

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78092

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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 6

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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	5
	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 B

RA000833

es--affidavits are sufficient to
er a District Court's refusal to
: parties was a denial of due

ccess to determine if an order
ourt is free to hold and weigh
excessive. In sum, the motion
tended time, and the court has
and made without reasonable
the lien is not frivolous and is
from that matter.⁷⁷³ Once that
orney's fees and costs to the
de based on the lien being
allenging party if the lien is
es to the lien claimant, if the
s excessive.⁷⁷⁶

ase. In its holding, the Court
rest in property, but are a
ificant property interest that
is not necessarily in keeping
viewed,⁷⁷⁸ and is difficult to
claims as any other property

any party with an interest in
t to show cause why the lien
be made upon affidavits and

evidence to support the petitioner's claim. If the court agrees that a hearing should be held, it must give 15 to 30 days notice of the hearing.⁷⁸⁰ Many times the courts will not be aware of this strict mandate and will issue the order to show cause on a shorter time basis, often because the moving party has provided a request for a shortened time period on some pending transaction or date with which the lien is interfering. While the trial courts are often accommodating to that request, there is no basis under the mechanics lien statute for the expedited hearing. Moreover, since the motion is effectively a challenge to the validity of the lien with limited due process, the Courts should be slow to shorten the time for a motion to less than the statutory minimum of 15 days. It should be noted that while the hearing must commence within 15 to 30 days, it need not be completed in that time, so long as the owner's rights to a speeding resolution of the validity or excessiveness of the lien is made expeditiously.⁷⁸¹

A ruling on a motion under NRS 108.2275 is a final order and is immediately appealable, however, a ruling that the lien claim is not frivolous or excessive does not allow a stay to be entered during the time of the appeal's pendency.⁷⁸² As such, the fact that a ruling is being appealed should not be taken by the lien claimant as tolling any statute of limitations on the claim of lien itself. The lien claimant still must file suit to foreclose the mechanics lien timely under NRS 108.233 and NRS 108.239.⁷⁸³ 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) Rule 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. The proper procedure is to file a complaint for foreclosure and to move the petitioning court to consolidate the two matters.

If the lien is ordered expunged or reduced under NRS 108.2275, the party removing the lien needs merely to record a copy of the certified order reducing or expunging the lien claim to release the property from the lien or reducing the same for all purposes.⁷⁸⁴

⁷⁸⁰ NRS 108.2275(3).

⁷⁸¹ *J.D. Const., Inc. v. IBEX Intern. Group, LLC*, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

⁷⁸² *Id.*, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

⁷⁸³ NRS 108.2275(8).

⁷⁸⁴ See Section 8:22, *Foreclosing the claim of lien*.

⁷⁸⁵ NRS 108.2275(9).

EXHIBIT C

RA000835

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FILED
FIFTH JUDICIAL DISTRICT COURT

DEC 14 2016

NYE COUNTY DEPUTY CLERK
DEPUTY

Marianne Yoffee

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

15 BRAHMA GROUP, INC., a Nevada corporation,
16
17 Lien/Bond Claimant,

18 vs.

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

25 Defendants,

CASE NO. : CV39799
DEPT. NO. : 1

BRAHMA GROUP, INC.'S
MECHANIC'S LIEN
FORECLOSURE COMPLAINT
AGAINST SURETY BOND

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

24 Lien/Bond Claimant, BRAHMA GROUP, INC. ("Brahma"), by and through its
25 attorneys of record, the law firm of PEEL BRIMLEY LLP, as and for its Complaint in this
26 action (the "Action") against the above-named Defendants, complains, avers and alleges as
27 follows:
28

///

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THE PARTIES

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

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

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

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

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

4. TONOPAH SOLAR ENERGY, LLC ("TSE")³ is and was at all times relevant to this Action:

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

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

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

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

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

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

3 d. The owner of those certain improvements and/or leasehold estate (the
4 "Project");

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

6 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
7 Parcels.⁴

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

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

14 a. Is and was at all times relevant to this Action a bonding company duly
15 licensed and qualified to do business as a surety in Nevada;

16 b. Issued Bond No. 854481 ("Surety Bond") pursuant to NRS 108.2415 as
17 discussed more fully below; and

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

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

21 a. Is and was at all times relevant to this Action a Nevada corporation; and

22 b. Is the principal on the Surety Bond and the Rider.

23 8. Brahma does not know the true names of the individuals, corporations, partnerships
24 and entities identified and named as Defendants by the fictitious names of (collectively, the "Doe
25 Defendants"), (i) BOE BONDING COMPANIES I through X, (ii) DOES I through X, and (iii)
26 ROE CORPORATIONS I through X. Brahma alleges that such Doe Defendants may be liable to
27 Brahma for damages arising from the construction of the Work of Improvement, as more fully

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

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1 discussed under the claims for relief set forth below. Brahma will request leave of this Honorable
2 Court to amend this Complaint to show the true names and capacities of each such fictitious Doe
3 Defendants when Brahma discovers such information.

4 9. Cobra, AHAC and the Doe Defendants are collectively referred to in the Complaint
5 as the "Defendants."

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

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

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

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

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

17 13. The Work was provided for the whole of the Work of Improvement, at the special
18 instance and/or request of TSE.

19 14. On or about April 09, 2018, Brahma timely recorded a Notice of Lien in the Official
20 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of
21 \$6,982,186.24.

22 15. On or about April 16, 2018 and as allowed by NRS 108.229(1), Brahma recorded
23 a Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as
24 Document 891073 and re-recorded the same document on April 18, 2018 as Document No.
25 891507, in the amount of \$7,178,376.94 (the "First Amended Lien").

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

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

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

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

- 9 a. in writing;
10 b. recorded against the Work of Improvement; and
11 c. given or served on the authorized agents of the BLM and TSE, or the BLM
12 and/or TSE knew of the existence of the Lien.

13 20. The Lien is in the amount Twelve Million Eight Hundred and Fifty-Nine Thousand,
14 Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents. (\$12,859,577.74), which is the
15 amount due and owing Brahma as of the date of this Complaint (the "Lienable Amount").

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

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

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

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

25 25. Brahma makes claim against Cobra and AHAC, and Cobra and AHAC are
26 obligated to Brahma for the Lienable Amount plus interest, costs and attorney's fees up to the
27 penal sum of the Surety Bond and Rider as provided in Chapter 108 of the Nevada Revised
28 Statutes.

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1 WHEREFORE, Brahma prays that this Honorable Court:

2 1. Enters judgment against the Defendants, and each of them, jointly and severally in
3 the amount of the Liable Amount;

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

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

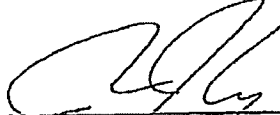
9 4. For such other and further relief as this Honorable Court deems just and proper in
10 the premises.

11 AFFIRMATION PURSUANT TO NRS 239B.030

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

14 Dated this 14th day of December 2018.

15 PEEL BRIMLEY LLP

16 

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EXHIBIT D

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FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

BRAHMA GROUP, INC., a Nevada corporation,

Counterclaimant/Lien Claimant,

vs.

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

Counter-Defendant.

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

NOTICE OF ENTRY OF ORDER

///

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///

PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074
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1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

8 Third-Party Defendants.

9
10 **NOTICE OF ENTRY OF ORDER**

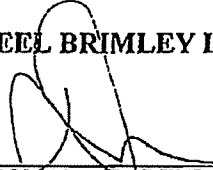
11 PLEASE TAKE NOTICE that an **Order Granting Brahma's Motion for Attorney's Fees**
12 **and Costs Pursuant to NRS 108.2275(6)(C)** was filed on January 8, 2019, a copy of which is
13 attached as Exhibit 1.

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

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

17 Dated this 9 day of January, 2019.

18 **PEEL BRIMLEY LLP**

19
20 
21 RICHARD L. PEEL, ESQ. (4359)
22 ERIC ZIMBELMAN, ESQ. (9863)
23 CARY B. DOMINA, ESQ. (10567)
24 RONALD J. COX, ESQ. (12723)
25 3333 E. Serene Avenue, Suite 200
26 Henderson, Nevada 89074-6571
27 *Attorneys for Brahma Group, Inc.*
28

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CERTIFICATE OF SERVICE

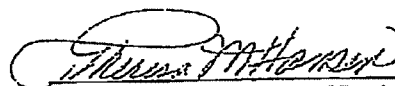
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 24th day of December 2018, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

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

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
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Geoffrey Crisp, Esq.
WEIL & DRAGE
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Henderson, NV 89052
gcrisp@weilndrage.com
Attorneys for Cobra Thermosolar Plants, Inc.



An Employee of Peel Brimley LLP

EXHIBIT 1

PEEL BRIMLEY LLP
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1 **ORDER**
2 **RICHARD L. PEEL, ESQ.**
3 Nevada Bar No. 4359
4 **ERIC B. ZIMBELMAN, ESQ.**
5 Nevada Bar No. 9407
6 **RONALD J. COX, ESQ.**
7 Nevada Bar No. 12723
8 **PEEL BRIMLEY LLP**
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rcox@peelbrimley.com
Attorneys for Brahma Group, Inc.

FIFTH JUDICIAL DISTRICT

JAN 03 2019

Nye County Clerk

Deputy

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

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

13 Plaintiff,

14 vs.

15 **BRAHMA GROUP, INC.**, a Nevada corporation,

16 Defendant.

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

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

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

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

26 **I. STATUTORY BASIS FOR AWARD OF FEES AND COSTS.**

27 On October 17, 2018, this Court signed an Order¹ Denying TSE's Motion to Expunge
28

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

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

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

6 ***

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

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

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

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

27 ² The *Brunzell* factors are:

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

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

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

15 **III. FINDINGS.**

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

24
25 4) The result—whether the attorney was successful and what benefits were derived.
See *Brunzell*, 85 Nev. at 349; *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. at 829.

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

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

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

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

12
13 **III. CONCLUSION.**

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

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

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

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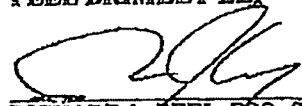
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(702) 990-7272 • FAX (702) 990-7273

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

6 Dated this 27 day December 2018.

7
8 
9 Senior Judge Steven Elliott

10 Submitted by:
11 PEEL BRIMLEY LLP

12 
13 RICHARD L. PEEL, ESQ. (NV Bar No. 4359)
14 ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)
15 RONALD J. COX, ESQ. (NV Bar No. 12723)
16 3333 E. Serene Avenue, Suite 200
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18 Attorneys for Brahma Group, Inc.
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NOW THEREFORE, IT IS HEREBY ORDERED that Brahma's Motion For Attorney's Fees And Costs Pursuant To NRS 108.2275(6)(c) is **GRANTED** and Brahma is awarded the sum of \$88,417.34 which shall be due and payable by TSE within ten (10) days of a notice of entry of this order being filed.

Dated this _____ day December 2018.

Senior Judge Steven Elliott

Submitted by:

PEEL BRIMLEY LLP



RICHARD I. PEEL, ESQ. (NV Bar No. 4359)
ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)
RONALD J. COX, ESQ. (NV Bar No. 12723)
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Attorneys for Brahma Group, Inc.

EXHIBIT A

RA000853

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1 **ORDR**
2 **RICHARD L. PEEL, ESQ.**
3 Nevada Bar No. 4359
4 **ERIC B. ZIMBELMAN, ESQ.**
5 Nevada Bar No. 9407
6 **RONALD J. COX, ESQ.**
7 Nevada Bar No. 12723
8 **PEEL BRIMLEY LLP**
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13 peel@peelbrimley.com
14 ezimbelman@peelbrimley.com
15 cox@peelbrimley.com
16 *Attorneys for Brahma Group, Inc.*

10 **FIFTH JUDICIAL DISTRICT COURT**

11 **NYE COUNTY, NEVADA**

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

14 **Plaintiff,**

15 **vs.**

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

17 **Defendant.**

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

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

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

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

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

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

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

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

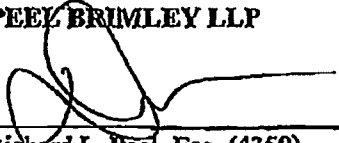
2 Now therefore,

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

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

11 **IT IS SO STIPULATED** this 21st day of December, 2018.

12
13 **PEEL BRIMLEY LLP**

14 
15 _____
16 Richard L. Peel, Esq. (4359)
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24 cdomina@peelbrimley.com
25 Attorneys for Defendant Brahma Group,
26 Inc.

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

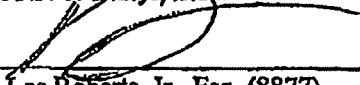
15 
16 _____
17 D. Lee Roberts, Jr., Esq. (8877)
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25 rgormley@wwhgd.com
26 Attorneys for Plaintiff Tonopah Solar Energy,
27 LLC

EXHIBIT E

RA000856

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2 ERIC B. ZIMBELMAN, ESQ.
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11 *Attorneys for Brahma Group, Inc.*

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

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

18 vs.


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

23 Defendants,

FILE

2019 JAN 11 P 1:14

NYE COUNTY CLERK

BY  DEPUTY

CASE NO. : CV39799
DEPT. NO. : 1

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

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

**(II) BREACH OF SETTLEMENT
AGREEMENT.**

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

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(702) 990-7272 + FAX (702) 990-7273

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

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

9 THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
15 Parcels.⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

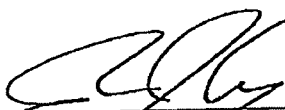
2. For such other and further relief as this Honorable Court deems just and proper in the premises.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 11th day of January 2019.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

ERIC ZIMBELMAN, ESQ.

Nevada Bar No. 9407

CARY B. DOMINA, ESQ.

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Attorneys for Brahma Group, Inc.

EXHIBIT 11

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11 *Attorneys for Brahma Group, Inc.*

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

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

18 vs.

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

23 Defendants,
24
25
26
27
28

CASE NO. : CV39799
DEPT. NO. : 1

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


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

**(II) BREACH OF SETTLEMENT
AGREEMENT.**

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

2019 JAN 11 P 1:14

NYE COUNTY CLERK

BY  DEPUTY

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

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

9 THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
15 Parcels.⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

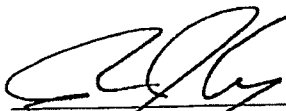
2. For such other and further relief as this Honorable Court deems just and proper in the premises.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 11th day of January 2019.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

ERIC ZIMBELMAN, ESQ.

Nevada Bar No. 9407

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

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Attorneys for Brahma Group, Inc.

EXHIBIT 12

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

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

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.
18
19
20

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

23 Lien/Bond Claimant,
24

25 vs.

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

CASE NO. : CV 39348

Consolidated with:

Case No. CV39799

DEPT. NO. : 2

BRAHMA GROUP, INC.'S:

**(I) SECOND AMENDED
COMPLAINT; AND**

**(II) FIRST AMENDED THIRD-
PARTY COMPLAINT.**

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

Counterdefendants,
BRAHMA GROUP, INC., a Nevada corporation,

Lien/Bond Claimant and Third-
Party Plaintiff,

vs.

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

Third-Party Defendants.

SECOND AMENDED COMPLAINT

Lien/Bond Claimant, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, and by way of this Second Amended Complaint ("Second Amended Complaint"), hereby (i) amends all previously filed claims and causes of action filed in this Action, (ii) brings this Second Amended Complaint against the above-named Counterdefendants, and (iii) complains, avers and alleges as follows:

THE PARTIES

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

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

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

2. Brahma is informed and believes and therefore alleges that the U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or

1 portions of real property located in Nye County, Nevada, and more particularly described as Nye
2 County Parcel Numbers 012-141-01 and 012-151-01 (the “BLM Parcels”).¹

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

8 4. Counterdefendant TONOPAH SOLAR ENERGY, LLC (“TSE”) is and was at all
9 times relevant to this Action:

10 a. A Delaware limited liability company authorized to do business in Nye
11 County and the State of Nevada;

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

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

18 d. The owner of those certain improvements and/or leasehold estate (the
19 “Project”):

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

21 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
22 Parcels.³

23 5. The TSE Parcels, along with the Project, are collectively referred to herein as the
24 “Work of Improvement,” and include all leasehold estates, easements, rights-of-way, common
25

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

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

28 ³ The term “Project” as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels
and the Liberty Parcels.

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

3 6. Brahma does not know the true names of the individuals, corporations, partnerships
4 and entities identified and named as Counterdefendants by the fictitious names of (collectively,
5 the "Doe Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE
6 BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that
7 such Doe Defendants are responsible for damages suffered by Brahma as more fully discussed
8 under the claims for relief set forth below. Brahma will request leave of this Honorable Court to
9 amend this Second Amended Complaint to show the true names and capacities of each such
10 fictitious Defendant when Brahma discovers such information.

11 7. TSE and the Doe Defendants are collectively referred to in this Second Amended
12 Complaint as the "Counterdefendants."

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

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

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

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

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

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

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

4 a. Failing and/or refusing to pay monies owed to BGI for the Work; and

5 |||

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

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

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

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

16 16. Brahma repeats and realleges each and every allegation contained in the preceding
17 paragraphs of the Second Amended Complaint, incorporates them by reference, and further alleges
18 as follows:

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

18. 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.

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

a. Asserting pre-textual, extra-contractual and inaccurate reasons for withholding payment long after the time required by the Agreement and Nevada law had elapsed for payment to be made by TSE to BGI.

27 b. TSE has improperly withheld moneys totaling more than One Million U.S.
28 Dollars for “retention” in purported reliance upon NRS 624.609(2)(a)(1).

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

5 ///

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

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

12 **THIRD CAUSE OF ACTION**
(Violation of NRS 624)

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

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

20 24. TSE violated the provisions of the Statute by failing or refusing to comply with the
21 requirements set forth therein.

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

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

27 **WHEREFORE**, Brahma prays that this Honorable Court:
28

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1. Enters judgment against the Counterdefendants, and each of them, jointly and severally in the amount of the Outstanding Balance;

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

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this ____ day of March 2019.

PEEL BRIMLEY LLP

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

ERIC ZIMBELMAN, ESQ.

Nevada Bar No. 9407

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1 **BRAHMA GROUP, INC.'S FIRST AMENDED THIRD-PARTY COMPLAINT**

2 Lien/Bond Claimant and Third-Party Plaintiff, BRAHMA GROUP, INC. ("Brahma"), by
3 and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, and by way of this First
4 Amended Third-Party Complaint ("Amended Third-Party Complaint"), hereby (i) amends all
5 previously filed claims and causes of action filed in this Third-Party Action, (ii) brings this
6 Amended Third-Party Complaint against the above-named Third-Party Defendants, and (iii)
7 complains, avers and alleges as follows:

8 **THE PARTIES**

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

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

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

14 c. Is a party to a negotiated settlement between Cobra and Brahma for the
15 payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra
16 Work") at the Project.

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

22 3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY,
23 LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this
24 Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real
25

26
27 _____
28 ⁴ The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of
the BLM Parcels by way of this Action.

1 property located in Nye County, Nevada, and more particularly described as Nye County Parcel
2 Number 012-431-06 (the "Liberty Parcel").⁵

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

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

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

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

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

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

16 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
17 Parcels.⁷

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

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

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

26
27 ⁵ Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the
Liberty Parcel by way of this Action.

28 ⁶ TSE is a party to Brahma's Second Amended Complaint, filed in the Action.

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

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

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

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

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

8 b. Is the principal on the Surety Bond and the Rider; and

9 c. Is a party to a negotiated settlement between Cobra and Brahma for the
10 payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra
11 Work") at the Project.

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

21 9. Cobra, AHAC and the Doe Defendants are collectively referred to in this Amended
22 Third-Party Complaint as the "Third-Party Defendants."

23 **FIRST CAUSE OF ACTION**

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

25 10. Brahma repeats and realleges each and every allegation contained in the preceding
26 paragraphs of this Amended Third-Party Complaint, incorporates them by reference, and further
27 alleges as follows:
28

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

4 12. As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right
5 to Lien on:

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

8 13. The TSE Work was provided for the whole of the Work of Improvement, at the
9 special instance and/or request of TSE.

10 14. On or about April 9, 2018, Brahma timely recorded a Notice of Lien in the Official
11 Records of Nye County, Nevada, as Document No. 890822 (“Original Lien”), in the amount of
12 \$6,982,186.24.

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

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

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

24 18. On or about September 14, 2018 (as allowed by NRS 108.229(1)), Brahma recorded
25 a Fourth Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,
26 as Document 899351 in the amount of \$12,859,577.74 (the “Fourth Amended Lien”).

27
28

1 19. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)
2 Third Amended Lien, and (iv) Fourth Amended Lien, collectively referred to herein as the "Lien,"
3 were:

- 4 c. In writing;
5 d. Recorded against the Work of Improvement; and
6 e. Were given or served on the authorized agents of the BLM and TSE, or the
7 BLM and/or TSE knew of the existence of the Lien.

8 20. The Lien (as amended) is in the amount Twelve Million Eight Hundred and Fifty-
9 Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents.
10 (\$12,859,577.74 - "Lienable Amount").

11 21. The Lienable Amount is due and owing Brahma as of the date of this Amended
12 Third-Party Complaint.

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

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

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

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

22 26. Brahma makes claim against the Third-Party Defendants and AHAC is obligated
23 to Brahma for the Lienable Amount plus interest, costs and attorney's fees up to the penal sum of
24 the Surety Bond and Rider as provided in Chapter 108 of the Nevada Revised Statutes.

25 **SECOND CAUSE OF ACTION**
26 **(Breach of Settlement Agreement Against Cobra)**

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

28. Brahma previously contracted directly with Cobra to perform the Cobra Work at the Project.

29. Brahma performed the Cobra Work and a payment dispute arose between Brahma and Cobra (the "Cobra Dispute").

30. Brahma and Cobra negotiated a resolution of the dispute and agreed to certain terms, which terms were memorialized in writing ("Settlement Agreement").

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

32. Brahma provided the Documentation and Cobra paid Brahma the First Payment.

33. Brahma tendered and/or provided Cobra the Additional Documentation to receive the Second Payment but Cobra has failed to pay Brahma the Second Payment.

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

35. Cobra has breached the Settlement Agreement by failing to tender payment of the Second Payment to Brahma, which Second Payment is due and owing.

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

THIRD CAUSE OF ACTION

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

1 37. Brahma repeats and realleges each and every allegation contained in the preceding
2 paragraphs of this Amended Third-Party Complaint, incorporates them by reference, and further
3 alleges as follows:

4 38. There is a covenant of good faith and fair dealing implied in every agreement,
5 including the Settlement Agreement.

6 39. Cobra breached its duty to act in good faith by performing the Settlement
7 Agreement in a manner that was unfaithful to the purpose of the Settlement Agreement, thereby
8 denying Brahma's justified expectations.

9 40. Due to the actions of Cobra, Brahma suffered damages in an amount more than the
10 Second Payment, for which Brahma is entitled to judgment in an amount to be determined at trial.

11 41. Brahma has been required to engage the services of an attorney to collect the
12 Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees and interest
13 therefore.

14 **FOURTH CAUSE OF ACTION**
15 **(Unjust Enrichment Against Cobra)**

16 42. Brahma repeats and realleges each and every allegation contained in the preceding
17 paragraphs of this Amended Third-Party Complaint, incorporates them by reference, and further
18 alleges as follows:

19 43. This cause of action is being pled in the alternative.

20 44. Brahma tendered and/or provided the Additional Documentation for the benefit
21 and/or at the specific instance and request of Cobra.

22 45. Cobra accepted, used and enjoyed the benefit of the Additional Documentation.

23 46. Brahma has demanded payment of the Second Payment.

24 47. To Date, Cobra has failed, neglected, and/or refused to pay the Second Payment.

25 48. Cobra has been unjustly enriched, to the detriment of Brahma.

26 49. Brahma has been required to engage the services of an attorney to collect the
27 Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees and interest
28 therefore.

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1
2 **WHEREFORE**, Brahma prays that this Honorable Court:

- 3 1. Enters judgment against Cobra in the amount of the Second Payment.
4 2. Enters judgment against the Third-Party Defendants and each of them, jointly and
5 severally in the Lienable Amount;
6 3. Enters a judgment against the Third-Party Defendants (as defined therein) and each
7 of them, jointly and severally, for Brahma's reasonable costs and attorney's fees incurred in the
8 collection of the Lienable Amount, as well as an award of interest thereon;
9 4. Enters judgment against AHAC up to the penal sum of the Surety Bond and Rider;
10 and
11 5. For such other and further relief as this Honorable Court deems just and proper in
12 the premises.

13
14 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

17 Dated this ____ day of March 2019.

18 **PEEL BRIMLEY LLP**

19
20
21 RICHARD L. PEEL, ESQ.
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9 *Attorneys for Tonopah Solar Energy, LLC*

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

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

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

Case No. CV 39348
Dept. No. 2

Consolidated with: Case No. CV 39799

**TSE'S OPPOSITION TO BRAHMA'S
COUNTERMOTION FOR LEAVE TO
FILE A SINGLE CONSOLIDATED
COMPLAINT**

**Hearing Date: April 17, 2019
Hearing Time: 10:00 a.m.**

21 BRAHMA GROUP, INC., a Nevada corporation,

22 Counterclaimant/Lien Claimant,

23 vs.

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

27 Counterdefendant.
28



1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

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

8 Third-Party Defendants.

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

11 Plaintiff-In-Intervention,

12 vs.

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

18 Defendants-In-Intervention.

19 BRAHMA GROUP, INC., a Nevada corporation,

20 Plaintiff,

21 vs.

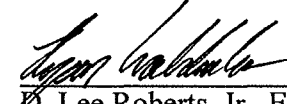
22 COBRA THERMOSOLAR PLANTS, INC., a
23 Nevada corporation; AMERICAN HOME
ASSURANCE COMPANY, a surety; BOE
24 BONDING COMPANIES I through X; DOES I
through X; ROE CORPORATIONS I through X,
25 inclusive,

26 Defendants.



Tonopah Solar Energy, LLC ("TSE"), by and through its undersigned counsel, hereby opposes Brahma Group, Inc.'s Countermotion for Leave to File a Single Consolidated Complaint ("Countermotion"). Based on the following Memorandum of Points and Authorities, Brahma's Countermotion should be denied.

DATED this 10th day of April, 2019.

 (14946); on behalf of
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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Nevada Supreme Court's December 2018 decision in *Matter of Estate of Sarge* requires that the Court deny Brahma's Countermotion. Prior to the *Sarge* decision, the *Mallin* case arguably permitted courts to merge two consolidated cases into each other. However, *Sarge* expressly overruled *Mallin* and held that consolidated cases "retain their separate identities" and cannot be merged into one another. Moreover, the *Sarge* decision relied in part on the U.S. Supreme Court's decision in *Hall*. In *Hall*, the U.S. Supreme Court stated that "consolidated cases should remain separate as to parties, pleadings, and judgment." Thus, contrary to Brahma's mischaracterization of it, the *Hall* case actually supports denying the Countermotion.

Perhaps sensing that its motion faces an uphill battle, Brahma seeks to play the victim and argues that Cobra and TSE are conspiring to achieve some kind of procedural victory against it. Brahma is not a victim nor is it in danger of becoming one. It is a massive national contractor with approximately 2,500 employees and hundreds of millions in yearly revenue that submitted millions in fraudulent charges on this Project.

TSE opposes the Countermotion because it seeks relief that is expressly barred by



1 Nevada case law and may have unintended consequences as this litigation progresses. The
2 purpose of Nevada's procedural rules is to "secure the just, speedy, and inexpensive
3 determination of every action and proceeding." NRCP 1. Taking these goals into account, the
4 Nevada Supreme Court decided in *Sarge* that consolidated cases should maintain separate
5 pleadings, verdicts and judgments. The Countermotion is a solution in search of a problem. If
6 the Countermotion is denied, both actions (i.e. CV 39348 and CV 39799) will still remain
7 consolidated and be heard together. To the extent judicial economy and convenience are
8 considerations, they have already been achieved by the granting of Brahma's prior Motion to
9 Consolidate.

10 In addition, although it is irrelevant to the merits of the Countermotion, TSE is compelled
11 to point out that, contrary to Brahma's assertions, TSE and Cobra are not ganging up on Brahma
12 and coordinating their defenses. Any similarity between Cobra's and TSE's arguments is either
13 pure coincidence or a product of Cobra's counsel reading the publicly available prior motion
14 work in this case.

15 TSE requests that the Court deny the Countermotion as it seeks relief that is prohibited
16 under the *Sarge* and *Hill* decisions and could have unforeseen procedural ramifications.

17 II. LEGAL ARGUMENT

18 A. The Nevada Supreme Court's December 2018 Decision in *Matter of Estate of* 19 *Sarge* Prohibits the Court From Merging Two Separate Actions into a Single 20 Action and is Directly on Point.

21 To properly understand the *Sarge* decision, it is necessary to first look at the case it
22 overruled – *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 607, 797 P.2d 978, 979 (1990). In
23 *Mallin*, the district court granted a motion to consolidate two insurance coverage actions "for all
24 purposes." *Id.* at 608, 797 P.2d at 980. Put another way, the district court in *Mallin* granted the
25 exact same motion that Brahma is now bringing before this Court. The Nevada Supreme Court
26 upheld the district court's decision and found that because the two actions had merged into one,
27 an order of the district court disposing of one of the two consolidated cases was not appealable
28 since the action as a whole remained undecided. *Id.* at 609, 797 P.2d at 980.



1 *Mallin* remained good law until December 2018 when the Nevada Supreme Court
2 expressly overruled it in *Sarge*, stating as follows:

3 [J]oinder for trial . . . does not merge two suits into a single suit . . . We thus
4 overrule our decision in *Mallin* to the extent it holds that cases consolidated
5 in the district court become a single case for all appellate purposes.
6 Consolidated cases retain their separate identities so that an order resolving
7 all of the claims in one of the consolidated cases is immediately appealable
8 as a final judgment under NRAP 3A(b)(1).

8 *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018) (emphasis added)
9 (internal citations omitted). The *Sarge* holding is not ambiguous. Prior to December 2018, it
10 was arguably permissible for district courts in Nevada to merge two consolidated cases into a
11 single action “for all purposes” just as Brahma’s Countermotion requests. After *Sarge*, merger
12 of consolidated actions is prohibited. Brahma’s Countermotion is three months too late and
13 should be denied.

14
15 **B. Contrary to Brahma’s Assertions, the U.S. Supreme Court’s Decision in *Hall***
16 ***v. Hall* also Stands for the Proposition that Two Separation Actions Cannot**
17 **Be Merged After Consolidation.**

17 Realizing that the *Sarge* decision precludes the relief it seeks, Brahma cites to the U.S.
18 Supreme Court’s decision in *Hall* to support its Countermotion. *Hall v. Hall*, 138 S. Ct. 1118,
19 1120, 200 L. Ed. 2d 399 (2018). However, *Hall* is equally unfavorable to Brahma’s position. In
20 *Hall*, the U.S. Supreme Court analyzed whether cases that are consolidated under FRCP 42(a),
21 which is nearly identical to NRCP 42(a), may be merged into a single case. The Court answered
22 the question in the negative after extensively surveying the history of FRCP 42(a), the 1813
23 statute¹ on which FRCP 42(a) was based and addressing policy concerns. *See generally id.*
24 (“consolidation is permitted as a matter of convenience and economy in administration, but does
25 not merge the suits into a single cause, or change the rights of the parties, or make those who are
26 parties in one suit parties in another.”).

27
28 ¹ 28 U.S.C. § 734 (repealed in 1948).



1 In an attempt to distort the *Hall* holding, Brahma seizes on a section² of the decision that
2 states that the term “consolidate” in FRCP 42(a) is ambiguous. *See* Countermotion at 11:5-15.
3 Brahma goes on to argue that, since the term is ambiguous, merger of two separate actions into
4 one is still permissible in certain circumstances. *Id.*

5 What Brahma leaves out is that, after finding this ambiguity, the U.S. Supreme Court
6 resolved the ambiguity by resorting to FRCP 42(a)’s legislative history and determining that the
7 term “consolidate” meant that the two separate cases are joined together but do not lose their
8 separate character. *Hall*, 138 S. Ct. at 1130 (“No sensible draftsman, let alone a Federal Rules
9 Advisory Committee, would take a term that had meant, for more than a century, that separate
10 actions do not merge into one, and silently and abruptly reimagine the same term to mean that
11 they do.”).

12 The U.S. Supreme Court went on to explain the policy rationale for not permitting merger
13 of two consolidated actions:

14
15 through consolidation under Rule 42(a) one or many or all of the phases of
16 the several actions may be merged. But merger is never so complete in
17 consolidation as to deprive any party of any substantial rights which he may
18 have possessed had the actions proceeded separately. Thus, separate
19 verdicts and judgments are normally necessary.

20 *Id.* (internal citations omitted) (emphasis added).

21 Since separate verdicts and judgments are necessary, allowing the filing of a single
22 merged complaint makes no sense and would only create confusion as to what case a particular
23 decision or order applies to. Indeed, the *Hall* decision notes that federal courts may not merge
24 the pleadings of two consolidated cases as Brahma seeks to do. *Id.* at 1128 (“Treatises
25 summarizing federal precedent applying the consolidation statute also concluded that
26 consolidated cases remain distinct. They recognized that consolidated cases should remain
27
28

² *See Hall*, 138 S. Ct. at 1124 (“Consolidation can thus sometimes signify the complete merger of discrete units: “The company consolidated two branches.” But the term can also mean joining together discrete units without causing them to lose their independent character.”) (discussing the ambiguity of the term).



1 separate as to parties, **pleadings**, and judgment.”) (emphasis added) (internal citations and
2 quotations omitted).

3 In sum, the U.S. Supreme Court’s decision in *Hill* is consistent with the Nevada Supreme
4 Court’s decision in *Sarge* and supports denial of Brahma’s Countermotion. Both decisions
5 preclude courts from merging two separate cases into one and require that the two cases have
6 separate pleadings and separate judgments.

7 **C. Contrary to Brahma’s Assertions, TSE and Cobra are Not Conspiring to**
8 **Defeat Brahma Via Procedural Trickery. TSE Refused to Stipulate to**
9 **Allowing the Filing of a Single Merged Complaint Because Such Action is**
10 **Prohibited by the Nevada Supreme Court and Could Have Unintended**
11 **Consequences.**

12 Brahma attempts to distract the Court from the above unfavorable case law by accusing
13 TSE and Cobra of ganging up against Brahma to gain some kind of procedural advantage. First,
14 Brahma, a massive contractor with approximately 2,500 employees and hundreds of millions in
15 yearly revenue, is hardly at risk of being taken advantage of in this dispute. Second, Brahma is
16 incorrect that TSE and Cobra are coordinating their defenses. Cobra was the EPC contractor on
17 the Project while TSE was the Project owner. Further, Cobra has no influence over TSE’s
18 conduct of this litigation.

19 TSE is not seeking to gain any procedural advantage but rather to ensure that this case
20 proceeds in the correct procedural manner and to avoid unintended consequences. The *Sarge*
21 case simply prevents the Court from merging the two consolidated cases into a single case.

22 ///

23 ///

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28 ///



1 **III. CONCLUSION**

2 The Nevada Supreme Court's decision in *Sarge* precludes courts from merging two
3 consolidated actions into each other as Brahma is seeking to do. Further, the U.S. Supreme
4 Court's decision in *Hall*, upon which the *Sarge* decision in part relied, states that consolidated
5 cases must maintain separate pleadings. For these reasons Brahma's Countermotion should be
6 denied.

7 DATED this 10th day of April, 2019.

8  14946; on behalf of
9 D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Ryan T. Gormley, Esq.
10 WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
11 6385 S. Rainbow Blvd., Suite 400
12 Las Vegas, NV 89118
13 Attorneys for Tonopah Solar Energy, LLC
14
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CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of April, 2019, a true and correct copy of the foregoing **TSE'S OPPOSITION TO BRAHMA'S COUNTERMOTION FOR LEAVE TO FILE A SINGLE CONSOLIDATED COMPLAINT** was hand delivered to the following:

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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.

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

ORIGINAL

1 **ORDR**

2 RICHARD L. PEEL, ESQ.

3 Nevada Bar No. 4359

4 ERIC B. ZIMBELMAN, ESQ.

5 Nevada Bar No. 9407

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15 Attorneys for Brahma Group, Inc.

FILED
FIFTH JUDICIAL DISTRICT

APR 22 2019

Nye County Clerk
Deputy

16 **FIFTH JUDICIAL DISTRICT COURT**

17 **NYE COUNTY, NEVADA**

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

20 Plaintiff,

21 vs.

22 BRAHMA GROUP, INC., a Nevada corporation.

23 Defendant.

24 BRAHMA GROUP, INC., a Nevada corporation.

25 Lien/Bond Claimant,

26 vs.

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

Counterdefendants,

CASE NO. : CV 39348

Consolidated with:

Case No. CV39799

DEPT. NO. : 2

**ORDER GRANTING BRAHMA'S
COUNTERMOTION FOR LEAVE
TO FILE A SINGLE
CONSOLIDATED AMENDED
COMPLAINT**

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RA000901

1 BRAHMA GROUP, INC., a Nevada corporation.

2 Lien/Bond Claimant and Third-
3 Party Plaintiff,

4 vs.

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

9 Third-Party Defendants.

10
11 **ORDER GRANTING BRAHMA'S COUNTERMOTION FOR LEAVE TO FILE A
SINGLE CONSOLIDATED AMENDED COMPLAINT**

12 This matter came on for hearing April 17, 2019 (the "Hearing") before the Honorable
13 Senior Judge Steven Elliott on the Countermotion for Leave to File a Single Consolidated
14 Amended Complaint ("Countermotion")¹ filed by Defendant/Lien Bond Claimant, BRAHMA
15 GROUP, INC. ("Brahma"). Eric B. Zimbelman, Esq. of PEEL BRIMLEY LLP appeared on
16 behalf of Brahma. Colby L. Balkenbush, Esq. of WEINBERG, WHEELER, HUDGINS, GUNN
17 & DIAL, LLC appeared on behalf of Plaintiff TONOPAH SOLAR ENERGY, LLC ("TSE"),
18 who opposed the Countermotion.

19 The Court having considered all the pleadings and papers on file, and having heard
20 argument of counsel, hereby **ORDERS** as follows:

- 21 1. Brahma's Countermotion is **GRANTED**; and
22 2. Brahma is granted leave to file the Consolidated Amended Pleading (titled "Brahma
23 Group, Inc.'s: (I) Second Amended Complaint; and (II) First Amended Third-Party
24 Complaint") substantially in the form attached hereto as Exhibit "A;" and

25 ///

26 ///

27
28 ¹ Brahma filed its Countermotion in connection with and as part of its Opposition to the Motion to Dismiss
filed by Third-Party Defendant Cobra Thermosolar Plants, Inc. ("Cobra"). By way of a separate
Stipulation and Order for Partial Dismissal, Cobra withdrew its Motion to Dismiss

Tonapah Solar v. Brahma Group

Case No: CV 39348

Order Granting Brahma's Counter-motion

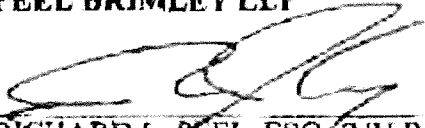
3. Nothing in this Order shall be deemed to mean that the constituent cases of this consolidated action (Case No. CV39348 and Case No. CV39799) do not "retain their separate identities at least to the extent that a final decision in one is immediately appealable by the losing party." *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018) citing *Hall v. Hall*, 138 S. Ct. 1118, 1131, 200 L. Ed. 2d 399 (2018).

Dated this ____ day April 2019.

SENIOR JUDGE STEVEN ELLIOTT

Submitted by:

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ. (NV Bar No. 4359)
ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)
RONALD J. COX, ESQ. (NV Bar No. 12723)
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Tonapah Solar v. Brahma Group

Case No: CV 39348

Order Granting Brahma's Counter-motion

3. Nothing in this Order shall be deemed to mean that the constituent cases of this consolidated action (Case No. CV39348 and Case No. CV39799) do not "retain their separate identities at least to the extent that a final decision in one is immediately appealable by the losing party." *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018) citing *Hall v. Hall*, 138 S. Ct. 1118, 1131, 200 L. Ed. 2d 399 (2018).

Dated this 22 day April 2019.


SENIOR JUDGE STEVEN ELLIOTT

Submitted by:

PEEL BRIMLEY LLP

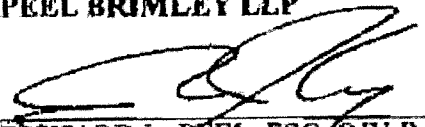

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Exhibit A

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

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

BRAHMA GROUP, INC., a Nevada corporation,

Lien/Bond Claimant,

vs.

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

Counterdefendants,

CASE NO. : CV 39348

Consolidated with:

Case No. CV39799

DEPT. NO. : 2

BRAHMA GROUP, INC.'S:

**(I) SECOND AMENDED
COMPLAINT; AND**

**(II) FIRST AMENDED THIRD-
PARTY COMPLAINT.**

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

1 BRAHMA GROUP, INC., a Nevada corporation,

2 Lien/Bond Claimant and Third-
3 Party Plaintiff,

4 vs.

5 COBRA THERMOSOLAR PLANTS, INC., a
6 Nevada corporation; AMERICAN HOME
7 ASSURANCE COMPANY, a surety; BOE
8 BONDING COMPANIES 1 through X; DOES 1
9 through X; ROE CORPORATIONS 1 through X,
10 inclusive,

11 Third-Party Defendants.

12 **SECOND AMENDED COMPLAINT**

13 Lien/Bond Claimant, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys
14 of record, the law firm of PEEL BRIMLEY LLP, and by way of this Second Amended Complaint
15 ("Second Amended Complaint"), hereby (i) amends all previously filed claims and causes of
16 action filed in this Action, (ii) brings this Second Amended Complaint against the above-named
17 Counterdefendants, and (iii) complains, avers and alleges as follows:

18 **THE PARTIES**

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

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

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

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

¹ The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of the BLM Parcels by way of this Action

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

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

a. A Delaware limited liability company authorized to do business in Nye County and the State of Nevada;

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

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

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

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

ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty Parcels.³

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

6. Brahma does not know the true names of the individuals, corporations, partnerships and entities identified and named as Counterdefendants by the fictitious names of (collectively,

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

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

1 the "Doe Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE
2 BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that
3 such Doe Defendants are responsible for damages suffered by Brahma as more fully discussed
4 under the claims for relief set forth below. Brahma will request leave of this Honorable Court to
5 amend this Second Amended Complaint to show the true names and capacities of each such
6 fictitious Defendant when Brahma discovers such information.

7 7. TSE and the Doe Defendants are collectively referred to in this Second Amended
8 Complaint as the "Counterdefendants."

9
10 **FIRST CAUSE OF ACTION**
(Breach of Contract)

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

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

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

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

24 12. 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 Payment Applications.

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

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

///

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

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

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

9
10 **SECOND CAUSE OF ACTION**
(Breach of Implied Covenant of Good Faith & Fair Dealing)

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

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

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

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

19 a. Asserting pre-textual, extra-contractual and inaccurate reasons for
20 withholding payment long after the time required by the Agreement and Nevada law had elapsed
21 for payment to be made by TSE to BGI.

22 b. TSE has improperly withheld monies totaling more than One Million U.S.
23 Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1).

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

28 ///

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

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

7 **THIRD CAUSE OF ACTION**
8 **(Violation of NRS 624)**

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

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

16 24. TSE violated the provisions of the Statute by failing or refusing to comply with the
17 requirements set forth therein.

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

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

23 ///

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25 ///

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WHEREFORE, Brahma prays that this Honorable Court:

1. Enters judgment against the Counterdefendants, and each of them, jointly and severally in the amount of the Outstanding Balance;
2. Enters a judgment against the Counterdefendants, and each of them, jointly and severally, for Brahma's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon; and
3. For such other and further relief as this Honorable Court deems just and proper in the premises.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this ____ day of April 2019,

PEEL BRIMLEY LLP

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

///

BRAHMA GROUP, INC.'S FIRST AMENDED THIRD-PARTY COMPLAINT

Lien/Bond Claimant and Third-Party Plaintiff, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, and by way of this First Amended Third-Party Complaint ("Amended Third-Party Complaint"), hereby (i) amends all previously filed claims and causes of action filed in this Third-Party Action, (ii) brings this Amended Third-Party Complaint against the above-named Third-Party Defendants, and (iii) complains, avers and alleges as follows:

THE PARTIES

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

- a. A Nevada corporation, duly authorized and qualified to do business in the State of Nevada;
- b. A duly licensed contractor holding a Nevada State Contractor's License, which license is in good standing; and
- c. Is a party to a negotiated settlement between Cobra and Brahma for the payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra Work") at the Project.

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

3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY, LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real

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

1 property located in Nye County, Nevada, and more particularly described as Nye County Parcel
2 Number 012-431-06 (the "Liberty Parcel").⁵

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

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

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

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

13 d. The owner of those certain improvements and/or leasehold estate (the
14 "Project");

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

16 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
17 Parcels.⁷

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

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

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

26
27 ⁵ Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the
Liberty Parcel by way of this Action.

28 ⁶ TSE is a party to Brahma's Second Amended Complaint, filed in the Action.

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

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

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

4 7. Brahma is informed, believes and therefore alleges that Third-Party Defendant
5 COBRA THERMOSOLAR PLANTS, INC. ("Cobra");

6 a. Is and was at all times relevant to this Third-Party Action a Nevada
7 corporation,

8 b. Is the principal on the Surety Bond and the Rider; and

9 c. Is a party to a negotiated settlement between Cobra and Brahma for the
10 payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra
11 Work") at the Project.

12 8 Brahma does not know the true names of the individuals, corporations, partnerships
13 and entities identified and named as Third-Party Defendants by the fictitious names of
14 (collectively, the "Doe Defendants"), (i) BOE BONDING COMPANIES I through X, (ii) DOES
15 I through X, and (iii) ROE CORPORATIONS I through X. Brahma alleges that such Doe
16 Defendants may be liable to Brahma for claims and/or damages arising from the construction of
17 the Work of Improvement, as more fully discussed under the claims for relief set forth below.
18 Brahma will request leave of this Honorable Court to amend this Amended Third-Party Complaint
19 to show the true names and capacities of each such fictitious Doe Defendants when Brahma
20 discovers such information.

21 9. Cobra, AHAC and the Doe Defendants are collectively referred to in this Amended
22 Third-Party Complaint as the "Third-Party Defendants."

23 **FIRST CAUSE OF ACTION**

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

25 10. Brahma repeats and realleges each and every allegation contained in the preceding
26 paragraphs of this Amended Third-Party Complaint, incorporates them by reference, and further
27 alleges as follows:

28 ///

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

4 12. As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right
5 to Lien on:

6 a. The BLM; and

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

8 13. The TSE Work was provided for the whole of the Work of Improvement, at the
9 special instance and/or request of TSE.

10 14. On or about April 9, 2018, Brahma timely recorded a Notice of Lien in the Official
11 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of
12 \$6,982,186.24.

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

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

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

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

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28 ///

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1 19. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)
2 Third Amended Lien, and (iv) Fourth Amended Lien, collectively referred to herein as the "Lien,"
3 were:

4 c. In writing;
5 d. Recorded against the Work of Improvement; and
6 e. Were given or served on the authorized agents of the BLM and TSE, or the
7 BLM and/or TSE knew of the existence of the Lien.

8 20. The Lien (as amended) is in the amount Twelve Million Eight Hundred and Fifty-
9 Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents.
10 (\$12,859,577.74 - "Lienable Amount").

11 21. The Lienable Amount is due and owing Brahma as of the date of this Amended
12 Third-Party Complaint.

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

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

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

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

22 26. Brahma makes claim against the Third-Party Defendants and AHAC is obligated
23 to Brahma for the Lienable Amount plus interest, costs and attorney's fees up to the penal sum of
24 the Surety Bond and Rider as provided in Chapter 108 of the Nevada Revised Statutes.

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

- 2 1. Enters judgment against the Third-Party Defendants and each of them, jointly and
3 severally in the Liable Amount;
- 4 2. Enters a judgment against the Third-Party Defendants (as defined therein) and each
5 of them, jointly and severally, for Brahma's reasonable costs and attorney's fees incurred in the
6 collection of the Liable Amount, as well as an award of interest thereon;
- 7 3. Enters judgment against AHAC up to the penal sum of the Surety Bond and Rider;
8 and
- 9 4. For such other and further relief as this Honorable Court deems just and proper in
10 the premises.

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

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

15 Dated this ____ day of April 2019.

16 **PEEL BRIMLEY LLP**

17
18
19 _____
20 RICHARD L. PEEL, ESQ.
21 Nevada Bar No. 4359
22 ERIC ZIMBELMAN, ESQ.
23 Nevada Bar No. 9407
24 RONALD J. COX, ESQ.
25 Nevada Bar No. 12723
26 3333 E. Serene Avenue, Suite 200
27 Henderson, Nevada 89074-6571
28 Attorneys for Brahma Group, Inc.

ORIGINAL

FILED
11TH JUDICIAL DISTRICT

APR 22 2019

Nye County Clerk
Deputy

RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
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rcox@peelbrimley.com
Attorneys for Brahma Group, Inc.

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

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

BRAHMA GROUP, INC., a Nevada corporation,

Lien/Bond Claimant.

vs.

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

Counterdefendants,

CASE NO. : CV 39348

Consolidated with:

Case No. CV39799

DEPT. NO. : 2

BRAHMA GROUP, INC.'S:

**(I) SECOND AMENDED
COMPLAINT; AND**

**(II) FIRST AMENDED THIRD-
PARTY COMPLAINT.**

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

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1 BRAHMA GROUP, INC., a Nevada corporation,

2 Lien/Bond Claimant and Third-
3 Party Plaintiff,

4 vs.

5 COBRA THERMOSOLAR PLANTS, INC., a
6 Nevada corporation; AMERICAN HOME
7 ASSURANCE COMPANY, a surety; BOE
8 BONDING COMPANIES 1 through X; DOES 1
through X; ROE CORPORATIONS 1 through X,
inclusive,

9 Third-Party Defendants.

10
11 **SECOND AMENDED COMPLAINT**

12 Lien/Bond Claimant, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys
13 of record, the law firm of PEEL BRIMLEY LLP, and by way of this Second Amended Complaint
14 ("Second Amended Complaint"), hereby (i) amends all previously filed claims and causes of
15 action filed in this Action, (ii) brings this Second Amended Complaint against the above-named
16 Counterdefendants, and (iii) complains, avers and alleges as follows:

17 **THE PARTIES**

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

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

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

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

28 ¹ The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of
the BLM Parcels by way of this Action.

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

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

a. A Delaware limited liability company authorized to do business in Nye County and the State of Nevada;

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

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

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

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

ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty Parcels.³

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

6. Brahma does not know the true names of the individuals, corporations, partnerships and entities identified and named as Counterdefendants by the fictitious names of (collectively,

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

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

1 the "Doe Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE
2 BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that
3 such Doe Defendants are responsible for damages suffered by Brahma as more fully discussed
4 under the claims for relief set forth below. Brahma will request leave of this Honorable Court to
5 amend this Second Amended Complaint to show the true names and capacities of each such
6 fictitious Defendant when Brahma discovers such information.

7 7. TSE and the Doe Defendants are collectively referred to in this Second Amended
8 Complaint as the "Counterdefendants."

9
10 **FIRST CAUSE OF ACTION**
(Breach of Contract)

11 8 Brahma repeats and realleges each and every allegation contained in the preceding
12 paragraphs of this Second Amended Complaint, incorporates them by reference, and further
13 alleges as follows:

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

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

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

24 12. 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 Payment Applications.

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

27 a. Failing and/or refusing to pay monies owed to BGI for the Work; and

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

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

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

9
10 **SECOND CAUSE OF ACTION**
(Breach of Implied Covenant of Good Faith & Fair Dealing)

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

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

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

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

19 a. Asserting pre-textual, extra-contractual and inaccurate reasons for
20 withholding payment long after the time required by the Agreement and Nevada law had elapsed
21 for payment to be made by TSE to BGI.

22 b. TSE has improperly withheld moneys totaling more than One Million U.S.
23 Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1).

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

28 ///

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

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

7 **THIRD CAUSE OF ACTION**
8 **(Violation of NRS 624)**

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

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

16 24. TSE violated the provisions of the Statute by failing or refusing to comply with the
17 requirements set forth therein.

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

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

23 ///

24 ///

25 ///

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3333 E. SERENE AVENUE, STE. 200
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(702) 990-7272 • FAX (702) 990-7273

1 WHEREFORE, Brahma prays that this Honorable Court:

2 1. Enters judgment against the Counterdefendants, and each of them, jointly and
3 severally in the amount of the Outstanding Balance;

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

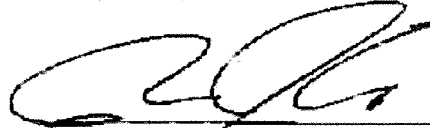
7 3. For such other and further relief as this Honorable Court deems just and proper in
8 the premises.

9 AFFIRMATION PURSUANT TO NRS 239B.030

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

12 Dated this 19th day of April 2019.

13 PEEL BRIMLEY LLP

14 

15 RICHARD L. PEEL, ESQ.

16 Nevada Bar No. 4359

17 ERIC ZIMBELMAN, ESQ.

18 Nevada Bar No. 9407

19 RONALD J. COX, ESQ.

20 Nevada Bar No. 12723

21 3333 E. Serene Avenue, Suite 200

22 Henderson, Nevada 89074-6571

23 Attorneys for Brahma Group, Inc.

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///

BRAHMA GROUP, INC.'S FIRST AMENDED THIRD-PARTY COMPLAINT

Lien/Bond Claimant and Third-Party Plaintiff, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, and by way of this First Amended Third-Party Complaint ("Amended Third-Party Complaint"), hereby (i) amends all previously filed claims and causes of action filed in this Third-Party Action, (ii) brings this Amended Third-Party Complaint against the above-named Third-Party Defendants, and (iii) complains, avers and alleges as follows:

THE PARTIES

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

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

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

c. Is a party to a negotiated settlement between Cobra and Brahma for the payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra Work") at the Project.

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

3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY, LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real

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

1 property located in Nye County, Nevada, and more particularly described as Nye County Parcel
2 Number 012-431-06 (the "Liberty Parcel").⁵

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

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

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

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

13 d. The owner of those certain improvements and/or leasehold estate (the
14 "Project");

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

16 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
17 Parcels.⁷

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

22 6. Brahma is informed, believes and therefore alleges that Third-Party Defendant
23 AMERICAN HOME ASSURANCE COMPANY ("AHAC");

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

26
27 ⁵ Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the
Liberty Parcel by way of this Action.

⁶ TSE is a party to Brahma's Second Amended Complaint, filed in the Action.

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

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

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

4 7. Brahma is informed, believes and therefore alleges that Third-Party Defendant
5 COBRA THERMOSOLAR PLANTS, INC. ("Cobra");

6 a. Is and was at all times relevant to this Third-Party Action a Nevada
7 corporation,

8 b. Is the principal on the Surety Bond and the Rider; and

9 c. Is a party to a negotiated settlement between Cobra and Brahma for the
10 payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra
11 Work") at the Project.

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

21 9. Cobra, AHAC and the Doe Defendants are collectively referred to in this Amended
22 Third-Party Complaint as the "Third-Party Defendants."

23 **FIRST CAUSE OF ACTION**

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

25 10. Brahma repeats and realleges each and every allegation contained in the preceding
26 paragraphs of this Amended Third-Party Complaint, incorporates them by reference, and further
27 alleges as follows:

28 ///

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

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

a. The BLM; and

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

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

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

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

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

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

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

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1 19. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)
2 Third Amended Lien, and (iv) Fourth Amended Lien, collectively referred to herein as the "Lien,"
3 were:

4 c. In writing;
5 d. Recorded against the Work of Improvement; and
6 e. Were given or served on the authorized agents of the BLM and TSE, or the
7 BLM and/or TSE knew of the existence of the Lien.

8 20. The Lien (as amended) is in the amount Twelve Million Eight Hundred and Fifty-
9 Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents
10 (\$12,859,577.74 - "Lienable Amount").

11 21. The Lienable Amount is due and owing Brahma as of the date of this Amended
12 Third-Party Complaint.

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

16 23 On or about October 9, 2018, Cobra (as principal) and AHAC (as surety) caused a
17 Surety Rider ("Rider") to be recorded in the Official Records of Nye County, Nevada as Document
18 No. 900303.

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

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

22 26. Brahma makes claim against the Third-Party Defendants and AHAC is obligated
23 to Brahma for the Lienable Amount plus interest, costs and attorney's fees up to the penal sum of
24 the Surety Bond and Rider as provided in Chapter 108 of the Nevada Revised Statutes.

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26 ///

27 ///

28

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

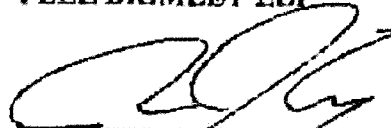
- 2 1. Enters judgment against the Third-Party Defendants and each of them, jointly and
3 severally in the Liable Amount;
- 4 2. Enters a judgment against the Third-Party Defendants (as defined therein) and each
5 of them, jointly and severally, for Brahma's reasonable costs and attorney's fees incurred in the
6 collection of the Liable Amount, as well as an award of interest thereon;
- 7 3. Enters judgment against AHAC up to the penal sum of the Surety Bond and Rider;
8 and
- 9 4. For such other and further relief as this Honorable Court deems just and proper in
10 the premises.

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

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

15 Dated this 19th day of April 2019.

16 **PEEL BRIMLEY LLP**

17 

18 **RICHARD L. PEEL, ESQ.**

19 Nevada Bar No. 4359

20 **ERIC ZIMBELMAN, ESQ.**

21 Nevada Bar No. 9407

22 **RONALD J. COX, ESQ.**

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25 Henderson, Nevada 89074-6571

26 Attorneys for Brahma Group, Inc.

27
28