

BY AUTHORITY

ORDINANCE NO. **4268**

COUNCILLOR'S BILL NO. **34**

SERIES OF 2024

INTRODUCED BY COUNCILLORS

A BILL
FOR AN ORDINANCE AMENDING THE ASPIRE PROJECT FINANCE AND DEVELOPMENT
AGREEMENTS

Whereas, the growth of a vibrant, mixed-use development in Downtown Westminster creates jobs, housing, business opportunities, entertainment uses and activities and serves an important public purpose for the entire City of Westminster (“City”); and

Whereas, Aspire Westminster Apartments LLC , and Aspire Westminster Borrower LLC, affiliates of Sherman Associates, Inc. developed a five-story, 226-unit mixed-use building (“Aspire”) with 34,000 square feet of retail in the center of Downtown Westminster located at 5850 W. Central Avenue; and

Whereas, Aspire serves as the center of activity in Downtown Westminster, fronting onto the Central Square, Westminster Boulevard, and Center Park, which is currently under construction; and

Whereas, the total project cost was \$84,787,000, financed through a combination of developer equity and deferred fees, primary and secondary construction loans, and City and Westminster Economic Development Authority (“WEDA” or “Authority”) considerations; and

Whereas, as part of the original Development and Finance Agreement package, the Authority agreed to loan Aspire Westminster Borrower LLC, an affiliate of Sherman Associates, \$2,000,000 for a 10-year term at 5.0% (Authority Loan). After the construction loan to Bank of the Ozarks was paid in full, the Authority Loan was secured by a Deed of Trust encumbering the Aspire project which lowered the interest rate to 3.5%. The collateral for the Authority Loan is guaranteed by George Sherman and Sherman Associates; and

Whereas, Sherman Associates current loan with Massachusetts Mutual Life Insurance Company has reached maturity with no further extension options requiring Sherman Associates to seek a new lending partner. The preferred new lending partner, Greystar, will not agree to finance a loan with a Subordinate Deed of Trust in the current lending environment. Sherman Associates is asking that WEDA agree to remove the Deed of Trust in favor of entering into an updated Promissory Note and receiving certain guarantees, a Negative Pledge Agreement and a Surplus Cash Pledge Agreement; and

WHEREAS, in order to continue the project’s success, secure the interests of WEDA and the City, and facilitate the current refinancing of the Project, specific guarantees and several agreements are proposed, including: the proposed First Amendment to the B-3 Project Finance Agreement (Exhibit A); First Amendment to the Second Amended & Restated B-3 Development Agreement (Exhibit B); Surplus Cash Pledge Agreement (Exhibit C); Negative Pledge Agreement (Exhibit D); updated Promissory Note (Exhibit E) in consideration of a Full Release of Deed of Trust (Exhibit F) among the City, WEDA, Aspire Westminster Apartments LLC, and Aspire Westminster Borrower LLC, affiliates of Sherman Associates, Inc., in substantially the same form as Exhibit “A, B, C, D, E and F” all incorporated by this reference.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. An updated Promissory Note from Aspire Westminster Borrower, LLC, as detailed below, and specific guarantees are offered to secure the interests of WEDA and the City. Among these guarantees are Pledge Guarantees and B-3 Authority Note Guarantees from both Sherman Associates, Inc. and George E. Sherman, individually. In addition to the updated Promissory Note and these guarantees,

Aspire Westminster Holdings LLC shall execute a Surplus Cash Pledge Agreement and a Negative Pledge Agreement.

Section 2. The attached First Amendment to the B-3 Project Finance Agreement further obligates Aspire to make annual payments of \$150,000 towards the interest and principal of the Authority Loan beginning December 31, 2025.

Section 3. In addition, Aspire shall pay to WEDA \$500,000 to be placed in a Tenant Improvement Escrow that will reimburse construction costs relating to the Food Hall or other commercial space in Aspire. Any unspent funds remaining in the Tenant Improvement Escrow as of December 31, 2028, shall be disbursed to WEDA.

Section 4. The Amendment resets the principal balance of the Authority Loan to \$2,536,066.097 which includes the original principal amount of \$2,000,000 plus accrued interest to date. The annual interest rate is set at 2.50%.

Section 5. If all of the above-referenced agreements are provided, the City Manager is authorized to execute and the City Clerk to attest to the First Amendment to the B-3 Project Finance Agreement and the First Amendment to the Second Amended & Restated B-3 Development Agreement.

Section 6. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 14th day of October, 2024.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of October, 2024.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office