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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:
Stoneridge Parkway, LLC,

Debtor.

CASE NO.: BK-16-11627-BTB

CHAPTER 11

**CREDITOR MELANIE HILL'S
OBJECTIONS AND OPPOSITION TO
DEBTOR'S SECOND AMENDED
DISCLOSURE STATEMENT AND
SECOND AMENDED PLAN OF
REORGANIZATION OF
STONERIDGE PARKWAY, LLC
UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE**

and

**JOINDER TO SILVERSTONE
RANCH COMMUNITY
ASSOCIATION'S OPPOSITION TO
MOTION OF THE DEBTOR FOR
THE ENTRY OF AN ORDER: (I)
APPROVING THE DISCLOSURE
STATEMENT; (II) APPROVING THE
FORM OF BALLOTS AND
PROPOSED SOLICITATION AND
TABULATION PROCEDURES; (III)
FIXING THE VOTING DEADLINE
WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN; (IV)
PRESCRIBING THE FORM AND
MANNER OF NOTICE THEREOF;**

(V) FIXING THE LAST DATE FOR FILING OBJECTIONS TO THE CHAPTER 11 PLAN; (VI) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE CHAPTER 11 PLAN; AND (VII) APPOINTING SCHWARTZ FLANSBURG PLLC AS SOLICITATION AND TABULATION AGENT [ECF No. 523]

Hearing Date: February 14, 2017
Hearing Time: 1:30 p.m.

Courtroom: 4
Judge: Chief Judge Bruce T. Beesley

COMES NOW creditor, interested party, and Silverstone Ranch Homeowner Melanie Hill (hereinafter “Ms. Hill”) (formerly known as Melanie Ells), by and through her counsel, Melanie Hill with Lovelock Hill Law, hereby objects and opposes the Second Amended Disclosure Statement for the Second Amended Plan of Reorganization of Stoneridge Parkway, LLC under Chapter 11 of the Bankruptcy Code [ECF Nos. 502 and 503] filed by the Debtor on January 2, 2017.

Ms. Hill also joins in the Silverstone Ranch Homeowners Association’s Opposition to Motion of the Debtor for the Entry of An Order: (i) Approving the Disclosure Statement; (ii) Approving the Form of Ballots and Proposed Solicitation and Tabulation Procedures; (iii) Fixing the Voting Deadline With Respect to the Debtor's Chapter 11 Plan; (iv) Prescribing the Form and Manner of Notice Thereof; (v) Fixing the Last Date for Filing Objections to the Chapter 11 Plan; (vi) Scheduling a Hearing to Consider Confirmation of the Chapter 11 Plan; and (vii) Appointing Schwartz Flansburg PLLC As Solicitation and Tabulation Agent [ECF No. 523] filed on January 31, 2017.

DATED this 31st day of January, 2017.

LOVELOCK HILL LAW

by: /s/ Melanie A. Hill
Melanie A. Hill (NV Bar # 8796)
Attorney for Creditor Melanie Hill

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4
5 Instead of filing a motion to sell the Silverstone Golf Club and Golf Course Property
6 (defined below) – the debtor’s sole asset – “free and clear” of the Golf Course Agreement (defined
7 below) or filing a motion requesting that the Court strip the Golf Course Agreement from the
8 entire property so that the Silverstone Golf Club and Golf Course Property can be re-entitled and
9 developed into 1600 residences, Stoneridge filed a Second Amended Disclosure Statement for
10 the Second Amended Plan of Reorganization of Stoneridge Parkway, LLC under Chapter 11 of
11 the Bankruptcy Code that is contingent upon obtaining this relief. For that reason alone, the
12 Chapter 11 plan is not feasible or confirmable on its face, and should be rejected outright by the
13 Court pursuant to Chapter 11, United States Code, Section 1129(a)(11).

14 Since 2000, the Silverstone Golf Club has operated in Northwest Las Vegas. The
15 Silverstone Ranch master planned residential development was based and constructed around the
16 Silverstone Golf Club and its amenities. In fact, when Pulte Homes (“Pulte”) sold homes within
17 the master planned residential development commonly referred to as Silverstone Ranch, their
18 marketing materials stated that intent as follows, “Live where you play at Pulte Homes’
19 Silverstone Ranch.” See Exhibit A, Pulte ad in So. Nevada New Homes Guide, attached to Lynne
20 Ells and Tommy Dean Ells’ Opposition to Debtor’s Disclosure Statement and Plan of
21 Reorganization [ECF No. 235, Ex. A.]. Of the approximately 1526 homes in Silverstone Ranch,
22 more than 750 homes, or nearly half, back up to the Silverstone Golf Club.

23
24 Consistent with Pulte’s intention to have the golf course serve as a cornerstone of the
25 Silverstone Ranch community, the Silverstone Ranch master planned community homeowners
26 (hereinafter “Homeowners”), the initial owner of the Silverstone Golf Club, and the developer of
27 the Silverstone Ranch Community entered into a Golf Course Agreement (defined below), which
28 *inter alia*, guaranteed by way of perpetual easement running with the land that the Golf Course

1 Property (defined below) would be used for no other purpose than a 27-hole golf course with
2 attendant facilities. See Golf Course Agreement attached as Exhibit B to the HOA's Opposition
3 to Second Amended Disclosure Statement for the Second Amended Plan of Reorganization of
4 Stoneridge Parkway, LLC under Chapter 11 of the Bankruptcy Code [ECF No. 524].

5 All Silverstone Ranch homeowners who purchased their home in the Silverstone Ranch
6 master planned community subject to the recorded CC&Rs and Golf Course Agreement,
7 including Ms. Hill, have legal and equitable rights in the Golf Course Property the Debtor seeks
8 to sell for residential development at a significant profit. The homeowners' rights are protected
9 under Nevada law, federal law, and federal bankruptcy law which requires the Court to uphold
10 the CC&Rs and Golf Course Agreement requiring the Golf Course Property to remain a 27-hole
11 championship golf course in perpetuity.

12 Ms. Hill has argued repeatedly that Desert Lifestyles sold the property to Stoneridge
13 Parkway to avoid Judge Boulware's Preliminary Injunction ordering Desert Lifestyles and
14 Western Golf Properties – to the extent it manages and maintains the Golf Course as the agent of
15 Desert Lifestyles – to “restore the Silverstone Golf Course to the condition it would have been in
16 had it received continuous watering and maintenance as of September 1, 2015, and shall thereafter
17 maintain the Golf Course in that condition pending further Order of this Court.” See Preliminary
18 Injunction attached as Exhibit D to the HOA's Opposition to Second Amended Disclosure
19 Statement for the Second Amended Plan of Reorganization of Stoneridge Parkway, LLC under
20 Chapter 11 of the Bankruptcy Code [ECF No. 524], p. 28, ll. 21-24. Ms. Hill incorporates her
21 Motion for Order Authorizing the Appointment of a Chapter 11 Trustee [ECF No. 406] she filed
22 on August 25, 2015 by reference as though fully set forth herein.

23
24 Today, the debtor filed an Adversary Proceeding against Aevitas Capital making similar
25 allegations that the sale of the Silverstone Golf Club was to avoid Judge Boulware's restoration
26
27
28

1 order¹ and seeking avoidance of Aevitas' debt as a preferential transfer pursuant to 11 U.S.C. §
2 547, for avoidance of Aevitas' debt as a fraudulent transfer and fraudulent transfer by an insider
3 pursuant to 11 U.S.C. § 548 and 11 U.S.C. § 544, to recharacterize as equity contributions any
4 and all claims of Aevitas (including those reflected in Aevitas' proof of claim) pursuant to 11
5 U.S.C. § 105, seeking to void the transfer under the Uniform Fraudulent Act ("UFTA") codified
6 at NRS § 112.140 et. seq., alleging bad faith in lending practices, equitable subordination pursuant
7 to 11 U.S.C. § 510(c), and seeking declaratory relief finding that the bad acts of Desert Lifestyles
8 and D-Day outlined in the Adversary Complaint and identified by Judge Boulware can and should
9 be imputed to Aevitas as the successor in interest to the D-Day Note and D-Day deed of trust.
10 See Adversary Complaint filed January 31, 2017 by the Debtor Stoneridge Parkway, LLC against
11 Aevitas Capital, LLC [ECF No. 1 in Case No. 17-01007-BTB].

12
13 The Court should resolve the allegations raised in the Adversary Complaint prior to
14 approving the Second Amended Disclosure Statement because finding a way to pay off Aevitas'
15 \$8,089,709.00 debt to date on the Golf Course Property Desert Lifestyles purchased for
16 4,250,000.00 a little over a year ago was the driving force in the decision to sell off a portion of
17 the Golf Course Property to DR Horton for 17,150,000.00 and seek to set aside the Golf Course
18 Agreement. See current calculation of Aevitas' claim calculated for the hearing date of February
19 14, 2017 in its Objection to Second Amended Disclosure Statement for the Second Amended Plan
20 of Reorganization of Stoneridge Parkway, LLC under Chapter 11 of the Bankruptcy Code filed
21 on January 31, 2017 [ECF No. 526], p. 4, ll. 17-19.

22 ///

23 ///

24 ///

25
26 _____
27 ¹ Specifically, the Adversary Complaint alleges as follows: "Upon information, the Debtor believes DL sold the
28 Property to it for the sole purpose of avoiding the Nevada District Court's rulings, including the Order to restore the
golf course Property to the same condition it was in on September 1, 2015, and stripping that same court of jurisdiction
over the case. See Adversary Complaint filed January 31, 2017 by the Debtor Stoneridge Parkway, LLC against
Aevitas Capital, LLC [ECF No. 1 in Case No. 17-01007-BTB], p. 7, para. 17.

II.**STATEMENT OF FACTS**

1
2
3 On or about September 1, 2015, the Silverstone Golf Club and 6 parcels that make up the
4 Silverstone Golf Course (hereinafter “Golf Course Property”) was sold to an out-of-state single
5 purpose limited liability company, Desert Lifestyles. Desert Lifestyles took the immediate steps
6 of closing the golf course, turning off the water, erecting a fence around the facilities, and
7 boarding up the clubhouse. A group of homeowners, including creditor Ms. Hill, hired their own
8 counsel to obtain a Temporary Restraining Order compelling Desert Lifestyles to resume watering
9 the Golf Course Property. On September 7, 2015, the law firm of Garman, Turner, Gordon filed
10 a Complaint and Ex-Parte Application for Temporary Restraining Order; and Motion for Certain
11 Declaratory Relief and Preliminary Injunction. Desert Lifestyles thereafter removed the case to
12 the United States District Court for the District of Nevada and it was assigned to Judge Richard
13 F. Boulware. See Steve Hellerstein, et al. v. Desert Lifestyles, LLC, et al., Case Number 15-cv-
14 01804-RFB-CWH.
15

16 Judge Boulware issued a temporary restraining order and then held a three-day hearing on
17 whether a preliminary injunction should issue on October 13th and November 2nd and 3rd, 2015.
18 Based upon the evidence presented at the hearing, Judge Boulware made detailed findings of fact
19 and conclusions of law and issued a preliminary injunction against Desert Lifestyles on November
20 10, 2015. That injunction required Desert Lifestyles to restore the Golf Course Property to the
21 condition it would have been in had it been continuously watered and maintained since September
22 1, 2015, in accordance with the Golf Course Agreement. Judge Boulware further found that the
23 homeowners had a high likelihood of success on the merits on the case because of the Golf Course
24 Agreement, an express easement that runs with the Golf Course Property and gives the
25 homeowners rights to enforce the agreement.
26

27 On the eve of the restoration hearing before Judge Boulware wherein Judge Boulware was
28 going to take testimony regarding whether Desert Lifestyles would be required to re-sod or re-

1 seed the Golf Course Property in order to restore it to the way it was when they purchased it on
2 September 1, 2015, Desert Lifestyles provided notice to the Court and the parties that it had sold
3 the golf course. Importantly, the note held on the property was merely assigned to Aevitas Capital
4 when Stoneridge purchased the Golf Course Property. Stoneridge did not purchase the Golf
5 Course Property for cash or take out a mortgage to acquire the Golf Course Property. Upon being
6 notified that Judge Boulware had granted the Silverstone Ranch Homeowner's Association's
7 Motion to Amend the Complaint to add Stoneridge as a party to the Hellerstein lawsuit before
8 Judge Boulware, Stoneridge immediately filed Chapter 11 bankruptcy to avoid being named as a
9 party to that lawsuit.

10 **A. The Golf Course Property must be run as a 27-hole championship golf course.**

11 The entire Silverstone Ranch Community and the Golf Course Property is subject to a
12 Declaration of Covenants, Conditions and Restrictions recorded on the entire property of the
13 Silverstone Ranch community on June 14, 2002 at Instrument No. 20020614.02202 ("CC&Rs")
14 and managed by the HOA. See CC&Rs attached as Exhibit A to the HOA's Opposition to Second
15 Amended Disclosure Statement for the Second Amended Plan of Reorganization of Stoneridge
16 Parkway, LLC under Chapter 11 of the Bankruptcy Code [ECF No. 524].

17 The entire Silverstone Ranch Community and the Golf Course Property is also subject to
18 a Second Amended and Restated Reciprocal Easement Agreement and Covenant to Share Costs
19 recorded on the property of the Silverstone Ranch community on June 14, 2002 at Instrument No.
20 20020614.02201 (the "Golf Course Agreement"). See Golf Course Agreement attached as
21 Exhibit B to the HOA's Opposition to Second Amended Disclosure Statement for the Second
22 Amended Plan of Reorganization of Stoneridge Parkway, LLC under Chapter 11 of the
23 Bankruptcy Code [ECF No. 524]. When each of the Homeowners purchased their residences,
24 they were provided a copy of the CC&Rs and the Golf Course Agreement.
25

26 The CC&Rs make it clear that:

27 The Golf Course Agreement contains, among other matters, certain **easements**
28 **granted in favor of the Units and Common Elements or encumbering the Units**

1 **and Common Elements** [] and provisions requiring the Association to maintain
2 certain Improvements located within the Golf Course Property that benefit the
3 Community. By acceptance of a deed or by acquiring any interest in any of the
4 property subject to this Declaration [(including the Golf Course Property itself)],
5 each Person, for himself or itself, his heirs, personal representatives, successors,
6 transferees and assigns, binds himself, his heirs, personal representatives,
7 successors, transferees and assigns, to all of the provisions, restrictions, covenants,
8 conditions, rules and regulations now or hereafter imposed by the Golf Course
9 Agreement.

10 See CC&Rs [ECF No. 524, Ex. A] § 3.10 (emphasis added). “Units” are individual residences
11 located within the Silverstone Ranch master planned community.

12 The Golf Course Agreement provides Ms. Hill and the Homeowners burdens (ex., the
13 effects of errant balls no matter what those are) as well as benefits. The benefits to Ms. Hill and
14 the Homeowners include an ongoing obligation that runs with the Golf Course Property that any
15 owner of the Golf Course Property provide ongoing operations and maintenance of the “Golf
16 Course Facilities.” Importantly, “the Golf Course Property **shall** be operated and maintained
17 solely as a 27-hole (or more) championship golf course and related improvements . . . in a clean,
18 safe, attractive and reasonably weed-free condition.” Golf Course Agreement [ECF No. 524, Ex.
19 B] at §§ 3.1 and 1.17 (emphasis added). Those related improvements include a “driving range,
20 practice greens, a clubhouse and all infrastructure, landscaping, service areas...utilities...water,
21 water features, reservoirs, ponds...and other features.” Id. The Golf Course owner is obligated
22 to operate and maintain the Golf Course Property and golf course facilities in accordance with
23 agreed-upon standards outlined in the Golf Course Agreement. Id. at §§ 1.20 and 3.2.

24 Inclusive in maintenance of the Golf Course Property and golf course facilities, the Golf
25 Course Owner, as that term is defined in the Golf Course Agreement, is required to treat the lakes
26 and ponds with water, to keep all water features in clean operating condition, to keep irrigation
27 systems fully operation at all times and repaired, and to employ golf professionals,
28 superintendents, grounds and greens keepers, and other personnel necessary to maintain the Golf
Course Property. Id. at § 3.2.1.

///

1 The Golf Course Agreement binds any successors and assigns and “remain in full force
2 and effect and shall be unaffected by and change in ownership of the Residential Property or Golf
3 Course Property.” Id. at §§ 3.1, 13.19. Any person or entity who acquired ownership of legal,
4 beneficial or equitable title in any Residential Property or Golf Course Property since June 14,
5 2002 is subject to the covenants outlined in the Golf Course Agreement. Id. at § 1.18. The
6 obligation to operate and maintain the Golf Course Facilities on the Golf Course Property was
7 intended to continue in perpetuity. Id. at § 3.1.

8 The Homeowners, including Ms. Hill, purchased their homes and paid a premium for their
9 homes based on the existence and guaranteed perpetual existence of the Silverstone Golf Club
10 and Golf Course Property. Had the Silverstone Golf Club and Golf Course Property not been an
11 easement granted to Ms. Hill, she would not have purchased her residence in the Silverstone
12 Ranch Community and paid such a high lot premium to live on the Silverstone Golf Club.

13
14 **B. Stoneridge has breached the Golf Course Agreement by failing to maintain and
operate the Silverstone Golf Club.**

15
16 On December 15, 2015, Stoneridge purchased the Golf Course Property from Desert
17 Lifestyles. Since its purchase of the Golf Course Property, Stoneridge has allowed the golf course
18 and its facilities to completely die and further deteriorate. Prior to purchasing the Silverstone
19 Ranch Golf Course, the golf course was being watered and maintained by Desert Lifestyles
20 pursuant to Judge Boulware’s Preliminary Injunction Order. Ms. Hill incorporates her Motion
21 for Order Authorizing the Appointment of a Chapter 11 Trustee [ECF No. 406] she filed on
22 August 25, 2015 by reference and directs the Court to the photographs attached as Exhibits 12–
23 15 showing the Court the state of the golf course prior to and after it was purchased by the Debtor.

24 **C. The Golf Course Agreement Cannot be Set Aside Without an Affirmative Vote or
25 Written Consent of 75% of the Homeowners.**

26 The Golf Course Agreement cannot be set aside without an affirmative vote or written
27 consent of 75% of the Homeowners. Section 13 of the Golf Course Agreement states:

28 **13.2 Term; Method of Termination.**

1 **13.2.1** This Agreement shall continue in full force and effect until terminated in
accordance with the provisions of Section 13.2.2.

2 **13.2.2** This Agreement may be terminated at any time only if such termination is
approved by Golf Course Owner, Residential Property Owner (if Residential
3 Property Owner then owns any Unit or any other portion of the Residential
Property) **and the affirmative vote or written consent, or any combination**
4 **thereof, of seventy five percent (75%) of the Unit Owners.**

5 See Golf Course Agreement [ECF No. 524, Ex. B], p. 40 (emphasis added).

6 **D. The Golf Course Agreement Cannot be Set Aside by the Bankruptcy Court.**

7 According to section 13.25.2 of the Golf Course Agreement, since the obligations under
8 this Agreement are in the nature of property interests rather than contractual rights, the Golf
9 Course Agreement cannot be set aside by the Bankruptcy Court. Stoneridge purchased the Golf
10 Course Property subject to the Golf Course Agreement that was recorded on the property.
11 Additionally, Stoneridge knew that Desert Lifestyles was in litigation with the Homeowners and
12 the Silverstone Ranch Homeowner's Association and that Desert Lifestyles had been ordered to
13 maintain the golf course to the way it looked when Desert Lifestyles purchased the Silverstone
14 Golf Club on September 1, 2015.

15 Stoneridge also knew this maintenance would be expensive when it knowingly purchased
16 the Golf Course Property having no assets to adequately maintain the property, which is
17 Stoneridge's only asset. Finally, Stoneridge knew that the Golf Course Agreement could not be
18 set aside in bankruptcy when it purchased the Golf Course Property on December 15, 2015
19 because this is specifically articulated in the Golf Course Agreement. If Stoneridge did not want
20 to operate and maintain a golf course, Stoneridge should not have purchased the Golf Course
21 Property. Stoneridge should not be able to use this court and the Bankruptcy code as a means to
22 profit from its highly risky and speculative investment. Specifically, Stoneridge is proposing to
23 sell the Golf Course Property to DR Horton who intends to build houses on the Golf Course
24 Property for \$17,150,000.00 which will yield a substantial profit to Mr. Modaberpour and
25 Stoneridge Parkway at the expense of Ms. Hill and the Homeowners.

26 Instead, the Court should compel Stoneridge to abide by the Golf Course Agreement or
27 convert the case to Chapter 7 liquidation and sell the Golf Course to an owner that intends to
28

1 operate and maintain the Silverstone Golf Club and Golf Course Property in accordance with the
 2 express easement in the Golf Course Agreement. Stoneridge should not be allowed to use this
 3 Chapter 11 reorganization to strip the express easement and recorded covenant from the Golf
 4 Course Property to profit at the expense of and on the backs of the Homeowners whose property
 5 values have suffered from the closing of the Silverstone Golf Club and Golf Course Property that
 6 is now dead and a blight and nuisance in the community. Stoneridge has also allowed the Golf
 7 Course Property to become an attractive nuisance.

8 Section 13 of the Golf Course Agreement further states:

9 **13.25.2** The parties hereto have entered into this Agreement with the intent of
 10 having this Agreement, and all of the rights and obligations of the parties
 11 hereunder, unaltered in any bankruptcy proceeding that may be commenced by or
 12 against either party under title 11 of the United States Code (the “Bankruptcy
 13 Code”) or any other similar law. Having been fully advised as to the difference
 14 between such rights, the parties agree that their respective **obligations under this
 Agreement are in the nature of property interests rather than contractual
 15 rights. The parties further agree that the rights and obligations conferred
 through this Agreement cannot be diminished, impaired, avoided, or
 16 otherwise altered in any bankruptcy proceeding** under the Bankruptcy Code or
 17 any other similar law, including (without limitation) any attempt by either of the
 18 parties hereto, or any other person or entity, to: (i) sell the real property addressed
 19 in this Agreement free and clear of this Agreement pursuant to a: (a) motion filed
 20 under Bankruptcy Code §363 or any other similar law; or (b) plan proposed under
 21 Chapter 11 of the Bankruptcy Code or any other similar law; or (ii) reject this
 22 Agreement under Bankruptcy Code §365 or any other similar law. The rights and
 23 obligations under this Agreement shall run with the land that is the subject of this
 24 Agreement, and any subsequent sale of the real property that is the subject of this
 25 Agreement shall be subject to all of the terms and provisions of this Agreement.

26 See Golf Course Agreement [ECF No. 524, Ex. B], p. 45 (emphasis added).

27 III.

28 **OBJECTIONS TO SECOND AMENDED DISCLOSURE STATEMENT AND SECOND AMENDED CHAPTER 11 PLAN AND OBJECTION TO THE REPORT PREPARED BY PETERSON ECONOMICS**

A. **Legal Standard for Approval of Disclosure Statement.**

Title 11, United States Code, Section 1125 provides that:

An acceptance or rejection of a plan may not be solicited after the commencement
 of the case under this title from a holder of a claim or interest with respect to such
 claim or interest, unless, at the time of or before such solicitation, there is
 transmitted to such holder the plan or a summary of the plan, and a written

1 disclosure statement approved, after notice and a hearing, by the court as
2 containing adequate information.

3 11 U.S.C. § 1125(b). The approval of a disclosure statement is a two-step process. As a threshold
4 matter, the Court should examine the terms of the Plan and determine whether on its face it is so
5 “fatally flawed” that confirmation would be impossible. In re Beyond.com, 289 B.R. 138, 139
6 (Bankr. N.D. Cal. 2003) (approval of a disclosure statement should be denied if the plan is clearly
7 unconfirmable).

8 Next, the Court must consider whether the disclosure statement provides creditors and
9 other parties in interest with “adequate information” of the terms of the Chapter 11 Plan that
10 allows both an informed vote and knowledgeable participation in the confirmation process.

11 “Adequate information” is defined as

12 information of a kind, and in sufficient detail, as far as is reasonably practicable in
13 light of the nature and history of the debtor and the condition of the debtor’s books
14 and records... that would enable such a hypothetical investor of the relevant class
15 to make an informed judgment about the plan...

16 11 U.S.C. § 1125(a)(1). “In determining whether a disclosure statement provides adequate
17 information, the court shall consider the complexity of the case, the benefit of additional
18 information to creditors and other parties in interest, and the cost of providing additional
19 information.” Id.; In re Michelson, 141 B.R. 715, 725 (Bankr. E.D. Cal 1992).

20 The seminal case of In re Metrocraft Pub. Services, Inc., 39 B.R. 567 (Bankr. N.D. Ga.
21 1984) set forth certain factors that “provide a useful starting point for the Court’s analysis of the
22 adequacy of the disclosure statement.” Id. at 568. Such relevant factors include:

23 (1) the events which led to the filing of a bankruptcy petition; (2) a description of
24 the available assets and their value; (3) the anticipated future of the company; (4)
25 the source of information stated in the disclosure statement; (5) a disclaimer; (6)
26 the present condition of the debtor while in Chapter 11; (7) the scheduled claims;
27 (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the
28 accounting method utilized to produce financial information and the name of the
accountants responsible for such information; (10) the future management of the
debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated
administrative expenses, including attorneys’ and accountants’ fees; (13) the
collectability of accounts receivable; (14) financial information, data, valuations or
projections relevant to the creditors’ decision to accept or reject the Chapter 11
plan; (15) information relevant to the risks posed to creditors under the plan; (16)
the actual or projected realizable value from recovery of preferential or otherwise

1 voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18)
2 tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

3 Id.; In re Pac. Shores Dev., Inc., 2011 Bankr. LEXIS 785 (Bankr. S.D. Cal. Feb. 25, 2011)
4 (applying the Metrocraft factors). The determination of what constitutes adequate information is
5 a subjective one that is made on a case by case basis at the discretion of the bankruptcy court. In
6 re Brotby, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003).

7 **B. The Debtor's Second Amended Disclosure Statement Is Inadequate Pursuant to 11**
8 **U.S.C. § 1125.**

9 The Debtor's Second Amended Disclosure Statement fails to disclose the information
10 necessary to make an informed vote or knowledgeably participate in the confirmation process.
11 For this reason alone, the Second Amended Disclosure Statement should not be approved.

12 Upon the debtor's request, the court is required to confirm the plan—provided that the
13 plan satisfies § 1129(a)'s remaining requirements—over the dissent of an impaired class of claims
14 or interests, if the plan does not discriminate unfairly and is fair and equitable with respect to each
15 dissenting, impaired class of claims or interests. Here, the plan does unfairly discriminate against
16 the Homeowners who purchased their homes on the Silverstone Golf Club and Golf Course
17 Property subject to an express easement and implied easement that it would remain a 27-hole
18 championship golf course in perpetuity. The Chapter 11 plan does not address the Homeowners
19 property value loss claims or nuisance damage claims and how those claims will be paid. It also
20 unfairly discriminates against the Homeowners' claims. Therefore, the Second Amended
21 Disclosure Statement is inadequate and should be disapproved.

22 Additionally, the Second Amended Disclosure Statement classifies the creditors into
23 Seven classes. The first three classes, the Clark County Taxing Authority, Aevitas Capital, and
24 the City of Las Vegas will be paid in full pursuant to the Chapter 11 Plan. However, the remaining
25 classes, which include the Silverstone Ranch Homeowners Association, the Homeowners, and
26 the Homeowners who will have their views impacted by the residential development plan, will
27 be drastically impaired. The Debtor intends to pay these classes of creditors, including Ms. Hill,
28

1 by “the Debtor’s relinquishment of the Homeowners Property left in the possession of the
2 Reorganized Debtor on behalf of to the HOA and individual homeowners.” The Debtor contends
3 that the Golf Course Property it is forcing the HOA to take under its non-confirmable Chapter 11
4 plan, including its requirements and liability to maintain the drainage easements and operate a
5 golf course at its expense, is more than adequate to satisfy these unsecured claims. It is not.

6 The Debtor further contends, without any support of a golf course designer or expert, that
7 this discarded land “is more than sufficient to operate a 27-hole golf course.” It is not. If you
8 review the golf course map in Exhibit C, it is clear this is just a “mini golf course.” Specifically,
9 the drawing shows the placement of two holes on most of the existing holes with no evidence that
10 this course is even playable or safe to the players and surrounding homes. The Debtor also makes
11 the unsupported argument that this is a 27-hole championship golf course as required under the
12 Golf Course Agreement. This is yet another violation of the Golf Course Agreement because this
13 is not a 27-hole championship golf course and there is no evidence that this course is even playable
14 in its proposed form. Not to mention it is not a championship course designed by a golf course
15 designer and developer. There are requirements on the par of the course and how many holes are
16 3, 4, or 5 par. None of this is discussed or addressed in the Second Amended Disclosure
17 Statement.
18

19 Further, the Debtor’s discarding of its liabilities to maintain the drainage easements and
20 shift its obligations onto the HOA and Homeowners is an outrageous proposal. The Debtor has
21 not evaluated if the HOA and Homeowners can afford to take on these liabilities or could ever
22 obtain insurance to own the drainage easements yet alone afford to maintain the Golf Course
23 Property or pay the quarterly property taxes on the Golf Course Property. For all of these reasons,
24 the Second Amended Chapter 11 Plan is not feasible and is non-confirmable.

25 The Second Amended Disclosure Statement also does not address whether or not the City
26 of Las Vegas will allow additional homes to be built in the Silverstone Ranch master planned
27 community because nearly all of the new houses will need to use Silverstone Ranch Boulevard
28

1 for ingress and egress. There is no traffic study attached or evidence that the development is
2 feasible for this reason as well.

3 Finally, the “EVALUATION OF FUTURE OPTIONS FOR SILVERSTONE GOLF
4 CLUB” prepared by Jon Peterson with Peterson Economics is merely his opinion letter and not
5 the entirety of his report that Danny Modaberpour, Stoneridge’s representative, testified was
6 prepared by Mr. Peterson during the continued 341 meeting of creditors on June 30, 2016. The
7 creditors, including Ms. Hill, are unable to test the opinions of Mr. Peterson who opined that the
8 best use of the property is residential housing, not the operation of a 27-hole championship golf
9 course. The fact that the entire report that was prepared by Mr. Peterson has not been provided
10 to the creditors forms the basis for this Objection to Exhibit B attached to the Second Amended
11 Disclosure Statement [ECF No. 502].

12
13 **C. Courts Across the Country Have Required that Property Subject to Express and**
14 **Implied Easements Be Enforced and Used Exclusively for that Purpose.**

15 Courts around the Country have embraced the idea that express and implied covenants
16 that relate to the maintenance and existence of a golf course are enforceable. Moreover, those
17 courts enforce the covenants as written.

18 In Shalimar, the residents of Shalimar Estates purchased individual residential homes in a
19 community with a golf course “which was intended as an integral part of the general plan for the
20 development and improvement of all the Shalimar property.” Shalimar, 688 P.2d at 683. The
21 developer also recorded restrictions on the residential land referring to a golf course
22 repeatedly. Id. at 684. The developer sold the residential homes with representations that the
23 golf course would be maintained and operated for a period of between 39 and 65 years. Id. The
24 court in this case found that the homeowner’s had a right to rely on the language of the recorded
25 restrictions and the developer representations, and that an implied easement existed for their
26 benefit. Id. at 686. Further, the court held that while recorded documents would suffice to put the
27 successor purchaser on constructive notice, the purchaser had actual notice because of, in part,
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1 the existence and operation of a golf course. Id. at 690-91. Finally, the court rejected two
2 economic arguments of the successor purchaser: (1) that requiring them to operate a golf course,
3 at a loss, amounted to “outright bondage;” and (2) that the court could not constitutionally require
4 the purchaser to maintain the property in a certain manner. Id. at 691. The Court specifically
5 recognized that the golf course was to be maintained and operated as a golf course. Id. at 692.

6 In Heatherwood Holdings, the Court considered whether or not to recognize an implied
7 restrictive covenant where a golf course was developed as a part of a residential
8 community. Heatherwood Holdings, LLC v. First Commercial Bank, 61 So. 3d 1012, 1016 (Ala.
9 2010). There, a developer had built a residential neighborhood with a golf course in the
10 community and eventually sold the golf course. Id. The successor purchaser later informed the
11 homeowners that they would be ceasing operations due to the course not being economically
12 viable. Id. at 1014. The court in this case determined that an implied easement existed, and that
13 the rational of Shalimar controlled, i.e. that the land had to be used as a golf course. Id. at 1024.

14 In Skyline Woods, an owner of the Chapel Hills Farm and Golf Course developed a
15 residential neighborhood abutting the golf course and sold the lots advertising the proximity and
16 existence of the golf course. Skyline Woods Homeowners Ass'n, Inc. v. Broekemeier, 758
17 N.W.2d 376, 380-81 (Neb. 2008). The golf course was later sold, and re-sold, eventually being
18 owned by Skyline Woods County Club, L.L.C. Id. at 381. Skyline Woods Country Club, L.L.C.
19 soon declared bankruptcy, and sold the course to Liberty. The owners of Liberty then informed
20 the homeowner’s abutting the course that he was not required to honor their golf membership
21 agreements, and began to shut down the course, and in response the homeowners sought an
22 injunction. Id. at 381. The court relied on Shalimar as a basis for finding an implied easement in
23 favor of the homeowners due primarily to representations made during the sale of the residential
24 homes. Id. at 390. The court further held that the bankruptcy sale to Liberty did not extinguish
25 the covenant, and upheld the enforcement of the implied covenant that the property be used only
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1 as a golf course, and maintained according to standards congruent with that finding. Id. at 393-
2 95.

3 Moreover, to invalidate a restrictive covenant, changed conditions must be so fundamental
4 that they thwart the original purpose of the restriction. Gladstone v. Gregory, 95 Nev. 474, 478,
5 596 P.2d 491, 494 (1979); Restatement (Third) of Property (Servitudes) § 7.10 (2000). Courts
6 have routinely rejected arguments that economic conditions rendering a golf course (or other
7 recreational facility such as tennis courts or swimming pools) unprofitable warrant abrogation of
8 the restrictive covenant demanding ongoing operations and maintenance. Shalimar, 688 P.2d at
9 691; Williams v. Butler, 1966-NMSC-184, 76 N.M. 782, 784, 418 P.2d 856, 858. An even
10 broader argument that a different use of restricted land would be more profitable, or that the
11 current use is not economically feasible, has been rejected by the courts. Cf. Fid. Title & Trust
12 Co. v. Lomas & Nettleton Co., 125 Conn. 373, 378, 5 A.2d 700, 702 (1939); Murphey v. Gray,
13 84 Ariz. 299, 304, 327 P.2d 751, 754 (1958); Welshire, Inc. v. Harbison, 33 Del. Ch. 199, 202,
14 91 A.2d 404, 405 (1952). In short, more than economic harm is needed to present a valid changed
15 conditions argument. Wolff v. Fallon, 44 Cal. 2d 695, 697, 284 P.2d 802, 803 (1955). Here,
16 Defendants do nothing to establish that the original purpose of the restriction has been thwarted.
17

18 **D. Even in the Absence of an Express Covenant or Easement, or of the Court Chose to**
19 **Set Aside the Golf Course Agreement as an Express Easement, the Homeowners Still**
20 **have the Right to Enforce the CC&Rs and Golf Course Agreement as an Implied**
Easement and Therefore the Second Amended Chapter 11 Plan in Non-Confirmable.

21 A homeowner and landowner has standing to bring a claim for declaratory and injunctive
22 relief where her rights to a beneficial implied easement are being violated by the unlawful acts of
23 another. See generally Boyd v. McDonald, 81 Nev. 642, 408 P.2d 717 (1965). In Nevada, the
24 three elements of an implied easement are (1) [u]nity of title and subsequent separation by a grant
25 of the dominant tenement; (2) apparent and continuous user; and (3) the easement must be
26 necessary to the proper or reasonable enjoyment of the dominant tenement. Id. at 647; at 720.
27 Necessity in this case is interpreted to mean “intent” and looks primarily at the grantor’s intent
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1 with regards to land use and “what a reasonable grantee would be justified in expecting as a part
2 of his bargain when he purchases land under the particular circumstances.” Id. at 648.

3 In cases of common-use communities, including golf communities, courts hold that where
4 a developer sells residential units with the promise of an amenity (such as a golf course), an
5 implied easement exists that can be enforced by the homeowners against subsequent purchasers
6 of the amenity. Shalimar Ass’n v. D.O.C. Enterprises, Ltd., 142 Ariz. 36, 43, 688 P.2d 682, 689
7 (Ct. App. 1984) (“Shalimar”); Bradley v. Frazier Park Playgrounds, 110 Cal. App. 2d 436, 442,
8 242 P.2d 958, 961 (1952). Ubiquitously, the sale of residential units in these situations is
9 contingent upon effectuation of the implied easement for their benefit. Shalimar, 142 Ariz. at 39-
10 40; Bradley, 110 Cal. App. At 439-40.

11 Here, the Homeowners also have an implied easement because they purchased their homes
12 on the Silverstone Gold Club which was an operating golf course when the homes were sold. See
13 App at p. 7 ¶ 10 (identifying home buyer’s reasonable reliance on an easement based on
14 representations of the developers). The Homeowners purchased their residential homes from a
15 common grantor, Pulte. The Homeowners have maintained apparent and continuous enjoyment
16 of their property, as implicitly promised in their home purchase. Furthermore, the Homeowners
17 have alleged that their purchase was based on promises of a golf course and an adherence to the
18 Golf Course Agreement and CC&Rs. The Homeowners therefore have an implied easement even
19 if the Court were to set aside the Gold Course Agreement that is completely independent of the
20 language of the Golf Course Agreement or the CC&Rs.

21 IV.

22 CONCLUSION

23 For all the reasons outlined above, Creditor Melanie Hill respectfully requests that the
24 Court disapprove the Debtor’s Second Amended Disclosure Statement because the Chapter 11
25 Plan is non-confirmable.
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1 Ms. Hill further requests that the Court STRIKE the “EVALUATION OF FUTURE
2 OPTIONS FOR SILVERSTONE GOLF CLUB” prepared by Jon Peterson with Peterson
3 Economics because his entire report has not been provided with the Second Amended Disclosure
4 Statement or produced to Ms. Hill for review.

5 DATED this 31st day of January, 2017.

7 LOVELOCK HILL LAW

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2017, I e-filed the foregoing

CREDITOR MELANIE HILL’S OBJECTIONS AND OPPOSITION TO DEBTOR’S SECOND AMENDED DISCLOSURE STATEMENT AND SECOND AMENDED PLAN OF REORGANIZATION OF STONERIDGE PARKWAY, LLC UNDER CHAPTER 11 OF THE BANKRUPTCY CODE and JOINDER TO SILVERSTONE RANCH COMMUNITY ASSOCIATION’S OPPOSITION TO MOTION OF THE DEBTOR FOR THE ENTRY OF AN ORDER: (I) APPROVING THE DISCLOSURE STATEMENT; (II) APPROVING THE FORM OF BALLOTS AND PROPOSED SOLICITATION AND TABULATION PROCEDURES; (III) FIXING THE VOTING DEADLINE WITH RESPECT TO THE DEBTOR’S CHAPTER 11 PLAN; (IV) PRESCRIBING THE FORM AND MANNER OF NOTICE THEREOF; (V) FIXING THE LAST DATE FOR FILING OBJECTIONS TO THE CHAPTER 11 PLAN; (VI) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE CHAPTER 11 PLAN; AND (VII) APPOINTING SCHWARTZ FLANSBURG PLLC AS SOLICITATION AND TABULATION AGENT [ECF No. 523].

Upon e-filing the document, the CM/ECF system served a copy of the document to each person participating in this Court’s CM/ECF program, as required under the local rules, including counsel for the Debtor, Samuel Schwartz.

DATED this 31st day of January, 2017.

/s/ Melanie A. Hill
An Employee of Lovelock Hill Law