


Roll 677 Image 1401-1417
Document 925 Type COVNT Pages 17
Date 7/19/2005 Time 3:05 PM
Rec Amt \$87.00

PATRICK F GILL, AUDITOR AND RECORDER
WOODBURY COUNTY IOWA 

**Declaration of Easements, Covenants and Restrictions
Recorder's Cover Sheet**

Preparer Information:

Cody M. McCullough, 614 Pierce Street, Sioux City, IA, 51101, Phone: (712) 277-4561

Taxpayer Information:

N/A

Return Address

Cody M. McCullough
614 Pierce Street
Sioux City, IA 51101

Grantors:

Lakeport Commons, L.L.C.

Grantees:

N/A

Legal Description: See Exhibit A

Document or instrument number if applicable:

Preparer

Information Cody M. McCullough, 614 Pierce Street, Sioux City, IA 51101, (712) 277-4561
Individual's Name Street Address City Phone

Crary, Huff, Inkster, Sheehan, Ringgenberg, Hartnett & Storm, P.C. ISBA # 02554

SPACE ABOVE THIS LINE
FOR RECORDER

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (“Declaration”) is made as of the 7 day of July, 2005 by **LAKEPORT COMMONS, L.L.C.**, an Iowa limited liability company, having its principal place of business at c/o Cormac Properties, 16820 Frances Street, Omaha, Nebraska 68130 (“Developer”).

WITNESSETH

WHEREAS, Developer is the owner of certain tracts of land legally described in EXHIBIT A attached hereto and made a part hereof and identified as the “**Outlot Tracts**” as depicted on the SITE PLAN attached hereto as EXHIBIT B and made a part hereof;

WHEREAS, the Developer intends to develop the Outlot Tracts in conjunction with each other as integral parts of a retail shopping complex, and in order to effectuate the common use and operation thereof;

WHEREAS, Developer and Kohl's Department Stores, Inc. entered into an Operation and Easement Agreement on March 11, 2005 (“**OEA**”) which contains covenants, agreements and easements which benefit and burden the Outlot Tracts;

WHEREAS, Developer desires to supplement the OEA by entering into this Declaration providing for non-exclusive perpetual ingress and egress easements to and from the Outlot Tracts and imposing restrictions on the curb cuts serving the Outlot Tracts.

NOW, THEREFORE, Developer, for itself, its successors and assigns, hereby declares that the Outlot Tracts shall be held, occupied, used, rented, enjoyed, transferred, conveyed, mortgaged, and otherwise encumbered subject to the following easements, covenants and restrictions:

ARTICLE 1

DEFINITIONS

1.1 **Occupant.** "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of the Outlot Tracts under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.2 **Outlot Tracts.** "Outlot Tracts" shall mean the portions of the Shopping Center identified on the SITE PLAN as "Outlot 2", "Outlot 3", "Outlot 4", "Outlot 5", "Outlot 6", "Outlot 7", "Outlot 8", "Outlot 9", "Outlot 10" and "Outlot 11".

1.3 **Owner.** "Owner" shall mean, as of any time, each fee simple owner of any Outlot Tract, including without limitation the Developer.

1.4 **Permittee.** "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Outlot Tracts; provided, however, persons engaged in civic, public or political activities within the Outlot Tracts, including but not limited to the following activities, shall not be considered to be Permittees:

- (a) exhibiting any placard, sign or notice;
- (b) distributing any circular, handbill, placard or booklet;
- (c) soliciting memberships or contributions for private, civic, public or charitable purposes;
- (d) parading, picketing or demonstrating; and
- (e) failing to follow rules or regulations established by the Owners and/or Occupants of the Shopping Center relating to the use of the Shopping Center.

1.5 **Person.** "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

1.6 **Shopping Center.** "Shopping Center" shall mean all of the property platted as the lots and outlots in Lakeport Commons, an Addition to Sioux City, Woodbury County, Iowa.

ARTICLE 2

EASEMENTS

2.1 Ingress and Egress.

(a) Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Outlot Tract, and for the benefit of the Owners thereof from time to time and their Permittees, in common with others entitled to use the same, a non-exclusive perpetual easement for the passage of vehicles over and across the access drives of the Outlot Tracts that are designated on the SITE PLAN as "Perpetual Access".

(b) The easement rights granted under this Section 2.1 shall be subject to the following reservations as well as the applicable provisions contained in the OEA:

(i) Notwithstanding anything in this Declaration to the contrary, the Outlot Tracts shall only be permitted to have curb cuts serving such Outlot Tracts (A) in the locations and (B) with the type of access as depicted on the SITE PLAN ("**Permissible Curb Cuts**"). If the SITE PLAN does not provide for Permissible Curb Cuts for an Outlot Tract, or if an Owner desires to construct a curb cut in an area not designated as a Permissible Curb Cut, such Owner may only construct additional curb cuts if such Owner obtains the approval of Developer for the location and type of access for the curb cut, regardless of whether Developer is an Owner, and the Owners of any and all Outlot Tracts, if any, sharing a common boundary with the area of such Outlot Tract where the proposed curb cut is to be located. Developer's approval shall be granted or withheld in Developer's sole and absolute discretion. If an approval is granted, such curb cuts shall be Permissible Curb Cuts for purposes of this Declaration.

(ii) In connection with the construction of any Permissible Curb Cuts, Developer hereby establishes and creates for the benefit of and as an appurtenance to each Outlot Tract to which the Permissible Curb Cuts are being constructed a temporary, non-exclusive construction easement in and to the Outlot Tract sharing such curb cut for the purpose of performing the construction work described herein. The term of such easement for each Permissible Curb Cut shall commence on the date the curb cut becomes a Permissible Curb Cut and shall terminate automatically without further action upon completion of the installation of such Permissible Curb Cut. Any Owner installing curb cuts pursuant to this Declaration (A) shall pay all costs and expenses with respect to such work, (B) shall cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first class materials and in a good and workmanlike manner as quickly as practical and in a manner so as to minimize interference with the conduct or operation of the business of the Owner whose Outlot Tract is affected or any Occupant of such Owner's Outlot Tract, (C) shall comply in all respects with all applicable governmental laws, regulations, and requirements, (D) shall promptly, at its sole cost and expense, clean the area and restore the affected portion of the Outlot

Tract to a condition equal to or better than the condition which existed prior to the commencement of such work, (E) except in the case of the installation of Permissible Curb Cuts on the Outlot Tract of another party prior to completion of the initial construction of improvements on the Outlot Tract of such other party or except in the case no business is then being operated on such Outlot Tract, shall cause such work to be done after normal business hours whenever possible and otherwise as quickly as practical and in such manner as to cause as little disturbance in the use of the Outlot Tract affected by such work and the business operated thereon as is practicable under the circumstances, (F) except in the case of emergency or except in the case of the installation of Permissible Curb Cuts on the Outlot Tract of another Owner prior to the completion of the initial construction of improvements on the Outlot Tract, or except in the case no business is then being operated on such Outlot Tract, shall not perform any such work during the months of October, November or December without the prior written consent of such Owner, and (G) shall indemnify, defend and hold the Owner of the Outlot Tract on which such Permissible Curb Cuts are installed and any Occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys fees, which may result from any such work.

(iii) In the event the installation of any Permissible Curb Cut is not completed in accordance with the standards of the above Section 2.1(b)(ii), the Developer shall have the right, but not the obligation, to perform whatever work is reasonably necessary in order to bring the Permissible Curb Cut into compliance with such standards. In the event Developer elects to exercise the remedy provided for herein, it shall notify, in a manner Developer deems proper, the Owner which initially constructed such Permissible Curb Cut five (5) days prior to performing such work and such Owner shall reimburse the Developer for all of the Developer's reasonable expenses incurred in connection with the work contemplated hereby within thirty (30) days of demand therefor.

ARTICLE 3

LIGHTING SPECIFICATIONS

3.1 **Requirements.** With respect to Outlots 3 and 5 only, for so long as that certain lease between Developer, as landlord, and Red Robin International, Inc., as tenant, remains in effect, the Owner and Occupant of each of Outlots 3 and 5 shall maintain lighting on said Outlot in accordance with the lighting specifications set forth in EXHIBIT C attached hereto and made a part hereof. Such lighting shall be operated not less than the hours required of the Owner or Occupant of Outlot 4.

ARTICLE 4

MISCELLANEOUS

4.1 **Modification of Declaration.** This Declaration may be modified or amended by, and only by, a written agreement signed by all of the then current Outlot Tract Owners and shall be effective only when recorded in the official real estate records of the county and state where the

Outlot Tracts are located. No consent to the amendment of this Declaration shall ever be required of any Occupant or Person other than the Outlot Tract Owners.

4.2 **Construction and Interpretation.**

(a) The terms of this Declaration and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatory hereto and its respective successors and assigns. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby, including but not limited to the OEA.

(b) This Declaration and the Exhibits hereto contain all the representations and the entire agreement with respect to the subject matter hereof.

(c) The provisions of this Declaration shall be construed as a whole pursuant to the laws of the State of Iowa, and further according to their common meaning and not strictly for or against the Developer.

(d) Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(e) The captions preceding the text of each article and section of this Declaration are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(f) Invalidation of any of the provisions contained in this Declaration, or invalidation of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

(g) No Occupant or Person other than the Developer or Owners shall have the right to enforce any of the provisions of this Declaration.

4.3 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Outlot Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

ARTICLE 5

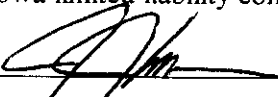
TERM

5.1 **Term of this Declaration.** This Declaration shall be effective as of the date first above written and the expiration and extension of this Declaration shall be governed by Iowa Code sections 614.24 – 614.28, as amended; provided, however, that the easements referred to in Article 2 which are specified as being perpetual shall have no term and will continue perpetually.

Signature pages follow

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed effective as of the day and year first above written.

LAKEPORT COMMONS, L.L.C.,
an Iowa limited liability company

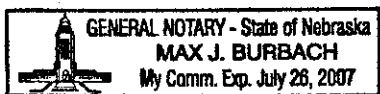
By:  _____

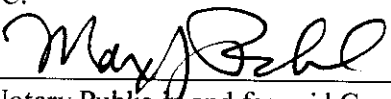
Name: Jeff W. Johnson

Title: Manager

STATE OF NEBRASKA, COUNTY OF DOUGLAS, ss:

This instrument was acknowledged before me on this 27 day of June, 2005, by Jeff W. Johnson as Manager of Lakeport Commons, L.L.C.



 _____
Notary Public in and for said County and State

CONSENT AND RATIFICATION

The undersigned, being the Tenant under a Lease dated as of August 18, 2003 between the undersigned and Lakeport Commons, L.L.C., for the premises described as Outlot 2, Lakeport Commons, an Addition to the City of Sioux City, Woodbury County, Iowa, hereby consents to and ratifies in its entirety all of the terms, conditions and provisions of the foregoing Declaration provided (i) no further amendments, modifications, changes, supplements or additions to the foregoing Declaration are made without the undersigned's prior written consent and (ii) in the event of any conflicts between the foregoing Declaration and the undersigned's Lease, the Lease will control.

BEST BUY STORES L.P., a Virginia limited partnership

By: BBC Property Co., a Minnesota corporation

Its: General Partner

By: James E. Istas

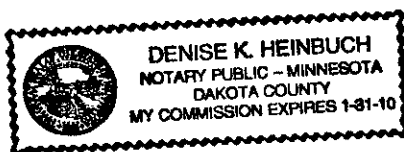
Name: James E. Istas

Title: Associate General Counsel

STATE OF MINNESOTA, COUNTY OF HENNEPIN, ss:

This instrument was acknowledged before me on this 7th day of July, 2005, by James E. Istas, as Associate General Counsel of BBC Property Co., General Partner for Best Buy Stores L.P.

Denise K. Heibuch
Notary Public in and for said County and State



CONSENT AND RATIFICATION

The undersigned, being the Tenant under a Ground Lease dated as of June 1, 2005 between the undersigned and Lakeport Commons, L.L.C., for the premises described as Outlot 4, Lakeport Commons, an Addition to the City of Sioux City, Woodbury County, Iowa, hereby consents to and ratifies in its entirety all of the terms, conditions and provisions of the foregoing Declaration.

RED ROBIN INTERNATIONAL, INC., a Nevada corporation

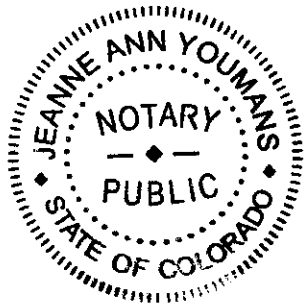
By: John W. Grant
John W. Grant

Name: _____

Title: _____

STATE OF Colorado, COUNTY OF Arapahoe, ss:

This instrument was acknowledged before me on this 1st day of July, 2005, by John W. Grant, as VP/Asst Secy of Red Robin International, Inc.



Jeanne Ann Youmans
Notary Public in and for said County and State

My Commission Expires 4-14-2009

EXHIBIT A

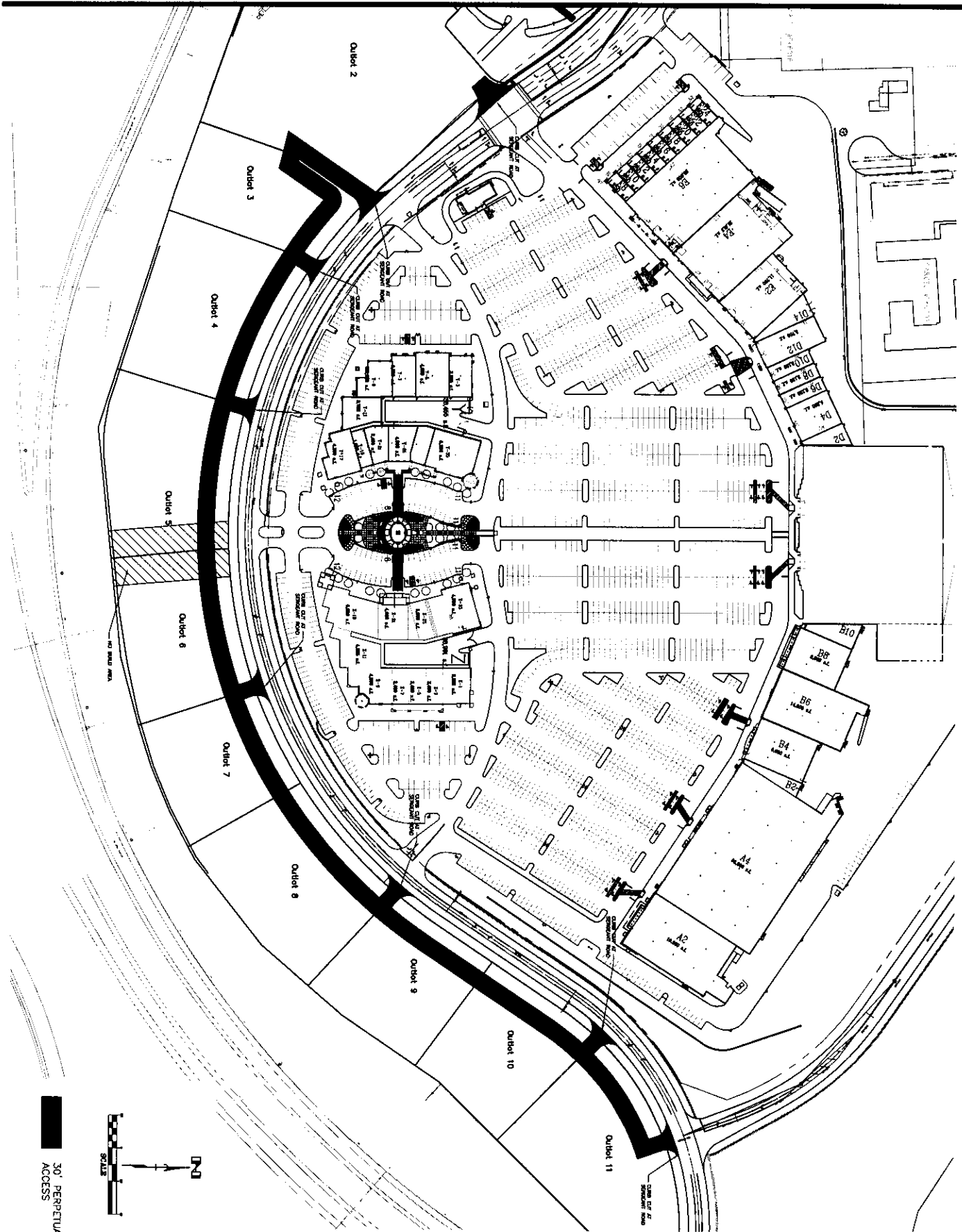
LEGAL DESCRIPTION OF THE OUTLOT TRACTS

Outlots 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, Lakeport Commons, an Addition to the City of Sioux City, Woodbury County, Iowa.

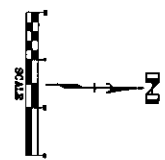
EXHIBIT B

SITE PLAN

See attached



30' PERPETUAL ACCESS



SITE PLAN

EXHIBIT B
LAKEPORT COMMONS
SIOUX CITY, IA

233500
DAIR
 DeWitt Grant Reckert & Assoc. Co.
 Consulting Engineers
 Sioux City, Iowa
 Rock Rapids, Iowa
 Sioux Falls, South Dakota

DATE: 05/23/05
 DRAWN BY: KLM
 APPROVED: [Signature]
 REVISED:

Document Produced by ddnPDF Unregistered - http://www.ddnsoft.com

EXHIBIT C

**LIGHTING SPECIFICATIONS FOR
OUTLOTS 3 AND 5**

See attached

Type _____
 Catalog No. _____

SiteMaster Roadway Series

Horizontal Lamp Cutoff Luminaire

APPLICATIONS

- Building Perimeters, Parks, Recreation Areas, Parking Areas, Roadways, Outdoor Sales Areas, Sport Courts, Outdoor Areas.

CONSTRUCTION

- Precision die-cast aluminum housing.
- One-piece fully gasketed die-cast aluminum lens frame.
- Construction and gasketing prohibit dust, moisture, and bug entry.
- Toolless entry into housing/lamp chamber via door/lens frame latch.
- Corrosion resistant Duraplex II bronze polyester powder coated finish.
- Optional designer finishes available. See page 281 in the ExcelLine catalog.

ELECTRICAL

- Porcelain spring-loaded 4KV pulse rated socket-mogul base.
- High Power Factor CWA ballast.
- Electrical components mounted to hinged ballast tray.
- Starting temperature: LX(HPS)-40°F/-40°C, MA(MH)-20°F/-30°C.

OPTICS

- One-piece hydroformed anodized aluminum reflector.
- Type IV reflector incorporates segmented inserts.
- 400W MA Type II and IV optics require reduced outer jacketed lamps.

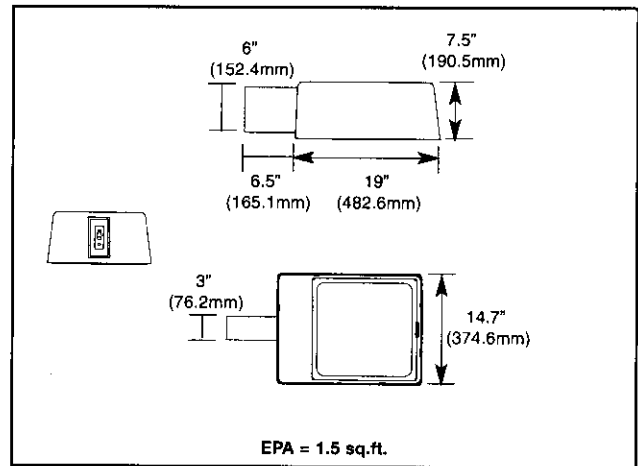
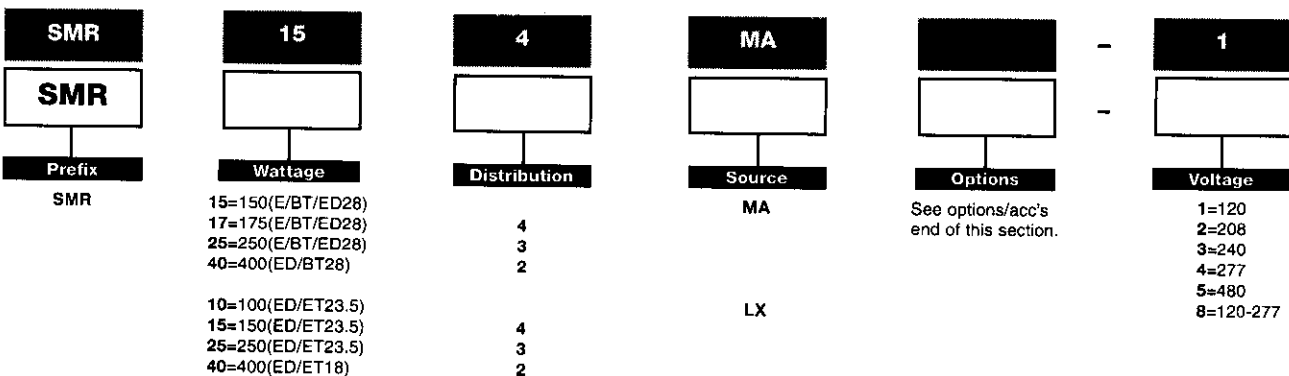
MOUNTING

- Factory installed die-cast aluminum arm.
- Arm contains integral wiring/splice chamber via side access.
- Key slot design provides one person installation.
- Hands-free wiring.

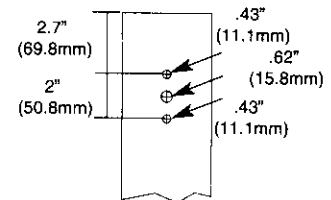
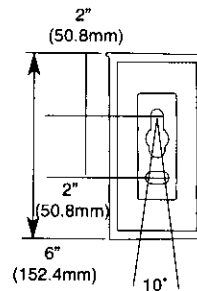
WARRANTY/LISTINGS

- UL 1572 listed for wet locations.
- Published five year limited warranty.

ORDERING GUIDE EXAMPLE



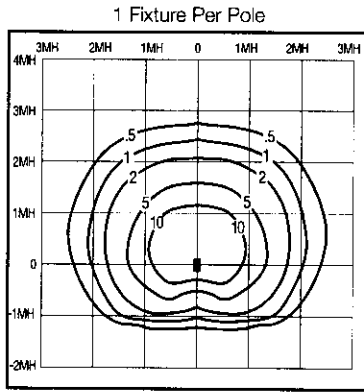
150 to 400 Watt (MA) Metal Halide
100 to 400 Watt (LX) High Pressure Sodium



ISO 9001 Registered

ExcelLine
 A GE CONSUMER THOMSON Company

SiteMaster Roadway Series



SMR153NLXL
LU150/55/MED
16,000 Lumens
10' Mount. Hgt.
Type III Distrib.

Footcandle Correction

Different Lamps/Watts

Multiply the following factors times the footcandle values for changes in lamps/watts:

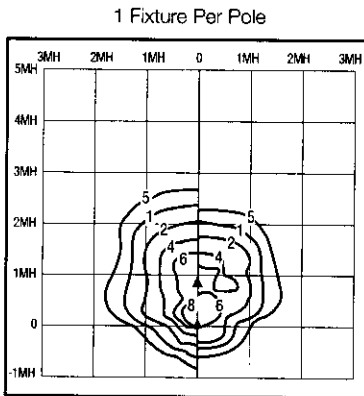
| | | | |
|----------|------|---------|-----|
| 35W HPS | .14 | 50W MA | .21 |
| 50W HPS | .25 | 70W MA | .34 |
| 70W HPS | .34 | 100W MA | .45 |
| 100W HPS | .60 | | |
| 150W HPS | 1.00 | | |

Different Mounting Height

Multiply the following factors times the footcandle values for changes in mounting height:

To Change From 10'

| | | | | | |
|------------|-----|-----|-----|-----|-----|
| New Height | 6' | 8' | 10' | 12' | 15' |
| Factor | 2.8 | 1.6 | 1.0 | .69 | .44 |



SMR404LX
LU400
50,000 Lumens
30' Mount. Hgt.
Forward Throw

SMR404MA
MH400/U
34,000 Lumens
30' Mount. Hgt.
Forward Throw

Footcandle Correction

Different Lamps/Watts

Multiply the following factors times the footcandle values for changes in lamps/watts:

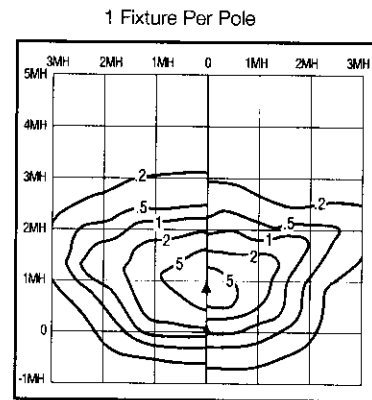
| | | | |
|----------|-----|---------|-----|
| 400W HPS | 1.0 | 400W MH | 1.0 |
| 250W HPS | .55 | 250W MH | .60 |
| 150W MA | .32 | 175W MH | .41 |

Different Mounting Height

Multiply the following factors times the footcandle values for changes in mounting height:

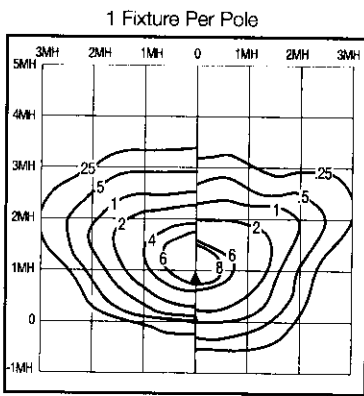
To Change From 30'

| | | | | | |
|------------|------|-----|-----|-----|-----|
| New Height | 20' | 25' | 30' | 35' | 40' |
| Factor | 2.25 | 1.4 | 1.0 | .73 | .56 |



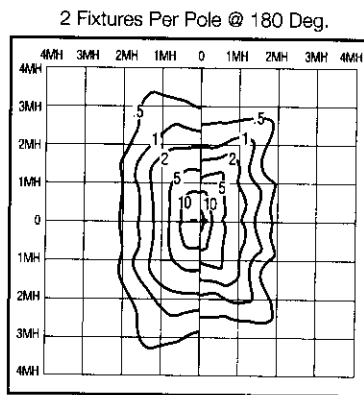
SMR402LX
LU400
50,000 Lumens
30' Mount. Hgt.
Type II Distrib.

SMR402MA
MH400/U
34,000 Lumens
30' Mount. Hgt.
Type II Distrib.



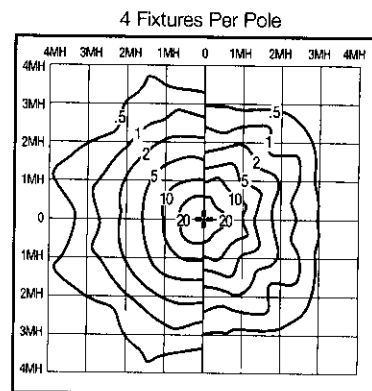
SMR403LX
LU400
50,000 Lumens
30' Mount. Hgt.
Type III Distrib.

SMR403MA
MH400/U
34,000 Lumens
30' Mount. Hgt.
Type III Distrib.



SMR403LX
LU400
50,000 Lumens
30' Mount. Hgt.
Type III Distrib.

SMR403MA
MH400/U
34,000 Lumens
30' Mount. Hgt.
Type III Distrib.



SMR403LX
LU400
50,000 Lumens
30' Mount. Hgt.
Type III Distrib.

SMR403MA
MH400/U
34,000 Lumens
30' Mount. Hgt.
Type III Distrib.

Square Straight Steel

Pole Shaft

The pole shaft is one piece construction, being fabricated from a weldable grade carbon steel structural tubing which has a uniform wall thickness of 11 gauge (0.1196"), 7 gauge (0.1793), or 3 gauge (0.2391"). The pole shaft material shall conform to ASTM-A-50C Grade C with a minimum yield strength of 50,000 psi. The pole shaft has a full length longitudinal resistance weld and is uniformly square in cross-section with flat sides, small corner radii and excellent torsional properties.

Baseplate

The anchor base is fabricated from a structural quality hot rolled carbon steel plate that meets or exceeds a minimum yield strength of 36,000 psi. The anchor base telescopes the pole shaft and is circumferentially welded top and bottom. All welds are performed in accordance with the American Welding Society specification AWS D1.1, latest edition.

Anchor Bolts

Anchor bolts are fabricated from a commercial quality hot rolled carbon steel bar that meets or

exceeds a minimum yield strength of 55,000 psi. Four properly sized anchor bolts, each with two regular hex nuts and washers, are furnished and shipped with all poles unless otherwise specified. Anchor bolts shall have the threaded end galvanized a minimum of 8 inches in accordance with ASTM-A-153. Fully galvanized anchor bolts are available upon request.

Handhole

An oval reinforced gasketed handhole having a nominal 3" x 5" or 4" x 6 1/2" inside opening, located 1'-6" above base, is standard on all poles. Optional 5" x 8" and 4" x 10" handholes are available (see options). A grounding provision is welded inside the handhole ring.

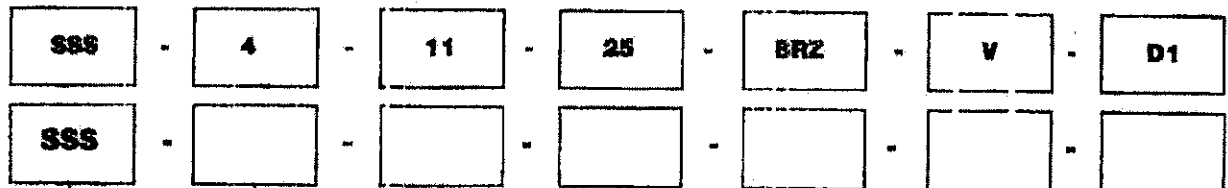
Standard Finishes

A polyester thermosetting powder coating electrostatically applied to the surface of the substrate to a minimum of 3 mil is standard on all color finishes. Hot dip galvanized finish to a ASTM-A-123 specification or primed finish is also available. For optional finishes, consult factory.



OPTIONS --- SEE PAGE 273.

ORDERING GUIDE EXAMPLE: SSS-4-11-25-BRZ-V-D1



| Prefix | Size | Gauge | Height | Finish | Family | Drilling |
|--------|-------------|--------------|--|---|---|--|
| SSS | 4 5 6 | 11 7 3 | 10 12 14 16 18 20 22 24 26 28 30 35 38 | BRZ=Bronze BL=Black GRA=Gray W/P=White G=Galvanized | S=Site Master SM=SiteMaster 1000 ² P=Performance V=Verilyte A m V8=Verilyte 8ush | D1=Single D21=Double at 180° D28=Double at 90° D3=Triple at 90° D4=Quad T2=2 3/8" Tenon T3=3" Tenon T4=4" Tenon |

Product information is subject to change without notice.

¹See pages 265-264 for EPA Compatibility.

²Minimum of 5" square required.

NOTE: Consult factory for pole configurations, weights and gauges not listed above. All pole orders are subject to cancellation fees.

