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Penny Maus
Director
Department of Real Estate and Airport Management
City of San Diego

Re: Proposed Midway Rising New Investor

Executive Summary

Midway Rising has the opportunity to partner with an investor to advance their Midway redevelopment plan. The investor is a special purpose business entity owned by E. Stanley Kroenke. Mr. Kroenke has substantial experience with mixed-use projects built around sports and entertainment facilities. In addition, Mr. Kroenke is reported to have an individual net worth exceeding $12 billion and is the owner of several professional sports franchises.

To facilitate this investment, Midway Rising seeks to form a joint venture, whereby Zephyr and Legends remain an investor with responsibilities for day-to-day management and business decisions for the project, and the new investor assumes a significant ownership interest in the joint venture with its investment of equity capital. This type of joint venture partnership is common for real estate investment and development.

The proposed investment partnership has the potential to de-risk the Midway Rising plan by providing a significant source of equity funding for the development, including for project planning, design and entitlement. In addition, Mr. Kroenke brings relevant and comparable development experience, including the Hollywood Park mixed-use redevelopment in Inglewood, which includes SoFi stadium, home to the Los Angeles Rams NFL football franchise. Notably, Legends, an existing member of the Midway Rising team, provided development management, partnership, sales and merchandise support to the same SoFi stadium development.

Background

In September 2022, San Diego City Council selected Midway Rising to pursue the redevelopment of the San Diego Sports Arena site. The City of San Diego (City) subsequently entered into an Exclusive Negotiation Agreement (ENA) with Midway Rising, which outlines a two-year negotiation and predevelopment period with two options to extend of one year each, at the City's discretion. In March 2023, the Midway Rising team proposed to modify its partnership and legal structure by adding an investor and Member – ESK Midway Rising Investor, LLC (New Investor) a special purpose entity 100%-owned by E. Stanley Kroenke.

JLL's scope of work

Under the terms of the ENA, the City reserves the right to approve of changes to the ownership interests of Midway Rising. JLL supported the City in its evaluation of the New Investor, as summarized below.

- Reviewing documents furnished by Midway Rising to understand the proposed terms for the New Investor. Documentation included:
  a) Ownership organizational chart;
  b) Operating Agreement for Midway Rising Partners, LLC;
  c) Documents relating to organization/formation and evidence of good standing for the entities comprising Midway Rising – Midway Rising GP, LLC, the New Investor, and Midway Rising Partners, LLC; and,
  d) Other documents and disclosures provided by Midway Rising in response to questions posed by JLL.

- Evaluating the New Investor based on JLL's experience and industry conventions pertaining to the structure of entities undertaking real estate development and investment.

- Providing research and due diligence relating to Mr. Kroenke and The Kroenke Group, based on publicly available information, information provided by Midway Rising, and prior JLL industry experience.

- Discussing and clarifying information provided by Midway Rising through email correspondence and discussions with Midway Rising representatives.

JLL's work does not constitute a legal opinion relating to any matters described herein or as relating to the terms and requirements of proposed Midway Rising Operating Agreement or the City's ENA with Midway Rising.

Proposed investor

The New Investor is a special purpose entity established for the purposes of investment in the Midway Rising project and joint-venture ownership. The investment entity is owned by E. Stanley Kroenke, a well-known businessperson, real estate owner and developer, and sports franchise owner. Mr. Kroenke has a reported individual net worth of $12.9 billion (Forbes, as of May 24, 2023). In addition, Mr. Kroenke is the owner or has ownership interests in several professional sports franchises – Denver Nuggets (NBA basketball), Colorado Rapids (MLS soccer), Colorado Avalanche (NHL hockey), Arsenal FC (Premier League soccer), Los Angeles Rams (NFL football). Finally, Mr. Kroenke has been active in real estate and development, reportedly owning more than 60 million square feet of real estate, being a significant landholder in North America, and undertaking sports and entertainment mixed-use development through The Kroenke Group, a privately held real estate development, investment and management firm founded by Mr. Kroenke in 1983.

Mr. Kroenke's collective commercial real estate experience, includes ownership and operations of retail centers in 39 states representing approximately 40 million square feet of real estate and Hollywood Park, a 300-acre master planned development in Inglewood, California comprised of SoFi Stadium (home to the Los Angeles Rams and Chargers NFL franchises), 890,000 square feet of retail space, a 6,000-seat performance venue, a 300-key hotel, commercial office space, 2,500 new housing units, and over 25 acres of public parks. Construction of the Hollywood Park master plan is approximately 50% complete. Other current projects in planning and predevelopment include large, mixed-use projects with sport facilities as core components:

- Woodland Hills (Los Angeles, CA): 96-acre development that will be the future headquarters and permanent practice facility of the LA Rams and feature a retail, entertainment, and office district.
- Ball Arena (Denver, CO): 55-acre retail and residential development surrounding an existing ~18,000-seat arena that currently hosts the Denver Nuggets and Colorado Avalanche.
- Emirates Stadium (London, England): Existing ~60,000-seat stadium, home to Arsenal Football Club, with plans to develop surrounding retail, park space, and housing units.

Joint venture structures for real estate development & investment

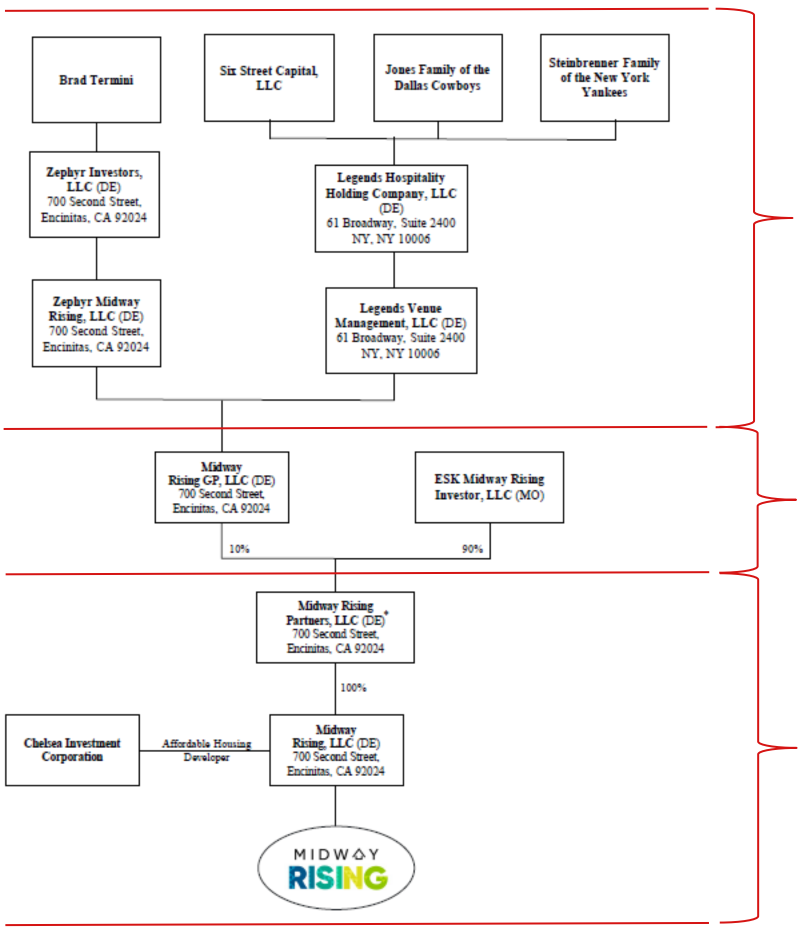
Joint ventures are common structures used for purposes of real estate development and investment. While there are a multitude of ways in which a joint venture can be structured, there are common forms. Frequently, joint ventures, or "JVs," are structured with a general partner entity (GP), (also referred to as a "sponsor"), and one or more limited partners (LP) that function as equity investors in the venture (e.g., real estate development). The GP acts in a capacity that is often recognized as the "developer" – managing the day-to-day operations, business matters, and team members to advance a development project. The limited partners, or investors, typically act in a more passive capacity, meaning they are important financial contributors to the success of a venture but have a more limited role in the implementation and execution of a project.

LPs tend to provide the large majority of equity capital needed at different stages of a development project. Investors seek to earn a return on their investment and typically have priority of returns from net cashflow generated by a project. General partners conversely provide a smaller portion of a project's equity capital needs (co-investment) and often have access to incentive payments based on the performance of a project, a "promote." A promote allows the GP to access a greater share of a project's cash flow than would otherwise be dictated by the pro-rata share of capital contributed by the LP and GP.

It is important to note that the summary above relates to the equity component of a project's capital stack. In many cases a joint venture would also source debt financing – e.g., construction loans and permanent loans to complete a development project.

Midway Rising proposed ownership and partnership

Presented below is a graphic, provided by Midway Rising, depicting an organizational chart for the Midway Rising ownership proposal, including the New Investor. JLL has annotated the chart below in red text for purposes of illustration.



JLL understands the Midway Rising proposal for the New Investor within the context of the joint venture concepts enumerated in the previous section, which include the following:

- The New Investor will be responsible for 90% of Midway Rising's contemplated equity capital contributions and have a 90% interest in Midway Rising during the term of the predevelopment period – the term commencing on the effective date of the new partnership and ownership structure and ending upon entitlements for or construction of horizontal and infrastructure development. During this same period, the GP (comprised of Zephyr and Legends entities) will be responsible for 10% of Midway Rising equity capital (co-invest).
- Following the predevelopment period with entitlements or construction commencement for horizontal and infrastructure development, the New Investor will be responsible for 95% of Midway Rising's equity capital for the project; the GP will be responsible for a 5% co-invest.

- In accordance with the interests above, project cash flow will be distributed as follows in order of priority as cash flow is available for such payments: first to provide a specified return on invested capital, second to return invested capital, and third, excess cash flow will be divided 75% to investors in proportion to their interests in the Midway Rising development entity, with 25% of excess cash flow to the GP, as a promote payment.
- With regard to the management of the Midway Rising development entity, the Zephyr and Legends entities will continue to lead the business efforts as the managing member of the company. Decisions made with respect to the management of the company will be binding and the managing member will be responsible for conducting all ordinary and usual business affairs of the company. Midway Rising has confirmed this understanding in written correspondence.
- The proposed partnership and operating agreement allows the New Investor participation in various “major decisions” of the company by virtue of a role in a formed executive committee, consisting initially of three members – two of which are appointed by the New Investor and Brad Termini of Zephyr. The executive committee has approval rights, including decisions pertaining to financing, budgets and operating plans, space leases, hiring and removal of a general contractor and architect of record, election to proceed with vertical construction on portions of the Midway site, and definitive agreements, as defined in the ENA.
- The proposed operating agreement allows the New Investor to transfer its interests in the Midway Rising development entity to Mr. Kroenke, a family member, spouse or spouse of a family member of Mr. Kroenke. It is JLL’s understanding that the City, by virtue of the ENA, would retain its approval rights for Midway Rising assignment or transfer of ownership interests, including those potential transfers noted here.

JLL understands that the Zephyr and Legends entities view the proposed New Investor as an enhancement to Midway Rising’s financial capacity and execution strategy, owing to the experience of the New Investor in comparable projects, including sports, entertainment, commercial and residential mixed-use development, and the investment contemplated by the partnership, which provides a durable source of capital for a large, multi-phased development that may extend over multiple market and real estate conditions.

New Investor disclosures and other information requests

JLL requested from Midway Rising various pieces of information in its due diligence process to further assess the suitability of the New Investor, including the following:

- Receipt of clarification and additional information relating to the New Investor’s current development pipeline, of which three projects are noted above – Woodland Hills, Ball Arena and Emirates Stadium;
- Receipt of confirmation that the Midway Rising development proposal and targeted outcomes, including specifically that the number of residential and affordable units will remain unchanged as a result of the proposed admittance of the New Investor;
- Receipt of names and identities of persons with an ownership interest in the New Investor (100% ownership by E. Stanley Kroenke), consistent with San Diego Charter Section 225;
- Receipt of confirmation that the existing Midway Rising owners will not receive monetary/value consideration as a part of the proposed New Investor partnership; and,

- Receipt of other disclosures relating to current or history of bankruptcy, litigation, claims, judgements, default, audits, tax liens and investigations by government agencies. Of such disclosures, Midway Rising and the New Investor represented the following: the New Investor is subject to various claims and litigation, which occur during the normal course of its business activities. Such claims and litigation do not adversely impact the New Investor's ability to invest in the Midway Rising development entity at the levels contemplated by the proposed operating agreement for the joint-venture.

Findings

Based on JLL's review of the information described above, we provide the following findings and considerations.

- The concept of additional and needed equity investment conforms to JLL's prior assumption – that Midway Rising would refine their financing strategy and seek additional equity financing partners, given the scale and components of the proposed development, as predevelopment activities proceed. JLL previously made comments to this assumption in our Midway NOA response review.
- Mr. Kroenke represents an investment partner with significant financial capabilities and commercial real estate development experience, including development comparable to the proposed Midway Rising plan and experience with the Legends team. JLL has independently verified Mr. Kroenke's involvement in the Hollywood Park development based on direct industry experience.
- The method of the proposed investment – the creation of a joint venture vehicle, where Zephyr and Legends continue to function as managers of day-to-day operations and responsibilities to advance the project, and the New Investor assumes an ownership interest based on its equity capital contribution – is consistent with JLL's experience with real estate development and investment structures. The proposed investment stands to soften some of the funding and financing risks JLL noted in its previous review of the Midway NOA responses, as related to predevelopment, project feasibility and execution.
- As noted above, and confirmed by Midway Rising, Zephyr's and Legend's role in development management is not proposed to change. In addition, through the contemplated co-investment and promote payment, Zephyr and Legends remain direct investors to the project with incentives to achieve project success.
- JLL acknowledges and notes that the New Investor will have participation in "major decisions" of the development entity based on the contribution of 90% to 95% of the equity capital investment contemplated by the development entity. This participation may be beneficial as a vetting tool and based on Mr. Kroenke's substantial real estate experience. The City should be aware that such participation in decisions, including for advancement of definitive real estate agreements, represents another party of influence in negotiations.
- JLL received confirmation that the admittance of the New Investor will not change the Midway Rising development concept, including its commitments to create affordable housing.
- JLL did not find items of concern relating to submitted disclosures – current/history of bankruptcy, litigation, claims, judgements, default, audits, tax liens and investigations by government agencies.

- JLL did not review financial statements for Mr. Kroenke and understands that the financial liability of the New Investor will be limited to the investment in the Midway Rising entity.
- JLL did not review specific pending or prior claims or litigation, but obtained the representation noted in the prior section.