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Hays County Texas
Liz Q. Gonzalez
County Clerk

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Parties:

Direct- DRIPPING SPRINGS CITY OF
Indirect- ANARENE INVESTMENTS LTD

Receipt Number: 318115
Processed By: Lynn Curry

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.



I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

A handwritten signature in cursive script, reading "Liz Q. Gonzalez".

Liz Q. Gonzalez, County Clerk

Hays County
Liz Q. Gonzalez
County Clerk
San Marcos, Texas 78666



70 2012 12030538

Instrument Number: 2012-12030538

As

Recorded On: October 23, 2012

OPR RECORDINGS

Parties: DRIPPING SPRINGS CITY OF

Billable Pages: 26

To ANARENE INVESTMENTS LTD

Number of Pages: 27

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

OPR RECORDINGS	116.00
Total Recording:	116.00

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

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User / Station: L Curry - Cashering #1

Record and Return To:

BAKER & ROBERTSON
P.O BOX 718
DRIPPING SPRINGS TX 78620



State of Texas |
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q. Gonzalez

Liz Q. Gonzalez, County Clerk

Draft "E"

DEVELOPMENT AGREEMENT
FOR ANARENE INVESTMENTS TRACT

STATE OF TEXAS §
COUNTY OF HAYS §

This Development Agreement ("Agreement") is between the City of Dripping Springs, (the "City"), and Anarene Investments Ltd., a Texas limited partnership ("Owner"). In this Agreement, the City and Owner are sometimes individually referred to as a "Party," and collectively referred to as the "Parties".

RECITALS:

WHEREAS, Owner has approximately 1,696 acres of land (the "Land") located within the extraterritorial jurisdiction (ETJ) of the City and in Hays County, Texas (the "County"), which is more fully described on *Exhibit A* attached hereto and incorporated herein for all purposes; and

WHEREAS, Owner intends to develop the Land as a master-planned community that will include residential and commercial uses, together with open space to benefit the residents and property owners of the community, as well as other residents of the City, the City's ETJ, and the County. In this Agreement, the Land, as it will be developed, is sometimes referred to as the "Project;" and

WHEREAS, the City is located in a rapidly growing area of the County and new construction and land development will impact the future character of the City; and

WHEREAS, the City has adopted a Comprehensive Plan to guide the City in planning for future growth and development, and the City Council finds that this Agreement is consistent with the Comprehensive Plan; and

WHEREAS, the City has determined that development agreements with developers of master-planned communities such as the Project will benefit the City by establishing land use controls; providing for the construction of appropriate and necessary utility, roadway and drainage infrastructure; encouraging economic development; protecting the environment; preserving native habitat and endangered species; and promoting the welfare of the citizens of the City and its ETJ; and

WHEREAS, the City and Owner are striving to achieve balance between the pressures of urbanization and the shared desires to protect the public safety, and conserve the hill country scenery and native habitat; and

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WHEREAS, this Agreement grants Owner a measure of predictability in terms of applicable municipal regulations and development fees; and

WHEREAS, this Agreement grants the City the public benefits related to the application of certain municipal regulations in the ETJ, including lighting regulations; and

WHEREAS, Owner and the City wish to enter into this Agreement to provide an alternative to the City's typical regulatory process for development; encourage innovative and comprehensive master-planning of the Land; provide a level of certainty of regulatory requirements throughout the term of this Agreement; and provide assurances of a high-quality development that will benefit the present and future residents of the City, the City's ETJ and the County; and

WHEREAS, the City is statutorily authorized to enter into such contracts with owners of property located in the City's ETJ pursuant to Texas Local Government Code Section 212.172; and

THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the City and Owner agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Agreement: This contract between the City of Dripping Springs, Texas and Owner, including all Exhibits, which are incorporated herein for all intents and purposes.

1.2 Applicable Rules:

Applicable Rules: The City Rules that, as modified by the Project Approvals and variances granted concurrent with this Agreement, if any, exist on the Effective Date of this Agreement and will be applicable to the development of the Property for the term of this Agreement. This term does not include Zoning, Building Codes, Landscaping, Lighting, Sign, or Exterior Design standards, as those regulations may apply or hereafter be applied to *non-residential* properties. This term does not include regulations mandated by state law, or that are necessary to prevent imminent harm to human safety or property, which may be modified and made applicable to the Project even after the Effective Date.

1.3 City: The City of Dripping Springs, an incorporated Type A, general-law municipality located in Hays County, Texas.

1.4 City Council: The governing body of the City of Dripping Springs, Texas.

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- 1.5 City Engineer:** The person or firm designated by the City Council as the engineer for the City of Dripping Springs, Texas.
- 1.6 City Rules:** The entirety of the City's Code of Ordinances, regulations and official policies, except as modified by this Agreement.
- 1.7 County:** Hays County, Texas.
- 1.8 Effective Date:** The date upon which this Agreement is executed by all Parties.
- 1.9 Home Owners Association (HOA):** is an organization created by a real estate developer for the purpose of controlling the appearance and managing any common-area assets during the marketing, managing, and selling of homes and sites in a residential subdivision. It grants the developer privileged voting rights in governing the association, while allowing the developer to exit financial and legal responsibility of the organization, typically by transferring ownership of the association to the homeowners after selling off a predetermined number of lots.
- 1.10 Impervious Cover Percentage:** The percentage calculated by dividing the total acres of impervious cover on the Land by the total number of acres included in the Land. Whether or not outdoor decks are included in the calculation of impervious cover shall be determined by the City Engineer based on the deck design and materials. In the calculation of impervious cover, the following shall be characterized as *pervious* for all purposes: open space, greenbelt, park, irrigation field, flood plain, water quality and/or drainage facility and/or area not lined with impermeable material, detention facility not lined with impermeable material, swale, irrigation area, playground, athletic fields, granite and/or pea gravel trail.
- 1.11 Land:** Approximately 1,696 acres of land, in Hays County, Texas, more fully described on the attached *Exhibit A*.
- 1.12 Master Plan:** The master plan of the City, originally presented in 1984, as may be amended, modified or supplemented by the City, in conjunction with the Comprehensive Plan.
- 1.13 Project:** The term as defined by Texas Local Government Code Chapter 245, as may be amended. The term refers to a specific property use and/or improvement undertaken on the Land, as documented in a manner that provides the City with fair notice.
- 1.14 Project Approvals:** All aspects of the Project outside the current scope of work will require prior approval by the City Council.
- 1.15 Parkland:** Parkland is a platted tract of land designated and used for recreation or open space.

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- 1.16 **Owner:** Anarene Investments Ltd., a Texas limited partnership, and any subsequent owner(s).
- 1.17 **TCEQ:** Texas Commission on Environmental Quality, or its successor agencies.
- 1.18 **TxDOT:** Texas Department of Transportation, or its successor agencies.

ARTICLE 2. PUBLIC BENEFITS, INFRASTRUCTURE & AMENITIES

- 2.1 **Purpose:** The development of the Land under this Agreement is intended to: (a) allow housing and commercial development within its ETJ to occur in an orderly manner in order to protect the health, safety and welfare of the City's present and future citizens; and (b) promote the aesthetic enhancement of the City and its ETJ; and (c) promote a safe and attractive self sustaining community.
- 2.2 **Environmental Protection:** Owner will implement compliance with the following natural resource laws and regulations, to the extent applicable:
 - 2.2.1 **Aquifer Protection:** Owner will comply with all applicable TCEQ regulations. Owner shall also take reasonable measures to protect the Trinity Aquifer, including at a minimum adherence to the above-cited Edwards Aquifer Rules for the Contributing Zone. If the development is a low-density development (less than fifteen (15%) Impervious Cover), no structural water quality controls will be required.
 - 2.2.2 **Land Application Restrictions:** If the Project utilizes individual onsite sewage disposal and if treated sewage effluent is disposed of through irrigation, property owners within the Project shall comply with the applicable City, County, and TCEQ permits. The City reserves the right to comment on any permit application submitted by the Owner.
 - 2.2.3 **Waterway Protection:** Owner shall obtain and comply with any authorizations from the US Army Corps of Engineers that may be required for road and utility crossings of creeks and construction of water quality protection infrastructure, including but not limited to Clean Water Act Section 404 Permitting.
 - 2.2.4 **Stormwater Controls:** Owner will prepare and implement a stormwater pollution prevention plan in compliance with the TCEQ's Texas Pollution Discharge Elimination System stormwater general permit for construction-related stormwater discharges.
 - 2.2.5 **Endangered Species:** Owner agrees to comply with the federal Endangered Species Act.

- 2.2.6 Water Conservation Plan:** Owner shall comply with the City's plan, which has been approved by the Lower Colorado River Authority (LCRA).
- 2.3 Parkland:** The Project will include approximately twenty-five (25) acres of parkland area to be dedicated and conveyed to the City of Dripping Springs, the land being more fully described on *Exhibit B* in meets & bounds and on a survey, attached hereto and incorporated herein for all purposes (the "Parkland"), and the form of the deed of conveyance being attached hereto as *Exhibit C*. The City agrees that, as part consideration for the dedication and conveyance of the Parkland, the City will name the Parkland and the pond located in the Parkland in accordance with written instructions from the representative of the John L. Hill, Jr. family, and will erect proper permanent signage that acknowledges the dedication and conveyance. The John L. Hill, Jr. family will not assign the naming rights granted herein. Additionally, this dedication and conveyance of the Parkland to the City shall fulfill all parkland dedication requirements of the Project to the City, including, but not limited to the requirements of Article 28.03 (Parkland Dedication) under the City's Code of Ordinances and Sections 19.1 and 19.4 (Subdivisions).

ARTICLE 3. PROPERTY DEVELOPMENT

- 3.1 Governing Regulations:** For purposes of any vesting analysis, the Parties agree that the Effective Date shall be construed as the date upon which the Development Agreement is approved by the City Council of Dripping Springs. The Applicable Rules shall govern the Project, unless otherwise expressly provided in this Agreement. For the term of this Agreement, the development and use of the Land will be controlled by the terms of this Agreement, the Project Approvals and the Applicable Rules. If there is any conflict between the Applicable Rules and the terms of this Agreement, the terms of this Agreement will control.

ARTICLE 4. FINANCING DISTRICT

- 4.1 Consent to Creation of District:** In accordance with Texas Local Government Code, Section 42.042, the City has considered the creation of conservation and reclamation districts, authorized pursuant to Texas Constitution Article III, Section 52, or Article XVI, Section 59 covering all or portions of the Land (the "Districts"). The City indicates its conceptual support for creation of the Districts pursuant to Section 42.042, Texas Local Government Code at the time of approval of this Agreement. The City's actual consent, if given, shall be evidenced by separate documents. The City agrees that any District may annex or exclude land owned by Owner that is located within the boundaries of the Project and the City's ETJ and may be divided in accordance with Chapters 49, 51, 53 and/or 54, Texas Water Code, or other Water Code provisions that may be applicable, in furtherance of Owner's development goals pursuant to this Agreement. Provided, however, that the Parties recognize that the property may lie within the City's "Potential service Area" in the "Wholesale Water Supply Agreement Between LCRA and the City of Dripping Springs," dated March 11, 2003. Additionally, the City's consent is conditioned upon the City being unable or refusing to provide water and/or wastewater services to the Property.

- 4.2 **Lighting:** Owner, or an electric utility designated by Owner, will construct all illumination for street lighting, signage, security, exterior, landscaping, and decorative facilities for the Project in accordance with all then-current City Rules, including the Lighting Ordinance in effect at the time of installation of the lighting, including both residential and non-residential rules. District(s) will be required to operate and maintain the lighting within its boundaries according to City Rules. Owners agree that all restrictive covenants for the Project shall reinforce this provision and be applied to all construction and builders.
- 4.3 **Fire Protection:** Each District, to the extent allowed by law, shall pursue all required approvals for, and, upon approval, will implement and finance a fire protection plan to provide fire protection services within the Project's boundaries in accordance with and subject to Section 49.351, Texas Water Code, and applicable regulations of the TCEQ, and Applicable Rules. Owners shall submit to City plans for emergency access points (e.g., crash gates) during the platting phase of development.
- 4.4 **Infrastructure Construction & Inspections:** Each District will be responsible for construction, operation and maintenance of all water, wastewater and drainage infrastructure within its boundaries, unless otherwise agreed to by Owner and the City. The City will have the right to review and approve all plans and specifications for such infrastructure during the Site Development Permit process, and to inspect all such infrastructure during construction and prior to acceptance for operation and maintenance. A copy of each set of approved plans and specifications and a copy of all inspection certificates will be filed with the City for review and approval. All water, wastewater, and drainage infrastructure within the Land shall be designed and built in accordance with the rules, regulations and specifications of the City and TCEQ, which rules, regulations and specifications are adopted as the governing rules, regulations and specifications for the water utility infrastructure constructed to serve the Project. All water, wastewater and drainage infrastructure within the Land shall be subject to City inspections and compliance with City Rules in effect at the time of inspection, as they may be amended from time to time, and TCEQ rules (TCEQ rules will control in the event of conflict). Fees for all inspections by the City or the City's designee under this section shall be paid by the District(s).
- 4.5 **Consent to Wastewater Discharge Facilities:** The City understands that the District(s) formed pursuant to Section 4.1 above, will apply to the TCEQ, or its successor agency, for a permit to treat and dispose wastewater generated by the development that is subject to this Agreement. The City reserves its right to comment on Owner's submission of such an application and order by the TCEQ.

ARTICLE 5. AUTHORITY

5.1 Term:

5.1.1 **Initial Term.** The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years thereafter ("Initial Term"), unless sooner terminated under this Agreement; provided, however, this Agreement may be extended for a longer duration not to exceed an additional fifteen (15) years upon mutual agreement of the Parties.

5.1.2 **Expiration.** After the Initial Term and any extension(s), this Agreement will be of no further force and effect, except that termination will not affect any right or obligation previously granted.

5.1.3 **Termination or Amendment.** This Agreement may be terminated or amended as to all of the Land at any time by mutual written consent of the City and Owner or may be terminated or amended only as to a portion of the Land by the mutual written consent of the City and Owner of only the portion of the Land affected by the amendment or termination.

5.2 **Authority:** This Agreement is entered under the statutory authority of Chapter 212, Subchapter G, *Texas Local Government Code*. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Land to the City.

5.3 **Applicable Rules:** As of the Effective Date, Owner has initiated the subdivision and development permit process for the Project. The City agrees that, in accordance with Chapter 245, *Texas Local Government Code*, the City will consider the approval of any further approvals necessary for the Project based solely on the Applicable Rules, as modified by the Project Approvals and this Agreement. Further, the City agrees that, upon the Effective Date, Owner has vested authority to develop the Land in accordance with the Applicable Rules, as modified by any exceptions contained in the Project Approvals and this Agreement.

5.4 **Right to Continue Development:** In consideration of Owner's agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Project, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Project. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Project will apply to the Land if such

moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owner's obligations or decreasing Owner's rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

5.5 Equivalent Substitute Obligation: If either Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and *bona fide* threat to public safety that prevents performance or requires different performance, subsequent conditions that would legally excuse performance under this Agreement, or, the Parties agree to cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.

5.6 Cooperation:

5.6.1 The City and Owner each agrees to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

5.6.2 The City agrees to cooperate with Owner in connection with any waivers or approvals Owner may desire or require to obtain from the County in connection with the development of the Land and a deferral of the County's plat and plan approval powers to the City for all plats and public infrastructure within the Project, other than roadway infrastructure that will be dedicated to the County for operation and maintenance after construction. Roads that will be dedicated to the County for operation and maintenance shall be subject to County review, inspection and approval prior to dedication to the County.

5.6.3 The City acknowledges that the Owner and/or HOA may in the future seek State or federal grant matching funds to finance certain park, recreational and environmental facilities within the Project. The City agrees to cooperate with and support these efforts to obtain grant funding that do not interfere with or conflict with the City's efforts to secure similar funding, including entering into joint use agreements with the Owner and or HOA, in furtherance of the City's goal of making additional park, environmental and recreational facilities available to the area. Provided, however, that the City will have no financial obligation associated with this activity.

5.7 Litigation: In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Owner and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. Owner

agrees to defend and indemnify the City for any litigation expenses, including court costs and attorneys fees, related to defense of this Agreement. The filing of any third party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

ARTICLE 6. GENERAL PROVISIONS

6.1 Assignment & Binding Effect:

- 6.1.1 This Agreement, and the rights and obligations of Owner hereunder, may be assigned by Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Project provided that the assignee assumes all of the obligations hereunder. Any assignment must be in writing, specifically describe the property in question, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned.
- 6.1.2 If Owner assigns its rights and obligations hereunder as to a portion of the Project, then the rights and obligations of any assignee and Owner will be non-severable, and Owner will be liable for the nonperformance of the assignee and vice-versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, even if such remedies will impede development activities of any performing developer as a result of that nonperformance.
- 6.1.3 The provisions of this Agreement will be binding upon, and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Project.

6.2 **Severability:** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

6.3 **Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in *Hays County*, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

- 6.4 **No Third Party Beneficiary:** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- 6.5 **Mortgagee Protection:** This Agreement will not affect the right of Owner to encumber all or any portion of the Land by mortgage, deed of trust or other instrument to secure financing for the Project. The City understands that a lender providing financing for the Project ("Lender") may require interpretations of or modifications to this Agreement and agrees to cooperate with Owner and its Lenders' representatives in connection with any requests for interpretations or modifications. The City agrees not to unreasonably withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City agrees as follows:
- 6.5.1 Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Land.
- 6.5.2 The City will, upon written request of a Lender given in compliance with Section 5.1.2, consider providing the Lender with a copy of any written notice of default given to Owners under this Agreement within ten (10) days of the date such notice is given to Owners.
- 6.5.3 In the event of default by Owner under this Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Owner, either under this Agreement or under the notice of default.
- 6.5.4 Any Lender who comes into possession of any portion of the Land by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Owner arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Owner under this Agreement that relate to the property in question have been paid or performed.
- 6.6 **Certificate of Compliance:** Within thirty (30) days of written request by either Party given accordance with Section 6.17, the other Party will execute and deliver to the requesting Party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested. A Party's failure to deliver a requested certification within this 30-day period will conclusively be deemed to constitute a confirmation that this Agreement is in full force without modification, and that there are no uncured defaults on the part of the requesting Party.

The City Administrator or Planning Director will be authorized to execute any requested certificate on behalf of the City.

- 6.7 Default:** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the regulations applied herein.
- 6.8 Remedies for Default:** If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement. In the event of a default by the City, Owner will be entitled to seek a writ of mandamus, in addition to seeking any other available remedies. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.
- 6.9 Reservation of Rights:** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
- 6.10 Attorneys Fees:** The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorneys fees, expenses and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce a judgment.
- 6.11 Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.
- 6.12 Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. An amendment to this Agreement may only be

DRAFT E final

approved by an affirmative vote of at least three of the five (3 of 5) members of the City Council.

- 6.13 Exhibits, Headings, Construction & Counterparts:** All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.
- 6.14 Time:** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.
- 6.15 Authority for Execution:** The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Owner certifies, represents, and warrants that the execution of this Agreement is duly authorized in conformity with its authority.
- 6.16 Property Rights:** Owner expressly and unconditionally waive and release the City from any obligation to perform a takings impact assessment under the Texas Private Real Property Rights Act, Texas Government Code Chapter 2007, as it may apply to this Agreement, the Land, and the Project so long as this Agreement is in effect.
- 6.17 Notices:** Any notices or approvals under this Agreement must be in writing may be sent by hand delivery, facsimile (with confirmation of delivery) or certified mail, return receipt requested, to the Parties at the following addresses or as such addresses may be changed from time to time by written notice to the other Parties:

CITY:

Original: City Administrator
City of Dripping Springs
P. O. Box 384
Dripping Springs, Texas 78620
Fax: (512) 858-5646

Copy to: Bojorquez Law Firm, LLP
Attention: Alan J. Bojorquez
12325 Hymeadow Dr., Ste. 2-100
Austin, Texas 78750
Fax: (512) 250-0749

OWNER:

Original: Anarene Investments Ltd.
c/o Graham Hill
2800 JPMorgan Chase Tower
600 Travis
Houston, Texas 77002
Phone: (713) 226-1301
Fax: (713) 229-2618

Copy to: Baker & Robertson
Attn: Rex G. Baker, III
P O Box 718
Dripping Springs, Texas 78620

Either City or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten days prior to the date such change is effected. All notices under this Agreement will be deemed given on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt or facsimile confirmation.

6.18 Exhibits: The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A - Description of the Land
- Exhibit B - Metes and Bounds Description of Parkland, and a survey
- Exhibit C - Form of Deed

STATE OF TEXAS

COUNTY OF HAYS

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IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below, to be effective on the date the last party signs.

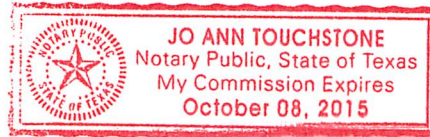
CITY OF DRIPPING SPRINGS:

By: *Todd Purcell*
Todd Purcell, Mayor

Date: 10-17-12

This instrument was acknowledged on this 17th day of October, 2012 by **Todd Purcell**, Mayor of the City of Dripping Springs, Texas, a Texas general law municipality, on behalf of said municipality.

Jo Ann Touchstone
Notary Public, State of Texas



STATE OF TEXAS

§
§
§

COUNTY OF HAYS

OWNER:

Anarene Investments Ltd.
a Texas limited partnership
by its general partner:

Anarene Management, LLC
a Texas limited liability company

By: *Graham Hill*
Title: Manager

Date: 9/6/11

This instrument was acknowledged before me of this 6 day of September, 2011 by *Graham Hill* Manager of Anarene Management, LLC, a Texas limited liability company, which is the general partner of Anarene Investments, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Deeann M. Jones
Notary Public, State of Texas

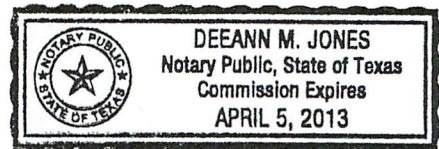


EXHIBIT "A"

	Bk	Vol	Pg
12030538	OPR	4467	493

Description of Land

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RECORDING PURPOSES**

EXHIBIT "B"

Description of parkland tract

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RECORDING PURPOSES**

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STATE OF TEXAS
COUNTY OF HAYS

25.7398 ACRES

A DESCRIPTION OF A 25.7398 ACRE TRACT OF LAND OUT OF THE EDWARD W. BROWN SURVEY NO, 136, A-44, HAYS COUNTY, TEXAS, SAID 25.7398 ACRES BEING OUT OF A CALLED 223.11 ACRE TRACT OF LAND DESCRIBED IN A DEED AS "TRACT 5" TO ANARENE INVESTMENTS, LTD. AS RECORDED IN VOLUME 2639, PAGE 450, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAID 25.7398 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Commencing at a Tx. D.O.T. Type II brass monument found in the west right of way of Ranch Road No. 12 at State Engineer's Highway Station 310+98.44, said monument being the most easterly northeast corner of a called 64.2441 acre tract of land described in a deed to the City of Dripping Springs as recorded in Volume 3326, Page 857, Official Public Records of Hays County, Texas, from which a ½ inch iron rod found at State Engineer's Highway Station 311+14.97 bears S 28°38'50"E, a distance of 22.62 feet, thence N 28°12'32"W, with the northeast line of said 64.2441 acre City of Drippings tract and a southerly line of said 223.11 Anarene Investments, LTD. tract, a distance of 302.42 feet to a ½ inch iron rod with cap set no. 4404 for the most southerly corner of the herein described 25.7398 acre tract and the POINT OF BEGINNING;

THENCE with the northeast line of said 64.2441 acre tract and a southerly line of said 223.11 acre tract, the following two (2) courses and distances,

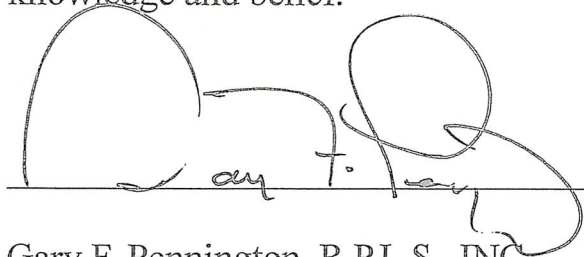
- 1) N 28°12'32"W, a distance of 363.08 feet to a ½ inch iron rod found for an angle point, and
- 2) N 46°55'43"W, a distance of 1013.82 feet to a ½ inch iron rod with cap set no. 4404 for the most westerly corner of the herein described 25.7398 acre tract;

THENCE departing said City of Dripping Springs 64.2441 acre tract and crossing said Anarene Investments LTD. tract, the following three (3) courses and distances,

- 1) N 45°59'39"E, a distance of 1153.28 feet to a ½ inch iron rod with cap set no. 4404 for the most northerly corner of the herein described tract,
- 2) S 49°13'13"E, a distance of 598.82 feet to a ½ inch iron rod with cap set no. 4404 for the northeast corner of the herein described tract, and
- 3) S 14°36'12"W, a distance of 1469.96 feet to the POINT OF BEGINNING, containing 25.7398 acres of land.

Bearing basis for this survey is the Texas State Plane Coordinate South Central Zone, N.A.D. 83. All distances are surface distances.

I, Gary F. Pennington, do hereby certify that this description and associated survey plat was prepared from a survey performed under my direction and supervision during February 2011, and is true and correct to the best of my knowledge and belief.

 02-01-2011

Gary F. Pennington, R.P.L.S., INC.
Registered Professional Land Surveyor
No. 4404- State of Texas
P.O. Box 1244
Dripping Springs, Texas 78620 (512) 894-0664



LEGEND

- 1/2" IRON ROD FOUND
- 1/2" IRON ROD SET CAP. NO. 4404
- ⊙ TXDOT TYPE II MONUMENT FOUND
- X- WIRE FENCE
- U UTILITY POLE
- GUY WIRE
- OVERHEAD UTILITY WIRE
- ◆ PIPELINE MARKER
- () RECORD INFORMATION VOL. 3326, PG. 827
- [] ADJOINER RECORD INFORMATION
- CONCRETE HIGHWAY MONUMENT FOUND

SCALE 1" = 200'

LINE	BEARING	DISTANCE
L1	S 28°38'50" E	22.62'
(REC)	S 28°12'38" E	22.65'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	2814.79'	94.92'	94.91'	S 15°33'52" W	01°55'55"

12030588 Bk Vol Pg
OPR 4467 498

ANARENE INVESTMENTS, LTD

VOL. 2639, PG. 420
(223.11 AC)
TRACT 5

25.7398 ACRES

CITY OF DRIPPING SPRINGS
VOL. 3326, PG. 857
(64.2441 ACRES)

SURVEY PLAT
OF
25.7398 ACRES

OUT OF THE
EDWARD W. BROWN SURVEY
NO. 136, A-44,
HAYS COUNTY, TEXAS.

POINT OF BEGINNING
24.7398 AC.

POINT OF COMMENCING
TX. D.O.T. BRASS CAP
24.7398 AC.

RANCH ROAD NO. 12

P.C. HIGHWAY STATION 310+19.27
HIGHWAY STATION 310+98.44 70' RT.
HIGHWAY STATION 311+14.97 55.15 RT.

L=315.55'
R=2794.81'
Δ=05°28'09"
C LEN=315.38'
BRG=S 19°17'15" W

(RECORD INFORMATION)
Δ = 06°28'07"
R = 2794.81'
L = 315.52'
CB = S 19°16'59" W
C = 315.36'

Called 0.126 Acres
State of Texas
Vol. 1089, Pg. 294
OPRHCT

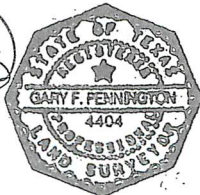
CERTIFICATION

I, GARY F. PENNINGTON, DO HEREBY CERTIFY THAT THIS SURVEY WAS PREPARED FROM A SURVEY PERFORMED UNDER MY DIRECTION AND SUPERVISION DURING FEBRUARY 2011, OF THE PROPERTY SHOWN HEREON AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NOTES:

- 1) ACCORDING TO THE NATIONAL FLOOD INSURANCE RATE MAP NO. 48209C0105F, DATED SEPTEMBER 2, 2005, A PORTION OF THIS PROPERTY IS LOCATED IN ZONE AE- A SPECIAL FLOOD HAZARD ZONE INUNDATED BY A 100 YEAR FLOOD.
- 2) BEARING BASIS FOR THIS SURVEY IS THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, N.A.D 83. ALL DISTANCES ARE SURFACE DISTANCES.
- 3) THIS SURVEY WAS PERFORMED WITHOUT A TITLE REPORT TO IDENTIFY EASEMENTS OR OTHER MATTERS OF RECORD THAT MAY AFFECT THIS TRACT. NO EASEMENT RESEARCH WAS PERFORMED OTHER THAN AS SHOWN HEREON.
- 4) REFERENCE IS HEREBY MADE TO AN ATTACHED METES AND BOUNDS DESCRIPTION.

GARY F. PENNINGTON R.P.L.S., INC.
R. P. L. S. NO. 4404
STATE OF TEXAS
P.O. BOX 1244
DRIPPING SPRINGS, TX 78620
(512) 894-0664



02.01.2011

EXHIBIT "C"

Form of Deed

	Bk	Vol	Pg
12030538	OPR	4467	499

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RECORDING PURPOSES**

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RECORDING PURPOSES**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HAYS §

THAT Anarene Investments Ltd., a Texas limited partnership ("Grantor"), for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration to the undersigned in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto THE CITY OF DRIPPING SPRINGS, a Texas municipality ("Grantee"), the real property located in Hays County, Texas (the "Property") and being more fully described on Exhibit "A" attached hereto and incorporated herein for all purposes.

This conveyance, however, is made and accepted subject to any and all restrictions, encumbrances, reservations, easements, covenants and conditions, if any, relating to the Property as the same are filed for record in the County Clerk's Office of Hays County, Texas and additionally by the restrictions more fully described on exhibit "B" attached hereto and incorporated herein for all purposes..

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, Grantee's successors and assigns forever; and Grantor does hereby bind Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto Grantee, Grantee's successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

EXECUTED this ___ day of _____, 2011.

GRANTOR:
Anarene Investments Ltd.
a Texas limited partnership
by its general partner:
 Anarene Management, LLC
 a Texas limited liability company

By: _____
Title: Manager

Grantee's Address:

STATE OF TEXAS §
 §
COUNTY OF HAYS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2011 by _____, manager of Anarene Management, LLC, a Texas limited liability company which is the general partner of Anarene Investments Ltd., a Texas limited partnership, on behalf of said limited partnership.

NOTARY PUBLIC, STATE OF TEXAS

MY COMMISSION EXPIRES: _____

EXHIBIT "A"

Legal description of parkland tract

	Bk	Vol	Pg
12030538	OPR	4467	502

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RECORDING PURPOSES**

EXHIBIT "B"

1. The Property is given to Grantee for public use including hiking paths, open park/green space and passive recreational activities, including, but not limited to, fishing, picnicking, hiking and exercising. The Property shall not be used for (i) active recreational uses, including, but not limited to, baseball, softball, soccer, golf, football, or other team sports, (ii) night time activities that require artificial illumination, (iii) camping, (iv) retail, (v) commercial or (vi) residential purposes.
2. No above ground structures shall be placed upon the Property, with the exception of fencing and a small storage structure on the south side of the pond located on the Property.
3. The Property shall not be subdivided.
4. No sign of any kind shall be displayed on the Property that is visible to the Hill Property.
5. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion of it unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers and such containers shall be appropriately screened from view from the Hill Property. The Property nor any part thereof shall be used or maintained as a dumping ground for rubbish. No incinerators or other equipment for the storage or disposal of such material shall be permitted. No junk, repair, or wrecking yard shall be located on the Property.
6. No horns, whistles, bells, or sirens shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Hill Property or to its occupants.
7. No activities shall be conducted on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be permitted on the Property.
8. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

The foregoing restrictions run with the land and shall not be modified, removed or waived without the express prior written consent of Anarene Investments Ltd., its successors or assigns.