

MRV96SEW

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	MVR, INC., AND STANFORD F. WARNER AND DONNA K. WARNER
SUBJECT/PROJECT:	SEWER LINE AT 2429 HIGHWAY 6 & 50 OFFICE DEPOT/CENTENNIAL RV
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	1995
EXPIRATION DATE:	WHEN CONTRACT IS RENEGOTIATED
DESTRUCTION DATE:	NONE

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MONIKA TODD CLK&REC MESA COUNTY CO

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**AGREEMENT TO MAINTAIN
SANITARY SEWER LINE**

This Agreement to Maintain Sanitary Sewer Line ("**Agreement**") is made and entered into this ___ day of January, 1996, by and between MRV, Inc., a Kansas corporation ("**MRV**"), STANFORD F. WARNER and DONNA K. WARNER, husband and wife (collectively "**Warner**"), with reference to the following facts, understandings and intentions of the parties:

A) The Grand Junction City Code ("**GJCO**") requires that a separate and independent sewer line shall be provided for every building. In exceptional circumstances, the City of Grand Junction ("**City**") has allowed separate properties to be served by a common sewer line provided the owners of such separate properties enter into an agreement to maintain and repair such common sewer line.

B) MRV and Warner are owners of contiguous properties located within Grand Junction, Colorado, referred to herein as the "**MRV Property**" and "**Warner Property**," respectively. A legal description of the MRV Property is attached hereto as Exhibit "A" and a legal description of the Warner Property is attached hereto as Exhibit "B."

C) The existing building on the Warner Property, having a street address of 2429 Highway 6 & 50, Grand Junction, Colorado, and the existing building on the MRV Property, having a street address of 2449 Highway 6 & 50, Grand Junction, Colorado, are served by a common sewer service line ("**Common Sewer Line**"). Because of the substantial cost of providing separate sewer service to each of such properties, and the disruption to ongoing business operations that would result from installation of such separate sewer service, the parties desire now to enter into this Agreement to assure the continued maintenance of the Common Sewer Line now serving such properties.

NOW, THEREFORE, based on the foregoing facts, understandings and intentions of the parties, and for valuable consideration, the receipt of sufficiency of which are hereby acknowledged, it is agreed as follows:

- 1) The parties hereto agree to repair, maintain, service and replace the Common Sewer Line beyond the service tap into the public sewer line as and when necessary to keep the same in good operating condition and in conformity with all applicable laws and ordinances of the City.
- 2) This Agreement is conditioned upon the City's approval of the terms hereof.
- 3) This Agreement shall be effective from the date of full execution hereof until such time as Warner (or any successor owner of the Warner Property) shall either (i) increase the total building floor area located on the Warner Property by fifty percent (50%) or more above the building floor area located thereon as of the date of full execution of this Agreement, or (ii) increase the number of employees to 25 or more full-time or part-time employees. Upon occurrence of either of the foregoing events, Warner shall at its sole expense install a separate sewer line to serve the Warner Property, at which time this Agreement shall terminate and be of no further force or effect. Warner may use the easement granted in Paragraph 4 below for maintenance, repair, use and installation of such separate sewer line to the extent that installing a separate sewer line in such easement area is not prohibited by GJCO. Warner represents that the building now located on the Warner Property contains approximately twelve thousand five hundred (12,500) square feet of floor area.
- 4) Each party to this Agreement shall be responsible at its sole expense for maintenance, repair and replacement of that portion of the Common Sewer Line which serves its property, which, in the case of the Warner Property, shall be defined to include all lines and cleanouts for a distance of four hundred feet (400') measured from the last sewage cleanout in the building on its property, and, in the case of the MRV Property, shall be defined as all lines from the building on its property downstream to the tap into the public sewer line. A diagram showing those portions of the Common Sewer Lines which each of the parties is responsible to maintain, repair and replace is attached hereto as Exhibit "C." MRV hereby grants to Warner an easement over the MRV Property fifteen feet (15') in width the centerline of which is the center of the existing Common Sewer Line, for the purpose of Warner's use of the Common Sewer Line and maintenance, repair and replacement thereof as set forth in this Agreement. If in connection with any such maintenance, repair and replacement work performed by Warner the surface of the easement area shall be disturbed, Warner shall restore or cause to be restored the surface of the easement area to substantially the same condition as existed prior to the performance of such work. Each party In the performance of its maintenance, repair and replacement obligations shall cause the

same to be done in a manner which is least disruptive to the business operations of the other party as is reasonably practicable under the circumstances. In the event either party shall fail to perform its obligations with respect to maintenance, repair and replacement of the Common Sewer Line as herein provided, and if such failure continues at the end of five (5) business days following the non-performing party's receipt of written notice describing such failure ("Default Notice"), the party giving such notice shall have the right, but not the obligation, to perform such obligation for and in behalf of the non-performing party and recover from the non-performing party the costs thereof plus interest at the rate of eighteen percent (18%) per annum or the maximum legal rate, whichever is less, from the date such costs are incurred until paid by the non-performing party; provided, however, if the nature of the cure is such that it cannot with the exercise of reasonable diligence be completed within five (5) business days following receipt of the Default Notice, the party receiving such notice shall not be deemed in default nor shall the party giving such notice have the right to cure such default if the party receiving such notice commences such cure within said five (5) business day period and thereafter diligently prosecutes such cure to completion.

5) Except in cases of emergency, if either party hereunder shall be required to incur repair or replacement expenses which will exceed One Thousand Dollars (\$1,000), such party shall provide as much prior notice to the other party of the commencement and probable duration of such work as is practicable under the circumstances, and shall endeavor, if possible, to provide five (5) business days prior notice of such work.

6) Office Depot, Inc. ("**Office Depot**") is now the sole occupant of the MRV Property pursuant to the terms of that certain lease between Office Depot and MRV dated October 27, 1995 ("**Lease**"). Office Depot is not a party to this Agreement but has executed this Agreement for the purpose of approving the form and content hereof and acknowledging, as between MRV and Office Depot, its responsibility during the term of the Lease, for so long as Office Depot is required to maintain the common areas of the MRV Property, to perform MRV's obligations under this Agreement with respect to maintenance, repair and replacement of the Common Sewer Line, subject, however, to the provisions of the Lease pertaining to capital expenditures. If under the terms of the Lease MRV should at any time be required to assume responsibility for maintenance of the common areas of the MRV Property, MRV shall perform its obligations hereunder with respect to maintenance, repair and replacement of the Common Sewer Line and the costs thereof shall be Common Area Operating Costs to be prorated between MRV and Office Depot as provided in the Lease. Notwithstanding the foregoing, MRV shall be obligated to Warner to perform MRV's obligations under this Agreement.

7) In the event it shall become necessary to replace the Common Sewer Line, the parties hereto agree in good faith to cooperate jointly in such construction,

including granting of reasonable and necessary easements for the performance of such work or to maintain the Common Sewer Line as set forth herein.

8) The parties hereto jointly and severally agree to indemnify and hold the City, its officers and employees, harmless from and against any and all costs, damages or expenses associated with the operation, maintenance and repair of the Common Sewer Line, including all consequential damages related thereto. In addition, if it is determined by a court of competent jurisdiction that the parties have breached their obligations under this Agreement, the parties shall be jointly and severally liable for the City's costs of enforcing the terms of this Agreement, which enforcement costs shall include, without limitation, any attorney's fees, engineering or consulting costs, and the reasonable value of the services of City personnel involved in such enforcement efforts. Further, if a court of competent jurisdiction shall find that the continued use of the Common Sewer Line by both the MRV Property and the Warner Property constitutes a violation of applicable law, and if the finding of such violation is not based on either of the circumstances described in Paragraph 3 hereof, then, if such court shall impose any fines or penalties or assess any costs by reason of such violation, or if it shall order the installation of separate sewer service to the Warner Property or other work necessary to bring sewer service to the MRV Property and the Warner Property into compliance with applicable law, the parties agree that payment of any such fines, penalties or costs and/or performance of any such compliance work, including, without limitation, installation of separate sewer service to the Warner Property, shall be the joint and several obligation of the parties hereto.

9) All maintenance, repair and replacement required under this Agreement shall be done in accordance with then applicable City, county, state, or federal laws, rules or regulations pertaining thereto.

10) In the event either party hereto shall bring an action against the other to enforce its rights hereunder, the prevailing party shall be entitled to recover from the losing party its costs of suit and reasonable attorney's fees, as determined by the court, which amount shall be made part of any judgment rendered in such action.

11) Any notice, demand, request or other communication (herein a "Notice") required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the person to whom the notice is addressed, (ii) if sent by U.S. Mail, certified, return receipt request, with postage prepaid, on the date of receipt or refusal by the address as set forth on the return receipt, and (iii) on the date the notice is delivered by a nationally recognized courier service that provides a return receipt (including FedEx, Express Mail, UPS, or similar operation) to the address of the party to whom it is directed, provided it is sent prepaid, return receipt requested. The addresses of the signatories to this Agreement are set forth below.

MRV

MRV, Inc.
2231 SW Wanamaker Road, Suite 300
Topeka, Kansas 66614-4275
Attention: Bruce L. Christensen, President

WARNER

Stanford F. Warner
c/o Centennial RV
2429 Highway 6/50
Grand Junction, Colorado 81502

With a copy to:

David M. Scanga, Esq.
Hoskin, Farina, Aldrich & Kampf
P.O. Box 40
200 Grand Ave., Suite 400
Grand Junction, CO 81502

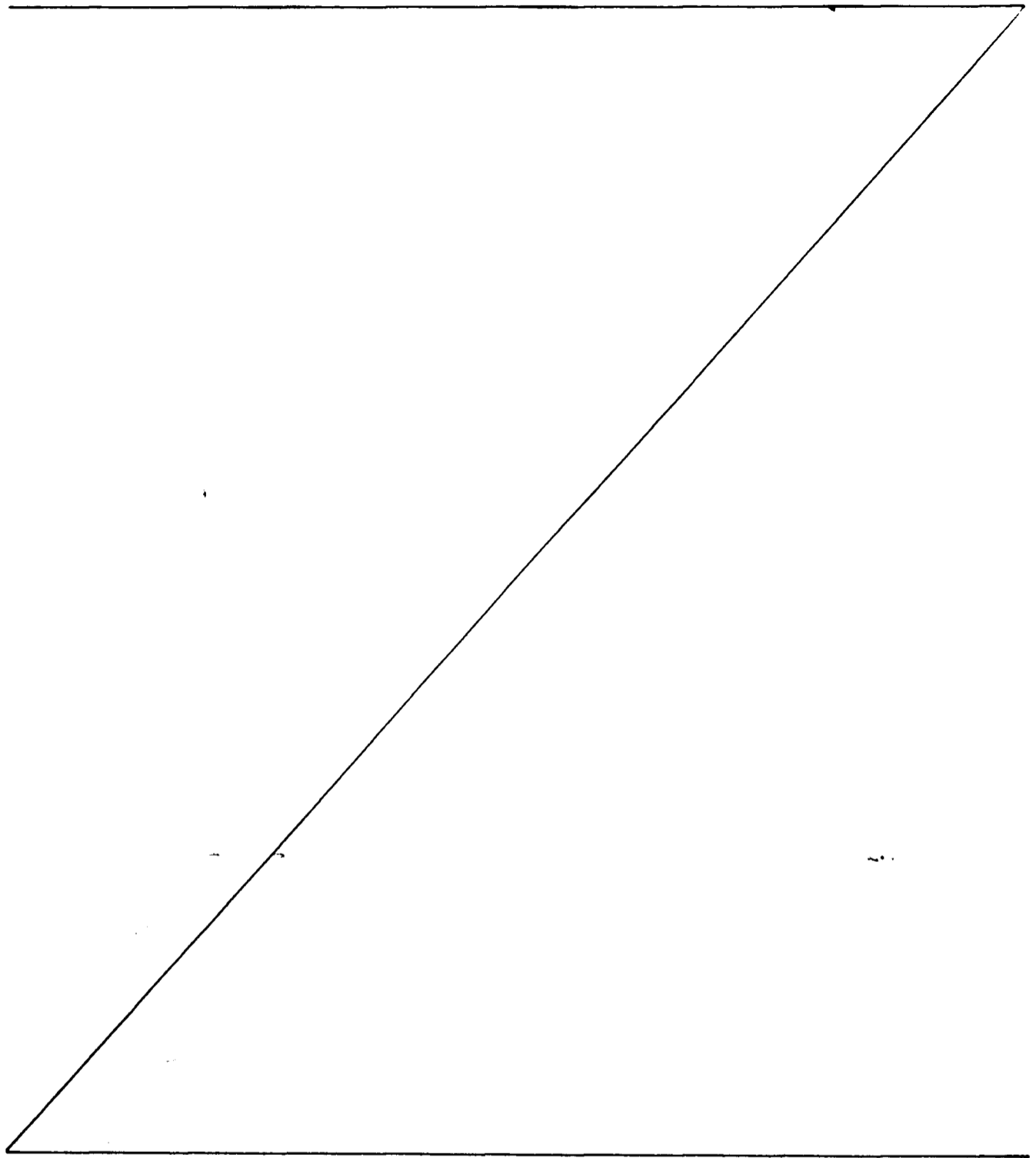
Each party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America; provided, however, notwithstanding anything herein contained to the contrary, in order for the notice of address change to be effective it must actually be delivered. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

12) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

13) The terms of this Agreement and all easements granted hereunder shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns who become owners of the properties described herein. This Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the properties burdened hereby.

14) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which

counterparts taken together shall constitute one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to form one document, which shall be recorded.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent that it become effective on the day and year first above written.

MRV

MRV, Inc.,
a Kansas corporation

By: Bruce L. Christensen
Print Name: Bruce L. Christensen
Title: President

WARNER

Stanford F. Warner

Donna K. Warner

APPROVAL AS TO FORM AND CONTENT AND ACKNOWLEDGMENT OF AGREEMENT BETWEEN MRV AND OFFICE DEPOT WITH RESPECT TO OBLIGATIONS STATED IN PARAGRAPH 6 HEREOF:

OFFICE DEPOT, INC.,
a Delaware corporation

By: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent that it become effective on the day and year first above written.

MRV

MRV, Inc.,
a Kansas corporation

By: _____

Print Name: _____

Title: _____

WARNER

Stanford F. Warner
Stanford F. Warner

Donna K. Warner
Donna K. Warner

APPROVAL AS TO FORM AND CONTENT AND ACKNOWLEDGMENT OF AGREEMENT BETWEEN MRV AND OFFICE DEPOT WITH RESPECT TO OBLIGATIONS STATED IN PARAGRAPH 6 HEREOF:

OFFICE DEPOT, INC.,
a Delaware corporation

By: _____

Print Name: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared, Stanford F. Warner and Donna K. Warner, individuals, to me known to be the persons who signed the foregoing instrument, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal in the State and County last aforesaid this ___ day of _____, 1996.

_____(SEAL)
Notary Public
State of _____
My Commission expires:

STATE OF Texas)
) SS: 454-08-4714
COUNTY OF Tarrant)

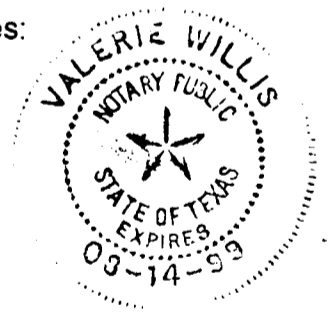
I HEREBY CERTIFY that on this day before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared, Bruce L. Christensen, an individual, to me known to be the person described as President of MRV Inc., a Kansas corporation, who signed the foregoing instrument in such capacity, and acknowledged the execution thereof to be his free act and deed as such person in such capacity for the uses and purposes therein mentioned, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal in the State and County last aforesaid this 25 day of Jan, 1996.

Valerie Willis (SEAL)
Notary Public
State of Texas
My Commission expires:

8-14-99

STATE OF FLORIDA)
Texas



State of Florida) SS:
COUNTY OF PALM BEACH)

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On this 25th day of January, 1996, personally appeared before me, a Notary Public in and for the State of Florida, Richard Brews, as Assistant Secy of Office Depot, Inc. a Delaware corporation, who acknowledged that he executed the foregoing for the purposes therein expressed.

Jean Goldsmith

Print Name: Jean Goldsmith (Seal)

Notary Public, State of Florida

Personally Known: ; or

Produced Identification: _____.

Identification Produced:



JEAN GOLDSMITH
MY COMMISSION # CC 187766 EXPIRES
March 13, 1996
BONDED THRU TROY FAIN INSURANCE, INC.

LANDLORD'S PROPERTY LEGAL DESCRIPTION

Order File Number: 95-4-64K

The land referred to in this Commitment is described as follows:

A tract of land situated in the SE 1/4 NW 1/4 of Section 9 in Township 1 South, Range 1 West of the Ute Meridian, more particularly described as follows:

Commencing at a Mesa County brass cap at the Northeast Corner of said SE 1/4 NW 1/4, from whence a Mesa County brass cap at the N 1/4 Corner of said Section 9 bears N 00° 11' 55" E, 1317.86 feet; thence N 89° 58' 02" W, 690.71 feet to a non-tangent point of curvature on the Southerly Right-of-Way line of U.S. Highway 6 & 50; thence in a generally Southeasterly direction by and with said Southerly Right-of-Way line and along the arc of a curve deflecting to the right, a distance of 128.88 feet, said curve having a Central Angle of 01° 18' 09", a Radius of 5670.00 feet, a Chord Bearing of S 65° 01' 32" E, and a Chord Distance of 128.88 feet to the Point of Beginning. Thence continuing by and with said Southerly Right-of-Way line and along the arc of a curve deflecting to the right, a distance of 509.05 feet, said curve having a Central Angle of 05° 08' 38", a Radius of 5670.00 feet, a Chord Bearing of S 61° 48' 13" E, and a Chord Distance of 508.88 feet to a non-tangent point; Thence continuing by and with said Southerly Right-of-Way line the following 3 courses: S 33° 36' 48" W, 118.16 feet; Thence S 56° 30' 04" E, 60.50 feet; Thence N 88° 02' 56" E, 114.30 feet to a point 25.00 feet Westerly of the East line of the aforementioned SE 1/4 NW 1/4 Section 9; Thence departing said Southerly Right-of-Way line and running S 00° 08' 56" W, parallel to and 25.00 feet Westerly of said East line, a distance of 283.97 feet to the Northerly line of Denver and Rio Grande Western Lease Tract No. 18068; Thence N 56° 23' 12" W, by and with said Northerly line, 816.67 feet; Thence departing said Northerly line and running N 33° 36' 48" E, bounded Northwesterly by Tract A, 240.41 feet to the Point and place of Beginning,

Mesa County, Colorado.

LEGAL DESCRIPTION OF WARNER PROPERTY

The land referred to in this policy is situated in the State of Colorado
County of Mesa

and is described as follows:

A tract of land situated in the SE1/4 NW1/4 and the NE1/4 NW1/4 of Section 9, Township 1 South, Range 1 West of the Ute Meridian, being more particularly described as follows:
Commencing at a Mesa County brass cap at the Northeast corner of said SE1/4 NW1/4, from whence a Mesa County brass cap at the North quarter corner of said Section 9 bears North 00°11'55" East 1317.86 feet;
thence North 89°58'02" West 690.71 feet to a non-tangent point of curvature on the Southerly right of way line of U.S. Highway 6 & 50;
thence in a generally Southeasterly direction by and with said Southerly right of way line and along the arc of a curve deflecting to the right a distance of 128.88 feet, said curve having a central angle of 01°18'09", a radius of 5670.00 feet and the chord of which bears South 65°01'32" East, and a chord distance of 128.88 feet to the point of beginning;
thence departing said Southerly right of way line South 33°36'48" West, bounded Southeasterly by Tract B, a distance of 240.41 feet to a point on the Northerly line of Denver and Rio Grande Western Lease Tract No. 18068;
thence by and with said Northerly line, North 56°23'12" West 1318.07 feet;
thence departing Northerly line, North 00°00'00" East 8.86 feet to a point on the arc of a curve upon the aforementioned Southerly right of way line;
thence continuing in a generally Southeasterly direction by and with said Southerly right of way line and along the arc of a curve deflecting to the left a distance of 545.60 feet, said curve having a central angle of 05°23'23", a radius of 5800.00 feet and the chord of which bears South 64°40'48" East, a chord distance of 545.40 feet to a tangent point;
thence continuing by and with said Southerly right of way line, South 67°22'30" East, 501.80 feet to a point of curvature;
thence along the arc of a curve deflecting to the right, a distance of 145.24 feet, said curve having a central angle of 01°28'13", a radius of 5660.00 feet, a chord bearing of South 66°38'24" East, and a chord distance of 145.24 feet to a point of non-tangency;
thence continuing by and with said Southerly right of way line South 89°58'02" East 24.42 feet to a point of curvature;
thence continuing by and with said Southerly right of way line and along the arc of a non-tangent curve deflecting to the right, a distance of 128.88 feet, said curve having a central angle of 01°18'09", a radius of 5670.00 feet, a chord bearing South 65°01'32" East, and chord distance of 128.88 feet to the point of beginning.

SANITARY UTILITY LINE DIAGRAM

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

~~Note:~~

SANITARY UTILITY LINE DIAGRAM: GRAND JUNCTION
BOTH 2428 HWY 6/50 & 2449 HWY 6/50

