

RESOLUTION NUMBER 05-061

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT PHASING AGREEMENT PURSUANT TO KMC 16.04.100 BETWEEN THE CITY OF KETCHUM AND RIVER LODGES, LLC, TO GOVERN THE PHASING OF THE DEVELOPMENT OF THE RIVER LODGES TOWNHOMES.

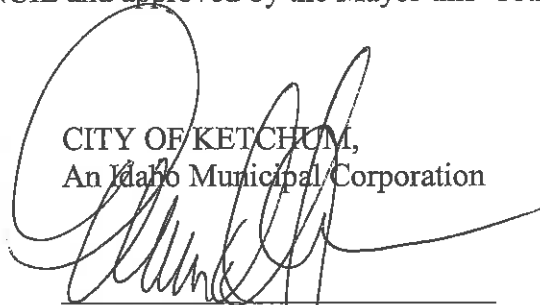
WHEREAS, in Resolution No. 04-054, the City Council authorized the Mayor to execute a Development Agreement with River Lodges, LLC, an Idaho limited liability company ("Owner"), governing the rezoning and development of the River Lodges Townhomes; and

WHEREAS, such Development Agreement has been duly executed and recorded as Instrument No. 508256 in the official records of the Blaine County Recorder; and

WHEREAS, pursuant to KMC 16.04.100, the Owner has requested to phase the development of the project pursuant to KMC 16.04.100.


NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho that the City Council hereby authorizes the Mayor to execute a Development Phasing Agreement pursuant to KMC 16.04.100 between the City and River Lodges, LLC to govern the phasing of the River Lodges Townhomes.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 18th day of July, 2005.



CITY OF KETCHUM,
An Idaho Municipal Corporation

EDWARD SIMON, Mayor

ATTEST:


Sandra E. Cady, CMC,
Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:



Benjamin W. Worst,
City Attorney

WHEN RECORDED, PLEASE RETURN TO:

PLANNING DEPARTMENT
CITY OF KETCHUM
BOX 2315
KETCHUM, IDAHO 83340

RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of August, 2005, by and between RIVER RUN, LLC, (collectively referred to as "Owner"), whose address is P.O. Box 1406, Sun Valley, Idaho, 83353, and the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Box 2315, Ketchum, Idaho, 83340.

RECITALS

WHEREAS, Owner is the owner of real property described as Sublots 3 and 4, Sun Valley Seasons, commonly known as 111 Walnut Avenue North and 573 First Street East, ("Subject Property"), located within the City of Ketchum, State of Idaho; and,

WHEREAS, Owner wishes to install landscaping, irrigation, and snowmelted driveway pavers in the public right-of-way of unimproved First Street, adjacent to Sublots 3 and 4, Sun Valley Seasons, Ketchum, Idaho, as shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement; and,

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to maintain the Improvements identified in Exhibit "A" within the public right-of-way of unimproved First Street, located adjacent to the real property described as Sublots 3 and 4, Sun Valley Seasons, Ketchum, Idaho, until notified by Ketchum to remove the same.

2. Owner shall, upon written notification by Ketchum, remove the Improvements within thirty (30) days of receipt of such notice, or such lesser time if deemed an emergency by Ketchum. If the Improvements are not so removed, Owner authorizes Ketchum to cause the Improvements to be removed at Owner's sole expense and to specially assess the costs thereof against the Subject Property.

3. Owner understands and agrees that this Agreement does not confer any property interests to Owner in the use of the City's rights-of-way and that Ketchum expressly reserves any and all authority to regulate and impose additional conditions on Owner at any time, including but not limited to, franchise fees.

4. Owner shall be responsible for the maintenance of said Improvements.

5. Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any intentional or negligent acts of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

6. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed or maintained in the public right-of-way.

7. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum.

8. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

9. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho.

10. This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. It is understood and agreed by the parties

hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

11. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

12. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

13. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

By: Robert Kesting
Robert Kesting, River Run, LLC

CITY OF KETCHUM:

By: Edward Simon
Edward Simon, Mayor

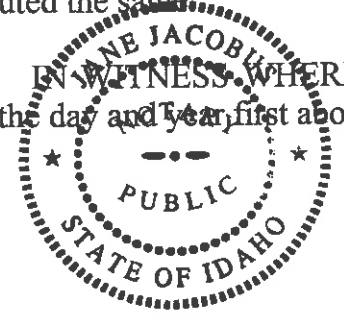
ATTEST:

Patricia Bennett
For: Sandra E. Cady
City Clerk

STATE OF IDAHO)
) ss.
County of Blaine)

On this 22nd day of August, 2005, before me, the undersigned Notary Public in and for said State, personally appeared EDWARD SIMON, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Ivanne Jacobus
Notary Public for Idaho
Residing at Blaine
Commission expires 11-12-05

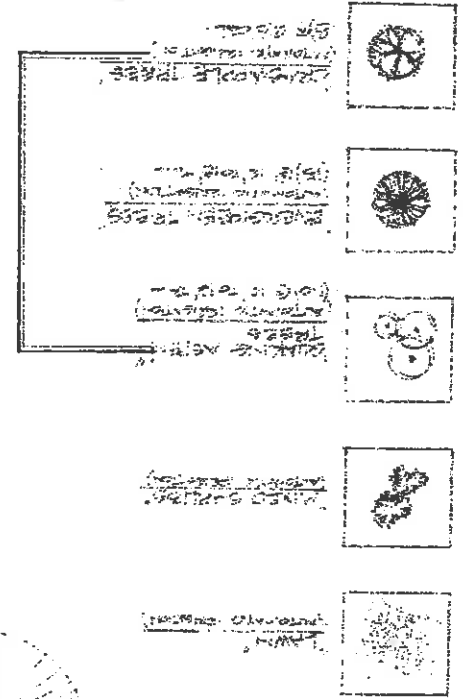
STATE OF Idaho)
) ss.
County of Blaine)

On this 22nd day of August, 2005, before me, the undersigned Notary Public in and for said State, personally appeared ROBERT KESTING (River Run, LLC), known to me to be the person(s) who executed the foregoing instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

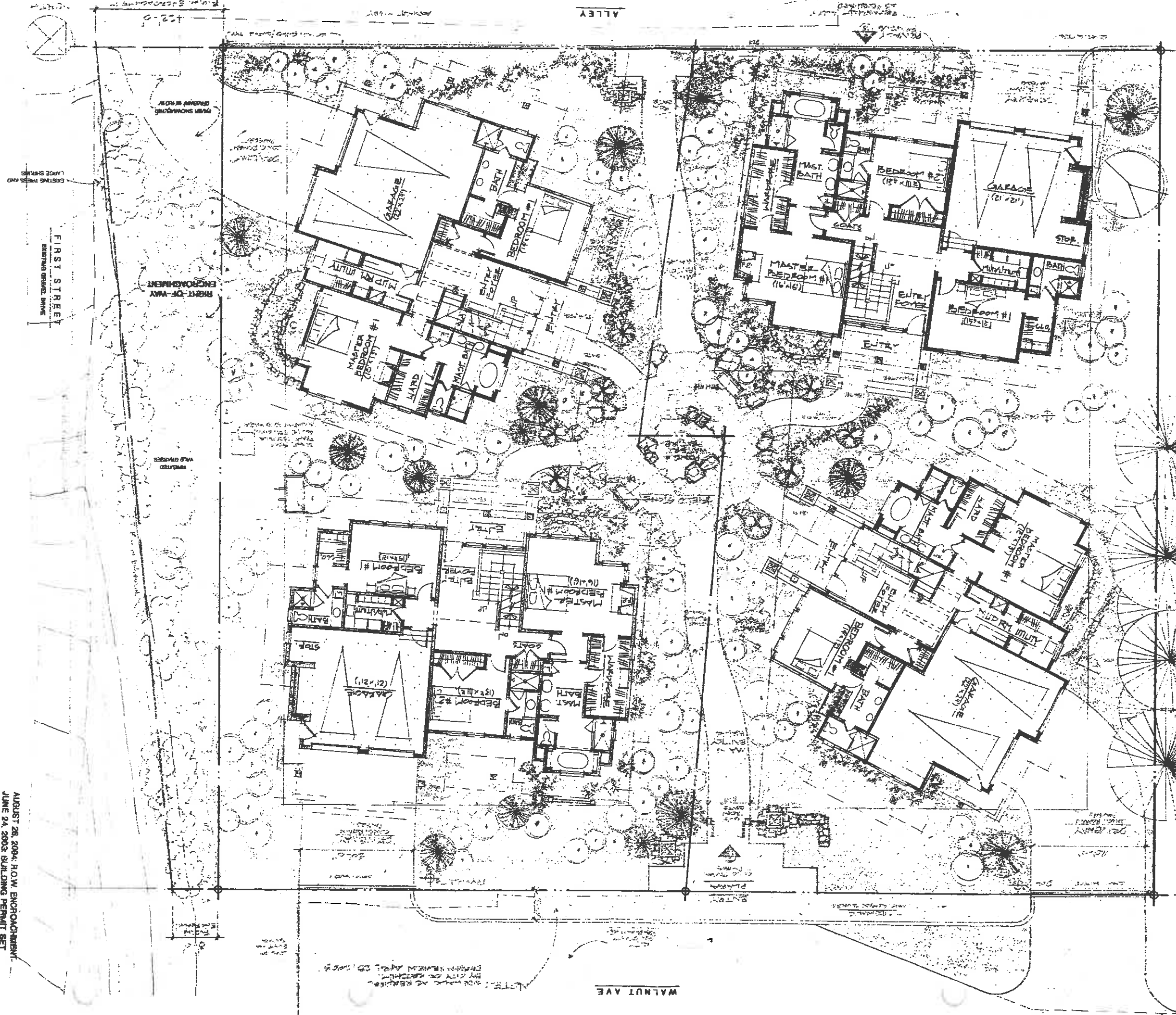


Marta R. Thompson
Notary Public for Idaho
Residing at Ketchum
Commission expires 5/21/09



LANDSCAPE PLAN

SCALE: 1/8" = 1'-0"

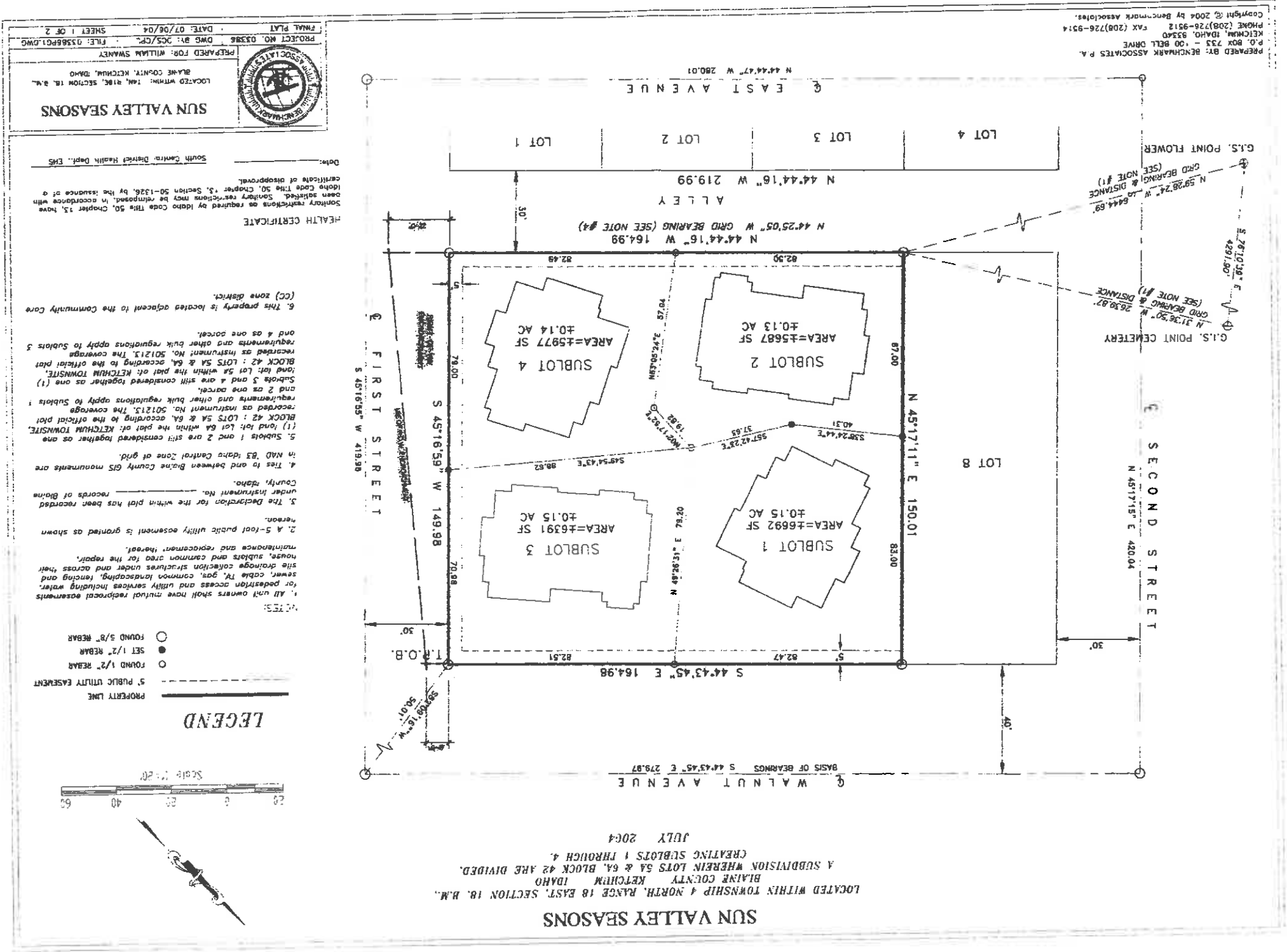


RUSCITTO/LATHAN/BLANTON ARCHITECTURA P.A.

P.O. Box 419 Sun Valley, Idaho 83353
 208 726 5608
 copy right ©

THE SUN VALLEY SEASONS
 KETCHUM IDAHO

AUGUST 28, 2004: R.O.W. ENCROACHMENT
 JUNE 24, 2003: BUILDING PERMIT SET
 MARCH 26, 2004: DESIGN REVIEW



RUSCOTTO/LATYAN/BLANTON ARCHITECTURAL P.A.

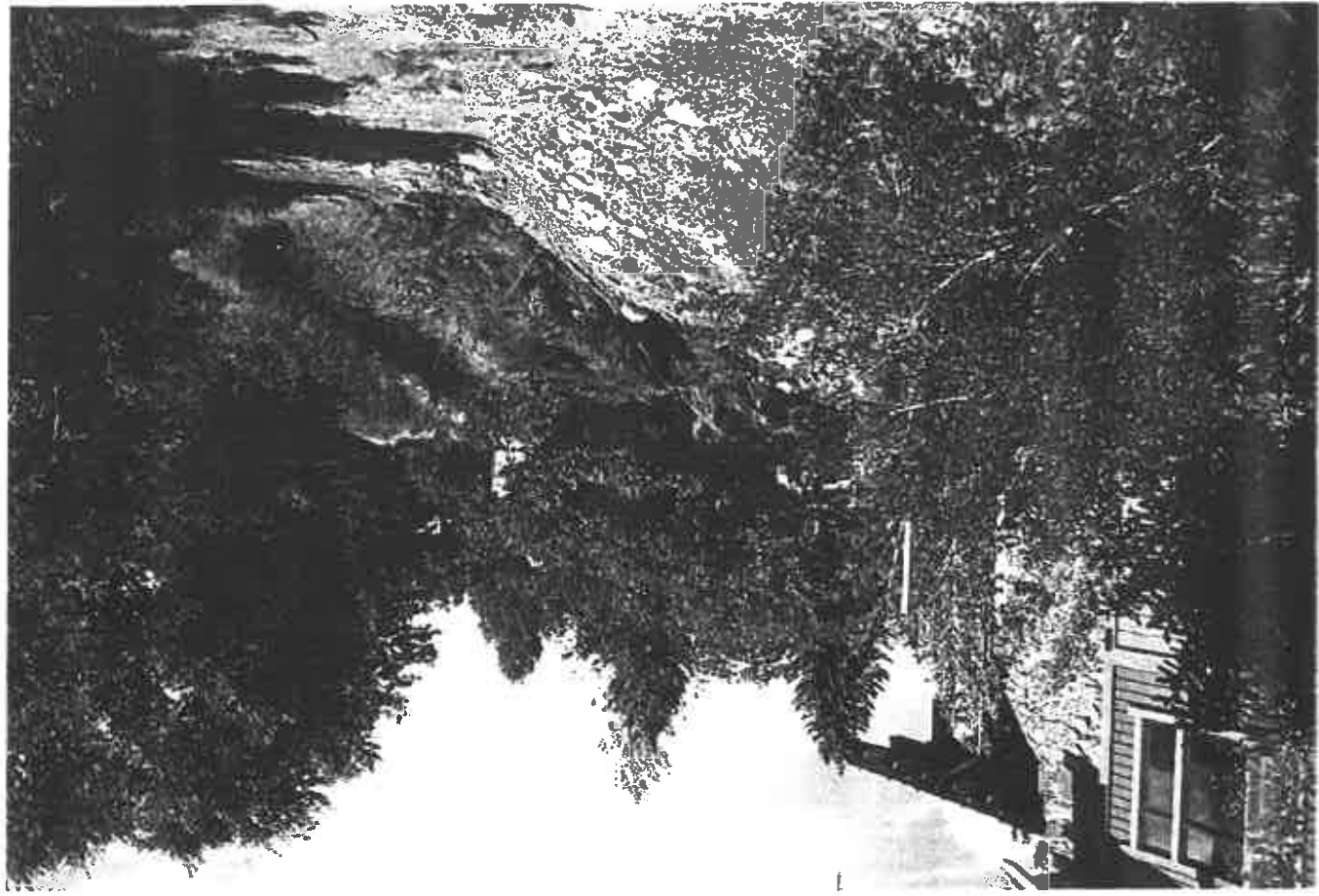
P.O. box 419 sun valley, Idaho 83353
 208 726 5608

THE SUN VALLEY SEASONS
 KETCHUM IDAHO

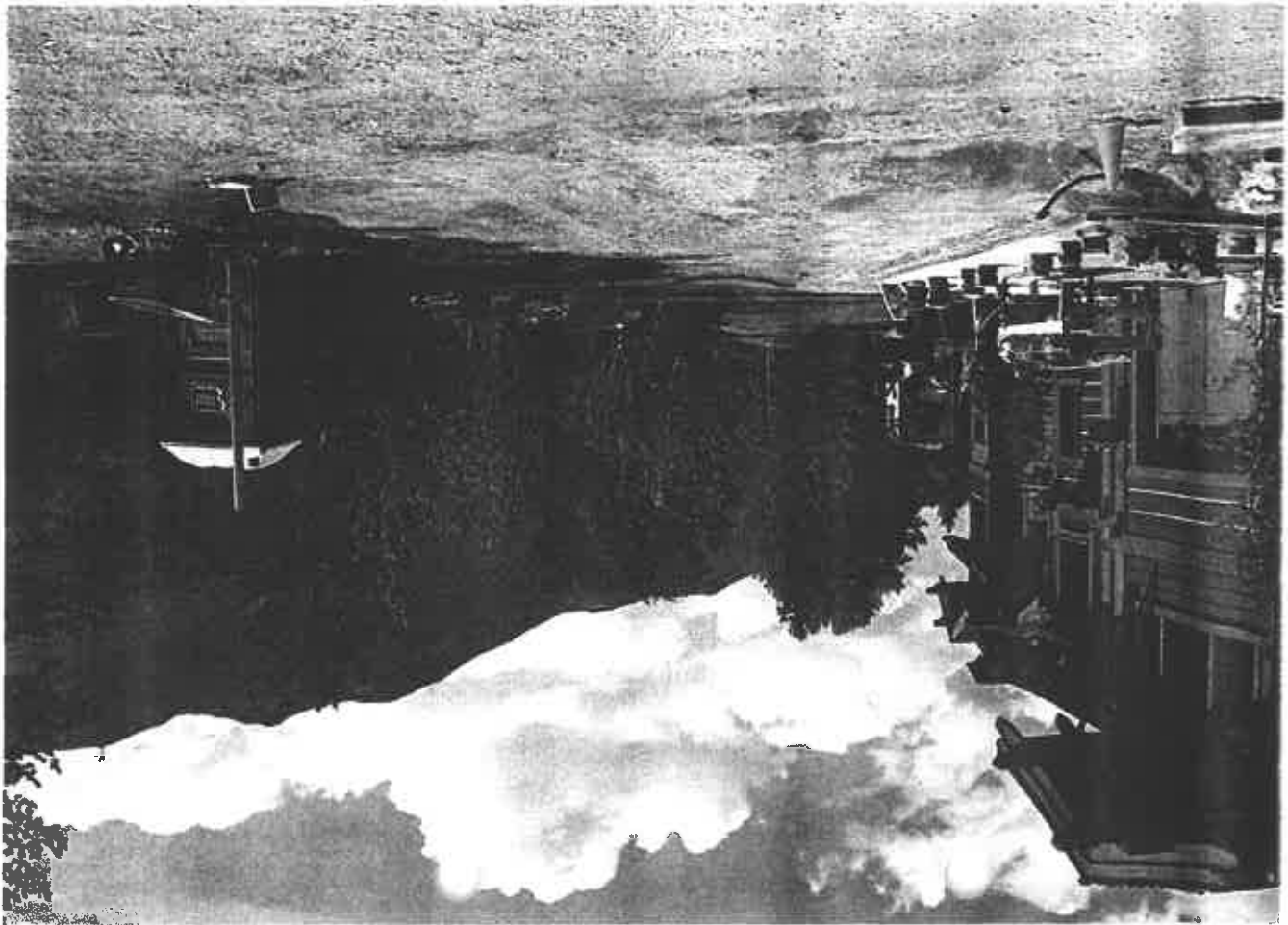
received
 8/27/04

CIVIL ENGINEERS RRMW

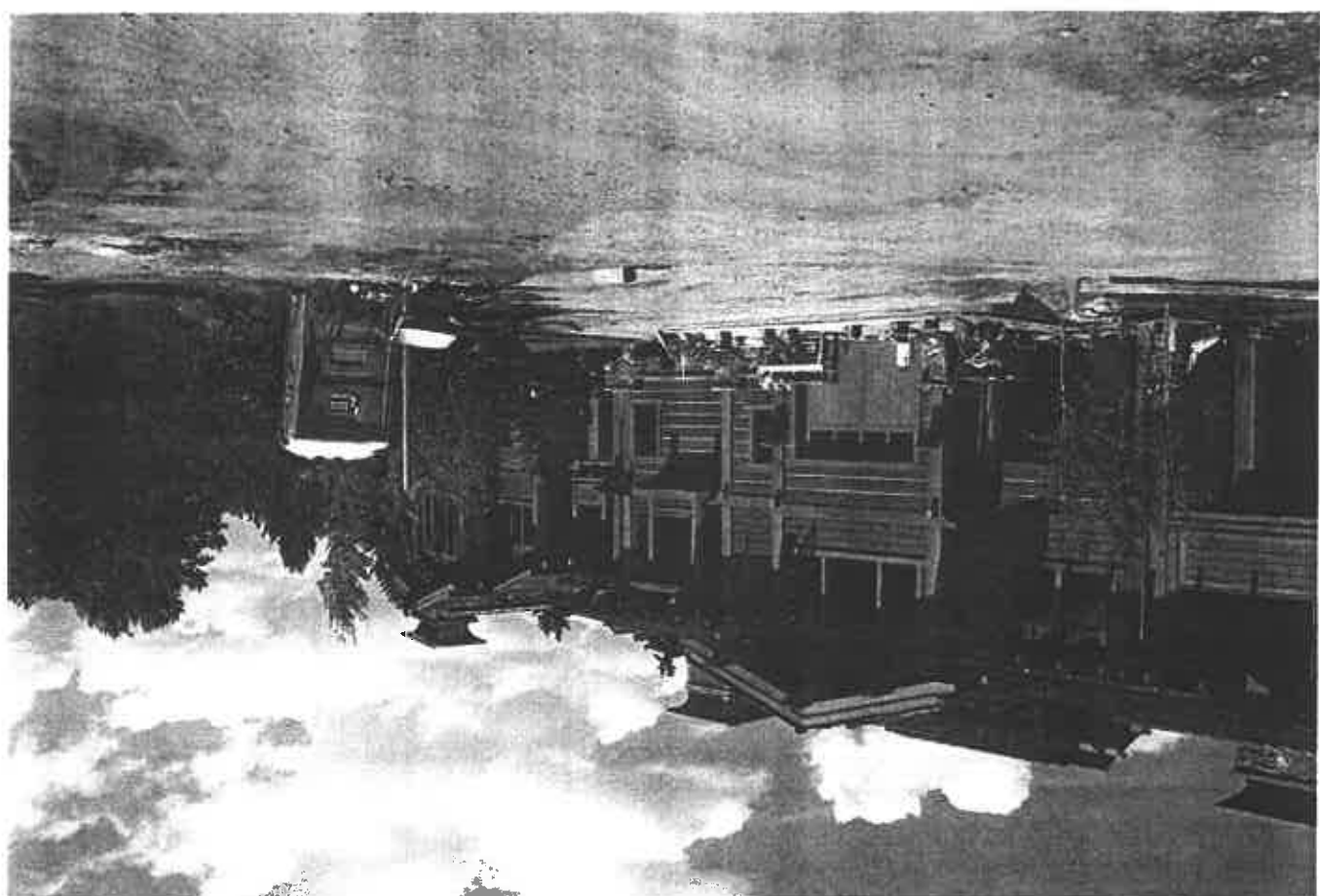
FIRST STREET VIEW TO NORTH EAST



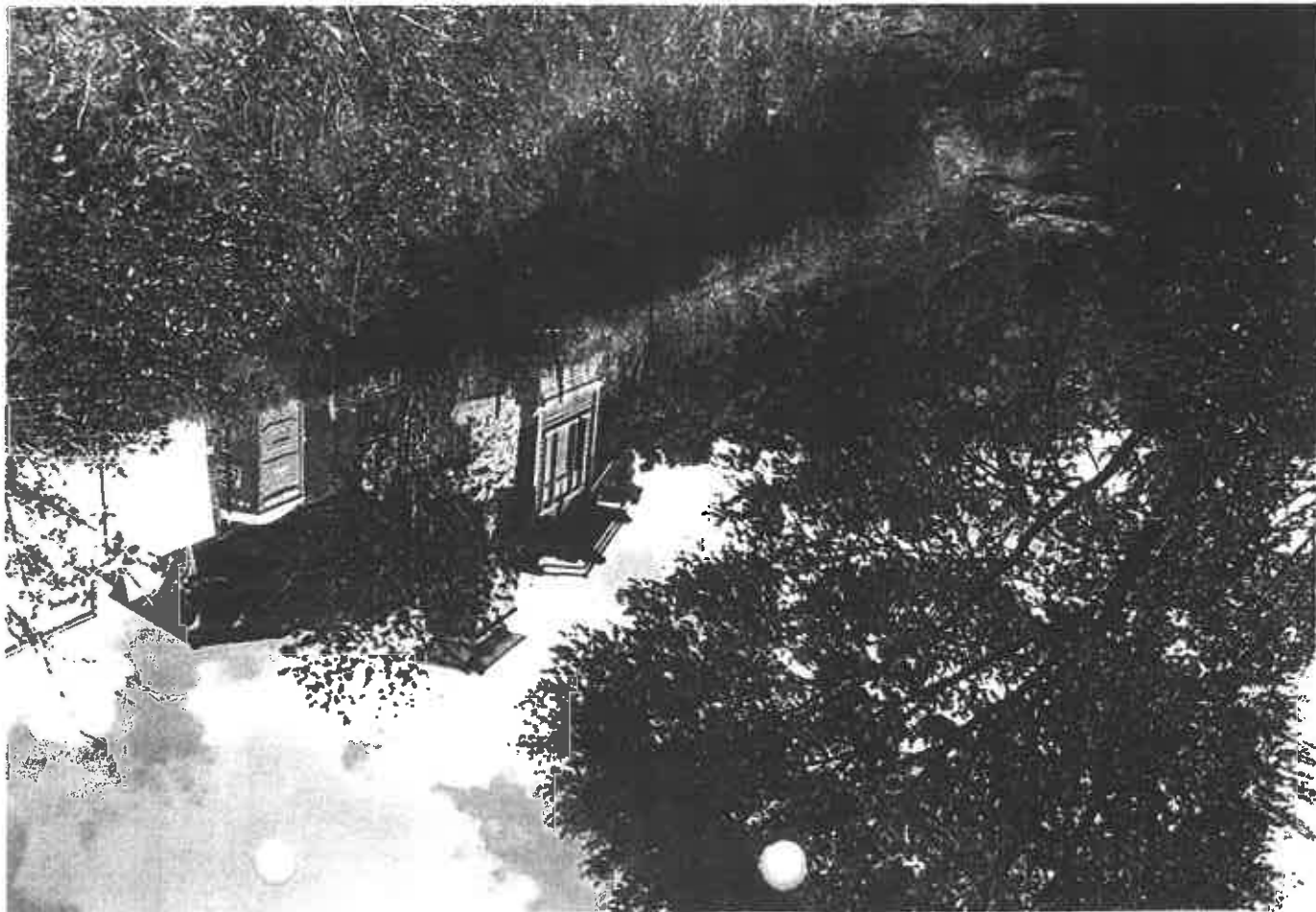
ALLEY VIEW TO EAST



ALLEY VIEW TO NORTH EAST



FIRST STREET VIEW TO NORTH WEST



THE SUN VALLEY SEASONS.

KETCHUM

IDAHO