

RESOLUTION NO. 07-2000

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, CONCURRING WITH A RELEASE OF A PORTION OF A DRAINAGE EASEMENT OWNED BY THE STATE OF TEXAS TO THE OWNERS OF THE FEE IN EXCHANGE FOR A NEW DRAINAGE EASEMENT AND FACILITY AT THE SAME LOCATION IN MESQUITE, TEXAS, AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF TEXAS AND THE CITY OF MESQUITE, TEXAS, WHEREBY THE CITY ASSUMES MAINTENANCE RESPONSIBILITIES FOR THE AFORESAID NEW DRAINAGE EASEMENT ON THE NORTHEAST QUADRANT OF INTERSTATE HIGHWAY 30 AND NORTHWEST DRIVE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

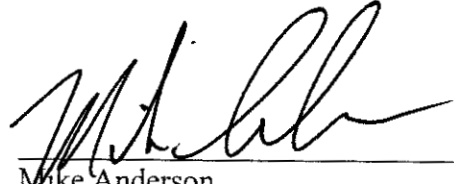
SECTION 1. That an independent determination has been made that the subject easement interest proposed to be released in Exhibit "A" of Tract 27-1AX is a surplus tract and is no longer needed for use as a drainage easement or for any other public purpose including, but not limited to, public transportation.

SECTION 2. That the City of Mesquite hereby approves of the release of the surplus 0.2065 acre tract as described in Exhibit "A" of Tract 27-1AX attached hereto by the State of Texas to "the owner of the fee in the land" provided it be exchanged for the new easement as described in Exhibit "B" of Parcel 27-1E attached hereto and the new drainage facility as described in the maintenance agreement.

SECTION 3. That the City Council of the City of Mesquite authorizes Mike Anderson, Mayor of the City of Mesquite, to execute an Agreement between the State of Texas and the City of Mesquite whereby the City assumes maintenance responsibilities for the new drainage facility including the new easement at the northeast quadrant of Interstate Highway 30 and Northwest Drive.

SECTION 4. That this resolution shall take effect from and after its passage.

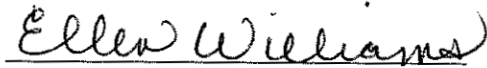
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7<sup>th</sup> day of February, 2000.



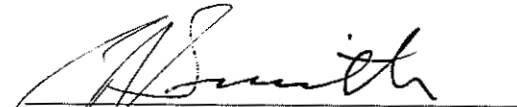
Mike Anderson  
Mayor

ATTEST:

APPROVED:



Ellen Williams  
City Secretary



B.J. Smith  
City Attorney

STATE OF TEXAS           §  
                                   §  
 COUNTY OF DALLAS       §

WITNESSETH:

This contract, made by and between the State of Texas, acting herein by and through the Texas Department of Transportation, hereinafter called STATE, and the City of Mesquite, hereinafter called CITY, is as follows:

WHEREAS, the STATE has operated and maintained a 0.631-acre drainage facility at approximately Highway Station 451+00 on Interstate Highway 30 (U.S. Highway 67) on the north side, an easement interest therein being conveyed to the STATE by instrument recorded in Volume 2899, Page 0346, of the Deed Records of Dallas County, Texas; and

WHEREAS, Duck Creek Partners, Ltd., a Texas limited partnership, hereinafter called OWNER, is the owner of the fee underlying a portion of the STATE's existing easement. OWNER has realigned and reconstructed new drainage facility improvements and related equipment, hereinafter called NEW FACILITY, more particularly described in Exhibits A and B, attached hereto and made a part hereof, at the subject location and has constructed said NEW FACILITY to STATE's and CITY's specifications upon land already owned by the State, upon land to be conveyed to the STATE and upon land already owned by the CITY; said land to be conveyed to the STATE being hereinafter called STATE'S EASEMENT and being more particularly described in Exhibits C and D, attached hereto and made a part hereof; and

WHEREAS, OWNER has constructed the NEW FACILITY partially upon STATE'S EASEMENT at OWNER's sole cost and expense, and OWNER and CITY have agreed that the construction of the NEW FACILITY will not adversely affect, as determined by the STATE, any other drainage facilities in the vicinity of Interstate Highway 30 and Northwest Drive; and

WHEREAS, the MESQUITE CITY COUNCIL passed a resolution on February 7, 2000, authorizing the appropriate CITY official to execute this agreement on behalf of the CITY;

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. The CITY shall maintain in good, safe repair and condition, at its sole expense and risk, all of the NEW FACILITY, including the portion located or to be located on the STATE'S EASEMENT. In addition to the foregoing, the CITY hereby assumes any and all responsibilities and liabilities the STATE may have for the proper and adequate handling of all future drainage into and from the NEW FACILITY located approximately at Highway Station 451+00 on I.H. 30 in Dallas County, Texas, including, but not limited to, flood prevention and prevention of adverse environmental effects with regard to that section of I.H. 30 within the CITY's jurisdiction. All operation, maintenance, repairs, replacement and/or construction related to the NEW FACILITY shall be accomplished in a manner so as to cause no interference with highway use or any reduction in the level of service of the highway facility as determined by the STATE.
2. THE CITY TO THE EXTENT PERMITTED BY LAW AGREES TO INDEMNIFY AND HOLD THE STATE HARMLESS AGAINST LOSS, DAMAGE, ALL PROCEEDINGS, SUITS, ACTIONS, CLAIMS, DAMAGES, JUDGMENTS, LIABILITIES, AWARDS AND EXPENSES RESULTING FROM CITY'S OPERATIONS AND MAINTENANCE OF THE NEW FACILITY UPON, AT OR FROM THE STATE'S EASEMENT OR ANY PORTION THEREOF.

3. If, on account of any breach or default by CITY of its obligations under this agreement, STATE enforces or defends any of STATE's rights or remedies hereunder, and should STATE prevail, STATE shall be entitled to receive from CITY reimbursement for any and all costs, including, but not limited to, attorneys' fees incurred in such connection.
4. The CITY agrees that it will not assign or abandon its responsibilities as set forth herein without first obtaining the STATE's consent in writing, which consent may be withheld by STATE for any reason.
5. In the event the STATE determines that the CITY has failed to maintain or make repairs or replacements as required herein, the STATE may notify CITY in writing of said failure. Should CITY fail to correct the situation within a reasonable time thereafter, as established by the STATE, STATE may make the necessary correction at CITY's sole liability, and the cost of labor, materials, equipment, plans and administration shall be paid by CITY within thirty (30) days of receipt of a statement of said cost from STATE. STATE may, at its option, choose any other remedies which may be available at law or equity. It is agreed and understood that STATE has no responsibility or liability with respect to such operation, maintenance, repairs, replacement and/or construction of the NEW FACILITY.
6. This contract contains a complete expression of the agreement between the parties, and there are no promises, representations or inducements except such as are herein provided.
7. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this contract shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.
8. The terms, conditions and covenants contained in this contract shall apply to and inure to the benefit of successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of STATE under this contract, including, but not limited to, any notices required or permitted to be delivered by STATE to CITY hereunder, may be exercised at STATE's option or performed by STATE's agent or attorney at the address below or to another address of which the CITY gives written notice to the STATE.
9. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this contract shall be construed as if such invalid, illegal or unenforceable provision never had been contained herein.
10. The effective date of this contract is the date that STATE signs the contract.

In witness whereof, CITY has executed this contract on the 15<sup>th</sup> day of March, 2000.

In witness whereof, STATE has executed this contract on this 27 day of MARCH, 2000.

THE CITY OF MESQUITE

THE STATE OF TEXAS

BY: [Signature]  
John L. Heiman, Jr.

Title: Mayor Pro Tem  
City of Mesquite

Address:  
1515 North Galloway  
Mesquite, Texas 75185-0137

Certified as being executed for the purpose and Effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission, ~~under the authority of Minute Order 100002.~~ JP

By: [Signature]  
John P. Campbell, P.E.  
Director of Right of Way

Approved:

By: [Signature]  
City Attorney

Attest:  
(Seal)

By: [Signature]  
City Secretary

## EXHIBIT "A"

County: Dallas  
Highway: IH 30

Page 1 of 2  
March 9, 2000

**LAND DESCRIPTION FOR MAINTENANCE AGREEMENT  
DRAINAGE EASEMENT**

Being a 0.2101 of an acre (9,154 square feet) tract of land located in the T. Thomas Survey, Abstract No. 1461, City of Mesquite, Dallas County, Texas, and being part of a called 9.75 acre tract of land described in a deed from Cheng-Yeh Chang and Yu Mei-Chu Chang to Duck Creek Partners, Ltd., a Texas Limited Partnership, dated July 14, 1998, and recorded in Volume 98136, Page 04189, of the Deed Records of Dallas County, Texas, and part of a called 105.19 acre tract described in a deed to the City of Mesquite recorded in Volume 69167, Page 1236, of said Deed Records, and part of a called 0.5217 acre tract described as Parcel 7, Part 1, in a deed from Cheng-Yeh Chang and wife to the State of Texas recorded in Volume 94097, Page 4289, of said Deed Records, and part of a called 100 feet wide and 175 feet long Tract I described in a Right-of-Way Easement deed to the State of Texas recorded in Volume 2899, Page 346, of said Deed Records. Said 0.2101 of an acre tract being more particularly described by metes and bounds as follows:

**COMMENCING** at a one-half inch iron pipe found for an angle break in the northwest line of the above referenced 9.75 acre tract and southeast line of the referenced 105.19 acre tract;

Thence South 42 deg. 13 min. 32 sec. West (the bearing basis for this description) a distance of 188.59 feet with the above said common northwest line and southeast line to a point for corner for the **POINT OF BEGINNING** hereof;

- (1) **THENCE** South 02 deg. 46 min. 28 sec. East a distance of 18.08 feet to a point for corner;
- (2) **THENCE** South 47 deg. 46 min. 28 sec. East a distance of 77.55 feet to a point for corner;
- (3) **THENCE** South 04 deg. 13 min. 32 sec. West a distance of 99.26 feet to a point for corner on the south line of the said 9.75 acre tract and the north right of way line of Interstate Highway No. 30;
- (4) **THENCE** South 37 deg. 23 min. 16 sec. East a distance of 38.09 feet to a point for corner;
- (5) **THENCE** South 52 deg. 36 min. 44 sec. West a distance of 15.00 feet to a point for corner;


## EXHIBIT "A"

County: Dallas  
 Highway: IH 30

Page 2 of 2  
 March 9, 2000

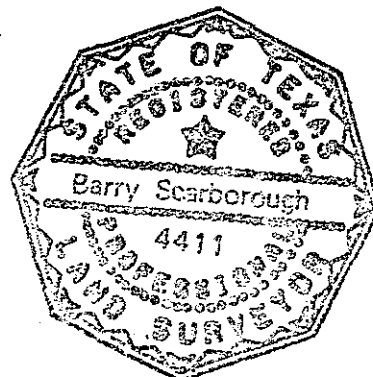
- (6) **THENCE** North 37 deg. 23 min. 16 sec. West a distance of 21.20 feet to a point for corner;
- (7) **THENCE** South 04 deg. 13 min. 32 sec. West a distance of 23.13 feet to a point for corner;
- (8) **THENCE** South 65 deg. 01 min. 54 sec. West a distance of 17.18 feet to a point for corner;
- (9) **THENCE** North 04 deg. 13 min. 32 sec. East, at a distance of 45.75 feet pass a point on the north right of way line of Interstate Highway No. 30 and the south line of the said 9.75 acre tract, then continuing for a total distance of 146.04 feet to a point for corner;
- (10) **THENCE** North 47 deg. 46 min. 28 sec. West a distance of 76.45 feet to a point for corner;
- (11) **THENCE** North 02 deg. 46 min. 28 sec. West, at 9.30 feet pass the northwest line of said 9.75 acre tract and a southeast line of said 105.19 acre tract, then continue for a total distance of 361.28 feet to a point for corner;
- (12) **THENCE** North 87 deg. 15 min. 31 sec. East a distance of 15.00 feet to a point for corner;
- (13) **THENCE** South 02 deg. 46 min. 28 sec. East a distance of 336.97 feet to the **POINT OF BEGINNING**, containing 0.2101 of an acre (9,154 square feet) of land.

A plat of even date herewith accompanies this legal description.



Barry Scarborough  
 Registered Professional Land Surveyor No. 4411

03/09/2000  
 Date

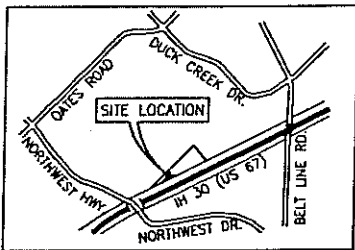
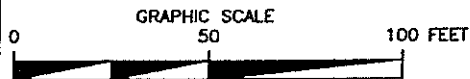


# EXHIBIT "B"

## MAINTENANCE AGREEMENT DRAINAGE EASEMENT

0.2101 ACRE (9,154 SQ.FT.)  
T. THOMAS SURVEY, ABSTRACT NO. 1461  
CITY OF MESQUITE, DALLAS COUNTY, TEXAS

- 1) BEARING BASIS IS THE SOUTHWEST PORTION OF THE NORTHWEST LINE OF THE 9.75 AC. TRACT DESCRIBED IN VOL. 98136, PG. 04189, OF THE DEED RECORDS OF DALLAS COUNTY, TX
- 2) UNLESS OTHERWISE NOTED, ● DENOTES 1/2" IRON ROD (SET) WITH "SUMMIT SURVEYING" CAP.
- 3) A LAND DESCRIPTION OF EVEN DATE HEREWITH ACCOMPANIES THIS PLAT.



1/2" IRON PIPE (FOUND)

P.O.C.

P.O.B.

DUCK CREEK PARTNERS, LTD.  
CALLED 9.75 ACRES / ONE TRACT  
PER DEED DATED 07/14/1998, RECORDED IN  
VOLUME 98136, PAGE 04189, IN THE DEED  
RECORDS OF DALLAS COUNTY, TEXAS

MAINTENANCE AGREEMENT  
DRAINAGE EASEMENT  
0.2101 ACRES (9,154 SQ.FT.)

CALLED 0.5217 ACRES  
STATE OF TEXAS  
PARCEL 7, PART 1  
VOL 94097, PG. 04289  
D.R.D.C.T.

EXISTING R.O.W. LINE

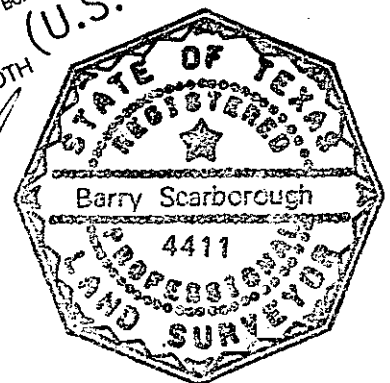
1" IRON ROD (FOUND)

STATE OF TEXAS  
100' x 175'  
DRAINAGE CHANNEL EASEMENT  
TRACT NO. 1, VOL. 2899, PG. 346  
05/12/1947  
D.R.D.C.T.

EXISTING R.O.W. LINE

INTERSTATE HWY. 30  
VARIABLE R.O.W. WIDTH (U.S. HWY. 67)

*Barry Scarborough*  
03/09/2000



SUMMIT SURVEYING, LTD.  
2040 DEERBROOK DR.  
TYLER, TEXAS 75703

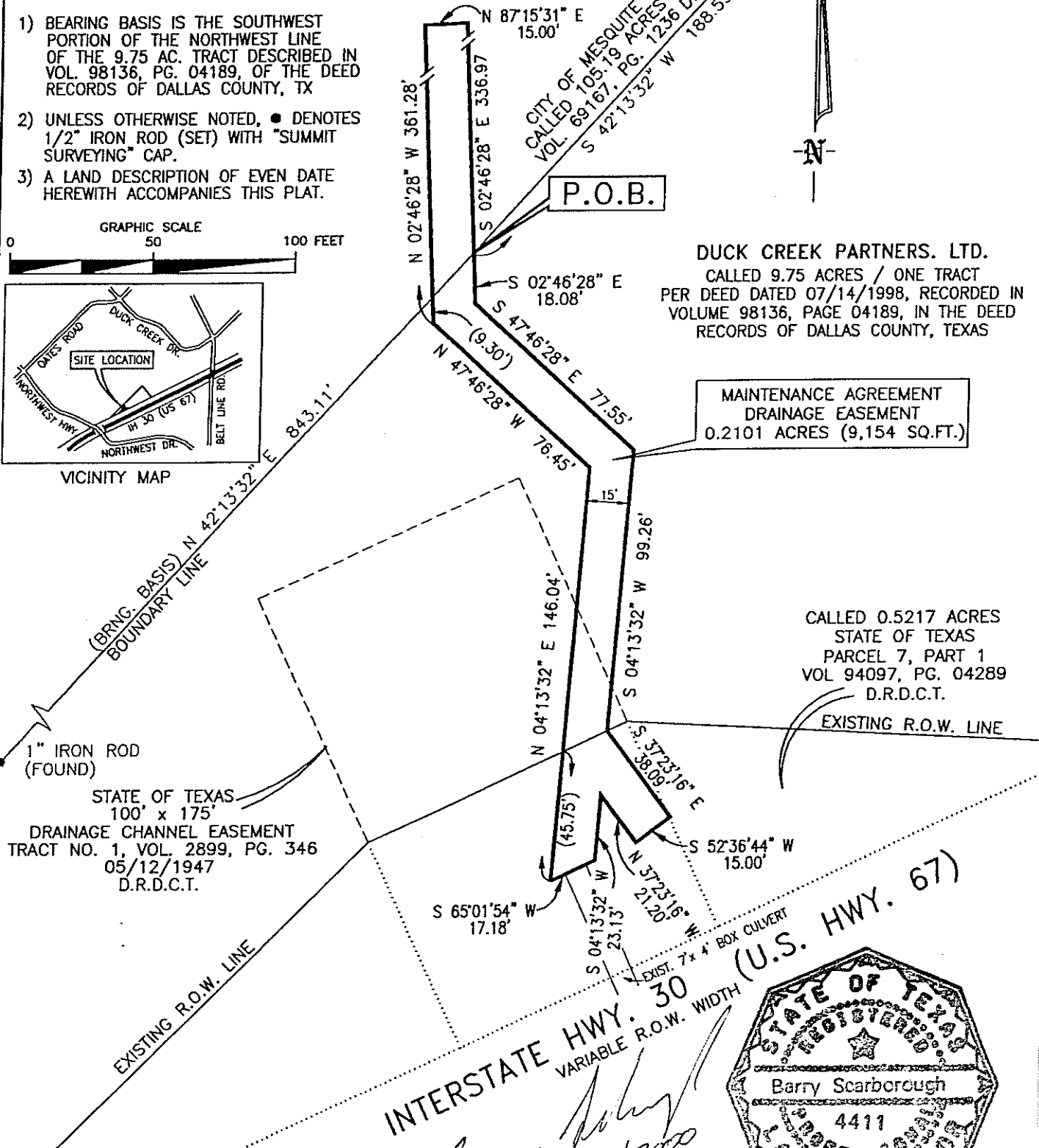




EXHIBIT "C"

County: Dallas  
Parcel: 27-1E  
Highway: IH 30

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March 9, 2000

**LAND DESCRIPTION FOR DRAINAGE EASEMENT**

Being a 0.0541 of an acre (2,354 square feet) tract of land located in the T. Thomas Survey, Abstract No. 1461, City of Mesquite, Dallas County, Texas, and being part of a called 9.75 acre tract of land described in a deed from Cheng-Yeh Chang and Yu Mei-Chu Chang to Duck Creek Partners, Ltd., a Texas Limited Partnership, dated July 14, 1998, and recorded in Volume 98136, Page 04189 of the Deed Records of Dallas County, Texas. Said 0.0541 of an acre tract being more particularly described by metes and bounds as follows:

**COMMENCING** at a one-half inch iron pipe found for an angle break in the northwest line of the above referenced 9.75 acre tract;

THENCE South 42 deg. 13 min. 32 sec. West a distance of 188.59 feet with said northwest line to a one-half inch iron rod set with a cap imprinted "SUMMIT SURVEYING" (hereafter denoted by IR Set) for the **POINT OF BEGINNING** hereof;

THENCE across said 9.75 acre tract as follows:

- (1) South 02 deg. 46 min. 28 sec. East a distance of 18.08 feet to an IR Set for corner;
- (2) South 47 deg. 46 min. 28 sec. East a distance of 77.55 feet to an IR Set for corner;
- (3) and South 04 deg. 13 min. 32 sec. West a distance of 83.36 feet to an IR Set for corner in the east line of a 100' by 175' drainage easement described in a deed to the State of Texas dated May 12, 1947, recorded in Volume 2899, Page 0346 of said Deed Records;
- (4) THENCE North 24 deg. 58 min. 06 sec. West a distance of 30.75 feet with the said east line of the drainage easement to an IR Set;

THENCE across said 9.75 acre tract as follows:

- (5) North 04 deg. 13 min. 32 sec. East a distance of 49.20 feet to an IR Set for corner;
- (6) North 47 deg. 46 min. 28 sec. West a distance of 76.45 feet to an IR Set for corner;
- (7) and North 02 deg. 46 min. 28 sec. West a distance of 9.30 feet to an IR Set for corner in the northwest line of the aforementioned 9.75 acre tract;

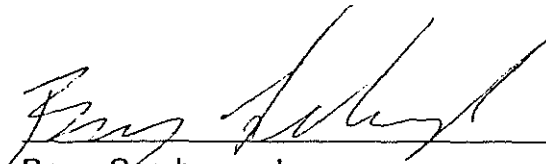
EXHIBIT "C"

County: Dallas  
Parcel: 27-1E  
Highway: IH 30

Page 2 of 2  
March 9, 2000

(8) THENCE North 42 deg. 13 min. 32 sec. East a distance of 21.21 feet to the **POINT OF BEGINNING**, containing 0.0541 of an acre (2,354 square feet) of land.

A plat of even date herewith accompanies this legal description.



Barry Scarborough  
Registered Professional Land Surveyor No. 4411

03/09/2000

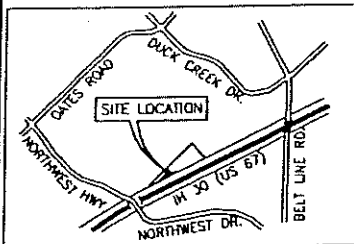
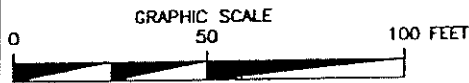
Date



# EXHIBIT "D" DRAINAGE EASEMENT PARCEL 27-1E

0.0541 ACRE (2,354 SQ.FT.)  
T. THOMAS SURVEY, ABSTRACT NO. 1461  
CITY OF MESQUITE, DALLAS COUNTY, TEXAS

- 1) BEARING BASIS IS THE SOUTHWEST PORTION OF THE NORTHWEST LINE OF THE 9.75 AC. TRACT DESCRIBED IN VOL. 98136, PG. 04189, OF THE DEED RECORDS OF DALLAS COUNTY, TX
- 2) UNLESS OTHERWISE NOTED, ● DENOTES 1/2" IRON ROD (SET) WITH "SUMMIT SURVEYING" CAP.
- 3) A LEGAL DESCRIPTION OF EVEN DATE HEREWITH ACCOMPANIES THIS PLAT.



VICINITY MAP

1/2" IRON PIPE (FOUND)

P.O.C.

CITY OF MESQUITE  
CALLED 109.19 ACRES  
VOL. 69167, PG. 1236  
D.R.D.C.T.

P.O.B.

DUCK CREEK PARTNERS, LTD.  
CALLED 9.75 ACRES / ONE TRACT  
PER DEED DATED 07/14/1998, RECORDED IN  
VOLUME 98136, PAGE 04189, IN THE DEED  
RECORDS OF DALLAS COUNTY, TEXAS

PARCEL 27-1E  
15" DRAINAGE EASEMENT  
0.0541 ACRES (2,354 SQ.FT.)

CALLED 0.5217 ACRES  
STATE OF TEXAS  
PART 1, VOL 94097, PG. 04289  
D.R.D.C.T.

EXISTING R.O.W. LINE

BOUNDARY LINE

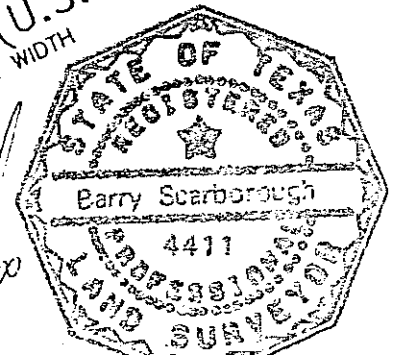
1" IRON ROD (FOUND)

STATE OF TEXAS  
100' x 175'  
DRAINAGE CHANNEL EASEMENT  
TRACT NO. 1, VOL. 2899, PG. 346  
05/12/1947  
D.R.D.C.T.

EXISTING R.O.W. LINE

INTERSTATE HWY. 30 (U.S. HWY. 67)  
VARIABLE R.O.W. WIDTH

*Barry Scarborough*  
03/09/2000



SUMMIT SURVEYING, LTD.  
5003 DEERBROOK DR.