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7 *The Korte Company*

Electronically Filed
Apr 06 2020 04:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 UPA 1, LLC, a Delaware limited liability
11 company,

12 Plaintiff,

13 vs.

14 THE KORTE COMPANY, a Missouri
corporation,

15 Defendant.

SUPREME COURT NO. 80736

Consolidated Case No. A-17-763262-B

Consolidated with, A-18-767674-C and A-
18-768969-B

Dept. No. 16

**AMENDED DOCKETING
STATEMENT
CIVIL APPEALS**

16
17
18 KORTE CONSTRUCTION COMPANY dba
19 THE KORTE COMPANY, a Missouri
corporation,

20 Plaintiff,

21 v.

22 UPA1 LLC, a Delaware limited liability
company; BRIDGEWAY ADVISORS, a
23 California corporation; STATE OF
NEVADA ON RELATION OF THE
24 BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION, ON
25 BEHALF OF THE UNIVERSITY OF
NEVADA, LAS VEGAS, a Constitutional
26 entity of the State of Nevada; WELLS
FARGO BANK NORTHWEST, N.A., AS
27 TRUSTEE OF THE UNLV STUDENT
HOUSING PHASE I PASS THROUGH
28 TRUST AGREEMENT AND

Consolidated Case No. A-18-767674-C

1 DECLARATION OF TRUST, a federal bank
2 institution, and DOES 1 through 100,
3 inclusive,

4 Defendants.

5 UPA 1, LLC, a Delaware limited liability
6 company,

7 Crossclaimant,

8 v.

9 TRAVELERS CASUALTY & SURETY
10 COMPANY OF AMERICA, a surety,

11 Cross-defendant.

12 **1. Eighth Judicial District Court, Department 16, Clark County, Judge Timothy
13 Williams, District Court Case Number A-17-763262-B**

14 **2. Attorney Filing Docket Statement**

15 Attorney: Leon F. Mead II, Esq. & Sarah M. Thomas, Esq. Telephone: 702.745.4800

16 Firm: Mead Law Group LLP, 7201 W Lake Mead Blvd., Suite 550, Las Vegas, Nevada
17 89128

18 Client: Korte Construction Company dba The Korte Company ("Korte")

19 **3. Attorney(s) Representing Respondents**

20 Attorney: Cynthia Alexander, Esq. and Taylor Anello, Esq. Telephone: 702.550.4400

21 Firm: Dickinson Wright PLLC, 8363 West Sunset Road, Suite 200, Las Vegas, Nevada
22 89113

23 Respondent is State of Nevada on Relation of the Board of Regents of the Nevada System
24 of Higher Education, on Behalf of the University of Nevada, Las Vegas ("UNLV").

25 Note: UPA also filed a Joinder to UNLV's Motion for Summary Judgment, the Order
26 from which this appeal is taken granted both. However, UPA did not seek any relief for
27 itself in the Joinder and the Order only disposed of claims against UNLV.

28 **4. Nature of Disposition below:**

Summary Judgment

1 **5. Does this appeal raise issues concerning any of the following?**

2 Child Custody, Venue, Termination of Parental Rights

3 No

4 **6. Pending and prior proceedings in this Court.**

5 There have been no prior appeals related to this matter. The underlying action in this
6 matter, is still pending between other parties. No other matters are pending related to this
7 appeal.

8 **7. Pending and prior proceedings in other courts.**

9 None.

10 **8. Nature of the action.**

11 This action is the result of a dispute between the general contractor (Korte) on a
12 tenant improvement pursuant to a contract with the lessee of real property (UPA) owned
13 by UNLV for construction of the University Park Project (now known as The Degree),
14 which is described in relevant purchasing and lease documents as “student housing and
15 certain commercial establishments.” The dispute is as to whether proper payment has
16 been made to Korte by UPA pursuant to the construction contract between Korte and
17 UPA. Korte has also made claims against the mechanic’s lien release bond recorded by
18 UPA as principal and Hartford Fire Insurance Company as surety, against UNLV as the
19 owner of the property under unjust enrichment principles as an alternate theory to Korte’s
20 claims against UPA, and for payment from Wells Fargo as the holder of a purported
21 construction disbursement account as an alternate theory to Korte’s claims against UPA.
22 Korte has also alleged tortious interference with its construction contract with UPA
23 against Bridgeway Advisors and other claims against UPA under NRS 108.2403 and
24 NRS 624.610. UPA claims that Korte breached the construction contract by, including
25 but not limited to, unlawfully terminating the construction contract, causing UPA delay
26 and disruption damages, and claims that Korte is not entitled to additional funds. UPA
27 has made a claim against Korte as principal and Travelers as surety on payment and
28 performance bonds for its alleged damages, as well as breach of contract against Korte,

breach of the implied covenant of good faith and fair dealing against Korte, and inappropriate exercise of NRS 624 against Korte.

9. Issues on Appeal

This appeal involves only Korte's unjust enrichment claim against UNLV. UNLV claimed, and the district court agreed, that Korte's unjust enrichment claim is barred by Korte's contract with UPA and the fact that a mechanic's lien release bond has been recorded against the Property, to which Korte's mechanic's lien has attached. Appellant believes that the *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 942 P.2d 182, 187 (1997) is directly in contravention of the Order granting UNLV's Motion for Summary Judgment and that it otherwise should not have been granted for the reasons described in Korte's Opposition thereto. The Order Granting UNLV's Motion for Summary Judgment is a final and appealable order as to UNLV, as it adjudicates all pending claims against UNLV.

10. Pending proceedings in this court raising the same or similar issues.

N/A

11. Constitutional issues.

N/A

12. Other Issues.

Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent

Korte believes that this appeal is appropriate because it believes that the decision granting UNLV's motion for summary judgment is against well-settled Nevada precedent, including *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 942 P.2d 182, 187 (1997).

13. Assignment to the Court of Appeals or retention in the Supreme Court.

This case should be assigned to the Court of Appeals per NRAP 17(b).

14. Trial

This case has not gone to trial yet.

1
2 **15. Judicial Disqualification.**

3 No.

4 **TIMELIENESS OF NOTICE OF APPEAL**

5 **16. Date of entry of written judgment or order appealed from** February 6, 2020.

6 **17. Date written notice of entry of judgment or order was served** February 6, 2020,
7 served by electronic service.

8 **18. If the time for filing the notice of appeal was tolled by a post-judgment motion**
9 **(NRCP 50(b), 52(b) or 59)**

10 N/A

11 **19. Date notice of appeal filed** March 2, 2020

12 **20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,**
13 **NRAP 4(a) or other**

14 NRAP 4(a)(1).

15 **21. Specify the statute or other authority granting this court jurisdiction to review the**
16 **judgment or order appealed from**

17 NRAP 3(A)(b)(1) and NRCP 54(b). The order that Korte is appealing is a final order as
18 to UNLV, as it grants summary judgment on all causes of action related to UNLV and
19 certifies that the Order is a final judgment as to UNLV. It also states that there is “no just
20 reason for delay in entering [the] Order.”

21 **22. List all parties involved in the action or consolidated actions in the district court:**

22 (a) Parties: Korte Construction Company dba The Korte Company (“Korte”); UPA1, LLC;
23 Bridgeway Advisors; State of Nevada on Relation of the Board of Regents of the Nevada
24 System of Higher Education on Behalf of the University of Nevada, Las Vegas
25 (“UNLV”); Wells Fargo Bank Northwest, N.A., as Trustee of the UNLV Student
26 Housing Phase I Pass Through Trust Under the Pass-Through Trust Agreement and
27 Declaration of Trust; Traveler’s Casualty & Surety Company of America; and Hartford
28 Fire Insurance Company. Additionally, there were parties that were involved in this case

1 previously, specifically, Builder Services Group, Inc. dba Central Valley Insulation and
2 Helix Electric of Nevada, LLC, both of whom have voluntarily dismissed their claims in
3 this action and have not been involved in the case since June of 2018.

- 4 (b) If all those parties in the district court are not parties to this appeal, explain in detail why
5 those parties are not involved in this appeal, e.g., formally dismissed, not served, other:
6 Only Korte and UNLV are parties to the appeal because the appeal is of the Order
7 Granting UNLV's Motion for Summary Judgment on the only claim made against UNLV
8 or by UNLV: Korte's unjust enrichment claim. That claim does not involve the other
9 parties to this action. Additionally, while UPA filed a Joinder to UNLV's Motion for
10 Summary Judgment, it only did so to support the Court finding in favor of UNLV on the
11 Motion, it did not seek any relief itself. Thus, UPA is not an appropriate party to this
12 appeal. Bridgeway, Wells Fargo, and Travelers were not involved in UNLV's Motion for
13 Summary Judgment and are therefore not affected by the Order which Korte is appealing.
14 Central Valley and Helix voluntarily dismissed their claims in June of 2018.

15 **23. Give a brief description (3 to 5 words) of each party's separate claims,**
16 **counterclaims, cross-claims, or third party claims and the date of formal disposition**
17 **of each claim.**

18 The operative pleadings are as follows:

19 Second Amended Complaint filed by The Korte Company makes the following claims:

20 (1) Relief Under NRS 108.2403(3)(a) against UPA1, LLC; (2) Relief Under NRS
21 624.610(6) against UPA1, LLC; (3) Breach of Contract against UPA1, LLC; (4) Unjust
22 Enrichment against UNLV; (5) Foreclosure of Mechanic's Lien on Surety Bond against
23 UPA and Hartford; (6) Tortious Interference with Business Contract against Bridgeway;
24 (7) Claim of Lien Upon Construction Disbursement Account against Wells Fargo; and
25 (8) Declaratory Relief against UPA1, LLC, UNLV, Hartford, Bridgeway, and Wells
26 Fargo.

27 *Korte's Unjust Enrichment Claim against UNLV was adjudicated by way of the Order*
28 *being appealed herein: the Order Granting State of Nevada on Relation of the Board of*

1 *Regents of the Nevada System of Higher Education, on behalf of the University of Nevada,*
2 *Las Vegas' Motion for Summary Judgment and UPA1, LLC's Joinder Thereto, Findings*
3 *of Fact, and Conclusions of Law.*

4 First [Second] [sic] Amended Crossclaim and Amended Counterclaim filed by UPA1,
5 LLC: (1) Breach of Surety Bond against Travelers; (2) Claim Against Performance Bond
6 Plead in the Alternative Pursuant to NRCP 8 against Travelers; (3) Breach of Contract
7 against Korte; (4) Breach of the Covenant of Good Faith and Fair Dealing against Korte;
8 (5) Inappropriate Exercise of NRS Chapter 624 Against Korte; (6) (sic) Declaratory
9 Relief Regarding Korte's NRS 624 NRS 108 Rights Against Korte.

10 *UPA1, LLC also previously made a negligence claim against Korte which was dismissed*
11 *by entry of order on Korte's Partial Motion to Dismiss on August 1, 2018.*

12 Helix and Central Valley both filed Statements of Fact Constituting Liens, which were
13 voluntarily dismissed on June 13, 2018 and June 18, 2018, respectively.

14 **24. Did the judgment or order appealed from adjudicate ALL the claims alleged below**
15 **and the rights and liabilities of ALL the parties to the action or consolidated actions**
16 **below?**

17 No

18 **25. If you answered "No" to question 24, complete the following:**

19 (a) Specify the claims remaining pending below:

20 Second Amended Complaint filed by The Korte Company makes the following
21 claims: (1) Relief Under NRS 108.2403(3)(a) against UPA1, LLC; (2) Relief Under
22 NRS 624.610(6) against UPA1, LLC; (3) Breach of Contract against UPA1, LLC;
23 (5) Foreclosure of Mechanic's Lien on Surety Bond against UPA and Hartford; (6)
24 Tortious Interference with Business Contract against Bridgeway; (7) Claim of Lien
25 Upon Construction Disbursement Account against Wells Fargo; and (8) Declaratory
26 Relief against UPA1, LLC, UNLV, Hartford, Bridgeway, and Wells Fargo.

27 First [Second] [sic] Amended Crossclaim and Amended Counterclaim filed by UPA1,
28 LLC: (1) Breach of Surety Bond against Travelers; (2) Claim Against Performance

Bond Plead in the Alternative Pursuant to NRCP 8 against Travelers; (3) Breach of Contract against Korte; (4) Breach of the Covenant of Good Faith and Fair Dealing against Korte; (5) Inappropriate Exercise of NRS Chapter 624 Against Korte; (7) (sic) Declaratory Relief Regarding Korte's NRS 624 NRS 108 Rights Against Korte.

(b) Specify the parties remaining below:

Korte; UPA1, LLC; Wells Fargo; Bridgeway; Travelers; Hartford

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? Yes.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? Yes.

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motions and orders resolving tolling motions
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third party claims asserted in the action or consolidated actions below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

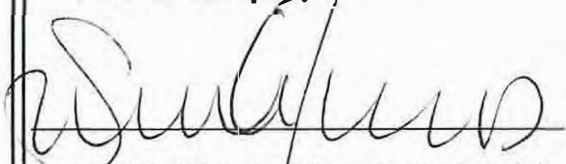
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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

~~The Korte Company~~



April 6, 2020

Sarah M. Thomas, Esq., counsel to The Korte Company

Executed in Clark County, Nevada

CERTIFICATE OF SERVICE

I, the undersigned, declare under the penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **AMENDED DOCKETING STATEMENT** by method indicated below:

- ☐ BY FAX: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☒ BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ BY OVERNIGHT MAIL: by causing the document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ BY PERSONAL DELIVERY: by causing the above listed document(s) to be personally delivered by [name of messenger service], a messenger person(s) at the address(es) set forth below.
- ☒ BY ELECTRONIC SUBMISSION: submitted to the above entitled Court for electronic filing and service upon the Court's Service List for the above referenced case.
- ☒ BY ELECTRONIC MAIL to: LKEvensen@hollandhart.com; calexander@dickinson-wright.com; tanello@dickinson-wright.com

Parties Served:

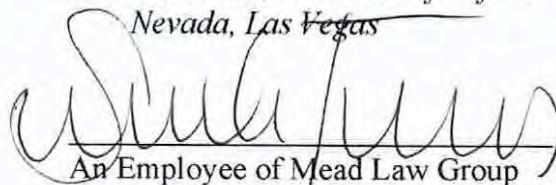
Lars Evensen, Esq.
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Attorneys for UPA 1, LLC

Cynthia Alexander, Esq.
Taylor Anello, Esq.
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*Attorneys for State of Nevada ex rel Board of
Regents of the Nevada System of Higher
Education, on behalf of University of
Nevada, Las Vegas*

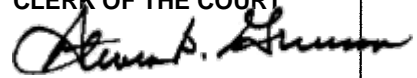
Dated: April 6, 2020


An Employee of Mead Law Group

EXHIBITS TO AMENDED DOCKETING STATEMENT

Exhibit Number	Description
Exhibit 1	Helix Electric Complaint (dismissed)
Exhibit 2	Central Valley Statement of Facts Constituting Notice of Lien and Complaint in Intervention (dismissed)
Exhibit 3	Notice of Entry of Order and Stipulation and Order for Dismissal with Prejudice re Helix Electric Complaint
Exhibit 4	Notice of Entry of Order and Stipulation and Order for Dismissal with Prejudice re Central Valley Complaint
Exhibit 5	Notice of Entry of Order and Order Granting in Part and Denying in Part The Korte Company's Motion to Dismiss UPA1, LLC's Counterclaim (dismissing UPA1, LLC's negligence claim)
Exhibit 6	The Korte Company's Second Amended Complaint
Exhibit 7	UPA 1, LLC's Answer to The Korte Company's Second Amended Complaint, Amended Counterclaim Against the Korte Company, and First Amended Cross Claim Against Travelers Casualty & Surety Company of America
Exhibit 8	Notice of Entry of Order and Order Granting State of Nevada on Relation of the Board of Regents of the Nevada System of Higher Education, on Behalf of the University of Nevada, Las Vegas' Motion for Summary Judgment and UPA1, LLC's Joinder Thereto, Findings of Fact, and Conclusions of Law

EXHIBIT “1”



COMP
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*Attorneys for Plaintiff Helix Electric
of Nevada, LLC dba Helix Electric*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HELIX ELECTRIC OF NEVADA, LLC dba
HELIX ELECTRIC, a Nevada limited liability
company,

Plaintiff,

vs.

KORTE CONSTRUCTION COMPANY dba THE
KORTE COMPANY, a Missouri corporation;
UNIVERSITY PARK, LLC, a Delaware limited
liability company; UNIVERSITY BOARD OF
REGENTS; UPA 1, LLC, a Delaware limited
liability company; TRAVELERS CASUALTY &
SURETY COMPANY OF AMERICA, a surety;
DOES I through X; ROE CORPORATIONS I
through X; BOE BONDING COMPANIES I
through X; LOE LENDERS I through X; TOE
TENANTS I through X, inclusive,

Defendants.

CASE NO.: A-18-768969-B
DEPT. NO.: Department 13

**MECHANIC'S LIEN
FORECLOSURE COMPLAINT**

**[Arbitration Exemption: Title to Real
Property]**

As and for its Complaint against the above-named defendants, Plaintiff, HELIX
ELECTRIC OF NEVADA, LLC dba HELIX ELECTRIC ("Helix"), by and through its attorneys
of record, the law firm of PEEL BRIMLEY LLP, complains, avers and alleges as follows:

THE PARTIES

1. Helix is and was at all times relevant to this action:
 - a. a Nevada limited liability company;
 - b. Duly authorized and qualified to do business in Clark County, Nevada; and

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

1 c. A licensed contractor holding a Nevada State Contractor's License, which
2 license is in good standing.

3 2. Helix is informed, believes and therefore alleges that, at all times relevant to this
4 Action, Defendant KORTE CONSTRUCTION COMPANY dba THE KORTE COMPANY
5 ("Korte"):

6 a. Is and was, a Missouri corporation, duly authorized to conduct business in
7 Nevada;

8 b. Is and was, a contractor, holding a Nevada State Contractor's license (NV.
9 License No. 57075).

10 3. Helix is informed, believes and therefore alleges that, at all times relevant to this
11 Action, Defendant TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA
12 ("Travelers"):

13 a. Is and was a bonding company duly licensed and qualified to do business
14 as a surety in Nevada; and

15 b. Issued Contractors License Bond No. 51S103847699BCM ("License
16 Bond") in the penal sum of Fifty Thousand and No/100 Dollars ("50,000.00—"Penal Sum"),
17 with Korte as Principal thereon.

18 4. Helix is informed and believes and therefore alleges that Defendants
19 UNIVERSITY BOARD OF REGENTS ("UBR"), UNIVERSITY PARK, LLC, a Delaware
20 limited liability company ("University Park"), and UPA 1, LLC, a Delaware limited liability
21 company ("UPA") (UBR, University Park and UPA are collectively herein referred to as
22 "Owners") are and were at all times relevant to this action:

23 a. Duly authorized and qualified to do business in the state of Nevada; and

24 b. The owners, reputed owners or the persons, individuals and/or entities who
25 claim an ownership interest in or with respect to that certain work of improvement, commonly
26 known as the University Park Apartments, located in Clark County, Nevada and more particularly
27 described as follows:

28 ///

4224 Grove Cir. Las Vegas, NV 89119	University Park Apartments Plat Book 8 Page 27 Lot 18 Block 2 & Lots 19-25 & VAC Rd
4224 Cottage Cir. Las Vegas, NV 89119	University Park Apartments Plat Book 8 Page 27 Lot 10 Block 2 & Lots 11-17 & VAC Rd
1164 Maryland Cir. Las Vegas, NV 89119	University Park Apartments Plat Book 8 Page 27 Lot 1 Block 2 & Lots 2-6, 9 & VAC Rd
Paradise	University Park Apartments Plat Book 8 Page 27 Lot A Block 2 & VAC Rd
4259 S. Maryland Pkwy Las Vegas, NV 89119	University Park Apartments Plat Book 8 Page 27 Lot 7 Block 2 & Lot 8 & VAC Rd

and more particularly described as Clark County Assessor Parcel Numbers 162-22-510-005, 162-22-510-006, 162-22-510-007, 162-22-510-008 and 162-22-510-009 including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof (collectively, the “Property”), upon which the Owners caused or allowed to be constructed certain improvements (the “Work of Improvement”).

5. The entire Property is reasonably necessary for the convenient use and occupation of the Work of Improvement.

6. Helix is informed, believes and therefore alleges that, at all times relevant to this Action, Defendant(s) BOE BONDING COMPANIES I through X (collectively, “BOE Defendants”) were bonding companies, who issued a performance and payment bond (the “Payment Bond”) on behalf of Korte, as principal. Helix will request leave of this Honorable Court to amend this Complaint to show the true name of BOE Defendants who issued such a Payment Bond.

7. Helix does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, LOE LENDERS I through X and TOE TENANTS I through X (inclusive of the BOE Defendants, collectively, “Doe Defendants”). Helix alleges that such Doe Defendants claim an

1 interest in or to the Property and/or are responsible for damages suffered by Helix as more fully
2 discussed under the claims for relief set forth below. Helix will request leave of this Honorable
3 Court to amend this Complaint to show the true names and capacities of each such fictitious
4 Defendant when Helix discovers such information.

5 8. Korte, Travelers, UBR, University Park, UPA, the Boe Defendants, and the Doe
6 Defendants are collectively referred to in this Complaint as the “Defendants.”

7
8 **FIRST CAUSE OF ACTION**
(Breach of Contract Against Korte)

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

11 10. On or about July 19, 2016, Helix entered into an agreement (the “Agreement”) with
12 Korte to supply electrical related work, materials and/or equipment (the “Work”) to or for the
13 Work of Improvement.

14 11. Helix furnished the Work for the benefit of and/or at the specific instance and
15 request of Korte.

16 12. Pursuant to the Agreement, Helix was to be paid an amount in excess of Ten
17 Thousand and no/100 Dollars (\$10,000.00) for the Work (“Agreement Price”).

18 13. Helix furnished the Work and has otherwise performed its duties and obligations as
19 required by the Agreement.

20 14. Korte breached the Agreement by, among other things:

21 a. Failing and/or refusing to pay the Agreement Price and other monies owed
22 to Helix for the Work;

23 b. Failing to adjust the Agreement Price to account for extras and/or changed
24 work, as well as suspensions, delays, acceleration and/or disruption of the Work caused or ordered
25 by Korte and/or its agents or representatives;

26 c. Failing to promptly recognize and grant time extensions to reflect additional
27 time allowable under the Agreement and permit related adjustments in scheduled performance;

28 ///

1 d. Failing and/or refusing to comply with the Agreement and Nevada law; and
2 e. Negligently or intentionally preventing, obstructing, hindering or
3 interfering with Helix's performance of the Work.

4 15. Helix is owed an amount in excess of Fifteen Thousand and no/100 Dollars
5 (\$15,000.00) (hereinafter "Outstanding Balance") from Korte for the Work.

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

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

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

12 18. Under Nevada law, there is a covenant of good faith and fair dealing implied in
13 every agreement, including the Agreement between Helix and Korte.

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

17 20. Due to the actions of Korte, Helix suffered damages in an amount in excess of the
18 Outstanding Balance, for which Helix is entitled to judgment in an amount to be determined at
19 trial.

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

23 **THIRD CAUSE OF ACTION**
(Unjust Enrichment Against Korte and the Owners)

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

26 23. As to Korte, this cause of action is being pled in the alternative.

27 24. Helix furnished the Work for the benefit of and/or at the specific instance and
28 request of Korte and/or the Owners.

- 1 25. Korte and/or the Owners accepted, used and enjoyed the benefit of the Work.
- 2 26. Korte and/or the Owners knew or should have known that Helix expected to be paid
- 3 for the Work.
- 4 27. Helix has demanded payment of the Outstanding Balance.
- 5 28. To date, Korte and the Owners have failed, neglected, and/or refused to pay the
- 6 Outstanding Balance.
- 7 29. Korte and/or the Owners have been unjustly enriched, to the detriment of Helix.
- 8 30. Helix has been required to engage the services of an attorney to collect the
- 9 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
- 10 interest therefor.

11 **FOURTH CAUSE OF ACTION**
 (Foreclosure of Notice of Lien)

- 12 31. Helix repeats and realleges each and every allegation contained in the preceding
- 13 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:
- 14 32. The Work was provided at the special instance and/or request of Korte and/or the
- 15 Owners for the Work of Improvement, as a whole.
- 16 33. As provided in NRS 108.245, (i) the Owners knew or should have known of Helix's
- 17 provision of the Work, and/or (ii) Helix served the Owners with a Notice of Right to Lien, as
- 18 prescribed by Nevada law.
- 19 34. Helix demanded payment of the Outstanding Balance, which amount remains past
- 20 due and owing.
- 21 35. On or about September 27, 2017, Helix timely gave or served the Owners and Korte
- 22 with a Fifteen-Day Notice of Intent to Lien.
- 23 36. On or about October 16, 2017, Helix timely recorded a Notice of Lien in the Official
- 24 Records of Clark County, Nevada, as Instrument No. 20171016-0002223 ("Lien").
- 25 37. The Lien was in writing and was recorded against the Property and the Work of
- 26 Improvement for the Outstanding Balance due to Helix in the amount of One Million Three
- 27
- 28

1 Hundred Fifty-Five Thousand Nine Hundred Twenty Dollars and Ninety-Six Cents
2 (\$1,355,920.96— “Lien Amount”).¹

3 38. As applicable, the Lien was served upon the Owners, Korte and/or their authorized
4 agent(s), as required by Nevada law.

5 39. Helix is entitled to an award of its attorney’s fees, costs and interest on the
6 Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

7 **FIFTH CAUSE OF ACTION**
8 **(Claim of Priority Against Lenders and Doe Defendants)**

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

11 41. Helix is informed and believes and therefore alleges that physical work of
12 improvement to the Work of Improvement commenced before the recording of the Doe
13 Defendants’ Deeds of Trust and/or other interest(s) in the Work of Improvement and/or any
14 leasehold estate claimed by any of the Doe Defendants.

15 42. Helix’s claims against the Work of Improvement and/or any leasehold estates are
16 superior to the claim(s) of Doe Defendants.

17 43. Helix has been required to engage the services of an attorney to collect the
18 Outstanding Balance due and owing for the Work, and Helix is entitled to recover its reasonable
19 costs, attorney’s fees and interest therefor.

20 **SIXTH CAUSE OF ACTION**
21 **(Violations of NRS 624 Against Korte)**

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

24 45. NRS 624.624 and NRS 624.626 (the “Statute”) requires higher-tiered contractors
(such as Korte) to, among other things:

25 a. Pay their lower-tiered subcontractors (such as Helix) in accordance with the
26 provisions of the Statute; and
27

28

¹ Helix reserves its right to amend the Lien Amount to account for additional monies owed to Helix.

b. Respond to payment applications and change order requests, as provided in the Statute.

46. Korte violated the Statute by failing to comply with the requirements set forth therein.

47. On or about September 12, 2017, Helix received correspondence from Korte advising Helix that Korte had stopped work on the Work of Improvement due to, among other things, the Owners' failure to make payment to Korte.

48. By correspondence dated September 15, 2017, Korte confirmed that it had exercised its rights under NRS 108.2403 and 108.2407 and NRS 624.606 to 624.630 (collectively, the "Statutes").

49. Pursuant to NRS 624.610, Helix was entitled to stop upon Korte stopping work.

50. On or about September 27, 2017, Helix served Korte with its (i) Confirmation of Directive to Stop Work (based on Korte's September 12 and 15, 2017 correspondence), and (ii) 10 Day Notice of Intent to Stop Work (as a result of Korte's failure to timely pay Helix).

51. On or about October 18, Helix served Korte with its (i) Notice of Stopping Work, and (ii) 15 Day Notice of Intent to Terminate Subcontract.

52. On or about November 9, 2017, Helix served Korte with its Notice of Termination of Subcontract.

53. By reason of the foregoing, Helix is entitled to the rights and remedies and the damages provided in the Statutes.

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

SEVENTH CAUSE OF ACTION
(Claim Against License Bond - Travelers)

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

56. Korte is named as principal and Travelers is named as surety on the License Bond.

57. The License Bond was in force during all times relevant to this action.

1 58. Helix provided the Work to the Work of Improvement and has not been paid the
2 Outstanding Balance.

3 59. Korte's failure to pay Helix for the Work constitutes an unlawful act or omission
4 under NRS 624.273.

5 60. Helix is entitled to be paid from the proceeds of the License Bond.

6 61. Helix has been damaged in an amount in excess of \$15,000.00, and has been
7 required to engage the services of an attorney to collect the Outstanding Balance and Helix is
8 entitled to recover its reasonable costs, attorney's fees and interest therefore.

9
10 **SEVENTH CAUSE OF ACTION**
11 **(Claim Against Payment Bond – Boe Bonding)**

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

14 63. Boe Defendants issued the Payment Bond on behalf of Korte, as principal.

15 64. The Payment Bond was in force during all times relevant to this Action.

16 65. Helix furnished the Work for the Work of Improvement and has not been paid the
17 Outstanding Balance.

18 66. Helix is entitled to be paid from the proceeds of the Payment Bond.

19 67. Helix has been required to engage the services of an attorney to collect the
20 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and
21 interests therefor.

22 **WHEREFORE**, Helix prays that this Honorable Court:

23 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
24 the amount of the Outstanding Balance, plus attorney's fees, costs and interest at the rate provided
25 in the Statutes (collectively, the "Judgment Amount");

26 2. Enters judgment against Korte in the Judgment Amount.

27 3. Enters judgment against Travelers and in favor of Helix for the Penal Sum of the
28 License Bond;

1 4. Enters a judgment in favor of Helix against Boe Bonding, Korte and the Payment
2 Bond in the Judgment Amount;

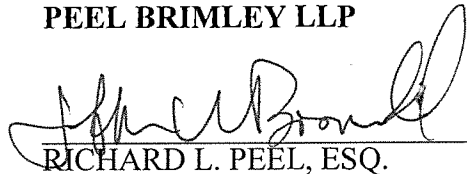
3 5. Enters judgment declaring that Helix has a valid and enforceable notice of lien
4 against the Property and the Work of Improvement, with priority over all Defendants, in the Lien
5 Amount together with costs, attorneys' fees and interest in accordance with NRS Chapter 108;

6 6. Adjudge a lien upon the Work of Improvement and the Property for the Lien
7 Amount, plus reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court
8 enter an Order that the Work of Improvement, Property, and improvements, such as may be
9 necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale
10 be applied to the payment of the Lien Amount due Helix herein; and

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

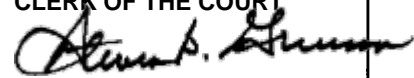
13 Dated this 2 day of February, 2018.

14 **PEEL BRIMLEY LLP**

15 
16 _____
17 RICHARD L. PEEL, ESQ.

18 Nevada Bar No. 4359
19 JEFFERSON W. BOSWELL, ESQ.
20 Nevada Bar No. 11776
21 3333 E. Serene Avenue, Suite 200
22 Henderson, Nevada 89074-6571
23 Attorneys for Helix Electric of Nevada, LLC
24 dba Helix Electric
25
26
27
28

EXHIBIT “2”



1 **SFCL**
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3 Nevada Bar #3712
4 RHONDA LONG, ESQ.
5 Nevada Bar #10921
6 DOBBERSTEIN LAW GROUP
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13 *Attorneys for Lien Claimant/Plaintiff in*
14 *Intervention Builder Services Group, Inc. dba*
15 *Central Valley Insulation*

16 **EIGHTH JUDICIAL DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 KORTE CONSTRUCTION COMPANY dba
19 THE KORTE COMPANY, a Missouri
20 corporation,

21 Plaintiff,

22 v.

23 UPA 1, LLC, a Delaware limited liability
24 company; BRIDGEWAY ADVISORS, LLC, a
25 California limited liability company; THE
26 BOARD OF THE REGENTS OF THE
27 NEVADA SYSTEM OF HIGHER
28 EDUCATION ON BEHALF OF THE
UNIVERSITY OF NEVADA, LAS VEGAS, a
Constitutional entity of the State of Nevada;
WELLS FARGO BANK NORTHWEST, N.A.,
AS TRUSTEE OF THE UNLV STUDENT
HOUSING PHASE I (LAS VEGAS, NV) PASS
THROUGH TRUST UNDER THE PASS-
THROUGH TRUST AGREEMENT AND
DECLARATION OF TRUST, a federal bank
institution; and DOES 1 through 100, inclusive,

Defendants.

BUILDER SERVICES GROUP, INC. dba
CENTRAL VALLEY INSULATION, a Florida
Corporation,

Case No.: A-18-767674-C

Dept. No.: 12

Honorable: Judge Michelle Leavitt

BUILDER SERVICES GROUP, INC. dba
CENTRAL VALLEY INSULATION'S
STATEMENT OF FACTS
CONSTITUTING A NOTICE OF LIEN
AND COMPLAINT IN INTERVENTION

1 Lien Claimant/Intervenor

2
3 vs.

4 UPA 1, LLC, a Delaware limited liability
5 company; THE BOARD OF THE REGENTS
6 OF THE NEVADA SYSTEM OF HIGHER
7 EDUCATION ON BEHALF OF THE
8 UNIVERSITY OF NEVADA, LAS VEGAS, a
9 Constitutional entity of the State of Nevada;
10 WELLS FARGO BANK NORTHWEST,N.A.,
11 AS TRUSTEE OF THE UNLV STUDENT
12 HOUSING PHASE I (LAS VEGAS, NV) PASS
13 THROUGH TRUST UNDER THE PASS-
14 THROUGH TRUST AGREEMENT AND
15 DECLARATION OF TRUST; DOES 1 through
16 10, inclusive; ROE ENTITIES 1 through 10,
17 inclusive,

18 Defendants.

19
20 BUILDER SERVICES GROUP, INC. dba
21 CENTRAL VALLEY INSULATION, a Florida
22 Corporation,

23 Plaintiff-in-Intervention,

24 vs.

25 KORTE CONSTRUCTION COMPANY dba
26 THE KORTE COMPANY, a Missouri
27 corporation; UPA 1, LLC, a Delaware limited
28 liability company; THE BOARD OF THE
29 REGENTS OF THE NEVADA SYSTEM OF
30 HIGHER EDUCATION ON BEHALF OF THE
31 UNIVERSITY OF NEVADA, LAS VEGAS, a
32 Constitutional entity of the State of Nevada;
33 TRAVELERS CASUALTY & SURETY
34 COMPANY OF AMERICA, a surety; DOES 1
35 through 10, inclusive; ROE ENTITIES 1
36 through 10, inclusive; LOE LENDERS, 1
37 through 10; BOE BONDING COMPANIES 1
38 through 10, inclusive,

39 Defendants-in-Intervention.

40 Lien Claimant/Intervenor Builder Services Group, Inc. dba Central Valley Insulation by
41 and through its counsel of record, the law firm of Dobberstein Law Group, hereby files its

1 Statement of Facts Constituting Lien and Complaint in Intervention pursuant to NRS 108.239 as
2 follows:

3 **PARTIES**

4 1. That lien Claimant/Intervenor Builder Services Group, Inc. dba Central Valley
5 Insulation (also referred herein as "CVI") was at all times mentioned herein a corporation duly
6 organized under the laws of the State of Florida, qualified to conduct business in the State of
7 Nevada, and holds a construction contract license issued by the Nevada State Contractors Board.
8

9 2. That CVI is informed and believes that Defendant-in Intervention Korte
10 Construction Company dba The Korte Company (also referred herein as "Korte") is and was at all
11 times mentioned herein a Missouri corporation doing business in the Clark County of the State of
12 Nevada and holds a construction contract license issued by the Nevada State Contractors Board.
13

14 3. That CVI is informed and believes that Defendant-in Intervention Travelers
15 Casualty and Surety Company of America (also referred herein as "Travelers"), is a surety
16 company, doing business in the State of Nevada, and issued a Nevada Contractors surety bond to
17 Korte in bond number 51S103847699BCM, in the amount of \$50,000.00, and also issued a
18 payment bond in bond number 106454425, in a bond amount of \$45,441,464.00 related to that
19 certain work of improvement, commonly known as the University Park Student Housing, located
20 in Clark County, Nevada which property is the subject of this action.
21

22 4. That CVI is informed and believes that Defendant The Board of the Regents of the
23 Nevada System of Higher Education on Behalf of The University of Nevada, Las Vegas ("UBR")
24 is a Constitutional entity of the State of Nevada, and was at all times relevant to this action doing
25 business in the State of Nevada; and is an owner, reputed owner or an entity who claims an
26 ownership interest in or with respect to that certain work of improvement, commonly known as
27
28

1 the University Park Student Housing, located in Clark County, Nevada which property is the
2 subject of this action.

3 5. That CVI is informed and believes that Defendant UPA 1, LLC ("UPA") is and
4 was at all times relevant to this action, a Delaware limited liability company doing business in the
5 State of Nevada; and is an owner, reputed owner or an entity who claims an ownership interest in
6 or with respect to that certain work of improvement, commonly known as the University Park
7 Student Housing, located in Clark County, Nevada which property is the subject of this action.
8

9 6. That Defendants UBR and UPA are collectively herein referred to as "Owners".

10 7. That CVI is informed and believes that Defendant Wells Fargo Bank Northwest,
11 N.A., as Trustee of The UNLV Student Housing Phase I (Las Vegas, NV) Pass Through Trust
12 under the Pass-Through Trust Agreement and Declaration of Trust ("Wells Fargo") is a federally
13 recognized banking institution, authorized and conducting business in the State of
14 Nevada, and managed construction financing for that certain work of improvement, commonly
15 known as the University Park Student Housing, located in Clark County, Nevada which property
16 is the subject of this action.
17

18 8. That all of the transactions and events, herein described, occurred in Clark County,
19 Nevada.

20 9. That the true names and capacities, whether individual, corporate, associate, or
21 otherwise, of Defendants, DOES 1 through 10, inclusive, ROE ENTITIES 1 through 10, inclusive;
22 LOE LENDERS 1 through 10, inclusive, and BOE BONDING COMPANIES 1 through 10,
23 inclusive, are unknown to CVI, who therefore sues said Defendants by such fictitious names. CVI
24 is informed and believes and thereby alleges that each of the Defendants designated herein as
25 DOES 1 through 10, inclusive, ROE ENTITIES 1 through 10, inclusive; LOE LENDERS 1
26 through 10, inclusive, and BOE BONDING COMPANIES 1 through 10, inclusive, are responsible
27
28

1 in some manner for the events and happenings referred to and caused damage proximately to CVI
2 as alleged herein. CVI specifically alleges that Defendants designated herein as DOES 1 through
3 10, inclusive, ROE ENTITIES 1 through 10, inclusive, and LOE LENDERS 1 through 10,
4 inclusive, may include individuals or entities that claim an ownership interest in the property that
5 is the subject of this lien foreclosure action. CVI specifically alleges that Defendants designated
6 herein as BOE BONDING COMPANIES 1 through 10, inclusive, includes entities that may have
7 issued bonds to Korte, as principal, related to the claims that are the subject of this action. CVI
8 will ask leave of this court to amend this Complaint to insert the true names and capacities when
9 the same has been ascertained and enjoins such Defendants in this action.
10

11 **FIRST CAUSE OF ACTION**

12 (Lien Foreclosure - Owners and Korte)

13 10. That CVI repeats and realleges each of its allegations above as if fully set forth
14 herein.

15 11. That CVI is informed, believes, and thereupon alleges that on or about February 5,
16 2016, Defendant UPA1, LLC, as owner, entered into a contract with Korte Construction Company
17 dba The Korte Company, as general contractor, for Korte to provide construction for university
18 student housing at University Park Student Housing, located at 4259 S. Maryland Parkway, Las
19 Vegas, Nevada 89119, APN Nos. 162-22510-001 through 162-22-510-009 (the "Project")
20

21 12. That on or about September 12, 2016, CVI entered into a subcontract with Korte
22 (the "CVI Subcontract") to provide insulation and related labor and materials to the Project for the
23 original contract price of \$515,000.00.
24

25 13. That CVI, at the direction of Korte, and for the benefit of Korte and Owners,
26 supplied labor and material at the Project and caused improvements to be made to the Project site.
27
28

1 14. That CVI began furnishing labor and materials at the Project by on or about
2 October 31, 2016.

3 15. That CVI performed the terms and conditions of the Subcontract in a workmanlike
4 manner.

5 16. That the original CVI Subcontract price was increased by approved change orders
6 in a total amount of \$423,389.70; which therefore made the total CVI Subcontract price
7 \$938,389.70.

8 17. That CVI completed furnishing materials for the building insulation at the Project
9 on or about October 16, 2017.

11 18. That CVI received \$279,550.52 for its work at the Project.

12 19. That the amount remaining due and owing to CVI for its work at the Project is
13 \$366,449.48.

14 20. That to date, CVI has not been paid in full for the work it provided at the Project,
15 and despite demands, the total sum of \$366,449.48 remains due and owing to CVI.

16 21. That on or about January 16, 2018, CVI recorded a mechanic's lien with the Clark
17 County Recorder's Office in Instrument No. 20180116-0002227 in the lien amount of
18 \$366,449.48. See, Lien attached as **Exhibit "1"**.

19 22. That the Mechanic Lien was served upon the Owners, Wells Fargo, Korte, and/or
20 their authorized agents as required by Nevada law.

21 23. That it has become necessary for CVI to retain the services of an attorney to
22 commence this lien action and CVI is, therefore, entitled to a reasonable attorney's fees and costs
23 of suit.

24 24. That as a result of perfecting its lien, CVI is entitled to all its statutory remedies
25 pursuant to Chapter 108 of the Nevada Revised Statutes.

SECOND CAUSE OF ACTION

(Unjust Enrichment - Owners and Korte)

25. That CVI repeats and realleges each of its allegations above as if fully set forth herein.

26. That CVI conferred a benefit upon the Owners and Korte which included without limitation, providing labor and materials at the Project.

27. That the Owners and Korte appreciated the benefit of CVI's work.

28. That the Owners and Korte accepted and retained the benefit of CVI's work to CVI's detriment.

29. That the Owners and Korte's appreciation, acceptance, and retention of CVI's performance of the agreement caused the Owners and Korte to be unjustly enriched because CVI has not be compensated for the value of work that CVI provided at the Project.

30. That it is inequitable for the Owners and Korte to retain the benefit of CVI's work at the Project.

31. That as a result of the Owners and Korte's conduct, CVI has incurred damages in excess of \$15,000.00, the exact amount which will be proven at trial.

32. That it has become necessary for CVI to retain the services of an attorney to commence this lien action, and CVI is, therefore, entitled to reasonable attorney's fees for the preparation, verification, services and recording of the liens and costs of suit.

1
2
3 **THIRD CAUSE OF ACTION**

4 (Breach of Contract - Korte)

5 33. That CVI repeats and realleges each of its allegations above as if fully set forth
6 herein.

7 34. That CVI entered into a subcontract with Korte on September 12, 2016 to provide
8 insulation and related labor and materials to the Project.

9 35. That CVI performed the terms and conditions of its subcontract with Korte by
10 furnishing labor and materials at the Project.

11 36. That Korte materially breached its subcontract with CVI by refusing to compensate
12 CVI for work that CVI performed under the agreement.

13 37. That as a result of Korte's conduct, CVI has incurred damages in excess of
14 \$15,000.00, the exact amount which will be proven at trial.

15 38. That as a result, it has been necessary for CVI to retain the services of an attorney
16 to prosecute this action, and CVI is therefore entitled to reasonable attorney's fees.

17 **FOURTH CAUSE OF ACTION**

18 (Breach of Good Faith and Fair Dealing - Korte)

19 39. That CVI repeats and realleges each of its allegations above as if fully set forth
20 herein.

21 40. That implied in every contract, including the subcontract in dispute, there exists a
22 covenant of good faith and fair dealing requiring that each party will not do anything to unfairly
23 interfere with the right of any other party to receive the benefits of the contract.

24 41. That CVI trusted and relied upon Korte to conduct itself in good faith during the
25 course of its construction work at the Project.
26
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1 42. That Korte breached the covenant of good faith and fair dealing by refusing to
2 compensate CVI for work performed under the subcontract; among other breaches.

3 43. As a result, CVI has incurred damages in excess of \$15,000.00, the exact amount
4 which will be proven at trial.

5 44. That it has become necessary for Plaintiff to retain the services of an attorney to
6 commence this action, and Plaintiff is therefore entitled to reasonable attorney's fees and costs of
7 suit.
8

9 **FIFTH CAUSE OF ACTION**

10 (Claim Against Nevada State Contractors License Bond – Travelers)

11 45. That CVI repeats and realleges each of its allegations above as if fully set forth
12 herein.

13 46. That Travelers Casualty and Surety Company of America at all times relevant to
14 this action was a licensed insurance company operating within the State of Nevada.

15 47. That Korte, as principal, was issued a Nevada State Contractors License Bond by
16 Travelers, as surety, in bond number 51S103847699BCM for the sum of \$50,000.00 on behalf of
17 Korte.
18

19 48. That CVI supplied labor and material at the Project at the direction of Korte.

20 49. That Korte agreed to pay for the labor and materials supplied by CVI at the Project.

21 50. That Korte failed to pay CVI for its work provided at the project in an amount of at
22 least \$366,449.48.
23

24 51. That Korte's failure to pay CVI for CVI's work constitutes an unlawful act or
25 omission under NRS 624.273, and CVI provided supplies and materials at the project, and as such
26 CVI is entitled to the bond proceeds.
27
28

1 52. It has become necessary for CVI to retain the services of an attorney to commence
2 this lien action, and CVI is, therefore, entitled to reasonable attorney's fees for the preparation,
3 verification, services and recording of the liens and costs of suit.

4 **SIXTH CAUSE OF ACTION**

5 (Claim Against Contractor's Payment Bond – Travelers)

6 53. That CVI repeats and realleges each of its allegations above as if fully set forth
7 herein.
8

9 54. That Travelers Casualty and Surety Company of America at all times relevant to
10 this action was a licensed insurance company operating within the State of Nevada.

11 55. That on or about February 8, 2016, Korte, as principal, was issued a payment bond
12 by Travelers, a surety, in bond number 106454425 for the sum of \$45,441,464.00.

13 56. That pursuant to the terms of said bond, Travelers agreed to pay the claims of CVI
14 upon the failure of Korte to pay CVI for its work at the Project.

15 57. That CVI supplied labor and material at the Project at the direction of Korte.

16 58. That Korte agreed to pay for the labor and materials supplied by CVI at the Project.

17 59. That Korte failed to pay CVI for its work provided at the project in an amount of at
18 least \$366,449.48.
19

20 60. That pursuant to the terms of the payment bond, Travelers is indebted to CVI in the
21 sum of \$366,449.48 together with interest as allowed by law under the terms of the bond.

22 61. It has become necessary for CVI to retain the services of an attorney to commence
23 this lien action, and CVI is, therefore, entitled to reasonable attorney's fees for the preparation,
24 verification, services and recording of the liens and costs of suit.
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3 **SEVENTH CAUSE OF ACTION**

4 (Violation of NRS 624 against Korte)

5 62. That CVI repeats and realleges each of its allegations above as if fully set forth
6 herein.

7 63. That NRS 624.606 to 624.630, et seq. (the "Statute") requires contractors, such as
8 Korte, to among other things, timely pay their subcontractors as provided in the Statute.

9 64. That in violation of the Statute, Korte has failed and/or refused to timely pay CVI
10 monies due and owing.

11 65. That as a result of Korte's conduct, CVI has incurred damages in excess of
12 \$15,000.00, the exact amount which will be proven at trial.

13 66. That it has been necessary for CVI to retain the services of an attorney to prosecute
14 this action, and CVI is therefore entitled to reasonable attorneys' fees.

15 **EIGHTH CAUSE OF ACTION**

16 (Lien Priority Claim)

17 67. That CVI repeats and realleges each of its allegations above as if fully set forth
18 herein.

19 68. That upon information and belief, CVI's work commenced at the Project before the
20 recording of a deed of trust or any other deeds of trust.

21 69. That CVI's lien claim is superior to the claims against Wells Fargo, or of any LOE
22 LENDERS 1 through 10, who may assert purported encumbrances the same property.

23 70. That it has been necessary for CVI to retain the services of an attorney to prosecute
24 this action, and CVI is therefore entitled to reasonable attorneys' fees.
25
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NINTH CAUSE OF ACTION

(Attorney's Fees)

71. That CVI repeats and realleges each of its allegations above as if fully set forth herein.

72. That CVI has incurred attorney's fees as foreseeable damages arising from Defendants' actions as described in this complaint.

73. That the attorney's fees expended by the CVI are the natural and proximate consequence of the breaches committed by Defendants, as alleged in this Complaint.

74. In addition to the contractual and statutory rights of Plaintiff to attorney's fees and costs, these attorney's fees and costs are pled as special damages pursuant to NRCP 9(g). See Sandy Valley Assocs. v. Sky Ranch Estates Ass'n, 35 P.3d 964 (2001).

75. As a result, CVI has incurred damages in excess of \$15,000.00, the exact amount which will be proven at trial.

76. That it has become necessary for CVI to retain the services of an attorney to commence this action, and CVI is therefore entitled to reasonable attorney's fees and costs of suit.

...

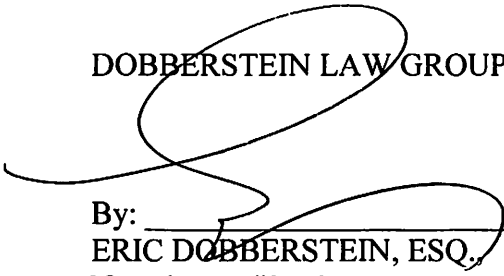
WHEREFORE, CVI expressly reserves the right to amend its Statement of Facts Constituting Lien and Complaint in Intervention at or before the time of trial of the action herein to include all items of damages not yet ascertained, demands judgment against the Defendants, and each of them, as follows, upon each cause of action:

1. For this Court enter judgment against Defendants in excess of \$15,000.00
2. For this Court enter judgment against Defendants for a reasonable sum as and for the costs of preparation, verification, services and filing of the liens;
3. For reasonable attorney's fees;

4. For costs of suit;
5. For the Court declare the rank and priority of all the lien claims and secured claims and that the liens be ascertained and adjudged as valid liens;
6. For the liens, be enforced according to law;
7. For the Court to direct a foreclosure sale of the property(ies) subject to the lien;
8. For the property(ies) to be sold and the proceeds applied to the payment of the sums due to CVI;
9. For the Court to enter such deficiency judgment against Defendants, if necessary.
10. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 12th day of February 2018.

DOBBERSTEIN LAW GROUP

By: 
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Nevada Bar #3712
RHONDA LONG, ESQ.
Nevada Bar #10921
9480 S. Eastern Ave. Suite 244
Las Vegas, Nevada 89123
Attorney for Plaintiff in Intervention
Builder Services Group, Inc. dba Central Valley Insulation

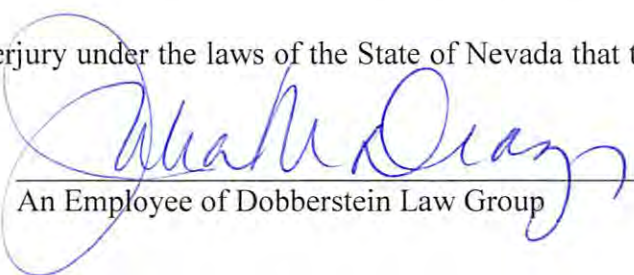
1
2 STATE OF NEVADA)
3) ss.
4 COUNTY OF CLARK)

5 Pursuant to NRCP Rule 5(b) and E.D.C.R. 8.05, I certify that I am an employee of
6 Dobberstein Law Group and that on this 12th day of February 2018, I caused a true and correct
7 copy of the foregoing **BUILDER SERVICES GROUP, INC. dba CENTRAL VALLEY**
8 **INSULATION'S STATEMENT OF FACTS CONSTITUTING A NOTICE OF LIEN AND**
9 **COMPLAINT IN INTERVENTION** to be served in the following method:

10 Leon F. Mead II, Esq.
11 Sara H. Mead, Esq.
12 MEAD LAW GROUP
13 10161 Park Run Drive, Suite 150
14 Las Vegas, NV 89145
15 (702) 869-0192
16 Fax (702) 922-3831
17 leon@meadlawgroup.com
18 sarah@meadlawgroup.com
19 *Attorneys for The Korte Company*

- 20
- 21 ○ **(BY MAIL)** I caused a true copy of each document, placed in a sealed addressed
22 envelope with postage fully paid to be placed for collection and mailing in the United
23 States mail at my place of business, Las Vegas, Nevada.
 - 24 ● **(BY ELECTRONIC SERVICE)** By use of the electronic filing system I served a copy of
25 the document(s) on the above listed interested parties. I certify that the above referenced
26 parties or their counsel of record were served through the e-service list via
27 Wiznet/Odyssey E-File & Serve, pursuant to Administrative Order 14.2.
 - 28 ○ **(BY PERSONAL SERVICE)** I delivered each such document by hand to each
addressee above.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
is true and correct.


An Employee of Dobberstein Law Group

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EXHIBIT “1”

**Builder Services Group, Inc.
dba Central Valley Insulation’s
Mechanic’s Lien
Instrument No. 20180116-0002227**

EXHIBIT “1”

Inst #: 20180116-0002227

Fees: \$40.00

01/16/2018 02:24:25 PM

Receipt #: 3297900

Requestor:

DOBBERSTEIN LAW GROUP

Recorded By: RYUD Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

APN: 162-22-510-009

When Recorded Return to:

Eric Dobberstein, Esq.

Dobberstein Law Group

9480 S. Eastern Avenue, Suite 244

Las Vegas, NV 89123

MECHANIC'S LIEN

MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN:

1. The amount of the original contract is: \$515,000.00
2. The total amount of all changes and additions, if any, is: \$423,389.70
3. The total amount of all payments received to date is: \$279,550.52
4. The amount of the lien, after deducting all just credits and offsets, is: \$366,449.48
5. The owner or reputed owner of the above-described property is: Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas, Attention Real Estate Office, located at 4505 S. Maryland Parkway, Las, Vegas, NV 89154-1027.
6. This lien is claimed for labor and materials provided to: Korte Co., 4259 S. Maryland Parkway, Las Vegas, Nevada.
7. The terms, time given and conditions of the contract are for insulation. Payment for said labor and materials are now due.
8. That the general contractor has refused to pay the balance for the services rendered although demand has been made for the monies due.
9. That the Claimant herein is entitled to reasonable attorney's fees, statutory interest on the amount of this lien claim and costs incurred in perfecting this lien claim.
10. A description of the property to be charged with the lien is: University Park Student Housing, 4259 S. Maryland Parkway, Las Vegas, NV 89119, APN No. 162-22-510.009.

DATED this 16 day of January 2018

By: Lydia Campbell
LYDIA CAMPBELL
Title: Collection Supervisor
Address: 475 N. William Blvd
Daytona Beach, FL 32114

STATE OF ^{Florida} NEVADA)
 ^{Volusia}) ss:
COUNTY OF CLARK)

Lydia Campbell, being first duly sworn, deposes and says that he is the
Collection Supervisor for Central Valley Insulation, that he has read the foregoing Mechanic's
Lien and knows the contents thereof and the contents thereof are true of his own
knowledge, except for any matters therein stated upon information and belief and as for
any such matters, he believes them to be true.

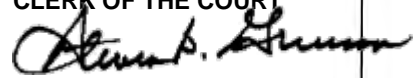
Lydia Campbell

SUBSCRIBED and SWORN to before me
on this 16 day of January, 2018

Kassie Cain
NOTARY PUBLIC in and for said
County and State



EXHIBIT “3”



RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
JEFFERSON W. BOSWELL, ESQ.
Nevada Bar No. 11776
RONALD J. COX, ESQ.
Nevada Bar No. 12723
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
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Telephone: (702) 990-7272
Facsimile: (702) 990-7273
rpeel@peelbrimley.com
jboswell@peelbrimley.com
rcox@peelbrimley.com
*Attorneys for Helix Electric
of Nevada, LLC dba Helix Electric*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

UPA1, LLC a Delaware limited liability company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri
corporation,

Defendant.

CASE NO. : A-17-763262-B
DEPT. NO. : 25

*Consolidated with:
A-18-767674-C
A-18-768969-B*

NOTICE OF ENTRY OF ORDER

KORTE CONSTRUCTION COMPANY DBA
THE KORTE COMPANY, a Missouri
corporation,

Plaintiff,

vs.

UPA1, LLC, a DELAWARE LIMITED
LIABILITY COMPANY; BRIDGEWAY
ADVISORS LLC, A CALIFORNIA LIMITED
LIABILITY COMPANY; THE BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION ON BEHALF OF THE
UNIVERSITY OF NEVADA, LAS VEGAS, A
CONSTITUTIONAL ENTITY OF THE STATE
OF NEVADA; WELLS FARGO BANK
NORTHWEST, N.A., AS TRUSTEE OF THE
UNLV STUDENT HOUSING PHASE I (LAS
VEGAS, NV) PASS THROUGH TRUST
UNDER THE PASS-THROUGH TRUST
AGREEMENT AND DECLARATION OF
TRUST, a federal bank institution and DOES 1
through 100, inclusive,

Defendants.

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

HELIX ELECTRIC OF NEVADA, LLC dba
HELIX ELECTRIC, a Nevada limited liability
company,

Plaintiff,

vs.

KORTE CONSTRUCTION COMPANY dba
THE KORTE COMPANY, a Missouri
corporation; UNIVERSITY PARK, LLC, a
Delaware limited liability company;
UNIVERSITY BOARD OF REGENTS; UPA 1,
LLC, a Delaware limited liability company;
TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a surety; DOES I
through X; ROE CORPORATIONS I through X;
BOE BONDING COMPANIES I through X; LOE
LENDERS I through X; TOE TENANTS I
through X, inclusive,


Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a **Stipulation and Order for Dismissal with Prejudice**
Certain Claims and Causes of Action was filed on **June 13, 2018**, a copy of which is attached
as Exhibit 1.

DATED this 13th day of June, 2018.

PEEL BRIMLEY LLP


RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
JEFFERSON W. BOSWELL, ESQ.
Nevada Bar No. 11776
RONALD J. COX, ESQ.
Nevada Bar No. 12723
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
*Attorneys for Helix Electric of Nevada, LLC
dba Helix Electric*

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 13th day of June, 2018, I caused the above and foregoing document,

NOTICE OF ENTRY OF ORDER, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

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

UPA 1 LLC:

Valerie Larsen (vlarsen@hollandhart.com)
J. Stephen Peek (speek@hollandhart.com)
Michelle Wood (mrwood@hollandhart.com)
Steven Morris (steve@gmdlegal.com)
Joyce Heilich (jeheilich@hollandhart.com)
Josef Rodarti (jrodarti@constructionriskmanagers.com)
Amanda Manahan (amanahan@constructionriskmanagers.com)
Kari Kamphuis (kari@constructionriskmanagers.com)
Vanessa Heeg (vanessa@constructionriskmanagers.com)
Greg Gilbert (gsgilbert@hollandhart.com)
Rachel Wise (rlwise@hollandhart.com)

Korte Company:

Leon Mead II (leon@meadlawgroup.com)
Sarah Mead (sarah@meadlawgroup.com)

**State of Nevada Board of Regents of the
Nevada System of Higher Education:**

Cynthia Alexander (calexander@dickinsonwright.com)
Docket Clerk - Litigation (LV_LitDocket@dickinsonwright.com)
Taylor Anello (tanello@dickinson-wright.com)
Lindsay Reid (LReid@dickinson-wright.com)
Jennifer Smith (jjsmith@dickinson-wright.com)

Builder Services Group:

Eric Dobberstein (eric@dobbersteinlaw.com)

Rhonda Long (Rlong@dobbersteinlaw.com)

Christine Spencer (cspencer@dobbersteinlaw.com)

Other Service Contacts not associated with a party on the case:

Brian Boschee, Esq. (bboschee@nevadafirm.com)

Renee Hoban (rhoban@nevadafirm.com)

Donna DiMaggio (ddimaggio@nevadafirm.com)

Cynthia Kelley (ckelley@nevadafirm.com)

Joshua Reisman (jreisman@rsnvlaw.com)

Robert Warns (rwarns@rsnvlaw.com)

Kelly Wood (kwood@rsnvlaw.com)

Kate Andrews (kandrews@nevadafirm.com)



An employee of PEEL BRIMLEY, LLP

EXHIBIT 1

ORIGINAL

Electronically Filed
6/13/2018 10:59 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
2 JEFFERSON W. BOSWELL, ESQ.
Nevada Bar No. 11776
3 **PEEL BRIMLEY LLP**
3333 E. Serene Avenue, Suite 200
4 Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
5 Facsimile: (702) 990-7273
rpeel@peelbrimley.com
6 jboswell@peelbrimley.com
Attorneys for Helix Electric
7 *of Nevada, LLC dba Helix Electric*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 UPA1, LLC a Delaware limited liability company,

11 Plaintiff,

12 vs.

13 THE KORTE COMPANY, a Missouri
14 corporation,

15 Defendant.

16 KORTE CONSTRUCTION COMPANY DBA
17 THE KORTE COMPANY, a Missouri
corporation,

18 Plaintiff,

19 vs.

20 UPA1, LLC, a DELAWARE LIMITED
21 LIABILITY COMPANY; BRIDGEWAY
22 ADVISORS LLC, A CALIFORNIA LIMITED
23 LIABILITY COMPANY; THE BOARD OF
24 REGENTS OF THE NEVADA SYSTEM OF
25 HIGHER EDUCATION ON BEHALF OF THE
26 UNIVERSITY OF NEVADA, LAS VEGAS, A
27 CONSTITUTIONAL ENTITY OF THE STATE
OF NEVADA; WELLS FARGO BANK
NORTHWEST, N.A., AS TRUSTEE OF THE
UNLV STUDENT HOUSING PHASE I (LAS
VEGAS, NV) PASS THROUGH TRUST
UNDER THE PASS-THROUGH TRUST
AGREEMENT AND DECLARATION OF
TRUST, a federal bank institution and DOES 1
through 100, inclusive,

28 Defendants.

CASE NO. : A-17-763262-B
DEPT. NO. : 25

Consolidate with:
A-18-767674-C
A-18-768969-B

**STIPULATION AND ORDER FOR
DISMISSAL WITH PREJUDICE
CERTAIN CLAIMS AND CAUSES OF
ACTION**

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

1 HELIX ELECTRIC OF NEVADA, LLC dba
2 HELIX ELECTRIC, a Nevada limited liability
company,

3 Plaintiff,

4 vs.

5 KORTE CONSTRUCTION COMPANY dba
6 THE KORTE COMPANY, a Missouri
corporation; UNIVERSITY PARK, LLC, a
7 Delaware limited liability company;
UNIVERSITY BOARD OF REGENTS; UPA 1,
8 LLC, a Delaware limited liability company;
TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a surety; DOES I
9 through X; ROE CORPORATIONS I through X;
BOE BONDING COMPANIES I through X; LOE
10 LENDERS I through X; TOE TENANTS I
through X, inclusive,

11 Defendants.
12

13 **STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE CERTAIN**
14 **CLAIMS AND CAUSES OF ACTION**

15 This Stipulation and Order for Dismissal With Prejudice Certain Claims and Causes of
16 Action ("Stipulation and Order") is entered among: (i) HELIX ELECTRIC OF NEVADA, LLC
17 dba HELIX ELECTRIC ("Helix"), by and through its attorneys of record, PEEL BRIMLEY LLP,
18 (ii) UPA 1, LLC and UNIVERSITY PARK, LLC (collectively, the (UPA1 Defendants"), by and
19 through their attorneys of record, HOLLAND & HART, LLP, (iii) KORTE CONSTRUCTION
20 COMPANY dba THE KORTE COMPANY and TRAVELERS CASUALTY & SURETY
21 COMPANY OF AMERICA (collectively, the "Korte Defendants"), by and through their attorneys
22 of record, MEAD LAW GROUP, and (iv) UNIVERSITY BOARD OF REGENTS ("UNLV"), by
23 and through its attorneys of record, DICKINSON WRIGHT PLLC. The foregoing parties hereby
24 stipulate and agree as follows:

25 1. All claims and causes of action that Helix and the UPA1 Defendants:

26 a. Have brought against the other in this Action shall be dismissed with
27 prejudice, with each party to bear its own attorney's fees and costs; and
28

1 b. Could have brought against the other in this Action, arising from or related
2 to the work, materials, and equipment (collectively, the "Helix Subcontract Work") which Helix
3 provided under or pursuant to the subcontract (the "Helix Subcontract") with Korte Construction
4 Company ("Korte") for the construction of the University Park Apartments ("Work of
5 Improvement"), shall be dismissed with prejudice, with each party to bear its own attorney's fees
6 and costs.

7 2. All claims and causes of action that Helix and the Korte Defendants:

8 a. Have brought against the other in this Action shall be dismissed with
9 prejudice, with each party to bear its own attorney's fees and costs; and

10 b. Could have brought against the other in this Action, arising from or related
11 to the Helix Subcontract Work, which Helix provided under or pursuant to the Helix Subcontract
12 for the construction of the Work of Improvement, shall be dismissed with prejudice, with each party
13 to bear its own attorney's fees and costs.

14 3. All claims and causes of action that Helix and UNLV have brought against the other
15 in this Action shall be dismissed with prejudice, with each party to bear its own attorney's fees and
16 costs.

17 4. The Parties shall bear their own attorney's fees and costs associated with the claims
18 and causes of action dismissed herein. However, nothing in this Stipulation and Order shall prevent
19 the parties remaining in this action after entry of this Stipulation and Order (collectively, the
20 "Remaining Parties," and individually, a "Remaining Party") from seeking recovery from another
21 Remaining Party of the attorney's fees and costs it has or may incur related to or arising out of
22 Helix's claims.

23 5. Nothing in this Stipulation and Order shall be deemed to affect, release, discharge,
24 or impair any rights, claims or defenses that are reserved by that certain Settlement Agreement
25 entered between Helix and UPA1 with an Effective Date of April 16, 2018.

26 ///

27 ///


28 ///

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

6. A trial date has yet to be set in this matter.

DATED this 6th day of ~~May~~ ^{JUNE}, 2018.

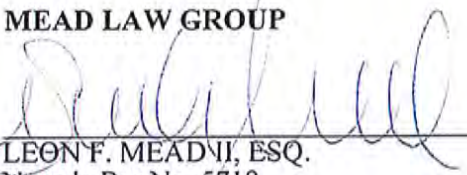
PEEL BRIMLEY LLP


BAR #12723
FOR
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
JEFFERSON W. BOSWELL, ESQ.
Nevada Bar No. 11776
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
*Attorneys for Helix Electric of Nevada, LLC
dba Helix Electric*

HOLLAND & HART LLP

J. STEPHEN PEEK, ESQ.
Nevada Bar No. 1758
GREGORY S. GILBERT, ESQ.
Nevada Bar No. 6310
DAVID J. FREEMAN, ESQ.
Nevada Bar No. 10045
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for UPA 1, LLC

MEAD LAW GROUP


LEON F. MEAD, ESQ.
Nevada Bar No. 5719
SARAH A. MEAD, ESQ.
Nevada Bar No. 13725
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
*Attorneys for The Korte Company and Travelers
Casualty & Surety Company of America*

DICKINSON WRIGHT PLLC

CYNTHIA L. ALEXANDER, ESQ.
Nevada Bar No. 6718
TAYLOR ANELLO
Nevada Bar No. 12881
8363 West Sunset Rd. Suite 200
Las Vegas, NV 89113
Attorneys for University of Board of Regents

ORDER

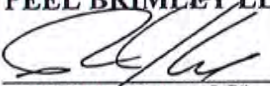
IT IS SO ORDERED.

DATED this 12th day of ~~April~~ ^{JUNE}, 2018.


DISTRICT COURT JUDGE MK

Submitted by:

PEEL BRIMLEY LLP


BAR #12723
FOR
RICHARD L. PEEL, ESQ. (SBN 4359)
JEFFERSON W. BOSWELL, ESQ. (SBN 11776)
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Helix Electric of Nevada, LLC dba Helix Electric

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

6. A trial date has yet to be set in this matter.

DATED this ____ day of May, 2018.

PEEL BRIMLEY LLP

HOLLAND & HART LLP



RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
JEFFERSON W. BOSWELL, ESQ.
Nevada Bar No. 11776
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
*Attorneys for Helix Electric of Nevada, LLC
dba Helix Electric*

J. STEPHEN PEEK, ESQ.
Nevada Bar No. 1758
GREGORY S. GILBERT, ESQ.
Nevada Bar No. 6310
DAVID J. FREEMAND, ESQ.
Nevada Bar No. 10045
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for UPA 1, LLC

MEAD LAW GROUP

DICKINSON WRIGHT PLLC

LEON F. MEAD II, ESQ.
Nevada Bar No. 5719
SARAH A. MEAD, ESQ.
Nevada Bar No. 13725
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
*Attorneys for The Korte Company and Travelers
Casualty & Surety Company of America*

CYNTHIA L. ALEXANDER, ESQ.
Nevada Bar No. 6718
TAYLOR ANELLO
Nevada Bar No. 12881
8363 West Sunset Rd. Suite 200
Las Vegas, NV 89113
Attorneys for University of Board of Regents

ORDER

IT IS SO ORDERED.

DATED this ____ day of April 2018.

DISTRICT COURT JUDGE

Submitted by:
PEEL BRIMLEY LLP

RICHARD L. PEEL, ESQ. (SBN 4359)
JEFFERSON W. BOSWELL, ESQ. (SBN 11776)
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Helix Electric of Nevada, LLC dba Helix Electric

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

6. A trial date has yet to be set in this matter.

DATED this ____ day of May, 2018.

PEEL BRIMLEY LLP

HOLLAND & HART LLP


RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
JEFFERSON W. BOSWELL, ESQ.
Nevada Bar No. 11776
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
*Attorneys for Helix Electric of Nevada, LLC
dba Helix Electric*

J. STEPHEN PEEK, ESQ.
Nevada Bar No. 1758
GREGORY S. GILBERT, ESQ.
Nevada Bar No. 6310
DAVID J. FREEMAN, ESQ.
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9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for UPA 1, LLC

MEAD LAW GROUP

DICKINSON WRIGHT PLLC

LEON F. MEAD II, ESQ.
Nevada Bar No. 5719
SARAH A. MEAD, ESQ.
Nevada Bar No. 13725
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
*Attorneys for The Korte Company and Travelers
Casualty & Surety Company of America*


CYNTHIA L. ALEXANDER, ESQ.
Nevada Bar No. 6718
TAYLOR ANELLO
Nevada Bar No. 12881
8363 West Sunset Rd. Suite 200
Las Vegas, NV 89113
Attorneys for University of Board of Regents

ORDER

IT IS SO ORDERED.

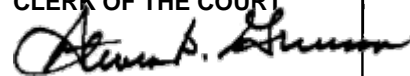
DATED this ____ day of April 2018.

DISTRICT COURT JUDGE

Submitted by:
PEEL BRIMLEY LLP

RICHARD L. PEEL, ESQ. (SBN 4359)
JEFFERSON W. BOSWELL, ESQ. (SBN 11776)
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Helix Electric of Nevada, LLC dba Helix Electric

EXHIBIT “4”



1 **NEO**
ERIC DOBBERSTEIN, ESQ.
Nevada Bar #3712
2 RHONDA LONG, ESQ.
Nevada Bar #10921
3 DOBBERSTEIN LAW GROUP
9480 S. Eastern Ave., Suite 244
4 Las Vegas, Nevada 89123
Phone: (702) 430-8900
5 Fax: (702) 995-7005
E-mail: eric@dobbersteinlaw.com
6 rlong@dobbersteinlaw.com
7 *Attorneys for Lien Claimant/Plaintiff in*
8 *Intervention Builder Services Group, Inc. dba*
Central Valley Insulation

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 UPA 1, LLC, a Delaware limited liability
12 company,

13 Plaintiff,

14 v.

15 THE KORTE COMPANY, a Missouri
16 corporation,

Defendant

17 AND ALL RELATED CLAIMS.
18
19
20
21
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25
26
27
28

Consolidated Case No. A-17-763262-B
Consolidated with Case No. A-18-767674-C
and A-18-767674-C

Dept. No.: 25
Honorable: Judge Kathleen Delaney

NOTICE OF ENTRY OF ORDER

NOTICE OF ENTRY OF ORDER

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order for Dismissal With Prejudice was entered in the above entitled matter on June 15, 2018, a copy of which is attached hereto.

DATED this 18th day of June 2018.

DOBBERSTEIN LAW GROUP

By: _____

ERIC DOBBERSTEIN, ESQ.

Nevada Bar #3712

RHONDA LONG, ESQ.

Nevada Bar #10921

9480 S. Eastern Ave., Suite 244

Las Vegas, Nevada 89123

Attorneys for Lien Claimant/Plaintiff-in-Intervention

CERTIFICATE OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Pursuant to NRCP Rule 5(b) and E.D.C.R. 8.05, I certify that I am an employee of Dobberstein Law Group and that on this 18~~th~~ day of June 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to be served in the following method:

Leon F. Mead II, Esq.
Sara H. Mead, Esq.
MEAD LAW GROUP
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
(702) 869-0192
Fax (702) 922-3831
leon@meadlawgroup.com
sarah@meadlawgroup.com
Attorneys for The Korte Company

Joshua H. Reisman, Esq.
Robert R. Warns III, Esq.
REISMAN SOROKAC
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(702) 727-6258
jreisman@rsnvlaw.com
rwarns@rsnvlaw.com
Attorneys for UPA1, LLC
Wells Fargo Bank Northwest, N.A.

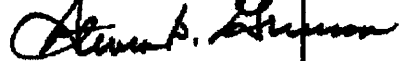
J. Stephen Peek, Esq.
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14 **Intervention Builder Services Group, Inc. dba**
15 **Central Valley Insulation**

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DISTRICT COURT
CLARK COUNTY, NEVADA

UPA 1, LLC, a Delaware limited liability
company,

Plaintiff,

v.

THE KORTE COMPANY, a Missouri
corporation,

Defendant.

AND ALL RELATED CLAIMS.

Consolidated Case No. A-17-763262-B
Consolidated with A-18-768969-B and
A-18-767674-C

Dept. No. XXV

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

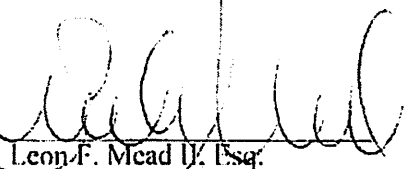
IT IS HEREBY STIPULATED by and between the parties through their attorneys of
record that any and all claims by or against Lien Claimant/Plaintiff in Intervention Builder
Services Group, Inc. dba Central Valley Insulation in the above captioned case are dismissed
with prejudice, with respect to these claims and the parties agree to pay their own attorney fees
and costs with respect to these claims. Notwithstanding the foregoing, the parties reserve all
rights they may be entitled to collect attorneys' fees and costs incurred with respect to these
claims from other parties that remain in this action after entry of this dismissal. There is no trial
date set in this matter.

1 There is no trial date set in this matter.

2 DATED this ____ day of _____, 2018.

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1 DATED this ____ day of May, 2018.

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1 There is no trial date set in this matter.

2 DATED this ____ day of _____, 2018.

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1 There is no trial date set in this matter.

2 DATED this ____ day of _____, 2018.

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1 There is no trial date set in this matter.

2 DATED this ____ day of _____, 2018.

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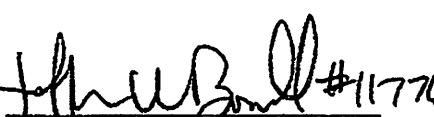
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Attorneys for Lien Claimant/Plaintiff-in-Intervention

Builder Services Group, Inc. dba Central Valley Insulation

17 IT IS SO ORDERED.

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District Court Judge MK

Submitted by:

21 DOBBERSTEIN LAW GROUP

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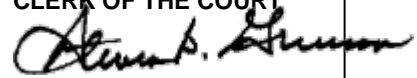
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EXHIBIT “5”



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DISTRICT COURT

CLARK COUNTY, NEVADA

UPA 1, LLC, a Delaware limited liability
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri
corporation,

Defendant.

Consolidated Case No. A-17-763262-B
Consolidated with, A-18-768969-B and A-
18-767674-C

Dept. No. 16

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING IN
PART THE KORTE COMPANY'S
MOTION TO DISMISS UPA 1, LLC'S
COUNTERCLAIM**

KORTE CONSTRUCTION COMPANY dba
THE KORTE COMPANY, a Missouri
corporation,

Plaintiff,

v.

UPA1 LLC, a Delaware limited liability
company; BRIDGWAY ADVISORS, a
California corporation; STATE OF NEVADA
ON RELATION OF THE BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION, ON BEHALF OF
THE UNIVERSITY OF NEVADA, LAS
VEGAS, a Constitutional entity of the State of
Nevada; WELLS FARGO BANK

Consolidated Case No. A-18-767674-C

1 NORTHWEST, N.A., AS TRUSTEE OF THE
2 UNLV STUDENT HOUSING PHASE I
3 PASS THROUGH TRUST UNDER THE
4 PASS-THROUGH TRUST AGREEMENT
AND DECLARATION OF TRUST, a federal
bank institution, and DOES 1 through 100,
inclusive,

5 Defendants,

7 HELIX ELECTRIC OF NEVADA, LLC dba
8 HELIX ELECTRIC, a Nevada limited liability
company,

9 Plaintiff,

10 v.

11 KORTE CONSTRUCTION COMPANY dba
12 THE KORTE COMPANY, a Missouri
13 corporation; UNIVERSITY PARK, LLC, a
Delaware limited liability company;
14 UNIVERSITY BOARD OF REGENTS; UPA
1 LLC, a Delaware limited liability company;
15 TRAVELERS CAUSALTY & SURETY
COMPANY OF AMERICA, a surety; DOES
16 1 through X; ROE CORPORATIONS I
through X; BOE BONDING COMPANIES I
17 through X; LOE LENDERS I through X; TOE
TENANTS I through X, inclusive,

18 Defendants.

Consolidated Case No. A-18-768969-B

20
21 PLEASE TAKE NOTICE that this Court entered the attached Order Granting in Part
22 and Denying in Part The Korte Company's Motion to Dismiss UPA 1, LLC's Counterclaim. The
23 Order is attached hereto as Exhibit "A".

24 Dated: August 1, 2018

MEAD LAW GROUP

25
26 /s/ Sarah A. Mead

27 Leon F. Mead II, Esq. NV Bar #5719
28 Sarah A. Mead, Esq. NV Bar #13725
Attorneys for The Korte Company

1 **CERTIFICATE OF SERVICE**

2

3 I, the undersigned, declare under the penalty of perjury, that I am over the age of eighteen
4 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be
5 served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER GRANTING
6 IN PART AND DENYING IN PART THE KORTE COMPANY'S MOTION TO DISMISS
7 UPA 1, LLC'S COUNTERCLAIM by method indicated below:

- 8 ☐ BY FAX: by transmitting via facsimile the document(s) listed above to the fax
9 number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a).
10 A printed transmission record is attached to the file copy of this document(s).
- 11 ☐ BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with
12 postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed
13 as set forth below.
- 14 ☐ BY OVERNIGHT MAIL: by causing the document(s) to be picked up by an overnight
15 delivery service company for delivery to the addressee(s) on the next business day.
- 16 ☐ BY PERSONAL DELIVERY: by causing the above listed document(s) to be personally
17 delivered by [name of messenger service], a messenger person(s) at the address(es) set
18 forth below.
- 19 ☒ BY ELECTRONIC SUBMISSION: submitted to the above entitled Court for electronic
20 filing and service upon the Court's Service List for the above referenced case.
- 21 ☐ BY ELECTRONIC MAIL:

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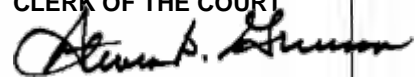
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NORTHWEST, N.A., AS TRUSTEE OF
THE UNLV STUDENT HOUSING PHASE I
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Dated: August 1, 2018

/s/ Sarah A. Mead
An Employee of Mead Law Group

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The Korte Company and Consolidated Cross-Defendant
Travelers Casualty & Insurance Company of America*

DISTRICT COURT

CLARK COUNTY, NEVADA

UPA 1, LLC, a Delaware limited liability
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri
corporation,

Defendant.

KORTE CONSTRUCTION COMPANY dba
THE KORTE COMPANY, a Missouri
corporation,

Plaintiff,

v.

UPA1 LLC, a Delaware limited liability
company; BRIDGWAY ADVISORS, a
California corporation; STATE OF NEVADA
ON RELATION OF THE BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION, ON BEHALF OF
THE UNIVERSITY OF NEVADA, LAS

Consolidated Case No. A-17-763262-B
*Consolidated with, A-18-768969-B, A-
767674-C*

Dept. No. ~~25~~ 16

**ORDER GRANTING IN PART AND
DENYING IN PART THE KORTE
COMPANY'S MOTION TO DISMISS
UPA 1, LLC'S COUNTERCLAIM**

PLEASE NOTE
DEPARTMENT CHANGE

Consolidated Case No. A-18-767674-C

1 VEGAS, a Constitutional entity of the State of
2 Nevada; WELLS FARGO BANK
3 NORTHWEST, N.A., AS TRUSTEE OF THE
4 UNLV STUDENT HOUSING PHASE I
5 PASS THROUGH TRUST UNDER THE
6 PASS-THROUGH TRUST AGREEMENT
7 AND DECLARATION OF TRUST, a federal
8 bank institution, and DOES 1 through 100,
9 inclusive,

10 Defendants,

11
12
13 HELIX ELECTRIC OF NEVADA, LLC dba
14 HELIX ELECTRIC, a Nevada limited liability
15 company,

16 Plaintiff,

17 v.

18 KORTE CONSTRUCTION COMPANY dba
19 THE KORTE COMPANY, a Missouri
20 corporation; UNIVERSITY PARK, LLC, a
21 Delaware limited liability company;
22 UNIVERSITY BOARD OF REGENTS; UPA
23 1 LLC, a Delaware limited liability company;
24 TRAVELERS CAUSALTY & SURETY
25 COMPANY OF AMERICA, a surety; DOES
26 1 through X; ROE CORPORATIONS I
27 through X; BOE BONDING COMPANIES I
28 through X; LOE LENDERS I through X; TOE
TENANTS I through X, inclusive,

Defendants.

Consolidated Case No. A-18-768969-B

On June 19, 2018, Korte Construction Company dba The Korte Company's ("Korte") Motion to Dismiss UPA 1 LLC's Counterclaim came on for hearing in front of the Honorable Kathleen Delaney in Department 25 in the Eighth Judicial District Court. Sarah A. Mead, Esq. of Mead Law Group appeared on behalf of Korte and Greg Gilbert, Esq. and Rachel Wise, Esq. of Holland & Hart appeared on behalf of UPA 1, LLC ("UPA"). Josh Reisman, Esq. of Reisman Sorokac appeared on behalf of Wells Fargo Bank Northwest, N.A., as Trustee of the UNLV Student Housing Phase I Pass-Through Trust Under the Pass-Through Trust Agreement ("Wells

1 Fargo”), as Wells Fargo filed a limited opposition to one of the statements made in Korte’s
2 factual and procedural history section of its Motion. Ms. Mead did not offer argument as to Wells
3 Fargo’s Limited Opposition, as the opposition was immaterial to the substance of Korte’s Motion.
4 Korte’s Motion sought to dismiss two causes of action in UPA’s Counterclaim, negligence and
5 inappropriate exercise of NRS Chapter 624. After hearing oral arguments of counsel, the Court
6 made the following Findings:

- 7 1. The Economic Loss Doctrine prevents claims of negligence against a contractor
8 providing construction services pursuant to a commercial construction contract when the
9 damages sought are purely economic in nature.
- 10 2. In evaluating UPA’s cause of action for negligence, the damages UPA has alleged in its
11 Counterclaim are purely economic in nature and UPA’s current pleading does not allege
12 facts demonstrating it has experienced non-economic loss warranting its Negligence
13 action.
- 14 3. Accordingly, Korte’s Motion is GRANTED IN PART, as to UPA’s Negligence claim.
- 15 4. The Court was not persuaded that UPA’s cause of action for Inappropriate Exercise of
16 NRS Chapter 624 should be dismissed, as it believes that UPA has alleged facts sufficient
17 to support this cause of action and has sufficiently pled inappropriate exercise of NRS
18 Chapter 624 under NRCP 8. Accordingly, dismissal of UPA’s inappropriate exercise of
19 NRS Chapter 624 is inappropriate under NRCP 12(b)(5) standards.
- 20 5. The Court notes, however, that its ruling does not bar Korte from bringing a summary
21 judgment motion on UPA’s inappropriate exercise claim as this litigation progresses.
- 22 6. Accordingly, Korte’s Motion is DENIED IN PART, as to UPA’s Inappropriate Exercise
23 of NRS Chapter 624 claim.
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1 Thus, after consideration of the pleadings and papers on file herein and oral arguments of counsel,
2 this Court hereby ORDERS that Korte's Motion to Dismiss is GRANTED IN PART without
3 prejudice, as to UPA's negligence claim, and DENIED IN PART, as to UPA's inappropriate
4 exercise of NRS Chapter 624 claim.

5 Dated: July 30, 2018


DISTRICT COURT JUDGE
14

7 Submitted by:

8 MEAD LAW GROUP

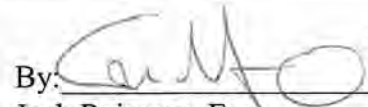
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10
11 By: 
12 Leon F. Mead II, Esq.
13 Nevada Bar No. 5719
14 Sarah A. Mead, Esq.
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16 10161 Park Run Drive, Ste 150
17 Las Vegas, NV 89145
18 Attorneys for The Korte Company

19 Approved as to form and content by:

20 HOLLAND & HART

REISMAN SOROKAC

21 By: _____
22 Stephen Peek, Esq.
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24 Greg Gilbert, Esq.
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Attorneys for Wells Fargo

1 Thus, after consideration of the pleadings and papers on file herein and oral arguments of counsel,
2 this Court hereby ORDERS that Korte's Motion to Dismiss is GRANTED IN PART without
3 prejudice, as to UPA's negligence claim, and DENIED IN PART, as to UPA's inappropriate
4 exercise of NRS Chapter 624 claim.

5 Dated: July _____, 2018

DISTRICT COURT JUDGE

7 Submitted by:

8 MEAD LAW GROUP
9

10 By: _____
11 Leon F. Mead II, Esq.
12 Nevada Bar No. 5719
13 Sarah A. Mead, Esq.
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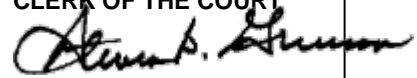
19 HOLLAND & HART

REISMAN SOROKAC

20 By: Michael Wally (12/11/19) for
21 Stephen Peek, Esq.
22 Nevada Bar No. 1758
23 Greg Gilbert, Esq.
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EXHIBIT “6”



ACOM

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Attorneys for Defendant and Consolidated Plaintiff and Counter-defendant

THE KORTE COMPANY *and Consolidated Cross-Defendant*

TRAVELERS CASUALTY AND INSURANCE COMPANY OF AMERICA

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

UPA 1, LLC, a Delaware limited liability
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri
corporation,

Defendant.

Consolidated Case No. A-17-763262-B
Consolidated with, A-18-768969-B

Dept. No. 16

KORTE CONSTRUCTION COMPANY dba
THE KORTE COMPANY, a Missouri
corporation,

Plaintiff,

v.

UPA1 LLC, a Delaware limited liability
company; BRIDGWAY ADVISORS, a
California corporation; STATE OF NEVADA
ON RELATION OF THE BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION, ON BEHALF OF
THE UNIVERSITY OF NEVADA, LAS
VEGAS, a Constitutional entity of the State

Consolidated Case No. A-18-767674-C

of Nevada; WELLS FARGO BANK
NORTHWEST, N.A., AS TRUSTEE OF
THE UNLV STUDENT HOUSING PHASE I
PASS THROUGH TRUST UNDER THE
PASS-THROUGH TRUST AGREEMENT
AND DECLARATION OF TRUST, a federal
bank institution, HARTFORD FIRE
INSURANCE COMPANY, a Connecticut
surety company, and DOES 1 through 100,
inclusive,

Defendants,

HELIX ELECTRIC OF NEVADA, LLC dba
HELIX ELECTRIC, a Nevada limited
liability company,

Plaintiff,

v.

KORTE CONSTRUCTION COMPANY dba
THE KORTE COMPANY, a Missouri
corporation; UNIVERSITY PARK, LLC, a
Delaware limited liability company;
UNIVERSITY BOARD OF REGENTS; UPA
1 LLC, a Delaware limited liability company;
TRAVELERS CAUSALTY & SURETY
COMPANY OF AMERICA, a surety; DOES
1 through X; ROE CORPORATIONS I
through X; BOE BONDING COMPANIES I
through X; LOE LENDERS I through X;
TOE TENANTS I through X, inclusive,

Defendants.

Consolidated Case No. A-18-768969-B

**SECOND AMENDED COMPLAINT
FOR:**

- 1. RELIEF UNDER NRS 108.2403(3)(a);**
- 2. RELIEF UNDER NRS 624.610(6);**
- 3. BREACH OF CONTRACT;**
- 4. UNJUST ENRICHMENT;**
- 5. FORECLOSURE OF MECHANIC'S
LIEN ON SURETY BOND;**
- 6. TORTIOUS INTERFERENCE WITH
BUSINESS CONTRACT;**
- 7. CLAIM OF LIEN UPON
CONSTRUCTION DISBURSEMENT
ACCOUNT; AND**
- 8. DECLARATORY RELIEF**

Arbitration Exemption:

Declaratory Relief

NOW COMES Plaintiff KORTE CONSTRUCTION COMPANY dba THE KORTE
COMPANY, and files its second amended complaint against Defendants as follows:

GENERAL ALLEGATIONS

1. Plaintiff, KORTE CONSTRUCTION COMPANY, dba The KORTE Company
("KORTE"), is a corporation organized under the laws of the state of Missouri, authorized to
conduct business in the state of Nevada, and is operating and performing such business within

1 the jurisdiction of this honorable Court as a general building contractor. KORTE is licensed by
2 the Nevada State Contractors Board, holding a Class AB Unlimited license, NSC License #
3 57075.

4
5 2. Defendant UPA1 LLC (“UPA1”) is a limited liability company, organized and
6 operating under the laws of the state of Nevada and within the territorial jurisdiction of this
7 honorable Court. UPA1 is assignee of that certain long-term ground lease described herein, and
8 is the owner and developer of the Project, as defined herein.

9
10 3. KORTE is informed and believes and based thereon alleges that Defendant
11 BRIDGEWAY ADVISORS is a corporation, formed and organized under the laws of the State
12 of California, and is subject to the jurisdiction of this Court, as it has taken advantage of business
13 opportunities and actively performed actions and tasks within the State of Nevada and
14 jurisdiction of this Court as further alleged hereinafter that caused the damages claimed herein.
15 KORTE is informed and believes and based thereon alleges that BRIDGEWAY ADVISORS
16 does not hold a Nevada contractor’s license and is not otherwise authorized to conduct business
17 in the State of Nevada.

18
19 4. KORTE is informed and believes and based thereon alleges that Defendant
20 STATE OF NEVADA ON RELATION OF THE BOARD OF REGENTS OF THE NEVADA
21 SYSTEM OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF NEVADA,
22 LAS VEGAS (“UNLV”), is a constitutional entity of the State of Nevada, and is the Owner of
23 the land on which the Project is constructed. KORTE is informed and believes and based thereon
24 alleges that UNLV entered into a lease with Defendant UPA1’s predecessor in interest,
25 University Park LLC, for the land on which the Project was constructed. KORTE is further
26 informed and believes that University Park LLC assigned that lease to Defendant UPA1 for
27
28

1 purposes of constructing the Project as alleged hereafter. By virtue of said lease, KORTE alleges
2 that UNLV is a proper defendant in this proceeding and KORTE is authorized to proceed against
3 them by application of NRS 108.22148(1)(f) and (g).
4

5 5. KORTE is informed and believes and based thereon alleges that Defendant
6 WELLS FARGO BANK NORTHWEST, N.A., AS TRUSTEE OF THE UNLV STUDENT
7 HOUSING PHASE I (LAS VEGAS, NV) PASS THROUGH TRUST UNDER THE PASS-
8 THROUGH TRUST AGREEMENT AND DECLARATION OF TRUST (“WELLS FARGO”),
9 is a federally recognized banking institution, authorized and conducting business in the State of
10 Nevada and subject to the jurisdiction of this court. WELLS FARGO is also the entity that
11 controls and manages the construction financing for the construction project described herein and
12 is listed as the holder of a purported construction disbursement account as stated in the Notice of
13 Posted Security recorded on the Project property as instrument number 20170630-0002809.
14

15 6. Upon information and belief, HARTFORD FIRE INSURANCE COMPANY
16 (“HARTFORD”) is a Connecticut surety company duly authorized to conduct business as a
17 surety in Nevada and has provided a surety bond for the benefit of KORTE with UPA as
18 principal, and Hartford, as surety thereon, recorded as Instrument No. 20180529-0001743.
19

20 7. KORTE is informed and believes and based thereon alleges that there are other
21 defendant individuals and/or business entities that are also liable to KORTE, jointly and / or
22 severally, for the injuries and damages complained of herein, but whose identities are currently
23 unknown to KORTE. Therefore, KORTE has named such individuals and business entities under
24 the fictitious business names of DOES 1 through 100, inclusive, and complained thereof herein
25 under such fictitious business names. Upon discovery of their true names and identities, KORTE
26 will supplement this pleading to reveal such true names.
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1 sought, and under that same section, UPA1 agreed to make monthly progress payments to
2 KORTE.

3 12. The Contract contains no schedule for payments.

4 13. The Contract provides that a progress payment shall be made within 23 days of
5 UPA1's receipt of KORTE's pay application.
6

7 14. Because the Contract contains no schedule for payments, however, Nevada
8 Revised Statutes ("NRS") 624.609(1)(b) governs, stating that payment is due within 21 days of
9 the prime contractor's submission of the pay application to the project owner.
10

11 15. The first twelve (12) monthly progress pay applications covered work furnished
12 by KORTE and its subcontractors and suppliers for the months of February 2016 through
13 January 2017, inclusive. UPA1 paid the amounts due under those payment applications in full.

14 16. UPA1's designated Defendant BRIDGEWAY ADVISORS ("BA") was the
15 Owner's Representative for the Project. In early 2017, Mr. Brian Winley of BA replaced Mr.
16 Ron Harvell of BA as the Owner's Representative lead contact person. BA is affiliated with the
17 California law firm of "Rodarti and Associates" (the "Rodarti firm"), owned in whole or in part
18 by Josef Rodarti, Esq., who is a member of the State Bar of California, but is *not admitted* to the
19 State Bar of Nevada. The Rodati firm also employs an attorney, Keith Davis, who (like Mr.
20 Rodarti) is not admitted to the State Bar of Nevada. BA does not hold a contractor's license
21 issued by the Nevada State Contractors Board. BA originally was to act as a mere representative
22 of UPA1, and, as such, is not allowed to directly manage the work of KORTE or any other
23 contractor unless it holds a valid Nevada contractor license, as specified in NRS 624.020(4) and
24 NRS 624.700(1).
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1 17. After commencement of construction, BA exceeded its role as owner's
2 representative and began attempting to manage the construction without a license to do so by,
3 among other things, directing Korte in the performance of the Contract work, improperly
4 interpreting the plans and specifications, influencing State Public Works Building Inspectors,
5 and actively interfering with KORTE'S construction work on the Project. These activities are a
6 violation of NRS 624.700(1). To compound these issues, BA affiliate, the Rodarti firm, began
7 advising UPA1 despite employing no attorney admitted to the State Bar of Nevada.
8

9 18. After BA assigned Brian Winley as the contact person, numerous disputes arose
10 between the parties over the progression of the work, as well as over UPA1's violations of the
11 Nevada Prompt Payment Act (NRS 624.600 through 624.630, inclusive) regarding the
12 withholding of payment for Korte's construction work and the failure to pay change orders made
13 part of the Contract by operation of law. KORTE is informed and believes that these violations
14 occurred in part due to UPA1's reliance upon the erroneous advice and counsel of BA and
15 Rodarti, unlawfully provided to UPA1 due to the lack of their Nevada licensure, which furthered
16 BA's intentional scheme to have KORTE removed from the Project for the express purpose of
17 preventing KORTE from receiving any further payment and to permit BA or someone of BA's
18 choosing to take over the Project after UPA1 terminated KORTE for alleged non-performance,
19 despite its lack of Nevada licensure to act as a general contractor or construction manager.
20
21

22 19. In response to pay applications number 13 through 16 covering the months of
23 February, March, April and May of 2017, UPA1 withheld paying KORTE various amounts
24 requested under those four pay applications, including amounts otherwise payable to KORTE's
25 subcontractors as well as the amounts payable to KORTE for its general conditions costs and
26 Fee.
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1 20. In addition, none of the amounts KORTE requested in the above-referenced four
2 pay applications were paid within 23 days of UPA1's receipt of the pay application.

3 21. On April 19, 2017, KORTE submitted a notice to UPA1 stating that UPA1 had
4 failed to make payment of the amount due under pay application number 13 submitted to UPA1
5 on March 14, 2017, and that UPA1 had provided no written notice explaining why payment was
6 being withheld, in violation of the Nevada Prompt Payment Act. The KORTE notice thereafter
7 stated that KORTE intended to stop work as permitted under NRS 624.610(1), forming a part of
8 the Nevada Prompt Payment Act ("PPA").
9

10 22. On May 12, 2017, KORTE submitted a notice to UPA1 stating that KORTE had
11 submitted its pay application covering the work in March 2017, namely pay application number
12 14, on April 7, 2017, and KORTE did not receive a notice of withholding of payment of any of
13 the amounts requested until May 4, 2017. After KORTE furnished two UPA1-requested
14 conditional lien releases which KORTE obtained from KORTE's subcontractors, UPA1
15 continued to withhold payment under pay application number 14 because of UPA1's demand for
16 unconditional lien waivers. KORTE's May 12, 2017 notice pointed out that such a demand was
17 not in accordance with Nevada law. The notice furthermore stated that KORTE reserved its right
18 to stop work under NRS 624.610.
19

20 23. On June 5, 2017, KORTE submitted a notice to UPA1 stating that UPA1's notice
21 of withholding delivered to KORTE on May 30, 2017 was two days late following KORTE's
22 submission of pay application number 15 covering the work during April 2017 which was
23 submitted to UPA1 on May 7, 2017. Once again, the KORTE notice stated that KORTE may
24 exercise its right to stop work under NRS 624.610.
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1 24. On June 30, 2017, KORTE submitted a notice to UPA1 stating that UPA1's
2 refusal to process pay application number 16 covering the work in May 2017 was unacceptable
3 and unlawful under NRS 624.622(2) by UPA1 setting forth eight conditions not recognized as
4 valid reasons for withholding a progress payment under Nevada law. After setting forth detailed
5 reasons why UPA1's stated conditions were improper, KORTE stated that the failure to process,
6 fund and make payment of the amounts due under pay application number 16 and the other
7 amounts due KORTE would result in an immediate work stoppage by the end of the day.

9 25. Also on June 30, 2017, KORTE submitted a notice to UPA1 stating that it had
10 come to KORTE's attention that UPA1 was leasing the Project site and that UPA1 had not
11 posted security under NRS 108.2403 in the form of either a bond or the establishment of a
12 statutorily-prescribed construction disbursement account administered by a construction control
13 as set forth in NRS 108.2403. KORTE added that it had not been provided with any notice of
14 posted security and requested a copy plus proof of the posted security itself. The notice further
15 states that KORTE intended to stop the work at the end of the day unless proof of the posted
16 security was provided by that time.

17 26. During a subsequent exchange of emails on June 30, 2017 between counsel for
18 KORTE and Joseph Rodarti for UPA1, respectively, UPA1 was informed that if KORTE
19 received the notice of posted security before the end of the day, KORTE would not stop of the
20 work for that reason.

21 27. UPA1 thereafter responded on June 30, 2017 by providing to KORTE a document
22 entitled "Notice of Posted Security" prepared by the Rodarti firm. The notice states in part that
23 UPA1 "established a Construction Disbursement Account pursuant to subsection 1 of NRS
24 108.2403," and identifies WELLS FARGO as the purported construction control. WELLS
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1 FARGO is the Trustee of the Project's lender's consortium and was merely the entity that
2 controlled and managed the construction fund for the Lender under, and subject to, the terms of
3 the loan agreement signed on behalf of the Lender and UPA1.
4

5 28. Because of the PPA violations, KORTE stopped the work at the Project at the end
6 of the work day on June 30, 2017. On July 3, 2017, KORTE's counsel sent a letter to Wells
7 Fargo requesting information supporting the position taken by UPA1 that the construction
8 escrow account for the Project satisfied the requirements of a construction disbursement account
9 administered by a construction control pursuant to NRS 108.2403 and other related statutes.
10 Wells Fargo never responded to the letter from KORTE's counsel.
11

12 29. Thereafter, the Parties participated in an "Early Neutral Evaluation" process
13 ("ENE") as required by the dispute resolution provisions of the Contract as modified by the
14 parties, in an attempt to resolve the disputes. At the end of two full days of ENE, the Parties were
15 unable to resolve the disputes but agreed to continue to work through the process. In a sign of
16 good faith, KORTE resumed the work on the Project while further negotiations took place.
17

18 30. Thereafter, KORTE and UPA1 continued to negotiate a resolution, however, as
19 KORTE continued to work on the Project, UPA1 continued to refuse to abide by the
20 requirements of the Nevada Prompt Payment Act and continued to withhold funds from KORTE
21 and its subcontractors. Further, instead of receiving a response from WELLS FARGO regarding
22 the veracity of UPA1's Notice of Posted Security, the Rodarti firm provided a "Certificate re
23 Posted Security" allegedly signed by a representative of "Wells Fargo [*sic*] Bank, N.A.," which
24 asserted that "subject to" the terms of the construction escrow agreement, KORTE could
25 consider the construction escrow account as "posted security" for purposes of NRS 108.2403.
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1 31. After KORTE informed UPA1 in August 2017 that the construction escrow
2 account did not appear to comply with the requirements for posted security, UPA1 furnished to
3 KORTE on August 22, 2017 a copy of the Construction Escrow Agreement.

4
5 32. The Construction Escrow Agreement states that the parties to the Agreement are
6 WELLS FARGO, UPA1, and the lending Trust without identifying the member or members of
7 the Trust. WELLS FARGO is designated as the “Trustee” and “Construction Escrow Agent;”
8 collectively WELLS FARGO and the Trust are designated as the “Beneficiary;” and UPA1 is
9 designated as the “Company.” The Agreement identifies the “Construction Monitor” as
10 Midland Loan Services, a division of PNC Bank, National Association. The Agreement recites
11 the loan amount from the Beneficiary to the Company is \$67,642,000. The Development Cost
12 Detail reflects that the portion of the loan amount to be applied toward construction costs is
13 \$46,208,887, including contingencies.
14

15 33. The Construction Escrow Agreement reads in part as follows:
16

17 Section 8.1. Construction Escrow Agent Holding Project Escrow Funds as
18 Agent for Beneficiary. Beneficiary directs Construction Escrow Agent to
19 hold all Project Escrow Funds in the Project Account from time to time as
20 collateral agent for the Beneficiary, and Construction Escrow Agent agrees
21 to act as collateral agent for the Beneficiary alone with respect to the holding
of Project Escrow Funds, provided, that Construction Escrow Agent shall
in any event make Disbursements in accordance herewith but only if all
conditions precedent thereto have been satisfied.

22 Section 8.2. Construction Escrow Agent Duties and Protections. ***

23 (g) No Duty to Inquire, Etc. The duties and responsibilities of
24 Construction Escrow Agent hereunder shall be determined solely by the
25 express provisions of this Agreement, and no other or further duties or
responsibilities shall be implied.

26 Section 9.2. Entire Agreement; Modifications. This Agreement, together
27 with the Exhibits and Schedules attached hereto, contains and embodies the
28 entire agreement of the parties hereto with respect to the subject matter
hereof, and no representations, inducements or agreements, oral or

otherwise, between the parties not contained in this Agreement and the Exhibits and Schedules, shall be of any force or effect. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Neither this Agreement nor any right or interest hereunder may be changed in whole or in part by any party without the prior consent of the other parties.

.....
Section 9.6. Third Parties. This Agreement is for the sole benefit of Beneficiary, Construction Monitor, Company and Construction Escrow Agent and shall not confer any right, benefit, interest on or to any other person.

Section 9.10. Disclaimer. This Agreement is made for the sole benefit of Company, Construction Monitor, Construction Escrow Agent and Beneficiary and no other person or persons shall have any benefits, rights or remedies under or by reason of this Agreement or by reason of any actions taken by Beneficiary pursuant to this Agreement. None of Beneficiary, Construction Monitor or Construction Escrow Agent shall be liable to any contractors, subcontractors, suppliers, architect, engineer, tenant or other party for labor or services performed or materials supplied in connection with the Construction Work. None of Beneficiary, Construction Monitor or Construction Escrow Agent shall be liable for any debts or claims accruing in favor of any such parties against Company or others or against the Project. *** No payment of funds directly to a contractor or subcontractor or provider of services or materials be deemed to create any third-party beneficiary status or recognition of same by the Beneficiary, Construction Monitor or Construction Escrow Agent. Without limiting the generality of the foregoing:

(a) None of Beneficiary, Construction Escrow Agent or Construction Monitor either undertakes or assumes any responsibility or duty to Company to select, review, inspect, supervise, pass judgment upon or inform Company of any matter in connection with the Project, including matters relating to the quality, adequacy or suitability of: (i) the Plans and Specifications, (ii) architects, subcontractors and suppliers employed or utilized in connection with the Construction Work or the workmanship of or materials used by any of them or (iii) the progress or course of the Construction Work and its conformity or nonconformity with the Plans and Specifications. Company shall rely entirely upon its own judgment with respect to such matters and any review, inspection, supervision, exercise of judgment or supply of information to Company by Beneficiary, Construction Monitor or Construction Escrow Agent in connection with such matters is for the protection of Beneficiary, Construction Escrow Agent and Construction Monitor only and neither Company nor any third party is entitled to rely thereon; ***

.....

1 34. KORTE, after reviewing the terms of the Construction Loan Escrow Agreement,
2 found that various terms within the agreement did not comport with the rights of lien claimants
3 and the obligations of the owner and the “construction control” under NRS 108.2403, 108.2407
4 and other applicable statutes. Therefore, KORTE informed UPA1 that the “Notice of Posted
5 Security” did not comport with the requirements of Nevada law, and that KORTE was stopping
6 work again under the provisions of NRS 108.2403(3). Further, as UPA1 had continued to
7 wrongfully withhold payment from KORTE without compliance with the Nevada Prompt
8 Payment Act, KORTE also informed UPA1 in late September 2017 that KORTE would stop
9 work under the provisions of NRS 624.610(2). UPA1 failed to make payment of amounts then
10 due to KORTE. KORTE then provided UPA1 additional notice that it intended to terminate the
11 Contract as it is allowed under NRS 624.610(4). UPA1 still did not make payment or post valid
12 security for the work. As such, on October 9, 2017, 15 days after providing notice of intent to
13 terminate, and 25 days after providing notice and stopping work under NRS 108.2403, KORTE
14 terminated the Contract for violation of Nevada law.
15

16
17
18 35. Pursuant to NRS 108.222 and 108.239, on October 9, 2017, KORTE caused to be
19 recorded with the Clark County Recorder’s Office, its Notice and Claim of Mechanics’ Lien
20 against the Project. Said Notice was recorded as Instrument No. 20171009-0001520, in the
21 unpaid balance of the Contract in the amount of \$20,366,490.22 (a true and correct copy of the
22 recorded lien is attached hereto as Exhibit “1”). Pursuant to the provisions of NRS 108.227,
23 KORTE caused a copy of the recorded Notice to be served on Defendants UPA1, UNLV and
24 WELLS FARGO, as well as University Park LLC, within 30 days of its recording.
25

26 36. On January 24, 2018, KORTE caused to be recorded with the Clark County
27 Recorder’s Office, its Amended Notice of Lien against the Project. The Amended Notice was
28

1 recorded as Instrument No. 20180124-0001571, in the amount of \$8,499,308.66 (a true and
2 correct copy of the recorded Amended Lien is attached hereto as Exhibit “2”). Pursuant to the
3 provisions of NRS 108.227, KORTE caused a copy of the recorded Amended Lien to be served
4 on Defendants UPA1, UNLV and WELLS FARGO, as well as University Park LLC, within 30
5 days of its recording.
6

7 37. On May 22, 2018, KORTE caused to be recorded with the Clark County
8 Recorder’s Office, its Second Amended Notice of Lien against the Project. The Second
9 Amended Notice was recorded as Instrument No. 20180522-0000016, in the amount of
10 \$3,632,395.21 (a true and correct copy of the recorded Second Amended Lien is attached hereto
11 as Exhibit “3”). Pursuant to the provisions of NRS 108.227, KORTE caused a copy of the
12 recorded Second Amended Lien to be served on Defendants UPA1, UNLV, and WELLS
13 FARGO, as well as University Park LLC, within 30 days of its recording.
14

15 38. On May 29, 2018, UPA1, as principal, and Hartford, as surety, executed a surety
16 bond in the amount of Five Million Four Hundred Forty-Eight Thousand Five Hundred Ninety-
17 Two and Eighty-Two Cents (\$5,448,592.82). UPA1 caused the surety bond to be recorded in the
18 Clark County Recorder’s office as Instrument No. 20180529-0001743.
19

20 **FIRST CAUSE OF ACTION**
21 **Claim for Relief Under NRS 108.2403(3)(b) against Defendant UPA1 and Does 1 through**
22 **50, inclusive**

23 39. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
24 38, inclusive, of this Complaint as if fully stated herein.

25 40. On September 12, 2017, KORTE notified UPA1 through UPA1’s counsel that
26 after review of the Construction Escrow Agreement, KORTE had determined that the agreement
27
28

1 did not satisfy the requirements for a construction disbursement account under NRS 108.2403.

2 The notice states, among other things, that:

- 3 (a) the loan proceeds are held by Wells Fargo solely for the benefit of the
4 Beneficiary, which includes Wells Fargo, and not for the benefit of any
5 potential mechanic's lien claimant as NRS 108.2407 contemplates and
6 requires;
7
8 (b) under the terms of the Construction Escrow Agreement, the general contractor
9 and subcontractors are not among the intended beneficiaries, again contrary to
10 a construction disbursement account of the type required by the above-
11 referenced statute;
12
13 (c) Wells Fargo, as Trustee for the lending Trust, is part of the lending group, and
14 under NRS 627.175(1)(d) Wells Fargo cannot serve as the construction
15 control;
16
17 (d) Wells Fargo's duties as limited per the terms of section 8.2 of the Agreement,
18 which is contrary to the duties of a construction control under NRS Chapter
19 627 and NRS 108.2407;
20
21 (e) the notice of posted security violated NRS 108.2403 by failing to identify the
22 name and address of the claimed construction control;
23
24 (f) KORTE intended to stop work immediately pursuant to NRS 108.2403(3); and
25
26 (g) UPA1 had 25 calendar days from the commencement of the actual work
27 stoppage to provide the required posted security, and failure to do so will result
28 in termination of the Contract pursuant to NRS 108.2403(3)(b).

41. KORTE stopped the work at the Project on September 12, 2017.

1 42. The twenty-fifth day of the work stoppage by KORTE occurred on October 7,
2 2017.

3 43. UPA1 did not post security under NRS 2403(3)(a) at any time on or before
4 October 9, 2017.

5 44. On October 9, 2017, KORTE submitted a notice to UPA1 that the Contract was
6 terminated pursuant to NRS 108.2403(3)(b) for UPA1's failure to post security in compliance
7 with Nevada law.

8 45. KORTE seeks to recover the damages it is entitled to pursuant to NRS
9 108.2403(3)(b).

11
12 **SECOND CAUSE OF ACTION**
13 **Claim for Relief Under NRS 624.610(6) against Defendant UPA1 and Does 1 through 50,**
14 **inclusive**

15 46. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
16 45, inclusive, of this Complaint as if fully stated herein.

17 47. On September 8, 2017, KORTE submitted a notice to UPA1 acknowledging
18 notification from UPA1 that UPA1 was continuing to withhold payment of KORTE's general
19 conditions costs and KORTE's Fee sought under pay application numbers 13 through 20,
20 inclusive. KORTE added that such withholding was and continued to be improper and illegal
21 because of, among other things, UPA's failure to provide a reasonably detailed explanation of
22 the reasons for withholding and UPA's failure to recognize that withholding for any claimed
23 corrective work was limited to the estimated cost over 50% of the withheld retention. KORTE
24 also requested a reasonably detailed explanation of the items UPA1 considered outstanding or
25 defective in support of UPA1's decision to continue to withhold payment, and absent same,
26
27
28

1 demanded immediate payment of the amount withheld. The notice also expressly reserved all of
2 KORTE's rights under the PPA.

3 48. On September 12, 2017, KORTE submitted a notice of work stoppage to UPA1.
4
5 The notice referred to a prior KORTE letter explaining why UPA1 had not complied with the
6 posted security requirement of Nevada law, and continued by pointing out that UPA1 was also
7 still in violation of the PPA by, among other things, continuing to withhold amounts due to
8 KORTE. After stating the work stoppage effective September 12, 2017 was initially due to the
9 failure to satisfy the posted security statutes, KORTE added that the work stoppage was also
10 supported by KORTE's prior notifications of PPA violations that have not been cured.

11
12 49. On September 25, 2017, KORTE submitted to UPA1 a notice of intent to
13 terminate the Contract in 15 days if UPA1 did not pay KORTE the withheld amount of
14 \$918,486.79.

15 50. Notwithstanding several notices to UPA1 of the improper withholding of the
16 \$918,486.79, UPA1 has failed or refused to pay all or any portion of that amount.

17
18 51. On October 10, 2017, KORTE submitted to UPA1 a notice stating that in addition
19 to the termination of the Contract for UPA1's failure to comply with the posted security
20 requirement of NRS 108.2403, the Contract was also terminated for non-compliance with the
21 PPA.

22
23 52. KORTE seeks to recover damages authorized under NRS 624.610(6).

24 **THIRD CAUSE OF ACTION**
25 **Claim for Relief for Breach of Contract against Defendant UPA1 and Does 1 through 50,**
26 **inclusive**

27 53. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
28 52, inclusive, of this Complaint as if fully stated herein.

1 54. In addition to the actions alleged herein by reference, UPA1 further breached the
2 Contract by, among other things:

- 3 a. Failing to provide adequate and constructible designs and specifications;
4
5 b. Failing to timely, adequately and properly respond to requests for
6 information and clarification of drawings;
7
8 c. Failing to timely and properly provide permits for the Work;
9
10 d. Allowing its representative (BA) to direct the work without a valid license
11 and to deviate from the approved plans and specifications without
12 adequate design support or authorization from the Architect of Record,
13 and otherwise interfering with KORTE's Work on the Project;
14
15 e. Failing to provide posted security for the Work of Improvement as
16 required by NRS 108.2403; and
17
18 f. Refusing to respond to change order requests within 30 days as mandated
19 by NRS 624.609(3) and refusing to acknowledge the change orders have
20 become part of the Contract by operation of Nevada law.

21 55. As a result of UPA1's numerous breaches of the Contract, KORTE has been
22 damaged in an amount to be proven at trial but in excess of \$15,000.00.

23 56. KORTE has been required to retain the undersigned firm of attorneys to protect
24 its rights and has and will continue to incur attorneys' fees and costs during this litigation.

25 ///

26 **FOURTH CAUSE OF ACTION**
27 **For Unjust Enrichment against UPA, UNLV and DOES 1 through 60, inclusive**

28 57. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
52, inclusive, of this Complaint as if fully stated herein.

1 58. Defendants, and each of them, have received a benefit from the work of KORTE
2 and its subcontractors. KORTE has made demand upon said Defendants for payment for the
3 work performed, but to date, said Defendants have refused to pay and/or compensate KORTE for
4 such work and benefits conferred on them.

5
6 59. Defendants' failure to compensate KORTE has left them unjustly enriched by
7 KORTE's work.

8 60. KORTE is entitled to judgment against Defendants in an amount to be proven at
9 trial, but in excess of \$15,000, plus interest, attorneys' fees and costs as additional and
10 foreseeable damages from their actions.

11
12 **FIFTH CAUSE OF ACTION**
13 **For Foreclosure of Mechanics Lien Upon Surety Bond Against UPA, Hartford and DOES 1**
14 **though 50 inclusive, and 61 through 70, inclusive**

15 61. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
16 60, inclusive, of this Complaint as if fully stated herein.

17 62. By virtue of its direct contract with the Project's owner, and the actual knowledge
18 that KORTE was performing construction work on the Project, KORTE has complied with or
19 been excused from complying with the obligations to serve Defendants with a Notice of Right to
20 Lien under NRS 108.245.

21 63. The Project is a private commercial work of improvement, intended to be
22 operated for profit by Defendants UPA1 and DOES 1 through 50, inclusive.

23 64. KORTE's Second Amended Notice of Lien is a valid lien upon the Project.

24 65. Thirty (30) days have lapsed since KORTE recorded the original Notice of Lien.
25 Moreover, KORTE has timely filed this Complaint for foreclosure and recorded a notice of lis
26 pendens against the Project concurrently with the filing of this Complaint.
27
28

1 66. On May 25, 2018, UPA and Hartford executed a surety bond in the amount of
2 Five Million Four Hundred Forty-Eight Thousand Five Hundred Ninety-Two Dollars and
3 Eighty-Two Cents (\$5,448,592.82).

4
5 67. On May 29, 2018, UPA caused the surety bond to be recorded with the Clark
6 County Recorder's office against the Project Site as Instrument Number 20180529-0001743.

7 68. Pursuant to NRS 108.2415(6)(a), the surety bond releases the property described
8 in the surety bond from the lien and the surety bond is deemed to replace the property as security
9 for the lien.

10 69. Pursuant to NRS 108.2421(2), KORTE may amend its complaint to add a claim
11 for liability against the principal and the surety on the surety bond to recover the full amount of
12 its mechanic's lien, plus interest, costs, and reasonable attorneys' fees.

13
14 70. Accordingly, KORTE is entitled to recover under the statutory bond posted by
15 UPA1 and Hartford the full amount of its mechanic's lien, plus interest, costs, and reasonable
16 attorneys' fees against UPA and Hartford.

17
18 **SIXTH CAUSE OF ACTION**
19 **Against Defendant BRIDGEWAY ADVISORS and DOES 91 through 100, inclusive for**
20 **Intentional Tortious Interference with Contract**

21 71. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
22 70, inclusive, of this Complaint as if fully stated herein.

23 72. KORTE is informed and believes and based thereon alleges that Defendant BA
24 and DOES 91 through 100, inclusive, had specific and actual knowledge of an existing contract
25 between KORTE and Defendants UPA1 and DOES 1 through 50, inclusive, to construct the
26 Project.

1 73. KORTE is informed and believes and based thereon alleges that BA (by and
2 through its principals), having been retained by Defendant UPA1 to act as an owner
3 representative on the Project, conceived, with malice and premeditation, to specifically interfere
4 with the relationship between KORTE and UPA1 with the specific intention to create facts and
5 evidence to support the wrongful termination of KORTE as general contractor, and to undertake
6 to act as the general contractor in KORTE's place and stead, and to obtain the benefits in the
7 form of compensation. In furtherance of such acts, BA undertook the specific acts complained of
8 herein, as well as others.
9

10 74. KORTE is informed and believes and based thereon alleges that Joseph Rodarti,
11 principal of BA, admitted this scheme to Greg Korte of KORTE during a face to face meeting on
12 the Project Site, by demanding that KORTE either "hand over the reins" to a hand-picked project
13 manager as dictated by BA or be terminated.
14

15 75. As a result of BA's tortious, malicious, bad faith and despicable actions and
16 conduct, the relationship between UPA1 and KORTE was significantly damaged and resulted
17 ultimately in the termination of the Contract between UPA1 and KORTE.
18

19 76. As a result of the termination of the Contract, KORTE has been damaged in an
20 amount to be determined at trial but exceeding \$15,000.00. Further KORTE is entitled to
21 punitive and exemplary damages from BA and DOES 91 through 100, inclusive, in an amount
22 sufficient to deter their despicable and malicious conduct in the future.
23

24
25 ///

26 **SEVENTH CAUSE OF ACTION**
27 **Against WELLS FARGO and DOES 71 through 90, inclusive for Claim of Lien upon**
28 **Construction Disbursement Account**

1 77. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
2 76, inclusive, of this Complaint as if fully stated herein.

3 78. UPA1 recorded the Notice of Posted Security on the Project property, Instrument
4 No. 20170630-0002809, which provides notice of UPA1's purported construction disbursement
5 account pursuant to NRS 108.2403.
6

7 79. The Notice lists WELLS FARGO as the construction control for the disbursement
8 account. In its Certificate re Construction Control, executed by Joseph Pugsley of WELLS
9 FARGO, WELLS FARGO contends that the construction escrow account also serves as the
10 construction disbursement account, and that WELLS FARGO, as the Lender to the Construction
11 Escrow Agreement where UPA1 is the Borrower, serves as construction control.
12

13 80. While it is KORTE's contention that this arrangement does not comport with the
14 requirements of NRS 108.2403, KORTE nevertheless is entitled to make a claim of lien upon the
15 construction disbursement account pursuant to NRS 108.2407(1) and the Notice of Posted Security.
16

17 81. Pursuant to NRS 108.2407(4), KORTE's recorded Notice of Lien and Amended
18 Notice constitute valid notification to the construction control of its claim of lien against the
19 construction disbursement account.

20 82. Thirty (30) days have lapsed since KORTE recorded the original Notice of Lien.
21 Moreover, KORTE has timely filed this Amended Complaint for foreclosure, recorded a notice
22 of lis pendens against the Project, and served all interested parties with a Notice of Foreclosure
23 concurrently with the filing of this Amended Complaint.
24

25 83. KORTE is entitled to a judgment foreclosing its lien against the construction
26 disbursement account in an amount to be proven at trial but in excess of \$15,000.00, plus
27 interest, attorneys' fees and costs of recording the Notice of Lien and Amended Notice, and the
28

1 foreclosure thereof, and that the construction control disburse money from the construction
2 disbursement account to pay the judgment owed to KORTE, free and clear of the interest of all
3 Defendants.

4
5 **EIGHTH CAUSE OF ACTION**
6 **Against All Defendants for Declaratory Relief**

7 84. KORTE hereby incorporates by reference the allegations of paragraphs 1 through
8 83, inclusive, of this Complaint as if fully stated herein.

9 85. A dispute has arisen between KORTE and the other Defendants as alleged herein.
10 Said dispute is an actual dispute and is capable of judicial resolution, but after numerous
11 attempts, cannot be resolved by the Parties without the intervention of this Court.

12 86. KORTE seeks a declaratory judgment in this matter in its favor and against the
13 Defendants as alleged and prayed for herein.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, KORTE prays for judgment in its favor and against Defendants, and each
17 of them, as follows:

18 1. For judgment against each Defendant in the amount of actual damages proven at
19 trial but in excess of \$15,000.00;

20
21 2. For the Amended Notice of Lien of KORTE to be adjudicated a valid lien upon
22 the surety bond posted by UPA1 and HARTFORD;

23 3. For an order directing WELLS FARGO as the construction control to disburse
24 money in the construction disbursement account to KORTE in the amount of its lien and any and
25 all attorneys' costs and fees associated therewith;

26
27 4. For a judgment against UPA1 and HARTFORD awarding the full lienable
28 amount of KORTE's mechanic's lien plus interest, costs, and reasonable attorneys' fees;

- 1 5. For damages pursuant to NRS 108.2403(3)(b);
2 6. For damages pursuant to NRS 624.610(6);
3 7. For interest thereon at the maximum legal rate;
4 8. For an award of attorneys' fees and costs actually incurred;
5 9. As to Defendants BA and DOES 91 through 100, inclusive, an award of punitive
6 and exemplary damages;
7 10. For a declaratory judgment commensurate with this prayer for relief, and
8 11. For such other and further damages as the Court deems just and proper.
9

10 Dated: October 9, 2018

MEAD LAW GROUP



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THE KORTE COMPANY

CERTIFICATE OF SERVICE

I, the undersigned, declare under the penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing THE KORTE COMPANY'S SECOND AMENDED COMPLAINT by method indicated below:

- ☐ BY FAX: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ BY PERSONAL DELIVERY: by causing the above listed document(s) to be personally delivered by [name of messenger service], a messenger person(s) at the address(es) set forth below.
- ☒ BY ELECTRONIC SUBMISSION: submitted to the above entitled Court for electronic filing and service upon the Court's Service List for the above referenced case.

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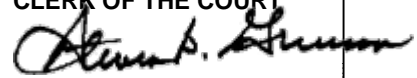
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Dated: October 9, 2018

/s/ Sarah M. Thomas
An Employee of Mead Law Group

EXHIBIT “7”



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15 **DISTRICT COURT**
16
17 **CLARK COUNTY, NEVADA**

18 UPA 1, LLC, a Delaware limited liability
19 company,

20 Plaintiff,

21 v.

22 THE KORTE COMPANY, a Missouri
23 corporation,

24 Defendant.

25 AND ALL RELATED CLAIMS.

Consolidated Case No. A-17-763262-B
Consolidated with A-18-768969-B
and A-18-767674-C

Dept. No. XXV

**UPA 1, LLC'S
ANSWER TO THE KORTE COMPANY'S
SECOND AMENDED COMPLAINT,
AMENDED COUNTERCLAIM AGAINST
THE KORTE COMPANY, AND FIRST
AMENDED CROSS CLAIM AGAINST
TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA**

26 Plaintiff UPA 1, LLC, ("UPA1") submits this answer and amended counterclaim in
27 response to Korte Construction Company dba The Korte Company's ("Korte") Second Amended
28 Complaint, filed on October 9, 2018, ("Korte Complaint").

**PLAINTIFF, UPA 1, LLC'S FIRST AMENDED ANSWER TO
KORTE CONSTRUCTION COMPANY DBA THE KORTE COMPANY'S
SECOND AMENDED COMPLAINT**

UPA1 hereby answers and responds to the Korte Complaint as follows:

1. UPA1 denies all allegations in the Korte Complaint not expressly admitted, denied, or otherwise responded to herein.

GENERAL ALLEGATIONS

2. Answering the allegations contained in paragraphs 1, 3, 4, 5, 6, and 7 of the Korte Complaint, UPA1 is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained therein and therefore denies the same.

3. Answering the allegations contained in paragraph 2 of the Korte Complaint, UPA1 admits that it is a limited liability company and that it is operating in the state of Nevada. UPA1 denies it was organized under the laws of the state of Nevada. UPA1 further admits it entered into a written Assignment, Assumption and Modification of the lease dated December 4, 2015, between University Park, LLC and UPA1. UPA1 denies the remaining allegations in their entirety.

GENERAL FACTUAL ALLEGATIONS

4. Answering the allegations contained in Paragraph 8 of the Korte Complaint, UPA1 admits it entered into the Cost Plus Agreement Between Owner and Contractor with Guaranteed Maximum Price ("Korte Contract") with Korte. UPA1 further admits the Project Site and Project are defined in the Korte Contract. Said Korte Contract speaks for itself, and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the document's express written language. UPA1 denies the remaining allegations in their entirety.

5. Answering the allegations in Paragraph 9 of the Korte Complaint, UPA1 admits the Board of Regents of the Nevada System of Higher Education ("Board") on behalf of University of Nevada Las Vegas ("UNLV") have entered into a Purchase and Sale Agreement ("Purchase Contract") with Wells Fargo Bank, N.A. ("Wells Fargo") pertaining to certain real property further described in the Purchase Contract. UPA1 further admits the Purchase Contract is the site for the Project ("Project Site"). UPA1 further admits that University Park, LLC assigned its interest as

1 lessee to UPA1 (“Lessee Contract”). Said Purchase Contract and lessee Contracts speak for
2 themselves, and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with
3 the document’s express written language. UPA1 denies the remaining allegations in their entirety.

4 6. Answering Paragraph 10, of the Korte Complaint, UPA1 states the Korte Contract
5 speaks for itself, and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent
6 with the document’s express written language. UPA1 denies the remaining allegations in their
7 entirety.

8 7. Answering Paragraph 11, UPA1 states the Korte Contract speaks for itself, and
9 UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with the document’s
10 express written language. UPA1 denies the remaining allegations in their entirety.

11 8. Answering Paragraph 12, UPA1 states the document referenced therein speaks for
12 itself, and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with the
13 document’s express written language. UPA1 denies the remaining allegations in their entirety.

14 9. Answering Paragraph 13, UPA1 states Paragraph 13 contains a legal conclusion to
15 which no response is required. To the extent a response is required, UPA1 states the Korte
16 Contract speaks for itself, and UPA1 denies Korte’s interpretation of the same to the extent it is
17 inconsistent with the document’s express written language. UPA1 denies the remaining
18 allegations in their entirety.

19 10. Answering Paragraph 14, UPA1 states Paragraph 14 contains a legal conclusion to
20 which no response is required. To the extent a response is required, UPA1 states the statute
21 referenced therein speaks for itself and UPA1 denies Korte’s interpretation of the same to the
22 extent it is inconsistent with the express statutory language. UPA1 denies the remaining
23 allegations in their entirety.

24 11. Answering Paragraph 15, UPA1 admits it paid Korte. UPA1 denies the remaining
25 allegations in their entirety.

26 12. Answering Paragraph 16, UPA1 states Paragraph 16 contains a legal conclusion to
27 which no response is required. To the extent a response is required UPA1 admits Bridgeway
28 Advisors (“BA”) has been involved in the Project. UPA1 states the statutes referenced therein

1 speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is
2 inconsistent with the express statutory language. UPA1 denies the remaining allegations in their
3 entirety.

4 13. Answering Paragraph 17, UPA1 states Paragraph 17 contains a legal conclusion to
5 which no response is required. To the extent a response is required, UPA1 states the statutes
6 referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the
7 extent it is inconsistent with the express statutory language. UPA1 denies the remaining
8 allegations in their entirety.

9 14. Answering Paragraph 18, UPA1 states Paragraph 18 contains a legal conclusion to
10 which no response is required. To the extent a response is required, UPA1 states it is without
11 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
12 contained therein and therefore denies the same.

13 15. Answering Paragraph 19, UPA1 denies the allegations in their entirety.

14 16. Answering Paragraph 20, UPA1 states Paragraph 20 contains a legal conclusion to
15 which no response is required. To the extent a response is required, UPA1 states it is without
16 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
17 contained therein and therefore denies the same.

18 17. Answering Paragraph 21, UPA1 states Paragraph 21 contains a legal conclusion to
19 which no response is required. To the extent a response is required, UPA1 states the statutes
20 referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the
21 extent it is inconsistent with the express statutory language. UPA1 denies the remaining
22 allegations in their entirety.

23 18. Answering Paragraph 22, UPA1 denies the allegations in their entirety.

24 19. Answering Paragraph 23, UPA1 states Paragraph 22 contains a legal conclusion to
25 which no response is required. To the extent a response is required, UPA1 states the statutes
26 referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the
27 extent it is inconsistent with the express statutory language. UPA1 denies the remaining
28 allegations in their entirety.

20. Answering Paragraph 24, UPA1 states Paragraph 24 contains a legal conclusion to which no response is required. To the extent a response is required, UPA1 states the statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express statutory language. UPA1 denies the remaining allegations in their entirety.

21. Answering Paragraph 25, UPA1 states Paragraph 25 contains a legal conclusion to which no response is required. To the extent a response is required, UPA1 states the statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express statutory language. UPA1 denies the remaining allegations in their entirety.

22. Answering Paragraph 26, UPA1 states Paragraph 26 contains a legal conclusion to which no response is required. To the extent a response is required, UPA1 states the statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express statutory language. UPA1 denies the remaining allegations in their entirety.

23. Answering Paragraph 27, states Paragraph 27 contains a legal conclusion to which no response is required. To the extent a response is required, UPA1 states the statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express statutory language. UPA1 further admits Korte and UPA1 wrote letters. Said letters speak for themselves, and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the document's express written language. UPA1 denies the remaining allegations in their entirety.

24. Answering Paragraph 28, states Paragraph 28 contains a legal conclusion to which no response is required. To the extent a response is required, UPA1 states it is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained therein and therefore denies the same. UPA1 further states the statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express statutory language. UPA1 denies the remaining allegations in their entirety.

1 25. Answering Paragraph 29, UPA1 admits the UPA1 and Korte participated in an
2 Early Neutral Evaluation (“ENE”) process. UPA1 further admits that UPA1 and Korte were
3 unable to resolve the dispute. UPA1 denies the remaining allegations in their entirety.

4 26. Answering Paragraph 30, states Paragraph 30 contains a legal conclusion to which
5 no response is required. To the extent a response is required, UPA1 states it is without knowledge
6 or information sufficient to form a belief as to the truth or veracity of the allegations contained
7 therein and therefore denies the same. UPA1 states the statutes referenced therein speak for
8 themselves and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with
9 the express statutory language. UPA1 denies the remaining allegations in their entirety.

10 27. Answering Paragraph 31, UPA1 states it is without knowledge or information
11 sufficient to form a belief as to the truth or veracity of the allegations contained therein and
12 therefore denies the same. UPA1 states the documents referenced therein speak for themselves
13 and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with the express
14 language. UPA1 denies the remaining allegations in their entirety.

15 28. Answering Paragraph 32, UPA1 states the documents referenced therein speak for
16 themselves and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with
17 the express language. UPA1 denies the remaining allegations in their entirety.

18 29. Answering Paragraph 33, UPA1 states the documents referenced therein speak for
19 themselves and UPA1 denies Korte’s interpretation of the same to the extent it is inconsistent with
20 the express statutory language. UPA1 denies the remaining allegations in their entirety.

21 30. Answering Paragraph 34, UPA1 states it is without knowledge or information
22 sufficient to form a belief as to the truth or veracity of the allegations contained therein and
23 therefore denies the same. UPA1 further states Paragraph 34 contains a legal conclusion to which
24 no response is required. To the extent an answer is required, UPA1 states the documents and
25 statutes referenced therein speak for themselves and UPA1 denies Korte’s interpretation of the
26 same to the extent it is inconsistent with the express language. UPA1 denies the remaining
27 allegations in their entirety.

28 31. Answering Paragraph 35, UPA1 states it is without knowledge or information

1 sufficient to form a belief as to the truth or veracity of the allegations contained therein and
2 therefore denies the same. UPA1 further states Paragraph 35 contains a legal conclusion to which
3 no response is required. To the extent an answer is required, UPA1 states the documents and
4 statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the
5 same to the extent it is inconsistent with the express language. UPA1 denies the remaining
6 allegations in their entirety.

7 32. Answering Paragraph 36, UPA1 states it is without knowledge or information
8 sufficient to form a belief as to the truth or veracity of the allegations contained therein and
9 therefore denies the same. UPA1 further states Paragraph 36 contains a legal conclusion to which
10 no response is required. To the extent an answer is required, UPA1 states the documents and
11 statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the
12 same to the extent it is inconsistent with the express language. UPA1 denies the remaining
13 allegations in their entirety.

14 33. Answering Paragraph 37, UPA1 states it is without knowledge or information
15 sufficient to form a belief as to the truth or veracity of the allegations contained therein and
16 therefore denies the same. UPA1 further states Paragraph 37 contains a legal conclusion to which
17 no response is required. To the extent an answer is required, UPA1 states the documents and
18 statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the
19 same to the extent it is inconsistent with the express language. UPA1 denies the remaining
20 allegations in their entirety.

21 34. Answering Paragraph 38, UPA1 admits the allegations in their entirety.

22 **FIRST CAUSE OF ACTION**

23 **Claim for Relief Under NRS 108.2403(3)(B) Against Defendant UPA1 and Does 1 Through**
24 **50, Inclusive**

25 35. Answering Paragraph 39, UPA1 repeats and realleges each and every answer
26 contained in every previous paragraph and incorporates the same as though fully set forth herein.

27 36. Answering Paragraphs 40, 41, 42, 43, 44, and 45 UPA1 states Paragraphs 40, 43,
28 44, and 45 contain legal conclusions to which no response is required. To the extent an answer is
required, UPA1 states the documents and statutes referenced therein speak for themselves and

UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express language. UPA1 denies any remaining allegations in Paragraphs 40, 41, 42, 43, 44, and 45 in their entirety.

SECOND CAUSE OF ACTION
Claim for Relief Under NRS 324.610(6) Against Defendant UPA1 and Does 1 Through 50, Inclusive

37. Answering Paragraph 46, UPA1 repeats and realleges each and every answer contained in every previous paragraph and incorporates the same as though fully set forth herein.

38. Answering Paragraphs 47, 48, 49, 50, 51, and 52 UPA1 states Paragraph 47, 48, and 52 contain legal conclusions to which no response is required. To the extent an answer is required UPA1 states the documents and statutes referenced therein speak for themselves and UPA1 denies Korte's interpretation of the same to the extent it is inconsistent with the express language. UPA1 denies any remaining allegations in Paragraphs 47, 48, 49, 50, 51, and 52 in their entirety.

THIRD CAUSE OF ACTION
Claim for Relief for Breach of Contract Against Defendant UPA1 and Does 1 Through 50, Inclusive

39. Answering Paragraph 53, UPA1 repeats and realleges each and every answer contained in every previous paragraph and incorporates the same as though fully set forth herein.

40. Answering Paragraphs 54, 55, and 56 UPA1 denies these allegations in their entirety.

FOURTH CAUSE OF ACTION
For Unjust Enrichment Against UPA1, UNLV and DOES 1 through 60, Inclusive

41. Answering Paragraph 57, UPA1 repeats and realleges each and every answer contained in every previous paragraph and incorporates the same as though fully set forth herein.

42. Answering Paragraphs 58, 59, and 60 UPA1 denies the same in their entirety.

FIFTH CAUSE OF ACTION
For Foreclosure of Mechanics Lien Upon Surety Bond Against UPA1, Hartford and DOES 1 through 50 Inclusive, and 61 through 70, Inclusive

43. Answering Paragraph 61, UPA1 repeats and realleges each and every answer

1 contained in every previous paragraph and incorporates the same as though fully set forth herein.

2 44. Answering Paragraphs 62, 63, 64, and 65, UPA1 denies these allegations in their
3 entirety.

4 45. Answering Paragraphs 66 and 67, UPA1 admits these allegations in their entirety.

5 46. Answering Paragraphs 68, 69, and 70, UPA1 states that Paragraphs 68, 69, and 70
6 state legal conclusions to which no response is required. To the extent an answer is required UPA1
7 states the documents and statutes referenced therein speak for themselves and UPA1 denies
8 Korte's interpretation of the same to the extent it is inconsistent with the express language.

9 **SIXTH CAUSE OF ACTION**

10 **Against Defendant BRIDGEWAY ADVISORS And DOES 91 Through 100,
Inclusive For Intentional Interference With Contract**

11 47. Answering Paragraph 71, UPA1 repeats and realleges each and every answer
12 contained in every previous paragraph and incorporates the same as though fully set forth herein.

13 48. Answering Paragraphs 72, 73, 74, 75, and 76, UPA1 states these allegations are not
14 pled against UPA1 and therefore no answer is required.

15 **SEVENTH CAUSE OF ACTION**

16 **Against Wells Fargo and DOES 71-90, Inclusive, For Claim Of Lien Upon Construction
Disbursement Account**

17 49. Answering Paragraph 77, UPA1 repeats and realleges each and every answer
18 contained in every previous paragraph and incorporates the same as though fully set forth herein.

19 50. Answering Paragraphs 78, 79, 80, 81, 82, and 83 UPA1 states these allegations are
20 not pled against UPA1 and therefore no answer is required.

21 **EIGHTH CAUSE OF ACTION**

22 **Against All Defendants For Declaratory Relief**

23 51. Answering Paragraph 84, UPA1 repeats and realleges each and every answer
24 contained in every previous paragraph and incorporates the same as though fully set forth herein.

25 52. Answering Paragraphs 85 and 86, UPA1 denies the same in their entirety.

26 **AFFIRMATIVE DEFENSES**

27 As and for separate affirmative defenses to Korte's Complaint, UPA1 asserts the following:

28 1. Korte has failed to state a claim against UPA1 upon which relief can be granted.

1 2. UPA1 is entitled to a setoff.

2 3. UPA1 is entitled to damages suffered due to project delays in Korte providing
3 improper materials required per the Parties' Agreement. UPA1 has and/or may suffer damages
4 assessed by UNLV as a direct result of Korte's failure to perform.

5 4. Any obligation or duty, contractual or otherwise, that Korte claims to be owed by
6 UPA1, if any, has been fully performed, satisfied, discharged, and/or excused.

7 5. Korte's claims are barred, in whole or in part, by an accord and satisfaction.

8 6. Korte's prior material breaches excuse any subsequent alleged breach on the part
9 of UPA1.

10 7. If UPA1 failed to perform any contractual obligation owed to Korte, which UPA1
11 expressly denies, there existed a valid excuse for such nonperformance.

12 8. UPA1 is informed, believes, and thereon alleges that if any contract, guarantee,
13 obligation, or amendments, as alleged in Korte's Complaint on file herein, has been entered into,
14 any duty of performance of UPA1 is excused due to a breach of condition precedent by Korte.

15 9. UPA1 is informed, believes, and thereon alleges that if any contract, guarantee,
16 obligation, or amendments, as alleged in Korte's Complaint on file herein, has been entered into,
17 any duty of performance of UPA1 is excused due to a breach of condition subsequent by Korte.

18 10. Insofar as any alleged breach of contract is concerned, Korte failed to give UPA1
19 timely notice thereof.

20 11. Korte's claims are barred in whole or in part because UPA1 did not breach any
21 duties owed to Korte, if any.

22 12. Korte did not confer any benefit upon UPA1.

23 13. UPA1 has not retained any benefit which in equity and good conscience belongs
24 to Korte.

25 14. To the extent that Korte has received any benefits from Korte, UPA1 has not been
26 unjustly enriched.

27 15. Korte's claims are barred by the doctrines of laches, waiver, and/or estoppel.

28 16. Korte's claims are barred by Korte's unclean hands.

1 17. Korte has failed to mitigate any damages and losses claimed to have been suffered,
2 if any, by Korte.

3 18. Korte's claims are barred because Korte has not sustained any damage, injury, or
4 loss as a result of UPA1's actions.

5 19. UPA1 acted at all times in good faith and in accordance with their contractual
6 and/or legal rights.

7 20. Korte failed to comply with the requirements of NRS Chapter 624 and related
8 statutory authority, and therefore its claims, or a portion thereof, are barred.

9 21. There is no basis for recovery of costs or attorneys' fees by Korte from UPA1.

10 22. UPA1 has been required to retain the services of Holland & Hart LLP to defend
11 against these claims and is entitled to an award of its reasonable attorneys' fees and costs.

12 23. At the time of the filing of UPA1's Answer, all possible affirmative defenses may
13 not have alleged inasmuch as insufficient facts and other relevant information may not have been
14 available after reasonable inquiry, and therefore, UPA1 reserves the right to amend this Answer to
15 allege affirmative defenses if subsequent investigations warrants the same.

16 WHEREFORE, UPA1 prays for Judgment on Korte's Complaint as follows:

17 1. Korte take nothing by virtue of the Complaint on file herein, and that the same be
18 dismissed with prejudice;

19 2. For an award of reasonable attorneys' fees and costs of suit incurred in this action;
20 and

21 3. For such other and further relief as the Court may deem just and proper.

22
23 **UPA 1, LLC's FIRST AMENDED CROSSCLAIM AND AMENDED COUNTER CLAIM**

24 Crossclaimant, UPA 1, LLC ("UPA1"), by and through its counsel of record, Holland &
25 Hart LLP, for its First Amended Crossclaim against Travelers Casualty & Surety Company of
26 America ("Travelers") and Counterclaim against Korte Construction Company dba the Korte
27 Company ("Korte") hereby alleges and complains as follows:

28 **PARTIES**

GENERAL ALLEGATIONS

5. UPA1 and Korte entered into an agreement entitled Cost Plus Agreement Between Owner And Contractor With A Guaranteed Maximum Price (“Korte Contract”) on or around February 5, 2016.

1 of the Korte Contract.

2 9. On or around May 2017, UPA1 informed Korte that Pay Application Nos. 13, 14,
3 and 15 were being withheld due to open Notices of Non-Compliance ("NNC") and, amongst other
4 issues, Korte's failure to include a written narrative with Pay Application No. 14 pursuant to Korte
5 Contract paragraph 3.2.1 requiring Korte to describe "the basis for any item set forth in the
6 Application for Payment that does not conform to instructions of [UPA1] in connection with any
7 applicable Pencil Draw."

8 10. On or around May 2017, UPA1 again notified Korte regarding multiple
9 outstanding issues with the project.

10 11. On or around June 2017, UPA1 notified Korte that it was in default of the Korte
11 Contract. Korte identified the reasons for default were the sheer number of outstanding NNC's,
12 issues with quality assurance and quality control pursuant to Korte Contract Article 8 and
13 paragraphs 1.3.1 and 1.3.10, and schedule issues.

14 12. On or around June 2017, UPA1 informed Korte that Pay applications 13, 14, 15,
15 16, and 17, were non-compliant and/or the change applications were previously rejected.
16 Therefore, payment would not be made.

17 13. On or around June 2017, Korte stopped work on the Project.

18 14. On or around July 2017, UPA1 requested additional information from Korte
19 regarding Pay application No. 17.

20 15. On or around July 2017, UPA1 reminded Korte that on multiple occasions, Korte
21 had been informed that Korte's Requests for Change Orders Nos. 65, 104, 105, 110, 113, 116, &
22 119 ("Change Orders") did not contain sufficient information to allow UPA1 to make an informed
23 decision regarding entitlement and/or quantum of time or cost requested. Korte additionally did
24 not provide additional backup documentation to support the Change Orders as provided in the
25 Korte Contract paragraphs 4.1.3 and 4.1.7.

26 16. On or around June 2017, UPA1 informed Travelers that UPA1 was considering
27 declaring a Contractor Default against Korte regarding this Project.

28 17. On or around August 2017, UPA1 issued a NNC regarding Korte's Requests for

1 Change Orders Nos. 120 and 127. UPA1 identified, amongst other issues, poor workmanship and
2 inexcusable delay for the issuance of the NNC on these matters.

3 18. On or around September 2017, UPA1 issued a notice of withholding regarding Pay
4 Application No. 19 based on noncompliance, amongst other issues.

5 19. In the fall of 2017, Korte walked off the project.

6 20. On or around September 2017, UPA1 informed Travelers that Korte had
7 terminated the Korte Contract and abandoned the Project and that UPA1 was considering declaring
8 Korte default.

9 21. On or around October 2017, Travelers, Korte, and UPA1 participated in a
10 telephonic conference regarding the Performance Bond.

11 22. For three months, Travelers took no action regarding Korte's default.

12 23. On or around January 2018, UPA1 informed Travelers UPA1 was forced to seek
13 out a completing builder to mitigate its damages caused by Korte.

14 24. On or around January 2018, Travelers acknowledged receipt of UPA1's January
15 2018 Letter, further described in paragraph 20, herein.

16 25. Travelers and UPA1 exchanged additional correspondences without reaching a
17 resolution.

18 26. Travelers failure to take action in accordance with the Performance Bond has also
19 damaged UPA1.

20 27. UPA1 was required to retain another general contractor to finish the Project and
21 has suffered damages due to Korte's refusal to perform in accordance with its Agreement.

22 28. Based on Korte's failure to perform, multiple subcontractors recorded mechanic's
23 liens against the Project and damaged UPA1.

24 **FIRST CLAIM FOR RELIEF**
25 **(Breach of Surety Bond Against Travelers)**

26 29. UPA1 repeats and realleges each and every allegation contained in the preceding
27 paragraphs of this Counterclaim, incorporating them by reference, and further alleges as follows:

28 30. Travelers issued a Performance Bond relevant to this Project.

1 31. The Performance Bond was in force during all times relevant to this action.

2 32. Travelers has failed and refused to pay UPA1 all amounts owed pursuant to the

3 Performance Bond.

4 33. Traveler's failure to fulfill the Performance Bond constitutes a material breach.

5 34. UPA1 has fully performed its obligations to Travelers under the Performance Bond

6 and/or its further performance is excused based on Traveler's prior breach.

7 35. UPA1 has suffered damages, including but not limited to compensatory,

8 consequential, special, delay, and impact damages, as a result of Traveler's breaches in an amount

9 in excess of \$15,000.00.

10 36. UPA1 has been forced to retain the services of Holland & Hart LLP to address the

11 conduct complained of herein and is therefore entitled to all its attorneys' fees and costs associated

12 with bringing this action.

SECOND CLAIM FOR RELIEF
(Claim Against Performance Bond Plead in the Alternative Pursuant to NRCP 8)

37. UPA1 repeats and realleges each and every allegation contained in the preceding paragraphs of this Counterclaim, incorporating them by reference, and further alleges as follows:

17 | 38. The Performance Bond was in force during all times relevant to this action.

39. Travelers is charged with being aware of the status of Korte's performance throughout the Project.

40. UPA1 has provided sufficient written notice to Korte regarding its failure to perform.

41. UPA1 has provided written notice and reasonable time to investigate to Travelers regarding this Project.

42. Travelers has failed to pay the Performance Bond in full before the expiration of 90 days after the date on which Korte performed labor on the project.

43. UPA1 has suffered damages, including but not limited to compensatory, consequential, special, delay, and impact damages, as a result of Traveler's breaches in an amount in excess of \$15,000.00.

THIRD CLAIM FOR RELIEF
(Breach of Contract Against Korte)

44. UPA1 repeats and realleges each and every allegation contained in the preceding paragraphs of this Counterclaim, incorporating them by reference, and further alleges as follows:

45. The Korte Contract was a valid and binding contract entered into by Korte and UPA1.

46. Korte has failed and refused to perform its obligations required by the Korte Contract.

47. Korte's failure to perform the obligations in the Korte Contract constitutes a material breach.

48. Korte's inappropriate termination of the Korte Contract constitutes a material breach.

49. Korte's inappropriate exercise of NRS 624 and NRS 108.2403 as a basis for its actions and inactions in violation of the Korte Contract constitutes a material breach.

50. UPA1 has fully performed its obligations to Korte under the Korte Contract and/or its further performance is excused based on Korte's prior breach.

51. UPA1 has suffered damages, including but not limited to compensatory, consequential, special, delay, and impact damages, as a result of Korte's breaches in an amount in excess of \$15,000.00.

52. UPA1 has been forced to retain the services of Holland & Hart LLP to address the conduct complained of herein and is therefore entitled to all its attorneys' fees and costs associated with bringing this action.

FOURTH CLAIM FOR RELIEF
(Breach of The Covenant of Good Faith and Fair Dealing Against Korte)

53. UPA1 repeats and realleges each and every allegation contained in the preceding paragraphs of this Counterclaim, incorporating them by reference, and further alleges as follows:

54. In all contracts in Nevada, including the Korte Contract here, there is an implied covenant of good faith and fair dealing.

55. Korte's above-referenced and other failures to timely perform mitigation and bond

1 payment pursuant to the Performance Bond constitute breaches of the implied covenant of good
2 faith and fair dealing.

3 56. Specifically, Korte acted in bad faith when it elected to stop work on the Project
4 without just cause and failed to notify UPA1 of Korte's subjective expectations concerning its
5 requirement that a bond be posted in accordance with NRS 108.

6 57. UPA1 has suffered damages, including but not limited to compensatory,
7 consequential, special, delay, and impact damages, as a result of Korte's breaches in an amount
8 in excess of \$15,000.00.

9 58. UPA1 has been forced to retain the services of Holland & Hart LLP to address the
10 conduct complained of herein and is therefore entitled to all its attorneys' fees and costs associated
11 with bringing this action.

12 **FIFTH CLAIM FOR RELIEF**
13 **(Inappropriate Exercise of NRS Chapter 624 Against Korte)**

14 59. UPA1 repeats and realleges each and every allegation contained in the preceding
15 paragraphs of this Counterclaim, incorporating them by reference, and further alleges as follows:

16 60. As early as May 2017, UPA1 informed Korte that multiple Pay Applications were
17 non-compliant with contractual or statutory requirements.

18 61. UPA1 additionally informed Korte of multiple violations and schedule issues
19 caused by Korte and in violation of the Korte Contract.

20 62. UPA1 further informed Korte change orders did not contain sufficient information
21 to allow UPA1 to make an informed decision concerning the approval of such change orders.

22 63. Korte failed to act in accordance with the requirements of the Korte Contract and
23 NRS Chapter 624, and as a result is prohibited from seeking the protections otherwise allowed by
24 NRS Chapter 624.

25 64. Korte failed to appropriately respond to notices of non-compliance.

26 65. Korte failed to appropriately submit payment applications and change order
27 requests, as provided in the Korte Contract.

28 66. On or around September 2017, Korte completely ceased work on the Project.

67. To the degree Korte's actions were based upon NRS 624, Korte's actions were an inappropriate exercise of Korte's rights or remedies otherwise sanctioned by NRS Chapter 624.

68. By the reasons of the foregoing, UPA1 is entitled to the rights and remedies and the damages provided by NRS Chapter 624 and the Korte Contract.

69. UPA1 has suffered damages, including but not limited to compensatory, consequential, special, delay, and impact damages, as a result of Korte's inappropriate exercise of NRS Chapter 624 in an amount in excess of \$15,000.00.

70. UPA1 has been forced to retain the services of Holland & Hart LLP to address the conduct complained of herein and is therefore entitled to all its attorneys' fees and costs associated with bringing this action.

SEVENTH CLAIM FOR RELIEF
(Declaratory Relief Regarding Korte's NRS 624 NRS 108 Rights)

71. UPA1 repeats and realleges each and every allegation contained in the preceding paragraphs of this Counterclaim, incorporating them by reference, and further alleges as follows:

72. A dispute has arisen between UPA1 and Korte as to whether Korte has appropriately exercised rights under NRS 624 and NRS 108.

73. A dispute has further arisen as to the Parties' respective rights to remedies under NRS 624 and NRS 108.

74. These disputes are actual disputes and are capable of judicial resolution, but after numerous attempts, cannot be resolved by the Parties without intervention of this Court.

75. UPA1 seeks a declaratory judgment in this matter in its favor and against Korte as alleged and prayed for herein.

PRAYER FOR RELIEF

WHEREFORE, UPA1 prays for judgment against Counterdefendants and Crossdefendants, and each of them, jointly and severally, pursuant to this Counterclaim and Crossclaim as follows:

1. That Korte take nothing from the claims in the Korte Complaint;
2. For an award of damages, including but not limited to compensatory,

1 consequential, special, delay, and impact damages, in an amount in excess of \$15,000.00;

2 3. For declaratory judgment commensurate with this prayer for relief;

3 4. For an award of reasonable attorneys' fees and costs of suit;

4 5. For an award of interest in an amount allowed by law; and

5 6. For such other and further relief as the Court may deem just and proper.

6 DATED this 30th day of October 2018.

7
8 HOLLAND & HART LLP

9   NV Bar # 14781

10 J. Stephen Peek, Esq. (1758)

11 Gregory S. Gilbert, Esq. (6310)

12 Rachel L. Wise, Esq. (12303)

13 9555 Hillwood Drive, 2nd Floor

14 Las Vegas, NV 89134

15 *Attorneys for Plaintiff UPA 1, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October 2018, a true and correct copy of the foregoing **UPA 1, LLC'S ANSWER TO THE KORTE COMPANY'S SECOND AMENDED COMPLAINT, AMENDED COUNTERCLAIM AGAINST THE KORTE COMPANY, AND FIRST AMENDED CROSS CLAIM AGAINST TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA** was served by the following method(s):



Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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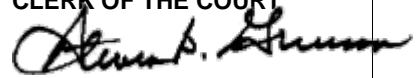
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*Attorneys for Wells Fargo Bank Northwest,
N.A., as Trustee of the UNLV Student Housing
Phase I Pass Through Trust Under the Pass-
Through Trust Agreement and Declaration of
Trust*



An Employee of Holland & Hart LLP

EXHIBIT “8”



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*Attorneys for State of Nevada ex rel. the
Board of Regents of the Nevada System
of Higher Education, on behalf of the
University of Nevada, Las Vegas*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

UPA 1, LLC, a Delaware limited liability
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri
corporation,

Defendant.

CASE NO. A-17-763262-B, A-18-767674-C,
A-18-768969-B (consolidated)

DEPT. XVI

AND ALL RELATED CLAIMS.

**NOTICE OF ENTRY OF ORDER GRANTING STATE OF NEVADA ON RELATION
OF THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER
EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS'
MOTION FOR SUMMARY JUDGMENT AND UPA1, LLC'S JOINDER THERETO,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

PLEASE TAKE NOTICE that an Order Granting State of Nevada on Relation of the Board
of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las
Vegas' Motion for Summary Judgment and UPA1, LLC's Joinder Thereto, Findings of Fact, and

1 Conclusions of Law was entered by the Clerk of the Court on February 6, 2020, a copy of which
2 is attached hereto.

3 DATED this 6th day of February, 2020.

4 DICKINSON WRIGHT PLLC

6 /s/ Cynthia L. Alexander

7 Cynthia L. Alexander, Esq.

8 Nevada Bar No. 6718

9 Taylor A. Anello, Esq.

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13 *Attorneys for State of Nevada on Relation*
14 *of the Board of Regents of the Nevada*
15 *System of Higher Education, on behalf of*
16 *the University of Nevada, Las Vegas*

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 6th day of February, 2020, he caused a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING STATE OF NEVADA ON RELATION OF THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS' MOTION FOR SUMMARY JUDGMENT AND UPA1, LLC'S JOINDER THERETO, FINDINGS OF FACT, AND CONCLUSIONS OF LAW** to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

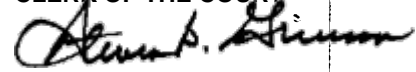
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14 *Board of Regents of the Nevada System*
15 *of Higher Education, on behalf of the*
16 *University of Nevada, Las Vegas*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 UPA 1, LLC, a Delaware limited liability
14 company,

15 Plaintiff,

16 vs.

17 THE KORTE COMPANY, a Missouri
18 corporation,

19 Defendant.

20 KORTE CONSTRUCTION COMPANY dba
21 THE KORTE COMPANY, a Missouri
22 corporation,

23 Plaintiff,

24 vs.

25 UPA 1 LLC, a Delaware limited liability
26 company, BRIDGEWAY ADVISORS, a
27 California corporation; STATE OF NEVADA
28 ON RELATION OF THE BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION, ON BEHALF OF
THE UNIVERSITY OF NEVADA, LAS
VEGAS, a Constitutional entity of the State of
Nevada; WELLS FARGO BANK

CASE NO. A-17-763262-B, A-18-767674-C,
A-18-768969-B (consolidated)

DEPT. XVI

ORDER GRANTING STATE OF
NEVADA ON RELATION OF THE
BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION, ON
BEHALF OF THE UNIVERSITY OF
NEVADA, LAS VEGAS' MOTION FOR
SUMMARY JUDGMENT AND UP1,
LLC'S JOINDER THERETO, FINDINGS
OF FACT, AND CONCLUSIONS OF LAW

DICKINSON WRIGHT PLLC

8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210

NORTHWEST, N.A., AS TRUSTEE OF THE UNLV STUDENT HOUSING PHASE I PASS THROUGH TRUST UNDER THE PASS-THROUGH TRUST AGREEMENT AND DECLARATION OF TRUST, a federal bank institution, and DOES 1 through 100, inclusive,

Defendants,

HELIX ELECTRIC OF NEVADA, LLC dba HELIX ELECTRIC, a Nevada limited liability company,

Plaintiff,

vs.

KORTE CONSTRUCTION COMPANY dba THE KORTE COMPANY, a Missouri corporation, UNIVERSITY PARK, LLC, a Delaware limited liability company, UNIVERSITY BOARD OF REGENTS; UPA I, LLC, a Delaware limited liability company, TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA, a surety; DOES I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X; TOE TENANTS I through X, inclusive,

Defendants.

ORDER GRANTING STATE OF NEVADA ON RELATION OF THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS' MOTION FOR SUMMARY JUDGMENT AND UPA1, LLC'S JOINDER THERETO, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Defendant, the State of Nevada *ex rel.* the Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas' ("UNLV") Motion for Summary Judgment and Defendant UPA1, LLC's ("UPA") Limited Joinder thereto came before this Court on October 16, 2019. Having reviewed the matter, as well as all pleadings, points and authorities, and exhibits submitted by counsel, this Court hereby grants UNLV's Motion for Summary Judgment and UPA's Joinder and makes the following findings of fact and conclusions of law:

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I. FINDINGS OF FACT

1. UNLV and UPA entered into a Project Development Agreement dated May 15, 2015 ("PDA").

2. The PDA contemplated UNLV purchasing the real property at Maryland Parkway and Cottage Grove (the "Property") and leasing it to UPA under a long-term lease pursuant to which, UPA, and possibly other third party developers, would "fund, construct, maintain, and operate student housing and certain commercial establishments" on that real property as part of University Park (the "Project").

3. UNLV purchased the Property, and its ownership interest was recorded with the Clark county Recorder's Office on May 29, 2015.

4. UNLV and UPA also entered into a written Lease Agreement for University Park Phase One (the "Lease") on May 15, 2015, which was recorded against the Property on February 2, 2016.

5. In order to complete its obligations under the Lease, UPA entered into a written contract with Korte titled, "Cost Plus Agreement Between Owner and Contractor with a Guaranteed Maximum Price" (the "Construction Contract") dated February 5, 2016, whereby UPA hired Korte to act as the general contractor to construct the Project.

6. The Construction Contract was entered into after UNLV had recorded its ownership interest in the Project and UPA had recorded its leasehold interest related to the Project.

7. Subsequently, a dispute between UPA and Korte arose regarding the work performed under the Construction Contract, which resulted in Korte recording a mechanics' lien against the entire Property on October 9, 2017 in the amount of \$20,366,490.22 (the "Mechanics' Lien").

8. On October 18, 2017, UPA filed a Motion Requesting Court Order to Show Cause Pursuant to NRS 108.2275, seeking a declaration from this court that the underlying Mechanics' Lien recorded by Korte is excessive, frivolous, and made without reasonable cause and praying for release of the same (the "Expungement Action").

9. On January 24, 2018, Korte filed a Complaint seeking foreclosure of the

1 Mechanics' Lien (the "Foreclosure Action"). The Expungement Action and Foreclosure Action
2 have subsequently been consolidated into the case at bar.

3 10. Also on January 24, 2018, Korte recorded a first amended mechanics' lien against
4 the Project on in the amount of \$8,499,308.66.

5 11. Korte recorded a second amended mechanics lien against the Project on May 22,
6 2018 in the amount of \$3,632,395.21.

7 12. On May 29, 2018, UPA, as principal, and Hartford Fire Insurance Company
8 ("Hartford"), as surety, executed a surety bond in the amount of Five Million Four Hundred and
9 Forty-Eight Thousand Five Hundred Ninety-Two Dollars and Eighty-Two Cents (\$5,448,592.82)
10 for the benefit of Korte (the "Bond").

11 13. On October 9, 2018, Korte filed its Second Amended Complaint (the "SAC") that
12 set forth a single cause of action against UNLV for unjust enrichment. The SAC set forth other
13 causes of action against UPA, Hartford, Wells Fargo Bank Northwest, N.A., as Trustee of the
14 UNLV Student Housing Phase I (Las Vegas, NV) Pass Through Trust Under the Pass-Through
15 Trust Agreement and Declaration of Trust ("Wells Fargo"), and Bridgeway Advisors.

16 14. Paragraph 68 of the SAC states "[p]ursuant to NRS 108.2415(6)(a), the surety bond
17 releases the property described in the surety bond from the lien and the surety bond is deemed to
18 replace the property as security for the lien."

19 15. On December 11, 2018, Korte recorded its Third Amended Notice of Lien against
20 the Project, reducing the amount of its mechanics' lien to \$2,899,988.72 (the "Amended Lien").

21 II. CONCLUSIONS OF LAW

22 1. "The phrase 'unjust enrichment' is used in law to characterize the result or effect
23 of a failure to make restitution of, or for, property or benefits received under such circumstances as
24 to give rise to a legal or equitable obligation to account therefor." 66 Am.Jur.2d Restitution § 3
25 (1973).

26 2. Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the
27 defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such
28 benefit under circumstances such that it would be inequitable for him to retain the benefit without

1 payment of the value thereof.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381,
2 283 P.3d 250, 257 (2012) (citing *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d
3 1272, 1273 (1981) (internal quotations omitted) (quoting *Dass v. Epplen*, 162 Colo. 60, 424 P.2d
4 779, 780 (1967))).

5 3. It is generally accepted that “unjust enrichment is not available when there is an
6 express, written contract. . . .” *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12,*
7 *1975*, 113 Nev. 747, 942 P.2d 182, 187 (1997) (citing 66 Am.Jur.2d Restitution § 6 (1973) (stating
8 that, generally, an action based on a theory of unjust enrichment is not available when there is an
9 express, written contract, because no agreement can be implied when there is an express
10 agreement)); *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184,
11 1197 (D. Nev. 2006), aff’d, 583 F.3d 1232 (9th Cir. 2009) (holding that claim for unjust enrichment
12 was barred because there was an express, written contract); *Wilson v. Stratosphere Corp.*, 371 F.
13 App’x 810, 811–12 (9th Cir. 2010).

14 4. Instead, “[t]he doctrine of unjust enrichment or recovery in quasi contract applies
15 to situations where there is no legal contract but where the person sought to be charged is in
16 possession of money or property which in good conscience and justice he should not retain but
17 should deliver to another [or should pay for].” 66 Am.Jur.2d Restitution § 11 (1973); see *Lipshie v.*
18 *Tracy Investment Co.*, 93 Nev. 370, 379, 566 P.2d 819, 824 (1977) (“To permit recovery by quasi-
19 contract where a written agreement exists would constitute a subversion of contractual principles.”).

20 5. The Construction Contract is an express, written contract exists between Korte and
21 UPA, which is the subject of this dispute.

22 6. The work and services for which Korte is alleging it is entitled to payment are
23 subject to the Construction Contract.

24 7. Korte’s claim for unjust enrichment is barred given that the contract at issue is
25 between Korte and UPA.

26 8. Korte’s claim of unjust enrichment is barred given that the Bond posted by UPA
27 exceeds the amount claimed by Korte for its services.

28 9. The Bond provides Korte an adequate remedy at law.

10. The Court directs entry of final judgment as to UNLV, as judgment in its favor on Korte's unjust enrichment claim leaves no other claims against or made by UNLV in this action.

11. The Court finds there is no just reason for delay in entering this Order.

ORDER


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that UNLV's Motion for Summary Judgment and UPA's Joinder are GRANTED.

DATED this 31 day of January, 2020.


DISTRICT COURT JUDGE

RESPECTFULLY SUBMITTED BY:

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