’s Motion to Consolidate Case No. CV 39799 with Case No. 39348	RA000795– RA000804	5
	Exhibit 10 – Brahma Group, Inc.’s Reply to Tonopah Solar Energy, LLC’s Opposition to Motion to Consolidate Case No. CV 39799 with Case No. 39348	RA000805– RA000865	5
	Exhibit 11 - Brahma Group, Inc.’s First Amended Complaint for (Among Other Things): (i) Foreclosure of Notice of Lien Against Surety Bond; and (ii) Breach of Settlement Agreement	RA000866– RA000875	55
	Exhibit 12 – Brahma Group, Inc.’s (i) Second Amended Complaint; and (ii) First Amended Third-Party Complaint	RA000876– RA000891	5
04/10/19	TSE’s Opposition to Brahma’s Countermotion for Leave to File a Single Consolidated Complaint	RA000892– RA000900	5
04/22/19	Order Granting Brahma’s Countermotion for Leave to File a Single Consolidated Amended Complaint	RA000901– RA000918	5
04/22/19	Brahma Group, Inc.’s (i) Second Amended Complaint; and (ii) First Amended Third-Party Complaint	RA000919– RA000931	5

EXHIBIT 1

SERVICES AGREEMENT

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

Tonopah Solar Energy, LLC
("TSE")

AND

Brahma Group, Inc.
("Contractor")

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

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

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

5. Work Policy, Personnel.

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

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

6. Representations and Warranties: Undertakings.

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

7. Intellectual Property Rights.

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

8. Confidentiality Provisions.

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

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

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

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

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

11. Remedies for Breach. Contractor understands and agrees that money damages would not be sufficient remedy for any breach of this Agreement and that TSE or applicable TSE Affiliate shall be entitled to seek injunctive or otherwise equitable relief to remedy or forestall any such breach or threatened breach. Such remedy shall be in addition to all other rights and remedies available at law or in equity.
12. No Consequential Damages. Notwithstanding any other provision in this Agreement, under no circumstances will either party or any affiliate of a party be liable to the other for any consequential, indirect, special, punitive or incidental damages. Each party hereby waives and releases any and all rights which it has, or may have in the future which arises out of or relates to the non-continuation or termination of this Agreement by TSE for any reason, except, however for any rights which Contractor may have for compensation due and payable in accordance with the terms of this Agreement.
13. Right of Publicity. Contractor may not use the name, logo, trademarks or service marks of TSE or TSE Affiliates or any part thereof in any publicity, advertisement or brochure without their prior written consent.
14. Equal Employment. TSE does not discriminate in employment on the basis of sex, age, race, creed, color, religion, sexual orientation, national origin, marital status, disability or any other basis that is prohibited by law. Contractor agrees in providing the Services not to discriminate on any basis and, if an entity, represents that it is an equal employment opportunity firm.

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

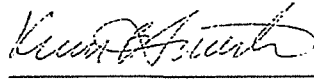
18. Waiver. If TSE fails or delays in exercising any right, power, or privilege hereunder, this shall not be deemed a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege hereunder.
19. Amendment. No part of this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

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

[Signature page follows]

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

TONOPAH SOLAR ENERGY, LLC

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

BRAHMA GROUP, INC.

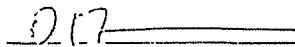
By: 
Name: David Z. Bq
Title: Vice President
Address: 1132 South 500 West
Salt Lake City, UT 84101
Email: David.Z.Bq@gmail.com
Fax: _____

EXHIBIT A

Start Date: XX

End Date: XX

Hourly Rate: See Exhibit C

Total Not to Exceed (NTE) amount: \$200,000.00

Authorized Representative: Rob Howe, Project Director

Schedule and Description of Objectives, Deliverables and Specifications:

EXHIBIT B

INSURANCE REQUIREMENTS

Insurance Requirements

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

Insurance Policy Provisions

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

Additional Insured

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

Primary and Non-Contributory Coverage

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

Separation of Insureds

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

Notice of Cancellation

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

Waiver of Subrogation

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

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

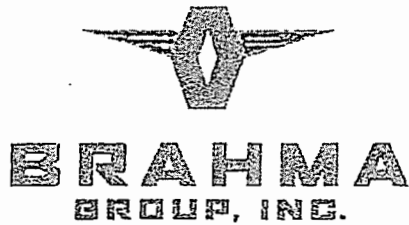
Acceptability of Insurers

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

Verification of Coverage

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

EXHIBIT C
BILLING RATES



CRAFT LABOR RATES
General Conditions - Support
Crescent Dunes Solar Energy Project
Tonopah, NV

CLASSIFICATION		Straight Time	Overtime	Double Time
Project Manager	\$	150.76	\$	199.65
Field Engineer	\$	134.73	\$	179.19
Cost Scheduler	\$	134.73	\$	179.19
Superintendent	\$	134.73	\$	179.19
QA/QC Manager	\$	95.89	\$	127.53
Safety Manager	\$	95.89	\$	127.53
Field Safety	\$	68.91	\$	91.65
CWI	\$	68.91	\$	91.65
Adverse	\$	57.98	\$	76.75

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

11-Nov-16



CRAFT LABOR RATES

Field

Crescent Dunes Solar Energy Project

Tonopah, NV

CLASSIFICATION		Straight Time	Overtime	Double Time
General Foreman	\$	91.26	\$	125.80
Foreman	\$	90.36	\$	120.18
Iron Worker	\$	85.43	\$	115.62
Carpenter	\$	71.07	\$	98.47
Electrician	\$	63.91	\$	81.00
Operator	\$	70.82	\$	96.76
Millwright	\$	85.43	\$	115.62
Pipe Fitter	\$	80.36	\$	112.99
Labourer	\$	45.62	\$	73.97

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

11-Rate-16



CRAFT LABOR RATES
General Conditions - Support

Crescent Dunes Solar Energy Project

Tonopah, NV

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

CLASSIFICATION		Straight Time	Overtime	Double Time
Project Manager	\$	176.78	\$	235.12
Project Engineer	\$	158.50	\$	210.81
Cost Scheduler	\$	138.50	\$	210.81
Superintendent	\$	158.50	\$	210.81
QA/QC Manager	\$	112.81	\$	150.44
Safety Manager	\$	112.81	\$	150.44
Field Survey	\$	81.07	\$	107.83
CWI	\$	81.07	\$	107.83
Admin.	\$	67.12	\$	89.27

* Per Diem Will be billed in addition to rates noted above

11-Nov-16



CRAFT LABOR RATES

Field

Crescent Dunes Solar Energy Project

Tonopah, NV

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

CLASSIFICATION		Straight Time	Overtime	Double Time
General Foreman	\$	110.89	\$	177.48
Foreman	\$	106.31	\$	171.99
Iron Worker	\$	100.50	\$	163.67
Unskilled	\$	86.97	\$	139.47
Electrician	\$	98.72	\$	158.30
Operator	\$	93.55	\$	150.32
Millwright	\$	100.50	\$	163.67
Pipe Fitter	\$	101.72	\$	165.29
Laborer	\$	65.43	\$	107.02

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

11-Nov-16

EXHIBIT D
Payment Deliverables

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

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

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

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

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

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

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

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

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

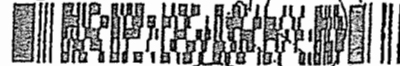
5. Contemporaneous with receipt of the final payment (or, at TSE's sole option, after final payment) Contractor shall furnish a duly executed Full and Final Waiver/Release of Mechanic's Lien from the Contractor in the form required by TSE, unconditionally waiving all contractual, statutory and constitutional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

EXHIBIT 2

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

DOC # 890822

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF LIEN

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

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

\$6,982,186.24

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

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

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

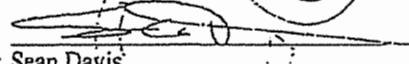
///

///

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

Dated: April 6, 2018.


Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

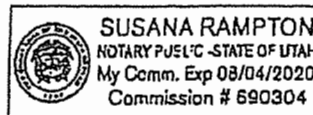
State of Utah)
) ss.
County of Salt Lake)

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

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


Sean Davis

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



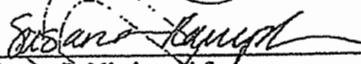

Notary Public in and for
the County of Salt Lake and State of Utah

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

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

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTH LINE THEREOF, NORTH $88^{\circ}34'27''$ WEST,
331.44 FEET TO THE CORNER OF THE EAST HALF ($E \frac{1}{2}$) OF THE
NORTHEAST QUARTER ($NE \frac{1}{4}$) OF THE SOUTHWEST QUARTER ($SW \frac{1}{4}$)
OF THE NORTHEAST QUARTER ($NE \frac{1}{4}$) OF SAID SECTION 2;
THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST
LINE THEREOF, NORTH $00^{\circ}20'22''$ EAST, 663.03 FEET; THENCE SOUTH
 $88^{\circ}42'55''$ EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2;
THENCE ALONG SAID EAST LINE, SOUTH $00^{\circ}20'11''$ WEST, 663.85
FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North one Half ($N \frac{1}{2}$) of the Southeast Quarter ($SE \frac{1}{4}$) and the Southeast Quarter ($SE \frac{1}{4}$) of the Southeast Quarter ($SE \frac{1}{4}$) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

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

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter ($NW \frac{1}{4}$) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

All land defined as "Servient Property" described and depicted in that certain document entitled "Grant of Generation-Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE ¼) of the Northeast Quarter (NE ¼) of Section 2, Township 5 North, Range 41 East, M.D.B. & M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 3641 of Official Records, Nye County, Nevada.

EXHIBIT 3

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

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

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

FILED
FIFTH JUDICIAL DISTRICT COURT

APR 17 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

Marianne Yoffee

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

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

11 BRAHMA GROUP, INC. a Nevada
12 corporation;

13 Plaintiff,

14 v.

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

17 Defendants.

CASE NO.: CV 39237
DEPT. NO.: 1

COMPLAINT

18
19 Plaintiff Brahma Group, Inc. ("Brahma Group"), by and through its counsel of the law firm
20 of Jones Lovelock, hereby complains and alleges against Tonopah Solar Energy, LLC ("TSE"),
21 Bureau of Land Management ("BLM") and Does 1 through 100, inclusive, as follows:

22 **THE PARTIES**

23 1. Brahma Group is a Nevada corporation that is authorized to do business in the State
24 of Nevada and is a Nevada licensed contractor in good standing with contractor's license number
25 0068114 and 0071384.

26 2. TSE is a limited liability company organized in Delaware and doing business in
27 Nevada as a foreign limited liability company.

28 3. BLM is a federal agency that manages certain land in Nevada.

4. Brahma Group does not know the true names or capacities of Does 1 through 100, inclusive, and sues such defendants by such fictitious names. Brahma Group is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible for and caused the damages herein alleged. When Brahma Group ascertains the true names and capacities of Does 1 through 100, it will amend the Complaint accordingly.

5. TSE is the owner of the project known as Crescent Dunes Solar Energy Project ("Project").

7. Pursuant to the Contract, Brahma Group was to be paid by TSE for time, equipment, and material to complete the Work.

9. TSE failed to pay certain invoices on or before the date that such invoices were due and failed to object in writing to the invoices prior to the date that they were due.

11. The Original Lien Amount consisted of the cumulative amount owed to Brahma on invoices that were forty-five days past due and not disputed by TSE prior to the invoice due date.

13. The Amended Lien Amount consisted of the cumulative amount owed to Brahma on invoices that were forty-five days past due and not disputed by TSE prior to the invoice due date.

1 14. Additional invoices have been submitted and will be submitted to TSE for payment
2 that are not due and owing as of the date of the filing of this Complaint and Brahma expects and
3 demands payment of the amounts reflected in said invoices.

4 15. Brahma Group served a copy of the Notice of Lien and Amended Notice of the Lien
5 on TSE and the BLM.

6 16. Prior to the filing of the Complaint, Brahma Group engaged TSE in informal
7 mediation through written and oral communications in an attempt to resolve its legal disputes, but
8 the parties were unable to reach any resolution.

9 17. The BLM owns certain property on which the Project is partially located.

10 **FIRST CLAIM FOR RELIEF**

11 **(Breach of Contract against TSE)**

12 18. Brahma Group repeats and realleges the allegations contained in the preceding
13 paragraphs, and by reference incorporate the same herein as though set forth in full.

14 19. The Contract is a valid, enforceable agreement.

15 20. TSE has defaulted under the terms of the Contract by, among other things, failing to
16 pay the amounts due to Brahma Group under the Contract.

17 21. Brahma Group has duly performed all of the conditions precedent on its part required
18 to be performed pursuant to the Contract except for those covenants and conditions which the Brahma
19 Group is excused from performing due to the conduct of TSE.

20 22. Brahma Group has suffered damages as a result of TSE's conduct in an amount in
21 excess of \$15,000.00.

22 **SECOND CLAIM FOR RELIEF**

23 **(Breach of Implied Covenant of Good Faith and Fair Against TSE)**

24 23. Brahma Group repeats and realleges the allegations contained in the preceding
25 paragraphs, and by reference incorporate the same herein as though set forth in full.

26 24. As stated above, TSE entered into valid and enforceable written contracts with
27 Brahma Group.
28

1 25. Under Nevada law, every contract imposes upon the contracting parties the duty of
2 good faith and fair dealing.

3 26. TSE breached their duty to Brahma Group by performing in a manner that was
4 unfaithful to the purpose of the agreements, including but not limited to failing to pay invoices
5 without basis and failing to offer any timely objection to such invoices.

6 27. Brahma Group has suffered damages as a result of TSE's conduct in an amount in
7 excess of \$15,000.00.

8 **THIRD CLAIM FOR RELIEF**

9 **(Unjust Enrichment Against TSE)**

10 28. Brahma Group repeats and realleges the allegations contained in the preceding
11 paragraphs, and by reference incorporate the same herein as though set forth in full.

12 29. Brahma Group provided labor, materials, and equipment to TSE for which Brahma
13 Group expected to be paid.

14 30. In the event that no enforceable agreement is deemed to exist, Brahma Group is
15 entitled to equitable relief for nonpayment by TSE.

16 31. TSE received the services and was aware that Brahma Group expected to be paid for
17 the labor, materials, and equipment that Brahma Group provided.

18 32. TSE has failed and refused to pay Brahma Group for the labor, materials, and
19 equipment provided.

20 33. TSE has been unjustly enriched by receiving services, equipment, and materials from
21 Brahma Group to complete Work on the Project.

22 34. Brahma Group has suffered damages as a result of TSE's conduct in an amount in
23 excess of \$15,000.00.

24 **FOURTH CLAIM FOR RELIEF**

25 **(Violation of Nevada Prompt Payment Act Against TSE)**

26 35. Brahma Group repeats and realleges the allegations contained in the preceding
27 paragraphs, and by reference incorporate the same herein as though set forth in full.

28

36. Under Nevada's Prompt Payment Act, Brahma Group was entitled to be paid for all labor, materials, and equipment it provided to the Project within forty-five (45) days following submission of an invoice to TSE.

37. Pursuant to Nevada Revised Statute 624.609, if TSE intended to withhold payment from Brahma Group, it was required to notify Brahma Group of any withholding of payment prior to the date a payment was due, which was within forty-five (45) days after receipt of an invoice.

38. TSE failed to notify Brahma Group of any basis for withholding payment from Brahma Group within 45 days after receipt of Brahma Group's invoices.

39. Brahma Group has suffered damages as a result of TSE's conduct in an amount in excess of \$15,000.00.

40. Brahma Group has been required to retain the services of an attorney in order to prosecute this action and, pursuant to NRS 624 is entitled to recover interest, attorney fees and costs as provided by law.

(Lien Foreclosure)

41. Brahma Group repeats and realleges the allegations contained in the preceding paragraphs, and by reference incorporate the same herein as though set forth in full.

42. Brahma Group provided labor, materials, and equipment to the Project for which it has not been paid.

43. Brahma Group recorded the Notice of Lien and Amended Notice of Lien and served each on TSE and the BLM.

44. Brahma Group has perfected its lien against the Project and the real property and meets all statutory requirements to maintain a mechanic's lien.

45. Brahma Group shall be entitled to an order from the Court foreclosing upon Brahma Group's lien, declaring Brahma Group's lien prior in interest to all other encumbrances against the Project, and awarding Brahma costs and fees inclusive of costs, attorney's fees and statutory interest, and causing the Project and real property to be sold in satisfaction thereof.

JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV89101

1 46. NRS Chapter 108 allows the Court to award a prevailing lien claimant costs,
2 attorney's fees, and statutory interest and Brahma Group's costs, attorney's fees, and statutory
3 interest shall be added to the amount of the lien.

4 **WHEREFORE**, Brahma Group prays for relief against TSE as follows:

- 5 1. For an award of actual and compensatory damages;
6 2. For an award of prejudgment interest and costs of suit;
7 3. For an order deeming Brahma Group's lien as a valid lien against the Project, prior
8 in interest to all other encumbrances and declaring the property to be sold to satisfy the lien in the
9 amount of the foreclosing the lien;
10 4. For an award of attorney's fees and costs; and,
11 5. For such other relief as this Court deems just and proper.

12 **NRS 239B.030 CERTIFICATION**

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

15 DATED this 16th day of April 2018.

16 **JONES LOVELOCK**

17 By: 

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

22 Attorneys for *Brahma Group, Inc.*
23
24
25
26
27
28

EXHIBIT 4

JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV89101

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

*Attorney for Plaintiff
Brahma Group, Inc.*

FILED
FIFTH JUDICIAL DISTRICT COURT

APR 17 2018

NYE COUNTY DEPUTY CLERK
DEPUTY _____

Marianne Yoffee

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUTY OF NYE

BRAHMA GROUP, INC. a Utah corporation;

Plaintiff,

v.

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

Defendants.

CASE NO.: CV 39237
DEPT. NO.: 1

**NOTICE OF FORECLOSURE OF
MECHANIC'S LIEN**

Plaintiff BRAHMA GROUP, INC. has filed a Complaint in the above-entitled action to foreclose on a Notice of Lien and Notice of First Amended and Restated Lien recorded against real property and improvements in Nye County, Nevada described more particularly in **Exhibit A** attached.

NOTICE IS HEREBY GIVEN to all persons holding or claiming liens pursuant to the provisions of NRS 108.221 to 108.246, inclusive, on the real property and improvements described herein to file with the Clerk of the Court and serve upon Plaintiff written Statements of Facts constituting their liens, together with the dates and amounts thereof.

The Statement of Facts must be filed within a reasonable time after the last publication of this Notice or receiving notice of this foreclosure, whichever occurs later. The Plaintiff and other parties

JONES LOVELOCK
400 S. 4th St., Ste. 500
Las Vegas, NV89101

1 adversely interested must be allowed twenty (20) days to answer the Statement of Facts.

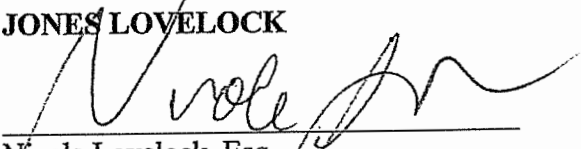
2 **NRS 239B.030 CERTIFICATION**

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

5 DATED this 16th day of April 2018.

6 **JONES LOVELOCK**

7
8 By:


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

11 Attorneys for *Brahma Group, Inc.*

EXHIBIT A

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 5

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

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

*Attorney for Plaintiff
Brahma Group, Inc.*

FILED
FIFTH JUDICIAL DISTRICT COURT

APR 17 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

Marianne Yoffee

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

BRAHMA GROUP, INC. a Utah corporation;

Plaintiff,

v.

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

Defendants.

CASE NO.: CV 39237
DEPT. NO.: 1

NOTICE OF LIS PENDENS

NOTICE IS HEREBY GIVEN that a Complaint against TONOPAH SOLAR ENERGY, LLC and the BUREAU OF LAND MANAGEMENT was filed by Plaintiff BRAHMA GROUP, INC.

The purpose of the Complaint, is among other things, to foreclose on a Notice of Lien recorded April 9, 2018 with the Nye County Recorder and a Notice of First Amended and Restated Lien recorded April 16, 2018 with the Nye County Recorder, against the real property and improvements owned by TONOPAH SOLAR ENERGY, LLC and the BUREAU OF LAND MANAGEMENT, which is described in **Exhibit A**.

///

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

NRS 239B.030 CERTIFICATION

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

DATED this 16th day of April 2018.

JONES LOVELOCK

By: 

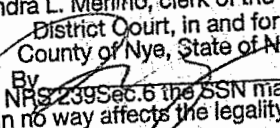
Nicole Lovelock, Esq.
Nevada State Bar No. 11187
Justin C. Jones, Esq.
Nevada State Bar No. 8519
400 S. 4th St., Ste. 500
Las Vegas, Nevada 89101

Attorneys for *Brahma Group, Inc.*

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date 4/17/18

Sandra L. Merliho, clerk of the Fifth Judicial District Court, in and for the County of Nye, State of Nevada

By  Deputy

Per NRS 239Sec.6 the SSN may be redacted, but in no way affects the legality of the document

EXHIBIT A

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 6



WEINBERG WHEELER
HUDGINS GUNN & DIAL
T R I A L L A W Y E R S

6385 South Rainbow Blvd.
Suite 400
Las Vegas, NV 89118

702.938.3838 Office
702.938.3864 Fax

D. Lee Roberts, Jr.
lroberts@wwhgd.com
Direct 702.938.3809

April 19, 2018

Via Email and U.S. Mail

Justin C. Jones, Esq.
Jones Lovelock
400 S. Fourth St., Ste. 500
Las Vegas, NV, 89101
jjones@joneslovelock.com

Re: *Crescent Dunes Solar Energy Project in Tonopah, Nevada*

Dear Justin:

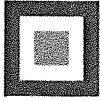
This firm represents TONOPAH SOLAR ENERGY, LLC ("TSE") in connection with its dispute with Brahma Group, Inc. ("BGI") arising out of the Crescent Dunes Solar Energy Project ("Project") in Tonopah, Nevada. I am writing to request mediation; put BGI on notice that it is in material breach of its contractual obligations to TSE; and to demand that BGI dismiss its lawsuit and immediately remove the liens and lis pendens it has wrongfully recorded against TSE, the Project and the BLM. Each of these issues will be separately addressed below.

Demand for Mediation

We understand that BGI has filed a Complaint against TSE and the BLM in the Fifth Judicial District Court (Case No. CV39237, Dept. No. 1) ("Lawsuit") seeking to foreclose on BGI's mechanic's lien. This Lawsuit by BGI is a violation of the February 1, 2017 Services Agreement ("Agreement") between TSE and BGI. Section 24 of that Agreement states as follows: "mediation is a condition precedent to the institution of legal proceedings arising from or relating to this Agreement." TSE demands that BGI comply with the Agreement and participate in a pre-litigation mediation. TSE proposes the following three mediators: Bill Turner, David Lee or Bruce Edwards.

Your claim that discussions among the parties satisfies the requirement to mediate is specious. The Nevada Supreme Court "RULES GOVERNING ALTERNATIVE DISPUTE RESOLUTION" defines mediation as:

... a process whereby a neutral third person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.



See <https://www.leg.state.nv.us/courtrules/RGADR.html>.

There is no good faith argument that the parties have mediated this dispute. Please advise on whether BGI agrees to mediate this dispute voluntarily, or whether it will be necessary to compel mediation..

Demand to Release Liens

TSE further demands that BGI release the mechanics liens it has recorded against the Project. First, the real property that has now been lienied by the federal government (BLM) and thus BGI is barred from recording a lien against it and/or attempting to foreclose on it. *United States v. Munsey Tr. Co. of Washington, D.C.*, 332 U.S. 234, 241, 67 S. Ct. 1599, 1602, 91 L. Ed. 2022 (1947) ("[N]othing is more clear than that laborers and materialmen do not have enforceable rights against the United States for their compensation. They cannot acquire a lien on public buildings, and as a substitute for that more customary protection, the various statutes were passed which require that a surety guarantee their payment.") (internal citations omitted). See also *F. D. Rich Co., Inc. v. U. S. for Use of Indus. Lumber Co., Inc.*, 417 U.S. 116 (1974) ("Ordinarily, a supplier of labor or materials on a private construction project can secure a mechanic's lien against the improved property under state law. But a lien cannot attach to Government property, ...").

Second, even assuming, *arguendo*, that BGI did have a right to lien federal property, BGI's liens are defective under NRS 108.245(2) due to BGI's failure to give the BLM a notice of right to lien prior to performing the work for which it is asserting lien rights. BGI does not have a direct contract with the BLM nor is there any evidence that the BLM was aware of BGI performing this work on the Project. No lien rights can attach before statutory notice is given to the owner of the land. Importantly, notice to TSE does not constitute notice to the BLM. *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 543, 245 P.3d 1149, 1159 (2010) ("[n]otice to one owner is not sufficient to affect the interest of other owners.").

Third, BGI's recordation of the liens constitutes a breach of its duty of good faith and fair dealing to first attempt mediation before pursuing its lien rights. Under NRS 108.226(1)(a), BGI has 90 days from the date it last performs work on the Project to record its lien. Given that BGI was still working on the project within the last weeks, the 90 day period has barely begun to run and there was thus no urgency for BGI to record the liens.

Finally, BGI is not entitled to file a lien under the terms of the contract. Pursuant to Section 10 of the contract, Brahma is permitted to file a lien only in cases where TSE has wrongfully failed to pay amounts owed. Since TSE has found that the disputed charges have not been properly substantiated, and BGI has failed and refused to provide substantiation, TSE is not wrongfully withholding payment.

If BGI's liens are not released by noon tomorrow (April 20, 2018), TSE will file a motion to expunge the liens and seek to recover its attorneys' fees under NRS 108.2275(6) & NRS 108.237(3).

Demand to Dismiss Lawsuit

TSE further demands that BGI dismiss the Lawsuit against TSE. The Lawsuit is premature and improper as BGI has not yet complied with Section 24 of the Agreement which requires mediation as a condition precedent to litigation. It is true that the Agreement does permit the filing of litigation if necessary to preserve a legal right (i.e. lien rights). However, even assuming BGI does have lien rights, BGI has 6 months to file a lien foreclosure action from the date its notice of lien was first recorded. See NRS 108.233(1).

In addition, NRS 108.244 ***prohibits*** lien claimants from filing a lien foreclosure action before 30 days have passed from the date the notice of lien was recorded. Here, BGI's last notice of lien was recorded on April 18, 2018 meaning that a foreclosure action would not be ripe until at least May 18, 2018. The premature lawsuit is not only a breach of BGI's contractual obligations, it is in violation of NRS 108.



WEINBERG WHEELER
HUDGINS GUNN & DIAL
T R I A L L A W Y E R S

Justin Jones, Esq.
April 19, 2018
Page 3

If BGI's lawsuit is not dismissed without prejudice by noon tomorrow (April 20, 2018), TSE will file a motion to dismiss the lawsuit and seek to recover its attorneys' fees under NRS 108.237(3).

Demand to Release Lis Pendens

A *lis pendens* may not be used to promote the recovery of a money judgment. Rather, they are only proper in an action affecting the title or possession of real property (i.e. an action to quiet title). *Weddell v. H2O, Inc.*, 128 Nev. 94, 106, 271 P.3d 743, 751 (2012). Here, BGI has no right to seek title to the BLM land the Project sits on since it belongs to the federal government and is not lienable. Moreover, as pointed out above, the lawsuit itself is premature since BGI failed to wait the statutorily required 30 days from the date its notice of lien was recorded. Thus, TSE demands that BGI release the *lis pendens* at the same time it dismisses the lawsuit against TSE.

Request for Full Documentation and Backup

Finally, TSE requests that BGI produce all documentation in its possession that supports its billings to TSE on this project. There are troubling discrepancies between the amount billed to TSE and the time cards and invoices submitted in support of those billings. Producing this documentation now will enable TSE to expedite its review, and process payment of any additional amounts actually owed to BGI. As you know, this documentation will be the subject of discovery if the mediation fails. Eventually, BGI will be compelled to produce all records in its custody and control. BGI's refusal to support the amounts billed only raises additional suspicion about BGI's motives and the accuracy of the billed amounts.

In addition, because of the federal funds involved in this Project, the provisions of the Federal False Claims Act ("Act") may apply. See 31 U.S.C. § 3729 (The term claim, as used in the Act, "means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that— ... is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest..."). Civil penalties under the Act include treble damages and can result in potential debarment from government contracting. If BGI cooperates in TSE's investigation of this matter, BGI may be subject to reduced damages under the Act (to the extent violations of the Act are found). *Id.*

Sincerely,

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

D. Lee Roberts, Jr.

DLR:ebi

cc: Colby Balkenbush, Esq.
Randy Hafer, Esq.
Tonopah Solar Energy, LLC

EXHIBIT 7



D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

*Attorneys for Defendant
Tonopah Solar Energy, LLC*

FILED
FIFTH JUDICIAL DISTRICT COURT

APR 24 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

Marianne Yoffee

IN THE FIFTH JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

BRAHMA GROUP, INC.; a Nevada corporation,
Plaintiff,

vs.

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

Defendants.

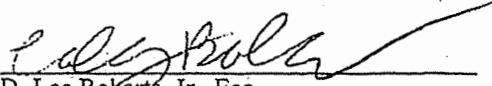
Case No. CV39237
Dept. No. 1

TONOPAH SOLAR ENERGY, LLC'S
MOTION TO EXPUNGE BRAHMA
GROUP, INC.'S MECHANIC'S LIENS
AND LIS PENDENS

Defendant TONOPAH SOLAR ENERGY, LLC (hereinafter "TSE" or "Defendant"),
by and through its attorneys of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN &
DIAL, LLC, hereby requests that the Court expunge the mechanic's liens and lis pendens
recorded against certain real property in Tonopah, Nevada by Brahma Group, Inc. (hereinafter
"BGI" or "Plaintiff"). The mechanic's liens and lis pendens are invalid because such documents
may not be recorded against federally owned land and, even assuming such action were
permissible, BGI has failed to follow Nevada's statutory scheme by not giving proper notice to
the owner of the land (the BLM), and by not waiting the statutorily required 30 days after its lien
was recorded to file its foreclosure Complaint.

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

4 DATED this 24th day of April, 2018.

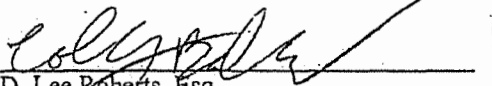
5 
6 D. Lee Roberts, Jr., Esq.
7 Colby L. Balkenbush, Esq.
8 WEINBERG, WHEELER, HUDGINS,
9 GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant
Tonopah Solar Energy, LLC

11 NOTICE OF MOTION

12
13 PLEASE TAKE NOTICE that TONOPAH SOLAR ENERGY, LLC'S MOTION TO
14 EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIENS AND LIS PENDENS will
15 come on for hearing in Department No. 1 of the above-entitled Court on the ____ day of
16 _____, 2018, at _____ a.m./p.m.

17 DATED this 24th day of April, 2018.

18 
19 D. Lee Roberts, Esq.
20 Colby L. Balkenbush, Esq.
21 WEINBERG, WHEELER, HUDGINS,
22 GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant
Tonopah Solar Energy, LLC



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

Through this Motion, TSE asks the Court to expunge the mechanic's liens and lis pendens recorded by BGI. In regard to the mechanic's liens, they are invalid as extensive case law holds that mechanic's liens may not be recorded against federally owned land. Moreover, even assuming, *arguendo*, that liens could be recorded against federal land, BGI failed to give the BLM notice of its right to lien the land before recording the liens, as required by NRS 108.245. Thus, whether this Court looks to federal case law or Nevada's statutory scheme for mechanic's liens the result is the same, BGI's liens must be expunged.

BGI's lis pendens must be expunged for the same reason, namely, that it is based on a lien foreclosure claim that may not be asserted against federal land. In addition, under NRS 108.244, a lien foreclosure complaint may not be filed less than 30 days after the mechanic's lien was recorded. BGI was in such a hurry to exert pressure on TSE that it violated this statute by



1 filing its Complaint just 8 days after it recorded its mechanic's lien. If the Complaint on which
2 BGI's lis pendens is based is invalid, it follows that the lis pendens itself is invalid as well.

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

8 II. STATEMENT OF FACTS

9 A. Background on the Project and the Parties' Dispute

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

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

22
23
24
25
26
27 ¹ The Property on which the Project is located consists of the following parcels: 012-031-04,
28 012-131-03, 012-131-04, 012-140-01, 012-141-01, 012-150-01, 012-151-01, 012-431-06, 612-
141-01.



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

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

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

- 11 • On April 9, 2018, BGI recorded a notice of lien against the Property in the amount of
12 \$6,982,186.24. **Exhibit 3.**
- 13 • On April 16, 2018, BGI recorded a first amended and restated lien against the Property in
14 the amount of \$7,178,376.94. **Exhibit 4.**
- 15 • On April 18, 2018, BGI recorded a first amended and restated lien to correct its failure to
16 attach an exhibit that describes the Property on which the Project is located. **Exhibit 5.**

17 BGI's failure to give notice to the BLM prior to recording the above liens should result in the
18 liens being expunged.

19 **C. BGI Improperly Recorded a Lis Pendens Against the Property**

20 On April 17, 2018, BGI recorded a lis pendens against the Property. **Exhibit 6** (lis
21 pendens). Just like the mechanic's liens, the lis pendens is improper and should be expunged. A
22 lis pendens may only be recorded against real property that the plaintiff would obtain title or
23 possession to if it prevails on its claims. Here, the federal government owns the real property on
24 which the Project is located and private citizens may not foreclose on federal land, thus making a
25 lis pendens improper.



D. The Mechanic's Liens and Lis Pendens Are an Improper Attempt by BGI to Maximize its Leverage in Advance of an Upcoming Contractually Required Mediation

Under NRS 108.226(1), BGI has 90 days from the date it last performed work on the Project to record a mechanic's lien. Given that BGI was still working on the Project within the last weeks, there was no need for BGI to immediately record the liens. In addition, NRS 108.244 prohibits lien claimants from filing a lien foreclosure suit before 30 days have passed from the date the mechanic's lien was recorded. Here, BGI's first mechanic's lien was recorded on April 9, 2018 but BGI filed its Complaint on April 17, 2018 (i.e. only waiting 8 days instead of the statutorily required 30 days).

The real reason behind BGI's expedited recording of numerous liens and a lis pendens is that it is seeking to exert leverage over TSE to force payment of the disputed invoices. While BGI's attempt to use the liens and lis pendens as leverage is unfortunately quite common in the construction industry, it is also an abuse that is prohibited by Nevada law. Indeed, as explained more fully below, recording a lis pendens with an ulterior motive (i.e. settlement leverage) will always result in the lis pendens being expunged.

In addition to being legally insufficient, BGI's recording of the liens and lis pendens is a breach of the Parties' Agreement. The Agreement requires that mediation occur prior to litigation. Exhibit 2 at p. 8. BGI has now breached this condition by filing the instant lawsuit and recording the lis pendens and mechanic's liens.

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

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

Under NRS 108.2275, the debtor of a mechanic's lien claimant may bring a motion to remove the lien on the property. The only requirements for such a motion are (1) that it set forth in detail the legal and factual grounds upon which the relief is requested and (2) that it include a notarized affidavit signed by the applicant setting forth a concise statement of the facts upon



1 which the motion is based. NRS 108.2275(2). The required affidavit is attached hereto as
2 **Exhibit 1**. Once the motion to expunge the lien is filed, the court must conduct a hearing within
3 not less than 15 days or more than 30 days after the court issues the order for a hearing. NRS
4 108.2275(4).

5 "After a hearing [on the motion to expunge], the district court shall make one of three
6 determinations: (1) that the notice of lien is frivolous and made without reasonable cause, (2) that
7 the lien amount is excessive, or (3) that the notice of lien is not frivolous or excessive and made
8 with reasonable cause." *J.D. Constr. v. IBEX Int'l Grp.*, 126 Nev. 366, 372, 240 P.3d 1033, 1038
9 (2010); *see also* NRS 108.2275(6).

10 In contrast to most statutes which give the district court discretion to award or deny
11 requests for attorneys' fees and costs,² NRS 108.2275 requires that the losing party on any
12 motion to expunge be forced to pay the winning party's fees and costs. *One Trop LLC v. Verma*,
13 No. 68756, 2016 WL 3896347, at *2 (Nev. App. July 13, 2016). In *One Trop*, the district court
14 granted a motion to expunge a mechanic's lien but denied the movant's request for attorneys'
15 fees and costs. *Id.* at *1. In denying the motion for fees, the district court reasoned that,
16 although it was expunging the lien, it had not found the lien to be frivolous. The Court of
17 Appeals reversed and remanded for an award of fees because, under NRS 108.2275(6), frivolity
18 is the only permissible reason to expunge a lien. Stated another way, if a mechanic's lien is
19 found to have been improperly asserted, it is by definition frivolous under NRS 108.2275(6) and
20 requires an award of fees and costs to the project owner.

21 **B. BGI's Liens Must be Expunged Because it is Impermissible to Lien Federally**
22 **Owned Land**

23 The United States Federal Government enjoys sovereign immunity from lawsuits unless
24 it has expressly waived that immunity via a federal statute. *Price v. United States*, 174 U.S. 373,
25

26 ² *See e.g.*, Nev. R. Civ. P. 37(a)(4) (providing that even if a motion to compel is granted, the
27 court does not have to award fees if its finds that the non-moving party's conduct was
28 "substantially justified."). In contrast, NRS 108.2275(6) requires that fees and costs be awarded
even in close cases where the person recording the mechanic's lien acted in good faith.



1 376, 19 S. Ct. 765, 766, 43 L. Ed. 1011 (1899) ("It matters not what may seem to this court
2 equitable, or what obligation we may deem ought to be assumed by the government . . . it is an
3 axiom of our jurisprudence [that] [t]he government is not liable to suit unless it consent thereto,
4 and its liability in suit cannot be extended beyond the plain language of the statute authorizing
5 it.").

6 Since there is no federal law that waives the government's immunity from mechanic's
7 liens and lien foreclosure actions, courts have universally held that federally owned land is not
8 subject to mechanic's liens that arise under state statutes. *F. D. Rich Co., Inc. v. U. S. for Use of*
9 *Indus. Lumber Co., Inc.*, 417 U.S. 116 (1974) ("Ordinarily, a supplier of labor or materials on a
10 private construction project can secure a mechanic's lien against the improved property under
11 state law. But a lien cannot attach to Government property . . ."); *United States v. Lewis Cty.*, 175
12 F.3d 671, 678 (9th Cir. 1999) ("Foreclosure against federally-owned property is a suit against the
13 United States, which cannot be prosecuted without its consent."); *Guild Mortg. Co. v. Prestwick*
14 *Court Tr.*, No. 215CV258JCMVCF, 2018 WL 894609, at *9 (D. Nev. Feb. 14, 2018)
15 ("Foreclosure on federal property is prohibited where it interferes with the statutory mission of a
16 federal agency."); *Best Assets, Inc. v. Dep't of Hous. & Urban Dev.*, No. 09 C 4259, 2009 WL
17 3719212, at *3 (N.D. Ill. Nov. 5, 2009) (Sovereign immunity, however, bars the imposition of
18 liens on federally owned property."); *U.S. for the Use & Benefit of Daniel H. Hill v. Am. Sur.*
19 *Co.*, 200 U.S. 197, 203, 26 S. Ct. 168, 170, 50 L. Ed. 437 (1906) ("As against the United States,
20 no lien can be provided upon its public buildings or grounds.")³

21 _____
22 ³ See also *United States v. Munsey Tr. Co. of Washington, D.C.*, 332 U.S. 234, 241, 67 S. Ct.
23 1599, 1602, 91 L. Ed. 2022 (1947) ("[N]othing is more clear than that laborers and materialmen
24 do not have enforceable rights against the United States for their compensation. They cannot
25 acquire a lien on public buildings, and as a substitute for that more customary protection, the
26 various statutes were passed which require that a surety guarantee their payment.") (internal
27 citations omitted); *Equitable Sur. Co. v. U.S., to Use of W. McMillan & Son*, 234 U.S. 448, 456,
28 34 S. Ct. 803, 805-06, 58 L. Ed. 1394 (1914) (stating that without the federal laws requiring
performance and payment bonds on federal projects, "laborers and materialmen (being without
the benefit of a mechanic's lien in the case of public buildings) would . . . be subject to great
losses.").



1 Here, BGI has recorded three mechanic's liens against the Property and it is undisputed
2 that the Property is owned by the BLM, a federal agency. Thus, BGI's mechanic's liens are
3 improper as a matter of law and should be expunged.

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

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

12 If a lien claimant substantially complies with NRS 108.245(1), the recorded lien will still
13 be valid. *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 536, 245 P.3d 1149, 1155
14 (2010). *Id.* "[A] lien claimant substantially complies with NRS 108.245's pre-lien requirement
15 when the property owner [1] has actual knowledge of the potential lien claim and [2] is not
16 prejudiced." However, while strict compliance with NRS 108.245(1) is not required, "[n]otice to
17 one owner is not sufficient to affect the interest of other owners." *Id.* at 543, 245 P.3d at 1159.

18 Here, it is undisputed that BGI never gave the BLM written notice of its alleged right to
19 lien the Property as required by NRS 108.245(1). Upon information and belief, the BLM also
20 did not have actual notice that BGI was performing work on the Project for TSE as BGI did not
21 have a contract with the BLM. Thus, BGI has not substantially complied with NRS 108.245's
22 notice requirements and its liens should be expunged.

23 **D. TSE is Entitled to Recover its Reasonable Attorneys' Fees and Costs**

24 As explained above, if the Court expunges BGI's mechanic's liens it must also require
25 BGI to pay TSE's reasonable attorney's fees and costs incurred in bringing this Motion. The
26 Court does not have discretion to expunge BGI's liens and not award fees and costs to TSE
27 under NRS 108.2275(6). This is so even if the Court believes that BGI and its attorneys acted in
28 good faith when recording the mechanic's liens. If this Motion is granted, TSE will submit a



1 redacted memorandum of fees and costs for the Court's review to enable the Court to determine
2 the reasonableness of TSE's fees under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349,
3 455 P.2d 31, 33 (1969).

4 **IV. BGI'S LIS PENDENS SHOULD BE EXPUNGED**

5 **A. BGI's Lis Pendens is Improper Because Under No Circumstances Could**
6 **BGI's Claims Result in BGI Gaining Title or Possession to the Real Property**
7 **on Which the Project is Located**

8 The burden is on the party who recorded the lis pendens to prove its propriety. NRS
9 14.015(2); NRS 14.015(3). Among other things, the plaintiff must prove that if it were to prevail
10 on its claims against the defendant, it would receive title or possession to the land on which the
11 lis pendens was recorded. NRS 14.015(2)(a). The Nevada Supreme Court has repeatedly
12 emphasized this requirement, stating that "lis pendens are not appropriate instruments for use in
13 promoting recoveries in actions for personal or money judgments." *Weddell v. H2O, Inc.*, 128
14 Nev. 94, 106, 271 P.3d 743, 751 (2012) (internal citations omitted). "It is fundamental to the
15 filing and recordation of a lis pendens that the action involve some legal interest in the
16 challenged real property." *Id.*; see also *Levinson v. Eighth Judicial Dist. Court of State In & For*
17 *Cty. of Clark*, 109 Nev. 747, 752, 857 P.2d 18, 21 (1993) ("There must be some claim of
18 entitlement to the real property affected by the lis pendens.").

19 Here, even assuming that BGI prevails on all its claims against TSE, BGI will never be
20 able to gain title to the Property on which the Project is located since the Property belongs to the
21 federal government. As set forth in Section III(B), federal land cannot be lienied or foreclosed
22 on. Since BGI has no hope of ever obtaining title or possession of the Property, the lis pendens
23 is improper.

24 **B. BGI's Lis Pendens is Improper Because it is Based on an Invalid Complaint**

25 In addition to proving that it would be entitled to the real property at issue if it prevails,
26 the recorder of a lis pendens must also prove that "the action was not brought in bad faith or for
27 improper motive." NRS 14.015(2)(b). Under NRS 108.244, a lien foreclosure complaint may
28 not be filed less than 30 days after the mechanic's lien was recorded. Here, the Complaint on



1 which the lis pendens is based is invalid because it was filed on April 17, 2018, just 8 days after
2 BGI recorded its first mechanic's lien on April 9, 2018. If the Complaint is invalid and
3 prohibited under NRS 108.244, then by extension the lis pendens must also be invalid. TSE
4 submits that recording a lis pendens that is based on an invalid Complaint is the definition of bad
5 faith.

6 In light of BGI's Complaint being premature and thus invalid under NRS 108.244, the
7 only explanation for BGI's recording of the lis pendens is that BGI is seeking to increase its
8 leverage and force TSE to pay the disputed invoices. This constitutes an improper use of the lis
9 pendens remedy and should result in expungement. *See e.g., In re Bradshaw*, 315 B.R. 875, 882
10 (Bankr. D. Nev. 2004) (finding that recording a lis pendens to gain leverage in an ongoing battle
11 over custody and visitation constituted bad faith).

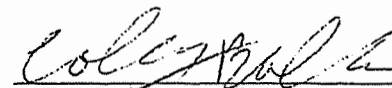
12 **V. CONCLUSION**

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

- 15 1.) Expunge the mechanic's liens attached hereto as Exhibits 3-5;
- 16 2.) Expunge the lis pendens attached hereto as Exhibit 6;
- 17 3.) Require BGI to reimburse TSE for the reasonable fees and costs it has incurred in
18 bringing this Motion.

19 DATED this 24th day of April, 2018.

20
21
22
23
24
25
26
27
28


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

*Attorneys for Defendant
Tonopah Solar Energy, LLC*



CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2018, a true and correct copy of the foregoing TONOPAH SOLAR ENERGY, LLC'S MOTION TO EXPUNGE BRAHMA GROUP, INC.'S MECHANIC'S LIENS AND LIS PENDENS was served by mailing a copy of the foregoing document in the United States Mail, postage fully prepaid, to the following:

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

Kevin E. Helm, Esq.
HELM AND ASSOCIATES
2330 Paseo Del Prado, Suite C103
Las Vegas, NV 89102

Attorneys for Plaintiff Brahma Group, Inc.

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

EXHIBIT 8

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

1 Nicole Lovelock, Esq.
Nevada State Bar No. 11187
2 Justin C. Jones, Esq.
Nevada State Bar No. 8519
3 **JONES LOVELOCK**
400 S. 4th St., Ste. 500
4 Las Vegas, Nevada 89101
Telephone: (702) 805-8450
5 Fax: (702) 805-8451
Email: nlovelock@joneslovelock.com
6 Email: jjones@joneslovelock.com
7

FILED
FIFTH JUDICIAL DISTRICT COURT

APR 24 2018

NYE COUNTY DEPUTY CLERK
DEPT. **DEBRA BENNETT**

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

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

10 **BRAHMA GROUP, INC.** a Nevada
corporation;

11 Plaintiff,

12 v.

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

16 Defendants.
17

CASE NO.: CV39237
DEPT. NO.: 1

NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE

18 / / /

19 / / /

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Pursuant to 41(a)(1)(A)(i) of the Nevada Rules of Civil Procedure, Plaintiff Brahma Group, Inc. hereby gives notice that the above-captioned action is voluntarily dismissed without prejudice.

DATED this 24th day of April 2018.

JONES LOVELOCK

By: 

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

Attorneys for *Brahma Group, Inc.*

EXHIBIT 9

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

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

WHEN RECORDED, MAIL TO:

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

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

NOTICE OF FIRST AMENDED AND RESTATED LIEN

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

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

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

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

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

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


///

///

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

Dated: April 13, 2018.

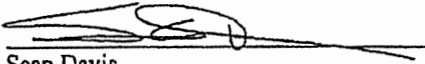
Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

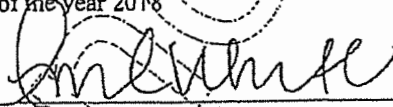
State of Utah)
) ss.
County of Salt Lake)

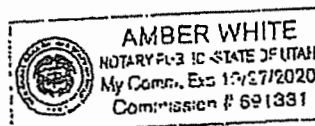
Sean Davis, being first duly sworn on oath according to law, deposes and says:

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


Sean Davis

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


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



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

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

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

APN

Recording Requested By:

Name Jones Lovelock, Nicole Lovelock

Address 400 S. 4th Street, Suite 500

City / State / Zip Las Vegas, Nevada 89101

DOC # 891507

Official Records Nye County Nevada

Deborah Beatty - Recorder

04/18/2018 10:32:56 AM

Requested By: JONES LOVELOCK

Recorded By: Kd RPTT:50

Recording Fee: \$35.00

Page 1 of 9



Notice of First Amended and Restated Lien

Title of Document (required)

Only use below if applicable

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

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

☐ Affidavit of Death - NRS 440.380(1)(A) & NRS 40.525(5)

☐ Judgment - NRS 17.150(4)

☐ Military Discharge - NRS 419.020(2)

☐ Other

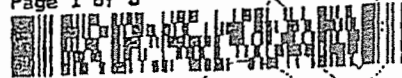
Signature

Name Typed or Printed

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

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

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF FIRST AMENDED AND RESTATED LIEN

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

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

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

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

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

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

///

///

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

Dated: April 13, 2018.

Brahma Group, Inc.

By: [Signature]
Name: Sean Davis
Title: President

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

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

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

[Signature]
Sean Davis

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

[Signature]
Notary Public in and for
the County of CL and State of Utah

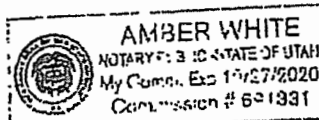


EXHIBIT A

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTH LINE THEREOF, NORTH $88^{\circ}34'27''$ WEST, 331.44 FEET TO THE CORNER OF THE EAST HALF (E $\frac{1}{2}$) OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF SAID SECTION 2;
THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH $00^{\circ}20'22''$ EAST, 663.03 FEET; THENCE SOUTH $88^{\circ}42'55''$ EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2;
THENCE ALONG SAID EAST LINE, SOUTH $00^{\circ}20'11''$ WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North one Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) and the Southeast Quarter (SE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M.; according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

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

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW $\frac{1}{4}$) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 10

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

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF SECOND AMENDED AND RESTATED LIEN

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

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

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

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

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

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

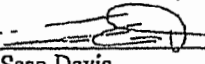
///

///

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

Dated: April 23, 2018.

Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

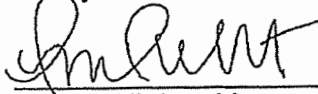
State of Utah)
) ss.
County of Salt Lake)

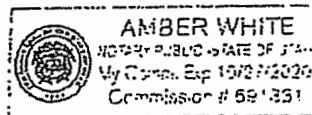
Sean Davis, being first duly sworn on oath according to law, deposes and says:

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


Sean Davis

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





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

EXHIBIT A

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 11

DOC #896269

Official Records Nye County NV
Deborah Beatty - Recorder
07/19/2018 11:53:44 AM
Requested By: PEEL BRIMLEY LLP
Recorded By: MJ RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 8

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

Recording Requested By:

Name Ronald J. Cox, Esq. - Peel Brimley LLP

Address 3333 E. Serene Ave., #200

City / State / Zip Henderson, NV 89074

Third Amended and/or Restated Notice of Lien

(Print Name Of Document On The Line Above)

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

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

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

THIRD AMENDED AND/OR RESTATED NOTICE OF LIEN

This Third Amended and/or Restated Notice of Lien ("Restated Lien"):

- Amends, restates and incorporates (by this reference):
 - That certain Notice of Lien recorded by Brahma Group, Inc. ("Lien Claimant") in the official records of the County Recorder's Office for Nye County, Nevada, on April 9, 2018, as Document No. 890822 (the "Original Lien");
 - That certain Notice of First Amended and Restated Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on April 16, 2018, as Document No. 891073, and as corrected by Document No. 891507 (collectively, the "First Amended Lien"); and
 - That certain Notice of Second Amended and Restated Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on April 24, 2018, as Document No. 891766 ("Second Amended Lien");¹ or
- To the extent allowed by law and to the extent the statutory period to record a notice of lien against the Work of Improvement (defined below) has not expired, shall act as a newly recorded notice of lien, which replaces and supersedes the Lien.

By way of this Restated Lien, Lien Claimant:

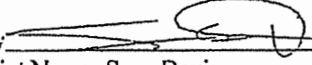
- Does hereby claim a lien against:
 - The real property described in Exhibit A (the "Land"), to the extent not owned by the Bureau of Land Management ("BLM") or Liberty Moly, LLC; and/or
 - The improvements located and constructed on the Land, including, but not limited to the improvements identified as the Crescent Dunes Solar Energy Plant (collectively, the "Improvements").
- Does hereby reserve the right to further amend this Restated Lien or to record a new notice of lien with respect to the Work it has furnished or may furnish on, about or for the benefit of any part or portion of the overall Work of Improvement (defined below), for which it is not paid, even if the same was previously the subject of the Lien; and
- Does not cancel, withdraw, discharge or release and expressly reserves all rights, remedies and claims that it may possess with respect to the Work it has furnished or may furnish on, about or for the benefit of the Improvements and the Work of Improvement.

¹ The Original Lien, First Amended Lien and Second Amended Lien are collectively referred to herein as the "Lien."

1. The amount of the original contract is:
 - \$26,358,868.64.
2. The amount of additional or changed work, materials and equipment, if any, is:
 - \$0.00.
3. The total amount of all payments received to date is:
 - \$14,456,393.89.
4. The amount of the lien, after deducting all just credits and offsets, is:
 - \$11,902,474.75.
5. The name of the owner, if known, of the Improvements is:
 - Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (collectively, "TSE").
 - Upon information and belief, TSE's principal address is believed to be 520 Broadway, 6th Floor, Santa Monica, CA 90401.
6. The name of the owner, if known, of the Land is:
 - As to APNs 612-141-01, 012-031-04, 012-131-03, 012-131-04:
 - TSE, with its principal address at 520 Broadway, 6th Floor, Santa Monica, CA 90401.
 - As to APNs 012-151-01 and 012-141-01:
 - The Bureau of Land Management ("BLM"), with its principal address at 1340 Financial Blvd., Reno, NV 89502.
 - As to APN 012-431-06:
 - Liberty Moly, LLC, with its principal address at 790 Commercial St. #B, Elko, NV 89801-3858.
 - As to APNs 012-140-01 and 012-150-01:
 - Unknown.
7. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:
 - TSE, with its principal address at 520 Broadway, 6th Floor, Santa Monica, CA 90401.
8. A brief statement of the terms of payment of the lien claimant's contract is:
 - As required by Nevada law, but in no event later than 45 days after the submission of an invoice.

9. A description of the Land and the Improvements thereon to be charged with the Restated Lien (the "Work of Improvement") is:
- See Attached Exhibit A.

BRAHMA GROUP, INC.


By 
Print Name: Sean Davis
Title: President and Chief Operating Officer

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

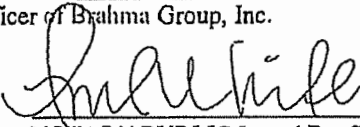
Sean Davis, being first duly sworn on oath according to law, deposes and says:

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

BRAHMA GROUP, INC.

By 
Print Name: Sean Davis
Title: President and Chief Operating Officer

SUBSCRIBED AND SWORN to before me this 19 day of July 2018, by Sean Davis, President and Chief Operating Officer of Brahma Group, Inc.


NOTARY PUBLIC In and For Said
County & State

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

Brahma Group, Inc.
c/o PEEL BRIMLEY LLP
3333 E. Serene Avenue Suite 200
Henderson, NV 89074-6571

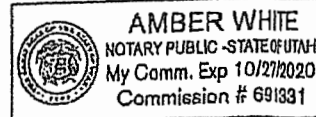


EXHIBIT A**Improvements:**

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

Land:

Nye County Assessor Parcels:

APN	Owner or Reputed Owner
012-031-04	Tonopah Solar Energy, LLC
012-131-03	Tonopah Solar Energy, LLC
012-131-04	Tonopah Solar Energy, LLC
012-140-01	Unknown
012-150-01	Unknown
012-141-01	Bureau of Land Management
012-431-06	Liberty Moly, LLC
012-151-01	Bureau of Land Management
612-141-01	Tonopah Solar Energy, LLC

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE NORTHWEST CORNER OF THE EAST HALF (E $\frac{1}{2}$) OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF SAID SECTION 2;

THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2; THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the True Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 12

DOC #899351

Official Records Nye County NV
Deborah Beatty - Recorder
09/14/2018 04:24:42 PM
Requested By: PEEL BRIMLEY LLP
Recorded By: MJ RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 8

APN 012-031-04; 012-131-03;

APN 012-131-04; 612-141-01;

APN 012-151-01; 012-141-01;

APN 012-431-06; 012-140-01; 012-150-01

Recording Requested By:

Name Ronald J. Cox, Esq. - Peel Brimley LLP

Address 3333 E. Serene Ave., #200

City / State / Zip Henderson, NV 89074

Fourth Amended and/or Restated Notice of Lien

(Print Name Of Document On The Line Above)

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

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

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

FOURTH AMENDED AND/OR RESTATED NOTICE OF LIEN

This Fourth Amended and/or Restated Notice of Lien ("Restated Lien"):

- Amends, restates and incorporates (by this reference):
 - That certain Notice of Lien recorded by Brahma Group, Inc. ("Lien Claimant") in the official records of the County Recorder's Office for Nye County, Nevada, on April 9, 2018, as Document No. 890822 (the "Original Lien");
 - That certain Notice of First Amended and Restated Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on April 16, 2018, as Document No. 891073, and as corrected by Document No. 891507 (collectively, the "First Amended Lien");
 - That certain Notice of Second Amended and Restated Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on April 24, 2018, as Document No. 891766 ("Second Amended Lien"); and
 - That certain Third Amended and/or Restated Notice of Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on July 19, 2018, as Document No. 896269 ("Third Amended Lien");¹ or
- To the extent allowed by law and to the extent the statutory period to record a notice of lien against the Work of Improvement (defined below) has not expired, shall act as a newly recorded notice of lien, which replaces and supersedes the Lien.

By way of this Restated Lien, Lien Claimant:

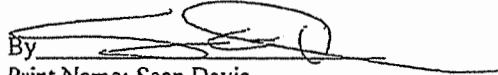
- Does hereby claim a lien against:
 - The real property described in Exhibit A (the "Land"), to the extent not owned by the Bureau of Land Management ("BLM") or Liberty Moly, LLC; and/or
 - The improvements located and constructed on the Land, including, but not limited to the improvements identified as the Crescent Dunes Solar Energy Plant (collectively, the "Improvements").
- Does hereby reserve the right to further amend this Restated Lien or to record a new notice of lien with respect to the Work it has furnished or may furnish on, about or for the benefit of any part of portion of the overall Work of Improvement (defined below), for which it is not paid, even if the same was previously the subject of the Lien; and

¹ The Original Lien, First Amended Lien, Second Amended Lien and Third Amended Lien are collectively referred to herein as the "Lien."

- Does not cancel, withdraw, discharge or release and expressly reserves all rights, remedies and claims that it may possess with respect to the Work it has furnished or may furnish on, about or for the benefit of the Improvements and the Work of Improvement.
1. The amount of the original contract is:
 - \$27,315,971.63.
 2. The amount of additional or changed work, materials and equipment, if any, is:
 - \$0.00.
 3. The total amount of all payments received to date is:
 - \$14,456,393.89.
 4. The amount of the lien, after deducting all just credits and offsets, is:
 - \$12,859,577.74.
 5. The name of the owner, if known, of the Improvements is:
 - Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (collectively, "TSE").
 - Upon information and belief, TSE's principal address is believed to be 520 Broadway, 6th Floor, Santa Monica, CA 90401.
 6. The name of the owner, if known, of the Land is:
 - As to APNs 612-141-01, 012-031-04, 012-131-03, 012-131-04:
 - TSE, with its principal address at 520 Broadway, 6th Floor, Santa Monica, CA 90401.
 - As to APNs 012-151-01 and 012-141-01:
 - The Bureau of Land Management ("BLM"), with its principal address at 1340 Financial Blvd., Reno, NV 89502.
 - As to APN 012-431-06:
 - Liberty Moly, LLC, with its principal address at 790 Commercial St. #B, Elko, NV 89801-3858.
 - As to APNs 012-140-01 and 012-150-01:
 - Unknown.
 7. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:
 - TSE, with its principal address at 520 Broadway, 6th Floor, Santa Monica, CA 90401.
 8. A brief statement of the terms of payment of the lien claimant's contract is:
 - As required by Nevada law, but in no event later than 45 days after the submission of an invoice.

9. A description of the Land and the Improvements thereon to be charged with the Restated Lien (the "Work of Improvement") is:
- See Attached Exhibit A.

BRAHMA GROUP, INC.

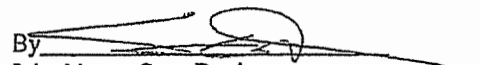
By 
Print Name: Sean Davis
Title: President and Chief Operating Officer

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

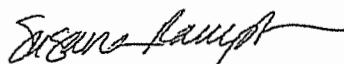
Sean Davis, being first duly sworn on oath according to law, deposes and says:

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

BRAHMA GROUP, INC.

By 
Print Name: Sean Davis
Title: President and Chief Operating Officer

SUBSCRIBED AND SWORN to before me this 14th day of September 2018, by Sean Davis, President and Chief Operating Officer of Brahma Group, Inc.



NOTARY PUBLIC In and For Said
County & State

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

Brahma Group, Inc.
c/o PEEL BRIMLEY LLP
3333 E. Serene Avenue Suite 200
Henderson, NV 89074-6571

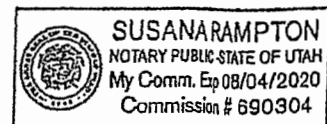


EXHIBIT A**Improvements:**

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

Land:

Nye County Assessor Parcels:

APN	Owner or Reputed Owner
012-031-04	Tonopah Solar Energy, LLC
012-131-03	Tonopah Solar Energy, LLC
012-131-04	Tonopah Solar Energy, LLC
012-140-01	Unknown
012-150-01	Unknown
012-141-01	Bureau of Land Management
012-431-06	Liberty Moly, LLC
012-151-01	Bureau of Land Management
612-141-01	Tonopah Solar Energy, LLC

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE NORTHWEST CORNER OF THE EAST HALF (E $\frac{1}{2}$) OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF THE NORTHEAST QUARTER (NE $\frac{1}{4}$) OF SAID SECTION 2;

THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2; THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the True Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 13

DOC #898974

Official Records Nye County NV
Deborah Beatty - Recorder
09/06/2018 11:58:11 AM
Requested By: WEIL & DRAGE APC
Recorded By: MJ RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 4

APN012-031-04; 012-131-03; 012-131-04;
APN012-140-01; 012-141-01; 012-431-06;
APN012-150-01; 012-151-01; and
APN012-141-01.
Recording Requested By:
Name WEIL & DRAGE, APC

Address 2500 Anthem Village Drive

City / State / Zip Henderson, Nevada 89052


NRS 108.2415 Surety Bond 854481 Posted to Release Lien with Power of Attorney

Title of Document (required)
Only use below if applicable

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

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

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


Signature _____

Ana M. Maldonado, Paralegal
Name Typed or Printed _____

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

RA000302

NRS 108.2415 Form of surety bond posted to release lien:

Bond #854481

(Assessor's Parcel Numbers: 012-031-04; 012-131-03; 012-131-04; 612-141-01; 012-431-06; 012-140-01; 012-150-01; 012-151-01; 012-141-01)

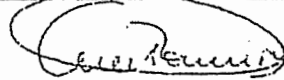
WHEREAS, Cobra Thermosolar Plant Inc. (name of principal), located at 11 Miles North Gabbs Pole Line Road, Tonopah, NV 89049 (address of principal), desires to give a bond for releasing the following described property owned by Tonopah Solar Energy, LLC (name of owners) from that certain notice of lien in the sum of \$7,178,386.94 recorded July (month) 19 (day) 2018 (year), in the office of the recorder in Nye County (name of county where the property is located):

Crescent Dunes Solar Energy Project

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, Brahma Group, Inc. (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$10,767,580.00 (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by the lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

IN TESTIMONY WHEREOF, the principal and surety have executed this bond at Houston, Texas on the 15th day of August, 2018.

Cobra Thermosolar Plant, Inc.



(Signature of Principal) Carlos Ramirez Vissal

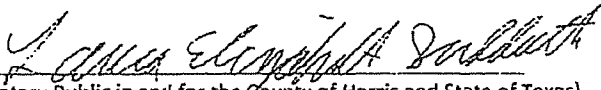
American Home Assurance Company

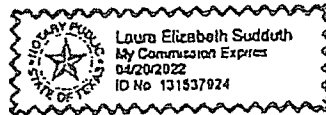


Sandra Parker, Attorney-in-Fact

State of Texas }
) ss.
 County of Harris }

On August 15, 2018, before me, the undersigned, a notary public of this County and State, personally appeared Sandra Parker known (or satisfactorily proved), who acknowledged that he or she executed the foregoing instrument for the principal and the surety for the purposes therein mentioned, Sandra Parker known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he or she acknowledged to me that the surety executed the foregoing instrument.


(Notary Public in and for the County of Harris and State of Texas)
Laura Elizabeth Sudduth Commission Expires: 04/20/2022



POWER OF ATTORNEY

American Home Assurance Company
 National Union Fire Insurance Company of Pittsburgh, PA.
 Principal Office: 175 Water Street, New York, NY 10038

Power No. 2185

No. 41-0-502340

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, have each hereby agreed:

That Amy Victoria, Elena Iordache, Marian Sheehan, Terri Morrison, Laura Sudolich,
 Sandra Parker, Gail A. Redinger, Terrell Mikron, Maria Aguirre and Orlando Aguirre, of Houston, Texas

do hereby and lawfully authorize in full, with full authority to execute on their behalf (under, evidence of, ratification and other contracts of indemnity and warranty obligation in the nature thereof, issued in and course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and the National Union Fire Insurance Company of Pittsburgh, PA. have each executed these presents

This 14th day of May, 2018



Michael Young, Vice President

STATE OF NEW YORK)
 COUNTY OF NEW YORK) ss.

On this 14th day of May, 2018, before me came the above named, officers of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., in me personally known to be the individuals and officers described herein, and acknowledged that he executed the foregoing instrument and attested the same as said representatives thereof in the authority of his office.

Juliana Hallenbeck
 JULIANA HALLENBECK
 Notary Public - State of New York
 No. 016487271
 On file in New York
 My Commission Expires April 18, 2021

CERTIFICATE

Exempt of Notarization, adopted by the Board of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 13, 1976

"RESOLVED, that the Chairman of the Board, the President, or any Vice President or, and hereby is, authorized to represent the Company in fact to represent in fact and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and warranty obligation in the nature thereof, and to sign thereon the corporate seal of the Company, in the execution of its lawful business.

"RESOLVED, that the signatories and officers of such offices and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or the seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and warranty obligation in the nature thereof.

"RESOLVED, that any such Attorney-in-fact delivering a secretarial certification that the foregoing resolutions shall be in effect may meet in such certification of the fact thereof, and shall be the best evidence thereof by such Attorney-in-fact.

I, Maria Lopez, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing copies of Resolutions adopted by the Board of Directors of these corporations, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and added the facsimile seal of each corporation.



Maria Lopez, Assistant Secretary

EXHIBIT 14

1 Geoffrey Crisp, Esq.
Nevada Bar No. 2104
2 Jeremy R. Kilber, Esq.
Nevada Bar No. 10643
3 WEIL & DRAGE, APC
4 2500 Anthem Village Drive
Henderson, NV 89052
5 (702) 314-1905 • Fax (702) 314-1909
6 gcrisp@weildrage.com
jkilber@weildrage.com
7 Attorneys for
8 COBRA THERMOSOLAR PLANTS, INC.

9
10 FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

11 TONOPAH SOLAR ENERGY, LLC, a) Case No.: CV 39348
12 Delaware limited liability company,) Dept. No.: 2
13)

14 Plaintiff,)

15 vs.)

16 BRAHMA GROUP, INC., a Nevada)
corporation,)

17 Defendant.)

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

20 Counterclaimant/Lien Claimant,)

21 vs.)

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

26 Counterdefendant,)
27)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that I am an employee of WEIL & DRAGE, APC, and that on this 9th day of October, 2018, I caused the following documents:

1. 10/09/2018 Recorded Doc #900303

Surety Rider Bond 854481 Posted to Release Lien with Power of Attorney; and

2. 09/24/2018 Affidavit of Service of 09/06/2018 Recorded Doc #898974

Surety Bond 85441 Posted to Release Lien with Power of Attorney.

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 Henderson, Nevada; and

By facsimile; and

By email transmission

to the attorneys listed below at the address, facsimile and email transmission indicated below:

Richard L. Peel, Esq.
Eric B. Zimbelman, Esq.
Ronald J. Cox, Esq.
Terri Hansen, Paralegal
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
(702) 990-7273 Fax
Peel@PeelBrimley.com
Zimbelman@PeelBrimley.com
RCox@PeelBrimley.com
thansen@peelbrimley.com
Attorneys for
BRAHMA GROUP, INC.

Colby Balkenbush, Esq.
WEINBERG WHEELER HUDGINS
GUNN & DIAL
6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
702.938.3864 Fax
CBalkenbush@wwhgd.com
Attorney for
TONOPAH SOLAR ENERGY, LLC

/s/ Ana M. Maldonado

Ana M. Maldonado, An Employee of
WEIL & DRAGE, APC

DOC #900303

Official Records Nye County NV
Deborah Beatty - Recorder
10/09/2018 11:13:27 AM
Requested By: WEIL & DRAGE APC
Recorded By: kd RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 3

APN 012-031-04; 012-131-03; 012-131-04;
APN 012-140-01; 012-141-01; 012-431-06;
APN 012-150-01; 012-151-01; and
APN 612-141-01.
Recording Requested By:
Name WEIL & DRAGE, APC

Address 2500 Anthem Village Drive

City / State / Zip Henderson, NV 89052

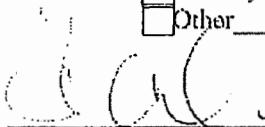
Surety Rider Bond 854481 Posted to Release Lien with Power of Attorney

Title of Document (required)
Only use below if applicable

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

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

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



Signature

Ana M. Maldonado
Name Typed or Printed

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

SURETY RIDER

To be attached to and form a part of American Home Assurance Company

Bond No. 854481

dated 03/15/2018
effective
(MONTH-DAY-YEAR)

executed by Cobra Thermosolar Plants, Inc. , as Principal,
(PRINCIPAL)

and by American Home Assurance Company , as Surety,

in favor of Brahma Group, Inc.
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing

The Bond Amount as follows:

From \$10,767,580.00

To \$19,289,366.61

and

The Lien Amount as follows:

From \$7,178,386.94

To \$12,859,577.74

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider
is effective 08/15/2018
(MONTH-DAY-YEAR)

Signed and Sealed 09/25/2018
(MONTH-DAY-YEAR)

Cobra Thermosolar Plants, Inc.
(PRINCIPAL)

By: _____
(PRINCIPAL)

José Antonio Fernández

American Home Assurance Company

By: _____
(SURETY)
Tannis Mattson, Attorney-in-Fact

POWER OF ATTORNEY

American Home Assurance Company
 National Union Fire Insurance Company of Pittsburgh, PA.
 Principal Head Office: 175 Water Street, New York, NY 10038

Power No. 7312

No. 31-B-002348

KNOW ALL MEN BY THESE PRESENTS:

The American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

---Mary Ann Garcia, Gloria Houston, Melissa Shepherd, Terri Morrison, Lanni Sudduth,
 Sinda Parker, Gina A. Rodriguez, Tawlis Jackson, Mario Arzamezdi, Orlando Aguirre, of Houston, Texas

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. have each executed these presents

This 16th day of May, 2018



Michael Yang, Vice President

STATE OF NEW YORK

COUNTY OF NEW YORK ss.

On this 16th day of May, 2018, before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations herein by authority of his office.

Juliana Hallenbeck
 JULIANA HALLENBECK
 Notary Public, State of New York
 No. 0148123811
 Qualified in Essex County,
 My Commission Expires April 15, 2021

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and he/she is, authorized to appoint Attorney(s)-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business.

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof.

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact.

I, Martin Bogue, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of each corporation



this 25th day of September, 2018

Martin Bogue

Martin Bogue, Assistant Secretary

6516674466

Attorney or Party without Attorney: Weil & Drage, APC 2500 Anthem Village Drive, 2nd Floor Henderson, NV 89052 Telephone No: (702) 314-1905 Attorney For:				For Court Use Only	
Ref. No. or File No.: 2803.001 CRESCENT DUNES					
Insert name of Court, and Judicial District and Branch Court:					
Plaintiff: Defendant:					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Disc:	Case Number: DOC #898974

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the NRS 108.2415 Surety Bond 854481 Posted to Release Lien with Power of Attorney, Power of Attorney
- Party served: Brahma Group, Inc.
 - Person served: Amber-Rose Aparicio, Authorized Agent, a person of suitable age and discretion at the most recent street address of the registered agent shown on the Information filed with the Secretary of State.
- Address where the party was served: Cogency Global Inc. - Registered Agent
321 W. Winnie Lane, #104, Carson City, NV 89703
- I served the party:
 - by personal service. I personally delivered the documents listed in Item 2 to the party or person authorized to receive process for the party (1) on: Fri, Sep 14 2018 (2) at: 02:40 PM

Fee for Service: \$0.00

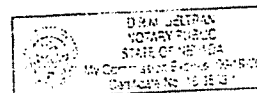
I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

- G. Person Who Served Papers:
- Toni Ruckman (R-052005, Washoe)
 - FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
c. (702) 671-4002

24 Sept 18 (Date) Toni L Ruckman (Signature)

7. STATE OF NEVADA, COUNTY OF Clark day of Sept, 2018 by Toni Ruckman (R-052005, Washoe)
 Subscribed and sworn to (or affirmed) before on this 24 day of Sept, 2018 by Toni Ruckman (R-052005, Washoe)
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Amber-Rose Aparicio
 (Notary Signature)



AFFIDAVIT OF SERVICE



2641854
(55090504)

RA000312

DOC #898974

Official Records Nye County NV
Deborah Beatty - Recorder
09/06/2018 11:58:11 AM
Requested By: WEIL & DRAGE APC
Recorded By: MJ RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 4

APN012-031-04; 012-131-03; 012-131-04;
APN012-140-01; 012-141-01; 012-431-06;
APN012-150-01; 012-151-01; and
APN612-141-01.
Recording Requested By:
Name WEIL & DRAGE, APC

Address 2500 Anthem Village Drive

City / State / Zip Henderson, Nevada 89052

NRS 108.2415 Surety Bond 854481 Posted to Release Lien with Power of Attorney

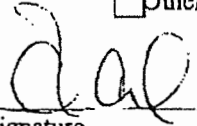
Title of Document (required)

****Only use below if applicable****

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

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

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


Signature

Ana M. Maldonado, Paralegal
Name Typed or Printed

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

NRS 108.2415 Form of surety bond posted to release lien:

Bond #854481

(Assessor's Parcel Numbers: 012-031-04; 012-131-03; 012-131-04; 612-141-01; 012-431-06; 012-140-01; 012-150-01; 012-151-01; 012-141-01)

WHEREAS, Cobra Thermosolar Plant Inc. (name of principal), located at 11 Miles North Gabbs Pole Line Road, Tonopah, NV 89049 (address of principal), desires to give a bond for releasing the following described property owned by Tonopah Solar Energy, LLC (name of owners) from that certain notice of lien in the sum of \$7,178,386.94 recorded July (month) 19 (day) 2018 (year), in the office of the recorder in Nye County (name of county where the property is located):

Crescent Dunes Solar Energy Project

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, Brahma Group, Inc. (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$10,767,580.00 (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by the lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

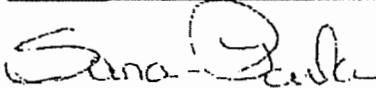
IN TESTIMONY WHEREOF, the principal and surety have executed this bond at Houston, Texas on the 15th day of August, 2018.

Cobra Thermosolar Plant, Inc.



(Signature of Principal) Carlos Ramirez Vissar

American Home Assurance Company



Sandra Parker, Attorney-in-Fact

State of Texas }
) ss.
 County of Harris }

On August 15, 2018, before me, the undersigned, a notary public of this County and State, personally appeared Sandra Parker known (or satisfactorily proved), who acknowledged that he or she executed the foregoing instrument for the principal and the surety for the purposes therein mentioned, Sandra Parker known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he or she acknowledged to me that the surety executed the foregoing instrument.


(Notary Public in and for the County of Harris and State of Texas)
Laura Elizabeth Sudduth Commission Expires: 04/20/2022



POWER OF ATTORNEY

American Home Assurance Company
National Union Fire Insurance Company of Pittsburgh, PA.
Principal Office: 175 Water Street, New York, NY 10038

Power No. 7188

No. 41-B-002348

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

Blair Ann Gerola, Gloria Minton, Marissa Shepherd, Terri Morrison, Laurie Sudoluth,
Sandra Parker, Gina A. Rodriguez, Tamara Madison, Mario Arzonendi, Orlando Aguirre, of Houston, Texas

its true and lawful Attorneys-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA, have each executed these presents.

this 15th day of May, 2018



Michael Yung, Vice President

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

On this 15th day of May, 2018, before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

Juliana Hallenbeck
JULIANA HALLENBECK
Notary Public - State of New York
No. 01148212371
October 13, 2021
My Commission Expires April 13, 2021

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to affix thereto the corporate seal of the Company, in the transaction of its storey business.

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company, when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof.

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Martin Bogue, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation.



this 15th day of August, 2018

Martin Bogue, Assistant Secretary

65165 (4/86)

EXHIBIT 15

DOC #892768

Official Records Nye County NV
Deborah Beatty - Recorder
05/15/2018 10:36:41 AM
Requested By: NATIONWIDE NOTICE INC
Recorded By: kd-RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 2

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

Recorded at the Request of and
Return Recorded Document to:
LUANN BERTRAND
H & E Equipment Services
4899 West 2100 South
Salt Lake City, UT 84120
702-320-6597

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: **\$477,831.40**
2. The total amount of all additional or changed work, materials and equipment, if any, is:
3. The total amount of all payments received to date is: **\$0.00**
4. The amount of the lien, after deducting all just credits and offsets, is: **\$477,831.40**
5. The name of the owner, if known, of the property is: **U.S. DEPARTMENT OF THE INTERIOR - BUREAU OF LAND MANAGEMENT, 1340 FINANCIAL BLVD, RENO, NV 89502.**
6. The name of the lessee, if known, of the property is: **TONOPAH SOLAR ENERGY, LLC, 2425 OLYMPIC BLVD., SUITE 500 EAST, SANTA MONICA, CA 90404.**
7. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: **BRAHMA GROUP INC, 1132 S 500 W, SALT LAKE CITY, UT 84101-3018.**
8. A brief statement of the terms of payment of the lien claimant's contract is: **Net 30**
9. A description of the property to be charged with the lien is: **11 MI N. GABBS POLE LINE NV89, TONOPAH, NEVADA; IMPROVEMENT: THE CRESCENT DUNES SOLAR ENERGY PROJECT IS A 110 MW PLANT CONSTRUCTED ON THE LAND IN TONAPAH, NEVADA. LAND: FURTHER DESCRIBED IN OR INSTRUMENT NUMBER 891507, ACCORDING TO THE PUBLIC RECORDS RECORDED IN NYE COUNTY, NEVADA; PARCEL ID: 012-031-04 / 012-131-03 / 012-131-04 / 012-140-01 / 012-141-01 / 012-150-01 / 012-151-01 / 012-431-06 / 612-141-01; 5076500**

H & E Equipment Services
4899 West 2100 South
Salt Lake City, UT 84120
702-320-6597

STATE OF NEVADA
COUNTY OF CLARK

LUANN BERTRAND being first duly sworn on oath according to law, deposes and says:

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

By: *Luann Bertrand*

LUANN BERTRAND, Agent

The foregoing instrument was acknowledged before me this 15 day of May, 2018 by LUANN BERTRAND, agent for H & E Equipment Services, who is personally known to me or who has produced _____ as identification, and who did/did not take an oath.

Kathleen A. Bistritz
NOTARY PUBLIC STATE OF NEVADA

My commission expires: 1-1-2019



EXHIBIT 16

DOC #898975

Official Records Nye County NV

Deborah Beatty - Recorder

09/06/2018 11:58:41 AM

Requested By: WEIL & DRAGE APC

Recorded By: MJ-RPTT:\$0

Recording Fee: \$35.00

Non Conformity Fee: \$

Page 1 of 4

APN012-031-04; 012-131-03; 012-131-04;

APN012-140-01; 012-141-01; 012-431-06;

APN012-150-01; 012-151-01; and

APN612-141-01.

Recording Requested By:

Name WEIL & DRAGE, APC

Address 2500 Anthem Village Drive

City / State / Zip Henderson, Nevada 89052

NRS 108.2415 Surety Bond 854482 Posted to Release Lien with Power of Attorney

Title of Document (required)

****Only use below if applicable****

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

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

☐ Affidavit of Death - NRS 440.380(1)(A) & NRS 40.525(5)

☐ Judgment - NRS 17.150(4)

☐ Military Discharge - NRS 419.020(2)

☐ Other _____

Signature

Ana M. Maldonado, Paralegal

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.

This cover page must be typed or printed.

RA000321

NRS 108.2415 Form of surety bond posted to release lien:

Bond #854482

(Assessor's Parcel Numbers: 012-031-04; 012-131-03; 012-131-04; 012-141-01; 012-150-01; 012-151-01; 012-431-06; 612-141-01; 012-140-01)

WHEREAS, Cobra Thermosolar Plant Inc. (name of principal), located at 11 Miles North Gibbs Pole Line Road, Tonopah, NV 89049 (address of principal), desires to give a bond for releasing the following described property owned by U.S. Department of the Interior - Bureau of Land Management (name of owners) from that certain notice of lien in the sum of \$477,831.40 recorded May (month) 15 (day) 2018, (year), in the office of the recorder in Nye County (name of county where the property is located):

Crescent Dunes Solar Energy Project

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, H&E Equipment Services, (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$716,741.10 (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by the lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

IN TESTIMONY WHEREOF, the principal and surety have executed this bond at Houston, Texas on the 15th day of August, 2018.

Cobra Thermosolar Plant, Inc.

(Signature of Principal) Carlos Ramirez Visser

American Home Assurance Company

Tannis Mattson, Attorney-in-Fact

State of Texas

} ss.

County of Harris

On August 15, 2018, before me, the undersigned, a notary public of this County and State, personally appeared Tannis Mattson known (or satisfactorily proved), who acknowledged that he or she executed the foregoing instrument for the principal and the surety for the purposes therein mentioned, Tannis Mattson known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he or she acknowledged to me that the surety executed the foregoing instrument.

Laura Elizabeth Sudduth
(Notary Public in and for the County of Harris and State of Texas)
Laura Elizabeth Sudduth Commission Expires: 04/20/2022



POWER OF ATTORNEY

American Home Assurance Company
 National Union Fire Insurance Company of Pittsburgh, PA.
 Principal Bond Office: 175 Water Street, New York, NY 10038

Power No. 7189

No. 31-B-002348

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

---Mary Ann Garcia, Gloria Mouton, Marissa Shepherd, Terri Morrison, Laura Sudduth,
 Sandra Parker, Gina A. Rodriguez, Tannis Matson, Mario Arzamendi, Orlando Aguirre, of Houston, Texas

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., have each executed these presents

this 16th day of May, 2018



Michael Yang, Vice President

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.

On this 16th day of May, 2018, before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

Juliana Hallenbeck
JULIANA HALLENBECK
 Notary Public - State of New York
 No. 011945123671
 Certified in Essex County
 My Commission Expires April 18, 2021

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business.

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Martin Bogue, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation



this 15th day of August, 2018

Martin Bogue, Assistant Secretary

65166-1496

EXHIBIT 17

FILED
FIFTH JUDICIAL DISTRICT

AUG 14 2018

Nye County Clerk
Terri Pemberton Deputy

CV 39348
Dept. No. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR NYE COUNTY

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada Corp.

Defendant.

ORDER OF REASSIGNMENT

Plaintiff filed a Motion to Expunge Brahma Group Inc.'s Mechanic's Lien on June 11, 2018. A hearing was held in the matter on August 6, 2018. Both parties were present at the hearing and indicated to the Court that Senior Judge Steven Elliott has familiarity with the parties and the facts due to his involvement in a previous case. Defendant then requested that this matter be heard before the Senior Judge. As such, the Court finds it appropriate to reassign the case to Senior Judge Steven Elliott for hearing or decision on the pending motions and for future handling of the case. Good cause appearing,

IT IS FURTHER ORDERED that this matter be reassigned to Senior Judge Steven Elliot for further proceedings.

DATED this 8th day of August, 2018.


District Court Judge

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



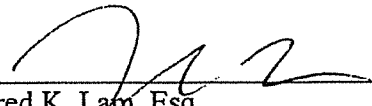


CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 8th day of August, 2018, he mailed
copies of the foregoing ORDER OF REASSIGNMENT to the following:

WEINBERG WHEELER HUDGINS
GUNN & DIAL
6385 South Rainbow Boulevard, Suite 400
Las Vegas, NV 89118

PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, NV 89074


Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social
security number of any person.

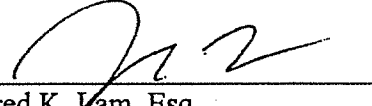

Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

EXHIBIT 18

Steven D. Grierson

1 COMP
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
4 ERIC B. ZIMBELMAN, ESQ.
5 Nevada Bar No. 9407
6 PEEL BRIMLEY LLP
7 3333 E. Serene Avenue, Suite 200
8 Henderson, Nevada 89074-6571
9 Telephone: (702) 990-7272
10 Facsimile: (702) 990-7273
11 rpeel@peelbrimley.com
12 ezimbelman@peelbrimley.com
13 Attorneys for Plaintiff
14 BRAHMA GROUP, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

BRAHMA GROUP, INC., a Nevada Corporation,

Plaintiff,

vs.

TONOPAH SOLAR ENERGY, LLC, a Delaware
Limited Liability Company; DOES I through X;
and ROE CORPORATIONS I through X,

Defendants.

CASE NO.: A-18-777815-C
DEPT. NO.: Department 14

COMPLAINT
(Arbitration Exempt: Amount in
Controversy Exceeds \$50,000.00)

Plaintiff, BRAHMA GROUP, INC. ("BGI"), by and through its attorneys of record, the
law firm of PEEL BRIMLEY LLP, as and for its Complaint against the above-named Defendants
complains, avers and alleges as follows:

THE PARTIES

1. BGI is and was at all times relevant to this action (i) a Nevada limited liability
company, duly authorized and qualified to do business in the state of Nevada, and (ii) a contractor,
holding a Nevada State Contractor's license, which license is in good standing.

2. BGI is informed, believes and therefore alleges that Defendant Tonopah Solar
Energy, LLC ("TSE") is and was at all times relevant to this action a foreign limited liability
corporation, duly authorized to conduct business in Nevada.

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

1 3. BGI and TSE are parties to a Services Agreement that establishes jurisdiction and
2 venue in this Court with respect to all disputes between the parties. Accordingly, this Court has
3 jurisdiction over the parties and the subject matter of this action.

4 4. BGI does not know the true names of the individuals, corporations, partnerships
5 and entities sued and identified in fictitious names as DOES I through X and ROE
6 CORPORATIONS I through X (collectively, "Doe Defendants"). BGI alleges that such Doe
7 Defendants are responsible for damages suffered by BGI as more fully discussed under the claims
8 for relief set forth below. BGI will request leave of this Honorable Court to amend this Complaint
9 to show the true names and capacities of each such fictitious Doe Defendant when BGI discovers
10 such information.

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

13 5. BGI repeats and realleges each and every allegation contained in the preceding
14 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

15 6. On or about February 1, 2017, BGI entered a Services Agreement (the
16 "Agreement") with TSE, wherein BGI agreed to provide a portion of the work, materials and/or
17 equipment (the "Work") for or relating to the Crescent Dunes Concentrated Solar Power Plant
18 ("the Project") in or near Tonopah, Nevada.

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

21 8. As required by the Agreement, BGI has, on a monthly basis and in the form and
22 manner required by the Agreement, provided numerous invoices to TSE for the Work in an amount
23 totaling in excess of Twenty-Six Million U.S. Dollars (\$26,000,000.00).

24 9. Pursuant to the Agreement and Nevada law, TSE agreed to and is obligated to pay
25 BGI for its Work within no more than 45 days after TSE's receipt of BGI's invoices

26 10. TSE breached the Agreement by, among other things:

- 27 a. Failing and/or refusing to pay the Services Fees and other monies owed to
28 BGI for the Work; and

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

11. BGI is owed an amount in excess of Eleven Million Nine Hundred Thousand U.S. Dollars (\$11,900,000) (the "Outstanding Balance") from TSE for the Work.

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

SECOND CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing)

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

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

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

16. Specifically, but without limitation, TSE breached its duty to act in good faith by asserting pre-textual, extra-contractual and inaccurate reasons for withholding payments long after the time required by the Agreement and Nevada law has elapsed. Also, and as part of the Outstanding Balance, TSE has improperly withheld moneys totaling in excess of One Million U.S. Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1). While that statutory provision permits withholding (on a payment-by-payment basis) a retention amount, not to exceed five percent (5%), such retention must be authorized pursuant to the Agreement, which is it not. Furthermore, and even if the Agreement allowed TSE to withhold retention from monthly payments (which it does not), TSE's withholding of retention amounts retroactively aggregated from invoices issued (and, in some cases, payments previously made) long ago constitutes extreme bad faith.

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

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

4 **THIRD CAUSE OF ACTION**
5 **(Unjust Enrichment)**

6 19. BGI repeats and realleges each and every allegation contained in the preceding
7 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

8 20. This cause of action is being pled in the alternative.

9 21. BGI furnished the Work for the benefit of and/or at the specific instance and request
10 of TSE.

11 22. TSE accepted, used and enjoyed the benefit of the Work.

12 23. Owner and TSE knew or should have known that BGI expected to be paid for the
13 Work.

14 24. BGI has demanded payment of the Outstanding Balance.

15 25. To date, TSE has failed, neglected, and/or refused to pay the Outstanding Balance.

16 26. TSE has been unjustly enriched, to the detriment of BGI.

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

20 **FOURTH CAUSE OF ACTION**
21 **(Violation of NRS 624)**

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

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

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

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

PEEL BRIMLEY LLP

RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
rpeel@peelbrimley.com
ezimbelman@peelbrimley.com
Attorneys for Plaintiff
BRAHMA GROUP, INC.

EXHIBIT 19

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
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
cdomina@peelbrimley.com
rcox@peelbrimley.com
Attorneys for Plaintiff
BRAHMA GROUP, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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

vs.

TONOPAH SOLAR ENERGY, LLC, a Delaware
Limited Liability Company; DOES I through X; and
ROE CORPORATIONS I through X,
Defendants.

TONOPAH SOLAR ENERGY, LLC a Delaware
limited liability company; DOES I through X; and
ROE CORPORATIONS I through X,

Counterclaimant,

vs.

BRAHMA GROUP, INC., a Nevada corporation
Counterdefendant.

CASE NO.: 2:18-CV-01747-RFB-GWF

**BRAHMA GROUP, INC.'S MOTION
FOR STAY, OR IN THE
ALTERNATIVE, MOTION TO
AMEND COMPLAINT**

Plaintiff, BRAHMA GROUP, INC. ("Brahma"), a Nevada corporation, by and through its
attorneys, the law firm of Peel Brimley LLP, hereby submits its Motion for Stay, or in the
Alternative Motion to Amend Complaint ("Motion").

This Motion is made and based on the following Memorandum of Points and Authorities, the pleadings, declarations and papers on file in this case (the "Case"), and any argument that the Court may entertain in this matter.

Dated this 16 day of October, 2018.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
CARY B. DOMINA, ESQ.
Nevada Bar No. 10567
RONALD J. COX, ESQ.
Nevada Bar No. 12723
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
rpeel@peelbrimley.com
ezimbelman@peelbrimley.com
Attorneys for Plaintiff
BRAHMA GROUP, INC.

**MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR
STAY, OR IN THE ALTERNATIVE, MOTION TO AMEND COMPLAINT**

I. INTRODUCTION

This Case presents the Court with one of those rare instances where all factors for a *Colorado River* stay are satisfied, allowing the Court to stay this Case to promote "wise judicial administration and conserve judicial resources and a comprehensive disposition of litigation."

This Case represents a duplication of a case TSE first commenced (as Plaintiff) against Brahma on June 1, 2018 in the Fifth Judicial District Court of Nye County (the "Nye County Court") when it sought to expunge the Brahma Lien (defined below) recorded against TSE's Work of Improvement (defined below). Indeed, the Nye County Court Judge has already ruled on dispositive issues that pertain to the subject matter of this Case and the Nye County Court is in the best position to proceed with the adjudication of all disputed matters that pertain to this Case, none of which present federal questions for the Court to resolve.

///

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

Accordingly, the Court should grant this Motion and stay this Case pending the outcome of the Action TSE commenced (as Plaintiff) before the Nye County Court. In the alternative, should this Court be inclined to deny the Motion, Brahma respectfully requests that it be permitted to amend its Complaint.

II. STATEMENT OF FACTS

A. The Work of Improvement.

TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company ("TSE"), is the owner of the Crescent Dunes Solar Energy Project constructed on certain real property located in Nye County, Nevada (the "Work of Improvement").

On or about February 1, 2017, TSE entered a Services Agreement ("Agreement") with Brahma,¹ whereby Brahma agreed to provide on a time and material basis, certain work, materials, and equipment (collectively, the "Work") for the Work of Improvement. Brahma provided the Work for the Work of Improvement and TSE has failed to fully pay Brahma for such Work.

B. The Brahma Lien and the Brahma Surety Bond.

Because of TSE's failure to fully pay Brahma for its Work, Brahma caused a notice of lien ("Original Lien") to be recorded on April 9, 2018 with the Nye County Recorder as Document No. 890822 against the Work of Improvement.²

Thereafter, the Original Lien was amended and/or restated on several occasions and ultimately increased to \$12,859,577.74, when Brahma caused its Fourth Amended Notice of Lien ("Fourth Amended Lien") to be recorded on September 14, 2018 with the Nye County Recorder as Document No. 899351.³ Brahma's Original Lien and the amendments and restatements thereto, including the Fourth Amended Lien are referred to collectively herein as the "Brahma Lien."

In an attempt to replace the Work of Improvement as security for the Brahma Lien with a surety bond, Cobra Thermosolar Plant, Inc., a Nevada corporation ("Cobra")⁴ and the original general contractor that TSE hired to construct the Work of Improvement, caused a surety bond to

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

² A copy of the Original Lien is attached hereto as **Exhibit 2**.

³ True and correct copies of Brahma's First Amended Lien, Second Amended Lien, Third Amended Lien and Fourth Amended Lien are attached hereto as **Exhibits 3, 4, 5 and 6**, respectively.

⁴ An affiliate of Cobra possesses an indirect ownership interest in TSE.

1 be recorded with the Nye County Recorder's Office on September 6, 2018, as Document No.
 2 898974 (the "Brahma Surety Bond"). The Brahma Surety Bond (i) was issued by American Home
 3 Assurance Company, as surety ("Surety") on August 15, 2018, (ii) identifies Cobra, as principal
 4 ("Principal"), and (iii) was in the amount of \$10,767,580.00.⁵

5 At Brahma's request and in compliance with Nevada law, Cobra caused the Penal Sum of
 6 the Surety Bond to be increased to \$19,289,366.61 or 1.5 times the amount of Brahma's Fourth
 7 Amended Lien by causing a Rider to the Surety Bond (the "Brahma Surety Bond Rider") to be
 8 recorded on October 9, 2018 with the Nye County Recorder's Office as Document No. 900303.⁶
 9 The Brahma Surety Bond and the Brahma Surety Bond Rider are collectively referred to herein as
 10 the "Brahma Surety Bond."

11 **C. The H&E Lien and the H&E Surety Bond.**

12 On May 15, 2018, H & E Equipment Services Inc., a Delaware Corporation and one of
 13 Brahma's suppliers for the Work of Improvement, caused a notice of lien to be recorded with the
 14 Nye County Recorder as Document No. 892768 in the amount of \$477,831.40 (the "H&E Lien").

15 To replace the Work of Improvement as security for the H&E Lien, on September 6, 2018,
 16 Cobra caused a surety bond to be recorded with the Nye County Recorder's Office as Document
 17 No. 898975 (the "H&E Surety Bond"). The H&E Surety Bond (i) was issued by American Home
 18 Assurance Company, as surety ("Surety") on August 15, 2018, (ii) identifies Cobra, as principal
 19 ("Principal"), and (iii) is in the amount of \$716,741.10.⁷

20 Because TSE has failed to fully pay Brahma, H&E has not been fully paid and Brahma
 21 understands that H&E intends to pursue claims against Brahma.

22 ///

23 ///

24 ///

25
 26 ⁵ A true and correct copy of the Brahma Surety Bond is attached hereto as **Exhibit 7**.

27 ⁶ A true and correct copy of the Brahma Surety Bond Rider is attached hereto as **Exhibit 8**.

28 ⁷ A true and correct copy of the H&E Surety Bond is attached hereto as **Exhibit 9**. It should also be noted that (i) American Home Assurance Company is the surety on both the Brahma Surety Bond and the H&E Surety Bond and is referred to herein as the "Surety," and (ii) Cobra is identified as the principal on both the Brahma Surety Bond and the H&E Surety Bond and is referred to herein as the "Principal."

D. To Expunge the Brahma Lien, TSE, as the Plaintiff, First Commenced an Action in Nye County Against Brahma, the Defendant.

On June 1, 2018, TSE, as plaintiff, commenced an action in Nye County as Case No. CV 39348 (the “Nye County Action”), seeking to expunge the Brahma Lien from the Work of Improvement by filing a Motion to Expunge Brahma Group, Inc.’s Mechanic’s Lien (the “Motion to Expunge”).⁸ The Nye County Action was assigned to the Honorable Steven Elliot, a senior Judge with Washoe County, who (i) previously presided over extensive litigation involving the construction of the Work of Improvement, and (ii) is very familiar with the Work of Improvement. *see* [Case No. CV-36323 titled *Helix Electric of Nevada, LLC v. Cobra Thermosolar Plants, Inc.; Tonopah Solar Energy LLC et. al.*; *see also*, Case No. 35217 titled *Merlin Hall dba Mt. Grant Electric v. Cobra Thermosolar Plants, Inc.; Tonopah Solar Energy, LLC, et. al.*]

At a hearing held on September 12, 2018 (the “September 12 Hearing”), Judge Elliot denied TSE’s Motion to Expunge. Following the September 12 Hearing, the parties submitted competing orders for the Nye County Court to sign and enter. Since Brahma was the prevailing party at the September 12 Hearing, Brahma intends to file a motion for an award of attorney’s fees and costs pursuant to NRS 108.2275(6), once an order denying the TSE Application is entered.⁹ The motion for attorney’s fees and costs must necessarily be heard by the Nye County Court.

E. Based on a Mistaken Interpretation of the Agreement, Brahma Filed an Action Against TSE in Clark County Nevada, Which TSE Removed to Federal Court Based on Diversity Jurisdiction Only.

Based on a mistaken belief that Section 24 of the TSE/Brahma Agreement required it to pursue its contract-based claims in Clark County, Nevada, Brahma filed a Complaint on July 17, 2018, against TSE for breach of contract, unjust enrichment, and violation of NRS Chapter 624 in the Eighth Judicial District Court of Nevada (the “Clark County Action”).¹⁰

///

///

⁸ A true and correct copy of TSE’s Motion to Expunge is attached hereto as **Exhibit 10**.

⁹ When the court finds a prevailing lien claimant’s notice of lien is not frivolous and was made with reasonable cause, the court must award to such prevailing lien claimant the costs and reasonable attorney’s fees it incurred to defend the motion. *See*, NRS 108.2275(6)(c).

¹⁰ A true and correct copy of Brahma’s Complaint filed in the Clark County Action is attached hereto as **Exhibit 11**.

1 Notably, Section 24 of the Agreement reads, “[Brahma] submits to the jurisdiction of the
2 courts in such state, with a venue in Las Vegas, Nevada, for any action or proceeding directly or
3 indirectly arising out of this Agreement.”

4 In *Am. First Federal Credit Union v. Soro*, 131 Nev. Adv. Op. 73, 359 P.3d 105 (Nev.
5 2015), the Nevada Supreme Court found that:

6 Clauses in which a party agrees to submit to jurisdiction are not necessarily
7 mandatory. Such language means that the party agrees to be subject to that
8 forum’s jurisdiction if sued there. It does not prevent the party from bringing suit
9 in another forum. The language of a mandatory clause shows more than that
10 jurisdiction is appropriate in a designated forum; it unequivocally mandates
exclusive jurisdiction. Absent specific language of exclusion, an agreement
conferring jurisdiction in one forum will not be interpreted as excluding
jurisdiction elsewhere.

11 Based on the reasoning of the *Am. First Federal Credit Union* Court, the forum selection
12 clause contained in Section 24 of the parties’ Agreement is “permissive” and “does not require” the
13 parties to resolve their contract claims in Las Vegas, Nevada. Rather, Section 24 allows Brahma to
14 bring such claims in the Nye County Action along with Brahma’s mechanic’s lien foreclosure
15 complaint (discussed below).

16 On September 10, 2018, TSE removed the Clark County Action to Federal Court based on
17 diversity jurisdiction only (the “Federal Action”).

18 On September 17, 2018, TSE filed its Answer and Counterclaim against Brahma in the
19 Federal Action alleging the following state law causes of action: (i) Breach of Contract; (ii) Breach
20 of the Implied Covenant of Good Faith and Fair Dealing; (iii) Declaratory Relief; (iv) Unjust
21 Enrichment; (v) Fraudulent/Intentional Misrepresentation; and (vi) Negligent Misrepresentation.

22 On September 25, 2018, Brahma filed its First Amended Complaint in the Federal Action
23 wherein it removed all causes of action against TSE except for its Unjust Enrichment claim.

24 On October 5, 2018, Brahma filed its Answer to TSE’s Counterclaim in the Federal Action.

25 On October 9, 2018, TSE filed its Answer to Brahma’s First Amended Complaint in the
26 Federal Action.

27 Finally, on October 10, 2018, the Parties filed a Joint Status Report in the Federal Action.

28 ///

1 With the exception of TSE's improper Jury Demand (which TSE has agreed to withdraw)
2 and its Removal Statement, no other filings have taken place in the Federal Action.

3 **F. Brahma Filed an Action to Foreclose on the Brahma Lien in the Nye County**
4 **Action.**

5 Because the Nye County Court had already ruled on the validity of the Brahma Lien and
6 was well acquainted with the facts of the case, Brahma (as the defendant in Case No. CV 39348)
7 filed its Mechanic's Lien Foreclosure Complaint in the Nye County Action on September 21,
8 2018,¹¹ as required by NRS 108.239(1).¹²

9 Also, on September 21, 2018, because the amount of the Brahma Surety Bond did not
10 comply with NRS 108.2415, Brahma filed (in the Nye County Action) its (i) Petition to Except to
11 the Sufficiency of the Bond, and (ii) Petition to Compel Increase of the Amount of the Bond (the
12 "Petition"). Assuming the Surety Bond Rider Cobra recently recorded complies with NRS
13 108.2415, Brahma intends to withdraw its Petition.

14 On September 25, 2018, Brahma filed in the Nye County Action its (i) First Amended
15 Counter-Complaint and included therein its contract-based claims against TSE, and (ii) Third-
16 Party Complaint asserting a claim against the Surety, the Brahma Surety Bond and Cobra, as
17 Principal.¹³

18 Brahma also understands that H&E intends to bring in the Nye County Action, (i) contract-
19 based claims against Brahma, and (ii) claims against the Surety, the H&E Surety Bond and Cobra,
20 as Principal.

21 **III. LEGAL ARGUMENT**

22 **A. The Court Should Stay this Action Under the *Colorado River Abstention***
23 **Doctrine.**

24 Because the Parties are proceeding with parallel litigation in the Nye County Action, the
25 Court should stay this removed civil action under the *Colorado River Abstention* Doctrine, thereby
26 allowing the Nye County Court and the Nye County Action to efficiently resolve this duplicative

27 ¹¹ A true and correct copy of the Mechanic's Lien Foreclosure Complaint is attached hereto as **Exhibit 12**.

28 ¹² In pertinent part, NRS 108.239(1) states, "A notice of lien may be enforced by an action in any court of competent jurisdiction that is located within the county where the property upon which the work of improvement is located"

¹³ A true and correct copy of the First Amended Counter-Complaint and Third-Party Complaint is attached hereto as **Exhibit 13**.

1 dispute. The *Colorado River* doctrine requires a federal court to abstain in favor of a concurrent
 2 state court proceeding where necessary to promote “wise judicial administration, conservation of
 3 judicial resources, and comprehensive disposition of litigation.” *Southwest Circle Group, Inc. v.*
 4 *Perini Building Company*, 2010 WL 2667335 *2 (D. Nev. June 29, 2010) (citing *Nakash v.*
 5 *Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989). The doctrine is designed to avoid piecemeal
 6 litigation and to prevent inconsistent results. *Colorado River Water Conservation Dist. v. United*
 7 *States*, 424 U.S. 800, 817 (1976). For the federal court to abstain, there must be a parallel or
 8 substantially similar proceeding in state court. *Commercial Cas. Ins. Co. v. Swarts, Manning &*
 9 *Associates, Inc.*, 616 F.Supp.2d 1027, 1032-33 (D. Nev. 2007)(citing *Security Farms v. Int’l Broth*
 10 *of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1009 (9th Cir. 1997)(“Inherent
 11 in the concept of abstention is the presence of a pendent state action in favor of which the federal
 12 court must, or may abstain”).

13 However, exact parallelism in the litigation is not required, only that the two proceedings be
 14 “substantially similar.” *Nakash*, 882 F.2d at 1411. “Suits are parallel if substantially the same
 15 parties litigate substantially the same issues in different forums.” *Security Farms*, 124 F.3d at 1033
 16 (citing *New Beckley Min. Corp. v. Int’l Union, United Mine Workers of America*, 946 F.2d 1072
 17 (4th Cir. 1991).

18 To determine whether the state court and federal court cases are “substantially similar,” the
 19 court’s emphasis has been on substantial party identity, transactional identity, and substantial
 20 similarity of claims. *See, e.g., Jesus Garcia v. County of Contra Costa*, 2015 WL 1548928, at *2
 21 (N.D. Cal. 2015) (“both actions seek relief based on the same event and are alleged against the
 22 same defendants”); *Southwest Circle Group Inc.*, 2010 WL 2667335 at *2 (concluding proceedings
 23 were “substantially similar” where they arose “from the same underlying dispute”); *Commercial*
 24 *Cas. Ins. Co.*, 616 F.Supp.2d at 1033 (deeming cases to be substantially similar where they “arise
 25 out of the conduct of the respective parties” and “called into question the same conduct”). To
 26 determine whether contemporaneous, concurrent state and federal litigation exists, the Court must
 27 look to the point in time when the party moved for its stay under *Colorado River*. *FDIC v. Nichols*,
 28 885 F.2d 633, 638 (9th Cir. 1989).

1 This case satisfies the standards for a *Colorado River* stay to promote “wise judicial
 2 administration and conserve judicial resources and comprehensive disposition of litigation.” The
 3 Nye County Action and Federal Action are substantially similar, contemporaneous, concurrent state
 4 and federal cases. *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 845 (9th Cir. 2017).
 5 Here, the pending Nye County Action (State Action) and District of Nevada Action (Federal
 6 Action) fulfill the substantial similarity requirement. Both cases involve the same parties and arise
 7 out of the same events—the Agreement, its performance, TSE’s failure to pay Brahma for its Work
 8 and TSE’s claims that Brahma over charged it for its Work. Both cases assert contractual and quasi-
 9 contractual claims and should be decided by the same trier of fact who will decide the Lien
 10 litigation—i.e., the Nye County Court. There is concurrent jurisdiction over all claims in these two
 11 cases; neither case asserts a claim within the exclusive subject-matter jurisdiction of a federal court.
 12 In other words, the federal court’s expertise on federal law is not required in this Case.

13 In *Colorado River*, the US Supreme Court described four factors federal courts should
 14 consider in determining whether abstention is appropriate: (1) whether the state or federal court has
 15 exercised jurisdiction over the res, (2) the order in which the forums obtained jurisdiction, (3) the
 16 desirability of avoiding piecemeal litigation, and (4) the inconvenience of the federal forum.
 17 *Colorado River*, 424 U.S. at 800. Subsequent decisions have added three more factors: (5) whether
 18 federal or state law controls the decision on the merits, (6) whether the state court can adequately
 19 protect the rights of the parties,¹⁴ and (7) whether the exercise of federal jurisdiction will promote
 20 forum shopping.¹⁵

21 “These factors are to be applied in a pragmatic and flexible way, as part of a balancing process
 22 rather than as a mechanical checklist.” *40235 Washington St. Corp. v. Lusardi*, 976 F.2d 587, 588
 23 (9th Cir. 1992). “As part of this flexible approach, it may be important to consider additional factors
 24 not spelled out in the *Colorado River* opinion.” *Commercial Casualty Ins. Co.*, 616 F.Supp.2d at
 25 1033 (citing *Moses Cone*, 460 U.S. at 26, 103 S.Ct. 927).

26 ///

28 ¹⁴ For factors (5) and (6), see, *Moses H. Cone Memorial Hosp.*, 460 U.S. 1 at 23-25.

¹⁵ For factor (7), see *Nakash*, 882 F.2d at 1411.

1 **1. *The Nye County Court First Assumed Jurisdiction Over the Res.***

2 Here, Judge Elliot first assumed jurisdiction over the *Res* when TSE, as plaintiff, knowingly
 3 and intentionally availed itself of the jurisdiction of the Nye County Court and filed the Nye County
 4 Action seeking to expunge The Brahma Lien. Which court first obtains in rem or quasi in rem
 5 jurisdiction over property is a dispositive factor that trumps all other *Colorado River* factors when
 6 established. *See, e.g., Washington Street Corp. v. Lusardi*, 976 F.2d 587, 589 (9th Cir. 1992)
 7 (staying federal court was required where state court obtained in rem jurisdiction over property in
 8 a quiet title action). This is so because “the mere fact that state and federal courts are initially vested
 9 with coequal authority does not mean that more than one court can actually adjudicate—much less
 10 administer—decrees over the same res.” *State Engineer of Nevada v. South Fork Band of Te-Moak*,
 11 339 F.3d 804, 813 (9th Cir. 2003). The jurisdiction over “property” refers to an interest in tangible
 12 physical property. *American Intern. Underwriters v. Continental Ins.*, 843 F.2d 1253, 1258 (9th
 13 Cir. 1988). In the District of Nevada, U.S. District Court Judge Roger Hunt concluded that the filing
 14 of a lien against a work of improvement established jurisdiction over the res. *Southwest Circle*
 15 *Group Inc.*, 2010 WL 2667335 at *2.

16 Here, the Nye County Court first assumed jurisdiction over the *Res* that is the subject of this
 17 dispute (i) when Brahma recorded the Brahma Lien against the Work of Improvement on April 9,
 18 2018, and (ii) subsequently, when TSE filed the Nye County Action to Expunge the Brahma Lien
 19 on June 1, 2018.

20 Notably, that Action was brought under NRS 108.2275 which requires a “party in interest in
 21 the property subject to the notice of lien who believes the notice of lien is frivolous and was made
 22 without reasonable cause...[to] apply by motion to the district court for the county where the
 23 property...is located for an order directing the lien claimant to appear before the court to show
 24 cause why the relief requested should not be granted.” Upon filing the Nye County Action, the Nye
 25 County Court assumed jurisdiction over the Brahma Lien recorded against the Work of
 26 Improvement.

27 ///

28 ///

1 On September 10, 2018, the Federal Action was removed from Clark County to federal court.
2 Therefore, the Nye County Court first establish jurisdiction over the *Res*. Moreover, Brahma has
3 since filed its mechanic's lien foreclosure action and claim against the Brahma Surety Bond in the
4 Nye County Action, providing the Nye County Court with additional jurisdiction over the *Res*.
5 Accordingly, jurisdiction over the *Res* was first asserted in the Nye County Court which factor
6 trumps all other factors set forth below and heavily favors abstention.

7 **2. The Nye County Court Obtained Jurisdiction First.**

8 This factor concerns not only the dates on which jurisdiction was established in the Nye
9 County Action vs. the Federal Action, but also the relative progress made between the two cases.
10 *American Intern. Underwriters*, 843 F.2d at 1258. Because the Nye County Court obtained
11 Jurisdiction over the Parties and the *Res* first, and because Judge Elliot has already held hearings
12 and ruled on heavily contested motions in the Nye County Court, including the merits and validity
13 of the Brahma Lien, this factor weighs substantially in favor of abstention for purposes of judicial
14 economy.

15 While both cases are relatively young, because the Nye County Court obtained jurisdiction
16 over the *Res* and the Brahma Lien first, the Nye County Action has progressed further along than
17 the Federal Action. Moreover, because Judge Elliot previously presided over extensive lien
18 litigation regarding the Work of Improvement, he is already knowledgeable about the Work of
19 Improvement and many of the unique issues the Parties encountered before, during and after
20 construction. As such, Nye County is the proper forum to hear all issues relating to the *Res*, just as
21 TSE determined when it commenced the Nye County Action.

22 **3. The Inconvenience of the Federal Forum.**

23 This factor concerns the inconvenience of the forum to the party who did not invoke the
24 federal forum and is typically discussed in the context of distant witnesses. *American Intern.*
25 *Underwriters*, 843 F.2d at 1258. However, inconvenience of a federal forum is deemed to be
26 irrelevant when a federal action and state action are located in the same general geographic area.
27 *Jesus Garcia*, 2015 WL 1548928 at *3. Here, while the Work of Improvement is located in
28 Tonopah, Nevada, all hearings have been and will continue to be held at the Nye County courthouse

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

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

located in Pahrump, Nevada, less than an hours' drive from Las Vegas.

Moreover, because the Brahma Surety Bond now stands as the collateral for the Brahma Lien, Brahma intends to file a Demand for Preferential Trial Setting under NRS 108.237(9), which requires the Court to clear its docket of all matters and proceed to trial within 60 days of Brahma filing its Demand.

The Nevada Legislature has afforded mechanic's lien claimants special rights to a just and speedy trial because of the value they add to real property and to the economy in general, as well as the vulnerable position they can find themselves in when an owner fails to pay for work, materials and equipment furnished to a construction project. In 2003 and 2005, and in response to the Venetian lien litigation, the Nevada Legislature substantially revised the mechanic's lien statutes with the intent to facilitate payments to lien claimants in an expeditious manner. *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 245 P.3d 1149, 1156 (2010). One of those revisions was to arm lien claimants with the right to petition the Court for a summary trial on their mechanic's lien claims.

Specifically, NRS 108.239(8) provides:

Upon petition by a lien claimant for a preferential trial setting:

(a) the court **shall give preference** in setting a date for the trial **of an action brought pursuant to this section**; and

(b) if a lien action is designated as complex by the court, the court may take into account the rights and claims of all lien claimants in setting a date for the preferential trial.

NRS 108.239(7) provides:

The **court shall** enter judgment according to the right of the parties, and shall, by decree, **proceed to hear and determine the claims in a summary way, or may, if it be the district court, refer the claims to a special master to ascertain and report upon the liens and the amount justly due thereon...**

The Nevada Supreme Court has recognized the Legislature's intent to provide lien claimants with special rights designed to provide them with a speedy remedy on their lien claims. *See California Commercial v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 67 P.3d 328 (2003); *See also, Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 197 P.3d 1032 (Nev. 2008)(acknowledging that

1 the object of the lien statutes is to secure payment to those who perform work or furnish material
2 to improve the property of the owner). Among the protections afforded lien claimants is the
3 statutory right to a preferential trial setting. By enacting Nevada's mechanic's lien statutes, the
4 Nevada Legislature has created a means to provide contractors with secured payment for their work,
5 materials and equipment furnished to construction projects in Nevada inasmuch as "contractors are
6 generally in a vulnerable position because they extend large blocks of credit; invest significant time,
7 labor and materials into a project; and have any number of works vitally depend upon them for
8 eventual payment." *Wilmington Trust FSB v. A1 Concrete Cutting & Demolition, LLC (In re*
9 *Fontainebleau Las Vegas Holdings, LLC)*, 289 P.3d 1199, 1210 (Nev. 2012).

10 Brahma, as a lien claimant, is entitled to a preferential trial setting pursuant to NRS 108.239
11 against the Brahma Surety Bond. Preferential trial rights in the Nye County Action mean this case
12 will be handled expeditiously, thereby reducing delay where Brahma has fronted money for work,
13 materials, and equipment. By contrast, in federal court, there is no preferential trial mechanism.
14 Moreover, even if there was a right to a preferential trial in Federal Court, because Judge Elliot is
15 on Senior status, he only handles a few cases at a time and would be in a much better position than
16 this Court to proceed with a lengthy trial within 60 days after Brahma files the Demand.

17 Further, because (i) the Brahma Surety Bond claim, and (ii) the H&E Lien claim, the H&E
18 Surety Bond claim and H&E's claims against Brahma (claims that are derivative of Brahma's
19 claims against TSE), will be litigated in the Nye County Action, H&E's claims will also be litigated
20 in the same action.

21 Finally, because TSE (as the Plaintiff) cannot remove the Nye County Action to Federal
22 Court, and because Cobra is of the same domicile as Brahma (i.e., both Nevada corporations) and
23 H&E is of the same domicile as TSE (i.e., both Delaware entities), there is no basis for diversity
24 jurisdiction. Hence, if the Court does not stay this Case, Brahma will be forced to litigate claims
25 arising from the same transaction and occurrence in two separate forums.

26 Thus, there is no question that the Nye County Court is a reasonable and convenient forum
27 in which to try the parties' dispute.

28 ///

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

1 **4. Desirability of Avoiding Piecemeal Litigation**

2 This factor concerns whether there are *special concerns* about inconsistent adjudication, as
3 there will always be an issue with duplicative state court-federal court litigation. *Seneca*, at 843.
4 “Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating
5 efforts and possibly reaching different results.” *Commercial Cas. Ins. Co.*, 616 F.Supp.2d at 1035
6 (citing *American Int’l Underwriters*, 843 F.2d at 1258). For instance, in *Colorado River*, the Court
7 found there to be a concern where water rights were in dispute and there was a real danger of
8 inconsistent adjudication.

9 Central to the dispute between Brahma and TSE is the amount of Work Brahma performed
10 on the Work of Improvement, the amount that TSE owes Brahma for that Work, and the lienable
11 amount for such Work. To determine Brahma’s lienable amount, the Nye County Court will
12 necessarily need to determine (i) the agreed upon contract value of said Work (NRS 108.222(a)),
13 or (ii) in cases where there may not have been an agreed upon price, the fair market value of said
14 Work (NRS 108.222(b)). A mechanic’s lien is a charge on real estate, created by law, in the nature
15 of a mortgage, to secure the payment of money due for work done thereon, or materials furnished
16 therefor. *Rosina v. Trowbridge*, 20 Nev. 105, 113, 17 P. 751 (Nev. 1888).

17 The Brahma Lien (recorded against the Work of Improvement and now secured by the
18 Brahma Surety Bond) creates a property interest which cannot be adjudicated by two different
19 courts. Inconsistent adjudication regarding Brahma’s lien rights (or claim against the Brahma
20 Surety Bond) would lead to chaos if one court determines that TSE owes Brahma one amount and
21 a different court determines that TSE owes Brahma a different amount. To resolve those two
22 inconsistent judgments, it would require further litigation.

23 Because the Nye County Court has already ruled on TSE’s attempt to expunge the Brahma
24 Lien, the Nye County Court is more familiar with many of the disputed issues between the Parties.
25 If this Court were to exercise jurisdiction, it would likely “be required to decide these matters anew,
26 requiring duplicative effort and creating a significant possibility of inconsistent results.” *See*
27 *Commercial Cas. Ins. Co.*, 616 F.Supp.2d at 1035 (citing *Ryder Truck Rental, Inc. v. Acton*
28 *Foodservices Corp.*, 554 F.Supp. 227, 281 (C.D.Cal 1983)(district court abstains because

1 “exercising federal jurisdiction in this case would not only require duplication of time and effort
2 on the part of the litigants and the Court, but would also create the possibility of inconsistent
3 results”).

4 Finally, acknowledging the possibility of inconsistent rulings being issued by the Nye County
5 Court and this Court, by letter dated October 15, 2018, TSE advised the Nye County Court, that it
6 was concerned that orders issued in the Nye County Action may adversely impact this Case.¹⁶

7 Hence, this factor weighs substantially in favor of abstention.

8 *5. Whether state or federal law provides rule of decision on the merits.*

9 Here, as a threshold matter, all the claims asserted by Brahma and counterclaimed by TSE
10 are state law claims. There are no federal questions involved in this Case where this Court’s
11 expertise on federal law is needed to resolve a dispute.

12 In *Montanore Minerals Corp. v. Bakie*, 867 F.3d 1160 (9th Cir. 2017), the Court reversed a
13 district court that had declined to stay an action that involved state law eminent domain
14 proceedings, which raised questions of statutory interpretation. *Id.* at 1168. In *Southwest Circle*
15 *Group Inc.*, the District of Nevada noted the special competence of Nevada state courts in complex
16 construction litigation and granted a stay. *Southwest Circle Group Inc.*, 2010 WL 2667335 at *3.
17 In fact, that court went on to state that “it would be a misuse of judicial resources to occupy this
18 courts time in a duplicative proceeding when it is clear that the state court is well-prepared to
19 proceed.” *Id.*

20 Here again, Judge Elliot having already ruled on substantive matters, is well-prepared to
21 proceed with presiding over the entire Case. Moreover, state courts are better equipped to handle
22 complex lien litigation utilizing expedited proceedings since such cases are much more frequently
23 filed in state court as opposed to federal court.

24 This factor also weighs heavily in favor of abstention for purposes of judicial economy.

25 ///

26 ///

27 ///

28 ¹⁶ A true and correct copy of TSE’s October 15, 2018 Letter is attached hereto as Exhibit 14.

1 **6. The Proceedings in the Nye County Action are Adequate to Protect TSE's**
 2 **Rights.**

3 This factor concerns whether the State Action would adequately protect federal rights.
 4 *Travelers Indemnity Co. v. Madonna*, 914 F.2d 1364, 1370 (9th Cir. 1990). A lack of concurrent
 5 jurisdiction would suggest state court is inadequate. *American Intern. Underwriters*, 843 F.2d at
 6 1259. There, however, is “no question that the state court has authority to address the rights and
 7 remedies at issue” in a case about breach of contract. *R.R. Street & Co. Inc. v. Transport Ins. Co.*,
 8 656 F.3d 966, 9821 (9th Cir. 2011)

9 Here, as none of the claims pending before this Court assert federal questions, let alone ones
 10 exclusively in a federal court’s jurisdiction, there is no concern that the state court proceeding
 11 would be inadequate. Moreover, NRCP 15 is available to TSE should it wish to amend its pleadings
 12 in the Nye County Action to add its contract claims and the fraudulent and negligent
 13 misrepresentation claims.

14 Because there is no question that the Nye County Action is adequate to protect TSE’s rights,
 15 this factor cuts in favor of abstention.

16 **7. Exercising Federal Court Jurisdiction Would Promote Forum Shopping.**

17 This factor concerns whether affirmatively exercising federal court jurisdiction would
 18 promote forum shopping. This is especially true where “the party opposing the stay seeks to avoid
 19 adverse rulings made by the state court or to gain a tactical advantage from the application of federal
 20 court rules.” *Travelers Indemnity Co.*, 914 F.2d at 1371. Here, TSE filed its Motion to Expunge the
 21 Brahma Lien in the Nye County Court, when it could have filed that same Motion before this Court.
 22 TSE’s removal of the Clark County Action is nothing more than an effort to engage in forum
 23 shopping to avoid the effects of the adverse ruling by Judge Elliott.

24 **B. In the Alternative, if the Court Does Not Stay this Case, the Court Should**
 25 **Allow Brahma to Amend its Complaint.**

26 In the event the Court is inclined to deny the Motion for Stay, Brahma requests that it be
 27 permitted to amend its Complaint to reassert its contract claims against TSE which are currently
 28 being litigated in the Nye County Action.

1 In light of the parallel state court claims asserted in the Nye County Action, and because
 2 “justice so requires,” Brahma should be permitted to amend its complaint under the liberal standard
 3 of FRCP 15(a)(2).

4 Federal Rule of Civil Procedure 15(a) states in relevant part:

- 5 (1) A party may amend its pleading once as a matter of course
 6 within (A) 21 days after serving it; or (B) if the pleading is
 7 one to which a responsive pleading is required, 21 days after
 8 service of a motion under Rule 12(b), (e) or (f), whichever is
 9 earlier.
 10 (2) In all other cases, a party may amend its pleading only with
 the opposing party’s written consent or the court’s leave. The
court should freely give leave when justice so requires.
 (emphasis added).

11 “The Supreme Court has interpreted Rule 15(a) and confirmed the liberal standard district
 12 courts must apply when granting such leave.” *Dannenbring v. Wynn Las Vegas, LLC*, 907 F.Supp.
 13 2d 1214, 1221 (D. Nev. 2013). In *Foman v. Davis*, the U.S. Supreme Court explained: “In the
 14 absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on
 15 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,
 16 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the
 17 amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*,
 18 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). “If the underlying facts or circumstances relied
 19 upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test
 20 his claim on the merits.” *Id.* “Of course, the grant or denial of an opportunity to amend is within
 21 the discretion of the District Court, but outright refusal to grant the leave without any justifying
 22 reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion
 23 and inconsistent with the spirit of the Federal Rules.” *Id.*

24 1. No Undue Delay

25 There has been no undue delay on the part of Brahma. Brahma initially included its breach
 26 of contract claims as part of this Action but removed those claims and asserted them in the Nye
 27 County Action along with its Lien claim and now its claim against the Brahma Surety Bond.
 28 Brahma believes the Nye County Court is the appropriate court to hear all matters in this Case.

1 However, to the extent the Court is unwilling to stay this Case, Brahma seeks leave of Court to
2 amend its Complaint to re-add its contract-based causes of action against TSE.

3 **2. *TSE will Not Be Prejudiced if Brahma is Permitted to Amend its***
4 ***Complaint.***

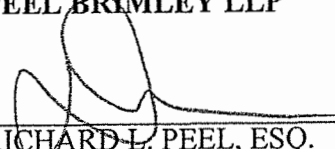
5 Given the infancy of this Case, TSE will suffer no prejudice if Brahma is permitted to
6 Amend its Complaint to add its contract-based claims. In fact, it is Brahma who would be
7 prejudiced if this Court does not stay this Case and does not allow Brahma to amend its Complaint.

8 **IV. CONCLUSION**

9 Based on the foregoing, this Court should stay this Case pending the outcome of the Nye
10 County Action which has been progressing for several months now. In the alternative, should the
11 Court be inclined to deny the Motion for Stay, this Court should permit Brahma to amend its
12 Complaint to add its contract-based causes of action against TSE.

13 Dated this 16 day of October, 2018.

14 **PEEL BRIMLEY LLP**

15 
16 **RICHARD L. PEEL, ESQ.**

17 Nevada Bar No. 4359

18 **CARY B. DOMINA, ESQ.**

19 Nevada Bar No. 10567

20 **RONALD J. COX, ESQ.**

21 Nevada Bar No. 12723

22 3333 E. Serene Avenue, Suite 200

23 Henderson, Nevada 89074-6571

24 Telephone: (702) 990-7272

25 rpeel@peelbrimley.com

26 cdomina@peelbrimley.com

27 rcox@peelbrimley.com

28 *Attorneys for Plaintiff*

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 Fed. R. Civ. P. 5, I certify that I am an employee of PEEL BRIMLEY LLP, I am over the age of eighteen years, and not a party to the within action. My business address is 3333 E. Serene Ave, Suite 200, Henderson, NV 89074. On October 16, 2018, I served the within document(s):

MOTION FOR STAY, OR IN THE ALTERNATIVE, MOTION TO AMEND COMPLAINT

to be served as follows:

- X By CM/ECF Filing – with the United States District Court of Nevada. I electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the attorney(s) and/or party(ies) listed below.
- ☐ By Facsimile Transmission at or about _____ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the persons served as set forth below.
- ☐ By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, NV, addressed as set forth below.

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

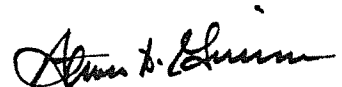
D. Lee Roberts, Jr., Esq. (NV Bar No. 8877)
Colby L. Balkenbush, Esq. (NV Bar No. 13066)
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
Attorneys for Defendant
Tonopah Solar Energy, LLC

/s/ Theresa M. Hansen

An employee of PEEL BRIMLEY LLP

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

EXHIBIT 20


CLERK OF THE COURT

COMP
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
Fax: (702) 990-7273
cdomina@peelbrimley.com
rcox@peelbrimley.com
Attorneys for W&W-AFCO Steel, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

AUSTIN GENERAL CONTRACTING, INC., a
Nevada corporation,

Plaintiff,

vs.

W&W-AFCO STEEL LLC, a Delaware limited
liability company; VALLEY STEEL, LLC, a
Nevada limited liability company.

Defendants.

W&W-AFCO STEEL LLC, a Delaware limited
liability company,

Lien Claimant,

vs.

AUSTIN GENERAL CONTRACTING, INC., a
Nevada corporation; PARBALL NEWCO,
LLC, a Delaware limited liability company;
WARM SPRINGS ROAD CVS, L.L.C., a
Nevada limited liability company;
ARMSTRONG DEVELOPMENT
PROPERTIES, INC., a Pennsylvania
corporation; WESTERN SURETY
COMPANY, a surety; BOE BONDING
COMPANIES I through X; DOES I through X;
LOE LENDERS I through X; ROE
CORPORATIONS I through X; TOE
TENANTS I through X, inclusive,

Defendants,

CASE NO.: A-16-743285-C
DEPT. NO.: IX

**MECHANIC'S LIEN FORECLOSURE
COMPLAINT**

[Arbitration Exemption: Title to Real
Property]

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

Lien Claimant, W&W-AFCO STEEL LLC ("W&W"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, as and for its Mechanic's Lien Foreclosure Complaint ("Complaint") against the above-named Defendants complains, avers and alleges as follows:

THE PARTIES

1. W&W is and was at all times relevant to this action (i) a Delaware limited liability company, duly authorized and qualified to do business in the state of Nevada, and (ii) a contractor holding a Nevada State Contractor's license, which license is in good standing.

2. W&W is informed and believes and therefore alleges that Defendant AUSTIN GENERAL CONTRACTING, INC. ("AGC"), is and was at all times relevant to this action (i) a Nevada corporation authorized and qualified to do business in the state of Nevada, and (ii) a contractor holding a Nevada State Contractor's license.

3. W&W is informed and believes and therefore alleges that Defendant PARBALL NEWCO, LLC ("Parball") is and was at all times relevant to this action (i) a Delaware limited liability company, and (ii) the owner, reputed owner or the person, individual and/or entity who claims an ownership interest in or with respect to that certain work of improvement commonly known as CVS Pharmacy located in Clark County, Nevada and described as follows:

Common Address:	3645 S. Las Vegas Blvd. Las Vegas, NV 89109
County Assessor Description:	Parcel Map File 81 Page 21 PT Lot 2 & VAC Rd

and more particularly described as Clark County Assessor Parcel Number 162-21-102-009, including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof (collectively,

1 the "Property"), upon which Parball caused or allowed to be constructed certain improvements
2 (the "Work of Improvement").

3 4. The whole of the Property is reasonably necessary for the convenient use and
4 occupation of the Work of Improvement.

5 5. W&W is informed and believes and therefore alleges that Defendant
6 ARMSTRONG DEVELOPMENT PROPERTIES, INC. ("Armstrong") is and was at all times
7 relevant to this action (i) a Pennsylvania corporation, duly authorized to conduct business in
8 Nevada, and (ii) claims to possess an interest in the Work of Improvement.

9 6. W&W is informed and believes and therefore alleges that Defendant WARM
10 SPRINGS ROAD CVS, L.L.C. ("CVS") is and was at all times relevant to this action (i) a
11 Nevada limited liability company, duly authorized to conduct business in Nevada, and (ii) claims
12 to possess an interest in the Work of Improvement.

13 7. W&W is informed and believes and therefore alleges that Defendant WESTERN
14 SURETY COMPANY ("Western") is and was at all times relevant to this action a bonding
15 company duly licensed and qualified to do business as a surety in Nevada.

16 8. For purposes of this Action and NRS 108.22148, Parball, Armstrong and CVS are
17 collectively referred to as the "Owners."

18 9. W&W does not know the true names of the individuals, corporations, partnerships
19 and entities sued and identified in fictitious names as BOE BONDING COMPANIES I through
20 X, DOES I through X, LOE LENDERS I through X, ROE CORPORATIONS I through X and
21 TOE TENANTS I through X (collectively, "Doe Defendants"). W&W alleges that such Doe
22 Defendants claim an interest in or to the Project and/or are responsible for damages suffered by
23 W&W as more fully discussed under the claims for relief set forth below. W&W will request
24
25
26
27
28

1 leave of this Honorable Court to amend this Complaint to show the true names and capacities of
2 each such fictitious Doe Defendant when W&W discovers such information.

3 **FIRST CAUSE OF ACTION**
4 **(Breach of Contract Against AGC)**

5 10. W&W repeats and realleges each and every allegation contained in the preceding
6 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

7 11. On or about May 27, 2015, W&W entered into a Lump Sum Subcontract
8 Agreement (the "Agreement") with AGC wherein W&W agreed to provide certain construction
9 related work, materials and/or equipment (the "Work") to or for the Work of Improvement.
10

11 12. W&W furnished the Work for the benefit of and/or at the specific instance and
12 request of AGC.

13 13. Pursuant to the Agreement, W&W was to be paid an amount in excess of Ten
14 Thousand and no/100 Dollars (\$10,000.00) for the Work ("Agreement Price").

15 14. W&W furnished the Work and has otherwise performed its duties and obligations
16 as required by the Agreement.
17

18 15. AGC breached the Agreement by, among other things:

19 a. Failing and/or refusing to pay the Agreement Price and other monies owed
20 to W&W for the Work;

21 b. Failing to adjust the Agreement Price to account for extras and/or changed
22 work, as well as suspensions, delays, acceleration and/or disruption of the Work caused or
23 ordered by AGC and/or its agents or representatives;

24 c. Failing to promptly recognize and grant time extensions to reflect
25 additional time allowable under the Agreement and permit related adjustments in scheduled
26 performance;
27

28 d. Failing and/or refusing to comply with the Agreement and Nevada law; and

1 e. Negligently or intentionally preventing, obstructing, hindering or
2 interfering with W&W's performance of the Work.

3 16. W&W is owed an amount in excess of Ten Thousand and no/100 Dollars
4 (\$10,000.00) (hereinafter "Outstanding Balance") from AGC for the Work.

5 17. W&W has been required to engage the services of an attorney to collect the
6 Outstanding Balance, and W&W is entitled to recover its reasonable costs, attorney's fees and
7 interest therefor.
8

9 **SECOND CAUSE OF ACTION**
10 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against AGC)**

11 18. W&W repeats and realleges each and every allegation contained in the preceding
12 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

13 19. There is a covenant of good faith and fair dealing implied in every agreement,
14 including the Agreement between W&W and AGC.

15 20. AGC breached its duty to act in good faith by performing the Agreement in a
16 manner that was unfaithful to the purpose of the Agreement, thereby denying W&W's justified
17 expectations.
18

19 21. Due to the actions of AGC, W&W suffered damages in an amount in excess of the
20 Outstanding Balance, for which W&W is entitled to judgment in an amount to be determined at
21 trial.

22 22. W&W has been required to engage the services of an attorney to collect the
23 Outstanding Balance, and W&W is entitled to recover its reasonable costs, attorney's fees and
24 interest therefor.
25

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
(Unjust Enrichment Against All Defendants)

23. W&W repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

24. This cause of action is being pled in the alternative as to AGC.

25. W&W furnished the Work for the benefit of and/or at the specific instance and request of the Defendants.

26. The Defendants accepted, used and enjoyed the benefit of the Work.

27. The Defendants knew or should have known that W&W expected to be paid for the Work.

28. W&W has demanded payment of the Outstanding Balance.

29. To date, the Defendants have failed, neglected, and/or refused to pay the Outstanding Balance.

30. The Defendants have been unjustly enriched, to the detriment of W&W.

31. W&W has been required to engage the services of an attorney to collect the Outstanding Balance, and W&W is entitled to recover its reasonable costs, attorney's fees and interest therefor.

FOURTH CAUSE OF ACTION
(Foreclosure of Notice of Lien)

32. W&W repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

33. The Work was provided at the special instance and/or request of the Owners for the Work of Improvement as a whole.

34. W&W demanded payment of the Outstanding Balance, which amount remains past due and owing.

1 35. On or about August 11, 2016, W&W timely recorded a Notice of Lien in the
2 Official Records of Clark County, Nevada, as Instrument No. 20160811-0001544 (the "Original
3 Lien").

4 36. On or about October 24, 2016, W&W recorded an Amended and/or Restated
5 Notice of Lien in the Official Records of Clark County, Nevada, as Instrument No. 20161024-
6 0002062 the ("Amended Lien").

7 37. The Original Lien and the Amended Lien are collectively referred to as the
8 "Liens."
9

10 38. The Liens were in writing and were recorded against the Property and the Work of
11 Improvement for the Outstanding Balance due to W&W in the amount of Four Hundred Fourteen
12 Thousand One Hundred Seventy and 20/100 Dollars (\$414,170.20).

13 39. W&W has complied with all requirements to perfect the Liens.

14 40. W&W is entitled to an award of its attorney's fees, costs and interest on the
15 Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.
16

17 **FIFTH CAUSE OF ACTION**
18 **(Claim of Priority Against Lenders and Doe Defendants)**

19 41. W&W repeats and realleges each and every allegation contained in the preceding
20 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

21 42. W&W is informed and believes and therefore alleges that the Work of
22 Improvement commenced before the recording of Lenders and the Doe Defendants' Deeds of
23 Trust and/or other interest(s) in the Work of Improvement and/or any leasehold estate claimed by
24 and of the Doe Defendants.

25 43. W&W's claims against the Property, Work of Improvement and/or any leasehold
26 estates are superior to the claim(s) of Lender and/or Doe Defendants.
27
28

1 44. W&W has been required to engage the services of an attorney to collect the
2 Outstanding Balance due and owing for the Work, and W&W is entitled to recover its reasonable
3 costs, attorney's fees and interest therefor.

4 **SIXTH CAUSE OF ACTION**
5 **(Violation of NRS 624 Against AGC)**

6 45. W&W repeats and realleges each and every allegation contained in the preceding
7 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

8 46. NRS 624.624 and NRS 624.626 (the "Statute") requires higher-tiered contractors
9 (such as AGC) to, among other things, (i) timely pay their subcontractors (such as W&W), and
10 (ii) respond to payment applications and change order requests, as provided in the Statute.

11 47. In violation of the Statute, AGC has failed and/or refused to comply with the
12 requirements of the Statute.

13 48. By reason of the foregoing, W&W is entitled to a judgment against AGC in the
14 amount of the Outstanding Balance as well as other remedies as defined by the applicable
15 Statutes.

16 49. W&W has been required to engage the services of an attorney to collect the
17 Outstanding Balance and W&W is entitled to recover its reasonable costs, attorney's fees and
18 interests therefor.

19 **SEVENTH CAUSE OF ACTION**
20 **(Claim Against License Bond - Western)**

21 50. W&W repeats and realleges each and every allegation contained in the preceding
22 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

23 51. W&W is informed and believes and therefore alleges that prior to the events
24 giving rise to the Complaint, Western issued Contractors License Bond No. 929397782 (the
25 "Bond").
26
27
28

52. The Bond is in the sum of Fifty Thousand and No/100 Dollars (“\$50,000.00”).

53. AGC is named as principal and Western is named as surety on the Bond.

54. The Bond was in force during all times relevant to this action.

55. W&W provided Work for the Work of Improvement and has not been paid the Outstanding Balance.

56. AGC’s failure to pay W&W for the Work constitutes an unlawful act or omission under NRS 624.273.

57. W&W is entitled to be paid from the proceeds of the Bond.

58. W&W has been damaged in an amount in excess of \$10,000.00, and has been required to engage the services of an attorney to collect the Outstanding Balance and W&W is entitled to recover its reasonable costs, attorney’s fees and interest therefore.

WHEREFORE, W&W prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the amount of the Outstanding Balance;

2. Enters a judgment against the Defendants, and each of them, jointly and severally, for W&W’s reasonable costs and attorney’s fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

3. Enter judgment against Western for the penal sum of the Bond;

4. For judgment declaring that W&W has valid and enforceable Liens against the Work of Improvement and the Property, with priority over all Defendants, in the amount of the Outstanding Balance together with costs, attorneys’ fees and interest in accordance with NRS Chapter 108;

5. Adjudge a lien upon the Work of Improvement and the Property for the Outstanding Balance, plus reasonable attorneys’ fees, costs and interest thereon, and that this

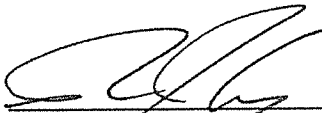
PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

1 Honorable Court enter an Order that the Property and Work of Improvement be sold pursuant to
2 the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of
3 sums due W&W herein; and

4 6. For such other and further relief as this Honorable Court deems just and proper in
5 the premises.
6

7 Dated this 16th day of January, 2017.

8 **PEEL BRIMLEY LLP**

9 

10 CARY B. DOMINA, ESQ.

11 Nevada Bar No. 10567

12 RONALD J. COX, ESQ.

13 Nevada Bar No. 12723

14 3333 E. Serene Avenue, Suite 200

15 Henderson, Nevada 89074-6571

16 Attorneys for W&W-AFCO Steel, LLC
17
18
19
20
21
22
23
24
25
26
27
28



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

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

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

**TONOPAH SOLAR ENERGY, LLC'S
REPLY TO BRAHMA GROUP, INC.'S
OPPOSITION TO TONOPAH SOLAR
ENERGY, LLC'S MOTION TO STRIKE
BRAHMA GROUP, INC.'S FIRST
AMENDED COUNTER-COMPLAINT,
OR, IN THE ALTERNATIVE, MOTION
TO DISMISS COUNTER-COMPLAINT,
OR, IN THE ALTERNATIVE, MOTION
TO STAY THIS ACTION UNTIL THE
CONCLUSION OF THE PROCEEDINGS
IN FEDERAL COURT**


Defendant **TONOPAH SOLAR ENERGY, LLC** (hereinafter "TSE"), by and through
its attorneys of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC,
hereby submits its Reply to Brahma Group, Inc.'s (hereinafter "Brahma") Opposition to TSE's
Motion to Strike/Dismiss/Stay. Brahma's lengthy opposition amounts to nothing more than an
argument that TSE is elevating form over substance. But that is incorrect. As explained below,



1 both form and substance support the relief sought by TSE's motion. Based on Brahma's actions
2 and filings, the Nevada Federal District Court is the appropriate place for this litigation to take
3 place. The Nevada Federal District Court routinely hears lien disputes such as the dispute
4 presented here. TSE's motion should be granted.

5 This Reply is made and based upon the following Memorandum of Points and
6 Authorities, the exhibits attached hereto, the pleadings and papers on file herein, and any
7 argument presented at the time of hearing on this matter.

8 DATED this 30th day of November, 2018.

9 
10 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

11
12
13
14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 TSE's Motion presented this Court with four straight forward reasons why Brahma's
18 Counter-Complaint and Third Party Complaint should be stricken, dismissed or stayed:

19 1.) TSE argued that Brahma's "Counter-Complaint" is not a recognized pleading and
20 therefore, pursuant to NRCP 7(a) and the Nevada Supreme Court's *Smith* decision, it must be
21 stricken. TSE further pointed out that NRS 108.2275 proceedings are special limited
22 proceedings that cannot be used to litigate a party's substantive claims against each other.

23 2.) TSE argued that Brahma's Contract with TSE contains a forum selection clause
24 requiring venue in Las Vegas, not Pahrump. TSE further argued that Brahma is estopped from
25 litigating the validity of this clause and/or has waived its right to challenge the clause because,
26 before filing its Counter-Complaint in this action, Brahma filed a nearly identical complaint in
27 the Eighth Judicial District Court in Las Vegas, thus acknowledging the enforceability of the
28 venue clause.



1 3.) TSE argued that this Court lacks subject matter jurisdiction over the three federal
2 court claims that Brahma dropped from its Eighth Judicial District Court complaint (the
3 complaint that was removed to federal court by TSE) and re-filed in Nye County because, once a
4 complaint is removed to federal court, all state courts lose jurisdiction over the claims, not just
5 the particular state court from which the claims were removed. TSE cited extensive case law
6 supporting this argument which Brahma's Opposition does not even attempt to address. *See*
7 Motion at pp. 15-19. TSE further pointed out that any different rule would result in removal to
8 federal court being a meaningless exercise as a plaintiff could simply re-file the same claims in a
9 state court action and proceed as if removal never occurred (which Brahma is attempting to do
10 here).

11 4.) Finally, TSE argued that, even if this Court disagrees with all of the above
12 arguments, this Court should still stay this action until completion of the parallel federal
13 proceedings under the "First to File" rule. TSE set forth extensive case law holding that where
14 two actions are "substantially similar," a court should stay the later filed action and allow the
15 first filed action to proceed to completion. In determining which action was "first filed" courts
16 look to the date of filing of the competing complaints. TSE showed that Brahma's Eighth
17 Judicial District Court complaint (that was later removed to federal court) was filed on July 17,
18 2018 whereas Brahma's Lien Foreclosure Complaint and Counter-Complaint in this action were
19 filed on September 20 and September 25, 2018, respectively. TSE further showed, and Brahma
20 has admitted in its federal court filings, that this later filed Nye County action is "substantially
21 similar" to the first filed federal action since it involves the same transaction or occurrence and
22 many of the same claims. Thus, TSE argued that a stay of this action is appropriate until the
23 federal court action is completed.

24 Rather than address the above straight forward arguments, Brahma's Opposition
25 essentially ignores them and trots out a hypothetical parade of horrors that will allegedly occur
26 if Brahma is forced to litigate its claims in Nevada Federal District Court. According to
27 Brahma, the prospect of a mechanic's lien claimant having to litigate in Nevada federal court is
28 so dire and unthinkable that this Court should ignore the well-settled legal principles set forth in



1 TSE's Motion and save Brahma from a federal court that is allegedly bent on depriving Brahma
2 of its mechanic's lien rights.

3 Brahma's scare tactics are a transparent attempt to distract this Court from the obvious
4 conclusion that Las Vegas federal court is the correct and appropriate forum for this litigation.
5 Contrary to Brahma's contentions, the federal court is fully capable of addressing all of
6 Brahma's claims, allowing all parties to participate in the litigation there (i.e. Cobra, AHAC,
7 H&E, etc.) under federal law permitting intervention of non-diverse parties and protecting all of
8 Brahma's rights under Nevada law. Indeed, Nevada's federal courts regularly handle mechanic's
9 lien cases both inside and outside the counties in which they sit. As an example, in *SMC*
10 *Construction*, the federal court in Washoe County expunged a mechanic's lien recorded on
11 property in Douglas County. *SMC Constr. Co. v. Rex Moore Grp., Inc.*, No.
12 317CV00470LRHVPC, 2017 WL 4227940, at *4 (D. Nev. Sept. 21, 2017). Judge Boulware, the
13 federal judge this dispute is currently pending before, recently issued a thorough opinion
14 regarding a mechanic's lien case that was before him and has experience handling such disputes.
15 *YWS Architects, LLC v. Alon Las Vegas Resort, LLC*, No. 217CV01417RFBVCF, 2018 WL
16 4615983, at *1 (D. Nev. Sept. 26, 2018). There is no policy that cases arising under Nevada's
17 mechanic's lien law cannot be litigated in federal court.

18 Brahma also argues that TSE is attempting to litigate the case in federal court as a delay
19 tactic. This is false. It is Brahma who is engaging and continues to engage in delay tactics.
20 Within two days of the FRCP 26(f) conference occurring, TSE served requests for production of
21 documents and interrogatories on Brahma in the federal action. **Exhibit 1** (written discovery).
22 Rather than responding, Brahma recently filed a motion to stay all discovery in the federal action
23 and objected to all of TSE's requests. **Exhibit 2** (Motion to Stay Discovery filed on November
24 28, 2018); *see also* **Exhibit 3** (Brahma's objections to TSE's written discovery). Brahma's
25 action belies its alleged desire for a speedy trial while TSE's actions show it is actively moving
26 the federal case forward.

27 Despite the rhetoric in Brahma's Opposition, the timeline of events set forth in TSE's
28 Motion shows that it is Brahma, not TSE, who is engaged in forum shopping. Brahma filed its

first complaint alleging substantive claims against TSE in the Eighth Judicial District Court on July 17, 2018. TSE removed Brahma's Eighth Judicial District Court complaint to federal court on September 10, 2018. Then, on September 12, 2018, this Court held a hearing on TSE's Motion to Expunge and denied the motion. Believing that it had found a favorable judge, Brahma changed strategies and sought to move its federal court claims to this Court within 2 weeks of receiving the favorable ruling on the Motion to Expunge, which has created the present procedural quagmire.

This Court can end this quagmire by ignoring the inapposite arguments in Brahma's Opposition and enforcing the following non-controversial principles set forth in TSE's Motion: (1) the only pleadings recognized in Nevada are those set forth in NRCP 7(a) and a "Counter-Complaint" is not among those; (2) a contractual forum selection clause that is not unreasonable and has been invoked by Brahma should be enforced; (3) state courts lose jurisdiction of claims that are removed to federal court unless and until the federal court issues an order remanding the claims back to state court; and (4) courts should allow the first-filed complaint to proceed and stay similar later-filed complaints in different actions. These well-established rules lead to one conclusion— this action should be dismissed or stayed and the first filed federal action in Las Vegas should be allowed to proceed. For these reasons and those set forth below, TSE requests that the Court grant its Motion.

II. BRAHMA'S COUNTER-COMPLAINT MUST BE STRICKEN BECAUSE THE NEVADA SUPREME COURT HELD IN *SMITH* THAT FILING A PLEADING THAT IS NOT RECOGNIZED BY NRCP 7(a) IS NOT AN EXCUSABLE TECHNICAL ERROR

A. Brahma's "Substance Over Form" Counter-Argument is Defeated by *Smith* and NRCP 7(a).

TSE's Motion argued that under NRCP 7(a), only three types of pleadings are allowed, a complaint, an answer and a reply to a counterclaim. TSE further pointed out that NRCP 7(a) clearly states that "no other pleading shall be allowed" and thus Brahma's "Counter-Complaint" should be stricken. In response, Brahma more or less acknowledges that its Counter-Complaint is problematic but argues that the Court should overlook this "technicality" because (1) the

1 Counter-Complaint gives TSE notice of Brahma's claims and (2) Nevada has a liberal notice
2 pleading standard.

3 Brahma's arguments fail because they would require this Court to disregard the express
4 language of NRCP 7(a) and the Nevada Supreme Court's decision in *Smith*. In *Smith*, the
5 Nevada Supreme Court was confronted with the exact same issue as here—what is the remedy
6 when a party files a pleading that is not permitted by NRCP 7(a). *Smith v. Eighth Judicial Dist.*
7 *Court*, 113 Nev. 1343, 1348, 950 P.2d 280, 283 (1997). The party that filed the rogue document
8 in *Smith* argued that its error should be excused because Nevada is a notice-pleading jurisdiction
9 that liberally construes pleadings (i.e. the same argument Brahma raises in its Opposition). The
10 *Smith* Court rejected this argument and ruled as follows:

11 Nevada is a notice-pleading jurisdiction and *pleadings* should be liberally
12 construed to allow issues that are fairly noticed to the adverse party. There
13 is, however, nothing technical about the defect in Chang's cross-claim; the
14 document simply is not a pleading, and does not itself put the matters
asserted therein at issue.

15 *Id.* (emphasis in original). In sum, *Smith* held that (1) filing a document not permitted by NRCP
16 7(a) is not a "technicality" and (2) that only the pleadings set forth in NRCP 7(a) fall within
17 Nevada's liberal pleading standard. Thus, since Brahma has filed a document that is not
18 permitted under NRCP 7(a), it cannot rely on Nevada's liberal notice-pleading standard to save
19 the document from being stricken.

20 **B. Brahma Has Not Cited any Case that Addresses NRCP 7(a) or *Smith***

21 The other cases cited by Brahma in its Opposition do not help its argument because they
22 do not address NRCP 7(a) or *Smith* and merely support the idea that Nevada is a notice pleading
23 jurisdiction, which no one disputes. Brahma cites *Nevada State Bank v. Jamison Family P'ship*,
24 106 Nev. 792, 800, 801 P.2d 1377, 1383 (1990) and *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d
25 672, 674 (1984) for the basic proposition that Nevada is a notice pleading jurisdiction. Brahma's
26 reliance on *State Dep't of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 738, 265 P.3d
27 666, 671 (2011) is misplaced because this case has nothing to do with the current issue before the
28 court, as it pertains to equitable tolling in the context of a statute of limitation for tax refunds.

None of the cases cited by Brahma address the applicability of NRCP 7(a) and *Smith*.

C. Contrary to Brahma's Strained Interpretation of the Statute, NRS 108.2275 Does Not Permit Filing a Counter-Complaint into a Motion to Expunge Proceeding

Brahma raises a handful of additional weak arguments that merit only brief discussion here. Brahma argues that even if the "Counter-Complaint" violates NRCP 7(a), NRCP 7(a) is trumped by NRS 108.2275 because NRS 108.2275(5) permits Brahma to file a Counter-Complaint in a special proceeding such as this one. This is incorrect. NRS 108.2275(5) only provides that, if a lien foreclosure complaint has already been filed, a motion to expunge can be filed in that action rather than being filed in a separate action. The statute says nothing about parties being permitted to file substantive claims via a "Counter-Complaint" in a limited proceeding that was created by a motion to expunge rather than a complaint. Indeed, the leading Nevada construction law treatise agrees that one cannot file a Counter-Complaint into a special proceeding such as this:

[a] foreclosure suit cannot be filed as a counter-claim to a petition to expunge or reduce under NRS 108.2275, however. Since a petition is not a "complaint," it cannot commence an action under Nevada Rules of Civil Procedure (NRCP) 4. Likewise, a "petition" is not a proper "pleading" under NRCP Rule 7(a), to which a counter-claim may be filed. Rather, it is a "motion" under NRCP Rule 7(b). As such, it is improper legal practice to file a counter-claim to a petition under NRS 108.2275.¹

In sum, contrary to Brahma's contentions, there is no conflict between NRCP 7(a) and NRS 108.2275(5) that would require resorting to NRCP 81(a)'s tiebreaker rule. No statute, rule or case permits what Brahma has done.

D. Brahma's Counsel's Past Violations of NRCP 7(a) and *Smith* Do Not Justify His Current Violation

Realizing the precariousness of its position, Brahma argues that, even though there is no legal authority permitting the filing of a Counter-Complaint in a proceeding such as this and even though such an action clearly violates NRCP 7 and *Smith*, this Court should not be

¹ LEON F. MEAD II, NEVADA CONSTRUCTION LAW 286 (2016 ed.), attached hereto as **Exhibit 4**.

perturbed as Brahma's counsel has done this in the past. *See* Opposition at 14:26-28 – 15:1-5 and Exhibit 20 to Opposition. But a past violation of the rules does not justify a current violation. An attorney cannot cite his own violations of the rules of civil procedure and the mechanic's lien statute as precedent for permitting him to continue violating said rules in the future.

E. NRCP 42 Has No Application Here

Finally, Brahma's argument that the Court should sever the Counter-Complaint from this action and then consolidate it under NRCP 42 is also unavailing. NRCP 42 does not permit such a course of action and, in any case, a pleading that violates NRCP 7(a) is void and cannot be somehow revived by severing and consolidation.

III. THE CONTRACT'S FORUM SELECTION CLAUSE IS ENFORCEABLE AND IS NOT VOIDED BY ANY NEVADA STATUTE

As pointed out in TSE's Motion, Brahma cannot now challenge the enforceability of the Contract's clause requiring all litigation take place in Las Vegas since Brahma is the one who first chose to file suit in the Eighth Judicial District Court in Las Vegas. Even if the clause were "permissive" as Brahma contends, it operates to "waive any objection to . . . venue in that jurisdiction." *Structural Pres. Sys., LLC v. Andrews*, 931 F. Supp. 2d 667, 673 (D. Md. 2013). All of Brahma's other arguments are red herrings designed to distract the court from this simple fact.

For example, Brahma argues that the clause requiring a Las Vegas venue is unenforceable because NRS 108.2421 allegedly requires that all bond and lien claims be brought in the county where the property at issue is located. This is incorrect. Nevada federal district courts and Nevada state courts regularly adjudicate mechanic's lien and bond claim cases that affect property located in counties other than the counties in which those courts sit. *See e.g., SMC Constr. Co. v. Rex Moore Grp., Inc.*, No. 317CV00470LRHVPC, 2017 WL 4227940, at *4 (D. Nev. Sept. 21, 2017). (the federal court in Washoe County expunged a mechanic's lien recorded on property in Douglas County); *Lamb v. Knox*, 77 Nev. 12, 16, 358 P.2d 994, 996 (1961) (Clark County state court ruled on mechanic's lien recorded on property in Nye County).

1 Thus, it is entirely appropriate for sophisticated parties to agree to litigate their construction
2 dispute in a Nevada county other than the county where the construction project took place.

3 Finally, contrary to Brahma's assertions, Brahma's alleged right to a Nye County venue
4 is neither sacrosanct nor unwaivable. *Lamb* at 16, 358 P.2d at 996 (mechanic's lien case holding
5 that "appellants waived any right under said statute to have the case tried in Nye County where
6 the land involved in the action was situated."). The Court should enforce the forum selection
7 clause and require Brahma to litigate in the forum it contractually agreed to and originally
8 chose—Las Vegas.

9 **IV. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THE**
10 **CLAIMS THAT TSE REMOVED TO FEDERAL COURT**

11 In its Motion, TSE cited extensive case law demonstrating that once an action is removed
12 to federal court, the state courts lose jurisdiction of all removed claims unless/until the federal
13 court issues an order remanding the case back to state court. TSE further demonstrated that this
14 rule divests all courts in the state of jurisdiction over the removed claims, not just the particular
15 state court from which the action was originally removed. *See* Motion at pp. 15-19. Among
16 others, the *Hollandsworth*, *General Handkerchief Corp.* and the *Leffall* cases² have nearly
17 identical facts to this case and resulted in the state court dismissing the later filed state court
18 action that sought to assert claims that were duplicative of those that were first removed to
19 federal court.

20 Brahma's Opposition does not attempt to respond to any of TSE's above arguments.
21 Instead, as stated earlier, Brahma focuses on trying to trick this Court into believing that
22 Brahma's fundamental rights will be prejudiced if this Court does not find some creative way to
23 keep this litigation in Nye County. Brahma points to its alleged right to pursue its contract
24 claims against TSE in conjunction with its claim against the Brahma Surety Bond and its alleged
25 right to a quick trial. But, these are not fundamental rights; they are procedural preferences.

26
27 ² *Roberts v. Hollandsworth*, 101 Idaho 522, 525, 616 P.2d 1058, 1061 (1980); *Fire Ass'n of Philadelphia*
28 *v. Gen. Handkerchief Corp.*, 304 N.Y. 382, 385, 107 N.E.2d 499, 500 (1952); *Leffall v. Johnson*, No. 09-
01-177 CV, 2002 WL 125824, at *2 (Tex. App. Jan. 31, 2002).



Moreover, the federal court is fully capable of protecting all of Brahma's fundamental rights. There is no prohibition on federal courts resolving Nevada mechanic's lien cases or entertaining requests for a speedy trial. It is common for federal courts in Nevada to adjudicate mechanic's lien cases outside of the county in which they sit. Brahma's procedural preferences do not justify forum shopping or subverting the removal jurisdiction of the Las Vegas federal court.

To reiterate, this Court lacks subject matter jurisdiction over the three contract claims that TSE removed to federal court and that Brahma then re-filed in this action via the "Counter-Complaint." The Court should construe Brahma's failure to address this issue as an admission that it lacks a good faith argument to the contrary, which it does.

V. BRAHMA'S REMOVED EIGHTH JUDICIAL DISTRICT COURT COMPLAINT WAS FILED BEFORE BRAHMA'S NYE COUNTY COMPLAINT AND THUS THIS ACTION SHOULD BE STAYED AND THE "FIRST FILED" FEDERAL ACTION ALLOWED TO PROCEED

As set forth in TSE's Motion, a stay is appropriate under the "First to File" rule where there is a substantially similar prior action pending before a different court. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982). In determining which action came "first" courts universally look to the date the respective complaints were filed. *Id.* at 96, n.3; *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). Since Brahma's Eighth Judicial District Court complaint was filed on July 17, 2018 and its Complaint and "Counter-Complaint" in the Nye County action were filed on September 20 and September 25, 2018, respectively, Brahma loses the first to file argument.

A. TSE is Not Seeking a Stay of Brahma's Motion for Attorneys' Fees

Brahma posits four arguments for why, even though its federal court complaint was first filed, this Court should still not stay this action. First, Brahma argues that the real motive behind TSE's request for a stay is that TSE is improperly trying to avoid an award of attorneys' fees against it for the Motion to Expunge that this Court denied. This is incorrect. As shown by TSE's Opposition to Brahma's Motion for Attorneys' Fees that was filed on November 20, 2018, TSE acknowledges that this Court should award attorneys' fees to Brahma but takes issue with the grossly unreasonable *amount* of fees Brahma is requesting. Indeed, TSE proposes in its

Opposition that the Court award Brahma approximately \$23,000 in fees. A hearing is set for December 11, 2018 on Brahma's Motion for Attorneys' Fees and TSE is not seeking to stay the Court's adjudication of that issue as it is not substantially related to the issues raised in the parallel federal action.

B. The Nevada Federal District Court Can Adjudicate All Aspects of the Parties' Dispute and the Litigation There is Already Further Along Than This Litigation

Second, Brahma argues that this Court is the most convenient forum because only this Court can hear all claims related to the Project in a single proceeding. Brahma is wrong and misunderstands the federal procedural rules and statutes. The federal court could resolve this entire dispute in an efficient manner and is already further along in doing so as that court has already issued a scheduling order and TSE has issued discovery requests to Brahma. *See Exhibit 5* (federal court scheduling order); *Exhibit 1* (federal court written discovery). Brahma and TSE could litigate all of their claims against each other in federal court. Brahma's bond claim against Cobra and AHAC (the surety) would be stayed by this Court and Cobra and the surety would interplead as non-diverse defendants in the federal action, as interested parties. *See Mattel, Inc. v. Bryant*, 441 F. Supp. 2d 1081, 1095 (C.D. Cal. 2005) *aff'd*, 446 F.3d 1011 (9th Cir. 2006) (providing that intervention by a non-diverse non-indispensable party in an action removed on the basis of diversity does not destroy diversity and that a party can intervene as a defendant even if there is no claim against it). Thus, the findings of fact and conclusions of law in the federal action would have a claim preclusive effect on Brahma's stayed bond claim against Cobra and the surety in this Court. *See Littlejohn v. United States*, 321 F.3d 915, 919 (9th Cir. 2003) (discussing claim preclusion).³ After the federal action is completed, there will be no need for Brahma to re-litigate any issues in Nye County.

³ Brahma also alludes to a pending lawsuit from H&E, a subcontractor to Brahma. The implications of this lawsuit are difficult to assess as it has not been filed yet. But, if H&E were to file claims against Brahma, as suggested by Brahma, it would do so in a separate action. According to Brahma, those claims are derivative of Brahma's claims against TSE. Thus, the H&E action will be the same whether or not this case is in state court or federal court; H&E's claims against Brahma will either be litigated simultaneously in a separate action, or, as H&E's claims are derivative, its case would most likely be stayed pending resolution of the federal action, which would have preclusive effect once decided.



1 **C. Nevada's Federal Courts Regularly Handle Mechanic's Lien and Bond**
2 **Claim Cases**

3 Third, Brahma argues that mechanic's lien actions are not suitable to being adjudicated in
4 federal court due to Nevada's special procedural rules regarding where a claim must be brought
5 and when that claim should be brought to trial. Again, the case law refutes Brahma's position as
6 Nevada federal courts regularly adjudicate mechanic's lien and bond claims that are located
7 outside the counties in which they sit. *See e.g., SMC Constr. Co. v. Rex Moore Grp., Inc.*, No.
8 317CV00470LRHVPC, 2017 WL 4227940, at *4 (D. Nev. Sept. 21, 2017). (the federal court in
9 Washoe County expunged a mechanic's lien recorded on property in Douglas County); *YWS*
10 *Architects, LLC v. Alon Las Vegas Resort, LLC*, No. 217CV01417RFBVCF, 2018 WL 4615983,
11 at *1 (D. Nev. Sept. 26, 2018) (Las Vegas federal district court adjudicating lien claim).
12 Clearly, Nevada's federal courts are more than capable of protecting lien and bond claimants'
13 statutory rights and have been doing so for a long time. Further, Brahma's misrepresents its
14 desire for a speedy trial of this matter as it has just recently filed a motion to stay all discovery in
15 the federal action and is refusing to respond to the written discovery TSE served on it. **Exhibits**
16 **2** (motion to stay) and **3** (Brahma's objections to TSE's written discovery).

17 **D. No Authority Exists that Prevents this Court From Issuing a Stay**

18 Fourth, Brahma argues that the *Maui One*⁴ case stands for the proposition that courts are
19 not permitted to stay a mechanic's lien or bond claim case. *Lehrer McGovern Bovis, Inc. v.*
20 *Maui One Excavating, Inc.*, 124 Nev. 1487, 238 P.3d 832 (2008). Brahma again misrepresents
21 the case law. *Maui One* says nothing about when a stay can or cannot issue in a mechanic's lien
22 case and instead involved the issue of whether NRCP 41's five year rule had been tolled by a
23 court ordered stay. *Id.*

24 In conclusion, there is no reason for this Court to deviate from the "First to File" rule.
25 Brahma's complaint in the Eighth Judicial District Court was filed before its Complaint and
26

27
28 ⁴ The *Maui One* case is an unpublished decision that Brahma has cited in violation of Nevada Rule of
Appellate Procedure 36. Regardless, the case does not support Brahma's argument.



1 Counter-Complaint in the Nye County action. Further, the Nevada Federal District Court is fully
2 able to adjudicate all issues among all parties in this matter, will not prejudice Brahma's rights in
3 any way and the pending litigation there is already further along than this litigation.

4 **VI. THE FEDERAL COURT IS LIKELY TO DENY BRAHMA'S MOTION TO STAY**
5 **THAT ACTION AND GRANT TSE'S MOTION TO ENJOIN BRAHMA FROM**
6 **PROCEEDING IN NYE COUNTY**

7 To further distract this Court from the merits of TSE's Motion, Brahma attached its
8 Motion to Stay the federal court action to its Opposition and argued that the federal court is
9 likely to grant that motion. Brahma also argued that TSE's Motion requesting that the federal
10 court issue an injunction enjoining Brahma from litigating this action any further is likely to be
11 denied.⁵ Brahma is wrong. The *Colorado River* abstention doctrine on which Brahma relies for
12 its Motion to Stay is disfavored. Further, federal courts regularly issue injunctions when parties
13 like Brahma seek to subvert their jurisdiction by re-filing removed claims in a different state
14 court action. In an abundance of caution and to defeat Brahma's attempt to give this Court only
15 one side of the story, TSE has attached hereto (1) TSE's Opposition to Brahma's Motion to Stay
16 the federal action, (2) Brahma's Reply to same, (3) TSE's Motion for Injunction in the federal
17 action, (4) Brahma's Opposition to same, and (5) TSE's Reply to the Motion for Injunction. *See*
18 **Exhibits 6-10.**⁶

19 **VII. BRAHMA'S LIEN FORECLOSURE CLAIM MUST BE DISMISSED BECAUSE**
20 **IT WAS FILED AS PART OF AN IMPERMISSIBLE AND VOID PLEADING**

21 Brahma acknowledges that its Lien Foreclosure claim must be dismissed now that a
22 surety bond has been posted by Cobra. However, Brahma disagrees as to the appropriate
23 procedure for accomplishing this. Brahma argues it should be permitted to amend the "Counter-
24 Complaint" to drop this claim. As set forth in Section II, above, this is not possible as the
25 Counter-Complaint was filed in violation of NRCP 7(a) and *Smith* and must be stricken. One

26 ⁵ Curiously, Brahma only attached its own federal court papers to its Opposition and did not include any
27 of TSE's papers.

28 ⁶ TSE has omitted attaching the voluminous exhibits to these motions to avoid burdening this Court but
can provide them upon request.




1 cannot amend a void pleading. Thus, Brahma's Lien Foreclosure claim should be dismissed
2 rather than amended out of the Counter-Complaint.

3 **VIII. CONCLUSION**

4 For all the reasons cited above and set forth in TSE's Motion, TSE requests that the Court
5 grant the Motion so that all aspects of the parties' dispute can be heard in the first filed federal
6 action. Federal courts regularly hear lien and bond claims such as these and are well equipped to
7 protect Brahma and TSE's procedural and substantive rights under Nevada's lien laws.

8 DATED this 30th day of November, 2018.

9
10 
11 D. Lee Roberts, Jr., Esq.
12 Colby L. Balkenbush, Esq.
13 Ryan T. Gormley, Esq.
14 WEINBERG, WHEELER, HUDGINS,
15 GUNN & DIAL, LLC
16 6385 S. Rainbow Blvd., Suite 400
17 Las Vegas, NV 89118
18 *Attorneys for Tonopah Solar Energy, LLC*
19
20
21
22
23
24
25
26
27
28



CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2018, a true and correct copy of the foregoing TONOPAH SOLAR ENERGY, LLC'S REPLY TO BRAHMA GROUP, INC.'S OPPOSITION TO TONOPAH SOLAR ENERGY, LLC'S MOTION TO STRIKE BRAHMA GROUP, INC.'S FIRST AMENDED COUNTER-COMPLAINT, OR, IN THE ALTERNATIVE, MOTION TO DISMISS COUNTER-COMPLAINT, OR, IN THE ALTERNATIVE, MOTION TO STAY THIS ACTION UNTIL THE CONCLUSION OF THE PROCEEDINGS IN FEDERAL COURT was served by mailing a copy of the foregoing document in the United States Mail, postage fully prepaid, to the following:

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

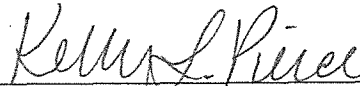

An employee of WEINBERG, WHEELER, HUDGINS
GUNN & DIAL, LLC

EXHIBIT 1

EXHIBIT 1

RA000380



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 Defendant/Counterclaimant
9 *Tonopah Solar Energy, LLC*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

14 BRAHMA GROUP, INC., a Nevada corporation,
15 Plaintiff,

16 vs.

17 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company; DOES I through X; and
18 ROE CORPORATIONS I through X,
19 Defendant.

20 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company; DOES I through X; and
21 ROE CORPORATIONS I through X,

22 Counterclaimant,

23 vs.

24 BRAHMA GROUP, INC., a Nevada corporation,
25 Counterdefendant.
26

Case No. 2:18-cv-01747-RFB-GWF

**TONOPAH SOLAR ENERGY, LLC'S
FIRST SET OF INTERROGATORIES TO
BRAHMA GROUP, INC.**



Defendant/Counterclaimant Tonopah Solar Energy, LLC ("TSE") requests that Plaintiff/Counterdefendant Brahma Group, Inc. ("Brahma," "you," or "your") answer under oath the interrogatories set forth below within 30 days of the date of service of the same upon you in accordance with Federal Rule of Civil Procedure 33. In answering these interrogatories, adhere to the following definitions and instructions.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used herein is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

1. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), which includes, but is not limited to, all electronic, written, or printed matter, information, communication, or data of any kind, including the originals and all copies thereof, such as, but not limited to, correspondence, letters, emails, text messages, electronic messages, contracts, reports, memoranda, notes, minutes, receipts, invoices, calendar entries, digital images, digital recordings, photographs, microfiche, videotapes, spreadsheets, drawings, all electronically stored information, unstructured data, and structured data. A draft of a nonidentical copy is a separate document within the meaning of this term.

2. "Communication" refers to the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

3. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

4. "Brahma," "you," and "your" refer to Plaintiff/Counterdefendant Brahma Group, Inc. and its past or present officers, directors, employees, corporate parents, subsidiaries, successors, predecessors, affiliates, agents, subcontractors and any other persons or entities who obtained or maintained information on its or their behalf.

5. "Contract" refers to the Services Agreement made as of February 1, 2017, between TSE and you, as amended by Amendment No. 1 to Services Agreement made as of November 2017, attached hereto as **Exhibit A**.



6. "Project" has the same meaning attributed to it by paragraph 6 in your Complaint filed in the Eighth Judicial District Court, dated July 17, 2018, wherein it refers to the Crescent Dunes Concentrated Solar Power Plant in or near Tonopah, Nevada.

INSTRUCTIONS

1. Construe each interrogatory in accordance with the following: (i) construe each interrogatory independently; do not construe any interrogatory so as to limit the scope of any other interrogatory; (ii) references to the singular include the plural and vice versa; (iii) references to one gender include the other gender; (iv) references to the past include the present and vice versa; (v) disjunctive terms include the conjunctive and vice versa; (vi) the words "and" and "or" are conjunctive and disjunctive as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope; (vii) the word "all" refers to all and each, and (viii) the word "each" refers to all and each.

2. Answer each interrogatory separately and fully. If you cannot answer an interrogatory fully, answer it to the extent possible, explain why you cannot answer the remainder, and state the nature of the information you cannot furnish. If you object to an interrogatory, you must object with specificity.

3. If, in responding to these interrogatories, you assert a privilege to any particular interrogatory, provide a privilege log as required by Fed. R. Civ. P. 26(b)(5), which identifies the nature of the claimed privilege and, at a minimum, includes enough information so that the propounding party and the Court can make an informed decision as to whether the matter is indeed privileged.

4. Each interrogatory is continuing in nature. If, after responding to these interrogatories, you obtain or become aware of further responsive information, promptly provide that information in accordance with Fed. R. Civ. P. 26(e) and the definitions and instructions herein.

5. To the extent that you produce documents in response to an interrogatory, produce all documents in accordance with the ESI Production Format, attached as Exhibit B to TSE's First Set of Requests for Production to you.



INTERROGATORIES

1. Identify and describe all of the persons and entities that you contracted with pertaining to or concerning the Project, including, but not limited to, subcontractors, suppliers, and consultants. Your description should include the person's or entity's complete name, address, telephone number, and a brief description of the type of services it, he, or she provided.

2. Identify and describe all of your current or past employees that performed work pertaining to the Project. Your description should include the employee's first name, last name, current employment status with you, current job title, job title(s) during the Project, present or last known address, present or last known email address, and present or last known telephone number.

3. Identify and describe all subcontractors you contracted with, pertaining to, or concerning the Project that are owned, in whole or in part, by you, any of your affiliates, or any of your or your affiliate's directors, officers, or employees, or any relative of any such director, officer, or employee. Your description should include the person's or entity's complete name, address, telephone number, a brief description of the type of services it, he, or she provided, the relationship of such person or entity to you and/or the ownership of such entity, and the amounts paid or to be paid to such person or entity with respect to the services performed.

///

///

///

///

///

///

///

///

///

///



4. If you contend that TSE failed to pay you and/or underpaid you for work you performed on the Project, identify and describe each such failure. Your description should include the specific nature of each component of the work, the date the work was performed, the document you submitted to TSE requesting payment for the work, the amount of money you were not paid and/or underpaid, and the bates-numbers of the material documents that support your contention that TSE failed to pay you and/or underpaid you.

DATED this 29th day of October, 2018.

/s/ Colby Balkenbush
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 Defendant
Tonopah Solar Energy, LLC*

Exhibit A: Services Agreement, as amended



RECEIPT OF COPY

RECEIPT OF COPY of TONOPAH SOLAR ENERGY, LLC'S FIRST SET OF
INTERROGATORIES TO BRAHMA GROUP, INC. is hereby acknowledged this 29th day of
October, 2018.

Richard L. Peel, Esq.
Eric B. Zimbelman, Esq.
Ronald J. Cox, Esq.
Peel Brimley, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
rpeel@peelbrimley.com
ezimbelman@peelbrimley.com
rcox@peelbrimley.com
Attorneys for Plaintiff Brahma Group, Inc.



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 Defendant/Counterclaimant
9 *Tonopah Solar Energy, LLC*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

14 BRAHMA GROUP, INC., a Nevada corporation,
15 Plaintiff,

16 vs.

17 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company; DOES I through X; and
18 ROE CORPORATIONS I through X,
19 Defendant.

20 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company; DOES I through X; and
21 ROE CORPORATIONS I through X,
22 Counterclaimant,

23 vs.
24

25 BRAHMA GROUP, INC., a Nevada corporation,
26 Counterdefendant.

Case No. 2:18-cv-01747-RFB-GWF

**TONOPAH SOLAR ENERGY, LLC'S
FIRST SET OF REQUESTS FOR
PRODUCTION TO BRAHMA GROUP,
INC.**



1 Defendant/Counterclaimant Tonopah Solar Energy, LLC ("TSE") requests that
2 Plaintiff/Counterdefendant Brahma Group, Inc. ("Brahma," "you," or "your") produce the
3 documents and things requested below at the offices of Weinberg, Wheeler, Hudgins, Gunn, &
4 Dial, 6385 South Rainbow Boulevard, Suite 400, Las Vegas, Nevada 89118 within 30 days of
5 the date of service of this request in accordance with Federal Rule of Civil Procedure 34. In
6 responding to these requests, adhere to the following definitions and instructions.

7 DEFINITIONS

8 Notwithstanding any definition below, each word, term, or phrase used herein is intended
9 to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

10 1. "Document" is defined to be synonymous in meaning and equal in scope to the
11 usage of this term in Federal Rule of Civil Procedure 34(a), which includes, but is not limited to,
12 all electronic, written, or printed matter, information, communication, or data of any kind,
13 including the originals and all copies thereof, such as, but not limited to, correspondence, letters,
14 emails, text messages, electronic messages, contracts, reports, memoranda, notes, minutes,
15 receipts, invoices, calendar entries, digital images, digital recordings, photographs, microfiche,
16 videotapes, spreadsheets, drawings, all electronically stored information, unstructured data, and
17 structured data. A draft of a nonidentical copy is a separate document within the meaning of this
18 term.

19 2. "Communication" refers to the transmittal of information (in the form of facts,
20 ideas, inquiries, or otherwise).

21 3. "Concerning" means relating to, referring to, describing, evidencing, or
22 constituting.

23 4. "Brahma," "you," and "your" refer to Plaintiff/Counterdefendant Brahma Group,
24 Inc. and its past or present officers, directors, employees, corporate parents, subsidiaries,
25 successors, predecessors, affiliates, agents, subcontractors and any other persons or entities who
26 obtained or maintained information on its or their behalf.

27 5. "JT Thorpe" refers to J.T. Thorpe & Son, Inc. and its past or present officers,
28 directors, employees, corporate parents, subsidiaries, successors, predecessors, affiliates, agents,



1 and any other persons or entities who obtained or maintained information on its or their behalf.

2 6. "Liberty Industrial" refers to Liberty Industrial Group, Inc. and its past or present
3 officers, directors, employees, corporate parents, subsidiaries, successors, predecessors,
4 affiliates, agents, and any other persons or entities who obtained or maintained information on its
5 or their behalf.

6 7. "Cobra" refers to Cobra Thermosolar Plants, Inc. and its past or present officers,
7 director, employees, corporate parents, subsidiaries, successors, predecessors, affiliates, agents,
8 and any other persons or entities who obtained or maintained information on its or their behalf.

9 8. "Contract" refers to the Services Agreement made as of February 1, 2017,
10 between TSE and you, as amended by Amendment No. 1 to Services Agreement made as of
11 November 2017, attached hereto as **Exhibit A**.

12 9. "Invoice" refers to the invoices that you had to submit to TSE for payment under
13 Section 4(c) of the Contract. This term includes your subcontractor invoices.

14 10. "Payment Deliverables" refers to the documents that you must provide with an
15 Invoice pursuant to Exhibit D to the Contract.

16 11. "Request for Reimbursement" refers to the written requests for reimbursement
17 governed by Section 4(d) of the Contract.

18 12. "Project" has the same meaning attributed to it by paragraph 6 in your Complaint
19 filed in the Eighth Judicial District Court, dated July 17, 2018, wherein it refers to the Crescent
20 Dunes Concentrated Solar Power Plant in or near Tonopah, Nevada.

21 **INSTRUCTIONS**

22 1. Produce all documents known or available to you after making a diligent search
23 of your records that are within your possession, custody, or control, or in the possession, custody,
24 or control of your counsel, agents, or representatives, or which can be obtained through
25 reasonably diligent efforts.

26 2. Construe each request in accordance with the following: (i) construe each request
27 for production independently; do not construe any request so as to limit the scope of any other
28 request; (ii) references to the singular include the plural and vice versa; (iii) references to one



gender include the other gender; (iv) references to the past include the present and vice versa; (v) disjunctive terms include the conjunctive and vice versa; (vi) the words "and" and "or" are conjunctive and disjunctive as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope; (vii) the word "all" refers to all and each, and (viii) the word "each" refers to all and each.

3. If any document or thing requested was at one time in existence, but is no longer in existence, please so state, specifying for each document and thing, (a) the type of document or thing, (b) the types of information contained therein, (c) the date upon which the document or thing was destroyed or ceased to exist, (d) the circumstances under which it was destroyed or ceased to exist, (e) the identity of all persons having knowledge of the circumstances under which it was destroyed or ceased to exist, and (f) the identity of all persons having knowledge or persons who had knowledge of the contents thereof.

4. If you have previously produced any documents required to be produced by any of these discovery requests, identify the document(s) by bates-number in responding to the request.

5. If you object to a request, state your objection with specificity and state whether any responsive materials are being withheld on the basis of that objection.

6. If, in responding to these requests, you claim any ambiguity in interpreting either a request or a definition or instruction applicable thereto, you cannot use such a claim as a basis for failing to respond; instead, you must set forth as part of your response to the request the language deemed to be ambiguous and the interpretation chosen to be used in responding to the request.

7. If, in responding to these requests, you assert a privilege to any particular request, provide a privilege log as required by Fed. R. Civ. P. 26(b)(5), which identifies the nature of the claimed privilege and, at a minimum, includes enough information so that the propounding party and the Court can make an informed decision whether the matter is indeed privileged.

8. Each request is continuing in nature. If, after responding to these requests, you obtain or become aware of further documents responsive to these requests, promptly produce



1 those documents and things in accordance with Fed. R. Civ. P. 26(e) and the definitions and
2 instructions herein.

3 9. Produce all documents in accordance with the ESI Production Format, attached
4 hereto as **Exhibit B**.

5 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

6 For the time period of January 1, 2017 to the present, produce the following
7 documents:

8 1. Produce all construction project documents pertaining to the Project, including,
9 but not limited to, work orders, contracts, change orders, requests for information, submittals,
10 drawings, specifications, plans, daily logs, daily reports, daily details, meeting minutes, journal
11 entries, schedules, monthly narratives, payment applications, invoices, time cards, and receipts.

12 2. Produce all Invoices you submitted to TSE under the Contract.

13 3. For each Invoice you submitted to TSE under the Contract, produce all Payment
14 Deliverables included with those Invoices.

15 4. For each Invoice you submitted to TSE under the Contract, produce all
16 documents that support or relate to the amount of money requested therein.

17 5. For each Invoice you submitted to TSE under the Contract, produce all
18 documents that demonstrate that the work set forth in that Invoice was actually performed
19 and/or completed.

20 6. Produce all Requests for Reimbursement you submitted to TSE under the
21 Contract.

22 7. For each Request for Reimbursement you submitted to TSE under the Contract,
23 produce all documents that support or relate to the amount of money requested therein.

24 8. Produce all documents reflecting the corporate relationship between you and
25 Liberty Industrial and/or the ownership of Liberty Industrial.

26 9. Produce all documents reflecting communications between you and Liberty
27 Industrial concerning the Project.

28 10. Produce all documents reflecting the corporate relationship between you and JT



- 1 Thorpe and/or the ownership of JT Thorpe.
- 2 11. Produce all documents reflecting communications between you and JT Thorpe
- 3 concerning the Project.
- 4 12. Produce all documents showing related party transaction disclosures you made
- 5 to TSE that indicate that a particular subcontractor or vendor was a related entity to Brahma.
- 6 13. Produce all documents concerning the services that you provided under the
- 7 Contract.
- 8 14. Produce all documents concerning the services that you provided that benefitted
- 9 TSE and fell outside the scope of the Contract.
- 10 15. Produce all documents reflecting communications between you and any persons
- 11 and/or entities concerning the Project.
- 12 16. Produce all bids you received that pertain to your work on the Project.
- 13 17. Produce all requests for proposals and/or requests for bids that you sent out that
- 14 pertain to your work on the Project.
- 15 18. For all equipment related charges that you have sought/are seeking payment on,
- 16 produce all documents that support or relate to the amount of money requested therein.
- 17 Documents that would be responsive to this request include, but are not limited to, rate cards
- 18 showing the hourly/daily rate for each piece of equipment, and documentation showing what
- 19 equipment was used, for how long and for what purpose.
- 20 19. Produce all documents showing that TSE agreed to pay your employees and
- 21 subcontractors' employees for lunch breaks and breaks while on site at the Project.
- 22 20. Produce all payroll records submitted to any unions related to the wages earned
- 23 by your employees and your subcontractors' employees for work on the Project.
- 24 21. Produce all documents showing that TSE authorized you to bill overtime hours
- 25 to the standby work order.
- 26 22. Produce all documents showing that TSE authorized you to bill hours to closed
- 27 work orders.
- 28 23. Produce all documents showing that TSE authorized you to bill hours to work



1 order 10131.

2 24. Produce all documents showing that TSE authorized you to bill hours for
3 employees who did not provide timesheets.

4 25. Produce all documents concerning work you performed as a subcontractor to
5 Cobra on or after January 1, 2017.

6 26. If certain equipment was not demobilized after you stopped performing work as
7 a subcontractor to Cobra and you used that equipment when performing work on the Project,
8 produce all documents pertaining to your use of the non-demobilized equipment.

9 27. Produce any organizational chart(s) or other similarly purposed documents,
10 which reflect your corporate structure.

11 28. Produce any employee roster(s) or other similarly purposed documents, which
12 identifies employees that provided services under the Contract.

13 29. Produce all documents reflecting your policy or practice with respect to the
14 retention or destruction of documents that may be responsive to any of the document requests
15 set forth herein.

16 30. Produce all documents identified, referenced, relied upon, or concerning your
17 answers to any interrogatories served upon you in this case.

18 DATED this 29th day of October, 2018.

19
20 /s/ Colby Balkenbush
21 D. Lee Roberts, Jr., Esq.
22 Colby L. Balkenbush, Esq.
23 Ryan T. Gormley, Esq.
24 WEINBERG, WHEELER, HUDGINS,
25 GUNN & DIAL, LLC
26 6385 S. Rainbow Blvd., Suite 400
27 Las Vegas, NV 89118

28 *Attorneys for Defendant
Tonopah Solar Energy, LLC*

26 **Exhibit A: Services Agreement, as amended**
27 **Exhibit B: ESI Production Format**



RECEIPT OF COPY

RECEIPT OF COPY of TONOPAH SOLAR ENERGY, LLC'S FIRST SET OF
REQUESTS FOR PRODUCTION TO BRAHMA GROUP, INC. is hereby acknowledged this
29th day of October, 2018.

Richard L. Peel, Esq.
Eric B. Zimbelman, Esq.
Ronald J. Cox, Esq.
Peel Brimley, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
rpeel@peelbrimley.com
ezimbelman@peelbrimley.com
rcox@peelbrimley.com
Attorneys for Plaintiff Brahma Group, Inc.