

**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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**JOINT APPENDIX OF DOCUMENTS ON THE RECORD**

**VOLUME 3 OF 6**

**JA0173-JA0383**

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# EXHIBIT 2

## ASSIGNMENT, ASSUMPTION AND MODIFICATION OF LEASE

THIS ASSIGNMENT, ASSUMPTION AND MODIFICATION OF LEASE (the "Assignment") is made as December 4, 2015, by and among 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 ("Landlord"), UNIVERSITY PARK, LLC, a Delaware limited liability company ("Assignor") and UPA 1, LLC, (the "Assignee").

### RECITALS

- A. Landlord and Assignor as Tenant are parties to that certain "Lease Agreement for University Park Phase One" dated as of May 15, 2015 (the "Lease") with respect to certain leased Premises located in Clark County, Nevada, as more particularly described therein. A copy of the Lease is attached hereto as Exhibit A and incorporated herein by reference.
- B. Section 26.1 of the Lease permits assignment of the Lease only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, and Landlord has consented only to the assignment of the Lease to Assignee described in this Assignment.
- C. In connection with the assignment of the Lease, Landlord and Assignee wish to modify certain of the terms and provisions of the Lease and to memorialize their agreement with respect to such modifications herein.

**NOW, THEREFORE**, for and in consideration of the premises, the mutual covenants contained herein and intending to be legally bound, the parties hereby agree as follows:

- 1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein by reference as a material part hereof. All terms used but not otherwise defined herein shall have their meanings as set forth in the Lease.
- 2. **Representations, Covenants and Warranties.** As a material inducement to Assignee to assume the obligations of Assignor as Tenant under the Lease, Landlord and Assignor represent, warrant and covenant to Assignee as follows:
  - A. The Lease attached as Exhibit A hereto is in full force and effect and has not been modified, assigned, supplemented or further amended, nor are there any other agreements between Landlord and Assignor concerning the Lease or the Premises, whether oral or written.
  - B. Assignor is not in default under the Lease, and to the actual knowledge of Landlord there are no events which have occurred that, with the giving of notice or the passage of time or both, would result in a default by Assignor as Tenant under the Lease.
  - C. Assignor has paid all rents and all other sums due (if any) under the Lease current to the date hereof.
  - D. There are no uncured defaults on the part of Landlord under the Lease; Assignor has not sent any notice of default under the Lease to Landlord, and there are no events which have

occurred that, with the giving of notice or the passage of time or both, would result in a default by Landlord under the Lease.

E. Assignor has full and lawful authority to assign its interest in the Lease.

F. The execution and delivery of, and performance by Landlord and Assignor pursuant to, this Assignment will not violate, conflict with or constitute a default under any agreement, order, rule or law by which either party or the Premises is bound, and any and all third party consents required for this Assignment have been obtained in writing.

G. The person executing this Assignment for each party has the authority to execute and deliver this Assignment on behalf of such party.

H. This Assignment includes all right, title and interest in and to all studies, agreements, permits, licenses, plans, authorizations and approvals relating to Improvement Work and to the occupancy and operation of the Premises. All costs associated with the Improvement Work have been or will be fully paid and satisfied by Assignee.

I. The warranties contained in this Section 2 are true as of the date of Assignor's execution of this Assignment and will be true as of the Effective Date and will survive the Effective Date.

### 3. Assignment.

A. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all interest as Tenant in and to the Premises under the Lease.

B. Assignee accepts the foregoing assignment and, except as specifically set forth herein, agrees to assume, fulfill, perform and discharge the obligations and liabilities of Assignor under the Lease hereby assigned and as modified herein, which arise on or after the Effective Date.

C. Landlord consents to the foregoing assignment and assumption pursuant to Section 26.1 of the Lease.

D. The foregoing assignment and assumption will be effective upon execution by all of the parties hereto (the "Effective Date")

E. Assignee will accept the Premises in their condition on the Effective Date.

F. The Lease attached to the Assignment is a correct copy of the Lease and all amendments and side agreements to it.

G. Prior to the Effective Date, Landlord (i) will not accept a surrender or consent to the modification of any of the terms of the Lease, (ii) will not terminate the Lease by reason of any act or omission of Tenant unless Landlord has given written notice of such act or omission to Assignee at its address in this Assignment and until a reasonable period of time has elapsed following the giving of such notice, during which period Assignee will have the right, but will not be obligated, to remedy such act or omission; (iii) will notify Assignee in writing at Assignee's address in the Assignment prior to the Effective Date if an Event of Default occurs under the Lease or if any of the statements made by Assignor in the Assignment are materially false or misleading, or omit to state a material fact, as a result of any circumstances occurring or becoming known to Landlord after the date of Landlord's execution of this Assignment.

**H.** Assignor shall remain liable for performing and discharging all obligations and liabilities relating to the Lease for which it was responsible and which arose prior to the Effective Date and shall defend, indemnify and hold Assignee harmless from and against any and all claims or losses arising prior to the Effective Date hereof relating to Tenant's obligations under the Lease, including without limitation losses related to reasonable attorney's fees and expenses incurred to resolve such claims or losses.

**I.** Except as otherwise provided in this Assignment, following the Effective Date Assignor shall be released from the obligations under the Lease, including, without limitation, the obligation to pay Rent and Additional Rent and all other amounts which become due under the Lease, if any.

**4. Modification of Lease.**

The parties agree that the Lease shall be modified as follows:

**A.** Section 32.1 of the Lease is hereby modified to provide that Assignee shall be entitled to the same rights and notices as Tenant. Assignee's address for notices is:

UPA 1, LLC  
c/o The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123  
(702) 362-2111 - Office  
(702) 637-4227 – Direct Line  
Attn: Tom George  
Email: Tomg@midbycos.com

or to such other address or addresses as may from time to time hereafter be designated by Assignee by like notice.

**B.** The parties agree to execute and record a Memorandum of Lease Assignment and Assumption, in form and content reasonably satisfactory to the parties, evidencing, among other things, this Assignment.

**5. Further Assurances.** The parties agree that they shall reasonably cooperate to provide such documents and information as may be reasonably required by Assignee's lender relative to the Lease and the Tenant's construction of the Improvement Work.

**6. Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**7. Mutual Indemnification.**

**A.** Assignor will indemnify Assignee against and hold Assignee harmless from any and all loss, liability, and expense (including reasonable attorneys' fees and court costs) arising out of any breach by Assignor of its warranties contained in this Assignment.

**B.** Assignee will indemnify Assignor against and will hold Assignor harmless from any loss, liability, and expense (including reasonable attorneys' fees and court costs) arising out of any breach by Assignee of its agreements contained in this Assignment after the Effective Date.

**8. Entire Agreement.** This Assignment embodies the entire agreement of Assignor and Assignee with respect to the subject matter of this Assignment, and it supersedes any prior agreements, whether written or oral, with respect to the subject matter of this Assignment. There are no agreements or understandings which are not set forth in this Assignment. This Assignment may be modified only by a written instrument duly executed by Assignor and Assignee.

**9. Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to the conflicts of laws doctrine of such state.



**10. Continuing Effect.** The Lease, as assigned, assumed and modified hereby, shall remain in full force and effect and is hereby ratified by the parties.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have duly executed this Assignment as of the day and date first above written, each by its duly authorized representative.

**LANDLORD:**

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF  
HIGHER EDUCATION**

By:    
 Name: Daniel J. Klarch  
 Title: Chancellor  
 Date: 12/7/15

**ASSIGNOR:**

**UNIVERSITY PARK, LLC**, a Delaware limited liability company

By its manager: Master Management, LLC, a Nevada limited liability company

By:   
 Eric S. Midby, Manager

Date: \_\_\_\_\_

**ASSIGNEE:**

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

By its manager: Master Management, LLC, a Nevada limited liability company

By:   
 Eric S. Midby, Manager

Date: \_\_\_\_\_





**NRS 396.431 Disclosure Statement**  
**By UPA 1, LLC**

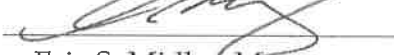
Pursuant to NRS 396.431, UPA 1, LLC, a Delaware limited liability company, hereby certifies that below is a list of all persons who hold an ownership interest of one percent (1%) or more in UPA 1, LLC:

Name of person(s) holding interest:  
University Park, LLC, a Delaware limited liability company

Dated: October 13, 2015

UPA 1, a Delaware limited liability company

By it manager:  
Master Management, LLC, a Nevada limited liability company

By:   
Eric S. Midby, Manager

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, University Park, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in University Park, LLC:

Name of person holding interest:

1. TMG Development, LLC

Dated as of March 2<sup>nd</sup>, 2015.

University Park, LLC

By: 

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, TMG Development, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in TMG Development, LLC:

Name of person holding interest:

1. The Midby Group, LLC

Dated as of March 2<sup>nd</sup>, 2015.

TMG Development, LLC

By: 

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

**NRS 396.431 Disclosure Statement  
By The Midby Group, LLC**

Pursuant to NRS 396.431, The Midby Group, LLC, a Nevada limited liability company, hereby certifies that below is a list of all persons who hold an ownership interest of one percent (1%) or more in The Midby Group, LLC:

Name of person(s) holding interest:

Eric S. Midby: 50.5%  
John C. Midby: 25.5%  
Bonny J. Midby: 10%  
Thomas George: 8%  
Libby Taff: 4%  
Ryan Hayden: 2%

Dated: October 13, 2015

The Midby Group, LLC a Nevada limited liability company

By it manager:

Master Management, LLC, a Nevada limited liability company

By:

  
Eric S. Midby, Manager

EXHIBIT A  
LEASE



LEASE AGREEMENT  
FOR  
UNIVERSITY PARK  
PHASE ONE

*by and between*

THE BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER EDUCATION

*on behalf of*

THE UNIVERSITY OF NEVADA, LAS VEGAS  
("LANDLORD")

*and*

UNIVERSITY PARK, LLC  
("TENANT")

Dated as of May 15, 2015

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## PHASE ONE LEASE

**LEASE AGREEMENT  
FOR  
UNIVERSITY PARK PHASE ONE**

This **LEASE AGREEMENT FOR UNIVERSITY PARK PHASE ONE** (this "**Lease**") dated for reference purposes only as of May 15, 2015, is made by and between 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 ("**Landlord**" or "**UNLV**"), and **UNIVERSITY PARK, LLC**, a Delaware limited liability company, ("**Tenant**"). Landlord and Tenant are individually sometimes referred to herein as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

***I. Background***

**A.** The University of Nevada, Las Vegas is a public, urban research institution founded in 1957; and a part of the Nevada System of Higher Education ("**NSHE**"). The NSHE is governed by a thirteen person Board of Regents ("**Regents**") who are elected by the people of the State of Nevada. UNLV exists in accordance with the laws of the State of Nevada; and is a flagship institution of higher learning in the State, offering bachelor's, master's, and doctoral degrees.

**B.** On November 30, 2012, the Regents approved a comprehensive update to UNLV's Campus master plan (the "**Campus Master Plan**"). One of the guiding principles of the Campus Master Plan is that expanding Campus housing with both additional and varied types of housing will significantly improve the quality of Campus life. The Campus Master Plan also indicates that UNLV's peer institutions house 20-25% of their student population. UNLV currently houses approximately 6% of its student population, and UNLV is at maximum capacity.

**C.** A real estate analysis and demand study (the "**Demand Study**") has been prepared by Brailsford & Dunlavey, Inc. that determined that the demand for student housing at UNLV was significantly underserved.

**D.** The Campus Master Plan identified privately owned property on the north side of Campus adjacent to Cottage Grove Avenue within an area defined in the Campus Master Plan as the "Midtown District" as a location for future student housing with UNLV potentially involved on a public/private partnership basis.

**E.** The real property described on **Exhibit A** (the "**Land**") is a part of the Midtown District, approximately 14 acres in size, and currently owned by Wells Fargo N.A. ("**Seller**"). The Land currently has 280 apartment units arranged as 4-plexes (the "**Existing Improvements**") that are approximately 50 years old.

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F. In August of 2014, Tenant submitted a proposal to Seller outlining a plan for the purchase and redevelopment of the Land for UNLV student housing. Tenant's proposal was submitted as part of a process in which CBRE on behalf of Seller sought bids/proposals from several developers for the redevelopment of the Land. In September of 2014, Tenant was selected by Seller as the winning bidder with the right to purchase the Land for \$20,500,000.

G. Tenant in turn approached UNLV about redeveloping the Land on a public-private basis consistent with the Campus Master Plan. In October of 2014, representatives of UNLV and Tenant met several times to discuss redevelopment of the Land and UNLV's potential involvement in that process.

H. On October 16, 2014, Tenant entered into a certain Purchase Contract (the "Purchase Contract") with Seller to purchase the Land for a purchase price of \$20,500,000 (the "Purchase Price").

I. As described in more detail below, redevelopment of the Land would involve UNLV purchasing the Land and leasing it back to Tenant and Future Phases, LLC, a Delaware limited liability company and an Affiliate of Tenant (hereinafter referred to as "FPLLC") for redevelopment. This would expand the Campus footprint in a strategically important area and ensure that UNLV maintains long term control of the Land.

### *II. Development Plans*

J. The Land currently consists of two planning areas, which are depicted on Exhibit B and identified herein as the "Phase One Land" and the "Future Phases Land". The Future Phases Land is the subject of a separate lease agreement (the "Future Phases Lease") executed concurrently with this Lease by Landlord and FPLLC. The Future Phases Land may be further subdivided in accordance with the terms of the Future Phases Lease if there are more than two development Phases of University Park. The overall development to occur on all of the Phases of the Land is hereinafter referred to as "University Park."

K. The plan and agreement of the Parties now contemplates (i) UNLV leasing the Phase One Land to Tenant, concurrent with the Closing under the Purchase Contract, which will develop the first stage of the planned student housing improvements, and (ii) UNLV leasing the Future Phases Land to FPLLC concurrent with the Closing under the Purchase Contract, which will develop the second and subsequent (if any) stages of University Park. .

L. Tenant, FPLLC and UNLV have also entered into that certain Project Development Agreement of even date herewith (the "Project Development Agreement") which describes and governs the design and construction process of University Park in greater detail. Conceptual drawings and schematics of University Park are attached to the Project Development Agreement, which illustrate the overall design concept for University Park (the "Schematic Plans"). Full build-out of University Park is projected to include up to 3,400 Beds in three wrap-style buildings with apartment-like amenities, a limited amount of retail space, and 1,500 structured parking spaces.



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The final Bed count and heights of the buildings will depend on market conditions as development of University Park proceeds.

**M.** It is generally intended by the Parties that University Park, in all of its Phases, will be held out to the public and potential Residents as an integral part of UNLV's On-Campus Housing stock like other On-Campus Housing facilities.

**N.** The first Phase of University Park development (the "Phase One Project") will be constructed by Tenant on the Phase One Land, approximately six (6) acres on the east end of the Land along the frontage of Maryland Parkway. The timing of development of the Phase Two Project and any subsequent Phases of University Park will be tied to the success of marketing and leasing of the Phase One Project. The development of the Future Phases of University Park is referred to in this Lease as the "Future Phases Project."

**O.** Tenant will be responsible for the financing, construction, management, maintenance, marketing, and operations of the Phase One Project. Tenant will also manage, maintain and operate the Existing Improvements that remain on the Phase One Land until such time as they are demolished as phased redevelopment of the Phase One Land proceeds.

**P.** Subject to certain conditions, Tenant will distribute a portion of the Available Cash of the Phase One Project (the "Project Success Contributions") to Student Residents (as defined below) in order to reduce future rental rates or provide other benefits directly to the Student Residents.

**Q.** University Park is consistent with the Campus Master Plan and the Demand Study and aligns with UNLV's vision for the revitalization of the Midtown District through public private partnerships.

**R.** The Regents approved a Memorandum of Understanding (the "Memorandum of Understanding") at their regular public meeting on December 5, 2014, in which Landlord and Tenant agreed to undertake certain actions resulting in Landlord's acquisition of the Land for the purpose of furthering UNLV's strategic interest to provide its students with safe and affordable housing, along with amenities, in close proximity to the Campus;

**S.** The Parties, in fulfillment of certain of the undertakings set forth in the Memorandum of Understanding, are now prepared to enter into this Lease for the development, financing, construction of the Phase One Project and management of the Premises, as described and defined below;

**T.** Pursuant to the terms, conditions, covenants, and provisions of this Lease, (i) Landlord desires to lease the Phase One Land to Tenant; (ii) Tenant desires to lease the Phase One Land from Landlord and construct Improvements, as defined below, upon the Phase One Land, and transfer the Improvements to Landlord; and (iii) Landlord desires to lease the Premises, as defined below, to Tenant, and Tenant desires to lease the Premises from Landlord.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration,

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the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party hereto, Landlord and Tenant hereby agree as follows with the intent to be legally bound:

### ARTICLE 1. DEFINITIONS.

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular; (ii) all accounting terms defined in GAAP and not otherwise defined herein have the meanings assigned to them in accordance with GAAP at the applicable time; (iii) all references in this Lease to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (iv) the word “including” shall have the same meaning as the phrase “including, without limitation,”; and (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision:

1.1. “**Academic Term**” means the spring and fall semesters of UNLV’s academic year, which run from approximately mid-January to mid-May (“**Spring Term**”) and from approximately mid-August to mid-December (“**Fall Term**”) of each calendar year.

1.2. “**Affiliate**” means any Person directly or indirectly controlling, controlled by, or under common control with another Person or a blood relative or spouse of such Person, if such Person is a natural Person. For the purposes of this definition, “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

1.3. “**Applicable Laws**” means applicable local, state, or federal laws, statutes, codes, ordinances, rules, regulatory notices, and any notices or orders of any and all governmental, quasi-governmental, or regulatory authorities and other authorities, and agencies having jurisdiction over the Premises, which are in effect from time to time.

1.4. “**Asset Management Fee**” has the meaning assigned to it in Section 14.8.

1.5. “**Available Cash**” has the meaning assigned to it in Section 5.5.

1.6. “**Beds**” means the maximum number of persons to whom the Tenant is allowed to sublease under all Applicable Laws within University Park (or a Phase or building thereof depending on the context) whether or not all such Beds are in fact leased from time to time.

1.7. “**Building Codes**” means all building codes, ordinances, and other Applicable Laws applicable to the construction of the Improvements.

1.8. “**Business Day**” means any day which is not a Saturday, Sunday, or legal holiday under the laws of the State of Nevada or United States of America.

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1.9.        **“Campus”** means the main Campus of the University of Nevada, Las Vegas, located at 4504 South Maryland Parkway in Clark County, Nevada.

1.10.      **“Campus Master Plan”** has the meaning assigned to it in Recital B.

1.11.      **“Certificate of Occupancy”** means an approved final inspection, certificate of occupancy, certificate of completion, or other similar verification from the building division of Clark County, the Public Works Board of the State of Nevada, or similar governmental agency with jurisdiction to inspect the Improvements, indicating the building, structure, or part thereof for which the approved final inspection was made or certificate was issued, was found by the building official at the time of certificate issuance or final inspection to be in substantial compliance with the provisions of Applicable Law and the technical codes.

1.12.      **“Closing”** has the meaning assigned to it in the Purchase Contract.

1.13.      **“Commercial Premises”** means those portions of the Premises to be used for commercial purposes, to be identified as such on the Construction Documents.

1.14.      **“Commercial Sublease”** means a Sublease for space within the Commercial Premises.

1.15.      **“Commercial Subtenant”** means a Subtenant of any portion of the Commercial Premises.

1.16.      **“Construction Documents”** means the final plans, specifications, and drawings for the construction of the Improvements to be prepared at Tenant’s expense in accordance with the Project Development Agreement.

1.17.      **“County Code”** means the Clark County Code of Clark County, Nevada.

1.18.      **“Debt Service”** means, for any debt service payment date, the amount required to pay the principal of (whether pursuant to a stated maturity or redemption requirements applicable thereto) and/or interest on financing permitted under this Lease and required to design, construct, and furnish the Premises pursuant to this Lease.

1.19.      **“Default Rate”** means a rate that is one percent (1%) per annum in excess of the the per annum rate of interest announced as the “prime rate” in the Wall Street Journal or its successor, in effect from time-to-time; provided that, in no event shall the Default Rate hereunder exceed the maximum amount or rate that lawfully may be charged in the circumstances, if such a maximum exists.

1.20.      **“Default Termination Notice”** has the meaning assigned to it in Section 24.4.

1.21.      **“Demand Study”** has the meaning assigned to it in Recital C.

1.22.      **“Dwelling”** means a building or portion thereof designed or used exclusively for residential occupancy by a family or by persons residing in a community residence and within which there is interior access to all habitable rooms.

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1.23. **“Effective Date”** means the date on which both the Landlord and Tenant shall have executed this Lease as set forth below their respective signatures or the later of such dates if they execute on different days.

1.24. **“Environmental Laws”** means Applicable Laws pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act.

1.25. **“Event of Default”** means either a Tenant Event of Default or a Landlord Event of Default.

1.26. **“Existing Improvements”** means the buildings and other structures and improvements currently existing on the Phase One Land on the Effective Date. **“Phase One Existing Improvements”** means those Existing Improvements located on the Phase One Land; **“Phase Two Existing Improvements”** means those Existing Improvements located on the Phase Two Land; **“Future Phases Existing Improvements”** means those Existing Improvements located on any of the Future Phases Land. **“Operating Existing Improvements”** means any Existing Improvements, regardless of which Phase they are located on, that remain undemolished at any given time.

1.27. **“Expenses”** means, for any period, all expenses paid in connection with the operation, maintenance and repair of the Premises during such period, including, but not limited to the following:

- (a) Taxes, charges or fees for, and taxes on, the furnishing of electricity, fuel, water, sewer, gas, oil and other utilities; security (provided, neither Tenant nor Landlord is obligated to provide security except as explicitly set forth herein);
- (b) pest control; cleaning of windows and exterior curtain walls; janitorial services; trash and snow removal; landscaping and repair and maintenance of grounds;
- (c) salaries, wages, and benefits for employees of Tenant engaged in the operation, maintenance or repair of the Premises including benefits, payroll taxes and worker’s compensation insurance;
- (d) license fees and governmental permits;
- (e) casualty and liability insurance;
- (f) cleaning supplies; uniforms and dry cleaning service;
- (g) supplies, repairs, replacements and other expenses for maintaining and operating the Premises;
- (h) the cost, including interest, amortized over its useful life or payback period of any capital improvement made to the Premises which is required under governmental law or regulation that was not applicable to the Premises at the time it was constructed or the installation of any device or other equipment which improves the operating efficiency of any system within the Premises and thereby reduces operating

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expenses, except to the extent such costs are funded from reserves required by the terms of Permitted Financing or hereunder, except to the extent such costs are funded from reserves required by the terms of Permitted Financing or hereunder;

(i) Tenant's accounting fees and costs for the preparation of statements of operating expenses or incurred in order to reduce operating expenses;

(j) legal fees and costs relating to the operation, repair or maintenance of the Premises or incurred in order to reduce operating expenses, service or management contracts with independent contractors and;

(k) management fees paid to third parties (provided, if such third party is Affiliated with Tenant the fees to be paid shall be at market rates);

(l) telephone, telegraph and stationery; and the costs of any other items which, under generally accepted accounting principles consistently applied from year to year with respect to the Premises, constitute operating and maintenance costs attributable to any or all of the Premises; and

(m) the Asset Management Fee;

all of the foregoing calculated in accordance with GAAP.

1.28. **"Fee Mortgage"** means any mortgage or deed of trust given by Landlord in connection with any borrowing or financing by Landlord or any other Person as to which Landlord's interest in the Phase One Project (or any part thereof) is encumbered or given as collateral in any form, and any modifications, extensions, renewals, and replacements thereof; provided, however, that "Fee Mortgage" does not include and specifically excludes any such instrument which is a Leasehold Mortgage.

1.29. **"Financing Agreements"** means any instrument or agreement between Tenant and a Leasehold Mortgagee providing financing for the Phase One Project, including any Leasehold Mortgage.

1.30. **"Fixtures"** means any and all equipment, machinery, and other fixtures or improvements that are permanently attached to and made part of the Improvements or that, although they can be removed from the Improvements, are necessary to operate or maintain the Improvements in a normal and ordinary way, such as HVAC systems, electrical systems, plumbing systems, and elevator systems.

1.31. **"Freshman"** means a UNLV Student with 29 or fewer semester credits based on a standard of 120 semester credits for graduation. If UNLV changes its method of determining graduation requirements in the future, the foregoing definition will be altered accordingly to a standard that requires approximately one-fourth of the graduation requirement. All UNLV undergraduate students with 30 or more semester credits are referred to herein as **"Upper-Class."** The use of the terms "Freshman" and "freshmen" are used without regard to gender and apply equally to men and women.

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1.32.     **"FPLLC"** has the meaning assigned to it in Recital I.

1.33.     **"Future Phase"** means each Phase of University Park located on the Future Phases Land.

1.34.     **"Future Phases Land"** has the meaning assigned to it in Recital J.

1.35.     **"Future Phases Lease"** has the meaning assigned to it in Recital J.

1.36.     **"Future Phases Project"** means the Future Phases Land and the mixed-use development (or developments if there are more than two (2) University Park Phases) on the Future Phases Land to be developed by FPLLC or its assignee, consisting primarily of housing facilities for UNLV Students and such other uses as provided in the Future Phases Lease and the Project Development Agreement.

1.37.     **"GAAP"** means generally accepted accounting principles consistently applied (as such term is used in the American Institute of Certified Public Accountants Professional Standards).

1.38.     **"General Contractor"** means a contractor engaged by Tenant to perform the Improvement Work or a portion thereof.

1.39.     **"Governmental Authorities"** means Clark County, the State of Nevada, the United States and their respective agencies but specifically excludes NSHE, the Regents and UNLV for purposes of this Lease.

1.40.     **"Gross Revenue"** means, for any period, all revenues derived from the operation and leasing of the Premises during such period, including but not limited to any interest earned thereon, as calculated under GAAP; provided, however, that Gross Revenue shall not include: (i) Subtenant Deposits, unless and until such Subtenant Deposits are forfeited to or applied by Tenant toward rental obligations in accordance with the terms of a Sublease with respect to any failure by the Subtenant to perform its obligations; (ii) proceeds or payments under insurance policies (except proceeds of any business interruption or rental loss insurance, which proceeds are hereby deemed included in Gross Revenue); (iii) condemnation proceeds; and (iv) proceeds from any sale or financing of the Premises. Notwithstanding the foregoing, "Gross Revenue" does not include any Subtenant Deposits.

1.41.     **"Hazardous Substances"** means "hazardous substances," "regulated substances," "hazardous wastes" or "solid wastes" (as such terms are defined and/or used in applicable Environmental Laws), including, without limitation, asbestos, lead paint, and polychlorinated biphenyls, or environmentally deleterious material in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to applicable Environmental Laws.

1.42.     **"Improvements"** means any and all buildings and improvements from time to time hereafter constructed on the Phase One Land, including without limitation all additions, alterations and improvements thereto or replacements thereof, and all fixtures, machinery,

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landscaping, signage, and equipment installed therein or affixed thereto necessary for the proper operation of such buildings and improvements; provided that “Improvements” does not include any of the Personal Property, Subtenant Improvements or the Existing Improvements.

1.43. “Improvement Work” means the work of design and construction required by the terms of this Lease to be performed by Tenant to cause the demolition of the Existing Improvements and Substantial Completion of the Improvements and all work of construction to be performed by Tenant and its contractors as required by this Lease and such additional work, if any, as may be required by Clark County, the Public Works Board of the State of Nevada, or other governmental or quasi-governmental agencies and public utilities such as but not limited to, the Las Vegas Valley Water District, Southern Nevada Water Authority, Clark County Water Reclamation District, Clark County School District, NV Energy, Southwest Gas, and Republic Services, as a condition to issuance of building permits or a Certificate of Occupancy or provision of services to the Premises in accordance with the Construction Documents.

1.44. “Land” means the real property described on Exhibit A, together with all rights, easements, and appurtenances thereto or in anywise belonging.

1.45. “Landlord” has the meaning assigned to it in the first paragraph of this Lease.

1.46. “Landlord Event of Default” has the meaning assigned to it in Section 31.4.

1.47. “Lease” has the meaning assigned to it in the first paragraph of this Lease.

1.48. “Lease Commencement Date” has the meaning assigned to it in Section 4.1.

1.49. “Leasehold Estate” means the estate of Tenant created by this Lease upon and subject to all the terms and conditions of this Lease.

1.50. “Leasehold Mortgage” means and includes any mortgage, deed of trust and any other security instrument or instruments constituting a lien upon Tenant’s interest under this Lease and the Leasehold Estate hereby created, and any modifications, extensions, renewals, and replacements thereof; provided, Landlord has approved or is deemed to have approved such instruments as provided in Section 24.2.

1.51. “Leasehold Mortgagee” means any holder of a Leasehold Mortgage or any interest therein.

1.52. “Lease Term” means the period from the Lease Commencement Date until the Lease Term expires pursuant to Sections 4.2.

1.53. “Lease Year” means a period of twelve (12) months beginning on the Lease Commencement Date and each twelve month period thereafter until the end of the Lease Term.

1.54. “Landlord” has the meaning assigned to it in the first paragraph of this Lease.

1.55. “Major Alterations” has the meaning set forth in Section 6.2.

1.56. “Memorandum of Lease” has the meaning assigned to it in Section 32.7.

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1.57. **“Memorandum of Understanding”** has the meaning assigned to it in Recital R.

1.58. **“Net Income”** means, for any period, Gross Revenue less Expenses for such period, determined in accordance with GAAP.

1.59. **“NSHE”** has the meaning assigned to it in Recital A.

1.60. **“New Lease”** has the meaning assigned to it in Section 24.6.

1.61. **“Occupant”** means a Subtenant, licensee, user, owner, and anyone occupying or using any Dwelling or Commercial Premises under or through Tenant, including their employees, agents, contractors and invitees.

1.62. **“Off-Campus Housing”** means student housing that is not, as of the Lease Commencement Date or from time to time in the future, (i) owned, leased, managed, or otherwise controlled by UNLV or an Affiliate of UNLV, or (ii) located on land owned, leased, or otherwise controlled by UNLV or an Affiliate of UNLV.

1.63. **“On-Campus Housing”** means student housing that is (i) owned, leased, managed, or otherwise controlled by UNLV, an Affiliate of UNLV or someone under contract with UNLV to lease, manage, or control on behalf of UNLV, or (ii) located on land owned, leased, or otherwise controlled by UNLV or an Affiliate of UNLV.

1.64. **“Party”** and **“Parties”** have the meanings assigned to them in the first paragraph of this Lease.

1.65. **“Permitted Exceptions”** means the easements, restrictions, encumbrances, or other exceptions listed on **Exhibit C** hereto.

1.66. **“Permitted Financing”** has the meaning assigned to it in Section 24.1.

1.67. **“Permitted Residents”** has the meaning assigned to it in Section 9.9

1.68. **“Person”** means an individual, corporation, limited liability company, partnership, joint venture, unincorporated association, or other entity.

1.69. **“Personal Property”** means all furniture, furnishings, appliances, equipment, and personal property of any nature whatsoever now or hereafter located or to be located on or in the Premises other than the Fixtures.

1.70. **“Phase”** means a distinct and severable portion of the entire University Park development, including at least (i) the **“Phase One Project”**, which is being developed by Tenant on the Phase One Land; and (ii) the **“Future Phases Project”**, which is being developed by FPLLC or its assigns on the Future Phases Land or a portion thereof. If the Future Phases Project is further divided into any additional and supernumerary Phases in accordance with the Future Phases Lease, the first of such Phases on the Future Phases Land will be the **“Phase Two Project”**, the next will be the **“Phase Three Project”** and the next, if any, will be the **“Phase Four Project”**. A Phase may or may not constitute a legally conveyable parcel.



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1.71. **"Phase One Land"** has the meaning assigned to it in Recital J. The boundaries of the Phase One Land may be adjusted in Tenant's and FPLLC's reasonable discretion.

1.72. **"Phase One Project"** means the Phase One Land and the mixed-use development on the Phase One Land to be developed by Tenant, consisting primarily of housing facilities for UNLV Students and such other uses as provided in this Lease and the Project Development Agreement..

1.73. **"Preferred Members"** has the meaning assigned to it in Section 5.5(e).

1.74. **"Premises"** has the meaning assigned to it in Section 2.1.

1.75. **"Project"** means, generically, the portion of the entire University Park to be developed by Tenant, FPLLC or any assignee of either.

1.76. **"Project Development Agreement"** has the meaning assigned to it in Recital L.

1.77. **"Purchase Contract"** has the meaning assigned to it in Recital H.

1.78. **"Purchase Price"** has the meaning assigned to it in Recital H.

1.79. **"Regents"** has the meaning assigned to it in Recital A.

1.80. **"Rent"** means Base Rent and any other sum required or stipulated to be paid by Tenant to Landlord hereunder.

1.81. **"Resident"** means any Subtenant who (a) occupies or resides in a portion of the Residential Premises pursuant to a Sublease with Tenant, or (b) has applied for residence in the Residential Premises and been accepted by Tenant.

1.82. **"Residential Premises"** means those portions of the Premises to be used as housing facilities, to be identified as such on the Design Development Documents.

1.83. **"Residential Sublease"** means a Sublease for space within the Residential Premises.

1.84. **"Secured Lenders"** has the meaning assigned to it in Section 24.13.

1.85. **"Secured Property"** has the meaning assigned to it in Section 24.13.

1.86. **"Seller"** has the meaning assigned to it in Recital E.

1.87. **"Student Resident"** means a Resident who is also a UNLV Student.

1.88. **"Sublease"** means any lease, sublease, sub-sublease, or license of the Premises or any part thereof by Tenant or Subtenant to another party. The term "Subleases" comprises Residential Subleases and Commercial Subleases.

1.89. **"Substantial Completion"** means, with respect to the Improvements, or any portion thereof, that the fire marshal of jurisdiction has certified them, as applicable, as ready for occupancy, but not including Commercial Subtenant improvements.

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1.90.     **"Subtenant"** means a tenant, subtenant, sub-subtenant, or occupant of a portion of the Premises pursuant to a Sublease.

1.91.     **"Subtenant Deposits"** means all security deposits or security interests paid by a Subtenant in advance or other deposits received from any Subtenant.

1.92.     **"Subtenant Improvements"** means any and all improvements from time to time made to any portion of the Premises by a Commercial Subtenant, including without limitation all additions, alterations, and improvements, or replacements thereof, which may be implemented in one or more phases, and all fixtures, machinery, signage, and equipment installed therein or affixed thereto necessary or desirable for the operation of such portion of the Premises by such Commercial Subtenant.

1.93.     **"Tax"** means, individually and collectively, any and all taxes, assessments, license fees, excises and charges of every sort, nature, and kind that during the Lease Term are levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of Tenant or Landlord in and to the Premises.

1.94.     **"Tenant"** has the meaning assigned to it in the first paragraph of this Lease.

1.95.     **"Tenant Event of Default"** has the meaning assigned to it in Section 31.3.

1.96.     **"Transfer"** has the meaning assigned to it in Section 26.1.

1.97.     **"Unavoidable Delay"** has the meaning assigned to it in 32.11.

1.98.     **"University Park"** has the meaning assigned to it in Recital K.

1.99.     **"UNLV"** has the meaning assigned to it in the first paragraph of this Lease.

1.100.    **"UNLV Police"** has the meaning assigned to it in Section 10.1.

1.101.    **"UNLV Student"** means an individual who (a) is enrolled at and attending UNLV for the then current semester, (b) is enrolled as a student at UNLV for a subsequent semester or has applied for acceptance at or been accepted at UNLV for a subsequent semester, or (c) with respect to summer occupancy, (i) was enrolled at and attending UNLV in the previous Spring Term or (ii) is enrolled at UNLV for the upcoming Fall Term or has applied for acceptance at or been accepted at UNLV for the upcoming Fall Term.

## ARTICLE 2. LEASE AND TITLE

2.1.     **Lease Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all the Phase One Land and Existing Improvements, situated in Clark County, Nevada, more particularly described in Exhibit B, and any and all appurtenant interests, rights, privileges, and easements, together with all licenses, agreements, easements, and rights of access appurtenant to the Phase One Land for pedestrian and vehicular ingress, egress and regress to and from the Phase One Land and to and from any entries and entrances located thereby and connecting with a public right-of-way whether now existing or acquired subsequent to the execution and delivery of

## P H A S E   O N E   L E A S E

this Lease, together with all Improvements now existing or to be constructed thereon (collectively, the “**Premises**”). Such rights of access granted to Tenant hereunder shall be non-exclusive and extend to all Subtenants of Tenant, and all employees, licensees, and invitees of Tenant and/or Tenant’s Subtenants. The Premises include the Residential Premises and the Commercial Premises.

2.2.       **Title.** Title to the Phase One Land and Existing Improvements shall be free and clear of all title exceptions except the Permitted Exceptions, to be evidenced by a Leasehold Title Insurance Policy, with a no encroachment endorsement, on the Phase One Land and Existing Improvements insuring Tenant’s Leasehold Estate in the Phase One Land and Existing Improvements subject only to the Permitted Exceptions.

2.3.       **Other Easements.** Notwithstanding any other provision of this Lease, Tenant and Landlord shall reasonably cooperate with one another in good faith to define and grant additional necessary easements relating to or benefiting the Premises on or over the Campus. Further, Landlord shall timely grant to Tenant access, temporary access, sidewalk, and/or utility easements (including without limitation electricity, cable, data, gas, water, storm water, and sewer) over and across the Campus as are needed for Tenant’s development, construction, and operation of the Premises. In addition, UNLV shall, from time to time, upon request by Tenant, exercise reasonable efforts and cooperate with Tenant, at no material cost to Landlord, in order to obtain releases, annulments, relocations, or abandonments of existing easements and other Permitted Exceptions that Tenant determines need to be released or abandoned in connection with the development and construction of the Premises.

2.4.       **Title to Improvements.** Ownership of Improvements constructed by Tenant shall vest in UNLV upon Substantial Completion subject, however, to Tenant’s rights under this Lease.

## ARTICLE 3.

[INTENTIONALLY OMITTED]

## ARTICLE 4.

## LEASE TERM.

4.1.       **Lease Term Commencement.** The term of this Lease (the “**Lease Term**”) shall commence on the later of (a) the Effective Date, or (b) the date Landlord acquires title to the Phase One Land (the “**Lease Commencement Date**”).

4.2.       **Lease Term Expiration.** Subject to the early termination provisions of this lease, including but not limited to Section 4.4, the Lease Term shall expire on the fortieth (40th) annual anniversary of the Lease Commencement Date unless Tenant exercises its Extension Option pursuant to Section 4.3.

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**4.3.      Tenant's Extension Option.** If Tenant Commences Construction of the Phase One Project, then Tenant shall have the option (the "Extension Option") to extend the Lease Term as follows:

(a)      Tenant's Extension Option shall be exercised, if at all, by written notice from Tenant to Landlord within one year of the issuance of the first Certificate of Occupancy for any dwelling unit on the Premises.

(b)      If Tenant exercises the Extension Option, the Lease Term shall end on the earlier of (i) or (ii) below:

(i)      the fortieth (40<sup>th</sup>) annual anniversary of the date on which one or more Certificates of Occupancy have been issued with respect to any dwelling unit on the Premises; or

(ii)     the forty-second (42<sup>nd</sup>) annual anniversary of the Lease Commencement Date.

**4.4.      Failure to Commence Construction.**

(a)      In the event Tenant shall fail to Commence Construction (as hereinafter defined) within two (2) years following the Effective Date, Landlord shall have the right, by written notice to Tenant, FPLLC, and to any Leasehold Mortgagee under this Lease or the Future Phases Lease (an "Intent to Terminate"), to terminate this Lease. The Intent to Terminate shall contain the effective date of the proposed termination which shall be not less than 180 days after the date of the Intent to Terminate.

(b)      In the event Tenant does Commence Construction prior to the termination date specified in the Intent to Terminate, the Intent to Terminate shall be void and the Lease shall continue as otherwise provided. If Tenant shall fail to Commence Construction prior to the expiration of such 180 period, Landlord may terminate this Lease at any time thereafter by written notice to Tenant; FPLLC, and to any Leasehold Mortgagee under this Lease or the Future Phases Lease; provided, if Tenant does Commence Construction prior to the date Landlord terminates this Lease, Landlord's right to terminate shall expire.

(c)      For purposes of the foregoing, the term "Commence Construction" refers to Tenant having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Phase One Project, and (c) commenced actual grading of the Phase One Land.

(d)      In the event Landlord terminates this Lease in accordance with Section 4.4, the Future Phases Lease shall also terminate in accordance with its terms upon the third anniversary of the termination of this Lease and FPLLC shall have the right to continue to operate the Existing Improvements (as defined in the Future Phases Lease) until that time.

## PHASE ONE LEASE

ARTICLE 5.  
RENT.

**5.1. Base Rent.** Base Rent shall be payable on the first day of the calendar month immediately following the Lease Commencement Date and on the first day of each calendar month thereafter during the Lease Term. Base Rent will be prorated for any partial month prior to the Lease Commencement Date and any partial month at the end of the Lease Term on the basis of the actual number of days in such month. Base Rent shall be due monthly in advance on the first day of each calendar month as follows:

**THE FOLLOWING DOLLAR AMOUNTS ARE APPROXIMATE AND BASED ON PHASE ONE LAND BEING 40% OF TOTAL ACREAGE. IF THE BOUNDARIES OF PHASE ONE ARE ADJUSTED OR IF PHASE ONE LAND IS LESS OR GREATER THAN 40% OF THE TOTAL ACREAGE THE DOLLAR AMOUNTS WILL BE ADJUSTED ACCORDINGLY IN THIS LEASE AND IN THE FUTURE PHASES LEASE SUCH THAT THE SUM OF THE INITIAL (I.E., LEASE YEARS 1 THROUGH 4) TOTAL BASE RENT UNDER BOTH LEASES SHALL BE \$550,000 PER YEAR, AS FURTHER PROVIDED IN THE PROJECT DEVELOPMENT AGREEMENT.**

<u>Lease Years</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1 through 4	\$ 220,000	\$ 18,333
5 through 8	\$ 226,600	\$ 18,883
9 through 12	\$ 233,398	\$ 19,450
13 through 16	\$ 240,400	\$ 20,033
17 through 20	\$ 247,612	\$ 20,634
21 through 25	\$ 255,040	\$ 21,253
26 through 30	\$ 262,692	\$ 21,891
31 through 35	\$ 270,572	\$ 22,548
36 through 40	\$ 278,689	\$ 23,224
41 and 42 <sup>1</sup>	\$ 287,050	\$ 23,921

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<sup>1</sup> Lease Years 41 and 42 apply only if the Lease Term is extended pursuant to Section 4.3.

## P H A S E   O N E   L E A S E

**5.2. Base Rent Credit.** Landlord acknowledges that, by the terms of the Project Development Agreement, Tenant and FPLLC made or are obligated to make a prepayment of the Base Rent under this Lease and under the Future Phases Lease in the amount of Two Million Dollars (\$2,000,000) (the “***Prepaid Rent***”) at the closing of the Land acquisition as described in the Project Development Agreement. Such Prepaid Rent shall be credited against (a) the Base Rent payable by Tenant pursuant to Section 5.1, and (b) the Base Rent payable by FPLLC under the Future Phases Lease in installments in the order that such payments are due until such amount is exhausted as more fully described in the Project Development Agreement. Tenant shall not be responsible for cash payments of Base Rent until the first month of the Lease Term in which the balance remaining of the Prepaid Rent is insufficient to fully cover the Base Rent payment due.

**5.3. Application of Gross Revenue.** Gross Revenue from the operation of the Premises shall be applied monthly or more frequently as required in the following order:

- (a) Payment of fees due to any trustee holding and making disbursements of Gross Revenue in accordance with the terms of the Financing Agreements;
- (b) Payment of Base Rent;
- (c) Payment of interest due to Leasehold Mortgagees;
- (d) Payment of principal and all other charges and expenses due to Leasehold Mortgagees or as otherwise required in any Leasehold Mortgage, including any debt service reserves;
- (e) Funding of the Project Reserve Fund as provided in Section 14.2 and any other operating and maintenance reserve required in any Financing Agreement;
- (f) Payment of all Expenses not included in Sections 5.3(a) through 5.3(e);
- (g) Payment of any Asset Management Fee as described in Section 14.8;
- (h) The balance in the manner described in Section 5.5.

Without limiting the foregoing, Tenant agrees that, with respect to any payments for which Gross Revenue derived from the operation of the Premises are the source of funds, Base Rent shall have priority of payment over any costs and expenses incurred by Tenant, including payment to Leasehold Mortgagees, and operations and maintenance; provided, Tenant may pay such other costs and contribute to appropriate reserve funds monthly immediately after payment of the monthly installment of Base Rent.

**5.4. [Intentionally Omitted]**

**5.5. Project Success Contributions.**

- (a) That portion of Gross Revenue remaining after (a) payment or funding of the sums described in Section 5.3(a) through 5.3(g), and (b) distributions to Preferred Members of Tenant is hereafter referred to as “***Available Cash.***”

## P H A S E   O N E   L E A S E

(b) Subject to all of the terms and provisions hereof, commencing in the first Lease Year after the later of (i) substantial completion of construction of the Phase One Project, or (ii) the date that all Preferred Members of Tenant have received (or would have received if seventy-five percent of all Available Cash had, in fact, been distributed to Preferred Members) a return of their capital contributions and all additional distributions to which they are entitled ("Preferred Returns"), Tenant shall deposit in an interest bearing fiduciary account an amount equal to twenty-five percent (25%) of the Available Cash of the Phase One Project earned in the prior Lease Year, which amount is hereafter referred to as the "Project Success Contribution."

(c) For purposes of the calculations referred to in this Section 5.5 only, the Preferred Returns shall be an amount equal to the sum of:

(i) The total amount of capital contributions made by Preferred Members of Tenant, subject to Section 5.5(d); and

(ii) Interest on the foregoing amount described in Section 5.5(c)(i) on the entire time such funds are held by Tenant as capital contributions from the Preferred Members equal to the lesser of (1) the actual interest paid to or accrued by Preferred Members, or (2) a fixed rate equal to eighteen percent (18%) per annum, compounded annually.

(d) Notwithstanding anything to the contrary, for purposes of the calculation referred to in this Section 5.5 only, the amount of the capital contributions made by Preferred Members to be used in this calculation shall not exceed thirty percent (30%) of the projected total project development cost.

(e) For purposes of the calculations to be made pursuant to this Section 5.5 only, the term "Preferred Members" means members of Tenant that contribute capital to Tenant without voting rights but with a right to return of their capital and a stated rate of interest on such contributed capital before distributions may be made to other members of Tenant; provided, entities that are Affiliated with Tenant and natural persons who are descendants (as defined in NRS 132.085) of John H. Midby shall not be deemed Preferred Members for this purpose.

(f) Nothing in this Section 5.5 shall be construed to dictate or restrict or in any way modify the financial arrangements between any of the members that constitute the Tenant but are intended only to affect the calculation of Project Success Contributions.

(g) Project Success Contributions shall be funded solely from Available Cash and are expressly subordinate to, and only payable after payment of or provision for, all Expenses and the Preferred Returns.

(h) On or before that date which is the earlier of thirty (30) calendar days after the date on which Tenant receives its annual audited financial statements following

## P H A S E   O N E   L E A S E

each Lease Year or one hundred twenty (120) calendar days after the expiration of each Lease Year, Tenant shall provide a statement (the “**Calculation Statement**”) showing the Available Cash for the previous Lease Year. Each Calculation Statement shall set forth the calculation used to determine the Available Cash with sufficient detail for Landlord to check the calculation and determination.

**5.6.      Payout of Project Success Contributions.**

The funds in the Project Success Contribution account shall be paid out as follows:

- (a)      Not later than February 28 of each calendar year, Tenant shall determine the total Project Success Contribution for the preceding year;
- (b)      Such sum shall be divided by the number of Student Residents within the Premises as of January 1 and the product thereof (“**Rebate Amount**”) shall be applied, with respect to each Student Resident, **first**, as a credit against any past due rental obligation of such Student Resident; **second**, as a credit against such Student Resident’s rental obligation for the month of February; and
- (c)      If any portion of the Rebate Amount remains after the foregoing, then Tenant shall deliver to such Student Resident a check in the amount of the remaining balance by April 1 of the same calendar year.

Nothing in this Lease is intended to constitute any Student Resident as a third party beneficiary; provided, UNLV may enforce the foregoing provisions regarding Project Success Contributions by an action at law or in equity.

**5.7.      Landlord’s Audit Right.** It is expected that annual financial statements will be produced for both the Residential Premises and Commercial Premises, if any. It is further expected that Tenant shall have said annual financial statements consolidated as one and subject to a single audit by a firm of independent certified public accountants selected by Tenant, subject to UNLV’s approval, which shall not be unreasonably withheld or conditioned; provided, that such audit shall contain discrete and separate statements of operating results and related balance sheets on an accrual basis in accordance with GAAP sufficient for the Parties to ascertain the finances of both the Residential Premises and Commercial Premises. The Parties shall cooperate in good faith to provide availability and access to financial information and documents necessary for said audit to be conducted.

Landlord shall have the right, at Landlord’s expense, to audit Tenant’s calculations provided in any Calculation Statement as follows:

- (a)      Tenant shall make Tenant’s records relating to or supporting the calculations set forth on any Calculation Statement available at Tenant’s offices for Landlord to review for such purpose. Tenant shall retain such documents for at least three (3) years after any Calculation Statement has been provided to Landlord hereunder.



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(b) Landlord shall have the right to claim an adjustment of the calculations set forth on any Calculation Statement; provided that any such claim shall be required to be made by written notice delivered to Tenant within ninety (90) calendar days after the date on which Landlord receives such Calculation Statement from Tenant. Any such claim shall be made by notice to Tenant within such ninety (90) calendar day period, specifying the reasons for such claim for adjustment in detail sufficient for Tenant to understand the basis for Landlord's claim. If Landlord fails to claim an adjustment in such manner and time with respect to any Calculation Statement, the Parties shall have no further right hereunder to challenge the determinations set forth in the applicable Calculation Statement. Notwithstanding the foregoing, if such claim for adjustment is of the nature that could not have been reasonably identified or known by the Party after evaluation and review of the Calculation Statement, then this Section 5.7(b) shall not apply and the effected Party shall be made whole as mutually agreed upon by the Parties.

(c) If Landlord timely claims an adjustment under Section 5.7(b) Tenant and Landlord shall use reasonable good faith efforts to resolve any such claim within forty-five (45) calendar days after the date on which the notice of claim was given by Landlord. If Tenant and Landlord are unable to resolve such claim within such forty-five (45) calendar day period, either Landlord or Tenant may submit such dispute to arbitration in accordance with Article 28.

(d) In the event that any such audit verifies that Project Success Contributions has been overpaid for any period, then Tenant shall deduct the overpayment from all subsequent payments until the overpayment amount is exhausted.

(e) In the event that any such audit verifies that Project Success Contributions has been underpaid for any period, then Tenant shall promptly make any necessary additional payment.

(f) Tenant will pay Landlord's reasonable accounting costs in the event the Landlord incurs expenses of a separate audit as a result of any discrepancies of more than five percent (5%) of the audited amount.

**5.8. Limitations.** Notwithstanding anything set forth herein to the contrary, during any period when Landlord or its successor ceases operation of an institution for higher education on the Campus or the Leased Premises are no longer designated by Landlord as On-Campus Housing, Tenant shall have no obligation to pay Project Success Contributions during such period; provided, however, that Project Success Contributions shall not cease (a) for any period when Campus operations are disrupted due to Unavoidable Delays or classes are not in session due to holidays or other regularly scheduled breaks in classes or (b) as the result of any change in operations or class offerings on the Campus or any closure, sale, or other transfer of any portion of the Campus so long as the balance of the Campus is operated as an institute of higher education.

## PHASE ONE LEASE

## ARTICLE 6.

## ALTERATIONS OF THE IMPROVEMENTS.

6.1. **Alterations.** Except as provided in Section 6.2, after construction of the Improvements has been completed by Tenant, Tenant may from time to time make such alterations, additions, improvements, and replacements to the Premises as it from time to time determines to be appropriate. Such alterations, additions, improvements and replacements, excepting normal maintenance and repairs and any Subtenant Improvements, shall be subject to prior approval by the Landlord, which such approval shall not be unreasonably withheld, conditioned, or delayed.

6.2. **Alterations of Completed Improvements.**

(a) **Minor Alterations.** Tenant may alter and make leasehold improvements for Occupants in areas of the Premises not visible from outside the building in which such Occupants reside or conduct business at any time during the Lease Term in Tenant's discretion.

(b) **Major Alterations.** After a Certificate of Occupancy has been issued for the Premises, the Tenant shall not make or permit to be made any substantial alteration of, addition to or change in the exterior facade (which shall include, without limitation, entrance locations, materials, windows and cornices forming a part of such facade) or the landscaping or other exterior features of the Improvements that are visible from outside the building to which such Certificate of Occupancy relates or otherwise materially alter the Premises in a manner contrary to the use and design features set forth in the Construction Documents ("**Major Alterations**") without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any request for such consent shall be accompanied by graphic, financial and other materials sufficient to illustrate the nature and extent of the proposed alteration, its impact, if any, upon improvements existing upon or planned for under the Construction Documents on other portions of the Campus.

6.3. **Construction of Alterations.** All alterations and additions made in accordance with Section 6.2 shall be constructed in a good and workmanlike manner, with good quality new materials and equipment, in compliance with Applicable Law, and shall be completed with due diligence. If Tenant shall fail to comply with the foregoing requirements, the Landlord may, within a reasonable time after its discovery thereof, direct in writing that the Tenant so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior approval of the Landlord. The Tenant shall promptly comply with such directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

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## ARTICLE 7.

## TAXES, ASSESSMENTS, AND UTILITIES.

7.1. **UNLV's Tax Exemption.** During the Lease Term, Landlord, exclusively, shall have and own fee simple title to the Premises. Under current law in the State of Nevada, the Parties believe, but do not warrant to the other Party, that the Premises will be exempt from all real and tangible personal property ad valorem taxation pursuant to NRS 361.157(c).

Further, the Parties acknowledge and agree that it is the intent and expectation of the Parties that Tenant's leasehold interest in the Premises or other rights, title and interest under this Lease shall not be subject to real and/or tangible personal property ad valorem taxation.

7.2. **Right to Contest Taxes.** If the imposition of any Tax shall be deemed by Tenant or Landlord to be improper, illegal, or excessive, Tenant may, in its own name, dispute and contest the same and, in such event and to the extent permitted by Applicable Laws, any such Tax need not be paid until adjudged to be valid; provided, however, Tenant shall in writing first notify Landlord of such dispute and contest and shall comply with the requirements of any Leasehold Mortgage concerning the contest of taxes. Unless so contested, any Tax shall be paid by Tenant or Landlord, as applicable, within the time provided by Applicable Laws, and if contested, any such Tax shall be paid before the execution upon or foreclosure of any lien for any Tax on the Premises.

7.3. **Tax on Receipt of Rent.** Landlord shall be solely responsible for the payment of any tax, assessment, charge or excise on, attributable to, or measured by the Base Rent or by any other payments received by Landlord under this Lease other than payments in the nature of reimbursement to Landlord.

7.4. **Utilities.** Tenant shall, during the Lease Term, pay and discharge punctually, as and when the same shall become due and payable all rents and charges for sewer, water, steam, heat, gas, hot water, electricity, light, and power, and other service or services, furnished to the Premises during the same period (hereinafter referred to as "**Utility Expenses**"). Notwithstanding the above, Residents may be separately metered for any or all utilities and shall directly pay said Utility Expenses to the extent separately metered during the terms of their Subleases. Landlord shall reasonably cooperate in obtaining necessary easements for such utilities to be provided to the Premises.

7.5. **Tax Benefits.** Landlord and Tenant agree that as between them, Tenant shall be entitled to all depreciation and/or amortization deductions, any state and/or federal investment credits, and to all other state and/or federal income tax deductions and credits which may be available with respect to the Premises, including without limitation, the Phase One Land, Improvements, and/or Personal Property; provided, that Landlord makes no representations or warranties regarding such deductions and credits, which shall be the sole responsibility of Tenant.

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**ARTICLE 8.**  
**ADVERTISING AND MARKETING.**

Tenant shall be responsible and shall have sole authority for marketing and leasing of the Premises except as may be explicitly provided in this Lease. Landlord hereby covenants and agrees, however, as follows, which covenants and agreements shall survive as obligations of the original Landlord following any Transfer pursuant to Article 26 hereof:

**8.1.      Advertising/Marketing.** The Parties shall work in good faith to facilitate the rental and leasing of University Park.

(a) Tenant may, throughout the Lease Term, market the Residential Premises to UNLV Students and other Permitted Residents as On-Campus Housing. Tenant shall be entitled to advertise the Residential Premises as On-Campus Housing.

(b) Tenant may, from time to time, present to UNLV advertising and marketing content for UNLV web sites and other media used by UNLV or its licensees to advertise on-Campus housing and/or written content and images intended for email distribution. UNLV agrees to place such content on its web site in a manner substantially similar to other on-Campus housing and to distribute by email as applicable to all UNLV Students, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen (except as an inducement to sublet from Tenant after the Freshman year) as long as the restrictions described in Section 8.2 are in effect.

(c) UNLV will allow Tenant to place advertising and marketing content in any written materials and mailings, signage, and similar media in a manner substantially similar to other on-Campus housing, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen as long as the restrictions described in Section 8.2 are in effect.

(d) UNLV shall allow Tenant to advertise on Campus kiosks and within student centers and any other locations on Campus where housing is offered or advertised on the same basis as other on-Campus housing.

(e) The Parties agree that the Premises shall be marketed as "Upper-Class" or "Move-Up" housing.

(f) Information regarding University Park will be included in UNLV's catalogues and informational brochures distributed to UNLV Students, at the time of their next printing and printing for any subsequent Lease Year, and on UNLV's web sites and other media outlets advertising and marketing housing.

(g) Nothing in this Lease shall prohibit Tenant from conducting normal and ordinary marketing activities typically conducted by Off-Campus Housing operators.

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(h) Tenant and UNLV will coordinate their efforts and cooperate with each other to market and make the Residential Premises and other on-Campus housing properties available to participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Tenant, subject to the terms and provisions of Section 9.9 hereof.

(i) Tenant shall be entitled to actively participate in transfer student orientation sessions, welcome week activities and other student orientation sessions or similar events for purposes of marketing University Park, subject to reasonable rules and regulations promulgated by UNLV.

(j) Neither Party shall make any claim or statement that is disparaging to the other Party or to the Premises or to other on-Campus housing properties.

### 8.2. Freshman Housing Policy.

(a) The Parties acknowledge that UNLV currently has a policy requiring Freshman students to live in specified On-Campus housing that does not include University Park. Tenant agrees not to market or lease to Freshmen as long as UNLV maintains such policy and does not permit Freshmen to live in any On-Campus facility that is not owned and operated by UNLV.

(b) UNLV may, in its sole discretion, allow Freshmen to reside in the Premises as overflow Freshman housing in the event that UNLV's owned and operated On-Campus housing is inadequate to meet the demand for Freshman housing; provided, Tenant is not required to accept Freshmen.

(c) UNLV shall provide Tenant with a means to verify the status of any applicant for a Sublease as a UNLV Student or other person who is entitled to reside in the Residential Premises pursuant to Sections 9.9(a) through 9.9(i). It is the Parties' intent that such means will be available for instantaneous electronic confirmation of status, but in any event, the confirmation shall be within three (3) business days of Tenant's request to Landlord. Such means to confirm student status will be available not later than ninety (90) days prior to the beginning of each Academic Term and Tenant shall have the right to rely on such means for the purposes of this Lease. If a Sublease applicant disagrees with UNLV's determination as communicated to Tenant, UNLV will, at Tenant's request and with consent of the applicant, provide a written determination of the applicant's eligibility to reside in the Premises.

## ARTICLE 9.

### RESTRICTION ON CERTAIN STUDENT HOUSING DEVELOPMENTS.

9.1. Housing Development Restriction. Landlord agrees that it shall not develop or construct or participate in the development, financing or construction of, or permit to be

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developed on any land that UNLV, NSHE or any of their Affiliates own or control, any Restricted Housing (defined below in Section 9.3) from the Effective Date of this Lease until the **earlier** of:

- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Phase One Project ("**Phase One Occupancy Date**"); or
- (b) the Phase One Achievement Date set forth below in Section 9.4(c) on which the Phase One Project is deemed to have achieved the Phase One Performance Standards.

The foregoing covenant is referred to herein as the "**Housing Restriction**").

**9.2. Extension of Housing Restriction.** In the event the Phase One Performance Standards are met before ten (10) years have passed from the Phase One Occupancy Date and UNLV intends to commence development of Restricted Housing as permitted by Section 9.1(b), UNLV agrees to first provide Tenant and FPLLC with a written notice of such intent. FPLLC may notify UNLV within thirty (30) days of such notice of intent that FPLLC elects to proceed with its development of (a) the Future Phases Project, or (b) the Phase Two Project if FPLLC elects to create more than one Phase of development on the Future Phases Land (either of (a) or (b) in this sentence being hereafter referred to as the "**Next Phase Project**"). If FPLLC gives timely written notice to UNLV and thereafter proceeds with development of the Next Phase Project, the Housing Restriction shall be extended until the **earlier** of:

- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Next Phase Project ("**Next Phase Occupancy Date**"); or
- (b) the date the Next Phase Project achieves the Next Phase Performance Standards set forth below in Section 9.5; or
- (c) the earlier of the following two dates unless FPLLC shall Commence Construction on the Next Phase Project before such date:
  - (i) the date that is eighteen months following the Phase One Achievement Date, or
  - (ii) the ten (10) year anniversary of the Effective Date.

For purposes of this Section 9.2, the term "**Commence Construction**" refers to FPLLC having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Next Phase Project, and (c) commenced actual grading of the Next Phase Land.

**9.3. "Restricted Housing" Defined.**

- (a) As used herein, "**Restricted Housing**" means any Dwelling designed, intended or used for any persons other than UNLV Students in their Freshman year of college.
- (b) "**Dwelling**" means a building or portion thereof designed or used for residential occupancy by an individual, family, group of unrelated individuals, or by

## PHASE ONE LEASE

persons residing in a community residence, and includes factory-built homes, manufactured homes, one-family, two-family and multiple-family dwellings, apartments, flats, and community residences, and any other building wherein human beings may be lawfully housed such as a “boarding house”, “lodging house”, “fraternity”, “sorority”, “dormitory”, or any other group living arrangement for unrelated individuals.

(c) Notwithstanding anything herein or in any other agreement between the Parties to the contrary, the Housing Restriction shall **not** apply to any Dwelling located west of Interstate Highway 15 or north of Sahara Avenue.

**9.4. Phase One Performance Standard.** The “*Phase One Performance Standard*” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Phase One Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “*Occupied*” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for Phase One shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by Tenant and the Leasehold Mortgagees.

(c) To provide Tenant with sufficient time to calculate the preceding year’s Debt Service Coverage Ratio, the Phase One Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.4(b) and (ii) the date on which the occupancy requirement in 9.4(a) is achieved (the “*Phase One Achievement Date*”).

As used herein, the term “*Debt Service Coverage Ratio*” means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

**9.5. Next Phase Performance Standard.** The “*Next Phase Performance Standard*” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Next Phase Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “*Occupied*” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for the Next Phase Project shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by FPLLC and the Leasehold Mortgagees.

## PHASE ONE LEASE

(c) To provide FPLLC with sufficient time to calculate the preceding year's Debt Service Coverage Ratio, the Next Phase Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.5(b) and (ii) the date on which the occupancy requirement in 9.5(a) is achieved (the "Next Phase Achievement Date").

As used herein, the term "Debt Service Coverage Ratio" means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

**9.6. Memorandum of Housing Restriction.** Tenant may, at Tenant's sole cost, record a memorandum of the Housing Restriction against any property now owned or hereafter acquired by the Landlord or Affiliate of Landlord for the benefit of UNLV and located within the geographical limits described in Section 9.3.

**9.7. University Park Information.** Landlord acknowledges that Tenant is making a significant investment to develop the Premises based, in part, upon the expectation that Tenant will have the ability to easily disseminate its marketing information to UNLV Students and prospective UNLV Students who have applied for admission to UNLV, potential participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Landlord.

**9.8. Leasing Policies of UNLV.** Except as explicitly provided in this Lease, UNLV shall not implement any policy or take any action which restricts or discourages UNLV Students from residing at the Residential Premises.

**9.9. Permitted Residents.** Tenant shall have the right to market and sublease the Residential Premises only to UNLV Students (except Freshmen as provided in Section 8.2), including but not limited to the following UNLV Students and others ("Permitted Residents"):

- (a) All classifications of UNLV Students, including undergraduates (except Freshmen as provided in Section 8.2), graduate students and post-graduates;
- (b) Current Subtenants of the Residential Premises;
- (c) UNLV Students living in Off-Campus Housing, in an effort to attract them to the Residential Premises;
- (d) UNLV Students living in UNLV's On-Campus Housing, in an effort to attract them to the Residential Premises rather than moving off-Campus;
- (e) Transfer students or former UNLV Students applying for admission or re-admission to UNLV;
- (f) UNLV faculty and staff;
- (g) Participants in summer camps, seminars, and conferences operated by UNLV or others at the Campus;



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(h) Participants in summer camps, seminars, and conferences independently contracted by Tenant;

(i) Students enrolled in other educational institutions including, but not limited to, local community colleges; and

(j) to any other individual with respect to any vacancies in the Premises as of July 1 of any year subject to the requirement that any Subleases covered by this Section 9.9(j) are terminable on or before the following June 30 and such premises are then made available for individuals described above in this Section 9.9.

(k) to any other individual without regard to the restrictions set forth in Section 9.9(j); provided, the total number of Residents who qualify for residency based solely on this Section 9.9(k) shall not exceed five percent (5%) of the total number of Beds.

Notwithstanding anything in this Lease to the contrary, the foregoing restriction on Tenant's right to enter into Subleases shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

**9.10. Supplemental Advertising and Marketing.** Nothing in this Lease is intended or shall be construed as limiting or restricting Tenant from engaging in any additional marketing or advertising of the Premises in its sole discretion.

### ARTICLE 10.

#### POLICE AND SECURITY SERVICES.

**10.1. Outdoor Patrols.** The Premises are within the jurisdiction of the University of Nevada, Las Vegas Department of Police Services (the "UNLV Police"). Landlord shall cause the UNLV Police to patrol the outdoor common areas of the Premises in substantially the same manner and frequency as such patrols are conducted at other Campus buildings and facilities.

**10.2. Supplemental Services** If requested by Tenant, the UNLV Police will provide additional services ("Supplemental Services") such as internal patrols, security at events, or other situations with respect to which Tenant requests police presence on the Premises in the same manner as other on-Campus academic, student housing facilities and retail operations on the Campus: provided, Tenant understands that such other academic, housing facilities and retail operations on the Campus pay the UNLV Police for Supplemental Services provided. If Tenant requests such Supplemental Services, the UNLV Police will charge Tenant a fee, annually or on a more frequent schedule, determined in a manner similar to that used to set the fee paid by other residential or commercial establishments on-Campus.

**10.3. Private Security Services** Tenant shall have the right in its sole discretion, but no obligation, to provide additional unarmed private security forces to supplement those provided by the UNLV Police and the Las Vegas Metropolitan Police force at Tenant's sole cost and in compliance with all Applicable Laws. Prior to engaging any private security, Tenant shall first

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obtain the written consent of UNLV Police, which consent shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 11.  
PROHIBITED USES.**

**11.1.     Prohibited Uses.** Notwithstanding any other provision of this Lease to the contrary, no portion of the Premises shall be used for the following purposes:

(a) Gaming, casino gambling, slot machines, video or other electronic gambling devices, except that the sale of State lottery tickets is permitted if the State of Nevada authorizes a State lottery.

(b) The sale of firearms, explosives or lethal weapons sales or establishments;

(c) An adult theater, adult bookstore, adult video store or other establishment which shows, previews, or prominently includes, as a part of its stock-in-trade for sale, rental or other consumption or entertainment, or which otherwise conspicuously displays, advertises, or conspicuously promotes for sale or rental: (a) movies, films, videos, magazines, books, discs or other medium (whether now or hereafter developed) that are rated "NC-17" by the Motion Picture Association of America, Inc. (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature; or (b) sexually explicit games, toys, devices, or similar merchandise.

(d) The sale, dispensing or use of marijuana or marijuana-infused products (as defined in NRS 453A.112), whether for medicinal or other purposes.

(e) An adult nightclub, or any other establishment which offers entertainment or services by nude, topless or partially clothed male or female persons or which is designed to arouse the prurient interest in another.

(f) A tattoo parlor, body piercing shop, and so-called head shops (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs).

(g) Any purpose that violates Applicable Law, or in such a manner as to constitute a nuisance.

**ARTICLE 12.  
SUBLEASES.**

**12.1.     Subleases.** Tenant, and its successors and assigns, shall have the right, without the consent or approval of Landlord, to enter into, modify, and terminate any Sublease for all or any part of the Premises. Each Sublease shall require the Subtenant to attorn (i) to Landlord in the event of the termination of this Lease or (ii) to any Leasehold Mortgagee that becomes the Tenant under a New Lease prior to the expiration date of the Sublease. . Notwithstanding the foregoing,

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no commercial sublease may extend beyond the Term without the written consent of Landlord, which may be given or withheld in its absolute discretion.

**12.2. Approval of Sublease Form.** In its capacity as an institution of higher education, UNLV is subject to certain affirmative obligations and regulations under federal and state law that apply to institutions of higher education ("**Institutional Restrictions**"). Some Institutional Restrictions may be applicable to the Residential Premises as a result of UNLV being the owner of the Land. In the event that it is necessary, in UNLV's reasonable opinion, that such Institutional Restrictions be incorporated into the Subleases between Tenant and a UNLV Student, UNLV shall notify Tenant in writing of such Institutional Restrictions and the provisions that UNLV desires be added to the form of Tenant's Subleases. Tenant agrees to incorporate such provisions in its form of Sublease agreement unless Tenant reasonably and in good faith questions the necessity of such provision or the applicability of the Institutional Restrictions to the Residential Premises. Either Party may submit to arbitration in accordance with Article 28 the issue of whether such provisions are reasonable and are reasonably necessary.. Landlord shall have the right to review the form or forms being used by Tenant, as well as the right to review Subleases then in effect, at any time and from time to time to confirm that the form or form contain all provisions required by this Section 12.2.

**12.3. Landlord's Right to Evict Certain Sublessee.** In the event that any Institutional Restrictions require that a Subtenant who is a UNLV Student be evicted from or relocated within the Residential Premises UNLV shall notify Tenant of such fact by written notice ("**Subtenant Action Notice**"). Such notice shall identify the Resident and contain a summary explanation of the reason for his or her eviction sufficient to provide the basis for a judicial eviction proceeding but subject to any privacy limits of Applicable Law (including but limited to the Family Educational Rights and Privacy Act ("FERPA")). The Subtenant Action Notice will be signed by the Vice President of Student Affairs, General Counsel or their designees, and shall state that UNLV has afforded the Sublessee any and all due process rights required under Applicable Law to which he or she may be entitled to challenge the grounds for such Subtenant Action Notice. Tenant shall use reasonable commercial efforts to cause the Subtenant described in the Subtenant Action Notice to be evicted or relocated, as directed in the Student Action Notice; provided, so long as the applicable Sublease contains the provisions required hereunder, Landlord shall reimburse Tenant for any costs incurred and hold Tenant harmless against any claim by the Subtenant that the eviction was wrongful or that the circumstances alleged in the Subtenant Action Notice were untrue, incomplete or libelous. Landlord agrees that Tenant shall have no obligation to verify the facts alleged by UNLV in the Subtenant Action Notice and is entitled to rely on the facts and allegations contained in the Subtenant Action Notice. UNLV will provide any affidavit required and make available witnesses if necessary in connection with any judicial proceeding and Tenant may voluntarily dismiss any action if UNLV shall fail to do so on a timely basis.

**12.4. Sublease to Landlord.** At Tenant's option and subject to agreement between Landlord and Tenant the terms to govern such Sublease, Tenant has the right to Sublease all or any part of the Premises and Improvements to Landlord for Permitted Uses, and any such Sublease

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between Landlord and Tenant shall set forth the Parties' agreement regarding such Permitted Use and to the extent that such Sublease conflicts or is inconsistent with this Lease, the provisions of the Sublease shall apply during such time as the Sublease is in effect.

**12.5. Tenant's Rights to Enforce Subleases, Control the Premises, and Determine Rental Rates.** Except with respect to actions required in response to a Student Action Notice, Landlord shall not interfere with Tenant's decisions with respect to the enforcement of Subleases, actions taken to prevent damage to the Premises and maintain the safety and security of the Premises and the persons and property located thereon.

**12.6. Nondiscrimination.** Landlord and Tenant shall comply with all Applicable Laws governing equal employment opportunities, immigration, and non-discrimination. To that end, Tenant shall not unlawfully discriminate in the conduct and operation of its business at the Premises against any person or group of persons because of race, color, religion, national origin, citizenship, sex, gender identity, sexual orientation, age, or disability.

**12.7. Nondisturbance.** Upon request therefor by Tenant, Landlord shall execute and deliver to a Commercial Subtenant a subordination, attornment, and nondisturbance agreement, in form and substance reasonably acceptable to Tenant and Landlord, which shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 13.  
PARKING.**

UNLV will make available for purchase by Residents of University Park (i.e., Phase One and all Future Phases combined) three hundred (300) residential parking passes allowing twenty-four hour parking on campus. UNLV will offer such parking passes on the same terms and conditions as it offers other students, but shall not be obligated to offer any discount to Residents. If the demand for residential parking passes by University Park residents exceeds 300 and UNLV elects not to make more than 300 available to University Park residents, the total supply will be allocated among the Phases as provided in the Project Development Agreement.

UNLV shall designate surface or structured parking spaces within a UNLV owned parking lot on the northern side portion of Campus as near to the Phase One Land as reasonably feasible determined by UNLV for use by Residents without time restrictions that may apply to other non-Resident parking. All residential parking on the UNLV Campus are on a first come first served basis, and the issuance of any permits hereunder shall be not deemed to guaranty any permit holder that spaces in any specific lot shall be available at all times.

UNLV shall only make such residential parking permits available to Residents if and to the extent parking available within the Phase One Project is and remains fully sold.

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## ARTICLE 14.

## MAINTENANCE, OPERATION, AND MANAGEMENT.

14.1. **Maintenance.** Tenant shall, at its sole cost and expense, keep and maintain in good order and repair the Premises, both interior and exterior, structural and non-structural. All repairs, replacements, and renewals shall be made promptly and be substantially equal in quality to the original Improvement Work. Tenant waives any right created by any law now or hereafter in force to make repairs to the Premises at Landlord's expense, it being understood that Landlord shall not in any event be required to make any alterations, rebuildings, restorations, replacements, changes, additions, improvements, or repairs, unless required to do so by separate agreement. The Premises shall, at all times comply with all requirements of this Lease except to the extent the same may be inapplicable during construction, and make all necessary repairs thereto, in a timely and workmanlike manner in accordance with industry standards.

14.2. **Phase One Project Reserves.** The following provisions apply only to Improvements constructed after the Effective Date and not to the Existing Improvements:

(a) Tenant shall:

(i) During the thirtieth (30<sup>th</sup>) Lease Year, cause to be conducted a study of the reserves ("**Reserve Study**") required to repair, replace and restore the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore and deliver a copy of the Reserve Study to Landlord;

(ii) At least annually thereafter, review the results of the Reserve Study with Landlord to determine whether those reserves are sufficient; and

(iii) At least annually thereafter, make any adjustments to Tenant's funding plan which the Tenant deems necessary to provide adequate funding for the required reserves ("**Annual Updates**").

(b) The Reserve Study must include, without limitation:

(i) A summary of an inspection of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(ii) An identification of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore which have a remaining useful life of less than 30 years;

(iii) An estimate of the remaining useful life of each major component of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(iv) An estimate of the cost of maintenance, repair, replacement or restoration of each major component of the Premises during and at the end of its useful life; and

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(v) An estimate of the total annual contribution to the Project Reserve Fund that may be necessary to cover the cost of maintaining, repairing, replacement or restoration of the major components of the Premises, after subtracting the existing reserves of Tenant as of the date of the Reserve Study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

(c) Tenant shall, beginning in the thirty-first (31<sup>st</sup>) Lease Year and in each Lease Year thereafter, create and maintain a fund for the purpose of reserving sufficient cash available for maintenance, repair, replacement or restoration of each major component of the Premises that is anticipated by the Reserve Study and the Annual Updates to require maintenance, repair, replacement or restoration during the remainder of the Lease Term (the “Project Reserve Fund”) and make an annual transfer to the Project Reserve Fund in an amount sufficient to cover all such costs of maintenance, repair, replacement or restoration.

(d) Any reserve amounts held by a Leasehold Mortgagee for the same or substantially similar purposes as described in Section 14.2(c) shall offset Tenant’s obligation under this Section 14.2 to the extent such reserves held by the Leasehold Mortgagee shall, under the terms of the Financing Documents, be available only for such similar purposes and shall be available to Landlord upon expiration of the Lease Term or earlier termination of this Lease to the same extent as required herein.

(e) Upon expiration of the Lease Term or upon earlier termination of the Lease, such amounts held in the Project Reserve Fund or any comparable reserve fund held by a Leasehold Mortgagee and used to offset Tenant’s obligation herein shall be paid over to Landlord.

(f) Tenant shall be entitled to draw upon the Project Reserve Fund to pay the costs of maintenance, repair, replacement or restoration of each major component of the Premises for which reserves are required by Section 14.2(c). Thereafter, future annual contributions to the Project Reserve Fund will restore the balance in the Project Reserve Fund as necessary to comply with Section 14.2(c).

(i) No Landlord consent shall be required with respect to a draw so long as the matter for which such draw is made relates to any maintenance, repair, replacement or restoration which has a cost and is made at a time substantially consistent with the Reserve Study and Annual Updates.

(ii) If any maintenance, repair, replacement or restoration is required to be made significantly earlier than contemplated in the Reserve Study or has a cost which is significantly higher than estimated in the Reserve Study, Landlord shall have the right to approve related draws, which approval shall not be unreasonably withheld, conditioned or delayed.

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(iii) If any maintenance, repair, replacement or restoration as contemplated in the Reserve Study has a cost which is significantly lower than estimated in the Reserve Study, Tenant may reallocate the difference in subsequent years to other maintenance, repair, replacement or restoration of major components of the Premises for which reserves are required by Section 14.2(c).

(iv) Tenant shall give Landlord 30 days' written notice of any planned draw which notice shall provide sufficient information to reflect that consent by Landlord is not required under this Section 14.2(f) or to enable Landlord to determine whether to give its approval to the draw.

**14.3.     Financial Aid.** In the event that UNLV Students receive financial aid to pay for housing that is dependent on living in on-Campus housing, Tenant and Landlord shall work together to develop a process to permit the Premises to qualify for such residence, if allowed by Applicable Law.

**14.4.     Signs.** Tenant shall have the right to install and replace, and to permit the installation or replacement by others, of any signs or advertising matter visible from the exterior of the Premises, so long as such signs conform with Landlord's regulations on use of UNLV's name and marks. Tenant shall comply with all applicable requirements of Governmental Authorities having jurisdiction and shall obtain all necessary governmental approvals prior to the installation or replacement of any sign or other advertising matter permitted by Landlord.

**14.5.     Project Management.** The Parties desire to provide for upper-class, move-up and graduate student housing on the UNLV Campus as described in this Lease, each acting independently in pursuance of its own separate business interests. Tenant shall operate and staff the Premises in a professional manner consistent with the operation of a first-class University housing facility, comparable to those at UNLV's peer institutions and to privately owned off-campus housing in Las Vegas. In furtherance of such intent and except as otherwise expressly provided in this Lease, Tenant shall in general and whether herein specifically authorized or not, take all actions that Tenant deems necessary, proper or desirable in its business judgment with respect to the ownership and operation of the Premises.

Nothing herein contained shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of (i) partnership or of joint venture between the parties hereto, or (ii) employer and employee, or (iii) any other relationship other than the relationship of Landlord and Tenant. The Landlord shall have no responsibility for the actions of the Tenant and no control over Tenant's operations other than as explicitly set forth in this Lease.

**14.6.     Selection Process for Professional Facility Management.** Tenant and Landlord each acknowledge that: the management of a student housing facility differs in certain critical respects from the operation of other rental housing facilities that are not specifically intended for students;

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(b) it is crucial to the success of the Project for Tenant to have the final authority to retain a professional property management company ("Manager") from among candidates pre-qualified by the Board of Regents ("Board") in order for Tenant to (i) obtain Project financing, (ii) maintain supervisory control of the Manager, and (iii) preserve an independent, arm's length, contractual relationship with Landlord and the Manager;

(c) Landlord, acting through its Board, must however retain the authority to reject any Manager that does not have substantial experience in the management of on-campus or off-campus student housing facilities similar to the Project or that would not be capable of maintaining the Project in a condition that protects and promotes the University's image as an educational institution; and

(d) Landlord does not wish, however, to have legal responsibility or liability for the acts of the Manager, who will act at the direction of Tenant and at Tenant's will.

For the foregoing reasons, the Parties agree to the following evaluation process to select a Manager. Tenant shall first identify, recruit and negotiate with one or more professional management companies with substantial experience in the management of on-campus or off-campus student housing facilities of a size and amenities package similar to the Project. During the evaluation process, Tenant will continuously solicit input and suggestions from UNLV's Senior Vice President for Finance and Business regarding the qualifications and experience of the management companies being considered and on each companies' abilities, qualifications and expertise to manage the Project. Tenant shall present one or more of the management companies to the Board for its review and endorsement. The Board's endorsement shall indicate that the Board will accept the company as Manager if it is retained by Tenant but shall not be construed as Landlord's acceptance of any responsibility or liability for the acts of the Manager.

The Board's review and endorsement of any submitted companies shall not be unreasonably withheld or delayed. Tenant may respond to any objections raised by the Board and ask for reconsideration of any companies rejected by the Board. Subject to the foregoing, Tenant shall have authority for final selection of the professional management company.

**14.7. AVS Housing Group.** UNLV has recommended to Tenant that Tenant retain AVS Housing Group, LLC to assist Tenant in marketing, leasing, contract administration, room assignments, operations and facility management duties on the Premises and such other services as it currently provides for UNLV's other on-Campus housing. The Parties acknowledge and agree, however, that Tenant is under no obligation to do so and that failure to do so will not affect or diminish UNLV's obligations as set forth in this Lease. UNLV further agrees that it waives any objection to Tenant retaining AVS Housing Group, LLC or any Affiliate thereof based on any potential or perceived conflict of interest so long as AVS Housing Group, LLC or its Affiliate agree to act on behalf of UNLV and Tenant on a comparable basis except as relates to fees charged by AVS Housing Group, LLC., which shall be separately negotiate between Tenant and AVS Housing Group, LLC.



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**14.8.     Asset Management Fee.** Tenant shall be entitled to pay itself a fee for the services it provides under this Lease (the “Asset Management Fee”) equal to one and one-half percent (1.5%) of the Gross Revenues.

**ARTICLE 15.**  
**CONDITION OF PREMISES.**

Tenant acknowledges that it is fully familiar with the Phase One Land and Existing Improvements and the physical condition thereof as of the date hereof. Except for Landlord’s obligation to (i) provide reasonable access for ingress, egress, and regress to the Premises, (ii) grant additional easements and access rights and cooperate with Tenant as to other matters pursuant to Section 2.3 above, and (iii) complete other duties as otherwise provided herein, Tenant accepts the Premises in the existing condition and state of repair, and agrees that Landlord shall in no event be liable for any latent or patent defects in the Phase One Land or the Existing Improvements.

**ARTICLE 16.**  
**RIGHT OF INSPECTION.**

Landlord shall at all reasonable times during regular business hours be permitted access to the Premises for the purposes of inspecting the same and generally to do such other work as is deemed necessary to determine Tenant’s compliance with this Lease. Except in the case of bona fide or apparent emergency or as provided under a Sublease or the Management agreement with Tenant, Landlord shall only be afforded access to the interior of any structure or building situate on the Premises: (a) when accompanied by a representative of Tenant; and (b) after five (5) Business Days written notice by Landlord to Tenant. In exercising its rights hereunder, Landlord shall not unreasonably interfere with the use or occupancy by Tenant or any Subtenant or Occupant. In the event of a bona fide or apparent emergency, Landlord may enter at any time and without accompaniment or notice (including forcibly, to the extent necessary), without such entry constituting an eviction of Tenant or a termination of this Lease.

**ARTICLE 17.**  
**ENVIRONMENTAL COVENANTS AND WARRANTIES.**

**17.1.     Representations.** Landlord and Tenant each warrants and represents to the other Party that it has disclosed to the other Party in writing any and all information known to Landlord or Tenant, as the case may be, relating to the environmental condition of the Phase One Land and the Existing Improvements.

**17.2.     Tenant’s Environmental Covenants.**

(a) Tenant shall not engage in and shall use reasonable efforts to prevent any Subtenant from engaging in operations at or in the Premises which involve the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, release, or threat of release of Hazardous Substances which would require remediation or clean-up to conform to Environmental Laws. Tenant shall at all times comply with

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Environmental Laws with respect to substances first coming onto the Premises following the Effective Date and during the Lease Term. Tenant shall not cause and shall not permit to exist as a result of an intentional or unintentional action or omission on its part (and Tenant shall use reasonable efforts not to permit to exist as a result of an intentional or unintentional action or omission on the part of any other party), the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping from or about the Premises of any Hazardous Substances in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to Environmental Laws.

(b) Nothing contained in this Section 17.2 shall be construed as prohibiting the use on the Premises of substances regulated by Environmental Laws that are normally or routinely used in the construction of improvements such as the Improvements or are normally or routinely used in the operation, repair, maintenance, and use of residential and commercial projects, such as fuels, solvents, cleaning materials, paint, and printing materials, so long as the same are used in a manner that complies with Environmental Laws.

## ARTICLE 18.

## WARRANTIES AND REPRESENTATIONS.

18.1. **By Landlord.** Landlord hereby warrants and represents to Tenant as follows:

(a) Landlord has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals, consents, and board or committee actions necessary to authorize Landlord to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken.

(b) The person executing this Lease on behalf of Landlord has authority on behalf of Landlord to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Landlord and is binding upon and enforceable against Landlord in accordance with its terms.

(c) The Premises are not subject to any pending or, to Landlord's knowledge, threatened litigation, and Landlord is not subject to any pending or, to Landlord's knowledge, threatened litigation that would or might affect the Land or Landlord's ability to perform its obligations under this Lease.

(d) The consummation by Landlord of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) Landlord is not a party to, or bound by, any indenture, mortgage, deed of trust, loan agreement, restriction, restrictive covenant, or any order or decree of any court or governmental agency, which might to a material degree adversely affect the Premises,

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University Park or any portion of the Land upon which University Park will be constructed.

(f) Landlord has no knowledge of any condition of or with respect to the Premises that would adversely affect the use and enjoyment of the Premises by Tenant in accordance with the terms and provisions of this Lease.

(g) As used in this Section 18.1, Landlord's "knowledge" means the actual knowledge of Landlord's (i) Senior Vice President of Administration and Finance, or (ii) General Counsel, or (iii) Director for Real Estate; or any person under the direct supervision of any of them, following reasonable investigation or inquiry.

### 18.2.     By Tenant.

(a) Tenant has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals and corporate or limited liability company actions necessary to authorize Tenant to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken. The person executing this Lease on behalf of Tenant has authority on behalf of Tenant to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Tenant and is binding upon and enforceable against Tenant in accordance with its terms.

(b) Tenant is not subject to any pending or, to Tenant's knowledge, threatened litigation that would or might affect Tenant's ability to perform its obligations under this Lease.

(c) The consummation by Tenant of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule, or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

## ARTICLE 19.

### TITLE TO IMPROVEMENTS.

Notwithstanding anything set forth or implied hereunder, during the Lease Term, Landlord shall have and own fee simple title to all Improvements affixed to or forming a part of the Premises, subject only to the Leasehold Estate and interests of Tenant pursuant to this Lease and to such Subleases as are authorized hereby.

## ARTICLE 20.

### MECHANICS' LIENS.

Tenant shall use commercially reasonable efforts to avoid the filing of mechanics' liens against the fee interest of Landlord in the Premises or the Leasehold Estate of Tenant under this Lease and shall obtain a lien waiver from the General Contractor upon completion of the Improvement Work. Tenant shall cause any claim of mechanics' lien arising by, through or under Tenant which purports to lien the estate of Landlord in the Premises to be removed or bonded off

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prior to any execution or enforcement of such lien. In the event that Tenant permits such liens to be foreclosed or executed on, Landlord may, but shall not be obligated to, pay such lien or liens in full, or cause the same to be removed of record by causing the lien or liens to be bonded. Any reasonable expenses incurred by Landlord in furtherance of Landlord's rights under this Article 20 shall be paid by Tenant to Landlord. Tenant may contest the validity of any such lien or claim, but upon final determination of such contest, Tenant shall pay any remaining judgment, decree or lien and cause the same to be released of record without cost to Landlord.

**ARTICLE 21.**  
**CASUALTY.**

**21.1.     Tenant's Obligation to Repair.** Except as provided in this Lease or in any Leasehold Mortgage, in the event of damage to or destruction of the Premises or any Improvements, the funds received by Tenant from property insurance acquired pursuant to Article 22 shall be made available to the extent needed to effect such repair and reconstruction of the structure or improvement so damaged or destroyed to substantially its condition prior to said damage or destruction, or, if such repair or reconstruction is determined by Tenant to be not commercially feasible due to the age, design, use, extent of damage or the type of construction, or other aspect of the Improvements, Tenant may, at its option, effect repair and reconstruction so as to preserve any portions of the Improvements that have not been substantially damaged or to remodel or revise the structure of the Improvements, or Tenant may raze the Improvements or any part thereof. Notwithstanding the foregoing, in the event that Tenant determines that any repair or reconstruction is not commercially feasible and/or that the continued operation of the Premises is not commercially feasible, Tenant may, at its option, terminate this Lease by written notice thereof to Landlord, whereupon Tenant shall be required to raze or repair the remaining Improvements to the extent necessary to protect them against further deterioration as a result of such casualty, and any insurance proceeds remaining following satisfaction of all sums secured by all Leasehold Mortgages and payment of any sums required to preserve or raze the Improvements shall be retained by Tenant. Tenant's restoration activities shall be subject to the following requirements and conditions:

(a) The restoration shall create a building of substantially the same (or greater) floor area and number of Beds as were contained in the damaged building; provided that Tenant shall be entitled to make such changes in the Improvements as Tenant determines are desirable to recognize changes that have occurred in this type of building since the original construction of the Premises and trends that are then occurring therein.

(b) Any material change to any work set forth in the Construction Documents for the restoration shall be subject to the review and approval of Landlord in accordance with the terms and provisions of Article 6 hereof, which approval shall not unreasonably be withheld, conditioned or delayed.

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(c) Landlord acknowledges that, notwithstanding anything set forth or implied herein to the contrary, Landlord has no ownership right or interest in the proceeds of the insurance acquired by Tenant pursuant to Article 22.

**21.2. Prompt Repair.** If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any Improvements, or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense but only to the extent of insurance proceeds and other amounts available to Tenant as above provided and subject to the provisions of Article 22 and the provisions of any Leasehold Mortgage. Subject to the time required for collecting insurance proceeds, redesigning, and obtaining governmental approvals therefor, obtaining necessary financing and Unavoidable Delays, Tenant shall use commercially reasonable efforts to promptly commence and complete such repair, replacement, reconstruction, or rebuilding to full completion.

**21.3. Lease Continuance.** This Lease and the Lease Term shall not terminate or be terminated because of damage to or destruction of the Improvements, except as expressly provided in this Lease. Tenant's obligation to pay Rent under this Lease shall be equitably abated during the period of any repair and/or reconstruction by Tenant pursuant to this Article 21.

## A R T I C L E   2 2 .

## I N S U R A N C E   A N D   I N D E M N I F I C A T I O N .

Before commencing construction of any Improvements, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect during the term of this Lease, at no cost to Landlord, the following insurance relating to the Premises:

**22.1. Liability Insurance.** Tenant shall purchase and maintain and keep in effect (or cause to be purchased and maintained and kept in effect) at all times during the Lease Term insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than \$5,000,000.00 per occurrence, which may be satisfied by any combination of a primary commercial general liability and excess liability or umbrella liability insurance policy, naming Landlord and any Leasehold Mortgagee as an additional insured. The coverage afforded the additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by Landlord shall be in excess of Tenant's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

- (a) Bodily injury
- (b) Broad form property damage (including completed operations)
- (c) Personal injury

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(d) Products and completed operations (this coverage shall extend for one year past the actual completion of construction of all Improvements)

**22.2. Workers' Compensation Insurance.** Tenant shall purchase and maintain and keep in effect at all times during the Lease Term workers compensation and employers liability insurance as required by the State of Nevada Workers Compensation statutes as follows:

(a) Workers Compensation (Coverage A) Statutory

(b) Employers Liability (Coverage B)

(i) \$500,000 each accident

(ii) \$500,000 each employee/disease

(iii) \$1,000,000 policy limit/disease

(iv) This policy shall include endorsement for All State coverage for state of hire.

**22.3. Automobile Liability Insurance.** If applicable, Tenant shall purchase and maintain and keep in effect at all times during the Lease Term commercial automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, to include non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add Landlord as an additional insured and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant.

**22.4. Property Insurance.** Tenant shall maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Lease Term insurance on the Premises and Improvements against special causes of loss form coverage. Such insurance shall be written on a replacement cost basis in the amount of the full replacement cost of the Improvements (but excluding the value of roads, foundations, surface parking areas, and similar improvements) subject, however to commercially reasonable sub-limits for buildings of this type. Tenant shall, periodically and its expense, but not less often than every 5 years during the term hereof, engage a consultant reasonably satisfactory to Landlord, to perform a detailed study of the cost to reconstruct the Phase One Project for purposes of determining the total insurance coverage required. During any period while the Premises is being constructed, the insurance required pursuant to this Article 22 shall be in the form of a builder's risk policy, to be provided by either Tenant or the General Contractor, equal to the replacement cost value of each building at the completion of construction.

(a) The builder's risk policy referred to above shall be special causes of loss form insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Premises and shall also insure finished products. Coverage shall also cover the interests of Landlord, Tenant, the General Contractor and the

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Contractors and construction subcontractors in the buildings while under construction and the building materials on site but not yet attached to or incorporated in the building with respect to the Premises, but it will not cover any machinery, tools, equipment, appliances, or other personal property owned, rented or used by Tenant, the General Contractor, or any subcontractor in the performance of the construction work on the Premises, which will not become a part of the completed Premises.

(b) The property insurance obtained under the builder's risk policy shall provide special causes of loss form coverage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, windstorm, false work, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the Premises' design professional's and the General Contractor for services and expenses required as a result of such insured loss. The builder's risk insurance shall include physical loss or damage to the construction work on the Premises, including materials and equipment in transit, on the Premises or at another location as may be indicated in the General Contractor application for payment and approved by Tenant.

(c) As to the builder's risk insurance policy, Tenant or the General Contractor, as applicable, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder's risk policy.

**22.5.     Evidence of Insurance.** Upon the Lease Commencement Date, and if requested by Landlord, no more than once annually thereafter, Tenant shall deliver to Landlord certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with this Article 22 reasonably acceptable to Landlord, which shall identify this Lease and include copies of endorsements naming Landlord as an additional insured for general liability coverage and auto liability coverage as to acts and omissions of Tenant and others for which Tenant is responsible under Applicable Laws and as to all liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant. The certificates, insurance policies, and endorsements required by this Article 22 shall contain a provision that coverages afforded will not be cancelled until at least thirty (30) calendar days prior written notice (ten (10) calendar days for nonpayment of premium) to Landlord prior to any lapse, cancellation, or a reduction in coverage. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Lease.

**22.6.     Copies and Additional Information.** Landlord shall be provided, upon reasonable request, copies of all policies and endorsements, to the extent available. Each copy of a policy shall include a copy of all endorsements and, if such copy is not a certified copy, shall be accompanied by a letter from Tenant's insurance broker stating that Tenant's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of

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the policy and endorsements is a true, correct, and complete copy of the respective insurance policy and all endorsements to the best of the broker's knowledge.

**22.7.     Tenant's Failure.** In the event that Tenant fails to carry insurance as required under this Article 22, and such failure continues for fifteen (15) calendar days after Tenant's receipt of written notice of such failure from Landlord, then in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant upon demand.

**22.8.     Claims Reporting.** Any failure to comply with the claims reporting provisions of the policies required to be maintained by Tenant hereunder or any breach of policy warranty shall not affect coverage afforded under the policy to protect Landlord.

**22.9.     Self-Insurance.** The policies specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Landlord under such policies. Tenant shall be solely responsible for any deductible and/or self-insured retention, which shall be included as Expenses under the definition of Net Income.

**22.10.    Payment of Insurance Proceeds.** In the event of any damage or destruction of the Premises or Improvements, the proceeds of Tenant's casualty insurance shall be paid to Tenant, or to the Leasehold Mortgagee, if said Leasehold Mortgagee so requires. If funds are disbursed to Tenant, Tenant shall deposit the proceeds in a fiduciary account or construction disbursement account to be distributed in accordance with this Lease.

**22.11.    Landlord's Insurance.** At the earliest possible time after execution of this Lease, and thereafter upon renewal of such policies, Landlord shall deliver to Tenant certificates evidencing Landlord's commercial general liability insurance, automobile liability insurance, property insurance, and workers compensation insurance, with limits of liability as currently maintained by Landlord.

**ARTICLE 23.**  
**CONDEMNATION.**

In the event that the entire Premises, or any part thereof, is taken or condemned for a public or quasi-public use or that after any partial taking the remaining portion of the Premises is not sufficient, in Tenant's reasonable judgment, for the successful operation of the Premises, Tenant shall have the right, with the written approval of the Leasehold Mortgagee (if there is then a Leasehold Mortgage), to terminate this Lease by written notice thereof to Landlord, in which event both Parties shall be relieved of and from any liability hereunder, except those accrued up to the time of such termination. In the event of any temporary taking or condemnation, Tenant shall be entitled to the entire award of the condemning authority. In the event that the entire Premises or any part thereof is permanently taken by condemnation, Tenant and Landlord shall cooperate to prove in each condemnation proceeding the loss in value, by reason of the taking, of the respective estates of Landlord and Tenant (notwithstanding the termination of this Lease, if any), and



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Landlord and Tenant shall each be entitled to pursue an award for the values of Landlord's and Tenant's respective interests in the Premises taken in such proceedings, if the condemning authority permits separate awards to be sought by Tenant and Landlord (it being acknowledged that in no event shall the portion of the award allocated to Tenant be less than all amounts secured by all Leasehold Mortgages). In the event that the condemning authority does not permit separate awards to be sought by Tenant and Landlord, then all proceeds and awards which may be payable as a result of condemnation shall, following their receipt by Tenant or any Leasehold Mortgagee, be distributed in the following order of priority:

**23.1.     Leasehold Mortgagees.** There shall first be paid to Leasehold Mortgagees such amounts as may be required by such Leasehold Mortgages to be paid to such Leasehold Mortgagees, in order of priority.

**23.2.     Costs of Collection and Restoration.** From the amount remaining, if any, there shall then be paid to Tenant a sum equal to the costs incurred by Tenant or Leasehold Mortgagee in connection with collection of such proceeds and awards (including, without limitation, all fees for experts, legal fees, costs of surveys, and appraisals, and court costs), and, in the event of a partial taking which does not result in the termination of this Lease, a sum equal to the costs incurred or to be incurred by Tenant in restoring the portion of the Premises remaining to a condition as nearly as possible to that in which the Premises were prior to such taking, in the light of any reduced area thereof, pursuant to a procedure reasonably satisfactory to Leasehold Mortgagee.

**23.3.     Remainder.** The amount remaining, if any, shall be paid to Tenant.

## ARTICLE 24. LEASEHOLD MORTGAGES.

**24.1.     Right to Mortgage.** On one or more occasions, Tenant and every successor and assignee of Tenant shall, in connection with the development and operation of the Phase One Project only have the right to enter into one or more Leasehold Mortgages and assign, transfer, or encumber this Lease as security for such Leasehold Mortgage ("Permitted Financing"). Tenant shall not place or create any mortgage, deed of trust or other lien or encumbrance purporting to affect Landlord's fee interest in the Premises or Landlord's interest in this Lease. Tenant shall not use, provide to others, or rely upon any financial statements, audits, or other documents of NSHE or UNLV for the purpose of obtaining any type of advantage with respect to financing the Phase One Project.

**24.2.     Landlord's Approval.**

(a) On or before that date which is fifteen (15) calendar days prior to the execution by Tenant of any Leasehold Mortgage, Tenant shall provide written notice thereof to Landlord, together with a true and correct copy of such Leasehold Mortgage. Landlord shall have the right to review and approve the terms of the Leasehold Mortgage in Landlord's reasonable discretion. In the event Landlord notifies Tenant in writing

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within ten (10) calendar days of receipt of the Leasehold Mortgage that Landlord does not approve thereof, Tenant shall not be permitted to execute the Leasehold Mortgage. If Landlord approves the Leasehold Mortgage in writing or fails to respond within ten calendar days, Tenant shall be permitted but not required to execute the Leasehold Mortgage in Tenant's sole discretion substantially in the form originally delivered to Landlord.

(b) Notwithstanding anything to the contrary, Tenant shall not be obligated to commence to perform the Improvement Work unless and until financing acceptable to Tenant is arranged. If financing acceptable to Tenant is not arranged within nine months after the Effective Date of this Lease, Tenant shall have the option to cancel this Lease by giving written notice of cancellation to Landlord; provided, such cancellation option shall be void if it is not exercised and financing is arranged thereafter. If Tenant can arrange financing only by making changes to the provisions of this Lease other than those provisions designating the length of the Term and the amount of Rent payable under this Lease, Tenant shall have the right to cancel this Lease if Landlord refuses to approve any such change in writing within thirty (30) days after Tenant's request therefor.

(c) In the event of any amendment to or modification of any Leasehold Mortgage, a copy thereof shall be provided to Landlord within fifteen (15) calendar days after the execution thereof. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and/or address shall be provided to Landlord. Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Article 24 shall be deemed properly addressed if sent to the Leasehold Mortgagee at the address indicated in the most recent notice sent with respect to the Leasehold Mortgage pursuant to this Article 24. Notices from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 32.1 hereof. Such notices, demands and requests shall be given in the manner described in Section 32.1 and shall in all respects be governed by the provisions of that section.

**24.3.     Default Notice; Leasehold Mortgagee's Right to Cure.**

(a) Landlord, upon providing Tenant any notice of default under this Lease or a termination of this Lease, shall at the same time provide a copy of such notice to the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage. No such notice by Landlord shall be deemed to have been duly given unless and until a copy thereof has been so provided to such Leasehold Mortgagees of which Landlord has received written notice in the manner specified herein.

(b) After such notice has been given to the Leasehold Mortgagee, such Leasehold Mortgagee shall have an additional ninety (90) day period (sixty (60) day

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period in the case of a monetary default) for remedying (or commencing to remedy and diligently pursuing remedying) any default or causing the same to be remedied (or commencing to remedy and diligently pursuing remedying) as is given Tenant; provided that such ninety (90) day period (sixty (60) day period in the case of a monetary default) shall begin when Landlord delivers a subsequent written notice to the Leasehold Mortgagee after the period of time given to Tenant to remedy, commence remedying or cause to be remedied the defaults specified in any such notice has expired in accordance with the terms and provisions of this Lease; provided, however, that in the event that any such nonmonetary default is not susceptible to cure by Leasehold Mortgagee until Leasehold Mortgagee can gain possession of the Premises, Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as Leasehold Mortgagee gains possession of the Premises, so long as

(i) during such extended cure period all payments of Rent are paid as required under this Lease (subject to the notice and cure provisions set forth in this Lease) and

(ii) Leasehold Mortgagee is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes Leasehold Mortgagee to take any such action at Leasehold Mortgagee's option in accordance with Applicable Laws and the terms and conditions of this Lease and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

**24.4. Notice to Leasehold Mortgagee.** Anything contained in this Lease to the contrary notwithstanding, if any default shall occur that may entitle Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default set forth in Article 31 or to a Leasehold Mortgagee in this Article 24, or elsewhere in this Lease, if any, Landlord shall notify ("**Default Termination Notice**") the Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay Rent, and at least sixty (60) calendar days in advance of the proposed effective date of such termination if such default is not the failure to pay Rent. The provisions of Section 24.5 shall apply if, during such 30- or 60-day Default Termination Notice period the Leasehold Mortgagee shall:

(a) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Default Termination Notice;

(b) Pay or cause to be paid all Rent and other payments then due and in arrears as specified in the Default Termination Notice to such Leasehold Mortgagee and that may thereafter become due during the cure period allowed to such Leasehold Mortgagee,

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subject to the notice and cure provisions set forth in this Lease; provided that no such amount shall be required to be paid before the same is due and owing under this Lease; and

(c) Comply or, in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible to being complied with by such Leasehold Mortgagee and continue to pursue such cure with reasonable due diligence, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the time allowed the Leasehold Mortgagee to complete such cure pursuant to this Section 24.4(c) shall be not less than sixty (60) calendar days and shall continue thereafter for so long as is reasonably necessary for the Leasehold Mortgagee to cure such nonmonetary requirement which is susceptible of cure by such Leasehold Mortgagee, including, in the event that the Leasehold Mortgagee is required to obtain possession of the Premises in order to effect such cure, any period of time reasonably required to obtain such possession (including any time Leasehold Mortgagee is stayed or enjoined).

**24.5.      Procedure on Default.**

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and Leasehold Mortgagee shall have proceeded in the manner provided for by Section 24.4, the specified date for the termination of this Lease as fixed by Landlord in its Default Termination Notice in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent shall be extended as provided in Section 24.4; provided, such Leasehold Mortgagee shall, during such extended period:

(i) Pay or cause to be paid the Rent, and other monetary obligations of Tenant under this Lease as the same become due (subject to the notice and grace provisions of Section 24.4) and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting: (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee; and

(ii) Unless Leasehold Mortgagee is stayed or enjoined from taking such actions, take steps to acquire or sell Tenant's interest in this Lease by

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foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity.

(b) If at the end of such extended period Leasehold Mortgagee is complying with this Section 24.5, this Lease shall not then terminate; and the time for completion by such Leasehold Mortgagee of proceedings pursuant to this Section 24.5 shall continue for the period provided in Section 31.1(b) in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent. Nothing in this Section 24.5, however, shall be construed to require Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured, and Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) Upon the acquisition of Tenant's Leasehold Estate herein by Leasehold Mortgagee or its designee or any other permitted purchaser at a foreclosure sale, assignment in lieu thereof, or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, all monetary defaults have been cured and the Leasehold Mortgagee, its designee or the successor of either shall proceed to cure any non-monetary defaults.

(d) Notwithstanding any other provision of this Lease, any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage (whether as a result of a default hereunder, a default under a Leasehold Mortgage or otherwise), shall be deemed to be a permitted Transfer or sale not requiring the consent of Landlord, provided such purchaser or assignee of this Lease and of the Leasehold Estate hereby created shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of such Leasehold Estate. No such sale, Transfer, or assignment shall constitute a default or Event of Default under this Lease.

(e) Notwithstanding any other provision of this Lease, no Leasehold Mortgagee or other person acquiring title to Tenant's interest in the Premises through or under a Leasehold Mortgage (including by Transfer in lieu of foreclosure) shall be liable for any loss or damage occurring prior to acquiring such title or subsequent to any assignment of such title. In the event of any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, (a) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any act or omission of Tenant, (b) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any amendment to this Lease not joined in or consented to by such Leasehold Mortgagee,

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(c) the Leasehold Mortgagee or purchaser at foreclosure shall not be subject to any offsets or defenses which Landlord has against Tenant and (d) Landlord and such Leasehold Mortgagee shall, each upon written request of the other, reaffirm in writing the validity of this Lease.

**24.6.     New Lease.** In the event of the termination of this Lease as a result of Tenant's default or otherwise, Landlord shall, in addition to providing the notices of default and termination as required by Section 24.4, provide Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord shall enter into a new lease ("New Lease") of the Premises with Leasehold Mortgagee or its designee for the remainder of the Lease Term, effective as of the date of termination, at the Rent and upon the terms, covenants, and conditions of this Lease (but excluding any requirements which are not applicable or have been satisfied by Tenant prior to termination), subject only to the conditions of title as the Premises are subject to on the date of the execution of the original Lease and such matters arising thereafter to which such Leasehold Mortgagee has consented to in writing, and to the right, if any, of any parties then in possession of any part of the Premises, provided:

(a) Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) calendar days after the date such Leasehold Mortgagee receives Landlord's notice of termination given pursuant to this Section 24.6;

(b) Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to this Lease regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 24.6 or under the New Lease, an amount equal to the Net Income derived by Landlord from the Premises during the period from the date of termination of this Lease to the date of the beginning of the Lease Term of such New Lease;

(c) Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which the Leasehold Mortgagee was notified by Landlord's Notice of Termination and that are reasonably susceptible of being cured by Leasehold Mortgagee or its designee; and

(d) Upon the execution and delivery of a New Lease, all Subleases and management agreements shall thereupon be assigned and transferred, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

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**24.7.   No Merger.** So long as any Leasehold Mortgage is in existence, unless Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall otherwise expressly consent in writing or unless this Lease has otherwise been terminated in accordance with its terms, the fee title to the Premises and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise. Landlord and Tenant may not voluntarily agree to terminate this Lease without the consent of Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage.

**24.8.   Erroneous Payments.** No payments not constituting payments of Rent made to Landlord by Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided Leasehold Mortgagee shall have made demand therefor not later than one (1) year after the date of such payment.

**24.9.   Bankruptcy.** In the event either Landlord or Tenant becomes the subject of a proceeding under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect (including any replacement thereof):

(a) Tenant shall not be entitled to reject this Lease without the prior written consent of the Leasehold Mortgagee and every other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; provided that, if the Lease is nevertheless rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 24.9(a) as if such bankruptcy proceeding had not occurred, unless the Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within sixty (60) calendar days following rejection of the Lease by Tenant or Tenant's trustee in bankruptcy. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in bankruptcy for Tenant in connection with any such proceeding, the rights of the Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 24.6 shall not be affected thereby.

(b) If the Lease is rejected by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; and any right to treat this Lease as terminated in such event shall be deemed

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assigned to such Leasehold Mortgagees, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) If this Lease is not treated as terminated in accordance with Section 24.9(b)(i), then this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the term hereof. Thereafter, Tenant or its successors shall be entitled to offset against Rent payable hereunder the amounts of any damages from time to time arising from such rejection or any failure of Landlord to perform its obligations hereunder and any such offset properly made shall not be deemed a default under this Lease. The lien of each Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection with the same priority as it would have enjoyed had such rejection not taken place.

**24.10. Landlord Not Liable for Tenant's Financing.** Tenant acknowledges that Tenant may not qualify for tax exempt financing. Tenant shall be solely responsible for debt repayment relative to any borrowings by Tenant, and Landlord shall not be a participant or guarantor on any such borrowings. Except for the subordination and nondisturbance and attornment agreements and estoppel certificates required by this Lease, Landlord shall not be made a party to any of Tenant's financing documents.

**24.11. Fee Mortgage.** All Fee Mortgages shall be subordinate to this Lease and any New Lease, and Landlord shall from time to time at the request of Tenant or any Leasehold Mortgagee provide a subordination agreement from any holder of a Fee Mortgage confirming that the Fee Mortgage is subordinate to this Lease and any New Lease.

**24.12. Limitation of Leasehold Mortgagee's Liability.** The liability of any Leasehold Mortgagee or its designee or nominee acquiring title pursuant to foreclosure or other process in lieu thereof under this Lease shall be limited to its interest in the Premises, and any judgments rendered against any such Leasehold Mortgagee or its designee or nominee following foreclosure or other process in lieu thereof shall be satisfied solely out of its interests in this Lease or the proceeds of sale of its interest in the Premises. No personal judgment shall lie against any such Leasehold Mortgagee or its designee or nominee upon extinguishment of its rights in the Premises, and any judgment so rendered shall not give rise to any right of execution or levy against such Leasehold Mortgagee's or its designee's or nominee's assets. The provisions of this Section 24.12 shall not inure to the successors and assigns of any Leasehold Mortgagee or its designee or nominee following its acquisition and Transfer of title to the Leasehold Estate created hereby. Nothing contained herein limiting the liability of a Leasehold Mortgagee or any Transferee shall be deemed to waive any default or remedies of Landlord.



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**24.13.    Security Interests.** Landlord hereby acknowledges and consents to Tenant's grant of security interests in the Personal Property of Tenant to bona fide lenders, their successors and assigns (together, "**Secured Lenders**"). Any Personal Property of Tenant in which a security interest has been granted to a Secured Lender is hereinafter called "**Secured Property**." Landlord subordinates any interest in the Personal Property of Tenant to security interests granted to Secured Lenders, subject to the provisions hereof. Landlord consents to the entry by Secured Lenders or their agents or representatives upon the Premises at any time pursuant to any document evidencing or governing a lien or security interest in favor of a Secured Lender for the purpose of removing the Secured Property, except that the Secured Lenders may not remove any Fixtures from the Premises. The Secured Property shall be deemed to be Personal Property and not a part of the Premises and shall not be claimed or seized or levied upon in any levy or legal execution or legal proceedings by Landlord. The Secured Lenders may remove Secured Property, or any part thereof, without liability for damage to or diminution in value of the Premises, except for the actual physical damage caused by such removal, which physical damage shall be repaired by the removing Secured Lender or caused to be repaired by the removing Secured Lender so that the Premises shall be restored to the condition the Premises would be in absent such removal.

**24.14.    No Guaranty; Only Debtor-Creditor Relationship.** Nothing contained herein shall be construed as a guaranty, of any kind or nature, by any Leasehold Mortgagee of any of the obligations of Tenant hereunder or as creating a relationship between Tenant and any Leasehold Mortgagee other than a relationship of creditor and debtor.

**24.15.    Casualty; Condemnation.** All proceeds of policies of insurance maintained hereunder and the award from any condemnation or taking of the Premises shall be applied as provided in Article 22 and Article 23, as applicable. The Leasehold Mortgagee is hereby authorized to participate in any actions, proceedings or negotiations in connection with the collection, settlement or compromise of any such proceeds or awards.

**24.16.    Proceedings.** Landlord shall give each Leasehold Mortgagee prompt written notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee written notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of written notice of such proceedings.

**24.17.    Waiver of Landlord's Lien.** Landlord does hereby waive any and all lien or claim of lien against Tenant, Commercial Subtenants, University Park, the Personal Property of Tenant and Commercial Subtenants, and all other trade fixtures and equipment of Tenant and Commercial Subtenants, now or hereafter located on the Premises, arising from this Lease or the relationship of Landlord and Tenant hereunder (or to the extent any such waiver is ineffective under Applicable Laws, Landlord hereby subordinates any such lien or claim of lien to the liens created under any and all Leasehold Mortgages, whether now or hereafter existing).

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**24.18. Changes to Mortgagee Protective Provisions.** In the event that Tenant hereafter desires to enter into a Leasehold Mortgage, Landlord shall consider in good faith any modifications, clarifications or changes to the mortgagee protective provisions contained in this Lease (including without limitation those set forth in this Article 24) which are reasonably requested by a Leasehold Mortgagee. Landlord shall promptly respond to any such request within ten (10) Business Days after Landlord's receipt of such request.

**ARTICLE 25.**  
**QUIET ENJOYMENT.**

Landlord represents and warrants that it has the right and capacity to enter into this Lease. Landlord covenants and agrees that Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Lease Term, without hindrance or molestation by anyone claiming paramount title or claims whatsoever, except by, through, or under Tenant, subject, however, to the covenants, agreements, terms, conditions, and other obligations of this Lease and any holder of any rights under any Permitted Exceptions and subject to the rights of Landlord set forth herein if an Event of Default occurs.

Landlord shall pay all amounts required to protect and defend Landlord's title to and interest in the Premises and as otherwise necessary to protect Tenant's interest in the Premises hereunder from any title exceptions adversely affecting Tenant's proposed use of the Premises, including without limitation any liens or similar claims not created by Tenant.

**ARTICLE 26.**  
**ASSIGNMENT AND TRANSFER.**

**26.1. Limitation: Consent Required.** Tenant may not, at any time, sell, assign, convey, or transfer (each, as applicable, a "Transfer") this Lease to another Person without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. As used herein, "Transfer" (a) shall include the appointment of a new Person as manager of Tenant, and (b) shall not include any subletting of the Premises or a Phase. Notwithstanding the foregoing, such restriction on Transfer shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

**26.2. Transfer by Landlord.** Notwithstanding anything set forth herein to the contrary, Landlord shall not at any time Transfer its interests in the Premises, the Phase One Land, the Improvements, and/or University Park, or any part thereof, without the prior written consent of Tenant and any Leasehold Mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Tenant's reasonable grounds for disapproval may include the risk of loss of tax-exempt status of the Land and the Phase One Project.

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**ARTICLE 27.  
ESTOPPEL CERTIFICATE.**

Upon not less than ten (10) Business Days prior written request by Tenant, Landlord, any Commercial Subtenant or any Leasehold Mortgagee, the other Party shall execute, acknowledge, and deliver to the requesting Party and/or to any current or prospective mortgagee, purchaser, assignee, title insurer, or other appropriate party, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified, and setting forth the modifications), setting forth the dates to which the Rent and charges payable by Tenant hereunder have been paid, whether or not to the knowledge of the Party making such certificate there is any existing default by either Party and whether or not any notice of default has been served by either Party upon the other and remains outstanding and stating the nature of any such defaults, and such other matters as may be reasonably requested, it being intended that any such statement delivered pursuant to this Article 27 may be relied upon by any existing or prospective title insurer, purchaser, assignee, Subtenant, mortgagee, or other appropriate party.

**ARTICLE 28.  
DISPUTE RESOLUTION.**

In recognition of the long term nature of each Party's commitment to the other and the substantial investment made by Tenant with regard to the Premises, in the event of a dispute, Landlord and Tenant agree that dispute resolution shall proceed as follows: first, negotiation as provided in Section 28.1; second, mediation, as provided in Section 28.2; and third, if the Parties are still unable to resolve their dispute, the complaining Party shall have all of the rights set forth in this Lease and available to such Party under Applicable Law to pursue adjudication and resolution of the dispute ("Dispute Resolution").

**28.1.     Negotiation.** The parties shall attempt in good faith to resolve any dispute promptly by negotiation between executives who have authority to settle the controversy. Either Party may give the other Party notice of any dispute not resolved in the ordinary course of business. Within ten (10) calendar days after delivery of the notice, the receiving Party shall submit a written response to the notice. The notice and response shall include (a) a statement of that Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) calendar days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations and materials provided pursuant to this negotiation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law, and statements made by any Party during negotiation may not be used against it in later proceedings if the Parties fail to resolve the dispute during negotiation.

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**28.2.      Mediation.** If a dispute has not been resolved by negotiation as provided above within twenty (20) calendar days or such longer time as the parties shall mutually agree upon, or the parties failed to meet within fifteen (15) days after delivery of the initial notice of negotiation, the parties shall endeavor to resolve the dispute by private mediation in Las Vegas, Nevada. If Landlord and Tenant cannot agree upon a mediator, each shall select one name from a list of mediators maintained by any bona fide dispute resolution provider or other private mediator, and the two mediators chosen by Landlord and Tenant shall then choose a third person who will serve as mediator. The parties agree to each have a representative present at the mediation who has authority to bind it to a written settlement agreement, subject to the approval of the board of directors or membership, as applicable, of Tenant and any consents or approvals of the Regents of the Nevada System of Higher Education or otherwise required by legislation and regulations governing Landlord. The initial mediation session shall be held promptly (but not more than thirty (30) calendar days following appointment of the mediator). All negotiations and materials provided pursuant to this mediation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law. Positions and statements made by any Party during mediation may not be used against it in later proceedings if the Parties fail to reach a settlement agreement during mediation. Each Party shall bear its own expenses and shall pay an equal share of the expenses of the mediator. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**28.3.      Further Legal Action.** Except as otherwise provided in this Lease, it is the intent of the Parties that these negotiation and mediation procedures shall govern any dispute under this Lease and either Party shall have the right to specifically enforce the negotiation and mediation procedures before the other Party may seek legal redress in a court of law. If a dispute has not been resolved by negotiation and mediation as provided in Sections 28.1 and 28.2, either Party shall have the right to commence legal action. Any legal actions brought to enforce this Lease shall be interpreted by the laws of the State of Nevada and brought in a court of competent jurisdiction in the State of Nevada.

**ARTICLE 29.**  
**INTEREST ON PAST DUE OBLIGATIONS.**

To compensate Landlord for its additional cost of processing late payments, for any payment of Rent which is not received within 7 days after it is due, Tenant will pay a late charge of two percent (2%) of the late payment, but not more than \$1,000 per month. Unless otherwise specifically provided herein, any amount due under this Lease from Tenant to Landlord which is not paid when due shall bear interest from the due date until paid at the Default Rate.

## PHASE ONE LEASE

## ARTICLE 30.

## SURRENDER UPON LEASE TERMINATION.

Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Personal Property and equipment that is not attached to the Improvements and shall surrender the Premises to Landlord in good functional similar condition as when placed in service (normal wear and tear excepted), damage by condemnation, casualty, and normal wear and tear excepted; provided that Tenant shall not remove from the Premises any Fixtures attached to or used in connection with operation of the Improvements, or any additions to or replacements thereof made during the Lease Term, it being the intent of the Parties that upon expiration or earlier termination of this Lease, Landlord shall receive the Improvements in operating condition; provided that nothing contained herein shall be construed as prohibiting Tenant from removing the Personal Property of Tenant or as prohibiting the removal of any belongings of any Subtenant. Tenant's Personal Property not removed by Tenant within six months after any expiration or other termination shall be considered abandoned, and Landlord may dispose of such property in accordance with Applicable Laws.

## ARTICLE 31.

## DEFAULT AND REMEDIES.

**31.1. Tenant Defaults.** The occurrence of any of the following shall constitute an event of default by Tenant hereunder (each, a "Tenant Event of Default"):

(a) Tenant shall have failed to pay any Base Rent payable under Section 5.1 when due or (subject to receipt of notice of the same from Landlord to the extent the bill therefor is received by Landlord) any other sum required or stipulated to be paid by Tenant to Landlord hereunder, and such failure continues for ten (10) calendar days following Tenant's receipt of written notice thereof from Landlord; or

(b) Tenant shall have failed to observe or perform any other covenant or obligation of Tenant hereunder and Tenant shall not have cured such failure within thirty (30) calendar days after Tenant shall have received written notice thereof from Landlord; provided, however, that if such failure is such as cannot with diligent effort be cured within thirty (30) calendar days, Tenant shall not be in default hereunder if Tenant shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, "Insolvency Laws"), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Tenant of Tenant's covenants and obligations under this Lease,

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as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Tenant of the performance of Tenant's covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Tenant of the performance of Tenant's covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Tenant or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If Tenant shall abandon the Premises; or

(f) If a Lien is filed against the Premises and Tenant fails to furnish a bond or otherwise obtain a release or discharge of the Lien as required by Article 20 of this Lease; or

(g) If any warranty or representation of Tenant contained in this Lease is untrue in any material respect as of the date made; or

(h) Tenant shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(i) A Transfer of this Lease in violation of Article 26.

**31.2. Landlord Remedies.** Upon the occurrence of a Tenant Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees set forth herein, Landlord shall be entitled to exercise any one or more or all of the following remedies:

(a) Subject to the rights of Leasehold Mortgagees set forth herein, Landlord may terminate this Lease and the rights of Tenant hereunder, and may enter and retake possession of the Premises (subject to the rights of Subtenants and Residents); or

(b) Landlord may exercise any other right or remedy available at law or in equity; provided that the remedy of terminating this Lease shall be subject to the rights of Leasehold Mortgagees, Subtenants and Residents; or

(c) Landlord, without additional notice, may cure such Event of Default on the part of Tenant at Tenant's expense, and Tenant shall promptly reimburse Landlord for all actual, reasonable costs and expenses incurred by Landlord in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Landlord in so curing such default or failure, and any damages incurred by Landlord as a result of such default or failure, shall be paid by Tenant within thirty (30) days of demand therefor by Landlord.

**31.3. Tenant's Right to Contest.** Notwithstanding anything to the contrary contained herein, if Landlord claims that a default has occurred under Section 31.1(b), and Tenant has

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contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.1(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

**31.4.      Landlord Defaults.** The occurrence of any of the following shall constitute an event of default by Landlord hereunder (each, a “**Landlord Event of Default**”):

(a) Landlord shall have failed to pay any sum required or stipulated to be paid by Landlord to Tenant hereunder, and such failure continues for ninety (90) calendar days following Landlord’s receipt of written notice thereof from Tenant; or

(b) Landlord shall have failed to observe or perform any other covenant or obligation of Landlord hereunder and Landlord shall not have cured such failure within ninety (90) calendar days after Landlord shall have received written notice thereof from Tenant; provided, however, that if such failure is such as cannot with diligent effort be cured within ninety (90) calendar days, Landlord shall not be in default hereunder if Landlord shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Landlord shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “**Insolvency Laws**”), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Landlord of Landlord’s covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Landlord of the performance of Landlord’s covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Landlord of the performance of Landlord’s covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Landlord or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If any warranty or representation of Landlord contained in this Lease is untrue in any material respect as of the date made; or

(f) Landlord shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(g) A Transfer of this Lease in violation of Article 26 above.

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**31.5.     Tenant Remedies.** Upon the occurrence of a Landlord Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees herein, Tenant shall be entitled to exercise any one or more or all of the following remedies:

(a)    Tenant may exercise any right or remedy available at law or in equity; and

(b)    Tenant, without additional notice, may cure such Event of Default on the part of Landlord at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual, reasonable costs and expenses incurred by Tenant in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, shall be paid by Landlord within thirty (30) days of demand therefor by Tenant.

**31.6.     Landlord's Right to Contest.** Notwithstanding anything to the contrary contained herein, if Tenant claims that a default has occurred under Section 31.4(b), and Landlord has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.4(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

**31.7.     Tenant's Remedies.** In the event that Landlord defaults hereunder or fails to timely comply with any of its duties or obligations hereunder, provided said default is not cured within ninety (90) calendar days after the giving of written notice thereof by Tenant to Landlord, unless such default is of such nature that it cannot be cured within such 90-day period, in which case no default is to occur so long as Landlord commences the curing of the default within such 90-day period and thereafter diligently pursues the curing of same, Tenant may, in addition to any other right or remedy available to Tenant hereunder or at law or in equity, cure such default or failure at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual costs and expenses incurred by Tenant, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, may at Tenant's option be offset against any Rent and other amounts from time to time due or owing by Tenant to Landlord hereunder.

**ARTICLE 32.**  
**GENERAL PROVISIONS**

**32.1.     Notices.** Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:



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TO LANDLORD:	<p>BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION c/o: Senior Vice President for Business and Finance University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451004 Las Vegas, NV 89154-1004 Attn: Gerry S. Bomotti Phone: (707) 895-3571 Fax: (702) 895-1090 Email: gerry.bomotti@unlv.edu</p>
WITH A COPY TO:	<p>Director for Real Estate: University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451027 Las Vegas, NV 89154-1027 Attn: Cherie Garrity Phone: (702) 895-2500 Fax: (702) 895-4960 Email: cherie.garrity@unlv.edu</p>
AND A COPY TO:	<p>General Counsel: University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451085 Las Vegas, NV 89154-1085 Attn: Elda Sidhu Phone: (702) 895-5185 Fax: (702) 895-5299 Email: elda.sidhu@unlv.edu</p>
TO TENANT:	<p>UNIVERSITY PARK, LLC c/o The Midby Companies 8275 South Eastern, Suite 103 Las Vegas, NV 89123 (702) 362-2111 - Office (702) 637-4227 – Direct Line Attn: Tom George Email: Tomg@midbycos.com</p>

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WITH A COPY TO: The Midby Companies  
8275 South Eastern, Suite 103  
Las Vegas, NV 89123  
(702) 362-2111 - Office  
(702) \_\_\_\_\_ – Direct Line  
Email: Ericm@midbycos.com

AND A COPY TO: Jeff Geen, Esq.  
2422 Granada Bluff Court  
Las Vegas, Nevada 89135  
(702) 985-1800  
Email: jeffsgeen@gmail.com

Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by facsimile transmission, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

**32.2. Waiver.** Neither Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies under this Lease unless the waiver is in writing and signed by such Party. Any such waiver shall be applicable only to the extent specifically set forth in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

**32.3. Compliance With Laws.** Tenant shall comply in all material respects at Tenant's sole cost and expense with all notices of all governmental authorities having jurisdiction over the Premises and shall observe and comply with all Applicable Laws. Notwithstanding the foregoing, Tenant shall have the right to reasonably contest any such notices or Applicable Laws.

**32.4. Approvals to be Reasonable.** Unless the context of a provision clearly and unambiguously indicates otherwise, any approval or consent required under this Lease or requested by a Party of the other Party, shall not be unreasonably withheld, conditioned or delayed.

**32.5. Interpretation.** The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for or against either of the Parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the Parties. The Parties do not intend to become, and nothing contained in this Lease shall be interpreted to deem that Tenant and Landlord are, partners or joint venturers in any way or that Tenant is an agent or representative of Landlord for any

## P H A S E   O N E   L E A S E

purpose or in any manner whatsoever. A male or female person may be referred to in this Lease by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of this Lease which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Lease specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Lease at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense. "Including" means "including but not limited to." Words such as "hereby," "herein," and "hereunder" and words of similar import shall be construed to refer to this Lease in its entirety. "Include" means "include but not limited to." "Any" means "any and all." Except to the extent the context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time." An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party's behalf and pursuant to its request or consent shall be deemed to have been performed by the Party. If a Party is required not to unreasonably withhold consent or approval, the Party shall also be required not to unreasonably delay consent or approval.

**32.6.     Captions, Links, Table of Contents.** The captions, links, headings, and table of contents set forth in this Lease are for convenience of reference only and shall not be limiting or determinative in the construction or interpretation hereof.

**32.7.     Memorandum of Lease.** The Parties shall execute a memorandum of lease (the "Memorandum of Lease") of this Lease in the form of Exhibit D attached to this Lease for recording. Any recording, realty transfer, documentary, stamp, or other tax imposed upon the execution or recording of the Memorandum of Lease shall be paid by Tenant.

**32.8.     Binding Effect.** All terms, covenants, conditions, and agreements contained in this Lease shall extend to and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**32.9.     Partial Invalidity.** If any term, covenant, or condition of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and shall be enforced to the extent permitted by Applicable Laws; provided such partial invalidity does not prevent Tenant from realizing the benefit of its bargain pursuant to this Lease, including but not limited to possession of the Premises and the use thereof in all material respects as contemplated by this Lease.

**32.10.    Governing Law; Consent to Exclusive Jurisdiction.** This Lease shall be construed in accordance with and governed by the laws of the State of Nevada, without regard to conflict of laws principles. For the purpose of any suit, action, or proceeding arising out of or relating to this Lease, each of Landlord and Tenant hereby irrevocably consents and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of Nevada. In addition to any form of service of process otherwise permitted by law, service in any such action may be given by certified or registered mail, return receipt requested, and shall be deemed served upon the actual

## PHASE ONE LEASE

delivery thereof in such manner to the Party intended to be served, which service shall be adequately established by the receipt for such delivery.

**32.11. Unavoidable Delays.** If either Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease (other than an obligation or condition requiring the making of any payment hereunder) by any condition beyond the reasonable control of such Party, commonly referred to as “force majeure” (each, an “Unavoidable Delay”), including, without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, failure of power, unavailability of utility service, delays attributable to a Party’s unreasonable withholding of its consent or approval hereunder, Act of God, unusually severe or inclement weather, governmental restriction, regulation or control, terrorist, war, enemy, or hostile governmental action, civil commotion, insurrection, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days. If either Party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days.

**32.12. Intellectual Property Rights.** No Party may use the intellectual property rights of the other Party without the express written permission of the other Party. Without limiting the generality of the last sentence, Tenant shall not use the name of the “Nevada System of Higher Education” or “UNLV”, or the marks, seals, logos, or any other related name (collectively the “Marks”), in its advertising or in the production of any materials produced by Tenant, without the prior written consent of NSHE or UNLV, as the case may be, pursuant to an approved licensing or other agreement between the parties. Tenant may, however, use the names “Nevada System of Higher Education” and “University of Nevada, Las Vegas” or their acronyms in factual descriptions of the Phase One Project and, to the extent that Tenant delivers materials to UNLV for publication or dissemination that include the names or Marks and UNLV does so publish or disseminate the materials, it shall be deemed approval of such use.

**32.13. Nonliability of Landlord and Tenant Officials and Employees.** Landlord’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Tenant shall look solely to Landlord’s interest in the Premises for the collection of any judgment. No director, officer, official, employee, agent, or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease. In no event shall this Lease be considered a general obligation of the Landlord or the State of Nevada. Tenant’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Landlord shall look solely to Tenant’s interest in the Premises for the collection of any judgment. No officer, official, employee, agent, member, or representative of Tenant shall be personally liable to Landlord or any successor in interest, in the event of any default or breach by Tenant for any amount which may become due to Landlord or any successor in interest, or on any obligation incurred under the terms of this Lease.

## P H A S E   O N E   L E A S E

**32.14. Surrender at End of Term.** On the last day of the Lease Term or upon any earlier termination of this Lease, all of Tenant's right, title and interest in and to the Premises, (which shall include the Premises and all Improvements and Fixtures) shall automatically and fully vest in Landlord, and Tenant shall surrender and deliver up the Premises to Landlord in good order, condition, and repair, damage by fire or other casualty of Taking excepted, free and clear of all lettings, occupancies, liens, and encumbrances other than (a) those, if any, existing on the date hereof, and (b) those created by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date. Notwithstanding the termination of the Lease, Tenant shall remain liable to Landlord for any loss or damage suffered by Landlord because of any Event of Default of Tenant. Upon surrender, Tenant shall assign to Landlord or Landlord's designee all Subleases, and other agreements and rights relating to the operation or use of the Premises, or Tenant's interest in them, as Landlord may request. The provisions of this 32.14 shall survive the expiration or earlier termination of this Lease.

**32.15. Yield Up.** On the last day of the Lease Term or upon any earlier termination of this Lease, Tenant, its assigns, or successors in interest shall deliver to Landlord such of the following as Tenant, its assignee or successor in interest may have in its possession: Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, any maintenance records and manuals for the Premises, all original licenses and permits then pertaining to the Premises, and all warranties and guarantees then in effect that Tenant has received in connection with any equipment or work or services performed on the Improvements, together with a duly executed assignment to Landlord, without recourse or warranty, of the foregoing (whether or not Tenant has any of them in its possession), and copies of all other documents relating to the Premises.

**32.16. Reserve Accounts.** Upon the expiration or termination of the Lease Term, all reserve accounts shall automatically and fully vest in Tenant.

**32.17. Prior Agreements and Discussions.** Any agreements between Landlord on the one hand and Tenant on the other hand before the date of this Lease and relating to the Premises are superseded by this Lease; provided, however, that the Memorandum of Understanding shall remain in full force and effect with respect to all things and matters (including all pre-development reimbursables) other than the Premises, notwithstanding the execution of this Lease. If there are any conflicts between the Memorandum of Understanding and this Lease, this Lease shall control. All prior negotiations relative to the Premises and/or University Park are merged into this Lease. The submission of any unexecuted copy of this Lease shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Lease until it is executed and delivered by both Parties.

**32.18. Relationship, No Third Party Rights.** This Lease shall not be construed to create a joint venture or partnership between Landlord and Tenant, it being the intention of the parties to create only a landlord and tenant relationship. Nothing in this Lease shall be construed to permit anyone other than Landlord, Tenant, the Leasehold Mortgagees and their respective

## P H A S E   O N E   L E A S E

successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

**32.19. Entire Agreement; Amendment.** This Lease embodies the entire agreement and understanding between the Parties with respect to the subject matter described in this instrument, and supersede all prior agreements and understandings between the Parties with respect to the subject matter hereof. The Recitals to this Lease are hereby incorporated herein and made a part hereof. The Parties acknowledge that financing and feasibility studies related to University Park may require, and the Parties shall reasonably cooperate with each other, to amend or enter into additional agreements that are mutually determined to be advantageous to the construction, ownership, and operation of the Premises. This Lease may be changed, waived, discharged or terminated only by an instrument in writing signed by the Party or Parties against which enforcement of such change, waiver, discharge or termination is sought.

**32.20. Counterparts.** This Lease may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature and acknowledgment pages may be taken from one counterpart and inserted in other counterparts to form a single Lease document.

**32.21. Attorneys' Fees.** In the event of any litigation proceedings regarding this Lease, the non-prevailing Party shall pay or reimburse the reasonable attorneys' fees, court costs and other reasonable costs paid or incurred by the prevailing Party in such litigation.

### ARTICLE 33. EXHIBITS.

The Exhibits to this Lease are as follows:

- A    LEGAL DESCRIPTION OF LAND
- B    GRAPHIC DEPICTION OF PHASE ONE LAND AND FUTURE PHASES  
      LAND
- C    PERMITTED EXCEPTIONS
- D    FORM OF MEMORANDUM OF LEASE

***[SIGNATURE PAGES FOLLOW]***

## PHASE ONE LEASE

IN WITNESS WHEREOF, the Parties hereto have executed this **LEASE AGREEMENT FOR UNIVERSITY PARK PHASE ONE** as of the date first written above.

**LANDLORD:**

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF  
HIGHER EDUCATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:**

**UNIVERSITY PARK, LLC, a Delaware limited liability company**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

--

LEGAL DESCRIPTION OF LAND

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) 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, 2009 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.



EXHIBIT B

GRAPHIC DEPICTION OF PHASE ONE LAND  
AND FUTURE PHASES LAND

NOTES

This map is for assessment use only and does NOT represent a survey. No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office.

This map is compiled from official records, including surveys and deeds, but only contains the information needed for assessment. See the recorded documents for more detailed legal information.

USE THIS RESULTS WITHIN MAP REDUCED FROM 1:100 ORIGINAL

MAP LEGEND

- Parcel Boundary
- Sub Boundary
- Right of Way PCL
- Match / Leader Line
- Historic Sub Boundary
- Section Line
- AR Space PCL
- AR Space PCL
- 1.00 Acreage
- 202 Parcel Subsid Number
- PG 3-4-45 PLAT RECORDING NUMBER
- Block Number
- Lot Number
- CL 1 CON LOT NUMBER

Scale: 1" = 200' Rev: 02/08/2011

162-22-5

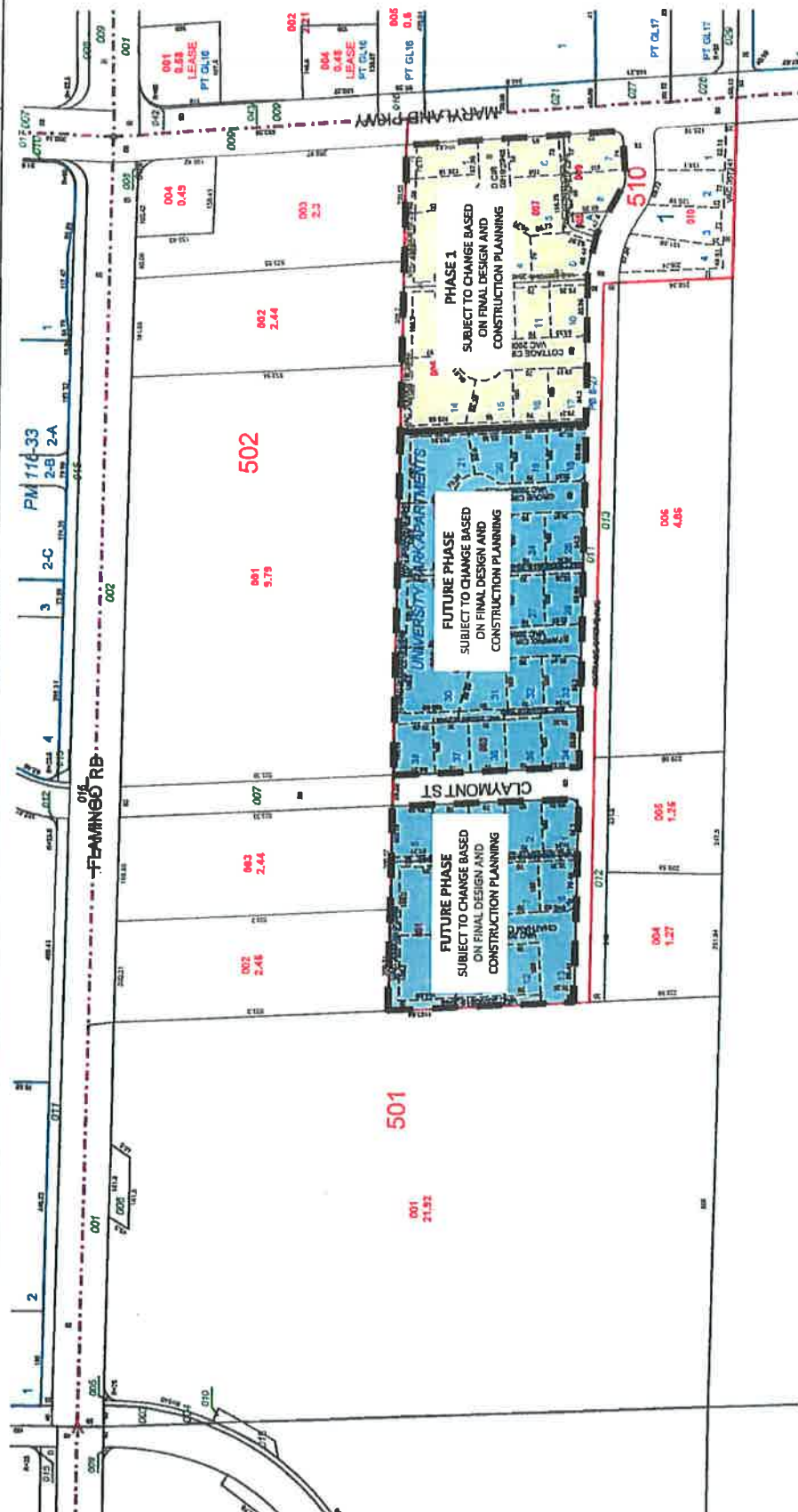
N 2 NE 4

22

T21S R61E

ASSESSOR'S PARCELS - CLARK CO., NV.

Michele W. Shafer - Assessor



TAX DIST 470

EXHIBIT C

PERMITTED EXCEPTIONS

14-08-0015-KR/DTL  
1<sup>st</sup> Amendment 10/15/14

## COMMITMENT FOR TITLE INSURANCE

### SCHEDULE A

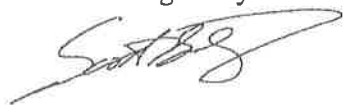
1. Effective Date: October 15, 2014 at 7:30 a.m.
2. Policy or Policies to be issued: Amount
  - a. Owners Policy CLTA: \$20,500,000.00

Proposed Insured: UNIVERSITY PARK, LLC A DELAWARE LIMITED  
LIABILITY COMPANY
3. The estate or interest in the land described or referred to in this Commitment is  
FEE
4. Title to the estate or interest in the land is at the effective date vested in:  

Wells Fargo Bank National Association
5. The land referred to in this Commitment is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART  
HEREOF

This Commitment shall not be valid or binding until countersigned by a validating officer or  
authorized signatory.



---

Title Officer: Scott M Braatz

American Land Title Association Commitment 2006

14-08-0015-KR/DTL  
1<sup>st</sup> Amendment 10/15/14

## COMMITMENT FOR TITLE INSURANCE

### SCHEDULE B – SECTION I

#### REQUIREMENTS

The following are the requirements to be complied with:

1. Payment of the agreed amounts for the interest(s) to be insured.
2. Payment of all premiums, fees and charges due the Company.
3. Instruments satisfactory to create the estate of interest to be insured must be properly prepared, executed, delivered and filed for record, to wit:

Grant, Bargain Sale Deed from the current owner to the Proposed Insured.  
Deed of Trust to be Insured herein, if any.

NOTE: A properly completed, executed and acknowledged State of Nevada Declaration of value form must accompany each deed submitted for recordation; real property transfer tax is calculated at the rate of \$2.55 per \$500.00 of consideration; basic recording fees are \$17.00 for the first page, and \$1.00 per page thereafter; a \$25.00 Nonstandard Document fee may apply.

4. The Company must be advised in writing of the name of any party not referred to in this Commitment who will acquired an interest in the land, or who will either obtain or make a loan or mortgage encumbering the land. The Company may then make additional requirements, or take additional exceptions to coverage on Schedule B, Section II.
5. Pay all taxes, charges, assessments levied and assessed against the land which are already due and payable, or which will be due and payable as of the effective dated of the policy anticipated by this Commitment.
6. The requirement that we be provided with a copy of the Operating Agreement of University Park, LLC prior to the close of escrow.
7. Release(s) or Reconveyance(s) of the Following:

NONE

14-08-0015-KR/DTL  
1<sup>st</sup> Amendment 10/15/14

8. Our search in the public record did not disclose any open deeds of trust on the herein described property. Please confirm with your seller/borrower that there are no liens or encumbrances affecting the herein described property other than those shown on the Preliminary Report or Commitment bearing the above referenced escrow number.
9. This transaction is entitled to a Short Term Rate discount on the Title Premiums which expires on March 11, 2017.
10. It is required that Seller furnish a fully executed Owner's Affidavit prior to close of this transaction if ALTA Extended coverage is contemplated.

The right is reserved to make additional exceptions and/or requirements upon examination of said documentation.

11. Prior to the issuance of an ALTA form Policy of Title Insurance, it shall be required that this Company be furnished with an ALTA/ACSM LAND TITLE SURVEY conforming to the minimum standard requirements as revised on February 23, 2011.
12. Underwriter approval is needed to close this transaction; therefore, submit all documentation, including but not limited to requested endorsements, at least ONE WEEK prior to the contemplated closing date.

**UNDERWRITER APPROVAL REQ.:** The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in satisfaction of the requirement above.

13. **The requirement that an inspection of the subject land be made prior to the close of escrow.**

**NOTE: Additional exceptions and/or requirements may be added to this report upon completion of said inspection.**

14. The requirement that a copy of the documentation together with all supplements, amendment, etc., thereto, of Wells Fargo Bank, National Association be furnished to this company.
15. Please provide the name(s) of the prospective purchaser(s) to the Title Department at least one week prior to the close of escrow so that we may complete this report. Additional requirements may be made at that time.

14-08-0015-KR/DTL  
1<sup>st</sup> Amendment 10/15/14

## COMMITMENT FOR TITLE INSURANCE

### SCHEDULE B – SECTION II

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
3. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
4. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

14-08-0015-KR/DTL  
1<sup>st</sup> Amendment 10/15/14

7. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,705.87, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,681.14 has been paid

Second installment of \$2,674.91 has been paid

Third installment of \$2,674.91 unpaid delinquent first Monday in January

Fourth installment of \$2,674.91 unpaid delinquent first Monday in March

Parcel No. 162-22-510-001

8. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,450.07, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,114.46 has been paid

Second installment of \$1,111.87 has been paid

Third installment of \$1,111.87 unpaid delinquent first Monday in January

Fourth installment of \$1,111.87 unpaid delinquent first Monday in March

Parcel No. 162-22-510-002

9. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,336.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,086.03 has been paid

Second installment of \$1,083.50 has been paid

Third installment of \$1,083.50 unpaid delinquent first Monday in January

Fourth installment of \$1,083.50 unpaid delinquent first Monday in March

Parcel No. 162-22-510-003



14-08-0015-KR/DTL  
1<sup>st</sup> Amendment 10/15/14

10. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,477.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,624.01 has been paid

Second installment of \$2,617.89 has been paid

Third installment of \$2,617.89 unpaid delinquent first Monday in January

Fourth installment of \$2,617.89 unpaid delinquent first Monday in March

Parcel No. 162-22-510-004

11. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,460.25, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,619.63 has been paid

Second installment of \$2,613.54 has been paid

Third installment of \$2,613.54 unpaid delinquent first Monday in January

Fourth installment of \$2,613.54 unpaid delinquent first Monday in March

Parcel No. 162-22-510-005

12. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,374.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,598.17 has been paid

Second installment of \$2,592.12 has been paid

Third installment of \$2,592.12 unpaid delinquent first Monday in January

Fourth installment of \$2,591.12 unpaid delinquent first Monday in March

Parcel No. 162-22-510-006

## EXHIBIT D

## FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

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

Space above this line for Recorder's Office only

## MEMORANDUM OF LEASES

THIS MEMORANDUM OF LEASE ("Memorandum of Leases") is made and entered into as of \_\_\_\_\_, 2015, by and between **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 ("Landlord" or "UNLV") and **UNIVERSITY PARK, LLC**, a Delaware limited liability company ("UPLLC"), and **[FUTURE PHASES, LLC]**, a Delaware limited liability company ("FPLLC").

UPLLC and FPLLC are collectively referred to herein as the "Tenants").

1. Landlord is the owner of that certain real property, and the improvements located thereon, located in Clark County, Nevada and more particularly described on Attachment A attached hereto (the "Land").

2. For and in consideration of the mutual covenants, agreements, and conditions set forth in the following unrecorded lease agreements:

(a) that certain unrecorded Lease Agreement for University Park Phase One by and between Landlord and UPLLC, dated \_\_\_\_\_, 2015 (the "Phase One Lease"), and

(b) that certain unrecorded Lease Agreement for University Park Future Phases by and between Landlord and FPLLC, dated \_\_\_\_\_, 2015 (the "Future Phases Lease," and, together with the Phase One Lease, collectively the "Leases."),

3. Landlord hereby leases to Tenants and Tenants hereby lease from Landlord, upon all the terms and conditions of the Leases, the Land and all buildings, structures, improvements, personal and intangible property, and appurtenances, as more particularly described in the Leases.

4. The Land is to be partitioned into two areas, which are sometimes referred to "Phase One Land" and "Future Phases Land," and will be leased by Landlord to UPLLC and FPLLC, respectively.

5. In accordance with the terms and conditions of the Leases:

(a) the term of the Phase One Lease shall be for a period not to exceed approximately \_\_\_\_ years commencing on the Commencement Date as more particularly set forth therein and

(b) the term of the Future Phases Lease shall be for a period not to exceed of approximately \_\_\_\_ years commencing on the Commencement Date as more particularly set forth therein

6. This Memorandum of Leases has been prepared to provide notice that the Land is subject to the terms and conditions of the Leases, which terms are hereby incorporated by reference into this Memorandum of Leases.

7. In no event shall the terms of this Memorandum of Leases be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Leases. In the event of any inconsistency between the terms of this Memorandum of Leases and the terms of the Leases, the terms of the Leases shall control.

8. This Memorandum of Leases may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

IN WITNESS WHEREOF, Landlord and Tenants have caused their duly authorized representatives to execute this Memorandum of Leases as of the date first written above.

***SIGNATURES TO FOLLOW***

ATTACHMENT A  
--  
TO MEMORANDUM OF LEASES  
--  
LEGAL DESCRIPTION OF LAND

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) 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, 2009 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.A

# EXHIBIT 3



## Transmittal Sheet

**DATE:** MARCH 15, 2016

**TIME:** 1215

**TO:** The Korte Company  
Attn: Mike Wylie  
9225 W. Flamingo Rd., Suite 100  
Las Vegas, NV 89147

**PHONE:** 702-228-9551

**FROM:** Mike Wolfe  
Project Manager

**PHONE:** 702-895-2470  
**FAX:** 702-895-4960

**RE:** PERMIT #16-B053, UNIVERSITY PARK APARTMENTS

### Transmitted:

NUMBER	DATE	DOCUMENT DESCRIPTION
1	11MAR16	Reviewed set of demo permit plans, phase I-above ground (sheets C1.01, C1.02, C2.01, C2.02)
1	11MAR16	Reviewed set of demo permit plans, phase II-utilities (sheets C1.01, C1.02, C2.01, C2.02)
1	11MAR16	Original permit
1	11MAR16	Original green card

### Message

Please note plans, permit, and green card must be kept on site at all times and be made available to the SPWD inspector.

Received By: Jeff Chandler

Date: 3-15-16

**State of Nevada Public Works Division**  
**Inspection and Plan Check Dept.**  
**515 E. Musser St. #102**  
**Carson City, Nevada 89701-4263**



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**Building Permit**

**Permit Number:** 16-B053

Page 1 of 2

Printed: 3/11/2016

---

**Applicant**

**Approval Date:** 3/11/2016

**Name:** UNLV  
**Address:** 4505 S. Maryland Parkway  
Box 451027  
Las Vegas, NV 89154  
**Phone:** 702-895-2470

---

**Owners**

---

**Contractors**

**Contractor Type:**

**Name:** The Korte Company  
**Address:** 9225 W. Flamingo Road  
Suite 100  
**Phone:** 702-228-9551  
North Las Vegas, NV 89030

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**Fees and Receipts:**

Number	Description	Amount
16-B053	Building Permit Fee (Auto)	\$114,592.45
16-B053	Sub Permit Fee 3 Items (Calc)	\$51,566.60
16-B053	Plan Review Fee (Calc)	\$116,311.33

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**Total Fees:** \$282,470.38

622756 \$282,470.38

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**Total Receipts:** \$282,470.38

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**Description**

**Structure Use:** Housing  
**Purpose:** UNLV University Park Studen  
**Construction Value:** \$35,597,727.00

**Start Date:**  
**End Date:**

---

**Conditions**

**Date:** 3/11/2016  
**Condition Description:** DEMO PHASE I & 2  
**Condition Comments:**

**Code:**

3JA0274

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**Other Fields:**

**Using Agency**

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

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**NY. STATE PUBLIC WORKS DIVISION- REQUIRED INSPECTIONS**

**Inspection requests must be made by 4 pm on the day before the requested date.  
No inspections prior to 8 am or later than 2 pm, unless alternate arrangements are made in advance.**

**NO Saturday or Sunday inspections.**  
**Inspection requests shall be e-mailed to SPWD**

**Send Invite to SPWD Inspector for Preconstruction Meeting**

**16-B053 UNLV University Park Apartments DEMO Phase 1&2ONLY**

<b>Required Inspections</b>	<b>Performed by</b>	<b>Pass/Fail</b>	<b>Date</b>
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**Additional inspections required by SPWD Inspector:**

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Agency staff is responsible to obtain and provide documentation to concerning these inspections.

1. Upon completion of project this Permit Card shall be returned to SPWD inspector.
2. Approved plans and this card must be provided to SPWD Inspector during inspections.

Typed on 3/9/ 2016 by AG

# EXHIBIT 4

*Carson City Office:*

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

**STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
PUBLIC WORKS DIVISION**

*Las Vegas Office:*

1830 East Sahara Avenue, Suite 204  
Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 10  
SPWD Inspector: Rick Maddox  
Date: 11-03-16 (Closed 12-14-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

All exposed conduit in the parking garage is to be Intermediate Metal Conduit (IMC) or Rigid Metal Conduit (RMC). All exposed conduit outside (5th floor) is required to be Rigid Metal Conduit (RMC). (NMC replaced with IMC above slab)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet E2.0 and Parking Garage Project Manual, Section 26 05 33 Part 3, 3.1 A-1 and 3.1 A-2. Corrosion protection required per 342.6 of the NEC for IMC and 344.14 (B) (2) of the NEC for RMC.

cc: SPWD Project Manager  
Architect/Consultant

*Carson City Office:*

515 East Musser Street, Suite 102  
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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 10  
SPWD Inspector: Rick Maddox  
Date: 11-03-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

All exposed conduit in the parking garage is to be Intermediate Metal Conduit (IMC) or Rigid Metal Conduit (RMC). All exposed conduit outside (5th floor) is required to be Rigid Metal Conduit (RMC).

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet E2.0 and Parking Garage Project Manual, Section 26 05 33 Part 3, 3.1 A-1 and 3.1 A-2. Corrosion protection required per 342.6 of the NEC for IMC and 344.14 (B) (2) of the NEC for RMC.

cc: SPWD Project Manager  
Architect/Consultant

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*Las Vegas Office:*

1830 East Sahara Avenue, Suite 204  
Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 09  
SPWD Inspector: Rick Maddox  
Date: 10-18-16 (CLOSED 10-20-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

The drain, waste and vent piping on the first floor (South Side) of the parking garage and the building drain line to the outside of the building was covered without the inspection required by section 103.5 of the 2012 Uniform Plumbing Code. Please expose the piping and provide the test required by section 712 of the 2012 Uniform Plumbing Code. (CORRECTIVE ACTION REQUIRED BY THIS NNC IS COMPLETE. PLUMBING PIPING EXPOSED, INSPECTED UNDER TEST AND APPROVED)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

103.5 and 712 of 2012 the Uniform Plumbing Code.

cc: SPWD Project Manager  
Architect/Consultant

*Carson City Office:*

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 09  
SPWD Inspector: Rick Maddox  
Date: 10-18-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

The drain, waste and vent piping on the first floor (South Side) of the parking garage and the building drain line to the outside of the building was covered without the inspection required by section 103.5 of the 2012 Uniform Plumbing Code. Please expose the piping and provide the test required by section 712 of the 2012 Uniform Plumbing Code.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

103.5 and 712 of 2012 the Uniform Plumbing Code.

cc: SPWD Project Manager  
Architect/Consultant

Carson City Office:

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 08  
SPWD Inspector: Rick Maddox  
Date: 10-14-16 (Closed on 12-14-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

The three hour fire barrier walls at the first floor does not comply with detail 14 on sheet A7.03. The detail is a proprietary system that calls for United States Gypsum one inch Sheetrock panels with 3.0 pound mineral fiber batts attached directly to the gypsum panels. The construction of the wall does not allow space or access for the wool batts and Pabco; Pabcore 1" panels have been installed.  
(Pab Core Replaced with USG 1" Sheetrock Panels)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Three Hour Fire Barrier Detail 14 on Sheet A7.03.

cc: SPWD Project Manager  
Architect/Consultant

*Carson City Office:*

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 08  
SPWD Inspector: Rick Maddox  
Date: 10-14-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

The three hour fire barrier walls at the first floor does not comply with detail 14 on sheet A7.03. The detail is a proprietary system that calls for United States Gypsum one inch Sheetrock panels with 3.0 pound mineral fiber batts attached directly to the gypsum panels. The construction of the wall does not allow space or access for the wool batts and Pabco; Pabcore 1" panels have been installed.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Three Hour Fire Barrier Detail 14 on Sheet A7.03.

cc: SPWD Project Manager  
Architect/Consultant



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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 07  
SPWD Inspector: Rick Maddox  
Date: 10-13-16 (Closed 11-14-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

All outside corners are to be a minimum of three (3) studs per Detail 4 on Sheet A7.60 and Section 2308.9.2 of the 2012 International Building Code. The outer walls that support the second floor deck are single studs at the ends of the walls. (Three Studs added at all corners)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Section 2308.9.2 of the 2012 International Building Code and Detail 4 on Sheet A7.60. .

cc: SPWD Project Manager  
Architect/Consultant

Carson City Office:

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

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Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 07  
SPWD Inspector: Rick Maddox  
Date: 10-13-16 (Closed 11-14-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

All outside corners are to be a minimum of three (3) studs per Detail 4 on Sheet A7.60 and Section 2308.9.2 of the 2012 International Building Code. The outer walls that support the second floor deck are single studs at the ends of the walls. (Three Studs added at all corners)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Section 2308.9.2 of the 2012 International Building Code and Detail 4 on Sheet A7.60. .

cc: SPWD Project Manager  
Architect/Consultant

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 07  
SPWD Inspector: Rick Maddox  
Date: 10-13-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

All outside corners are to be a minimum of three (3) studs per Detail 4 on Sheet A7.60 and Section 2308.9.2 of the 2012 International Building Code. The outer walls that support the second floor deck are single studs at the ends of the walls.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Section 2308.9.2 of the 2012 International Building Code and Detail 4 on Sheet A7.60. .

cc: SPWD Project Manager  
Architect/Consultant

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Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 6 (Closed 1-20-17)  
SPWD Inspector: Rick Maddox  
Date: 10-12-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S.Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Provide a fix to relocate the PVC drain, waste and vent piping into the walls using appropriate fittings as prescribed in 706.1 of the 2012 Uniform Plumbing Code at all locations that the piping missed the wall lines. A method for patching the concrete slab will be required. The slab is not to be patched until repair is complete and piping retested as required by 712.0 of the UPC.

**\*\*REQUIRED CORRECTIVE ACTION COMPLETED!**

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

312.1, 312.2, and 706.1 of the 2012 Uniform Plumbing Code

Carson City Office:

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
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Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 06  
SPWD Inspector: Rick Maddox  
Date: 10-12-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Provide a fix to relocate the PVC drain, waste and vent piping into the walls using appropriate fittings as prescribed in 706.1 of 2012 the Uniform Plumbing Code at all locations that the piping missed the wall lines. A method for patching the concrete slab will be required. The slab is not to be patched until repair is completed and piping retested as required by 712.0 or the UPC.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

312.1, 312.2 and 706.1 of 2012 the Uniform Plumbing Code.

cc: SPWD Project Manager  
Architect/Consultant

Carson City Office:

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
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**PUBLIC WORKS DIVISION**

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Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 05  
SPWD Inspector: Rick Maddox  
Date: 10-12-16 (Closed 11-04-15)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Replace the treated sill plates at the closet areas in unit 1104 with new plate. The plate at this location is splintered and does not provide the proper bearing for the wall. Breaks at sill plates are required to be strapped with a 1-1/2 wide 16 gage galvanized strap with six (6) 16d nails on each side of the plate break per IBC 2308.9.8. (Sill plates replaced)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

IBC 2304.3.1, 2308.9.2.4 and 2308.9.8.

cc: SPWD Project Manager  
Architect/Consultant

**3JA0289**

Carson City Office:

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

**STATE OF NEVADA**  
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Las Vegas Office:

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Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 05  
SPWD Inspector: Rick Maddox  
Date: 10-12-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Replace the treated sill plates at the closet areas in unit 1104 with new plate. The plate at this location is splintered and does not provide the proper bearing for the wall. Breaks at sill plates are required to be strapped with a 1-1/2 wide 16 gage galvanized strap with six (6) 16d nails on each side of the plate break per IBC 2308.9.8.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

IBC 2304.3.1, 2308.9.2.4 and 2308.9.8.

cc: SPWD Project Manager  
Architect/Consultant

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 04  
SPWD Inspector: Rick Maddox  
Date: 10-11-16 (Closed on 11-04-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Provide an engineered field foundation repair for the missed foundation dimensions at the first floor unit 1105 foundation. The north south foundation at shear wall SA-C and SA-P is short for the 22 feet of the wall and the north return to the outside wall does not provide full bearing for the 2 hour bearing wall. A bolt retrofit will be required for the hold down hardware in the area per note 6 of the hold down bolt details on sheet SB0.2 of the approved plan. (Fondation repaired per RFI 174 with special inspection by Tom Helm of Nova Geotechnical)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet SB1.1B, IBC 2308.6 and 2304.3.1.

cc: SPWD Project Manager  
Architect/Consultant

**3JA0291**



Carson City Office:

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 04  
SPWD Inspector: Rick Maddox  
Date: 10-11-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Provide an engineered field foundation repair for the missed foundation dimensions at the first floor unit 1105 foundation. The north south foundation at shear wall SA-C and Sa-P is short for the 22 feet of the wall and the north return to the outside wall does not provide full bearing for the 2 hour bearing wall. A bolt retrofit will be required for the hold down hardware in the area per note 6 of the hold down bolt details on sheet SB0.2 of the approved plan

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet SB1.1B, IBC 2308.6 and 2304.3.1.

cc: SPWD Project Manager  
Architect/Consultant

**3JA0292**

Carson City Office:  
515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
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**DEPARTMENT OF ADMINISTRATION**  
**PUBLIC WORKS DIVISION**

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 03  
SPWD Inspector: Rick Maddox  
Date: 10-6-16(Closed 1-19-17)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S.Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

An in floor metallic raceway system (Walker Duct) has been added in the slab on grade at the north side of the Fitness Room that is not shown on the approved plan. Please provide an approved plan revision for the addition of the in floor metallic raceway system installed in the slab on grade and the associated floor receptacle outlets on Sheet E3.02 Detail 3.

**\*\*REQUIRED CORRECTIVE ACTION HAS BEEN COMPLETED.**

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Approved Plan Sheet E3.02 Detail 3. (Walker Duct Not Shown on the SNPD Approved Plan)

*Carson City Office:*

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**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 03  
SPWD Inspector: Rick Maddox  
Date: 10-6-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

An in floor metallic raceway system (Walker Duct) has been added in the slab on grade at the north side of the Fitness Room that is not shown on the approved plan. Please provide an approved plan revision for the addition of the in floor metallic raceway system installed in the slab on grade and the associated floor receptacle outlets on Sheet E3.02 Detail 3.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Approved Plan Sheet E3.02 Detail 3. (Walker Duct Not Shown on the SNPD Approved Plan)

cc: SPWD Project Manager  
Architect/Consultant

*Carson City Office:*

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

**STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
PUBLIC WORKS DIVISION**

*Las Vegas Office:*

1830 East Sahara Avenue, Suite 204  
Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 02  
SPWD Inspector: Rick Maddox  
Date: 9-22-16 (Closed 10-20-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Note CC of sheet SBO.5 is called out as follows; "FRAMING IN EXTERIOR WALLS SHALL BE FIRE RETARDANT –TREATED WOOD (FRTW) PER IBC 2303.2 AND 2304.9.5. FASTNERS IN FRTW SHALL BE IN ACCORDANCE w/MFR'S RECOMMENDATIONS".

The exterior walls are being framed with number two (2) Douglas fir untreated 2x6's.

The exterior bearing walls are required to be a two-hour rated assembly in type III-A construction.

(CORECTIVE ACTION REQUIRED BY THIS NNC IS COMPLETE. FIRE RATED MATERIAL VERIFIED)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet SBO.5 Note CC under Framing Plan Notes .

cc: SPWD Project Manager

Carson City Office:

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**PUBLIC WORKS DIVISION**

Las Vegas Office:

1830 East Sahara Avenue, Suite 204  
Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 02  
SPWD Inspector: Rick Maddox  
Date: 9-22-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Note CC of sheet SBO.5 is called out as follows; "FRAMING IN EXTERIOR WALLS SHALL BE FIRE RETARDANT –TREATED WOOD (FRTW) PER IBC 2303.2 AND 2304.9.5. FASTNERS IN FRTW SHALL BE IN ACCORDANCE w/MFR'S RECOMMENDATIONS".

The exterior walls are being framed with number two (2) Douglas fir untreated 2x6's.

The exterior bearing walls are required to be a two-hour rated assembly in type III-A construction.

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet SBO.5 Note CC under Framing Plan Notes .

cc: SPWD Project Manager  
Architect/Consultant

Cleared  
10-18-16  
3JA0298

*Carson City Office:*

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

**STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
PUBLIC WORKS DIVISION**

*Las Vegas Office:*

1830 East Sahara Avenue, Suite 204  
Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 1  
SPWD Inspector: Rick Maddox  
Date: 9-22-16 (CLOSED 10-20-16)  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Plumbing passing thru concrete masonry walls are to be installed to not subject the piping to any undue strains or stress from expansion, contraction and structural steeling. Provide a detail from the design professionals for compliance with section 312.2 of the 2012 Uniform Plumbing Code.  
(CORRECTIVE ACTION REQUIRED BY THIS NNC IS COMPLETE. MASONRY AROUND PIPING REMOVED AND SLEEVE ADDED TO ALLOW FOR EXPANSION AND CONTRACTION)

**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet SG1.1 and PG2.10. Section 312.2 of the 2012 Uniform Plumbing Code.

cc: SPWD Project Manager

Architect/Consultant

*Carson City Office:*

515 East Musser Street, Suite 102  
Carson City, Nevada 89701-4263  
(775) 684-4141 | Fax (775) 684-4142

**STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
PUBLIC WORKS DIVISION**

*Las Vegas Office:*

1830 East Sahara Avenue, Suite 204  
Las Vegas, Nevada 89104-3739  
(702) 486-5115 | Fax (702) 486-5094

**NOTICE OF NON-COMPLIANCE (NNC)**

NNC No.: 01  
SPWD Inspector: Rick Maddox  
Date: 9-22-16  
Contractor: Korte Construction

**Project Identification**

Project Name: University Park Student Housing  
Project Address: 4259 S Maryland Parkway  
SPWD Project No.: 16-B053

The listed items have been found to be in non-compliance with the Contract Documents and/or with the applicable codes and regulations. The listed items require prompt correction and re-inspection.

**Description of Non-Compliant Work:**

Plumbing passing thru concrete masonry walls are to be installed to not subject the piping to any undue strains or stress from expansion, contraction and structural settling. Provide a detail from the design professionals for compliance with section 312.2 of the 2012 Uniform Plumbing Code.

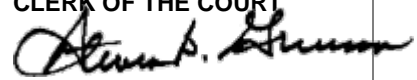
**Applicable drawing sheets, details, specification sections, submittals, or codes:**

Sheet SG1.1 and PG2.10. Section 312.2 of the 2012 Uniform Plumbing Code.

cc: SPWD Project Manager  
Architect/Consultant

*CLEAR  
10-18-16*





**RFJN**  
**DICKINSON WRIGHT PLLC**

Cynthia L. Alexander  
Nevada Bar No. 6718  
Email: calexander@dickinson-wright.com  
Taylor Anello  
Nevada Bar No. 12881  
Email: tanello@dickinson-wright.com  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 550-4400  
Fax: (844) 670-6009

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

UPA 1, LLC, a Delaware limited liability  
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri  
corporation,

Defendant.

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

DEPT. 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'  
REQUEST FOR JUDICIAL NOTICE**

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' REQUEST FOR JUDICIAL NOTICE**

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 requests that the  
Court take judicial notice of the documents listed below in this Request for Judicial Notice  
("RJN").

A fact is subject to judicial notice if it is "(1) [g]enerally known within the territorial  
jurisdiction of the trial court; or (2) [c]apable of accurate and ready determination by resort to  
sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to  
reasonable dispute." NRS 47.130; *see also* Fed. R. Evid. 201(b). The court "shall take judicial

notice if requested by a party and supplied with the necessary information” and such notice “may be taken at any stage of the proceeding.” NRS 47.150, 47.170; *see also* Fed. R. Evid. 201(d), (f). The Court may take judicial notice of matters of public record. *See Jory v. Bennight*, 542 P.2d 1400, 1403 (Nev. 1975) (taking notice of Secretary of State records); *United States v. 14.02 Acres of Land*, 547 F.3d 943, 955 (9th Cir. 2008) (the court “may take judicial notice of matters of public record”) (citations and internal quotation marks omitted); *Valasquez v. Mortgage Elec. Registration Sys., Inc.*, No. C 08-3818 PJH, 2008 WL 4938162, at \*2–3 (N.D. Cal. Nov. 17, 2008) (taking judicial notice of: (1) Deed of Trust, (2) Assignment of Deed of Trust, (3) Notice of Default and Election to Sell Under Deed of Trust, (4) Substitution of Trustee, and (5) Rescission of Notice of Default because they were publicly recorded). In the context of motions to dismiss, courts regularly take judicial notice of public documents attached to motions to dismiss submitted by defendants. *See, e.g., Roe v. Johnson*, 334 F. Supp. 2d 415, 419-20, n.6 (S.D. NY 2004); *In re Bayside Prison Litigation*, 190 F. Supp. 2d 755, 761 (D. NJ. 2002); *see also Leber v. Berkley Vacation Resorts*, Case No. 2:08-CV-01752-PMP-PAL, 2009 U.S. Dist. LEXIS 66928 (D. Nev. Jul. 27, 2009).

Here, the Court may take judicial notice of each of the attached documents. Judicial notice of the following documents is proper in the context of UNLV’s Motion for Summary Judgment (“Motion”) as each document below is a public document or is an official Nevada record. The documents are:

1. Copy of the Deed recorded May 29, 2015 as Instrument No. 201505290005531 (attached as **Exhibit 1**).
2. Copy of the Notice of Lien recorded October 9, 2017 as Instrument No. 20171009-0001520 attached hereto as **Exhibit 2**.

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

4. Copy of the Third Amended Notice of Lien recorded December 11, 2018 as Instrument No. 20181211-0001830 attached as **Exhibit 4**.

Each of the above referenced documents are recorded with the Clark County Recorder's Office and, therefore, are matters of public record, the authenticity of which may be readily and accurately determined. As such, and for all the foregoing reasons, the Court may take judicial notice of each of the Documents attached hereto.

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

8363 West Sunset Road, Suite 200

Las Vegas, Nevada 89113-2210

**Tel: (702) 550-4400**

*Attorneys for 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 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' REQUEST FOR JUDICIAL NOTICE** 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:

David Freeman, Esq.  
 Gregory S. Gilbert, Esq.  
 J. Stephen Peek, Esq.  
 HOLLAND AND HART, LLP  
 9555 Hillwood Drive, 2<sup>nd</sup> Floor  
 Las Vegas, NV 89134  
[dfreeman@hollandhart.com](mailto:dfreeman@hollandhart.com)  
[gsgilbert@hollandhart.com](mailto:gsgilbert@hollandhart.com)  
[speek@hollandhart.com](mailto:speek@hollandhart.com)  
*Attorneys for UPA 1, LLC*

Brian Boschee, Esq.  
 Donna Dimaggio, Esq.  
 HOLLEY DRIGGS WALCH FINE WRAY  
 PUZEY & THOMPSON  
 400 S. 4<sup>th</sup> Street, 3<sup>rd</sup> Floor  
 Las Vegas, NV 89101  
[bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)  
[ddimaggio@nevadafirm.com](mailto:ddimaggio@nevadafirm.com)  
*Attorneys for Bridgeway Advisors*

Leon F. Mead II, Esq.  
 Sarah Mead Thomas, Esq.  
 MEAD LAW GROUP LLP  
 7201 W. Lake Mead Blvd., Suite 550  
 Las Vegas, Nevada 89128  
[leon@meadlawgroup.com](mailto:leon@meadlawgroup.com)  
[sarah@meadlawgroup.com](mailto:sarah@meadlawgroup.com)  
*Attorneys for The Korte Company*

Joshua H. Reisman, Esq.  
 Glenn Machado, Esq.  
 Robert R. Warns III, Esq.  
 REISMAN SOROKAC  
 8965 S. Eastern Ave., Suite 382  
 Las Vegas, NV 89123  
[jreisman@rsnvlaw.com](mailto:jreisman@rsnvlaw.com)  
[gmachado@rsnvlaw.com](mailto:gmachado@rsnvlaw.com)  
[rwarns@rsnvlaw.com](mailto:rwarns@rsnvlaw.com)  
*Attorneys for Wells Fargo Northwest, N.A*



An Employee of Dickinson Wright PLLC

# EXHIBIT 1

APN: 162-22-510-001 through  
162-22-510-009

**WHEN RECORDED MAIL TO:**

BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION,  
on behalf of the UNIVERSITY OF  
NEVADA, LAS VEGAS  
Attn: Real Estate Office  
4505 S. Maryland Pkwy., P.O. Box 451027  
Las Vegas, NV 89154

**MAIL TAX BILL TO:**

BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION,  
on behalf of the UNIVERSITY OF  
NEVADA, LAS VEGAS  
Attn: Real Estate Office  
4505 S. Maryland Pkwy.  
Las Vegas, NV 89154-1027

---

**GRANT, BARGAIN AND SALE DEED**

THIS INDENTURE WITNESSETH, that **WELLS FARGO BANK, NATIONAL ASSOCIATION**, for valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the UNIVERSITY OF NEVADA, LAS VEGAS, whose address is Attn: Real Estate Office, 4505 South Maryland Parkway, Las Vegas, Nevada 89154-1027, all that real property situated in the County of Clark, State of Nevada, described as follows:

See Exhibit "A" attached hereto and by this reference incorporated herein

TOGETHER WITH all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

**SUBJECT TO:**

1. General and special taxes and assessments for the current fiscal year, not delinquent, and including the personal property taxes of any former owner, if any; and
2. Restrictions, conditions, reservations, rights, rights-of-way and easements now of record, if any, or any that actually exist on the property.

IN WITNESS WHEREOF, this instrument has been executed this 27<sup>th</sup> day of May, 2015.

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

By: [Signature]  
Name: Devin Murphy  
Title: Vice President

### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

*see attached*

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
(here insert name of the officer)

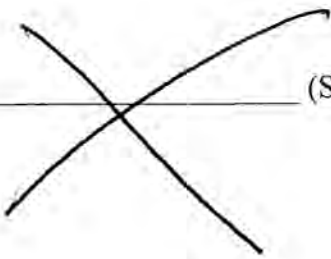
personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature \_\_\_\_\_ (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California )

County of San Diego )

On May 27 2015 before me, Michael Conrad Notary Public  
(here insert name and title of the officer)

personally appeared Dawn Murphy

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Michael Conrad

(Seal)

## OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Grant, Bargain and Sale Deed

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)  
☐ Attorney-in-Fact  
☐ Corporate Officer(s) \_\_\_\_\_ Title(s)

- ☐ Guardian/Conservator  
☐ Partner - Limited/General  
☐ Trustee(s)  
☐ Other: \_\_\_\_\_

representing: \_\_\_\_\_  
 Name(s) of Person(s) or Entity(ies) Signer is Representing

### Additional Information

#### Method of Signer Identification

Proved to me on the basis of satisfactory evidence:  
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:  
 Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

#### Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐

EXHIBIT A

LEGAL DESCRIPTION

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) 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 RERECORDED JULY 1, 2009 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.

# State of Nevada Declaration of Value Form

## 1. Assessor Parcel Number(s)

- a) 162-22-510-001 thru 009  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

## 2. Type of Property:

- a. ☐ Vacant Land      b. ☐ Sgl. Fam. Residence  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☒ Apt. Bldg.      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
i. ☐ Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE  
ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

## 3. a. Total Value/Sales Price of Property

\$0.00

## b. Deed in Lieu of Foreclosure Only (value of property)

## c. Transfer Tax Value:

\$0.00

## d. Real Property Transfer Tax Due

\$0.00

## 4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: 13 &amp; per NRS 361.055

b. Explain Reason for Exemption: Transfer to a Constitutional Entity of the State of Nevada

## 5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: [Signature] Capacity: GRANTOR/SELLER

Signature: \_\_\_\_\_ Capacity: GRANTEE/BUYER

SELLER (GRANTOR) INFORMATION  
(REQUIRED)BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: Wells Fargo Bank, National Association

Print Name: BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS

Address: 1 Independent Ave  
Suite 615  
City: Jacksonville  
State: FL Zip: 32262Address: Attn: Real Estate Office  
City: Las Vegas  
State: NV Zip: 89154

## COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Nevada Title Company

Esc. #: 14-08-0015-KR/DTL

Address: 3993 Howard Hughes Parkway, Suite 120

City:

Las Vegas

State: NV

Zip: 89169

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

# 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

**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  
UPAI 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:

**UPAI 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

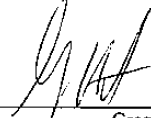
By: 

Greg O. Korte  
President, Las Vegas Division

**VERIFICATION OF LIEN**

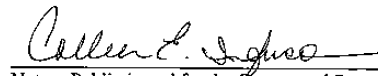
State of Nevada                    )  
  ) ss.  
County of Clark                 )

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 3

Inst #: 20180529-0001743  
Fees: \$40.00  
05/29/2018 11:02:14 AM  
Receipt #: 3413623  
Requestor:  
CHICAGO TITLE LAS VEGAS - 9  
Recorded By: WIHD Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

**APN#'S:**

162-22-510-001  
162-22-510-002  
162-22-510-003  
162-22-510-004  
162-22-510-005  
162-22-510-006  
162-22-510-007  
162-22-510-008  
162-22-510-009

**Recording Requested by and Return to:**

The Midby Companies  
8275 S. Eastern Avenue Suite 103  
Las Vegas, NV 89123  
Accommodation Only 12900001

---

**Mechanic's Release of Lien**

---

This page added to provide additional information required by NRS 111.312 Sections 1-2  
(Additional Recording Fee Applies)

The cover page must be typed or printed in clear black ink only.

THIS IS BEING RECORDED AT THE REQUEST OF  
CHICAGO TITLE AS AN ACCOMMODATION ONLY  
WITH NO LIABILITY.

APN # 162-22-510-001 through 162-22-510-009

Bond No. 72BSBHK6915

## Mechanic's Release of Lien

WHEREAS, UPA 1, LLC (name of principal), located at 8275 S. Eastern, Suite 103, LV, NV 89123 (address of principal), desires to give a bond for releasing the following described property owned by Board of Regents of the Nevada System of Higher Education (name of owners) from that certain notice of lien in the sum of \$3,632,395.21, recorded May (month) 22<sup>nd</sup> (day) 2018 (year), in the office of the recorder in Clark County (name of county where the property is located):

Lots one (1) through thirty-eight (38), inclusive, and Lot "A", all in Block Two (2), and Lots one (1) through thirteen (13), 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, 2009 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.

## A claim of Mechanic's Lien for Labor and/or Material furnished

Lien Claimant: The Korte Company  
 Amount: \$20,366,490.22  
 Recorded: October 9, 2017 as Instrument NO. 20171009-0001520, Official Records

A Notice of Pending Action to Foreclose said mechanic's lien in District Court, Clark County, Nevada, Case No. A-18-767674-C was recorded January 23, 2018 as Instrument No. 20180123-0009992, of Official Records.

## Amended Notice of Lien for Labor and/or Material furnished

Lien Claimant: The Korte Company  
 Amount: \$8,499,308.66  
 Recorded: January 24, 2018 as Instrument No. 20180124-0001571, Official Records.

## Second Amended Notice of Lien for Labor and/or Material furnished

Lien Claimant: The Korte Company  
 Amount: \$3,632,395.21  
 Recorded: May 22, 2018 as Instrument No. 20180522-0000016 Official Records.

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, The Korte Company dba Korte Construction Co., (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$5,448,592.82, (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by the lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

IN TESTIMONY WHEREOF, the principal and surety have executed this bond in Las Vegas, Nevada, on the 25<sup>th</sup> day of the month of May of the year 2018.

## "PRINCIPAL"

## UPA 1, LLC

By: University Park, LLC, its sole member  
 By: Master Management, LLC, its manager

By: [Signature]  
 Eric S. Midby 5-25-18

COUNTERSIGNED THIS 25<sup>th</sup> DAY OF May, 2018

BY: [Signature]

Lisa Dawn Stevens, License #49803

(Print or Type Name Here)

7881 W. Charleston, Suite #140

Address

Las Vegas, NV 89117

City, State & Zip Code

(702) 382-4010

Phone Number

State of Nevada }

} ss.

County of Clark }

On 25<sup>th</sup> (month) May (day) 2018, (year), before me, the undersigned, a notary public of this County and State, personally appeared Eric S. Midby who acknowledged that he or she executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared Lisa Stevens known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he or she acknowledged to me that the surety executed the foregoing instrument.

[Signature]  
 (Notary Public in and for  
 the County and State)



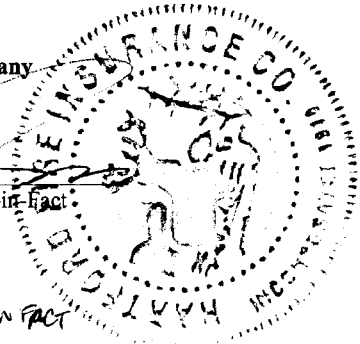
## "SURETY"

## Hartford Fire Insurance Company

By: [Signature]  
 Lisa Stevens, Attorney-in-fact

LISA STEVENS

ATTORNEY IN FACT



Hartford Fire  
 Insurance Co  
 Incorporated 1810

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

**THE HARTFORD**

BOND, T-12

One Hartford Plaza

Hartford, Connecticut 06155

[Bond.Claims@thehartford.com](mailto:Bond.Claims@thehartford.com)

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: LEAVITT INSURANCE AGENCY

Agency Code: 72-166079

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <b>Hartford Fire Insurance Company</b> , a corporation duly organized under the laws of the State of Connecticut         |
| <input checked="" type="checkbox"/> | <b>Hartford Casualty Insurance Company</b> , a corporation duly organized under the laws of the State of Indiana         |
| <input checked="" type="checkbox"/> | <b>Hartford Accident and Indemnity Company</b> , a corporation duly organized under the laws of the State of Connecticut |
| <input type="checkbox"/>            | <b>Hartford Underwriters Insurance Company</b> , a corporation duly organized under the laws of the State of Connecticut |
| <input type="checkbox"/>            | <b>Twin City Fire Insurance Company</b> , a corporation duly organized under the laws of the State of Indiana            |
| <input type="checkbox"/>            | <b>Hartford Insurance Company of Illinois</b> , a corporation duly organized under the laws of the State of Illinois     |
| <input type="checkbox"/>            | <b>Hartford Insurance Company of the Midwest</b> , a corporation duly organized under the laws of the State of Indiana   |
| <input type="checkbox"/>            | <b>Hartford Insurance Company of the Southeast</b> , a corporation duly organized under the laws of the State of Florida |

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of** Unlimited :

Angelina Jensen, Lisa Stevens, Jeric Leavitt, Dixon Leavitt of LAS VEGAS, Nevada

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**In Witness Whereof**, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*John Gray*

John Gray, Assistant Secretary

*M. Ross Fisher*

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT

ss. Hartford

COUNTY OF HARTFORD

On this 5th day of January, 2018, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Kathleen T. Maynard*

Kathleen T. Maynard  
Notary Public

My Commission Expires July 31, 2021

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of May 25th, 2018

Signed and sealed at the City of Hartford:



*Kevin Heckman*  
Kevin Heckman, Assistant Vice President

# EXHIBIT 4

Inst #: 20181211-0001830

Fees: \$40.00

12/11/2018 02:06:07 PM

Receipt #: 3584084

Requestor:

MEAD LAW GROUP

Recorded By: WIHD 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

**THIRD 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; First amended on January 24, 2018 in the Office of the Clark County Recorders' Office as Instrument No. 20180124-0001571, and hereby again amends its Notice of Claim of Lien upon the property and leasehold estate 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: \$7,444,003.49
3. The total amount of all payments received to date is: \$ 35,443,413.02
4. The amount of the lien, after deducting all just credits and offsets, is: \$ 2,899,988.72
5. The name of the owner/lessor and tenants/lessees, if known, of the property are:

**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

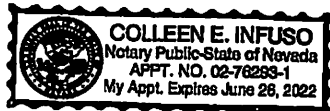
State of Nevada )  
 ) ss.  
County of Clark )

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 11<sup>th</sup> day of the month of Dec of the year 2018

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





**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**

**JOINT APPENDIX OF DOCUMENTS ON THE RECORD**

**VOLUME 3 OF 6<sup>1</sup>**

**JA0173-JA0383**

MEAD LAW GROUP LLP

/s/ Sarah Mead Thomas

Leon F Mead II, Esq.

Nevada Bar No. 5719

Sarah M. Thomas, Esq.

Nevada Bar No. 13725

Matthew W. Thomas, Esq.

Nevada Bar No. 15102

7201 W Lake Mead Blvd., Suite 550

Las Vegas, Nevada 89128

*Attorneys for Appellant*

DICKINSON WRIGHT PLLC

/s/ Cynthia Alexander

Cynthia Alexander, Esq.

Nevada Bar No. 6718

Anjali D. Webster, Esq.

Nevada Bar No. 12515

3883 Howard Hughes Pkwy,

Suite 800

Las Vegas, Nevada 89169

*Attorneys for Respondent*

<sup>1</sup> This is part 2 of the Volume 3, as the file size on the eflex system would not allow for volume 3 to be uploaded in one file.

## **CHRONOLOGICAL INDEX**

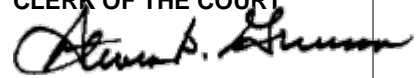
<u><b>Document Description</b></u>	<u><b>Date</b></u>	<u><b>Volume/Page Number</b></u>
The Korte Company's Complaint	January 11, 2018	1JA0001-24
The Korte Company's Amended Complaint	January 24, 2018	1JA0025-53
Electronically Issued Summons	February 1, 2018	1JA0054-57
The Korte Company's Second Amended 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



**REQT**  
**DICKINSON WRIGHT PLLC**

Cynthia L. Alexander  
Nevada Bar No. 6718  
Email: calexander@dickinson-wright.com  
Taylor Anello  
Nevada Bar No. 12881  
Email: tanello@dickinson-wright.com  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 550-4400  
Fax: (702) 382-1661

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

UPA 1, LLC, a Delaware limited liability  
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri  
corporation,

Defendant.

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,

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

DEPT. 16

**REQUEST FOR HEARING ON 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**

**HEARING REQUESTED**

1 inclusive,

2 Defendants,

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

6 v.

7 Plaintiff,

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

19 Defendants.

20 **REQUEST FOR HEARING ON STATE OF NEVADA ON RELATION OF THE BOARD**  
21 **OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF**  
22 **OF THE UNIVERSITY OF NEVADA, LAS VEGAS' MOTION FOR SUMMARY**  
23 **JUDGMENT**

24 Defendant, the State of Nevada *ex rel.* the Board of Regents of the Nevada System of  
25 Higher Education, on behalf of the University of Nevada, Las Vegas, through undersigned  
26 counsel, the law firm of Dickinson Wright PLLC, hereby requests this Court set a hearing on its  
27 Motion for Summary Judgment, filed on August 1, 2019, and attached hereto as **Exhibit 1**.

28 DATED this 2<sup>nd</sup> day of August, 2019.

DICKINSON WRIGHT PLLC

By: 

Cynthia L. Alexander (NSB # 6718)  
Taylor Anello (NSB # 12881)  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 550-4400

*Attorneys for 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 2<sup>nd</sup> day of August, 2019, he caused a copy of the foregoing **REQUEST FOR HEARING ON 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:

David Freeman, Esq.  
 Gregory S. Gilbert, Esq.  
 J. Stephen Peek, Esq.  
 HOLLAND AND HART, LLP  
 9555 Hillwood Drive, 2<sup>nd</sup> Floor  
 Las Vegas, NV 89134  
[dfreeman@hollandhart.com](mailto:dfreeman@hollandhart.com)  
[gsgilbert@hollandhart.com](mailto:gsgilbert@hollandhart.com)  
[speek@hollandhart.com](mailto:speek@hollandhart.com)  
*Attorneys for UPA I, LLC*

Brian Boschee, Esq.  
 Donna Dimaggio, Esq.  
 HOLLEY DRIGGS WALCH FINE WRAY  
 PUZEY & THOMPSON  
 400 S. 4<sup>th</sup> Street, 3<sup>rd</sup> Floor  
 Las Vegas, NV 89101  
[bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)  
[ddimaggio@nevadafirm.com](mailto:ddimaggio@nevadafirm.com)  
*Attorneys for Bridgeway Advisors*

Leon F. Mead II, Esq.  
 Sarah Mead Thomas, Esq.  
 MEAD LAW GROUP LLP  
 7201 W. Lake Mead Blvd., Suite 550  
 Las Vegas, Nevada 89128  
[leon@meadlawgroup.com](mailto:leon@meadlawgroup.com)  
[sarah@meadlawgroup.com](mailto:sarah@meadlawgroup.com)  
*Attorneys for The Korte Company*

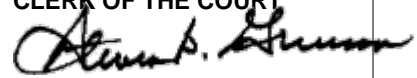
Joshua H. Reisman, Esq.  
 Glenn Machado, Esq.  
 Robert R. Warns III, Esq.  
 REISMAN SOROKAC  
 8965 S. Eastern Ave., Suite 382  
 Las Vegas, NV 89123  
[jreisman@rsnvlaw.com](mailto:jreisman@rsnvlaw.com)  
[gmachado@rsnvlaw.com](mailto:gmachado@rsnvlaw.com)  
[rwarns@rsnvlaw.com](mailto:rwarns@rsnvlaw.com)  
*Attorneys for Wells Fargo Northwest, N.A*



An Employee of Dickinson Wright PLLC



# EXHIBIT 1



**MSJD**  
**DICKINSON WRIGHT PLLC**

Cynthia L. Alexander  
Nevada Bar No. 6718  
Email: calexander@dickinson-wright.com  
Taylor Anello  
Nevada Bar No. 12881  
Email: tanello@dickinson-wright.com  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 550-4400  
Fax: (844) 670-6009

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

UPA 1, LLC, a Delaware limited liability  
company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri  
corporation,

Defendant.

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

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**

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").

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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: 

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*Attorneys for The Board of Regents of  
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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.

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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*

## 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,**

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

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

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

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

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

26 It is undisputed that the Deed reflecting UNLV's ownership interest and the Lease  
 27 reflecting UPA's leasehold interest were recorded against the Property prior to Korte's execution  
 28 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.

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

Korte has not -- and cannot -- show that UNLV has appreciated or unjustly retained any actual, concrete benefit from the work performed by Korte on the Project. Again, the lessee on the Property - UPA - is involved in the instant litigation and will remain the lessee on the Property at issue for the foreseeable future. UNLV does not currently have possession of the Project, is not able to use any of the improvements on the Project and is not receiving any monetary benefit for the use of the improvements, meaning that UNLV has not appreciated the benefit of any of the work performed by Korte and has certainly not unjustly retained any benefit from the work performed by Korte. This is a fatal flaw in Korte's claim for unjust enrichment against UNLV.

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.

DICKINSON WRIGHT PLLC

By: 

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Nevada Bar No. 6718

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Nevada Bar No. 12881

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Tel: (702) 550-4400

*Attorneys for 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 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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 Gregory S. Gilbert, Esq.  
 J. Stephen Peek, Esq.  
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*Attorneys for UPA 1, LLC*

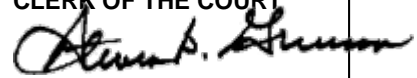
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*Attorneys for Plaintiff UPA 1, LLC*

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

UPA 1, LLC, a Delaware limited liability  
company,

Plaintiff,

v.

THE KORTE COMPANY, a Missouri  
corporation,

Defendant.

AND ALL RELATED CLAIMS.

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

**UPA 1, LLC'S LIMITED JOINDER TO  
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' MOTION FOR SUMMARY  
JUDGMENT**

**Hearing Date: September 25, 2019**  
**Hearing Time: 9:00am**

Plaintiff UPA 1, LLC ("UPA"), by and through its counsel of record, HOLLAND & HART LLP, hereby submits this Limited Joinder to 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") Motion for Summary Judgment (the "Motion").

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This limited joinder is based on the attached Memorandum of Points and Authorities, the attached exhibits, the papers and pleadings on file with the Court, and any additional evidence or oral argument that the Court may allow.

DATED this 6th day of August, 2019

HOLLAND & HART LLP

/s/ David J. Freeman

Gregory S. Gilbert

Joseph G. Went

David J. Freeman

9555 HILLWOOD DRIVE, 2ND FLOOR

LAS VEGAS, NV 89134

*Attorneys for Plaintiff UPA 1, LLC*

### **MEMORANDUM OF POINTS AND AUTHORITIES**

UPA joins the Motion for the limited purpose of providing further evidence demonstrating no genuine issue of material fact exists that The Korte Company (“Korte”) has had actual and constructive knowledge of UNLV’s ownership interest in the Property (as defined in the Motion) since at least February 10, 2016.

On February 10, 2016, Todd J. Korte, on behalf of Korte, executed a *Contractor’s Certificate, Consent and Acknowledgement* (the “Contractor’s Certificate”). A copy of the Contractor’s Certificate is attached hereto as **Exhibit “1”**. The Contractor’s Certificate states that it was executed in connection with a *Note Purchase Agreement* (the “NPA”) between UPA and its lender. *See id.* The Contractor’s Certificate uses defined terms further described in a certain Deed of Trust “as defined in the Note Purchase Agreement.” *See id.* at § 1. A copy of the NPA is attached hereto as **Exhibit “2”**. The NPA defines the “Deed of Trust” as: “a Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated as of the date hereof (the ‘Deed of Trust’).” *See id.* at § 1.3. The NPA expressly states that the Property “is being leased by [UPA] from UNLV”, identifies the *Lease Agreement for University Park Phase One dated May 15, 2015* (the “Lease”) and describes UNLV as “Landlord” and UPA as the “Tenant” under the terms of the Lease. *See id.* at § 1.1.

1 It has long been established in Nevada that a “corporation can acquire knowledge or  
2 receive notice only through its officers and agents.” *See Strohecker v. Mut. B&L Assn.*, 55 Nev.  
3 350, 355, 34 P.2d 1076, 1077 (1934). Under Nevada law, the knowledge of an officer or agent is  
4 imputed to the corporation when the agent obtains the knowledge “while acting in the course of  
5 his employment and within the scope of his authority, and the corporation is charged with such  
6 knowledge even though the officer or agent does not in fact communicate his knowledge to the  
7 corporation.” *See USACM Liquidating Trust v. Deloitte & Touche LLP*, 764 F. Supp. 2d 1210,  
8 1217 (D. Nev. 2011). In this case, Todd Korte’s acquisition of knowledge on February 10, 2016  
9 that the Property was owned by UNLV and leased to UPA under the terms of a Lease should be  
10 imputed to Korte.

11 Because there are no genuine issues of material fact that Korte had actual and constructive  
12 knowledge of UNLV’s ownership interest in the Property by at least February 10, 2016, this Court  
13 should make such a finding fact and conclusion.

14 DATED this 6th day of August, 2019

15 HOLLAND & HART LLP

16 s/ David J. Freeman.

17 Gregory S. Gilbert

18 Joseph G. Went

19 David J. Freeman

20 9555 HILLWOOD DRIVE, 2ND FLOOR

21 LAS VEGAS, NV 89134

22 *Attorneys for Plaintiff UPA 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of August, 2019, a true and correct copy of the foregoing **UPA 1, LLC'S LIMITED JOINDER TO 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' MOTION FOR SUMMARY JUDGMENT** was served by the following method(s):

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

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 and Travelers Casualty And Surety Company  
 of America

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Attorneys for Bridgeway Advisors

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

/s/ Yalonda Dekle

An Employee of Holland & Hart LLP

13388975\_v1

HOLLAND & HART LLP  
 9555 HILLWOOD DRIVE, 2ND FLOOR  
 LAS VEGAS, NV 89134

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# EXHIBIT 1

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## EXECUTION VERSION

**CONTRACTOR'S CERTIFICATE, CONSENT AND ACKNOWLEDGMENT**

This Contractor's Certificate, Consent and Acknowledgment, dated as of February 10, 2016 and is delivered by The Korte Company, a Missouri corporation ("*General Contractor*"), to 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 dated as of the date hereof ("*Lender*"), in connection with that certain Note Purchase Agreement dated as of February 10, 2016 by and among UPA 1, LLC, a Delaware limited liability company ("*Assignor*"), and Lender regarding the Project (the "*Note Purchase Agreement*").

1. *Definitions.* Capitalized terms used herein but not defined herein shall have the meaning set forth in the Deed of Trust (as defined in the Note Purchase Agreement).

2. *Certifications.* General Contractor hereby certifies to Lender as follows:

(a) Reference is made to the Plans and Specifications (the "*Plans and Specifications*") described in Schedule 1 hereto. General Contractor has reviewed the Plans and Specifications, and General Contractor is the general contractor retained by Assignor to carry out and supervise construction of the work described in such Plans and Specifications pursuant to the terms of that certain Cost Plus Agreement Between Owner And Contractor With A Guaranteed Maximum Price dated as of the date hereof by and between Assignor and General Contractor (the "*General Construction Contract*").

(b) General Contractor has not executed any change orders to the General Construction Contract and currently there are no requested or proposed change orders that have not been executed, other than as set forth on Schedule 2.

(c) To the best of the General Contractor's current knowledge, no change orders or other amendments, modifications or supplements to the General Construction Contract, the Project Budget or the Plans and Specifications are required to complete the Project on or before the Outside Completion Date (as defined in the Construction Escrow Agreement), except for the requested or proposed change orders listed on Schedule 2; *provided, however*, that General Contractor is not an architect or engineer and makes no representations about the adequacy of the design, architectural services, or engineering services for the Project.

(d) To the best of the General Contractor's current knowledge, the General Construction Contract and the subcontracts thereunder (existing and to be let) cover all labor, material and equipment described by the Plans and Specifications or necessary to complete the Project on or before the Outside Completion Date, except for the requested or proposed change orders listed on Schedule 2 and those portions of the work under the direct supervision of the owner (*i.e.*, site utilities, permanent power, telecom, site work and access, and landscaping) that are required to be complete in a manner that supports the current construction schedule.

UPA 1, LLC

Contractor's Certificate, Consent and Acknowledgment

(e) General Contractor is generally familiar with the requirements of applicable Laws and Governmental Requirements relating to the construction of the Project in accordance with the Plans and Specifications; *provided, however*, that General Contractor is not an architect or engineer and makes no representations whatsoever about the adequacy of the design, architectural services, or engineering services for the Project.

(f) With respect to any Required Permits or approvals under Governmental Requirements that are required in connection with the completion of the Project which have not been obtained, if any, General Contractor currently knows of no reason why such Required Permits or approvals will not be timely issued so that the Project may be completed by the Completion Date in accordance with the Plans and Specifications; *provided, however*, that General Contractor is not an architect or engineer and makes no representations whatsoever about the adequacy of the design, architectural services, or engineering services for the Project.

(g) General Contractor currently has no knowledge of any other reason why the Project will not be completed by the Outside Completion Date in accordance with the Plans and Specifications, but notes that certain portions of the work under the direct supervision of the owner (*i.e.*, site utilities, permanent powers, telecom, site work and access, and landscaping) are required to be complete in a manner that supports the construction schedule.

(h) To the knowledge of General Contractor, no matured default of any of Assignor's obligations under the General Construction Contract has occurred and no condition exists or event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default.

3. *Assignment.* General Contractor hereby acknowledges receipt of a counterpart original of, and consents to, the Collateral Assignment of Contracts, Plans and other Agreements Affecting Real Estate dated as of February 5, 2016 by Assignor in favor of Lender (the "*Assignment of Contracts and Plans*").

4. *Default and Lender's Right to Cure.* General Contractor agrees that it will send to Lender copies of all default notices simultaneously with the sending of any such notices to Assignor. All notices shall be sent pursuant to the notice provisions in the General Construction Contract to Lender at the address set forth on Exhibit A hereto. General Contractor further agrees that Lender is hereby granted the right (but not the obligation) to cure any defaults by Assignor within thirty (30) days after receipt of written notice by the undersigned of the Assignor's failure to cure any such default; *provided, however*, with respect to all non-monetary defaults said thirty (30) day period shall be extended so long as within said thirty (30) day period the Lender has commenced to cure and is proceeding with due diligence to cure said defaults.

5. *Right to Performance.* General Contractor agrees to look solely to the Assignor for the performance of any of the obligations of the Assignor under the General Construction Contract. However, if Lender exercises, with respect to the General Construction Contract, any rights and privileges conferred upon it by the Assignment of Contracts and Plans and asserts the

UPA 1, LLC

## Contractor's Certificate, Consent and Acknowledgment

present right to have the benefits of the General Construction Contract and to enforce the same against General Contractor in the place and stead of the Assignor, General Contractor agrees with respect to such General Construction Contract (i) to perform for, and for the benefit of, Lender, all of the obligations of General Contractor under and pursuant to the General Construction Contract if the balance then due under the General Construction Contract (being the portion of the total General Construction Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of General Contractor) has been paid or is then paid, and if Lender thereafter pay General Contractor such amounts that become due under the General Construction Contract as such amounts become due, and (ii) Lender shall have no personal obligations or liabilities of any kind under the General Construction Contract, the Assignment of Contracts and Plans or otherwise.

The foregoing Certificate, Consent and Acknowledgment is furnished for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by General Contractor, and General Contractor understands and intends that Lender will disburse substantial sums in reliance on, and will otherwise rely on, the foregoing and that General Contractor will be legally bound by the foregoing.

This Certificate, Consent and Acknowledgment shall inure to the benefit of Lender and its successors and assigns (including any purchasers at a foreclosure sale or transferees who acquire the Property by deed in lieu or otherwise and their respective successors and assigns).

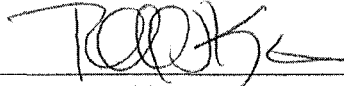
UPA 1, LLC

Contractor's Certificate, Consent and Acknowledgment

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate, Consent and Acknowledgment as of the date first written above, pursuant to proper authority duly granted.

The Korte Company, a  
Missouri corporation

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



Name: Todd J. Korte

Title: President & CEO

**NOTICE ADDRESSES FOR LENDER**

Wells Fargo Bank Northwest, N.A., as Trustee  
299 South Main Street, 5<sup>th</sup> Floor  
MAC U1228-051  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Services

EXHIBIT A  
(to Contractor's Certificate, Consent and Acknowledgment)

## PLANS

<b>Drawings Dwg. No.</b>	<b>Title</b>	<b>Latest Date</b>
Exhibit 1	Architectural - Apartments	11/03/2015
Exhibit 2	Architectural - Garage	11/03/2015

## SCHEDULE 1

(to Contractor's Certificate, Consent and Acknowledgment)

3JA0357

**CHANGE ORDERS**

None.

SCHEDULE 2  
(to Contractor's Certificate, Consent and Acknowledgment)

W3000357

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# EXHIBIT 2

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## EXECUTION VERSION

UPA 1, LLC

\$67,642,000 5.35% Senior Secured Note

# NOTE PURCHASE AGREEMENT

Dated as of February 10, 2016

UPA 1, LLC  
c/o The Midby Group, LLC  
8275 South Eastern, suite 103  
Las Vegas, Nevada 89123  
Attention: Tom George

NOTE PURCHASE AGREEMENT

Re: \$67,642,000 5.35% Senior Secured Note  
Due on the Maturity Date (as defined therein)

Dated as of  
February 10, 2016

Wells Fargo Bank Northwest, National Association, as Trustee  
MAC: U1228-051  
299 S. Main St. 5th Floor  
Salt Lake City, Utah 84111  
Attn: Corporate Trust Lease Group

UPA 1, LLC, a limited liability company organized under the laws of the State of Delaware (the "*Company*"), agrees with you as follows:

SECTION 1. DESCRIPTION OF NOTE AND COMMITMENT.

*Section 1.1 Nature of Financing.* The Company desires to borrow funds and to secure repayment of such borrowing with the Company's interest in the Granted Property described below and the rental payments due and payable under the Residential Subleases (as defined in the Lease Agreement for University Park Phase One dated May 15, 2015 between the Company (as successor-in-interest to University Park, LLC), as Tenant, and 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, as Landlord (together with its successors and assigns, "*UNLV*") (such Lease Agreement as it may heretofore or hereafter be amended, supplemented or modified is hereinafter referred to as, the "*Lease*"). The real estate which is being leased by the Company from UNLV (the "*Granted Property*") is more fully described in the Deed of Trust (hereinafter defined).

*Section 1.2 Description of Note.* In order to provide for the financing, the Company will authorize the issue and sale of its 5.35% Senior Secured Note due on the Maturity Date (as defined therein) (the "*Note*") in the principal amount of \$67,642,000. The Note will be dated the date of issue, will bear interest from the date of issue until maturity at the rate of 5.35% per annum and principal and interest thereon will be paid in installments as provided in the amortization schedule attached as Annex I to the Note. The Note will be otherwise substantially in the form attached hereto as Exhibit A. Interest on the Note will be computed on the basis of a 360-day year of twelve 30-day months. You, the above addressee, are hereinafter sometimes referred to as the "*Purchaser*."

UPA 1, LLC

Note Purchase Agreement

*Section 1.3 Security for the Note.* The Note will be secured by, among other things, (i) a Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated as of the date hereof (the "*Deed of Trust*") from the Company for the benefit of the Purchaser, creating a valid and perfected first mortgage lien on the Granted Property (as defined in the Deed of Trust), together with the buildings, structures and improvements now or hereafter located thereon, and assigning the Company's right, title and interest in and to the Lease therein described, (ii) the Assignment of Leases and Rents from the Company to the Purchaser, (iii) the Project Account (as defined in the Construction Escrow Agreement dated as of the date hereof among the Company, the Purchaser and Wells Fargo Bank Northwest, N.A., as Construction Escrow Agent (the "*Construction Escrow Agreement*")), and (iv) the Completion Guaranty and Guaranty of Repayment Agreement from Eric Midby and the Midby Group, LLC (the "*Completion Guaranty*").

*Section 1.4 Sale of Note.* Subject to the terms and conditions herein contained and on the basis of the representations and warranties hereinafter set forth, the Company agrees to issue and sell to you and you agree to purchase from the Company on the date hereinafter specified, the Note at a price equal to 100% of the principal amount thereof. The Note will be delivered to you on February 10, 2016 (the "*Closing Date*"). Delivery of the Note on the Closing Date will be made at the offices of Mayer Brown LLP, 71 South Wacker Drive, Chicago, Illinois 60606 against payment therefor in Federal or other funds current and immediately available which shall be pursuant to written payment instructions delivered by the Company to you prior to the Closing Date. The Note will be delivered to you on the Closing Date in the principal amount then to be purchased by you, registered in your name or in the name of such nominee as specified on Schedule I attached to the Escrow and Servicing Agreement.

*Section 1.5 Definitions.* Capitalized terms not otherwise defined herein shall have the respective meanings ascribed thereto in the Deed of Trust.

## SECTION 2. REPRESENTATIONS.

*Section 2.1 Representations of the Company.* The Company represents and warrants that all representations set forth in Exhibit B hereto are true and correct as of the Closing Date and are hereby incorporated herein by reference with the same force and effect as though herein set forth in full.

*Section 2.2 Representations of the Purchaser.* You represent that you are purchasing the Note for your own account, for the purpose of investment and not with a view to the distribution thereof, and that you have no present intention of selling, negotiating, or otherwise disposing of the Note, it being understood that the disposition of your property shall at all times be and remain within your control.

## SECTION 3. CLOSING CONDITIONS.

Your obligation to purchase and pay for the Note shall be subject to the following conditions precedent:

*Section 3.1 Execution and Recordation of Agreements.* (a) On or prior to the Closing Date the following documents, in a form satisfactory to you and your special counsel,

UPA 1, LLC

Note Purchase Agreement

shall have been duly executed, acknowledged and delivered by all parties thereto, and shall be in full force and effect:

- (i) the Deed of Trust;
- (ii) the Assignment of Leases and Rents;
- (iii) the Escrow and Servicing Agreement with Wells Fargo Bank Northwest, National Association;
- (iv) the Construction Escrow Agreement;
- (v) the Indemnity and Guaranty Agreement;
- (vi) the Hazardous Materials Indemnity Agreement;
- (vii) the Note;
- (viii) the Completion Guaranty and Guaranty of Repayment Agreement; and
- (ix) the Assignment of Contracts.

(b) On or prior to the Closing Date, the Deed of Trust, the Assignment of Leases and Rents and all necessary financing statements and similar notices, if and to the extent permitted or required by applicable law, shall have been recorded or filed for record in each public office wherein such recording or filing is deemed necessary or appropriate by you or your special counsel to perfect the liens thereof as against creditors of or purchasers from the Company. Without limiting the foregoing, all taxes, fees and other charges in connection with the execution, delivery, recording and filing of the foregoing instruments shall have been paid by the Company or allowance therefor shall have been made by the Company.

*Section 3.2 Delivery of Closing Items.* On or prior to the Closing Date the Company shall have delivered (or you shall have otherwise received) the following items in a form satisfactory to you and your special counsel:

- (a) Certificate and Agreement;
- (b) ALTA boundary survey;
- (c) Title Commitment from Chicago Title Insurance Company;
- (d) Phase I Environmental Assessment (no more than six months old);
- (e) MAI Appraisal (no more than six months old);
- (f) Legal opinion of Mayer Brown LLP, your special counsel, in the form of Exhibit C hereto;

UPA 1, LLC

Note Purchase Agreement

- hereto; (g) Legal opinion of Borrower counsel, substantially in the form of Exhibit D
- hereto; (h) Legal opinion of UNLV's counsel, substantially in the form of Exhibit E
- or the Lease; (i) Evidence of any insurance required by Section 2.15 of the Deed of Trust
- (j) Reserved;
- (k) copy of Lease as certified by the Company;
- (l) Such documents and evidence to establish the existence and good standing of the Company and the authorization of the transactions contemplated by the Operative Agreements;
- (m) Seismic Report in form and substance acceptable to the Purchaser;
- (n) Property Condition engineering report for the existing improvements on the Future Phases property in form and substance acceptable to the Purchaser;
- Purchaser; (o) Payment and Performance Bonds from a surety acceptable to the
- (p) Construction Contract;
- (q) Project Budget;
- (r) Engineer's Report confirming acceptability of design;
- (s) Evidence of land contribution and length of Base Rent abatement period;
- (t) Certificate and Agreement executed by UNLV;
- (u) All other items described on the closing checklist that is part of the Closing Memorandum delivered in connection with this Agreement.

*Section 3.3 Payment of Special Counsel Fees and Expenses.* On or prior to the Closing Date, the Company shall have paid all reasonable fees and disbursements of your special counsel for which the Company is responsible, as reflected in the statement of such special counsel delivered prior to the date of required payment.

*Section 3.4 Waiver of Conditions.* If on the Closing Date the Company fails to tender the Note or if the conditions specified in this Section 3 have not been substantially fulfilled, you may thereupon elect to be relieved of all further obligations under this Agreement. Without limiting the foregoing, if the conditions specified in this Section 3 have not been substantially fulfilled, you may waive compliance by the Company with any such condition to such extent as you may in your sole discretion determine. Nothing in this Section 3.4 shall operate to relieve

UPA 1, LLC

Note Purchase Agreement

the Company of any of its respective obligations hereunder or to waive any of your rights against the Company.

#### SECTION 4. MISCELLANEOUS.

*Section 4.1 Transfer of Note.* At any time and from time to time the holder of the Note may transfer the Note either (i) by delivery to the Company of written notice of such transfer together with a copy of the instrument of transfer and specifying the name and address of the transferee or (ii) upon surrender thereof at the principal office of the Company duly endorsed or accompanied by a written instrument of transfer duly executed by such holder or its attorney authorized in writing.

*Section 4.2 Loss, Theft, Etc. of Note.* Upon receipt of evidence satisfactory to the Company of the loss, theft, mutilation or destruction of the Note, and in the case of any such loss, theft or destruction upon delivery of a bond of indemnity in such form and amount as shall be reasonably satisfactory to the Company, or in the event of such mutilation upon surrender and cancellation of the Note, the Company will make and deliver a new Note, of like tenor, in lieu of such lost, stolen, destroyed or mutilated Note. The Company may require the payment of a sum sufficient to cover any stamp tax or governmental charge imposed upon such reissuance. If the Purchaser or any other institutional investor is the owner of any such lost, stolen or destroyed Note, then the affidavit of the President, a Vice President or other responsible officer of such owner, setting forth the fact of loss, theft or destruction and of its ownership of the Note at the time of such loss, theft or destruction shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of such owner to indemnify and hold the Company harmless.

*Section 4.3 Powers and Rights Not Waived; Remedies Cumulative.* No delay or failure on the part of the holder of the Note in the exercise of any power or right shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof, or the exercise of any other power or right, and the rights and remedies of the holder of the Note are cumulative to and are not exclusive of any rights or remedies any such holder would otherwise have, and no waiver or consent shall extend to or affect any obligation or right not expressly waived or consented to.

*Section 4.4 Notices.* All communications provided for hereunder shall be in writing and mailed by registered or certified mail or by prepaid overnight air courier and if to you, addressed to you at the address set forth in Section 12 of the Escrow Agreement, or if to the Company, addressed to the Company, at c/o The Midby Group, LLC, 8275 South Eastern, Suite 103, Las Vegas, Nevada 89123, Attention: Tom George or to such other address as you or the Company shall designate by written notice to the other.

*Section 4.5 Reproduction of Documents.* The Operative Agreements and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) documents received by you at the closing of your purchase of the Note (except the Note itself), and (c) financial statements, certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar

UPA 1, LLC

Note Purchase Agreement

process and you may destroy any original document so reproduced. The Company agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

*Section 4.6 Counterparts.* This Agreement may be executed in any number of counterparts, each counterpart constituting an original but all together only one Agreement.

*Section 4.7 Successors and Assigns; Survival of Representations.* This Agreement and all covenants herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereunder. All covenants, representations and warranties made by the Company and the Purchaser herein and made by the Company in any certificates delivered pursuant hereto, whether or not in connection with the closing, shall survive the closing and the delivery of this Agreement and the Note.

*Section 4.8 Severability.* Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts, or portion which may, for any reason, be hereafter declared invalid.

*Section 4.9 Governing Law.* This Agreement and the Note shall be governed by and construed in accordance with the laws of the State of Nevada.

*Section 4.10 Captions.* The descriptive headings of the various Sections or parts of this Agreement are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

*Section 4.11* It is expressly understood and agreed by the parties hereto that, (a) this Note Purchase Agreement is executed and delivered by the Purchaser not in its individual or personal capacity but solely in its capacity as Trustee under the Trust Agreement (as defined in the Deed of Trust) on behalf of the Trust (as such terms are defined in the Trust Agreement), in the exercise of the powers and authority conferred and vested in it as Trustee under the Trust Agreement, subject to the protections, indemnities and limitations from liability afforded to the Trustee thereunder; (b) in no event shall Wells Fargo Bank Northwest, National Association, in its individual capacity have any liability for the representations, warranties, covenants, agreements or other obligations of the Trust (or on behalf of the Trust) hereunder, as to all of which recourse shall be had solely to the Trust Property of the Trust; (c) nothing contained herein shall be construed as creating any liability on Wells Fargo Bank Northwest, National Association, individually or personally, to perform any expressed or implied covenant, duty or obligation of any kind whatsoever contained herein; and (d) under no circumstances shall Wells Fargo Bank Northwest, National Association, be personally liable for the payment of any fees, costs, indebtedness or expenses of any kind whatsoever or, except as set forth in Section 6.01(c) of the Trust Agreement, be personally liable for the breach or failure of any obligation,

UPA 1, LLC

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representation, agreement, warranty or covenant whatsoever made or undertaken by the Trustee or the Trust hereunder.

*Section 4.12* Notwithstanding anything contained herein, it is expressly understood that Purchaser is acting as a trustee and whenever any consent, approval, or other action of the Purchaser is contemplated hereby, Purchaser may act in accordance with the instructions of the appropriate percentage of certificate holders (pursuant to the Trust Agreement), or otherwise in accordance with the terms and provisions of the documents creating and relative to the administration of the Purchaser trust, and not on its own discretion.

*Section 4.13 Waiver of Trial by Jury.* The Company hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the loan evidenced by the Note, the application for the extension of credit evidenced by the Note, the Deed of Trust or the other Operative Agreements.

*[Signature Pages Follow]*




UPA 1, LLC

Note Purchase Agreement

The execution hereof by you shall constitute a contract between us for the uses and purposes hereinabove set forth, and this Note Purchase Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

UPA 1, LLC, a Delaware limited liability company

By: Master Management, LLC, a Nevada limited liability company, as Manager

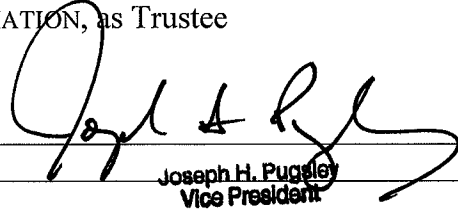
By   
Name: Eric S. Midby  
Title: Manager

UPA 1, LLC

Note Purchase Agreement

The foregoing Agreement is hereby confirmed and accepted.

WELLS FARGO BANK NORTHWEST, NATIONAL  
ASSOCIATION, as Trustee

By   
Name: Joseph H. Pugaley  
Title: Vice President

## UPA 1, LLC

5.35% Senior Secured Note, Due on the Maturity Date (defined herein)

No. R-  
\$67,642,000

February \_\_, 2016

UPA 1, LLC, a limited liability company organized under the laws of the State of Delaware (the "*Company*"), for value received, hereby promises to pay to or to the order of Wells Fargo Bank Northwest, National Association, as Trustee or registered assigns, the principal amount of SIXTY SEVEN MILLION, SIX HUNDRED FORTY-TWO THOUSAND AND 0/100 DOLLARS (\$67,642,000) together with interest from the date hereof until maturity at the rate of 5.35% per annum (computed on the basis of a 360-day year of 12 consecutive 30-day months) in installments as follows:

(i) one installment of interest only in the amount of \$50,261.76 due and payable on \_\_\_\_\_, 2016;

(ii) installments of interest only, if any, each in the amount of \$301,570.58 due and payable on the fifteenth day of each calendar month during the period from \_\_\_\_\_, 2016 to but not including the Principal Amortization Start Date (defined below);

(iii) three hundred forty-seven(347) installments, each consisting of principal and interest in the amount as set forth on the amortization schedule attached hereto as Annex I payable monthly on the Principal Amortization Start Date and on the fifteenth day of each month thereafter to but not including the Maturity Date; and

(iv) an amount equal to the outstanding principal and accrued interest due and payable on the Maturity Date.

As used herein (i) the term "*Principal Amortization Start Date*" shall mean September 15, 2020 and (ii) the term "*Maturity Date*" shall mean August 15, 2049.

The Company further promises to pay interest at the rate of 10.35% per annum (i) on each overdue installment of principal, premium, if any, and (to the extent legally enforceable) upon each overdue installment of interest in each case from and after the due date of each such installment, whether by acceleration or otherwise, until paid and (ii) during the continuance of an Event of Default, on the unpaid balance hereof and on any overdue payment of any Make-Whole Amount. Payments of principal, premium, if any, and interest shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts by check mailed and addressed to the holder hereof at the address set forth on page 1 of the Note Purchase Agreement described below, or, at the option of the holder hereof, in such manner and at such other place in the United States of America as the holder hereof shall have designated to the Company in writing.

EXHIBIT A  
(to Note Purchase Agreement)

This Note is issued under and pursuant to the terms and provisions of the Note Purchase Agreement dated as of the date hereof (the "*Note Purchase Agreement*") entered into by the Company with Wells Fargo Bank Northwest, National Association, as Trustee (the "*Purchaser*") and secured by (i) the Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated as of the date hereof (the "*Mortgage*") from the Company for the benefit of the Purchaser in respect of the Granted Property described therein and the Lease dated May 15, 2015 between the Company, as tenant, and The Board of Regents of the Nevada System of Higher Education on behalf of The University of Nevada, Las Vegas, as Landlord (together with its successors and assigns, "*UNLV*"), (ii) the Assignment of Leases and Rents dated as of the date hereof from the Company to the Purchaser (the "*Assignment of Leases and Rents*"), and (iii) the Project Account (as defined in the Construction Escrow Agreement dated as of the date hereof among the Company, the Purchaser and Wells Fargo Bank Northwest, N.A., as Construction Escrow Agent (the "*Construction Escrow Agreement*")). This Note and the holder hereof are entitled to all the benefits provided for by the Note Purchase Agreement, the Deed of Trust, the Assignment of Leases and Rents, the Construction Escrow Agreement and the other Operative Agreements, to which Note Purchase Agreement, Deed of Trust, Assignment of Leases and Rents, Construction Escrow Agreement and Operative Agreements reference is hereby made for the statement thereof, including a description of the Granted Property (as defined in the Deed of Trust), the nature and extent of the security and the rights of the holder of the Note and of the Company in respect thereof. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed thereto in the Deed of Trust.

*[Signature Page to Follow]*

This Note may be declared due prior to its expressed maturity date, voluntary prepayments may be made thereon by the Company and certain prepayments are required to be made thereon, all in the events, on the terms and in the manner and amounts as provided in the Deed of Trust.

UPA 1, LLC, a Delaware limited liability company

By: Master Manager, LLC, a Nevada limited  
liability company, as Manager

By \_\_\_\_\_  
Name: Eric Midby  
Title: Manager

3JA0372

ANNEX I  
AMORTIZATION SCHEDULE

ANNEX I  
(to Note)

716302034.9 15490228

W3000372

## REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to you as follows:

1. *Subsidiaries.* The Company has no Subsidiaries.
2. *Organization and Authority.* (a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada. The Company has all requisite power and authority to enter into or perform its obligations under the Operative Agreements to which the Company is a party and the Note and to incur the indebtedness evidenced thereby.  
  
 (b) The Company is a single purpose entity organized solely for the purpose of (i) acquiring, owning, and leasing the Granted Property and (ii) constructing student housing for UNLV on the Granted Property, as set forth in the Operative Agreements.  
  
 (c) The Company has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now conducted and as presently proposed to be conducted.  
  
 (d) The Company is not transacting business in any jurisdiction other than Nevada.
3. *Indebtedness.* The Company has no indebtedness, guaranties, liabilities or other obligations other than as permitted in the Deed of Trust.
4. *Full Disclosure.* No written statement furnished to you by the Company or any person, agent or other entity authorized or employed by the Company as financial advisor, agent, broker, dealer or otherwise in connection with the offering or sale of the Note and furnished by the Company or any such person, agent or other entity to you in connection with the negotiation of the transactions contemplated by the Note Purchase Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not materially misleading. There is no fact peculiar to the Company which the Company or such person, agent or other entity has not disclosed to you in writing which materially affects adversely nor, so far as the Company can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Company or the ability of the Company to perform its obligations under the Operative Agreements to which it is a party or the Note.
5. *Pending Litigation.* There are no proceedings pending, or to the knowledge of the Company, threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal. The Company is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal.
6. *Title to Properties.* The Company has a valid leasehold interest in the Granted Property and has good title to all the other property it purports to own (except as sold or otherwise disposed of in the ordinary course of business and except for minor survey exceptions,

EXHIBIT B

(to Note Purchase Agreement)

or minor encumbrances, easements or reservations of, or rights of others for, rights of way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, reservations, rights and restrictions do not in the aggregate materially detract from the value of any of said properties or materially impair their use in the operation of the business of the Company). Without limiting the foregoing, the Company has good and marketable title in fee simple or leasehold estate (or its equivalent under applicable law) to the Granted Property subject to matters set forth in the commitment for the Title Insurance Policy.

7. *Sale is Legal and Authorized.* The sale of the Note and compliance by the Company with all of the provisions of the Operative Agreements to which it is a party and the Note:

(a) are within the powers of the Company;

(b) will not violate any provisions of any law or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under the Organizational Documents of the Company or any indenture or other agreement or instrument to which the Company is a party or by which it may be bound or result in the imposition of any liens or encumbrances on any property of the Company; and

(c) have been duly authorized by proper action on the part of the Company (no further action by the shareholders, owners, members or partners of the Company being required by law, the Organizational Documents of the Company or otherwise), and the Operative Agreements to which it is a party and the Note have been executed and delivered by the Company and constitute the legal, valid and binding obligations, contracts and agreements of the Company enforceable in accordance with their respective terms.

The term "*Organizational Documents*" of any entity shall mean (a) in the case of a corporation, the articles or certificate of incorporation and the by-laws of such corporation, (b) in the case of a limited liability company, the certificate of existence, certificate of formation or and the limited liability company agreement of such limited liability company, (c) in the case of a limited partnership, the certificate of limited partnership and limited partnership agreement of such limited partnership and the Organizational Documents of the general partner of such limited partnership, (d) in the case of a trust, the certificate of trust (if applicable) and the trust agreement for such trust, and (e) any documents similar or equivalent to the foregoing under the laws of the State where such entity was organized or formed.

8. *No Defaults.* No Default or Event of Default as defined in the Deed of Trust has occurred and is continuing.

9. *Governmental Consent.* No approval, consent or withholding of objection on the part of any regulatory body, state, Federal or local, is necessary in connection with the



execution and delivery by the Company of the Operative Agreements or the Note or compliance by the Company with any of the provisions of the Operative Agreements or the Note.

10. *Taxes.* All tax returns required to be filed by the Company in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Company or upon any of its properties, income or franchises which are shown to be due and payable in such returns have been paid. The Company does not know of any proposed additional tax assessment against it.

11. *Receipt of Proceeds.* The Company has received from the Purchaser, without any right or claim of rescission, abatement, offset, counterclaim or defense, the entire amount of Note proceeds of \$67,642,000 subject to the terms of the Operative Agreements. There is no requirement for any future advances by the Purchaser under the Operative Agreements.

12. *Use of Proceeds.* The proceeds from the sale of the Note will be used to repay indebtedness incurred to finance the purchase and/or construction of the Granted Property. None of the transactions contemplated in the Note Purchase Agreement (including without limitation thereof, the use of proceeds from the issuance of the Note) will violate or result in the violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including, without limitation, Regulations U, T and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. The Company does not own or intend to carry or purchase any "margin security" within the meaning of said Regulation U. None of the proceeds from the sale of the Note will be used to purchase any "security" within the meaning of the Securities Exchange Act of 1934, as amended.

13. *Investment Company Act Status.* The Company is not an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

14. *Compliance with Law.* The Company is not in violation of any law, ordinance, governmental rule or regulation to which it is subject nor, to the knowledge of the Company, is UNLV in violation of any such laws, ordinances, rules or regulations relating to the Granted Property to which it is subject, including in each case without limitation, the Occupational Safety and Health Act of 1970, as amended, the Employee Retirement Income Security Act of 1974, as amended (together with any successor statute and all regulations thereunder, "ERISA") and all Environmental Legal Requirements (defined below), the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of the Company. The term "Environmental Legal Requirement" shall mean any applicable law, statute or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, transportation, treatment, storage or management of solid or hazardous wastes or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the Granted Property of the Company or the operation, construction or

modification of any thereof, including without limitation the following: the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Solid Waste Disposal Act, and any state statutes addressing similar matters, and any state statute providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of hazardous substances and any state nuisance statute.

15. *ERISA.* The Company has no “*employee pension benefit plans*” as such term is defined in Section 3 of ERISA. The Company is not entering into the Operative Agreements to which it is a party or any other transaction contemplated hereby or thereby, directly or indirectly, in connection with any arrangement in any way involving any employee benefit plan or related trust with respect to which it in its individual capacity or any of the other parties hereto or any of their affiliates, is a party-in-interest, all within the meaning of ERISA and the Internal Revenue Code of 1986, as amended.

16. *Solvency.* The Company is solvent, has capital not unreasonably small in relation to its business or any contemplated or undertaken transaction and has assets having a value both at fair valuation and at present fair salable value greater than the amount required to pay the Company’s debts as they become due and greater than the amount that will be required to pay the Company’s probable liability on its existing debts as they become absolute and matured. The Company does not intend to incur, nor does it believe that it will incur, debts beyond its ability to pay such debts as they become due. The Company will not be rendered insolvent by the execution, delivery and performance of its obligations under the Note Purchase Agreement, the Note and the Deed of Trust. The Company does not intend to hinder, delay or defraud its creditors by or through the execution, delivery or performance of its obligations under the Note Purchase Agreement, the Note and the Deed of Trust.

17. *Private Offering.* Neither the Company, directly or indirectly, nor any agent on its behalf has offered or will offer the Note or any Security (as defined in Section 2(1) of the Securities Act of 1933, as amended) to, or has solicited or will solicit an offer to acquire the Note or any similar Security from, or has otherwise approached or will approach or negotiate in respect of the Note or any similar Security with, any person or entity other than the Purchaser and certain other institutional investors, each of whom was offered the Note at private sale for investment and the Company represents and warrants that neither the Company, directly or indirectly, nor any agent on its behalf has offered or will offer the Note or any similar Security to, or has solicited or will solicit an offer to acquire the Note or any similar Security from, any person or entity so as to bring the issuance and sale of the Note within the provisions of Section 5 of the Securities Act of 1933, as amended.

18. *The Lease.* The Lease is in full force and effect and has not been modified or amended. No offset has been asserted with respect to any rents or other sums payable or to become payable under the Lease to UNLV as landlord under such Lease and, except for the prepayment of rent under the Lease resulting from the Company’s affiliate’s contribution of \$2,000,000 towards the cost of the Property which results in a prepayment of 3.6 years of rent

under the Lease, no rents payable by the Company under the Lease have been paid more than one month in advance. The Company is not in default under the Lease and, to the Company's knowledge, no other default has occurred and is continuing under the Lease and no other event has occurred which with the lapse of time or notice, or both, would constitute a default under the Lease.

19. *The Granted Property.* The Granted Property has not suffered damage or destruction which renders it inoperable or unusable and, under applicable zoning, use, environmental protection and other laws, ordinances, rules and regulations, the Granted Property may be used in the ordinary course of the Company's business. Without limiting the foregoing, no portion of the real property constituting a portion of the Granted Property is located in an "area of special flood hazard," as that term is defined in the regulations of the Federal Insurance Administration, Department of Housing and Urban Development, under the National Flood Insurance Act of 1968, as amended (24 CFR § 1909.1).

20. *Reserved.*

21. *Property Taxed as Separate Tax Lot.* The Granted Property is taxed as a separate and distinct tax lot. No part of the Granted Property shares a tax lot with any adjoining lands and for all purposes the Granted Property may be mortgaged, conveyed and otherwise dealt with as a single, independent parcel.

22. *Trading with the Enemy Act.* Neither the issuance and sale of the Note nor the use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or the Anti-Terrorism Order or any enabling legislation or executive order relating to any of the same. Without limiting the generality of the foregoing, neither the Company nor any of its Affiliates (a) is or will become a blocked person described in Section 1 of the Anti-Terrorism Order or (b) engages or will engage in any dealings or transactions or be otherwise associated with any such blocked person. For purposes hereof, "Anti-Terrorism Order" means Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons who Commit, threaten to Commit or Support Terrorism).

23. *Management Agreement.* There is no Management Agreement in effect with respect to the Granted Property, except the Property Management Agreement (as defined in the Deed of Trust) between the company and ACH.

24. *Permits and Approvals.* The Company has obtained all permits and approvals that are required for the construction and use of the Granted Property under any and all applicable laws, ordinances, rules, regulations, covenants and restrictions, all of which have been duly and validly issued by the governmental authorities or persons having jurisdiction or rights with respect thereto, and which permits and approvals are in full force and effect and are not subject to appeal, any applicable period for appealing such actions having expired. The Granted Property complies or will comply after completion in all material respects with all requirements of all laws, ordinances, rules, regulations, covenants and restrictions affecting the construction and intended use(s) and operation thereof as set forth in the Lease.

25. *Zoning.* The zoning classifications applicable to the Granted Property permit the occupancy, use and operation of the Granted Property as student housing as set forth in the Lease. The Granted Property and the occupancy, use and operation thereof are in compliance in all respects with all applicable requirements of state, county and municipal law and all licenses, permits and approvals required for the occupancy, use and operation of the Granted Property as student housing have been obtained and are in full force and effect;

26. *No Condemnation.* No condemnation, eminent domain or other similar proceeding has been commenced or, to the knowledge of the Company, is contemplated with respect to all or any portion of the Property.

27. *Not a Foreign Person.* Neither the Company nor any Affiliate of the Company is a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

## DESCRIPTION OF SPECIAL COUNSEL'S CLOSING OPINION

The closing opinion of Mayer Brown LLP, special counsel to the Purchaser, which is called for by Section 3.2(f) of the Note Purchase Agreement, shall be dated the Closing Date and addressed to the Purchaser, shall be satisfactory in form and substance to the Purchaser and shall be to the effect that:

1. The issuance, sale and delivery of the Note under the circumstances contemplated by the Note Purchase Agreement does not under existing law require the registration of the Note under the Securities Act of 1933, as amended, or the qualification of an indenture under the Trust Indenture Act of 1939, as amended.

EXHIBIT C  
(to Note Purchase Agreement)

DESCRIPTION OF CLOSING OPINION OF COUNSEL  
FOR THE COMPANY

The closing opinion of Borrower counsel which is called for by Section 3.2(g) of the Note Purchase Agreement, shall be dated the Closing Date and addressed to the Purchaser shall be satisfactory in form and substance to the Purchaser and shall be to the effect that:

1. The Company is a limited liability company duly organized, legally existing and in good standing under the laws of the State of Nevada with full power and authority to enter into and perform each of the Operative Agreements to which it is a party and to issue the Note and incur the indebtedness to be evidenced thereby;

2. The Company is duly licensed or qualified and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or the nature of the business transacted by it makes such licensing or qualification necessary;

3. Each of the Operative Agreements to which the Company is a party has been duly authorized by all necessary action on the part of the Company, has been duly executed by the Company and delivered and constitutes the legal, valid and binding contract and agreement of the Company, enforceable in accordance with its terms, except as enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) certain remedies provided for in the Deed of Trust may be limited by applicable law (none of which limitations on remedies will, however, in the opinion of such counsel, materially interfere with the practical realization of the security provided by the Deed of Trust);

4. The Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement have been duly [authorized by all necessary action on the part of [Indemnitor], have been]<sup>1</sup> executed by [Indemnitor] and delivered and constitute the legal, valid and binding contracts and agreements of [Indemnitor], enforceable in accordance with their terms, except as enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

5. The Note has been duly authorized by all necessary action on the part of the Company and has been duly executed by the Company and delivered and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally, and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

<sup>1</sup> Applicable when Indemnitor is an entity, not an individual.

EXHIBIT D  
(to Note Purchase Agreement)

6. No approval, consent or withholding of objection on the part of, or registration or qualification with, any governmental body, Federal, state or local, is necessary in connection with the execution and delivery of the Note or the Operative Agreements to which the Company is a party;

7. The issuance, sale and delivery of the Note under the circumstances contemplated by the Note Purchase Agreement does not under existing law require the registration of the Note under the Securities Act of 1933, as amended, or the qualification of an indenture under the Trust Indenture Act of 1939, as amended;

8. The issuance and sale of the Note by the Company and compliance by the Company with the Note and all of the provisions of the Operative Agreements to which it is a party will not conflict with, or result in any breach of any of the provisions of, or constitute a default under, the Organizational Documents of the Company or other instrument known to such counsel to which the Company is a party or by which the Company may be bound, or result in the imposition of any liens or encumbrances on any property of the Company other than in favor of the Purchaser;

9. To our knowledge, there are no suits or proceedings pending, or threatened against or affecting the Company which, if adversely determined, would have a material adverse effect on the financial condition or business of the Company or on the ability of the Company to perform its obligations under the Note or the Operative Agreements to which it is a party;

10. The obligations of the Company under the Note, including the interest payable under the Note, and all fees and premiums paid or payable in connection therewith (and without taking into account any so-called "savings clause" or similar provision which would purport to reduce any amount payable by the Company to the maximum level permitted by applicable law), is governed by the laws of the State of Nevada and is not usurious and is not violative of any applicable state or federal law regulating the reservation, payment or collection of interest; and

11. The Deed of Trust and the financing statements and the acknowledgements set forth therein are in form satisfactory for recording or filing with the applicable recording or filing office, as the case may be, and conform to all requirements of the laws of the State of Nevada for recording or filing, as applicable.

12. With respect to the Deed of Trust:

(a) The Deed of Trust must be recorded and indexed in the Clark Register of Deeds, State of Nevada, to create a valid and effective lien of record on, and security interest with respect to, the Granted Property that constitutes an interest in real property.

(b) Upon satisfaction of such recording and indexing requirements, the Deed of Trust will constitute a valid and effective lien of record on, and security interest with respect to, the Granted Property described in the Deed of Trust to the extent such Granted Property constitutes an interest in real property in which the

Company has title or interest. Upon payment of the applicable recording fees for the Deed of Trust, there shall have been duly paid all taxes, fees, and other public charges payable to any state or municipal agency within the State of Nevada in connection with the recording and indexing of the Deed of Trust in the State of Nevada.

(c) It is not necessary, prior to the stated maturity of the Note, to re-record the Deed of Trust in order to maintain notice of and to preserve the validity of the lien on and security interest in the real property collateral described therein.

(d) The Deed of Trust is effective as a security agreement under the Uniform Commercial Code-Secured Transactions in effect in the State of Nevada (the "*Nevada UCC*") for those items of the Granted Property in which a security interest may be created under the Nevada UCC.

13. The Assignment of Leases and Rents creates a valid current assignment of the Lease and rents thereunder and upon recording the Assignment of Leases and Rents in the Clark County, Register of Deeds, State of Nevada, no further action will be necessary to effect such assignment.

14. Upon proper filing of the financing statement with the Company as debtor under the Nevada UCC with the Secretary of State of the State of Nevada and recording the Deed of Trust as a financing statement in the Clark County, Register of Deeds, State of Nevada, then such financing statements and the Deed of Trust shall have been duly filed or recorded, as applicable, in all public offices in which they are required to be so filed or recorded in order to perfect the lien and security interest granted or intended to be granted thereby to the extent a lien in the Granted Property may be perfected by filing a UCC financing statement or recording the Deed of Trust as a financing statement; and upon payment of the applicable filing and recording fees, there shall have been duly paid all taxes, fees and other public charges which are payable in connection with such execution, delivery and filing and no further filing or recording is necessary in order to fully create and perfect the liens and security interest granted, or intended to be granted, to Purchaser under the Deed of Trust in such of the Granted Property that is covered by the scope of the Nevada UCC and in which a security interest may be perfected by such filing or recording.

15. The Lease constitutes the legal, valid and binding contract and agreement of UNLV, enforceable in accordance with its terms, except as enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The opinion of Borrower counsel shall cover such other matters relating to the sale of the Note as the Purchaser may reasonably request.



DESCRIPTION OF CLOSING OPINION OF COUNSEL  
FOR UNLV

The closing opinion of UNLV counsel, which is called for by Section 3.2(h) of the Note Purchase Agreement, shall be dated the Closing Date and addressed to the Purchaser shall be satisfactory in form and substance to the Purchaser and shall be to the effect that:

1. UNLV is a constitutional entity duly organized, legally existing and in good standing under the laws of the State of Nevada with full power and authority to enter into and perform the Lease;
2. The Lease has been duly authorized by all necessary action on the part of UNLV, has been duly executed by UNLV and delivered and constitutes the legal, valid and binding contract and agreement of UNLV, enforceable in accordance with its terms, except as enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) certain remedies provided for in the Lease may be limited by applicable law (none of which limitations on remedies will, however, in the opinion of such counsel, materially interfere with the practical realization of the security provided by the Lease);
3. No approval, consent or withholding of objection on the part of, or registration or qualification with, any governmental body, Federal, state or local, is necessary in connection with the execution and delivery of the Lease;
4. The compliance by UNLV with the Lease will not conflict with, or result in any breach of any of the provisions of, or constitute a default under, the Organizational Documents of UNLV or other instrument known to such counsel to which UNLV is a party or by which UNLV may be bound;

EXHIBIT E  
(to Note Purchase Agreement)