Minute No. 382
Report – Standing Policy Committee on Property and Development – May 12, 2015

Item No. 9 **Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 607 Dawson Road North for the Purpose of Developing and Maintaining a Parking Area (St. Boniface Ward)**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of Darling International Canada Inc. (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a parking area identified as "Encroachment Area" on Misc. Plan 14596 be approved (hereinafter referred to as the "Lands").

2. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development – May 12, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 20, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 12, 2015, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

On April 14, 2015, the Standing Policy Committee on Property and Development laid over the matter to the May 12, 2015 meeting of the Standing Policy Committee on Property and Development.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 607 Dawson Road North for the Purpose of Developing and Maintaining a Parking Area**

Critical Path: **Standing Policy Committee on Property and Development, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	M. Pittet	M. Ruta	M. Jack A/CAO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of Darling International Canada Inc. (hereinafter referred to as the “Licensee”) for the purpose of developing and maintaining a parking area identified as “Encroachment Area” on Misc. Plan 14596 be approved (hereinafter referred to as the “Lands”).

2. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule “A” and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The Encroachment By-law No. 692/74, clause 4(1)(d), states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Designated Officer of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council."

Section 2 of The Encroachment By-law No. 692/74 provides:

""Designated Officer" means the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law".

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of Darling International Canada Inc.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general policy, regulatory, environmental or human resource implications to entering into an encroachment agreement shown on the attached Miscellaneous Plan No. 14596.

HISTORY

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a parking area adjacent to the Lessee's holdings at 607 Dawson Road North.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed terms and conditions.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the terms and conditions.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of Darling International Canada Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: March 5, 2015

Project Name:

First Year of Program 2015

Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 607 Dawson Road North for the Purpose of Developing and Maintaining a Parking Area

	2015	2016	2017	2018	2019
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	1,708	2,188	2,188	2,188	2,188
Net Cost/(Benefit)	$ (1,708)	$ (2,188)	$ (2,188)	$ (2,188)	$ (2,188)
Less: Existing Budget Amounts	(1,708)	(2,188)	(2,188)	(2,188)	(2,188)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2015 consist of the $2,187.50 rental rate pro-rated for an assumed commencement date of May 1 + a one-time admin fee of $250. Revenues from 2016 onward represent the annual rental amount. Business tax revenue, if any, is immaterial and excluded from this analysis.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department as to legal issues
Risk Management, Corporate Finance

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	March 12, 2015
File No.:	MA2015-055

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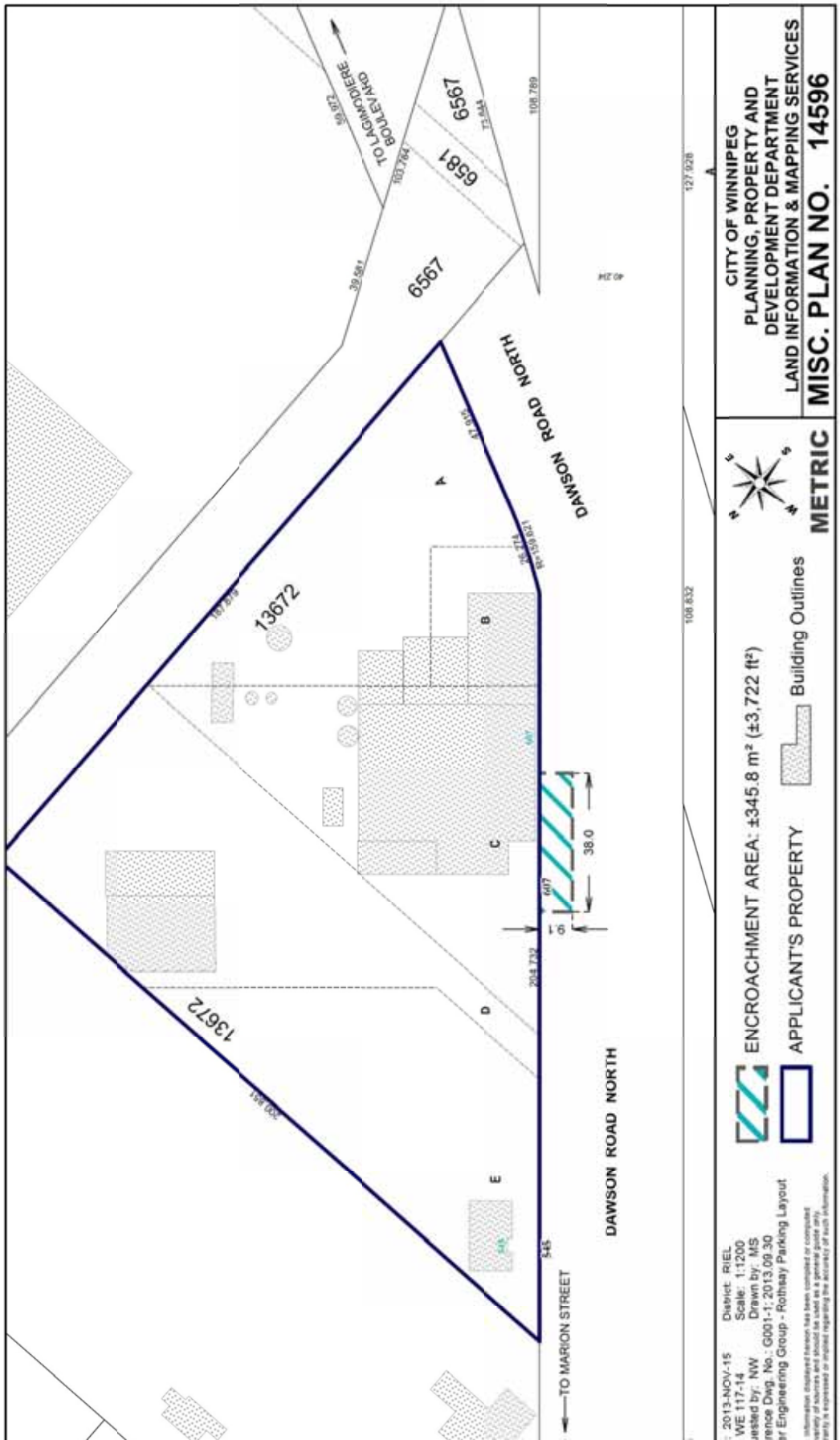

CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14596
METRIC
ENCROACHMENT AREA: ±345.8 m² (±3,722 ft²)
APPLICANT'S PROPERTY
Building Outlines
DAWSON ROAD NORTH
DAWSON ROAD NORTH
TO LAGIMODIERE BOULEVARD
TO MARION STREET
13672
13672
6567
6567
6581
38.0
9.1
A
B
C
D
E

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE DAWSON ROAD NORTH PUBLIC RIGHT OF WAY ADJACENT TO 607 DAWSON ROAD NORTH FOR THE PURPOSE OF PARKING.

Use:	Subject to the terms and conditions set forth below, Licensee shall use the area subject to this Encroachment Agreement as a parking area.
Licensee:	Darling International Canada Inc. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 14596, attached;
Term:	Annually Continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$2,187.50 per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-Law No. 692/74 and amendments thereto, in event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly, plus an initial administrative fee of $250.00 plus GST;
Insurance:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and cross liability clause; All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba; Deductibles shall be borne by the Licensee; The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior written notice to the City of Winnipeg;

The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;

The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Cancellation: Ninety (90) days written notice;

Conditions: That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) months from the date of said approval unless the applicant enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtain an extension of time from the Designated Officer – Encroachments;

The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis;

The City shall have the right to access the Encroachment Area at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area;

The Licensee acknowledges that a City-owned 300 millimetre water main exists running down the Dawson Road North right-of-way at an offset of approximately 4.6 metres west of the east property line of the right-of-way and that there is a private 150 millimetre water shut off valve and one curb stop for the private water services located at this site;

The Licensee shall not assign this agreement or sublet the Encroachment Area without the prior consent of the City;

That all utilities be permitted to enter the Encroachment Area for maintenance, repair or installation of services at any time without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed application will be at the expense of the Licensee;

Manitoba Hydro and Centra Gas Manitoba Inc. have facilities in the affected area but no easement requirements. Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed license will be at the expense of the developer and/or Licensee. Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office. If the application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if their easement requirements remain the same. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee contact the Call-Before-You-Dig line at 204-480-1212;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage removal, snow removal, security, etc. The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Encroachment Area;

The Licensee shall indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Encroachment Area by the Licensee;

That if any removal, relocation or adjustment of existing MTS facilities is required as a result of the proposed license, the reasonable associated costs, it will be at the expense of Licensee; that extreme caution be used when excavating in the vicinity of MTS buried plant and that the Licensee contact the Buried Plan Location Service at 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

That if at any time during the term the City's use or requirements for the Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Parking Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Parking Area as required by the City and to pay all costs and expenses associated therewith;

The Public Works Department does not currently have plans for the areas encompassing the proposed Encroachment Agreement. However, if and when the City does require the encroachment areas in the future the parking will need to be removed at the Licensee's cost;

That all applicable permits be obtained prior to any development;

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works Department and by the City Solicitor/Director of Legal Services to protect the City's interests and agreed to by the Licensee, acting reasonably;

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content;

DARLING INTERNATIONAL CANADA INC. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 14596 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

DARLING INTERNATIONAL CANADA INC.

Per: _____ 09-04-2014

DATE

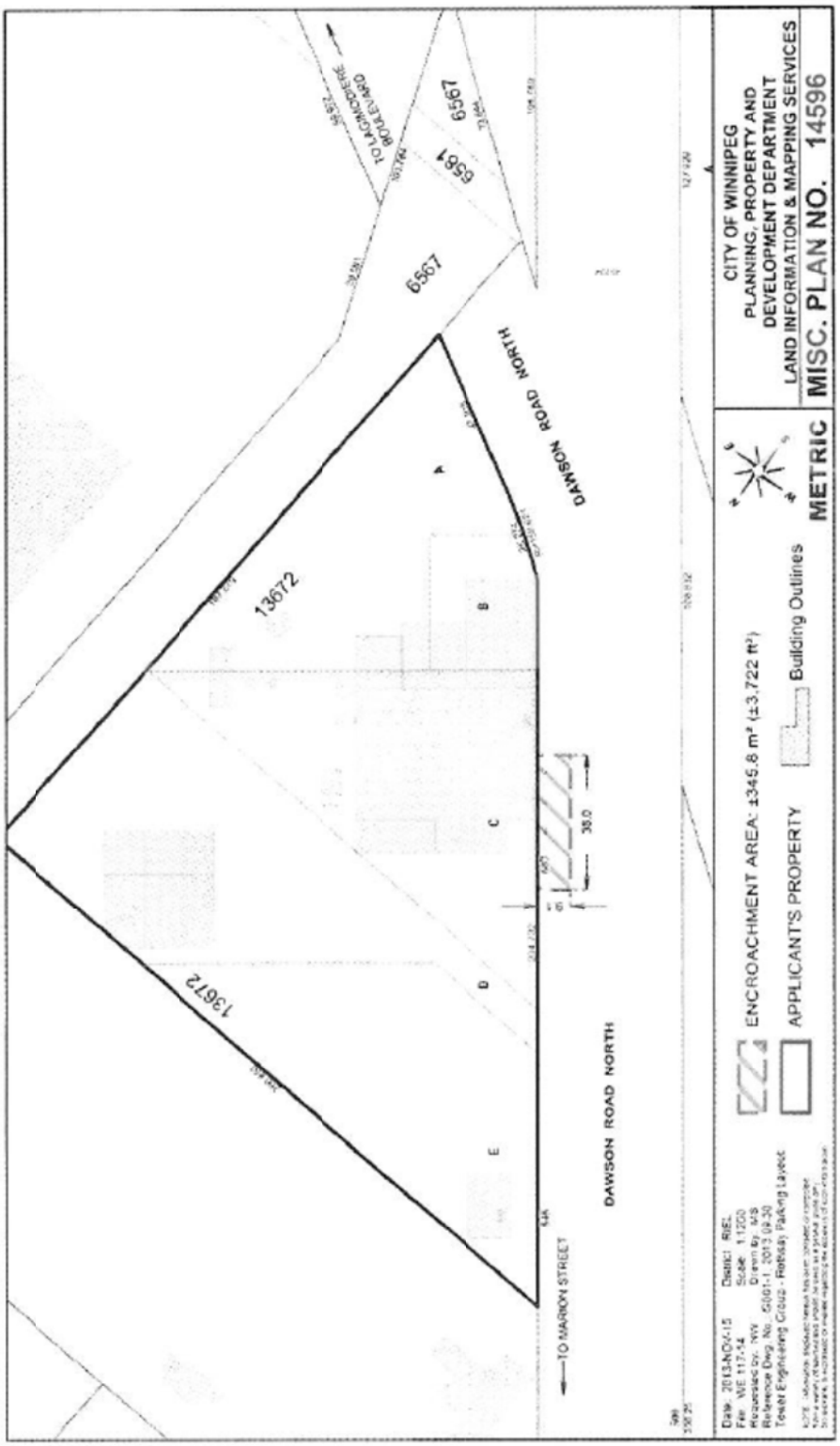
Ryan Reid

NAME

SVP, Canada

TITLE

I/We have been authorized to bind the Corporation


TO LAGIMODIERE BOULEVARD
6567
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13672
DAWSON ROAD NORTH
TO MARION STREET
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PLANNING, PROPERTY AND
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LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14596
METRIC
ENCROACHMENT AREA: ±345.8 m² (±3,722 ft²)
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Building Outlines