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

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 2

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5.) In the alternative, stay this action until the lawsuit pending in Nevada Federal District Court is resolved. A stay is appropriate under the "first to file rule" because the complaint in the federal court action was filed before the Complaint and First Amended Counter-Complaint in this action.

DATED this 18th day of October, 2018.

D. Lee Roberts, Jr., Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of October, 2018, a true and correct copy of the foregoing **TONOPAH SOLAR ENERGY, LLC'S MOTION TO STRIKE BRAHMA GROUP, INC.'S FIRST AMENDED COUNTER-COMPLAINT, OR, IN THE ALTERNATIVE, MOTION TO DISMISS COUNTER-COMPLAINT, OR, IN THE ALTERNATIVE, MOTION TO STAY THIS ACTION UNTIL THE CONCLUSION OF THE PROCEEDINGS IN FEDERAL COURT** was served by mailing a copy of the foregoing document in the United States Mail, postage fully prepaid, to the following:

Richard L. Peel. Esq.
Eric B. Zimbelman, Esq.
Ronald J. Cox, Esq.
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Henderson, Nevada 89074
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Cynthia S. Bowman

An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

WEINBERG WHEELER HUDGINS GUNN & DIAL

EXHIBIT 1

EXHIBIT 1

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FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company, Plaintiff, vs. BRAHMA GROUP, INC., a Nevada corporation, Defendant.	CASE NO. : CV 39348 DEPT. NO. : 2 **BRAHMA GROUP, INC.'S MECHANIC'S LIEN FORECLOSURE COMPLAINT** **[Arbitration Exemption: Action Concerning Title to Real Estate]**
BRAHMA GROUP, INC., a Nevada corporation, Counterclaimant/Lien Claimant, vs. TONOPAH SOLAR ENERGY LLC, a Delaware limited liability company; BOE BONDING COMPANIES I through X; DOES I through X; ROE CORPORATIONS I through X; and TOE TENANTS I through X, inclusive, Counterdefendant,	

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

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Brahma does not know the true names of the individuals, corporations, partnerships and entities identified and named as Counterdefendants by the fictitious names of (collectively, the "Doe Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that such Doe Defendants claim an interest in or to the TSE Parcels and/or the Work of Improvement as more fully discussed under the claims for relief set forth below. Brahma will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Brahma discovers such information.

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

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

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FIRST CAUSE OF ACTION
(Foreclosure of Notice of Lien)

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

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

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

a. The BLM; and

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

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

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

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

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

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

///

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

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

a. In writing;

b. Recorded against the Work of Improvement; and

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

18. The Lien is in the amount Twelve Million Eight Hundred and Fifty-Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents. ($12,859,577,74), which is the amount due and owing Brahma as of the date of this Complaint (the "Outstanding Balance").

19. In addition to an award of the Outstanding Balance, Brahma is entitled to an award of its attorney's fees, costs, and interest, as provided in Chapter 108 of the Nevada Revised Statutes.

WHEREFORE, Brahma prays that this Honorable Court:

1. Enters judgment against the Counterdefendants, and each of them, jointly and severally and to the extent of their interest in the Work of Improvement, in the amount of the Outstanding Balance;

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

3. Enters judgment declaring that Brahma has a valid and enforceable notice of lien against the Work of Improvement, in the amount of the Outstanding Balance together with costs, attorneys' fees and interest in accordance with NRS Chapter 108;

4. Adjudge a lien upon the Work of Improvement for the Outstanding Balance, plus reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court enter an Order that the Work of Improvement, and improvements, such as may be necessary, be sold pursuant to

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the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due Brahma herein;

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 20th day of September 2018.

PEEL BRIMLEY LLP

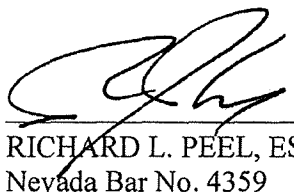

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EXHIBIT 2

EXHIBIT 2

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FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company, Plaintiff, vs. BRAHMA GROUP, INC., a Nevada corporation, Defendant.	CASE NO. : CV 39348 DEPT. NO. : 2 **BRAHMA GROUP, INC.'S:** **(I) FIRST AMENDED COUNTER-COMPLAINT; AND** **(II) THIRD-PARTY COMPLAINT.** **[Arbitration Exemption: Action Concerning Title to Real Estate]**
BRAHMA GROUP, INC., a Nevada corporation, Counterclaimant/Lien Claimant, vs. TONOPAH SOLAR ENERGY LLC, a Delaware limited liability company; BOE BONDING COMPANIES I through X; DOES I through X; ROE CORPORATIONS I through X; and TOE TENANTS I through X, inclusive, Counterdefendant,	

BRAHMA GROUP, INC., a Nevada corporation,

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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FIRST AMENDED COUNTER-COMPLAINT

Counterclaimant/Lien Claimant/Third-Party Claimant, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, hereby amends in this action (the "Action"), that certain Mechanic's Lien Foreclosure Complaint ("Original Counter-Complaint") by way of this First Amended Counter-Complaint ("Amended Counter-Complaint"), which is brought against the above-named Counterdefendants. Brahma complains, avers and alleges as follows:

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Brahma does not know the true names of the individuals, corporations, partnerships and entities identified and named as Counterdefendants by the fictitious names of (collectively, the "Doe Defendants"), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that such Doe Defendants claim a) an interest in or to the TSE Parcels and/or the Work of Improvement, or b) damages arising from the construction of the Work of Improvement, as more fully discussed under the claims for relief set forth below. Brahma will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Brahma discovers such information.

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

FIRST CAUSE OF ACTION
(Breach of Contract)

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

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

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

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

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

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

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

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

14. BGI is owed Twelve Million Eight Hundred Fifty-Nine Thousand Five Hundred Seventy-Seven and 74/100 Dollars ($12,859,577,74—"Outstanding Balance") from TSE for the Work.

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

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

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

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

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

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

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

b. TSE has improperly withheld moneys totaling more than One Million U.S. Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1). While that statutory provision permits withholding (on a payment-by-payment basis) a retention amount, not to exceed five percent (5%), such retention must be authorized pursuant to the Agreement, which it is not.

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

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

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

THIRD CAUSE OF ACTION
(Foreclosure of Notice of Lien)

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

23. Brahma provided the Work for the Work of Improvement and is owed the Outstanding Balance for the Work.

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

a. The BLM; and

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

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

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

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

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

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

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

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

a. In writing;

b. Recorded against the Work of Improvement; and

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

32. The Lien is in the amount of the Outstanding Balance, which is the amount due and owing Brahma as of the date of this Amended Counter-Complaint.

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33. In addition to an award of the Outstanding Balance, Brahma is entitled to an award of its attorney's fees, costs, and interest, as provided in Chapter 108 of the Nevada Revised Statutes.

FOURTH CAUSE OF ACTION
(Violation of NRS 624)

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

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

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

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

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

WHEREFORE, Brahma prays that this Honorable Court:

1. Enters judgment against the Counterdefendants, and each of them, jointly and severally and to the extent of their interest in the Work of Improvement, in the amount of the Outstanding Balance;

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

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3. Enters judgment declaring that Brahma has a valid and enforceable notice of lien against the Work of Improvement, in the amount of the Outstanding Balance together with costs, attorneys' fees and interest in accordance with NRS Chapter 108;

4. Adjudge a lien upon the Work of Improvement for the Outstanding Balance, plus reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court enter an Order that the Work of Improvement, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due Brahma herein;

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 26 day of September 2018.

PEEL BRIMLEY LLP

R. P.

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BRAHMA GROUP, INC.'S THIRD-PARTY COMPLAINT

Third-Party Plaintiff, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, brings this Third-Party Complaint ("Third-Party Complaint") in the action (the "Action") against the above-named Third-Party Defendants. Brahma complains, avers and alleges as follows:

THE PARTIES

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

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

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

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

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

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

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

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

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

[6] While TSE is a party to Brahma's Counterclaim, TSE is not a party to the Third-Party Action.

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

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

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

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

ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty Parcels.[7]

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

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

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

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

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

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

b. Is the principal on the Surety Bond.

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

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

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

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

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

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

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

a. The BLM; and

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

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

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

15. On or about April 16, 2018 and as allowed by NRS 108.229(1), Brahma recorded a Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as

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Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada on April 18, 2018, as Document No. 891507, in the amount of $7,178,376.94 (the "First Amended Lien").

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

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

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

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

c. In writing;

d. Recorded against the Work of Improvement; and

e. Were given or served on the authorized agents of the BLM and TSE, or the BLM and/or TSE knew of the existence of the Lien.

20. The Lien is in the amount Twelve Million Eight Hundred and Fifty-Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents. ($12,859,577,74), which is the amount due and owing Brahma as of the date of this Third-Party Complaint (the "Outstanding Balance").

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

40. The Surety Bond fails to meet the requirements of NRS 108.2415(1), because it is not in an amount that is 1 ½ times the amount of Brahma's Lien.

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

42. Brahma makes claim against and Cobra and AHAC are obligated to Brahma for the Outstanding Balance plus interest, costs and attorney's fees up to the penal sum[8] of the Surety Bond as provided in Chapter 108 of the Nevada Revised Statutes.

WHEREFORE, Brahma prays that this Honorable Court:

6. Enters judgment against the Third-Party Defendants, and each of them, jointly and severally in the amount of the Outstanding Balance;

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

8. Enters judgment against AHAC up to the penal sum of the Surety Bond.

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 24 day of September 2018.

PEEL BRIMLEY LLP

R. P.

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[8] Brahma has separately excepted to the sufficiency of the penal sum of the Surety Bond under NRS 108.2425. Nothing herein shall be deemed a waiver of any rights and claims that Brahma may possess under contract, at law or in equity.

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EXHIBIT 3

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COMP
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DISTRICT COURT

CLARK COUNTY, NEVADA

BRAHMA GROUP, INC., a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

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

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

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

THE PARTIES

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

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

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

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

FIRST CAUSE OF ACTION
(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION
(Unjust Enrichment)

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

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

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

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

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

24. BGI has demanded payment of the Outstanding Balance.

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

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

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

FOURTH CAUSE OF ACTION
(Violation of NRS 624)

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

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

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

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

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

WHEREFORE, BGI prays that this Honorable Court:

1. Enters judgment against TSE in the amount of the Outstanding Balance;

2. Enters a judgment against TSE for BGI's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

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

Dated this 17th day of July, 2018.

PEEL BRIMLEY LLP

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EXHIBIT 4

EXHIBIT 4

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, statues, 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		**BRAHMA GROUP, INC.**	
By:	Kevin B. Smith	By:	[signature]
Name:	Kevin B. Smith	Name:	David Zimmerman
Title:	President	Title:	VP & General Counsel
Address:	520 Broadway 6th Floor Santa Monica, CA 90401	Address:	1132 South 500 West Salt Lake City, UT 84101
Email:	legal@solarreserve.com	Email:	david.z@bgi.email
Fax:	(310) 315-2201	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

BRAHMA GROUP, INC.

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	$ 134.23	$ 179.19	
Cost/Scheduler	$ 134.23	$ 179.19	
Superintendent	$ 134.23	$ 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

BRAHMA GROUP, INC.

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

BRAHMA GROUP, INC.

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	
CWI	$ 81.07	$ 107.83	
Admin	$ 67.12	$ 89.27	

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

11-Nov-16

BRAHMA GROUP, INC.

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	
Millwright	$ 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 5

EXHIBIT 5

NOTC
D. Lee Roberts, Jr., Esq.
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Attorneys for Defendant
Tonopah Solar Energy, LLC

WEINBERG WHEELER HUDGINS GUNN & DIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

BRAHMA GROUP, INC., a Nevada corporation, Plaintiff, vs. TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	Case No. A-18-777815-B Dept. No. 11 **NOTICE OF REMOVAL TO FEDERAL COURT**

TO THE EIGHTH JUDICIAL DISTRICT COURT:

PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed by Defendant Tonopah Solar Energy, LLC on September 10, 2018 in Nevada Federal District Court. A copy of the Notice of Removal is attached to this Notice as **Exhibit 1**, and is served and filed herewith.

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NOTICE IS FURTHER GIVEN that the filing of the Notice of Removal, together with a copy of the notice with the Clerk of this Court, effectuates the removal of this action in accordance with 28 U.S.C. § 1446(d).

DATED this 10th day of September, 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 Defendant
Tonopah Solar Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of September, 2018, a true and correct copy of the foregoing **NOTICE TO STATE COURT OF REMOVAL TO FEDERAL COURT** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

Cynthia S Bowman

An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

WEINBERG WHEELER HUDGINS GUNN & DIAL

EXHIBIT 1

EXHIBIT 1

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Tonopah Solar Energy, LLC

WEINBERG WHEELER HUDGINS GUNN & DIAL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BRAHMA GROUP, INC., a Nevada corporation, Plaintiff, vs. TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	Case No. **DEFENDANT TONOPAH SOLAR ENERGY, LLC'S NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that 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 removes this action from the Eighth Judicial District Court for Clark County, Nevada, Case No. A-18-777815-B, to the United States District Court for the District of Nevada. Federal jurisdiction exists over these proceedings pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because there is complete diversity between the parties and because the amount in controversy exceeds $75,000.00. In support of removal, TSE states:

I. INTRODUCTION AND BACKGROUND

This action arises from a dispute between Plaintiff BRAHMA GROUP, INC. ("Brahma") and Defendant TSE regarding a services agreement whereby Brahma agreed to perform certain

work at the Crescent Dunes Solar Energy Project for TSE. *See* Plaintiff's Complaint at ¶¶ 5–6, attached hereto as **Exhibit 1**. Plaintiff filed its Complaint on July 17, 2018 in the Eighth Judicial District Court, Clark County, Nevada, case number A-18-777815-B. Plaintiff alleges causes of action for (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; (3) Unjust Enrichment; and (4) Violation of NRS 624. Plaintiff alleges it is owed an amount in excess of $11,900,000.00. *See* Plaintiff's Complaint at ¶ 11.

As more fully set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because TSE has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

II. REMOVAL IS PROPER IN THIS CASE

A. Complete Diversity Exists Between Plaintiff and Defendant.

Plaintiff is a Nevada corporation with its principal place of business in Utah, and for jurisdictional purposes, is a citizen of both Nevada and Utah. *See* U.S.C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business").

Defendant TSE is a limited liability company. Tonopah Solar Energy Holdings II, LLC ("TSEH II") is the sole member of TSE. TSEH II's members are Capital One, National Association ("Capital One"), and Tonopah Solar Energy Holdings I, LLC ("TSEH I"). Capital One is a national banking association with its main office located in McClean, Virginia, making it a citizen of Virginia.[1] TSEH I's members are Tonopah Solar I, LLC and Tonopah Solar Investments, LLC. Tonopah Solar I, LLC's members are Banco Santander, S.A and Inversiones Capital Global, S.A. Banco Santander, S.A. is an international banking institution with its

[1] *See* 28 U.S.C. § 1348 ("All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located."); *see also Wachovia Bank v. Schmidt*, 546 U.S. 303, 303, 126 S. Ct. 941, 942, 163 L. Ed. 2d 797 (2006) (holding that a national banking association is only a citizen of the state in which its main office is located rather than a citizen of every state where it operates or has a branch office).

headquarters and principal place of business in Madrid, Spain, making it a citizen of Spain. Inversiones Capital Global, S.A. is a subsidiary of Banco Santander, S.A. with its principal place of business also in Spain, making it a citizen of Spain. Tonopah Solar Investments, LLC's members are SolarReserve CSP Holdings, LLC and Cobra Energy Investment, LLC. SolarReserve CSP Holdings, LLC's sole member is SolarReserve CSP Finance, LLC. SolarReserve CSP Finance, LLC's sole member is SolarReserve, LLC. The sole member of SolarReserve, LLC is SolarReserve, Inc., which is a corporation formed in Delaware with its principal place of business in Santa Monica, California, making it a citizen of Delaware and California. Cobra Energy Investment, LLC's sole member is Cobra Energy Investment Finance, LLC. Cobra Energy Investment Finance, LLC's sole member is Cobra Industrial Services, Inc., which is a Delaware corporation with its principal place of business in Texas, making it a citizen of Delaware and Texas.

In sum, TSE is a citizen of Spain, Delaware, California, Texas, and Virginia for purposes of diversity jurisdiction. *See Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) ("an LLC is a citizen of every state of which its owners/members are citizens."). Since Plaintiff is not citizen of any the states Defendant is a citizen of, complete diversity exists.

B. The Amount in Controversy Exceeds $75,000.00.

A preponderance of evidence supports that the amount in controversy exceeds $75,000. *See Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-404 (9th Cir. 1996); *Guglielmino v. McKee Foods Corp.*, 2007 WL 2916193 (9th Cir. Oct. 9, 2007). Here, Plaintiff expressly alleges it is owed an amount in excess of $11,900,000.00 for work performed. *See* Plaintiff's Complaint ¶ 11, attached hereto as **Exhibit 1**. Based on these allegations, it is clear Plaintiff's claimed damages are in excess of $75,000. *See Guglielmino*, 2007 WL 2916193, slip op. at n.5. Accordingly, the jurisdictional amount is satisfied in this case.

III. TSE HAS SATISFIED THE PROCEDURAL REQUIREMENT FOR REMOVAL

This notice is timely filed within 30 days of service of the Complaint and summons. 28 U.S.C. § 1446(b). Specifically, the Complaint was filed July 17, 2018, and Counsel for TSE accepted service on behalf of TSE on August 21, 2018.

Venue, for removal purposes, properly lies in the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1446(a) because it encompasses the Eighth Judicial District Court, where this action was originally brought.

TSE will file a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court and will serve a copy on Plaintiff's counsel as required by 28 U.S.C. § 1446(d).

Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders that were filed in the state court action are attached hereto as **Exhibit 1**.

IV. CONCLUSION

For all the above reasons, it is proper for TSE to remove this action from the Eighth Judicial District Court for Clark County, Nevada to the United States District Court for the District of Nevada.

DATED this 10th day of September, 2018.

/s/ Colby Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
WEINBERG, WHEELER, HUDGINS,
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Attorneys for Defendant
Tonopah Solar Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2018, a true and correct copy of the foregoing **DEFENDANT TONOPAH SOLAR ENERGY, LLC'S NOTICE OF REMOVAL** was served by mailing a copy of the foregoing document in the United States Mail, postage fully prepaid, to the following:

Richard L. Peel. Esq.
Eric B. Zimbelman, Esq.
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Attorneys for Plaintiff Brahma Group, Inc.

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

EXHIBIT 6

EXHIBIT 6

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BRAHMA GROUP, INC., a Nevada corporation, Plaintiff, vs. TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company, Defendant.	CASE NO. 2:18-cv-01747-RFB-GWF **DEFENDANT TONOPAH SOLAR ENERGY, LLC'S ANSWER TO BRAHMA GROUP, INC'S COMPLAINT AND COUNTERCLAIM AGAINST BRAHMA**

Defendant **TONOPAH SOLAR ENERGY, LLC** (hereinafter "TSE"), by and through its attorneys of the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby submits its Answer to Plaintiff's Complaint ("Complaint").

GENERAL ALLEGATIONS

1. Answering Paragraph 1 of the Complaint, TSE denies that Brahma Group, Inc. ("BGI") is a limited liability company. As to the remaining allegations, TSE is without sufficient knowledge to form a belief as to the truth of those allegations and therefore denies each and every remaining allegation.

2. Answering Paragraph 2 of the Complaint, TSE admits each and every allegation therein.

3. Answering Paragraph 3 of the Complaint, TSE admits that BGI and TSE are parties to a Services Agreement. TSE denies the remaining allegations in this paragraph.

4. Answering Paragraph 4 of the Complaint, TSE is without sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and therefore denies each and every allegation contained therein.

FIRST CAUSE OF ACTION

(Breach of Contract)

5. Answering Paragraph 5 of the Complaint, TSE repeats and incorporates herein by reference each and every response contained in Paragraphs 1 through 4, inclusive, as though fully set forth herein in their entirety.

6. Answering Paragraph 6 of the Complaint, TSE denies that BGI agreed to provide "a portion of the work, materials and/or equipment (the 'Work')" for the Project, and avers that the Services Agreement speaks for itself.

7. Answering Paragraph 7 of the Complaint, TSE denies each and every allegation therein.

8. Answering Paragraph 8 of the Complaint, TSE denies each and every allegation therein.

9. Answering Paragraph 9 of the Complaint, TSE denies each and every allegation therein.

10. Answering Paragraph 10 of the Complaint, TSE denies each and every allegation therein.

11. Answering Paragraph 11 of the Complaint, TSE denies each and every allegation therein.

12. Answering Paragraph 12 of the Complaint, TSE denies each and every allegation therein.

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SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

13. Answering Paragraph 13 of the Complaint, TSE repeats and re-alleges and incorporates herein by reference each and every response contained in Paragraphs 1 through 12, inclusive, as though fully set forth herein in their entirety.

14. Answering Paragraph 14 of the Complaint, TSE admits each and every allegation contained therein.

15. Answering Paragraph 15 of the Complaint, TSE denies each and every allegation therein.

16. Answering Paragraph 16 of the Complaint, TSE denies each and every allegation therein.

17. Answering Paragraph 17 of the Complaint, TSE denies each and every allegation therein.

18. Answering Paragraph 18 of the Complaint, TSE denies each and every allegation therein.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

19. Answering Paragraph 19 of the Complaint, TSE repeats and re-alleges and incorporates herein by reference each and every response contained in Paragraphs 1 through 18, inclusive, as though fully set forth herein in their entirety.

20. Answering Paragraph 20 of the Complaint, TSE is without sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and therefore denies each and every allegation contained therein.

21. Answering Paragraph 21 of the Complaint, TSE denies each and every allegation therein.

22. Answering Paragraph 22 of the Complaint, TSE denies each and every allegation therein.

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23. Answering Paragraph 23 of the Complaint, TSE denies each and every allegation therein.

24. Answering Paragraph 24 of the Complaint, TSE admits each and every allegation therein.

25. Answering Paragraph 25 of the Complaint, TSE denies each and every allegation therein.

26. Answering Paragraph 26 of the Complaint, TSE denies each and every allegation therein.

27. Answering Paragraph 27 of the Complaint, TSE denies each and every allegation therein.

FOURTH CAUSE OF ACTION

(Violation of NRS 624)

28. Answering Paragraph 28 of the Complaint, TSE repeats and re-alleges and incorporates herein by reference each and every response contained in Paragraphs 1 through 27, inclusive, as though fully set forth herein in their entirety.

29. Answering Paragraph 29 of the Complaint, TSE responds that it calls for a legal conclusion and that the statutes cited speak for themselves. Therefore, TSE denies each and every allegation contained therein.

30. Answering Paragraph 30 of the Complaint, TSE denies each and every allegation therein.

31. Answering Paragraph 31 of the Complaint, TSE denies each and every allegation therein.

32. Answering Paragraph 32 of the Complaint, TSE denies each and every allegation therein.

33. TSE denies any allegation not already responded to above.

34. TSE denies the allegations set forth in BGI's prayer for relief.

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AFFIRMATIVE DEFENSES

1. BGI's claims are barred due to its failure to state facts sufficient to constitute a cause of action upon which relief can be granted against TSE.

2. BGI's claims are barred because BGI has failed to fulfill a condition precedent to payment on its invoices, namely, that BGI provide TSE with all supporting documentation for BGI's invoices that may be reasonably required or requested by TSE.

3. BGI's claims are barred by the doctrine of equitable estoppel. Among other things, BGI deliberately concealed the inaccuracies, irregularities and overcharges in its invoices to TSE for the purpose of causing TSE to not withhold payment on those invoices. TSE was unaware of the inaccuracies, irregularities and overcharges in the invoices that BGI submitted and relied to its detriment on said invoices when making payment. Thus, BGI cannot now prevent TSE from challenging the substance of those invoices by arguing that TSE did not follow the procedures set forth in NRS 624 for withholding payment to a general contractor.

4. BGI's claims are barred by its fraudulent actions. Among other things, BGI submitted fraudulent invoices to TSE for the purpose of causing TSE to not withhold payment on those invoices. TSE was unaware until recently of the fraudulent nature of the invoices that BGI submitted and relied to its detriment on said invoices when making payment. Thus, BGI cannot now prevent TSE from challenging the substance of those invoices by arguing that TSE did not follow the procedures set forth in NRS 624 for withholding payment to a general contractor.

5. BGI's claims are barred by its negligent misrepresentations. Among other things, BGI knew or should have known that its invoices contained false and misleading information and failed to provide TSE with sufficient information to evaluate the reasonableness of the claimed services performed and incidental expenses incurred. TSE was unaware until recently of the misleading nature of the invoices that BGI submitted and relied to its detriment on said invoices when making payment. Thus, BGI cannot now prevent TSE from challenging the substance of those invoices by arguing that TSE did not follow the

procedures set forth in NRS 624 for withholding payment to a general contractor.

6. Pursuant to Paragraph 2 of the Services Agreement, BGI agreed to only render to TSE "such services as are reasonably necessary to perform the work" ordered by TSE. BGI breached the contract and breached the covenant of good faith and fair dealing by incurring and billing unreasonable and inflated claims for labor and incidental expenses which were not reasonably necessary to perform the work ordered by TSE.

7. Pursuant to Paragraph 4(d) of the Services Agreement, TSE agreed to reimburse BGI for its "reasonable out-of-pocket expenses that are necessary for the performance of the Services." The term "services" means "such services as are reasonably necessary to perform the work" ordered by TSE. BGI breached the contract and breached the covenant of good faith and fair dealing by incurring and billing unreasonable and inflated claims for out-of-pocket expenses that were both unreasonable and not reasonably necessary to perform the services ordered by TSE.

8. BGI breached the Services Agreement and the covenant of good faith and fair dealing by assigning work to related entities so that it could bill additional fees and charges in excess of the contract rates for labor and incidental expenses.

9. The Services Agreement contemplated BGI performing the work for a period of over one year and work was performed for more than one year. Therefore, the statute of frauds bars evidence of any oral agreements allegedly promising any payment or performance not expressly required by the written contract.

10. Pursuant to Paragraph 19 of the Services Agreement, the obligations of the Services Agreement can only be amended by a writing signed by the party to be charged. Accordingly, any claimed oral work orders, waivers or modifications to the terms of the written instrument are void and unenforceable.

11. Pursuant to Exhibit A of the Services Agreement, TSE has no obligation to pay for any services or incidental expenses not expressly authorized by a written Work Order issued in writing by TSE.

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12. To the extent BGI induced TSE's employees or other representatives to authorize or approve unnecessary or unreasonable services or expenses, such work was beyond the scope of the Services Agreement and TSE's employees had no actual or apparent authority to approve such work.

13. Requiring TSE to pay for intentionally inflated, unnecessary or unreasonable charges would be both procedurally and substantively unconscionable regardless of any knowledge or consent of an employee of TSE.

14. BGI's claims are barred due to its unclean hands and inequitable conduct as Plaintiff has submitted fraudulent invoices to TSE and engaged in other fraudulent practices on the Project.

15. TSE promised to pay BGI promptly for any and all services and expenses that BGI could prove were reasonably and necessarily incurred under the terms of the Services Agreement. To the extent BGI ultimately proves it is entitled to additional payment under the Services Agreement, Plaintiff has failed to mitigate its alleged damages by, among other things, being stubbornly litigious and failing and refusing to provide adequate and complete documentation for its claims without the necessity of litigation.

16. Pursuant to Paragraph 4(a) and Exhibit A of the Services Agreement, TSE has no obligation to pay for services or incidental expenses in excess of the not-to-exceed ("NTE") amount of $5 million. TSE has paid in excess of $5 million and has no further obligations under the Services Agreement.

17. Pursuant to Paragraph 18 of the Services Agreement, TSE's delay in exercising any of its rights under the Services Agreement, including but not limited to its right to demand documentation and proof of services rendered and expenses incurred, cannot be deemed a waiver of TSE's rights under the Services Agreement or Nevada law.

18. BGI's claims are barred by the equitable doctrines of laches, waiver, consent, and release.

19. BGI's damages, if any, were caused by BGI's own negligence.

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20. All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer. TSE has repeatedly requested backup documentation from BGI but BGI has generally refused to provide the requested documentation sufficient to justify and validate its invoices. Therefore, TSE reserves the right to amend this Answer to allege additional defenses if information obtained during discovery warrants doing so.

TSE'S COUNTERCLAIM

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 counterclaims, alleging as follows:

JURISDICTION AND PARTIES

1. Plaintiff Brahma Group, Inc. (hereinafter "BGI"), is a Nevada corporation with its principal place of business in Salt Lake City, Utah, making BGI a citizen of Nevada and Utah for purposes of diversity jurisdiction.

2. Defendant/Counterclaimant TSE is a limited liability company. Tonopah Solar Energy Holdings II, LLC ("TSEH II") is the sole member of TSE. TSEH II's members are Capital One, National Association ("Capital One") and Tonopah Solar Energy Holdings I, LLC ("TSEH I"). Capital One is a national banking association with its main office located in McClean, Virginia, making it a citizen of Virginia. TSEH I's members are Tonopah Solar I, LLC and Tonopah Solar Investments, LLC. Tonopah Solar I, LLC's members are Banco Santander, S.A and Inversiones Capital Global, S.A. Banco Santander, S.A. is an international banking institution with its headquarters and principal place of business in Madrid, Spain, making it a citizen of Spain. Inversiones Capital Global, S.A. is a subsidiary of Banco Santander, S.A. with its principal place of business also in Spain, making it a citizen of Spain. Tonopah Solar Investments, LLC's members are SolarReserve CSP Holdings, LLC and Cobra Energy Investment, LLC. SolarReserve CSP Holdings, LLC's sole member is SolarReserve CSP Finance, LLC. SolarReserve CSP Finance, LLC's sole member is SolarReserve, LLC.

The sole member of SolarReserve, LLC is SolarReserve, Inc, which is a corporation formed in Delaware with its principal place of business in Santa Monica, California, making it a citizen of Delaware and California. Cobra Energy Investment, LLC's sole member is Cobra Energy Investment Finance, LLC. Cobra Energy Investment Finance, LLC's sole member is Cobra Industrial Services, Inc., which is a Delaware corporation with its principal place of business in Texas, making it a citizen of Delaware and Texas. In sum, TSE is a citizen of Spain, Delaware, California, Texas and Virginia for purposes of diversity jurisdiction.

3. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441 because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy, exclusive of interest, costs, and attorneys' fees, exceeds the sum of $75,000.00.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in Nevada.

GENERAL ALLEGATIONS

5. TSE is the project developer for the Crescent Dunes Solar Energy Facility located outside Tonopah, Nevada, a solar energy project designed to produce 110 megawatts of electricity ("Project").

6. While TSE is the project developer and oversees construction efforts, the approximately 1,600 acres of land on which the Project is located is leased from the Bureau of Land Management, of the United States Department of the Interior ("BLM").

7. The Project consists of, among other things, over 10,000 tracking mirrors called heliostats that follow the sun throughout the day and reflect and concentrate sunlight onto a large receiver on top of a concrete tower. The receiver is filled with molten salt that absorbs the heat from the concentrated sunlight and ultimately passes through a steam generation system to heat water and produce high pressure steam which in turn is used to drive a conventional power turbine, which generates electricity.

8. The Project is a public-private project that was financed by both private investors as well as by a significant loan guaranteed by the United States Department of

Energy.

9. TSE signed an engineering, procurement and construction ("EPC") contract with Cobra Thermosolar Plants, Inc. ("EPC Contractor"), an affiliate of Cobra Energy Investment, LLC, to construct the Project.

10. Construction of the Project began in or about September 2011, and in or about December 2015, the Project reached provisional acceptance ("PA") and began supplying energy to NV Energy.

11. Soon after reaching PA, the Project began experiencing a high rate of defects.

12. Despite the requests of TSE, the EPC Contractor ultimately failed to correct and/or refused to correct many of the defects on the Project.

13. To rectify the numerous defects, TSE hired BGI, who previously served as a subcontractor to the EPC Contractor on the Project, to complete warranty work on the Project.

14. TSE and BGI entered into a contract as of February 1, 2017, to accomplish the above purpose ("Services Agreement").

15. The Services Agreement provides, among other things, that TSE will issue work orders to BGI describing the work BGI is to perform and also provides the hourly rates that BGI may charge for labor.

16. The Services Agreement also provides that for each invoice submitted by BGI to TSE for payment, BGI must provide, among other things, "such supporting documentation as may be reasonably required or requested by TSE."

17. Many of the invoices submitted by BGI were difficult to decipher and contained confusing information regarding the work allegedly done by BGI. However, after expending a significant amount of time, effort and resources analyzing BGI's invoices, TSE has identified numerous significant inaccuracies, irregularities and overcharges in BGI's invoices.

18. The following are among the improprieties that TSE has identified in respect of BGI's invoices:

19. BGI allowing individuals to bill excess, improper and/or unauthorized amounts of time to the Project.

20. BGI charging a 10 percent mark up to TSE for work performed on the project by sister companies to BGI that were, therefore, not true third party subcontractors and, thus, not entitled to an otherwise contractually permitted 10 percent mark-up.

21. BGI billing TSE for work performed by its sub-contractors, which was not supported by corresponding, supporting invoices.

22. BGI billing for amounts with respect to which it had miscalculated its margin.

23. BGI billing TSE for improper equipment charges.

24. BGI billing TSE for 100 percent of the time BGI and its subcontractors' were onsite rather than taking into consideration lunch breaks and other breaks.

25. BGI billing against work orders that were already closed/completed.

26. Upon becoming aware of the serious inaccuracies, irregularities, and overcharges in BGI's invoices, TSE requested additional invoice backup documentation from BGI.

27. TSE was entitled to request additional invoice backup documentation from BGI under the Services Agreement.

28. The purpose of these requests was to enable TSE to determine/confirm whether the charges reflected on the invoices were appropriate or whether they were improper overcharges.

29. While BGI did provide some additional invoice backup documentation in response to TSE's requests for additional documentation, BGI generally refused to provide the information requested by TSE, indicating that TSE was either not entitled to the documentation or that the documentation that it did provide was clear on its face.

30. Standing alone, without further backup documentation in sufficient detail to justify the charges on BGI's invoices to TSE, the invoices are inaccurate, improper, and seek to force TSE to pay BGI amounts to which it is not entitled.

31. TSE is currently disputing the validity of more than $11 million of charges invoiced by BGI out of a total invoiced amount of approximately $25 million.

32. A portion of this amount relates to invoices for which BGI has already received

payment that contain many of the same inaccuracies, irregularities, and improprieties that TSE has identified in the invoices it is now disputing and remain unpaid. These issues only came to light after TSE allocated an inordinate amount of resources, resources that TSE can ill afford, to review the charges that it is now disputing. TSE has paid BGI approximately $13 million with respect to these prior invoices.

33. TSE is entitled to a declaration from the Court that it is not required to pay BGI for the amounts in the unpaid invoices that are inaccurate, irregular, and constitute improper overcharges by BGI.

34. BGI is liable to TSE for the amounts BGI has overcharged TSE on invoices that were previously paid by TSE as well as all other direct and consequential damages flowing from BGI's improper overcharges, including, attorneys' fees and costs.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

35. TSE repeats and realleges the allegations contained in the preceding paragraphs of this Counterclaim as though fully set forth herein.

36. On February 1, 2017, TSE and BGI entered into the Services Agreement, which is a valid contract.

37. TSE has satisfied all of its obligations under the Services Agreement.

38. BGI breached the Services Agreement by, among other things, submitting invoices to TSE that were replete with inaccuracies, irregularities and overcharges.

39. BGI breached the Services Agreement by, among other things, refusing to provide TSE with reasonable supporting documentation for the invoices which BGI submitted for payment and which TSE determined contain inaccuracies, irregularities and overcharges.

40. As a direct and proximate result of BGI's breaches, TSE has been damaged in an amount in excess of $75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

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SECOND CLAIM FOR RELIEF

(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing)

41. TSE repeats and realleges the allegations contained in the preceding paragraphs of this Counterclaim as though fully set forth herein.

42. Implied in the Services Agreement is an obligation of good faith and fair dealing.

43. BGI breached the implied covenant of good faith and fair dealing by, among other things, submitting invoices to TSE that were filled with inaccuracies, irregularities and overcharges.

44. BGI breached the implied covenant of good faith and fair dealing by, among other things, refusing to provide TSE with reasonable supporting documentation for the invoices which BGI submitted for payment and which TSE determined contain inaccuracies, irregularities and overcharges.

45. BGI breached the implied covenant of good faith and fair dealing by, among other things, supplying alleged supporting information for its invoices that was confusing and indecipherable and likely provided for the purpose of disguising the inaccuracies, irregularities and overcharges in the invoices.

46. TSE's justified expectation that it was receiving accurate invoices from BGI that could be supported by reasonable backup documentation has been denied.

47. As a direct and proximate result of BGI's breach, TSE has been damaged in an amount in excess of $75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

THIRD CLAIM FOR RELIEF

(Declaratory Relief)

48. TSE repeats and realleges the allegations contained in the preceding paragraphs of this Counterclaim as though fully set forth herein.

49. BGI is not entitled to any payment on the current outstanding unpaid invoices as those invoices are replete with inaccuracies, irregularities and overcharges and include

charges that are not supported by backup documentation.

50. The actions of BGI are unilateral and unauthorized.

51. TSE is entitled to declaratory relief concerning its rights under the Services Agreement, namely that no further payment is due to BGI.

52. The interests of TSE and BGI are adverse regarding this justiciable controversy.

53. The issues are ripe for judicial determination because they present an existing controversy and harm is likely to occur in the future without the Court's adjudication of the Parties' rights.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment/Quantum Meruit)

54. TSE repeats and realleges the allegations contained in the preceding paragraphs of this Counterclaim as though fully set forth herein.

55. This cause of action is being pled in the alternative.

56. BGI submitted invoices to TSE that were replete with inaccuracies, irregularities and overcharges.

57. TSE, in reliance on BGI's representations that these invoices were accurate, paid BGI the amounts requested in the invoices, and thereby conferred a benefit on BGI.

58. BGI accepted, appreciated and retained the benefit of TSE's payments on these inaccurate, irregular and inflated invoices.

59. BGI knew or should have known that TSE would never have paid the invoices had it been aware that the invoices were replete with inaccuracies, irregularities and overcharges.

60. It would be inequitable and against the fundamental principles of justice to allow BGI to retain the benefit of TSE's payments on the aforementioned invoices

61. BGI has been unjustly enriched to the detriment of TSE.

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FIFTH CLAIM FOR RELIEF

(Fraudulent/Intentional Misrepresentation)

62. TSE repeats and realleges the allegations contained in the preceding paragraphs of this Counterclaim as though fully set forth herein.

63. BGI has submitted numerous invoices that contain fraudulent misrepresentations regarding the amount of money BGI was due from TSE for work BGI performed on the Project.

64. For example, the Services Agreement provides that BGI may add a 10 percent mark up for work done by third parties.

65. BGI falsely represented to TSE that its sister companies, Liberty Industrial ("LI") and JT Thorpe ("JTT"), were true third parties when BGI submitted invoices seeking a 10 percent markup for LI and JTT. The invoices for LI appeared on BGI invoices beginning March 24, 2017, and continued to appear on BGI invoices until May 18, 2018. In total, LI invoices appeared on 50 BGI invoices. The timecards for LI were signed by Clay Stanaland or Tiffanie Owen, BGI employees. The invoice for JTT appeared on the BGI invoice dated April 11, 2018. The invoice for JTT did not appear to be signed by a TSE or BGI representative. All of the referenced BGI invoices were signed by David Zimmerman, BGI Vice President and General Counsel.

66. BGI knew the invoices for LI and JTT were false when it submitted them because, among other things, BGI was aware of the Services Agreement's language only permitting a 10 percent mark-up for true third parties and because BGI was aware that LI and JTT were its sister companies and not true third parties.

67. As another example, upon information and belief, BGI falsely represented that certain work billed against Work Order 18811 pertained to the work contemplated by that work order.

68. Upon information and belief, the work contemplated by Work Order 18811 was completed on December 13, 2017, yet BGI continued to fraudulently bill against that work order until late January 2018.

69. BGI knew that its representations that its work fell under Work Order 18811 were false because BGI had informed TSE that the work order was complete prior to continuing to bill additional work to that work order.

70. In addition, BGI falsely represented to TSE that BGI personnel time and subcontractor personnel time was within the scope of Work Order 10131 by submitting invoices billing personnel time to that work order despite knowing that Work Order 10131 was to be used exclusively for BGI's morning safety meetings. BGI billed TSE against Work Order 10131 on BGI invoices dated March 31, 2017, July 25, 2017, November 17, 2017, December 6, 2017 and December 7, 2017. The BGI timecards were signed by Clay Stanaland, a BGI employee, and all BGI invoices were signed by David Zimmerman, BGI Vice President and General Counsel.

71. BGI knew that its representations that it was appropriate to bill time relating to BGI personnel and subcontractor personnel to Work Order 10131 were false because BGI knew that Work Order 10131 was to be used only for the morning safety meetings.

72. BGI made the above described false representations in order to induce TSE to pay BGI amounts to which BGI knew it was not entitled.

73. TSE justifiably relied on BGI's false representations in making payments to BGI.

74. TSE has been damaged by BGI's fraudulent misrepresentations in an amount in excess of $75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

75. In making these fraudulent misrepresentations to TSE, BGI acted with malice/implied malice and conscious disregard for TSE's rights. As such, TSE is entitled to an award of punitive damages pursuant to NRS 42.005.

76. While TSE believes it has meet the pleading standard under Nev. R. Civ. P. 9(b), TSE avers, that, in the alternative, the relaxed pleading standard set forth in *Rocker v. KPMG LLP*, 122 Nev. 1185, 1195, 148 P.3d 703, 709 (2006), overruled on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008), applies.

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77. TSE cannot plead fraud with more particularity because the required back up information for BGI's invoices is solely in BGI's possession and cannot be secured without formal legal discovery.

78. BGI has refused, despite repeated requests from TSE, to produce the information that would allow TSE to plead fraud with more particularity.

SIXTH CLAIM FOR RELIEF

(Negligent Misrepresentation)

79. TSE repeats and realleges the allegations contained in the preceding paragraphs of this Counterclaim as though fully set forth herein.

80. BGI supplied false information to TSE and made false representations to TSE, as detailed more fully in the above paragraphs of this Counterclaim.

81. BGI supplied this false information and made these false representations to TSE because BGI had a pecuniary interest in inducing TSE to pay BGI amounts to which BGI was not entitled.

82. TSE justifiably relied on BGI's false representations in making payments to BGI.

83. BGI failed to exercise reasonable care or competence in obtaining and/or communicating the aforementioned false information to TSE.

84. TSE has been damaged by BGI's negligent misrepresentations in an amount in excess of $75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

WHEREFORE, TSE prays for relief as follows:

1. Dismissal of Plaintiff's Complaint with prejudice;

2. For judgment in favor of TSE and against BGI on all claims asserted herein;

3. For actual, compensatory, and consequential damages in an amount in excess of $75,000.00;

4. For pre- and post-judgment interest on any money judgment;

5. For an award of attorneys' fees and court costs incurred herein;

6. For punitive damages under NRS 42.005 for BGI's malice/implied malice and

conscious disregard of TSE's rights; and

7. For such further relief as the Court may grant.

DATED this 17th day of September 2018.

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

Attorneys for Defendant/Counterclaimant
Tonopah Solar Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2018, a true and correct copy of the foregoing **DEFENDANT TONOPAH SOLAR ENERGY, LLC'S ANSWER TO BRAHMA GROUP, INC'S COMPLAINT AND COUNTERCLAIM AGAINST BRAHMA** was served by e-service, in accordance with the Electronic Filing Procedures of the United States District Court, to the following:

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

Cynthia S. Bowman

An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

EXHIBIT 7

EXHIBIT 7

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BRAHMA GROUP, INC., a Nevada Corporation, Plaintiff, vs. TONOPAH SOLAR ENERGY, LLC, a Delaware Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	CASE NO.: 2:18-CV-01747-RFB-GWF **FIRST AMENDED COMPLAINT**
TONOPAH SOLAR ENERGY, LLC a Delaware limited liability company; DOES I through X; and ROE CORPORATIONS I through X, Counterclaimant, vs. BRAHMA GROUP, INC., a Nevada corporation Counterdefendant.	

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

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THE PARTIES

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

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

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

FIRST CAUSE OF ACTION
(Unjust Enrichment)

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

5. BGI provided a portion of the work, materials and/or equipment (the "Work") for or relating to the Crescent Dunes Solar Power Plant (the "Work of Improvement") located in or near Tonopah, Nevada.

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

7. TSE accepted, used and enjoyed the benefit of the Work.

8. TSE knew or should have known that BGI expected to be paid for the Work.

9. BGI is owed an amount in excess of Twelve Million Eight Hundred Thousand and No/100 Dollars ($12,800,000-- the "Outstanding Balance") from TSE for the Work.

10. BGI has demanded payment of the Outstanding Balance.

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

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

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

WHEREFORE, BGI prays that this Honorable Court:

1. Enters judgment against TSE in the amount of the Outstanding Balance;

2. Enters a judgment against TSE for BGI's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

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

Dated this 25 day of September, 2018.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5, I certify that I am an employee of PEEL BRIMLEY LLP, I am over the age of eighteen years, and not a party to the within action. My business address is 3333 E. Serene Ave, Suite 200, Henderson, NV 89074. On September 25, 2018, I served the within document(s):

FIRST AMENDED COMPLAINT

to be served as follows:

X By CM/ECF Filing – with the United States District Court of Nevada. I electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the attorney(s) and/or party(ies) listed below.

☐ By Facsimile Transmission at or about _____ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the persons) served as set forth below.

☐ By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, NV, addressed as set forth below.

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

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EXHIBIT 8

EXHIBIT 8

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BRAHMA GROUP, INC., a Nevada Corporation, Plaintiff, vs. TONOPAH SOLAR ENERGY, LLC, a Delaware Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	CASE NO.: 2:18-CV-01747-RFB-GWF **BRAHMA GROUP, INC.'S MOTION FOR STAY, OR IN THE ALTERNATIVE, MOTION TO AMEND COMPLAINT**
TONOPAH SOLAR ENERGY, LLC a Delaware limited liability company; DOES I through X; and ROE CORPORATIONS I through X, Counterclaimant, vs. BRAHMA GROUP, INC., a Nevada corporation Counterdefendant.	

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

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

Dated this 16 day of October, 2018.

PEEL BRIMLEY LLP

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

I. INTRODUCTION

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

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

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

II. STATEMENT OF FACTS

A. The Work of Improvement.

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

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

B. The Brahma Lien and the Brahma Surety Bond.

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

Thereafter, the Original Lien was amended and/or restated on several occasions and ultimately increased to $12,859,577.74, when Brahma caused its Fourth Amended Notice of Lien ("Fourth Amended Lien") to be recorded on September 14, 2018 with the Nye County Recorder as Document No. 899351.[3] Brahma's Original Lien and the amendments and restatements thereto, including the Fourth Amended Lien are referred to collectively herein as the "Brahma Lien."

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

[1] A copy of the Agreement is attached hereto as **Exhibit 1**.
[2] A copy of the Original Lien is attached hereto as **Exhibit 2**.
[3] True and correct copies of Brahma's First Amended Lien, Second Amended Lien, Third Amended Lien and Fourth Amended Lien are attached hereto as **Exhibits 3, 4, 5 and 6**, respectively.
[4] An affiliate of Cobra possesses an indirect ownership interest in TSE.

be recorded with the Nye County Recorder's Office on September 6, 2018, as Document No. 898974 (the "Brahma Surety Bond"). The Brahma Surety Bond (i) was issued by American Home Assurance Company, as surety ("Surety") on August 15, 2018, (ii) identifies Cobra, as principal ("Principal"), and (iii) was in the amount of $10,767,580.00.[5]

At Brahma's request and in compliance with Nevada law, Cobra caused the Penal Sum of the Surety Bond to be increased to $19,289,366.61 or 1.5 times the amount of Brahma's Fourth Amended Lien by causing a Rider to the Surety Bond (the "Brahma Surety Bond Rider") to be recorded on October 9, 2018 with the Nye County Recorder's Office as Document No. 900303.[6] The Brahma Surety Bond and the Brahma Surety Bond Rider are collectively referred to herein as the "Brahma Surety Bond."

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

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

To replace the Work of Improvement as security for the H&E Lien, on September 6, 2018, Cobra caused a surety bond to be recorded with the Nye County Recorder's Office as Document No. 898975 (the "H&E Surety Bond"). The H&E Surety Bond (i) was issued by American Home Assurance Company, as surety ("Surety") on August 15, 2018, (ii) identifies Cobra, as principal ("Principal"), and (iii) is in the amount of $716,741.10.[7]

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

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

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

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

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

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

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

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

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

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

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

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

Notably, Section 24 of the Agreement reads, "[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."

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

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

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

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

On September 17, 2018, TSE filed its Answer and Counterclaim against Brahma in the Federal Action alleging the following state law causes of action: (i) Breach of Contract; (ii) Breach of the Implied Covenant of Good Faith and Fair Dealing; (iii) Declaratory Relief; (iv) Unjust Enrichment; (v) Fraudulent/Intentional Misrepresentation; and (vi) Negligent Misrepresentation.

On September 25, 2018, Brahma filed its First Amended Complaint in the Federal Action wherein it removed all causes of action against TSE except for its Unjust Enrichment claim.

On October 5, 2018, Brahma filed its Answer to TSE's Counterclaim in the Federal Action.

On October 9, 2018, TSE filed its Answer to Brahma's First Amended Complaint in the Federal Action.

Finally, on October 10, 2018, the Parties filed a Joint Status Report in the Federal Action.

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With the exception of TSE's improper Jury Demand (which TSE has agreed to withdraw) and its Removal Statement, no other filings have taken place in the Federal Action.

F. Brahma Filed an Action to Foreclose on the Brahma Lien in the Nye County Action.

Because the Nye County Court had already ruled on the validity of the Brahma Lien and was well acquainted with the facts of the case, Brahma (as the defendant in Case No. CV 39348) filed its Mechanic's Lien Foreclosure Complaint in the Nye County Action on September 21, 2018,[11] as required by NRS 108.239(1).[12]

Also, on September 21, 2018, because the amount of the Brahma Surety Bond did not comply with NRS 108.2415, Brahma filed (in the Nye County Action) its (i) Petition to Except to the Sufficiency of the Bond, and (ii) Petition to Compel Increase of the Amount of the Bond (the "Petition"). Assuming the Surety Bond Rider Cobra recently recorded complies with NRS 108.2415, Brahma intends to withdraw its Petition.

On September 25, 2018, Brahma filed in the Nye County Action its (i) First Amended Counter-Complaint and included therein its contract-based claims against TSE, and (ii) Third-Party Complaint asserting a claim against the Surety, the Brahma Surety Bond and Cobra, as Principal.[13]

Brahma also understands that H&E intends to bring in the Nye County Action, (i) contract-based claims against Brahma, and (ii) claims against the Surety, the H&E Surety Bond and Cobra, as Principal.

III. LEGAL ARGUMENT

A. The Court Should Stay this Action Under the *Colorado River Abstention* Doctrine.

Because the Parties are proceeding with parallel litigation in the Nye County Action, the Court should stay this removed civil action under the *Colorado River Abstention* Doctrine, thereby allowing the Nye County Court and the Nye County Action to efficiently resolve this duplicative

[11] A true and correct copy of the Mechanic's Lien Foreclosure Complaint is attached hereto as **Exhibit 12.**
[12] In pertinent part, NRS 108.239(1) states, "A notice of lien may be enforced by an action in any court of competent jurisdiction that is located within the county where the property upon which the work of improvement is located ...."
[13] A true and correct copy of the First Amended Counter-Complaint and Third-Party Complaint is attached hereto as **Exhibit 13.**

dispute. The *Colorado River* doctrine requires a federal court to abstain in favor of a concurrent state court proceeding where necessary to promote "wise judicial administration, conservation of judicial resources, and comprehensive disposition of litigation." *Southwest Circle Group, Inc. v. Perini Building Company*, 2010 WL 2667335 *2 (D. Nev. June 29, 2010) (citing *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989). The doctrine is designed to avoid piecemeal litigation and to prevent inconsistent results. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). For the federal court to abstain, there must be a parallel or substantially similar proceeding in state court. *Commercial Cas. Ins. Co. v. Swarts, Manning & Associates, Inc.*, 616 F.Supp.2d 1027, 1032-33 (D. Nev. 2007)(citing *Security Farms v. Int'l Broth of Teamsters, Chauffers, Warehousemen & Helpers,* 124 F.3d 999, 1009 (9th Cir. 1997)("Inherent in the concept of abstention is the presence of a pendent state action in favor of which the federal court must, or may abstain").

However, exact parallelism in the litigation is not required, only that the two proceedings be "substantially similar." *Nakash*, 882 F.2d at 1411. "Suits are parallel if substantially the same parties litigate substantially the same issues in different forums." *Security Farms*, 124 F.3d at 1033 (citing *New Beckley Min. Corp. v. Int'l Union, United Mine Workers of America*, 946 F.2d 1072 (4th Cir. 1991).

To determine whether the state court and federal court cases are "substantially similar," the court's emphasis has been on substantial party identity, transactional identity, and substantial similarity of claims. *See, e.g., Jesus Garcia v. County of Contra Costa*, 2015 WL 1548928, at *2 (N.D. Cal. 2015) ("both actions seek relief based on the same event and are alleged against the same defendants"); *Southwest Circle Group Inc.*, 2010 WL 2667335 at *2 (concluding proceedings were "substantially similar" where they arose "from the same underlying dispute"); *Commercial Cas. Ins. Co*, 616 F.Supp.2d at 1033 (deeming cases to be substantially similar where they "arise out of the conduct of the respective parties" and "called into question the same conduct"). To determine whether contemporaneous, concurrent state and federal litigation exists, the Court must look to the point in time when the party moved for its stay under *Colorado River*. *FDIC v. Nichols*, 885 F.2d 633, 638 (9th Cir. 1989).

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This case satisfies the standards for a *Colorado River* stay to promote "wise judicial administration and conserve judicial resources and comprehensive disposition of litigation." The Nye County Action and Federal Action are substantially similar, contemporaneous, concurrent state and federal cases. *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 845 (9th Cir. 2017). Here, the pending Nye County Action (State Action) and District of Nevada Action (Federal Action) fulfill the substantial similarity requirement. Both cases involve the same parties and arise out of the same events—the Agreement, its performance, TSE's failure to pay Brahma for its Work and TSE's claims that Brahma over charged it for its Work. Both cases assert contractual and quasi-contractual claims and should be decided by the same trier of fact who will decide the Lien litigation—i.e., the Nye County Court. There is concurrent jurisdiction over all claims in these two cases; neither case asserts a claim within the exclusive subject-matter jurisdiction of a federal court. In other words, the federal court's expertise on federal law is not required in this Case.

In *Colorado River,* the US Supreme Court described four factors federal courts should consider in determining whether abstention is appropriate: (1) whether the state or federal court has exercised jurisdiction over the res, (2) the order in which the forums obtained jurisdiction, (3) the desirability of avoiding piecemeal litigation, and (4) the inconvenience of the federal forum. *Colorado River,* 424 U.S. at 800. Subsequent decisions have added three more factors: (5) whether federal or state law controls the decision on the merits, (6) whether the state court can adequately protect the rights of the parties,[14] and (7) whether the exercise of federal jurisdiction will promote forum shopping.[15]

"These factors are to be applied in a pragmatic and flexible way, as part of a balancing process rather than as a mechanical checklist." *40235 Washington St. Corp. v. Lusardi*, 976 F.2d 587, 588 (9th Cir. 1992). "As part of this flexible approach, it may be important to consider additional factors not spelled out in the *Colorado River* opinion." *Commercial Casualty Ins. Co.*, 616 F.Supp.2d at 1033 (citing *Moses Cone,* 460 U.S. at 26, 103 S.Ct. 927).

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[14] For factors (5) and (6), see, *Moses H. Cone Memorial Hosp.*, 460 U.S. 1 at 23-25.
[15] For factor (7), see *Nakash*, 882 F.2d at 1411.

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1. The Nye County Court First Assumed Jurisdiction Over the Res.

Here, Judge Elliot first assumed jurisdiction over the *Res* when TSE, as plaintiff, knowingly and intentionally availed itself of the jurisdiction of the Nye County Court and filed the Nye County Action seeking to expunge The Brahma Lien. Which court first obtains in rem or quasi in rem jurisdiction over property is a dispositive factor that trumps all other *Colorado River* factors when established. *See, e.g., Washington Street Corp. v. Lusardi*, 976 F.2d 587, 589 (9th Cir. 1992) (staying federal court was required where state court obtained in rem jurisdiction over property in a quiet title action). This is so because "the mere fact that state and federal courts are initially vested with coequal authority does not mean that more than one court can actually adjudicate—much less administer—decrees over the same res." *State Engineer of Nevada v. South Fork Band of Te-Moak*, 339 F.3d 804, 813 (9th Cir. 2003). The jurisdiction over "property" refers to an interest in tangible physical property. *American Intern. Underwriters v. Continental Ins.*, 843 F.2d 1253, 1258 (9th Cir. 1988). In the District of Nevada, U.S. District Court Judge Roger Hunt concluded that the filing of a lien against a work of improvement established jurisdiction over the res. *Southwest Circle Group Inc.*, 2010 WL 2667335 at *2.

Here, the Nye County Court first assumed jurisdiction over the *Res* that is the subject of this dispute (i) when Brahma recorded the Brahma Lien against the Work of Improvement on April 9, 2018, and (ii) subsequently, when TSE filed the Nye County Action to Expunge the Brahma Lien on June 1, 2018.

Notably, that Action was brought under NRS 108.2275 which requires a "party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without reasonable cause...[to] apply by motion to the district court for the county where the property...is located for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted." Upon filing the Nye County Action, the Nye County Court assumed jurisdiction over the Brahma Lien recorded against the Work of Improvement.

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On September 10, 2018, the Federal Action was removed from Clark County to federal court. Therefore, the Nye County Court first establish jurisdiction over the *Res*. Moreover, Brahma has since filed its mechanic's lien foreclosure action and claim against the Brahma Surety Bond in the Nye County Action, providing the Nye County Court with additional jurisdiction over the *Res*. Accordingly, jurisdiction over the *Res* was first asserted in the Nye County Court which factor trumps all other factors set forth below and heavily favors abstention.

2. The Nye County Court Obtained Jurisdiction First.

This factor concerns not only the dates on which jurisdiction was established in the Nye County Action vs. the Federal Action, but also the relative progress made between the two cases. *American Intern. Underwriters*, 843 F.2d at 1258. Because the Nye County Court obtained Jurisdiction over the Parties and the *Res* first, and because Judge Elliot has already held hearings and ruled on heavily contested motions in the Nye County Court, including the merits and validity of the Brahma Lien, this factor weighs substantially in favor of abstention for purposes of judicial economy.

While both cases are relatively young, because the Nye County Court obtained jurisdiction over the *Res* and the Brahma Lien first, the Nye County Action has progressed further along than the Federal Action. Moreover, because Judge Elliot previously presided over extensive lien litigation regarding the Work of Improvement, he is already knowledgeable about the Work of Improvement and many of the unique issues the Parties encountered before, during and after construction. As such, Nye County is the proper forum to hear all issues relating to the *Res*, just as TSE determined when it commenced the Nye County Action.

3. The Inconvenience of the Federal Forum.

This factor concerns the inconvenience of the forum to the party who did not invoke the federal forum and is typically discussed in the context of distant witnesses. *American Intern. Underwriters*, 843 F.2d at 1258. However, inconvenience of a federal forum is deemed to be irrelevant when a federal action and state action are located in the same general geographic area. *Jesus Garcia*, 2015 WL 1548928 at *3. Here, while the Work of Improvement is located in Tonopah, Nevada, all hearings have been and will continue to be held at the Nye County courthouse

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located in Pahrump, Nevada, less than an hours' drive from Las Vegas.

Moreover, because the Brahma Surety Bond now stands as the collateral for the Brahma Lien, Brahma intends to file a Demand for Preferential Trial Setting under NRS 108.237(9), which requires the Court to clear its docket of all matters and proceed to trial within 60 days of Brahma filing its Demand.

The Nevada Legislature has afforded mechanic's lien claimants special rights to a just and speedy trial because of the value they add to real property and to the economy in general, as well as the vulnerable position they can find themselves in when an owner fails to pay for work, materials and equipment furnished to a construction project. In 2003 and 2005, and in response to the Venetian lien litigation, the Nevada Legislature substantially revised the mechanic's lien statutes with the intent to facilitate payments to lien claimants in an expeditious manner. *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 245 P.3d 1149, 1156 (2010). One of those revisions was to arm lien claimants with the right to petition the Court for a summary trial on their mechanic's lien claims.

Specifically, NRS 108.239(8) provides:

> Upon petition by a lien claimant for a preferential trial setting:
> (a) the court **shall give preference** in setting a date for the trial **of an action brought pursuant to this section**; and
> (b) if a lien action is designated as complex by the court, the court may take into account the rights and claims of all lien claimants in setting a date for the preferential trial.

NRS 108.239(7) provides:

> The **court shall** enter judgment according to the right of the parties, and shall, by decree, **proceed to hear and determine the claims in a summary way, or may, if it be the district court, refer the claims to a special master to ascertain and report upon the liens and the amount justly due thereon**...

The Nevada Supreme Court has recognized the Legislature's intent to provide lien claimants with special rights designed to provide them with a speedy remedy on their lien claims. *See California Commercial v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 67 P.3d 328 (2003); *See also, Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 197 P.3d 1032 (Nev. 2008)(acknowledging that

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the object of the lien statutes is to secure payment to those who perform work or furnish material to improve the property of the owner). Among the protections afforded lien claimants is the statutory right to a preferential trial setting. By enacting Nevada's mechanic's lien statutes, the Nevada Legislature has created a means to provide contractors with secured payment for their work, materials and equipment furnished to construction projects in Nevada inasmuch as "contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time, labor and materials into a project; and have any number of works vitally depend upon them for eventual payment." *Wilmington Trust FSB v. A1 Concrete Cutting & Demolition, LLC (In re Fontainebleau Las Vegas Holdings, LLC),* 289 P.3d 1199, 1210 (Nev. 2012).

Brahma, as a lien claimant, is entitled to a preferential trial setting pursuant to NRS 108.239 against the Brahma Surety Bond. Preferential trial rights in the Nye County Action mean this case will be handled expeditiously, thereby reducing delay where Brahma has fronted money for work, materials, and equipment. By contrast, in federal court, there is no preferential trial mechanism. Moreover, even if there was a right to a preferential trial in Federal Court, because Judge Elliot is on Senior status, he only handles a few cases at a time and would be in a much better position than this Court to proceed with a lengthy trial within 60 days after Brahma files the Demand.

Further, because (i) the Brahma Surety Bond claim, and (ii) the H&E Lien claim, the H&E Surety Bond claim and H&E's claims against Brahma (claims that are derivative of Brahma's claims against TSE), will be litigated in the Nye County Action, H&E's claims will also be litigated in the same action.

Finally, because TSE (as the Plaintiff) cannot remove the Nye County Action to Federal Court, and because Cobra is of the same domicile as Brahma (i.e., both Nevada corporations) and H&E is of the same domicile as TSE (i.e., both Delaware entities), there is no basis for diversity jurisdiction. Hence, if the Court does not stay this Case, Brahma will be forced to litigate claims arising from the same transaction and occurrence in two separate forums.

Thus, there is no question that the Nye County Court is a reasonable and convenient forum in which to try the parties' dispute.

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4. Desirability of Avoiding Piecemeal Litigation

This factor concerns whether there are *special concerns* about inconsistent adjudication, as there will always be an issue with duplicative state court-federal court litigation. *Seneca*, at 843. "Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *Commercial Cas. Ins. Co.*, 616 F.Supp.2d at 1035 (citing *American Int'l Underwriters*, 843 F.2d at 1258). For instance, in *Colorado River*, the Court found there to be a concern where water rights were in dispute and there was a real danger of inconsistent adjudication.

Central to the dispute between Brahma and TSE is the amount of Work Brahma performed on the Work of Improvement, the amount that TSE owes Brahma for that Work, and the lienable amount for such Work. To determine Brahma's lienable amount, the Nye County Court will necessarily need to determine (i) the agreed upon contract value of said Work (NRS 108.222(a)), or (ii) in cases where there may not have been an agreed upon price, the fair market value of said Work (NRS 108.222(b)). A mechanic's lien is a charge on real estate, created by law, in the nature of a mortgage, to secure the payment of money due for work done thereon, or materials furnished therefor. *Rosina v. Trowbridge*, 20 Nev. 105, 113, 17 P. 751 (Nev. 1888).

The Brahma Lien (recorded against the Work of Improvement and now secured by the Brahma Surety Bond) creates a property interest which cannot be adjudicated by two different courts. Inconsistent adjudication regarding Brahma's lien rights (or claim against the Brahma Surety Bond) would lead to chaos if one court determines that TSE owes Brahma one amount and a different court determines that TSE owes Brahma a different amount. To resolve those two inconsistent judgments, it would require further litigation.

Because the Nye County Court has already ruled on TSE's attempt to expunge the Brahma Lien, the Nye County Court is more familiar with many of the disputed issues between the Parties. If this Court were to exercise jurisdiction, it would likely "be required to decide these matters anew, requiring duplicative effort and creating a significant possibility of inconsistent results." *See Commercial Cas. Ins. Co.*, 616 F.Supp.2d at 1035 (citing *Ryder Truck Rental, Inc. v. Acton Foodservices Corp.*, 554 F.Supp. 227, 281 (C.D.Cal 1983)(district court abstains because

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"exercising federal jurisdiction in this case would not only require duplication of time and effort on the part of the litigants and the Court, but would also create the possibility of inconsistent results").

Finally, acknowledging the possibility of inconsistent rulings being issued by the Nye County Court and this Court, by letter dated October 15, 2018, TSE advised the Nye County Court, that it was concerned that orders issued in the Nye County Action may adversely impact this Case.[16]

Hence, this factor weighs substantially in favor of abstention.

5. Whether state or federal law provides rule of decision on the merits.

Here, as a threshold matter, all the claims asserted by Brahma and counterclaimed by TSE are state law claims. There are no federal questions involved in this Case where this Court's expertise on federal law is needed to resolve a dispute.

In *Montanore Minerals Corp. v. Bakie*, 867 F.3d 1160 (9th Cir. 2017), the Court reversed a district court that had declined to stay an action that involved state law eminent domain proceedings, which raised questions of statutory interpretation. *Id.* at 1168. In *Southwest Circle Group Inc.*, the District of Nevada noted the special competence of Nevada state courts in complex construction litigation and granted a stay. *Southwest Circle Group Inc.*, 2010 WL 2667335 at *3. In fact, that court went on to state that "it would be a misuse of judicial resources to occupy this courts time in a duplicative proceeding when it is clear that the state court is well-prepared to proceed." *Id.*

Here again, Judge Elliot having already ruled on substantive matters, is well-prepared to proceed with presiding over the entire Case. Moreover, state courts are better equipped to handle complex lien litigation utilizing expedited proceedings since such cases are much more frequently filed in state court as opposed to federal court.

This factor also weighs heavily in favor of abstention for purposes of judicial economy.

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[16] A true and correct copy of TSE's October 15, 2018 Letter is attached hereto as **Exhibit 14**.

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6. The Proceedings in the Nye County Action are Adequate to Protect TSE's Rights.

This factor concerns whether the State Action would adequately protect federal rights. *Travelers Indemnity Co. v. Madonna*, 914 F.2d 1364, 1370 (9th Cir. 1990). A lack of concurrent jurisdiction would suggest state court is inadequate. *American Intern. Underwriters*, 843 F.2d at 1259. There, however, is "no question that the state court has authority to address the rights and remedies at issue" in a case about breach of contract. *R.R. Street & Co. Inc. v. Transport Ins. Co.*, 656 F.3d 966, 9821 (9th Cir. 2011)

Here, as none of the claims pending before this Court assert federal questions, let alone ones exclusively in a federal court's jurisdiction, there is no concern that the state court proceeding would be inadequate. Moreover, NRCP 15 is available to TSE should it wish to amend its pleadings in the Nye County Action to add its contract claims and the fraudulent and negligent misrepresentation claims.

Because there is no question that the Nye County Action is adequate to protect TSE's rights, this factor cuts in favor of abstention.

7. Exercising Federal Court Jurisdiction Would Promote Forum Shopping.

This factor concerns whether affirmatively exercising federal court jurisdiction would promote forum shopping. This is especially true where "the party opposing the stay seeks to avoid adverse rulings made by the state court or to gain a tactical advantage from the application of federal court rules." *Travelers Indemnity Co.*, 914 F.2d at 1371. Here, TSE filed its Motion to Expunge the Brahma Lien in the Nye County Court, when it could have filed that same Motion before this Court. TSE's removal of the Clark County Action is nothing more than an effort to engage in forum shopping to avoid the effects of the adverse ruling by Judge Elliott.

B. In the Alternative, if the Court Does Not Stay this Case, the Court Should Allow Brahma to Amend its Complaint.

In the event the Court is inclined to deny the Motion for Stay, Brahma requests that it be permitted to amend its Complaint to reassert its contract claims against TSE which are currently being litigated in the Nye County Action.

In light of the parallel state court claims asserted in the Nye County Action, and because "justice so requires," Brahma should be permitted to amend its complaint under the liberal standard of FRCP 15(a)(2).

Federal Rule of Civil Procedure 15(a) states in relevant part:

> (1) A party may amend its pleading once as a matter of course within (A) 21 days after serving it; or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a motion under Rule 12(b), (e) or (f), whichever is earlier.
>
> (2) In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The ***court should freely give leave when justice so requires***. (emphasis added).

"The Supreme Court has interpreted Rule 15(a) and confirmed the liberal standard district courts must apply when granting such leave." *Dannenbring v. Wynn Las Vegas, LLC*, 907 F.Supp. 2d 1214, 1221 (D. Nev. 2013). In *Foman v. Davis*, the U.S. Supreme Court explained: "In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.—the leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Id.* "Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." *Id.*

1. No Undue Delay

There has been no undue delay on the part of Brahma. Brahma initially included its breach of contract claims as part of this Action but removed those claims and asserted them in the Nye County Action along with its Lien claim and now its claim against the Brahma Surety Bond. Brahma believes the Nye County Court is the appropriate court to hear all matters in this Case.

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However, to the extent the Court is unwilling to stay this Case, Brahma seeks leave of Court to amend its Complaint to re-add its contract-based causes of action against TSE.

2. TSE will Not Be Prejudiced if Brahma is Permitted to Amend its Complaint.

Given the infancy of this Case, TSE will suffer no prejudice if Brahma is permitted to Amend its Complaint to add its contract-based claims. In fact, it is Brahma who would be prejudiced if this Court does not stay this Case and does not allow Brahma to amend its Complaint.

IV. CONCLUSION

Based on the foregoing, this Court should stay this Case pending the outcome of the Nye County Action which has been progressing for several months now. In the alternative, should the Court be inclined to deny the Motion for Stay, this Court should permit Brahma to amend its Complaint to add its contract-based causes of action against TSE.

Dated this 16 day of October, 2018.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5, I certify that I am an employee of PEEL BRIMLEY LLP, I am over the age of eighteen years, and not a party to the within action. My business address is 3333 E. Serene Ave, Suite 200, Henderson, NV 89074. On October 16, 2018, I served the within document(s):

MOTION FOR STAY, OR IN THE ALTERNATIVE, MOTION TO AMEND COMPLAINT

to be served as follows:

X By CM/ECF Filing – with the United States District Court of Nevada. I electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the attorney(s) and/or party(ies) listed below.

☐ By Facsimile Transmission at or about _____ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the persons) served as set forth below.

☐ By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, NV, addressed as set forth below.

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

D. Lee Roberts, Jr., Esq. (NV Bar No. 8877)
Colby L. Balkenbush, Esq. (NV Bar No. 13066)
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cbalkenbush@wwhgd.com
Attorneys for Defendant
Tonopah Solar Energy, LLC

/s/ Theresa M. Hansen
An employee of PEEL BRIMLEY LLP

EXHIBIT 9

EXHIBIT 9

DOC #899351

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

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

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

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

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

Recording Requested By:

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

Address 3333 E. Serene Ave., #200

City / State / Zip Henderson, NV 89074

Fourth Amended and/or Restated Notice of Lien

(Print Name Of Document On The Line Above)

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

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

Signature Name Typed or Printed

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

FOURTH AMENDED AND/OR RESTATED NOTICE OF LIEN

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

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

By way of this Restated Lien, Lien Claimant:

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

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

- Does not cancel, withdraw, discharge or release and expressly reserves all rights, remedies and claims that it may possess with respect to the Work it has furnished or may furnish on, about or for the benefit of the Improvements and the Work of Improvement.

1. The amount of the original contract is:
   - $27,315,971.63.

2. The amount of additional or changed work, materials and equipment, if any, is:
   - $0.00.

3. The total amount of all payments received to date is:
   - $14,456,393.89.

4. The amount of the lien, after deducting all just credits and offsets, is:
   - $12,859,577.74.

5. The name of the owner, if known, of the Improvements is:
   - Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (collectively, "TSE").
   - Upon information and belief, TSE's principal address is believed to be 520 Broadway, 6th Floor, Santa Monica, CA 90401.

6. The name of the owner, if known, of the Land is:
   - As to APNs 612-141-01, 012-031-04, 012-131-03, 012-131-04:
     - TSE, with its principal address at 520 Broadway, 6th Floor, Santa Monica, CA 90401.
   - As to APNs 012-151-01 and 012-141-01:
     - The Bureau of Land Management ("BLM"), with its principal address at 1340 Financial Blvd., Reno, NV 89502.
   - As to APN 012-431-06:
     - Liberty Moly, LLC, with its principal address at 790 Commercial St. #B, Elko, NV 89801-3858.
   - As to APNs 012-140-01 and 012-150-01:
     - Unknown.

7. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:
   - TSE, with its principal address at 520 Broadway, 6th Floor, Santa Monica, CA 90401.

8. A brief statement of the terms of payment of the lien claimant's contract is:
   - As required by Nevada law, but in no event later than 45 days after the submission of an invoice.

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

BRAHMA GROUP, INC.

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

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

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

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

BRAHMA GROUP, INC.

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

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

Susana Rampton
NOTARY PUBLIC In and For Said
County & State

SUSANA RAMPTON
NOTARY PUBLIC -STATE OF UTAH
My Comm. Exp 08/04/2020
Commission # 690304

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

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

EXHIBIT A

Improvements:

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

Land:

Nye County Assessor Parcels:

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

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

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

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

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

- Section 2: The SW ¼ NE ¼ and the W ½ SE ¼;
- Section 11: The W ½ NE ¼, the W ½ SE ¼ and the E ½ SW ¼;
- Section 14: The NE ¼ NW ¼, the W ½ NW ¼ and the NW ¼ SW ¼;
- Section 15: The E ½ SE ¼ and the SW ¼ SE ¼;
- Section 22: The NE ¼ NE ¼, the W ½ NE ¼, the SE ¼ NW ¼, the E ½ SW ¼, the SW ¼ SW ¼ and the NW ¼ SE ¼;
- Section 27: The NE ¼ NW ¼ and the W ½ NW ¼;
- Section 28: The SE ¼ NE ¼, the E ½ SE ¼ and the SW ¼ SE ¼;
- Section 33: The NW ¼ NE ¼

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 ¼, the E ½ SW ¼, the E ½ SW ¼ SW ¼, the E ½ SE ¼ NW ¼, the S ½ NE ¼, the NE ¼ NE ¼ and the SE ¼ NW ¼ NE ¼;
- Section 34: The W ½, the SE ¼, the W ½ NE ¼, the SE ¼ NE ¼ and the SW ¼ NE ¼ NE ¼;
- Section 35: The SW ¼ SW ¼ NW ¼, the SW ¼ SW ¼, the SE ¼ NW ¼ SW ¼ and the W ½ NW ¼ SW ¼.

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 ¼ SW ¼ NW ¼
- Section 3: The N ½, the NW ¼ SE ¼, the N ½ NE ¼ SE ¼, the SW ¼ NE ¼ SE ¼, the NW ¼ SW ¼ SE ¼, the N ½ SW ¼, the N ½ S ½ SW ¼ and the SW ¼ SW ¼ SW ¼;
- Section 4: The NE ¼, the N ½ SE ¼, the E ½ SE ¼ SE ¼, the NW ¼ SE ¼ SE ¼, the NE ¼ SW ¼ SE ¼, the NE ¼ NE ¼ SW ¼, the E ½ NW ¼, the E ½ of Lot 4 and the NE ¼ SW ¼ NW ¼

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 ½ NE ¼ SW ¼ NE ¼

And

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

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE NORTHWEST CORNER OF THE EAST HALF (E 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 True Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

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

PARCEL 4-3

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

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

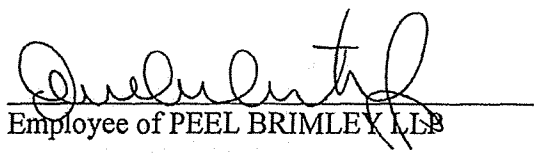
PARCEL 5:

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

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September 2018, I served a true and correct copy of Brahma Group, Inc.'s Fourth Amended and/or Restated Notice of Lien on the interested parties by serving the same in the following manner to the addresses listed below:

OWNER	MANNER OF SERVICE
BLM Washington Office 1849 C Street NW, Rm 5665 Washington, DC 20240	Certified Mail – 7017 3040 0000 8289 7541 Regular Mail
BLM Nevada Office 1340 Financial Blvd. Reno, NV 89502	Certified Mail – 7017 3040 0000 8289 7558 Regular Mail
Bureau of Land Management Tonopah Field Station PO Box 911 Tonopah, NV 89049	Certified Mail – 7017 3040 0000 8289 7565 Regular Mail
Liberty Moly, LLC 790 Commercial St., #B Elko, NV 89801-3585	Certified Mail – 7017 3040 0000 8289 7572 Regular Mail
Liberty Moly, LLC c/o Ross Delipkau 50 West Liberty Street Reno, NV 89501	Certified Mail – 7017 3040 0000 8289 7589 Regular Mail
OWNER/LESSEE	
Tonopah Solar Energy, LLC c/o Kevin B. Smith, President 520 Broadway, 6th Floor Santa Monica, CA 90401	Certified Mail – 7017 3040 0000 8289 7596 Regular Mail
Tonopah Solar Energy LLC c/o CSC Services of Nevada Inc. 2215 B Renaissance Drive Las Vegas, NV 89119	Certified Mail – 7017 3040 0000 8289 7602 Regular Mail
Tonopah Solar Energy, LLC c/o SolarReserve LLC Attn: Rob Howe 7881 W. Sahara Avenue, Suite 230 Las Vegas, NV 89117	Certified Mail – 7017 3040 0000 8289 7619 Regular Mail
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	Certified Mail – 7017 3040 0000 8289 7626 Regular Mail



Employee of PEEL BRIMLEY LLP

EXHIBIT 10

EXHIBIT 10

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

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

TONOPAH SOLOR ENERGY, LLC, a Delaware limited liability company, Plaintiff, vs. BRAHMA GROUP, INC., a Nevada corporation, Defendant.	Case No.: CV 39348 Dept. No.: 2 **CERTIFICATE OF SERVICE**
BRAHMA GROUP, INC., a Nevada corporation, Counterclaimant/Lien Claimant, vs. TONOPAH SOLOR ENERGY, LLC, a Delaware limited liability company; BOE BONDING COMPANIES I through X; DOES I through X; ROE CORPORATIONS I through X; and TOE TENANTS I through X, inclusive, Counterdefendant,	

WEIL & DRAGE
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
2500 Anthem Village Drive
Henderson, NV 89052
Phone: (702) 314-1905
Fax: (702) 314-1909
www.weildrage.com

CERTIFICATE OF SERVICE

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

1. 10/09/2018 Recorded Doc #900303

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

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

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

to be served as follows:

By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and

By facsimile; and

By email transmission

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

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

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

/s/ Ana M. Maldonado

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

WEIL & DRAGE
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
2500 Anthem Village Drive
Henderson, NV 89052
Phone: (702) 314-1905
Fax: (702) 314-1909
www.weildrage.com

DOC #900303

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

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

Recording Requested By:
Name WEIL & DRAGE, APC

Address 2500 Anthem Village Drive

City / State / Zip Henderson, NV 89052

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

Title of Document (required)
Only use below if applicable

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

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

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

Signature

Ana M. Maldonado
Name Typed or Printed

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

SURETY RIDER

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

Bond No. 854481

dated effective 08/15/2018
(MONTH-DAY-YEAR)

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

and by American Home Assurance Company , as Surety,

in favor of Brahma Group, Inc.
(OBLIGEE)

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

The Bond Amount as follows:
From $10,767,580.00
To $19,289,366.61

and

The Lien Amount as follows:
From $7,178,386.94
To $12,859,577.74

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

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

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

Cobra Thermosolar Plants, Inc.
(PRINCIPAL)

By: _____
(PRINCIPAL)
José Antonio Fernández

American Home Assurance Company
(SURETY)

By: _____
Tannis Mattson, Attorney-in-Fact

S-0443/GEEF 10/99

POWER OF ATTORNEY

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

Power No. 7212

No. 31-B-0023446

KNOW ALL MEN BY THESE PRESENTS:

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

---Mary Ann Garcia, Gloria Meyton, Marissa Shepherd, Terri Morrison, Laura Suddath, Sandra Parker, Gina A. Rodriguez, Tulcis Mattson, Mario Arzamendi, Orlando Aguirre: of Houston, Texas

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

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

This 16th day of May, 2018

Michael Yang, Vice President

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

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

JULIANA HALLENBECK
Notary Public - State of New York
NO. 01HA6361537
Qualified in Bronx County
My Commission Expires April 19, 2021

CERTIFICATE

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

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

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

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

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

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

this 25th day of September, 2018

Martin Hogue, Assistant Secretary

65166 (4/96)

Attorney or Party without Attorney:		For Court Use Only
Weil & Drage, APC 2500 Anthem Village Drive, 2nd Floor Henderson, NV 89052 Telephone No: (702) 314-1905		
Attorney For:	Ref. No. or File No.: 2803.001 CRESCENT DUNES	
Insert name of Court, and Judicial District and Branch Court:		
Plaintiff: Defendant:		

AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number: DOC #898974

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the NRS 108.2415 Surety Bond 854481 Posted to Release Lien with Power of Attorney, Power of Attorney

3. a. *Party served:* Brahma Group, Inc.
   b. *Person served:* Amber-Rose Aparicio, Authorized Agent, a person of suitable age and discretion at the most recent street address of the registered agent shown on the information filed with the Secretary of State.

4. *Address where the party was served:* Cogency Global Inc. - Registered Agent
   321 W. Winnie Lane, #104, Carson City, NV 89703

5. *I served the party:*
   a. by personal service. I personally delivered the documents listed in Item 2 to the party or person authorized to receive process for the party (1) on: Fri, Sep 14 2018 (2) at: 02:40 PM

Fee for Service: $0.00
I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

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

24 Sept 18 — *(Date)*

Toni L Ruckman — *(Signature)*

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

(Notary Signature)

DIANE LEITMAN
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 02-19-20
Certificate No: 15-0[illegible]

DOC #898974

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

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

Recording Requested By:
Name WEIL & DRAGE, APC

Address 2500 Anthem Village Drive

City / State / Zip Henderson, Nevada 89052

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

Title of Document (required)
Only use below if applicable

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

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

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

Signature

Ana M. Maldonado, Paralegal
Name Typed or Printed

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

NRS 108.2415 Form of surety bond posted to release lien:

Bond #854481

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

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

Crescent Dunes Solar Energy Project

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

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

Cobra Thermosolar Plant, Inc.

(Signature of Principal) Carlos Ramiro Visser

American Home Assurance Company

Sandra Parker , Attorney-in-Fact

State of Texas)
) ss.
County of Harris)

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

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

Laura Elizabeth Sudduth
My Commission Expires
04/20/2022
ID No 131537924

POWER OF ATTORNEY

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

Power No. 7188

No. 31-B-002348

KNOW ALL MEN BY THESE PRESENTS:

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

--Mary Ann Gerein, Gloria Morton, Marissa Shepherd, Teri Morrison, Laura Suddath, Sandra Parker, Gina A. Rodriguez, Tennis Mattson, Mario Azzarendi, Orlando Aguilar of Houston, Texas

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

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

this 15th day of May, 2018

Michael Yung, Vice President

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

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

JULIANA HALLENBECK
Notary Public - State of New York
No. 01HA6325771
Qualified in Nassau County
My Commission Expires April 18, 2021

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1970:

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

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

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

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

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

this 15th day of August, 2018

Martin Bogue, Assistant Secretary

65166 (4/96)

BROADCAST REPORT

TIME : 10/09/2018 15:07
NAME : WEIL & DRAGE, APC
FAX : 17023141909
TEL :
SER.# : BROK3J469756

PAGE(S)	10

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
10/09	15:02	7029907273	01:45	10	OK	ECM
10/09	15:04	7029383864	03:15	10	OK	ECM

BUSY: BUSY/NO RESPONSE
NG : POOR LINE CONDITION
CV : COVERPAGE

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

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company, Plaintiff, vs. BRAHMA GROUP, INC., a Nevada corporation, Defendant.	CASE NO. : CV 39348 DEPT. NO. : 2 **BRAHMA GROUP, INC.'S MOTION FOR LEAVE TO AMEND ITS FIRST AMENDED COUNTER-COMPLAINT AND THIRD-PARTY COMPLAINT**
BRAHMA GROUP, INC., a Nevada corporation, Counterclaimant/Lien Claimant, vs. TONOPAH SOLAR ENERGY LLC, a Delaware limited liability company; BOE BONDING COMPANIES I through X; DOES I through X; ROE CORPORATIONS I through X; and TOE TENANTS I through X, inclusive, Counterdefendant,	

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BRAHMA GROUP, INC., a Nevada corporation,

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

BRAHMA GROUP, INC.'S MOTION FOR LEAVE TO AMEND ITS FIRST AMENDED COUNTER-COMPLAINT AND THIRD-PARTY COMPLAINT

BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, respectfully moves this Honorable Court pursuant to Nev. R. Civ. P. 15(a) for an Order Granting Brahma leave to file the Proposed Second Amended Complaint and Amended Third-Party Complaint, which is attached hereto as **Exhibit 1** and incorporated herein by this reference.

This Motion is based on the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, and any oral argument which may be heard at the hearing set for this matter.

Dated this 19th day of October, 2018.

PEEL BRIMLEY LLP

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NOTICE OF HEARING

You and each of you, will please take notice that the hearing on **BRAHMA GROUP, INC.'S MOTION FOR LEAVE TO AMEND ITS FIRST AMENDED COUNTER-COMPLAINT AND THIRD-PARTY COMPLAINT** will come for hearing on _____, 2018 at _____ a.m., or as soon thereafter as counsel may be heard in Department 2 in the above-referenced Court.

Dated this 19th day of October, 2018.

PEEL BRIMLEY LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Brahma and Tonopah Solar Energy, LLC ("TSE") entered into an agreement ("Agreement") wherein Brahma agreed to provide certain work, materials and equipment ("Work") to the Crescent Dunes Solar Energy Project ("Project") located in Nye County. TSE agreed to pay Brahma for the Work. Brahma provided the Work and is owed $12,859,577.74 ("Outstanding Balance") from TSE for the same.

To secure payment of the Outstanding Balance, Brahma caused to be recorded in the Official Records of the Nye County Recorder's Office its Notice of Lien and subsequent amendments to the same (collectively, the "Lien").

On or about September 21, 2018, and as required by NRS 108.239(1), Brahma filed its Mechanic's Lien Foreclosure Complaint (the "Initial Complaint") against TSE to foreclose on its Lien.

On or about September 6, 2018, pursuant to NRS 108.2413, Cobra Thermosolar Plants, Inc. ("Cobra"), as principal, and American Home Assurance Company ("AHAC"), as surety, caused Bond #854481 (the "Surety Bond") to be recorded. The purpose of the Surety Bond is to release the Project from Brahma's Lien and replace it with the Surety Bond. However, the penal sum of the Surety Bond did not meet the requirements of NRS 108.2415(1) as it was not 1 ½ times the amount of Brahma's Lien.

As a result of the recordation of the Surety Bond, Brahma filed its First Amended Counter-Complaint and Third-Party Complaint ("Amended Complaint") against TSE, Cobra and AHAC, asserting among other things, a claim against the Surety Bond as authorized by NRS 108.2421. However, because the Surety Bond did not comply with NRS 108.2415(1), Brahma did not remove its foreclosure cause of action.

On or about October 9, 2018, Cobra and AHAC caused to be recorded a Surety Rider ("Rider"), which increased the penal sum of the Surety Bond to $19,289,366.61, in compliance with NRS 108.2415(1).

As a result of the recordation of the Rider, it appears the Surety Bond complies with NRS 108.2415 and replaces the Project as security for Brahma's Lien. Therefore, Brahma desires to amend its (i) Amended Complaint to remove its foreclosure cause of action, and (ii) Third-Party Complaint to include the Rider in its claim against the Surety Bond. As Brahma already amended its Initial Complaint, Brahma requested the other parties stipulate to the amendment. On October 17, 2018, Brahma sent an email[1] to TSE and Cobra advising them Brahma intended to amend its Amended Complaint and requested they stipulate to such an amendment. On October 18, 2018, TSE responded via email stating it would "not stipulate to allow such an amendment."[2]

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[1] A copy of Richard L. Peel's October 17, 2018 email is attached hereto as **Exhibit 2**.
[2] A copy of the October 18, 2018 email is attached hereto as **Exhibit 3**.

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II. LEGAL ARGUMENT.

Nevada Rule of Civil Procedure 15(a) states in relevant part: "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and ***leave shall be freely given when justice so requires***" (emphasis added). Brahma sought written consent from counsel for TSE and Cobra to further amend the Amended Complaint, however, counsel for TSE would "not stipulate to allow such an amendment."

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant—leave to amend should be freely given. *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138 (1973). Although granting leave to amend a complaint is left to the sound discretion of the district court, "it is also true that leave to amend should be permitted when no prejudice to the defendant will result and when justice requires it." *Fisher v. Executive Fund Life Ins. Co.*, 88 Nev. 704, 705-06, 504 P.2d 700 (1972). Under the liberal standard of Nev. R. Civ. P. 15(a), and because no parties will suffer prejudice at this early stage of the litigation, Brahma should be permitted to further amend its Amended Complaint.

There has been no undue delay, bad faith, or any dilatory motive on the part of Brahma in seeking this amendment. To The contrary, Brahma's proposed amendment removes its foreclosure action against TSE and adds the Rider to the claim against the Surety Bond, Cobra and AHAC. The amendment which Brahma seeks benefits TSE, yet TSE will not stipulate to the amendment and is requiring Brahma to file the instant Motion. There is also no prejudice to the parties as this litigation is in its infancy. The Initial Complaint was filed only 28 days ago and the Amended Complaint was filed 24 days ago.

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III. CONCLUSION

For the reasons set forth herein, Brahma respectfully requests this Court grant this Motion for Leave to Amend its First Amended Counter-Complaint and Third-Party Complaint and allow it to file its Second Amended Counter-Complaint and Amended Third-Party Complaint as proposed in **Exhibit 1**.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 19th day of October, 2018.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 19th day of October, 2018, I caused the above and foregoing document entitled **BRAHMA GROUP, INC.'S MOTION FOR LEAVE TO AMEND ITS FIRST AMENDED COUNTER-COMPLAINT AND THIRD-PARTY COMPLAINT** to be served as follows:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ Wiznet, the Court's electronic filing system;

☐ pursuant to EDCR 7.26, to be sent **via facsimile;**

☐ to be hand-delivered; and/or

☐ other – electronic mail

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

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