STONERIDGE COMMUNITY FACILITIES DISTRICT
REQUEST FOR BOARD ACTION
Date: December 13, 2012

SUBJECT: Approval of SunCor Bankruptcy Settlement Plan

SUBMITTING DEPARTMENT: District Management

PREPARED BY: Larry Tarkowski, District Manager

AGENDA LOCATION: Comments/Communications ☐, Consent ☐, Work/Study☐,
New Business ☒, Public Hearing ☐, Second Reading ☐

ATTACHMENTS: a) Proposed SunCor Bankruptcy Settlement Plan (excerpt)

SUMMARY/BACKGROUND: The StoneRidge development in Prescott Valley involves approximately 2,832 planned residential units (of which approximately 1000 have been developed and occupied). The development documents include a Jan 13, 2000 Effluent Use Agreement, a Jul 1, 2000 Restated Development Agreement (Development Agreement), a Nov 20, 2001 District, Development, Financing Participation and Intergovernmental Agreement (Financing Agreement), and various Dec 1, 2001 agreements (including a Depository Agreement, Payment Agreement, and Stand-by Contribution Agreement (Contribution Agreements)). The original parties included the Town, the StoneRidge Community Facilities District (created Jul 26, 2001 as a financing mechanism for public improvements (SRCFD)), and SunCor Development Co. (SunCor). The Town Council and Town staff serve (respectively) as the SRCFD Board and SRCFD officers. And, SRCFD and the Town have entered into an intergovernmental agreement dated Feb 13, 2003 under which the Town provides SRCFD with operation and administration services.

An election held Nov 13, 2001 authorized issuance by SRCFD of up to $33,000,000.00 in general obligation bonds to construct necessary public improvements throughout the life of the project. Based on the plan presented to the SRCFD Board for the current development, the Board then issued $14,800,000.00 in bonds on Dec 1, 2001. At the same time, SunCor entered into the Contribution Agreements which required SunCor to make semi-annual standby contributions to supplement ad valorem tax collections from StoneRidge property owners in order to make the initial bond payments (based on a target tax rate of $3.00 per $100 secondary assessed value). Under the Agreements, SunCor also made a cash deposit of $2,960,000.00 to the bond trustee for use if the stand-by contributions were to cease for any reason. Finally, SunCor agreed to make an annual contribution of up to $45,000.00 to supplement an additional $0.30 tax rate per $100 collected to assist the Town with maintaining the public improvements.

After considerable initial success, the StoneRidge development (and SunCor) eventually suffered negative effects from the worldwide economic down-turn. On Apr 3, 2009, SunCor's parent company (Pinnacle West) filed notice with the Securities and Exchange

Commission that it planned to dispose of certain SunCor assets (including the StoneRidge development). In Oct 2009, SunCor began working with SRCFD and the Town to develop documents to assign the underlying agreements as part of a proposed sale to a new entity to be created by Shea Homes. Unfortunately, that sale was never consummated. In fact, in September 2010 SunCor representatives informed SRCFD/Town staff that SunCor was pursuing a total liquidation that would likely include bankruptcy. Over the intervening year, SRCFD/Town staff and officers worked with SunCor representatives to find a resolution that would allow SunCor to liquidate while mitigating the negative impacts on SRCFD, the Town, and StoneRidge residents. In the process, the SRCFD Board hired bankruptcy counsel and consulted with other counsel that had originally assisted in creating SRCFD and issuing the bonds. SRCFD Board members and staff also met on numerous occasions with StoneRidge residents. The StoneRidge homeowners association (HOA) hired its own legal counsel and began to take an active part in the discussions. And, SunCor continued to look for a purchaser of its interests in StoneRidge.

The primary focus of the discussions was to resolve a technical Net Worth test in the documents (in preparation for the anticipated SunCor bankruptcy) and to try to ensure continued standby contributions. At the same time, residents expressed concern about ensuring local control of the StoneRidge Community Center (Center). As a result, on Jun 2, 2011, the SRCFD Board approved a lease agreement involving the Center. SunCor was conveying the Center to SRCFD for the remaining term of the bonds (2026), with a reverter to the HOA after that term. Under the lease agreement, the HOA would lease the Center from SRCFD and would be solely responsible for its management and maintenance. Its rental payments (approximately $168,000.00 annually) would irrevocably be deposited into the same account that ad valorem taxes from residents were paid into to cover bond payments. And, the SRCFD Manager would make a favorable determination with regard to the Net Worth test. His letter to that effect was issued on Jun 24, 2011.

With regard to continued standby contributions, there was an initial prospect that StoneRidge would be purchased by entities formed by the M3 Companies. However, their proposal did not include operation of the golf course and negotiations with SunCor eventually stalled. Soon thereafter, Univest stepped forward with a proposal that included operation of the golf course which SunCor accepted. On Aug 18, 2011, the SRCFD Board and Town Council took actions to extend the term of the Development Agreement to Jun 30, 2030, and to assign SunCor's obligations under the Effluent Use Agreement, the Development Agreement, the Financing Agreement, and the Contribution Agreements to two new single-purpose entities formed by Univest (Univest-StoneRidge, LLC and Univest-StoneRidge Golf, LLC).

In the course of the negotiations with potential purchasers, they had noted that the actual amounts being contributed towards bond payments by homeowners through their ad valorem tax payments were actually going down because of the rapid decline in secondary assessed valuations. This was resulting in unanticipated increases in the standby contributions required of any successor developer and the uncertainty of this exposure was identified as a major impediment to sale of and renewed development in StoneRidge. Suggestions that the developer and the SRCFD Board simply default under their obligations in the agreements and allow draws to be made on the $2,960,000.00 deposit were rejected as fraught with legal dangers (including suit by the bond trustee or bond holders). Instead, SRCFD staff recommended in the FY 2011-2012 budget process that the Board consider increasing the tax rate above the target rate of $3.30 per $100 secondary assessed valuation in order to roughly maintain the collection amount at the level of the previous year. The Board followed this recommendation and set the rate at approximately $3.90 per $100. When assessed valuations declined again the following year, the Board took a similar action as part of the FY 2012-2013 budget and set the rate at approximately $4.47 per $100.

The new StoneRidge developer has indicated that his long-term economic model requires that the bonds eventually be refinanced to remove the uncertainty of future standby contributions. Since any balance in the $2,960,000.00 deposit would be returned to the developer after the bonds had been paid off, he indicated willingness for that money to be used as part of any refinancing. With HOA lease revenues continuing to be available towards bond payment, this has led to discussions between the developer and StoneRidge residents about possible refinancing. On Mar 1, 2012, the HOA Board made a presentation to the SRCFD Board that indicated a large majority of residents favored such refinancing. Unfortunately, by that time SunCor had filed for Chapter 11 bankruptcy (Feb 24, 2012; U.S. Bankruptcy Court, District of Arizona, No. 2:12-bk-03429-RTB) and had listed the deposit as an asset in its bankruptcy estate. This temporarily brought to a halt any consideration of refinancing.

After unsuccessful efforts to have SunCor voluntarily remove the deposit from its list of assets, SRCFD's outside counsel filed an adversary proceeding in the bankruptcy case on Jul 11, 2012. Also, on or about Jul 30, 2012 SRCFD (in conjunction with the bond trustee) filed a claim for $6,335,802.00 (representing an estimated present value of potential standby contributions over the bond term). SRCFD also made a claim for its attorney fees. On Sep 13, 2012, SunCor entered into an agreement with SRCFD to settle the adversary proceeding and seek an order from the judge that the deposit was not part of the bankruptcy estate (effective after notice to other potential claimants). However, that same day SunCor filed an objection to the SRCFD/bond trustee claims.

Negotiations have continued among SunCor (and Pinnacle West), SRCFD, the bond trustee, and other potential creditors (including other community facilities districts for SunCor developments in Arizona) about a potential settlement of all bankruptcy claims. The negotiations have focused on a proposal by Pinnacle West to make a cash payment into the bankruptcy estate (and subordinate its own claims) intended to cover the administrative costs (including attorney fees) and a portion of the claims by creditors. How large that cash payment would be (and how any balance after payment of administration costs would be distributed to creditors) has been the issue. SRCFD's costs (including its share of the bond trustee's costs under the bond documents) are currently estimated at $250,000.00 and it has insisted that those amounts be covered in any settlement. It has also sought an amount on its total claim that would assist with the ultimate goal of bond refinancing (removing the need for future standby contributions).

SunCor and Pinnacle West have now proposed a settlement plan (approved by a Creditor Committee) to liquidate SunCor based on cash contributions by Pinnacle West of $7,000,000.00 to the bankruptcy estate. After payment of certain administrative costs, it is understood that approximately $5,100,000.00 will be available to share with the various CFDs (including an estimated $1,358,436.00 to settle SRCFD's joint claim with the bond trustee). This amount is possible because of a separate agreement that the StoneRidge developer has made with SunCor to contribute $100,000.00 into the settlement plan and another $100,000.00 directly to SRCFD to help cover legal costs. It is this proposed settlement plan which SunCor is now requesting the SRCFD Board to formally indicate it will approve.

In anticipation of this settlement, SRCFD staff has asked the bond underwriter (RBC Dain Raucher) to run various scenarios on a potential bond refinancing in the near term. RBC has been asked to consider likely interest rates if approximately $4 Million were to be available as a cash infusion (the current deposit plus the expected bankruptcy claim settlement net of the remaining SRCFD legal & other costs), and if the bond term were extended between 2 and 5 years. After the developer recently met with HOA representatives, that proposed extension settled on 4 years (to allow time for new residents to help cover these costs). The resulting projections from RBC now indicate (subject to the final interest rate) only a modest (or no) increase in total tax amount needed from residents, with that total amount being certain into the future and the prospect being likely that amounts per resident will go down (as new residents move in). No standby contribution will be needed going forward from the developer. Finally, it is understood from statements by current SRCFD Board members that the Board will take action at the time of approving any bond refinancing that it will not consider any future bond issues (despite the amount that was originally authorized).

OPTIONS ANALYSIS: The SRCFD Board may vote to express approval of the bankruptcy settlement proposal by SunCor/Pinnacle West, OR express disapproval of the settlement proposal in its current form.

ACTION OPTION: Motion to express approval of the bankruptcy settlement proposal by SunCor/Pinnacle West attached hereto, **OR** Motion not to approve the proposed bankruptcy settlement. **VOTE.**

RECOMMENDATION: Staff recommends approval of the attached bankruptcy settlement proposal.

FISCAL ANALYSIS: In an effort to balance the interests of the StoneRidge residents, other Town residents, the current StoneRidge developer, the bond trustee, bondholders and other creditors of the SunCor bankruptcy, it is believed that this settlement appropriately obtains consideration for the SRCFD/bond trustee bankruptcy claims (while making certain that the current $2.96 million deposit can be used towards bond refinancing). Such refinancing helps ensure the long-term viability of the StoneRidge development by removing the standby contribution requirement while bringing a measure of certainty to StoneRidge residents as ad valorem taxpayers.

REVIEWED BY:

StoneRidge CFD Treasurer ______________________________
StoneRidge CFD Clerk _________________________________
StoneRidge CFD Legal Counsel ______________________________
StoneRidge CFD Manager ______________________________

BOARD ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to ___________________