

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 12-42

Acceptance of Non-Standard Permanent Drainage Easement in Inverness
Business Park from BHIF Holdings, LLLP, The Estate of George B. Beardsley
and 200 Inverness Drive West Holding Corp. in regard to The Inverness Golf Course

WHEREAS, the Board of Southeast Metro Stormwater Authority (SEMSWA) in Resolution No. 08-19 approved a Standard Drainage Easement for use in regard to stormwater improvements and authorized the Executive Director of SEMSWA to execute those easements on behalf of SEMSWA as long as they adhere to the standard easement with minor non-substantive modifications; and

WHEREAS, 200 Inverness Drive West Holding Corp. is the owner of The Inverness Golf Course and BHIF Holdings, LLLP and The Estate of George B. Beardsley hold a long term lease of The Inverness Golf Course (Owners); and

WHEREAS, Inverness Golf Course is located both within the boundaries of Inverness Water And Sanitation District (IWSD) and the Inverness Business Park and the District has adopted the SEMSWA's Stormwater Management Manual (Manual) that sets forth the criteria for the design of stormwater improvements; and

WHEREAS, the Manual requires developers to dedicate drainage easements for stormwater improvements in Inverness Business Park (Easement Property) allowing SEMSWA to enter, re-enter, and occupy the Easement Property; and

WHEREAS, as part of the Implementation Intergovernmental Agreement (IIGA) between SEMSWA and IWSD, and as part of assuming IWSD's stormwater functions, as further described in the IIGA, SEMSWA will be required to enter and re-enter the Easement Property; and

WHEREAS, Owners will discharge detained flows offsite into the Cottonwood Creek drainageway through various tracts of land in the Cottonwood Creek floodplain owned by virtue of their lease and fee ownership of The Inverness Golf Course; and

WHEREAS, the Standard Drainage Easement adopted by the SEMSWA Board of Directors has been modified to address concerns by the Owners about SEMSWA's access of their recreational properties during periods other than November through March of each year; and

WHEAREAS, the non-standard Permanent Drainage Easement has been prepared by SEMSWA staff and legal counsel and approved by the Owners.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Permanent Drainage Easement attached hereto as Exhibit A and authorizes the Executive Director of SEMSWA to accept, execute and record this Easement.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

PERMANENT DRAINAGE EASEMENT

This PERMANENT DRAINAGE EASEMENT (this “**Instrument**”) is granted as of this ____ day of November, 2012, by:

(i) **BHIF Holdings, LLLP**, a Colorado limited liability limited partnership and **The Estate of George B. Beardsley** (collectively, “**Ground Lessor**”) and (ii) **200 Inverness Drive West Holding Corp.**, a Colorado corporation (“**Holding Corp**”);

(collectively, Ground Lessor and Holding Corp are referred to herein as the “**Grantors**”), to:

the **Southeast Metro Stormwater Authority** (“**SEMSWA**” or the “**Grantee**”).

- A. The Grantors are, to the extent of their respective interests therein, the owners of the unplatted property referred to as Inverness Golf Course, Arapahoe County, Colorado and generally described on Exhibit A attached hereto and made a part hereof (the “**Property**”).
- B. Presently, the Access and Maintenance Easements dated 10/20/11 depicted and generally described on Exhibit Sheets B07, B08, C02 and C03 attached as Exhibit B hereto (the “**Easement Parcels**”) are within the Property and include stormwater facilities and access routes from the public right of way to those facilities.

For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged by the Grantors, the Grantors hereby grant, bargain, sell and convey to the Grantee, its transferees and successors in title or assigns, a non-exclusive permanent drainage easement (the “**Easement**”) to survey, construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements at the Grantee’s sole cost and expense (“**Permitted Activities**”), in, on, to, through, over, under and across the Easement Parcels (subject to all matters of record and all matters which would be revealed by a survey of the Easement Parcels) pursuant to, and subject to, the following terms and conditions:

Specific Conditions for Use of the Easement on the Property.

1. SEMSWA will contact Holding Corp through its managing agent (currently, IHGC Operators, Inc.) to schedule access to the Easement Parcels for any Permitted Activities. Holding Corp will provide a 24 hour, 7 day a week contact number. SEMSWA will schedule access for non-emergency projects and maintenance on the Easement Parcels to coincide with periods of limited use, generally

November through March and generally during times that have limited or lower levels of usage. It is the intent of the parties that SEMSWA will undertake the Permitted Activities in a manner so as to minimize to the extent possible, interference with or disruptions to the Grantors' respective operations and business activities on the Property.

2. For scheduled access onto the Easement Parcels, SEMSWA will, prior to entry onto the Easement Parcels, identify the purpose for access, the approximate area of access and the estimated time for the completion of the work.
3. SEMSWA will locate all subterranean improvements and all utilities before excavating or before soil drilling on any portion of the Easement Parcels.
4. Upon notice of a scheduled access, within 2 business days thereafter Holding Corp will use reasonable efforts to locate, to the extent it reasonably can, its own buried facilities in the Easement Parcels including irrigation valve boxes and sprinkler heads, to assist in avoiding damages during access or construction. Failure to locate or an error in locating such improvements does not obviate the responsibility for repair by SEMSWA, at its sole cost and expense, of damaged facilities unless Holding Corp was negligent in its efforts to locate Holding Corp's buried facilities.
5. Upon completion of any Permitted Activities on the Easement Parcels, SEMSWA will notify Holding Corp so that it can inspect the Property to note any visible damages requiring repair. Holding Corp will endeavor to make any such claim for repair to SEMSWA within 2 business days of SEMSWA's notification of leaving the site. Such inspection does not obviate the need for repair for underground damages or items found later to be the result of SEMSWA activities.
6. SEMSWA is required to repair damages resulting from Permitted Activities that affect operations on the Property immediately, or as soon as reasonably practical. Repairs that do not affect operations on the Property shall be made within 2 weeks, weather and access permitting.
7. SEMSWA may, in an emergency, after attempting to contact Holding Corp through its managing agent (currently, IHGC Operators, Inc.) using a designated emergency number, access the Easement Parcels using reasonable care for completion of any Permitted Activities that are necessitated by an emergency. An emergency includes access immediately following a flood event that has caused significant damage to property or drainage facilities, or in the instance when a drainage facility has failed or failure of the facility is imminent.

8. In the event SEMSWA requires access to property outside the Easement Parcels, which access is reasonably necessary to complete its responsibilities, SEMSWA shall request permission from Holding Corp where such access is required. If such access is granted, SEMSWA shall comply with Holding Corp's reasonable construction, access and security rules. On the Property, and notwithstanding anything to the contrary contained herein, SEMSWA shall not access over golf course greens, bunkers or tee boxes under any circumstances, and shall avoid fairways and other golf course improvements to the extent possible.

9. All written notices given hereunder shall be addressed as follows:

(a) if to the Grantors, to:

BHIF Holdings, LLLP
400 S. Steele, Unit #71
Denver, Colorado 80209
Attention: Woody Beardsley

and

The Estate of George B. Beardsley
400 S. Steele, Unit #71
Denver, Colorado 80209
Attention: Pamela Davis Beardsley

and

200 Inverness Drive West Holding Corp.
c/o IHGC Operators, Inc.
200 Inverness Drive West
Englewood, Colorado 80112
Attention: George Fischer

with a copy to

200 Inverness Drive West Holding Corp.
c/o Lowe Enterprises Investment Management, LLC
11777 San Vicente Avenue, Suite 900
Los Angeles, California 90049
Attention: Legal Counsel

and

Spierer, Woodward, Corbalis & Goldberg, P.C.
2 Inverness Drive East, Suite 200
Englewood, Colorado 80112
Attention: John A. Woodward/Chris Sharp

(b) if to the Grantee, to:

Southeast Metro Stormwater Authority
76 Inverness Drive East, Suite A
Centennial, Colorado 80112
Attention: _____

or to such other address as any party shall have provided to the other parties in writing. Notices, to be effective hereunder, shall (i) be in writing except where this Instrument expressly permits verbal notices, (ii) be delivered on a business day or in the case of an emergency, confirmed on the next business day, (iii) be effective upon delivery, and (iv) be delivered to the addresses set forth above. Written notices may only be delivered by overnight delivery service, first class mail return receipt requested, or hand delivery. No other delivery method shall be effective hereunder.

10. The Grantee shall pay the costs and expenses incurred with respect to or associated with all Permitted Activities to the extent such Permitted Activities provide or are expected to provide a public benefit. The actual, reasonable costs and expenses of any Permitted Activities that are performed at the request of the Grantee and are expected to inure to the exclusive benefit of the Grantee shall be paid for by the Grantee.

General Conditions for Use of the Easement on the Property:

Except as modified by the Specific Conditions for Use of the Easement on the Property, above, the following General Conditions to the use of the Easement shall apply.

1. The Grantee, its contractors, agents, successors and permitted assigns shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Parcels for any Permitted Activities.
2. The Grantee shall not have the right to grant easements over or through the Easement Parcels to any other person or entity for any purpose whatsoever. Any attempt to do so (regardless of whether the Grantee shall have notified the Grantors thereof) shall be conclusively deemed to over-burden the Easement Parcels and shall be void. The Grantors may, to the extent of their interests, grant other easements over the Easement Parcels (subject to the terms hereof)

to any other party from time to time on the condition that such easements do not material interfere with the purposes of this Permanent Drainage Easement.

3. Subject to the terms of this Paragraph, the Grantee, its contractors, agents, successors and permitted assigns, shall subject to the terms hereof have the right to enter upon the Easement Parcels for any Permitted Activities and to remove objects interfering with the drainage improvements and their proper functioning. The Grantee acknowledges that the Easement Parcels cross a working golf course and the Grantee shall use its best efforts to minimize any interference with such use. In no event shall the Grantee (i) change the topography or soil conditions of the Easement Parcels, (ii) erect any above-grade improvements, (iii) materially change any existing water features or the landscaping, or (iv) cause any material damage or long-term inconvenience to the golf course without the prior written consent of Holding Corp which may be withheld in its sole and absolute discretion.
4. The Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the drainage improvements. The Grantors shall not take any action that would materially impair the lateral or subjacent support for the drainage improvements.
5. The Grantee shall upon not less than 30 days prior notice have the right and authority to assign to any appropriate local governmental entity, or to any public utility provider, any and all rights to use, and all rights and obligations associated with, the Easement as are granted to and accepted by the Grantee herein.
6. The Grantee agrees that at such time and in the event that the Easement described herein be abandoned by the Grantee or any assignee, such Easement shall terminate and the real property interest represented by such Easement shall revert to the Grantors, their heirs, successors and/or assigns to the extent of their respective interests therein. Because of the potentially infrequent nature of the allowed use of the Easement, mere non-use of the Easement Parcels notwithstanding or the length of time of such non-use shall not constitute abandonment.
7. The Grantee agrees to execute, deliver and acknowledge any factually correct estoppel certificates and other agreements required from time-to-time by any of the Grantors' lenders, partners, investors, or title insurers evidencing the nature and extent of the easements granted hereby.
8. Each and every one of the benefits and burdens of the Easement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantors and the Grantee.

9. The consideration set forth above includes full and just compensation.
10. In further consideration hereof, each of the Grantors, for itself and its transferees and successors in title or assigns, to the extent of its respective property interests covenants and agrees that no building, structure, fill of soils or other materials, or other above or below ground obstruction that will materially interfere with the established drainage or the purposes of the Easement, will be placed, erected, or installed on behalf of the Grantors on the Easement Parcels or permitted by the Grantors without written authorization of the Grantee, which will not be unreasonably withheld or delayed. Nothing in this Paragraph or in this Instrument shall in anyway restrict any right of Holding Corp or Ground Lessor to cause or permit any improvements to be constructed or erected (including but not limited to regrading and relandscaping) outside the boundaries of the Easement Parcels. The Grantee hereby confirms that no existing improvements in the Easement Parcels (including, without limitation, tees, greens, bunkers, fairways, ponds, streams, cart paths, walkways and structures) interferes with the established drainage or the purposes of the Easement. Nothing in this Paragraph shall prohibit the Grantors from maintaining, repairing and replacing existing buildings, structures, fill of soils or other materials, or other above or below ground obstructions or maintaining substantially the same grade/topography and existing or similar landscaping within the Easement Parcels in its normal course of business as long as the same does not materially interfere with the purposes of this Permanent Drainage Easement. The Grantee acknowledges that improvements to the Property outside the Easement Parcels could alter the direction or flow of the drainage into the Easement Parcels, and the Grantee consents thereto. The Grantors covenant and agree that in the event the terms of this Paragraph are violated by the Grantors, their transferees and successors in title or assigns, such violation shall be corrected and eliminated within 90 calendar days after the receipt of notice from the Grantee. If such corrections are not made or diligently pursued by the Grantors, their transferees and successors in title or assigns, or whoever is the current owner of the fee title to the Easement Parcels, if different from the Grantors, within said 90 day period, the Grantee, after written notice to the Grantors, shall have the right to correct and eliminate such violation, and the Grantors, their transferees and successors in title or assigns, or whoever is the current owner of the fee title to the real property described as the Easement Parcels, if different from the Grantors shall promptly pay the actual costs thereof. In the event of a breach of this Paragraph 10 by the Grantors, the Grantee shall provide written notice to Ground Lessor and Holding Corp of such violation and in the event a cure of such violation is not completed by the violating party within 30 days of such notice (or such longer period as may reasonably be required provided such cure is commenced within such 30-day period and diligently pursued to completion), the Grantee shall, as its sole and exclusive remedy, be permitted to cure such

violation and shall diligently pursue such cure to completion. The actual cost thereof shall be paid by Holding Corp or Ground Lessor (as applicable).

11. Although the Grantee is granted herein the authority to maintain drainage improvements on the Easement Parcels, that grant shall in no way be construed to require Grantee to perform any maintenance on such drainage improvements. It is specifically understood and agreed to by and between the Grantors and the Grantee that any such maintenance of drainage improvements is contingent upon the approval of and budgeting for such maintenance by the Board of Directors of the Grantee, neither of which can be guaranteed.
12. Subject to the provisions of Paragraph 11 above, in the event the Grantee fails to perform its maintenance or other obligations hereunder, and such failure continues for 90 days (or less time in the case of an emergency), after notice thereof is delivered to the Grantee, Holding Corp (or Ground Lessor in the event Holding Corp is no longer the Tenant pursuant to the Ground Lease (as defined in Paragraph 15 below)) may, at its option, (i) perform such maintenance and the Grantee shall be liable for the actual cost thereof and/or (ii) terminate this Instrument.
13. To the extent permitted by law, the Grantee agrees to protect, defend, indemnify and hold the Grantors and their respective members, partners, shareholders, directors, officers, employees, heirs, agents, successors and assigns harmless from and against all costs, charges, damages, expenses (including, but not limited to, reasonable attorneys' fees and expenses) losses, liabilities and claims (A) arising from or in connection with any injury to persons or damage to property due to (i) the Grantee's negligence or willful misconduct, (ii) the performance of the Permitted Activities, (iii) the Grantee's failure to perform any of its obligations set forth in this Instrument as limited by the provisions of Paragraph 11 above, or (B) due to mechanics' or materialmen's liens recorded against any Grantor's real property interests containing the Easement Parcels in connection with any activities of the Grantee. The foregoing provisions of this Paragraph shall not apply to any such costs, charges, damages, expenses, losses, liabilities and claims to the extent arising from Grantor's gross negligence or willful misconduct. The Grantee shall not cause, suffer to exist or permit the recording of, any mechanics' or materialmen's liens against the Easement Parcels unless the Grantee is contesting the same by appropriate proceedings and has posted a bond or taken other steps to prevent the foreclosure of such lien pending resolution of the contest.
14. The Grantors reserve the right to relocate, alter or modify, or to cause the Grantee to relocate, alter or modify, the location of all or any portion of the drainage improvements to another location either within or outside of the Easement Parcels, from time to time, in the Grantors' sole discretion and at

Grantors' sole cost and expense on the condition that such does not materially impact the drainage capacity and effectiveness currently in existence on the Easement Parcels. In the event of any such relocation, alteration or modification, the Grantee shall, at the Grantors' option, either: (i) execute a release (in recordable form) of the rights granted hereunder with respect to the portion of the Easement Parcels to be vacated and enter into a new agreement in substantially the same form as this Instrument (in recordable form) to cover the new easement area or areas, in which event the Easement shall be considered canceled as to the portion vacated by such relocation and all rights and obligations of the Grantee contained herein with respect to the Easement Parcels shall be described in such subsequent agreement; or (ii) execute an amendment (in recordable form) to this Instrument amending the description of the Easement Parcels to reflect the designated location where the drainage improvements are to be relocated or are located, as applicable. Grantee shall cooperate with Grantors in taking all steps necessary or appropriate to accomplish the release of designated portions of the Easement Parcels from the effect of this Instrument and the relocation, alteration or modification of the Easement Parcels or the drainage improvements, in whole or in part. If any or all of the Easement Parcels or the drainage improvements are to be relocated, altered, or modified, Grantee shall, upon Grantors' request (and at Grantors' sole cost and expense) promptly remove the drainage improvements and restore the Easement Parcels to the same condition existing at the time of the execution of this Instrument, and commence construction of the new drainage improvements on such new location designated by Grantors also at Grantor's sole cost and expense.

15. As between Ground Lessor and Holding Corp only, (i) nothing contained herein shall modify or limit Ground Lessor's and Holding Corp's rights or obligations under the Ground Lease and (ii) in the event of any conflict between the terms of this Instrument and the terms of the Ground Lease, the latter shall control.

[SIGNATURES ON FOLLOWING PAGE]

GRANTORS:

BHIF HOLDINGS, LLLP,
a Colorado limited liability limited partnership

By: BHIF GP, LLC,
a Colorado limited liability company,
Its General Partner

By: _____
Name: _____
Its: _____

THE ESTATE OF GEORGE B. BEARDSLEY

By: _____
Name: _____
Title: _____

200 INVERNESS DRIVE WEST
HOLDING CORP.,
a Colorado Corporation

By: _____
Name: _____
Title: _____

GRANTEE:

SOUTHEAST METRO STORMWATER AUTHORITY

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) **ss.**
County of Arapahoe)

The foregoing Permanent Drainage Easement was acknowledged before me this
_____day of _____, 2012, by _____ as
President of _____.

Witness my hand and official seal:

Notary Public _____

My commission expires: _____

STATE OF COLORADO)
) **ss.**
County of Arapahoe)

The foregoing Permanent Drainage Easement was acknowledged before me this
_____day of _____, 2012, by _____ as
President of _____.

Witness my hand and official seal:

Notary Public _____

My commission expires: _____

STATE OF COLORADO)
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County of Arapahoe)

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Notary Public _____

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STATE OF COLORADO)
) **ss.**
County of Arapahoe)

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_____ day of _____, 2012, by _____ as
President of _____.

Witness my hand and official seal:

Notary Public _____

My commission expires: _____

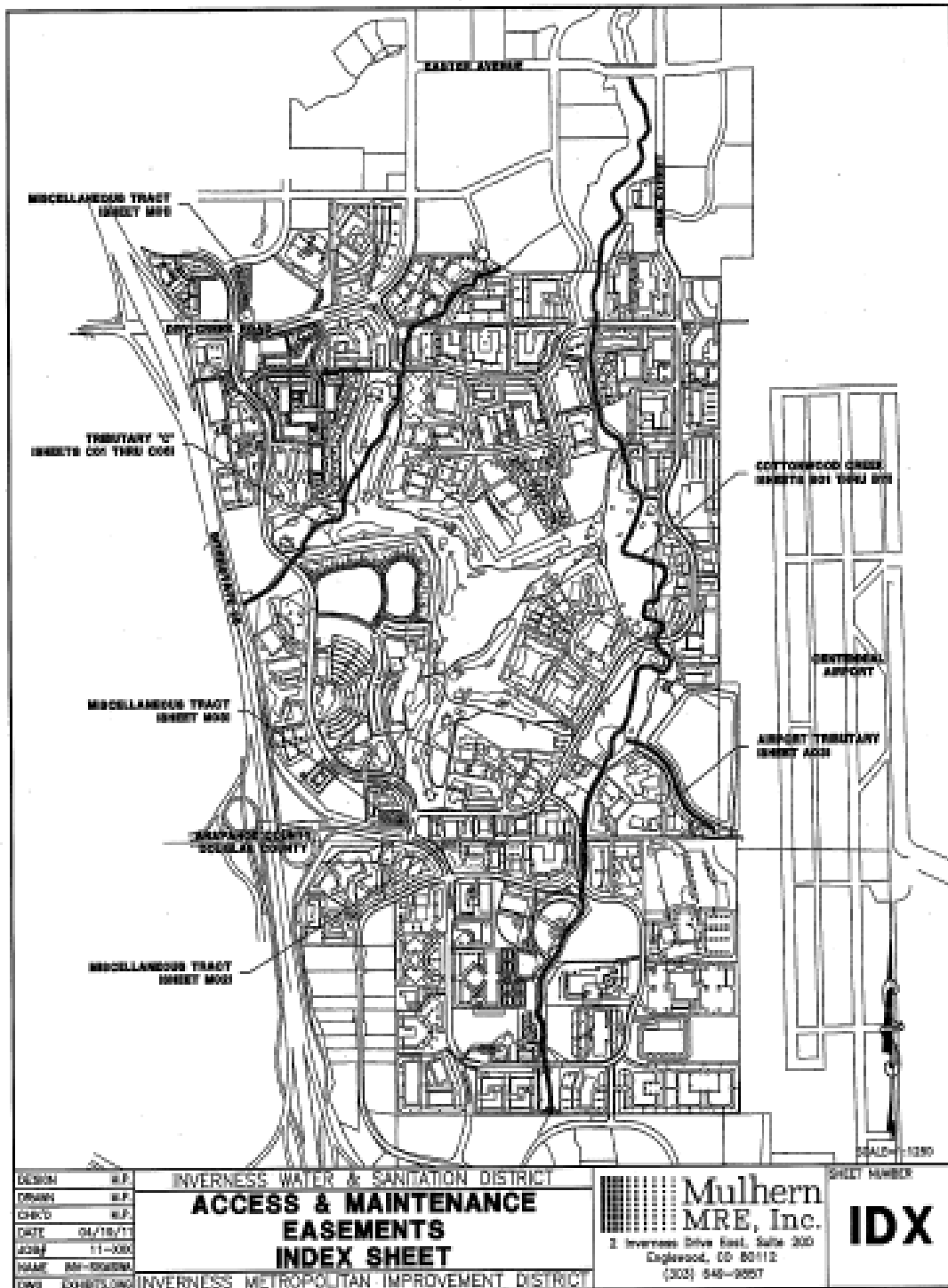
Exhibit A

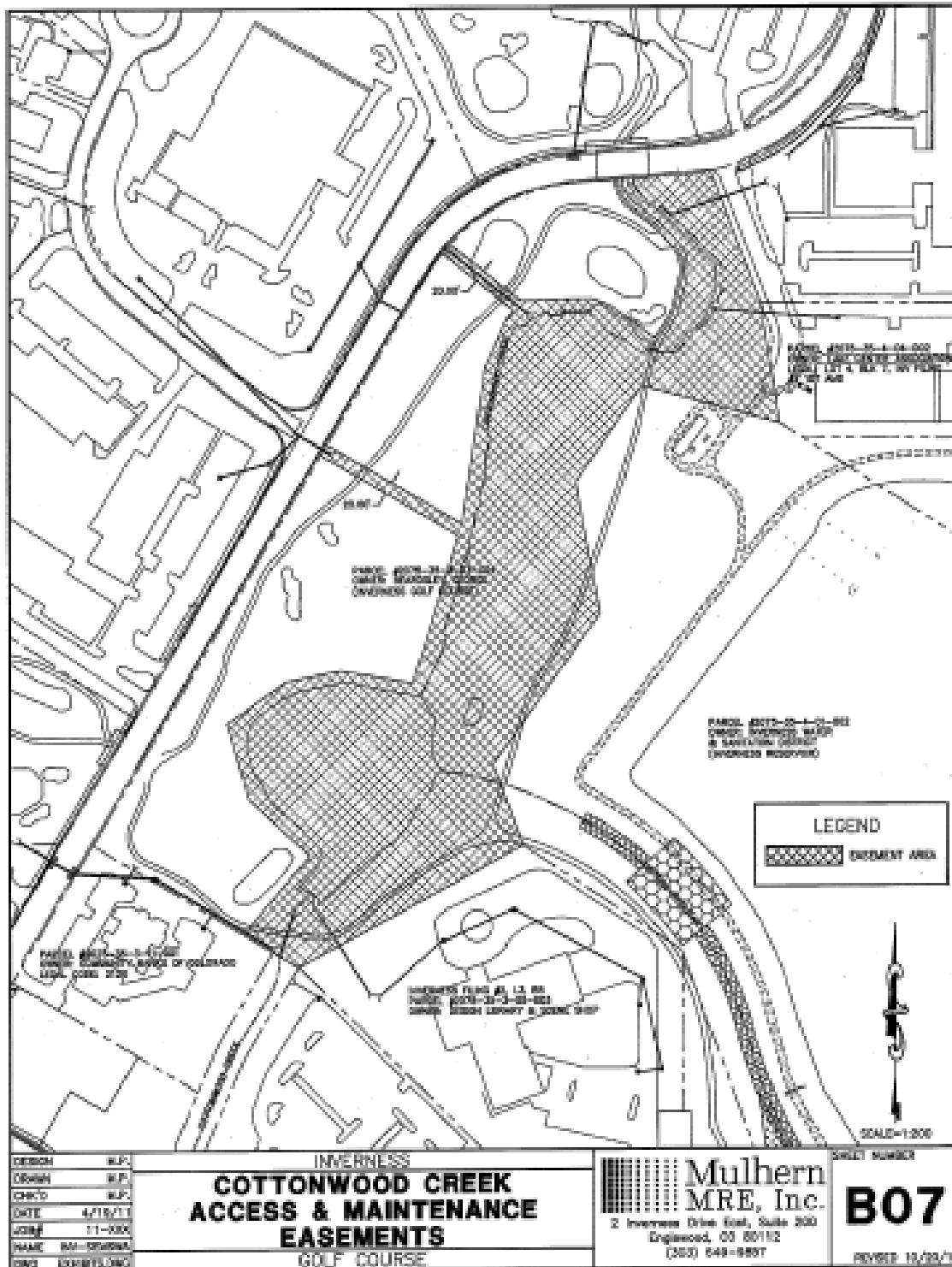
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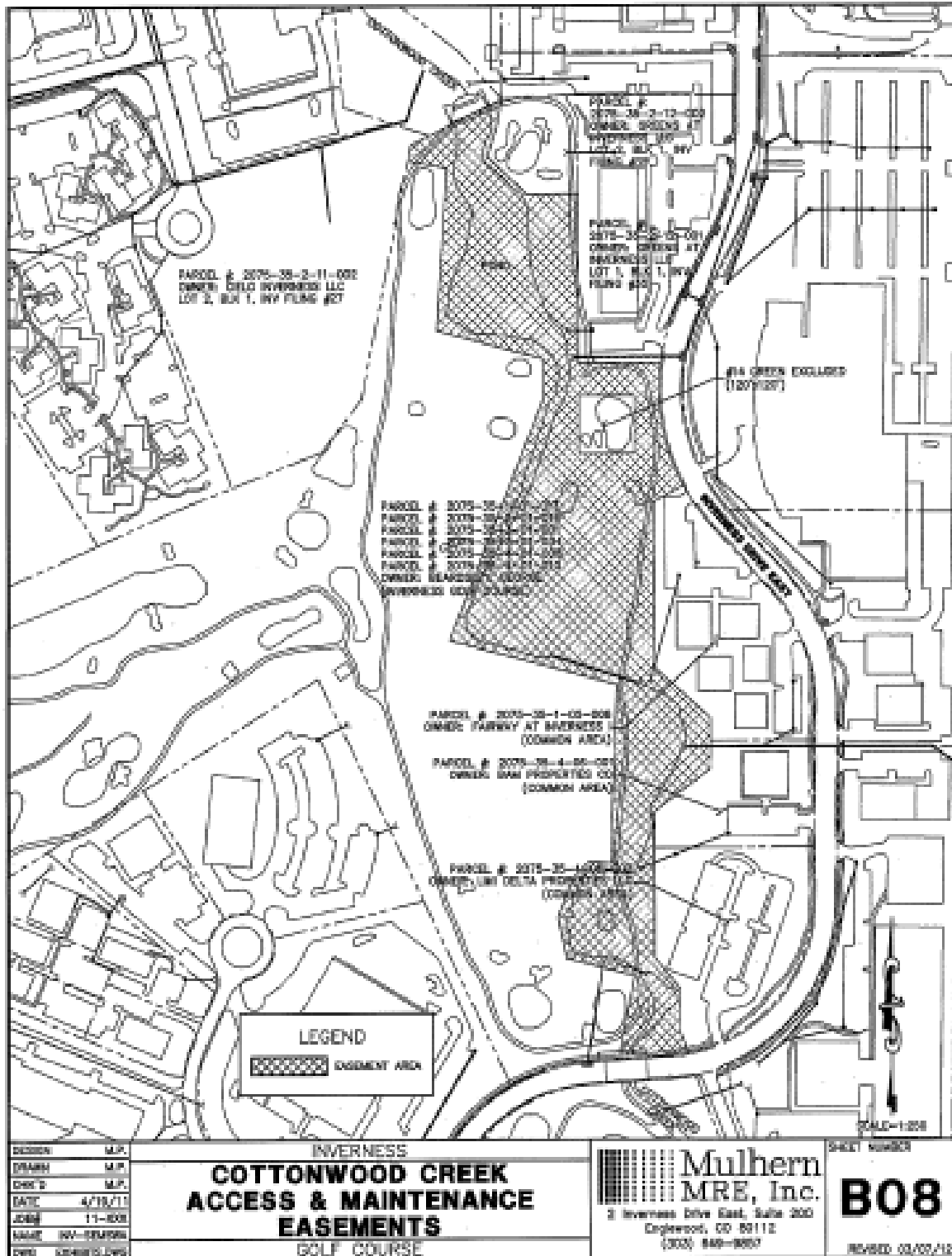
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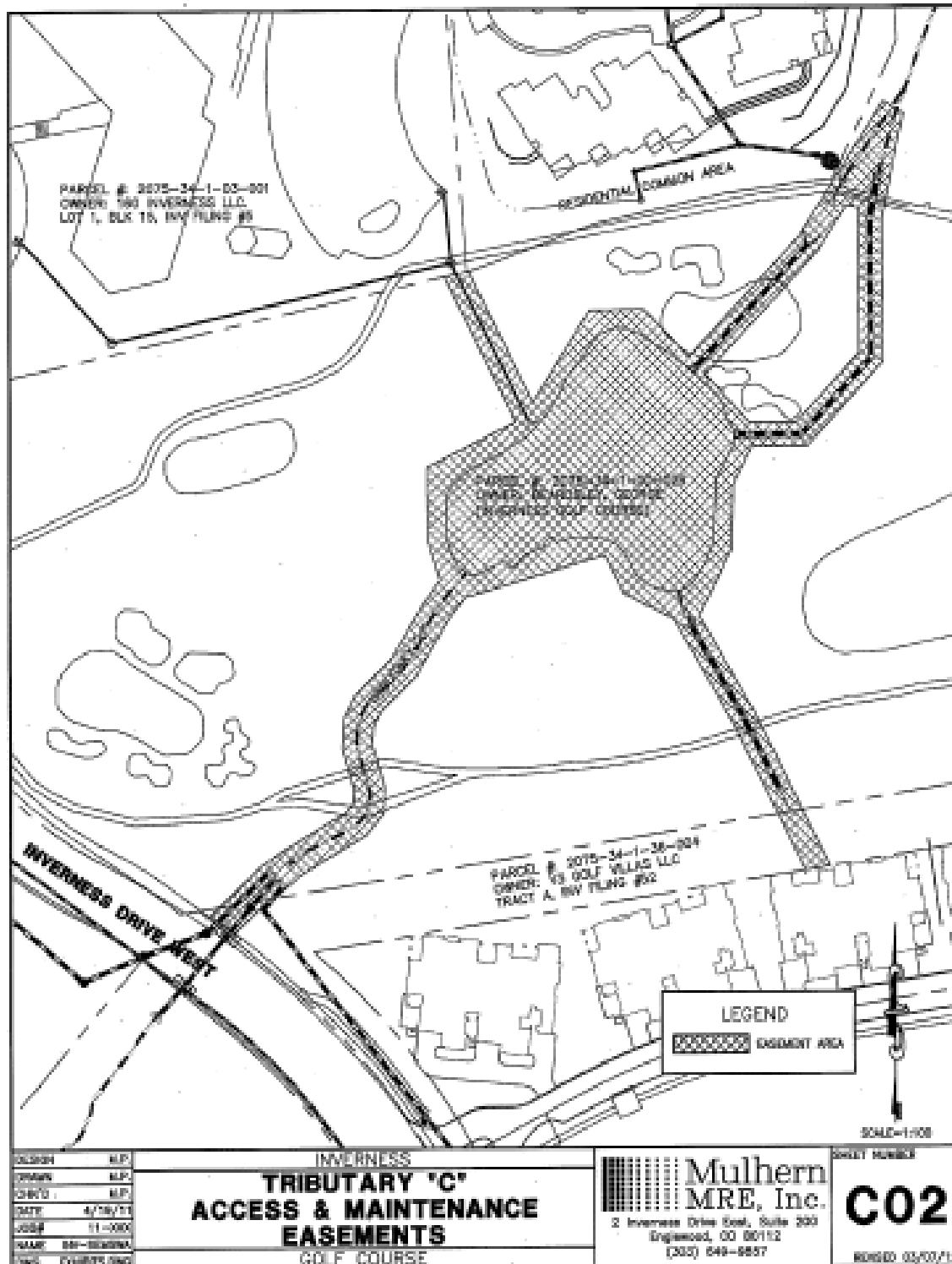
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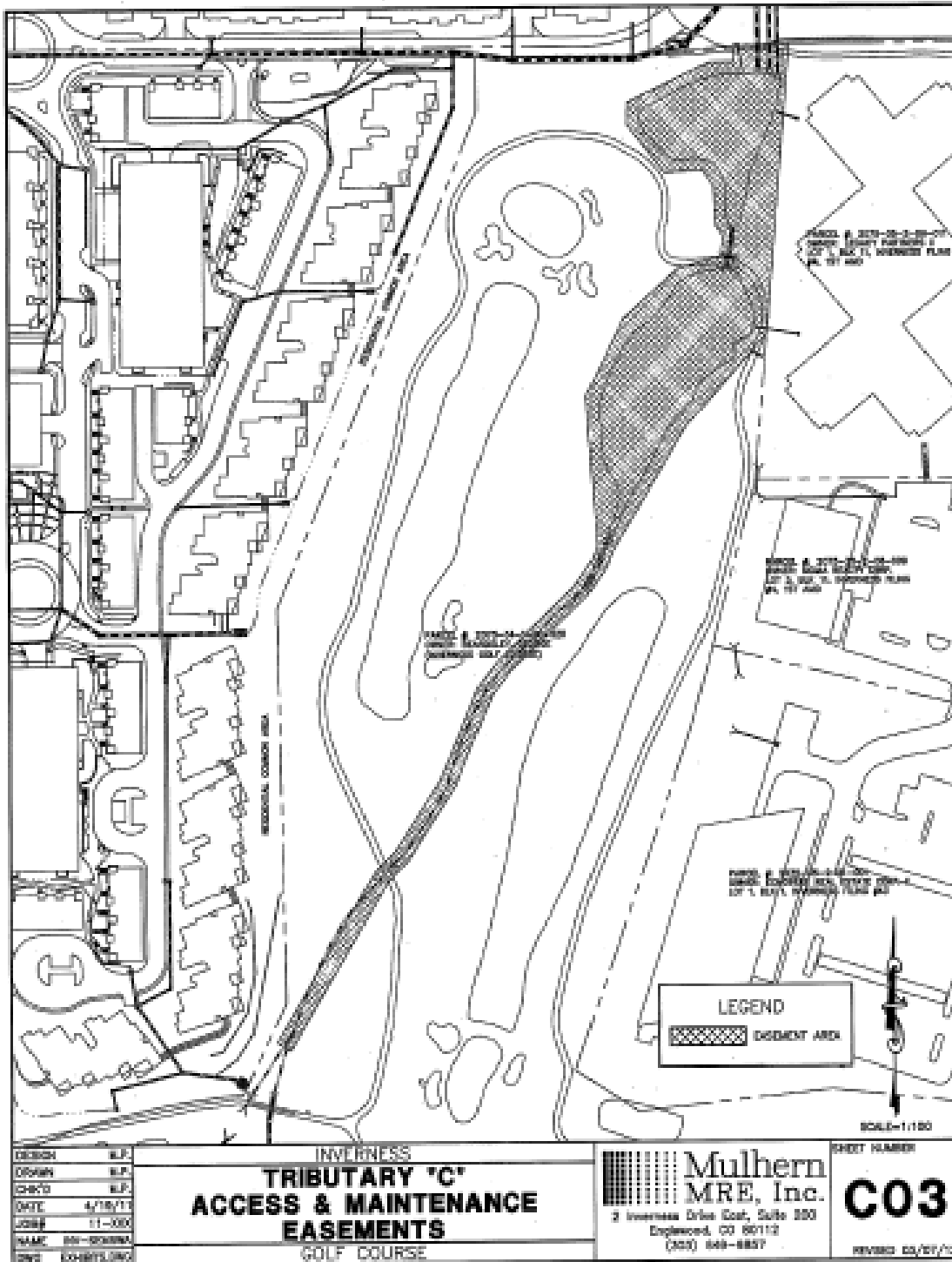
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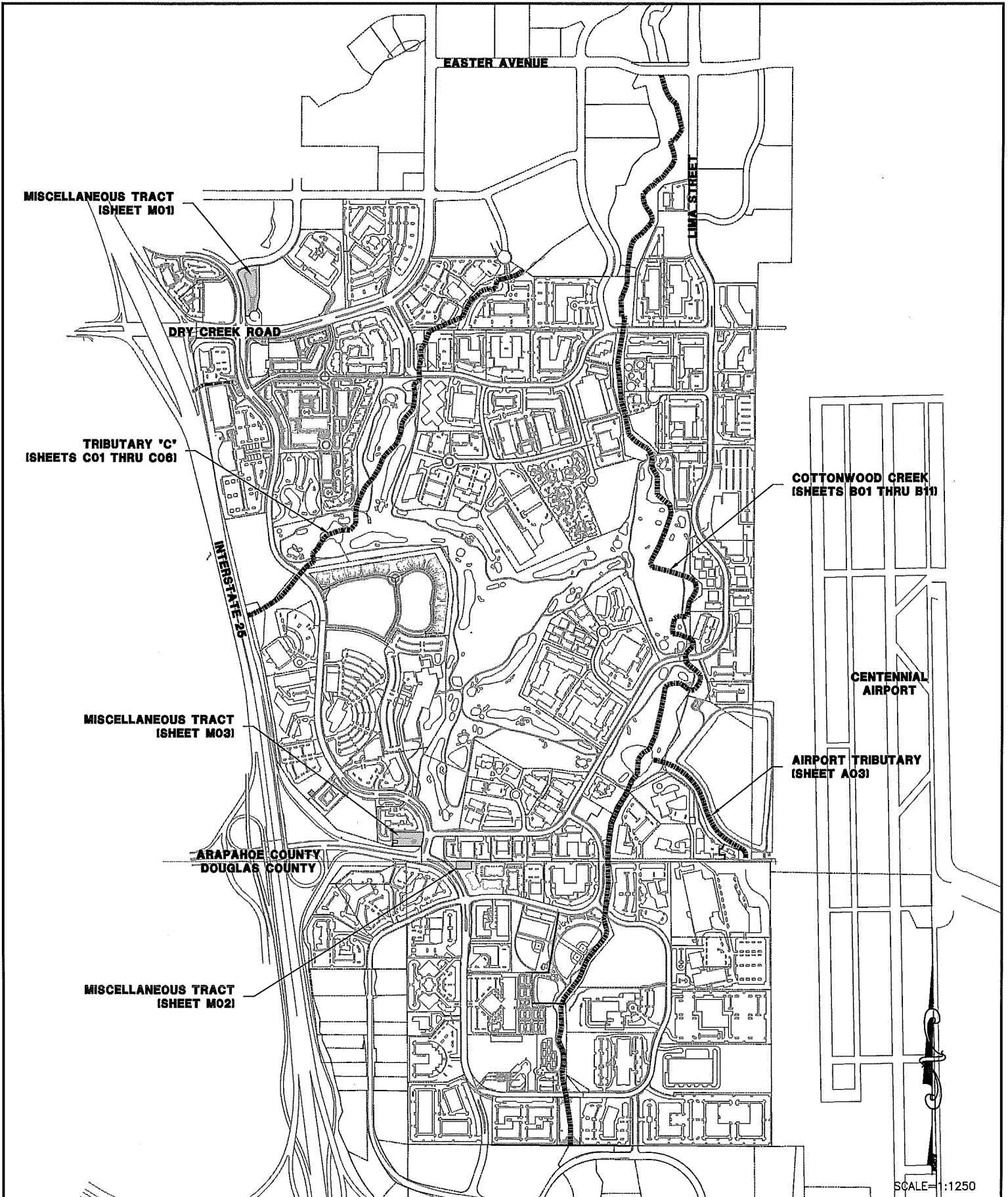












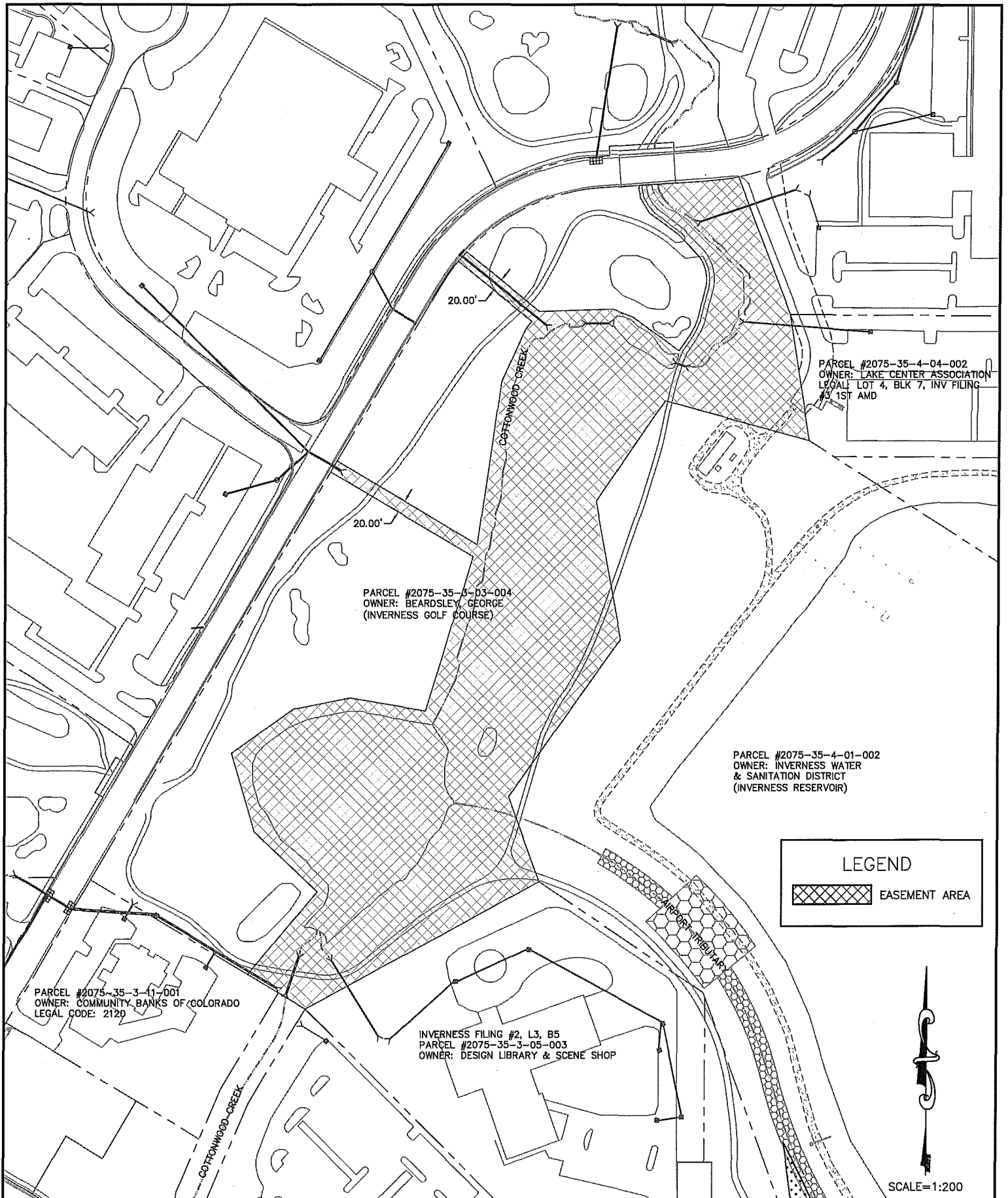
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|--------|--------------|
| DESIGN | M.P. |
| DRAWN | M.P. |
| CHK'D | M.P. |
| DATE | 04/19/11 |
| JOB# | 11-XXX |
| NAME | INV-SEMSWA |
| DWG | EXHIBITS.DWG |

INVERNESS WATER & SANITATION DISTRICT
**ACCESS & MAINTENANCE
EASEMENTS
INDEX SHEET**
INVERNESS METROPOLITAN IMPROVEMENT DISTRICT



**Mulhern
MRE, Inc.**
2 Inverness Drive East, Suite 200
Englewood, CO 80112
(303) 649-9857

SHEET NUMBER
IDX



| | |
|--------|--------------|
| DESIGN | M.P. |
| DRAWN | M.P. |
| CHK'D | M.P. |
| DATE | 4/19/11 |
| JOB# | 11-XXX |
| NAME | INV-SEMSWA |
| DWG | EXHIBITS.DWG |

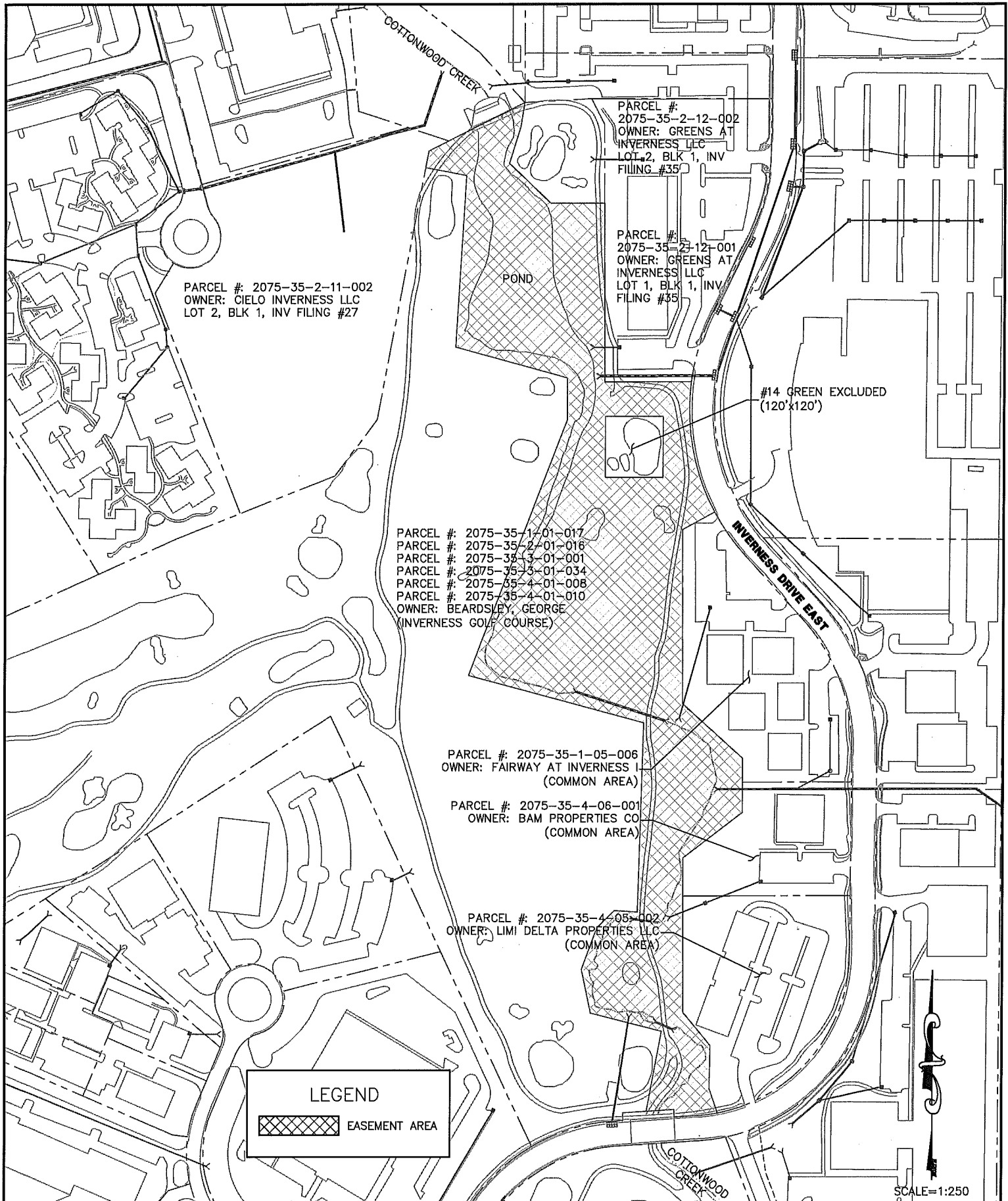
INVERNESS

COTTONWOOD CREEK ACCESS & MAINTENANCE EASEMENTS

GOLF COURSE

Mulhern
MRE, Inc.
2 Inverness Drive East, Suite 200
Englewood, CO 80112
(303) 649-9857

SHEET NUMBER
B07
REVISED 10/20/11

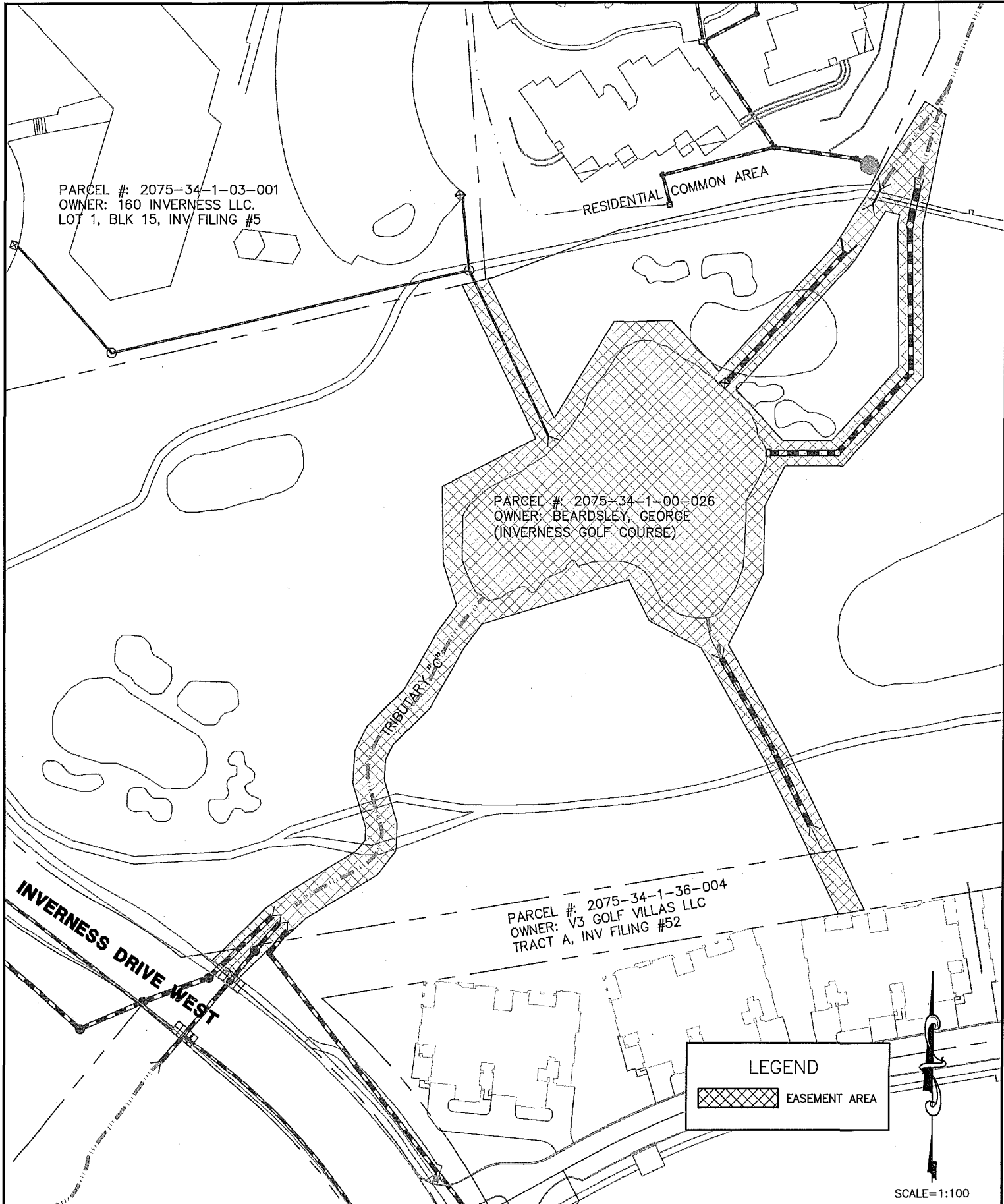


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| DRAWN | M.P. |
| CHK'D | M.P. |
| DATE | 4/19/11 |
| JOB# | 11-XXX |
| NAME | INV-SEMSWA |
| DWG | EXHIBITS.DWG |

INVERNESS
**COTTONWOOD CREEK
 ACCESS & MAINTENANCE
 EASEMENTS**
 GOLF COURSE

**Mulhern
 MRE, Inc.**
 2 Inverness Drive East, Suite 200
 Englewood, CO 80112
 (303) 649-9857

SHEET NUMBER
B08
 REVISED 03/07/12



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| DESIGN | M.P. |
| DRAWN | M.P. |
| CHK'D | M.P. |
| DATE | 4/19/11 |
| JOB# | 11-XXX |
| NAME | INV-SEMSWA |
| DWG | EXHIBITS.DWG |

INVERNESS

TRIBUTARY "C"

ACCESS & MAINTENANCE

EASEMENTS

GOLF COURSE

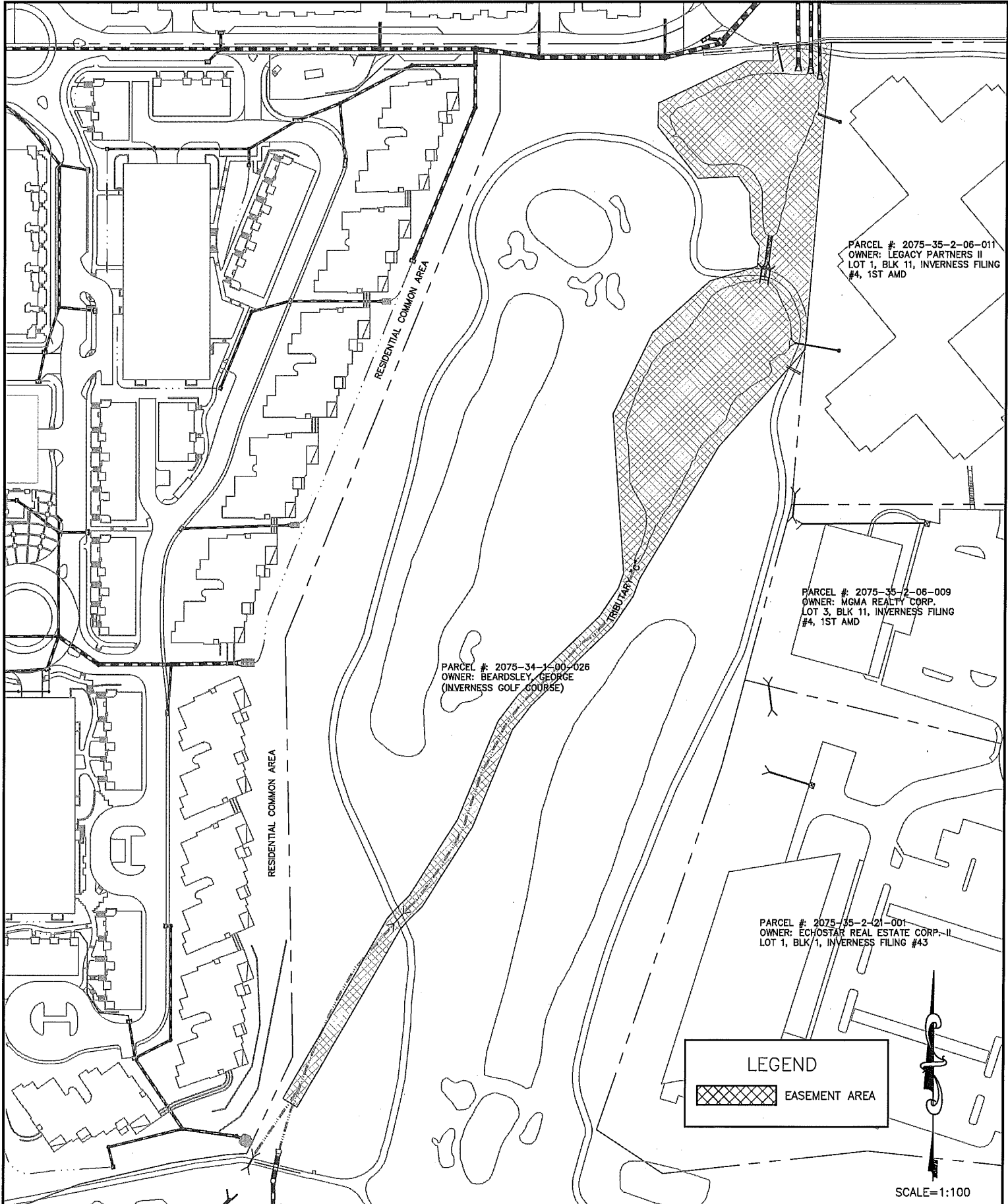
 **Mulhern**
MRE, Inc.

2 Inverness Drive East, Suite 200
Englewood, CO 80112
(303) 649-9857

SHEET NUMBER

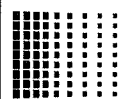
C02

REVISED 03/07/12



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| DESIGN | M.P. |
| DRAWN | M.P. |
| CHK'D | M.P. |
| DATE | 4/19/11 |
| JOB# | 11-XXX |
| NAME | INV-SEMSWA |
| DWG | EXHIBITS.DWG |

INVERNESS
**TRIBUTARY "C"
ACCESS & MAINTENANCE
EASEMENTS**
GOLF COURSE



**Mulhern
MRE, Inc.**
2 Inverness Drive East, Suite 200
Englewood, CO 80112
(303) 649-9857

SHEET NUMBER
C03
REVISED 03/07/12