PUTNAM COUNTY BOARD OF COMMISSIONERS



117 Putnam Drive, Suite A & Eatonton, GA 31024

Called Meeting Agenda Friday, May 29, 2020 \0000 11:30 AM Putnam County Administration Building – Room 203

Opening

- 1. Welcome Call to Order
- 2. Pledge of Allegiance (staff)

Called Meeting

3. Consideration and possible action on proposed development agreement for improvements to Collis Road (BW)

Closing

4. Adjournment

The Board of Commissioners reserves the right to continue the meeting to another time and place in the event the number of people in attendance at the meeting, including the Board of Commissioners, staff, and members of the public exceeds the legal limits. The meeting cannot be closed to the public exceet by a majority vote of a quorum present for the meeting. The board can vote to go into an executive session on a legally exempt matter during a public meeting even if not advertised or listed on the agenda. Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities are required to contact the ADA Compliance Officer, at least three business days in advance of the meeting at 706-485-2776 to allow the County to make reasonable accommodations for those persons.

File Attachments for Item:

3. Consideration and possible action on proposed development agreement for improvements to Collis Road (BW)

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2020 (the "Effective Date"), by and between **Putnam County**, **Georgia**, by and through the Putnam County Board of Commissioners (collectively "County"), as party of the first part, and **Oconee Overlook**, **LLC**, **Mallard's Overlook**, **LLC**, **Lick Creek Holdings**, **LLC and HJR Oconee**, **LLC**, each a Georgia limited liability company (collectively "Developer"), as party of the second part. (The parties hereto are each referred to herein as a "Party" and collectively as the "Parties".)

WHEREAS, Developer intends to develop certain real property having tax parcel identification numbers Map 104 Parcel 030, Map 104 Parcel 032001, Map 104 Parcel 032, Map 104 Parcel 033 and Map 104B Parcel 001 attached hereto as Exhibit "A" (collectively "Subject Property") located in Putnam County, Georgia and adjacent to county road Collis Road as a hotel development ("Proposed Development");

WHEREAS, Parties desires that Collis Road be improved between Wards Chapel Road and the vehicular entrance to the Proposed Development by expanding the public right-of-way onto land currently owned by Developer to allow additional traffic flow to the Proposed Development;

WHEREAS, County agrees to improve Collis Road between Wards Chapel Road and the vehicular entrance to the Proposed Development by expanding the public right-of-way onto land currently owned by Developer upon the dedication of such land for public use; and,

WHEREAS, the Parties freely and voluntarily enter into this Agreement and acknowledge that this Agreement is not made as a requirement attached to any county action approving or authorizing the Proposed Development;

NOW, THEREFORE, for and in consideration of the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Developer agree as follows:

1. Development and Location.

The Proposed Development shall consist of the improvements and plan attached as Exhibit "B." The Proposed Development is to be sited on the Subject Property, which is adjacent to and accessed by Collis Road, a public county road.

2. Term and Effective Date.

This Agreement shall become effective upon execution of this Agreement by both parties and shall last for a maximum of four years, unless the Parties complete performance of their respective obligations prior to the end of such term.

3. Consideration.

The Parties hereby acknowledge and affirm the good and valuable consideration received under this Agreement. Specifically, Developer acknowledges and affirms the benefit received by the expansion of the public right-of-way between Wards Chapel Road and the vehicular entrance to the Proposed Development, which will allow for additional traffic flow to the Proposed Development, and County acknowledges and affirms the benefit received by the dedication of such land for public use.

4. Obligations of Developer.

a. Developer agrees to dedicate, transfer, and/or deed to County fee simple title to a strip of land parallel to the current Collis Road right-of-way for the entire linear length of Tract "A" as depicted in Plat Book 36, Page 199, in the Office of the Clerk of Superior Court of Putnam County that shall allow County to improve and widen the Collis Road right-of-way to a width of fifty (50) feet as measured from the center line of the existing roadway ("Right-of-Way Dedication Parcel"). Such Right-of-Way Dedication Parcel shall be more accurately described on a plat of survey to be completed by a registered land surveyor, the expense of which shall be borne by County, following execution of this Agreement. The square footage of the Right-of-Way Dedication Parcel shall not be excluded from development calculations for purposes of compliance with applicable governmental development controls including the Putnam County Zoning Ordinance.

- b. Developer shall convey the Right-of-Way Dedication Parcel no later than the issuance of the land development permit for the Proposed Development. Developer shall provide written notice to County, addressed to the County Manager, at least 14 days prior to any transfer of ownership of any interest in the Right-of-Way Dedication Parcel.
- c. Any contract, agreement, or promise to transfer ownership of any interest in any real property involved in the Proposed Development shall be subject to and include the obligation of Developer to transfer the interest described in Subparagraph A of this Section.

5. Obligations of County.

- a. County shall begin acquisition of those portions of Collis Road not owned by Developer necessary for the construction of the Improvements (defined below) no later than thirty (30) days after issuance of the land disturbance permit for the Proposed Development. County shall commence construction of the Improvements no later than sixty (60) days after issuance of the building permit for the Proposed Development.
- b. County agrees to fund and to perform (or cause to perform on County's behalf) the following improvements ("Improvements") which shall adhere to the following minimum standards:
 - i. The System Improvements shall be designed and constructed such that the Collis Road paved roadway width shall be a minimum of twenty-four(24) feet wide. The width of Collis Road right-of-way shall be a total of fifty (50) feet, (25) feet as measured from centerline of the existing roadway.
 - ii. Pavement Reconstruction of Collis Road. This construction method will consist of reclamation of the existing asphalt pavement, compacting the reclaimed materials and resurfacing the roadway with an asphalt surface course of 2 inches of 12.5 mm asphaltic concrete and a binder course of 3 inches of 19 mm asphaltic concrete (total length of Collis Road impacted from the development is approximately 3000 feet from Wards Chapel to the proposed entrance).

- iii. Thermoplastic edge and centerline striping of Collis Road from Wards Chapel to proposed Hotel entrance.
- iv. Shoulder rehabilitation & traffic control of Collis Road from Wards Chapel to proposed entrance, to include the construction of a 5-foot shoulder (minimum 2:1 slope) and roadside ditch on both sides of the road
- v. The turning radius of the intersection of Wards Chapel at Collis Road to a minimum of 30 feet with the widened section to be constructed with 6 inches of graded aggregate base and 2.5 inches of 12.5 mm asphaltic concrete; and
- vi. All System Improvements shall be performed in a good and workmanlike manner, in compliance with all Applicable Laws and in accordance with the Plans and Specifications.
- c. Developer's failure to complete the Proposed Development within the terms of this Agreement shall relieve County of the obligations contained in the section.

6. Miscellaneous Provisions:

- a. <u>Entire Agreement, Amendments</u>. This Agreement, together with and including the Exhibits referred to herein constitute the entire agreement between the Parties as to the matters contemplated herein. There are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by a further agreement in writing duly executed by the Parties and recorded (in short form) in the Public Records of Putnam County, Georgia.
- b. <u>Further Assurances</u>. In addition to the acts recited in this Agreement, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability, responsibility, charge or expense, additional documentation as may be reasonably necessary to complete the intent of the parties contemplated hereby, including the execution and/or recordation of further instruments.

- c. <u>Authority</u>. By their execution hereof each person executing this Agreement hereby represents and warrants that they have full power and authority to bind any corporation, partnership, trust or other entity for which he or she purports to act hereunder.
- d. <u>Counterparts</u>. This Agreement may be executed in multiple counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A facsimile, PDF or similar electronic transmission of a counterpart signed by a Party hereto shall be regarded as signed by such party for purposes hereof.
- e. <u>Severability</u>. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
- f. <u>Governing Law</u>. This Agreement, and all matters arising out of or relating to this Agreement, are and shall be governed by, and construed in accordance with, the laws of the State of Georgia.
- g. <u>Venue</u>. Any legal suit, action, or proceeding arising out of, based upon, or relating to this Agreement shall be instituted in the Superior Court of Putnam County or the United States District Court for the Middle District of Georgia, and each party to this Agreement irrevocably submits to the exclusive jurisdiction and venue of such courts in any such suit, action, or proceeding.
- h. <u>No Waiver</u>. Any failure to enforce any provision contained in this Agreement shall in no way be deemed a waiver of the right to do so thereafter. The invalidity, violation, abandonment or waiver of any one or more of any of the provisions hereof shall not affect or impair the remaining portions of this Agreement. The Parties acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all Parties and their respective counsel and, accordingly, all Parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any Party hereto based on authorship nor more strictly construed against any one of the Parties hereto. The Parties acknowledge

each to the other that both they and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

- i. <u>Captions</u>. The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement, nor in any way affect this Agreement.
- j. <u>Recitals</u>. The recitals at the beginning of this document are intended only to provide information about the basic background and purpose of this Agreement and do not control the operative portions or validity of this Agreement.
- k. <u>Remedies</u>. Subject to applicable Laws, each Party shall have full remedies for the other Party's failure to perform. All rights or remedies granted to each Party under this Agreement are cumulative and are not exclusive of any other rights or remedies provided hereunder, and may be pursued singularly, successively, or together, and may be exercised as often as the occasion shall arise. For avoidance of doubt, no Party shall have the right to seek or collect speculative, punitive, consequential damages or special damages of any kind or character from any other Party.
- 1. <u>Prevailing Party Attorneys' Fees and Costs</u>. In the event of litigation arising under this Agreement, or in the event any Party finds it necessary to institute any proceedings or litigation for the purpose of enforcing its rights under this Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party or parties, in addition to any damages otherwise due, reasonable attorneys' fees, paralegals' fees and expert fees whether incurred at trial, on appeal, or in bankruptcy proceedings.
- m. <u>Time of the Essence</u>. Time shall be of the essence for each and every provision hereof. Any time period provided for this Agreement which ends on Saturday, Sunday or a legal holiday in the State of Georgia shall

extend to 6:00 p.m. on the next full business day. A "business day" means any day, other than a Saturday, Sunday or legal holiday in the State of Georgia.

- n. Force Majeure. As used herein, "Force Majeure" means unavoidable delays caused by Acts of God, strikes, governmental restrictions, fire, explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, acts of terrorism, war, labor disputes, hurricane, tropical storm or tornado, and inclement weather, acts of the public enemy or other events beyond the control of the party required to act. Force Majeure does not include the failure or inability to pay money. For the purpose of determining a performance, or default, of this Agreement, the time periods for performance shall be extended by the number of days lost to that Party by Force Majeure. If any Party is actually delayed or prevented from performing any of its obligations by reason of Force Majeure, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligations by such Party, provided, however, that in order for such Party to be entitled to the benefit of the provisions of this Section, such Party must give written notice to the other Parties within seven (7) days following the commencement of such Force Majeure describing such event with reasonable particularity and identifying the obligation(s) which such Party is unable to perform as a result of such Force Majeure event. The Parties agree to take such steps as may be reasonably necessary to shorten such delay as much as is commercially reasonable under the circumstances.
- o. <u>Assignment; Successors and Assigns</u>. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, successors and permitted assigns and the legal representatives of their estates, as the case may be.
- p. <u>Notices</u>. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Agreement shall be in writing, shall be signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, or upon being deposited with FedEx or another reliable overnight courier service, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may

designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at such address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response, if given hereunder, shall be addressed as follows:

If to County:	Paul Van Haute, County Manager Putnam County 117 Putnam Drive Eatonton, Georgia 31024
with a copy to (which shall not constitute notice):	Adam Nelson, Esq. Fleming & Nelson, LLP 631 Ronald Reagan Dr. # 2 Evans, Georgia 30809
If to Developer:	Josh and Lauren Sprayberry 6350 Lake Oconee Parkway Suite 110 PMB # 33 Greensboro, Georgia 30642
with a copy to (which shall not constitute notice):	Jeffrey S. Haymore, Esq. 1776 Peachtree Street Suite 390 N Atlanta, Georgia 30309

- q. <u>Number and Gender</u>. Whenever required by the context, the singular number shall include the plural and the masculine gender shall include the feminine and neuter.
- r. <u>No Third-Party Beneficiaries</u>. This Agreement is made for the sole benefit of the Parties and their respective successors and assigns and no other

person shall have any right, remedy or legal interest of any kind by reason of this Agreement.

- s. <u>Recordation</u>. Upon execution by the Parties hereto, this Agreement shall be recorded in the Public Records of Putnam County, Georgia.
- t. <u>Exhibits</u>. The following list of exhibits attached hereto are incorporated herein by reference and made a part hereof:

Exhibit "A"	[Subject Property Legal Descriptions]
Exhibit "B"	[Hotel Concept Plan]
Exhibit "C"	
Exhibit "D"	

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement and affixed their corporate seal as of the date indicated below.

Signed, sealed and delivered in the presence of:	PUTNAM COUNTY , GEORGIA a political subdivision of the State of Georgia
Unofficial Witness	By: Print Name:
Notary Public	Title:
Notary Fublic	Date of Execution by County:
My Commission Expires:	, 2020
[NOTARY SEAL]	

[Signatures continued on next page]

Signed, sealed and delivered in the presence of:

OCONEE OVERLOOK, LLC, a

Georgia limited liability company

Unofficial Witness

By:_____ Print Name:_____ Title:_____

Notary Public

Date of Execution:	,
2020	

My Commission Expires:_____

Signed, sealed and delivered in the presence of:

MALLARD'S OVERLOOK, LLC, a

Georgia limited liability company

Unofficial Witness

By:_____ Print Name:_____ Title:_____

Notary Public

Date of Execution:	,
2020	

My Commission Expires:_____

Signed, sealed and delivered in the presence of:

LICK CREEK HOLDINGS, LLC, a

Georgia limited liability company

Unofficial Witness

By:_____ Print Name:_____ Title:_____

Notary Public

Date of Execution:	,	
2020		

My Commission Expires:_____

Signed, sealed and delivered in the presence of:

HJR OCONEE, LLC, a Georgia limited liability company

Unofficial Witness

By:_____ Print Name:_____ Title:_____

Notary Public

Date of Execution:	,	
2020		

My Commission Expires:_____

Exhibit "A"

Parcel 1:

All that tract or parcel of land, lying and being in Putnam County, Georgia, containing 3.50 acres, more or less, and being designated as Parcel "B" as shown on a plat prepared by American Testing Laboratories, Inc., dated February 21, 1975, recorded in Plat Book 7, Page 43, Clerk's Office, Putnam County Superior Court, and by this reference said plat is made a part of this description. This is the same property conveyed as Tract 2 in Deed Book 146, page 83, said Clerk's Office.

Deed Reference: Deed Book 788, Page 565

Parcel 2:

All that tract or parcel of land, lying and being in Putnam County, Georgia, designated as Parcel "C" containing 2.14 acres, as shown on a plat prepared by American Testing Laboratories, Inc., dated February 21, 1975, and recorded in Plat Book 7, Page 43, Clerk's Office, Putnam County Superior Court, and by reference said plat is made a part of this description. This is the same property as conveyed at Deed Book 146, Page 82, Putnam County, Georgia records.

Parcel 3:

All that lot or parcel of land, lying and being in the 308th G.M. District, Putnam County, Georgia, being shown as Parcel 3 described in a deed recorded in Deed Book 149, page 103, Clerk's Office, Putnam County Superior Court, with the description being corrected as follows: shown as a strip 66.73 feet wide as property of Ruby C. Califf on a plat dated January 21, 1980, prepared by American Testing Laboratories, Inc. recorded in Plat Book 10, page 24, Clerk's Office, Putnam Co. Superior Court, and by reference is made a part of this description. Said tract of land is bound on the northeast for 375.13 feet by property of J. Douglas McElheney and 62.06 feet by a proposed 60 foot right of way for a road; on the south by 66.73 feet from the southern right of way of said road to property line of Russell N. Copelan; on the southwest by property of Russell N. Copelan; on the west by a portion of the Maggie A. Copelan Estate, Parcel B, and on the northeast by 60.66 feet of Georgia Power Access Area to Lake Oconee.

Together with

A right of ingress and egress to the above described property over a 60' proposed road right of way. Said proposed road right of way is shown in part on two separate plats; on a plat recorded in Plat Book 8, page 182, Clerk's Office, Putnam Co. Superior Court, a proposed road is shown as adjacent to

Lots F and G on said plat, this road right of way is in addition to the 60' road right of way shown on plat prepared for J. Douglas McElheney recorded in Plat Book 10, Page 24, Clerk's Office, Putnam Co. Superior Court.

Deed Reference: Deed Bok 788, Page 567.

Tract A:

All that certain tract or parcel of land lying and being in the 308th District, G.M. of Putnam County, Georgia, containing 29.58 acres, more or less, and being designated as Tract A on that certain plat prepared by Jack E. Newsome, Georgia Land Surveyor No. 3113 on December 17, 2019, and record in Plat Book 36, Page 199, in the Office of the Clerk of the Superior Court of Greene County, Georgia, which said plat and the record thereof are hereby incorporated herein and made a part hereof by reference.

LESS AND EXCEPT All that certain tract or parcel of land lying and being in the 308th District, G.M. of Putnam County, Georgia, containing 29.58 acres, more or less, and being designated as Tract A1 on that certain plat prepared by Jack E. Newsome, Georgia Land Surveyor No. 3113 on December 17, 2019, and record in Plat Book 36, Page 199, in the Office of the Clerk of the Superior Court of Greene County, Georgia, which said plat and the record thereof are hereby incorporated herein and made a part hereof by reference. This being the same property as shown in Deed Book 700, Page 729.

Tract B:

All that certain tract or parcel of land lying and being in the 308th District, G.M. of Putnam County, Georgia, containing 21.40 acres, more or less, and being designated as Tract B on that certain plat prepared by Jack E. Newsome, Georgia Land Surveyor No. 3113 on December 17, 2019, and recorded in Plat Book 36, Page 199, in the Office of the Clerk of the Superior Court of Greene County, Georgia, which said plat and the record thereof are hereby incorporated herein and made a part hereof by reference.

Tract B1:

All that certain lot or parcel of land lying and being in Land Lot 330, 308th District, G.M., Putnam County, Georgia, being known as Tract B1, containing 0.35 acres, more or less, as shown on that certain plat of survey prepared by Southeast Land Surveying, by Jack E. Newsome, Registered Land Surveyor No. 3113, dated December 17, 2019, which said plat and the record thereof are hereby incorporated herein and made a part hereof by reference, and more fully described as follows:

Beginning at a ½" Re-Bar on the Northern right-of-way of Collis Road, run North 44 degrees 54 minutes 29 seconds West a distance of 1799.15 feet to a ½" Re-Bar and the TRUE POINT OF BEGINNING; thence run North 44 degrees 12 minutes 28 seconds West a distance of 129.44 feet to a ¼" Re-Bar; thence run North 44 degrees 34 minutes 5 seconds East a distance of 97.47 feet to a ¼" Re-Bar; thence run South 65 degrees 31 minutes 12 seconds East a distance of 128.48 feet to a ¼" Re-Bar; thence run South 41 degrees 06 minutes 05 seconds West a distance of 144.62 feet to a ½" Re-Bar and the True POINT OF BEGINNING.

Tract B2:

All that certain lot or parcel of land lying and being in Land Lot 330, 308th District, G.M., Putnam County, Georgia, being known as Tract B2, containing 0.11 acres, more or less, as shown on that certain plat of survey prepared by Southeast Land Surveying, by Jack E. Newsome, Registered Land Surveyor No. 3113, dated December 17, 2019, which said plat and the record thereof are hereby incorporated herein and made a part hereof by reference, and more fully described as follows:

Beginning at a ¹/₂" Re-Bar on the Northern right-of-way of Collis Road, run North 44 degrees 54 minutes 29 seconds West a distance of 1799.15 feet to a ¹/₂" Re-Bar; thence run North 41 degrees 06 minutes 05 seconds East a distance of 144.62 feet to a ¹/₄" Re-Bar; thence run South 65 degrees 04 minutes 58 seconds East a distance of 58.82 feet to a ¹/₄" Re-Bar; thence run North 15 degrees 25 minutes 25 seconds West a distance of 67.71 feet to a ¹/₄" Re-Bar and the TRUE POINT OF BEGINNING; thence run North 15 degrees 32 minutes 59 seconds West a distance of 104.44 feet to a ¹/₄" Re-Bar; thence run South 81 degrees 36 minutes 39 seconds East a distance of 103.60 feet to a ¹/₂" Re-Bar; thence run South 41 degrees 03 minutes 49 seconds West a distance of 113.40 feet to a ¹/₄" Re-Bar and the TRUE POINT OF BEGINNING.

Exhibit "B" Hotel Plan









Oconee Overlook Lake Oconee, Georgia

Main Lobby Entry at Porte Cochere













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