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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
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No. 98221-0

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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MARIA JESUS SARALEGUI BLANCO,

Petitioner,

vs.

ERNESTO HERNANDEZ, TERI HERNANDEZ and the marital  
community comprised thereof,

Respondents,

and

DAVID GONZALEZ SANDOVAL,  
ALEXANDRA BARAJAS GONZALEZ, and the marital community  
comprised thereof,

Defendants.

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BRIEF OF PETITIONER

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## I. INTRODUCTION

Maria Saralegui Blanco was viciously mauled by a pit bull when providing Bible study to Elvia Sandoval at the mobile home where Ms. Sandoval lived with her son and daughter-in-law, defendants David Gonzalez Sandoval and Alexandra Barajas Gonzalez, who owned the pit bull. Respondents Ernesto and Teri Hernandez (collectively, “the Landlords”) own the subject premises and about 20 properties in Snohomish County, and have liability insurance through State Farm. While the tenant dog owners are strictly liable under RCW 16.08.040, they are uninsured and insolvent independently of any judgment that may be obtained against them in this matter.

Ms. Blanco was discussing scripture with Elvia Sandoval in the driveway of the premises when the pit bull named Enzo escaped from the fence and attacked her. The pit bull knocked her to the ground, bit off much of her face, and ate her ear. The fence from which the pit bull had escaped was weathered, chewed up, and was in poor condition, and had been that way for at least a year.

Ernesto Hernandez knew that David Gonzalez Sandoval kept a pit bull there, permitted the keeping of the dog and approved David Gonzalez Sandoval’s building of the subject fence. Ernesto Hernandez also regularly inspected the premises, at least once a

year and possibly on a daily basis, and thus knew or should have known of the poor condition of the fence and that it was inadequate to contain the pit bull. Ms. Blanco and her companions testify that they were nervous about the pit bull, but only felt safe because of its deceptively apparent containment within the fence. Elvia Sandoval kept Ms. Blanco and her companions out of the house and away from the dog when they were there. Ms. Blanco described the dog as vicious on her previous visits, and that it would jump as well as bark when she was there. Elvia Sandoval testified that the dog was that way around strangers, including Ernesto Hernandez, who also kept his distance from the dog when he was there.

The Landlords retained control of the premises through their “Residential Rental Agreement” which provided complete discretion to the Landlords as to what conditions pets could be allowed on the premises and what conditions tenant additions and improvements, such as the subject fence, could be made.

On these facts and reasonable inferences therefrom under the summary judgment standard, the Landlords owed premises liability duties under Oliver v. Cook, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016) for the condition of the fence as well as under the Oliver court’s holding that the dog was a “condition of the land” and that there is no “dog bite exception to ordinary premises

liability rules.” Id., 194 Wn. App. at 454. This is comparable to this court’s rejection of a “natural bodies of water” exception to premises liability rules in Degel v. Majestic Mobile Manor, Inc., 129 Wn.2d 43, 51, 914 P.2d 728 (1996).

The Landlords contend they had no duties to prevent the attack under Frobig v. Gordon, 124 Wn.2d 732, 881 P.2d 226 (1994) and Shafer v. Beyers, 26 Wn. App. 442, 613 P.2d 554 (Div. 1, 1980). The Oliver court distinguished Frobig and Shafer as not having applied ordinary premises liability rules to dog attacks. Division II in Oliver also overruled *sub silentio* its 1990 holding in Clemmons v. Fidler, 58 Wn. App. 32, 791 P.2d 257 (1990), upon which this Court’s holding in Frobig was based.

Under ordinary premises liability rules, Ms. Blanco was an invitee on premises, or at least a licensee. Having not surrendered both possession and control over the premises, the Landlords owed Ms. Blanco duties under Washington’s adoption of the Restatement (Second) of Torts § 343 for an invitee or § 342 if found to be a licensee. Since the Landlords knew or should have known about the unreasonably unsafe condition of the fence and the dangerous propensities of the pit bull, and since Ms. Blanco, had no reason to know of the unreasonably unsafe condition of the fence, evidence supports a finding of the Landlord’s liability under either standard.

## II. ISSUE PRESENTED FOR REVIEW

Whether the Landlords owed a duty to Ms. Blanco to prevent her from being viciously attacked by a pit bull that escaped from an unreasonably unsafe fence on their premises under Oliver v. Cook and longstanding premises liability law including Degel v. Majestic Mobile Manor, Inc., or whether there is a “dog bite exception to ordinary premises liability rules” under Frobig v. Gordon, 124 Wn.2d 732, 881 P.2d 226 (1994) that would apply not only to the pit bull, but to the unreasonably unsafe fence that failed to contain it.

## III. STATEMENT OF THE CASE

On Tuesday, May 8, 2018 around noon, a pit bull named Enzo escaped from a fence through a rotten, chewed up board and viciously attacked plaintiff Maria Saralegui Blanco and three other people in the driveway of Defendants’ property at 6507 204<sup>th</sup> Street Northeast, Arlington, Snohomish County, Washington, 98223 (“the premises” or “the property”). The attack is described in vivid detail by Maria Blanco,<sup>1</sup> as well as by witnesses Teresa Jimenez, Jaylene Lyman, and Katie Lyman who were with her.<sup>2</sup>

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<sup>1</sup> CP 322-323 (Maria Blanco deposition, Pages 25-36)

<sup>2</sup> CP 289-294 (Teresa Jimenez Decl., ¶ 7, 8, and attached police statement); CP 296-299 (Katie Lyman Decl., ¶ 5, 6, and attached police statement); CP 566-570 (Jaylene Lyman Decl. ¶ 6, 7, and attached police statement (Ex. 4 to Moore Decl.))

Maria Blanco was born in February of 1942 and was 76 years old at the time of the attack.<sup>3</sup> She is a Jehovah's Witness, who at the time of the attack, was visiting the premises for Bible study with Elvia Gonzalez Sandoval.<sup>4</sup> Elvia Sandoval lived at the subject premises with her son and daughter in law, defendant David Gonzalez Sandoval and defendant Alexandra Barajas Gonzalez.<sup>5</sup> David Sandoval moved onto the premises with his mother sometime between 2014 and 2016, along with two of his siblings.<sup>6</sup> David Sandoval married Alexandra Gonzalez in October of 2017, and she moved into the premises in 2017.<sup>7</sup> At the time of the dog attack, Alexandra Gonzalez was pregnant with their son, who was born after the incident.<sup>8</sup> At the time of the attack, David

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<sup>3</sup> CP 120-121 (Maria Blanco deposition, Pages 6:25-7:1)

<sup>4</sup> CP 311 (Maria Blanco deposition, Page 14); CP 292 (Teresa Jimenez Decl. ¶ 9); CP 567 (Jaylene Lyman Decl. ¶ 4); CP 297 (Katie Lyman Decl. ¶ 3 and 4); CP 344-345 (Elvia Sandoval deposition, Pages 6-7)

<sup>5</sup> Id. Defendant Alexandra Barajas Gonzalez was initially incorrectly identified and named in Plaintiff's complaint as "Alejandra Martinez." The pleadings were retroactively amended to identify her by her correct name of Alexandra Barajas Gonzalez in the Superior Court's Jan. 15, 2020 Order Granting Plaintiff's Motion to Amend Pleadings and Change Caption. CP 45-47; *See also* CP 86-101 (Plaintiff's Motion to Amend, with Declaration in Support and Exhibits thereto.)

<sup>6</sup> CP 409 (Ernesto Hernandez deposition, Page 23); CP 381 (David Sandoval deposition, Page 6). Ernesto Hernandez and David Sandoval testify that David Sandoval moved in around 2015 or 2016, but the Residential Rental Agreement and payment receipt provided by Defendants Sandoval / Gonzalez in response to Plaintiff's written discovery requests is dated July 1, 2014. CP 301-303 (Residential Rental Agreement and payment receipt)

<sup>7</sup> CP 381-382 (David Sandoval deposition, Pages 6-7)

<sup>8</sup> CP 374-375 (Elvia Sandoval deposition, Page 49:17-50:1)

Sandoval lived on the premises with his mother, Elvia Sandoval, and his wife, Alexandra Gonzalez.<sup>9</sup>

**A. Facts regarding Maria Blanco's Bible study with Elvia Sandoval and her status as an invitee on premises**

Maria Blanco testified that she had been to the property around five times prior to the day of the attack for Bible study with Elvia Sandoval, who had invited her and other Jehovah's witnesses to visit on Tuesdays.<sup>10</sup> On the day of the attack, she was accompanied by Teresa Jimenez, Jaylene Lyman, and Jaylene's sister Katie Lyman, who were also Jehovah's Witnesses providing Bible studies.<sup>11</sup> Teresa Jimenez describes their study sessions with Elvia Sandoval as follows:

For several months before the incident, we would meet with Elvia at her home on a weekly basis for months prior to the incident. We would meet on Tuesdays, because Elvia had Tuesdays off from work. The sessions would start around 10:30 AM to 11:30 AM, and usually last around 15 to 20 minutes, sometimes more. The sessions were held in Spanish.

CP 290 (Teresa Jimenez Decl., ¶ 4.) She also testified that Elvia Sandoval sometimes invited her inside the house. *Id.*, ¶ 5.

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<sup>9</sup> CP 414-416 (Ernesto Hernandez deposition, Pages 28-30); CP 445 (Teri Hernandez deposition, Page 19).

<sup>10</sup> CP 311 (Maria Blanco deposition, Page 14:10-14)

<sup>11</sup> CP 291 (Teresa Jimenez Decl. ¶ 6); CP 567-568 (Jaylene Lyman Decl. ¶ 5); CP 297 (Katie Lyman Decl. ¶ 5).

It is undisputed that there were no warning signs or “beware of dog” signs on the property, and there were no signs prohibiting solicitation.<sup>12</sup> The Jehovah’s Witness church policy is to have its members honor people’s requests to stay away from their homes.<sup>13</sup> Defendant Teri Hernandez also happens to be a Jehovah’s Witness who provides Bible study.<sup>14</sup> She testifies that Jehovah’s Witnesses’ policy is to keep a record of people who tell them not to come back.<sup>15</sup> If someone tells them not to come back, they will not return for at least three years, and then only an elder can return to see if they are still not welcome.<sup>16</sup> Maria Blanco and her companions all testified that nobody told them to leave, to stay away, that they were trespassing or that they were not welcome there.<sup>17</sup> Elvia Sandoval testified that Maria Blanco came to her house several times to talk to her about the Bible,<sup>18</sup> and that “It was not forced conversation about the Bible.”<sup>19</sup> Elvia Sandoval testified she did “invite her into the home” but “only once” when

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<sup>12</sup> CP 395 (David Sandoval deposition, Page 31:5-15); CP 431 (Ernesto Hernandez deposition, Page 47:13-15)

<sup>13</sup> CP 292 (Teresa Jimenez Decl. ¶ 9); CP 568 (Jaylene Lyman Decl. ¶ 8); CP 297 (Katie Lyman Decl. ¶ 7).

<sup>14</sup> CP 448-449 (Teri Ernesto Hernandez deposition, Pages 37-38)

<sup>15</sup> CP 449-450 (Id., Pages 38-39)

<sup>16</sup> Id.

<sup>17</sup> CP 292 (Teresa Jimenez Decl. ¶ 9); CP 568 (Jaylene Lyman Decl. ¶ 8); CP 297 (Katie Lyman Decl. ¶ 7); CP 373-374 (Maria Blanco deposition, Pages 48:20-22, 49:2-4)

<sup>18</sup> CP 346 (Elvia Sandoval deposition, Page 9:18-19)

<sup>19</sup> CP 347 (Id., Page 10:8-9)

the weather was bad.<sup>20</sup> Elvia Sandoval acknowledges that she never told Maria Blanco to leave. She testified, “I don’t know if I’m guilty or not. Sometimes, I say if I communicate, **if I had told the woman to leave, this may not have happened.**”<sup>21</sup>

**B. Facts regarding the pit bull attack**

Elvia Sandoval was alone at home at the time that Maria Blanco and her companions came to see her.<sup>22</sup> She testified that when Maria Blanco came to her home, Elvia Sandoval received her and they went to the middle of the yard to talk.<sup>23</sup> Elvia Sandoval thinks that she had been speaking with Maria Blanco for “maybe ten minutes” before the dog attacked, and that they were standing next to the truck.<sup>24</sup> Elvia Sandoval didn’t see the dog escape, since her back was to the dog.<sup>25</sup> She thinks the dog “just skipped through” the wood shown on photo number 80 in Exhibit 1 to her deposition.<sup>26</sup> The fence had gates but the gates were

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<sup>20</sup> *Id.*, Page 10:14-18

<sup>21</sup> CP 358 (*Id.*, Page 22:16-18 (emphasis added))

<sup>22</sup> CP 355 (*Id.*, Page 19)

<sup>23</sup> CP 375 (*Id.*, Page 50)

<sup>24</sup> CP 361-364 (*Id.*, Page 28:6-13; Pages 28-30 and 34)

<sup>25</sup> CP 356 (*Id.*, Page 20:1-3)

<sup>26</sup> CP 367-368 (*Id.*, Pages 42:19-43:5); CP 256-287 (photos marked as Exhibit 1 to Elvia Sandoval’s deposition. Elvia Sandoval described the attack and the scene in further detail on pages 20-21, 24-45, and 28-30 to her deposition with references to the photos. CP 356-357, 359-360, and 361-363. She identified the subject pit bull, Enzo, in photo 108. CP 285. Ernesto Hernandez also describes the property in the photos of this exhibit in Pages 65-69 of his deposition. CP 433-437

closed at the time.<sup>27</sup> Elvia Sandoval also testified that Maria Blanco did nothing to provoke the dog to attack, and that Maria Blanco did not have any interaction of any kind with the dog.<sup>28</sup>

Maria Blanco testifies that she arrived at around 11:30 AM, and usually studied a half an hour with Elvia Sandoval.<sup>29</sup> The attack occurred sometime between 12:00 noon and 12:30 P.M.<sup>30</sup> They had just completed their studies, and she had just closed her Bible, when the dog was on her.<sup>31</sup> Referring to photographs of the scene taken by the Arlington Police Department,<sup>32</sup> Maria Blanco described the attack and the location of the attack.<sup>33</sup> She described how the dog escaped from the fence and attacked her:

**Q.** And for the record, you're indicating the middle of Exhibit 6, near where the police officer is?

**A.** Yes. It was there that he jumped, yes. Because I saw here where he bit a piece of wood, and he jumps here. I looked at him. It looked like he was flying, but he wasn't flying but he was so fast that he jumped. So he escaped here. And so the police officer realized that a piece of wood had fallen here, and he jumped -- he could jump through here. The fence was very poor.

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<sup>27</sup> CP 367 (Elvia Sandoval deposition, Page 42:11-14)

<sup>28</sup> CP 365 (Id., Page 40:23-41:9)

<sup>29</sup> CP 321 (Maria Blanco deposition, Page 24:10-25)

<sup>30</sup> CP 311 (Id., Page 14:6-7)

<sup>31</sup> CP 325 (Id., Page 28)

<sup>32</sup> CP 249-254

<sup>33</sup> CP 336-339 (Maria Blanco deposition, Pages 50-53) Maria Blanco was not on the wooden structure by the door at the time, but in the driveway by the car. While her testimony was interpreted from Spanish to English as "porch" or "patio," she clarified that she was not on the wooden structure at the time of the attack, but in the driveway by the truck, where the pool of her blood is shown on Exhibit 2 to her deposition. Id.; CP 250 (Exhibit 2 to Maria Blanco's deposition); *See also* CP 261-262 (Photos showing pool of blood as marked as Exhibit 1 to Elvia Sandoval's deposition)

Maria Blanco deposition, Page 52:3-11. The dog attacked four people, including Maria Blanco, Teresa Jiminez, Elvia Sandoval, and Orlando Sullivan.<sup>34</sup> Maria describes how the dog savagely bit her face, but “not just the face; he pulled out this, my ear, and he ate it right in front of me. He ate my ear.”<sup>35</sup>

**C. Facts regarding the tenancy, the “Residential Rental Agreement,” and the Landlords’ right to control**

The Landlords, Ernesto and Teri Hernandez, own the premises.<sup>36</sup> Ernesto Hernandez believes they bought the property in 2011, but Teri Hernandez thinks they bought it earlier, around 2005.<sup>37</sup> Teri Hernandez admits her husband “**Ernesto Hernandez has sole control over** anything pertaining to the renting and **maintenance of this property.**”<sup>38</sup> Ernesto and Teri Hernandez own about 20 properties in Snohomish County.<sup>39</sup> David Sandoval testifies that he signed a lease with Ernesto Hernandez when he first moved in, but the lease was for two years and was never

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<sup>34</sup> CP 325-328 (Maria Blanco deposition, Pages 28-31); Maria Blanco testified the dog bit a neighbor who responded, and thought the man was Elvia Sandoval’s son. CP 328. Elvia Sandoval identified the man as Orlando Sullivan but denied the man was hurt. CP 359 (Elvia Sandoval deposition, Page 24)

<sup>35</sup> CP 325 (Id., Page 28:2-5)

<sup>36</sup> CP 407-408 (Ernesto Hernandez deposition, Pages 18-19); CP 443-444 (Teri Hernandez deposition, Pages 17-18).

<sup>37</sup> Id.

<sup>38</sup> CP 539 (Teri Hernandez Decl. ¶ 2) (emphasis added)

<sup>39</sup> CP 410-414 (Ernesto Hernandez deposition, Pages 24-28)

renewed.<sup>40</sup> However, the language of the lease specifies it is a “month-to-month Rental Agreement [that] may be terminated by either party by giving a **WRITTEN** notice not less than **20 days** prior to the end of the rental period. CP 301 (Residential Rental Agreement, Page 1) (emphasis in original).<sup>41</sup>

This “Residential Rental Agreement” provides “Tenant(s) shall not do anything nor keep anything on or about premises which may increase insurance rates or hazard.” CP 302 (Residential Rental Agreement, Page 2) It specifically provides for the landlord to retain plenary control over both pets and changes to the premises. Under “**PETS:**” it provides “No pets shall be brought onto the premises for ANY purpose without the prior written consent of the owner agent.” CP 301 (Residential Rental Agreement, Page 1) (emphasis in original). With respect to the premises, it provides: “Tenants shall not make any changes or improvements to this home, inside or out, without written permission of the Landlord.” CP 302 (Id., Page 2, first paragraph.) The Agreement provides “Tenant(s), their family and invitees shall comply with all rules and regulations at the time of occupancy ...

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<sup>40</sup> CP 385 (David Sandoval deposition, Page 15:10-11)

<sup>41</sup> The Rental Agreement does include a provision under “**FINANCIAL TERMS**” setting the rental rate for a two year period: “On this 1 day of July, 2014, the sum of \$1100.00 as payment for rent from 1 July, 2014 to July, 2016.” CP 301 (emphasis in original)

and any future rules and regulations the landlord deems necessary for the common good of all tenants and/or neighbors.” Id. The Agreement also includes a provision for “INSPECTIONS” under which the landlord may enter the “home at reasonable times” including with 24 hours’ notice to show the property to prospective buyers or tenants, and with 48 hours’ notice “for inspections, to fill maintenance requests or make improvements. Id. In the “case of suspected **abandonment or emergency**, the Landlord or Landlord’s representatives, **may enter at any time.**” Id. (emphasis in original).

Despite the existence of the Rental Agreement, Ernesto and Teri Hernandez testified there was no written lease in effect,<sup>42</sup> Ernesto Hernandez testified he had a verbal agreement that included David Sandoval keeping the yard clean, but there were no terms of the agreement regarding the upkeep, maintenance, or repairs on the property, and he had no policies regarding any alterations.<sup>43</sup> Ernesto Hernandez testified he has no policies regarding animals or pets on the property.<sup>44</sup> Ernesto Hernandez testifies he drives by the property “maybe twice a year” and

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<sup>42</sup> CP 419 (Ernesto Hernandez deposition, Page 35); CP 446-447 (Teri Hernandez deposition, Pages 20-21)

<sup>43</sup> CP 419 (Ernesto Hernandez deposition, Page 35)

<sup>44</sup> CP 420 (Id., Page 36)

inspects the property once a year.<sup>45</sup> On his inspection, he also looks at the condition of the yard.<sup>46</sup>

**D. Facts regarding the Landlords' knowledge of the pit bull and of the unreasonably unsafe fence**

David Sandoval testified that the wood plank in the fence through which the dog escaped was made of plywood,<sup>47</sup> and the ragged condition of the wood “had to have been probably there for a year.”<sup>48</sup> David Sandoval thinks the wood could have gotten that way from the dog chewing on it as well as from the weather.<sup>49</sup> He thinks the dog could have chewed through it in a couple of minutes because it had been rotten from being exposed to the weather.<sup>50</sup> Alexandra Gonzalez testifies the wood got in that condition by the dog’s chewing.<sup>51</sup>

When David Sandoval and his mother first moved in, they had a four-pound chihuahua mix, which Ernesto Hernandez knew about.<sup>52</sup> David later got the subject pit bull when he was a

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<sup>45</sup> CP 417 (Ernesto Hernandez deposition, Page 33)

<sup>46</sup> CP 418 (Id., Page 34)

<sup>47</sup> CP 390 (David Sandoval deposition, Page 25, referring to photo 80 (CP 278))

<sup>48</sup> CP 391 (Id., Page 26:20-25)

<sup>49</sup> CP 392 (Id., Page 27:18-20)

<sup>50</sup> CP 393-394 (Id., Pages 29:19-22 and 30:14-18.) David Sandoval uses the word “weatherized” to describe exposure to “rain, air, water, sun.” CP 394 (Id., Page 30:12-13)

<sup>51</sup> CP 402 (Alexandra Gonzalez deposition, Page 12:14-15)

<sup>52</sup> CP 381 (David Sandoval deposition, Page 6); CP 349-350 (Elvia Sandoval deposition, Pages 11-12)

puppy.<sup>53</sup> The chihuahua once lived with the pit bull puppy,<sup>54</sup> but moved out with Elvia Sandoval's daughter long before the incident.<sup>55</sup> David Sandoval testifies he bought the pit bull in September of 2016 when it was seven weeks old, and told Ernesto Hernandez that he had bought the dog.<sup>56</sup>

When Ernesto Hernandez bought the property, there was a wood fence on the north and west side, and a chain link fence on the east, but no fencing on the south side.<sup>57</sup> David Sandoval added the wire fence portion, from which the pit bull ultimately escaped, to the south side when he got the pit bull.<sup>58</sup> He built the additional fencing when the dog was about four months old.<sup>59</sup> If the pit bull was seven weeks old in September of 2016, this places the building of the fence addition around November or December of 2016.

Ernesto Hernandez knew David Sandoval had a pit bull, and saw the pit bull when he was a puppy sometime in the summer of 2017.<sup>60</sup> He never expressed any concern about what would

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<sup>53</sup> CP 349-350 (Elvia Sandoval deposition, Pages 11-12)

<sup>54</sup> CP 384 (David Sandoval deposition, Page 9)

<sup>55</sup> CP 369 (Elvia Sandoval deposition, Page 44:15-17); *See also* CP 421-422 (Ernesto Hernandez deposition, Pages 37:22 – 38:8)

<sup>56</sup> CP 382-383 (David Sandoval deposition, Pages 7-8)

<sup>57</sup> CP 410 (Ernesto Hernandez deposition, Page 24)

<sup>58</sup> CP 424-424 and 428-429 (*Id.*, Pages 41-42 and 44-45); CP 349-350 (Elvia Sandoval deposition, Pages 11-12)

<sup>59</sup> CP 383-384 (David Sandoval deposition, Pages 8-9)

<sup>60</sup> CP 421 and 423 (Ernesto Hernandez deposition, Pages 37 and 39).

happen when the pit bull puppy grew up.<sup>61</sup> He had no “discussions regarding whether or not the fence would be improved or upgraded as the dog got bigger.”<sup>62</sup> However, if the dog was seven weeks old in September of 2016, it would have been nearly full grown by the summer of 2017.<sup>63</sup>

There are conflicting accounts about how often Ernesto came to the property after David Sandoval got the pit bull. Elvia Sandoval testifies that “Ernesto is someone who walks my house every -- every single day.”<sup>64</sup> She elaborated:

When Mr. Ernesto was going there, he was always talking to me. He would say, I’m going to swing by. And -- but he was walking by almost every day because it was on the way to his house.

CP 353 (Elvia Sandoval deposition, Pages 17:24-25). She specifically testified that Ernesto Hernandez was there when the pit bull was fully grown, and that the dog would bark at him when he was there.<sup>65</sup> Alexandra Gonzalez testified she saw Ernesto Hernandez on the property when the pit bull was fully grown, and that “Ernesto saw that there was a pit bull at the property, and he

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<sup>61</sup> *Id.*, Page 40

<sup>62</sup> *Id.*, Pages 45:23-46:1

<sup>63</sup> See <http://www.goodpitbulls.com/health-care/pit-bulls-stop-growing/> (“Typically, pit bulls reach full height between 12 to 18 months old and full weight between two or three years old.”) (last visited July 14, 2020)

<sup>64</sup> CP 353 (Elvia Sandoval deposition, Pages 17:24-25)

<sup>65</sup> CP 372 (Elvia Sandoval deposition, Page 47:13-23)

knew that the pit bull was kept there.”<sup>66</sup> David Sandoval testified that prior to the attack, when Ernesto Hernandez drove by he would “just stop by and see if everything was fine.”<sup>67</sup> By all accounts, it is undisputed that Ernesto Hernandez knew that David Sandoval had a pit bull on the property, and that it was there with Ernesto Hernandez’s permission.<sup>68</sup>

Ernesto Hernandez also knew about and approved the fence:

**Q.** Okay. So sometime before you went to the property in 2017 and saw the dog, he called you and you had a conversation about the dog and the fence?

**A.** Yeah. He asked me if he could put in a fence; he was going to get a little dog.

**Q.** Okay. And what did you say?

**A.** Yeah, that’s fine.

**Q.** Did you ask him what kind of dog he had?

**A.** No.

**Q.** Did you ask him what kind of fence he planned on putting in?

**A.** Yeah. He said wire.

CP 426 (Ernesto Hernandez deposition, Pages 42:7-18). He saw the fence but never inspected it, and admits he did nothing to ensure it was capable of containing a pit bull:

**Q.** So when you went there after this phone call in the summer of 2017, the fence was already in place; is that correct?

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<sup>66</sup> CP 401 (Alexandra Gonzalez deposition, Page 11:6-17)

<sup>67</sup> CP 386 (David Sandoval deposition, Page 21:8-13)

<sup>68</sup> CP 387 (David Sandoval deposition, Page 22:10-17); CP 236 (David Sandoval Decl. ¶ 8) (“Mr. Hernandez was aware I had Enzo, and never raised any concerns about him.”)

A. Correct.

Q. Okay. Did you ever inspect the fence?

A. No.

Q. Did you ever do anything to ensure that the fence was capable of containing a pit bull?

A. No.

CP 427 (Id., Page 43:3-11). David Sandoval agrees:

Q. And did Ernesto know that you built that fence?

A. Yeah. He saw it.

Q. Was there any discussion about the fence, prior to building it, with Ernesto?

A. I let him know that I was going to put up a fence 'cause I wanted a dog to be out in the yard, and he said it was fine.

Q. And did he ever come out to inspect the fence after it was built?

A. No, he didn't. Or at least not that I was aware of.

Q. And do you know if he ever did anything at any time between the time the fence was built and the day of the attack to make sure that the fence was adequate to hold the dog?

A. Not that I'm aware of.

CP 388-389 (David Sandoval deposition, Pages 23:24-24:15).

Elvia Sandoval also testified she had no knowledge of Ernesto or Teri Hernandez doing anything to make sure the fence was able to hold a dog. CP 373 (Elvia Sandoval deposition, Page 48:13-16).

Ernesto Hernandez has not instituted any policies against having pit bulls on any of his properties, or any policies regarding what kind of fence that they need to contain the dog.<sup>69</sup> He agrees that as a property owner, it's important to be able to recognize

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<sup>69</sup> CP 432 (Ernesto Hernandez deposition, Page 59:15-20)

potential safety risks and hazards on his properties.<sup>70</sup> Prior to this incident, he was aware “through the news” that pit bulls are seen by many as dangerous dogs that have done great harm and injury.<sup>71</sup> However, he has never taken any steps to educate himself as to what fencing or containment would be adequate or acceptable to keep the public safe from pit bulls.<sup>72</sup>

**E. Facts regarding the Landlords’ notice of the pit bull’s dangerous propensities**

Ms. Blanco and her companions were nervous and concerned about the pit bull, who would bark at them, but they felt safe because the dog appeared to be contained within the fence.<sup>73</sup> Ms. Blanco described the dog barking and jumping in a “violent” manner when she was there on previous occasions, and reported that Elvia Sandoval told her the dog was the “angry” type:

**Q.** Did you see the dog in the fence when you would come over?

**A.** Oh, yes. Yes.

**Q.** So where was he inside the fence?

**A.** Well, the dog would run in there within the enclosure because he wasn’t tied up, so he would run from one area to the other. He wasn’t tied up; he didn’t have a chain; he didn’t have a -- anything.

...

**Q.** In the times that you were there before the incident,

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<sup>70</sup> CP 438 (Id., Page 70:3-6)

<sup>71</sup> Id., Page 70:7-10

<sup>72</sup> Id., Page 70:11-14

<sup>73</sup> CP 291 (Teresa Jimenez Decl. ¶ 6); CP 297 (Katie Lyman Decl. ¶ 5); CP 567-568 (Jaylene Lyman Decl. ¶ 5); CP 313-315 and 320-321 (Maria Blanco deposition, Pages 16-18 and 23-24)

how many times would the dog bark?

A. Well, he didn't bark all the time, but you could see he was violent.

Q. How could you see he was violent?

A. He would -- because he would jump. He would jump up and bark.

Q. What about him jumping and barking made him seem violent?

A. Well, because Ms. Elvia said her dog was the angry type.

CP 314 (Maria Blanco deposition, Page 17:15-18:20).<sup>74</sup> Elvia

Sandoval testified that the dog's behavior was the reason she kept

Ms. Blanco outside the house:

Q. At any point when Maria visited, would Enzo bark at her or any other people she was with?

A. She was barking at her, yes. That's why I never wanted her to be in my house. I was keeping her outside. And I don't understand why it was like that.

Q. Did you ever see Maria having any type of interaction with Enzo?

A. I knew that she didn't like the dog. I don't know. I don't know.

Q. Did Maria ever stop by with other people?

A. Yes, with another -- another person. One time, another person -- the other person told her that that type of dogs are very protective, and they don't accept strange people. And that was all.

CP 351 (Elvia Sandoval deposition, Page 14:10-14). She also

testified that the dog would bark at meter readers and others who

would come to the house:

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<sup>74</sup> When asked if she told Ms. Blanco or her companion the dog was "aggressive in any way," Elvia Sandoval answered: "No. One time once, I told her that we -- we didn't want to receive visitors because -- because my daughter-in-law was pregnant." CP 351- 352 (Elvia Sandoval deposition, Pages 15:24-16:12)

**Q.** I believe you had mentioned previously that the dog would be protective of family; is that right?

**A.** Yes.

...

**Q.** No, but I'm asking you about this dog. In your personal knowledge and observation, do you recall this dog being protective of the house or of the people who live there?

**A.** Yes. Because when the guy of the water utility was going to check, the dog was barking. And when he was going to check the light -- electric bill, yeah, he was barking. Sometimes when I was coming back from work, he was barking, and I was petting him. And then he was he stopped barking.

**Q.** Now, would the dog behave differently between strangers, such as the utility people, than the dog would behave towards friends and family?

**A.** I think so.

CP 369-370 (Elvia Sandoval deposition, Pages 44:11-45:15).

Specifically with respect to Ernesto Hernandez, she testified that

Mr. Hernandez was there when the dog was fully grown, that the

dog would bark at him, and that he would avoid the dog:

**Q.** How did the dog behave when Ernesto Hernandez would go to the property?

**A.** When Mr. Ernesto was going there, he was always talking to me. He would say, I'm going to swing by. And -- but he was walking by almost every day because it was on the way to his house.

...

**Q.** Was he there when the dog was fully grown?

**A.** Yes.

**Q.** How did the dog react to him when he was there?

**A.** He was just barking, and that was it. But Ernesto never got close to the dog. He would do whatever he needed to do, and then he was getting out. And I don't think he likes dogs. He was not getting close to the dog.

CP 370-372 (Elvia Sandoval deposition, Pages 45:16-47:23).

**F. Procedural history and the tenant pit bull owners' insolvency**

The Superior Court granted summary judgment dismissal of Ms. Blanco's claims against the landlords, defendants Ernesto and Teri Hernandez on September 10, 2019.<sup>75</sup> While the tenant dog owners, defendants David Gonzalez Sandoval and Alexandra Barajas Gonzalez remained in the case,<sup>76</sup> they are insolvent and uninsured.<sup>77</sup> Mr. Gonzalez Sandoval's former criminal defense lawyer agreed to represent them "temporarily to respond to the complaint"<sup>78</sup> and filed a notice of intent to withdraw before trial.<sup>79</sup>

Ms. Blanco promptly filed a motion for reconsideration on September 18, 2019,<sup>80</sup> which was ultimately denied on February 10, 2020.<sup>81</sup> Ms. Blanco then filed her Notice of Discretionary Review to this Court,<sup>82</sup> and review was granted on the merits of the landlord premises liability question.<sup>83</sup>

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<sup>75</sup> CP 219-220 (Order Granting Defendants Hernandez' Motion for Summary Judgment, and Denying Defendants Gonzalez Sandoval and Martinez's Motion for Summary Judgment Without Prejudice)

<sup>76</sup> Id.

<sup>77</sup> CP 233-240 (Declarations in support of motion for summary judgment)

<sup>78</sup> CP 236 (Gonzalez Sandoval Decl., ¶ 11-13)

<sup>79</sup> CP 157. Cassandra Lopez de Arriaga graciously continues to represent them through this appeal.

<sup>80</sup> CP 212-218

<sup>81</sup> CP 37-39. The delay is discussed in the Court's February 10, 2020 letter to the parties and related correspondence. CP 12-27

<sup>82</sup> CP 1-2

<sup>83</sup> June 3, 2020 Order of this Court. Ms. Blanco also sought review of the Superior Court's denial of her Motion to Certify, which is now moot. *See* CP 1-2, 9-11, 150-156.

## IV. ARGUMENT

### A. The standard of review is *de novo*.

This Court reviews “summary judgment motions *de novo*, engaging in the same inquiry as the trial court.” Vargas v. Inland Wash., LLC, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019) (*citing Afoa v. Port of Seattle (I)*, 176 Wn.2d 460, 466, 478, 296 P.3d 800 (2013) (*citing City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006))). The “superior court’s reasoning on summary judgment is not relevant” to the appellate court’s inquiry. Oliver v. Cook, 194 Wn. App. 532, 546 n.10, 377 P.3d 265 (Div. 2, 2016) (*citing Olympic Tug & Barge, Inc. v. Dep’t of Revenue*, 188 Wn. App. 949, 952 n.3, 355 P.3d 1199 (Div. 2, 2015), *review denied*, 184 Wn.2d 1039, 379 P.3d 950 (2016)).

In an action for negligence a plaintiff must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause. Tincani v. Inland Empire Zoological Soc’y., 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). The existence of a duty is a question of law reviewed *de novo*. Vargas, 194 Wn.2d at 730; Degel v. Majestic Mobile Manor, Inc., 129 Wn.2d 43, 48, 914 P.2d 728 (1996). Where duty depends on proof of certain facts that may be disputed, summary judgment is inappropriate. Sjogren v. Props. of Pacific NW, LLC., 118 Wn. App. 144, 148, 75 P.3d 592 (Div. 2, 2003). The facts and

reasonable inferences from those facts are considered in a light most favorable to the nonmoving party. Babcock v. Mason County Fire Dist. No. 6., 144 Wn.2d 774, 784, 30 P.3d 1261 (2001).

**B. The Landlords owed a duty to Ms. Blanco under ordinary premises liability rules, for which under *Oliver v. Cook* there is no “dog bite exception.”**

Ms. Blanco’s claims against the Landlords are based on ordinary premises liability rules and applicable law including the Division II holding in Oliver v. Cook, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016). Her claims against the Landlords are not based on strict liability under RCW 16.08.040 or the common law, nor do they rely on any finding of the Landlords being owners, harborers, or keepers of the pit bull. The Landlords rely on Frobig v. Gordon, 124 Wn.2d 732, 881 P.2d 226 (1994) and Shafer v. Beyers, 26 Wn. App. 442, 613 P.2d 554 (Div. 1, 1980), which were distinguished by the Oliver court.

In Frobig, this Court found the landlord defendants were not responsible for injuries resulting from a tiger attack that occurred on their premises while their tenants were using the tiger in filming a commercial. Similar results were found by Division I in Shafer v. Beyers, 26 Wn. App. 442, 446–47, 613 P.2d 554 (1980) (no liability for landlord who briefly saw dog on premises two or three days prior to the plaintiff’s injury).

In Oliver, the court found the landlord defendant Eugene Mero owed duties of a possessor of land to plaintiff Steven Oliver, who was an invitee on premises, and that the dog owned by tenant and co-defendant Henry Cook was a condition of the land. Oliver, 194 Wn. App. at 544. (“Here, [the dog] Scrappy is the relevant “condition” on the land.”) The Oliver court discussed both Frobig and Shafer and found they were dispositive only of strict liability claims, and that a separate analysis was required for premises liability theories:

The scope of a landlord’s duties in a dog bite case under premises liability is a question of first impression in Washington. Prior case law in Washington has focused exclusively on the common law theory of strict liability for a dog bite. Here, however, Oliver does not claim strict liability but, instead, he argues a theory of premises liability. Although Washington courts have not yet applied premises liability to a dog bite case, many other states have. These states have made it clear that premises liability applies in dog bite cases—and involves a separate analysis from the common law, strict liability theory.

Oliver v. Cook, 194 Wn. App. at 543 (footnote omitted).<sup>84</sup> The

Oliver court distinguished Frobig and Shafer as follows:

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<sup>84</sup> The Oliver court cited the following out of state cases for the proposition that other states recognize strict liability for dog bites as a separate theory from premises liability:

King v. Breen, 560 So.2d 186, 189–91 (Ala. 1990); Yuzon v. Collins, 116 Cal.App.4th 149, 10 Cal.Rptr.3d 18, 20 (2004); Legro v. Robinson, 328 P.3d 238, 243 (Colo. App. 2012); Giacalone v. Hous. Auth. of Town of Wallingford, 306 Conn. 399, 51 A.3d 352, 356 (2012); Anderson v. Walthal, 468 So.2d 291, 294 (Fla. Dist. Ct. App. 1985); Custer v. Coward, 293 Ga.App. 316, 667 S.E.2d 135, 138 (2008); Boswell v. Steele, 158 Idaho 554, 348 P.3d 497, 505 (Idaho Ct. App.

We note that all of the Washington cases addressing dog bite liability appear to address only the common law rules for animal attacks. At common law, only the owner, keeper, or harbinger of a dangerous animal is strictly liable for injuries the animal causes. *See, e.g., Frobigh v. Gordon*, 124 Wn.2d 732, 735, 881 P.2d 226 (1994); *Shafer v. Beyers*, 26 Wn. App. 442, 446–47, 613 P.2d 554 (1980). But this common law theory is separate from premises liability. As discussed above, other states recognize that strict liability for dog bites is a separate theory from premises liability. **In other words, strict liability is not the only cause of action for a dog bite. Nor is there a dog bite exception to ordinary premises liability rules.**

*Oliver v. Cook*, 194 Wn. App. at 545 (emphasis added).

Rejecting a “dog bite exception” to premises liability rules is also consistent with this Court’s holding in *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996). In *Degel*, this Court found the mobile home park owner could be liable for failing to put a fence between a play area and the creek in which the plaintiff child suffered catastrophic injuries from a near-drowning. This Court found “We have never recognized a ‘natural

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2015); *McCraney v. Gibson*, 952 N.E.2d 284, 288 (Ind. Ct. App. 2011); *Fouts ex rel. Jensen v. Mason*, 592 N.W.2d 33, 38–39 (Iowa 1999); *Klimek v. Drzewiecki*, 135 Mich.App. 115, 352 N.W.2d 361, 363–64 (1984); *Olier v. Bailey*, 164 So.3d 982, ¶¶ 22–24 (Miss. 2015); *Wilson ex rel. Wilson v. Simmons*, 103 S.W.3d 211, 218 (Mo. Ct. App. 2003); *Knapton ex rel. E.K. v. Monk*, 2015 MT 111, ¶¶ 15–16, 379 Mont. 1, 347 P.3d 1257; *Twogood v. Wentz*, 2001 ND 167, ¶¶ 13–20, 634 N.W.2d 514, 518; *Mota v. Gruszczynski*, 197 Ohio App.3d 750, 2012-Ohio-275, 968 N.E.2d 631, at ¶¶ 20–23; *Taylor v. Glenn*, 2010 OK CIV APP 20, ¶¶ 6–10, 231 P.3d 765, 766; *DuBois v. Quilitzsch*, 21 A.3d 375, 381 (R.I. 2011); *Fletcher v. Richardson*, 603 S.W.2d 734, 736 (Tenn. 1980).

*Oliver v. Cook*, 194 Wn. App. at 543 n. 9

bodies of water doctrine’ applicable to all premises liabilities actions.” Id. Just as without the dog, the defective fence would have been harmless here, without the creek, the lack of the fence in Degel would have been harmless. The Degel Court found the landowner owed a duty to provide a fence or otherwise sufficient barrier. Just as this Court rejected a “natural bodies of water” exception to premises liability rules, the Oliver court rejected a “dog bite exception.”

In deciding Oliver, Division II overruled *sub silentio* its 1990 holding in Clemmons v. Fidler, 58 Wn. App. 32, 791 P.2d 257 (Div. 2, 1990) upon which Frobig relied. *See Frobig* at 736. Clemmons rejected the common law – and common sense – rule adopted by California in Uccello v. Laudenslayer, 44 Cal.App.3d 504, 118 Cal.Rptr. 741, 81 A.L.R.3d 628 (1975), as follows:

In California, for example, a landlord is liable for dog bite injuries if the landlord has actual knowledge of the dog and its dangerous propensities coupled with the right to remove the dog by retaking possession of the premises. Clemmons urges us to follow Uccello. We decline, for we see no reason to depart from our settled rule. That rule recognizes the notion that a tenancy is equivalent to a conveyance: a lessor surrenders both possession *and* control of the land to the lessee during the term of the tenancy. Our rule also promotes the salutary policy of placing responsibility where it belongs, rather than fostering a search for a defendant whose affluence is more apparent than his culpability.

Clemmons v. Fidler, 58 Wn. App. at 38 (citations omitted) (italics in original).

The Clemmons decision followed a policy favoring affluent (and insured) landlords over innocent victims of dog attacks, even where the landlord has knowledge of the dog and the right to control, and ignored the policies of safety and deterrence underlying tort law. In the context of workplace safety, Washington courts have long recognized that safety duties are best placed on the entity in the best position to ensure safety.<sup>85</sup> The facts of this case demonstrate just how and why the policy followed in Clemmons endanger the public and should be reconsidered. Through no fault of her own, Ms. Blanco was viciously mauled by a pit bull. The dog's owners are insolvent and uninsured and may be headed for bankruptcy regardless of any judgment against them in this case. *See* CP 233-240. They will bear no consequence and will provide no compensation to Ms. Blanco regardless of the amount of the judgment against them. The Landlords, who retained control over pets and additions on the property, and who knew or should have known that the fence was inadequate to hold the dog, seek to avoid liability, leaving Ms.

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<sup>85</sup> *See* Vargas v. Inland Wash., LLC, 194 Wn.2d 720, 452 P.3d 1205 (2019); Afoa v. Port of Seattle (I), 176 Wn.2d 460, 296 P.3d 800, 810 (2013); Kamla v. Space Needle Corp., 147 Wn. 2d 114, 121, 52 P.3d 472 (2002); Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990); Kelley v. Howard S. Wright Const. Co., 90 Wn.2d 323, 582 P.2d 500 (1978);

Blanco alone to bear the consequences and the literal scars of the fault of those in the best position to have prevented the harm.

**1. Ms. Blanco was an invitee on premises; but the Landlords would owe a duty even if she is found to be a licensee.**

“The legal duty a landowner owes to a person entering the premises depends on whether the entrant is a trespasser, licensee, or invitee.” Oliver at 544 *citing* Younce v. Ferguson, 106 Wn.2d 658, 662-666, 724 P.2d 991 (1986).<sup>86</sup> In Oliver, the court found that the plaintiff was an invitee on an automobile shop, and applied Washington’s adoption of the Restatement (Second) of Torts § 343 (1965) for duties owed to an invitee:

A landowner is liable for an invitee’s physical harm caused by a “condition on the land” only if the landowner:  
(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and  
(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and  
(c) fails to exercise reasonable care to protect them against the danger.

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<sup>86</sup> In its 1986 Younce decision, this Court considered abandoning the ancient status-based common law premises liability standards in favor of a unified “standard of reasonable care under all the circumstances,” but determined it was not yet ready to do so:

In Egede-Nissen we acknowledged past questioning of the common law classification scheme, *see* Ward v. Thompson, 57 Wn.2d 655, 660, 359 P.2d 143 (1961) (“timeworn distinctions”); Mills v. Orcas Power & Light Co., 56 Wn.2d 807, 820, 355 P.2d 781 (1960) (“ancient categories”), but decided that we were not ready then to totally abandon the traditional categories and adopt a unified standard. Egede-Nissen v. Crystal Mt., Inc., 93 Wn.2d at 131, 606 P.2d 1214 (1980). We still are not ready and reaffirm use of common law classifications to determine the duty of care owed by an owner or occupier of land.

Younce v. Ferguson, 106 Wn.2d at 662-663

Oliver at 544 (*citing Iwai v. State*, 129 Wn.2d 84, 93–94, 915 P.2d 1089 (1996) (*quoting Restatement (Second) of Torts* § 343 (1965))).

In this case, a jury could find that Ms. Blanco was an invitee on the premises for the church business purpose of providing Bible study to Elvia Sandoval. In Thompson v. Katzer, the Court of Appeals described the basis for distinguishing between business visitor invitees and licensees:

The ultimate goal is to differentiate (1) an entry made for a business or economic purpose that benefits both entrant and occupier, from (2) an entry made for a purpose that either (a) benefits only the entrant or (b) is primarily familial or social.

Thompson v. Katzer, 86 Wn. App. 280, 286, 936 P.2d 421 (Div. 2, 1997). While there may not have been any economic benefit to Ms. Blanco’s visits with Elvia Sandoval, the visits were clearly for the business of the church and were not familial or social. The formulation applied by the Thompson court does not require an economic purpose, as shown by the use of the disjunctive “or” in an “entry made for a business or economic purpose.” Id. A jury could find Ms. Blanco’s visits were for the purpose of conferring religious and spiritual benefits for both Ms. Blanco and Elvia Sandoval. To wit, churches owe duties of invitees to their members who are there for religious rather than economic

purposes. Huston v. First Church of God, of Vancouver, 46 Wn. App. 740, 732, P.2d 173 (Div. 2, 1987).

Even if, contrary to the summary judgment standard, Ms. Blanco were found to be a rejected solicitor, the Landlords would still owe her duties of a landowner to a licensee. In Singleton v. Jackson, the Court of Appeals found a rejected Jehovah's Witness to be a licensee when she first "approached a house owned by [defendant] Jackson, intending to engage in religious solicitation." Singleton v. Jackson, 85 Wn. App 835, 837, 935 P.2d 644 (Div. 2, 1997). Defendant Jackson did not live there but allowed her son and daughter-in-law Hugh and Patricia Colson to use one of the bedrooms as an office. Id. After Patricia Colson explicitly told the plaintiff and her companion that she did not wish to speak with them, the plaintiff slipped and fell on a slippery deck. Id. at 838. The court rejected the defendant's argument that plaintiff was a trespasser and found she was a licensee.

The court then found defendant Jackson, the landlord, owed the plaintiff duties of a possessor of land to a licensee caused by a condition on the land, which attach when:

- (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and

(b) he [or she] fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and

(c) the licensees do not know or have reason to know of the condition and the risk involved.

Singleton at 843 (*citing* Tincani v. Inland Empire Zoological Soc., 124 Wn.2d 121, 133, 128, 875 P.2d 621 (1994) (*quoting* Restatement (Second) of Torts § 342 (1965))).

Unlike the plaintiff in Singleton, who had been rejected on her first attempt for solicitation, and who was determined to be a licensee based on authority governing door to door solicitors, facts support a finding that Ms. Blanco and her companions had an established relationship with Elvia Sandoval to provide Bible study on a regular basis. But even if Ms. Blanco were a licensee, the Landlords would still owe her duties under Singleton and the Restatement (Second) of Torts § 342 (1965).

## **2. The Landlords retained control over the premises.**

Under Washington law including Oliver, and under the out-of-state cases Oliver relied upon,<sup>87</sup> two elements can be distilled for a landlord to be liable for an attack by a tenant's dog on the premises. First, the landlord has to retain control over the premises or at least the relevant common area. Second, the landlord has to

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<sup>87</sup> Oliver v. Cook, 194 Wn. App. at 543 n. 9, and citations in Footnote 84, *supra*.

know or have reason to know that the dog has dangerous propensities. In this case, Ms. Blanco has presented sufficient evidence from which a jury can find both elements were met.

In Geise v. Lee, this Court found a landlord had a duty to keep a common area free from snow and ice where the plaintiff alleged “defendants were negligent in failing to exercise reasonable care to keep the **common areas under their control** in a reasonably safe condition.” Geise v. Lee, 84 Wn.2d 866, 868, 529 P.2d 1054, 1055 (1975) (emphasis added). In its 1996 Iwai v. State decision, this Court reaffirmed the “Connecticut rule” applied in Geise, “which requires landlords to keep common areas in a safe condition regardless of the cause of the danger.” Iwai v. State, 129 Wn.2d 84, 91-92, 915 P.2d 1089, 1092 (1996) (*citing Geise* at 869 and its adoption of the “Connecticut rule” of Reardon v. Shimelman, 102 Conn. 383, 128 A. 705, 39 A.L.R. 287 (1925)) “Recognizing that the landlord is not the guarantor of occupants’ safety, Geise held a plaintiff must show the landlord had actual or constructive knowledge of the dangerous condition and failed to fix the condition within a reasonable amount of time.” Iwai at 92 (*citing Geise* at 871). This Court in Degel followed Geise in finding:

“In the context of landlords and tenants, this means that a landlord has an affirmative obligation to maintain the common areas of the premises in a reasonably safe

condition for the tenants' use. Geise v. Lee, 84 Wn.2d 866, 529 P.2d 1054 (1975) (mobile home park owner who has actual or constructive notice of hazard has a duty to remove dangerous accumulations of ice and snow from common areas).

Degel v. Majestic Mobile Manor, 129 Wn.2d 43, 49, 914 P.2d 728, 731 (1996). The Iwai Court also affirmed Degel in its adoption of the Restatement (Second) of Torts §§ 343 and 343A, noting that Degel was decided after Iwai was argued. Iwai v. State, 129 Wn.2d at 95. *See also* Sjogren v. Props. of the Pac. N.W., 118 Wn. App. 144, 148, 75 P.3d 592, 594 (Div. 2, 2003) (Applying Degel)

Out of state cases considered by the Oliver court tied the landlord's duties to retention of control of the premises, including the following:

However, the rule [of landlord non-liability after tenant takes possession] is subject to several exceptions. One exception includes circumstances in which the landlord retains control, or the landlord and tenant have joint control over the premises where the injury occurs. Stupka v. Scheidel, 244 Iowa 442, 447, 56 N.W.2d 874, 877 (1953). Generally, this exception applies where the injury is caused by the condition of common areas over which the landlord, alone or jointly with the tenant, has control. Id. In these circumstances, the landlord is liable to one who has been so injured after coming onto the premises at the tenant's invitation. Id. **Thus, as to this exception, control determines liability.**

Fouts by Jensen v. Mason, 592 N.W.2d 33, 38 (Iowa 1999)

(emphasis added) The Fouts by Jensen court found the landlord could be held responsible for a tenant's dog attack on a two and

half year old, applying New Jersey’s appellate court’s reasoning and policy in another case involving a dog attack on a young child:

In our view, “an abnormally [vicious] domestic animal is like an artificial [dangerous] condition in the property.” **Where a landlord, either by his affirmative consent or by his failure to take curative measures, permits another to harbor such an animal in those areas in which he retains control, he is liable to his tenants and others lawfully on the premises for the injuries that result.** Consistent with the landlord’s obligation to maintain the premises in a reasonably safe condition, a landlord is obliged to take reasonable measures to protect other tenants and their invitees from harm which a vicious dog is capable of inflicting. **To permit a landlord in such a situation to sit idly by in the face of the known danger to others would be socially and legally unacceptable.**

Linebaugh v. Hyndman, 213 N.J. Super. 117, 121-22, 516 A.2d 638, 640 (Super. Ct. App. Div. 1986) *as quoted by Fouts by Jensen v. Mason*, 592 N.W.2d 33, 39 (Iowa 1999) (emphasis added). The North Dakota Supreme Court in the 2001 Twogood case, also cited by Oliver, *supra*, succinctly stated these principles: “the general rule is that a landlord is not liable to a third person for an attack by a tenant’s dog unless **the landlord had control of the premises and knowledge of the vicious propensities of the dog.**” Twogood v. Wentz, 2001 ND 167, ¶ 20, 634 N.W.2d 514 (emphasis added) (finding the defendant absentee landlords had neither control of the premises nor knowledge that the tenant even had a dog.)

In Washington, control may be established by a showing of a right to control, without need of showing the actual exercise of

control. Parrigan v. Phillips Petroleum Co., 16 Wn. App. 34, 37, 552 P.2d 1065 (Div. 1, 1976); Kelley v. Howard S. Wright Constr. Co., 90 Wn.2d 323, 330-31, 582 P.2d 500 (1978). “Whether a right to control has been retained depends on the parties’ contract, the parties’ conduct, and other relevant factors.” Phillips v. Kaiser Aluminum, 74 Wn. App. 741, 875 P.2d 1228 (Div. 2, 1994). The lack of control is also an important basis of the finding of non-liability under Clemmons v. Fidler, 58 Wn. App. 32, 38, 791 P.2d 257 (Div. 2, 1990). The Clemmons court assumed that “a tenancy is equivalent to a conveyance: a lessor surrenders both possession *and* control of the land to the lessee during the term of the tenancy.” Id.

In this case, the jury could find that the Landlords did not surrender control of the premises, particularly with respect to the fence. If there was no lease or the Rental Agreement had truly expired or the lease was otherwise not in effect as testified to by the Landlords as well as David Sandoval, then there was no conveyance that would relieve the Landlords of any control, duty, or liability. If the Rental Agreement is found to be in effect under the terms of the Agreement and RCW 59.20.090 (1),<sup>88</sup> the terms of

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<sup>88</sup> RCW 59.20.090 (1) provides: “Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall

the agreement expressly provide for the Landlords' retained control over both pets and the premises. Pets are expressly banned under the Agreement "without the prior written consent of the owner." CP 301. Changes or improvements to the premises, which would include the fence, are likewise prohibited "without written permission of the Landlord." CP 302. From these provisions, it is clear that the allowance of pets, the construction of fences, and any conditions to be imposed, are completely at the Landlords' discretion. Other jurisdictions have held that a lease's terms or a landlord's policy on pets can manifest sufficient control by the landlord to subject it to liability. *See Holcomb v. Colonial Associates, LLC*, 358 N.C. 501, 597 S.E. 2d 710 (2004); *Gallick v. Barto*, 828 F. Supp. 1168, 1174-75 (M.D. Pa.,1993); *Brotko v. U.S.*, 727 F. Supp. 78, 84-85 (D.R.I., 1989).

The Agreement further requires the tenants comply with "any future rules and regulations the landlord deems necessary for the common good of all tenants and/or neighbors." *Id.* In addition to showing that the Landlords did not completely surrender control of the premises for the relevant purposes of animals and fences, this provision shows the Landlords voluntarily assumed a duty to

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be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon."

establish reasonable regulations for the “common good of all tenants and/or neighbors.” In Washington, landlords can gratuitously assume such a duty, and may be liable for their breaches of duties of ordinary care. “[I]ndependent of the law of landlord and tenant, a landlord is liable to his tenant or the tenant’s guest for his affirmative acts of negligence.” Rossiter v. Moore, 59 Wn.2d 722, 370 P.2d 250 (1962). (reversing summary judgment in favor of landlord who failed to replace railing.) A jury could find that defendant David Sandoval was an agent or acting contractor of the Landlords, who retained the right to control his acts and omissions in how he built the fence. Parrigan v. Phillips Petroleum Co., 16 Wn. App. 34, 37, 552 P.2d 1065 (Div. 1, 1976); Williamson v. The Allied Group, Inc., 117 Wn. App. 451, 72 P.3d 230 (Div. 1, 2003).

**3. The Landlords had knowledge of the pit bull’s dangerous propensities.**

A reasonable jury could find that the Landlords knew or had reason to know of dangerous conditions on the land. These conditions include both the pit bull and the rotten fence board that was inadequate to contain the dog. With respect to the pit bull, the defendants argue the pit pull had never attacked or bitten any

person or animal and that no citations or infractions<sup>89</sup> had been issued for dangerous or disruptive behavior of the dog.<sup>90</sup>

Despite the defendants' denials, there is evidence to show the Landlords had both actual and constructive knowledge of the dangerous propensities of the specific dog as well as the recognized dangerousness of the pit bull breed. Ms. Blanco described the dog barking and jumping in a "violent" manner on previous occasions.<sup>91</sup> The dog would bark at her companions to such a degree as to make them nervous.<sup>92</sup> Elvia Sandoval testified that the dog's behavior was the reason she kept Ms. Blanco outside the house when she visited.<sup>93</sup> Likewise, she testified to the dog's similar behavior toward strangers.<sup>94</sup> Specifically regarding Mr. Hernandez, she testified he was there when the dog was fully grown, that the dog would bark at him, and that he would avoid the dog.<sup>95</sup> Finally, a jury could infer that the physical evidence of the

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<sup>89</sup> The lack of any citations would likely be inadmissible under Hadley v. Maxwell, 144 Wn.2d 306, 314 n.3, 27 P.3d 600 (2001) *citing* Billington v. Schaal, 42 Wn.2d 878, 882, 259 P.2d 634 (1953).

<sup>90</sup> CP 235-236 (David Sandoval Decl., ¶ 4-5); *See also* CP 505 (Defendants Hernandez's Motion for Summary Judgment, Page 2:14-15)

<sup>91</sup> CP 314 (Maria Blanco deposition, Page 17:15-18:20)

<sup>92</sup> CP 291 (Teresa Jimenez Decl. ¶ 6); CP 297 (Katie Lyman Decl. ¶ 5); CP 567-568 (Jaylene Lyman Decl. ¶ 5); CP 313-315 and 320-321 (Maria Blanco deposition, Pages 16-18 and 23-24)

<sup>93</sup> CP 351 (Elvia Sandoval deposition, Page 14:10-14)

<sup>94</sup> CP 369-370 (Id., Pages 44:11-45:15)

<sup>95</sup> CP 370-372 (Id., Pages 45:16-47:23)

bitten fence showed both a propensity of the pit bull to attempt escape and a likelihood that it would eventually succeed.

These facts meet or exceed the notice standards applied in Oliver, which found sufficient evidence for summary judgment reversal on the following facts:

Regarding whether [landlord] Mero knew of the danger [the pit bull] Scrappy posed, Mero testified in his deposition that he knew Scrappy to bark at passing strangers and let them know they “shouldn’t go near that vehicle.” Mero also testified that he avoided approaching vehicles when Scrappy was in them. This evidence raises a question of material fact about whether Mero knew Scrappy posed an unreasonable risk of harm.

Oliver v. Cook, 194 Wn. App. at 545. They also meet the notice standards of the Restatement (Second) of Torts, § 509 (Harm Done by Abnormally Dangerous Domestic Animals), as described in Comment g:

g. Knowledge of dangerous propensities -- scienter. It is not necessary to the application of the rule stated in this Section that the possessor of the domestic animal know of its abnormally dangerous propensities; it is enough that he has reason to know of them. **Thus it is not necessary that he know that it has previously attacked human beings or animals or has done harm by being over-violent in play or by digging up vegetation. A dog is not necessarily regarded as entitled to one bite.** It is enough that the possessor of the animal knows that it has on other occasions exhibited such a tendency to attack human beings or other animals or otherwise to do harm as should apprise him of its dangerous character. Thus, the fact that a dog has to his knowledge unsuccessfully attempted to attack human beings or other animals is sufficient to bring its possessor within the rule stated in this Section. **Sufficient also is any form of ill temper displayed in the presence of man or beast that would apprise a reasonable person that the**

**animal if uncontrolled would make an attack.** It is not enough, however, that the possessor of the animal has reason to know that it has a propensity to do harm in one or more specific ways; it is necessary that he have reason to know of its propensity to do harm of the type that it inflicts.

Restatement (Second) of Torts, § 509 (1965), comment g.<sup>96</sup>

In Washington, in Austin v. Jimmy's Contractor Servs., Inc., an unpublished October 2019 Division III case, the court applied Oliver where a dog bit a customer of an employer who allowed an employee to keep it on premises. After finding the employee's negligent failure to keep the dog away from customers was out of the scope of his employment, Division III compared the facts, and found the plaintiff's claim failed for lack of notice to the landowner:

The parties agree that Austin was an invitee. Thus, Jimmy's owed Austin a duty to use reasonable care with respect to conditions on the premises. Tincani, 24 Wn.2d at 138. A dog is a condition on land. *See* Oliver v. Cook, 194 Wn. App. 532, 544, 377 P.3d 265 (2016). In Oliver, a premises liability claim based on a dog bite survived summary judgment. Id. at 545. In that case, plaintiff Steven Oliver operated an automobile shop on defendant Eugene Mero's property. Id. at 535. Defendant Henry Cook, a friend of Mero, owned a dog named Scrappy. Id. Mero was aware that Scrappy would bark at passersby. Id. at 544. He avoided approaching vehicles when Scrappy was inside,

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<sup>96</sup> Tennessee does not apply strict liability to dog owners for damages caused while on their own property, but analyses such claims under premises liability rules, including a knowledge requirement, to which the Supreme Court of Tennessee applied Restatement (Second) of Torts, § 509 (1965), comment g. Fletcher v. Richardson, 603 S.W.2d 734, 735 n.1 (Tenn. 1980), *cited by* Oliver v. Cook, 194 Wn. App. at 543 n. 9. In Tennessee this was subsequently codified in 2007 in T.C.A. 44-8-413. Civil liability for injury caused by dogs.

and warned others to do the same. Id. With Mero’s knowledge, Cook left Scrappy in a parked truck with the window open. Id. at 535. When Oliver walked by the truck, Scrappy lunged out the window and bit him on the face. Id. at 535-536. Division Two of this court held that because Mero knew of the dog’s aggressive tendencies, a triable issue of fact existed as to whether Mero breached his duty to Oliver as an invitee. Id. at 544.

Here, Jimmy’s had no indication that [employee] Erwin’s dog was aggressive. The dog was friendly and playful and was present at the office without incident for several days prior to the bite. Austin presented no evidence that Jimmy’s Roofing knew or should have known that Erwin’s dog was dangerous.

Austin v. Jimmy’s Contractor Servs., Inc., No. 36112-8-III, 2019 Wash. App. LEXIS 2645, at \*5-6, 2019 WL 5266414 (Div. 3, Oct. 17, 2019) (Unpublished) *reconsideration denied*, Wn.App.2d 1047 (Div. 3, Dec. 3, 2019).<sup>97</sup> The breed of the dog was not mentioned. As set forth above, Ms. Blanco has submitted sufficient evidence of the subject pit bull’s vicious nature and that the dog was anything but “friendly and playful” when she and others were on the premises.

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<sup>97</sup> Petitioner cites this unpublished 2019 decision pursuant to GR 14.1, under which this “decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate” Crosswhite v. Dep’t of Soc. & Health Servs., 197 Wn. App. 539, 544, 389 P.3d 731 (Div. 3, 2017) (Disclaimer required by Division III when citing unpublished opinions) *Cf. Karanjah v. Dep’t of Soc. & Health Servs.*, 199 Wn. App. 903, 912–13, 401 P.3d 381 (Div. 2, 2017) (“based on the plain language of GR 14.1(a), a party may cite an unpublished case from this court and merely identify it as unpublished. Nothing more is required.”)

Similar arguments on similar facts in Ms. Blanco’s case were considered in Hambrick v. Clark, Pierce County Superior Court No. 17-2-12086-9.<sup>98</sup> CP 161-175 (Defendants Nelsons’ motion for summary judgment); CP 181-190 (Plaintiff Hambrick’s Opposition); CP 193-194 (Order denying summary judgment). Felicia Hambrick was a social guest on a single-family residential property when she was viciously attacked by a pit bull. Id. Unlike in the instant case, where Ms. Blanco was in the driveway and the dog escaped from a defective fence, Ms. Hambrick was in the house when “Plaintiff heard the door to the Clarks’ bedroom open and [the pit bull] Roscoe assaulted her moments later.” CP 163. There was no evidence or allegation that the door was defective. The plaintiff relied on Oliver v. Cook and presented the following facts to show the landlord’s notice in Hambrick compared with the facts in Oliver:

[Defendant landlord] Tim Nelson knew that Roscoe barked aggressively at strangers. Roscoe barked at him during the one encounter he has admitted to. He acknowledged the aggressive behavior of pit bulls generally, and Roscoe specifically.

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<sup>98</sup> Petitioner cites this trial court decision as non-binding and persuasive authority only pursuant to Oltman v. Holland Am. Line USA, Inc., 163 Wn.2d 236, 248, 178 P.3d 981 (2008). (“Insofar as the analysis in another trial judge’s decision might be helpful, there is no rule or precedent that bars its consideration by a trial judge. Further, trial judges can be presumed to know that other trial court rulings are not precedential.”) The current text of RAP 10.4 (h) refers to GR 14.1, which speaks to unpublished opinions of the Court of Appeals and jurisdictions other than Washington state, but does not prohibit or otherwise address citation to Washington Superior Court decisions.

CP 187 (Plaintiff Hambrick’s Opposition, page 7:1-4). The Pierce County Superior Court, Hon. Helen Whitener presiding, denied the landlord defendants’ motion. CP 193-194

In addition to evidence of the dangerous propensities of the individual dog, Enzo, in Ms. Blanco’s case, the jury may consider the fact that Enzo was a pit bull, which is widely recognized to be a dangerous breed.<sup>99</sup> The dangers of pit bulls have been known in Snohomish County since at least 1987.<sup>100</sup> This Court recognized the dangers of pit bulls in 1989, when it upheld the City of Yakima’s breed ban:

In January 1987, there were three attacks by pit bull dogs on unsuspecting citizens in Yakima. On July 28, 1987, the City of Yakima adopted ordinance 3034 which bans dogs known by the owners to be pit bulls, specifically the breeds Bull Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier, and American Staffordshire Terrier, as well as dogs “identifiable” as having any pit bull variety as an element of their breeding.

American Dog Owners Ass’n v. City of Yakima, 113 Wn.2d 213, 214, 777 P. 2d 1046 (1989). Several local Washington

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<sup>99</sup> See CP 452-464 (DogsBite.org Breed Specific Legislation FAQ from <https://www.dogsbite.org/legislating-dangerous-dogs-bsl-faq.php> (last visited August 20, 2019))

<sup>100</sup> See CP 469-483 (February 1987 article by Michael E. Weight, then Assistant City Attorney of Everett entitled City Bites Dog – Regulating Vicious Dogs / Pit Bull Terriers, Legal Notes (MRSC Information Bulletin No. 444). The City of Everett also declared any “dog known by the owner to be a pit bull terrier” to be “Potentially dangerous dog.” EMC 6.08.010. However, this breed-specific reference was repealed on Nov. 6, 2019 effective Nov. 27, 2019.

jurisdictions have banned pit bulls, regulated them, and / or declared them to be “dangerous” or “potentially dangerous.”<sup>101</sup> Recently enacted RCW 16.08.110 allows cities and counties to continue to ban or restrict dog ownership based on the dog’s breed, so long as the regulations or breed bans provide for owners to obtain exemptions for individual dogs that pass a “American kennel club canine good citizen test or a reasonably equivalent canine behavioral test.” RCW 16.08.110 (signed into law April 30, 2019, effective date of January 1, 2020.)<sup>102</sup> Here it is undisputed that the subject dog was a pit bull. Ernesto Hernandez testified that he was aware of the dangerous nature of the breed.<sup>103</sup>

Finally, the sheer viciousness of the pit bull’s attack on Ms. Blanco may be circumstantial evidence of prior vicious tendencies that probably would have been noticed by Mr. Hernandez when he was on the property. Not only did the animal savagely attack Ms. Blanco, biting off much of her face and eating her ear, it continued to attack Ms. Blanco’s companion Teresa Jiminez as well as Elvia

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<sup>101</sup> CP 466-467 (Pit Bull Ordinances in Washington compiled by DogsBite.org, reportedly “verified as active on July 28, 2017” from <https://www.dogsbite.org/legislating-dangerous-dogs-washington.php> (as visited August 20, 2019). This website has subsequently been updated.

<sup>102</sup> There is no evidence that the subject pit bull passed any such test. David Sandoval and Elvia Sandoval testified the dog did not have any training classes. CP 384 (David Sandoval deposition, Page 9:4-7); CP 352 (Elvia Sandoval deposition, Page 16:22-24)

<sup>103</sup> CP 438 (Ernesto Hernandez deposition, Page 70:7-10)

Sandoval, the dog owner's mother and resident of the rental property. Further, the dog continued to attack until neighbor Orlando Sullivan responded and continued to attack him as well.

On these facts, a jury could find the Landlords knew or should have known about the dangers of the dog and the inadequate fence and that they failed to exercise reasonable care to make the condition safe or to warn the plaintiff. The Landlords admitted they did nothing to ensure the fence was adequate to hold the dog, and it is undisputed that no warnings were posted. Ms. Blanco and her companions testified that they believed the fence would protect them from the dog; a jury could find that they did not know or have reason to know otherwise.

## V. CONCLUSION

For the aforesaid reasons, Petitioner Maria Saralegui Blanco respectfully requests this Court affirm Oliver and reverse the dismissal of her claims against the Landlords in this action, who retained control over the property, who knew or should have known that a pit bull with dangerous tendencies was on the property, who knew or should have known that the weathered and bitten fence was inadequate to contain the animal, and who did nothing to protect the public from these dangers.

Respectfully submitted this 20<sup>th</sup> day of July, 2020.



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## **VI. APPENDIX**

- A. Photos of the fence, the pit bull, and Maria S. Blanco after the attack (CP 281, 285, and 287)**
- B. Photos Marked as Exhibits 1-6 to Deposition of Maria S. Blanco (CP 249-254)**
- C. Photos Marked as Exhibit 1 to Deposition of Elvia Sandoval (CP 256-287)**
- D. Residential Rental Agreement (CP 301-303)**

# **APPENDIX A**







## **APPENDIX B**

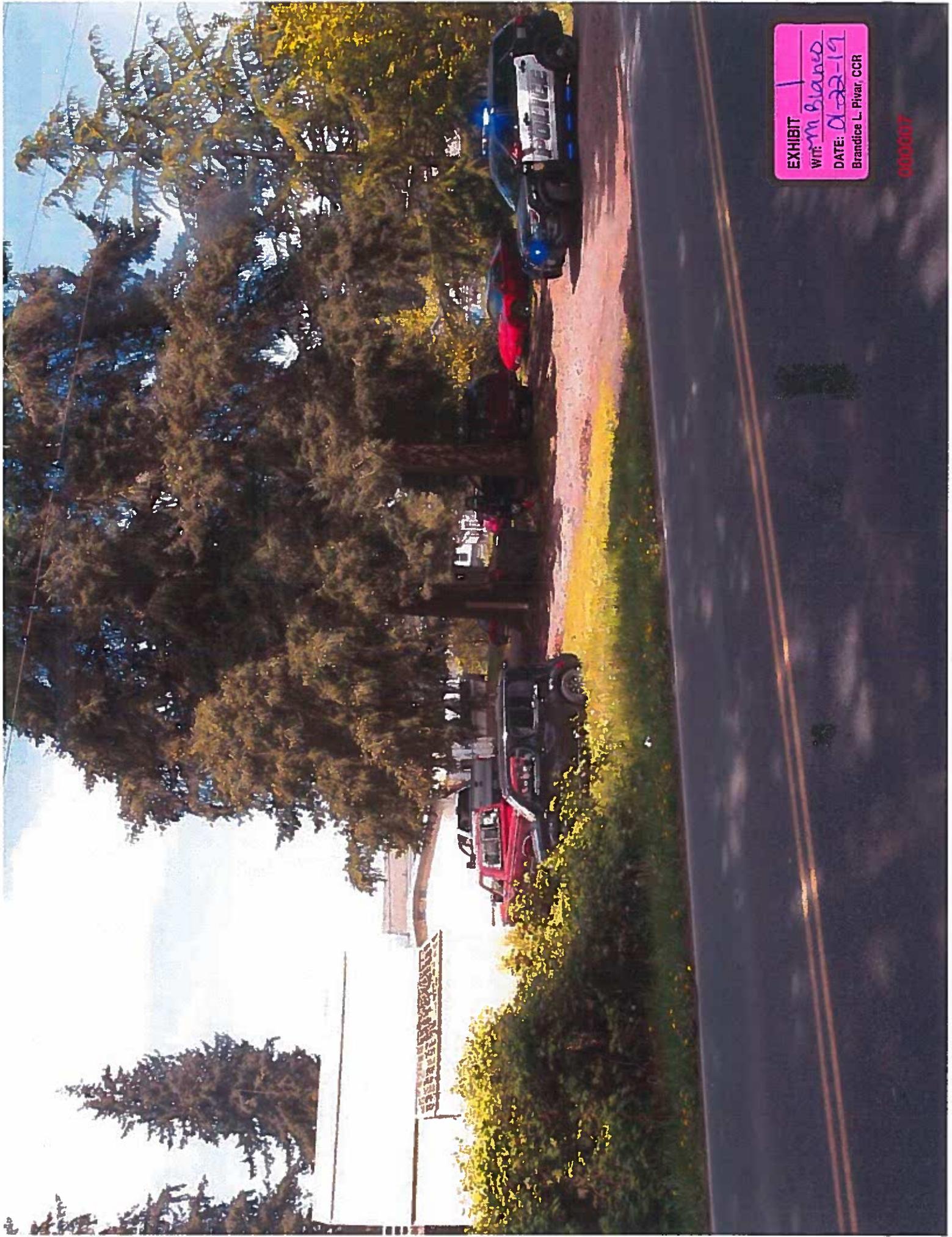


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Brandice L. Pivar, CCR

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EXHIBIT 2  
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DATE: 9-22-19  
Brandice L. Pivar, CCR

030020





EXHIBIT 3  
WIT: M. Blanco  
DATE: 01-22-19  
Brandice L. Pivar CCR

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EXHIBIT 4  
WIT: M. BLAND  
DATE: 01-28-14  
Brandice L. Pivar, CCR



EXHIBIT S  
WFR: M. Blanco  
DATE: 0-22-19  
Brandice L. Pivar, CCR  
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EXHIBIT 6  
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DATE: 01-22-19  
Brandice L. Pivar, CCR

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## **APPENDIX C**

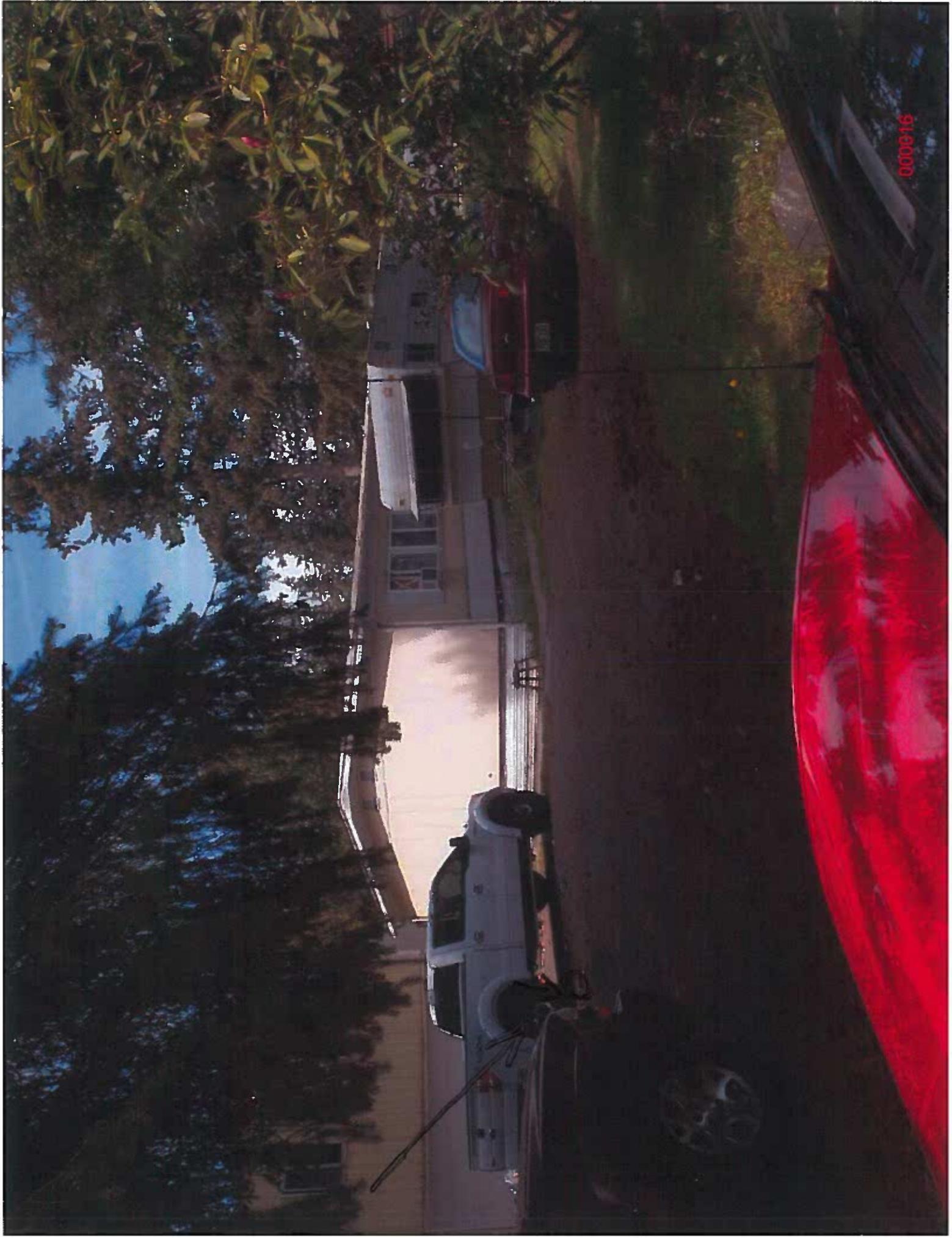


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E. MITCHELL

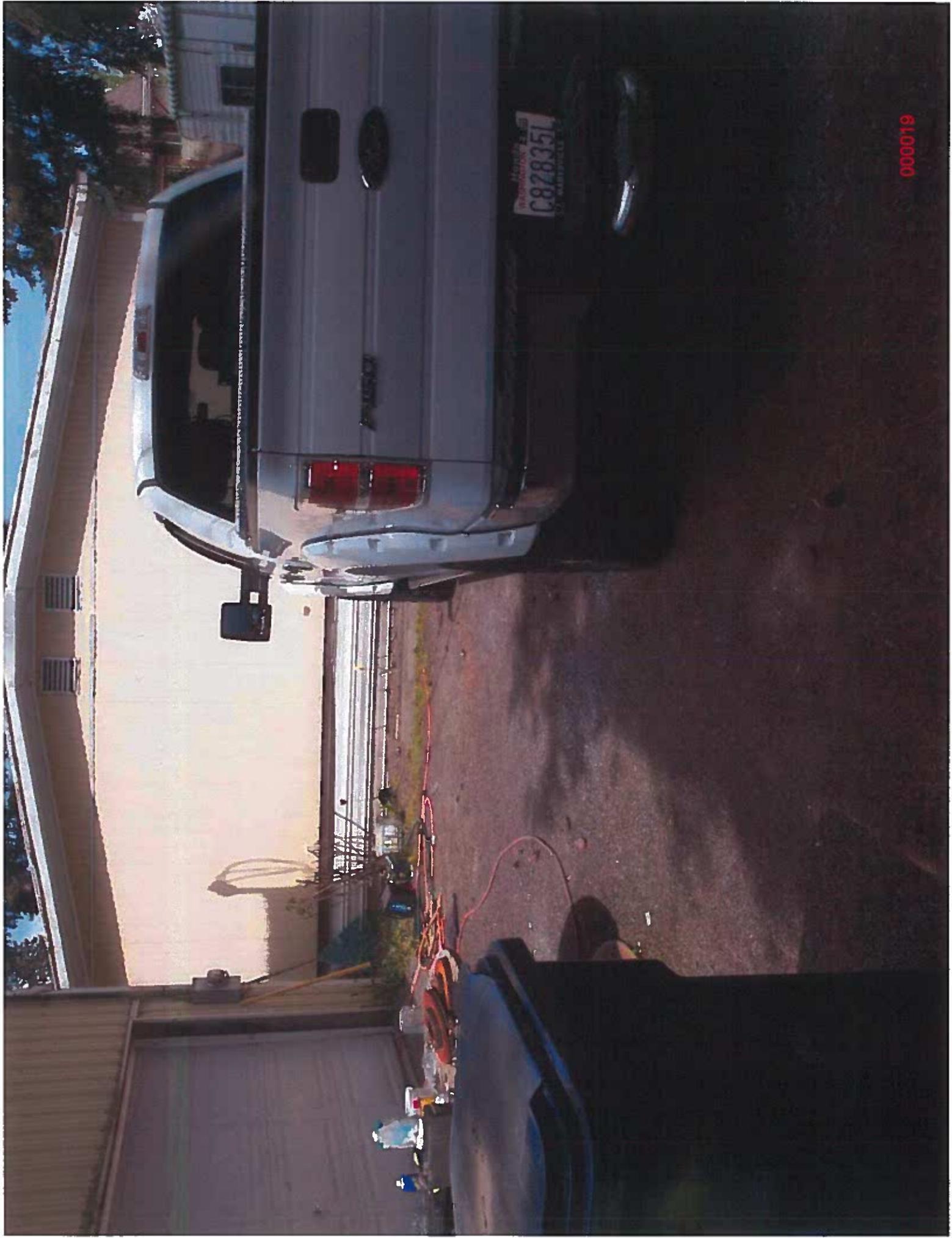
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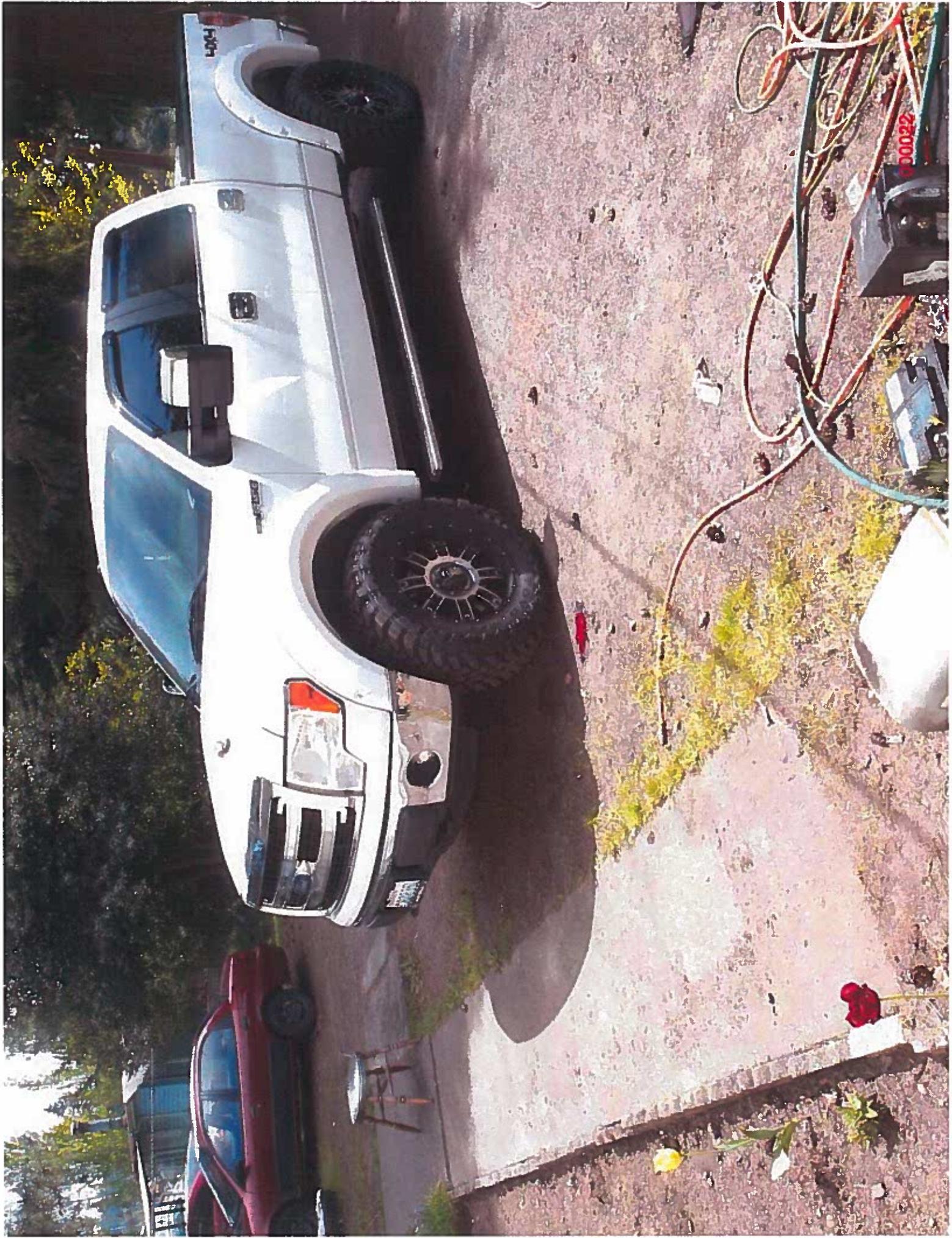


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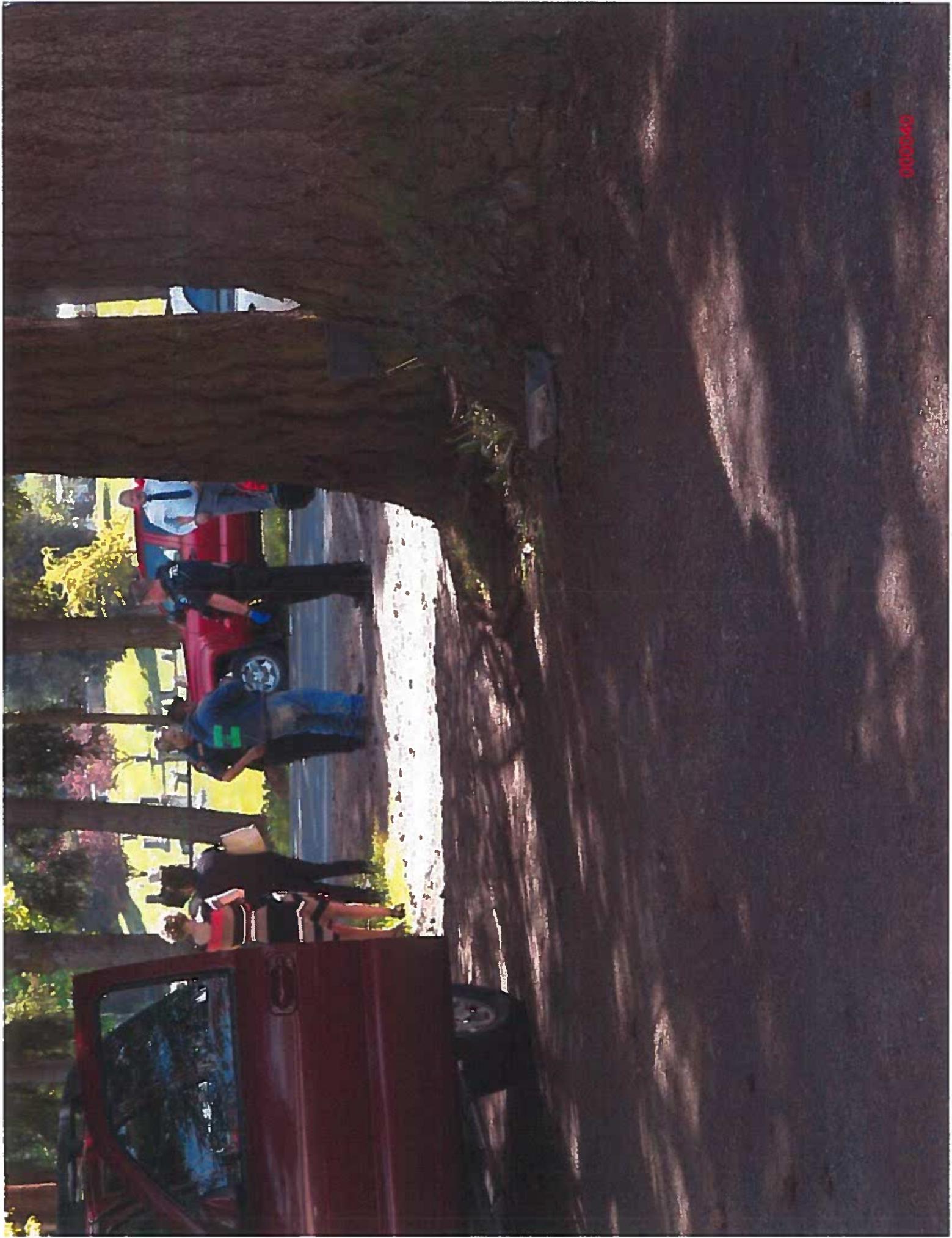
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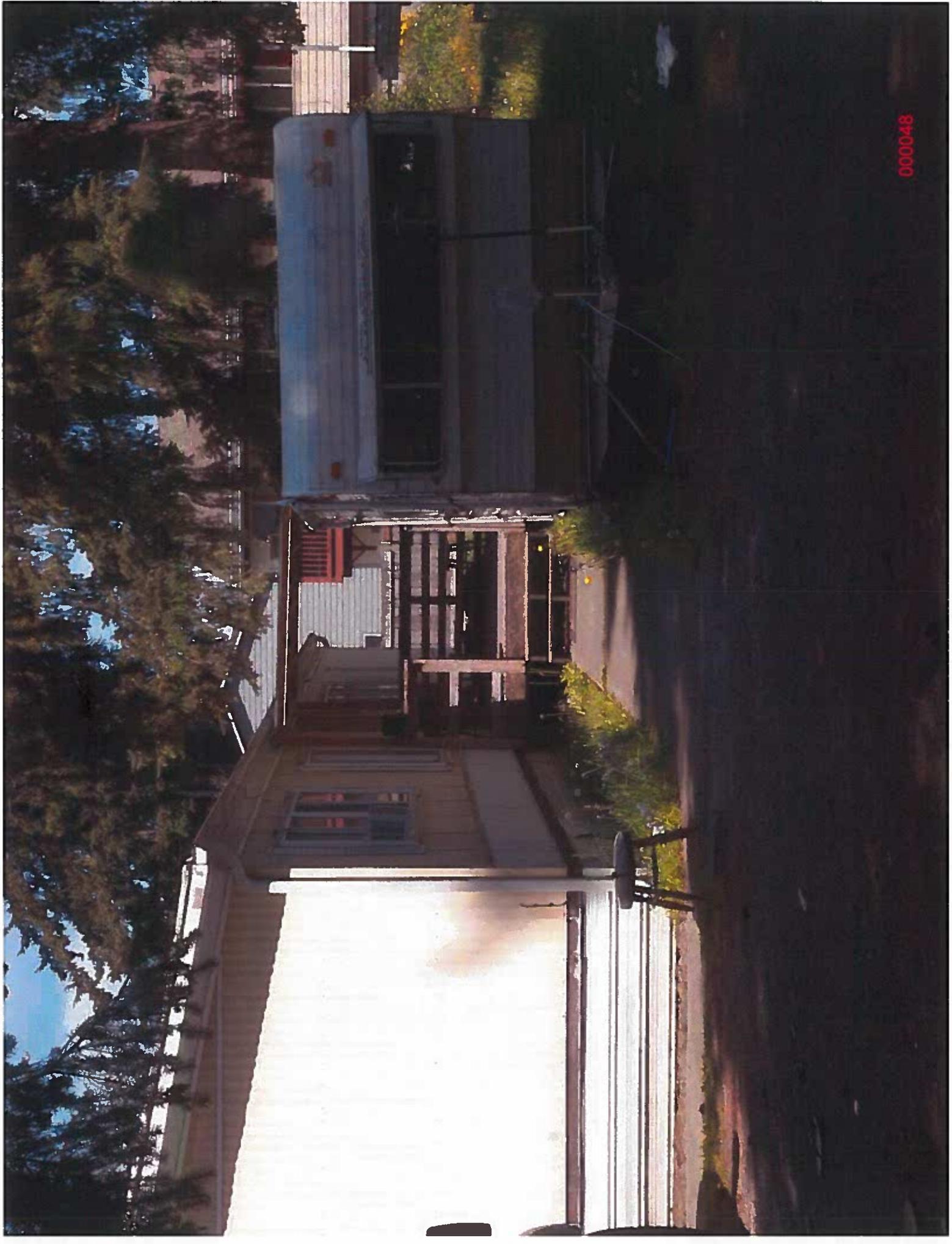


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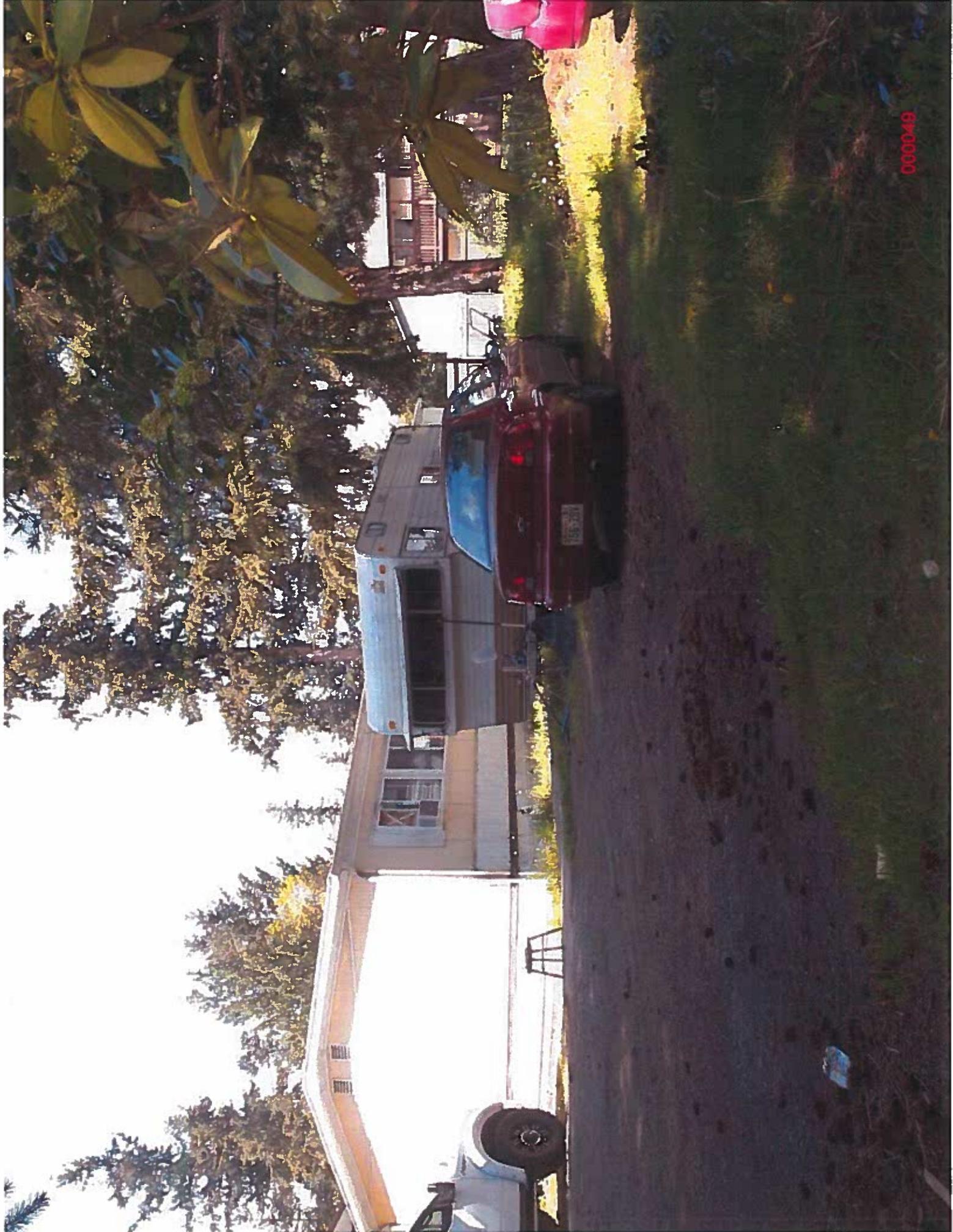


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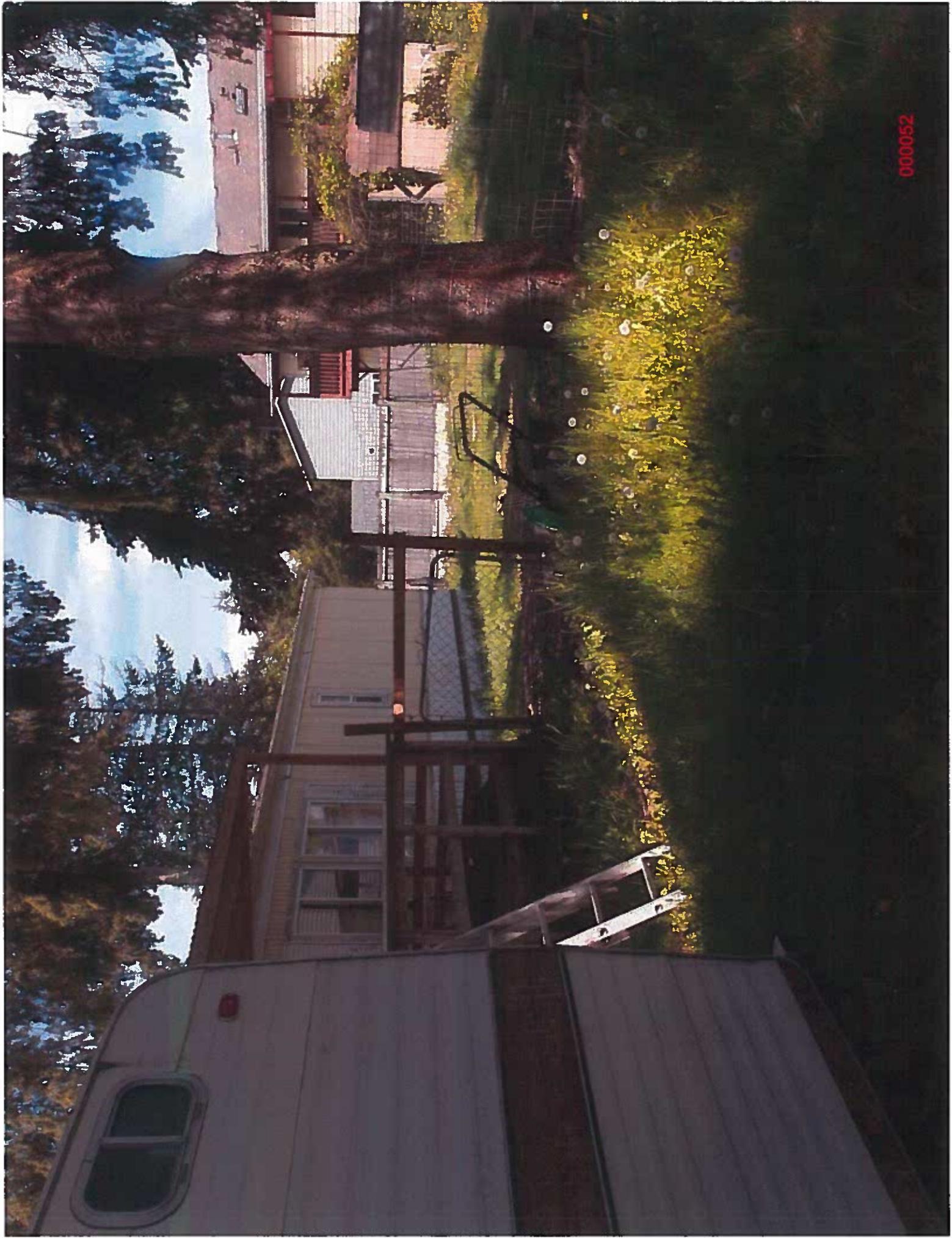
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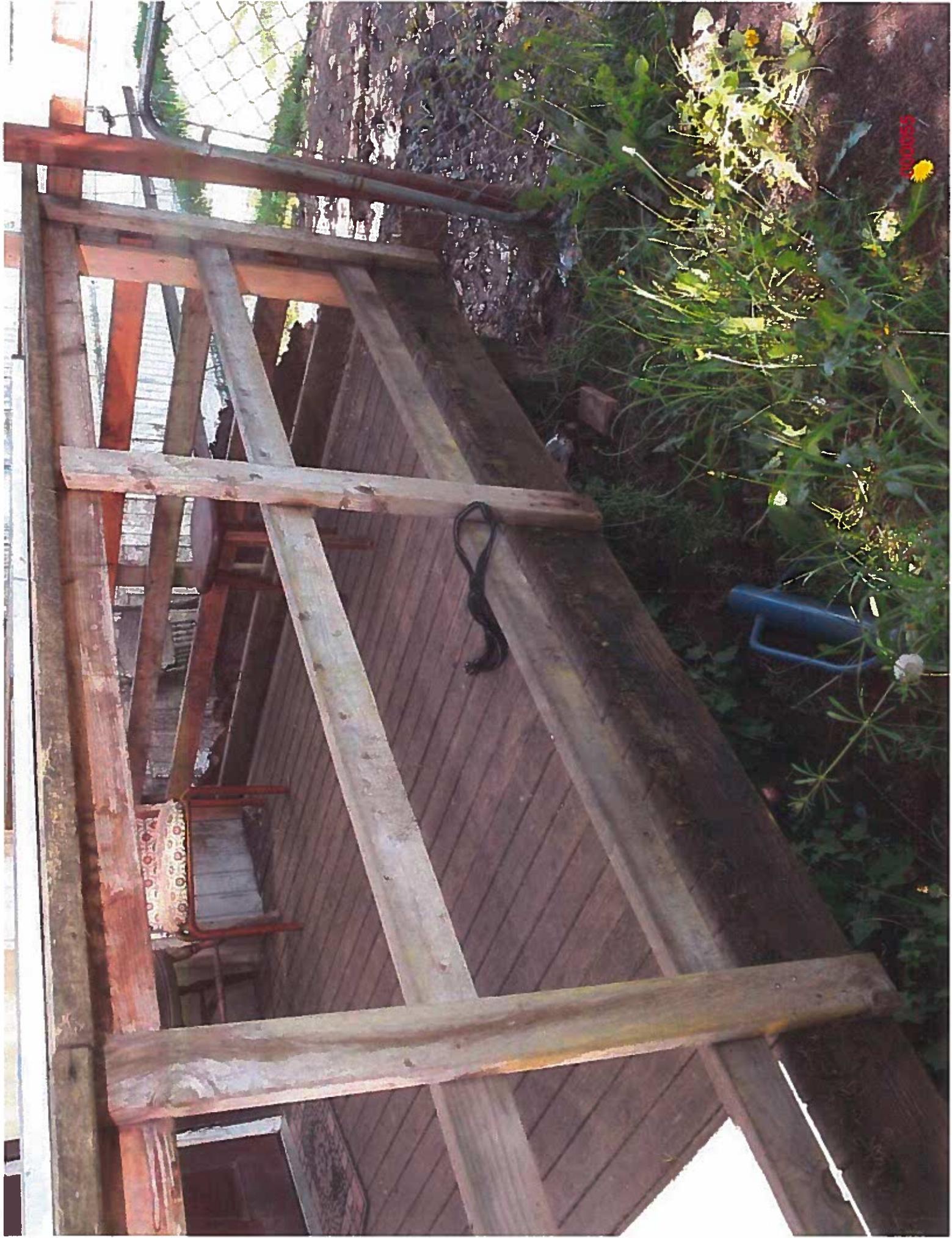
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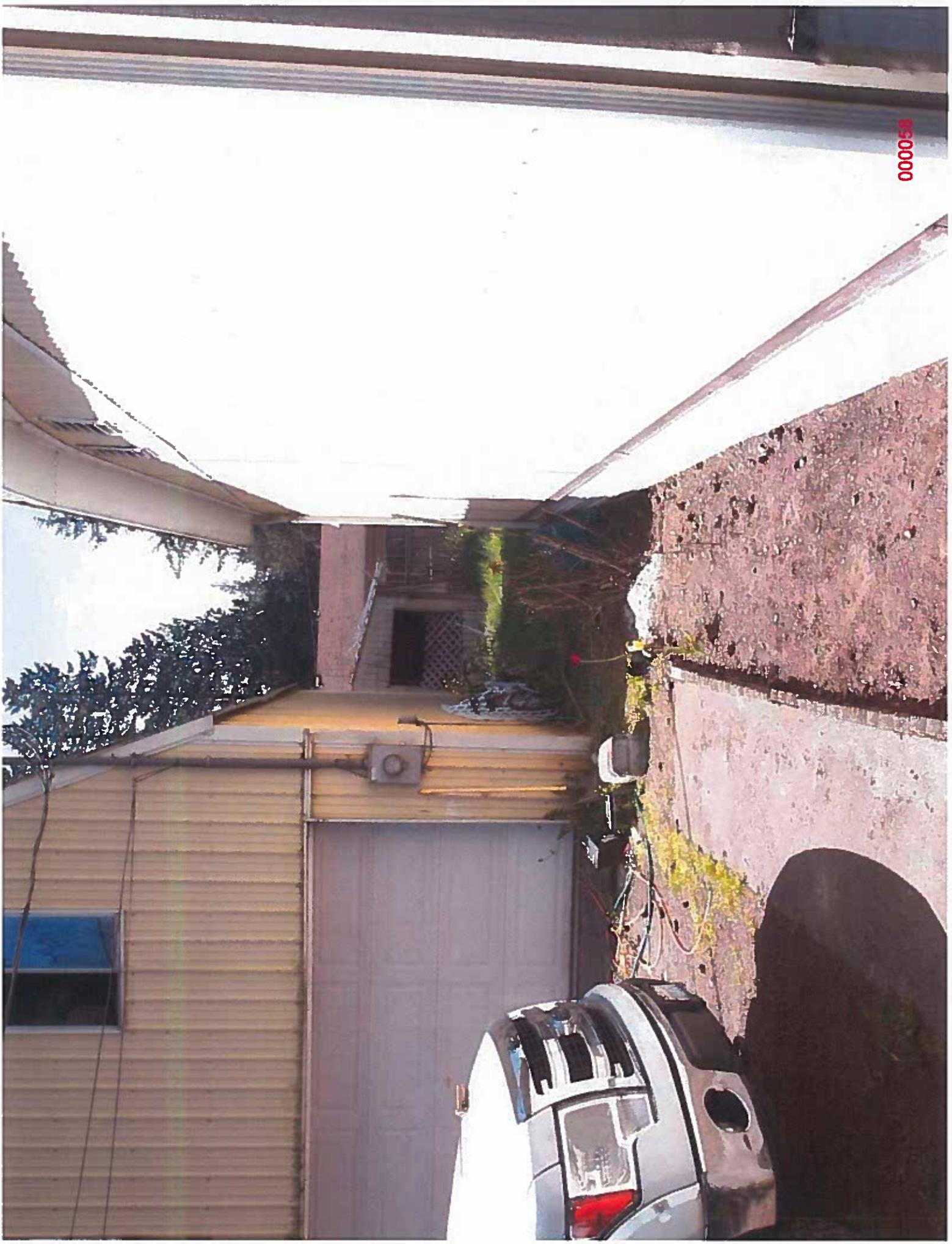
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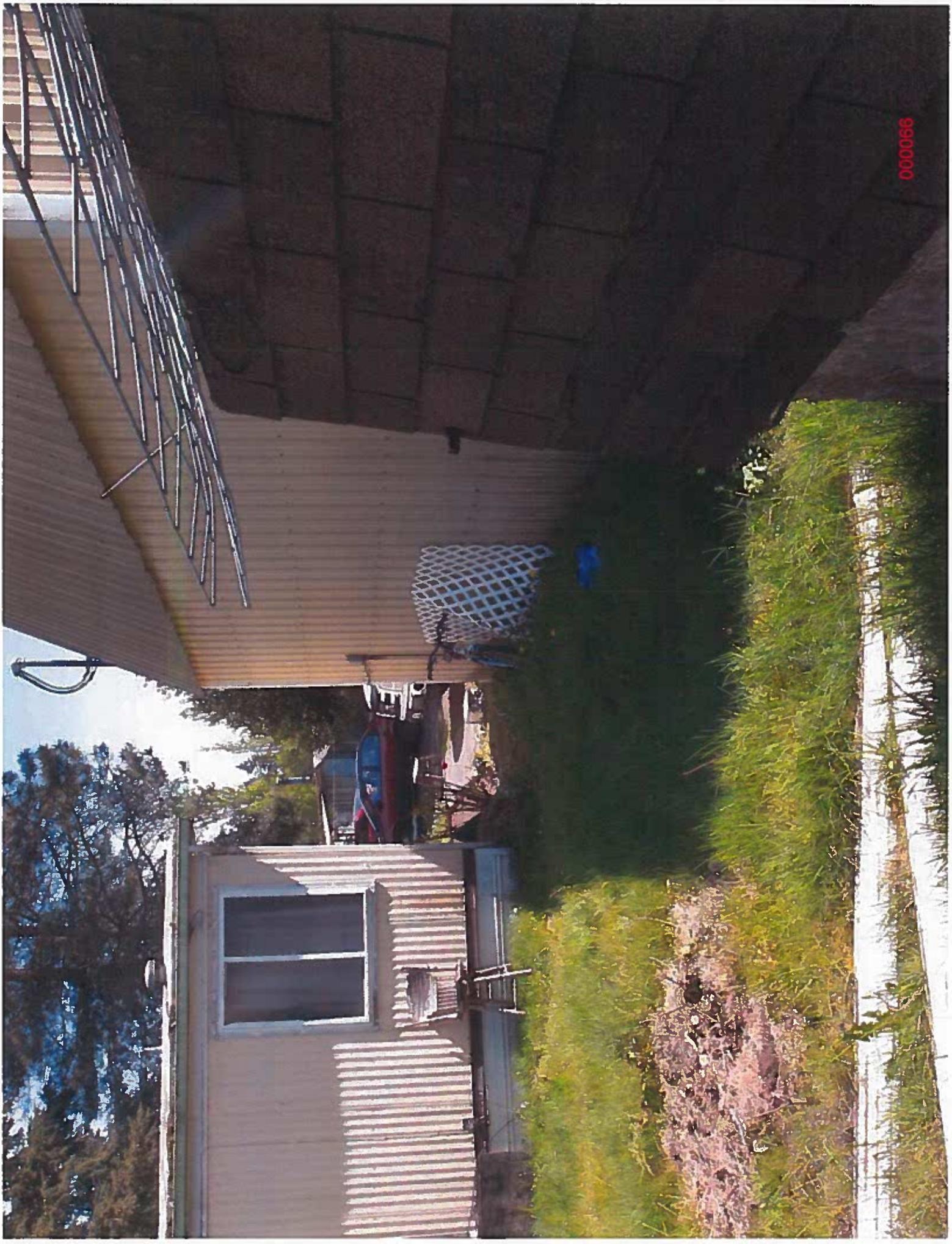
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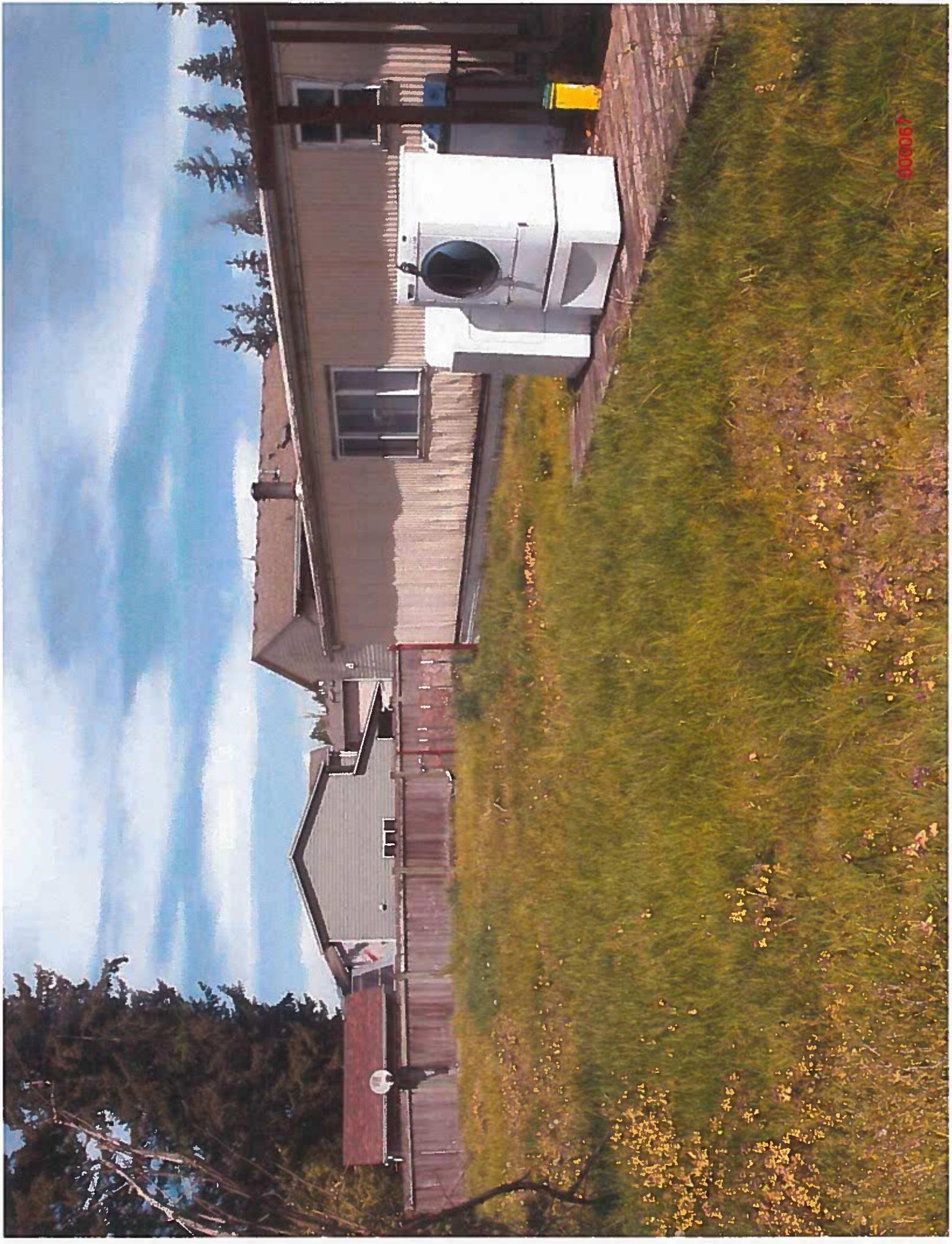
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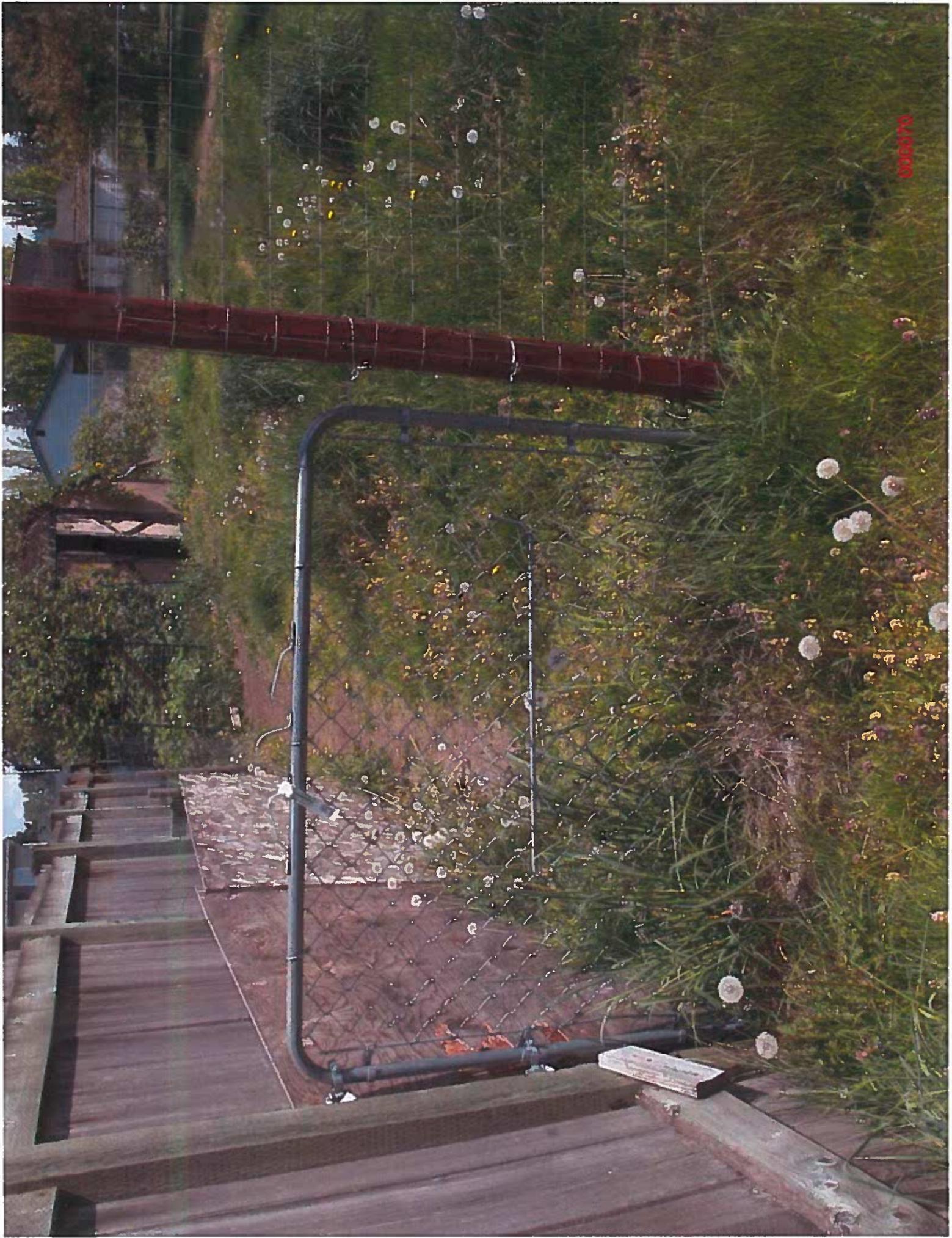
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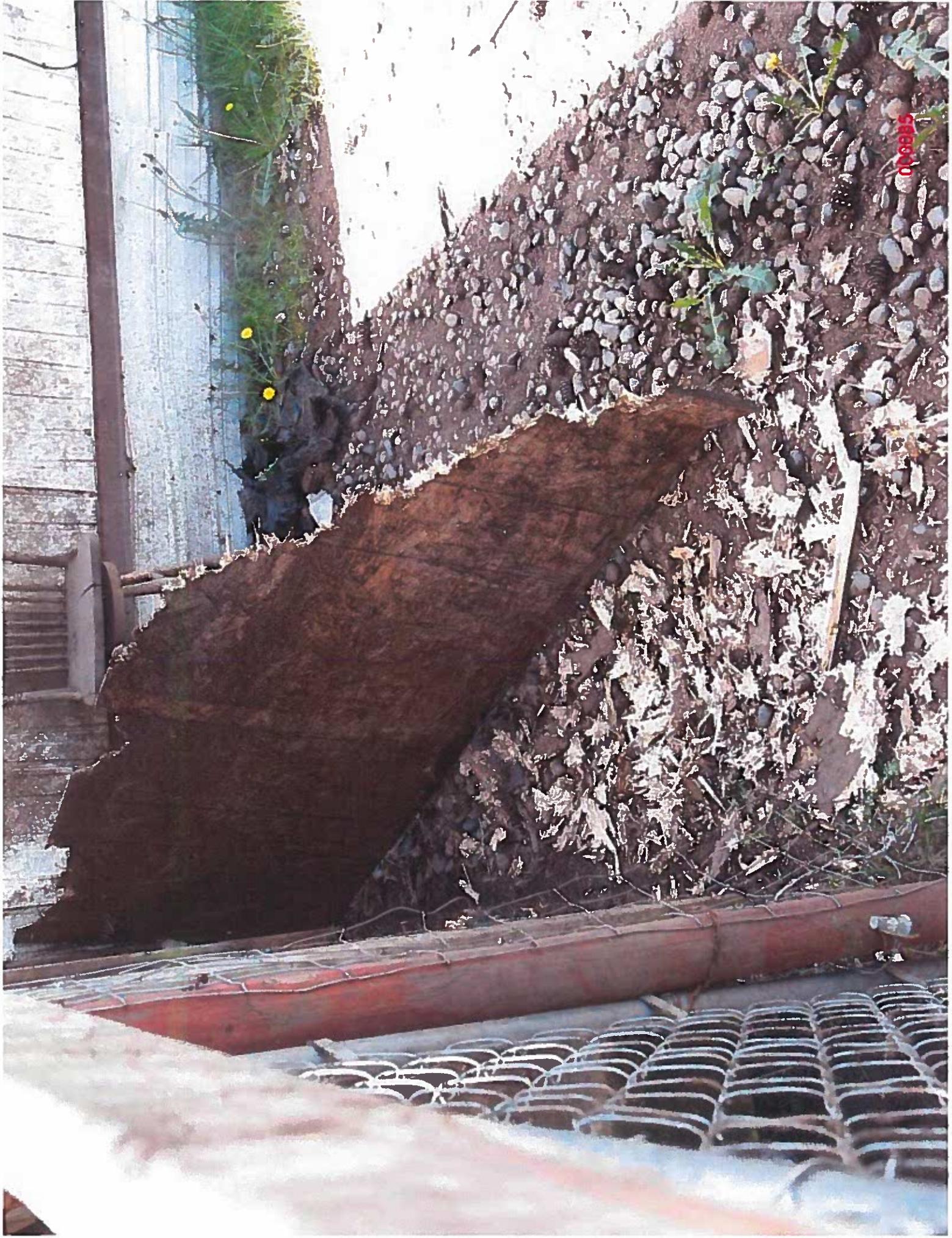


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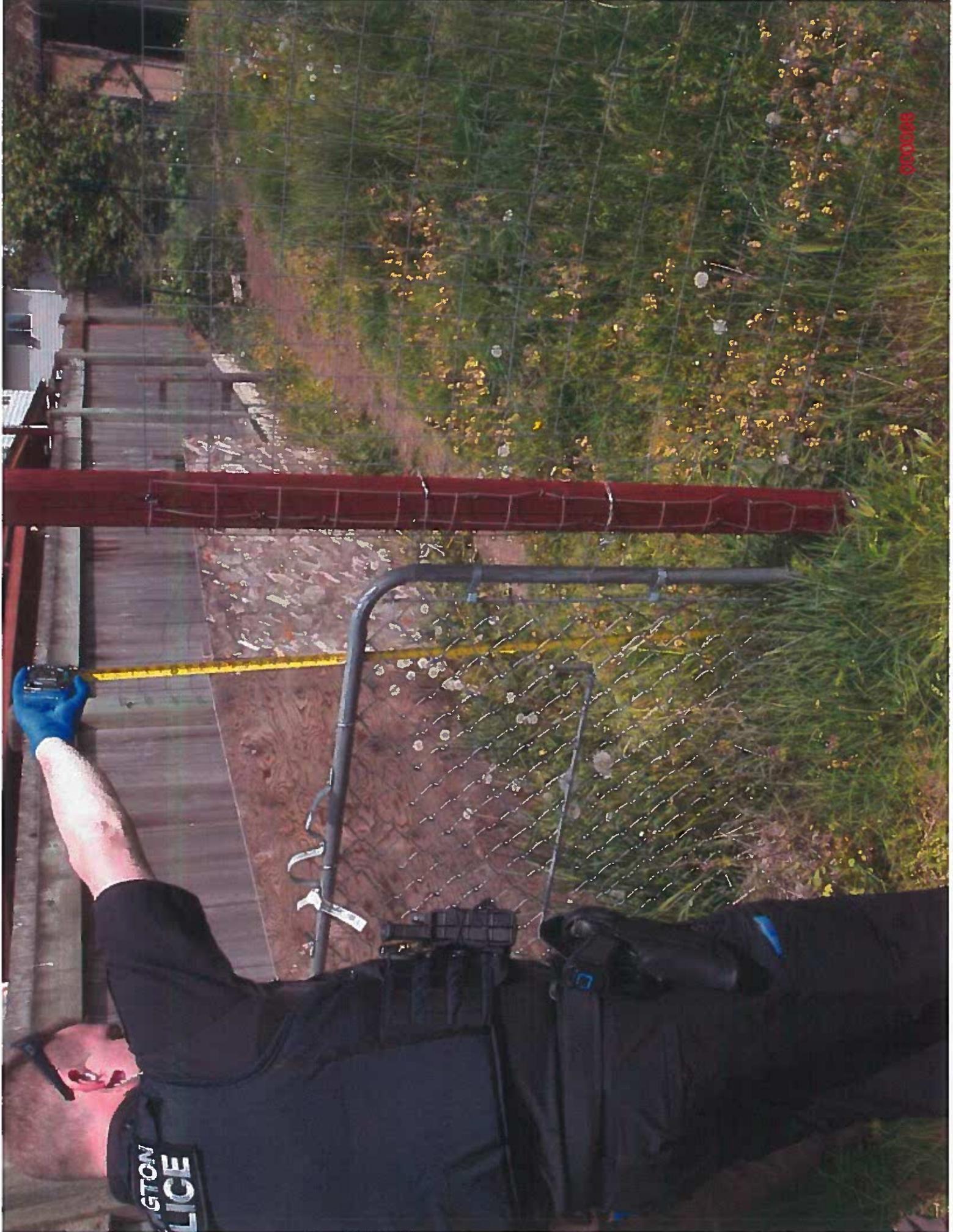




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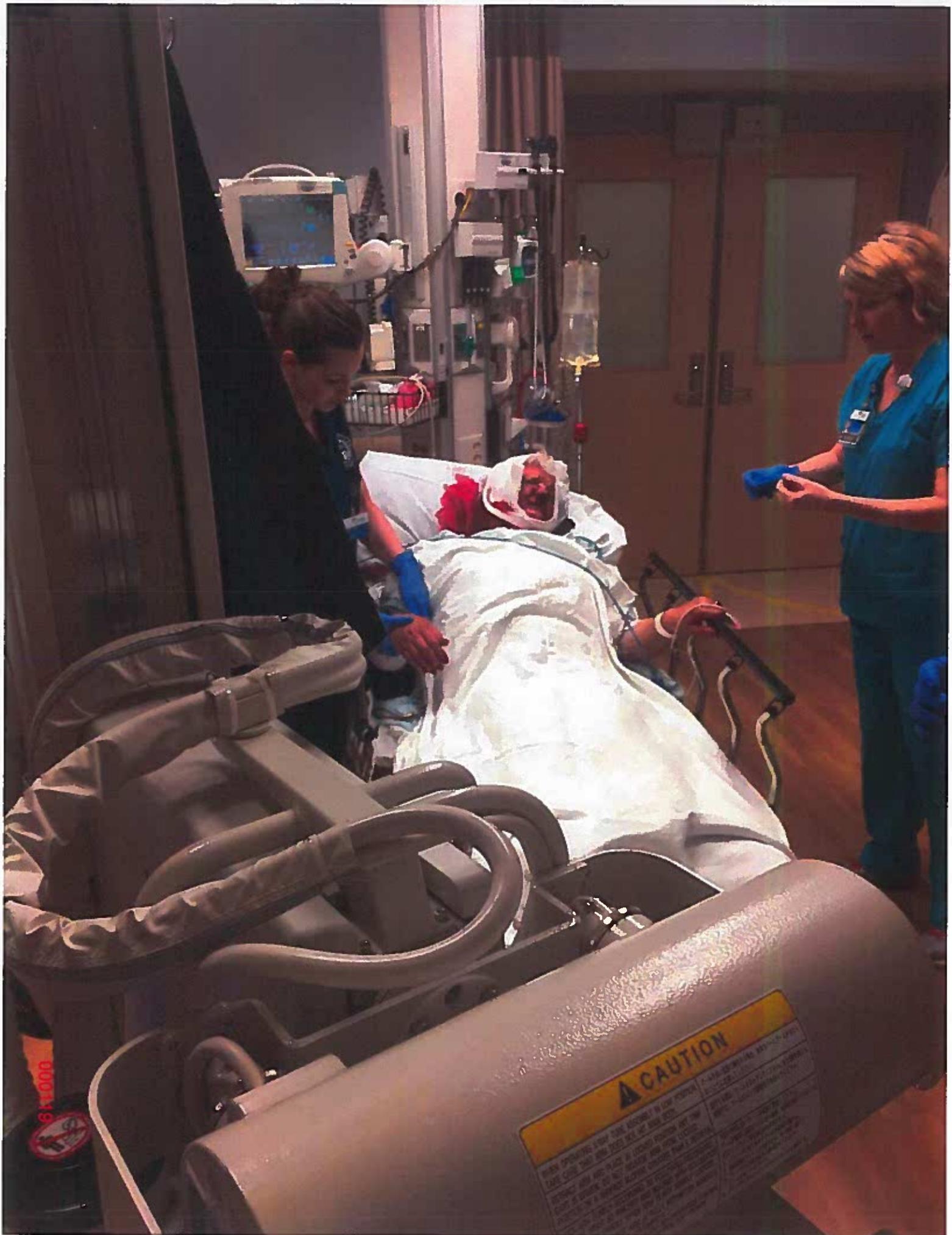
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**CAUTION**

When operating this device, use the following instructions:

1. Do not touch the patient's skin or the device's internal components.	2. Do not use the device on patients with metal implants or prostheses.
3. Do not use the device on patients with pacemakers or other implanted electronic devices.	4. Do not use the device on patients with a history of seizures.
5. Do not use the device on patients with a history of heart disease.	6. Do not use the device on patients with a history of stroke.
7. Do not use the device on patients with a history of kidney disease.	8. Do not use the device on patients with a history of liver disease.
9. Do not use the device on patients with a history of diabetes.	10. Do not use the device on patients with a history of high blood pressure.

# **APPENDIX D**

# RESIDENTIAL RENTAL AGREEMENT

WETA Form 11-05

This agreement made on the 1 day of July, 2014 between Ernesto Hernandez  
Landlord

and \_\_\_\_\_  
Tenant(s)  
Landlord hereby rents CS07 204 St NE ARLINGTON VA 22203  
Address Unit # City State/ZIP commencing \_\_\_\_\_

This month-to-month Rental Agreement may be terminated by either party by giving a **WRITTEN** notice not less than **20 days** prior to the end of rental period. All rents are due and payable on the 1 day of each month in advance regardless of the date of first occupancy. Days of occupancy prior to the first of the month may be charged for on a pro-rated daily basis.

### FINANCIAL TERMS:

**Rent:** Tenant agrees to pay owner-manager, or a designated representative, as rent the sum of \$ 1100.<sup>00</sup>  
(one thousand one hundred dollars) per month in advance at

Payment Location \_\_\_\_\_

On this 1 day of July, 2014, the sum of \$ 1100.<sup>00</sup> as payment for rent  
from 1 July 2014 to July 2016.

A **Non-Refundable Fee** of \$ \_\_\_\_\_ (\_\_\_\_\_ dollars) shall be paid for the express  
purpose of \_\_\_\_\_

**Deposit:** Management acknowledges receipt of a damage/security/faithful performance deposit of \$ \_\_\_\_\_  
(held in the \_\_\_\_\_ Trust Account in \_\_\_\_\_  
Name of Account Name of Bank  
located at \_\_\_\_\_  
Street Address of Bank City State / ZIP

Washington State Landlord Tenant Act allows the Owner to hold any interest accrued to defray administrative costs. This Deposit shall be held for the fulfillment of Tenant's obligations to this contract inclusive of, but not limited to, rent owed, late fees, cleaning, damage, etc. as provided by the state Landlord Tenant Act. If the tenant terminates the tenancy before \_\_\_\_\_ full months of rent have been paid after commencement of the tenancy, the security deposit shall be forfeited without affecting the obligation for other monies possibly owed for rent due, cleaning, damage and other obligations.

**An additional monthly occupancy charge** of \$ 100.<sup>00</sup> per each additional person, other than those listed on the Application and Rental Agreement shall be charged **after** that person has been approved by the Landlord.

**A Late Fee** of \$ 5 per day is charged if rent is not paid by the 5 day of the month with charges calculated from the 1st day of the month.

**Bad Checks** will carry a fee of \$ 30.<sup>00</sup> and rent will not be considered paid until the check is replaced by guaranteed funds.

**Additional Rent** All amounts to be paid by tenant of any nature shall be considered additional rent.

**OCCUPANCY:** This Rental SHALL NOT be occupied by more than \_\_\_\_\_ persons. These persons are limited to those people listed on the Rental Application(s) and this Rental Agreement. Any changes in the occupancy must be approved in writing by the Landlord PRIOR to the actual change being made.

**USE OF PREMISES:** Tenant(s) agrees to use said premises as a single unit residential dwelling and agrees not sell, assign or sublet this contract or said premises, or any portion thereof without the express written consent of the owner/agent. Said premises shall be used in compliance with all city, county, state and federal laws and other rules and regulations.

**OCCUPANCY CHANGE:** It is expressly understood that this agreement is between the owner and tenant(s) each jointly and severally. In the event of default or vacating by any one tenant, each and every remaining tenant shall be responsible for the timely payment of the full rent and all other provisions of this contract. This shall not relieve the vacating tenant(s) of monetary and physical obligations under this contract until the "Transfer of Deposit and Responsibility" form is signed, releasing their obligations under this agreement between the owner and all remaining tenants.

**PETS:** No pets shall be brought onto the premises for **ANY** purpose without the prior written consent of the owner/agent. If permission is given, Tenant(s) shall assume full liability for any and all injury and/or damage to others and to said premises.

**WASTE:** Tenant(s) shall keep unit and grounds in a clean and sanitary condition, disposing of all waste and rubbish at reasonable and regular intervals.

Tenant(s) agree not to permit or allow said premises to be damaged or depreciated in value by any active neglect of tenant(s), family members or invitees. Tenant(s) must report any damage or malfunctioning of anything provided by the Landlord for repair as a lease obligation. Fire alarm and smoke detector batteries excepted. The tenant(s) shall be responsible for all glass breakage. Tenant(s) shall report any maintenance or MOLD problem to landlord on Maintenance Request form as soon as the problem is detected. Tenant(s) shall not make any changes or improvements to this home, inside or out, without written permission of the Landlord. All attachments, inside or outside, shall be left upon vacating with no charges to Landlord. Should such changes or additions be determined to have created a damage to same, the tenant(s) shall be responsible for the restoration of property to the move-in condition.

The tenant(s) agree not to change locks without the prior written permission from the owner agent and upon doing so shall provide the owner agent with key(s). Tenant(s) shall not do anything nor keep anything on or about premises which may increase insurance rates or hazard. Absolutely no parking is allowed on grounds, except in designated areas.

**INSPECTIONS:** Management will give proper notice to enter your home at reasonable times, i.e., 24 hr. to show to prospective tenant or buyer, 48 hr. for inspections, to fill maintenance requests or make improvements; in case of suspected abandonment or emergency, the Landlord, or the Landlord's representatives, may enter at any time.

**UTILITIES:** All utilities shall be the responsibility of the tenant(s), except for \_\_\_\_\_ and shall be transferred into the tenant's name effective as of the date of access to these premises. A \$\_\_\_\_\_ per day, per utility penalty may be assessed by the owner agent if not transferred as agreed or are put back into the owner agent's name before lawful termination of this contract. Any charges incurred on the utilities which are the responsibility of the tenant(s) shall be paid by the tenant(s).

**SMOKE ALARMS:** Tenant(s) agree to maintain smoke alarm devices including adequate batteries. A fine of not more than \$200.00 may be imposed for failure to comply with these provisions as required by RCW 48.48.140(3).

**WATER BEDS:** Prior written permission must be obtained from owner agent for use of waterbeds.

**GENERAL:**

**Abandonment:** is where the tenant defaults in the payment of rent and reasonably indicates by words or action the intention to terminate tenancy. Tenant(s) shall be liable for such abandonment and, without the required 20 day notice, for the following month's rent or until re-rented, whichever comes first.

**Rules:** Tenant(s), their family and invitees shall comply with all rules and regulations in effect at the time of occupancy, a copy of which is a part of this agreement, and any future rules and regulations the Landlord deems necessary for the common good of all tenants and/or neighbors.

**Survivorship:** The provisions of this agreement shall apply to and bind the executors, administrators, successors, and assignees of the respective parties hereto.

**Signing:** It is agreed by all tenants that any tenant signing the move-in or move-out condition report does so on behalf of all tenants.

**Litigation:** In the event of monies owed to the owner, tenant(s) shall be responsible for all costs incurred, both legal and otherwise (including attorney fees), to collect said monies. In the event any lawsuit is brought to enforce any of the terms and/or conditions of this contract, the venue of such action shall lie in Yakima County, Washington.

**Laws:** All Sections of the Landlord Tenant Act of the state of Washington, RCW 59.18, shall apply to this contract.

**Waiver:** Landlord reserves all rights provided under the laws of the state of Washington. If a tenant makes an arrangement or agreement for the benefit of the tenant(s), it shall NOT be construed as a permanent waiver.

**Insurance:** Owner shall not be liable in any manner for or on account of theft or any loss or damage sustained by fire, water, flood, wind, or any other natural causes, however caused, or for loss of any articles from any cause, from said premises or buildings. **WE STRONGLY RECOMMEND THE TENANT OBTAIN RENTER'S INSURANCE.**

Should said buildings be totally destroyed by fire, lightning, earthquake or any other casualty, this agreement shall be deemed forthwith terminated. Should fire, lightning, earthquake or any other casualty partially damage said buildings, whether or not the demised premises are affected thereby, Owner may elect to terminate this agreement or to repair such damage. If Owner elects to repair, the rent shall be abated at the ratio that that portion of the demised premises that is rendered temporarily unfit for occupancy, and not used or occupied by tenant, shall bear to the whole demised premises. Alternative housing or rent during this time is the responsibility of the tenant. Tenant understands that insurance for their personal property is their responsibility.

**IN CASE OF AN EMERGENCY,** please notify the following Relative:

<u>Ana Kalberg</u>	<u>Friend</u>	<u>Marysville</u>	<u>WA 98270</u>	<u>360-659-7866</u>
Name	Relationship	Address	City	State/ZIP Phone

Signed and fully accepted in the City of \_\_\_\_\_, Washington.

<u>David J. Gonzalez</u>	<u>7-7-14</u>	Tenant	Date
<u>[Signature]</u>	<u>7/1/14</u>	Owner/Manager	Date
_____	_____	Tenant	Date
_____	_____	Co-Signer	Date

Agent Phone \_\_\_\_\_ Address \_\_\_\_\_

# RECEIPT

DATE 7/1/2014No. 772904RECEIVED FROM DAVID GONZALEZ\$ 1100.00One thousand one hundred and no DOLLARS FOR RENT  
 FOR \_\_\_\_\_

ACCOUNT	
PAYMENT	
BAL. DUE	<u>✓</u>

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM 7/1/2014 TO 7/31/2014BY [Signature]

**BISHOP LAW OFFICES, P.S.**

**July 20, 2020 - 1:25 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98221-0  
**Appellate Court Case Title:** Maria Jesus Saralegui Blanco v. David Gonzalez Sandoval et al.  
**Superior Court Case Number:** 18-2-08290-9

**The following documents have been uploaded:**

- 982210\_Briefs\_20200720132340SC587392\_0668.pdf  
This File Contains:  
Briefs - Petitioners  
*The Original File Name was Brief of Petitioner.pdf*

**A copy of the uploaded files will be sent to:**

- cassandralopezlaw@gmail.com
- ofelia.granados.f9ko@statefarm.com
- ofelia.granados@statefarm.com
- owen@laurashaverlaw.com

**Comments:**

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Sender Name: Derek Moore - Email: derek@bishoplegal.com  
Address:  
19743 1ST AVE S  
NORMANDY PARK, WA, 98148-2401  
Phone: 206-592-9000

**Note: The Filing Id is 20200720132340SC587392**