



Agenda Memorandum

Agenda Item – {{section.number}}.B.

City Council Meeting
October 14, 2024



Strategic Priority 1: Access to Opportunity

Advance access to opportunity and prosperity for all in Westminster through diverse housing choices, increased mobility options, safe and walkable neighborhoods, and strong social networks.



Strategic Priority 4: Economic Vitality

Promote and support a resilient economy that attracts and retains a diversity of businesses, workers, and industries, expands living wage jobs, and diversifies the City's tax base.

Subject: First Reading of Councillor's Bill No. 34 Amending the Aspire Project Finance and Development Agreements Between the City of Westminster and Sherman Associates, Inc. and Releasing the Subordinate Deed of Trust on the Aspire Project

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Recommended City Council Action:

Pass Councillor's Bill No. 34 on first reading amending the Aspire project Finance and Development Agreements between the City of Westminster and Sherman Associates, Inc. and releasing the Subordinate Deed of Trust on the Aspire project.

Summary Statement:

- Aspire Westminster Apartments LLC (Aspire), an affiliate of Sherman Associates, Inc. (Sherman Associates), developed a five-story, 226-unit mixed-use building with 34,000 square feet of retail in the center of Downtown Westminster located at 5850 West Central Avenue (the Project).
- This building serves as the center of activity in Downtown Westminster, fronting onto the Central Square, Westminster Boulevard, and Center Park, which is currently under construction.

- Current tenants leasing a portion of the commercial/retail space include Vatos Tacos & Tequila, Inks & Drinks, Superfruit Republic, and MADabolic Westminster, along with 11,000 square feet for a future food market hall, which is currently in building permitting review.
- The total Project cost was \$84,787,000, financed through a combination of developer equity and deferred fees, primary and secondary construction loans, in addition to City and Westminster Economic Development Authority (WEDA) considerations.
- As part of the original Development and Finance Agreement package, WEDA agreed to loan Aspire Westminster Borrower LLC, an affiliate of Sherman Associates, \$2,000,000 for a 10-year term. 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. In the current constrained lending environment, the preferred lending partner, Greystar, is not able to finance a loan with a Subordinate Deed of Trust in place. Sherman Associates is asking that WEDA agree to remove the Deed of Trust in favor of entering into a Negative Pledge Agreement and a Surplus Cash Pledge Agreement.
- During a recent Executive Session, WEDA directed Staff to bring forth a package of agreements for consideration that will allow for Sherman to refinance its loan while providing support for the food hall tenant.

Fiscal Impact:

\$0 in expenditures.

Source of Funds:

Not applicable.

Policy Issue(s):

Should City Council pass Councillor's Bill No. 34 amending the Project Finance and Development Agreements and releasing the Subordinate Deed of Trust between the City of Westminster and Sherman Associates that will facilitate refinancing and provide additional support for the food hall tenant?

Alternative(s):

City Council could choose not to adopt Councillor's Bill No. 34 amending the Project Finance and Development Agreements or releasing the Subordinate Deed of Trust. Staff believes there is a possibility that Aspire may default on its current loan if City Council does not agree to the amendments as proposed. If a default were to occur, it could negatively impact future development throughout Downtown Westminster. A default would also put the entire \$2,000,000 WEDA loan at risk of non-payment.

Background Information:

Aspire developed a five-story, 226-unit mixed-use building with 34,000 square feet of retail in the center of Downtown Westminster located at 5850 West Central Avenue. The building was completed in 2019 and serves as the center of activity in Downtown Westminster, fronting onto the Central Square, Westminster Boulevard, and Center Park, which is currently under construction. Current

tenants leasing a portion of the commercial/retail space include Vatos Tacos & Tequila, Inks & Drinks, Superfruit Republic, and MADabolics Westminster, along with 11,000 square feet for a future food hall, which is currently under building permit review. Sherman Associates is under a lease to develop the food hall space, and the future tenant has submitted building plans for review prior to commencing construction on the space. The opening of a food hall will greatly assist in activating this strategic area of Downtown Westminster.

The total Project cost for this project was \$84,787,000, financed through a combination of developer equity and deferred fees, primary and secondary construction loans, in addition to City and WEDA considerations.

As part of the original Development and Finance Agreement package, WEDA agreed to loan Aspire Westminster Borrower LLC, an affiliate of Sherman Associates, \$2,000,000 for a 10-year term at 5.0% interest. Once the construction loan to Bank of the Ozarks was paid in full, the WEDA loan was secured by a deed of trust encumbering the Project which lowered the interest rate to 3.5%. The collateral for the WEDA loan is guaranteed by George Sherman and Sherman Associates.

Due to the maturity of the existing loan, Sherman Associates conducted a broad market search for a new lender and identified Greystar as a lending partner. This search occurred during the fastest and largest Federal Reserve rate hike in US history which put significant strain on commercial real estate assets and banks that provide lending to commercial property. In this environment, lenders have become extremely cautious with many ceasing lending on commercial real estate and others adding restrictions such as prohibiting Subordinate Deed of Trusts which currently secures WEDA's loan. Sherman Associates is asking that WEDA agree to remove the Deed of Trust in favor of entering into a Negative Pledge Agreement and a Surplus Cash Pledge Agreement.

To continue this strong partnership and support a pivotal project in the Downtown, Staff and the Downtown Consultant Team have prepared a package of agreements that facilitate the following deal terms for City Council consideration:

- Release of Deed of Trust: WEDA agrees to release the Subordinate Deed of Trust and instead enter into a Negative Pledge Agreement and a Surplus Cash Pledge Agreement at refinance closing. These agreements prohibit any additional unsecured financing and promise payback of the loan out of equity in the Project. Based on a recent appraisal, the Project realizes approximately \$18 million in equity. Staff believes this will grow as lending markets improve. Additionally, WEDA's loan remains senior to the developer's Accrued Development Fees, Intercompany Loans, and any future loans.
- Guarantee: These agreements will be backed by personal and corporate guarantees in the same form as those guaranteeing the current WEDA note which is George Sherman and Sherman Associates.
- Updated Promissory Note: A new Promissory Note in the amount of \$2,000,000 will be executed by WEDA at 2.5% interest and includes interest accrued to date in the amount of \$536,066.97 for a total of \$2,536,066.97. Aspire will make annual payments of \$150,000 beginning December 31, 2025 to reduce the balance on the loan until the loan reaches maturity in 2029. In the event the Aspire property is sold prior to the maturity of the loan, Sherman Associates will pay the balance of the loan at closing.
- Tenant Improvement Escrow: In addition, as consideration for releasing the Deed of Trust, Sherman Associates agrees to pay \$500,000 to WEDA to hold in a separate account to be

paid out to Sherman Associates and the food hall tenant upon WEDA's approval. These funds are to be used toward hard construction costs on the food hall through a term of May 31, 2025. At the end of the term, if WEDA has not fully disbursed funds, any remaining funds out of the \$500,000 can be used toward another tenant in the food hall space or other commercial spaces in the Aspire building. If WEDA has not fully disbursed funds from the escrow by December 31, 2028, then any funds remaining shall become the property of WEDA. This \$500,000 is considered additional funds and will not be used to pay down the \$2,000,000 loan.

- Additional Equity: As a lender condition to the refinance, Sherman Associates is required to put additional equity into the Project which furthers the developer's investment and commitment to Aspire and Downtown Westminster.

Staff believes that amending the Finance and Development Agreement package per the terms detailed above will continue WEDA and the City's support for this pivotal Project while supporting the future food market hall tenant, in substantially the same terms as outlined in the attached document package.

Approving an amendment to the Finance and Development Agreements for the Project as outlined above contributes to the City's Strategic Plan priority of Access to Opportunity by supporting diverse housing choices and walkable neighborhoods in the City's Downtown. In addition, providing input on the proposed terms supports the Strategic Plan priority of Economic Vitality by supporting and retaining business and workers and by helping to diversify the City's tax base.

Respectfully submitted,

Jody Andrews

Jody L. Andrews
City Manager

Attachments:

Councillor's Bill No. 34 Amending the Aspire Project Finance and Development Agreements Between the City of Westminster and Sherman Associates, Inc. and Releasing the Subordinate Deed of Trust on the Aspire Project

Exhibit A: First Amendment to the B-3 Project Finance Agreement

Exhibit B: First Amendment to the Second Amended & Restated B-3 Development Agreement

Exhibit C: Surplus Cash Pledge Agreement

Exhibit D: Negative Pledge Agreement

Exhibit E: Promissory Note

Exhibit F: Request for Full Release of Deed of Trust

Attachment 1: Vicinity Map