

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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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX OF DOCUMENTS ON THE RECORD

VOLUME 5 OF 6

JA0414-JA0433

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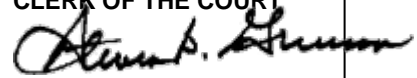
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EXHIBIT “A”


NTSO

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*Attorneys for
 The Korte Company*

DISTRICT COURT**CLARK COUNTY, NEVADA**

UPA 1, LLC, a Delaware limited liability
 company,

Plaintiff,

vs.

THE KORTE COMPANY, a Missouri
 corporation,

Defendant.

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

Dept. No. 25

**NOTICE OF ENTRY OF FINDINGS OF
 FACT AND CONCLUSIONS OF LAW
 REGARDING UNLV'S JOINDER IN
 PETITION AND ORDER TO SHOW
 CAUSE WHY KORTE CONSTRUCTION
 COMPANY'S LIEN SHOULD NOT BE
 EXPUNGED AND ORDER DENYING
 SAME**

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

Plaintiff,

v.

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

Consolidated Case No. A-18-767674-C

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,

Consolidated Case No. A-18-768969-B

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

Plaintiff,

v.

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

Defendants.

PLEASE TAKE NOTICE that this Court entered the Findings of Fact and Conclusions
of Law Regarding UNLV's Joinder in Petition and Order to Show Cause Why Korte
Construction Company's Lien Should Not Be Expunged and Order Denying Same on April 11,
2018.

///

1 A file-stamped copy of the Findings of Fact and Conclusions of Law and Order has been
2 attached hereto as Exhibit A.

3 Dated: April 23, 2018.

MEAD LAW GROUP

4
5
6 /s/ Sarah A. Mead

7 Leon F. Mead II, Esq. NV Bar #5719
8 Sarah A. Mead, Esq. NV Bar #13725
9 *Attorneys for The Korte Company*
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CERTIFICATE OF SERVICE

I, the undersigned, declare under the penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING UNLV'S JOINER IN PETITION AND ORDER TO SHOW CAUSE WHY KORTE CONSTRUCTION COMPANY'S LIEN SHOULD NOT BE EXPUNGED AND ORDER DENYING SAME by method indicated below:

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

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 Education, on behalf of University of Nevada,
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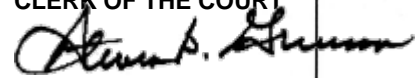
Attorneys for Bridgeway Advisors

Dated: April 23, 2018

/s/ Sarah A. Mead

An Employee of Mead Law Group

EXHIBIT “A”



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13 *Attorneys for Defendant*
14 *The Korte Company*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,

20 vs.

21 THE KORTE COMPANY, a Missouri
22 corporation,

23 Defendant.

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

Dept. No. XXV

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
UNLV'S JOINDER IN PETITION AND
ORDER TO SHOW CAUSE WHY
KORTE CONSTRUCTION
COMPANY'S LIEN SHOULD NOT BE
EXPUNDGED AND ORDER DENYING
SAME**

24 KORTE CONSTRUCTION COMPANY dba
25 THE KORTE COMPANY, a Missouri
26 corporation,

27 Plaintiff,

28 v.

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

Consolidated Case No. A-18-767674-C

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

Defendants,

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

Plaintiff,

v.

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

Defendants.

Consolidated Case No. A-18-768969-B

The **Order to Show Cause** ("OSC") hearing on Plaintiff UPA 1 LLC's Motion
Requesting Court Order to Show Cause Pursuant to NRS 108.2275(1) came for hearing on
March 13, 2018 at 1:30 pm in Department XXV of the above referenced court. Appearing for
the Parties were Greg S. Gilbert, Esq., of Holland & Hart LLP for Plaintiff and Consolidated
Defendant UPA 1, LLC ("UPA"); Cynthia L. Alexander, Esq., of Dickinson Wright PLLC, for
Intervenor and Consolidated Defendant THE BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF NEVADA,
LAS VEGAS ("UNLV"); Leon F. Mead II, Esq., of the Mead Law Group, for Defendant and
Consolidated Plaintiff, KORTE CONSTRUCTION COMPANY dba THE KORTE COMPANY

1 (“Korte”); Richard L. Peel, Esq., and Eric Zimbelman, Esq., of Peel Brimley LLP, for
 2 Consolidated Plaintiff HELIX ELECTRIC of NEVADA LLC dba HELIX ELECTRIC (“Helix”),
 3 and Eric Dobberstein, Esq., of the Dobberstein Law Group, for Lien Claimant / Plaintiff in
 4 Intervention, BUILDER SERVICES GROUP, INC., dba CENTRAL VALLEY INSULATION
 5 (“CVI”).
 6

7 As part of the OSC hearing, UNLV moved for the expungement of Korte’s Notice of
 8 Lien, as amended, from the real estate property interest of UNLV on the property located at 4259
 9 S. Maryland Parkway, Las Vegas, Nevada 89119, APN 162-22-510-001 through 162-22-510-
 10 009 (the “Property”), on which the construction project now known as “The District” would be
 11 constructed (the “Project”), under that certain lease agreement between UNLV and UPA dated
 12 May 15, 2015 (the “Lease”). UNLV’s motion was made on its assertions that 1) The Property
 13 could not be subject to Korte’s Notice of Lien, as the Property is owned by a governmental entity
 14 of the State of Nevada and is therefore immune from the attachment of mechanics liens under
 15 the doctrine of Sovereign Immunity, 2) Korte’s Notice of Lien encompasses portions of the
 16 Property on which no work was performed and therefore, the Notice of Lien is too broad and
 17 those portions of the Property on which no work was performed should be released from scope
 18 of Korte’s Notice of Lien, and 3) Because Korte failed to serve UNLV with a Notice of Right to
 19 Lien under NRS 108.245, Korte could not claim a lien on the Property as it did not have a direct
 20 contract with UNLV for the work it provided to the Project.

21 While the OSC motion was pending, Case No. A-18-768969-B and Case No. A-18-
 22 768969-B were consolidated into this action. Helix and CVI joined in Korte’s Opposition and
 23 submitted briefs separately opposing the OSC to the extent the OSC might be deemed to also
 24 apply to their mechanic’s liens.

25 Having considered the moving, responding and replying papers submitted by all the
 26 Parties counsel on this matter, and having heard and considered the argument of counsel, the
 27 Court hereby makes the following findings of fact and conclusions of law as they relate to
 28 UNLV’s issues noted above only:

1 **FINDINGS OF FACT**

2 The Court hereby finds the following facts to be true and proven for purposes of this
3 matter:

4 1. UNLV, having determined that it needed additional housing for its students,
5 entered into a memorandum of understanding (the "MOU") and certain subsequent
6 "Implementing Agreements" with UPA's parent company, University Park LLC ("UPLLC"),
7 whereby UNLV acquired UPLLC's contract to purchase the Property from its then current owner,
8 with UNLV contributing \$18,500,000 and University Park LLC contributing \$2,000,00 towards
9 the total purchase price of \$20,500,000. *UNLV Response, Exhibit 1, pg. 002, section 1.1.*

10 2. The purpose of the MOU was to memorialize the agreement between UNLV and
11 UPLLC to redevelop the Property through a public private partnership. *UNLV Response, Exhibit*
12 *1, pg. 002, Recital F.* However, the MOU and subsequent agreements made clear that "none of
13 the Parties is or becomes in any way a partner of the other in the conduct of its business or a joint
14 venture with the other." *Id., pg. 008, section 4.6. See also UNLV Response Exhibit 2, pg. 037,*
15 *section 6.6.*

16 3. UNLV did not seek to construct the Project under NRS Chapter 338 as a public
17 work of improvement under the requirements of competitive bidding or other public works
18 requirements, including posting of public works bond under NRS Chapter 339. *Korte Reply to*
19 *UNLV Response, Affidavit of Greg Korte thereto, pg. 2, ¶ 3, filed 02/16/2018.*

20 4. The MOU contemplated leasing the Property to UPLLC for an initial term of 40
21 years, and UPLLC would construct a new development on the Property, which included the
22 Project as part of the redevelopment. *Id.*

23 5. According to the MOU, UPLLC "would be responsible for all financing of the
24 Project and all such financing would be non-recourse to UNLV's fee simple interest" in the
25 Property. *UNLV Response, Exhibit 1, pg. 003, sections 1.2 & 1.3.* The MOU further provided
26 that "UNLV would not backstop the Project financing or have financial responsibility for the
27
28

Project in any way” [*Id.*, section 1.3] with the intention to “minimize [UNLV’s] financial risk and preserve [UNLV’s] debt capacity for other core/academic related projects.” *Id.*, Recital F.

6. On May 15, 2015, UNLV and UPLLC (and another UPLLC Affiliate, Future Phases LLC) entered into a comprehensive Project Development Agreement (the “PDA”) where it was agreed that UNLV, UPLLC, and Future Phases LLC would collectively develop the Property. *UNLV Response, Exhibit 2, pgs. 016 - 061.*

7. On May 15, 2015, UNLV and UPLLC entered into a lease agreement for the portion of the Property on which the Project would be built (the “Lease”). *UNLV Response, Exhibit 4, pgs. 071 – 160.* On February 10, 2016, UPLLC assigned the Lease, with UNLV’s permission, to UPA.

8. While UNLV was to be involved in oversight of the operation of the Project, the MOU, PDA and the Lease provide that UPLLC (or its eventual assignee) would be responsible for the bulk of the Project development, operation and maintenance. In addition to providing for units for potential student housing, the Lease also provides for the construction of improvements “to be used for commercial purposes” [see Ex. 4, ¶1.13], commercial subleases [see Ex. 4, ¶1.14] and commercial subtenants [see Ex. 4, ¶1.15]. In addition, Section 1.92 of the Lease provides for:

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.

[Ex. 4, ¶1.92]. For these reasons, without limitation, the Project is for predominantly private or non-governmental uses or purposes.

9. UNLV did not record a notice of non-responsibility as a “disinterested owner” under the provisions of NRS 108.234. *UNLV Sur-Reply filed 03/08/18, pg. 14, ll. 9-17.* UPA also did not require its lessee, UPA, to comply with NRS 108.2403 through 108.2407 by either posting a statutory lien release bond or by fully funding a construction disbursement account and

1 recording a notice of posted security. As such UNLV did not qualify as a disinterested owner
2 and would not, in any event, have been entitled to record a notice of non-responsibility.

3 10. In early 2016, UPA began negotiations with Korte for the construction of the
4 Project on the Property and entered into a formal construction agreement for the Construction of
5 the Project on February 5, 2016 (the "Construction Contract"). *UPA Motion filed 10/18/17,*
6 *Exhibit 1.*

7 11. Korte did not serve UNLV with a Notice of Right to Lien under NRS 108.245.

8 12. UNLV was aware that Korte was performing construction work on the Project as
9 early as March 15, 2016. *UNLV Response filed 02/09/18, Exhibit 5, pgs. 161-164.*

10 13. Korte recorded its Notice of Lien against the Project and the Property on October
11 9, 2017. *UPA Motion filed 10/18/17, Exhibit 2; Affidavit of Greg Korte filed 11/9/17, pg. 4, ¶ 10.*
12 Some of Korte's subcontractors, including Helix and CVI, also recorded mechanic's liens
13 against the Project and the Property.

14 14. Korte amended its Notice of Lien on January 24, 2018. *Korte Request for Judicial*
15 *Notice filed 01/24/18, Exhibit B.*

16 15. Korte's Notice of Lien was recorded against the Property in its entirety, and not
17 just the land parcels on which the Project is being constructed. *UPA Motion filed 10/18/17,*
18 *Exhibit 2; Korte Request for Judicial Notice filed 01/24/18, Exhibit B.*

19 CONCLUSIONS OF LAW

20 The Court hereby makes the following conclusions of law:

21 1. The Nevada Legislature waived the sovereign immunity of the State of Nevada
22 and its political subdivisions from liens in the circumstances provided in, without limitation,
23 NRS 108.22148(1)(f).

24 2. UNLV is a political subdivision of the State of Nevada.

25 3. However, the Project was not constructed by UNLV as a public work under the
26 provisions of NRS Chapters 338 and 339.

1 4. As the Project is for predominantly private or non-governmental uses or purposes,
2 UNLV, as a political subdivision of the State of Nevada, is an "Owner" as defined in NRS
3 108.22148(1)(f) whose property is subject to attachment by mechanic's liens.

4 5. Even though its property is subject to attachment by mechanic's liens, UNLV
5 could have nonetheless immunized its leased property against mechanic's liens arising from
6 construction of the Project in the same manner as any other lessor by (1) requiring its lessee,
7 UPA, to comply with NRS 108.2403 through 108.2407 by either posting a statutory lien release
8 bond or by fully funding a construction disbursement account, (2) recording a notice of posted
9 security, and (3) recording and serving a "notice of non-responsibility" as provided in NRS
10 108.234.

11 6. However, because UNLV did not comply with the provisions of NRS 108.2403
12 through 108.2407 and NRS 108.234, it "may not assert any claim that [its] interest in [the Project
13 and the Property] upon which an improvement is constructed, altered or repaired is not subject
14 to or is immune from the attachment of a lien pursuant to [the NMLL]. NRS 108.234(6).

15 7. UNLV's interest in the Project and the Property are subject to the Notice of Lien
16 of Korte and those of Helix, CVI, any other lien claimant arising from their work on the Project
17 to the extent that such liens are otherwise determined to be valid under the NMLL.

18 8. UNLV had actual knowledge of Korte's construction work on the Project.

19 9. UNLV has not provided any evidence to the Court that it was prejudiced by Korte
20 not providing a Notice of Right to Lien under NRS 108.245.

21 10. As UNLV had actual knowledge of Korte's construction work on the Project,
22 Korte has substantially complied with any requirement under NRS 108.245 to serve UNLV with
23 a Notice of Right to Lien, and UNLV has not suffered any prejudice as a result. *See Hardy*
24 *Companies, Inc. v. SNMARK*, 126 Nev. 526, 539, 245 P.3d 1149, 1156 (2010), and its progeny.

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IT IS HEREBY ORDERED:

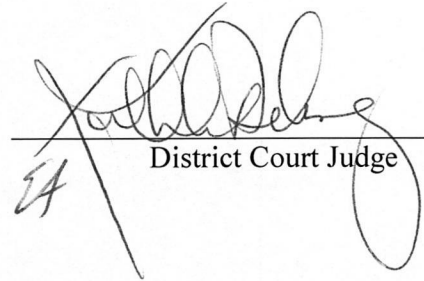
1. UNLV's objection to its ownership interest in the Property and the Project being subject to the mechanics lien of Korte, Helix and CVI on the grounds of sovereign immunity is DENIED.

2. UNLV's objection to its interest in the Property and the Project being subject to the mechanics lien of Korte on the grounds that Korte failed to comply with the provisions of NRS 108.245 is DENIED.

3. UNLV's objection to the scope of Korte's Notice of Lien as encumbering excessive portions of the Property is DENIED without prejudice, pending additional discovery into the issue of how much of the Property should be covered by Korte's Notice of Lien.

IT IS SO ORDERED.

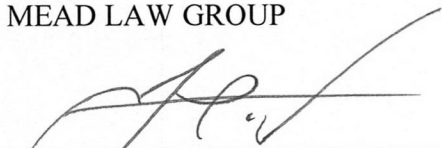
Dated: April 11, 2018


District Court Judge

Respectfully Submitted by:

Dated: April 4, 2018.

MEAD LAW GROUP


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Sarah A. Mead, Esq. NV Bar #13725
Attorneys for The Korte Company

Findings of Fact and Conclusions of Law and Order Thereon Reviewed by:

HOLLAND & HART LLP

DICKINSON WRIGHT PLLC

By: J. Stephen Peek

By: DID NOT RESPOND

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CERTIFICATE OF SERVICE

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

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

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10 
11 Dated: April 4, 2018

/s/ Sarah A. Mead

An Employee of Mead Law Group