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13 **UNITED STATES BANKRUPTCY COURT**
14 **FOR THE DISTRICT OF NEVADA**

15 In re:) Case No.: 22-10540-GS
16)
17 STONERIDGE PARKWAY LLC,) Chapter 11
18)
19 Debtor.) Hearing Date: August 9, 2022
20) Hearing Time: 1:30 p.m.
21 _____

22 **DEBTOR’S OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY**
23 **TO ENFORCE SECURITY INTEREST IN THE SILVERSTONE PROPERTY**

24 Stoneridge Parkway LLC, the plaintiff in the above-captioned Chapter 11 case (the
25 “**Debtor**”), by and through its counsel of record, files this opposition (the “**Opposition**”) to the
26 motion [ECF No. 79] (the “**Motion**”)¹ of Shun Lee Lending, Ltd. (“**Shun Lee**”) for relief from the
27 automatic stay with respect to the real property owned by Debtor and located at 8600 Cupp Drive,
28 Las Vegas, Nevada 89131, Assessor’s Parcel Numbers 125-10-110-009; 125-10-110-014; 125-10-
510-007; 125-10-712-005; 125-10-811-001; and 125-10-811-020 (the “**Property**”). In support of
the Opposition, the Debtor respectfully states as follows:

29 **PRELIMINARY STATEMENT**

30 1. Shun Lee moves for relief from the automatic stay under Sections 1, 2, and 3 of
31 362(d) of the Bankruptcy Code. As set forth in greater detail below, however, “cause” does not
32 exist to grant such relief under any Section of 362(d) of the Bankruptcy Code.

33 _____
34 ¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the
35 Motion.

1 2. First, “cause” does not exist under Section 362(d)(1) as Shun Lee has failed to
2 demonstrate how it is not “adequately protected” - thus justifying the relief requested. Shun Lee
3 has not provided any evidence to support its contention that there is no equity in the Property. A
4 significant issue that will be a focus of the upcoming arbitration hearing between the Debtor and
5 the Silverstone Ranch Community Association (the “**HOA**”) is the existence of the Golf Course
6 Covenants presently encumbering the Property. All parties appear to agree, including Shun Lee,
7 that with the removal of the Golf Course Covenants, the Property’s value is substantially greater.
8 Additionally, the Debtor has a letter of intent offer for the purchase of the Property upon the
9 condition of the removal of the Golf Course Covenants. *See* “Letter of Intent to Purchase Real
10 Property”, a copy of which is attached as **Exhibit A** to the Declaration of Danny Modaberpour (the
11 “**Modaberpour Declaration**”) filed concurrently herewith. In light of the foregoing, there is no
12 “cause” justifying the relief requested pursuant to 362(d)(1).

13 3. Likewise, “cause” does not exist to grant relief from the automatic stay under
14 Section 362(d)(2) because, despite Shun Lee’s unsubstantiated assertions: (i) the Debtor has equity
15 in the Property, and certainly more equity in the Property upon the removal of the Golf Course
16 Covenants; and (ii) the Property is unequivocally necessary for an effective reorganization. The
17 Debtor has an offer for the sale of the Property for a minimum purchase price of \$34,000,000.00
18 from Tri Pointe Homes, which offer could substantially increase based on the number of homes
19 available to be built at the Property. *See* Modaberpour Declaration, **Exhibit A**. Moreover, the term
20 “effective reorganization” in Section 362(d)(2) includes a liquidation plan as well as a rehabilitation
21 plan, thus justifying the continuation of the stay here. *See In re Associated Investors Joint*
22 *Adventure*, 91 B.R. 555, 558 (Bankr. C.D. Cal. 1988) (*citing In re Koopmans*, 22 B.R. 395 (Bankr.
23 D. Utah 1982)).

24 4. Finally, Shun Lee’s assertions to grant relief under Section 362(d)(3) are not
25 persuasive for multiple reasons. For example, this Chapter 11 case has not been designated as a
26 single asset real estate case. Nevertheless, even if such a designation had been made, the Debtor
27 timely filed its Chapter 11 plan (and related disclosure statement) on May 17, 2022, within the 90-
28 day period set forth in Section 362(d)(3). Moreover, the Debtor has been diligently prosecuting its

1 claims since the onset of the petition date and is moving forward with maximizing the value of the
2 Property, with the goal of removing the Golf Course Covenants and proceeding with the sale of the
3 Property to Tri Pointe Homes (or to another purchaser with a higher and better offer). There is
4 nothing to indicate, and Shun Lee fails to provide any analysis on the same, that the Debtor’s plan
5 does not have a reasonable possibility of being confirmed within a reasonable amount of time and
6 therefore, Shun Lee is not entitled to the requested relief under Section 362(d)(3).

7 5. Therefore, for the foregoing reasons, Shun Lee’s Motion should be denied.

8 **LEGAL ARGUMENT**

9 **Cause Does Not Exist Under Section 362(d)(1)**

10 6. Under Section 362(d)(1) of the Bankruptcy Code, the court shall grant relief from
11 the automatic stay ... such as by terminating, annulling, modifying or conditioning such stay ... for
12 cause, including the lack of adequate protection of an interest in property. 11 U.S.C. § 362(d)(1).
13 Here, the Shun Lee argues “cause” exists because it is not adequately protected. This argument,
14 however, is misguided.

15 7. As the party seeking stay relief, the Shun Lee must first establish a prima facie case
16 that cause exists for relief under Section 362(d)(1) of the Bankruptcy Code. *See United States v.*
17 *Gould (In re Gould)*, 401 B.R. 415, 426 (B.A.P. 9th Cir. 2009). Furthermore, “[a]dequate
18 protection is provided to safeguard the creditor against **depreciation in the value** of its collateral
19 **during the reorganization process.**” *First Fed. Bank of Cal. V. Weinstein (In re Weinstein)*, 227
20 B.R. 284, 296 (B.A.P. 9th Cir. 1998), *citing Paccom Leasing Corp. v. Deico Elecs., Inc. (In re*
21 *Deico Elecs., Inc.)*, 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992) (emphasis added). In the case at hand,
22 Shun Lee failed to establish that it is not adequately protected and has set forth no evidence to
23 support that the Property is declining in value—inquiries that are exclusively focused on what is
24 occurring to the creditor’s interest **post-petition.**

25 8. “The general purpose of adequate protection is to ensure that the secured creditor
26 ultimately received what it would have received had not bankruptcy intervened.” *In re Las Vegas*
27 *Monorail Co.*, 429 B.R. 317, 326 (Bankr. D. Nev. 2010). Adequate protection is a flexible concept,
28 not subject to the mechanical application of a formula, but is rather committed to the sound

1 discretion of the bankruptcy court to apply on a case-by-case basis. *Id.*

2 9. Here, Shun Lee argues that the Debtor has not made any payments to Shun Lee in
3 relation to the Property and therefore, on that basis, the stay must be lifted. In support of this
4 contention, Shun Lee cites to *In re Covenant Christian Center Intern., Inc.*, 364 B.R. 374 (Bankr.
5 D. Ariz. 2007). That holding, however, does not lend support to Shun Lee’s position. Rather, the
6 United States Bankruptcy Court for the District of Arizona in *In re Covenant Christian Center*
7 *maintained the stay* and opined that because the movant met its burden of proof on its claims,
8 coupled with the “lack of equity in the property, the novelty of the Debtor’s attack on the [movant’s]
9 claim[,] the lack of any payments by the Debtor since the beginning of the case, the lack of any
10 operating reports [...], the other debts secured by the property, the demonstrated inability of the
11 Debtor to refinance the debt prior to maturity (at a time when all of the complained of extra fees,
12 default interest and late charges had not yet accrued and would have been avoided), the Court
13 concludes that substantial payments are necessary to continue the stay in place.” 364 B.R. at 378.

14 10. Here, unlike the debtor in *In re Covenant Christian Center*, the Debtor is current on
15 its monthly operating reports, has filed a plan and disclosure statement, has an offer to purchase the
16 Property from Tri Pointe, which offer is in excess of Shun Lee’s debt, and is diligently prosecuting
17 its Chapter 11 case with the goal of maximizing the value of the Property (Shun Lee’s security).
18 As such, any purported lack of payments by the Debtor to the Shun Lee does not constitute “cause”
19 for purposes of Section 362(d)(1) justifying relief from the stay.

20 11. Next, Shun Lee asserts that no equity exists in the Property, therefore allowing the
21 pending arbitration hearing to proceed between Debtor and the HOA, while not lifting the stay to
22 allow Shun Lee to proceed with its foreclosure proceedings will result in unfairness to the lender.
23 *See Motion*, p.8.

24 12. Shun Lee has taken the unilateral and albeit, unsupported, position that no equity
25 exists in the Property. This is incorrect. There is equity in the Property and certainly significantly
26 more equity upon the removal of the Golf Course Covenants. The Debtor has received a recent
27 offer from Tri Pointe Homes as evidenced by the attached “Letter of Intent to Purchase Real
28

1 Property” for the purchase of the Property for a minimum of \$34,000,000.00.² See Modaberpour
2 Declaration, **Exhibit A**. While the removal of the Golf Course Covenants is a matter to be resolved
3 with the HOA, there is nothing to support the position that there is no equity whatsoever in the
4 Property, justifying Shun Lee’s request for relief from the stay.

5 13. Furthermore, any argument of unfairness to Shun Lee is now cured, as evidenced
6 by the HOA’s recent Opposition to the Motion [ECF No. 99] wherein the HOA “will stipulate to
7 allow for Shun Lee to participate in the arbitration.” ECF No. 99, p.3.

8 14. Finally, notwithstanding the foregoing and the fact that the Shun Lee is adequately
9 protected, adequate protection is only required to the extent of any decline in the value of the
10 Property post-petition. The Shun Lee has not submitted any evidence that the Property is declining
11 in value post-petition.

12 15. It is well known through the real estate market in Southern Nevada that property
13 values are increasing. See Las Vegas Review Journal Article dated May 31, 2022, attached hereto
14 as **Exhibit 1**. Appreciation or increases in the value of the property can also be sufficient, standing
15 alone, to provide adequate protection. See *Matter of Pleasant Valley, Inc.*, 6 B.R. 13 (Bankr. D.
16 Nev. 1980) (“The passage of time in these days of inflation may give adequate protection.”); see
17 also *In re Orlando Trout Creek Ranch*, 80 B.R. 190 (Bankr. N.D. Cal. 1987).

18 16. Simply put, there is no “cause” to terminate the automatic stay under Section
19 362(d)(1), and Shun Lee did not meet its burden regarding the same. Accordingly, stay relief is not
20 appropriate under 11 U.S.C. § 362(d)(1).

21 **Cause Does not Exist Under Section 362(d)(2).**

22 17. Pursuant to 11 U.S.C. § 362(d)(2), a party in interest may be granted relief from the
23 automatic stay if: (i) the debtor does not have equity in the property; **and** (ii) the property is not
24 necessary for an effective reorganization. 11 U.S.C. § 362(d)(2) (emphasis added).

25 18. In dealing with the requirement of Section 362(d)(2), several courts hold that the

26 _____
27 ² The purchase price for the Property may increase based on the amount of the number of single-
28 family home lots ultimately approved for construction on the Property. “For each Lot over and above the
520/Lot minimum that is ultimately approved, Buyer shall pay an additional \$80,000 per Lot.” See
Modaberpour Declaration, **Exhibit A**.

1 phrase “effective reorganization” under Section 362(d)(2) **includes a liquidation plan** as well as a
 2 rehabilitation plan. *In re Associated Investors Joint Adventure*, 91 B.R. at 558 (Bankr. C.D. Cal.
 3 1988) (emphasis added) (*citing In re Koopmans*, 22 B.R. 395 (Bankr. D. Utah 1982)).

4 19. In *Koopmans*, the bankruptcy court held that:

5 [P]roperty in which the debtor has no equity is necessary to an effective
 6 reorganization whenever it is necessary, either in the operation of the business or
 in a plan, to further the interest of the estate through rehabilitation or liquidation.

7 22 B.R. at 407 (emphasis added).

8 20. In *Associated Investors*, the bankruptcy court adopted the test set forth in *Koopmans*,
 9 explaining that the Fifth Circuit reorganized in *In re Timbers of Inwood Forest Assoc., Ltd.*, 808
 10 F.2d 363, 372, n. 14 (5th Cir. 1987), *aff’d* 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988)³
 11 that there may be circumstances under which the debtor is able to satisfy the “effective
 12 reorganization test of section 362(d)(2) by showing that the property at issue is necessary to an
 13 effective liquidation of the debtor under Chapter 11, as distinguished from an effective
 14 rehabilitation of debtor.”

15 21. Shun Lee again hangs its hat on the unsupported position that there is no equity in
 16 the Property. As set forth above, this is incorrect. There is equity in the Property, and the Debtor
 17 has a liquidation plan as evidenced of the offer for purchase of the Property. *See* Modaberpour
 18 Declaration, **Exhibit A**.

19 22. Even assuming, arguendo, that there is no equity in the Property as Shun Lee
 20 purports, standing alone, this is still insufficient to grant relief from the stay under Section
 21 362(d)(2). “Where there is no equity, **still a meaningful proposal or offer of further protection**
 22 **will further the stay**. Mere indispensability of the property to the debtor’s survival and high hopes,
 23 however, is not enough under Section 362(d)(2).” *In re Pleasant Valley, Inc.*, 6 B.R. at 18
 24 (emphasis added). But here, the Debtor is not resting on high hopes for an effective reorganization.
 25 The Debtor has an offer in place for the purchase of the Property. It stands to reason then that the

26 _____
 27 ³ In *United States Assoc. of Texas v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 375 (1988),
 28 the United States Supreme Court held that the property must be “essential for an effective reorganization
 that is in prospect.” The *Associated Investors* case was decided after the United States Supreme Court’s
 decision in *Timbers*.

1 Property is absolutely necessary for effective reorganization and therefore, relief under Section
2 362(d)(2) is unwarranted.

3 **Cause Does Not Exist Under Section 362(d)(3).**

4 23. Finally, despite the Debtor’s filing of its Chapter 11 plan within the applicable 90-
5 day period under Section 362(d)(3), Shun Lee still seeks relief under Section 362(d)(3) because it
6 does not believe the Debtor’s Chapter 11 plan can be confirmed within a reasonable time.

7 24. Under Section 362(d)(3) of the Bankruptcy Code, which applies to single asset real
8 estate cases, relief must be granted unless,

9 [N]ot later than the date that is 90 days after the entry of the order for relief (or such
10 later date as the court may determine for cause by order entered within the 90-day
11 period) or 30 days after the court determines that the debtor is subject to this
paragraph, whichever is later—

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

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

14 11 U.S.C. § 362(d)(3).

15 25. For purposes of § 362(d)(3), “[t]o prove a reasonable possibility of confirmation
16 within a reasonable time, the Debtor must at least show that ‘the proposed ... plan has a realistic
17 chance of being confirmed [and] is not patently unconfirmable’ although ‘adjudicating a relief from
18 stay motion under § 362(d)(3)(A) is not to be a mini confirmation hearing.’” *In re Carlsbad Dev.*
19 *I, LLC*, 2009 Bankr. LEXIS 754, *10-11.

20 26. At the outset, there has been no court determination that this is a single-asset estate,
21 such that Section 362(d)(3) even applies. Be that as it may, Shun Lee makes the unsubstantiated
22 claim that “Debtor’s Plan does not have a reasonable possibility of being confirmed within a
23 reasonable time...”. Shun Lee, however, provides no analysis as to what is unreasonable about
24 Debtor’s proposed plan and simply assumes, without providing any evidence or legal analysis, that
25 waiting multiple months for the arbitration to conclude is an unreasonable time.

26 27. Shun Lee concedes that the Debtor timely filed a Chapter 11 plan on May 17, 2022,
27 within the 90-day period set forth in Section 362(d)(3).

28 28. The Debtor has been diligently prosecuting its claims since the start of this case and

1 will be diligently moving forward with the maximization of the value of the Property. Lastly, the
2 Debtor has a firm offer in place, from a national homebuilder, contingent on the removal of the
3 Golf Course Covenants for the sale of the Property and for the benefit of its creditors and the estate.
4 Accordingly, cause does not exist to grant relief from the automatic stay under Section 362(d)(3).

5 **CONCLUSION**

6 29. For the foregoing reasons, the Debtor submits that “cause” does not exist to
7 terminate or modify the automatic stay pursuant to Section 362(d) of the Bankruptcy Code. As a
8 result, Shun Lee’s Motion should be denied.

9 WHEREFORE, the Debtor requests that this Court: (i) deny Shun Lee’s Motion; and (ii)
10 grant such other relief as the Court may deem just or appropriate.

11 Dated this 26th day of July 2022.

12 Respectfully Submitted,

13 SCHWARTZ LAW, PLLC

14 By: /s/ Samuel A. Schwartz

15 Samuel A. Schwartz, Esq.

16 Bryan A. Lindsey, Esq.

17 601 East Bridger Avenue

18 Las Vegas, NV 89101

19 *Counsel for the Debtor*

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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF system on July 26, 2022, the following:

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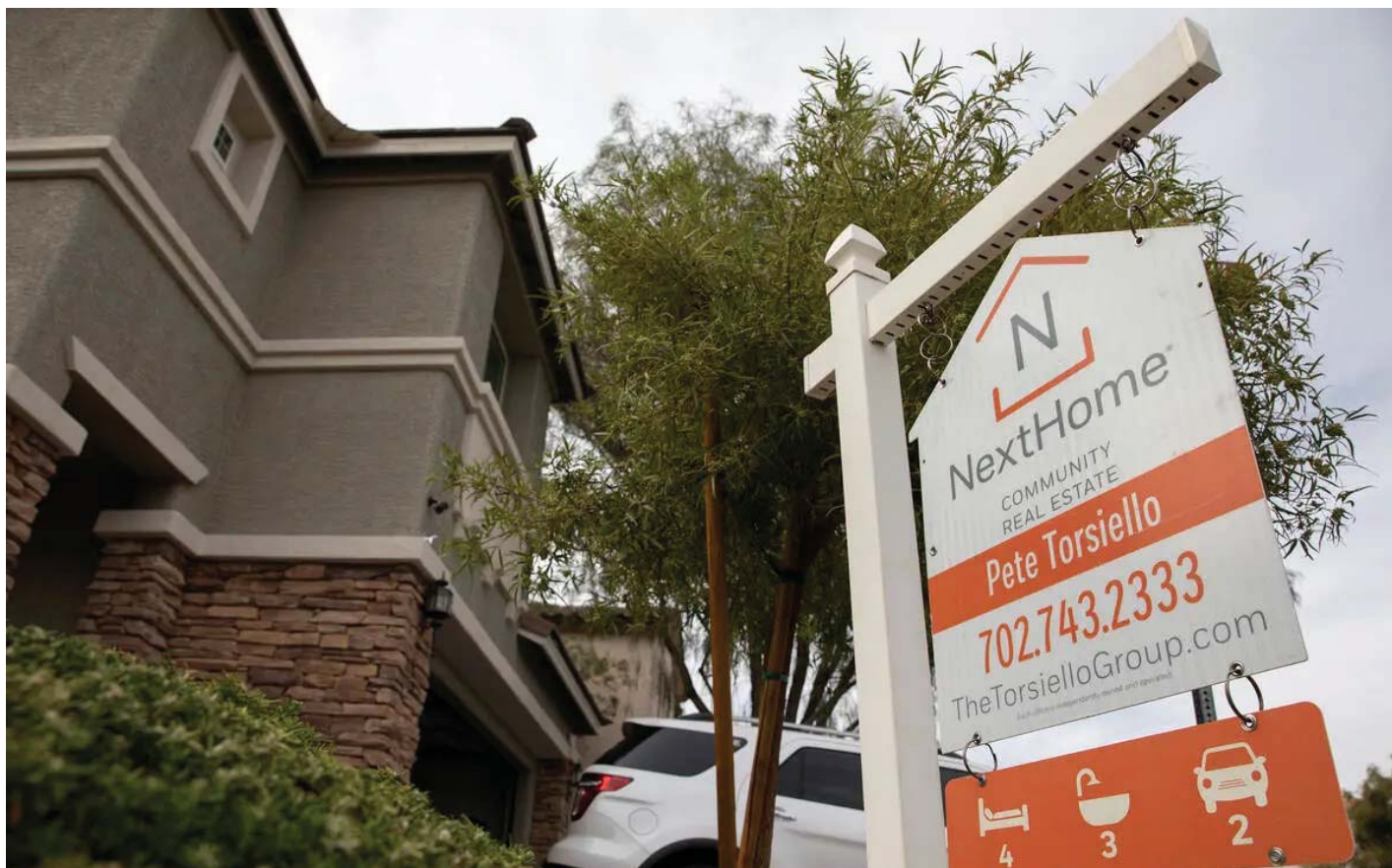
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/s/ Brian J. Braud
Brian J. Braud, an employee of
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EXHIBIT 1

EXHIBIT 1

Las Vegas home price growth shoots past US average



A home is for sale in the Centennial Hills neighborhood on Thursday, May 5, 2022, in Las Vegas. (Ellen Schmidt/Las Vegas Review-Journal) @ellenschmidt



By **Eli Segall** Las Vegas Review-Journal

May 31, 2022 - 12:53 pm



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Updated May 31, 2022 - 2:42 pm

Las Vegas home price growth sped past the fast-rising U.S. average again in March, and there's no telling when prices will hit the brakes, a new report shows.

Southern Nevada house prices were up 28.5 percent year over year in March, compared to 20.6 percent nationally, according to the S&P CoreLogic Case-Shiller index released **Tuesday** by S&P Dow Jones Indices.

All 20 markets tracked for the report showed double-digit annual price gains. Topping the list was Tampa, Florida, where prices skyrocketed 34.8 percent from a year earlier.

This also marked the 10th consecutive month that Las Vegas' price growth outpaced the national average.

It's a safe prediction that price gains will begin to slow, but the "timing" of that "is a more difficult call," said Craig Lazzara, managing director at S&P Dow Jones, in a news release.

The report underscores America's ongoing housing frenzy, and how prices keep accelerating despite rising mortgage rates that have increased buyers' borrowing costs.

'Inflection point'

Overall, buyer demand has "held strong" despite interest rates reaching levels not seen in more than a decade and record-breaking price growth, said Dan Handy, economic data analyst with listing site Zillow, in a statement Tuesday.

The market, however, "may be nearing an inflection point when it comes to price growth," he said, adding that house hunters "will likely start to rethink what they can afford" and that sellers "may already be responding," as the rate of price cuts is on the rise.

Following the most heated year for housing in a while — in which cheap borrowing costs fueled a buying boom of rapid sales and record prices — sales totals locally and nationally have dropped lately as once-rock-bottom mortgage rates push higher.

At the same time, sales prices keep rising, and homes that do sell are trading quickly.

Lawrence Yun, chief economist with the National Association of Realtors, pointed to the [rare state](#) of U.S. housing in a recent news release.

"The market is quite unusual as sales are coming down, but listed homes are still selling swiftly, and home prices are much higher than a year ago," Yun [said](#).

'This trend may continue'

Nationally, the average rate on a 30-year home loan in April was 4.98 percent, up from 3.45 percent in January and 3.06 percent in April of 2021, mortgage-finance giant Freddie

Mac reported.

In Southern Nevada, the median sales price of previously owned single-family homes was a record **\$475,000** in April, up 3.3 percent from March and 26.7 percent from April of 2021, according to trade association Las Vegas Realtors, which pulls data from its resale-heavy listing service.

Amid the typically busy spring buying season, 3,001 single-family homes traded hands in April, down 8.3 percent from March and 14.9 percent from April 2021, the association reported.

Homebuilders' sales activity has also **tumbled lately** in Las Vegas.

Builders logged 911 net sales — new purchase contracts minus cancellations — in Southern Nevada in April, down nearly 30 percent from March, Las Vegas-based Home Builders Research reported.

The monthly sales tally in April was the lowest of 2022, leaving builders' sales totals this year through April, down 18 percent from the same four-month stretch last year, the firm reported.

All told, “this trend may continue as mortgage rates continue to rise,” Home Builders Research President Andrew Smith wrote in the report.

Realty One Group agent Judi Hirsh said recently that Las Vegas remains a seller's market overall, given the still-tight inventory of listings.

But, she added, the market is “softening” and isn't experiencing the “craziness” of even a few months ago.

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