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## MEMORANDUM

**TO:** Corbin Gordon

**FROM:** Chase Chamberlain

**DATE:** June 7, 2024

**RE:** Midway CDRA's Power to Assign and/or Extend Agreement with Ridley's

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### INTRODUCTION AND FACTUAL BACKGROUND

I have been asked to analyze the Midway City Community Development and Renewal Agency ("CDRA") Agreements to determine if: (1) Can Ridley's assign the CDRA agreement; and (2) Can Midway City extend the agreement if it wants.

Both these questions will be analyzed below.

### LEGAL ANALYSIS

#### *Question 1: Can Ridley's assign the CDRA agreement?*

#### **Conclusion**

Yes, it can. The original Participation Agreement includes a provision allowing assignment subject to CDRA's approval. The resolution approving the assignment states that this provision will also apply to Ridley's.

## **Rule**

On January 9, 2008, the City of Midway approved the Interlocal Agreement, allowing taxes to be used to promote development in the area with any development agreement approved of by the CDRA.

Section 3.5 of the Participation Agreement, effective June 11, 2008, specifically allowed JJSL (“The Developer”) to assign or transfer the Developer’s duties of performance or right to compensation so long as the Developer obtains prior written approval from the CDRA. The Participation Agreement in that same section states that the CDRA’s approval “shall not be unreasonably withheld, conditioned or delayed,” indicating a presumption of approval for assignment.

In the event of a catastrophic event to the Developer, the Developer’s representative could sell or transfer the operation, “together with all rights under this Agreement, to another” with consent of the CDRA.

On April 24, 2013, the Developer used this power to assign the interest to Ridley’s, which the CDRA approved in Resolution 2013-01. Conditioned on this approval was the Developer repaying any tax incentive payments if the sale to Ridley’s resulted in a profit. The CDRA stated that all other provisions of the Participation Agreement “shall continue to apply with full force and effect to Ridley’s.”

## **Application**

The original Participation Agreement specifically allows the original signer of the agreement, the Developer, to assign the agreement to another. The CDRA was supposed to approve any such transfer without any unreasonable delay, conditions, or rejections. The whole purpose of the agreement was to allow taxes to be used to foster economic development, indicating a clear anticipation of the developer constructing the store for another business to then move in and enjoy the same tax benefits.

An assignment of the agreement would make the new assignee, Ridley’s in this case, enjoy the same tax benefits as well as the right to also assign the agreement to another, with CDRA approval. The agreement stated that all other provisions of the Participation Agreement shall continue in force. This necessarily includes section 3.5’s right to assign, subject to CDRA approval, which should be granted.

## **Conclusion**

The purpose of the language of the agreements indicate that the original developer had the right to assign the rights and obligations to the Participation Agreement. The fact that the resolution approving the transfer of the agreement to Ridley’s states that the same provisions shall apply in full force to Ridley indicates that Ridley will also enjoy this same right to assign.

## ***Question 2: Can the City of Midway extend the agreement if it wants to?***

### **Conclusion**

Not unilaterally, although there is a way for the agreement to be extended. The Interlocal Agreement giving the CDRA the city's tax money is set to expire in 2024 and "in no event" could be continued. While the language terminating the Interlocal Agreement is strong, there is a provision allowing modification of the Interlocal Agreement, upon which the Participation Agreement with Ridely's is based.

### **Rule**

Utah code 17C-4-201 states that; "an agency may negotiate with a taxing entity for the taxing entity's consent to the agency receiving the taxing entity's project area funds for the purpose of providing money to carry out a proposed or adopted community development project area plan. The consent of a taxing entity under Subsection (1) may be expressed in (a) a resolution adopted by the taxing entity; or (b) an interlocal agreement, under Title 11, Chapter 13, Interlocal Cooperation Act, between the taxing entity and the agency." Utah Code Ann. §17C-4-201(1),(2).

Utah Code 11-13-204 lists the powers of interlocal entities, stating that they may "make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions." Utah Code Ann. §11-13-204(1)(a)(ii)(D).

Utah Code 11-13-216 states that each agreement under this act (the Interlocal Cooperation Act) shall extend for a term not to exceed 50 years. Utah Code Ann. §11-13-216.

In January 2008, the City of Midway signed an Interlocal Agreement with the CDRA, pursuant to Section 11-13-202.5 and 17C-4-201. This agreement was to give tax revenues from the project area to the CDRA to allow the CDRA to give tax incentives to businesses in the area. The Interlocal Agreement specifically states that "the Agency, for a period not to exceed fifteen (15) tax years...shall receive 100% of the Tax Increment..." and later that "The term of this Agreement shall...*in any event terminate by September 30, 2024.*" However, the Interlocal Agreement also includes a provision allowing modification if all parties, including the City and the CDRA, agree. Section 7 states "a modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by the Parties."

Just a few months later, on June 11, 2008, the CDRA passed a resolution approving the Participation Agreement with JJSL, LLC, pursuant to the powers vested by Section 17C-1-202. JJSL, LLC was the developer that agreed to build the grocery store in exchange for the tax increments that CDRA was authorized to give. Section 3.1 states that the Agency, as an inducement to the Developer to build the project, would "provide a financial incentive of approximately \$1,200,000, to be paid over a period of *not to exceed 15 years, subject to any terms of the Interlocal Agreement.*"

Section 3.1 goes on to state that "*In no event will the total participation given to the Project exceed \$1,200,000.00, over a fifteen (15) period as defined herein.*"

## **Application**

The Interlocal Agreement between the City of Midway and the CDRA specifically states that the agreement will terminate in September of 2024. However, the agreement also states that it can be modified if “the modification is in writing and signed by both parties.” So, while the Interlocal agreement is set to expire this year, it could be modified and be extended. It just can’t be extended beyond 50 years.

The Participation Agreement between the CDRA and the Developer (and later assigned to Ridley’s), in turn, emphasizes in Section 3.2 that “in no event will the total participation given to the Project exceed “1,200,000 over a fifteen-year period.” Since the agreement became effective in 2008, the agreement would’ve expired last year in 2023. Section 3.1 states that tax payments shall not exceed 15 years, *but* subject to any terms of the Interlocal Agreement.

Both the Interlocal Agreement and the Participation Agreement clearly state that the tax-increment agreement for Ridley’s is to terminate after fifteen years. There is a possibility, however, that this can be extended if the Interlocal Agreement is modified to extend past 2024 and allow the participation to be modified. The fifteen-year time limit is subject to any terms of the Interlocal Agreement, so if the Interlocal Agreement is changed, then the Participation Agreement will be subject to those terms.

Modifying the Interlocal Agreement will require the signatures of both the City of Midway and the CDRA. Midway City cannot unilaterally extend the agreement.

Should Midway City and the CDRA modify the Interlocal Agreement, or even just create a new one, the term of that agreement cannot exceed 50 years, as stated by Utah law.

## **Conclusion**

Right now, the terms of the agreement explicitly state that the payments are not to exceed 15 years. However, the Interlocal Agreement allows the City and CDRA to modify the agreement, and the Participation Agreement says it shall terminate in 15 years but is subject to the terms of the Interlocal Agreement. Basically, the answer is no, the agreement cannot be extended *unless* the city and CDRA agree to modify the Interlocal Agreement, which could then specify the terms the Participation Agreement is to follow, which could extend the deadline. Under Utah law, the period cannot exceed 50 years.