

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court Case No. 78256
District Court Case No. CV 39348**

Tonopah Solar Energy, LLC,
Petitioner

Electronically Filed
Mar 06 2019 02:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

The Fifth Judicial District Court, State of Nevada, Nye County, and
the Honorable Steven P. Elliott, Senior Judge,
Respondent

and

Brahma Group, Inc.,
Real Party in Interest.

**PETITIONER'S APPENDIX
VOLUME 1**

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

*Attorneys for Petitioner
Tonopah Solar Energy, LLC*

CHRONOLOGICAL INDEX

Date Filed	Description	Bates Number	Volume(s)
06/11/2018	TSE's Motion to Expunge	PA000001	1
	Exhibit 1 – Services Agreement	PA000014	1
	Exhibit 2 – Notice of Lien	PA000036	1
	Exhibit 3 – Notice of First Amended and Restated Lien	PA000044	1
	Exhibit 4 – Notice of First Amended and Restated Lien	PA000048	1
	Exhibit 5 – Notice of Second Amended and Restated Lien	PA000058	1
	Exhibit 6 – Notice of Voluntary Dismissal Without Prejudice	PA000068	1
	Exhibit 7 – Affidavit of Justin Pugh	PA000079	1
10/18/2018	TSE's Motion to Strike/Dismiss/Stay	PA000084	1
	Exhibit 1 – Brahma's Lien Foreclosure Complaint	PA000109	2
	Exhibit 2 – Brahma's First Amended Counter-Complaint and Third-Party Complaint	PA000116	2
	Exhibit 3 – Brahma's Complaint in the Eighth Judicial District Court	PA000131	2
	Exhibit 4 – Services Agreement	PA000137	2
	Exhibit 5 – Notice of Removal to Federal Court	PA000159	2
	Exhibit 6 – TSE's Answer and	PA000169	2

CHRONOLOGICAL INDEX

	Counterclaim in the Federal Action		
	Exhibit 7 – Brahma’s First Amended Complaint in the Federal Action	PA000189	2
	Exhibit 8 – Brahma’s Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000194	2
	Exhibit 9 – Fourth Amended and/or Restated Notice of Lien	PA000214	2
	Exhibit 10 – Certificate of Service of Surety Bond Rider	PA000225	2
10/23/2018	Brahma’s Motion for Leave to Amend filed on October 23, 2018	PA000237	2
	Exhibit 1 – Brahma’s Second Amended Counter-Complaint and Amended Third-Party Complaint	PA000244	3
	Exhibit 2 – October 17, 2018 Email	PA000257	3
	Exhibit 3 – October 18, 2018 Email	PA000260	3
11/1/2018	Notice of Entry of Order, served on November 1, 2018, denying TSE’s Motion to Expunge	PA000264	3
	Exhibit A – Order Denying TSE’s Motion to Expunge	PA000267	3
11/05/2018	Brahma’s Opposition to TSE’s Motion to Strike/Dismiss/Stay	PA000274	3
	Exhibit 1 – Services Agreement	PA000307	3
	Exhibit 2 – Notice of Lien	PA000329	4
	Exhibit 3 – Complaint, dated April 17, 2018	PA000337	4

CHRONOLOGICAL INDEX

	Exhibit 4 – Notice of Foreclosure of Mechanic’s Lien	PA000344	4
	Exhibit 5 – Notice of Lis Pendens	PA000352	4
	Exhibit 6 – April 19, 2018 Correspondence	PA000360	4
	Exhibit 7 – TSE’s Motion to Expunge, dated April 24, 2018	PA000364	4
	Exhibit 8 – Notice of Voluntary Dismissal Without Prejudice	PA000377	4
	Exhibit 9 – Notice of First Amended and Restated Lien	PA000380	4
	Exhibit 10 – Notice of Second Amended and Restated Lien	PA000393	4
	Exhibit 11 – Third Amended and/or Restated Notice of Lien	PA000403	4
	Exhibit 12 – Fourth Amended and/or Restated Notice of Lien	PA000412	4
	Exhibit 13 – NRS 108.2415 Surety Bond	PA000421	5
	Exhibit 14 – Certificate of Service of Surety Bond Rider	PA000426	5
	Exhibit 15 – Notice of Lien	PA000437	5
	Exhibit 16 – NRS 108.2415 Surety Bond	PA000440	5
	Exhibit 17 – Order of Reassignment	PA000445	5
	Exhibit 18 – Complaint in the Eighth Judicial District Court	PA000448	5

CHRONOLOGICAL INDEX

	Exhibit 19 – Brahma’s Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000454	5
	Exhibit 20 – Mechanic’s Lien Foreclosure Complaint in Case No. A-16-743285-C	PA000474	5
11/05/2018	TSE’s Opposition to Brahma’s Motion for Leave to Amend	PA000485	5
11/30/2018	TSE’s Reply in Support of its Motion to Strike/Dismiss/Stay	PA000492	5
	Exhibit 1 – TSE’s First Set of Interrogatories to Brahma and TSE’s First Set of Requests for Production to Brahma	PA000507	6
	Exhibit 2 – Brahma’s Motion to Stay Discovery Pending Determination of Dispositive Motion in the Federal Action	PA000522	6
	Exhibit 3 – Brahma’s Responses to TSE’s First Set of Requests for Production of Documents and First Set of Interrogatories	PA000535	6
	Exhibit 4 – Nevada Construction Law 2016 Edition by Leon F. Mead II	PA000551	6
	Exhibit 5 – Scheduling Order in the Federal Action	PA000562	6
	Exhibit 6 – TSE’s Response to Brahma’s Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000565	6

CHRONOLOGICAL INDEX

	Exhibit 7 – Brahma’s Reply in Support of Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000589	6
	Exhibit 8 – TSE’s Motion for Injunction and to Strike in the Federal Action	PA000603	6
	Exhibit 9 – Brahma’s Response to TSE’s Motion for Injunction and to Strike in the Federal Action	PA000619	7
	Exhibit 10 – Reply in Support of TSE’s Motion for Injunction and to Strike in the Federal Action	PA000645	7
12/03/2018	Brahma’s Reply in Support of its Motion for Leave to Amend	PA000661	7
	Exhibit 1 – Mechanic’s Lien Foreclosure Complaint in Case No. A-16-743285-C	PA000676	7
12/11/2018	Hearing Transcript from December 11, 2018 hearing	PA000687	7-8
01/25/2019	Notice of Entry of Order, served on January 25, 2019, Denying in part and Granting in part TSE’s Motion to Strike/Dismiss/Stay and Granting Brahma’s Motion for Leave to Amend	PA000870	8
	Exhibit 1 – Order Denying in part and Granting in part TSE’s Motion to Strike/Dismiss/Stay and Granting Brahma’s Motion for Leave to Amend	PA000874	8
NA	Docket for the Federal Action	PA000878	8

CHRONOLOGICAL INDEX

NA	Docket for the Nye County special proceeding	PA000886	8
-----------	---	-----------------	----------

ALPHABETICAL INDEX

Date Filed	Description	Bates Number	Volume(s)
10/23/2018	Brahma's Motion for Leave to Amend filed on October 23, 2018	PA000237	2
	Exhibit 1 – Brahma's Second Amended Counter-Complaint and Amended Third-Party Complaint	PA000244	3
	Exhibit 2 – October 17, 2018 Email	PA000257	3
	Exhibit 3 – October 18, 2018 Email	PA000260	3
11/05/2018	Brahma's Opposition to TSE's Motion to Strike/Dismiss/Stay	PA000274	3
	Exhibit 1 – Services Agreement	PA000307	3
	Exhibit 2 – Notice of Lien	PA000329	4
	Exhibit 3 – Complaint, dated April 17, 2018	PA000337	4
	Exhibit 4 – Notice of Foreclosure of Mechanic's Lien	PA000344	4
	Exhibit 5 – Notice of Lis Pendens	PA000352	4
	Exhibit 6 – April 19, 2018 Correspondence	PA000360	4
	Exhibit 7 – TSE's Motion to Expunge, dated April 24, 2018	PA000364	4
	Exhibit 8 – Notice of Voluntary Dismissal Without Prejudice	PA000377	4
	Exhibit 9 – Notice of First Amended and Restated Lien	PA000380	4
	Exhibit 10 – Notice of Second	PA000393	4

ALPHABETICAL INDEX

	Amended and Restated Lien		
	Exhibit 11 – Third Amended and/or Restated Notice of Lien	PA000403	4
	Exhibit 12 – Fourth Amended and/or Restated Notice of Lien	PA000412	4
	Exhibit 13 – NRS 108.2415 Surety Bond	PA000421	5
	Exhibit 14 – Certificate of Service of Surety Bond Rider	PA000426	5
	Exhibit 15 – Notice of Lien	PA000437	5
	Exhibit 16 – NRS 108.2415 Surety Bond	PA000440	5
	Exhibit 17 – Order of Reassignment	PA000445	5
	Exhibit 18 – Complaint in the Eighth Judicial District Court	PA000448	5
	Exhibit 19 – Brahma’s Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000454	5
	Exhibit 20 – Mechanic’s Lien Foreclosure Complaint in Case No. A-16-743285-C	PA000474	5
12/03/2018	Brahma’s Reply in Support of its Motion for Leave to Amend	PA000661	7
	Exhibit 1 – Mechanic’s Lien Foreclosure Complaint in Case No. A-16-743285-C	PA000676	7
NA	Docket for the Federal Action	PA000878	8

ALPHABETICAL INDEX

NA	Docket for the Nye County special proceeding	PA000886	8
12/11/2018	Hearing Transcript from December 11, 2018 hearing	PA000687	7-8
01/25/2019	Notice of Entry of Order, served on January 25, 2019, Denying in part and Granting in part TSE's Motion to Strike/Dismiss/Stay and Granting Brahma's Motion for Leave to Amend	PA000870	8
11/1/2018	Notice of Entry of Order, served on November 1, 2018, denying TSE's Motion to Expunge	PA000264	3
06/11/2018	TSE's Motion to Expunge	PA000001	1
	Exhibit 1 – Services Agreement	PA000014	1
	Exhibit 2 – Notice of Lien	PA000036	1
	Exhibit 3 – Notice of First Amended and Restated Lien	PA000044	1
	Exhibit 4 – Notice of First Amended and Restated Lien	PA000048	1
	Exhibit 5 – Notice of Second Amended and Restated Lien	PA000058	1
	Exhibit 6 – Notice of Voluntary Dismissal Without Prejudice	PA000068	1
	Exhibit 7 – Affidavit of Justin Pugh	PA000079	1
10/18/2018	TSE's Motion to Strike/Dismiss/Stay	PA000084	1
	Exhibit 1 – Brahma's Lien Foreclosure Complaint	PA000109	2

ALPHABETICAL INDEX

	Exhibit 2 – Brahma’s First Amended Counter-Complaint and Third-Party Complaint	PA000116	2
	Exhibit 3 – Brahma’s Complaint in the Eighth Judicial District Court	PA000131	2
	Exhibit 4 – Services Agreement	PA000137	2
	Exhibit 5 – Notice of Removal to Federal Court	PA000159	2
	Exhibit 6 – TSE’s Answer and Counterclaim in the Federal Action	PA000169	2
	Exhibit 7 – Brahma’s First Amended Complaint in the Federal Action	PA000189	2
	Exhibit 8 – Brahma’s Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000194	2
	Exhibit 9 – Fourth Amended and/or Restated Notice of Lien	PA000214	2
	Exhibit 10 – Certificate of Service of Surety Bond Rider	PA000225	2
11/05/2018	TSE’s Opposition to Brahma’s Motion for Leave to Amend	PA000485	5
11/30/2018	TSE’s Reply in Support of its Motion to Strike/Dismiss/Stay	PA000492	5
	Exhibit 1 – TSE’s First Set of Interrogatories to Brahma and TSE’s First Set of Requests for Production to Brahma	PA000507	6
	Exhibit 2 – Brahma’s Motion to Stay Discovery Pending Determination of Dispositive Motion in the Federal	PA000522	6

ALPHABETICAL INDEX

	Action		
	Exhibit 3 – Brahma’s Responses to TSE’s First Set of Requests for Production of Documents and First Set of Interrogatories	PA000535	6
	Exhibit 4 – Nevada Construction Law 2016 Edition by Leon F. Mead II	PA000551	6
	Exhibit 5 – Scheduling Order in the Federal Action	PA000562	6
	Exhibit 6 – TSE’s Response to Brahma’s Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000565	6
	Exhibit 7 – Brahma’s Reply in Support of Motion for Stay, or in the alternative, Motion to Amend Complaint in the Federal Action	PA000589	6
	Exhibit 8 – TSE’s Motion for Injunction and to Strike in the Federal Action	PA000603	6
	Exhibit 9 – Brahma’s Response to TSE’s Motion for Injunction and to Strike in the Federal Action	PA000619	7
	Exhibit 10 – Reply in Support of TSE’s Motion for Injunction and to Strike in the Federal Action	PA000645	7

WEINBERG WHEELER
HUDGINS GUNN & DIAL



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

*Attorneys for Plaintiff
Tonopah Solar Energy, LLC*

FILED
FIFTH JUDICIAL DISTRICT
W
JUN -11 2018
Nye County Clerk
DEBRA BENNETT Deputy

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

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

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

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

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



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

DATED this 1st day of June, 2018.

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

*Attorneys for Plaintiff
Tonopah Solar Energy, LLC*

NOTICE OF MOTION

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

DATED this 1st day of June, 2018.

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

*Attorneys for Plaintiff
Tonopah Solar Energy, LLC*



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

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



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

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

10 **II. STATEMENT OF FACTS**

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

17 Since there is no federal law that waives the government's immunity from mechanic's
18 liens and lien foreclosure actions, courts have universally held that federally owned land is not
19 subject to mechanic's liens that arise under state statutes. *F. D. Rich Co., Inc. v. U. S. for Use of*
20 *Indus. Lumber Co., Inc.*, 417 U.S. 116 (1974) ("Ordinarily, a supplier of labor or materials on a
21 private construction project can secure a mechanic's lien against the improved property under
22 state law. But a lien cannot attach to Government property . . ."); *United States v. Lewis Cty.*, 175
23 F.3d 671, 678 (9th Cir. 1999) ("Foreclosure against federally-owned property is a suit against the
24

25 _____
26 ⁵ Importantly, granting TSE's Motion would not necessarily bring about a harsh result. BGI
27 continues to have the option to (1) release the current mechanic's lien, (2) give the statutorily
28 required pre-lien notice to the BLM and then (3) record a new mechanic's lien. However, to
date, BGI has failed to take this path and instead continues to defend a lien that has been invalid
from the start.



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

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

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

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

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



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

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

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

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

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26

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

V. CONCLUSION

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

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

DATED this 1st day of June, 2018.

Collyer

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

*Attorneys for Plaintiff
Tonopah Solar Energy, LLC*



CERTIFICATE OF SERVICE

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

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

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

Attorneys for Defendant Brahma Group, Inc.

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

EXHIBIT 1

EXHIBIT 1

SERVICES AGREEMENT

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

Tonopah Solar Energy, LLC
("TSE")

AND

Brahma Group, Inc.
("Contractor")

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

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

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

5. Work Policy, Personnel.

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

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

6. Representations and Warranties: Undertakings.

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

7. Intellectual Property Rights.

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

8. Confidentiality Provisions.

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

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

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

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

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

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

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

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

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

[Signature page follows]

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

TONOPAH SOLAR ENERGY, LLC

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

BRAHMA GROUP, INC.


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

EXHIBIT A

Start Date: February 7, 2017

End Date: November 14, 2018

Hourly Rate: See Exhibit C

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

Authorized Representative: Rob Howe, Project Director

Scope of Work

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

EXHIBIT B

INSURANCE REQUIREMENTS

Insurance Requirements

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

Insurance Policy Provisions

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

Additional Insured

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

Primary and Non-Contributory Coverage

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

Separation of Insureds

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

Notice of Cancellation

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

Waiver of Subrogation

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

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

Acceptability of Insurers

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

Verification of Coverage

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

EXHIBIT C
BILLING RATES



CRAFT LABOR RATES
General Conditions - Support

Crescent Dunes Solar Energy Project
Tonopah, NV

CLASSIFICATION		Straight Time	Overtime	Double Time
Project Manager	\$	150.26	\$ 199.85	
Field Engineer	\$	134.73	\$ 179.19	
Cost Scheduler	\$	134.73	\$ 179.19	
Superintendent	\$	134.73	\$ 179.19	
QA/QC Manager	\$	95.89	\$ 127.53	
Safety Manager	\$	95.89	\$ 127.53	
Field Safety	\$	68.91	\$ 91.65	
CWI	\$	68.91	\$ 91.65	
Admin	\$	57.05	\$ 75.88	

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

11-Nov-16



CRAFT LABOR RATES

Field

Crescent Dunes Solar Energy Project

Tonopah, NV

CLASSIFICATION	Straight Time	Overtime	Double Time
General Foreman	\$ 94.26	\$ 125.36	
Foreman	\$ 90.36	\$ 120.18	
Iron Worker	\$ 85.43	\$ 113.62	
Carpenter	\$ 73.92	\$ 98.32	
Electrician	\$ 83.91	\$ 111.60	
Operator	\$ 79.52	\$ 105.76	
Millwright	\$ 85.43	\$ 113.62	
Pipe Fitter	\$ 86.46	\$ 114.99	
Laborer	\$ 55.62	\$ 73.97	

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

11-Nov-16



CRAFT LABOR RATES
General Conditions - Support

Crescent Dunes Solar Energy Project

Tonopah, NV

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

CLASSIFICATION		Straight Time	Overtime	Double Time
Project Manager	\$	176.78	\$ 235.12	
Field Engineer	\$	158.50	\$ 210.81	
Cost Scheduler	\$	158.50	\$ 210.81	
Superintendent	\$	158.50	\$ 210.81	
QA/QC Manager	\$	112.81	\$ 150.04	
Safety Manager	\$	112.81	\$ 150.04	
Field Safety	\$	81.07	\$ 107.83	
CW1	\$	81.07	\$ 107.83	
Admin	\$	67.12	\$ 89.27	

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

11-Nov-16



CRAFT LABOR RATES

Field

Crescent Dunes Solar Energy Project

Tonopah, NV

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

CLASSIFICATION	Straight Time	Overtime	Double Time
General Foreman	\$ 110.89	\$ 147.48	
Foreman	\$ 106.31	\$ 141.39	
Iron Worker	\$ 100.50	\$ 133.67	
Carpenter	\$ 86.97	\$ 115.67	
Electrician	\$ 98.72	\$ 131.30	
Operator	\$ 93.55	\$ 124.42	
Millswright	\$ 100.50	\$ 133.67	
Pipe Fitter	\$ 101.72	\$ 135.29	
Laborer	\$ 65.43	\$ 87.02	

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

11-Nov-16

EXHIBIT D
Payment Deliverables

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

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

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

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

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

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

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

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

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

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

EXHIBIT 2

EXHIBIT 2

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

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF LIEN

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

1. The amount of the original contract is: this is a time and material contract with no specified original contract amount

2. The total amount of all additional or changed work, materials and equipment, if any, is: not applicable

3. The total amount of all payments received to date is: \$13,818,882.29

4. The amount of the lien, after deducting all just credits and offsets, is:
\$6,982,186.24

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

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

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

///

///

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

Dated: April 6, 2018.

Brahma Group, Inc.

By: 

Name: Sean Davis

Title: President

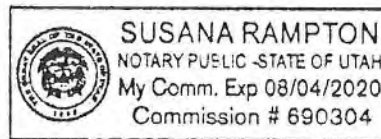
State of Utah)
) ss.
County of Salt Lake)

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

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


Sean Davis

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



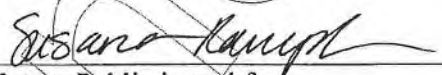

Notary Public in and for
the County of Salt Lake and State of Utah

EXHIBIT A**Improvement:**

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

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

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

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

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 3

EXHIBIT 3

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

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF FIRST AMENDED AND RESTATED LIEN

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

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

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

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

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

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


///

///

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

Dated: April 13, 2018.

Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

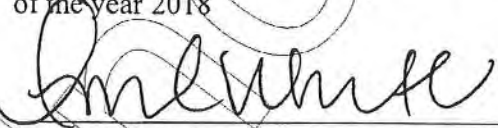
State of Utah)
) ss.
County of Salt Lake)

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

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


Sean Davis

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


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

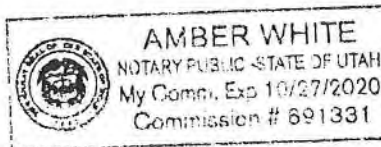


EXHIBIT 4

EXHIBIT 4

APN 012-031-04, 012-131-03, 012-131-04,
APN 012-140-01, 012-141-01, 012-150-01,
APN 012-151-01, 012-431-06, 612-141-01
APN _____
Recording Requested By:
Name Jones Lovelock, Nicole Lovelock

Address 400 S. 4th Street, Suite 500

City / State / Zip Las Vegas, Nevada 89101

Notice of First Amended and Restated Lien

Title of Document (required)
Only use below if applicable

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

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

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

Signature _____

Name Typed or Printed _____

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

DOC # 891507

Official Records Nye County Nevada
Deborah Beatty - Recorder
04/18/2018 10:32:56 AM
Requested By: JONES LOVELOCK
Recorded By: kd RPTT:\$0
Recording Fee: \$35.00
Page 1 of 9



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

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF FIRST AMENDED AND RESTATED LIEN

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

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

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

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

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


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

///

///

Solar Energy Project more particularly described in Exhibit A.

Brahma Group, Inc.

By: 
Name: Sean Davis
Title: President

State of Utah)
County of Salt Lake) ss.

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

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

Sean Davis

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

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

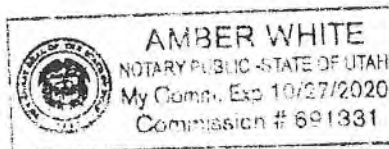


EXHIBIT A

Unofficial Copy

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

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

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

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

And

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 5

EXHIBIT 5

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

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



WHEN RECORDED, MAIL TO:

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

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

NOTICE OF SECOND AMENDED AND RESTATED LIEN

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

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

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

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

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

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

///

///

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

Dated: April 23, 2018.

Brahma Group, Inc.

By: 

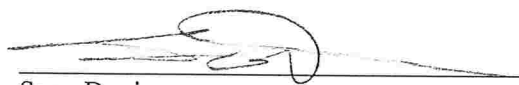
Name: Sean Davis

Title: President

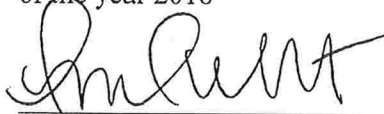
State of Utah)
) ss.
County of Salt Lake)

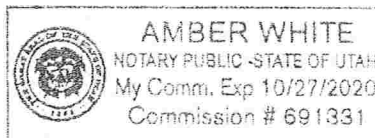
Sean Davis, being first duly sworn on oath according to law, deposes and says:

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


Sean Davis

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





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

EXHIBIT A

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 6

EXHIBIT 6

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

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

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

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

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

10 BRAHMA GROUP, INC. a Nevada
corporation;

11 Plaintiff,

12 v.

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

16 Defendants.

CASE NO.: CV39237
DEPT. NO.: 1

NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE

18 / / /

19 / / /

20

21

22

23

24

25

26

27

28

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

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

3 DATED this 24th day of April 2018.

4 JONES LOVELOCK

5
6 By: 

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

7
8
9 Attorneys for *Brahma Group, Inc.*

APN 012-031-04, 012-131-03, 012-131-04, 012-140-01,

APN 012-141-01, 012-150-01, 012-151-01, 012-431-06,

APN 612-141-01

APN _____

Recording Requested By:

Name Jones Lovelock, Nicole Lovelock

Address 400 S. 4th Street, Suite 500

City / State / Zip Las Vegas, Nevada 89101

DOC # 891765

Official Records Nye County Nevada

Deborah Beatty - Recorder

04/24/2018 03:17:22 PM

Requested By: JONES LOVELOCK

Recorded By: tc RPTT:\$0

Recording Fee: \$35.00

Page 1 of 8



Release of Lis Pendens

Title of Document (required)

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

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

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

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

☐ Judgment – NRS 17.150(4)

☐ Military Discharge – NRS 419.020(2)

☐ Other _____

Signature _____

Name Typed or Printed _____

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

This cover page must be typed or printed.

PA000071

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

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

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

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

11 BRAHMA GROUP, INC. a Utah corporation;

CASE NO.: CV39237
DEPT. NO.: 1

12 Plaintiff,

13 v.

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

RELEASE OF LIS PENDENS

16 Defendants.
17

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

22 / / /

23 / / /

24
25
26
27
28

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

NRS 239B.030 CERTIFICATION

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

DATED this 24th day of April 2018.

JONES LOVELOCK

By: 

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

Attorneys for *Brahma Group, Inc.*

EXHIBIT A

EXHIBIT A

Improvement:

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

Land:

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

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

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

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

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

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

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

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

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

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

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

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

And

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

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

PARCEL 4-1:

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

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

PARCEL 4-2:

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

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

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

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

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

PARCEL 5:

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

EXHIBIT 7

EXHIBIT 7



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

Attorneys for Plaintiff
Tonopah Solar Energy, LLC

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

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

Plaintiff,

vs.

BRAHMA GROUP, INC.; a Nevada corporation,

Defendant.

Case No.
Dept. No.

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

AFFIDAVIT OF JUSTIN PUGH

STATE OF NEVADA)

COUNTY OF NYE)

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

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

2. I am a Managing Director at FTI Consulting ("FTI") in the Corporate Finance and Restructuring Division.



1 3. FTI is the project manager for Tonopah Solar Energy, LLC ("TSE") on
2 the Crescent Dunes Solar Energy Project ("Project") located outside Tonopah,
3 Nevada.

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

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

9 6. TSE entered into a contract with Brahma Group, Inc. ("BGI") in February
10 2017 to have BGI perform work on the Project. A true and correct copy of the
11 contract is attached as **Exhibit 1** to the Motion. Since then, BGI has submitted
12 certain invoices for which TSE has been unable to determine if payment is
13 appropriate.

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

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

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

23 ///

24 ///

25 ///

26 ///

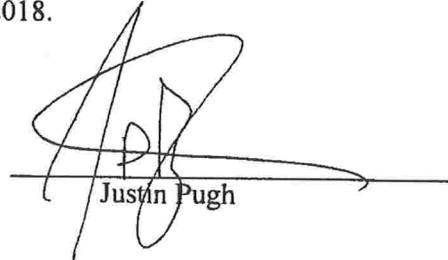
27 ///

28 ///

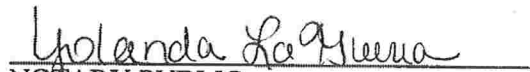


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. On April 9, 2018, BGI recorded a mechanic's lien against the Property with the Nye County Recorder. BGI then recorded amendments to that lien on April 16, 2018, April 18, 2018 and April 24, 2018.
DATED this 31st day of May, 2018.


Justin Pugh

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



NOTARY PUBLIC

Yolanda LaGuerra
Notary Public, State of New York
No. 01142776000
Certificate Filed in Eugene County
Commission Expires May 15, 2021

BANK TRANSIT NO.	\$ CHECKS	\$ CASH	CASE NUMBER	DATE	FROM WHOM RECEIVED	DESCRIPTION	RECEIVED BY
18	245.00		39348	9/11	WENES06 WHITE	NEW CIVIL	JJB

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

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

80469 

INVALID WITHOUT SIGNATURE

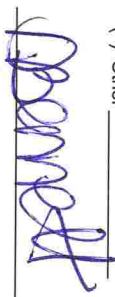
- () Docket - Civil
- () Fees County - Civil
- () Fees State - Civil
- () Docket - Probate
- () Fees - Probate

- () Clerk's Certificates
- () Acknowledgements
- () Corporations
- () Notarial Records

- () Marriage License - County
- () Marriage License - State
- () Juvenile Fees
- () Domestic Violence Fees
- () Adult Fines
- () Other _____

RETAIN THIS RECEIPT
FOR YOUR RECORDS

Q 39348
D2



SIGNATURE



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

Attorneys for Tonopah Solar Energy, LLC

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

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

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

Case No. CV 39348
Dept. No. 2

**TONOPAH SOLAR ENERGY, LLC'S
MOTION TO STRIKE BRAHMA
GROUP, INC.'S FIRST AMENDED
COUNTER-COMPLAINT, OR, IN THE
ALTERNATIVE, MOTION TO DISMISS
COUNTER-COMPLAINT, OR, IN THE
ALTERNATIVE, MOTION TO STAY
THIS ACTION UNTIL THE
CONCLUSION OF THE PROCEEDINGS
IN FEDERAL COURT**


Defendant **TONOPAH SOLAR ENERGY, LLC** (hereinafter "TSE"), by and through
its attorneys of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC,
hereby moves to strike and/or dismiss Brahma Group, Inc.'s (hereinafter "Brahma") First
Amended Counter-Complaint ("Counter-Complaint") that was filed on September 25, 2018. The
Counter-Complaint is a transparent attempt by Brahma to avoid the jurisdiction of the Nevada
Federal District Court over the Parties' dispute.



In the alternative, this Court should stay this action until the Parties' litigation in Nevada Federal District Court is complete. The federal action was filed first and thus, under principles of comity, and in order to not reward Brahma's forum shopping strategy, this action should be stayed.

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


DATED this 18th day of October, 2018.


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

NOTICE OF MOTION

PLEASE TAKE NOTICE that TONOPAH SOLAR ENERGY, LLC'S MOTION TO STRIKE BRAHMA GROUP, INC.'S FIRST AMENDED COUNTER-COMPLAINT, OR, IN THE ALTERNATIVE, MOTION TO DISMISS COUNTER-COMPLAINT, OR, IN THE ALTERNATIVE, MOTION TO STAY THIS ACTION UNTIL THE CONCLUSION OF THE PROCEEDINGS IN FEDERAL COURT will come on for hearing in Department No. _____ of the above-entitled Court on the _____ day of _____ 2018, at _____ a.m./p.m.

DATED this 18th day of October, 2018.


D. Lee Roberts, Esq.
Colby L. Balkenbush, 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

TSE is the project developer for the Crescent Dunes Solar Energy Facility located outside Tonopah, Nevada ("Project"). TSE contracted with Brahma to perform certain warranty work on the Project. The Parties are currently in the midst of a dispute over the sufficiency of certain invoices Brahma has submitted to TSE for payment. In essence, Brahma contends that TSE owes it additional money for work Brahma performed on the Project. TSE contends that Brahma is not owed any additional money and that many of Brahma's invoices are fraudulent.

This Motion is necessary as Brahma has improperly attempted to move the substantive portion of the Parties' dispute (i.e. who owes who what) out of federal court, where it was first filed, and into this Court. Brahma first filed a complaint against TSE on July 17, 2018 in the Eighth Judicial District Court in Las Vegas. On September 10, 2018, TSE removed that action to Nevada Federal District Court.

Brahma, apparently unhappy with its new federal forum, has turned this case into a procedural quagmire in an attempt to avoid federal jurisdiction. On September 25, 2018, Brahma filed a First Amended Complaint in federal court that dropped all but one of its claims against TSE. On the exact same day, Brahma filed a "Counter-Complaint" in this proceeding that added the dropped federal court claims to this case. In other words, Brahma has affected a stunning "back-door remand" of its federal court claims to this Court without even filing a motion to remand with the federal court. However, there are numerous problems with Brahma's forum shopping that should result in this Court either (1) striking/dismissing the Counter-Complaint or (2) staying this proceeding until the parallel action in federal court is complete.

First, Brahma's stand-alone "Counter-Complaint" is not a recognized pleading under NRCP 7(a) and thus should be stricken. Pursuant to NRCP 7(a) and the Nevada Supreme Court's *Smith* decision, the only permissible pleadings are complaints, answers and replies. Further, this is a special proceeding under NRS 108.2275 that was created solely to address TSE's Motion to Expunge Brahma's Mechanic's Lien. Thus, the jurisdictional basis for this proceeding ceased to exist once the Court denied TSE's Motion to Expunge on September 12,



1 2018. There is no Nevada authority permitting a “Counter-Complaint” to be filed into a special
2 proceeding such as this.

3 Second, the Parties’ Contract requires that “any action or proceeding directly or indirectly
4 arising out of this Agreement” be venued in Las Vegas. Indeed, Brahma initially filed its
5 substantive claims in the Eighth Judicial District Court but now, after it has received a favorable
6 ruling from this Court, seeks to move the litigation to the Fifth Judicial District in Pahrump. The
7 Court should enforce the venue selection clause and require Brahma to re-file its claims in a Las
8 Vegas court.

9 Third, a substantial body of state and federal case law holds that once an action is
10 removed to federal court, state courts lack subject matter jurisdiction over the parties’ dispute
11 until the matter is remanded back to state court. Thus, this Court should dismiss Brahma’s
12 claims that were removed to federal court and then re-filed with this Court based on lack of
13 subject matter jurisdiction.

14 Fourth, in regard to Brahma’s Lien Foreclosure claim against TSE, that claim is now
15 moot and should be dismissed as an over \$19 million bond has been posted as security for
16 Brahma’s mechanic’s lien. NRS 108.2415(6) provides that a surety bond replaces the property
17 as security for the lien once it is posted.

18 Finally, in the alternative, assuming *arguendo* that the Court disagrees with all of TSE’s
19 above arguments, the Court should at least stay this proceeding until the first filed federal action
20 is completed. Under the “first to file rule,” a stay is appropriate if there is a substantially similar
21 action pending before a different court. Here, Brahma has admitted in a recent federal court
22 filing that this proceeding is a “duplicative dispute” and that it fulfills the “substantial similarity”
23 requirement for a stay.¹ Thus, a stay is appropriate because the federal action was filed on July
24

25 ¹ Brahma agrees with TSE that this dispute is duplicative of the first filed federal court action but the
26 parties disagree over which action should be stayed, this proceeding or the federal one. Brahma has filed
27 a motion to stay with the federal court arguing that that court should stay the federal action under the
28 *Colorado River* abstention doctrine. For reasons TSE will not go into in detail here, the *Colorado River*
doctrine is completely inapplicable to this matter and Brahma’s motion to stay is unlikely to be granted.
Brahma’s motion to stay misrepresents key facts to the federal court (a matter TSE will bring to that
court’s attention in its opposition which is not yet due). For example, Brahma represents that its claims
against TSE were first brought in Nye County rather than federal court (a misrepresentation) and



17, 2018 but Brahma did not file a complaint in this proceeding until September 20, 2018.

II. PROCEDURAL HISTORY OF THIS NYE COUNTY ACTION

This proceeding was created not by the filing of a complaint but rather by TSE's filing of its Motion to Expunge Brahma's Mechanic's Lien on June 11, 2018. NRS 108.2275 creates a statutory exception to NRCP 3 (requiring the filing of a complaint to institute a civil action) permitting parties to institute special limited proceedings with the mere filing of a motion to expunge. TSE's Motion to Expunge was heard by this Court on September 12, 2018 and denied in full.

That ruling should have been the end of this limited special proceeding. Instead, Brahma has now filed a Complaint and First Amended Counter-Complaint, seeking to broaden the scope of this proceeding beyond NRS 108.2275. On September, 20, 2018, Brahma filed a "Lien Foreclosure Complaint" against TSE asserting a single cause of action for lien foreclosure in this Nye County proceeding. **Exhibit 1** (Lien Foreclosure Complaint). On September 25, 2018, Brahma filed a "First Amended Counter-Complaint" in this proceeding that added three additional claims against TSE that had already been asserted in a first filed federal court action. **Exhibit 2** (First Amended Counter-Complaint). Those claims were (1) Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair Dealing and (3) Violation of NRS 624.

In addition, on September 25, 2018, Brahma filed a Third Party Complaint against American Home Assurance Company ("American Home") and Cobra Thermosolar Plants, Inc. ("Cobra"), asserting a claim against the surety bond those entities had posted in satisfaction of Brahma's mechanic's lien.

To reiterate, the original jurisdictional basis for this action no longer exists. First, TSE's Motion to Expunge was denied in full by this Court. Second, subsequent to the denial of TSE's Motion to Expunge, American Home and Cobra posted a surety bond in the amount of \$19,289,366.61. As required by NRS 108.2415(1), this bond is 1.5 times the amount of

represents that TSE is the one seeking a friendly judge by engaging in forum shopping, even though TSE removed the Eighth Judicial District Court action to federal court **BEFORE** this Court denied TSE's Motion to Expunge.

1 Brahma's most recent Fourth Amended Mechanic's Lien (\$12,859,577.74.). As a result of that
2 bond being posted Brahma's mechanic's lien that was the subject of TSE's Motion to Expunge
3 has been released.

4 **III. STATEMENT OF FACTS**

5 **A. Brahma's Contract and NRS 624 Claims Have Been Removed to Federal** 6 **Court, Thus Divesting this Court of Jurisdiction**

7 On July 17, 2018, while this special proceeding was still ongoing in this Court, Brahma
8 filed a Complaint in the Eighth Judicial District Court asserting claims against TSE for (1)
9 Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair Dealing, (3)
10 Violation of NRS 624 and (4) Unjust Enrichment. **Exhibit 3** (Clark County Complaint).
11 Brahma's decision to file its substantive claims against TSE in Clark County rather than Nye
12 County was appropriate as the Parties' Contract contains a clause requiring venue in Las Vegas.
13 **Exhibit 4** at p. 8 (Contract). TSE then removed that action to Nevada Federal District Court on
14 September 10, 2018 based on diversity.² **Exhibit 5** (Notice of Removal). As detailed more fully
15 in Section VI below, this removal divested all Nevada state courts of jurisdiction over the
16 removed claims. *See* 28 U.S.C. § 1446(d) (stating that upon the filing of the Notice of Removal,
17 "the State court shall proceed no further unless and until the case is remanded.").

18 On September 17, 2018, TSE filed an Answer and Counterclaim to Brahma's removed
19 Complaint. **Exhibit 6** (TSE's Answer and Counterclaim). TSE's Counterclaim asserts six
20 claims against Brahma in the federal court action including (1) Breach of Contract, (2) Breach of
21 the Implied Covenant, (3) Declaratory Relief, (4) Unjust Enrichment/Quantum Meruit, (5) Fraud
22 and (6) Negligent Misrepresentation. All of these counterclaims were properly before the federal
23 court before Brahma attempted a back-door remand to this Court that has created a procedural
24 quagmire.

25
26
27 ² TSE's removal was timely as TSE was not served with the Clark County Complaint until August 21,
28 2018.



1 **B. In an Attempt to Avoid the Federal Court's Jurisdiction, Brahma Dropped**
2 **Three Claims from its Federal Court Complaint and Re-filed Those Claims**
3 **in a Nye County Counter-Complaint in this Court**

4 After this Court denied TSE's Motion to Expunge on September 12, 2018, Brahma
5 apparently had a change of heart and decided that, rather than litigating its substantive claims in
6 Las Vegas (where it had first filed them), it preferred to litigate those claims before this Court in
7 Pahrump. Thus, on September 25, 2018, Brahma (1) filed a First Amended Complaint in federal
8 court that dropped its claims for Breach of Contract, Breach of the Implied Covenant of Good
9 Faith and Fair Dealing and Violation of NRS 624³ and (2) filed a First Amended Counter-
10 Complaint in Nye County that added those same three dropped federal claims to this proceeding.
11 See **Exhibit 7** (First Amended Federal Court Complaint filed on September 25, 2018); **Exhibit 2**
12 (First Amended Nye County Counter-Complaint filed on September 25, 2018).

13 Brahma's attempt at a back-door remand of the removed federal action was not subtle.
14 The three claims dropped from Brahma's federal court Complaint on September 25, 2018 are the
15 exact same claims that were simultaneously added to this Nye County proceeding that same day.
16 The allegations that make up the three new claims in Nye County are also identical to those
17 asserted in the removed federal action. Thus, there can be no question that Brahma is engaged in
18 transparent and impermissible forum shopping.

19 **C. The Parties' Contract Contains a Venue Selection Clause Requiring that this**
20 **Matter be Litigated in Las Vegas, Nevada**

21 The Parties' substantive claims against each other belong in Las Vegas Federal District
22 Court not only because the claims were first filed there by Brahma, but also because the Parties'
23 Contract requires a Las Vegas venue. The Contract provides as follows:

24 ³ This Court should not mistake Brahma's dropping of its three federal court claims via the First
25 Amended Federal Court Complaint as court sanctioned behavior. Under FRCP 15(a)(1), a party has a
26 right to amend its complaint without leave of court within 21 days after a responsive pleading is filed.
27 Since TSE filed its Answer to Brahma's removed Complaint on September 17, 2018, Brahma was able to
28 drop the three claims via its First Amended Complaint without seeking leave from the federal court.
 However, TSE has brought a motion in federal court seeking to have that court strike Brahma's
 amendment as it was done as part of a bad faith effort to defeat the federal court's exclusive jurisdiction
 over all removed claims.



This Agreement shall be governed by the laws of the State of Nevada. Contractor (i.e. Brahma) submits to the jurisdiction of the courts in such State, with a venue in Las Vegas, Nevada, for any action or proceeding directly or indirectly arising out of this Agreement.

Exhibit 4 at p. 8 (Contract) (emphasis added). Brahma was apparently aware of this clause as it decided to first file its substantive claims against TSE in the Eighth Judicial District Court on July 17, 2018. Now, for whatever reason, Brahma has decided to ignore this clause and seeks to unilaterally move three of its federal court claims to Nye County. TSE requests that this Court enforce the venue selection clause and require Brahma to litigate its claims where they were originally brought—Las Vegas.

IV. LEGAL STANDARD FOR MOTION TO STRIKE AND MOTION TO DISMISS

TSE brings this Motion pursuant to NRCP 12(f), NRCP 12(b)(1) and NRCP 12(b)(5). Under NRCP 12(f), it is appropriate to bring a motion to strike “any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Further, the Nevada Supreme Court has stated that when a pleading other than those expressly permitted in NRCP 7(a) is filed, the appropriate remedy is a motion to strike that pleading. *Smith v. Eighth Judicial Dist. Court In & For Cty. of Clark*, 113 Nev. 1343, 1348, 950 P.2d 280, 283 (1997).

Under NRCP 12(b)(1), lack of subject matter jurisdiction is appropriately raised in a motion to dismiss. Similarly, NRCP 12(h)(3) provides that “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” In general, the party moving to dismiss an action bears the burden of persuasion. However, when the defense of lack of subject matter jurisdiction is raised “[t]he burden of proving the jurisdictional requirement is properly placed on the plaintiff.” *Morrison v. Beach City LLC*, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000) (emphasis added). The district court can take evidence on the claim that the court lacks subject matter jurisdiction and such evidence is not necessarily confined to the allegations of the complaint. *Id.* Thus, the burden is on Brahma rather than TSE to prove that this Court can still retain jurisdiction of claims that have been removed to federal court.



Under NRCP 12(b)(5), a defendant may request that a court dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." In deciding a motion to dismiss, a court should treat the factual allegations in the complaint as true and it should draw all inferences in favor of the plaintiff. *See Simpson v. Mars, Inc.*, 113 Nev. 188, 190 (1997). If, after crediting the factual allegations in the plaintiff's complaint as true the plaintiff cannot prove a set of facts that would entitle him to relief, then a court should dismiss the plaintiff's lawsuit. *See id.*

V. BRAHMA'S COUNTER-COMPLAINT SHOULD BE DISMISSED BECAUSE A "COUNTER-COMPLAINT" IS NOT A RECOGNIZED PLEADING AND CANNOT BE FILED IN A SPECIAL ACTION SUCH AS THIS ONE

A. Brahma's "Counter-Complaint" is Not One of the Three Permitted Pleadings Under NRCP 7(a) and Thus Must be Stricken/Dismissed

NRCP 7(a) provides as follows:

There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. **No other pleading shall be allowed**, except that the court may order a reply to an answer or a third-party answer.

(emphasis added). In *Smith*, the Nevada Supreme Court provided an extensive explanation of this rule. *Smith v. Eighth Judicial Dist. Court In & For Cty. of Clark*, 113 Nev. 1343, 1346, 950 P.2d 280, 282 (1997). There, the first pleading filed was plaintiff Lee's complaint against defendant Chang for injuries incurred in a car accident. Defendant Chang then filed a separate document entitled "cross-claim" that alleged that a different defendant (Smith) was responsible for Chang's injuries in the accident.

The Nevada Supreme Court explained that the district court should have stricken the defendant's "cross-claim" under NRCP 7(a) because **"the only pleadings allowed are complaints, answers and replies"** and a "cross-claim" or "counter-claim" was not a permitted pleading. *Id.* (emphasis added). "Counterclaims and cross-claims are not separate pleadings, but are claims for relief that may be set forth in answers and complaints." *Id.* Thus, because the defendant had failed to assert the cross-claim in his answer (a permitted pleading), the court was



1 obligated to strike the rogue “cross-claim” as an impermissible pleading under NRCP 7(a). *Id.*
2 (“[c]ounterclaims and cross-claims must be set forth in pleadings authorized by NRCP 7,
3 because ‘[n]o other pleading shall be allowed.’”).

4 The Nevada Supreme Court further explained that the fact that Nevada is a notice-
5 pleading jurisdiction that liberally construes pleadings could not save the defendant’s rogue
6 pleading from being stricken. “There is, however, nothing technical about the defect in Chang’s
7 cross-claim; the document simply is not a pleading, and does not itself put the matters asserted
8 therein at issue.” *Id.* at 283 (emphasis added).

9 Here, like defendant Chang in the *Smith* case, Brahma has filed a pleading that is not
10 permitted under NRCP 7(a). Brahma’s “Counter-Complaint” filed on September 25, 2018 is not
11 one of the three permitted pleadings under Nevada law (i.e. a “complaint,” “answer” or “reply.”).
12 Thus, under NRCP 7(a) and *Smith*, Brahma’s Counter-Complaint constitutes a rogue pleading
13 that must be stricken.

14 Brahma may argue in response that, even if it is styled as a “Counter-Complaint,” its
15 pleading should be construed as a “complaint” which is a permitted pleading under NRCP 7(a).
16 However, such an argument would be without merit as, by definition, a “complaint” is a pleading
17 that initiates an action. BLACK’S LAW DICTIONARY (10th ed. 2014) (defining a “Complaint” as
18 “[t]he initial pleading that starts a civil action and states the basis for the court’s jurisdiction.”);
19 *see also* NRCP 3. Since this action was initiated by TSE’s June 11, 2018 Motion to Expunge,
20 there is no way to construe Brahma’s “Counter-Complaint” as a “complaint.”

21 Brahma’s Counter-Complaint also cannot be construed as an “answer” or a “reply.” By
22 definition, an “answer” responds to the allegations in a plaintiff’s complaint yet TSE has not
23 filed a complaint in this action. Similarly, a “reply” responds to the allegations in a counter-
24 claim yet TSE has not filed a counter-claim in this action. *See* NRCP 7(a) (identifying proper
25 pleadings and expressly stating that “No other pleading shall be allowed . . .”); NRCP 12(a);
26 BLACK’S LAW DICTIONARY (10th ed. 2014). In sum, since Brahma’s “Counter-Complaint” is not
27 a “complaint,” “answer” or “reply,” and, pursuant to Rule 7(a), “[n]o other pleading shall be
28

1 allowed . . . ,” it must be stricken.⁴

2 **B. This is a Special Proceeding With a Limited Focus. The Court Lacks**
3 **Jurisdiction to Hear Matters Beyond TSE’s Already Decided Motion to**
4 **Expunge**

5 Brahma’s failure to file one of the pleadings permitted by NRCP 7(a) points to a broader
6 problem with Brahma’s strategy of attempting to bring its substantive claims before this court—
7 NRS 108.2275 proceedings were not intended to address parties’ substantive claims against each
8 other. This proceeding was initiated by the filing of TSE’s Motion to Expunge. Thus, the sole
9 jurisdictional basis for this proceeding is NRS 108.2275 (governing motions to expunge
10 mechanic’s liens). The Nevada Supreme Court has indicated that proceedings to expunge a lien
11 under NRS 108.2275 are special proceedings. In these proceedings, a district court’s authority is
12 strictly limited to making one of three findings: (1) that a lien is frivolous, (2) that a lien is
13 excessive or (3) that a lien is neither frivolous nor excessive. *See e.g., Crestline Inv. Grp., Inc. v.*
14 *Lewis*, 119 Nev. 365, 371, 75 P.3d 363, 367 (2003) (finding that district court exceeded its
15 authority by going beyond making one of the above 3 findings) (superseded by statute on
16 unrelated grounds). Importantly, nothing in NRS 108.2275 permits a party to broaden those
17 proceedings by filing a “counter-complaint.”

18 Counsel for TSE has conducted an extensive search of Nevada case law and has been
19 unable to find any situation similar to this one (i.e. where a proceeding was initiated by the filing
20 of a motion to expunge and was later broadened by the party opposing the motion to expunge
21 filing a “counter-complaint” that brought its substantive claims before the court.).⁵ Thus, a
22 second independent ground for striking/dismissing Brahma’s Counter-Complaint is that such a
23 filing simply does not fall within the limited scope of NRS 108.2275 proceedings.

24
25
26 ⁴ The Nevada Supreme Court’s decision in *Smith* indicates that striking the pleading rather than
dismissing it is the appropriate remedy when NRCP 7(a) is violated.

27 ⁵ Conversely, if this action had been initiated by the filing of a complaint rather than a motion to expunge,
28 the court’s jurisdiction would be broader. *See e.g., J.D. Constr. v. IBEX Int’l Grp.*, 126 Nev. 366, 370,
240 P.3d 1033, 1036 (2010) (plaintiff first filed complaint then later filed a motion to expunge).



VI. BRAHMA'S "COUNTER-COMPLAINT" SHOULD BE DISMISSED BECAUSE THE PARTIES' CONTRACT CONTAINS A VENUE SELECTION CLAUSE REQUIRING THAT THIS MATTER BE LITIGATED IN LAS VEGAS, NEVADA

A. The Venue Clause is Reasonable and Enforceable

The Nevada Supreme Court has held that venue selection clauses will be enforced so long as they are reasonable and do not offend due process. *Tandy Computer Leasing, a Div. of Tandy Elecs., Inc. v. Terina's Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8 (1989). Further, when a party seeks to set aside a venue selection clause, the burden is on that party to make a "strong showing" that the clause should not be enforced. *Id.* at 844, 784 P.2d at 8 (emphasis added); see also *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972) ("in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside."). In *Bremen*, which the Nevada Supreme Court cited with approval to in *Tandy*, the U.S. Supreme Court held that anyone seeking to avoid the enforcement of a venue selection clause has a "heavy burden of proof." *M/S Bremen*, 407 U.S. at 17.

Here, section 24 of the Parties' contract provides in clear normal size font that venue shall be in Las Vegas, Nevada "for any action or proceeding directly or indirectly arising out of this Agreement." **Exhibit 4** at p. 8. The title of this section is "GOVERNING LAW-SUBMISSION TO JURISDICTION-WAIVER OF JURY TRIAL." *Id.* (emphasis in original). Thus, Brahma knew it was agreeing to litigate all disputes with TSE in Las Vegas rather than Pahrump when it signed the contract. Further, Brahma is a sophisticated entity that regularly negotiates multi-million dollar construction contracts all over the country.⁶ There is nothing unfair about forcing Brahma to litigate this dispute in Las Vegas, a much more convenient location for both parties, rather than Pahrump. **Indeed, Brahma originally filed its substantive claims against TSE in the Eighth Judicial District Court in Las Vegas.** **Exhibit 3** (Clark County Complaint). Brahma should not be permitted to dance back and forth between different

⁶ See e.g., <https://brahmagroupinc.com>.



forums depending on which way it thinks the winds are blowing on a given day.

B. Brahma is Estopped from Arguing Against a Venue in Federal Court Located in Las Vegas Because it Chose to File the First Lawsuit in the Eighth Judicial District Court in Las Vegas

TSE anticipates that Brahma will argue that the clause in this case is “permissive” rather than “mandatory” and thus venue is permitted in Las Vegas but not required. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. Adv. Op. 73, 359 P.3d 105, 107 (2015) (discussing the difference between mandatory and permissive venue clauses). While TSE believes the clause is mandatory, the Court need not reach this issue as Brahma waived its right to raise this argument when Brahma voluntarily filed its first Complaint in Las Vegas. “Waiver requires the intentional relinquishment of a known right. If intent is to be inferred from conduct, the conduct must clearly indicate the party's intention. Thus, the waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished.” *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007).

Here, Brahma elected to file a Complaint in the Eighth Judicial District Court in Las Vegas on July 17, 2018 rather than in this Court. Further, Brahma took this action with full knowledge that the forum selection clause may have been “permissive”⁷ rather than “mandatory” since “[e]very one is presumed to know the law and this presumption is not even rebuttable.” *Smith v. State*, 38 Nev. 477, 151 P. 512, 513 (1915). TSE, in turn, relied on Brahma’s actions and removed the Complaint filed in Las Vegas to federal court. TSE, in reliance on Brahma first filing its substantive claims in Las Vegas, has also filed an Answer and Counterclaim in the federal action. Brahma’s argument that it was confused about whether the forum selection clause was permissive or mandatory at the time it filed the July 17 suit in Las Vegas is not

⁷ Again, TSE makes this argument “in the alternative,” assuming for the sake of argument that the forum selection clause is permissible rather than mandatory, which it is not.

1 credible.⁸

2 Moreover, Courts have held that even if a forum selection clause is permissive (as
3 Brahma contends), it serves to waive any objection the party has to the listed venue. *Structural*
4 *Pres. Sys., LLC v. Andrews*, 931 F. Supp. 2d 667, 673 (D. Md. 2013) (“permissive forum-
5 selection clauses are sometimes referred to as ‘consent to jurisdiction’ clauses because such
6 clauses specify one court empowered to hear the litigation which, in effect, waives any objection
7 to personal jurisdiction or venue in that jurisdiction”) (emphasis added) (internal citation
8 omitted); *see also Am. Airlines, Inc. v. Rogerson ATS*, 952 F. Supp. 377, 384 (N.D. Tex. 1996)
9 (holding that a forum selection clause waives a party’s right to contest venue in the forum
10 specified).

11 In other words, now that suit has been brought in a Las Vegas court (the federal action),
12 Brahma is barred from contesting that some other court (i.e. this Court) is a more appropriate
13 venue. This “consent to jurisdiction” rule is particularly appropriate here as it was not TSE that
14 chose to file the first lawsuit in Las Vegas but rather Brahma.

15 **C. TSE Did Not Relinquish its Right to Enforce the Forum Selection Clause by**
16 **Filing the Motion to Expunge with the Nye County Court. TSE Merely**
17 **Complied with Nevada Law**

18 TSE anticipates that Brahma may also argue that TSE’s filing of the Motion to Expunge
19 with the Nye County Court results in a waiver of TSE’s right to enforce the forum selection
20 clause. However, such an argument would be misplaced. The only reason TSE initiated this
21 proceeding in Nye County (which has now been resolved) was that Nevada law requires that a
22 motion to expunge a mechanic’s lien be brought in the county where the land affected by the lien
23 is located. *See* NRS 108.2275(1) (providing that a motion to expunge must be brought in “the
24 district court for the county where the property or some part thereof is located.”). Critically, the
25 filing of a special proceeding such as this one does not waive a party’s right to enforce a forum
26 selection clause for other claims. *Pirollo Bros. v. Angelo Maffei & Figli, SAS*, No. 87 CIV. 7561

27 ⁸ In Brahma’s Motion to Stay filed with the federal court on October 16, 2018, Brahma makes this
28 argument.



(MBM), 1989 WL 20945, at *2 (S.D.N.Y. Mar. 2, 1989) (“when a party disregards a forum selection clause and sues on a contract in an unauthorized forum, it waives the forum selection clause only for the specific claim that it pursues”).

Now that this Court has decided TSE’s Motion to Expunge, the venue selection clause should be enforced and the remainder of this proceeding⁹ sent back to federal court in Clark County.

VII. THIS COURT LACKS JURISDICTION OVER THE THREE BRAHMA CLAIMS IN THE “COUNTER-COMPLAINT” THAT WERE REMOVED TO FEDERAL COURT

A. Once a Matter Has Been Removed to Federal Court, States Courts Lose Jurisdiction Over the Dispute

Even assuming this Court were to (1) decline to strike Brahma’s “Counter-Complaint” and (2) decline to enforce the Contract’s venue selection clause, there are additional grounds for dismissal. The federal removal statute expressly bars any further proceedings in state court once a notice of removal has been filed. The statute provides as follows:

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal **and the State court shall proceed no further unless and until the case is remanded.**

28 U.S.C. § 1446(d) (emphasis added). In interpreting the above language, the Ninth Circuit stated that “the clear language of the general removal statute provides that the state court loses jurisdiction upon the filing of the petition for removal.” *Resolution Trust Corp. v. Bayside Developers*, 43 F.3d 1230, 1238 (9th Cir.1994); *see also California ex rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1011 (9th Cir. 2000) (“it is impossible to obtain judicial remedies and sanctions in state and local courts once an action is removed to federal court. The removal of an action to federal court necessarily divests state and local courts

⁹ Brahma’s Lien Foreclosure claim is addressed in Section VIII, *supra*. That claim must be dismissed on separate grounds since a surety bond has been posted in 1.5 times the amount of Brahma’s most recent mechanic’s lien. *See* NRS 108.2415(6) (providing that lien on land is released upon posting of bond).



1 of their jurisdiction over a particular dispute.”); Wright & Miller, *Federal Practice & Procedure*
2 § 3736 (4th ed.) (stating that, following removal, any further proceedings in a state court are
3 considered *coram non judice* and will be vacated even if the case is later remanded).

4 Moreover, it is not just the particular state court from which the case was removed that is
5 divested of jurisdiction over the dispute but all courts in the state. See *In re M.M.*, 154 Cal. App.
6 4th 897, 912, 65 Cal. Rptr. 3d 273, 284 (2007) (“states are separate sovereigns with respect to the
7 federal government. Removal of an action may therefore be viewed as a transfer of the
8 proceeding from the courts of one sovereign (a state) to the courts of another (the United
9 States).”).

10 In *Hollandsworth*, the Idaho Supreme Court upheld the district court’s dismissal of a
11 complaint that was filed in state court after a separate action was already pending in federal
12 court, stating as follows:

13 The filing of the second action in the state court under these circumstances,
14 involving as it did the same parties, the same issues and the same facts,
15 incurs needless and substantially increased costs to the defendants, is a
16 waste of judicial resources, and conjures up the possibility of conflicting
judgments by state and federal courts.

17 *Roberts v. Hollandsworth*, 101 Idaho 522, 525, 616 P.2d 1058, 1061 (1980).

18 In *General Handkerchief Corp.*, an insured brought an action in New York state court
19 against its insurer to recover on a policy issued to it. The insurer subsequently removed the
20 action to federal court. Later, the insurer brought a separate action against the insured in New
21 York state court (i.e. a second subsequent state court action) for the recovery of insurance
22 premiums. The insured filed a counterclaim in the second state court action (i.e. similar to the
23 “Counter-Complaint” filed by Brahma here) that was nearly identical to its complaint that had
24 been previously removed to federal court. The state court dismissed the counterclaim based on
25 lack of subject matter jurisdiction due to the prior removal of the same claims to federal court
26 and the New York Court of Appeals upheld the dismissal. *Fire Ass’n of Philadelphia v. Gen.*
27 *Handkerchief Corp.*, 304 N.Y. 382, 385, 107 N.E.2d 499, 500 (1952).

28 In *Leffall*, an inmate brought an action against staff members for injuries he received in



1 slip and fall accident. That action was removed to federal court. The inmate then filed a second
2 suit in state court against the same defendants. The court found that because the theories of
3 causation and damages in the second state court suit were “substantively identical” to those in
4 the removed federal case, dismissal of the second state court suit was required. *Leffall v.*
5 *Johnson*, No. 09-01-177 CV, 2002 WL 125824, at *2 (Tex. App. Jan. 31, 2002).

6 In *Riley*, the plaintiff filed her complaint in state court and the defendant then removed to
7 federal court based on federal question jurisdiction. The plaintiff then filed a motion to remand
8 which the federal court denied. Unhappy with being stuck in a federal forum, plaintiff then filed
9 an amended complaint in state court. The federal court severely criticized plaintiff’s actions:

10 [Plaintiff], however, has created a procedural mess. After the court denied
11 her original motion to remand, she filed an amended complaint in state
12 court; the court has no idea why she did this. Once removed, this court, not
13 the state court, had jurisdiction until this court remanded the case or
14 dismissed it without prejudice. This concept is not subtle; it is basic to the
15 law of jurisdiction. [plaintiff] had no basis for filing the amended complaint
16 in state court.

17 *Riley v. Carson Pirie Scott & Co.*, 946 F. Supp. 716, 718 (E.D. Wis. 1996) (emphasis added).
18 Similarly, in *Crummie*, the plaintiff filed an amended complaint in state court after the action
19 was removed to federal court. The federal court found the amended state court complaint was
20 void and of no effect because the state court lacked jurisdiction. *Crummie v. Dayton-Hudson*
21 *Corp.*, 611 F. Supp. 692, 693 (E.D. Mich. 1985) (“After a removal of an action, a federal court
22 acquires total, exclusive jurisdiction over the litigation . . . Applying the foregoing precepts to
23 the matter at bar, it is evident that Plaintiff’s filing of an amended complaint in state court
24 subsequent to the removal of the cause was of no effect.”).

25 The rule that removal divests all state courts of jurisdiction over a dispute is both
26 necessary and logical. Without such a rule, any party could defeat federal jurisdiction by simply
27 re-filing its case in a different state court than the one the case was removed from without ever
28 even having to file a motion to remand expressly challenging the federal court’s jurisdiction.
Such an outcome would be directly contrary to both the letter and spirit of 28 U.S.C. § 1446(d)
and make removal meaningless. Indeed, not only do state courts lack jurisdiction once a matter



1 is removed to federal court, but federal courts have authority to issue injunctions to enjoin state
2 court litigation that is filed after removal in an attempt to defeat federal jurisdiction.¹⁰

3 **B. This Court Lacks Jurisdiction Over the Three Brahma Claims in the**
4 **Counter-Complaint that Were Removed to Federal Court**

5 As set out above, state and federal courts from around the country have held that
6 plaintiffs will not be permitted to defeat federal jurisdiction by simply re-filing the same claims
7 in a second state court action after those claims have been removed to federal court. In
8 determining whether this court lacks jurisdiction to hear Brahma's three federal court claims, the
9 only question is whether the claims asserted in Brahma's Counter-Complaint are substantially
10 similar to the claims that were previously removed to federal court by TSE.

11 Here, Brahma has already admitted in a recent filing in federal court that this proceeding
12 is "duplicative" of the federal action and that it fulfills the "substantial similarity" requirement.
13 **Exhibit 8** (Brahma's Motion to Stay Federal Action at pp. 7, 9 (emphasis added). In fact, the
14 three claims against TSE that Brahma recently added to this action via the filing of its "Counter-
15 Complaint" are the exact same three claims that TSE previously removed to federal court. Those
16 claims are (1) Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair
17 Dealing and (3) Violation of NRS 624. The allegations that make up these claims are the same
18 allegations that were asserted in the federal court action. *Compare Exhibit 3* 2:11-28 – 5:1-5
19 (Brahma's July 17, 2018 Complaint filed in the Eighth Judicial District Court and removed to
20 Nevada Federal District Court on September 10, 2018) with **Exhibit 2** at 4:17-28 – 8:1-19
21 (Brahma's September 25, 2018 First Amended Counter-Complaint filed with the Nye County
22 District Court). Thus, pursuant to 28 U.S.C. § 1446(d), this Court lacks jurisdiction over those
23 three claims and "shall proceed no further unless and until the case is remanded." 28 U.S.C. §
24 1446(d) (emphasis added). TSE requests that these three claims be dismissed.

25 As an aside, TSE does not contend that this Court lacks jurisdiction over Brahma's lien
26

27 ¹⁰ *Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372, 1378 (9th Cir. 1997); *Kansas Pub. Employees Ret.*
28 *Sys. v. Reimer & Koger Assocs., Inc.*, 77 F.3d 1063, 1070 (8th Cir. 1996). TSE will be filing a motion
seeking to have the federal court enjoin this litigation.



1 foreclosure claim against TSE or over Brahma's third party bond claim against third party
2 defendants American Home Assurance Company ("American Home") and Cobra Thermosolar
3 Plants, Inc. ("Cobra"). NRS 108.239 (governing lien foreclosure claims) and NRS 108.2421
4 (governing bond claims) indicate that proceedings on those statutory claims must be brought in
5 the county where the property at issue is located. Further, unlike the three claims TSE is
6 seeking dismissal of, the lien foreclosure and bond claims were not previously removed to
7 federal court by TSE. However, as set forth more fully below, Brahma's lien foreclosure claim
8 against TSE should be dismissed on other grounds and the surety bond claim should be stayed.

9 **VIII. BRAHMA'S LIEN FORECLOSURE CLAIM MUST BE DISMISSED BECAUSE**
10 **A BOND HAS BEEN POSTED AS SECURITY FOR THE LIEN**

11 Brahma's third cause of action is for Foreclosure of Notice of Lien and seeks to foreclose
12 on the TSE owned improvements to which its mechanic's lien attaches. This is the only claim
13 before this Court that has not already been removed to federal court. NRS 108.2415 provides
14 that if a surety bond is provided in the amount of 1.5 times the notice of lien, the mechanic's lien
15 is released from the land/improvements and attaches instead to the bond. NRS 108.2415(6) ("the
16 recording and service of the surety bond . . . releases the property described in the surety bond
17 from the lien and the surety bond shall be deemed to replace the property as security for the
18 lien."). *See also* NRS 108.2413 ("[a] lien claimant's lien rights or notice of lien may be released
19 upon the posting of a surety bond in the manner provided in NRS 108.2415 to 108.2425,
20 inclusive."); *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 551, 331 P.3d 850, 857-58
21 (2014) (" . . . each surety bond replaced its corresponding property as security for the lien. This
22 means that a judgment awarded to respondent for one of those four properties would not be
23 against the property, but against the respective surety, up to the amount of the bond, and against
24 the principal for any amounts in excess of the bond amount.").

25 Here, Brahma's Fourth Amended Notice of Lien¹¹ was in the amount of \$12,859,577.74.

26
27
28 ¹¹ The Fourth Amended Notice of Lien was recorded on September 14, 2018 with the Nye County Recorder. This is the most recent lien recorded by Brahma.

1 **Exhibit 9.** 1.5 times this amount is \$19,289,366.61. On October 9, 2018, Cobra¹² caused a bond
2 in this amount to be recorded against the property/improvements encumbered by Brahma's lien.

3 **Exhibit 10** (surety bond). Thus, under NRS 108.2415(6), Brahma's lien against the
4 property/improvements owned by TSE has been released and now attaches to Cobra's bond. As
5 such, it is appropriate to dismiss Brahma's Lien Foreclosure claim as there is no set of facts
6 under which Brahma could be permitted to foreclose on TSE's property.

7 **IX. IN THE ALTERNATIVE, THE COURT SHOULD STAY THIS ACTION UNTIL**
8 **THE COMPLETION OF THE PARALLEL FEDERAL COURT PROCEEDINGS**
9 **BASED ON THE "FIRST TO FILE RULE" AND PRINCIPLES OF COMITY**

10 **A. Legal Standard for Staying Proceedings Under the First to File Rule**

11 In the event this Court (1) declines to strike Brahma's Counter-Complaint under NRCP
12 7(a), (2) declines to enforce the Contract's clause requiring venue in Las Vegas, (3) declines to
13 dismiss the Counter-Complaint for lack of subject matter jurisdiction, and (4) declines to dismiss
14 Brahma's Lien Foreclosure claim based on the posting of Cobra's \$19 million bond, this Court
15 should at least stay this action until the first filed parallel proceedings in federal court are
16 complete.

17 "The power to stay proceedings is incidental to the power inherent in every court to
18 control the disposition of the causes on its docket with economy of time and effort for itself, for
19 counsel, and for litigants. How this can best be done calls for the exercise of judgment which
20 must weigh competing interests and maintain an even balance." *Maheu v. Eighth Judicial Dist.*
21 *Court In & For Clark Cty., Dep't No. 6*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973); see also
22 *Jordan v. State ex rel. DMV and Public Safety*, 110 P.3d 30, 41 (Nev. 2005) ("Nevada courts
23 possess inherent powers of equity and of control over the exercise of their jurisdiction.")
24 (overruled on other grounds).

25 Under the "first to file rule," a stay is particularly appropriate where there is a
26 substantially similar prior action pending before a different court. *Pacesetter Sys., Inc. v.*

27 ¹² Due to certain contractual obligations that are not pertinent to the instant Motion, Cobra was obligated
28 to TSE to post this bond to keep the property/improvements free of liens.



1 *Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982) (holding that it is appropriate for the “district
2 court to decline jurisdiction over an action when a complaint involving the same parties and
3 issues has already been filed in another district”). The two actions need not be identical, only
4 “substantially similar.” *Inherent.com v. Martindale–Hubbell*, 420 F.Supp.2d 1093, 1097
5 (N.D.Cal.2006);¹³ see also *McWane Cast Iron Pipe Corp. v. McDowell, Wellman Eng'g Co.*, 263
6 A.2d 281, 283 (Del. 1970) (stating that courts generally exercise that discretion “freely in favor
7 of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt
8 and complete justice, involving the same parties and the same issues.”); *Diet Ctr., Inc. v.*
9 *Basford*, 124 Idaho 20, 22, 855 P.2d 481, 483 (Ct. App. 1993) (“Where two actions between the
10 same parties, on the same subject, and to test the same rights, are brought in different courts
11 having concurrent jurisdiction, the court which first acquires jurisdiction, its power being
12 adequate to the administration of complete justice, retains its jurisdiction and may dispose of the
13 whole controversy, and no court of coordinate power is at liberty to interfere with its action.”);
14 21 C.J.S. Courts § 280 (“a state court should refuse to exercise jurisdiction over an action once it
15 is apprised of the fact that the federal court has assumed jurisdiction of an earlier suit based on
16 the same cause of action.”).

17 The *Schwartz* case is directly on point. In *Schwartz*, the plaintiff sued the defendants in
18 state court, the defendants removed the case to federal court and plaintiff then filed a separate
19 second action in state court. The second state court action involved identical claims to those
20 pending in the first filed federal action. The defendants filed a motion to stay the second state
21 court action which was denied. The Florida appellate court reversed and granted the stay,
22 holding that “[t]he [district] court's ruling has the effect of circumventing federal removal
23 jurisdiction and requires the petitioners to defend against the same causes of action in two
24 forums.” *Schwartz v. DeLoach*, 453 So. 2d 454, 456 (Fla. Dist. Ct. App. 1984) (emphasis
25 _____)

26 ¹³ The *Inherent.com* decision was cited to with approval by the Nevada Supreme Court in the *Gabrielle*
27 decision. *Gabrielle v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, No. 66762, 2014 WL
28 5502460, at *1 (Nev. Oct. 30, 2014) (unpublished). In *Gabrielle*, the Nevada Supreme Court held that it
was an abuse of discretion for a district court to not stay a state court action that was filed subsequent to a
federal court action involving the same claims and parties. *Id.*



1 added). Just like the court did in *Schwartz*, this Court should stay this action and refuse to allow
2 Brahma to circumvent federal removal jurisdiction

3 **B. Brahma's Claims Were First Filed in the Federal Court Action and Thus**
4 **This Action Should be Stayed Until the Federal Action is Resolved**

5 It is hard to imagine a more compelling set of facts justifying a stay than those presented
6 in this case. Brahma's claims for (1) Breach of Contract, (2) Breach of the Implied Covenant
7 and (3) Violation of NRS 624 were first filed in the Eighth Judicial District Court on July 17,
8 2018. TSE then removed those claims to federal court on September 10, 2018. It was not until
9 September 20, 2018 that Brahma filed its original Complaint in this proceeding asserting a Lien
10 Foreclosure claim and not until September 25, 2018 that Brahma filed its Counter-Complaint
11 adding the three federal court claims to this proceeding.¹⁴ Thus, whether this Court looks at the
12 date of Brahma's original Complaint or Counter-Complaint in this proceeding, Brahma's
13 substantive claims against TSE were first asserted in the federal court action.

14 Moreover, the timing of Brahma's actions indicates a calculated attempt to undermine the
15 federal court's jurisdiction and forum shop. On September 25, 2018, Brahma filed its First
16 Amended Complaint in federal court dropping three claims from that action. That same day,
17 Brahma filed the Counter-Complaint adding the exact same three claims to this action. Clearly,
18 after this Court denied TSE's Motion to Expunge on September 12, 2018, Brahma decided that
19 this Court was a more advantageous venue and proceeded to attempt to move its federal court
20 claims here via any means necessary. The "first to file rule" exists precisely to prevent parties
21 like Brahma from switching between different forums on a whim and should be enforced here.
22 In sum, if this Court is not inclined to strike/dismiss Brahma's Counter-Complaint, the Court
23 should stay this proceeding until the resolution of the first filed federal court litigation.

24 _____
25 ¹⁴ Brahma may attempt to argue that the present action was the one "first filed" as TSE did file its Motion
26 to Expunge (which created this action) on June 11, 2018 which is prior to the July 17, 2018 Complaint
27 Brahma filed in Clark County state court. However, the case law is clear that, for purposes of the first
28 filed rule, the filing date of an action is derived from the filing date of the complaint. See NRCP 3 ("a
civil action is commenced by the filing of a complaint"); *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d
93, 96 n. 3 (9th Cir.1982) (filing date of respective complaints was all that mattered for purposes of the
first filed rule); *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994).

1 Importantly, the stay should apply not only to the three claims that were previously
2 removed to federal court but to this entire action. Brahma's claim for Lien Foreclosure (against
3 TSE) and its third party Surety Bond Claim (against Cobra and American Home) both involve
4 the exact same issues and subject matter as Brahma's contract and NRS 624 claims. Both of
5 these claims boil down to allegations that TSE owes Brahma money for work Brahma performed
6 on the Project. If Brahma were permitted to proceed in this Court with its Lien Foreclosure and
7 Surety Bond claim, TSE would be forced to litigate the same issue in two forums and there
8 would be the possibility of multiple inconsistent judgments. *Barapind v. Reno*, 72 F. Supp. 2d
9 1132, 1146 (E.D. Cal. 1999) (noting that one justification for applying the first to file rule is that
10 it "avoids the embarrassment of conflicting judgments"). As such, TSE requests that the Court
11 stay this action until the first filed federal action is complete.

12 **X. CONCLUSION**

13 TSE requests the following relief from the Court:

14 1.) Strike Brahma's September 25, 2018 Counter-Complaint because it is an
15 impermissible pleading under both NRCP 7(a) and NRS 108.2275;

16 2.) Dismiss Brahma's Counter-Complaint because it was filed in violation of the
17 Contract's requirement that venue be in Las Vegas, Nevada;

18 3.) Dismiss Brahma's claims for (1) Breach of Contract, (2) Breach of the Implied
19 Covenant of Good Faith and Fair Dealing and (3) Violation of NRS 624 because this Court lacks
20 subject matter jurisdiction over those claims. Since those claims were removed to federal court
21 prior to being filed in this action, this Court lacks jurisdiction under 28 U.S.C. § 1446(d).

22 4.) Dismiss Brahma's Lien Foreclosure claim since Cobra has now posted an over
23 \$19 million bond as security for Brahma's lien. NRS 108.2415(6) provides that a lien on
24 property is released once a surety bond is posted; and

25 ///

26 ///

27 ///

28 ///