

*** * 362 INFORMATION SHEET * ***

Stoneridge Parkway LLC
DEBTOR

BK-22-10540-gs
BANKRUPTCY CASE NO.

MOTION #

Shun Lee Lending Ltd.
MOVANT

11
CHAPTER

Certification of Attempt to Resolve the Matter Without Court Action:

Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.

Date: 6/24/2022

Signature: /s/Robert Hirsh
Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: 8600 Cupp Drive, Las Vegas, Nevada 89131

NOTICE SERVED ON: Debtor(s) X; Debtor's counsel; X; Trustee; X

DATE OF SERVICE: 06/24/2022

MOVING PARTY'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st no less than \$ **28,502,030.86**
 2nd \$

Total Encumbrances:

APPRAISAL of OPINION as to VALUE:
Appraisal to be filed by Movant

OPPOSING PARTIES' CONTENTIONS:

OPPOSING PARTIES' CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st \$ __
 2nd \$ __

Total Encumbrances:

APPRAISAL of OPINION as to VALUE:

Unknown

TERMS of MOVANT'S CONTRACT with the DEBTOR(S):

Outstanding Amounts
 Initial Secured Loan: **\$27,970,629.42**
 DIP Loan: **\$531,401.44**
 Interest Rate: First Note 18%
 Second Note 12%
 Payment per Month:
 Date of Default: Initial Secured Loan 12/2015
 DIP Loan 12/2016
 Amount in Arrears: **\$28,502,030.86**

Date of Notice of Default:
 Initial Secured Loan 12/2015
 DIP Loan 12/2016

SPECIAL CIRCUMSTANCES:

SUBMITTED BY: Brett A. Axelrod

SIGNATURE: /s/Brett A. Axelrod

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Electronically Filed June 24, 2022

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12
13 **UNITED STATES BANKRUPTCY COURT**

14 **DISTRICT OF NEVADA**

15 In re

16 STONERIDGE PARKWAY LLC,

17 Debtor.

Case No. BK-22-10540-gs

Chapter 11

**MOTION OF SHUN LEE LENDING,
LTD. FOR RELIEF FROM THE
AUTOMATIC STAY TO ENFORCE
SECURITY INTEREST IN THE
SILVERSTONE PROPERTY**

Hearing Date: August 5, 2022

Hearing Time: 1:30 p.m.

23
24 Shun Lee Lending, Ltd. ("SLL"), by and through its undersigned counsel, hereby submits this
25 motion (the "Motion") for entry of an order, pursuant to sections 362(d)(1), (2) and (3) of title 11 of
26 the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rules 4001 and 9014
27 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), granting SLL relief from
28 the automatic stay to enforce its security interest in the Silverstone Property (defined below) and such

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1 other and further relief as the Court may deem just and proper. In support of the Motion, SLL
2 respectfully states as follows:

3 **PRELIMINARY STATEMENT¹**

4 1. The Debtor filed this Chapter 11 Case on the eve of a foreclosure sale scheduled by
5 SLL, with the goal (for the second time) of obtaining an elusive fresh start by selling the Silverstone
6 Property and using the proceeds to pay its indebtedness (including SLL’s ever-increasing claim of no
7 less than approximately \$28.5 million, which is secured by the Silverstone Property). The Debtor’s
8 proposed chapter 11 Plan is dependent upon stripping the Silverstone Property of certain restrictive
9 covenants on the use of the property as a golf course, through an Adversary Proceeding commenced
10 before the Bankruptcy Court.

11 2. Although SLL still has yet to receive *any* payments on account of its secured loan,
12 SLL has stood by—and even supported—the Debtor’s efforts in this Chapter 11 Case to date, on the
13 promise that the Debtor’s Plan may present the most effective means of liquidating, and avoiding any
14 further diminution to the value of, SLL’s collateral; namely, by facilitating an efficient resolution to
15 the issues that have plagued the Silverstone Property with the involvement of all of the parties,
16 whether through negotiation, mediation, or litigation. However, it has become clear that such a result
17 will not be possible, with the HOA and Debtor on the cusp of litigating their dispute in an arbitration
18 to which SLL is not a party, while SLL remains unable to protect its interests in its collateral due to
19 the continued stay of its prepetition foreclosure proceedings. Thus, for the reasons set forth below,
20 SLL seeks relief from the automatic stay so that it may enforce its security interests in the Silverstone
21 Property.

22 **JURISDICTION, VENUE, AND PREDICATES FOR RELIEF**

23 3. The Bankruptcy Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157
24 and 1334. Venue in the District of Nevada is proper pursuant to 28 U.S.C. § 1409. This matter is a
25 core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
26

27 _____
28 ¹ Capitalized terms used but not otherwise defined in this Preliminary Statement have the
meanings ascribed to them in the remainder of this Motion.

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4. The predicates for the relief requested herein are sections 105 and 362 of the Bankruptcy Code, and Bankruptcy Rules 4001 and 9014.

5. SLL does consent to the entry of final orders or judgments by the Bankruptcy Court.

RELEVANT BACKGROUND

I. SLL’s Prepetition Secured Claim and Prepetition Foreclosure Proceeding

6. SLL is the prepetition secured lender to the above-captioned debtor and debtor-in-possession, Stoneridge Parkway LLC (the “Debtor”), as successor in interest to Aevitas Capital, LLC.

7. As set forth in SLL’s Proof of Claim No. 97 filed on June 21, 2022 (the “SLL Claim”), as of the Debtor’s bankruptcy filing on February 16, 2022 (the “Petition Date”), the Debtor was indebted to SLL in the amount of no less than \$28,502,030.86² in principal, interest, late charges and other fees, costs, and expenses due and owing under the parties’ Loan Documents (as defined in the SLL Claim).

8. The SLL Claim is secured by a first priority security interest in that certain property located at 8600 Cupp Drive, Las Vegas, Nevada 89131 (the “Silverstone Property”). The Silverstone Property is the Debtor’s primary asset, a former golf course that has fallen under disrepair and has not been in operation since 2015. The Silverstone Property is located within the Silverstone Ranch Community, a planned community development comprised of over 1,500 homes built around the Silverstone Property. The Debtor’s Schedules of Assets and Liabilities filed on March 2, 2022 [ECF No. 13] state that the Silverstone Property has a net book value of \$0.00.

9. To date, the Debtor has not made any payments owed under the Loan Documents. See Attachment in Support of SLL Claim, Section 3.i. In addition, the Debtor has failed to pay property taxes associated with the Silverstone Property, resulting in the accumulation and compounding of outstanding property taxes.

10. Thus, prior to the Petition Date, SLL initiated proceedings to enforce its rights under its collateral, the Silverstone Property. On January 25, 2022, the Clark County Recorder issued the Notice of Trustee’s Sale scheduling the foreclosure sale for February 17, 2022.

² SLL reserves its right to provide amounts due and owing for post-petition interest and expenses.

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1 **II. Debtor’s Chapter 11 Filing and Proposed Sale of the Silverstone Property**

2 11. On February 16, 2022 (the eve of foreclosure), the Debtor filed a voluntary petition
3 for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned chapter
4 11 case (the “Chapter 11 Case”) in the United States Bankruptcy Court for the District of Nevada (the
5 “Bankruptcy Court” or “Court”).

6 12. As set forth in the Debtor’s Disclosure Statement filed on May 17, 2022 [ECF No. 60],
7 the Debtor attributes its liquidity issues and chapter 11 filing (its second chapter 11 filing in
8 approximately six years) to an inability to continue to operate the Silverstone Property as a profitable
9 golf course. This is not only the result of waning demand for golf courses in the Las Vegas area, but
10 also due to severe drought conditions that have made it all but impossible to maintain the golf course
11 on the Silverstone Property (as discussed further below). *See* Disclosure Statement, § II.B.4.

12 13. Thus, despite unsuccessful attempts to market the Silverstone Property prepetition, the
13 Debtor has filed a chapter 11 plan (the “Plan”) [ECF No. 61] in which the Debtor proposes to auction
14 the Property for the purpose of paying its secured indebtedness.³

15 14. Critically, the value and marketability of the Silverstone Property hinges upon the
16 Debtor’s efforts to strip the property of certain “Golf Course Covenants” (as defined in the Disclosure
17 Statement) set forth in that certain Second Amended and Restated Reciprocal Easement Agreement
18 (the “Golf Course Agreement”) by and between the Debtor and the Silverstone Ranch Community
19 Association (the “HOA”). The Golf Course Agreement requires that the Silverstone Property be used
20 only as a championship 27-hole golf course.

21 15. However, as set forth in the Debtor’s Disclosure Statement and other pleadings before
22 this Court, maintaining the Silverstone Property as a golf course is impossible in light of water
23 regulations enacted by the Las Vegas Valley Water District (the “LVVWD”). Specifically, on
24 November 2, 2021, the LVVWD adopted regulations that prohibit the use of the Colorado River water
25 supply for new golf courses in Las Vegas, Nevada. *See, e.g.*, Disclosure Statement, Exhibit 13. In
26 fact, the Debtor has asserted that it received information specifically indicating that the LVVWD will

27 _____
28 ³ Including the SLL Claim, an aggregate amount of \$32,449,120.99 in secured claims have
been filed against the Debtor’s estate.

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1 not provide water for a golf course on the Silverstone Property. *See Motion to Amend Adversary*
2 *Complaint* [Adversary Proceeding, ECF No. 21], ¶¶ 5 and 10(c).

3 16. Thus, on March 14, 2022, the Debtor commenced Adversary Proceeding No. 22-
4 01050-GS (the “Adversary Proceeding”) against the HOA, seeking, among other things, to remove
5 the Golf Course Covenants from the Silverstone Property. On May 19, 2022, the Debtor filed a
6 motion to amend the complaint [Adversary Proceeding, ECF No. 21], which the Court granted at a
7 hearing held on June 2, 2022.

8 **III. The HOA’s Enforcement of Restrictive Golf Course Covenants**

9 17. The Debtor and the HOA have been engaged in litigation regarding the Silverstone
10 Property and Golf Course Covenants for over six years, ultimately culminating in the HOA asserting
11 an arbitration demand under the Golf Course Agreement on November 5, 2021 (before the Petition
12 Date). By its arbitration demand, the HOA seeks, among other things, declaratory relief upholding
13 the enforceability of the Golf Course Covenants.

14 18. On April 14, 2022, the HOA filed a motion (the “HOA Stay Relief Motion”) [ECF
15 No. 43] to dismiss the Adversary Proceeding and a motion for relief from the automatic stay to allow
16 the arbitration to proceed. The Court granted the HOA Stay Relief Motion at a hearing held on June
17 2, 2022. On June 15, 2022, the Debtor filed a notice of lodgment of a proposed order granting the
18 motion [ECF No. 72], however the order has not yet been entered to date.

19 19. Both the Adversary Proceeding and the Plan confirmation process have been stayed
20 pending the outcome of the arbitration.

21 20. In light of the foregoing, it is clear that the Debtor will be unable to effectuate its
22 proposed Plan within a reasonable amount of time, if at all. Meanwhile, SLL’s unpaid secured claim
23 continues to increase due to unpaid fees, interests, and other costs as its collateral (the Silverstone
24 Property) continues to deteriorate, particularly in light of the HOA’s impending arbitration—which
25 may strip the Silverstone Property of any value it may have. Moreover, SLL—the party with the real
26 economic interest in the outcome of the arbitration—may not have an opportunity to participate or
27
28

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1 have its rights protected in the arbitration process.⁴ Therefore, at this juncture, the relief requested
2 herein is necessary to ensure SLL an opportunity to protect its interests.

3 **RELIEF REQUESTED**

4 21. By this Motion, SLL seeks entry of an order granting SLL relief from the automatic
5 stay pursuant to section 362(d) of the Bankruptcy Code to the extent necessary to permit SLL to
6 enforce its security interest in the Silverstone Property, including by the prosecution of foreclosure
7 proceedings with respect thereto.

8 **BASIS FOR RELIEF**

9 22. In pertinent part, section 362(d) of the Bankruptcy Code provides that:

10
11 (d) On request of a party in interest and after notice and a hearing the court
12 shall grant relief from the stay provided under subsection (a) of this section,
such as by terminating, annulling, modifying, or conditioning such stay—

13 (1) for cause, including the lack of adequate protection of an interest
14 in property of such party in interest;

15 (2) with respect to a stay of an act against property under subsection
16 (a) of this section, if –

17 (A) the debtor does not have an equity in such property; and

18 (B) such property is not necessary to an effective
19 reorganization.

20 (3) with respect to a stay of an act against single asset real estate under
21 subsection (a), by a creditor whose claim is secured by an interest in such real
22 estate, unless, not later than the date that is 90 days after the entry of the order
for relief (or such later date as the court may determine for cause by order
entered within that 90-day period) or 30 days after the court determines that
the debtor is subject to this paragraph, whichever is later—

23 (A) the debtor has filed a plan of reorganization that has a reasonable
24 possibility of being confirmed within a reasonable time; or

25 (B) the debtor has commenced monthly payments [. . .].

26 11 U.S.C. §§ 362(d)(1) through (3).

27
28 ⁴ SLL intends to seek to participate in the arbitration proceeding; however, any such right is
subject to the discretion of the arbitration panel.

1 23. Therefore, a creditor is entitled to relief from the automatic stay if cause exists
2 (including a lack of adequate protection of its interest in collateral), or, alternatively, if the debtor
3 lacks equity in the collateralized property and the property is not necessary to an effective
4 reorganization. *Id.*

5 24. Pursuant to section 362(g) of the Bankruptcy Code, in any hearing concerning a
6 request for relief from the automatic stay, the moving creditor bears the burden of proof solely with
7 respect to the debtor’s equity in the property. The Debtor bears the burden on all other issues,
8 including whether the Debtor is adequately protected or that the property is necessary to an effective
9 reorganization. 11 U.S.C. § 362(g).

10 25. As the Supreme Court has noted, the latter requires the Debtor to establish “a
11 reasonable possibility of a successful reorganization within a reasonable amount of time.” *United*
12 *Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 466 (1988). Courts
13 have held that:

14
15 It is not enough for a debtor to argue that the automatic stay should continue
16 because it needs the secured property in order to propose a reorganization.
17 If this were the test all property held by debtors could be regarded as
18 necessary for the debtors’ reorganization. The key word under [Bankruptcy
19 Code §] 362(d)(2)(B) is “effective”; the property must be necessary to an
20 effective reorganization. If all the debtor can offer at this time is high hopes
21 without any financial prospects on the horizon to warrant a conclusion that
22 a reorganization in the near future is likely, it cannot be said that the
23 property is necessary to an “effective” reorganization.

24 *In re Clark Technical Assocs., Ltd.*, 9 B.R. 738, 740 (Bankr. D. Conn. 1981).

25 26. For the reasons discussed below, SLL is entitled to relief from the automatic stay under
26 sections 362(d)(1), (d)(2), and/or (d)(3) so that it may enforce its security interest in the Silverstone
27 Property by continuing its prepetition foreclosure proceedings.

28 **A. The Automatic Stay Should be Terminated for Cause Pursuant to 11 U.S.C. § 362(d)(1).**

29 27. Pursuant to section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay
shall be granted for cause, including a lack of adequate protection. Although the Bankruptcy Code
does not define “adequate protection”, section 361 provides three non-exhaustive means of providing

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1 adequate protection, including requiring “a cash payment or periodic cash payments to [the secured
 2 creditor], to the extent that the stay under section 362 . . . results in a decrease in the value of such
 3 entity’s interest in such property.” 11 U.S.C. 361(1). Courts have held that the lack of any payments
 4 by the debtor since the beginning of the case, among other things, constitutes a lack of adequate
 5 protection necessitating relief from the automatic stay. *See In re Covenant Christian Center Intern.,*
 6 *Inc.*, 364 B.R. 374, 378 (Bankr. D. Ariz. 2007).

7 28. Here, the Debtor has not made *any* payments on account of the SLL Claim at any time
 8 (principal, interest, or otherwise), prior to the Petition Date or thereafter. The Debtor has also failed
 9 to pay the property taxes owed in connection with the Silverstone Property. The Debtor’s failure to
 10 make these payments constitutes cause for lifting the automatic stay under section 362(d)(1) to avoid
 11 any further diminution in the value of SLL’s collateral, the Silverstone Property.

12 29. Moreover, the determination of “cause” under subsection (d)(1) is not subject to a rigid
 13 test; rather, courts determine “cause” on a case-by-case basis. *See In re Podmostka*, 527 B.R. 51, 54
 14 (Bankr. D. Mass. 2015); *In re Haines*, 309 B.R. 668, 674 (Bankr. D. Mass. 2004) (noting that cause
 15 “has no clear definition and is determined on a case-by-case basis”).

16 30. The unique circumstances of this case require that the stay be lifted to permit SLL to
 17 foreclosure. Because the Debtor has no equity in the Silverstone Property (as discussed in more detail
 18 below), SLL is the true economic stakeholder. Absent the relief requested herein, the arbitration
 19 proceeding (to which SLL is not a party) will proceed and the issues relating to the enforcement of
 20 the restrictive Golf Course Covenants will be decided without SLL’s ability to meaningful participate
 21 and have its rights represented. The arbitration award will have significant impact on the value of
 22 SLL’s collateral. To permit the arbitration to proceed, while maintaining the stay of SLL’s
 23 foreclosure proceedings (which had resulted in a foreclosure sale being scheduled merely one day
 24 after the Petition Date), contradicts one of the fundamental purposes of the automatic stay—ensuring
 25 fairness among creditors. *See, e.g., Reyher v. Trust Annuity Plan for Pilots of Trans World Airlines,*
 26 *Inc.*, 1995 WL 689325, at *2 (M.D. Fla. Nov. 17, 1995) (noting that the purpose of the automatic stay
 27 is to provide debtor protection “and to promote fairness amongst creditors”).
 28

1 31. Thus, SLL respectfully submits that the automatic stay should be lifted pursuant to
2 section 362(d)(1) of the Bankruptcy Code.

3 **B. The Automatic Stay Should be Terminated Pursuant to 11 U.S.C. § 362(d)(2).**

4 32. Section 362(d)(2) of the Bankruptcy Code provides that a secured creditor is entitled
5 to stay relief where the debtor lacks any equity in the collateralized property and the property is not
6 necessary for an effective reorganization.

7 33. As the Ninth Circuit has held, “equity” for purposes of section 362(d)(2) “refers to the
8 difference between the value of the property and all encumbrances upon it.” *Stewart v. Gurley*, 745
9 F.2d 1194, 1195 (9th Cir. 1984). Further, with respect to the Debtor’s burden to establish the property
10 is necessary to an effective reorganization, the Ninth Circuit Bankruptcy Appellate Panel has noted
11 that the Debtor “must offer sufficient evidence to indicate that a successful reorganization within a
12 reasonable time is ‘assured.’” *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 75 (9th Cir. BAP
13 1994). The Debtor must “do more than manifest unsubstantiated hopes for a successful
14 reorganization.” *Id.* Rather, the Debtor must demonstrate that the reorganization is feasible. *See In*
15 *re Kurth Ranch*, 97 B.R. 33, 35 (Bankr. D. Mont. 1989).

16 34. There can be little dispute that the Debtor lacks any equity in the Silverstone Property.
17 The Silverstone Property lacks any meaningful value due to the existence of the restrictive Golf
18 Course Covenants requiring the Silverstone Property to remain a golf course and the regulations
19 imposed by the LVVWD making it impossible for the Debtor to access water necessary to operate a
20 golf course. Without the ability to strip the Golf Course Covenants or obtain water rights, the market
21 value of the property is *de minimis*, at best and the approximately \$32.5 million in secured claims
22 against it, of which approximately \$28 million is held by SLL, is well in excess of any current market
23 value. The Debtor concedes this, having scheduled the Silverstone Property as having a book value
24 of \$0.00. *See* Schedule A, Part 55.

25 35. The Debtor proposed a Plan that provides for the sale or abandonment⁵ of the
26 Silverstone Property in order to pay the Debtor’s secured indebtedness. The Plan is not currently

27 _____
28 ⁵ The Plan contemplates abandoning the Property in full satisfaction of secured claims in the event the proposed sale fails for any reason. *See* Plan, Article V.4. This result would simply delay

1 feasible. The Silverstone Property may only be sold subject to the Golf Course Covenants under the
2 current circumstances. Therefore, the Debtor cannot meet its burden of establishing that the
3 Silverstone Property is necessary for an “effective” reorganization. *See in re Kurth Ranch*, 97 B.R.
4 at 35 (noting that to defeat a motion for stay relief under section 362(d)(2), “the property must not
5 only be necessary for reorganization, but [the] reorganization [must be] feasible”).

6 36. Thus, SLL respectfully submits that the automatic stay should be lifted pursuant to
7 section 362(d)(2) of the Bankruptcy Code.

8 **C. The Automatic Stay Should be Terminated Pursuant to 11 U.S.C. § 362(d)(3).**

9 37. Finally, SLL is entitled to relief from the automatic stay pursuant to section 362(d)(3)
10 of the Bankruptcy Code, which requires a court to grant stay relief for secured creditors to proceed
11 against “single asset real estate” unless: (1) within 90 days of the date the petition is filed the debtor
12 either files a chapter 11 plan “*that has a reasonable possibility of being confirmed within a reasonable*
13 *time;*” or (2) the debtor has begun making regular monthly payments to each creditor whose claim is
14 secured by the “single asset real estate.” 11 U.S.C. § 362(d)(3) (emphasis added).

15 38. As set forth herein, while the Debtor’s Plan was filed within the 90-day window to
16 comply with the “single asset real estate” requirement, the Debtor’s Plan does not have a reasonable
17 possibility of being confirmed within a reasonable time, and the Debtor has not made any payments
18 to SLL.

19 39. For the foregoing reasons, SLL respectfully submits that it is entitled to relief from the
20 automatic stay to enforce its security interest in the Silverstone Property.

21 **WAIVER OF STAY UNDER BANKRUPTCY RULE 4001(a)(3)**

22 40. Bankruptcy Rule 4001(a)(3) stays orders granting relief from the automatic stay for
23 fourteen (14) days following the entry of such an order. In light of the potential prejudice to SLL that
24 any delay in the relief requested herein may cause (as discussed above), SLL respectfully requests
25 that, in addition to granting relief from the automatic stay as requested herein, the Court waive the
26 stay that would otherwise be imposed by Bankruptcy Rule 4001(a)(3).

27 _____
28 the inevitable outcome that would have otherwise occurred months ago had SLL’s foreclosure
process not been stayed.

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RESERVATION OF RIGHTS

41. SLL expressly reserves the right to (i) amend or supplement this Motion and (ii) seek additional or alternative relief, including but not limited to adequate protection pursuant to section 363(e) of the Bankruptcy Code.

CONCLUSION

For the foregoing reasons, SLL respectfully requests that the Court enter an order granting the relief requested herein.

DATED this 24th day of June 2022.

FOX ROTHSCHILD LLP

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