

MOTION: BODDYE

**November 28, 2023
Regular Meeting**

SECOND: BAILEY

Res. No. 23-589

RE: APPROVE PURCHASE AGREEMENT WITH BELNO, LLC FOR 13505 TELEGRAPH ROAD, WOODBRIDGE, VIRGINIA, 22192, AND REALLOCATE \$416,250 OF THE REMAINING BALANCE OF AMERICAN RESCUE PLAN ACT FUNDING IN THE LIFT UP LODGING PROGRAM AND TRANSFER, BUDGET, AND APPROPRIATE \$133,750 IN TRANSIENT OCCUPANCY TAX FUND BALANCE FOR THE REQUISITE REFUNDABLE DEPOSIT – OCCOQUAN MAGISTERIAL DISTRICT

ACTION: APPROVED

WHEREAS, on July 17, 2018, the Prince William Board of County Supervisors (Board) issued Directive (DIR) 18-43 to “authorize the County Executive to put out a Request For Information to look for partners to develop indoor sports facilities on both ends of the county;” and

WHEREAS, on June 25, 2019, the Board renewed DIR 18-43 to continue to “pursue public-private partnerships to finance the western indoor fieldhouse and the eastern indoor sports complex” after removing the projects from the 2019 Bond Referendum list; and

WHEREAS, on February 21, 2022, MEB General Contractors, Inc. (MEB) submitted a Public Private Education Act proposal for the development of a 240,000 square foot indoor sports and events facility in eastern Prince William County (Project); and

WHEREAS, on February 22, 2023, MEB submitted a detailed proposal that included 13505 Telegraph Road, Woodbridge, Virginia, 22192, consisting of approximately 21.85 acres, identified as GPIN No. 8392-06-6432 (Property) as the Project site; and

WHEREAS, staff negotiated a sales price of \$16,000,000 with the Property owners, Belno, LLC, including a refundable \$550,000 security deposit and a one-hundred fifty (150) day study period and drafted a Purchase Agreement; and

WHEREAS, the security deposit will be returned if the Board determines not to proceed with the Project within the study period; and

WHEREAS, if the Board decides to purchase the Property within the study period, the total cost will be \$15,450,000, and the funding source will be debt financing with a partial-year cost of approximately \$400,000 in Fiscal Year (FY) 2025; and

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WHEREAS, within one-hundred fifty (150) days of execution of the Purchase Agreement, the Board must determine whether to purchase the property, and if deciding to purchase the Property, the Board will have thirty (30) days to close; and

WHEREAS, securing the Property is necessary to advance the Project, which responds to numerous Board directives to pursue an indoor sports facility and conforms with Objective 3 of the Resilient Economy Goal in the 2021 - 2024 Strategic Plan: *Invest in economic development, parks, recreation and tourism programs, projects and infrastructure that drive business and creates a sought-after quality of life attractive to residents, visitors, and business investors* as well as TOUR 2.4 Policy in the 2020 Comprehensive Plan: *consider public-private partnerships to develop and operate new tourism related facilities*; and

WHEREAS, action to approve the resolution does not commit the Board to developing the Project as long as the Board terminates the Purchase Agreement within the study period; and

WHEREAS, the Lift Up Lodging program was approved by the Board in 2021 to assist local hotels experiencing economic hardship from the COVID-19 pandemic and the Board appropriated \$4,000,000 in American Rescue Plan Act (ARPA) funding for the program, \$3,273,750 of which was awarded to forty-five (45) properties, leaving a balance of \$726,250; and

WHEREAS, all but one (1) hotel property received Lift Up Lodging funding, and that single property did not qualify because it was sold during the COVID pandemic; and

WHEREAS, on November 28, 2023, the Board appropriated \$310,000 for the Interim Agreement with MEB from the available Lift Up Lodging funds, leaving a balance of \$416,250; and

WHEREAS, the Transient Occupancy Tax (TOT) fund balance for tourism at the end of FY 2023 was \$3,100,000, and after accounting for the \$1,700,000 appropriated / programmed for the County's 2024 Solheim Cup sponsorship commitments, the new balance will be \$1,400,000; and

WHEREAS, staff recommends using the \$416,250 in available Lift Up Lodging funds and \$133,750 in Transient Occupancy Tax fund balance for tourism to pay for the requisite \$550,000 security deposit for the Purchase Agreement;

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NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby approves Purchase Agreement with Belno, LLC for 13505 Telegraph Road, Woodbridge, Virginia, 22192, and reallocates \$416,250 of the remaining balance of American Rescue Plan Act funding in the Lift Up Lodging program and transfers, budgets, and appropriates \$133,750 in Transient Occupancy Tax Fund Balance for the requisite refundable deposit;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors hereby authorizes the Director of Parks and Recreation to execute the attached Purchase Agreement and such other documents as are necessary to affect the intent of this resolution and approved as to form by the County Attorney's Office.

ATTACHMENT: Purchase Agreement

Votes:

Ayes: Angry, Bailey, Boddye, Franklin, Wheeler

Nays: Lawson, Vega, Weir

Absent from Vote: None

Absent from Meeting: None

ATTEST: _____

Andrea P. Madden

Clerk to the Board

AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2023 (“Effective Date”), by and between the **BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY**, the governing body of Prince William County, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as “County” and **BELNO, LLC** (hereinafter referred to as “Belno”).

WITNESSETH

WHEREAS, the Board of County Supervisors wishes to acquire property located at 13505 Telegraph Road, Woodbridge, Virginia, 22192 consisting of approximately 21.85 acres, identified as GPIN No. 8392-06-6432 in the Occoquan Magisterial District; and

WHEREAS, the Board of County Supervisors wishes to acquire the Property in its entirety;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings expressed here, Belno agrees to convey and the County agrees to acquire certain hereinafter described property interests, all in accordance with the terms and conditions set forth herein.

1. PROPERTY: The property which is the subject of this Agreement consists of approximately 21.85 acres of property identified as GPIN No. 8392-06-6432, located in the Occoquan Magisterial District of Prince William County at 13505 Telegraph Road, Woodbridge, Virginia, 22192, together with all of Belno’s right, title and interest in and to any structures and improvements of any kind located thereon, all rights of way, easements, privileges, entitlements and obligations associated therewith or running with the land and all associated permits, agreements, rights and obligations (collectively, the “Property”). Belno agrees to sell, and the County agrees to purchase the Property, for the Compensation defined below and expressly upon the terms and conditions contained herein.

2. COMPENSATION: The compensation for the Property shall be Sixteen Million Dollars (\$16,000,000.00) (the “Compensation”), which the County shall pay Belno in cash or equivalent, upon settlement and recordation of the deed. This is a sale in gross and not by the square foot or acre.

3. STUDY PERIOD: The “Study Period” shall refer to the period beginning on the Effective Date and expiring at 5:00 p.m. Eastern Time, one hundred and fifty (150) days thereafter. If, before expiration of the Study Period, County decides, in County’s sole discretion, for any reason or no reason not to purchase the Property, it shall notify Belno in writing of its decision not to proceed with this Agreement; this Agreement shall automatically terminate; the Deposit defined below, and all interest accrued thereon, if any, shall be returned to County, and the parties shall have no further obligation or liability to each other hereunder, except such obligations in this Paragraph that expressly are to survive termination of this Agreement. Absent such notice of termination, this Agreement shall continue in full force and effect. If, prior to the end of the Study Period the County is satisfied, then the County may, in its sole discretion, accelerate the close of the Study Period.

4. OTHER CONDITIONS OF PURCHASE:

a. During the Study Period, and if the County elects to go forward with closing from the end of the Study Period until the closing date, the County and its subcontractors shall have the right to enter upon the Property to make all inspections and investigations of the condition of the Property which the County may deem necessary in the County’s sole discretion, to determine if the Property is suitable to the County; the County shall have full and unfettered access to the Property and may enter the Property and perform environmental and other tests, including but not limited to, normal soil borings, percolation tests, engineering and topographical studies, and the availability of utilities, all of which inspections and investigations shall be undertaken at the County’s expense. In the event of termination of this Agreement for any reason other than a default by Belno, the County will deliver to Belno copies of all tests, reports, plats, plans, studies, applications, submissions, etc. prepared by or procured by the County with

respect to the Property and assign, to the extent such are assignable, all of its rights, title and interest therein to Belno. Prior to entry onto the Property by the County and/or any consultant or contractor engaged by the County to perform any tests or studies of the Property, the County shall provide to Belno (for the County's entry) and obtain from each such consultant and contractor, and provide to Belno (for such consultant's and/or contractor's entry), a certificate of insurance evidencing that the County, and/or such consultant or contractor, as applicable, has in force commercial general liability insurance, issued by an insurance company licensed to do business in the Commonwealth of Virginia, with limits of not less than One Million Dollars (\$1,000,000.00) single limit for bodily injury, death and property damage liability per occurrence, with umbrella aggregate coverage of not less than Two Million Dollars (\$2,000,000.00), which certificate shall note that Belno is named as an additional insured under such policy. Belno shall in no way be responsible or liable for any accidents, incidents, damages or cost incurred by the County or its consultants and/or contractors as a result of the activities conducted by the County or such consultants and/or contractors while on the Property, in the absence of willful misconduct or gross negligence by Belno. The County shall repair any damage caused to the Property by the County or its consultants, contractors or agents and restore the Property to substantially the condition existing prior to such entry thereon within 10 days of the date of receipt of written notice of such damage. This obligation to repair damage and restore the Property shall expressly survive any termination of this Agreement.

b. Belno shall supply to the County within ten (10) days of full execution of this Agreement, for informational purposes only and without representation or warranty of any nature from Belno, copies of all environmental reports, engineering reports, soil tests, surveys, permits, title reports and copies of any existing title policy pertaining to the Property which are in Belno's possession or reasonable control. Upon request of the County, Belno also shall provide to the County's environmental consultant a completed standard owner's environmental questionnaire.

c. County shall within five (5) business days following execution and delivery of this Agreement by County, deliver cash in the amount of Five Hundred Fifty Thousand Dollars

(\$550,000) (“Deposit”) to be held by Settlement Agent (as defined in Section 11) as the earnest money deposit. County and Belno acknowledge and agree that the Deposit is refundable to the County if the County gives notice of termination prior to end of the Study Period. The Deposit shall be credited to the Purchase Price at Settlement.

d. If the County does not give notice of termination prior to the expiration of the Study Period and this transaction shall fail to close because of a wrongful refusal or default on the part of the County beyond all applicable cure periods, and if Belno is not in breach of the Agreement, then the Deposit shall be paid by the Settlement Agent to Belno as agreed liquidated damages. Thereafter, neither County nor Belno shall have any further obligation under this Agreement other than those which expressly survive termination hereof. County and Belno acknowledge that if County defaults, Belno will suffer damages in an amount which cannot be ascertained with reasonable certainty on the Effective Date and that the amount of the Deposit to be paid to Belno most closely approximates the amount necessary to compensate Belno in the event of such default. County and Belno agree that this is a bona fide liquidated damages provision and not a penalty or forfeiture provision. Belno waives all other remedies including the right to recover damages in excess of the Deposit and the right to enforce specific performance.

e. If this transaction shall fail to close because of a wrongful refusal to close or default on the part of Belno beyond all applicable cure periods, and if the County is not in breach of the Agreement, the County shall be entitled as its sole and exclusive remedy hereunder to either: (i) terminate this Agreement, in which event Settlement Agent shall promptly return the Deposit to the County, and the parties shall have no further rights or obligations under this Agreement other than those which expressly survive termination hereof; or (ii) pursue the remedy of specific performance against Belno.

Prior to declaring a default under this Section 4 and exercising the remedies described herein, the non-defaulting party shall issue written notice of default to the defaulting party describing the event or condition of default in sufficient detail to enable a reasonable person to determine the action necessary to cure the default. The defaulting party shall have seven (7) days from

delivery of the notice in which to cure the default. If the default has not been cured within such cure period, the non-defaulting party may exercise the remedies described above.

5. DEED: Belno shall convey the Property in fee simple by Special Warranty deed, together with all improvements, appurtenances, riparian rights, privileges and easements benefitting, belonging, or pertaining thereto, and all right, title and interest of Belno, in and to the land lying in the bed of any street, road, or highway (open or proposed) in front of, adjoining, or serving the said Property. Title to the Property shall be good and marketable, free and clear of liens, claims, encumbrances, easements, covenants and leases of any kind, other than the Permitted Exceptions (as defined below). Marketability of title is defined as good of record and fact, insurable subject only to standard exceptions of title and the Permitted Exceptions by a title insurance company authorized to transact business in the Commonwealth of Virginia. During the Study Period, the County shall obtain a report of title on the Property and the County may, at its sole cost and expense, obtain a current survey of the Property, and provide a copy of such report and survey to Belno. If the County objects to any matters disclosed by the title report or any such survey, then the County shall notify Belno of the objections in writing at least ten (10) days prior to the expiration of the Study Period (the "Title Objections"). The County shall include with its Title Objections a copy of the title report or title commitment (and if a survey is obtained, the survey) upon which the Title Objections are based, and copies of all instruments to which such Title Objections pertain. Other than Mandatory Cure Items, as described below, any items on the title report or on any such survey to which the County does not object (or any items affecting title to the Property on the final day of the Study Period if the County fails to obtain a title report during the Study Period and any items that may be disclosed by a current survey of the Property existing on the final day of the Study Period if the County fails to obtain a survey during the Study Period) shall be "Permitted Exceptions" subject to which the County agrees to take title. If there are Title Objections, then Belno has until five (5) days prior to the expiration of the Study Period in which to elect whether or not it will attempt to cure the Title Objections; provided Belno will be obligated to cure at or prior to settlement any and all (i) monetary liens that encumber the Property, and (ii) other title matters recorded by Belno after the Effective Date

of this Agreement without the express written approval of the County (the foregoing are collectively referred to as the “Mandatory Cure Items”). If Belno is not required to and elects not to cure any Title Objection, then the County’s election not to give a notice of termination prior to the expiration of the Study Period shall be deemed to be an election by the County to waive such Title Objection and proceed hereunder, in which event such waived Title Objection shall be a Permitted Exception. If Belno elects to attempt to cure Title Objections which are not Mandatory Cure Items (such Title Objections being referred to hereafter as “Title Objections To Be Cured”), then Belno shall proceed diligently to correct the Title Objections To Be Cured at their sole cost and expense. If the Title Objections To Be Cured have not been cured by the time for settlement, then the County may, in its sole discretion, by written notice to Belno, (I) waive the uncured Title Objections To Be Cured and proceed to settlement, (II) terminate this Agreement, in which event the Deposit shall be returned to the County and all other obligations of the County and Belno to each other shall thereupon be terminated except for those obligations that expressly survive the termination of this Agreement, or (III) extend the settlement date for a period of time not exceeding six (6) weeks in order for Belno to continue to attempt to remedy the Title Objections To Be Cured, without the County waiving its options under (I) and (II) above if Belno is unable to cure such Title Objections To Be Cured prior to the extended settlement date. Belno specifically authorizes the settlement attorney to discharge any valid monetary liens against the Property from the proceeds due to Belno.

6. TAXES: Applicable real estate taxes and fees for the Property shall be apportioned as of the closing date (i.e., with Belno being responsible for all such amounts payable with respect to the period up to but not including the closing date).

7. SETTLEMENT CHARGES:

a. Belno shall pay (i) the “grantor’s tax”, any Regional WMATA Capital Fee, and any Regional Congestion Relief Fee required to be paid in connection with the recordation of the Deed pursuant to Sections 58.1-802, 58.1-802.3, and 58.1-802.4 of the Code of Virginia (as amended), and (ii) all applicable expenses incurred by Belno in connection with the transaction contemplated by the Agreement.

b. The County shall pay all other settlement expenses, including (i) its own expenses incurred by County in connection with the transaction contemplated by this Agreement, (ii) County's attorney's fees, if any; and (iii) the settlement fee charged by the Settlement Agent.

8. POSSESSION: Possession shall be given to the County at Settlement. At closing there will be no parties other than Belno in possession of any portion of the Property or improvements as lessees, tenants, or trespassers. The Property shall be delivered in its "as is, where is" condition as of the day of settlement.

9. SETTLEMENT: Settlement shall be made at the office of William E. Evans, Esq., (the "Settlement Agent"), at 10575 Crestwood Drive, Manassas, Virginia by no later than thirty (30) days after the expiration of the Study Period.

10. ENTIRE AGREEMENT: This Agreement, when executed by the parties, Contains the final and entire agreement between them. No parties shall be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

11. BELNO'S REPRESENTATIONS, WARRANTIES AND COVENANTS:

a. Belno hereby represents and warrants to Purchaser as of the Effective Date (except as otherwise specified in this Paragraph) and the closing date as follows:

i. Authority. Belno has the lawful authority to execute and deliver, and to perform all of its obligations under, this Agreement. The person executing this Agreement on behalf of Belno has the lawful right, power, authority and capacity to bind Belno to the terms hereof, and all requisite action required pursuant to Belno's governing documents has been taken to make this Agreement valid and binding on Belno in accordance with its terms.

ii. No Legal Bar. The execution by Belno of this Agreement and the consummation by Belno of the transaction hereby contemplated does not, and on the closing date will not (a) result in a breach of or default under any indenture, agreement, instrument or obligation to which Belno is a party and which affects all or any portion of the Property, or (b) to Belno's actual knowledge, constitute a violation of the

requirements of any governmental authority.

iii. No Default. Belno has received no written notice of, and otherwise has no actual knowledge of, the existence of any uncured default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Belno is a party and which affects any portion of the Property.

iv. Litigation. Belno has not received written notice of, and otherwise has no actual knowledge of, any actions, suits, proceedings or investigations pending or threatened against the Property, including without limitation, condemnation or eminent domain claims, actions or proceedings.

v. No Hazardous Material. Except as disclosed in any of the materials provided to the County by Belno pursuant to the provisions of Section 4.b. of this Agreement, or as otherwise disclosed in writing by Belno to the County, Belno (i) has not received any written notice from any court, administrative agency or other governmental authority of any violations arising under any environmental laws applicable to the Property (“Environmental Laws”), (ii) has not generated or stored any Hazardous Materials (as defined under applicable Environmental Laws) at the Property, and (iii) has no actual knowledge that there are any Hazardous Materials present on the Property in violation of, and requiring remediation under, applicable Environmental Laws.

vi. Parties in Possession. There are no leases or other occupancy agreements to which Belno is a party which are currently in effect with respect to the Property. To Belno’s actual knowledge, there are no parties other than Belno in possession of any portion of the Property as lessees, tenants or trespassers.

vii. Duty to Disclose. Belno shall disclose to the County in writing any conditions or events that arise or occur subsequent to the Effective Date of this Agreement, and through closing, that become known to Belno and which materially contradict or modify any representation of Belno set forth herein and which would have a material effect upon the Property or its use.

viii. Covenant Against Waste. Belno shall not knowingly permit any party to deposit trash or other material upon the Property prior to closing. Belno shall not alter the current physical condition of the Property prior to closing except as may be required in order to comply with applicable laws, ordinances or regulations.

12. GOVERNING LAW AND VENUE. This Agreement shall be governed by the Constitution and laws of the Commonwealth of Virginia. Any legal action based on, arising out of, or related to this Agreement shall be filed in the state courts of Prince William County, Virginia.

13. MISCELLANEOUS:

a. Each party warrants to the other that neither has dealt with a real estate broker or finder in connection with this transaction other than Belno's broker, Guy Travers of R.L. Travers & Associates, Inc. ("Belno's Broker") and the County's broker, Coleman Rector of Weber Rector Commercial Real Estate Services ("the County's Broker"). Belno shall pay Belno's Broker a brokerage commission in accordance with the terms of a separate written agreement between Belno and Belno's Broker, and Belno shall also pay the County's Broker a commission from Belno's proceeds of sale at closing, in accordance with the terms of a separate written agreement between Belno and the County's Broker.

b. This Agreement may be executed in one or more counterparts, all of which shall be but one Agreement and all of which shall have the same force and effect as if all parties hereto had executed a single copy. Either party may execute a counterpart of this Agreement and deliver the same to the other party by means of facsimile or email transmission, and any such counterpart so executed shall be binding and enforceable, to the same effect as if an original counterpart had been executed and delivered.

c. Time is of the essence with respect to all time periods set forth in this

Agreement.

14. ENTIRE AGREEMENT: This Agreement, when executed by the parties, contains the final and entire agreement between them. No parties shall be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

15. NOTICE: All notices or other communications required or permitted hereunder must be delivered to the following addresses (a) personally, by hand delivery; (b) by Federal Express or a similar recognized overnight courier service; or (c) by email, provided that a confirmation copy is delivered within one (1) business day by the method set forth above in clause (a) or (b). All such notices shall be deemed to have been given for all purposes of this Agreement upon the date of receipt or refusal, except that whenever a notice is either received on a day which is not a business day or is required to be delivered on or before a specific day which is not a business day, the day of receipt or required delivery shall automatically be extended to the next business day.

If to Belno:

Belno, LLC
P.O. BOX 1574
Newington, VA 22122
Email: Rickcole@jdlongmasonry.com

With a copy to:

Walsh, Colucci, Lubeley & Walsh, P.C.
4310 Prince William Parkway, Suite 300
Prince William, VA 22192
Attn: David J. Bomgardner
Email: dbomgardner@thelandlawyers.com

If to County:

c/o PW County Executive
1 County Complex Court
Prince William, VA 22192

Notice given by counsel to a party to this Agreement shall be considered notice given by such party. Any party to the Agreement or its counsel may designate a different address for itself by notice given in the manner set forth above.

WITNESS the following signatures:

BELNO, LLC

By: _____
Name/Title: _____

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

BY: _____
SETH HENDLER-VOSS
Department of Parks, Recreation, and Tourism
Director, its authorized agent pursuant to Board of
County Supervisors Resolution No. 23-

COMMONWEALTH OF VIRGINIA;
County of Prince William, to-wit:

I, the undersigned Notary Public, hereby certify that SETH HENDLER-VOSS,
Department of Parks, Recreation, and Tourism Director and authorized agent of the Board of
County Supervisors of Prince William County, Virginia, whose name is signed to the foregoing
Agreement, appeared and acknowledged the same before me this ____ day of
_____, 2023.

NOTARY PUBLIC

My Commission expires: _____

Notary Registration No.: _____

APPROVED AS TO FORM
COUNTY ATTORNEY'S OFFICE

Alan F. Smith
Chief Deputy County Attorney

Date