

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellant,

vs.

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,

Respondent.

**NO. 80736**

**District Court**

**Case No. A-17-763262-B**

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**VOLUME 1 OF 6**

**JA0001-JA0121**

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## **CHRONOLOGICAL INDEX**

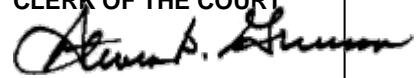
<u><b>Document Description</b></u>	<u><b>Date</b></u>	<u><b>Volume/Page Number</b></u>
The Korte Company's Complaint	January 11, 2018	1JA0001-24
The Korte Company's Amended Complaint	January 24, 2018	1JA0025-53
Electronically Issued Summons	February 1, 2018	1JA0054-57
The Korte Company's Second Amended Complaint <i>Containing Unjust Enrichment Claim Against UNLV</i>	October 9, 2018	1JA0058-82
UNLV Answer to Second Amended Complaint	October 29, 2018	1JA0083-103
UNLV Motion for Summary Judgment	August 1, 2019	1JA0104-121
Declaration of David Frommer in Support of UNLV Motion <i>Including Exhibits 1-4 attached thereto</i>	August 1, 2019	2JA0122-172 3JA0173-299 Ex. 1: 2JA0126-172 Ex. 2: 3JA0173-271 Ex. 3: 3JA0272-276 Ex 4: 3JA0277-299
UNLV Request for Judicial Notice <i>Including Exhibits 1-4 attached thereto</i>	August 1, 2019	3JA0300-323 Ex. 1: 3JA0305-312 Ex. 2: 3JA0313-315 Ex. 3: 3JA0316-320 Ex. 4: 3JA0321-323

UNLV Request for Hearing re Motion	August 2, 2019	3JA0324-345
UPA 1, LLC's Limited Joinder to UNLV Motion	August 6, 2019	3JA0346-383
The Korte Company's Opposition to UNLV Motion	August 19, 2019	4JA0384-399
Affidavit of Greg Korte in Support of Opposition	August 19, 2019	4JA0400-404
Affidavit of Todd Korte in Support of Opposition	August 19, 2019	4JA0405-409
Declaration of Sarah M. Thomas, Esq. in Support of Opposition <i>Including Exhibit A attached thereto</i>	August 19, 2019	4JA0410-413 5JA0414-433 Ex. A: 5JA414-433
UNLV Reply in Support of UNLV Motion	October 9, 2019	6JA0434-446
Transcript of Proceedings <i>Hearing on UNLV Motion for Summary Judgment</i>	October 16, 2019	6JA0447-494
Order Granting UNLV Motion	February 6, 2020	6JA0495-504
Notice of Entry of Order Granting UNLV Motion	February 6, 2020	6JA0505-517
Notice of Appeal	March 2, 2020	6JA0518-521

## **ALPHABETICAL INDEX**

<u><b>Document Description</b></u>	<u><b>Date</b></u>	<u><b>Volume/Page Number</b></u>
Affidavit of Greg Korte in Support of Opposition	August 19, 2019	4JA0400-404
Affidavit of Todd Korte in Support of Opposition	August 19, 2019	4JA0405-409
Declaration of David Frommer in Support of UNLV Motion <i>Including Exhibits 1-4 attached thereto</i>	August 1, 2019	2JA0122-172 3JA0173-299 Ex. 1: 2JA0126-172 Ex. 2: 3JA0173-271 Ex. 3: 3JA0272-276 Ex 4: 3JA0277-299
Declaration of Sarah M. Thomas, Esq. in Support of Opposition <i>Including Exhibit A attached thereto</i>	August 19, 2019	4JA0410-413 5JA0414-433 Ex. A: 5JA414-433
Electronically Issued Summons	February 1, 2018	1JA0054-57
Notice of Appeal	March 2, 2020	6JA0518-521
Notice of Entry of Order Granting UNLV Motion	February 6, 2020	6JA0505-517
Order Granting UNLV Motion	February 6, 2020	6JA0495-504
The Korte Company's Amended Complaint	January 24, 2018	1JA0025-53
The Korte Company's Complaint	January 11, 2018	1JA0001-24
The Korte Company's Opposition to UNLV Motion	August 19, 2019	4JA0384-399

The Korte Company's Second Amended Complaint <i>Containing Unjust Enrichment Claim Against UNLV</i>	October 9, 2018	1JA0058-82
Transcript of Proceedings <i>Hearing on UNLV Motion for Summary Judgment</i>	October 16, 2019	6JA0447-494
UNLV Answer to Second Amended Complaint	October 29, 2018	1JA0083-103
UNLV Motion for Summary Judgment	August 1, 2019	1JA0104-121
UNLV Reply in Support of UNLV Motion	October 9, 2019	6JA0434-446
UNLV Request for Hearing re Motion	August 2, 2019	3JA0324-345
UNLV Request for Judicial Notice <i>Including Exhibits 1 – 4 attached thereto</i>	August 1, 2019	3JA0300-323 Ex. 1: 3JA0305- 312 Ex. 2: 3JA0313- 315 Ex. 3: 3JA0316- 320 Ex. 4: 3JA0321- 323
UPA 1, LLC's Limited Joinder to UNLV Motion	August 6, 2019	3JA0346-383

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THE KORTE COMPANY

**EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY NEVADA**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.

Case No.: A-18-767674-C

Dept: Department 12

**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 MECHANICS LIEN;**
- 6) TORTIOUS INTERFERENCE WITH BUSINESS CONTRACT, AND**
- 7) DECLARATORY RELIEF**

**Arbitration Exemption:****Affects Title To Real Property  
Declaratory Relief**

1 NOW COMES Plaintiff KORTE CONSTRUCTION COMPANY dba THE KORTE  
2 COMPANY, and complains of Defendants as follows:

3 **GENERAL ALLEGATIONS**

4  
5 1. Plaintiff, KORTE CONSTRUCTION COMPANY, dba The KORTE Company  
6 (“KORTE”), is a corporation organized under the laws of the state of Missouri, authorized to  
7 conduct business in the state of Nevada, and is operating and performing such business within  
8 the jurisdiction of this honorable Court as a general building contractor. KORTE is licensed by  
9 the Nevada State Contractors Board, holding a Class AB Unlimited license, NSC License #  
10 57075.

11  
12 2. Defendant UPA1 LLC (“UPA1”) is a limited liability company, organized and  
13 operating under the laws of the state of Nevada and within the territorial jurisdiction of this  
14 honorable Court. UPA1 is assignee of that certain long-term ground lease described herein, and  
15 is the owner and developer of the Project, as defined herein.

16  
17 3. KORTE is informed and believes and based thereon alleges that Defendant  
18 BRIDGEWAY ADVISORS LLC is a limited liability company, formed and organized under the  
19 laws of the State of California, and is subject to the jurisdiction of this Court, as it has taken  
20 advantage of business opportunities and actively performed actions and tasks within the State of  
21 Nevada and jurisdiction of this Court as further alleged hereinafter that caused the damages  
22 claimed herein. KORTE is informed and believes and based thereon alleges that BRIDGEWAY  
23 ADVISORS LLC does not hold a Nevada contractor’s license and is not otherwise authorized to  
24 conduct business in the State of Nevada.

25  
26 4. KORTE is informed and believes and based thereon alleges that Defendant THE  
27 BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION ON  
28

1 BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS (“UNLV”), is a constitutional  
2 entity of the State of Nevada, and is the Owner of the land on which the Project is constructed.  
3 KORTE is informed and believes and based thereon alleges that UNLV entered into a lease with  
4 Defendant UPA1’s predecessor in interest, University Park LLC, for the land on which the  
5 Project was constructed. KORTE is further informed and believes that University Park LLC  
6 assigned that lease to Defendant UPA1 for purposes of constructing the Project as alleged  
7 hereafter. By virtue of said lease, KORTE alleges that UNLV is a proper defendant in this  
8 proceeding and KORTE is authorized to proceed against them by application of NRS  
9 108.22148(1)(f) and (g).  
10  
11

12 5. KORTE is informed and believes and based thereon alleges that Defendant  
13 WELLS FARGO BANK NORTHWEST, N.A., AS TRUSTEE OF THE UNLV STUDENT  
14 HOUSING PHASE I (LAS VEGAS, NV) PASS THROUGH TRUST UNDER THE PASS-  
15 THROUGH TRUST AGREEMENT AND DECLARATION OF TRUST (“WELLS FARGO”),  
16 is a federally recognized banking institution, authorized and conducting business in the State of  
17 Nevada and subject to the jurisdiction of this court. WELLS FARGO is also the entity that  
18 controls and manages the construction financing for the construction project described herein.  
19

20 6. 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.  
27  
28



**GENERAL FACTUAL ALLEGATIONS**

7. Effective February 5, 2016, KORTE, as “Contractor”, and UPA1, as “Owner”, entered into a contract (“Contract”) captioned “Cost Plus Agreement Between Owner and Contractor with a Guaranteed Maximum Price.” The Contract identifies the construction project as the University Park Student Housing Project (“Project”) located on the northwest corner of South Maryland Parkway and Cottage Grove Avenue, in Las Vegas, Clark County, Nevada, and has been assigned the Assessor’s Parcel Numbers of 162-22-510-001 through 009 (“Project Site”).

8. UNLV is the owner in fee of the real property forming the site for the Project (“Project Site”). Prior to February 5, 2016, the Board of Regents leased the Project site to University Park LLC. Thereafter and also prior to February 5, 2016, University Park LLC assigned its interest as lessee in the leasehold interest covering the Project Site to UPA1.

9. Generally stated, the Contract provides that UPA1 shall pay KORTE the Actual Cost of the Work Performed, as defined in the Contract plus the Contractor’s Fee of 4% of that Cost, subject to a Guaranteed Maximum Price for the original scope of Work under the Contract of \$45,441,464.00.

10. Article 3 of the General Conditions forming a part of the Contract is titled “Contract Price and Payment Applications.” Under section GC3.2.1, KORTE agreed to submit to UPA1 monthly progress payment applications covering the costs of the labor, materials, equipment, supervision and other work performed that month plus KORTE’s general conditions costs for that month plus KORTE’s Fee less retention of five percent of the amount otherwise sought, and under that same section, UPA1 agreed to make monthly progress payments to KORTE.

1           11.     The Contract contains no schedule for payments.

2           12.     The Contract provides that a progress payment shall be made within 23 days of  
3 UPA1's receipt of KORTE's pay application.

4           13.     Because the Contract contains no schedule for payments, however, Nevada  
5 Revised Statutes ("NRS") 624.609(1)(b) governs, stating that payment is due within 21 days of  
6 the prime contractor's submission of the pay application.

7           14.     The first twelve (12) monthly progress pay applications covered work furnished  
8 by KORTE and its subcontractors and suppliers for the months from February 2016 through  
9 January 2017, inclusive. UPA1 paid the amounts due under those pay applications in full.

10           15.     UPA1's designated Defendant BRIDGEWAY ADVISORS LLC ("BA") as the  
11 Owner's Representative for the Project. In early 2017, Mr. Brian Winley of BA replaced Mr.  
12 Ron Horvall of BA as the Owner's Representative lead contact person. BA is affiliated with the  
13 California law firm of "Rodarti and Associates", owned in whole or in part by Josef Rodarti,  
14 Esq., who is a member of the State Bar of California, but is *not admitted* to the State Bar of  
15 Nevada. The Rodati firm also employs an attorney, Keith Davis, who (like Mr. Rodarti) is not  
16 admitted to the State Bar of Nevada. BA does not hold a contractor's license issued by the  
17 Nevada State Contractors Board. BA originally was to act as a mere representative of UPA1,  
18 and, as such, is not allowed to directly manage the work of KORTE or any other contractor  
19 unless it holds a valid Nevada contractor license, as specified in NRS 624.020(4) and NRS  
20 624.700(1).

21           16.     After commencement of construction, BA exceeded its role as owner's  
22 representative and began attempting to manage the construction without a license to do so by,  
23 among other things, directing Korte in the performance of the Contract work, improperly  
24

1 interpreting the plans and specifications, influencing State Public Works Building Inspectors,  
2 and actively interfering with KORTE'S construction work on the Project. These activities are a  
3 violation of NRS 624.700(1). To compound these issues, BA affiliate the Rodarti firm began  
4 advising UPA1 despite employing no attorney admitted to the State Bar of Nevada.  
5

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

18 18. In response to pay applications number 13 through 16 covering the months of  
19 February, March, April and May of 2017, UPA1 withheld paying KORTE various amounts  
20 requested under those four pay applications, including amounts otherwise payable to KORTE's  
21 subcontractors as well as the amounts payable to KORTE for its general conditions costs and  
22 Fee.  
23

24 19. In addition, none of the amounts KORTE requested in the above-referenced four  
25 pay applications were paid within 21 days of UPA1's receipt of the pay application.

26 20. On April 19, 2017, KORTE submitted a notice to UPA1 stating that UPA1 had  
27 failed to make payment of the amount due under pay application number 13 submitted to UPA1  
28

1 on March 14, 2017, and that UPA1 had provided no written notice explaining why payment was  
2 being withheld. The KORTE notice thereafter stated that KORTE intended to stop work as  
3 permitted under NRS 624.610(1), forming a part of the Nevada Prompt Payment Act (“PPA”).  
4

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

15 22. On June 5, 2017, KORTE submitted a notice to UPA1 stating that UPA1’s notice  
16 of withholding delivered to KORTE on May 30, 2017 was two days late following KORTE’s  
17 submission of pay application number 15 covering the work during April 2017 which was  
18 submitted to UPA1 on May 7, 2017. Once again, the KORTE notice stated that KORTE may  
19 exercise its right to stop work under NRS 624.610.  
20

21 23. On June 30, 2017, KORTE submitted a notice to UPA1 stating that UPA1’s  
22 refusal to process pay application number 16 covering the work in May 2017 was unacceptable  
23 and unlawful under NRS 624.622(2) by setting forth eight conditions not recognized as valid  
24 reasons for withholding under Nevada law. After setting forth detailed reasons why UPA1’s  
25 stated conditions were improper, KORTE stated that the failure to process, fund and make  
26  
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1 payment of the amounts due under pay application number 16 would result in an immediate  
2 work stoppage by the end of the day.

3 24. Also on June 30, 2017, KORTE submitted a notice to UPA1 stating that it had  
4 come to KORTE's attention that UPA1 was leasing the Project site and that UPA1 had not  
5 posted security under NRS 108.2403 in the form of either a bond or a construction disbursement  
6 agreement administered by a construction control as set forth in NRS 108.2403. KORTE added  
7 that it had not been provided with any notice of posted security and requested a copy plus proof  
8 of the posted security itself. The notice further states that KORTE intended to stop the work at  
9 the end of the day unless proof of the posted security was provided by that time.  
10

11 25. During a subsequent exchange of emails on June 30, 2017 between counsel for  
12 KORTE and Joseph Rodarti for UPA1, respectively, UPA1 was informed that if KORTE  
13 received the notice of posted security before the end of the day, KORTE would not stop of the  
14 work for that reason.  
15

16 26. UPA1 thereafter responded on June 30, 2017 by providing to KORTE a document  
17 entitled "Notice of Posted Security" prepared by Joseph Rodarti's law office. The notice states  
18 in part that UPA1 "established a Construction Disbursement Account pursuant to subsection 1 of  
19 NRS 108.2403," and identifies WELLS FARGO as the construction control. WELLS FARGO is  
20 the Trustee of the Project's lender's consortium and was merely the entity that controlled and  
21 managed the construction fund for the Lender under its loan agreement with UPA1.  
22

23 27. Because of the PPA violations, KORTE stopped the work at the Project at the end  
24 of the work day on June 30, 2017. On July 3, 2017, KORTE's counsel sent a letter to Wells  
25 Fargo requesting information supporting the position taken by UPA1 that the construction  
26 escrow account for the Project satisfied the requirements of a construction disbursement account  
27  
28

1 administered by a construction control pursuant to NRS 108.2403 and other related statutes.  
2 Wells Fargo never responded to the letter from KORTE's counsel.

3 28. Thereafter, the Parties participated in an "Early Neutral Evaluation" process  
4 ("ENE") as required by the Contract dispute resolution provisions, in an attempt to resolve the  
5 disputes. At the end of two full days of ENE, the Parties were unable to resolve the disputes but  
6 agreed to continue to work through the process. In a sign of good faith, KORTE resumed the  
7 work on the Project while further negotiations took place.

8 29. Thereafter, KORTE and UPA1 continued to negotiate a resolution, however, as  
9 KORTE continued to work on the Project, UPA1 continued to refuse to abide by the  
10 requirements of the Nevada Prompt Payment Act, and continued to withhold funds from KORTE  
11 and its subcontractors. Further, instead of receiving a response from WELLS FARGO regarding  
12 the veracity of UPA1's Notice of Posted Security, Joseph Rodarti's office provided a "Certificate  
13 re Posted Security" allegedly signed by a representative of "Wells Fargo [*sic*] Bank, N.A.," which  
14 asserted that "subject to" the terms of the construction escrow account, KORTE could consider  
15 the construction escrow account as "posted security" for purposes of NRS 108.2403.

16 30. After KORTE informed UPA1 in August 2017 that the construction escrow  
17 account did not appear to comply with the requirements for posted security, UPA1 furnished to  
18 KORTE on August 22, 2017 a copy of the Construction Escrow Agreement.

19 31. The Construction Escrow Agreement states that the parties to the Agreement are  
20 WELLS FARGO, UPA1, and the lending Trust without identifying the member or members of  
21 the Trust. WELLS FARGO is designated as the "Trustee" and "Construction Escrow Agent;"  
22 collectively WELLS FARGO and the Trust are designated as the "Beneficiary;" and UPA1 is  
23 designated as the "Company." The Agreement identifies the "Construction Monitor" as  
24  
25  
26  
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Midland Loan Services, a division of PNC Bank, National Association. The Agreement recites the loan amount from the Beneficiary to the Company is \$67,642,000. The Development Cost Detail reflects that the portion of the loan amount to be applied toward construction costs is \$46,208,887, including contingencies.

32. The Construction Escrow Agreement reads in part as follows:

Section 8.1. Construction Escrow Agent Holding Project Escrow Funds as Agent for Beneficiary. Beneficiary directs Construction Escrow Agent to hold all Project Escrow Funds in the Project Account from time to time as collateral agent for the Beneficiary, and Construction Escrow Agent agrees 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.

\*\*\*

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

\*\*\*

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

\*\*\*

Section 9.2. Entire Agreement; Modifications. This Agreement, together with the Exhibits and Schedules attached hereto, contains and embodies the 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; \*\*\*

.....

33. KORTE then received a copy of the construction loan escrow agreement, and after reviewing its terms, found that nothing in the agreement comported with the rights of lien claimants and obligations of owners and the “construction control” under NRS 108.2403, 108.2407 and other applicable statutes. Therefore, KORTE informed UPA1 that the “Notice of Posted Security” did not comport with the requirements of Nevada law, and that KORTE intended to stop work again under the provisions of NRS 108.2403(3). Further, as UPA1 had continued to wrongfully withhold payment from KORTE without compliance with the Nevada



1 Prompt Payment Act, KORTE also informed UPA1 that it would stop work under the provisions  
2 of NRS 624.610(2). UPA1 failed to make payment. KORTE then provided UPA1 additional  
3 notice that it intended to terminate the Contract as it is allowed under NRS 624.610(4). UPA1  
4 still did not make payment or post valid security for the work. As such, on October 9, 2017, 15  
5 days after providing notice of intent to terminate, and 25 days after providing notice and stopping  
6 work under NRS 108.2403, KORTE terminated the Contract for violation of Nevada law.

8 34. Pursuant to NRS 108.222 and 108.239, on October 9, 2017, KORTE caused to be  
9 recorded with the Clark County Recorder's Office, its Notice and Claim of Mechanics' Lien  
10 against the Project. Said Notice was recorded as Instrument No. 20171009-0001520, in the  
11 unpaid balance of the Contract in the amount of \$20,366,490.22 (a true and correct copy of the  
12 recorded lien is attached hereto as Exhibit "1"). Pursuant to the provisions of NRS 108.227,  
13 KORTE caused a copy of the recorded Notice to be served on Defendants UPA1, UNLV and  
14 WELLS FARGO, as well as University Park LLC, within 30 days of its recording.

#### 16 **FIRST CAUSE OF ACTION**

#### 17 **Claim for Relief Under NRS 108.2403(3)(b) against Defendant UPA1 and Does 1 through** 18 **50, inclusive**

19 35. KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
20 34, inclusive, of this Complaint as if fully stated herein.

21 36. On September 12, 2017, KORTE notified UPA1 through UPA1's counsel that  
22 after review of the Construction Escrow Agreement, KORTE had determined that the agreement  
23 did not satisfy the requirements for a construction disbursement account under NRS 108.2403.

24 The notice states, among other things, that:

- 25 (a) the loan proceeds are held by Wells Fargo solely for the benefit of the  
26 Beneficiary, which includes Wells Fargo, and not for the benefit of any  
27  
28

1 potential mechanic's lien claimant as NRS 108.2407 contemplates and  
2 requires;

3 (b) under the terms of the Construction Escrow Agreement, the general contractor  
4 and subcontractors are not among the intended beneficiaries, again contrary to  
5 a construction disbursement account of the type required by the above-  
6 referenced statute;

7 (c) Wells Fargo, as Trustee for the lending Trust, is part of the lending group, and  
8 under NRS 627.175(1)(d) Wells Fargo cannot serve as the construction  
9 control;

10 (d) Wells Fargo's duties as limited per the terms of section 8.2 of the Agreement,  
11 which is contrary to the duties of a construction control under NRS Chapter  
12 627 and NRS 108.2407;

13 (e) the notice of posted security violated NRS 108.2403 by failing to identify the  
14 name and address of the claimed construction control;

15 (f) KORTE intended to stop work immediately pursuant to NRS 108.2403(3); and

16 (g) UPA1 had 25 calendar days from the commencement of the actual work  
17 stoppage to provide the required posted security, and failure to do so will result  
18 in termination of the Contract pursuant to NRS 108.2403(3)(b).

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

20 38. The twenty-fifth day of the work stoppage by KORTE occurred on October 7,  
21 2017.

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

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

4           41.     KORTE seeks to recover the damages it is entitled to pursuant to NRS  
5 108.2403(3)(b).  
6

7                               **SECOND CAUSE OF ACTION**  
8           **Claim for Relief Under NRS 624.610(6) against Defendant UPA1 and Does 1 through 50,**  
9                               **inclusive**

10           42.     KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
11 34, inclusive, of this Complaint as if fully stated herein.

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

25           44.     On September 12, 2017, KORTE submitted a notice of work stoppage to UPA1.  
26 The notice referred to a prior KORTE letter explaining why UPA1 had not complied with the  
27 posted security requirement of Nevada law, and continued by pointing out that UPA1 was also  
28

1 still in violation of the PPA by, among other things, continuing to withhold amounts due to  
2 KORTE. After stating the work stoppage effective September 12, 2017 was initially due to the  
3 failure to satisfy the posted security statutes, KORTE added that the work stoppage was also  
4 supported by KORTE's prior notifications of PPA violations that have not been cured.  
5

6 45. On September 25, 2017, KORTE submitted to UPA1 a notice of intent to  
7 terminate the Contract in 15 days if UPA1 did not pay KORTE the withheld amount of  
8 \$918,486.79.

9 46. Notwithstanding several notices to UPA1 of the improper withholding of the  
10 \$918,486.79, UPA1 has failed or refused to pay all or any portion of that amount.  
11

12 47. On October 10, 2017, KORTE submitted to UPA1 a notice stating that in addition  
13 to the termination of the Contract for UPA1's failure to comply with the posted security  
14 requirement of NRS 108.2403, the Contract was also terminated for non-compliance with the  
15 PPA.

16 48. KORTE seeks to recover damages authorized under NRS 624.610(6).  
17

18 **THIRD CAUSE OF ACTION**  
19 **Claim for Relief for Breach of Contract against Defendant UPA1 and Does 1 through 50,**  
20 **inclusive**

21 49. KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
22 48, inclusive, of this Complaint as if fully stated herein.

23 50. In addition to the actions alleged herein by reference, UPA1 further breached the  
24 Contract by, among other things:

- 25 a. Failing to provide adequate and constructible designs and specifications,
- 26 b. Failing to timely, adequately and properly respond to requests for  
27 information and clarification of design;  
28

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

13 51. As a result of UPA1's numerous breaches of the Contract, KORTE has been

14 damaged in an amount to be proven at trial but in excess of \$15,000.00.

15 52. KORTE has been required to retain the undersigned firm of attorneys to protect

16 its rights and has and will continue to incur attorneys' fees and costs during this litigation.

17

18 **FOURTH CAUSE OF ACTION**

19 **For Unjust Enrichment against All Defendants**

20 53. KORTE hereby incorporates by reference the allegations of paragraphs 1 through

21 48, inclusive, of this Complaint as if fully stated herein.

22 54. Defendants, and each of them, have received a benefit from the work of KORTE

23 and its subcontractors. KORTE has made demand upon said Defendants for payment for the

24 work performed, but to date, said Defendants have refused to pay and/or compensate KORTE for

25 such work and benefits conferred on them.

26

27 55. Defendants' failure to compensate KORTE has left them unjustly enriched by

28 KORTE's work.

1           56.     KORTE is entitled to judgment against Defendants in an amount to be proven at  
2 trial, but in excess of \$15,000, plus interest, attorneys' fees and costs as additional and  
3 foreseeable damages from their actions.  
4

5                               **FIFTH CAUSE OF ACTION**  
6                               **For Foreclosure of Mechanics Lien against All Defendants**

7           57.     KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
8 48, inclusive, of this Complaint as if fully stated herein.

9           58.     By virtue of its direct contract with the Project's owner, and the actual knowledge  
10 that KORTE was performing construction work on the Project, KORTE has complied with or  
11 been excused from complying with the obligations to serve Defendants with a Notice of Right to  
12 Lien under NRS 108.245.  
13

14           59.     The Project is a private commercial work of improvement, intended to be  
15 operated for profit by Defendants UPA1 and DOES 1 through 50, inclusive. As such, Defendant  
16 UNLV and DOES 51 through 60, inclusive, are defined as "Owners" along with Defendants  
17 UPA1 and DOES 1 through 50, inclusive, pursuant to the provisions of NRS 108.22418.  
18 Therefore, their interest in the Project and the Project Site are subject to and do not have priority  
19 over the lien of KORTE.  
20

21           60.     Defendants WELLS FARGO and DOES 61 through 90, inclusive, claim an  
22 interest against the Project and the Project Site upon the leasehold interest of Defendants UPA1  
23 and DOES 1 through 50, inclusive, only, and do not have an interest superior to Defendant  
24 UNLV and DOES 51 through 60, inclusive. KORTE has an interest superior to that of  
25 Defendants UNLV and DOES 51 through 60, inclusive, under the provisions of Nevada law. As  
26 UNLV and DOES 51 through 60, inclusive interest in the Project and Project Site, the interest of  
27  
28

1 WELLS FARGO and DOES 61 through 90, inclusive, are also subject to KORTE's Notice of  
2 Lien for priority purposes.

3 61. KORTE's Notice of Lien is a valid lien upon the Project.

4 62. Thirty (30) days have lapsed since KORTE recorded the Notice of Lien.

5 Moreover, KORTE has timely filed this Complaint for foreclosure and recorded a notice of lis  
6 pendens against the Project concurrently with the filing of this Complaint.

7 63. KORTE is entitled to a judgment foreclosing its Notice of Lien in an amount to be  
8 proven at trial but in excess of \$15,000.00, plus interest, attorneys' fees and costs of recording  
9 the Notice of Lien and the foreclosure thereof, and that the Project and Project Site be ordered  
10 sold to pay the judgement owed to KORTE, free and clear of the interest of all Defendants.

11 KORTE further asks that it be entitled to make a credit bid at the foreclosure sale so ordered of  
12 all or a part of its judgment amount. KORTE further demands that a deficiency judgment be  
13 entered against all Defendants in any amount remaining unpaid thereon after the sale of the  
14 Project and Project Site.

#### 15 **SIXTH CAUSE OF ACTION**

16 **Against Defendant BRIDGEWAY ADVISORS LLC and DOES 91 through 100, inclusive**  
17 **for Intentional Tortious Interference with Contract**

18 64. KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
19 48, inclusive, of this Complaint as if fully stated herein.

20 65. KORTE is informed and believes and based thereon alleges that Defendant BA  
21 and DOES 91 through 100, inclusive, had specific and actual knowledge of an existing contract  
22 between KORTE and Defendants UPA1 and DOES 1 through 50, inclusive, to construct the  
23 Project.  
24  
25  
26  
27  
28

1           66.     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           67.     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 "turn over the Project to [BA] or be  
13 terminated."

14  
15           68.     As a result of BA's tortious, malicious, bad faith and despicable actions and  
16 conduct, the relationship between UPA1 and KORTE was significantly damages and resulted  
17 ultimately in the termination of the Contract between UPA1 and KORTE.

18  
19           69.     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                   **SEVENTH CAUSE OF ACTION**  
25                   **Against All Defendants for Declaratory Relief**

26           70.     KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
27 69, inclusive, of this Complaint as if fully stated herein.



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

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

2. For the Notice of Lien of KORTE to be adjudicated a valid lien upon the Project and Project Site;

4. For an order directing the Project and the Project site be sold and the proceeds of such sale to be applied to the lien of KORTE and the judgment secured thereby, and also allowing KORTE to make a full or partial credit bid of the amount of its judgment at said sale;

8. For an award of attorneys' fees and costs actually incurred;

9. As to Defendants BA and DOES 91 through 100, inclusive, an award of punitive and exemplary damages;

10. For a declaratory judgment commensurate with this prayer for relief, and

11. For such other and further damages as the Court deems just and proper.

Dated: January 11, 2018

MEAD LAW GROUP



---

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 Plaintiff*  
*THE KORTE COMPANY*

# EXHIBIT “1”

APN# 162-22-510-001 thru 009

After Recording Return To:

Leon F. Mead II, Esq.

Mead Law Group

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

**NOTICE OF LIEN**

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

1. The amount of the original contract is: **\$ 45,441,464.00**
2. The total amount of all additional or changed work, materials and equipment, if any, is: **\$ 6,719,117.51**
3. The total amount of all payments received to date is: **\$ 31,794,091.29**
4. The amount of the lien, after deducting all just credits and offsets, is: **\$ 20,366,490.22**
5. The name of the owner, if known, of the property is:

**Board of Regents of the  
Nevada System of Higher Education  
Attn: Real Estate Office  
4505 S. Maryland Parkway  
Las Vegas, NV 89154-1027**

**University Park LLC  
UPA1 LLC  
Future Phases LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123**

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

**UPA1 LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123**

7. A brief statement of the terms of payment of the lien claimant's contract is: **Payment due 21 days after submission of invoice.**
8. A description of the property to be charged with the lien is:

Lots one (1) through thirty-eight (38), inclusive, and Lot "A", all in Block Two (2), and Lots one (1) through thirteen (12), inclusive, in Block Three (3) of University Park Apartments, as shown by map thereof on file in Book 8, of Plats, Page 27, in the Office of the County Recorder of Clark County, Nevada.

Together with that portion of land vacated by that certain order of vacation recorded June 29, 2009 in Book 20090629 as Document No. 0003322 and Re-Recorded July 1, 2019 in Book 20090701 as Document No. 0001032 and Re-recorded August 19, 2009 in Book 20090819 as Document No. 0002948 of official records, Clark County, Nevada, that would pass through by operation of law.

APN#s 162-22-510-001 thru 162-22-510-009, inclusive

The Korte Company

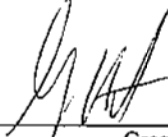
By: 

Greg O. Korte  
President, Las Vegas Division

**VERIFICATION OF LIEN**

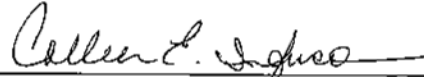
State of Nevada                    )  
  ) ss.  
County of Clark                 )

I, **Greg O. Korte**, being first duly sworn on oath according to law, deposes and says: I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

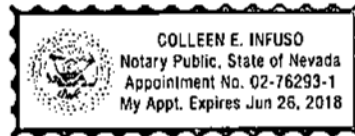


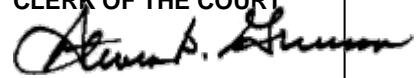
Greg O. Korte

Subscribed and sworn to before me this 9<sup>th</sup> day of the month of Oct. of the year 2017



Notary Public in and for the County and State



**ACOM**

Leon F. Mead II, Esq.

Nevada Bar No. 5719

email: [leon@meadlawgroup.com](mailto:leon@meadlawgroup.com)

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10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

Tel: 702.869-0192

Fax: 702.922.3831

*Attorneys for Plaintiff*

THE KORTE COMPANY

**EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY NEVADA**KORTE CONSTRUCTION COMPANY DBA  
THE KORTE COMPANY, a Missouri  
corporation,

Plaintiff,

vs.

UPA1, LLC, a Delaware limited liability  
company; BRIDGEWAY 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  
NORTHWEST, N.A., AS TRUSTEE OF THE  
UNLV STUDENT HOUSING PHASE I PASS  
THROUGH TRUST UNDER THE PASS-  
THROUGH TRUST AGREEMENT AND  
DECLARATION O TRUST, a federal bank  
institution, and DOES 1 through 100, inclusive,

Defendants

Case No.: A-18-767674-C

Dept: XII

**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;**
- 6. TORTIOUS INTERFERENCE WITH BUSINESS CONTRACT;**
- 7. CLAIM OF LIEN UPON CONSTRUCTION DISBURSEMENT ACCOUNT; AND**
- 8. DECLARATORY RELIEF**

**Arbitration Exemption:****Affects Title to Real property  
Declaratory Relief**

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

3 **GENERAL ALLEGATIONS**

4  
5 1. Plaintiff, KORTE CONSTRUCTION COMPANY, dba The KORTE Company  
6 (“KORTE”), is a corporation organized under the laws of the state of Missouri, authorized to  
7 conduct business in the state of Nevada, and is operating and performing such business within  
8 the jurisdiction of this honorable Court as a general building contractor. KORTE is licensed by  
9 the Nevada State Contractors Board, holding a Class AB Unlimited license, NSC License #  
10 57075.

11  
12 2. Defendant UPA1 LLC (“UPA1”) is a limited liability company, organized and  
13 operating under the laws of the state of Nevada and within the territorial jurisdiction of this  
14 honorable Court. UPA1 is assignee of that certain long-term ground lease described herein, and  
15 is the owner and developer of the Project, as defined herein.

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

25  
26 4. KORTE is informed and believes and based thereon alleges that Defendant  
27 STATE OF NEVADA ON RELATION OF THE BOARD OF REGENTS OF THE NEVADA  
28

1 SYSTEM OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF NEVADA,  
2 LAS VEGAS (“UNLV”), is a constitutional entity of the State of Nevada, and is the Owner of  
3 the land on which the Project is constructed. KORTE is informed and believes and based thereon  
4 alleges that UNLV entered into a lease with Defendant UPA1’s predecessor in interest,  
5 University Park LLC, for the land on which the Project was constructed. KORTE is further  
6 informed and believes that University Park LLC assigned that lease to Defendant UPA1 for  
7 purposes of constructing the Project as alleged hereafter. By virtue of said lease, KORTE alleges  
8 that UNLV is a proper defendant in this proceeding and KORTE is authorized to proceed against  
9 them by application of NRS 108.22148(1)(f) and (g).  
10  
11

12 5. KORTE is informed and believes and based thereon alleges that Defendant  
13 WELLS FARGO BANK NORTHWEST, N.A., AS TRUSTEE OF THE UNLV STUDENT  
14 HOUSING PHASE I (LAS VEGAS, NV) PASS THROUGH TRUST UNDER THE PASS-  
15 THROUGH TRUST AGREEMENT AND DECLARATION OF TRUST (“WELLS FARGO”),  
16 is a federally recognized banking institution, authorized and conducting business in the State of  
17 Nevada and subject to the jurisdiction of this court. WELLS FARGO is also the entity that  
18 controls and manages the construction financing for the construction project described herein and  
19 is listed as the holder of a purported construction disbursement account as stated in the Notice of  
20 Posted Security recorded on the Project property as instrument number 20170630-0002809.  
21

22 6. KORTE is informed and believes and based thereon alleges that there are other  
23 defendant individuals and/or business entities that are also liable to KORTE, jointly and / or  
24 severally, for the injuries and damages complained of herein, but whose identities are currently  
25 unknown to KORTE. Therefore, KORTE has named such individuals and business entities under  
26 the fictitious business names of DOES 1 through 100, inclusive, and complained thereof herein  
27  
28



1 under such fictitious business names. Upon discovery of their true names and identities, KORTE  
2 will supplement this pleading to reveal such true names.

3 **GENERAL FACTUAL ALLEGATIONS**

4  
5 7. Effective February 5, 2016, KORTE, as “Contractor”, and UPA1, as “Owner”,  
6 entered into a contract (“Contract”) captioned “Cost Plus Agreement Between Owner and  
7 Contractor with a Guaranteed Maximum Price.” The Contract identifies the construction project  
8 as the University Park Student Housing Project (“Project”) located on the northwest corner of  
9 South Maryland Parkway and Cottage Grove Avenue, in Las Vegas, Clark County, Nevada, and  
10 has been assigned the Assessor’s Parcel Numbers of 162-22-510-001 through 009 (“Project  
11 Site”).  
12

13 8. UNLV is the owner in fee of the real property forming the site for the Project  
14 (“Project Site”). Prior to February 5, 2016, the Board of Regents leased the Project site to  
15 University Park LLC. Thereafter and also prior to February 5, 2016, University Park LLC  
16 assigned its interest as lessee in the leasehold interest covering the Project Site to UPA1.  
17

18 9. Generally stated, the Contract provides that UPA1 shall pay KORTE the Actual  
19 Cost of the Work Performed, as defined in the Contract plus the Contractor’s Fee of 4% of that  
20 Cost, subject to a Guaranteed Maximum Price for the original scope of Work under the Contract  
21 of \$45,441,464.00. The Contract also authorized changes in and additions to the Work, and  
22 corresponding changes in the GMP and the time for completion.  
23

24 10. Article 3 of the General Conditions forming a part of the Contract is titled  
25 “Contract Price and Payment Applications.” Under section GC3.2.1, KORTE agreed to submit  
26 to UPA1 monthly progress payment applications covering the costs of the labor, materials,  
27 equipment, supervision and other work performed that month plus KORTE’s general conditions  
28

1 costs for that month plus KORTE's Fee less retention of five percent of the amount otherwise  
2 sought, and under that same section, UPA1 agreed to make monthly progress payments to  
3 KORTE.

4  
5 11. The Contract contains no schedule for payments.

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

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

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

15 15. UPA1's designated Defendant BRIDGEWAY ADVISORS ("BA") as the  
16 Owner's Representative for the Project. In early 2017, Mr. Brian Winley of BA replaced Mr.  
17 Ron Harvell of BA as the Owner's Representative lead contact person. BA is affiliated with the  
18 California law firm of "Rodarti and Associates", owned in whole or in part by Josef Rodarti,  
19 Esq., who is a member of the State Bar of California, but is *not admitted* to the State Bar of  
20 Nevada. The Rodati firm also employs an attorney, Keith Davis, who (like Mr. Rodarti) is not  
21 admitted to the State Bar of Nevada. BA does not hold a contractor's license issued by the  
22 Nevada State Contractors Board. BA originally was to act as a mere representative of UPA1,  
23 and, as such, is not allowed to directly manage the work of KORTE or any other contractor  
24 unless it holds a valid Nevada contractor license, as specified in NRS 624.020(4) and NRS  
25 624.700(1).  
26  
27  
28

1           16.     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           17.     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 UPA1's violation of the Nevada  
11 Prompt Payment Act (NRS 624.600 through 624.630, inclusive) regarding the withholding of  
12 payment for Korte's construction work and the failure to pay change orders made part of the  
13 Contract by operation of law. KORTE is informed and believes that these violations occurred in  
14 part due to UPA1's reliance upon the erroneous advice and counsel of BA and Rodarti,  
15 unlawfully provided to UPA1 due to the lack of their Nevada licensure, which furthered BA's  
16 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           18.     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.  
27  
28

1           19.     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           20.     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           21.     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           22.     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.  
25  
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1           23.     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 setting forth eight conditions not recognized as valid  
4 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           24.     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           25.     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           26.     UPA1 thereafter responded on June 30, 2017 by providing to KORTE a document  
22 entitled "Notice of Posted Security" prepared by Joseph Rodarti's law office. The notice states  
23 in part that UPA1 "established a Construction Disbursement Account pursuant to subsection 1 of  
24 NRS 108.2403," and identifies WELLS FARGO as the purported construction control. WELLS  
25  
26  
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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 27. 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 28. 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 29. 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, Joseph Rodarti's office provided a "Certificate  
23 re 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.  
26  
27  
28

1           30.     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           31.     The Construction Escrow Agreement states that the parties to the Agreement are  
5 WELLS FARGO, UPA1, and the lending Trust without identifying the member or members of  
6 the Trust. WELLS FARGO is designated as the “Trustee” and “Construction Escrow Agent;”  
7 collectively WELLS FARGO and the Trust are designated as the “Beneficiary;” and UPA1 is  
8 designated as the “Company.” The Agreement identifies the “Construction Monitor” as  
9 Midland Loan Services, a division of PNC Bank, National Association. The Agreement recites  
10 the loan amount from the Beneficiary to the Company is \$67,642,000. The Development Cost  
11 Detail reflects that the portion of the loan amount to be applied toward construction costs is  
12 \$46,208,887, including contingencies.

13           32.     The Construction Escrow Agreement reads in part as follows:  
14

15                   Section 8.1. Construction Escrow Agent Holding Project Escrow Funds as  
16 Agent for Beneficiary. Beneficiary directs Construction Escrow Agent to  
17 hold all Project Escrow Funds in the Project Account from time to time as  
18 collateral agent for the Beneficiary, and Construction Escrow Agent agrees  
19 to act as collateral agent for the Beneficiary alone with respect to the holding  
20 of Project Escrow Funds, provided, that Construction Escrow Agent shall  
21 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  
2 33. KORTE then received a copy of the construction loan escrow agreement, and  
3 after reviewing its terms, found that nothing in the agreement comported with the rights of lien  
4 claimants and the obligations of the owner and the “construction control” under NRS 108.2403,  
5 108.2407 and other applicable statutes. Therefore, KORTE informed UPA1 that the “Notice of  
6 Posted Security” did not comport with the requirements of Nevada law, and that KORTE was  
7 stopping work again under the provisions of NRS 108.2403(3). Further, as UPA1 had continued  
8 to wrongfully withhold payment from KORTE without compliance with the Nevada Prompt  
9 Payment Act, KORTE also informed UPA1 in late September 2017 that KORTE would stop  
10 work under the provisions of NRS 624.610(2). UPA1 failed to make payment. KORTE then  
11 provided UPA1 additional notice that it intended to terminate the Contract as it is allowed under  
12 NRS 624.610(4). UPA1 still did not make payment or post valid security for the work. As such,  
13 on October 9, 2017, 15 days after providing notice of intent to terminate, and 25 days after  
14 providing notice and stopping work under NRS 108.2403, KORTE terminated the Contract for  
15 violation of Nevada law.  
16  
17  
18

19 34. Pursuant to NRS 108.222 and 108.239, on October 9, 2017, KORTE caused to be  
20 recorded with the Clark County Recorder’s Office, its Notice and Claim of Mechanics’ Lien  
21 against the Project. Said Notice was recorded as Instrument No. 20171009-0001520, in the  
22 unpaid balance of the Contract in the amount of \$20,366,490.22 (a true and correct copy of the  
23 recorded lien is attached hereto as Exhibit “1”). Pursuant to the provisions of NRS 108.227,  
24 KORTE caused a copy of the recorded Notice to be served on Defendants UPA1, UNLV and  
25 WELLS FARGO, as well as University Park LLC, within 30 days of its recording.  
26  
27  
28

**Claim for Relief Under NRS 108.2403(3)(b) against Defendant UPA1 and Does 1 through 50, inclusive**

37. On September 12, 2017, KORTE notified UPA1 through UPA1's counsel that after review of the Construction Escrow Agreement, KORTE had determined that the agreement did not satisfy the requirements for a construction disbursement account under NRS 108.2403. The notice states, among other things, that:

- Mead Law Group**  
10161 Park Run Dr.  
Suite 150  
Las Vegas, NV 89145  
T. 702.869-0192  
F/. 702.922.3831

- 1 (c) Wells Fargo, as Trustee for the lending Trust, is part of the lending group, and  
2 under NRS 627.175(1)(d) Wells Fargo cannot serve as the construction  
3 control;  
4  
5 (d) Wells Fargo's duties as limited per the terms of section 8.2 of the Agreement,  
6 which is contrary to the duties of a construction control under NRS Chapter  
7 627 and NRS 108.2407;  
8  
9 (e) the notice of posted security violated NRS 108.2403 by failing to identify the  
10 name and address of the claimed construction control;  
11  
12 (f) KORTE intended to stop work immediately pursuant to NRS 108.2403(3); and  
13  
14 (g) UPA1 had 25 calendar days from the commencement of the actual work  
15 stoppage to provide the required posted security, and failure to do so will result  
16 in termination of the Contract pursuant to NRS 108.2403(3)(b).  
17  
18 38. KORTE stopped the work at the Project on September 12, 2017.  
19  
20 39. The twenty-fifth day of the work stoppage by KORTE occurred on October 7,  
21 2017.  
22  
23 40. UPA1 did not post security under NRS 2403(3)(a) at any time on or before  
24 October 9, 2017.  
25  
26 41. On October 9, 2017, KORTE submitted a notice to UPA1 that the Contract was  
27 terminated pursuant to NRS 108.2403(3)(b) for UPA1's failure to post security in compliance  
28 with Nevada law.  
42. KORTE seeks to recover the damages it is entitled to pursuant to NRS  
108.2403(3)(b).

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

43. KORTE hereby incorporates by reference the allegations of paragraphs 1 through 35, inclusive, of this Complaint as if fully stated herein.

44. On September 8, 2017, KORTE submitted a notice to UPA1 acknowledging notification from UPA1 that UPA1 was continuing to withhold payment of KORTE's general conditions costs and KORTE's Fee sought under pay application numbers 13 through 20, inclusive. KORTE added that such withholding was and continued to be improper and illegal because of, among other things, UPA's failure to provide a reasonably detailed explanation of the reasons for withholding and UPA's failure to recognize that withholding for any claimed corrective work was limited to the estimated cost over 50% of the withheld retention. KORTE also requested a reasonably detailed explanation of the items UPA1 considered outstanding or defective in support of UPA1's decision to continue to withhold payment, and absent same, demanded immediate payment of the amount withheld. The notice also expressly reserved all of KORTE's rights under the PPA.

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

1           46.     On September 25, 2017, KORTE submitted to UPA1 a notice of intent to  
2 terminate the Contract in 15 days if UPA1 did not pay KORTE the withheld amount of  
3 \$918,486.79.

4           47.     Notwithstanding several notices to UPA1 of the improper withholding of the  
5 \$918,486.79, UPA1 has failed or refused to pay all or any portion of that amount.  
6

7           48.     On October 10, 2017, KORTE submitted to UPA1 a notice stating that in addition  
8 to the termination of the Contract for UPA1's failure to comply with the posted security  
9 requirement of NRS 108.2403, the Contract was also terminated for non-compliance with the  
10 PPA.  
11

12           49.     KORTE seeks to recover damages authorized under NRS 624.610(6).  
13

14                               **THIRD CAUSE OF ACTION**  
15           **Claim for Relief for Breach of Contract against Defendant UPA1 and Does 1 through 50,**  
16                               **inclusive**

17           50.     KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
18 49, inclusive, of this Complaint as if fully stated herein.

19           51.     In addition to the actions alleged herein by reference, UPA1 further breached the  
20 Contract by, among other things:

- 21                   a.   Failing to provide adequate and constructible designs and specifications;
- 22                   b.   Failing to timely, adequately and properly respond to requests for  
23                       information and clarification of drawings;
- 24                   c.   Failing to timely and properly provide permits for the Work;
- 25                   d.   Allowing its representative (BA) to direct the work without a valid license,  
26                       and to deviate from the approved plans and specifications without  
27  
28

adequate design support or authorization from the Architect of Record,  
and otherwise interfering with KORTE's Work on the Project;

e. Failing to provide posted security for the Work of Improvement as  
required by NRS 108.2403; and

f. Refusing to respond to change order requests within 30 days as mandated  
by NRS 624.609(3) and refusing to acknowledge the change orders have  
become part of the Contract by operation of Nevada law.

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

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

**FOURTH CAUSE OF ACTION  
For Unjust Enrichment against All Defendants**

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

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

56. Defendants' failure to compensate KORTE has left them unjustly enriched by  
KORTE's work.

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

**FIFTH CAUSE OF ACTION**  
**For Foreclosure of Mechanics Lien Against All Defendants**

58. KORTE hereby incorporates by reference the allegations of paragraphs 1 through 49, inclusive, of this Complaint as if fully stated herein.

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

60. The Project is a private commercial work of improvement, intended to be operated for profit by Defendants UPA1 and DOES 1 through 50, inclusive. As such, Defendant UNLV and DOES 51 through 60, inclusive, are defined as "Owners" along with Defendants UPA1 and DOES 1 through 50, inclusive, pursuant to the provisions of NRS 108.22418. Therefore, their interest in the Project and the Project Site are subject to and do not have priority over the lien of KORTE.

61. Defendants WELLS FARGO and DOES 61 through 90, inclusive, claim an interest against the Project and the Project Site upon the leasehold interest of Defendants UPA1 and DOES 1 through 50, inclusive, only, and do not have an interest superior to Defendant UNLV and DOES 51 through 60, inclusive. KORTE has an interest superior to that of Defendants UNLV and DOES 51 through 60, inclusive, under the provisions of Nevada law. As UNLV and DOES 51 through 60, inclusive interest in the Project and Project Site, the interest of WELLS FARGO and DOES 61 through 90, inclusive, are also subject to KORTE's Amended Notice of Lien for priority purposes.

62. KORTE's Amended Notice of Lien is a valid lien upon the Project.

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

64. KORTE is entitled to a judgment foreclosing its Amended Notice of Lien in an amount to be proven at trial but in excess of \$15,000.00, plus interest, attorneys' fees and costs of recording the Notice of Lien and Amended Notice and the foreclosure thereof, and that the Project and Project Site be ordered sold to pay the judgment owed to KORTE, free and clear of the interest of all Defendants. KORTE further asks that it be entitled to make a credit bid at the foreclosure sale so ordered of all or a part of its judgment amount. KORTE further demands that a deficiency judgment be entered against all Defendants in any amount remaining unpaid thereon after the sale of the Project and Project Site.

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

65. KORTE hereby incorporates by reference the allegations of paragraphs 1 through 49, inclusive, of this Complaint as if fully stated herein.

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

67. KORTE is informed and believes and based thereon alleges that BA (by and through its principals), having been retained by Defendant UPA1 to act as an owner representative on the Project, conceived, with malice and premeditation, to specifically interfere with the relationship between KORTE and UPA1 with the specific intention to create facts and



1 evidence to support the wrongful termination of KORTE as general contractor, and to undertake  
2 to act as the general contractor in KORTE's place and stead, and to obtain the benefits in the  
3 form of compensation. In furtherance of such acts, BA undertook the specific acts complained of  
4 herein, as well as others.

5  
6 68. KORTE is informed and believes and based thereon alleges that Joseph Rodarti,  
7 principal of BA, admitted this scheme to Greg Korte of KORTE during a face to face meeting on  
8 the Project Site, by demanding that KORTE either "turn over the Project to [BA] or be  
9 terminated."

10  
11 69. As a result of BA's tortious, malicious, bad faith and despicable actions and  
12 conduct, the relationship between UPA1 and KORTE was significantly damaged and resulted  
13 ultimately in the termination of the Contract between UPA1 and KORTE.

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

18  
19 **SEVENTH CAUSE OF ACTION**  
20 **Against WELLS FARGO for Claim of Lien upon Construction Disbursement Account**

21 71. KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
22 35, inclusive, of this Complaint as if fully stated herein.

23 72. UPA1 recorded the Notice of Posted Security on the Project property, Instrument  
24 No. 20170630-0002809, which provides notice of UPA1's purported construction disbursement  
25 account pursuant to NRS 108.2403.

26  
27 73. The Notice lists WELLS FARGO as the construction control for the disbursement  
28 account. In its Certificate re Construction Control, executed by Joseph Pugsley of WELLS

1 FARGO, WELLS FARGO contends that the construction escrow account also serves as the  
2 construction disbursement account, and that WELLS FARGO, as the Lender to the Construction  
3 Escrow Agreement where UPA1 is the Borrower, serves as construction control.

4  
5 74. While it is KORTE's contention that this arrangement does not comport with the  
6 requirements of NRS 108.2403, KORTE nevertheless is entitled to make a claim of lien upon the  
7 construction disbursement account pursuant to NRS 108.2407(1) and the Notice of Posted Security.

8  
9 75. Pursuant to NRS 108.2407(4), KORTE's recorded Notice of Lien and Amended  
10 Notice constitute valid notification to the construction control of its claim of lien against the  
11 construction disbursement account.

12  
13 76. Thirty (30) days have lapsed since KORTE recorded the original Notice of Lien.  
14 Moreover, KORTE has timely filed this Amended Complaint for foreclosure, recorded a notice  
15 of lis pendens against the Project, and served all interested parties with a Notice of Foreclosure  
16 concurrently with the filing of this Amended Complaint.

17  
18 77. KORTE is entitled to a judgment foreclosing its lien against the construction  
19 disbursement account in an amount to be proven at trial but in excess of \$15,000.00, plus  
20 interest, attorneys' fees and costs of recording the Notice of Lien and Amended Notice, and the  
21 foreclosure thereof, and that the construction control disburse money from the construction  
22 disbursement account to pay the judgment owed to KORTE, free and clear of the interest of all  
23 Defendants.

24 **EIGHTH CAUSE OF ACTION**  
25 **Against All Defendants for Declaratory Relief**

26  
27 78. KORTE hereby incorporates by reference the allegations of paragraphs 1 through  
28 77, inclusive, of this Complaint as if fully stated herein.

## PRAAYER FOR RELIEF

8. For interest thereon at the maximum legal rate;

1 9. For an award of attorneys' fees and costs actually incurred;

2 10. As to Defendants BA and DOES 91 through 100, inclusive, an award of punitive  
3 and exemplary damages;

4 11. For a declaratory judgment commensurate with this prayer for relief, and

5 12. For such other and further damages as the Court deems just and proper.

6 Dated: January 24, 2018

MEAD LAW GROUP

8  
9  
10 Leon F. Mead II, Esq.  
Nevada Bar No. 5719  
11 Sarah A. Mead, Esq.  
Nevada Bar No. 13725  
12 10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
13 *Attorneys for Plaintiff*  
14 *THE KORTE COMPANY*  
15  
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# EXHIBIT “1”

Fees: \$40.00

10/09/2017 03:49:52 PM

Receipt #: 3217502

Requestor:

MEAD LAW GROUP

Recorded By: RYUD Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

APN# 162-22-510-001 thru 009

After Recording Return To:

Leon F. Mead II, Esq.

Mead Law Group

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

**NOTICE OF LIEN**

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

1. The amount of the original contract is: **\$ 45,441,464.00**
2. The total amount of all additional or changed work, materials and equipment, if any, is: **\$ 6,719,117.51**
3. The total amount of all payments received to date is: **\$ 31,794,091.29**
4. The amount of the lien, after deducting all just credits and offsets, is: **\$ 20,366,490.22**
5. The name of the owner, if known, of the property is:

**Board of Regents of the  
Nevada System of Higher Education  
Attn: Real Estate Office  
4505 S. Maryland Parkway  
Las Vegas, NV 89154-1027**

**University Park LLC  
UPA1 LLC  
Future Phases LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123**

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

**UPA1 LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123**

7. A brief statement of the terms of payment of the lien claimant's contract is: **Payment due 21 days after submission of invoice.**
8. A description of the property to be charged with the lien is:

Lots one (1) through thirty-eight (38), inclusive, and Lot "A", all in Block Two (2), and Lots one (1) through thirteen (12), inclusive, in Block Three (3) of University Park Apartments, as shown by map thereof on file in Book 8, of Plats, Page 27, in the Office of the County Recorder of Clark County, Nevada.

Together with that portion of land vacated by that certain order of vacation recorded June 29, 2009 in Book 20090629 as Document No. 0003322 and Re-Recorded July 1, 2019 in Book 20090701 as Document No. 0001032 and Re-recorded August 19, 2009 in Book 20090819 as Document No. 0002948 of official records, Clark County, Nevada, that would pass through by operation of law.

APN#s 162-22-510-001 thru 162-22-510-009, inclusive

The Korte Company

By: 

Greg O. Korte  
President, Las Vegas Division

**VERIFICATION OF LIEN**

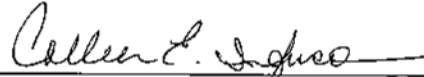
State of Nevada                    )  
  ) ss.  
County of Clark                    )

I, **Greg O. Korte**, being first duly sworn on oath according to law, deposes and says: I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

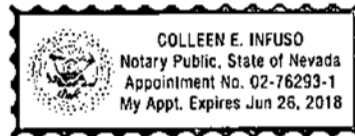


Greg O. Korte

Subscribed and sworn to before me this 9<sup>th</sup> day of the month of Oct. of the year 2017



Notary Public in and for the County and State



# EXHIBIT “2”



APN# 162-22-510-001 thru 009

After Recording Return To:

Leon F. Mead II, Esq.

Mead Law Group

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

---

**AMENDED NOTICE OF LIEN**

As authorized under NRS 108.229(1), the undersigned lien claimant, The Korte Company dba Korte Construction Co., hereby amends its Notice of Lien previously recorded on October 9, 2017 in the Office of the Clark County Recorders' Office as Instrument No. 20171009-0001520, and amends its claim of lien upon the property described in this notice for work, or equipment furnished or to be furnished for the improvement of the property as follows:

1. The amount of the original contract is: **\$ 45,441,464.00**
2. The total amount of all additional or changed work, materials and equipment, if any, is: **\$ 5,491,805.90**
3. The total amount of all payments received to date is: **\$ 30,274,041.36**
4. The amount of the lien, after deducting all just credits and offsets, is: **\$ 8,499,308.66**
5. The name of the owner, if known, of the property is:

**Board of Regents of the  
Nevada System of Higher Education  
Attn: Real Estate Office  
4505 S. Maryland Parkway  
Las Vegas, NV 89154-1027**

**University Park LLC  
UPA1 LLC  
Future Phases LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123**

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

**UPA1 LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123**

7. A brief statement of the terms of payment of the lien claimant's contract is: **Payment due 21 days after submission of invoice.**
8. A description of the property to be charged with the lien is:

Lots one (1) through thirty-eight (38), inclusive, and Lot "A", all in Block Two (2), and Lots one (1) through thirteen (12), inclusive, in Block Three (3) of University Park Apartments, as shown by map thereof on file in Book 8, of Plats, Page 27, in the Office of the County Recorder of Clark County, Nevada.

Together with that portion of land vacated by that certain order of vacation recorded June 29, 2009 in Book 20090629 as Document No. 0003322 and Re-Recorded July 1, 2019 in Book 20090701 as Document No. 0001032 and Re-recorded August 19, 2009 in Book 20090819 as Document No. 0002948 of official records, Clark County, Nevada, that would pass through by operation of law.

APN#s 162-22-510-001 thru 162-22-510-009, inclusive

The Korte Company dba Korte Construction Co.

By: \_\_\_\_\_

Greg O. Korte  
President, Las Vegas Division

### VERIFICATION OF LIEN

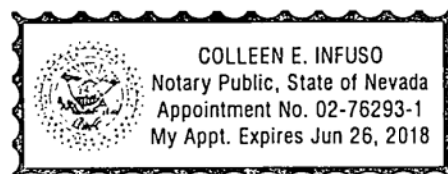
State of Nevada )  
 ) ss.  
County of Clark )

I, **Greg O. Korte**, being first duly sworn on oath according to law, deposes and says: I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

\_\_\_\_\_  
Greg O. Korte

Subscribed and sworn to before me this 24<sup>th</sup> day of the month of Jan. of the year 2018

Colleen E. Infuso  
Notary Public in and for the County and State



1 SUMM  
2 Leon F. Mead II, Esq.  
3 Nevada Bar No. 5719  
4 eMail: [leon@meadlawgroup.com](mailto:leon@meadlawgroup.com)  
5 Sarah A. Mead, Esq.  
6 Nevada Bar No. 13725  
7 eMail: [sarah@meadlawgroup.com](mailto:sarah@meadlawgroup.com)  
8 **MEAD LAW GROUP**  
9 10161 Park Run Drive, Suite 150  
10 Las Vegas, NV 89145  
11 Tel: 702.869-0192  
12 Fax: 702.922.3831  
13 *Attorneys for Plaintiff*  
14 THE KORTE COMPANY

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY NEVADA**

17 KORTE CONSTRUCTION COMPANY DBA  
18 THE KORTE COMPANY, a Missouri  
19 corporation,

20 Plaintiff,

21 vs.

22 UPA1, LLC, a Delaware limited liability  
23 company; BRIDGEWAY ADVISORS, a  
24 California corporation; STATE OF NEVADA  
25 ON RELATION OF THE BOARD OF  
26 REGENTS OF THE NEVADA SYSTEM OF  
27 HIGHER EDUCATION, ON BEHALF OF  
28 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 PASS  
THROUGH TRUST UNDER THE PASS-  
THROUGH TRUST AGREEMENT AND  
DECLARATION O TRUST, a federal bank  
institution, and DOES 1 through 100, inclusive,

Defendants.

Case No.: A-18-767674-C

Dept: XII

SUMMONS - CIVIL

1 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
 2 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ**  
 3 **THE INFORMATION BELOW.**

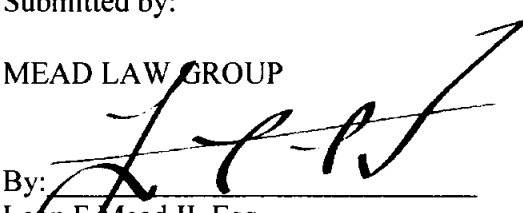
4 **TO THE DEFENDANT(S):** A civil complaint has been filed by the Plaintiff against you for  
 5 the relief set forth in the Amended Complaint.

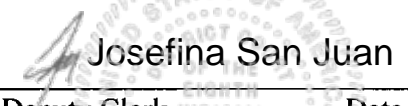
- 6 1. If you intend to defend this lawsuit, within 30 days after this Summons is served  
 7 on your, exclusive of the day of service, you must do the following:
  - 8 (a) File with the Clerk of this Court, whose address is shown below, a formal  
 9 written response to the Complaint in accordance with the rules of the  
 10 Court, with the appropriate filing fee.
  - 11 (b) Serve a copy of your response upon the attorney whose name and address  
 12 is shown below.
- 13 2. Unless you respond, your default will be entered upon application of the Third-  
 14 Party Plaintiff(s) and failure to so respond will result in a judgment of default  
 15 against you for the relief demanded in the Amended Complaint, which could  
 16 result in the taking of money or property or other relief requested in the Amended  
 17 Complaint.
- 18 3. If you intend to seek the advice of an attorney in this matter, you should do so  
 19 promptly so that your response may be filed on time.
- 20 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
 21 board members, commission members and legislators each have 45 days after  
 22 service of this Summons within which to file an Answer or other responsive  
 23 pleading to the Amended Complaint.

24 Submitted by:

STEVEN D. GRIERSON  
 Clerk of Court

25 MEAD LAW GROUP

26 By:   
 Leon F. Mead II, Esq.  
 Nevada Bar No. 5719  
 Sarah A. Mead, Esq.  
 Nevada Bar No. 13725  
 Attorneys for Plaintiff  
 The Korte Company

27 By:  2/1/2018  
 Deputy Clerk Date  
 Regional Justice Center  
 200 Lewis Avenue  
 Las Vegas, NV 89101

**NOTE: When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure 4(b).**

### AFFIDAVIT OF SERVICE

STATE OF \_\_\_\_\_ )  
 ) ss:  
 COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received \_\_\_ copy(ies) of the Summons and Amended Complaint, \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_, 20\_\_\_, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_.

**(Affiant must complete the appropriate paragraph)**

1. Delivering and leaving a copy with the Defendant \_\_\_\_\_ at (state address) \_\_\_\_\_.
2. Service the Defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the Defendant's usual place of abode located at (state address) \_\_\_\_\_.

**[Use paragraph 3 for service upon agent, completing (a) or (b)]**

3. Service the Defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_
  - (a) With \_\_\_\_\_ as \_\_\_\_\_, an agent lawfully designated by statute to accept service of process;
  - (b) With \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):
  - ☐ Ordinary mail
  - ☐ Certified mail, return receipt requested

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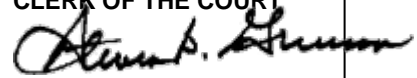
☐ Registered mail, return receipt requested

Addressed to the Third-Party Defendant \_\_\_\_\_ at Defendant's last  
known address which is (state address) \_\_\_\_\_.

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

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of person making service

**ACOM**

Leon F. Mead II, Esq.

Nevada Bar No. 5719

email: [leon@meadlawgroup.com](mailto:leon@meadlawgroup.com)

Sarah M. Thomas, Esq.

Nevada Bar No. 13725

email: [sarah@meadlawgroup.com](mailto:sarah@meadlawgroup.com)**MEAD LAW GROUP**

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

Tel: 702.745-4800

Fax: 702.745.4805

*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.  
27  
28

**GENERAL FACTUAL ALLEGATIONS**

1  
2 8. Effective February 5, 2016, KORTE, as “Contractor”, and UPA1, as “Owner”,  
3 entered into a contract (“Contract”) captioned “Cost Plus Agreement Between Owner and  
4 Contractor with a Guaranteed Maximum Price.” The Contract identifies the construction project  
5 as the University Park Student Housing Project (“Project”) located on the northwest corner of  
6 South Maryland Parkway and Cottage Grove Avenue, in Las Vegas, Clark County, Nevada, and  
7 has been assigned the Assessor’s Parcel Numbers of 162-22-510-001 through 009 (“Project  
8 Site”).  
9

10 9. UNLV is the owner in fee of the real property forming the site for the Project  
11 (“Project Site”). Prior to February 5, 2016, the Board of Regents leased the Project site to  
12 University Park LLC. Thereafter and also prior to February 5, 2016, University Park LLC  
13 assigned its interest as lessee in the leasehold interest covering the Project Site to UPA1.  
14

15 10. Generally stated, the Contract provides that UPA1 shall pay KORTE the Actual  
16 Cost of the Work Performed, as defined in the Contract plus the Contractor’s Fee of 4% of that  
17 Cost, subject to a Guaranteed Maximum Price for the original scope of Work under the Contract  
18 of \$45,441,464.00. The Contract also authorized changes in and additions to the Work, and  
19 corresponding changes in the GMP and the time for completion.  
20

21 11. Article 3 of the General Conditions forming a part of the Contract is titled  
22 “Contract Price and Payment Applications.” Under section GC3.2.1, KORTE agreed to submit  
23 to UPA1 monthly progress payment applications covering the costs of the labor, materials,  
24 equipment, supervision and other work performed that month plus KORTE’s general conditions  
25 costs for that month plus KORTE’s Fee less retention of five percent of the amount otherwise  
26  
27  
28

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).  
25  
26  
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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.  
27  
28

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.  
25  
26  
27  
28

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  
25  
26  
27  
28

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.  
26  
27  
28



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

13           33. The Construction Escrow Agreement reads in part as follows:  
14

15           Section 8.1. Construction Escrow Agent Holding Project Escrow Funds as  
16 Agent for Beneficiary. Beneficiary directs Construction Escrow Agent to  
17 hold all Project Escrow Funds in the Project Account from time to time as  
18 collateral agent for the Beneficiary, and Construction Escrow Agent agrees  
19 to act as collateral agent for the Beneficiary alone with respect to the holding  
20 of Project Escrow Funds, provided, that Construction Escrow Agent shall  
21 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           35.     Pursuant to NRS 108.222 and 108.239, on October 9, 2017, KORTE caused to be  
16 recorded with the Clark County Recorder’s Office, its Notice and Claim of Mechanics’ Lien  
17 against the Project. Said Notice was recorded as Instrument No. 20171009-0001520, in the  
18 unpaid balance of the Contract in the amount of \$20,366,490.22 (a true and correct copy of the  
19 recorded lien is attached hereto as Exhibit “1”). Pursuant to the provisions of NRS 108.227,  
20 KORTE caused a copy of the recorded Notice to be served on Defendants UPA1, UNLV and  
21 WELLS FARGO, as well as University Park LLC, within 30 days of its recording.

22           36.     On January 24, 2018, KORTE caused to be recorded with the Clark County  
23 Recorder’s Office, its Amended Notice of Lien against the Project. The Amended Notice was  
24  
25  
26  
27  
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).

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

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

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

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

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.  
27  
28

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

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

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

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

21           83.     KORTE is entitled to a judgment foreclosing its lien against the construction  
22 disbursement account in an amount to be proven at trial but in excess of \$15,000.00, plus  
23 interest, attorneys' fees and costs of recording the Notice of Lien and Amended Notice, and the  
24

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;

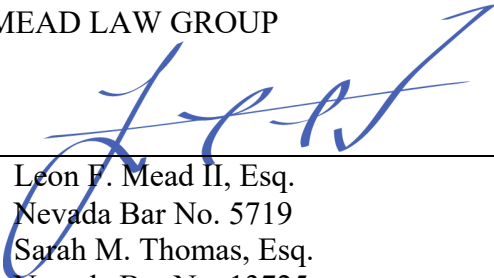
23 3. For an order directing WELLS FARGO as the construction control to disburse  
24 money in the construction disbursement account to KORTE in the amount of its lien and any and  
25 all attorneys' costs and fees associated therewith;  
26

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

  
\_\_\_\_\_  
Leon F. Mead II, Esq.  
Nevada Bar No. 5719  
Sarah M. Thomas, Esq.  
Nevada Bar No. 13725  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff*  
*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.
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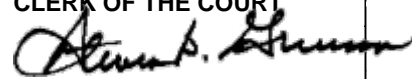
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Dated: October 9, 2018

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



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 9

**DISTRICT COURT****CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

16 THE KORTE COMPANY, a Missouri  
 17 corporation,

18 Defendant.

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

22 Plaintiff,

23 v.

24 UPA 1 LLC, a Delaware limited liability  
 company, BRIDGEWAY ADVISORS, a  
 25 California corporation; STATE OF NEVADA  
 ON RELATION OF THE BOARD OF  
 26 REGENTS OF THE NEVADA SYSTEM OF  
 HIGHER EDUCATION, ON BEHALF OF  
 27 THE UNIVERSITY OF NEVADA, LAS  
 VEGAS, a Constitutional entity of the State of  
 Nevada; WELLS FARGO BANK  
 28 NORTHWEST, N.A., AS TRUSTEE OF THE  
 UNLV STUDENT HOUSING PHASE I PASS

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

DEPT. 25

**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'**  
**ANSWER TO KORTE CONSTRUCTION**  
**COMPANY DBA THE KORTE**  
**COMPANY'S SECOND AMENDED**  
**COMPLAINT**



1 THROUGH TRUST UNDER THE PASS-  
 2 THROUGH TRUST AGREEMENT AND  
 3 DECLARATION OF TRUST, a federal bank  
 institution, and DOES 1 through 100,  
 inclusive,

4 Defendants,

5  
 6 HELIX ELECTRIC OF NEVADA, LLC dba  
 7 HELIX ELECTRIC, a Nevada limited liability  
 company,

8 v.

9 Plaintiff,

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

15 Defendants,

16  
 17 **STATE OF NEVADA ON RELATION OF THE BOARD OF REGENTS OF THE**  
 18 **NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY**  
 19 **OF NEVADA, LAS VEGAS' ANSWER TO KORTE CONSTRUCTION COMPANY DBA**  
**THE KORTE COMPANY'S SECOND AMENDED COMPLAINT**

20 Defendant, the State of Nevada *ex rel.* the Board of Regents of the Nevada System of  
 21 Higher Education, on behalf of the University of Nevada, Las Vegas (hereinafter "UNLV"),  
 22 through undersigned counsel, the law firm of Dickinson Wright PLLC, hereby submits its  
 23 Answer to Korte Construction Company DBA The Korte Company's Second Amended  
 24 Complaint as follows:

25  
 26 **GENERAL ALLEGATIONS**

27 1. UNLV is without knowledge or information sufficient to form a belief as to the  
 28 truth or falsity of the allegations in Paragraph 1, and therefore denies the same.

1           2.       UNLV denies that UPA1 is the “owner” of the Project. UNLV is without  
2 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining  
3 allegations in Paragraph 2, and therefore denies the same.

4           3.       UNLV is without knowledge or information sufficient to form a belief as to the  
5 truth or falsity of the allegations in Paragraph 3, and therefore denies the same.

6           4.       UNLV denies that Korte is authorized to proceed against them by application of  
7 NRS 108.22148(1)(f) and (g) and submits that the statute referenced speaks for itself. UNLV  
8 admits the remaining allegations in Paragraph 4.

9           5.       UNLV is without knowledge or information sufficient to form a belief as to the  
10 truth or falsity of the allegations in Paragraph 5, and therefore denies the same.

11           6.       The allegations contained in Paragraph 6 are legal conclusions and therefore no  
12 response is required from UNLV. To the extent a response is deemed required, the allegations  
13 are denied.

14           7.       The allegations contained in Paragraph 7 are legal conclusions and therefore no  
15 response is required from UNLV. To the extent a response is deemed required, the allegations  
16 are denied.

17                               **GENERAL FACTUAL ALLEGATIONS**

18           8.       The allegations in Paragraph 8 reference a document (the “Contract”), and said  
19 document speaks for itself. Insofar as the allegations in Paragraph 7 purports to interpret or  
20 summarize the contents of the Contract, UNLV responds that the Contract is a document of  
21 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
22 UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of  
23 any remaining allegations in Paragraph 7, and therefore deny the same.

24           9.       UNLV admits the allegations in Paragraph 9.

1           10.     The allegations in Paragraph 10 reference a document (the "Contract"), and said  
2 document speaks for itself. Insofar as the allegations in Paragraph 10 purports to interpret or  
3 summarize the contents of the Contract, UNLV responds that the Contract is a document of  
4 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
5 UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of  
6 any remaining allegations in Paragraph 10, and therefore deny the same.

8           11.     The allegations in Paragraph 11 reference a document (the "Contract"), and said  
9 document speaks for itself. Insofar as the allegations in Paragraph 11 purports to interpret or  
10 summarize the contents of the Contract, UNLV responds that the Contract is a document of  
11 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
12 UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of  
13 any remaining allegations in Paragraph 11, and therefore deny the same.

15           12.     The allegations in Paragraph 12 reference a document (the "Contract"), and said  
16 document speaks for itself. Insofar as the allegations in Paragraph 12 purports to interpret or  
17 summarize the contents of the Contract, UNLV responds that the Contract is a document of  
18 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
19 UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of  
20 any remaining allegations in Paragraph 12, and therefore deny the same.

22           13.     The allegations in Paragraph 13 reference a document (the "Contract"), and said  
23 document speaks for itself. Insofar as the allegations in Paragraph 13 purports to interpret or  
24 summarize the contents of the Contract, UNLV responds that the Contract is a document of  
25 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
26 UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of  
27 any remaining allegations in Paragraph 13, and therefore deny the same.

1           14.     The allegations in Paragraph 14 reference a statute and said statute speaks for  
2     itself. The remaining allegations contained in Paragraph 14 are legal conclusions and therefore  
3     no response is required from UNLV. To the extent a response is deemed required, the allegations  
4     are denied.

5           15.     UNLV is without knowledge or information sufficient to form a belief as to the  
6     truth or falsity of the allegations in Paragraph 15, and therefore denies the same.

7           16.     The allegations in Paragraph 16 reference a statute and said statute speaks for  
8     itself. UNLV is without knowledge or information sufficient to form a belief as to the truth or  
9     falsity of the remaining allegations in Paragraph 16, and therefore denies the same.

10          17.     The allegations in Paragraph 17 reference a statute and said statute speaks for  
11     itself. UNLV is without knowledge or information sufficient to form a belief as to the truth or  
12     falsity of the remaining allegations in Paragraph 17, and therefore denies the same.

13          18.     UNLV is without knowledge or information sufficient to form a belief as to the  
14     truth or falsity of the allegations in Paragraph 18, and therefore denies the same.

15          19.     UNLV is without knowledge or information sufficient to form a belief as to the  
16     truth or falsity of the allegations in Paragraph 19, and therefore denies the same.

17          20.     UNLV is without knowledge or information sufficient to form a belief as to the  
18     truth or falsity of the allegations in Paragraph 20, and therefore denies the same.

19          21.     The allegations in Paragraph 21 reference a document (the "April 19, 2017  
20     Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 20 purports  
21     to interpret or summarize the contents of the April 19, 2017 Notice, UNLV responds that the  
22     April 19, 2017 Notice is a document of independent legal significance and UNLV denies any and  
23     all allegations inconsistent therewith. UNLV is without knowledge or information sufficient to  
24     form a belief as to the truth or falsity of any remaining allegations in Paragraph 21, and therefore  
25     denies the same.

1 deny the same.

2       22. The allegations in Paragraph 22 reference a document (the "May 12, 2017  
3 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 22 purports  
4 to interpret or summarize the contents of the May 12, 2017 Notice, UNLV responds that the May  
5 12, 2017 Notice is a document of independent legal significance and UNLV denies any and all  
6 allegations inconsistent therewith. UNLV is without knowledge or information sufficient to  
7 form a belief as to the truth or falsity of any remaining allegations in Paragraph 22, and therefore  
8 deny the same.  
9

10       23. The allegations in Paragraph 23 reference a document (the "June 5, 2017  
11 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 23 purports  
12 to interpret or summarize the contents of the June 5, 2017 Notice, UNLV responds that the June  
13 5, 2017 Notice is a document of independent legal significance and UNLV denies any and all  
14 allegations inconsistent therewith. UNLV is without knowledge or information sufficient to  
15 form a belief as to the truth or falsity of any remaining allegations in Paragraph 23, and therefore  
16 deny the same.  
17

18       24. The allegations in Paragraph 24 reference a document (the "June 30, 2017  
19 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 24 purports  
20 to interpret or summarize the contents of the June 30, 2017 Notice, UNLV responds that the June  
21 30, 2017 Notice is a document of independent legal significance and UNLV denies any and all  
22 allegations inconsistent therewith. UNLV is without knowledge or information sufficient to  
23 form a belief as to the truth or falsity of any remaining allegations in Paragraph 24, and therefore  
24 deny the same.  
25

26       25. The allegations in Paragraph 25 reference a document (the "June 30, 2017  
27 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 25 purports  
28

1 to interpret or summarize the contents of the June 30, 2017 Notice, UNLV responds that the June  
2 30, 2017 Notice is a document of independent legal significance and UNLV denies any and all  
3 allegations inconsistent therewith. UNLV is without knowledge or information sufficient to  
4 form a belief as to the truth or falsity of any remaining allegations in Paragraph 25, and therefore  
5 deny the same.  
6

7 26. UNLV is without knowledge or information sufficient to form a belief as to the  
8 truth or falsity of the allegations in Paragraph 26, and therefore deny the same.

9 27. The allegations in Paragraph 27 reference a document (the "Notice of Posted  
10 Security"), and said document speaks for itself. Insofar as the allegations in Paragraph 27  
11 purports to interpret or summarize the contents of the Notice of Posted Security, UNLV responds  
12 that the Notice of Posted Security is a document of independent legal significance and UNLV  
13 denies any and all allegations inconsistent therewith. UNLV is without knowledge or  
14 information sufficient to form a belief as to the truth or falsity of any remaining allegations in  
15 Paragraph 27, and therefore deny the same.  
16

17 28. UNLV is without knowledge or information sufficient to form a belief as to the  
18 truth or falsity of the allegations in Paragraph 28, and therefore deny the same.

19 29. UNLV is without knowledge or information sufficient to form a belief as to the  
20 truth or falsity of the allegations in Paragraph 29, and therefore deny the same.  
21

22 30. The allegations in Paragraph 30 reference a document (the "Certificate re Posted  
23 Security"), and said document speaks for itself. Insofar as the allegations in Paragraph 30  
24 purports to interpret or summarize the contents of the Certificate re Posted Security, UNLV  
25 responds that the Certificate re Posted Security is a document of independent legal significance  
26 and UNLV denies any and all allegations inconsistent therewith. UNLV is without knowledge  
27 or information sufficient to form a belief as to the truth or falsity of any remaining allegations in  
28

1 Paragraph 30, and therefore deny the same.

2 31. UNLV is without knowledge or information sufficient to form a belief as to the  
3 truth or falsity of the allegations in Paragraph 31, and therefore deny the same.

4 32. The allegations in Paragraph 32 reference a document (the "Construction Escrow  
5 Agreement"), and said document speaks for itself. Insofar as the allegations in Paragraph 32  
6 purports to interpret or summarize the contents of the Construction Escrow Agreement, UNLV  
7 responds that the Construction Escrow Agreement is a document of independent legal  
8 significance and UNLV denies any and all allegations inconsistent therewith. UNLV is without  
9 knowledge or information sufficient to form a belief as to the truth or falsity of any remaining  
10 allegations in Paragraph 32, and therefore deny the same.

11 33. The allegations in Paragraph 33 reference a document (the "Construction Escrow  
12 Agreement"), and said document speaks for itself. Insofar as the allegations in Paragraph 33  
13 purports to interpret or summarize the contents of the Construction Escrow Agreement, UNLV  
14 responds that the Construction Escrow Agreement is a document of independent legal  
15 significance and UNLV denies any and all allegations inconsistent therewith. UNLV is without  
16 knowledge or information sufficient to form a belief as to the truth or falsity of any remaining  
17 allegations in Paragraph 33, and therefore deny the same.

18 34. The allegations in Paragraph 34 reference a document (the "Construction Loan  
19 Escrow Agreement"), and said document speaks for itself. Insofar as the allegations in  
20 Paragraph 34 purports to interpret or summarize the contents of the Construction Loan Escrow  
21 Agreement, UNLV responds that the Construction Loan Escrow Agreement is a document of  
22 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
23 UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of  
24 any remaining allegations in Paragraph 34, and therefore deny the same.

1           35.     The allegations in Paragraph 35 reference a document (the "Notice and Claim of  
2 Mechanics' Lien"), and said document speaks for itself. Insofar as the allegations in Paragraph  
3 35 purports to interpret or summarize the contents of the Notice and Claim of Mechanics' Lien,  
4 UNLV responds that the Notice and Claim of Mechanics' Lien is a document of independent  
5 legal significance and UNLV denies any and all allegations inconsistent therewith. UNLV  
6 admits that it received service of the Notice and Claim of Mechanics' Lien. UNLV is without  
7 knowledge or information sufficient to form a belief as to the truth or falsity of any remaining  
8 allegations in Paragraph 35, and therefore deny the same.

10           36.     The allegations in Paragraph 36 reference a document (the "Amended Notice of  
11 Lien"), and said document speaks for itself. Insofar as the allegations in Paragraph 35 purports  
12 to interpret or summarize the contents of the Amended Notice of Lien, UNLV responds that the  
13 Amended Notice of Lien is a document of independent legal significance and UNLV denies any  
14 and all allegations inconsistent therewith. UNLV admits that it received service of the Amended  
15 Notice of Lien. UNLV is without knowledge or information sufficient to form a belief as to the  
16 truth or falsity of any remaining allegations in Paragraph 36, and therefore deny the same.

18           37.     The allegations in Paragraph 37 reference the Amended Notice of Lien, and said  
19 document speaks for itself. Insofar as the allegations in Paragraph 36 purports to interpret or  
20 summarize the contents of the Amended Notice of Lien, UNLV responds that the Amended  
21 Notice of Lien is a document of independent legal significance and UNLV denies any and all  
22 allegations inconsistent therewith. UNLV admits that it received service of the Amended Notice  
23 of Lien. UNLV is without knowledge or information sufficient to form a belief as to the truth or  
24 falsity of any remaining allegations in Paragraph 37, and therefore deny the same.

26           38.     The allegations in Paragraph 38 reference a document, (the "Surety Bond"), and  
27 said document speaks for itself. Insofar as the allegations in Paragraph 38 purports to interpret  
28



1 or summarize the contents of the Surety Bond, UNLV responds that Surety Bond is a document  
2 of independent legal significance and UNLV denies any and all allegations inconsistent  
3 therewith. UNLV is without knowledge or information sufficient to form a belief as to the truth  
4 or falsity of any remaining allegations in Paragraph 38, and therefore deny the same.

5  
6 **FIRST CAUSE OF ACTION**

7 **Claim for Relief Under NRS 108.2403(3)(b) against Defendant UPA1 and Does 1 through**  
8 **50, inclusive**

9 39. UNLV hereby incorporates by reference the responses to paragraphs 1 through  
10 38, inclusive, as though fully set forth herein.

11 40. The allegations in Paragraph 40 reference a document (the "September 12, 2017  
12 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 37 purports  
13 to interpret or summarize the contents of the September 12, 2017 Notice, UNLV responds that  
14 the September 12, 2017 Notice is a document of independent legal significance and UNLV  
15 denies any and all allegations inconsistent therewith. UNLV is without knowledge or  
16 information sufficient to form a belief as to the truth or falsity of any remaining allegations in  
17 Paragraph 40 and therefore deny the same.

18 41. UNLV is without knowledge or information sufficient to form a belief as to the  
19 truth or falsity of the allegations in Paragraph 41, and therefore deny the same.

20 42. UNLV is without knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations in Paragraph 42, and therefore deny the same.

22 43. UNLV is without knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the allegations in Paragraph 43, and therefore deny the same.

24 44. The allegations in Paragraph 44 reference a document (the "October 9, 2017  
25 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 41 purports  
26 to interpret or summarize the contents of the October 9, 2017 Notice, UNLV responds that the  
27  
28

October 9, 2017 Notice is a document of independent legal significance and UNLV denies any and all allegations inconsistent therewith. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of any remaining allegations in Paragraph 44 and therefore deny the same.

45. The allegations in Paragraph 45 do not require a response. To the extent a response is deemed required, the allegations are denied.

**SECOND CAUSE OF ACTION**  
**Claim for Relief Under NRS 624.610(6) against Defendant UP1 and Does 1 through 50,**  
**inclusive**

46. UNLV hereby incorporates by reference the responses to paragraphs 1 through 45 as though fully stated herein.

47. The allegations in Paragraph 47 reference a document (the "September 8, 2017 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 47 purports to interpret or summarize the contents of the September 8, 2017 Notice, UNLV responds that the September 8, 2017 Notice is a document of independent legal significance and UNLV denies any and all allegations inconsistent therewith. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of any remaining allegations in Paragraph 47 and therefore deny the same.

48. The allegations in Paragraph 48 reference a document (the "September 12, 2017 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 48 purports to interpret or summarize the contents of the September 12, 2017 Notice, UNLV responds that the September 12, 2017 Notice is a document of independent legal significance and UNLV denies any and all allegations inconsistent therewith. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of any remaining allegations in Paragraph 48 and therefore deny the same.

1           49.     The allegations in Paragraph 46 reference a document (the "September 25, 2017  
2 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 49 purports  
3 to interpret or summarize the contents of the September 25, 2017 Notice, UNLV responds that  
4 the September 25, 2017 Notice is a document of independent legal significance and UNLV  
5 denies any and all allegations inconsistent therewith. UNLV is without knowledge or  
6 information sufficient to form a belief as to the truth or falsity of any remaining allegations in  
7 Paragraph 49 and therefore deny the same.

9           50.     UNLV is without knowledge or information sufficient to form a belief as to the  
10 truth or falsity of the allegations in Paragraph 50 and therefore deny the same.

11           51.     The allegations in Paragraph 51 reference a document (the "October 10, 2017  
12 Notice"), and said document speaks for itself. Insofar as the allegations in Paragraph 48 purports  
13 to interpret or summarize the contents of the October 10, 2017 Notice, UNLV responds that the  
14 October 10, 2017 Notice is a document of independent legal significance and UNLV denies any  
15 and all allegations inconsistent therewith. UNLV is without knowledge or information sufficient  
16 to form a belief as to the truth or falsity of any remaining allegations in Paragraph 51 and  
17 therefore deny the same.

19           52.     The allegations in Paragraph 52 do not require a response. To the extent a  
20 response is deemed required, the allegations are denied.

### 22                   **THIRD CAUSE OF ACTION**

#### 23                   **Claim for Relief for Breach of Contract against Defendant UPA1 and Does 1 through 50,** 24                   **inclusive**

25           53.     UNLV hereby incorporates by reference the responses to paragraphs 1 through 52  
26 as though fully stated herein.

27           54.     UNLV is without knowledge or information sufficient to form a belief as to the  
28 truth or falsity of the allegations in Paragraph 54 and therefore deny the same.

1           55. UNLV is without knowledge or information sufficient to form a belief as to the  
2 truth or falsity of the allegations in Paragraph 55 and therefore deny the same.

3           56. The allegations in Paragraph 56 do not require a response. To the extent a  
4 response is deemed required, the allegations are denied.

5  
6                           **FOURTH CAUSE OF ACTION**  
7           **For Unjust Enrichment against UPA, UNLV and DOES 1 through 60, inclusive**

8           57. UNLV hereby incorporates by reference the responses to paragraphs 1 through 56  
9 as though fully stated herein.

10          58. To the extent the allegations in Paragraph 58 pertain to UNLV, the allegations  
11 contained in Paragraph 58 are legal conclusions and therefore no response is required from  
12 UNLV. To the extent a response is deemed required as to the allegations pertaining to UNLV,  
13 the allegations are denied. UNLV is without knowledge or information sufficient to form a  
14 belief as to the truth or falsity of the allegations contained in Paragraph 58 as to the remaining  
15 defendants and therefore deny the same.

16          59. To the extent the allegations in Paragraph 59 pertain to UNLV, the allegations  
17 contained in Paragraph 59 are legal conclusions and therefore no response is required from  
18 UNLV. To the extent a response is deemed required as to the allegations pertaining to UNLV,  
19 the allegations are denied. UNLV is without knowledge or information sufficient to form a  
20 belief as to the truth or falsity of the allegations contained in Paragraph 59 as to the remaining  
21 defendants and therefore deny the same.

22          60. To the extent the allegations in Paragraph 60 pertain to UNLV, the allegations  
23 contained in Paragraph 60 are legal conclusions and therefore no response is required from  
24 UNLV. To the extent a response is deemed required as to the allegations pertaining to UNLV,  
25 the allegations are denied. UNLV is without knowledge or information sufficient to form a  
26 belief as to the truth or falsity of the allegations contained in Paragraph 60 as to the remaining  
27  
28

1 defendants and therefore deny the same.

2 **FIFTH CAUSE OF ACTION**

3 **For Foreclosure of Mechanics Lien Upon Surety Bond Against UPA, Hartford and DOES 1**  
4 **through 50 inclusive, and 61 through 70, inclusive**

5 61. UNLV hereby incorporates by reference the responses to paragraphs 1 through 60  
6 as though fully stated herein.

7 62. The allegations in Paragraph 62 reference a statute and said statute speaks for  
8 itself. The remaining allegations contained in Paragraph 62 are legal conclusions and therefore  
9 no response is required. To the extent a response is deemed required as to the allegations  
10 pertaining to UNLV, the allegations are denied. UNLV is without knowledge or information  
11 sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 62  
12 as to the remaining defendants and therefore deny the same.

13 63. The allegations in Paragraph 63 are legal conclusions and therefore no response is  
14 required. To the extent a response is deemed required, the allegations are denied.

15 64. The allegations contained in Paragraph 64 are legal conclusions and therefore no  
16 response is required. To the extent a response is deemed required as to the allegations pertaining  
17 to UNLV, the allegations are denied. UNLV is without knowledge or information sufficient to  
18 form a belief as to the truth or falsity of the allegations contained in Paragraph 64 as to the  
19 remaining defendants and therefore deny the same.

20 65. The allegations contained in Paragraph 65 are legal conclusions and therefore no  
21 response is required. To the extent a response is deemed required, the allegations are denied.

22 66. UNLV is without knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the allegations contained in Paragraph 66 and therefore deny the same.

24 67. The allegations contained in Paragraph 67 are legal conclusions and therefore no  
25 response is required. To the extent a response is deemed required, the allegations are denied.

68. The allegations in Paragraph 68 reference a statute and said statute speaks for itself. The remaining allegations contained in Paragraph 68 are legal conclusions and therefore no response is required. To the extent a response is deemed required as to the allegations pertaining to UNLV, the allegations are denied. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 68 as to the remaining defendants and therefore deny the same.

69. The allegations in Paragraph 69 reference a statute and said statute speaks for itself. The remaining allegations contained in Paragraph 68 are legal conclusions and therefore no response is required. To the extent a response is deemed required as to the allegations pertaining to UNLV, the allegations are denied. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 69 as to the remaining defendants and therefore deny the same.

70. UNLV denies the allegations contained in Paragraph 70.

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

71. UNLV hereby incorporates by reference the responses to paragraphs 1 through 70 as though fully stated herein.

72. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 72 and therefore deny the same.

73. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 73 and therefore deny the same.

74. UNLV is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 74 and therefore deny the same.

75. UNLV is without knowledge or information sufficient to form a belief as to the

1 truth or falsity of the allegations contained in Paragraph 75 and therefore deny the same.

2 76. UNLV is without knowledge or information sufficient to form a belief as to the  
3 truth or falsity of the allegations contained in Paragraph 76 and therefore deny the same.

4 **SEVENTH CAUSE OF ACTION**  
5 **Against WELLS FARGO and DOES 71 through 90, inclusive for Claim of Lien upon**  
6 **Construction Disbursement Account**

7 77. UNLV hereby incorporates by reference the responses to paragraphs 1 through 76  
8 as though fully stated herein.

9 78. The allegations in Paragraph 78 reference a document (the "Notice of Posted  
10 Security," Instrument No. 20170630-0002809), and said document speaks for itself. Insofar as  
11 the allegations in Paragraph 78 purports to interpret or summarize the contents of the Notice of  
12 Posted Security, UNLV responds that the Notice of Posted Security is a document of  
13 independent legal significance and UNLV denies any and all allegations inconsistent therewith.  
14 The allegations in Paragraph 78 also reference a statute and said statute speaks for itself. UNLV  
15 is without knowledge or information sufficient to form a belief as to the truth or falsity of the  
16 remaining allegations contained in Paragraph 78 and therefore deny the same.

17 79. The allegations in Paragraph 79 reference documents (the "Notice of Posted  
18 Security," and the "Certificate re Construction Control"), and said documents speak for  
19 themselves. Insofar as the allegations in Paragraph 79 purports to interpret or summarize the  
20 contents of the Notice of Posted Security and/or Certificate re Construction Control, UNLV  
21 responds that they are documents of independent legal significance and UNLV denies any and all  
22 allegations inconsistent therewith.

23 80. The allegations in Paragraph 80 reference statutes and said statutes speak for  
24 themselves. The remaining allegations contained in Paragraph 80 are legal conclusions and  
25 therefore no response is required. To the extent a response is deemed required, the allegations are  
26  
27  
28

1 denied.

2 81. The allegations in Paragraph 81 reference a statute and said statute speaks for  
3 itself. The remaining allegations contained in Paragraph 81 are legal conclusions and therefore  
4 no response is required. To the extent a response is deemed required, the allegations are denied.

5 82. UNLV is without knowledge or information sufficient to form a belief as to the  
6 truth or falsity of the allegations contained in Paragraph 82 and therefore deny the same.

7 83. The allegations contained in Paragraph 83 are legal conclusions and therefore no  
8 response is required. To the extent a response is deemed required, the allegations are denied.

9  
10 **EIGHTH CAUSE OF ACTION**  
11 **Against All Defendants for Declaratory Relief**

12 84. UNLV hereby incorporates by reference the responses to paragraphs 1 through 83  
13 as though fully stated herein.

14 85. The allegations contained in Paragraph 85 are legal conclusions and therefore no  
15 response is required. To the extent a response is deemed required, the allegations are denied.

16 86. The allegations contained in Paragraph 86 are legal conclusions and therefore no  
17 response is required. To the extent a response is deemed required, the allegations are denied.

18 **AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 Korte's Amended Complaint fails to state a claim for relief against UNLV.

21 **SECOND AFFIRMATIVE DEFENSE**

22 The claims for relief set forth in Korte's Amended Complaint are barred by the applicable  
23 statute of limitations.

24 **THIRD AFFIRMATIVE DEFENSE**

25 Korte, by virtue of its own acts and/or the acts or omissions of others chargeable to it,  
26 have unjustly delayed in commencing this action, that said delay has prejudiced the rights of this  
27  
28



Defendant and, therefore, the Amended Complaint should be barred under the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Korte, by virtue of its own acts and/or the acts or omissions of others chargeable to it is estopped and/or should be equitably estopped from obtaining relief sought from UNLV.

**FIFTH AFFIRMATIVE DEFENSE**

Any injury suffered by Korte was caused by the acts, omissions and wrongdoing of Korte or of others chargeable to it, and not any acts, omissions or wrongdoing by UNLV.

**SIXTH AFFIRMATIVE DEFENSE**

Any injury suffered by Korte was proximately caused and contributed to by the conduct, acts, omissions and wrongdoing or conduct, acts, omissions and/or activities of a third party and/or parties either named or unnamed, and any recovery obtained by Korte should be barred and/or reduced accordingly.

**SEVENTH AFFIRMATIVE DEFENSE**

Korte's claims are barred, in whole or in part, by the doctrines of mutual mistake and/or frustration of purpose.

**EIGHTH AFFIRMATIVE DEFENSE**

Any and all damages allegedly sustained by Korte are the result of the acts and/or omissions of a third-party over whom UNLV had no control.

**NINTH AFFIRMATIVE DEFENSE**

Korte has failed to mitigate its alleged damages.

**TENTH AFFIRMATIVE DEFENSE**

Korte's damages, if any, are or will be set-off by its recovery of damages by other parties and, thus, any judgment obtained by Korte against UNLV should be barred and/or reduced accordingly.

**ELEVENTH AFFIRMATIVE DEFENSE**

Korte voluntarily and knowingly failed to take action to protect its rights and thus have waived such rights.

**TWELFTH AFFIRMATIVE DEFENSE**

Korte gave its consent, express or implied, to the acts, omissions and conduct alleged in the Amended Complaint.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Korte, by virtue of its own acts and/or the acts or omissions of others chargeable to it, ratified the alleged conduct in the Amended Complaint.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Korte's claims are barred as a result of the failure to satisfy conditions precedent to asserting the claims.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Korte's claims against UNLV are barred because UNLV is a constitutional entity of the State of Nevada and a subdivision of the State of Nevada.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Korte's claims against UNLV are barred because Korte failed to conduct due diligence prior to entering into any contracts referenced in the Amended Complaint.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Korte's claims against UNLV are barred because Korte failed to provide adequate and requisite notices to all interested parties.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Korte's claims are barred by laches and unclean hands.

**NINETEENTH AFFIRMATIVE DEFENSE**

Korte's claims fail for a lack of consideration.

### **TWENTIETH AFFIRMATIVE DEFENSE**

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer, and therefore, UNLV reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants. Some affirmative defenses may have been pled for purposes of non-waiver. Defendants reserve the right to amend the affirmative defenses as discovery progresses.

### **PRAYER FOR RELIEF**

**WHEREFORE**, UNLV prays for judgment as follows:

1. That Korte take nothing by virtue of this action and that the same be dismissed with prejudice;
2. That judgment be rendered in UNLV's favor and against Korte;
3. That UNLV be awarded its attorneys' fees and costs incurred in the defense of this action; and
4. For such other and further relief as the Court may deem just and proper.

DATED this 29<sup>th</sup> day of October, 2018.

DICKINSON WRIGHT PLLC

By: 

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*Attorneys for Intervenor The Board of Regents of the Nevada System of Higher Education on behalf of The University of Nevada, Las Vegas*

**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 29<sup>th</sup> day of October 2018, he caused a copy of the **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' ANSWER TO SECOND AMENDED COMPLAINT** 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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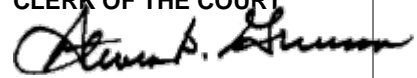
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*Attorneys for Intervenor, the Board  
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of Higher Education on behalf of  
the University of Nevada, Las Vegas*

**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. 16

**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**

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

Plaintiff,

v.

UPA 1 LLC, a Delaware limited liability  
company, BRIDGEWAY 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  
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,

v.

Plaintiff,

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; BOE BONDING COMPANIES I  
through X; LOE LENDERS I through X; TOE  
TENANTS I through X, inclusive,

Defendants.

**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**

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 (hereinafter "UNLV"),  
through undersigned counsel, the law firm of Dickinson Wright PLLC, hereby submits its  
Motion for Summary Judgment (the "Motion").

///

///

///

///

This Motion is based on the pleadings and papers on file, the Memorandum of Points and Authorities below, and any argument that this Court may entertain.

DATED this 1<sup>st</sup> day of August, 2019.

DICKINSON WRIGHT PLLC

By: 

Cynthia L. Alexander, Esq.

Nevada Bar No. 6718

Taylor Anello, Esq.

Nevada Bar No. 12881

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*Attorneys for The Board of Regents of  
the Nevada System of Higher Education  
on behalf of The University of Nevada,  
Las Vegas*

#### NOTICE OF MOTION

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing 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 on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 2019, \_\_\_\_\_.m. of said date, in Department \_\_\_\_\_.

DATED this 1<sup>st</sup> day of August, 2019.

DICKINSON WRIGHT PLLC

By: 

Cynthia L. Alexander, Esq.

Nevada Bar No. 6718

Taylor Anello, Esq.

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Las Vegas*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

At its core, this is a dispute between UNLV's tenant, UPA 1, LLC ("UPA") and a general contractor, The Korte Company ("Korte") hired by UPA to build student housing on a parcel of real property located across from the UNLV campus and owned by UNLV. During construction UPA and Korte became involved in a dispute, resulting in Korte recording a mechanics' lien against UNLV's property. While the dispute between UPA and Korte involves the reasonableness of the lien and the quality of work performed, the only claim pending against UNLV is an unjust enrichment claim set forth by Korte. The undisputed material facts clearly establish that UNLV is entitled to judgment as a matter of law on Korte's claim for unjust enrichment because (1) the claim is barred given that a written contract exists between UPA and Korte; and (2) the bond posted by UPA can and should satisfy any and all damages that Korte may claim.

### II. STATEMENT OF UNDISPUTED FACTS

UNLV and UPA entered into a Project Development Agreement dated May 15, 2015 ("PDA").<sup>1</sup> The PDA contemplated UNLV purchasing the real property at Maryland Parkway and Cottage Grove 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").<sup>2</sup> UNLV did purchase, and is the current owner of, the real property, which is just over fourteen and a half (14 1/2) acres of real property located at the corner of Maryland Parkway and Cottage Grove, commonly known as 4259 S. Maryland Parkway, Las Vegas, Nevada 89119, APN: 162-22-510-001 through 162-22-510-009 (the "Property").<sup>3</sup> This

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<sup>1</sup> A true and correct copy of the Project Development Agreement is attached to the Declaration of David Frommer (the "UNLV Declaration") as Exhibit 1 to the UNLV Declaration.

<sup>2</sup> *Id.* at ¶ 4.

<sup>3</sup> *Id.* at ¶ 6; *See also* Request for Judicial Notice ("RJN") filed concurrently herewith at Exhibit 1.



ownership is undisputed by the parties to this action and was recorded with the Clark County Recorder's Office on May 29, 2015.<sup>4</sup>

UNLV and UPA<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.

As the construction for the Project involves state-owned land, UNLV, not UPA or Korte, was required to apply for the construction permit from the Nevada State Public Works Division (the "SPWD").<sup>8</sup> The March 11, 2016 construction permit, which listed Korte as the contractor, was clearly issued to UNLV by the SPWD and specifically references that the Project is for student housing at University Park.<sup>9</sup> On March 11, 2016, the SPWD listed Korte as the Contractor on the permit for the Project.<sup>10</sup> On March 15, 2016, Michael Wolfe, the Project Manager at UNLV, sent Korte a fax with copies of the plans, permit and green card for the Project, reminding Korte that the documents needed to be kept on site at all times and made available to the SPWD inspector.<sup>11</sup>

Subsequently, a dispute between UPA and Korte arose regarding the Construction

<sup>4</sup> *Id.*; See also Korte's Second Amended Complaint at ¶ 9.

<sup>5</sup> The original lease was between UNLV and UPA 1, LLC's predecessor University Park LLC. University Park LLC assigned its leasehold interest in the Project to UPA 1, LLC. True and correct copies of the original lease and assignment are attached to the UNLV Declaration as Exhibit 2.

<sup>6</sup> See UNLV Declaration at ¶ 7.

<sup>7</sup> See Korte's Second Amended Complaint at ¶ 8.

<sup>8</sup> See UNLV Declaration at ¶ 10.

<sup>9</sup> True and correct copies of the construction permits are attached to the UNLV Declaration as Exhibit 3.

<sup>10</sup> *Id.*

<sup>11</sup> A true and correct copy of the March 15, 2016 fax to Korte is attached to the UNLV Declaration as Exhibit 3.

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").<sup>12</sup> 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"). On January 24, 2018, Korte filed a Complaint seeking foreclosure of the Mechanics' Lien (the "Foreclosure Action"). The Expungement Action and the Foreclosure Action were consolidated and remain ongoing. For purposes of this Motion, only the Foreclosure Action, and in particular Korte's sole claim against UNLV for unjust enrichment, is at issue.

On May 29, 2018, UPA, as principal, and Hartford Fire Insurance Company ("Hartford"), as surety, executed and recorded a surety bond in the amount of Five Million Four Hundred and Forty-Eight Thousand Five Hundred Ninety-Two Dollars and Eighty-Two Cents (\$5,448,592.82) for the benefit of Korte (the "Bond").<sup>13</sup> On October 9, 2018, Korte filed its Second Amended Complaint (the "SAC") in the Foreclosure Action which set forth a single cause of action against UNLV for unjust enrichment. In the SAC, Korte also dropped its claim for foreclosure of the Property, in favor of claims for recovery against the Bond.<sup>14</sup> This is important to note because Korte is no longer seeking recourse against the Property, which is the only thing tying UNLV to this litigation.

On December 11, 2018, Korte recorded its Third Amended Notice of Lien against the Project, reducing the amount of its mechanics' lien to \$2,899,988.72 (the "Amended Lien"), nearly half of the amount of the Bond.<sup>15</sup> Construction on the Project recently was completed,

<sup>12</sup> See RJN at Exhibit 2; see also SAC at ¶ 35.

<sup>13</sup> *Id.* at Exhibit 3; see also SAC at ¶ 38.

<sup>14</sup> See SAC generally.

<sup>15</sup> See RJN at Exhibit 4.

and UPA still holds the leasehold interest in the Property to date.<sup>16</sup>

### III. LEGAL ARGUMENT

#### A. LEGAL STANDARD

Summary judgment is appropriate and “shall be rendered forthwith” when the pleadings and other evidence on file demonstrate that there is no “genuine issue as to any material fact and that the moving part is entitled to a judgment as a matter of law.” *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Id.*, 121 Nev. at 731. While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party bears the burden “to do more than simply show that there is some metaphysical doubt” as to the operative facts in order to avoid summary judgment. *Matsushita Electric Industrial, Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986), *cited by Wood*, 121 Nev. at 732. The non-moving party “must, by Declaration or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.” *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P. 2d 591 (*quoting Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)). Here, the undisputed facts clearly establish that Korte cannot succeed in its claim for unjust enrichment against UNLV and that UNLV is entitled to judgment as a matter of law.

#### B. UNLV IS ENTITLED TO JUDGMENT AS A MATTER OF LAW AS TO KORTE’S CLAIM FOR UNJUST ENRICHMENT.

“The phrase ‘unjust enrichment’ is used in law to characterize the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor.” 66 Am.Jur.2d Restitution § 3 (1973). “Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is ‘acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.’” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev.

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<sup>16</sup> *See* UNLV Declaration at ¶ 13.

371, 381, 283 P.3d 250, 257 (2012) (*citing Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (internal quotations omitted) (*quoting Dass v. Epplen*, 162 Colo. 60, 424 P.2d 779, 780 (1967))).

According to the SAC, Korte alleges that UNLV, along with the other Defendants, “have received a benefit from the work of Korte, that Korte has made demand upon said Defendants for the work performed, but to date, said Defendants have refused to pay and/or compensate Korte for such work and benefits conferred on them.”<sup>17</sup> This is the sole basis and only substantive allegation in support of Korte’s unjust enrichment claim against UNLV. Yet, the undisputed facts establish that (1) there is a written contract that governs the payment terms and recourse for the services provided by Korte; (2) that the Bond has been posted exceeding the amount allegedly owed to Korte for its services; and (3) UNLV has not unjustly retained any benefit from Korte’s services. As such, there are no genuine issues of material fact and UNLV is entitled to judgment as a matter of law.

*1. The Existence Of A Written Contract Between Korte And UPA Bars The Claim For Unjust Enrichment Against UNLV.*

It is generally accepted that “unjust enrichment is not available when there is an express, written contract. . . .” *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 942 P.2d 182, 187 (1997) (*citing* 66 Am.Jur.2d Restitution § 6 (1973) (stating that, generally, an action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement)); *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184, 1197 (D. Nev. 2006), *aff’d*, 583 F.3d 1232 (9th Cir. 2009) (holding that claim for unjust enrichment was barred because there was an express, written contract); *Wilson v. Stratosphere Corp.*, 371 F. App’x 810, 811–12 (9th Cir. 2010). Instead, “[t]he doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and

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<sup>17</sup> See SAC at ¶ 58.

1 justice he should not retain but should deliver to another [or should pay for].” 66 Am.Jur.2d  
 2 Restitution § 11 (1973); *see Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 379, 566 P.2d 819,  
 3 824 (1977) (“To permit recovery by quasi-contract where a written agreement exists would  
 4 constitute a subversion of contractual principles.”).

5 As explained above, it is undisputed that Korte and UPA entered into the Construction  
 6 Contract on February 5, 2016 which governs the terms of payment and services to be provided  
 7 by Korte in connection with the Project. The only services for which Korte is alleging it is  
 8 entitled to payment are subject to the Construction Contract. As such, as a matter of law, the  
 9 existence of the Construction Contract between Korte and UPA bars any claim in equity,  
 10 including the claim for unjust enrichment against UNLV.

11  
 12 2. *Reliance on the Leasepartners Case as Support For Korte’s Unjust Enrichment  
 Claim is Misplaced.*

13 Reliance on the Nevada Supreme Court’s decision in *Leasepartners Corp. v. Robert L.*  
 14 *Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 751, 942 P.2d 182, 184 (1997) in support of  
 15 Korte’s unjust enrichment claim against UNLV, would overstate the case’s holding and, thereby  
 16 inappropriately extend its applicability to the facts and circumstances at hand. Based on the  
 17 limited, specific facts present in *Leasepartners*, the court held that an unjust enrichment claim  
 18 could be pursued despite the existence of a contract between an equipment security holder on a  
 19 construction project and the owner’s tenant.

20 In *LeasePartners*, LeasePartners entered into a lease with the lessee, Danzig Corp., of the  
 21 Royal Hotel related to electronic signage outside the hotel, which provided a monthly payment  
 22 schedule and further provided that Danzig could purchase the signage at the end of the lease term  
 23 for one dollar. *Id.* The terms of the lease between Danzig and LeasePartners stated that the title  
 24 to the equipment should remain with LeasePartners, regardless of whether it became affixed to  
 25 the hotel. *Id.* This conflicted with the terms of the agreement between Danzig and the owners of  
 26 the hotel, Brooks Trust, which designated that everything, including all personal property except  
 27 for gaming equipment, would be “surrendered with the Leased Property as a part thereof.”  
 28 Danzig defaulted on its lease with Brooks Trust and the lease was terminated. *Id.* **Importantly,**

not until Danzig's default and the subsequent termination of the lease, did LeasePartners learn that Danzig was only a tenant at the Royal Hotel. *Id.* at 751-752 (emphasis added). The Brooks Trust refused to surrender the signage or pay LeasePartners for them, so LeasePartners sued Brooks Trust for claim and delivery and unjust enrichment. *Id.*

Based upon those specific facts, the Supreme Court reversed the lower court's granting of summary judgment in favor of Brooks Trust because it found that the claim for unjust enrichment against Brooks Trust was not automatically barred due to the existence of a written contract between Danzig and LeasePartners. The facts noted in the decision, upon which the court must have relied, are clearly distinguishable from the facts at issue here for the following reasons: (1) Korte had constructive knowledge that UPA was the lessee and that UNLV owned the Property prior to performing any services under the Construction Contract; (2) Korte has actual knowledge that UPA was the lessee and that UNLV owned the Property prior to performing any services under the Construction Contract; (3) Korte has an adequate remedy at law against UPA and the Bond; and (4) UNLV has not unjustly retained any benefit from Korte.

*a. Korte Had Notice That UNLV Was The Owner Of The Property.*

What this Court must keep in mind is that unjust enrichment is an equitable theory of recovery. In *LeasePartners* the Court made it a point to note that LeasePartners did not have any knowledge that Danzig was merely a tenant until after Danzig had defaulted. This lack of knowledge would put LeasePartners in a difficult position to protect itself from the circumstances that eventually unfolded. As a matter of equity, LeasePartners had a completely different position than Korte does here. Korte cannot claim that it had no knowledge of UNLV's ownership interest in the Property. In fact, it is abundantly clear that Korte had actual, or, at the very least, constructive notice that the Property was owned by UNLV.

*i. As a matter of law, Korte had constructive knowledge that the Property was owned by UNLV.*

It is undisputed that the Deed reflecting UNLV's ownership interest and the Lease reflecting UPA's leasehold interest were recorded against the Property prior to Korte's execution of the Construction Contract. Nevada law provides that every document recorded in a county

recorder's office gives notice to all persons upon recordation. Nev. Rev. Stat. 247.190; *see also In re Crystal Cascades Civil, LLC*, 398 B.R. 23, 29 (Bankr. D. Nev. 2008), *aff'd*, 415 B.R. 403 (B.A.P. 9th Cir. 2009). In fact, Nevada courts have consistently held that purchasers of real property are charged with constructive notice of any interest a title search would reveal. *Adaven Mgmt., Inc. v. Mountain Falls Acquisition Corp.*, 124 Nev. 770, 779, 191 P.3d 1189, 1195 (2008) (*citing Snow v. Pioneer Title Ins. Co.*, 84 Nev. 480, 484–86, 444 P.2d 125, 127–28 (1968)). Any general contractor conducting due diligence before entering into a substantial construction contract would review the applicable property records and discover UNLV and UPA's respective interest. Even if Korte did not conduct due diligence, as a matter of law, it had constructive notice, due to the proper recording of UNLV's ownership interest.

In addition to the recorded documents, the Project is entitled University Park Phase One and is located just next to campus. Any logical individual would likely believe that, or at least inquire whether, the Project to build student housing was related to UNLV. Any attempt by Korte to feign ignorance of UNLV's ownership of the Property would be disingenuous.

ii. Korte had actual knowledge that the Property was owned by UNLV prior to starting work on the Project.

In addition to the recorded documents, at the very outset of Korte's involvement in the Project, Korte was receiving communications from the SPWD.<sup>18</sup> The fact that the public works department was involved in the Project at all would have given Korte notice that the Property was state-owned, as the SPWD only has jurisdiction over state-owned projects. *See Nev. Rev. Stat. 338 et seq.*<sup>19</sup> UNLV was required to apply for the construction permit, meaning that before any work could commence, Korte had actual knowledge that the Property was state-owned. To take it one step further, the communications at the outset of the Project expressly indicated that UNLV was the owner of the Property. These facts are critical for this Court's analysis because

<sup>18</sup> *See* UNLV Declaration at ¶ 10 and Exhibit 4.

<sup>19</sup> *See also* Nev. Rev. Stat. 338.010(16) (defining "Public body" as the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work); Nev. Rev. Stat. 338.010(17) (defining "Public work" as any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money for publicly owned works and property).

they distinguish Korte's position from that of LeasePartners, making the limited exception set forth in *LeasePartners* inapplicable to the facts and circumstances here.

***b. Korte Has Recourse Against UPA, The Current Lessee.***

If a legal remedy exists against a co-party, a claimant must first exhaust the legal remedy before attempting to recover in equity against another party. *Deanna Construction Co. Inc. v. Sarasota Entertainment Corp.*, 636 So.2d. 767 (Fla.4th DCA 1994). In *LeasePartners*, Danzig had defaulted and was essentially out of the picture because the fixture in question had been retained and was being utilized by the owner. Unlike *LeasePartners*, the tenant with whom Korte contracted, UPA, is still subject to a Lease with UNLV. Further, UNLV is not taking a position regarding the validity or applicability of the Construction Contract to the Project and services performed by Korte. Korte indeed brought a cause of action against UPA for breach of contract and its recourse can be fully and adequately determined under the terms of that contract.

***c. Korte's Security Interest Is In The Bond, Which Is An Adequate Remedy At Law.***

Another distinguishing factor from *LeasePartners* is that Korte's security interest is not in the Property itself, or in any property under the control of UNLV. This is clearly illustrated by Korte's own admission in the SAC, whereby it asserts, "[p]ursuant to NRS 108.2415(6)(a), the surety bond releases the property described in the surety bond from the lien and the surety bond is deemed to replace the property as security for the lien."<sup>20</sup> Accordingly, it is undisputed that the Property is no longer subject to the Lien and that UNLV's interest in the Project is through its ownership interest in the Property. As the Property is no longer a source of recovery for Korte, it is impossible for Korte to succeed on a claim for unjust enrichment against UNLV.

Instead, the Bond provides Korte an adequate remedy at law, precluding it from asserting unjust enrichment. As a general rule, the remedy of unjust enrichment is not available in a contractor's or subcontractor's action for work performed on a construction project where the law provides another remedy. 68 Causes of Action 2d 1 (Originally published in 2015) (*citing e.g.*,

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<sup>20</sup> *Id.* at ¶ 68.



1 *Bamburg Steel Buildings, Inc. v. Lawrence General Corp.*, 817 So. 2d 427, 165 Ed. Law Rep.  
 2 876 (La. Ct. App. 2d Cir. 2002)). Thus, before recovery can be had against a defendant on an  
 3 unjust enrichment theory, a contractor or subcontractor may be required to exhaust its remedies.  
 4 See *Forrest Const. Co., LLC v. Laughlin*, 337 S.W.3d 211 (Tenn. Ct. App. 2009); *E & M Sales*  
 5 *West, Inc. v. Diversified Metal Products, Inc.*, 2009 UT App 299, 221 P.3d 838 (Utah Ct. App.  
 6 2009).) Here, it is undeniable that Korte has failed to exhaust other remedies provided by law.  
 7 Any recourse by Korte regarding improvements on the Property should and can be satisfied by  
 8 the Bond.

9 In fact, if Korte were permitted to execute on the Bond and/or seek an award of damages  
 10 under its claim for breach of contract against UPA, Korte would undeniably receive a windfall.  
 11 The work that Korte is alleging benefited UNLV is the very same work that Korte is seeking  
 12 payment for under the Lien. The Bond is the security for the Lien. As such, the appropriate  
 13 remedy at law is foreclosure of the Bond. Unjust enrichment against UNLV is not a legal  
 14 remedy in this circumstance. Finally, as explained below, UNLV has not retained any benefit  
 15 from the work performed by Korte.

16 **d. UNLV Has Not Appreciated or Unjustly Retained Any Benefit From**  
 17 **Korte.**

18 In order for Korte to succeed on a claim for unjust enrichment, it must establish that  
 19 UNLV has actually appreciated and unjustly retained a benefit conferred upon it by Korte, which  
 20 it cannot. It is undisputed that UPA is the current lessee on the Property, pursuant to a long-term  
 21 lease with UNLV. This means that, despite its ownership interest in the Property, UNLV does  
 22 not currently have possession of the Project or any of the improvements thereon. These facts are  
 23 distinguishable from those in *LeasePartners* because, in *Leasepartners*, the landlord, Brooks  
 24 Trust, had physical possession of the hotel and signage in operation and the lessee, Danzig, was  
 25 completely off the project. It was under those limited facts that the Court in *Leasepartners* found  
 26 that the claim for unjust enrichment against the owner of the property was not precluded. Under  
 27 the facts at issue here, it would be wholly speculative to hold that UNLV, as the landlord, has  
 28 received any benefit from the work performed by Korte on the Project.

1 Other jurisdictions have agreed that a contractor seeking recovery against a landlord  
2 under a theory of unjust enrichment must establish that the landlord has actually received a  
3 benefit from tenant improvements and that speculation that some benefit may be conferred to the  
4 landlord in the future is insufficient. *See Coffee Pot Plaza P'ship v. Arrow Air Conditioning &*  
5 *Refrigeration, Inc.*, 412 So. 2d 883, 884 (Fla. Dist. Ct. App. 1982) (denying recovery in unjust  
6 enrichment where a contractor repaired and installed refrigeration equipment left behind by a  
7 tenant reasoning that it would be speculative to hold that the landlord had received a benefit,  
8 even though the value of the equipment had been enhanced because the enhancement was in a  
9 space that the landlord could not rent out); *Variety Children's Hospital v. Vigliotti*, 385 So.2d  
10 1052 (Fla.3d DCA 1980) (holding that a basic element of unjust enrichment is that some benefit  
11 must flow to the party sought to be charged.) Further, the quality of Korte's work is being  
12 disputed by UPA in the instant litigation. As such, whether any benefit was conferred to any  
13 party by virtue of the work performed is speculative and insufficient to support a claim for unjust  
14 enrichment. *See Thompson v. Herrmann*, 91 Nev. 63, 68, 530 P.2d 1183, 1186 (1975) (holding  
15 that the defendant could not recover under a theory of unjust enrichment where work failed to  
16 meet state regulations and thus was rendered useless, ultimately providing no advantage to the  
17 plaintiff).

18 Korte has not -- and cannot -- show that UNLV has appreciated or unjustly retained any  
19 actual, concrete benefit from the work performed by Korte on the Project. Again, the lessee on  
20 the Property - UPA - is involved in the instant litigation and will remain the lessee on the  
21 Property at issue for the foreseeable future. UNLV does not currently have possession of the  
22 Project, is not able to use any of the improvements on the Project and is not receiving any  
23 monetary benefit for the use of the improvements, meaning that UNLV has not appreciated the  
24 benefit of any of the work performed by Korte and has certainly not unjustly retained any benefit  
25 from the work performed by Korte. This is a fatal flaw in Korte's claim for unjust enrichment  
26 against UNLV.  
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3. *UNLV Cannot Be Held Liable to Korte Merely Because It Owns The Property.*

Even though Korte is no longer seeking recovery against the Property and has a sufficient remedy by way of the Bond, Korte is improperly attempting to keep UNLV tied up in this litigation solely by virtue of its ownership interest in the Property. Other jurisdictions have reasoned that a property owner cannot be held liable to a contractor under an unjust enrichment theory for a tenant's improvements merely because the owner owned the property, and the contractor was treated unjustly by the tenant. *See, e.g., DCB Construction Co., Inc. v. Central City Development Co.*, 965 P.2d 115 (Colo.1998) (*citing* Restatement of Restitution § 110 (1937); *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314, 283 P.3d 45 (Ct. App. Div. 1 2012).

In fact, courts have only allowed a contractor hired by a tenant to make improvements to leasehold premises to recover unpaid monies from the property owner in circumstances where the owner has engaged in improper, deceitful, or misleading conduct. *Id.*; *see also Kujawa v. Billboard Cafe at Lucas Plaza, Inc.*, 10 S.W.3d 584 (Mo. Ct. App. E.D. 2000); *Insulation Contracting & Supply v. Kravco, Inc.*, 209 N.J.Super. 367, 507 A.2d 754, 760 (N.J.Super.Ct.App.Div.1986) (referring to a case requiring that defendant engage in misleading behavior); *Kemp v. Majestic Amusement Co.*, 427 Pa. 429, 234 A.2d 846, 848 (Pa.1967) (“[I]n the absence of some misleading by the third party, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third party.”); *Frank W. Whitcomb Constr. Corp. v. Cedar Constr. Co.*, 142 Vt. 541, 459 A.2d 985, 988 (Vt.1983) (“Certainly there is nothing to show the plaintiff to have been misled to its detriment either deliberately or accidentally.”); *Farwest Steel Corp. v. Mainline Metal Works, Inc.*, 48 Wash.App. 719, 741 P.2d 58, 65 (Wash.Ct.App.1987) (identifying a common thread among cases finding unjust enrichment in that they “involved some clear act of bad faith by the defendant” and noting that the defendant there had not misled the plaintiff). Otherwise, a landlord would be cast in the role as an insurer for any tenant who contracts for improvements to the leasehold. *Wang Elec., Inc.*, 230 Ariz. 314, 283 P.3d 45.

1 Here, Korte has not even alleged, and certainly cannot establish, that UNLV has engaged  
2 in any improper, deceitful or misleading conduct. In fact, courts in other jurisdictions have held  
3 that where an owner takes steps to ensure payment by a contractor for work performed by a  
4 subcontractor, and the contractor does not pay the subcontractor for the performance of his  
5 services, the "injustice was not visited" upon the subcontractor by the owner. *Blum v. Dawkins,*  
6 *Inc.* 683 So.2d 163 (Fla. 5th DCA 1996). This line of case law and reasoning is logically  
7 supported by the fact that unjust enrichment is an equitable claim for relief. Where the owner of  
8 the property takes steps to ensure payment of a contractor and does not engage in any  
9 wrongdoing itself, it would be inequitable to hold them liable for another's actions.  
10

11 Here, UNLV required that UPA post the Bond, which will undeniably satisfy the Lien  
12 and any damages claimed by Korte. According to the SAC, Korte is not seeking any separate or  
13 distinct damages from UNLV under the theory of unjust enrichment, but rather is seeking the  
14 same damages that it seeks under its breach of contract claim and the claim for foreclosure of the  
15 Bond. The pleadings alone make it clear that, due to the actions of UNLV, Korte is protected  
16 and has adequate remedies at law. Korte's claim for unjust enrichment against UNLV is  
17 precluded because there are no allegations or evidence that demonstrate UNLV was in any way  
18 deceitful or misleading to Korte.

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## IV. CONCLUSION

Based upon the foregoing, there are no genuine issues of material fact and UNLV respectfully requests that this Court find that UNLV is entitled to judgment in its favor as a matter of law as to Korte's claim for unjust enrichment.

DATED this 1<sup>st</sup> day of August, 2019.

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**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 1<sup>st</sup> day of August, 2019, he caused a copy of the foregoing **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** 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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