This Instrument Prepared by and Return To:
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DEVELOPMENT AGREEMENT CONCERNING TRANSPORTATION CONCURRENCY AND OTHER MATTERS PURSUANT TO CHAPTER 163, FLORIDA STATUTES [COUNTRY GREEN]

Between
City of Ocala, a Florida municipal corporation,
and
Country Green, LP, a Nevada limited liability partnership

Effective Date: April 19, 2022

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DEVELOPMENT AGREEMENT CONCERNING TRANSPORTATION CONCURRENCY AND OTHER MATTERS PURSUANT TO CHAPTER 163, FLORIDA STATUTES [COUNTRY GREEN]

THIS DEVELOPMENT AGREEMENT CONCERNING TRANSPORTATION CONCURRENCY AND OTHER MATTERS PURSUANT TO CHAPTER 163, FLORIDA STATUTES [COUNTRY GREEN] executed by the Parties as of April 19, 2022 (the "Effective Date"), is entered into by and between:

- City of Ocala, a Florida municipal corporation ("City"); and
- Country Green, LP, a Nevada limited liability partnership ("Owner").

WHEREAS:

A. Owner owns Property[1] which is located in Marion County, Florida, and also within the jurisdictional boundaries of City.

B. Owner has made application to City for rezoning of the Property to a Planned Development (PD) zoning district, and for approval of the PD Plan.

C. Such application is being approved by City contemporaneously herewith.

D. Owner intends to develop the Property as a mixed-use real estate development, which may include apartments and commercial retail uses, as set forth in the PD Plan as currently approved or as such PD Plan may be subsequently amended.

E. Project Engineer prepared the Traffic Study on behalf of Owner, which studied the effect on Transportation Facilities of the development of the Property. The Traffic Study was reviewed and approved by City, County and the TPO. The provisions of the Traffic Study are, by this reference, incorporated into the terms and provisions of this Agreement.

F. The Traffic Study projects that, based on the adopted level of service standards of the City and County, certain Transportation Facilities identified in this Agreement will have adequate facility capacity during the PM peak hour for the projected new traffic generated by the build-out of the Property, taking into account existing background traffic and projected growth of existing traffic, and background vested traffic, except concerning the Deficient Facilities.

G. Chapter 86 of City's Code of Ordinances provides that, in the case of inadequate transportation capacity or under circumstances similar to these (e.g., where the transportation capacity is adequate only because of a planned transportation improvement by City, a portion of the ROW of which is owned by Developer), a property owner may enter into a concurrency development agreement with the City to provide or fund Transportation Improvements. This Agreement shall constitute a concurrency development agreement under the provisions of Chapter 86 of the City Code.

H. Owner has submitted an Application for a Certificate of Capacity to the City for the vehicular Trips (capacity) needed to accommodate the development of the Property.

[1] Terms capitalized in these Whereas paragraphs, and not previously defined herein, are defined in paragraph 1 below.

I. Section 10-323 of the County Impact Fee Ordinance provides for a Developer to be provided with a credit against Impact Fees pursuant to a written impact fee credit agreement approved by the County Commission for conveyance of ROW and construction or expansion of Transportation Facilities.

J. Owner, and a third party, are parties to the Wintergreen Development Agreement with City pursuant to which Owner and other parties are contributing the Conveyed ROW to City to mitigate the impact of development, and to permit City to construct SW 44th Avenue and a third party to construct another Transportation Facility.

K. City and Owner believe that based upon the conveyance of the Conveyed ROW to City under the Wintergreen Development Agreement, Owner is entitled to Impact Fee Credits pursuant to the County Impact Fee Ordinance and Section 163.3180, Florida Statutes.

L. This Agreement also constitutes a development agreement under the Development Agreement Act to the extent it concerns matters in addition to transportation concurrency.

M. City has held public hearings to accept and encourage public input with respect to the proposals of Owner contained in this Agreement, and has considered public input. City has determined that the provisions of this Agreement and the contemplated vesting of development rights contemplated by this Agreement are consistent with, and not in contravention with, the provisions of City's Concurrency Management System, as codified in Chapter 86 of the City Code.

N. City has provided its Notice of Intent to consider entering in this Concurrency Development Agreement by advertisements published in the Ocala Star-Banner, a newspaper of general circulation and readership in Marion County, Florida, on December 17, 2021 and January 7, 2022, and by mailing a copy of the Notice of Intent to Owner, and to the persons and entities shown on the most recent Marion County Tax Roll to be the owners of property lying within three hundred feet (300') of the boundaries of the Property which is the subject-matter of this Agreement, and by announcing the date, time, and place of the second hearing during the first hearing.

O. The City Council of the City has held public hearings on January 4, 2022 and January 18, 2022, to consider this Agreement, has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development contemplated and permitted by this Agreement comply with the City's Code.

NOW, THEREFORE, in consideration of the foregoing (which are incorporated herein by reference), the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

1. **Definitions**.

1.1. Definitions. In addition to any other terms which may be specifically defined elsewhere in this Agreement, for the purposes of this Agreement the following terms shall have the following meanings:

1.1.1. *Agreement* – This Concurrency Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and

provisions and pursuant to the provisions of Sections 163.3161 through 163.3215, inclusive, of the Florida Statutes.

1.1.2. *Capacity Reservation Fee* – The amount to be paid by Owner to City for the Reserved Trips as set forth in Section 86-2(e).

1.1.3. *City* – The City of Ocala, a Florida municipal corporation.

1.1.4. *City CMS* – The City's Concurrency Management System, as codified in Chapter 86 of the City Code, as the same may be subsequently amended, modified or supplemented.

1.1.5. *City Code* – The City's Code of Ordinances, as the same may be subsequently amended, modified or supplemented.

1.1.6. *Community Planning Act* – Section 163.3161, et seq., Florida Statutes (2018).

1.1.7. *Concurrency Mitigation* – The construction or expansion of Transportation Facilities, and the conveyance of the Conveyed ROW, as set forth in paragraph 3.6.

1.1.8. *Conveyed ROW* – The ROW to be conveyed to City pursuant to the Property Donation Agreement or this Agreement. The Conveyed ROW includes all of the real property conveyed interests to City either in fee simple or pursuant to easements.

1.1.9. *County* – Marion County, Florida, a political subdivision of the State of Florida.

1.1.10. *County CMS* – The County Concurrency Management System, as codified in Division 8 of Chapter 1 of the County LDR, as the same may be subsequently amended, modified or supplemented.

1.1.11. *County Code* – The "Marion County Code" as defined in Section 1-1 of the County Code, as the same may be subsequently amended, modified or supplemented.

1.1.12. *County Impact Fee Credit Agreement* – An agreement between Owner and County pursuant to which Owner is provided with credits against Impact Fees, as set forth in greater detail in paragraph 4.1.1.

1.1.13. *County Impact Fee Ordinance* – The Marion County Impact Fee Ordinance for Transportation Facilities as defined and codified in Division 2 of Article 10 of the County Code.

1.1.14. *Deficient Facilities* – One or more Transportation Facilities of which capacity is inadequate (i.e., the Transportation Facilities will be operating at less than the adopted Level of Service ("LOS") for such Transportation Facilities) as determined by the Traffic Study as of buildout of the Project, other than Transportation Facilities for which capacity is projected to be inadequate (based upon existing and projected future background traffic) prior to development of the Property. The Traffic Study identified the Deficient Facilities as set forth in paragraph 3.5.2.

1.1.15. *Development Agreement Act* – The "Florida Local Government Development Agreement Act" as defined in Section 163.3220, Florida Statutes, and as codified in Sections 163.3220 through 163.3243, Florida Statutes.

1.1.16. *Effective Date* – The date the terms of this Agreement become effective, as set forth in paragraph 9.15 below.

1.1.17. *Equivalency Matrix* – The Land Use Exchange Matrix attached hereto as **Exhibit C**.

1.1.18. *FDOT* – The Florida Department of Transportation, or its successor.

1.1.19. *Governmental Authority* – Any governmental entity, agency, department, bureau, division, or other representative of any governmental entity which has jurisdiction, permitting authority, or the authority to issue authorizations or approvals regarding development or usage of the Property or any portion thereof, all Transportation Improvements (as defined below) which are the subject of this Agreement, and all road, stormwater management and utilities Improvements or facilitates which are the subject of this Agreement.

1.1.20. *Impact Fee Credits* – Credits against Impact Fees to be provided to Owner under the County Impact Fee Credit Agreement.

1.1.21. *Impact Fees* – Impact fees due under the County Impact Fee Ordinance. Because this Agreement concerns transportation concurrency and transportation impact fees only, this phrase does not apply to any other impact fees, or similar charges, assessed under the County Code or City Code.

1.1.22. *Month* – (regardless of whether the term is capitalized) – When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date of the first event. For example, two (2) months after October 15, 2022, is November 15, 2022. If the first event is a date which is not in the subsequent month, the subsequent date will be the last day of such subsequent month. For example, one month after October 31, 2022, is November 30, 2022.

1.1.23. *Owner* – As defined in the introductory paragraph to this Agreement, being the current record title owners of the Property, or any portion thereof. It is anticipated that there will eventually be multiple owners of parcels of the Property, the terms of this Agreement shall run with the land and remain in place and shall be effective as to all of the Property, notwithstanding the Property having multiple Owners.

1.1.24. *Parcel or Parcels* – One or more of the Parcels of real property specifically described or referenced in this Agreement, including the Property (as defined below).

1.1.25. *Party* or *Parties* – One or more of City or Owner.

1.1.26. *PD Amendment* – An amendment to the PD zoning classification for the Property or of the then-approved PD Plan.

1.1.27. *PD Plan* – The PD Plan (that meets the requirements of Section 122-943 of the City Code) as the same may be subsequently amended or modified through a PD amendment.

1.1.28. *Project* – Collectively, the development of the Property and all related infrastructure required to market and use the Property, or Parcels thereof, as a mixed-use development as contemplated under the terms of this Agreement. The term "Project" shall include all design, permitting and construction of infrastructure Transportation Improvements described in this Agreement; acquisition of all required ROW for roads and utilities infrastructure; and procurance of all necessary approvals or permits from all applicable Governmental Authorities. This term shall also apply to all actions to be undertaken by an Owner or City pursuant to the terms of this Agreement or any amendment or supplement thereto.

1.1.29. *Project Engineer* – The engineering firm or firms retained by Owner to perform the Traffic Study and prepare the Equivalency Matrix. As of the Effective Date, Kimley-Horn & Associates, Inc. is the Project Engineer. Owner may change the Project Engineer without amending this Agreement but, by providing written notice to City.

1.1.30. *Property* – The real property owned by Owner located in Marion County, Florida, also located within the jurisdictional boundaries of City, described on attached **Exhibit A.**

1.1.31. *Property Donation Agreement* – The Agreement Concerning Donated Right-of-Way and Related Matters between City and Owner and a third party dated January 18, 2022.

1.1.32. *Public Facilities* – Those public facilities identified in paragraph 8 below.

1.1.33. *Reservation of Capacity* or *Reserved Capacity* or *Capacity Reservation* – The reservation of Trips to Owner pursuant to paragraph 5.1 below.

1.1.34. *Reserved Trips* – The Trips (as defined below) that are included in Owner's Reserved Capacity.

1.1.35. *ROW* – Right-of-way required for the construction of Transportation Improvements and as defined in the Wintergreen Development Agreement.

1.1.36. *Stormwater Management Facilities* – A system which is designated and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapter 62-330, F.A.C. and the City Code.

1.1.37. *Subsequent Owners* – A successor in title to Owner or to the other current owners of the Property or any Parcel thereof.

1.1.38. *TPO* – The Ocala Marion Transportation Planning Organization.

1.1.39. *Traffic Study* – The "Traffic Impact Analysis Country Green PD" dated June 2018, prepared by Project Engineers regarding the Property as stated in Whereas paragraph D, as supplemented by the Equivalency Matrix provided by Project Engineer in December 2021. The Traffic Study has been: (a) prepared in accordance with the methodology agreed to by City, County, and TPO; and (b) reviewed, approved and accepted by City, County and TPO. The Traffic Study was developed pursuant to a methodology approved by the City, County, and Ocala/Marion County Transportation Planning Organization (TPO), and the Traffic Study has been reviewed, approved and accepted by City, County, and the TPO. The contents of the Traffic Study are, by this reference, incorporated into this Agreement.

1.1.40. *Transportation Facilities* – All public roads, streets or highways (collectively the "Roadway Segments"), and intersections ("Intersections") studied pursuant to the Traffic Study.

1.1.41. *Transportation Improvements* – All construction required to be undertaken to complete the construction, or modification, of the described infrastructure. This shall include, but not be limited to, all surface improvements, roads, paving, sidewalks, gutters, lighting, Stormwater Management Facilities, and potable water, sanitary sewer, and electrical utilities, reclaimed water, and fiber optic infrastructure.

1.1.42. *Trip* or *Project Trip* – The projected traffic impact of the development of the Property, or a Parcel thereof, measured in terms of net new PM external peak hour vehicle trip generation.

1.1.43. *Water Management District* or *District* – The Southwest Florida Water Management District, an agency of the State of Florida, the Governmental Authority which has jurisdiction over the design, permitting and operation of surface water and stormwater management systems, and Stormwater Management Facilities, for the Property and for all Transportation Improvements, and (if applicable) utilities improvements, to be constructed under the terms of this Agreement.

1.1.44. *Wintergreen Development Agreement* – The Development Agreement Concerning Transportation Concurrency and other matters pursuant to Chapter 163, Florida Statutes [Wintergreen] of even date herewith entered into between City, on the one hand, and Owner and W.G. One Corp, a Nevada corporation, as Trustee of the Wintergreen B.T., a business trust, on the other hand.

1.2. Rules of Construction. For the purposes of the interpretation, construction, administration, and implementation of this Agreement, unless otherwise stated in this Agreement or the context clearly indicates to the contrary, the following rules of construction shall apply:

1.2.1. Words importing the singular number shall include the plural, and vice versa.

1.2.2. Words importing a particular gender shall include all genders.

1.2.3. Where a provision involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either or," the conjunction shall be interpreted as follows: "and" indicates that all the connected terms shall apply; "or" indicates that the connected terms may apply singly or in any combination; and "either or," indicates that only one of the connected terms may apply.

1.2.4. The word "includes" shall be assumed to be followed by the phrase "without limitation," and therefore shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

1.2.5. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement.

1.2.6. The term "heretofore" shall mean prior to the execution of this Agreement.

2. **Representations and Warranties**. As a material inducement to the other Parties to enter into this Agreement, each Party makes the following representations and warranties to the other Parties to this Agreement:

2.1. Owners' Representations and Warranties. Owner represents and warrants to City that:

2.1.1. Owner is a validly organized limited liability partnership under the laws of the State of Nevada and is authorized to transact business in the State of Florida.

2.1.2. Owner has taken all actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives for Owner, authorized to execute this Agreement in their respective capacities as set forth below.

2.1.3. The Owner is the legal and equitable owner of the Property. The Property is not encumbered by any mortgages or other liens.

2.1.4. The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the governing documents of Owner.

2.2. **City Representations and Warranties**. City represents and warrants to Owner that:

2.2.1. The actions by City hereunder are consistent with, and not in contradiction of, the terms and provisions of the City's Comprehensive Plan.

2.2.2. City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and the conducting of public hearings related thereto.

2.2.3. Upon the execution and delivery of this Agreement by City, the obligations of City shall be valid and binding obligations of City.

2.2.4. Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, the City Code or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

2.2.5. Owner has, pursuant to the provisions of paragraph 5.1 reserved transportation facilities for external trips ingressing and egressing to or from the Property in the amount set forth in such paragraph.

TRANSPORTATION CONCURRENCY

3. **Transportation Facilities; Traffic Concurrency; Owner Contributions**.

3.1. Traffic Study. The Traffic Study has, as set forth in paragraph 1.1.39, been: (a) prepared in accordance with the methodology agreed to by City, County and the TPO; and (b) reviewed, approved and accepted City, County and the TPO.

3.2. Equivalency Matrix.

3.2.1. Owner and City agree that the Land Use Trip Equivalency Matrix ("Matrix") shown on attached **Exhibit C**, shall be used to quantify allowed changes in the land use types and intensities of the overall development program for the Project. [Note: This Matrix allows changes in the approved land uses and intensities on a site in the Project, and provides the method of calculation and determination of the changes in the off-site Transportation Facilities impact which would be the result of the changes. Permitted uses per the PD and as shown on the PD Plan of the Project, as the same may be subsequently amended or modified through a PD Amendment.] For the purposes of this Matrix, the Trip generation rates for each land use was obtained using rates or equations provided in the ITE Trip Generation Manual (10th Edition).

3.2.2. In addition to the development uses within the Project which are expressly set forth in the Equivalency Matrix, other development uses may be allowed pursuant to the Equivalency Matrix if there is a trip generation rate for such other uses under the current Trip Generation Manual published by the institute of Traffic Engineers.

3.2.3. Any time Owner uses the Equivalency Matrix or other provisions of this paragraph 3.2, Owner shall notify City in writing, and upon request of Owner and acknowledgement by City that the use, or uses, comply with the requirements of this paragraph 3, City shall acknowledge and confirm the remaining development uses and density/intensities available for the Project under the Equivalency Matrix.

3.3. Study Area. The Traffic Study for the Project included all roadway segments where PM, peak hour project traffic consumes three percent (3%) or more of the same subject roadway segment's peak hour directional service capacity, consistent with the approved methodology.

3.4. Roadway Segments.

3.4.1. The Traffic Study analyzes traffic capacity based upon the current adopted levels of service for the applicable Transportation Facilities, as adopted by the governmental entity owning and operating the particular traffic facility (the City, County or FDOT, as applicable).

3.4.2. The Traffic Study concludes that, under the 2037 buildout roadway segment evaluation for PM peak hour traffic volume, there are no LOS deficiencies (i.e., Deficient Facilities) due to the addition of project traffic (other than those that would occur without Project Traffic).

3.5. Intersections.

3.5.1. The Traffic Study includes an intersection analysis identifying the intersections included in the Study pursuant to the agreed methodology, and any required operational changes to the intersections to maintain required traffic concurrency standards. The Traffic Study analyzes traffic capacity based upon the current adopted levels of service for the applicable Transportation Facilities, as adopted by the governmental entity owning and operating the particular traffic facility (the City, County or FDOT, as applicable).

3.5.2. The Traffic Study concludes that, under the 2037 buildout intersection analysis for PM peak hour traffic volume, there are the following LOS deficiencies (i.e., Deficient Facilities) due to the addition of project traffic (other than those that would occur without Project Traffic):

3.5.2.1 Intersection of SW 20th Street and SW 38th Avenue.

3.5.2.2 Intersection of SW 27th Street and SW 38th Avenue.

3.6. Mitigation.

3.6.1. The Traffic Study identified Deficient Facilities.

3.6.2. Developer will mitigate the Deficient Facilities identified in paragraph 3.5.2 by constructing, and dedicating of any required ROW for, such Deficient Facilities during Project development.

3.6.3. Developer will mitigate the remaining Deficient Facilities by performing its obligations under the "Wintergreen Development Agreement" (i.e., conveying ROW as set forth therein).

4. **Concurrency Mitigation**. City and Owner agree that Owner may satisfy the transportation concurrency requirements for the Project as follows:

4.1. Credits. City acknowledges that, pursuant to the provisions of Section 163.3180(5)(2)(e), Florida Statutes, Owner is entitled to receive a credit for the conveyance of the Conveyed ROW under the Wintergreen Development Agreement, on a dollar-for-dollar basis for impact fees, mobility fees or other transportation concurrency mitigation requirements paid

or payable in the future with respect to the Project including the Capacity Reservation Fee due to City.

4.1.1. City and Owner believe that Owner is entitled to a credit against Impact Fees pursuant to Section 10-323 of the County Impact Fee Ordinance and that such credit should be provided pursuant to an impact fee credit agreement (the "County Impact Fee Credit Agreement") to be negotiated and entered into with County.

4.1.1.1 If Owner is able to retain counsel to represent Owner in connection with the County Impact Fee Credit Agreement, City will support Owner in connection therewith.

4.1.1.2 If Owner is not able to retain such counsel prior to the closing under the Property Donation Agreement, City will thereafter attempt to negotiate such an County Impact Fee Credit Agreement on behalf of Owner. In connection therewith:

a. Although City will permit Assistant City Attorney W. James Gooding III or another attorney with the City Attorney's office (either, the "City Attorney") to negotiate such an agreement on behalf of Owner, Owner acknowledges that the City Attorney represents City, and not Owner, in connection therewith. Therefore, while the City Attorney will communicate with and consider requests by Owner, the City Attorney will not be obligated to attempt to obtain provisions in the County Impact Fee Credit Agreement that the City Attorney reasonably anticipates that County will not agree to.

b. While City will attempt to negotiate the County Impact Fee Credit Agreement on behalf of Owner, City does not represent, warrant or guarantee to Owner that the County Impact Fee Credit Agreement will be acceptable to Owner. Rather, City will attempt to negotiate the County Impact Fee Credit Agreement within the confines of the County Impact Fee Ordinance.

c. If, during or following City's efforts, Owner is not satisfied with the County Impact Fee Credit Agreement as negotiated by City, Owner shall provide notice of such fact to City whereupon City will discontinue its efforts on behalf of Owner, and Owner will thereafter handle all negotiations with County in connection with the County Impact Fee Credit Agreement.

4.1.1.3 Under no circumstances is the County Impact Fee Credit Agreement a condition precedent to Owner's obligations under this Agreement or under the Property Donation Agreement.

4.1.2. Because the County is not a party to this Agreement, in the event that County hereafter adopts or imposes any new impact fee, mobility fees, or other transportation concurrency mitigation requirements that are payable with respect to the Project, Owner shall, as required, make appropriate notification or application to County with respect to Owner's rights to the dollar-for-dollar credit

specified in the referenced provisions of Section 163.3180(5)(2)(e) of the Florida Statutes.

4.1.3. City acknowledges that Owner is entitled to a credit against the Concurrency Reservation Fee due to City under the City CMS. The amount of such credit for the Conveyed ROW shall be determined as follows:

4.1.3.1 By agreement between City and Owner.

4.1.3.2 If City and Owner are unable to agree upon the value, and if Owner and County enter into a County Impact Fee Agreement pursuant to paragraph 4.1.1 of this Agreement, pursuant to the method for valuing the Conveyed ROW set forth therein.

4.1.3.3 Otherwise, as set forth in the City CMS (currently Section 86-10(g)(6).

5. **Capacity Reservations**.

5.1. Reservation of Capacity.

5.1.1. In consideration for Owner's obligations under this Agreement, there is reserved in favor of Owner, for the benefit of the Property, Reserved Capacity in the amount of 522 Trips.

5.1.1.1 Owner has previously submitted to City, with the submission of the Traffic Study, a Capacity Reservation request. Simultaneous with the execution of this Agreement, City will issue to Owner, for the benefit of Owner, and for the benefit of the Property, a concurrency determination in accordance with the normal procedures of City's CMS.

5.1.1.2 Such concurrency determination shall be conditioned upon Owner conveying to City the Conveyed ROW as and when set forth in the Wintergreen Development Agreement and, in any event, within six (6) months of the Effective Date of this Agreement. If such condition does not occur within such time period, City may revoke the concurrency determination in its sole discretion.

5.1.1.3 Further, if the amount of the credit to be provided to Owner for the Conveyed ROW pursuant to paragraph 4.1.3 is insufficient to pay the entire Concurrency Reservation Fee, Owner shall pay the difference to City within one (1) month after the amount of such credit is determined; if Owner does not do so, City may revoke the concurrency determination in its sole discretion.

5.2. Term of Reservation. The Reservation of Capacity granted to Owner by City as set forth above for the benefit of the Property or any portion thereof shall have a term commencing on the Effective Date of this Agreement and ending on the twenty-fifth anniversary of the date that City completes construction of Phase 1 of the portion of NW 44th Avenue that it is constructing pursuant to the Property Donation Agreement, and such roadway is open to the public for vehicular traffic; City will provide notice to Owner of such date so that Owner may calculate the duration. Any extensions of the reservations of capacity beyond

such twenty-fifth shall require amendment to this Agreement, and subsequent review and approval of an updated Traffic Study.

ADDITIONAL PROVISIONS

6. **Benefits of Development Agreement Act**. Pursuant to Section 163.3233, Florida Statutes:

6.1. The City's laws and policies governing the development of the Property at the time of the execution of this Agreement shall govern the development of the Property for the duration of this Agreement.

6.2. City may apply subsequently adopted laws and policies that are subject to this Agreement only if the City holds a public hearing and determines:

6.2.1. They are not in conflict with the laws and policies governing this Agreement and do not prevent development of the Property for the uses, intensities, or densities in this Agreement;

6.2.2. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to the Project that is subject to this Agreement;

6.2.3. They are specifically anticipated and provided for in this Agreement;

6.2.4. City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

6.2.5. This Agreement is based on substantially inaccurate information supplied by the developer.

6.3. Notwithstanding paragraph 6.2, no subsequently enacted laws or policies may, except as expressly set forth herein concerning termination of this Agreement, eliminate or modify the Reservation of Capacity provided for in paragraph 5 of this Agreement.

7. **Development Permits Required**.

7.1. Local Development Permits.

7.1.1. The local development permits approved or needed to be approved for the development of the Project (or portions thereof) in accordance with the provisions of this Agreement, and the status of each such permit or approval, are set forth on the attached **Exhibit B**.

7.1.2. Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified Permit, nor to obligate the City, to grant any of the Permits, actions, or approvals enumerated above.

7.2. Additional Permits, Etc. The failure of this Agreement to address any particular permit, condition, term, or restriction on development shall not relieve the Owner, City or County of the necessity of complying with any law governing said permitting requirement, conditions, terms and restrictions with respect to the contemplated development of the Project, as applicable.

7.3. Additional Conditions. City reserves the right to impose additional conditions, terms, restrictions or other requirements determined to be necessary for the public health, safety, and welfare of their citizens with respect to the development contemplated by the Owner and described in this Agreement, provided that such conditions, terms or restrictions shall not be in contravention with the terms of this Agreement.

8. **Public Facilities**. The Public Facilities that will service the Project, the person or entity who or which shall provide such Public Facilities, and the date of any new Public Facilities which must be constructed, are as follows:

8.1. Transportation Facilities. See the provisions of paragraphs 3 through 5 regarding Transportation Facilities which will provide capacity for the Project.

8.2. Potable Water. Potable water services for the Property are available from the City. City presently has sufficient permitted and constructed capacity, unreserved, for the development of the Project.

8.3. Sanitary Sewer. Sanitary sewer services for the Property are available from the City. City presently has sufficient permitted and constructed capacity, unreserved, for development of the Project.

8.4. Solid Waste Collection. Solid waste collection for the Property will be provided pursuant to the City Code by the City. City currently has sufficient capacity, unreserved, to provide solid waste collection services for the Project.

8.5. Educational Facilities. Public education services for the Property are currently provided by the following schools, operated by the Marion County Board of Public Education:

8.5.1. Elementary School – Saddlewood Elementary

8.5.2. Middle School – Liberty Middle School

8.5.3. High School – West Port High School

8.6. Recreational Facilities. The Property is served by recreational facilities owned by City, including the Ocala Sports Complex located within three (3) miles of the Property.

8.7. Health Systems and Facilities. West Marion Hospital is located approximately one and eight-tenths (1.8) miles from the Property.

9. **Additional Provisions**.

9.1. Notices.

9.1.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph 9.1:

9.1.1.1 For Developer: MTN Holding Company Inc., Attn: Don Carll, 2600 Pleasantdale Road, Suite 7, Atlanta, Georgia 30340; email: don@mtnholding.com.

a. With a copy to: Gary Scott Edinger, Esq., 305 NE 1st Street, Gainesville, FL 32601; email: gsedinger12@gmail.com.

9.1.1.2 For City: Director of Growth Management Services, 201 SE 3rd Street (2nd Floor), Ocala, FL 34471; email: TChighizola@Ocalafl.org.

a. With a copy to: City Engineer, 1805 N.E. 30th Ave., Building 600, Ocala, Florida 34470; email: SLanier@Ocalafl.org.

9.1.2. Each such Communication shall be deemed delivered:

9.1.2.1 On the date of delivery if by personal delivery;

9.1.2.2 On the date of email transmission if by email (subject to paragraph 9.1.5); and

9.1.2.3 If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.

9.1.2.4 Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

9.1.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with paragraph 9.1.2.

9.1.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

9.1.5. Concerning Communications sent by email:

9.1.5.1 The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;

9.1.5.2 If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time

for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;

9.1.5.3 Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.

9.1.5.4 The sender must print the email to establish that is was sent (though it need not do so at the time the email was sent); and

9.1.5.5 The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

9.2. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership by or among Owner, City or County in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

9.3. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Any portion of the Property which may under the terms of this Agreement later may be designated for public use or purposes shall be conveyed by Owner to City or County, as applicable. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

9.4. Default Provisions.

9.4.1. The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach or failure of an express condition hereunder.

9.4.2. All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedy provided by law or equity.

9.4.3. No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice (with, if applicable, a copy to any other Party to this Agreement) specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default.

9.4.4. In the event of a material default by Owner with respect to their obligations to City under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to City under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact Owner's obligations regarding, a Third Party Parcel, the right of City to withhold permits upon a default by Owner shall not extend to City permits pending or to be issued with respect to a successor owner of the Third Party Parcel. The Parties agree that failure of Owner to timely provide Concurrency Mitigation by conveying to City the Conveyed ROW under the provisions of this Agreement shall constitute a default with respect to, or impacting Owner's obligations regarding, a Third Party Parcel, and therefore permit City to withhold permits for such Third Party Parcel.

9.5. Estoppel Statements.

9.5.1. Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

9.5.1.1 Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

9.5.1.2 Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).

9.5.1.3 That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.

9.5.1.4 That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

9.5.1.5 That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

9.5.2. Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event suggest the Party

furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

9.6. Litigation. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.

9.7. Binding Effect. The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.

9.8. Headings. The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.

9.9. Severability. Except as otherwise set forth herein, in the event any provision or section of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

9.10. Survival of Representations and Warranties. All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.

9.11. Successors and Assigns.

9.11.1. All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.

9.11.2. Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.

9.12. Applicable Law. This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.

9.13. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

9.14. Amendment of Agreement. This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

9.15. Effective Date.

9.15.1. This Agreement shall become effective upon the occurrence of all of the following events: (1) the now-pending City Ordinance No. _____ becoming final and non-appealable; and (2) execution of this Agreement by all Parties; (3) and the recordation of the Agreement in the Public Records of Marion County, Florida.

9.15.2. Notwithstanding the foregoing:

9.15.2.1 The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date; and

9.15.2.2 In the event this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Marion County, Florida, the obligations of the parties shall be suspended hereunder.

9.16. Term. The term of this Agreement shall be for a period of thirty (30) years, commencing on the Effective Date. The duration of the Reservation of Capacity granted to Owner is governed by paragraph 5.2 of this Agreement which shall apply notwithstanding that such duration is less than the term of this Agreement.

9.17. Exhibits.

9.17.1. All exhibits attached to this Agreement shall be deemed incorporated herein by reference.

9.17.2. The following exhibits are attached to this Agreement:

9.17.2.1 **Exhibit A** – Property

9.17.2.2 **Exhibit B** – Permits/Approvals

9.17.2.3 **Exhibit C** – Equivalency Matrix

THEREFORE, the Parties have executed this Agreement effective as of the Effective Date (notwithstanding that it may be executed or acknowledged on other dates as set forth below).

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Country Green, LP, a Nevada limited liability partnership

By: _____
Don Carll as General Partner

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this ____ day of _____, 2022, by Don Carll as General Partner of Country Green, LP, a Nevada limited liability partnership.

_____
Notary Public, State of _____
Name: _____

Commission Number:
Commission Expires:

Notary: Check one of the following:
☐ Personally known OR ☐ Produced Identification

☐ Produced Identification (if this box is checked, fill in blanks below).
Type of Identification Produced: _____
_____

ATTEST:

_____
Angel B. Jacobs
City Clerk

City of Ocala, a Florida municipal corporation

_____
Ire J. Bethea, Sr.
President, Ocala City Council

Approved as to form and legality

_____
W. James Gooding III
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this ____ day of _____, 2022, by Ire J. Bethea, Sr., as City Council President, for the City of Ocala, a Florida municipal corporation.

_____
Notary Public, State of Florida
Name: _____

Commission Number:
Commission Expires:

Notary: Check one of the following:
☐ Personally known OR ☐ Produced Identification

☐ Produced Identification (if this box is checked, fill in blanks below).
Type of Identification Produced: _____
_____

EXHIBIT A
PROPERTY

Real property with Marion County Tax Parcel ID #: 23320-005-03 described as follows:

SEC 27 TWP 15 RGE 21
COM AT NW COR OF S 1/2 OF SE 1/4 OF SEC 21 TH S 00-27-06 E 32.55 FT TO POB TH S 89-52-02 E 660.51 FT TH S 00-06-59 W 1294.05 FT TH S 00-04-57 W 1324.83 FT TH N 89-49-15 W 656.99 FT TH N 00-02-37 W 1325.18 FT TH N 00-05-22 E 1293.17 FT TO POB.

EXHIBIT B
PERMITS/APPROVALS

	PERMITS/APPROVALS[2]	STATUS
1.	Annexation of the Property into the jurisdictional boundaries of the City	Completed
2.	Assignment of appropriate Future Land Use designation for Property	Completed
3.	Assignment of Planned Development (PD) zoning to Property	Pending[3]
4.	Approval of PD Plan for Property	Pending[4]
5.	Approval of Final Development Plan for the entire Property or portions of the Property, for PD zoning district	Pending
6.	Water Management District Environmental Resources (stormwater) Permit	TBAF[5]
7.	FDEP Permit – extension of City potable water system	TBAF
8.	City approval - extension of City sanitary sewer system	TBAF
9.	City approval – Amended Conceptual Site Development Plan (to be obtained as phases of project) if phases of project are developed (if required by City Code)	TBAF
10.	City Site Plan approval (Commercial sites requiring site plan approval under City Land Development Regulations)	TBAF
11.	City Plat approval – Plat(s) of property or portions thereof	TBAF

[2] Some of the Permits or Approvals identified above would be issued multiple times as sub-areas of the Property are developed. Nothing in this Agreement shall be deemed to obligate the Owner's compliance with terms and provisions of each such identified permit, nor to obligate the City or County to grant any of the permits, actions or approvals enumerated above.
[3] It is anticipated that this will be approved simultaneously with the approval of this Agreement.
[4] See Footnote3.
[5] "TBAF" stands for ("to be applied for").

EXHIBIT C
EQUIVALENCY MATRIX

COUNTRY GREEN PD TRIP EQUIVALENCY MATRIX

Land Use Trip Equivalency Matrix

A. LAND USE EQUIVALENCY RATES

CHANGE FROM \ CHANGE TO	Single-Family Housing (DU)	Multi-Family Housing (DU)	Assisted Living Facility (Beds)	General Office (1,000 SF)	Medical-Dental Office (1,000 SF)	Commercial Retail (1,000 SF)
Single-Family Housing (DU)	--	2.4353	3.8030	0.8187	0.2721	0.2437
Multi-Family Housing (DU)	0.4106	--	1.5616	0.3362	0.1117	0.1001
Assisted Living Facility (Beds)	0.2630	0.6404	--	0.2153	0.0716	0.0641
General Office (1,000 SF)	1.2215	2.9748	4.6453	--	0.3324	0.2977
Medical-Dental Office (1,000 SF)	3.6749	8.9495	13.9754	3.0085	--	0.8955
Commercial Retail (1,000 SF)	4.1036	9.9937	15.6059	3.3595	1.1167	--

B. EQUIVALENCY EXAMPLES

EXAMPLE 1: TRADE FROM COMMERCIAL RETAIL TO MULTI-FAMILY HOUSING
Trade 10,000 SF of Commercial Retail for ? DU of Multi-Family Housing
= (10 KSF) Commercial Retail x 9.9937 DU of Multi-Family Housing
= 99.937 x (DU) Multi-Family Housing
= 100 DU of Multi-Family Housing

EXAMPLE 2: TRADE FROM COMMERCIAL RETAIL TO OFFICE
Trade 30 KSF of Commercial Retail for ? (1,000) SF of Office
= (30 KSF) Commercial Retail x 3.3595 (1,000 SF) of Office
= 100.785 x (1,000) SF Office
= 100,785 SF Office

EXAMPLE 3: ADD ALF FROM MULTI-FAMILY HOUSING
Add 150 beds of ALF for ? DU of Multi-Family Housing
= 150 Beds of ALF / 1.5616 (DU) Multi-Family Housing
= 96.056 x DU Multi-Family Housing
= Reduce Multi-Family Housby by 96 DU

C. SOURCE INFORMATION AND DOCUMENTATION FOR EQUIVALENCY RATES

Land Use	Units	Gross Trip Rate [1]	% New Trips [2]	Trips / Unit
Single-Family Housing (ITE 210)	1 (DU)	0.990	78.00%	0.772
Multi-Family Housing (ITE 221)	1 (DU)	0.406	78.00%	0.317
Assisted Living Facility (ITE 254)	1 (Bed)	0.260	78.00%	0.203
General Office (ITE 710)	1 (1,000 SF)	1.150	82.00%	0.943
Medical-Dental Office (ITE 720)	1 (1,000 SF)	3.460	82.00%	2.837
Commercial Retail (ITE 820)	1 (1,000 SF)	5.853	54.12%	3.168

D. FOOTNOTES

[1]: Trip Rate based upon ITE *Trip Generation, Tenth Edition*, p.m. peak-hour trip generation rates as follows:

Single-Family	Obtained using the Trip Generation rate for ITE LUC 210.
Multi-Family	Obtained using the Trip Generation equation for ITE LUC 221 and the approved trip generation for the project.
Assisted Living Facility	Obtained using the Trip Generation rate for ITE LUC 254.
Office	Obtained using the Trip Generation rate for ITE LUC 710.
Medical-Dental Office	Obtained using the Trip Generation rate for ITE LUC 720.
Commercial Retail	Obtained using the Trip Generation equation for ITE LUC 820 and the approved trip generation for the project.

[2]: % New is based upon the Internal Capture and Pass-by Capture = (1 - IC%) * (1 - PB%). An internal capture of 22% was applied for residential uses and 18% for retail/office uses based on the trip generation for the overall site. A pass-by capture of 34% was applied to the shopping center land use consistent with the trip generation approved for the proposed development program.

k:\oca_civil\142742000 - wintergreen pd tia\calcs\equivalency matrix\[country green pd - trip equivalency matrix.xlsx]trip eq. matrix

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