

**TAB 2**

**ROY FAMILY RANCHES**

**PROJECT DA2012-01**

**Staff Report**  
**Development Agreement (DA2012-01)**  
**Roy Family Ranches**  
**2007 and 2011 21<sup>st</sup> Street W.**

**REQUEST**

Roy Family Ranches is requesting a Development Agreement to defer the construction of stormwater facilities for the remaining 4 single family lots located at 2007 and 2011 21<sup>st</sup> Street W. On November 21, 2011 The City Commission granted PD-H zoning and preliminary plat approval for 6 single family lots on approximately 8 acres containing 2 single family residences. The applicant has now applied for final plat and a development agreement with the City.

The applicant indicates that it may take several years to build out the remaining lots in the subdivision, requiring the subject development agreement as Section 26-21 of the Subdivision Code states:

*All improvements required by these regulations shall be installed by and at the expense of the developer, as required by the city engineer in accordance with professional engineering standards*  
*(e) Drainage. An adequate drainage system, including necessary curbs, pipes, culverts, drop inlets, bridges, swale ditches, ponds, lakes and their outlets, subsurface drains, etc. shall be provided for the proper drainage of all surface water. All drainage shall be designed using the appropriate criteria of the Southwest Florida Water Management District or where applicable, county or FDOT minimum criteria for drainage design. As-built drawings shall be supplied by the subdivider.*

**OWNERS:** Charles A. and Pamela G. Roy and Brian T. and Heidi A. Allwood

**LOCATION/PIN #/PARCEL SIZE OF SUBJECT PROPERTIES**

2007 W 21<sup>st</sup> Street (PID # 2415410451)/4.33 acres  
2011 W 21<sup>st</sup> Street (PID # 2415410379)/3.68 acres  
Total Site: 8.01 acres

**PLAN/ZONING/EXISTING USE OF SUBJECT PROPERTIES**

Residential-4/PD-H (Planned Development-Housing)/2 single-family detached units, barn, horses, gazebo

**PLAN/ZONING/USES OF SURROUNDING AREA**

North: RES-3 (County) & RES-4 (City)/A-1 (County) & ER (City)/vacant land  
South: RES-3 (County) & RES-4 (City)/A-1 (County) & ER (City)/single family residential  
East: RES-3 (County)/A-1 (County)/vacant land  
West: RES-4 (City)/ER (City)/single family residential

## **BACKGROUND**

SWFWMD approved a master drainage Permit on February 16, 2012 which was modified by 3 Permits issued on May 11, 2012 addressing Lots 1, 4 and 3 respectively. The original Permit addresses Lot 6. Lots 2 and 5 have existing residences. The 5 year SWFWMD permits will defer the construction of drainage facilities until each of the remaining residences is constructed

Section 16.3 Development Agreement of the Zoning Code lists a number of items required to be included in a development agreement. The proposed Roy Family development agreement meets all the requirements except (g), a description of any reservation or dedication of land for public purposes, which is not applicable to this project. The proposed development agreement is for 20 years and requires that the SWFWMF Permit be valid at the time of construction.

### **Consistency with Comprehensive Plan and Concurrency Finding**

On November 21, 2011, the City Commission approved the annexation and plan amendment to Res-4 for the eastern lot (2007 21<sup>st</sup> Street W), and rezoned both lots to PD-H for 6 SF lots off the existing private drive at a density of 0.75 du/ac, consistent with the Res-4 (4 du/ac) as well as the surrounding E-R zoning district (1 du/ac). The proposed development agreement is consistent with these approvals and is therefore consistent with the densities of the Future Land Use Element of the Palmetto 2030 Comprehensive Plan.

Minimum requirements for concurrency per Sec. 14.3 of the Zoning Code is as follows:

*In order to obtain a certificate of concurrency one (1) of the following conditions must be satisfied. For water, wastewater, drainage and solid waste:*

- (1) Necessary facilities and services are in place at the time the development permit is issued; or*
- (2) Necessary facilities will be in place when the impacts of development occur (a conditional development permit); or*
- (3) Necessary facilities are under construction at the time the permit is issued; or*
- (4) Necessary facilities/services are guaranteed in an enforceable development agreement pursuant to Sections 163.3220 through 163.3243, Florida Statutes or an agreement or development order issued pursuant to Chapter 380, Florida Statutes; or*

*For transportation and recreation/open space, any one (1) of the above and:*

- (5) Necessary facilities and services are the subject of a binding executed contract between the city and a contractor which provides for the commencement of actual construction or provision of services within one (1) year after the issuance of a development permit*

Water, wastewater and solid waste will be in place at the time the development permit is issued and drainage facilities will be guaranteed through the proposed development agreement.

### **STAFF RECOMMENDATION:**

Staff recommends approval of the proposed development agreement as it is consistent with the City's Comprehensive Plan and meets the concurrency requirements of the Zoning Code subject to

recommended edits to the text of the development agreement.

**PLANNING AND ZONING BOARD RECOMMENDATION:**

The Planning and Zoning Board shall recommend **APPROVAL, APPROVAL WITH CONDITION(S) or DENIAL** of the proposed Development Agreement.

**CITY COMMISSION:**

The Planning and Zoning Board shall **APPROVE, APPROVE WITH CONDITION(S) or DENY** the proposed Development Agreement.

**ROY FAMILY RANCHES**  
**LOCAL DEVELOPMENT AGREEMENT**

This **LOCAL DEVELOPMENT AGREEMENT** ("Development Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **The City of Palmetto, a municipal corporation**, whose address is 516 8<sup>th</sup> Avenue W., Palmetto 34221, (the "City") and Charles A. Roy and Pamela G. Roy, and Brian T. Allwood and Heidi A. Allwood, care of address is 2007 21<sup>st</sup> Street W, Palmetto, FL 34221 (the "Applicant").

**Recitals:**

Applicant holds legal title to a 8.01 ± acre parcel of real property located in the City of Palmetto and generally bounded by single family residential/ Lake Rowlett to the south, vacant land to the east, vacant land to the north, and single family residential to the west (the "Project Site"), the complete legal description for which is attached hereto as Exhibit "A".

Applicant has, pursuant to Application No. AN/PA/Z/GDP 2011-03, applied for and received (i) annexation into the city, (ii) a change of the Plan Category to ER, (iii) zoning and preliminary site plan approval from the City of Palmetto to rezone the Project Site to the PDH and (iv) a General Development Plan for 6 single family lots with homes to be constructed on the Project Site (the "Roy Family Ranches" or the "Project").

There already exist two houses on the Project Site, so that only four (4) additional homes will be constructed on the four (4) vacant lots ("Remaining Lots"), as shown on the Plat of the Project.

The City's Code of Ordinances, Chapter 26, Subdivisions, Article I, Section 26-1, establishes regulations to provide for the harmonious development of the City with regards to various items, including transportation, potable water, sanitary facilities and drainage.

The preliminary site plan, general development plans and other stipulations between the City and Applicant provide that each home when constructed will connect directly into the City's water and sewer systems.

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Applicant has, pursuant to Application No. AN/PA/Z/GDP 2011-03, applied for and received (i) annexation into the city, (ii) a change of the Plan Category to RES-4, (iii) zoning and preliminary plat approval from the City of Palmetto to rezone the Project Site to the PD-H and (iv) a General Development Plan for 6 single family lots with homes to be constructed on the Project Site (the “Roy Family Ranches” or the “Project”).

There already exist two houses on the Project Site, so that only four (4) additional homes will be constructed on the four (4) vacant lots (“Remaining Lots”), as shown on the approved GDP for the Project.

The City’s Code of Ordinances, Chapter 26, Subdivisions, Article I, Section 26-1, establishes regulations to provide for the harmonious development of the City with regards to various items, including transportation, potable water, sanitary facilities and drainage.

The preliminary plat, general development plan and other stipulations between the City and Applicant provide that each home when constructed will connect directly into the City’s water and sewer systems.

The Roy Family Ranches Subdivision Preliminary Plat/General Development Plan was approved with the understanding that all required infrastructure was acceptable (private street) or available within the adjacent public Right-of-way (water and sewer) with the exception of a grading and drainage plan for the subdivision as required by Section 26-21 of the City Ordinances.

Southwest Florida Water Management District (SWFWMD) approved construction plans for Roy Family Ranches on February 16, 2012, by issuance of permit No. 659458/46040789.000 ("Master Permit") establishing design criteria for the proposed 6 lot subdivision. The 2 residential lots on which homes are currently constructed (Lots 2 and 5) are exempt from the plan. The Master Permit establishes a separate drainage design for each of the Remaining Lots on an individual basis with outfall to Lake Rowlett via platted drainage easements. This design allows each of the Remaining Lots to function independently of others regarding drainage. Each of the Remaining Lots will have its own SWFWMD permit ("applicable SWFWMD Permit").

Applicant does not wish to disturb the property at this time and would like to defer the construction of the drainage facility for each of the Remaining Lots until such time as a building permit is acquired for a Remaining Lot. At the time of construction of a residence on a Remaining Lot, the Applicant or the then owner of the lot will be required to construct the drainage facilities.

Because the proposed build out of the Remaining Lots may take several years, Applicant is requesting the approval of a "Development Agreement" with the City which will allow the Applicant or any successor owner of a lot up to twenty years to construct the drainage facilities. The Development Agreement would tie the construction of these facilities to the building permit for each lot.

The City Commission has approved the Project subject to the condition that Applicant undertake certain actions as hereinafter specified and that performance of same be guaranteed in an enforceable Development Agreement as authorized by Sections 163.3220 through 163.3246, Florida Statutes.

Pursuant to Section 163.3220, Florida Statutes, et seq., the City is authorized to enter into a Development Agreement.

The first of two required public hearings on this Development Agreement was held by the Planning and Zoning Board on \_\_\_\_\_, \_\_\_\_\_, at which time the Planning and Zoning Board reviewed this Development Agreement, received the recommendation of the Planning staff, and found the Development Agreement to be consistent with the City Comprehensive Plan and Code of Ordinances.

The second required public hearing on this Development Agreement was held by the City Commission on \_\_\_\_\_, \_\_\_\_\_, at which time the City Commission approved this Development Agreement and authorized the Mayor to execute the Development Agreement on behalf of the City.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. **Recitals True and Correct.** The recitals set forth above are true and correct and are incorporated herein by reference.
2. **Description of Development Uses.** The Project shall be developed including the following components:  
  
Six single family residences, with four (4) of the lots to have an onsite drainage plan as provided by each applicable SWFWMD Permit.
3. **Ownership of Land Subject to Development Agreement.** A legal description of the land subject to this Development Agreement (i.e., the Project Site) is attached hereto as Exhibit "A". The current legal owners of the Project Site are: Charles A. Roy and Pamela G. Roy, and Brian T. Allwood and Heidi A. Allwood.
4. **Description of Public Facilities.** The following public facilities and services currently serve the Project:



(A) Potable Water: The City currently provides potable water to the Project Site in sufficient quantity to serve the Project.

(B) Sanitary Sewer: The City currently provides sanitary sewer service to the Project Site in sufficient quantity to serve the Project.

(C) Solid Waste: The City currently provides Solid Waste Management Services to the Project Site to serve the Project.

(D) Storm Water Management: With the Applicant's or subsequent Owner's construction of the proposed storm water management facilities on each lot as required by the applicable SWFWMD Permit and SWFWMD regulations, the Project will meet concurrency requirements for storm water.

5. **Construction of Drainage System.** For each of the Remaining Lots, at the time of construction of a house on any one of the Remaining Lots, the owner shall cause the required drainage facilities to be constructed thereon. In addition to all documents that the city normally requires for an application for a building permit, the owner for such lot shall include in the application for a building permit with the City:

Plans for the construction of the drainage system designed and approved for such lot, in accordance with the Applicable SWFWMD Permit.

Provided that all other conditions for issuance of a certificate of occupancy have been met, upon certification that the drainage system has been constructed to the standards of the Applicable SWFWMD Permit, the City shall issue a Certificate of Occupancy for the house and Lot.

6. **Time Frame of Permits.** Applications for building permits for each of the Remaining Lots shall be filed with the City on or before the expiration of this Development Agreement. Any of the Remaining Lots that does not have a certificate of occupancy shall not be entitled to receive a building permit for construction thereon, unless or until a valid SWFWMD Permit is presented to the City.

7. **Concurrency Findings.** The Planning and Zoning Board in its capacity as the Local Planning Agency of City, on \_\_\_\_\_, \_\_\_\_\_, found that the concurrency requirements of

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the Comprehensive Plan and the City Code of Ordinances will be met for the Project regarding the facilities and services described in Paragraph 5, provided the terms and conditions of this Development Agreement are undertaken and performed by Applicant.

8. **Consistency with Comprehensive Plan.** The Planning and Zoning Board, in its capacity as the Local Planning Agency for the City, on \_\_\_\_\_, \_\_\_\_\_, specifically found that the Project, as detailed in Application No. AN/PA/Z/GDP 2011-03, and this Development Agreement, are consistent with the Comprehensive Plan of the City and the City Code of Ordinances of the City, provided that the Applicant performs all obligations accruing under the terms of this Development Agreement.

9. **Disclaimer of Joint Venture.** Applicant and City represent that by the execution of this Development Agreement it is not the intent of the parties that this Development Agreement be construed or deemed to represent a joint venture or common undertaking between City and Applicant, or either, with any third party. While engaged in carrying out and complying with the terms of this Development Agreement, Applicant is an independent principal and not a contractor for or an officer or employee of City. Applicant shall not at any time or in any manner represent that it or any of its agents or employees are employees of City.

10. **Successors in Interest.** The burdens of this Development Agreement shall be binding upon, and the benefits shall inure to, all successors in interest to the parties to the Development Agreement including all mortgagees to the parties to this Development Agreement. Notwithstanding anything in this Development Agreement to the contrary, the City shall have no responsibility or liability for any obligations of Applicant under this Development Agreement, and the City does not assume any obligations to or for Applicant.

11. **Amendments:** All amendments to this Development Agreement, including any such amendments extending the term of the Development Agreement, shall be ineffective unless reduced to writing and executed by the City and Applicant, in accordance with Article XVI of the City Zoning Code and Sections 163.3237 and 163.3229, Florida Statutes.

12. **Applicable City Ordinances and Codes:** In accordance with Section 163.3233, Florida Statutes, and Article XVI of the City Zoning Code, the codes, policies, and ordinances of

the City governing the development of the Project upon the date of execution of this Development Agreement shall govern the development of the Project for the duration of this Development Agreement: provided, however, the City may apply codes, policies, and ordinances adopted subsequent to the execution hereof to the Project only if City has held a public hearing and made the determinations required by the above cited Florida Statute and Code provisions.

13. **Recording of this Development Agreement:** The Clerk of the City (the "Clerk") shall record this Development Agreement in the Public Records of Manatee County, Florida, no later than fourteen (14) days after the execution of this Development Agreement by all parties. Applicant shall bear the expense of recording this Development Agreement. Additionally, the Clerk shall mail a recorded copy of this Development Agreement to the state land planning agency by certified mail, return receipt requested no later than fourteen (14) days after the recordation of this Development Agreement. The City shall record a notice in the Public Records of Manatee County to reflect the date indicated on the return receipt card to establish the date of receipt by the Department of Economic Opportunity.

14. **Applicable Law and Venue.** This Development Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusive in Manatee County, Florida, unless prohibited by law.

15. **Severability.** In the event any term or provision of this Development Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Development Agreement; provided, however, if any term or provision of this Development Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

16. **Entire Agreement.** This Development Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions,

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representations, understandings, or terms of any kind as conditions or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing signed by both parties and executed in the same manner as this Development Agreement.

17. **Parties Drafted Equally.** The City and Applicant agree that both parties have played an equal and a reciprocal part in drafting this Development Agreement. Therefore no provision of this Development Agreement shall be construed by a Court or judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.

18. **Notices.** All notices, demands, requests for approvals or other communications given by either party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by a recognized national overnight courier service, or by hand delivery to the office of each party indicated below and addressed as follows:

To Applicant: Charles A. Roy and Pamela G. Roy, and  
Brian T. Allwood and Heidi A. Allwood  
2007 21<sup>st</sup> Street West  
Palmetto, FL 34221

With a Copy to: Hugh E. McGuire, Esq.  
1206 Manatee Ave W  
Bradenton, FL 34205

To City: Mayor  
516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221

With Copies to: Public Works Director  
City of Palmetto  
600 17<sup>th</sup> Street West  
Palmetto, Florida 34221

City Attorney  
City of Palmetto  
516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221

19. **Survival of Warranties, Representations.** The warranties, representations, covenants and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

20. **Effective Date.** This Development Agreement shall become effective immediately upon the occurrence of all the following:

(A) Approval of the final subdivision plat application by the City;

(B) Recordation of a fully executed original of this Development Agreement in the public records of Manatee County, Florida, as provided herein; and

(C) Expiration of any and all appeal periods for any challenge to the approval of the plan amendment, zoning, GDP and preliminary plat applications or this Development Agreement; and

(D) Thirty (30) days have expired since a copy of this Development Agreement has been received by the State Land Planning Agency as required pursuant to Section 163.3239, Florida Statutes, and Article XVI of the City Zoning Code and as evidenced by the notice recorded pursuant to Paragraph 19 hereof.

21. **Termination.** This Development Agreement as it relates to any of the Remaining Lots shall automatically terminate and expire, unless extended by agreement of the parties, upon the occurrence of the first of the following:

(A) The full performance by all parties hereto of each and every one of their respective obligations arising under the terms of this Development Agreement.

(B) The expiration of the applicable SWFWMD permit or any extension thereof. In the event that any expired SWFWMD Permit is reinstated or replaced with another permit issued by SWFWMD, then this Agreement shall be reinstated to the extent of such reinstated or new permit.

(C) The execution of a written agreement by all parties, or their successors in interest, providing for the cancellation and termination of this Development Agreement.

(D) The revocation of this Development Agreement by the City Commission in accordance with Section 163.3235, Florida Statutes, and Section 16.11 of the City Zoning Code.

(E) The expiration of twenty (20) years from the effective date of this Development Agreement, as defined in Paragraph 20 above.

22 **Annual Monitoring.** During the term of this Development Agreement the Applicant shall file an annual monitoring report relating to their respective property with the Mayor. The first such report shall be filed one year from the effective date of this Development Agreement as defined herein. The City shall have the right and obligation to inspect and monitor the Project at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of this Development Agreement.

**THIS DEVELOPMENT AGREEMENT** was adopted by the City Commission on \_\_\_\_ day of \_\_\_\_\_, 2012, at a publically held meeting of the City Commission at which a quorum was present and after such notices had been posted as required by the ordinances of the City.

**CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, a municipal corporation,**

ATTEST: James R. Freeman,  
City Clerk

By: \_\_\_\_\_  
Mayor Shirley Groover Bryant

By: \_\_\_\_\_  
Clerk

Date: \_\_\_\_\_

Witness:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
**Charles Roy**

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

THE FOREGOING INSTRUMENT was acknowledged before me this \_\_\_\_ day  
of \_\_\_\_\_, 2012, Charles Roy, who is (personally known or who showed  
\_\_\_\_\_ as identification) to me.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

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The Roy Family Ranches Subdivision Preliminary Plat/General Development Plan was approved with the understanding that all required infrastructure was acceptable (private street) or available within the adjacent public Right-of-way (water and sewer) with the exception of a grading and drainage plan for the subdivision as required by Section 26-21 of the City Ordinances.

Southwest Florida Water Management District (SWFWMD) approved construction plans for Roy Family Ranches on February 16, 2012, by issuance of permit No. 659458/46040789.000 ("Master Permit") establishing design criteria for the proposed 6 lot subdivision. The 2 residential lots on which homes are currently constructed (Lots 2 and 5) are exempt from the plan. The Master Permit establishes a separate drainage design for each of the Remaining Lots on an individual basis with outfall to Lake Rowlett via platted drainage easements. This design allows each of the Remaining Lots to function independently of others regarding drainage. Each of the Remaining Lots will have its own SWFWMD permit ("applicable SWFWMD Permit").

Applicant does not wish to disturb the property at this time and would like to defer the construction of the drainage facility for each of the Remaining Lots until such time as a building permit is acquired for a Remaining Lot. At the time of construction of a residence on a Remaining Lot, the Applicant or the then owner of the lot will be required to construct the drainage facilities.

Because the proposed build out of the Remaining Lots may take several years, Applicant is requesting the approval of a "Development Agreement" with the City which will allow the Applicant or any successor owner of a lot up to twenty years to construct the drainage facilities. The Development Agreement would tie the construction of these facilities to the building permit for each lot.

The City Commission has approved the Project subject to the condition that Applicant undertake certain actions as hereinafter specified and that performance of same be guaranteed in an enforceable Development Agreement as authorized by Sections 163.3220 through 163.3246, Florida Statutes.



Pursuant to Section 163.3220, Florida Statutes, et seq., the City is authorized to enter into a Development Agreement.

The first of two required public hearings on this Development Agreement was held by the Planning and Zoning Board on \_\_\_\_\_, \_\_\_\_, at which time the Planning and Zoning Board reviewed this Development Agreement, received the recommendation of the Planning staff, and found the Development Agreement to be consistent with the City Comprehensive Plan and Code of Ordinances.

The second required public hearing on this Development Agreement was held by the City Commission on \_\_\_\_\_, \_\_\_\_, at which time the City Commission approved this Development Agreement and authorized the Mayor to execute the Development Agreement on behalf of the City.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. **Recitals True and Correct.** The recitals set forth above are true and correct and are incorporated herein by reference.

2. **Description of Development Uses.** The Project shall be developed including the following components:

Six single family residences, with four (4) of the lots to have an onsite drainage plan as provided by each applicable SWFWMD Permit.

3. **Ownership of Land Subject to Development Agreement.** A legal description of the land subject to this Development Agreement (i.e., the Project Site) is attached hereto as Exhibit "A". The current legal owners of the Project Site are: Charles A. Roy and Pamela G. Roy, and Brian T. Allwood and Heidi A. Allwood.

4. **Description of Public Facilities.** The following public facilities and services currently serve the Project:

(A) Potable Water: The City currently provides potable water to the Project Site in sufficient quantity to serve the Project.

(B) Sanitary Sewer: The City currently provides sanitary sewer service to the Project Site in sufficient quantity to serve the Project.

(C) Solid Waste: The City currently provides Solid Waste Management Services to the Project Site to serve the Project.

(D) Storm Water Management: With the Applicant's or subsequent Owner's construction of the proposed storm water management facilities on each lot as required by the applicable SWFWMD Permit and SWFWMD regulations, the Project will meet concurrency requirements for storm water.

5. **Construction of Drainage System.** For each of the Remaining Lots, at the time of construction of a house on any one of the Remaining Lots, the owner shall cause the required drainage facilities to be constructed thereon. In addition to all documents that the city normally requires for an application for a building permit, the owner for such lot shall include in the application for a building permit with the City:

Plans for the construction of the drainage system designed and approved for such lot, in accordance with the Applicable SWFWMD Permit.

Provided that all other conditions for issuance of a certificate of occupancy have been met, upon certification that the drainage system has been constructed to the standards of the Applicable SWFWMD Permit, the City shall issue a Certificate of Occupancy for the house and Lot.

6. **Time Frame of Permits.** Applications for building permits for each of the Remaining Lots shall be filed with the City on or before the expiration of this Development Agreement. Upon the expiration of any Applicable SWFWMD Permit, any of the Remaining Lots that does not have a certificate of occupancy shall not be entitled to receive a building permit for construction thereon, unless or until a valid SWFWMD Permit is presented to the City.

7. **Concurrency Findings.** The Planning and Zoning Board in its capacity as the Local Planning Agency of City, on \_\_\_\_\_, \_\_\_\_\_, found that the concurrency requirements of the Comprehensive Plan and the City Code of Ordinances will be met for the Project regarding the facilities and services described in Paragraph 5, provided the terms and conditions of this Development Agreement are undertaken and performed by Applicant.

8. **Consistency with Comprehensive Plan.** The Planning and Zoning Board, in its capacity as the Local Planning Agency for the City, on \_\_\_\_\_, \_\_\_\_\_, specifically found that the Project, as detailed in Application No. AN/PA/Z/GDP 2011-03, and this Development Agreement, are consistent with the Comprehensive Plan of the City and the City Code of Ordinances of the City, provided that the Applicant performs all obligations accruing under the terms of this Development Agreement.

9. **Disclaimer of Joint Venture.** Applicant and City represent that by the execution of this Development Agreement it is not the intent of the parties that this Development Agreement be construed or deemed to represent a joint venture or common undertaking between City and Applicant, or either, with any third party. While engaged in carrying out and complying with the terms of this Development Agreement, Applicant is an independent principal and not a contractor for or an officer or employee of City. Applicant shall not at any time or in any manner represent that it or any of its agents or employees are employees of City.

10. **Successors in Interest.** The burdens of this Development Agreement shall be binding upon, and the benefits shall inure to, all successors in interest to the parties to the Development Agreement including all mortgagees to the parties to this Development Agreement. Notwithstanding anything in this Development Agreement to the contrary, the City shall have no responsibility or liability for any obligations of Applicant under this Development Agreement, and the City does not assume any obligations to or for Applicant.

11. **Amendments:** All amendments to this Development Agreement, including any such amendments extending the term of the Development Agreement, shall be ineffective unless reduced to writing and executed by the City and Applicant, in accordance with Article XVI of the City Zoning Code and Sections 163.3237 and 163.3229, Florida Statutes.

12. **Applicable City Ordinances and Codes:** In accordance with Section 163.3233, Florida Statutes, and Article XVI of the City Zoning Code, the codes, policies, and ordinances of the City governing the development of the Project upon the date of execution of this Development Agreement shall govern the development of the Project for the duration of this Development Agreement: provided, however, the City may apply codes, policies, and ordinances adopted subsequent to the execution hereof to the Project only if City has held a public hearing and made the determinations required by the above cited Florida Statute and Code provisions.

13. **Recording of this Development Agreement:** The Clerk of the City (the "Clerk") shall record this Development Agreement in the Public Records of Manatee County, Florida, no later than fourteen (14) days after the execution of this Development Agreement by all parties. Applicant shall bear the expense of recording this Development Agreement. Additionally, the Clerk shall mail a recorded copy of this Development Agreement to the state land planning agency by certified mail, return receipt requested no later than fourteen (14) days after the recordation of this Development Agreement. The City shall record a notice in the Public Records of Manatee County to reflect the date indicated on the return receipt card to establish the date of receipt by the Department of Community Affairs.

14. **Applicable Law and Venue.** This Development Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusive in Manatee County, Florida, unless prohibited by law.

15. **Severability.** In the event any term or provision of this Development Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Development Agreement; provided, however, if any term or provision of this Development Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

16. **Entire Agreement.** This Development Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions, representations, understandings, or terms of any kind as conditions or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing signed by both parties and executed in the same manner as this Development Agreement.

17. **Parties Drafted Equally.** The City and Applicant agree that both parties have played an equal and a reciprocal part in drafting this Development Agreement. Therefore no provision of this Development Agreement shall be construed by a Court or judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.

18. **Notices.** All notices, demands, requests for approvals or other communications given by either party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by a recognized national overnight courier service, or by hand delivery to the office of each party indicated below and addressed as follows:

To Applicant: Charles A. Roy and Pamela G. Roy, and  
Brian T. Allwood and Heidi A. Allwood  
2007 21<sup>st</sup> Street West  
Palmetto, FL 34221

With a Copy to: Hugh E. McGuire, Esq.  
1206 Manatee Ave W  
Bradenton, FL 34205

To City: Mayor  
516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221

With Copies to: Public Works Director  
City of Palmetto  
516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221

City Attorney  
City of Palmetto  
516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221

19. **Survival of Warranties, Representations.** The warranties, representations, covenants and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

20. **Effective Date.** This Development Agreement shall become effective immediately upon the occurrence of all the following:

(A) Adoption and approval of the zoning, site plan and final subdivision plat applications by the City;

(B) Recordation of a fully executed original of this Development Agreement in the public records of Manatee County, Florida, as provided herein;

(C) Expiration of any and all appeal periods for any challenge to the approval of the zoning and preliminary site plan applications or this Development Agreement; and

(D) Thirty (30) days have expired since a copy of this Development Agreement has been received by the State Land Planning Agency as required pursuant to Section 163.3239, Florida Statutes, and Article XVI of the City Zoning Code and as evidenced by the notice recorded pursuant to Paragraph 19 hereof.

21. **Termination.** This Development Agreement as it relates to any of the Remaining Lots shall automatically terminate and expire, unless extended by agreement of the parties, upon the occurrence of the first of the following:

(A) The full performance by all parties hereto of each and every one of their respective obligations arising under the terms of this Development Agreement.

(B) The expiration of the applicable SWFWMD permit or any extension thereof. In the event that any expired SWFWMD Permit is reinstated or replaced with another

permit issued by SWFWMD, then this Agreement shall be reinstated to the extent of such reinstated or new permit.

(C) The execution of a written agreement by all parties, or their successors in interest, providing for the cancellation and termination of this Development Agreement.

(D) The revocation of this Development Agreement by the Board in accordance with Section 163.3235, Florida Statutes, and Section 16.11 of the City Zoning Code.

(E) The expiration of twenty (20) years from the effective date of this Development Agreement, as defined in Paragraph 20 above.

22 **Annual Monitoring.** During the term of this Development Agreement the Applicant shall file an annual monitoring report relating to their respective property with the Mayor. The first such report shall be filed one year from the effective date of this Development Agreement as defined herein. The City shall have the right and obligation to inspect and monitor the Project at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of this Development Agreement.

**THIS DEVELOPMENT AGREEMENT** was adopted by the City Commission on \_\_\_\_ day of \_\_\_\_\_, 2012, at a publically held meeting of the City Commission at which a quorum was present and after such notices had been posted as required by the ordinances of the City.

**CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, a municipal corporation,**

ATTEST: James R. Freeman,  
City Clerk

By: \_\_\_\_\_  
Mayor Shirley Groover Bryant

By: \_\_\_\_\_  
Clerk

Date: \_\_\_\_\_

Witness:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
**Charles Roy**

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

THE FOREGOING INSTRUMENT was acknowledged before me this \_\_\_\_ day  
of \_\_\_\_\_, 2012, Charles Roy, who is (personally known or who showed  
\_\_\_\_\_ as identification) to me.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

H:\h\_mcguire\ROY FAMILY RANCHES\Developer Agreement 6-18-2012.doc



## EXHIBIT "A"

### DESCRIPTION:

**COMMENCE** AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY FLORIDA; THENCE S00°13'30"E, 33.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 21ST STREET WEST FOR THE **POINT OF BEGINNING**; THENCE S89°53'45"W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 223.15 FEET TO THE NORTHEAST CORNER OF LOT 3, CHURCH HILL DOWNS SUBDIVISION AS PER PLAT THEREOF RECORDED IN PLAT BOOK 20, PAGES 196 AND 197 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; THENCE S00°05'36"W, ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 599.96 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3; THENCE WEST, 5.99 FEET, MORE OR LESS, TO THE NORMAL HIGH WATER LINE OF LAKE ROWLETT; THENCE MEANDERING SOUTHERLY, ALONG SAID NORMAL HIGH WATER LINE, A DISTANCE OF 99.0 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION OF SAID NORMAL HIGH WATER LINE AND THE SOUTHERLY EXTENSION OF SAID EAST LINE OF LOT 3; THENCE CONTINUE MEANDERING SOUTHEASTERLY, ALONG SAID NORMAL HIGH WATER LINE, A DISTANCE OF 740.0 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION OF SAID NORMAL HIGH WATER LINE AND THE EAST LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED AND RECORDED IN OFFICIAL RECORD BOOK 2233, PAGE 4309, OF AFORESAID PUBLIC RECORDS; THENCE N00°12'46"E, ALONG SAID EAST LINE, A DISTANCE OF 726.62 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION OF SAID EAST LINE AND THE AFOREMENTIONED SOUTH RIGHT-OF-WAY LINE OF 21ST STREET WEST; THENCE S89°53'47"W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 249.63 FEET; THENCE S89°53'45"W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 26.80 FEET TO THE POINT OF BEGINNING.