

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Brian L. Boger, Special Referee

Appellate Case No. 2018-000450

Trenholm Building Company, Respondent,

v.

Rajarithnam S. Aluri, Trustee, Appellant.
The Aluri Family Trust,
UTD May 3, 2012,

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Trenholm Building Company,)
)
 Plaintiff,)
 v.)
)
 Rajarathnam S. Aluri, Trustee, The)
 Aluri Family Trust, UTD May 3, 2012,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CA#: 2016-CP-40-1373

REVISED ORDER

RICHLAND COUNTY
 FILED
 2018 FEB 13 AM 10:45
 JEANNETTE W. HARRIS
 C. P. & G. S.

DATE OF HEARING: September 29, 2017

SPECIAL REFEREE: Brian L. Boger

PLAINTIFF'S ATTORNEY: Carlos W. Gibbons, Jr.

DEFENDANT'S ATTORNEY: Allen Jackson Barnes

This action for a declaratory judgment was commenced in the Richland County Court of Common Pleas on March 1, 2016 by Trenholm Building Company. On April 18, 2016, Defendant Trust filed its Answer and Counterclaims. On May 11, 2016, Plaintiff filed a Reply to Counterclaims in opposition to the Defendant's counterclaims. On September 29, 2017 this Court held a final hearing on the matter.

The issue before the court is to determine whether Rajarathnam S. Aluri, Trustee, The Aluri Family Trust, UTD May 3, 2012 (hereinafter "Defendant") has the right to use the driveway owned by Trenholm Building Company (hereinafter "Plaintiff") by virtue of an easement, license, prior use or necessity. Defendant, in its counterclaims, posits that an easement was created by prior use of the driveway. In the alternative, Defendant claims that an easement was created by necessity, prescription, or that Defendant has a license to use that driveway.

STATEMENT OF FACTS

Defendant owns residential property at 616 Pickens Street, Columbia, SC. Defendant's Trustee, Dr. Aluri, purchased the property from Shandon Development Company in 2003, and he subsequently transferred the property to Defendant trust in 2012. Plaintiff owns the adjacent residential property at 618 Pickens Street. Plaintiff purchased the property from Shandon Rental Group in 1999. The properties were commonly owned by Shandon Development Company from 1984 to 1998, and in 1998, Defendant's property was conveyed to EW&M Limited Partnership. A driveway between the two properties has existed since at least 1976, and it is undisputed that the driveway is owned by the Plaintiff.

Defendant's property is situated in such a way that Defendant lacks easy vehicular access to a section of his property without the use of Plaintiff's driveway. Defendant has relied upon Plaintiff's driveway to some degree for some period of time to access the otherwise rather difficult portion of his property for parking purposes. Nevertheless, Defendant's property includes a driveway that grants Defendant access to the road and the remainder of his property. Importantly, there is no easement of record granting Defendant the right to use Plaintiff's driveway.

At the hearing on September 29, 2017, the parties introduced testimony as to the frequency of Defendant's use of the driveway; the amount of time Defendant has used the driveway; whether Defendant was explicitly or implicitly permitted to use the driveway, and; whether Defendant's predecessors-in-title were permitted to use or actually used Plaintiff's driveway. Additionally, expert testimony, surveys of the properties, and photographs of the property were introduced at trial. In consideration of the evidence introduced at trial, the court finds the following facts: Defendant and Dr. Aluri's predecessors-in-title, Shandon Development

Company and EW&M Limited Partnership, were not explicitly or implicitly permitted to use Plaintiff's driveway. Defendant's predecessors-in-title did not regularly use Plaintiff's driveway, and Defendant's predecessors-in-title did not use Plaintiff's driveway at the time title to the properties was severed. Plaintiff did not grant a license to use its driveway to any titleholder in the chain-of-title to Defendant's property. Defendant, and its predecessors-in-title, have not used Plaintiff's driveway without interruption since 1998.

DISCUSSION

A. Easement by Prior Use

Defendant claims to have a right to use Plaintiff's driveway due to an easement implied by prior use. There is a dearth of case law in South Carolina on easements of this nature, but the seminal case of *Boyd v. Bellsouth Telephone Telegraph Co., Inc* clearly directs this Court to its proper conclusion. An easement implied by prior use has not been created, and Defendant does not have the right to use Plaintiff's driveway.

In South Carolina, an easement implied by prior use is created when the claimant establishes the following: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and; (6) the common grantor indicated an intent to continue the prior use after severance of title. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006). These requirements are not unique to South Carolina. In fact, every state east of the Mississippi River has similar or identical requirements. Adam Leitman Bailey and Israel Katz, *Analyzing Easement Laws and Cases in the States East of*

the Mississippi River, 31-FEB Prob. & Prop. 1, 5-7 (2017). The failure to establish any of these elements would defeat Defendant's claim.

It is undisputed that Shandon Development Company owned Plaintiff's and Defendant's property between 1984 and 1998. *See* Def.'s Exhibits 3-4. Further, the parties acknowledge that common ownership of their properties ceased in 1998 when Shandon Development Company sold Defendant's parcel to EW&M Limited Partnership. *See* Def.'s Exhibit 4. Therefore, Defendant has established the first two elements of an easement implied by prior use.

In contrast, Defendant has failed to establish the third element, that the prior use asserted was in existence at the time of unity of title. The only evidence proffered by Defendant to establish this element was testimony from Dr. Aluri that the previous owner of Defendant's property didn't tell him that he *couldn't* use Plaintiff's driveway, and that he saw the driveway being used as early as 1988 when he owned a neighboring property. Transcript, p. 83, ll. 13-16; transcript, pp. 81-82, ll. 19-25. Defendant did not proffer testimony from his predecessor-in-title or others who would have first-hand knowledge of the prior use Defendant asserts. The absence of direct evidence or disinterested testimony demonstrating that Plaintiff's driveway was used for the purpose Defendant asserts at the time of unity of title compels this Court to conclude that the prior use Defendant claims was not in existence at the time of unity of title.

Importantly, the third element is a gatekeeper for the remaining elements. If Defendant cannot prove the prior use asserted was in existence at the time of unity of title, it logically follows that Defendant cannot prove that the parties were aware of such use. Likewise, Defendant is unable to show that the prior use asserted was necessary for his enjoyment of the property, or that the common grantor intended to continue such use after severance of title.

Accordingly, Defendant has failed to establish four of the six elements necessary to prevail on this claim.

B. Easement by Necessity

Defendant claims that an easement by necessity exists because he is unable to access a portion of his property without use of Plaintiff's driveway. Unfortunately, Defendant has not demonstrated the degree of necessity needed to prevail on this claim.

An easement by necessity is created when the proponent can establish three elements: (1) unity of title; (2) severance of title, and; (3) necessity. *Jowers v. Hornsby*, 292 S.C. 549, 550, 357 S.E.2d 710, 710-11 (1987). As discussed in the preceding subsection, Defendant has established the first two elements. Therefore, this inquiry will focus on the third element.

In South Carolina, "the degree of necessity which is required is 'reasonable necessity.' The party claiming an easement must prove more than convenience, but he need not show that the easement is absolutely essential." *Id.* "The necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible." *Id.* The language describing the standard appears to grant significant leeway to an individual claiming an easement by necessity, but the policy behind the doctrine of easement by necessity is to ensure that landlocked parcels have access to a public road. *Morrow v. Dyches*, 328 S.C. 522, 529, 492 S.E.2d 420,424 (1997). Fortunately, the facts in *Morrow* are similar to the case at bar.

In *Morrow*, the party seeking an easement by necessity owned property with access to a public road. *Id.* Nevertheless, that party sought an easement by necessity on the adjacent property because tractor-trailers could not access the rear portion of the proponent's property without using the driveway of the adjacent property. *Id.* In this case, Defendant's property has access to a public road, but it has difficulty conveniently accessing the rear portion of its

property without using Plaintiff's driveway. Convenience does not mean necessity. There is little variance between the facts in this case and the case in *Morrow*. The court in *Morrow* was clear that the proponent's dilemma did not establish necessity. This Court must rule based on the precedent set in *Morrow*. It is not necessary for Defendant to use Plaintiff's driveway, and Defendant does not own an easement by necessity.

C. Easement by Prescription

Defendant claims an easement has been created by prescription. For reasons similar to those discussed in Subsection "A," Defendant does not own a prescriptive easement.

A party claiming a prescriptive easement must show by clear and convincing evidence (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; (3) use or enjoyment which is either adverse or under claim of right. *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-170 (2015). This court only need inquire into the first element to reach the proper conclusion.

Dr. Aluri acquired the property he claims owns an easement on Plaintiff's property in 2003. See Def.'s Exhibit 4. The law requires continued and uninterrupted use for a period of twenty years. Assuming, *arguendo*, Defendant has not enjoyed continued and uninterrupted use of Plaintiff's driveway for the entirety of the time it has owned the relevant property, and he has not proven by clear and convincing evidence that his predecessor-in-title enjoyed the same use for the eight years preceding his acquisition of the property. As discussed in Subsection "A," Defendant offered *de minimis* evidence showing that his predecessor-in-title made continued and uninterrupted use for the eight years necessary to satisfy the requirement. This Court further finds that the Defendant itself has not enjoyed continued and uninterrupted use of Plaintiff's driveway during the time it has owned the property. The evidentiary standard to prevail on this

D. License

Defendant claims to possess a license to use Plaintiff's driveway. This court disagrees. A license to enter the premises of another's property for an agreed purpose is a contractual right personal to the licensee. *Hilton Head Air Service, Inc. v. Beaufort County*, 308 S.C. 450, 456-457, 418 S.E.2d 849, 853 (Ct.App. 1992). A license does not vest in the licensee any estate or interest in the land, as it only conveys the temporary privilege of being on the premises for an agreed purpose. *Id.*

The foundation of contract law is the concept of mutual assent. Defendant did not present any evidence at trial indicating that it and Plaintiff mutually assented to an agreement whereby Defendant could use Plaintiff's driveway. In fact, Defendant presented evidence to the contrary. At trial, Dr. Aluri testified that in all of his interactions with the former property manager of Plaintiff's property, "[he] never had a discussion [with her] or an issue about [Defendant] not being able to use the driveway. . ." Transcript, p. 83, ll. 13-16. Dr. Aluri further testified that Plaintiff's former property manager never told him that he *didn't* have permission to use that driveway. Transcript, p.84 ll. 1-3. Problematically for the Defendant, unilateral assumptions can never amount to mutual assent. Plaintiff did not grant Defendant a license to use its driveway.

CONCLUSIONS OF LAW

Defendant does not own an easement implied by prior use on Plaintiff's driveway because Defendant did not demonstrate that the identified use of the driveway existed at the time common ownership of the properties was severed.

Defendant does not own an easement by necessity on Plaintiff's driveway because Defendant has direct access to the road from its property via a separate driveway located on the Defendant's property, and the Defendant has not demonstrated an actual, real, and reasonable need to use Plaintiff's driveway.

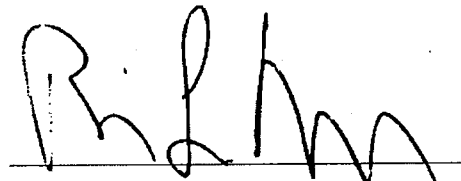
Defendant does not own a prescriptive easement on Plaintiff's driveway because Defendant failed to prove that it and its predecessors-in-title have enjoyed continuous and uninterrupted use of Plaintiff's driveway for 20 years.

Defendant does not have a license to use Plaintiff's driveway. Plaintiff has never granted Defendant a license, and any license Defendant believes it may have had terminated upon the commencement of this action by Plaintiff.

RULING

This Court rules that Defendant has no right to use Plaintiff's driveway for access to the rear of its property by virtue of an easement or a license. Plaintiff's ownership and use of its property is not subject to any such right by Defendant or any third party.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "B. L. Boger", written over a horizontal line.

Brian L. Boger, Special Referee

Columbia, South Carolina

February 1, 2018

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #: 2016-CP-40-1373

Trenholm Building Company,)
)
Plaintiff,)
)
v.)
)
Rajarathnam S. Aluri, Trustee,)
The Aluri Family Trust, UTD)
May 3, 2012,)
)
Defendant.)
-----)

COPY

HEARING

Friday, September 29, 2017
9:59 a.m. - 12:51 p.m.

The Hearing was heard before The Honorable Special Referee Brian L. Boger, at the South Carolina Bar, 950 Taylor Street, Columbia, South Carolina, on the 29th day of September, 2017 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.



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1 be some sort of punitive and unnecessary
2 measure, not to mention, as I said ---

3 MR. GIBBONS: Let me interject. We're getting a
4 little bit far field for opening statements.

5 MR. BARNES: Okay. I'm done.

6 THE COURT: I agree.

7 MR. BARNES: I'm done.

8 THE COURT: We'll move on.

9 MR. GIBBONS: Just suffice it to say, we disagree
10 with most of what Mr. Barnes just said,
11 including his assessment of the law. But we're
12 ready.

13 THE COURT: We're ready. Let's call your first
14 witness.

15 MR. GIBBONS: It'll be Taylor Miller, who is seated
16 across from me.

17 TAYLOR MILLER, having been duly sworn, testifies as
18 follows:

19 MR. MILLER - DIRECT EXAMINATION BY MR. GIBBONS:

20 Q: I'm going to call you Taylor since we're
21 somewhat informal here. Taylor, do you live
22 here in Columbia?

23 A: Yes.

24 Q: And what do you do for a living?

25 A: I work for Senior Matters, which is a geriatric



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1 care management company. In addition to that,
2 I manage 618 Pickens apartments.

3 Q: And who do you manage that on behalf of?

4 A: Trenholm Building Company.

5 Q: And tell me a little bit about Trenholm
6 Building Company. What is it and how long has
7 it been in existence?

8 A: I'll let you know what I do know. It is a
9 company shared by the Bagnal family in Columbia
10 and it, at one time, held several properties
11 within its entity. And as of right now
12 Trenholm Building Company is managing 618
13 Pickens.

14 Q: Okay. When you say you're managing it, what
15 does all that include? What are some of your
16 duties?

17 A: Right. I lease the apartments out, I show them
18 to tenants, I fulfill all tenants' issues and
19 concerns and manage any maintenance issues that
20 need to be taken care of.

21 Q: And about how long have you held that position
22 for Trenholm Building Company?

23 A: About six years.

24 Q: And when you first started managing the
25 property -- let me back up.



1 MR. GIBBONS: And I'm going to say Judge. Judge,
2 we've already stipulated to the admissibility
3 of the surveys. And I'm going to go ahead and
4 get it marked as Plaintiff's Number One.

5 THE COURT: No objection?

6 MR. BARNES: No. We stipulated to it.

7 (Plaintiff's Exhibit Number One was marked and
8 admitted into evidence.)

9 Q: While she's marking that, I'm just going to let
10 you testify from that copy.

11 MR. BARNES: You said Defendant's Number One, did
12 you?

13 MR. GIBBONS: Plaintiff's Number One.

14 Q: What I've just handed you, Taylor, is a survey
15 of 616; is that right?

16 A: This is of 618.

17 Q: 618. I'm sorry. 618.

18 A: 618, yes.

19 Q: Okay. And the apartments that you manage are
20 depicted on that survey?

21 A: Yes, that is correct.

22 Q: Okay. And when you first started managing, the
23 portion of the property shown on that survey
24 that is not your property has kind of got polka
25 dots and it says, "Gravel". You see that?



1 A: Correct.

2 Q: Okay. It's kind of the back right part of the
3 survey?

4 A: Uh-huh (affirmative response).

5 Q: When you first started managing the property,
6 what use was being made of that parcel?

7 A: None.

8 Q: Was there any parking of cars there?

9 A: No.

10 Q: And were there any signs that had any
11 indication that it was reserved parking or ...

12 A: No.

13 Q: And when did that change?

14 A: I would probably say four years ago.

15 Q: And what happened, what change was effected and
16 who made it?

17 A: It was my understanding that Dr. Aluri had
18 placed signs there for leasing purposes. Some
19 of my tenants had asked about them in which
20 they had conversations with Dr. Aluri about the
21 cost of leasing these parking places on a
22 semester basis. And there went his -- and that
23 was the beginning of his profiting on 616
24 portion of this plat.

25 Q: Is there any way to get back to that gravel



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1 parking area other than through your driveway?
2 A: No, there is not.
3 Q: All right. And at any time since you've been
4 involved in the property, have you given any
5 permission to any third party to use that
6 driveway?
7 A: To use our driveway?
8 Q: Yes.
9 A: No.
10 Q: And are you aware of any document that is
11 recorded or not recorded that gives anybody the
12 right to use that driveway?
13 A: No.
14 Q: Let me get you to identify that picture right
15 there.
16 A: Yes. This is looking south. This is on 618
17 Pickens property looking south towards 616 and
18 Dr. Aluri's fellowship center.
19 Q: Okay. The vehicles that you see sort of over
20 the retaining wall ...
21 A: Yes.
22 Q: Where are those vehicles parked?
23 A: 616.
24 Q: That's not your property, right?
25 A: Correct.



1 Q: And the signs that are there that say reserve
2 parking ...

3 A: Correct.

4 Q: Is it your testimony those were not there when
5 you first started managing the property?

6 A: Correct.

7 MR. GIBBONS: Let's get this admitted as Plaintiff's
8 Number Two. And I'll have you use that.

9 MR. BARNES: That's fine.

10 MR. GIBBONS: Yours can come in later.

11 (Plaintiff's Exhibit Number Two was marked and
12 admitted into evidence.)

13 Q: Now, as a result of Dr. Aluri's use of that
14 portion that's in the gravel part of the
15 survey, what situations have resulted from
16 that? What have you either observed or had
17 reported to you as far as your managerial
18 duties for the apartments?

19 A: At times tenants will pull straight ahead on to
20 618's property that would block 616's rented
21 spaces and would be verbally accosted by
22 Dr. Aluri, both on our property and off our
23 property. He would at times drive his vehicle
24 up the driveway and verbally accost our tenants
25 for their parking habits on our property. I've



1 recently blocked -- had to block them --
2 pulling straight into 618 you're blocking
3 this -- you know, the 616 portions that he's
4 renting. I've been accosted by -- he's now
5 leasing them to his employees when there's
6 plenty of parking down by his fellowship
7 center. I think that was a way of him to no
8 longer charge for those spots, but now he's
9 charging for the spots he's leased from the
10 fellowship center at a rate, I believe, of 685
11 a semester. I'm going off, but let me answer.
12 I've had to block one of his employees in which
13 she verbally accosted me when I was showing a
14 tenant the apartment. That tenant was very --
15 perspective tenant did not rent with us because
16 he did not know what was going on between the
17 two properties. So, we lost a perspective
18 tenant due to Dr. Aluri's actions as well as
19 his employees' actions. His employee
20 instructed me that Dr. Aluri told her that he
21 owns the driveway and that we only have access
22 to it, which is ---

23 **MR. BARNES:** Object. Hearsay.

24 **MR. GIBBONS:** We'll move on.

25 **Q:** Let me ask you if you can identify these



1 photographs right here, Taylor.

2 A: Yes. These are photographs I took on 618
3 property where somebody with an Aluri parking
4 pass is parked in our apartment number two
5 spot.

6 MR. GIBBONS: Let's get these admitted as
7 Plaintiff's Number Three. They can just go in
8 as one exhibit.

9 (Plaintiff's Exhibit Number Three was marked and
10 admitted into evidence.)

11 Q: Okay. Now, looking at what's been marked as
12 Plaintiff's Number Three, further explain what
13 that is. Tell us -- referring to the survey,
14 tell us where that car is parked, referring to
15 the survey.

16 A: It would be underneath -- in the back left it
17 would be underneath what says garage apartment
18 above. There's three parking places underneath
19 that apartment. And it would be the second one
20 in the middle. So, this is the area that
21 Dr. Aluri is leasing spaces and this particular
22 person that has a contract for lease of parking
23 is actually in my tenants spot in apartment
24 number two.

25 Q: Okay. And do you see a green sticker on the



1 back of that car?

2 A: Yes.

3 Q: What does that green sticker say?

4 A: "Aluri Parking Pass".

5 Q: And that car is, without question, on your
6 property at 618?

7 A: One hundred percent.

8 Q: Has that happened more than one time?

9 A: Yes, it has.

10 Q: What kind of problems result from that
11 situation being in existence?

12 A: Tenants will come back from class or work and
13 not have their parking spot, call me, and I'll
14 need to come down there and figure out what's
15 going on, locate the person that owns the car,
16 have them move it so that my tenant can get
17 inside to get inside and do their school work.

18 Q: If access to Dr. Aluri on that gravel part is
19 denied, would that have any negative effect on
20 your property and your ability for your tenants
21 to make use of it?

22 A: Absolutely not.

23 Q: And mention was made of a fence being installed
24 there, would that have any negative effect to
25 you if that were done?



1 A: Absolutely not.

2 Q: And if this gravel area was excavated from Dr.
3 Aluri's side, would that have any negative
4 effect on your property?

5 A: Absolutely not.

6 Q: Have there been any occasions where Dr. Aluri
7 or people on his behalf have towed cars of your
8 tenants?

9 A: Yes. On multiple occasions he would call -- I
10 don't know exactly which towing company, but
11 he'd call a towing company up to my driveway to
12 use our -- obviously we're sitting here
13 discussing the amount of space there is behind
14 618 house. But they would take up that whole
15 entire back side of towing vehicles out of our
16 property.

17 Q: How many occasions has that happened on?

18 A: At least a dozen.

19 Q: Over how long a period of time?

20 A: Four years.

21 Q: If you don't have access or use of the gravel
22 area, does that have any negative effect or
23 will it have any negative effect on any service
24 vehicles or any people that you want to have on
25 your property?



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1 A: Absolutely not.

2 Q: Just to be clear. When you first started
3 managing, there was no parking in that gravel
4 area?

5 A: That is correct.

6 MR. GIBBONS: Give me just one minute please, Judge.

7 THE COURT: Sure.

8 (Off the Record)

9 Q: Taylor ...

10 A: Yes.

11 Q: On these occasions when doctor Aluri would come
12 up to you, I think you used the word accosted.
13 But describe that in more detail. What tone
14 and what attitude and what words do you recall
15 him saying?

16 A: He was very defiant that he had access to that
17 driveway. On multiple occasions he stated that
18 he owned half of the driveway at which point I
19 knew that not to be the case. I'd already
20 seen -- I think it was the 1999 Cox & Dinkins
21 drawing. But threatening to have my car towed.
22 You know, just a very -- very belligerent in
23 his conversations with me.

24 Q: Okay. Are there occasions when your tenants,
25 either having social events or family or



- 1 whatever, and they have additional cars come
2 onto the property?
- 3 A: Uh-huh (affirmative response).
- 4 Q: What happens in usual practice when that takes
5 place?
- 6 A: Say that again.
- 7 Q: When there are additional cars of tenants of
8 your property that come onto the property, what
9 parking arrangements are made?
- 10 A: They'll either park behind their car in their
11 parking spot or they'll park straight ahead.
- 12 Q: And is that made known to the other tenants
13 that that situation's going to happen?
- 14 A: Yes.
- 15 Q: And what result -- with regard to any cars on
16 the gravel area, what result does that have?
- 17 A: Well, they would be blocked in.
- 18 Q: And what has Dr. Aluri done in that situation
19 in the past?
- 20 A: He has come on the property and raised issues
21 about it. As well as the people that he's
22 leased the spots to.
- 23 Q: Have any guests of your tenants ever been
24 towed?
- 25 A: Yes.



1 Q: By Dr. Aluri or people on his behalf?

2 A: Yes.

3 Q: And just to be clear, nobody of whom you are
4 aware has granted any access to that driveway
5 to Dr. Aluri?

6 A: Correct.

7 MR. GIBBONS: That's all the questions I have,
8 Taylor. Answer anything that Mr. Barnes has of
9 you. Do you want to come over here, Jack, or
10 are you okay?

11 MR. BARNES: I'll just stay right here if that's
12 okay.

13 MR. MILLER - CROSS-EXAMINATION BY MR. BARNES:

14 Q: Taylor, is it all right if I call you Taylor?

15 A: Yeah.

16 Q: And you can call me Jack. Are you related to
17 the Bagnal family?

18 A: I am, yes.

19 Q: Okay. So, are you actually a shareholder of
20 the Trenholm Building Company?

21 A: Yes.

22 Q: Okay. And you've managed that property for six
23 years?

24 A: Uh-huh.

25 Q: Do you have any experience prior to this in



1 managing real estate?

2 A: Yes.

3 Q: And what experience is that?

4 A: Having rented my wife's house.

5 Q: Okay. Ever rented a multi-tenant unit prior to
6 this?

7 A: No.

8 Q: Do you have any speciality or designation as a
9 property manager?

10 A: Is there?

11 Q: I don't know. I don't know. So, I assume you
12 don't have one if you don't know.

13 A: No. How do you get that?

14 Q: Prior to you -- was it your testimony that Dr.
15 Aluri has only been making use of that gravel
16 area for the last four years; is that right?

17 A: Approximately, yes, sir.

18 Q: Okay. And prior to four years, it's your
19 testimony that he never used that property?

20 A: Not that he never used it, that he didn't lease
21 those spaces out.

22 Q: Okay. But you don't know whether his tenants
23 were actually parking there?

24 A: No. There was no frequent use of that
25 property.



1 Q: Okay. And how often are you there?

2 A: The first three years I was there at least once
3 a week.

4 Q: Okay. And for how long were you there when you
5 would go?

6 A: I'd say approximately 30 minutes to an hour.

7 Q: Okay. So, the other 23 hours and the other six
8 days of the week you didn't know who was using
9 it or what was going on there?

10 A: Correct.

11 Q: Okay. I believe it was your testimony that
12 there's no other way to access that gravel
13 area; is that correct? That's what I wrote
14 down.

15 A: For what usage?

16 Q: I believe the question was, is there any other
17 way to access the gravel area. And your
18 testimony was no other way.

19 A: For vehicular, no, not the portion that is in
20 question that is being used. Vehicular, no.
21 But, yes, there is access to it.

22 Q: And to your knowledge no one related to the
23 Bagnal family has ever given him permission?

24 A: That is absolutely correct.

25 Q: Okay. Are you familiar with the statute or



1 city ordinances that don't allow towing to be
2 done without a sign that says if you park here,
3 you'll be towed?

4 **MR. GIBBONS:** Object. Relevance and hearsay.

5 **THE COURT:** I'll allow it. Go ahead.

6 A: Say that one more time.

7 Q: Are you aware of any city ordinances that
8 require a sign saying no parking, if the owner
9 is going to tow someone for parking there?

10 A: No.

11 Q: On how many occasions has Dr. -- have you seen
12 a car with Dr. Aluri's sticker on there?

13 A: On our property ---

14 Q: Yes, sir.

15 A: --- or just in general? On your property I
16 would say three to four times.

17 Q: Okay. Three to four times over a six-year
18 period?

19 A: Sure.

20 Q: And I believe it's your testimony that
21 Dr. Aluri's towed as many as 12 cars?

22 A: Uh-huh (affirmative response).

23 Q: So, the frequency of using his property is a
24 lot more than the frequency of his people using
25 your property; is that correct?



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1 A: Through that ratio, correct.

2 Q: And Dr. Aluri's also talked to you or someone
3 relate to the property and indicated he was
4 going to tow on other occasions when he didn't
5 actually tow, correct?

6 A: He threatened to tow a lot more than he
7 probably actually towed, so yes.

8 Q: And would you agree with me that it's actually
9 a fairly frequent issue that your tenants in
10 618 park in that gravel area on 618?

11 A: No.

12 Q: You disagree with that?

13 A: I disagree that they frequently use that. I
14 disagree with that. They were forewarned upon
15 signing of the lease of Dr. Aluri's behavior
16 and the risk of parking in that area.

17 Q: Is that actually part of your lease on 618,
18 part of the written lease?

19 A: No. It's verbal.

20 Q: Okay. How do you know -- what's your source of
21 information about Dr. Aluri's renting spots?

22 A: He's got a gigantic yellow sign on Blossom and
23 Pickens that states \$385 per parking spot.
24 That number leads to Dr. Aluri.

25 Q: And do you know what spaces that he's talking



1 about there?

2 A: It at one time was 616 parking gravel, this
3 portion right here, until he was questioned and
4 he moved his employees that were parking down
5 the street where they work to our property, so
6 that he wasn't technically leasing them.

7 Q: Okay. And is there any prohibition from him
8 leasing the spots?

9 A: Say ...

10 Q: Are you aware of any prohibition for him
11 leasing spots?

12 A: Please explain.

13 Q: Is there any law or anything that would prevent
14 him from leasing spot?

15 A: Absolutely not.

16 Q: Okay. So, that's a fair use of his property if
17 he wants to use it to rent spots?

18 A: If he has access to our driveway, yes.

19 Q: Are you aware that Dr. Aluri has a parking lot
20 on both the west and the east side of the
21 fellowship building?

22 A: I'm aware that he owns basically everything
23 south of 618 to ---

24 Q: Blossom Street?

25 A: --- Blossom Street. Yes, sir.



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- 1 Q: So, in addition to the lot behind 616, he has
2 two other parking lots?
- 3 A: Uh-huh (affirmative response).
- 4 Q: And do you know how many spots are in those?
- 5 A: If I had to guess, I'd say there's probably at
6 least 60 parking spots that he has access to.
- 7 Q: Okay. Have you actually measured the space
8 behind 616 and where the garage apartments are,
9 have you measured it?
- 10 A: No, I have not measured it. But once I was
11 told -- I believe you and our attorney had a
12 conversation where you were concerned that we
13 would not be able to get in and out of the
14 property if we were to put up a fence. We
15 tested it with multiple vehicles and had no
16 issues.
- 17 Q: Okay. And what about if you don't have access
18 to Dr. Aluri's property coming in the driveway
19 ---
- 20 **MR. BARNES:** Let me go ahead and -- let's mark as
21 Defendant's Number One this. J
- 22 (Defendant's Exhibit Number One was marked and
23 admitted into evidence.)
- 24 Q: Let's just go through these if you don't mind.
25 The first one, what's that a picture of?



- 1 A: This is the retaining wall looking on to 618
2 property.
- 3 Q: Okay. So, where that staircase is and those
4 two doors, that's actually y'all's property,
5 618?
- 6 A: Yes. Correct. Yes, sir.
- 7 Q: And Dr. Aluri has the reserved parking signs on
8 both your side and his side of the parking
9 spots, correct?
- 10 A: Correct. Those are double sided reserved
11 parking signs.
- 12 Q: Looking at page number two, is this just a --
13 tell me what this is..
- 14 A: This would be on the backside of Dr. Aluri's
15 property, still looking on to ours.
- 16 Q: Okay. Just a little longer shot of page one?
- 17 A: Correct.
- 18 Q: Page three, same thing basically, just a
19 different angle?
- 20 A: Correct. Yes.
- 21 Q: What about page four?
- 22 A: This would be Dr. Aluri's driveway on the right
23 side of 616, going back to that area that we
24 were just looking at.
- 25 Q: Okay. And you see the canopy in the upper



1 right hand corner of ---

2 A: Yes.

3 Q: Do you know whose parking that is?

4 A: I do not.

5 Q: Okay. Looking at, I think, page number five.
6 What is this?

7 A: This would be 618 Pickens' driveway.

8 Q: Okay. And this is what I wanted to ask you
9 about. If you -- looking at the, I guess, left
10 corner of 618 building there, there's sort of
11 a concrete abutment coming out of the building
12 there, is that?

13 A: Uh-huh.

14 **MR. BARNES:** And let me -- just for purposes of the
15 Special Referee, I'm referring to this area
16 right here.

17 **THE COURT:** Okay. I see it.

18 Q: If you did not have access to Dr. Aluri's
19 property, do you know whether a vehicle, say a
20 large SUV or a large truck, would be able to
21 get through that particular opening right there
22 with that abutment?

23 A: Absolutely.

24 Q: And y'all measurement that?

25 A: Yes.



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1 Q: And you're aware, aren't you that the driveway
2 where it becomes asphalt actually encroaches on
3 Dr. Aluri's property, don't you?

4 A: I have been told that.

5 Q: Okay. Looking at the next page, I think that's
6 maybe the same picture.

7 A: That stake is actually from when Cox & Dinkins
8 came out to do the second appraise -- or ---

9 MS. BAGNAL: Survey.

10 A: Survey. Thank you. So, that shows where they
11 have our line.

12 Q: All right. And let me ask you this. Do you
13 know ---

14 THE COURT: I'm sorry to interrupt. Is this that
15 stake right there, is that ...

16 MR. BARNES: Yes.

17 THE COURT: Okay. Thank you.

18 Q: And do you know what the distance from that
19 stake to this particular concrete wall over --
20 retaining wall over here is?

21 A: You're asking me?

22 Q: Yes, sir.

23 A: No, I do not know the actual measurements.

24 Q: Okay. Let's look at the next page. This is
25 just farther up the driveway; is that correct?



- 1 A: That is correct.
- 2 Q: Okay. And this is looking back to I guess that
3 single garage apartment?
- 4 A: Correct.
- 5 Q: Okay. The next page basically the same picture
6 I think.
- 7 **MR. GIBBONS:** Too far ahead.
- 8 A: Yes. I'm sorry. It is.
- 9 Q: Okay. And let me ask you just -- I'm going to
10 point to. This is the concrete abutment right
11 here that we're talking about?
- 12 A: Yes.
- 13 Q: Okay. And that's actually -- it's a little
14 hard to tell in this picture, but that's
15 actually not flush with the brick wall,
16 correct?
- 17 A: That is correct. It's approximately I'd say
18 five inches off of the building.
- 19 Q: All right. Next page I think that's a close-up
20 of that abutment I'm talking about?
- 21 A: Yes, that is correct.
- 22 Q: Okay. Now, looking at the next page, that is
23 a -- the reverse view. This is looking towards
24 Pickens Street; is that correct?
- 25 A: That is correct.



1 Q: Okay. Let me point -- I'm going to point to
2 his. Do you see these two drains right here?

3 A: Yes. I recognize them because we have to
4 unclog them from time to time for our tenants.

5 Q: And are you aware that one of those actually
6 goes to Dr. Aluri's building?

7 A: If that's the case, I'm not aware.

8 Q: Okay. Looking at the next page.

9 A: Uh-huh.

10 Q: This is just the spaces you referenced earlier.
11 I think you referenced Dr. Aluri's tenant or
12 somebody with an Aluri sticker parking in the
13 middle one that doesn't have a car here.

14 A: Correct. Yes.

15 Q: Okay. Looking at this next picture, whose
16 property is this tree on; do you know?

17 A: According to Cox & Dinkins, it runs right down
18 the middle of the property line. So, I don't
19 know how the courts would rule. I guess -- I
20 don't know. I guess we both own it. Whoever
21 loves it the most.

22 Q: And looking at the last picture, this is
23 looking at the difference in elevation from 618
24 to 616?

25 A: Yes, sir.



1 Q: Okay. And do you know what the drop there is?

2 A: I would say three to four feet.

3 THE COURT: For the Court's clarification, that
4 drop, is in this area?

5 MR. BARNES: It is this right here (indication).

6 THE COURT: Okay. Thank you.

7 MR. BARNES: That's actually the retaining wall.

8 THE COURT: Right there.

9 THE WITNESS: The retaining wall is just right here
10 (indication).

11 THE COURT: The witness is showing the longer line
12 where it says gravel as opposed to the shorter
13 one. Is that correct?

14 THE WITNESS: This is the retaining wall.

15 MR. BARNES: Well, yeah, that's the retaining wall.
16 Actually goes to right here. The park closest
17 to the building, I believe, is a little deeper
18 than -- I think you can see it in this first
19 photograph right here. The retaining wall
20 actually does -- goes out like that and this is
21 a little bit longer.

22 Q: Is that your understanding?

23 A: I'm not familiar with there being a retaining
24 wall right here. I could be wrong.

25 THE COURT: I understand the picture now. I



1 may ask you to repeat something just because
2 your accent, that's all.

3 **DR. ALURI:** Sure.

4 **RAJARATHNAM S. ALURI,** having been duly sworn,
5 testifies as follows:

6 **DR. ALURI - DIRECT EXAMINATION BY MR. BARNES:**

7 **Q:** Dr. Aluri, will you give us your full for the
8 record?

9 **A:** Rajarathnam, R-A-J-A-R-A-T-H-N-A-M, Aluri.

10 **Q:** And, Dr. Aluri, what do you do here in
11 Columbia?

12 **A:** I have been in Columbia for 41 years.

13 **Q:** Forty one?

14 **A:** And I'm a resident of the University Hill
15 Neighborhood. And the Governor's actually my
16 neighbor until recently. I came to go to USC
17 in '76. And I have four different
18 responsibilities I have. Number one is
19 International Friendship Ministries. It is a
20 Christian religious organization working with
21 about 50 churches in Columbia, ministering to
22 international students. Then I do -- I have a
23 language training school. I bring people from
24 outside of the country to come to Columbia we
25 will teach them English as a second language.



- 1 Q: Okay. And of those 15 or 16 houses, are some
2 of them multiple-tenant units?
- 3 A: Exactly. Yes, sir.
- 4 Q: And, Dr. Aluri, what year did you buy the 616
5 property?
- 6 A: I believe it was in 2003.
- 7 Q: Okay. And you subsequently transferred
8 ownership of that property to a family trust?
- 9 A: Yes, sir.
- 10 Q: Okay. Are you the trustee of that family
11 trust?
- 12 A: Uh-huh (affirmative response).
- 13 Q: Yes?
- 14 A: Yes, sir.
- 15 Q: Okay. When you starting looking at buying the
16 property at 616, were you aware of the use of
17 the driveway in between 616 and 618?
- 18 A: Yes.
- 19 Q: Okay. And were you -- did you know whether or
20 not both buildings utilized that driveway?
- 21 A: That's my understanding because I was there
22 since 1988 in 610 Pickens Street, so I'm aware
23 that both properties use the -- that's to my
24 understanding, that both have access to the
25 same driveway to the back of the 616 and 618.



1 Q: Okay. And at the time you bought the property,
2 was -- well, you bought the property from
3 Elizabeth Whitener.

4 A: Whitener.

5 Q: And it was actually in the name of a limited
6 partnership.

7 A: Exactly.

8 Q: And would you have bought the property if the
9 driveway was not utilized by both properties?

10 A: I would not have bought the property if the
11 driveway was not available to me only because
12 that would have denied access to park in my
13 backyard.

14 Q: Was the retaining wall there in 2003 when you
15 bought the property?

16 A: To my recollection I believe so, because I did
17 not ...

18 Q: You didn't build it?

19 A: I don't think so.

20 Q: I'm saying, you didn't build that retaining
21 wall?

22 A: I don't recall building it. I believe it was
23 there.

24 Q: Okay. Have your tenants always parked -- use
25 that driveway and parked on that gravel area?



1 A: Yes. Ever since I bought the property, there
2 was no issue about my tenants being able to go
3 to the back yard using the driveway between the
4 two units, to go back there, it was never an
5 issue.

6 Q: And did you have discussions with Elizabeth
7 Fouche about that? Is that her name, Rebecca
8 Fouche?

9 A: Yeah.

10 Q: Rebecca? Okay. Did you ---

11 A: It's a French name. I'm not sure how to spell
12 it.

13 Q: Fouche?

14 A: Yeah. But we had never a discussion or an
15 issue about us not being able to use the
16 driveway when Rebecca was managing it.

17 Q: Okay. And did you have conversations with
18 Rebecca about using that driveway?

19 A: I use to have sometimes when other -- her
20 tenants park in my property, I use to ask her
21 to please tell your tenants not to use my
22 space. We have a common driveway, but back of
23 my apartment is my parking area, so please tell
24 them not to use my -- I reminded her several
25 times.



1 Q: Okay. And she never told you that you didn't
2 have permission to use that driveway?

3 A: That's correct.

4 Q: Is there any other way for you to access that
5 gravel part of your parking, of your yard back
6 there, Dr. Aluri?

7 A: There's no way to go to the backside of -- part
8 of the back side of my 616 Pickens Street
9 except using the driveway between 618 and 616.

10 Q: Well, would it be possible to excavate half of
11 your yard and park there?

12 A: It would be difficult because the elevation is
13 probably three feet, four feet above the ground
14 level. And then to turn around and come back,
15 there's no way to turn around and come back
16 also. So, there's no way to level it to
17 four feet down to the level and then be able to
18 turn around and to come back through.

19 Q: Have you ever discussed with the city whether
20 or not they'd even give you permission to do
21 that?

22 A: No. I never felt the need to do that.

23 Q: And is that -- why is it you never felt the
24 need?

25 A: Because that driveway between 616 and 618 has



- 1 A: I have four units there. There probably are
2 six tenants total. It could be more, but I'm
3 just giving an approximate number.
- 4 Q: Okay.
- 5 A: Because I don't manage day to day no more.
- 6 Q: Okay. Have you, from time to time, leased out
7 some of your parking spaces behind 616?
- 8 A: Very rarely. I did, but very rarely I did it.
9 I don't do that anymore. But very rarely I did
10 it at one time because 618 tenants actually
11 asked me whether I would rent a space for them.
12 And then perhaps I did one or two. I don't
13 remember how many, but, yeah.
- 14 Q: Okay. So, their tenants actually used the
15 driveway to access your property?
- 16 A: Exactly. When I said 616, it's using the
17 driveway between 618 and 616, that was a
18 portion we're talking about.
- 19 Q: Yes, sir. Who utilizes that back lot now, the
20 gravel part?
- 21 A: Some of my tenants.
- 22 Q: Okay. And do any members of your school ever
23 use that?
- 24 A: When I have an event at the office, we need
25 more space, and we have always used that extra



1 space for my office purpose.

2 Q: Okay. And have you done that since 2003?

3 A: Yes, sir.

4 Q: Okay. Why did you put the no parking signs up
5 there, Dr. Aluri?

6 A: Because I was a little bit getting tired of
7 people using my space. And then I called the
8 tow company. I believe they told me that I
9 cannot tow the cars until I have a clearly
10 marked no parking signs. So, I realized that
11 I had to have a sign to be able to tow the
12 cars. So, there's no notice of no parking sign
13 that I cannot tow the car even though they park
14 on my backyard. I'm not a lawyer, so that's
15 what was told. So, to protect myself, I put up
16 no parking signs on all of my property, not
17 only this one, so that I can tow cars which
18 don't belong on my property.

19 Q: So, you put those signs up on all your
20 properties?

21 A: Yes, sir.

22 Q: And you live in this neighborhood?

23 A: I live at 1827 Greene Street.

24 Q: Okay. Is this a densely developed area?

25 A: Very heavily densely populated.



1 Q: What about -- what happens when a moving truck
2 comes in there to move people to -- into their
3 apartments at 618?

4 A: They use my place to park. Even if they're
5 moving the U-Haul, there's no way they can back
6 out. So, it's a very difficult situation for
7 618 without, you know, using my backside
8 property on a temporary basis, moving in and
9 moving out, driving around, turning around. It
10 has to -- you know, it's a pretty common
11 practice. And I don't mind for that situation
12 because I know they have to have somewhere to
13 turn around and come back out.

14 Q: Okay. And your tenants use their asphalt area
15 to back out and turn around to go out, do they?

16 A: Yes. It's a mutual.

17 MR. BARNES: I don't think I have anymore questions.

18 MR. GIBBONS: Thank you.

19 THE COURT: Cross-Examination?

20 MR. GIBBONS: Yeah.

21 DR. ALURI - CROSS-EXAMINATION BY MR. GIBBONS:

22 Q: Dr. Aluri, let's break this down. The driveway
23 at 618 is not the only access you have to your
24 property. You have a driveway on the other
25 side of 616 to get to the back of the property,



1 correct?

2 A: Partially correct, because I cannot use six of
3 my parking spaces unless I go through the
4 driveway between 616 and 618.

5 Q: But the only thing you need access to is the
6 inside of the building on the property, right?
7 And to get to the inside of the building on the
8 property, you have access other than the
9 driveway on 618?

10 A: To get into the building?

11 Q: That's right.

12 A: That's correct.

13 Q: And you stated that you would not have bought
14 this property had you not known that there was
15 a shared driveway. You've been involved in
16 many financial real estate transactions,
17 correct?

18 A: This is probably one of my first -- I mean,
19 after that I had many more, but not -- before
20 that I didn't have much experience.

21 Q: Did you have a lawyer represent you in this
22 transaction?

23 A: I had to have a lawyer to close the property.

24 Q: Did you have a real estate agent?

25 A: No, because I approached the lady directly to



1 sell the property, owner, yeah.

2 Q: So, you pretty much represented your own
3 interest in this, correct?

4 A: I wanted to buy the property because it's next
5 to my non-profit group, so I approached her and
6 she sold it. I don't recall if I -- I had to
7 use a lawyer, my own lawyer, to represent me in
8 closing, to do all the legal work.

9 Q: Okay. Did you get a loan to buy the property
10 or you paid cash?

11 A: I got the loan.

12 Q: And this shared driveway was important to you,
13 so you asked to see some proof of that; did you
14 not?

15 A: Because there was no question about it because
16 I watched that happen. Nobody raised an
17 objection to it before that. That issue never
18 came about until 2015.

19 Q: Well, you'll agree there's a question about it
20 now, correct?

21 A: Since 2015, not before that.

22 Q: Okay. Well, if this was so important to you,
23 why did you not get the answer before you made
24 the purchase?

25 A: Because it was never a concern to me because it



1 was never objected to me because nobody told me
2 that ---

3 Q: Whose word did you take that it was a shared
4 driveway?

5 A: Because I watched people going back and forth.

6 Q: Whose word did you take that it was a shared
7 driveway?

8 A: I was watching it because my office is next
9 door, yes.

10 Q: You took your own word?

11 A: Because I'm next door. I'm there most of the
12 day during the day hours.

13 Q: So, you didn't think it was necessary to get a
14 lawyer to check into that because you took your
15 own word?

16 A: My lawyers did their job in terms of the legal
17 work, but I'm not a lawyer, yeah.

18 Q: What did you get when you bought 616 that
19 assured you that that was a shared driveway?

20 A: Because of the practice.

21 Q: I'm sorry?

22 A: I saw the people using it.

23 Q: Okay. So, there was no -- you didn't make any
24 other inquiry other than you saw activity,
25 correct?



1 A: It's a combined use, I observed it.

2 Q: Okay. That didn't raise a question in your
3 mind, hey, I need to find out why this is a
4 shared use?

5 A: No. It did not come about until 2015.

6 Q: Okay. Now, you first -- I know you and your
7 wife bought the property first and then it was
8 deeded to the trust, correct? So, your first
9 involvement was in 2003, correct?

10 A: With this property.

11 Q: With this property, correct. Okay. So, that's
12 less than 20 years you've owned this piece of
13 property either individually or as trustee?

14 A: That's correct.

15 Q: Okay. And even though this access to the
16 graveled area might be your preference, there
17 is other access to it, albeit it might be more
18 expensive or more trouble or you just don't
19 want to go through the hassle of dealing with
20 it, there is other ways for you to use this
21 graveled portion?

22 A: You are to walk behind it to see. It's not
23 practical at all to do that ---

24 Q: You could excavate it and put up another
25 retaining wall and have full use of that area,



- 1 correct?
- 2 A: It can be possibly done, but it's not an easy
3 job. It's an expensive job.
- 4 Q: You just don't want to do it?
- 5 A: Well, if I do that, then you will have a hard
6 time to back out and go back around also.
- 7 Q: Okay. On that point, you heard the testimony
8 that, if a fence was put up there, they don't
9 think it would affect them.
- 10 A: I think if anyone walks through that one, in
11 reality and practicality, I think it would be
12 very difficult because I've been there, I
13 watched it, I observed it. And I know the
14 small driveways that are in the neighborhood.
- 15 Q: Have you ever tried to back a car in that area
16 without going on the gravel driveway?
- 17 A: Because it's more space, because still I have
18 five feet space of my own space.
- 19 Q: But have you ever tried it yourself?
- 20 A: It's possible. I didn't remember, but maybe
21 possible, yeah, I may have done it.
- 22 Q: The parking signs that you put up, you not only
23 put them facing 616, you put them facing 618 as
24 well, correct?
- 25 A: That's correct because that's my space.



1 Q: Okay. And have you had to have cars towed from
2 618?

3 A: At least once or twice maybe.

4 Q: And what would be the reason for that?

5 A: Because they're using my space.

6 Q: Who is, somebody unauthorized?

7 A: Exactly.

8 Q: Okay. And is that one of the reasons you did
9 the little green parking passes?

10 A: No. There's more than that, because I rent to
11 my own tenants everywhere.

12 Q: Well, look at Plaintiff's Number Three here.
13 That's the car that was parked in the covered
14 parking there on 618. It's got the green Aluri
15 parking pass. Do you recognize that car as
16 being one of your tenants?

17 A: It's possible. You know, I don't keep track of
18 ---

19 Q: I thought you just told me you did keep track
20 of your tenants.

21 A: By this sticker, yeah. But also I do rent to
22 people -- I have rented in the past -- I don't
23 know exactly what year this was, so I can't
24 tell what year it was, when it was taken, so
25 it's possible this was my tenant because those



1 are my stickers.

2 Q: Okay. When you rent parking, whether it's on
3 the gravel area or behind 616 or anywhere else,
4 are there assigned spaces or is it just the
5 right to come onto the property and park
6 wherever there's a space?

7 A: They're not assigned by number.

8 Q: Okay.

9 A: But they're given the space -- especially I
10 tell them where my space are, where they're not
11 to park because I tell them if they park in the
12 wrong space, they will be towed. Because I
13 have my own tenants' cars towed in the past.
14 Not in this location, other places where they
15 take the neighbor's property, they were towed.
16 So, I try to caution my tenants, make sure that
17 you only park in my spaces behind my property.
18 Don't use other people's property because if
19 they get towed, I'm not responsible.

20 Q: Okay. Now, the six spaces that's are on the
21 graveled area, we've agreed they're six there,
22 are those assigned to anybody?

23 A: Not by number.

24 Q: Okay. Are there other people that can come
25 from other locations to park there if they're



1 getting to one of your other properties? In
2 other words, there's not the same six people
3 parking there all the time, even though they're
4 not assigned spaces. Have I asked that clear
5 enough?

6 A: No.

7 Q: Okay. You're right. You're right. I didn't.
8 In other words, there's six spaces, they're not
9 assigned, okay? People that have your parking
10 sticker, the green parking pass, as long as
11 they've got one of those, they can come onto
12 this property and park there in your belief,
13 correct?

14 A: Yeah. But other people don't come there
15 because other people aren't anywhere near that
16 property. Other tenants won't come because
17 they're not near the property.

18 Q: Didn't you say when you have events at the ...

19 A: Yeah. Those are my people. If I have an
20 activity on a Friday evening -- I usually have
21 a Friday evening activity or maybe Thursday
22 evening activity as a part of the ministry I do
23 and I don't have enough spaces. I tell them
24 they can use the other places I have behind the
25 616 property because those are my spaces.



- 1 Q: So, there's no way the owner of 618 can know
2 with any degree of accuracy who's going to show
3 up to use those parking places if they
4 continue? You've got complete control over it,
5 is that what you're telling us?
- 6 A: Rephrase one more time, please. Maybe simplify
7 that question.
- 8 Q: If somebody rents from you a parking place,
9 whether they're a tenant or not, and there are
10 six spaces on 616 ---
- 11 A: North side of the lot.
- 12 Q: On their side, right. They can come up
13 there -- in your opinion, they can come up
14 there and park any time, no restrictions, no
15 nothing?
- 16 A: If they have a sticker there, yes.
- 17 Q: That's your position, okay. Do you carry any
18 kind of insurance that covers people coming and
19 going on that property?
- 20 A: I have liability insurance for my tenants -- I
21 mean, for my properties.
- 22 Q: What about, say one of your tenants backs out
23 of a space that you've got and hits a car that
24 is a tenant of 618, who pays for that?
- 25 A: That's a legal question, I cannot answer, okay?



1 Q: You see where it can be problematic?

2 A: Well, because tenants -- I remember one time a
3 tree branch fell down and then damage, so they
4 had car insurance that pays for them. Any
5 accidents, you know, car's insurance should be
6 covered. I mean, that's state law that you
7 must have car insurance, either private
8 property or public property.

9 Q: Do you make sure your tenants all have car
10 insurance?

11 A: That's not my -- that's the state
12 responsibility. That's not my responsibility
13 to see whether they have car insurance or not.

14 Q: There are four units you said in 616 and you
15 have six tenants total. That's what you said,
16 right?

17 A: It may be more, but I've just got a minimum six
18 tenants.

19 Q: Okay. How many parking spaces are on the
20 property at 616, not including the gravel area?

21 A: Technically it's only four on the other side,
22 maybe five. Because you have to go on the
23 backside, very close to the alleyway that goes
24 down.

25 Q: There's a carport back there, right?



1 A: Okay. That carport does not belong to me.
2 That carport belongs to the Blossom Street
3 owner. It's not my property.

4 Q: How does that car get back there?

5 A: Okay. That car is people are parking the wrong
6 way. In fact, I warned them not to park
7 because that owner has towed cars in the past.

8 Q: Does he use your driveway to get to that
9 carport?

10 A: It's an alleyway. It's not my driveway. It's
11 a city-owned alleyway. I don't own that
12 alleyway. So, that carport does not belong to
13 me.

14 Q: That's the alleyway that's on the side lot line
15 of the right, not the rear.

16 A: Exactly.

17 Q: Okay. All right.

18 A: But let me explain that. The carport belongs
19 to -- I think it's 1620 or -- Blossom Street
20 address.

21 Q: Okay.

22 A: It has a duplex. And then -- so, my tenants
23 even try to park there. I caution them. I
24 said, don't park in their carport because
25 they'll be towed.



1 Q: Right.

2 A: And he has towed cars in the past.

3 Q: Now, mention was made of a sign that you've got
4 on Blossom Street that says parking and with
5 your phone number. That sign is still there,
6 correct?

7 A: Yes, sir. That sign is still there because I
8 did a non-profit organization. We own 25
9 spaces. And then we use some of the space for
10 our office purpose. And the other spaces we
11 don't use, we rented to the ministry, income
12 for the non-profit origination. And that sign
13 is not for the other properties. That's only
14 for the property where the sign is that is 610
15 Pickens Street.

16 Q: All right. As of right now, are the gravel
17 parking spaces used for your employees or are
18 they rented to tenants or other people?

19 A: They're for my tenants and also some of my
20 friends who attend a different church, their
21 kids go to school, I let them use the parking.
22 I have a nephew who goes to USC. He lives in
23 Lexington. I let him use some of the parking.
24 So, it's multiple use. My office, if we have
25 a function, I can use it. I have friends whose



1 kids go to USC, I let them use it. My tenants
2 have guests, they use it. My tenants need more
3 space, they use it.

4 Q: You say you had a property manager now; is that
5 right?

6 A: I have property management people. It's more
7 than one.

8 Q: Okay. Is that a particular company or an
9 individual or -- can you tell us who that is?

10 A: I have people in the office who manage the
11 property. My daughter in Orlando runs some of
12 it. But I have a fellow named Phil who is
13 helping me now. I had a lady who worked for me
14 for two years, she went back to teaching. So,
15 I try to manage my own property, but I have
16 office people who run day-to-day operations
17 only because I won't sell it my own tenants.
18 I want to give the right tenants who, you know
19 ---

20 Q: I want to go back to something -- I'm sorry.
21 I want to go back to something you said earlier
22 when Mr. Barnes was questioning you about the
23 retaining wall, whether or not you built it.
24 And you said you don't think you built it.

25 A: I don't recall. Let me put it -- I don't



1 recall.

2 Q: And that would be a -- according to your
3 testimony, to tear it down and excavate it
4 would be a huge expensive project. But you
5 don't recall whether or not there was expense
6 and just a process of going through building
7 it? I mean, did you build it or did you not
8 build it?

9 A: I don't remember building that one, okay? I
10 cannot recall building that one.

11 Q: Did you build another one on the property?

12 A: No. I didn't think so.

13 Q: So, you can't say in your testimony that you
14 did not build that wall?

15 A: I'm pretty positive that I did not build the
16 wall, but I cannot be a hundred percent, yeah,
17 because -- yeah. It's ...

18 Q: It's clear that you did not put up the no
19 parking signs until some recent time, three to
20 five years ago, correct?

21 A: I started putting my signs when I knew that,
22 no, I cannot tow any car from any of my parking
23 lots unless I had the signs clearly marked that
24 no parking.

25 Q: And as I understood it, it wasn't just this



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1 area that you put the signs, you put signs
2 everywhere you got parking?

3 A: That's correct.

4 Q: Okay. All right.

5 A: But I believe I may have started with this one
6 first because it's becoming more of a problem
7 for me.

8 Q: It was always double signs though facing 618
9 and facing your way, right?

10 A: Only on that location.

11 Q: Only on that location, okay. Had you ever used
12 any stripes or lines or anything else to
13 delineate parking spaces up there?

14 A: I didn't think so. I don't remember so,
15 because, you know, it's gravel and it's hard to
16 mark anything.

17 Q: So, if somebody not knowing about this lawsuit
18 and not knowing what all of us in this room
19 know about this property, they could walk back
20 there, they wouldn't know whether it was
21 parking or not?

22 A: No. It says no parking sign.

23 Q: Well, without the signs. There's no lines,
24 there's no designated spaces?

25 A: Rephrase one more time, please.



1 Q: In the gravel area there's no lines or any
2 other indications that there are parking spaces
3 in that graveled area?

4 A: There's not clearly marked spaces I recall
5 until y'all had the asphalt pavement down. And
6 it was kind of an open space for everybody.

7 Q: On that point, so you knew and were aware that
8 they were paving their side of the parking lot?

9 A: Yeah.

10 Q: Did you ever go to them and say, hey, pave mine
11 too while you're at it?

12 A: No.

13 Q: Let me find out what that would cost?

14 A: No. Because I don't -- many parking spaces
15 don't have to be paved to park at the back lot.
16 I have other properties I have no paving, but
17 people still park. I didn't have to mark them,
18 they still park because they know it's a
19 parking space.

20 Q: You had not put up the no parking signs at the
21 time they paved the parking lot, though, right?

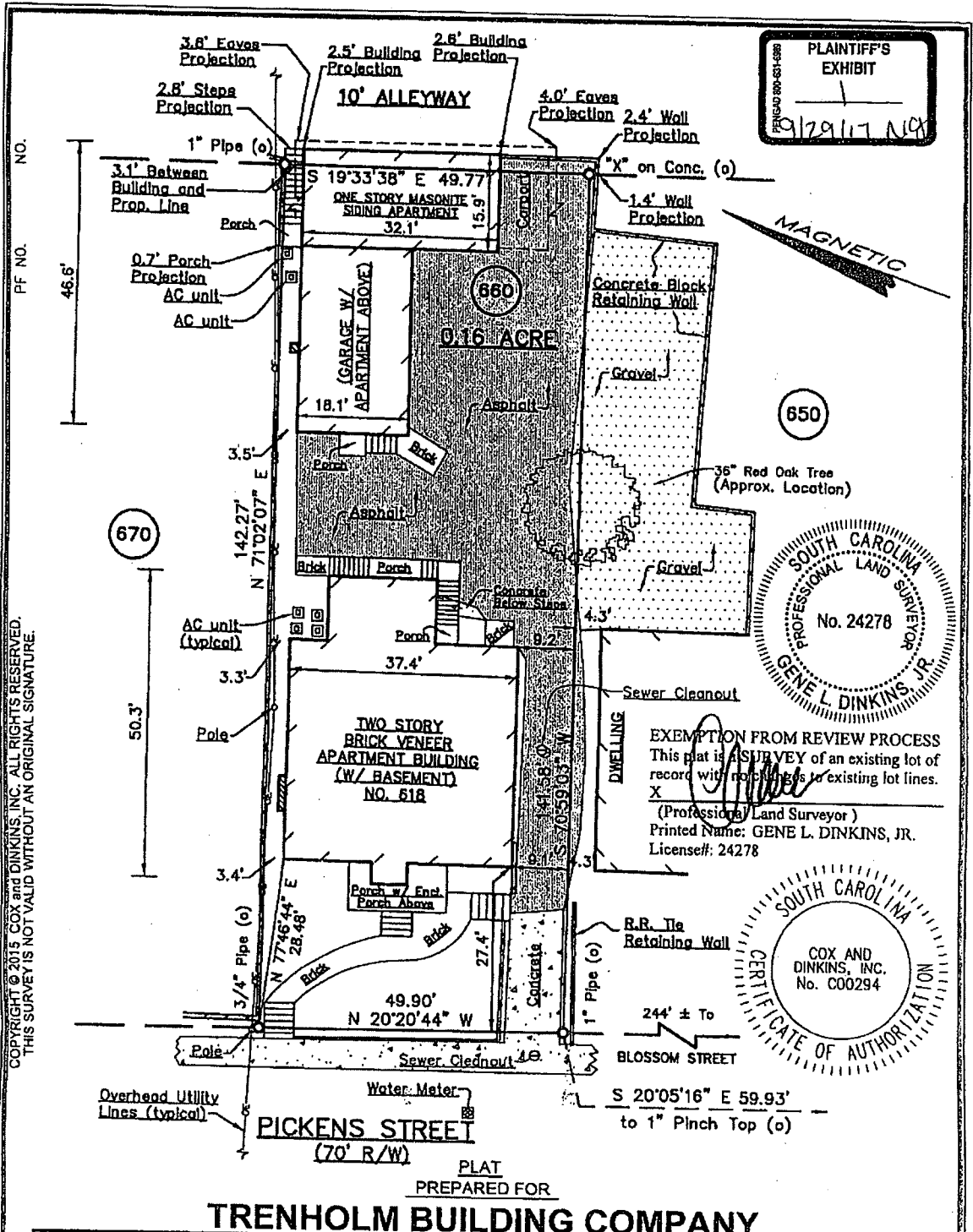
22 A: I don't know which preceded what.

23 MS. BAGNAL: I need to ask you something.

24 MR. GIBBONS: Yeah. Give us just one quick second.

25 THE COURT: Take your time.





PLAINTIFF'S EXHIBIT
9/29/17 NCX

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR
No. 24278
GENE L. DINKINS, JR.

EXEMPTION FROM REVIEW PROCESS
This plat is a SURVEY of an existing lot of record with no changes to existing lot lines.
X
(Professional Land Surveyor)
Printed Name: GENE L. DINKINS, JR.
License #: 24278

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
COX AND DINKINS, INC.
No. C00294

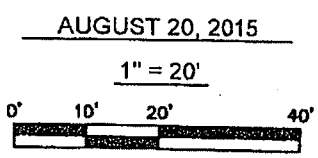
PLAT PREPARED FOR
TRENHOLM BUILDING COMPANY

RICHLAND COUNTY, COLUMBIA, S.C.
THE SAME BEING DESIGNATED AS LOT NO. 660, ON PLAT PREPARED FOR REMBERT DEVELOPMENT COMPANY, BY F.C. BLACK, C.E., DATED JANUARY, 1911, AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY IN PLAT BOOK "C", PAGE 24. REFERENCE IS ALSO MADE TO DEED RECORDED IN RICHLAND COUNTY DEED BOOK D292, PAGE 823 AND TO PLAT PREPARED FOR TRENHOLM BUILDING COMPANY, BY COX AND DINKINS, INC., DATED MARCH 31, 1999.

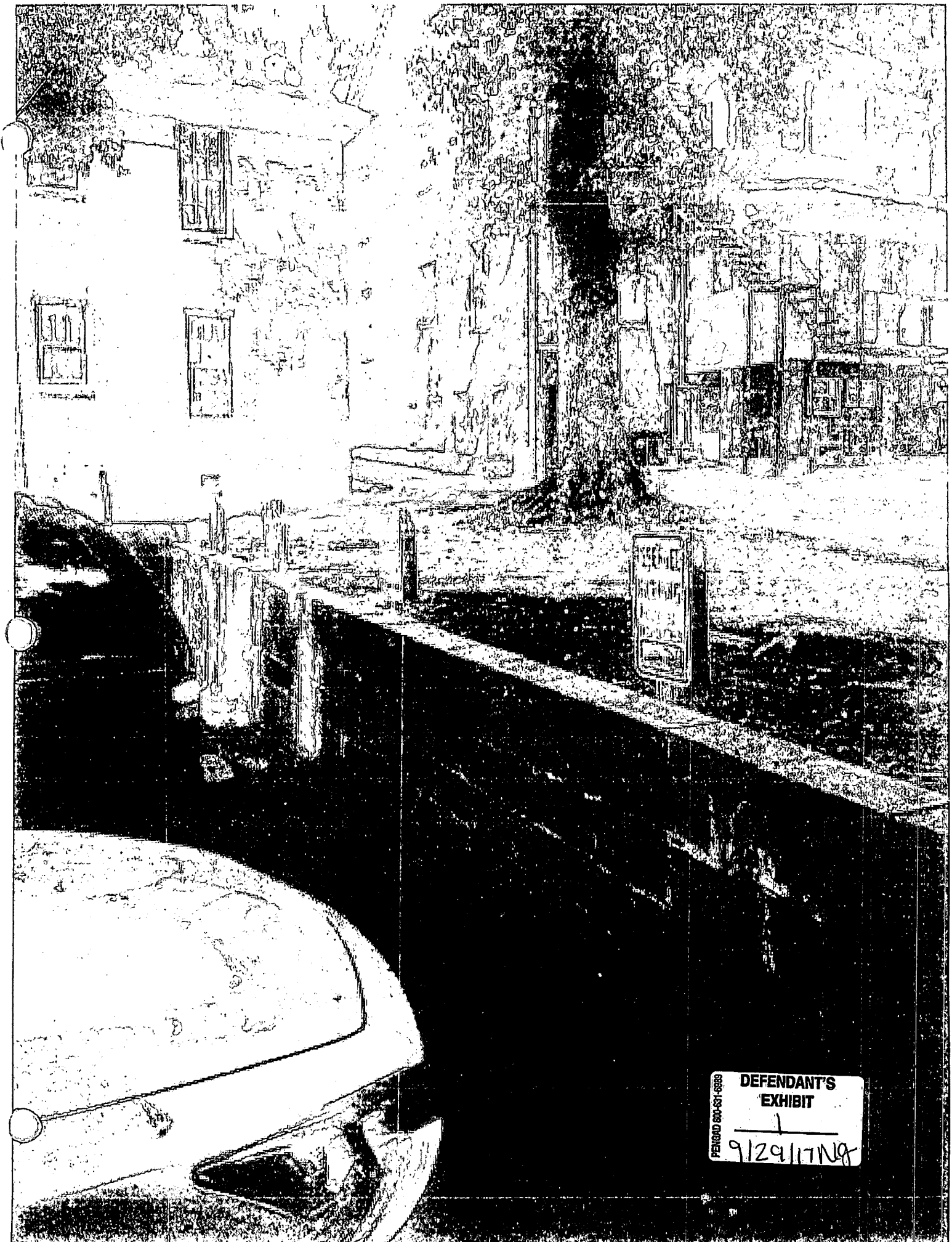


COX AND DINKINS, INC.
724 BELTLINE BLVD.
COLUMBIA, SOUTH CAROLINA 29205
803-254-0518 Fax: 803-765-0993
Email: cdinc@coxanddinkins.com

I hereby state that to the best of my professional knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown.
PROF. LAND SURVEYOR NO. 24278
GENE L. DINKINS, JR.

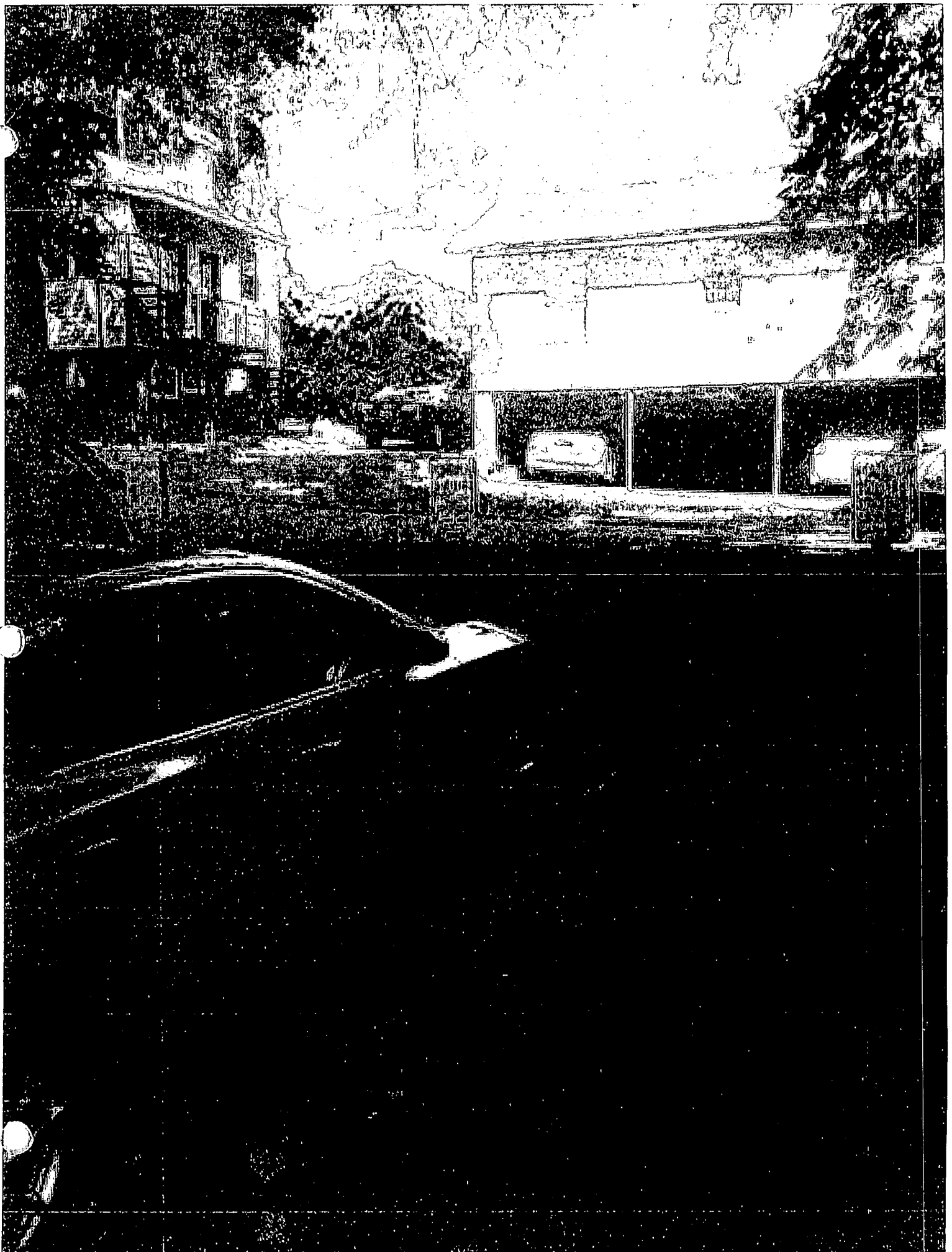






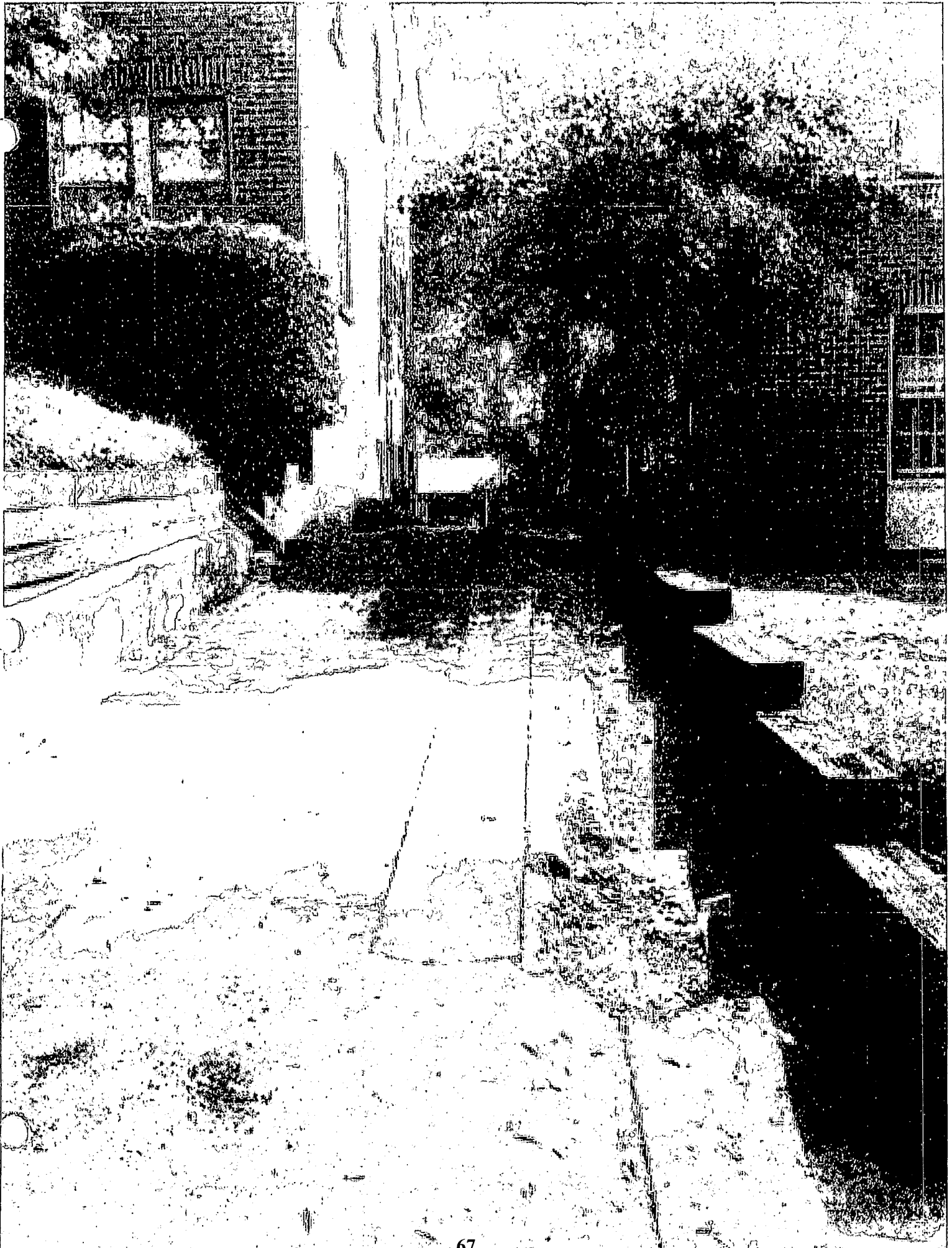
FENIGAD 800-367-6399
DEFENDANT'S
EXHIBIT
1
9/29/17 N9



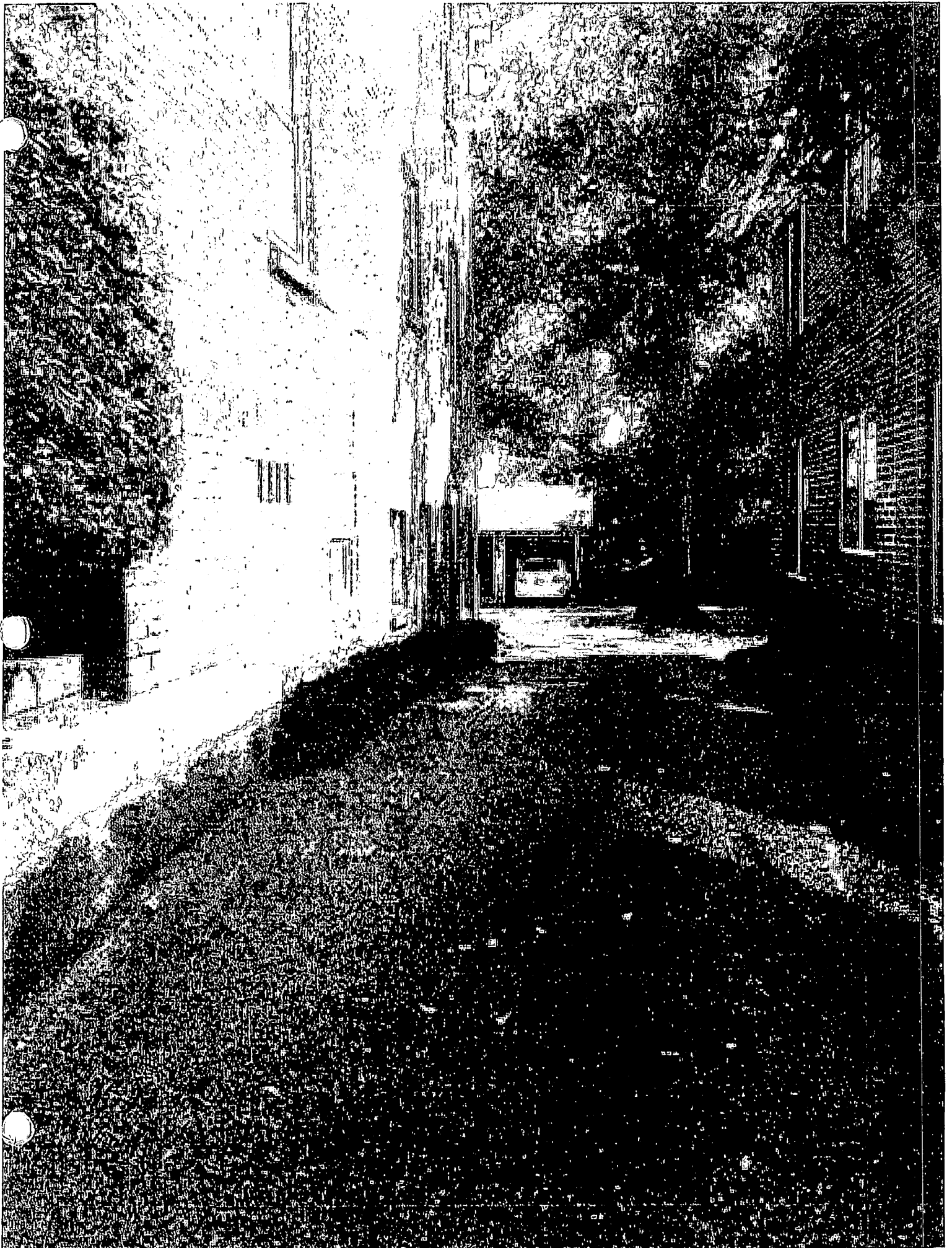


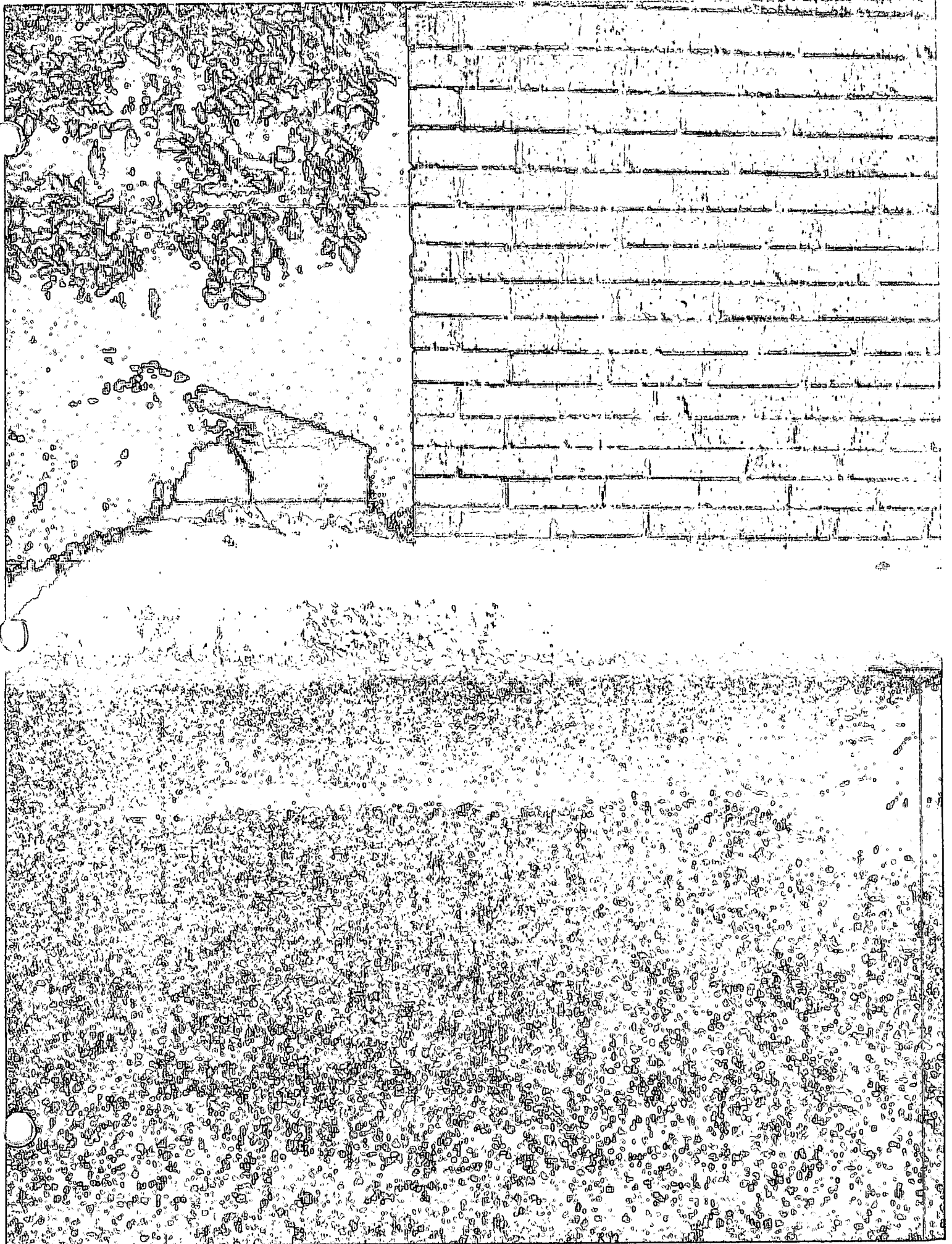


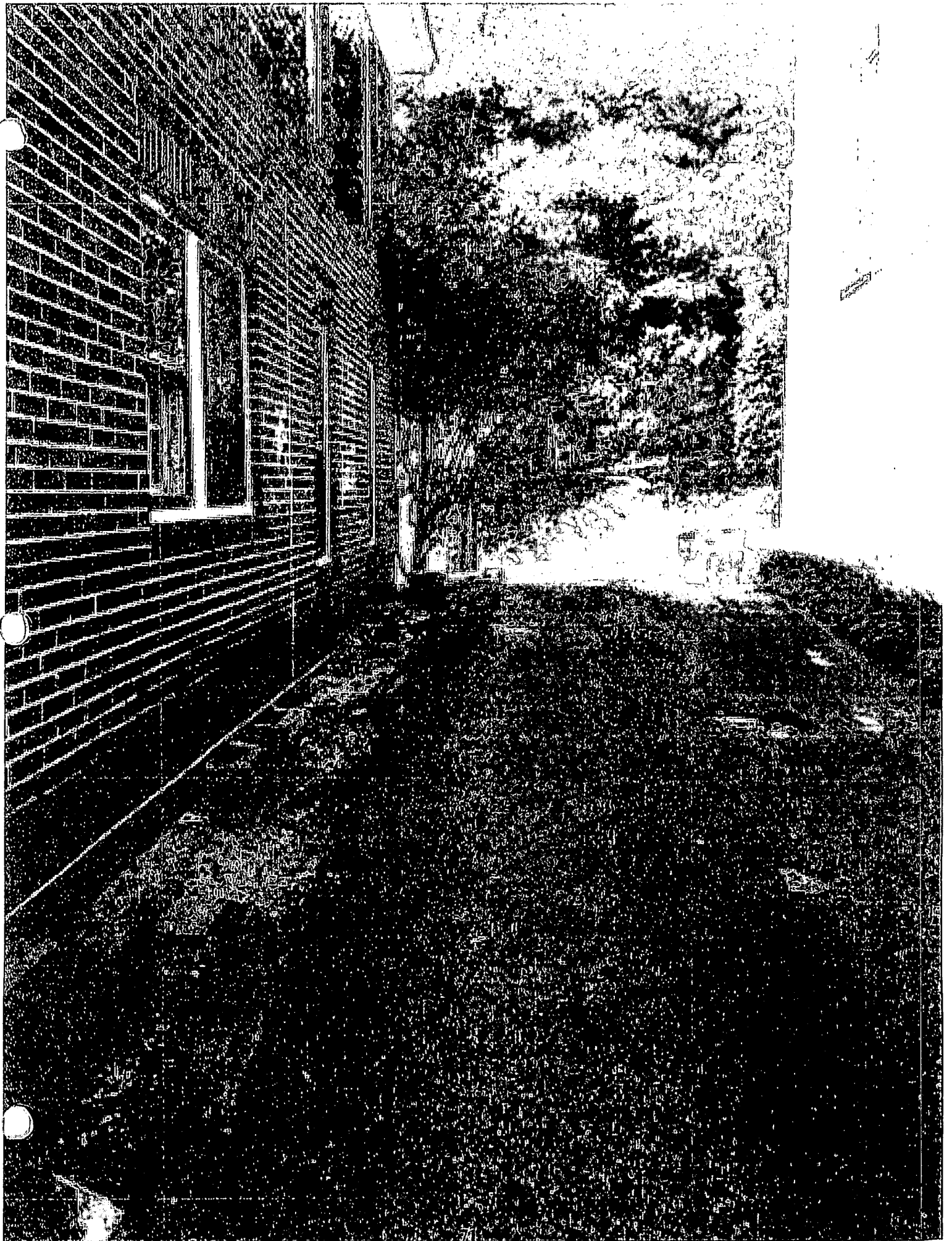




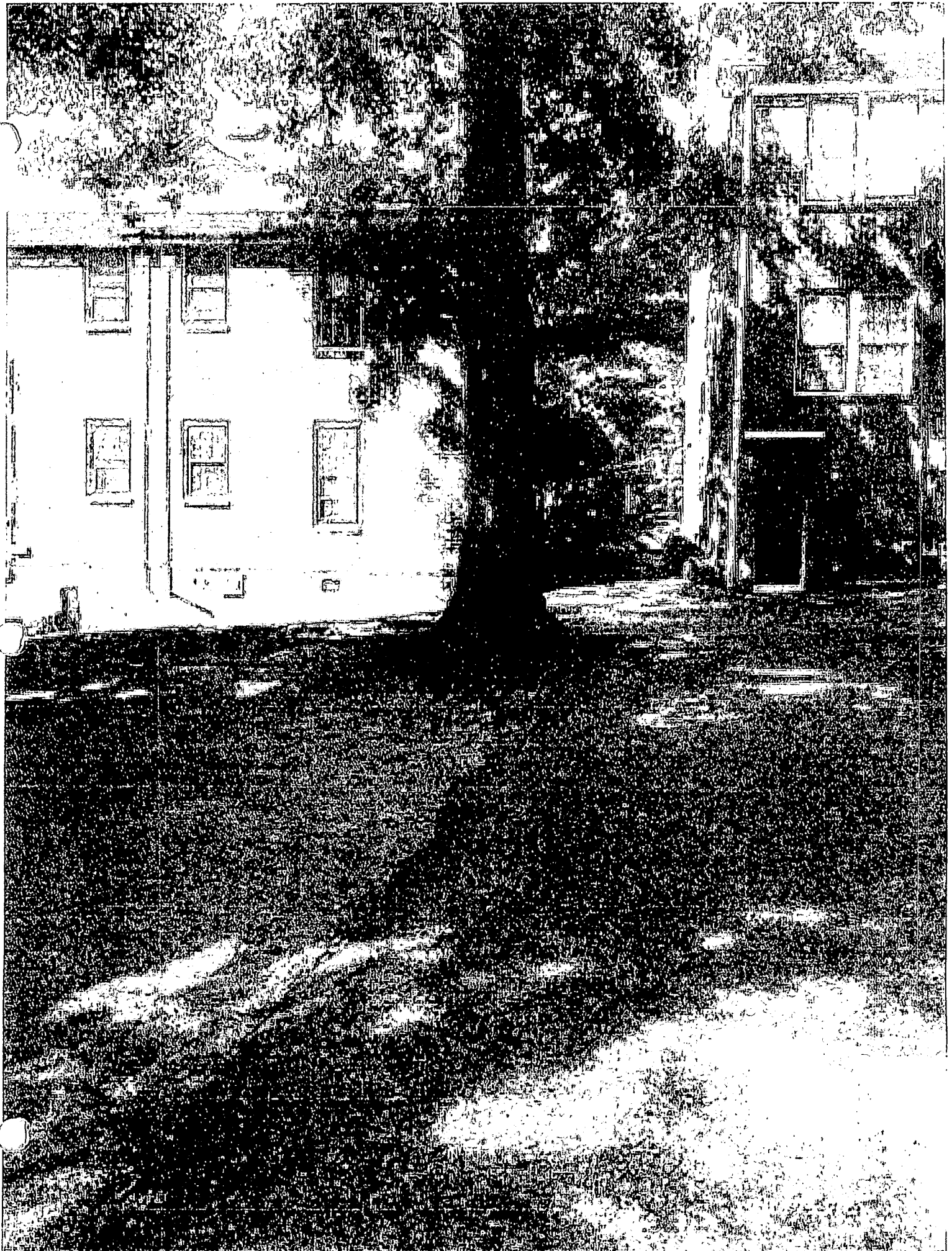


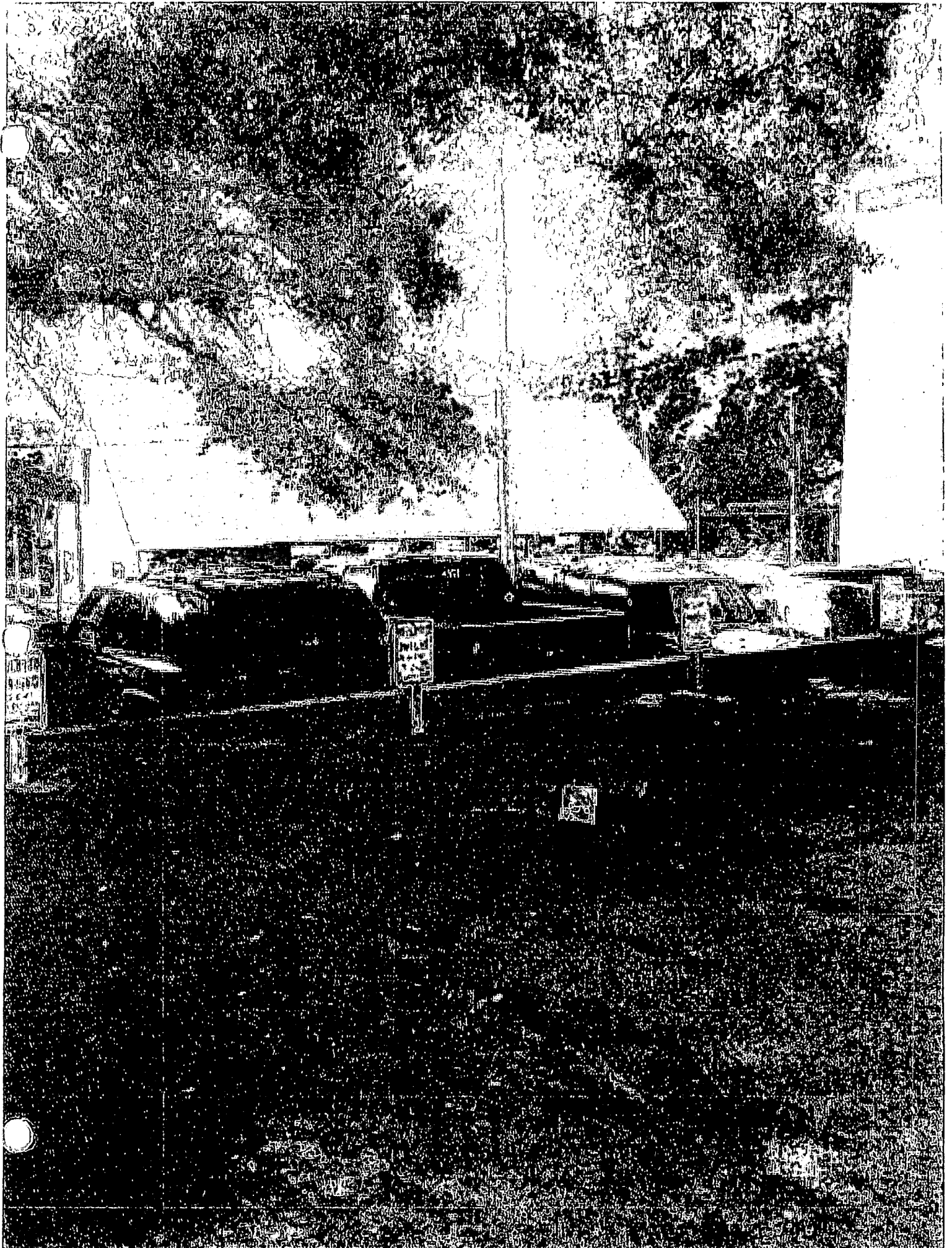




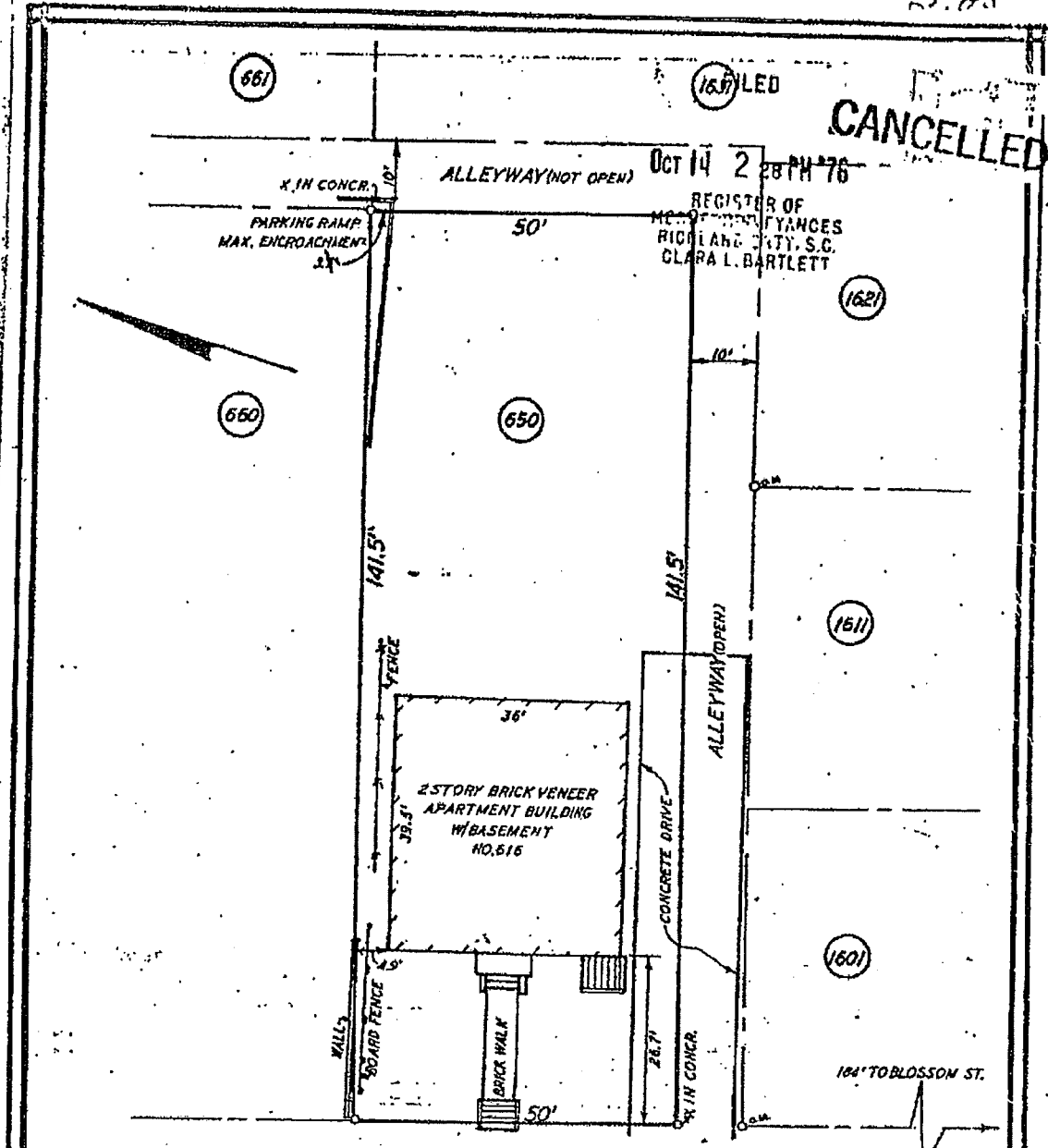








72.07.1



CANCELLED

OCT 14 2 28 PM '76

REGISTER OF
MEASUREMENTS
RICHLAND COUNTY, S.C.
CLARA L. BARTLETT

661

1607 LED

660

650

1621

1511

1601

104' TO BLOSSOM ST.

PICKENS STREET

PLAT PREPARED FOR...

D. REECE WILLIAMS, III

COLUMBIA, S. C.

THE SAME BEING SHOWN AS LOT 650 ON PLAT OF PROPERTY OF
REMBERT DEVELOPMENT COMPANY BY F. C. BLACK, C. E.
DATED JANUARY, 1911 AND RECORDED IN THE OFFICE OF THE CLERK
OF COURT FOR RICHLAND COUNTY IN PLAT BOOK C AT PAGE 24.

SCALE: 1"=20'

SEPTEMBER 29, 1976

IRON CORNERS

I HEREBY CERTIFY THAT THE MEASUREMENTS AS SHOWN ON THIS PLAT ARE CORRECT
AND THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

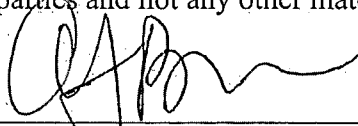
Claude R. McMillan, Jr.
CLAUDE R. McMILLAN, JR., P.E. & R.L.S. NO. 1034

6577

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 18, 2018



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