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Alspaugh v. District Court In and For Boulder County

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IN THE SUPREME COURT OF THE STATE OF COLORADO
 No. 27677

FILED IN THE
 SUPREME COURT
 OF THE STATE OF COLORADO

MAY 26 1977

MARK H. ALSPAUGH AND
 JUANITA S. ALSPAUGH,

Petitioners,

vs.

THE DISTRICT COURT IN AND FOR THE COUNTY
 OF BOULDER, HONORABLE WILLIAM D.
 NEIGHBORS, Judge, PAUL MULLINS, d/b/a:
 PAUL MULLINS CONSTRUCTION CO., PAUL
 MULLINS CONSTRUCTION CO., A Colorado
 Corporation,

Respondents:

Flourne Walsh

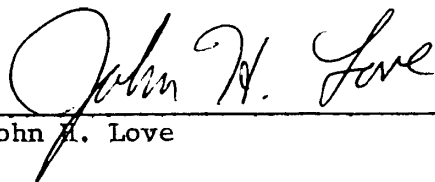
SUPPLEMENTAL
 AFFIDAVIT OF
 PETITIONER'S
 ATTORNEY

I, JOHN H. LOVE, being duly sworn, hereby state and affirm to the best of my knowledge, information, and belief:

This supplemental affidavit, together with materials incorporated herein by reference is a supplement to Appendix K, Part I which was attached to the May 18, 1977 affidavit of the undersigned. Since ten copies are being provided to the Supreme Court, the pages attached hereto are numbered consecutively from the last page of Part I of Appendix K and no additional copies are made and separately numbered following the last page of Part II of Appendix K.

Exhibit K Item No.	Title	"K" Part I Page No.
1 - 45	See Appendix K, Parts I and II incorporated by reference	K-1 thru K-152
46	Minute Order (orally advised such order was entered on 5/24/77)	K-153
47	Envelope Transmitting the 5/24/77 Order (Annotated)	K-155
48	Reporter's Transcript Hearing on Motion to Compel Recordation, Motion for Temporary Injunction and Motion to Compel Discovery	K-156

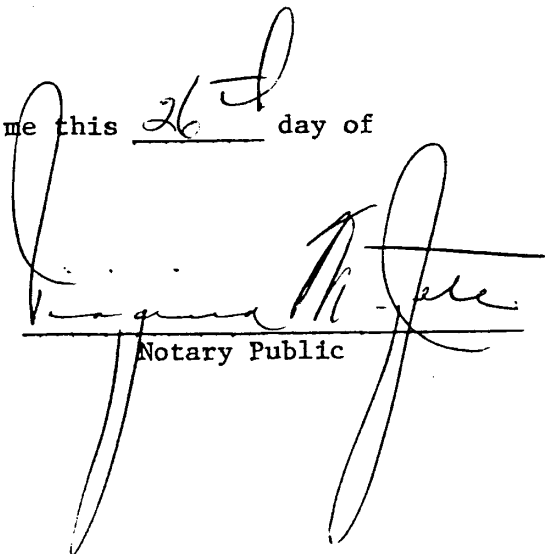
Exhibit K Item No.	Title	"K" Part I Page No.
49	Homeowners' Request For Clarification of Scope of May 19, 1977 Hearing	K-180
50	Amended Notice of Hearing	K-185
51	Second Amended Notice of Hearing	K-186
52	Homeowners' Objection to Second Amended Notice of Hearing and Motion to Vacate Said Notice.	K-187
53	Release - Capitol Federal Savings.	K-190
54	Release - Transamerica Title Insurance Co.	K-192



 John H. Love

STATE OF COLORADO)
) ss.
 COUNTY OF BOULDER)

Subscribed and sworn to before me this 26th day of
 May, 1977, by John H. Love.



 Notary Public

My commission expires:

My Commission expires Nov. 7, 1978

MAY 25 1977

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF BOULDER
STATE OF COLORADO

Action No. 75-0383-1

PAUL MULLINS CONSTRUCTION COMPANY)

VS.)

MINUTE ORDER)

MARK H. AND JUANITA S. ALSPAUGH)

JUDGE: WILLIAM D. NEIGHBORS CLERK: KAY NUGENT REPORTER: BARBARA BAILEY

On May 24, 1977 the following actions were taken in the

above-captioned case and the Clerk is directed to enter these proceedings
in the register of actions:

APPEARANCES: Eldon E. Silverman for Paul Mullins Construction Company
and Paul Mullins; John H. Love and Dennis L. Blewitt for
Mark H. and Juanita S. Alspaugh; David C. Wells and Harry
M. Williams for Capitol Federal Savings and Loan Association

On May 19, 1977, the Court heard oral arguments on the motion
to compel recordation of the certificate of release of mechanic's lien
filed by Capitol Federal Savings and Loan Association, the motion for a
temporary injunction filed by Mark H. and Juanita S. Alspaugh and the
motion to compel discovery and for imposition of sanctions filed by
Paul Mullins Construction Company and Paul Mullins.

The motion of Captiol Federal Savings and Loan Association
to compel recordation of the Clerk's certificate of release of mechanic's
lien is granted. John H. Love is directed to deliver the certified copy of
the certificate of release of mechanic's lien to the Clerk and Recorder of
Boulder County for recording forthwith. The certified copy of the release
has been sent to Mr. Love with a copy of this minute order. The Court
confirmed that the sum of \$20,668.41 was deposited into the registry of
the Court on March 16, 1977. The Clerk of the District Court deposited
the funds with Captiol Federal Savings and Loan Association on March
17, 1977.

The motion for a temporary injunction filed by Mark H. and Juanita S. Alspaugh is denied.

The motion to compel discovery and for imposition of sanctions filed by Paul Mullins Construction Company and Paul Mullins was withdrawn.

Mr. Silverman and Mr. Love entered into the following stipulation:

1. On or before June 1, 1977, Mr. Silverman will mail a copy of the report of Jack Lippoldt to Mr. Love.

2. On or before June 10, 1977 Mr. Silverman and his expert witness on the issue of roofing shall have the opportunity to view the films and photographs in Mr. Love's office. The viewing and examination of the films and photographs shall take place upon 48 hours notice to Mr. Love. It shall take place at 12:00 noon. The date for the examination of the films and photographs shall be on a day when Mr. Alspaugh is present in Boulder, Colorado.

3. Within seven (7) days after the expert witness views the films and photographs, Mr. Silverman shall mail a copy of his report to Mr. Love.

The stipulation is approved by the Court and made the order of the Court.

BY THE COURT:

Alicia S. Neighlon

Judge

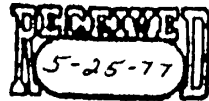
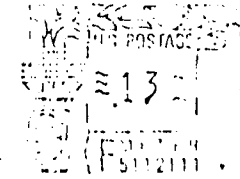
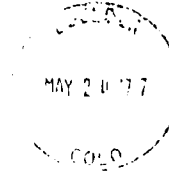
cc: Eldon E. Silverman
John H. Love
Dennis L. Blewitt
David C. Wells
Harry M. Williams

The above and foregoing were placed into the court's files as to the persons or attorneys interested

Date: 5/24/77 By: BJD

OFFICE OF CLERK OF THE DISTRICT COURT

TWENTIETH JUDICIAL DISTRICT
Civil Courts Building - 2025 14th Street
BOULDER, COLORADO 80302



John H. Love, Esq.

250 Arapahoe, Suite 202

Boulder, Colorado 80302

Minute Order only!
Certificate of Release
of Mechanics' Lien
not enclosed.

M. A. Makleyow
So advised by Mrs. Makleyow
Mk

K155

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IN THE DISTRICT COURT
 IN AND FOR THE COUNTY OF BOULDER
 STATE OF COLORADO
 Civil Action No. 75-0383-1

PAUL MULLINS CONSTRUCTION CO.,)	
a Colorado corporation,)	
)	
Plaintiff,)	
)	
vs.)	
)	
MARK H. and JUANITA S. ALSPAUGH,	)	<u>REPORTER'S TRANSCRIPT</u>
)	
Defendants and	)	<u>HEARING ON MOTION TO</u>
Third-Party Plaintiffs,	)	<u>COMPEL RECORDATION,</u>
)	
and	)	<u>MOTION FOR TEMPORARY</u>
	)	<u>INJUNCTION AND MOTION</u>
CAPITOL FEDERAL SAVINGS and	)	<u>TO COMPEL DISCOVERY</u>
GERALD CAPLAN, PUBLIC TRUSTEE)	
FOR THE COUNTY OF BOULDER,)	
STATE OF COLORADO,)	
)	
Defendants,)	
)	
vs.)	
)	
PAUL MULLINS, Individually and d/b/a)	
PAUL MULLINS CONSTRUCTION CO., and)	
TRANSAMERICA TITLE INSURANCE CO., a)	
California corporation,)	
)	
Third-Party Defendants.)	

BE IT REMEMBERED that on May 19, 1977, the same
 being a regular juridical day of the 1976 Term of Court of
 the Twentieth Judicial District of the State of Colorado,
 the above-entitled action came on for hearing on motions
 before the HONORABLE WILLIAM D. NEIGHBORS, District Court

BARBARA J. DAHL
 REGISTERED PROFESSIONAL REPORTER

1 Judge, presiding in Division 1 of the District Court in and
2 for the County of Boulder.

3 APPEARANCES

4
5 For Plaintiff and Third- ELDON SILVERMAN, Silverman
6 Party Defendant Mullins and Reeves, P.C., 821 17th
7 Construction Co. and Street, Suite 500, Denver,
8 Paul Mullins: Colorado 80202.

9 For Defendant and Third- JOHN H. LOVE, Attorney at Law,
10 Party Plaintiffs Mark H. 250 Arapahoe, Suite 202,
11 and Juanita Alspaugh: Boulder, Colorado 80302,
12 and DENNIS BLEWITT, 700
13 Metropolitan Building, Denver,
14 Colorado 80202.

15 For Defendant Capitol DAVID WELLS, Attorney at Law,
16 Federal Savings and 1300 Canyon Boulevard,
17 Defendant Transamerica Boulder, Colorado 80302.
18 Title Insurance Co:

19 For Defendant Capitol HARRY M. WILLIAMS, Attorney
20 Federal Savings: at Law, 50 South Steele Street,
21 Suite 625, Denver, Colorado
22 80202.
23
24
25

P R O C E E D I N G S

10:05 o'clock a.m.

1
2
3 THE COURT: This is Civil Action 75-0383-1, Paul
4 Mullins Construction Company vs. Alspaugh. This case is set
5 this morning for a hearing on the motion to compel recorda-
6 tion of the release of the mechanic's lien, motion for
7 temporary injunction, and motion to compel discovery and
8 sanctions.

9 For the record would counsel please state your
10 names and the parties you represent?

11 MR. SILVERMAN: Eldon E. Silverman on behalf of
12 plaintiff and third-party defendant Mullins.

13 MR. LOVE: John Love on behalf of the Alspaugh's.

14 MR. WELLS: David Wells on behalf of the defendant
15 Capitol Federal Savings.

16 MR. BLEWITT: Dennis Blewitt for the Alspaugh's.

17 MR. WILLIAMS: Harry Williams on behalf of Capitol
18 Federal Savings.

19 THE COURT: Mr. Wells.

20 MR. WELLS: Your Honor, I really felt it necessary
21 to file a motion to get this action straightened out, and
22 perhaps I ought to preface my remarks with an apology, and
23 I'll tell you, I'm awful bent out of shape with the posture
24 this case has taken, and I think it's absurd, so to the extent
25 I get carried away, I apologize in advance.

1 But let me go back a little to another point in
2 time, and that is back to January of this year, and on that
3 date we had a meeting with counsel for the Alspaugh's at
4 which we reached a settlement by which substitute security
5 would be put up under the mechanic's lien statute. They
6 would pay us 'X' number of dollars for the counterclaim we
7 were asserting for attorney's fees, and the matters would
8 be dismissed with prejudice as between Alspaugh's, Capitol
9 Federal, and Transamerica.

10 Then it was about another two months after that
11 this was to be implemented. Well, on March 16th, we met over
12 at Capitol Federal's office, and we signed a stipulation
13 which is before the Court. The money was exchanged. Every-
14 thing was agreed to. There were no problems and counsel for
15 the Alspaugh's agreed to leave from the meeting there and
16 bring the stipulation and motion, the order and the certifi-
17 cate of release over to the Court. From there they were to
18 go ahead and record the release.

19 Eldon filed a motion with reference to this, and he
20 wasn't a party to it, and we had a hearing on that. There
21 was a small change made to the order, but it really doesn't
22 significantly affect anything.

23 Now, in the stipulation, as you'll find in numerous
24 pleadings in this file, there is a statement that this
25 shall have no effect as a waiver of their arbitration rights.

1 The second thing that we said is that it would not prejudice
2 the Alspaugh's in any way by making the substitution of
3 security. The third thing we said is that the money would
4 be paid out in accordance with the orders of the Court.

5 All right; now, the problem seems to come with
6 reference to arbitration. Now, at the time of the hearing
7 under Eldon's motion, the language was modified where it says
8 that the money was going to be paid out to satisfy any judg-
9 ment. All right; well, I think that was really inherent in
10 the other language that we had where it would be paid out in
11 accordance with further orders of the Court. So, the language
12 really didn't change anything to any extent.

13 Now, I got another voluminous pleading, of which
14 I have many, and in this thing which for some reason I hap-
15 pened to read it, and on about the fifth page I saw where
16 they weren't going to record this release of the mechanic's
17 lien, and that prompts this particular motion which I have
18 here right now.

19 Now, they state in that motion, if I understand it
20 correctly, that this has some adverse effect, the revision of
21 the language in the previous order, upon the arbitration
22 issue, and I really don't see where that comes from.

23 They also say that they're going to appeal this
24 thing to the Colorado Supreme Court again for the second
25 time on this jurisdictional issue, going again to arbitration,

1 and in addition to that, now they want to enjoin us from
2 recording that certificate.

3 Well, I don't profess to have the highest I.Q.
4 of perhaps some others in this room, but be that as it may.
5 I've got some basic understandings of how mechanic's liens
6 work, and there is a distinction between the debt and the
7 security.

8 Now, the debt is the contractual claims and any
9 claims arising out of the contract for which Mullins or
10 Alspaugh are fighting it out, and that's fine. But that is
11 in an in personam action, and whether that is going to be
12 determined by the Court or arbitration is an issue that per-
13 tains only to the in personam action on the debt or contract
14 claim.

15 Now, by statute mechanic's liens rights have been
16 created, and that is where my involvement came in on behalf
17 of Capitol. I couldn't have cared less about their contractual
18 disputes because that didn't really affect me. The only
19 thing that affected me was the mechanic's lien and how much
20 of that work asserted by Mullins was lienable against the
21 house, and you could have a claim for the debt with a judg-
22 ment entered on that and have a mechanic's lien with nothing
23 supporting it, and have that dismissed, so they're entirely
24 distinct claims.

25 An arbitration tribunal has no authority to decide

1 the amount of a claim, the validity, or priority, or anything
2 pertaining to the mechanic's lien. That can only be done by
3 a court of law.

4 Now, they're trying to take this thing and mish it
5 all back up again in some context of saying this deprives
6 them of their arbitration rights, but if you look at what we
7 did, we simply took that security aspect, and we said, All
8 right; rather than using the property, as we normally would
9 under a mechanic's lien, as security, we would put up cash
10 to secure that. It's simply a substitution. There has been
11 no release of security. There is still security there for
12 that, but this has nothing to do with arbitration.

13 Now, I have not done it yet because I just got
14 authority and I haven't got the motions done yet, but I'm
15 filing motions under Rule 11 and Rule 107 to make the re-
16 covery of our attorney's fees and costs.

17 When we made the settlement, it was with certain
18 known expenses and everything in place. Now we've had two
19 hearings since then, and these were never taken into account.

20 I submit this whole thing is done in bad faith by
21 counsel for the Alspaugh's, and I certainly believe that --
22 and specifically what makes me think this is the fact that
23 they have indicated, as I stated, that they're going to go
24 back up to the Supreme Court because they have a right to
25 have this jurisdictional issue determined to try to get the

1 matter of arbitration resolved prior to the time of the
2 trial. Now, that trial is coming up in July.

3 But when they were up in the Supreme Court once
4 before, at that time the Supreme Court said, and I quote
5 from the language, "This is not a proper case for this
6 Court to inject itself at this juncture into the ruling on
7 waiver. If, in fact, the District Court erred, the error
8 may be corrected on appeal."

9 Now, they've already taken it up once on the origi-
10 nal proceeding. Now they're thinking of doing it again the
11 second time on the same thing where this language in the
12 identical case where they are involved says, "No way, guys.
13 You've already been up once on the original proceeding, and
14 it's going to be determined on appeal after you go to trial
15 on the merits", and I submit that there is bad faith on this
16 thing.

17 Now, without the release of the mechanic's lien,
18 here is where we stand: There is double security for the
19 mechanic's lien right now. There is both and real property
20 and the funds in the registry of the court.

21 The second thing is that we have the title clouded.
22 All right; the problem that I'm faced with is that the order
23 was entered and it says that Capitol Federal and Transamerica
24 are dismissed with prejudice.

25 Now, on the one hand I'm dismissed out with

1 prejudice in the case, and on the other hand, I still have a
2 cloud against the title on the property for which the deed of
3 trust provides for the indemnification and the right to ap-
4 pear and defend and so on, and there's no way I can do it
5 in that posture.

6 They've reached the settlement agreement with us,
7 and I submit they ought to abide by the settlement agreement
8 and get off of this hocus-pocus about affecting the arbitra-
9 tion rights. It has nothing to do whatsoever with the
10 security. In the stipulation there's no waiver. There's no
11 prejudice that it's going to be paid out per the court order.
12 The only difference is now that it says we're going to apply
13 it to the judgment, and I submit that was inherent before.

14 Now, they also in there say that the big hang-up
15 is the jurisdictional issue and that we pay out in accordance
16 with court order. That seems to be the problem if what I'm
17 making out of their motion makes any sense, but yet in the
18 stipulation they also said that that money would be paid out
19 in accordance with the orders of the court. The court is
20 the key to paying out the money. That's not for the arbitra-
21 tion tribunal. If the Court doesn't pay out the money or
22 order it be paid out, that money is never going to be paid
23 out. If it's paid to the registry of the court, there's
24 nobody else to say how it's going to be paid out. The only
25 question is how is it going to be applied, and I think what

1 they're doing is simply going round and round and round on
2 these particular points and causing nothing but undue expense
3 for all of us.

4 We made a settlement with good faith with these
5 people because we wanted out of this case, and I don't think
6 there's any question about that. I think I made my thoughts
7 pretty known in the past. We are not interested in trying to
8 run up more expense or create more problems. All we want to
9 do is get this thing wrapped up.

10 That certificate of release can be recorded. They
11 state that they were going to record it, and now they don't
12 want to. All we want is that that be done so we can close
13 it up and leave them with their particular problems.

14 He says there's no authority for my motion to
15 compel the recordation of this thing. It seems a little
16 strange to me making that statement after I've already seen
17 these motions in limine or undifferentiated motions. If I
18 don't have authority for this, I don't know where he got
19 authority for his motions. I cite that it is under the Rules
20 of Procedure.

21 As a consequence, I think that this whole thing
22 ought to be laid to rest. We ought to have the certificate
23 of release recorded. Thank you.

24 THE COURT: Mr. Love.

25 MR. LOVE: Your Honor, counsel: I think that there

1 has been some misapprehension on the part of counsel for
2 Capitol and Transamerica with regard to the settlement and
3 to the facts upon the balance of the case which includes the
4 present issue of the conditions under which the signed certifi-
5 cate of release of mechanic's lien would be recorded.

6 My general recollection concerning the discussions
7 we had with representatives of those parties early this year
8 was that, in effect, we had reached an agreement in princi-
9 ple, but that not all of the terms of the agreement had been
10 reduced to writing.

11 In fact, there was an exchange of I think no less
12 than three letters. First I received a letter from Mr.
13 Williams, and I replied with a proposal which in effect I
14 recall proposing that there be included in part of the settle-
15 ment language to the effect which would provide a further
16 right of rescission to the compromise and settlement agreement
17 as a safety valve over and above the Federal three-day right
18 of rescission to provide for a contingency that possibly the
19 Court might not approve the documents that would be finally
20 tendered to the Court for approval and result in any record-
21 ing.

22 Now, as I recall, I think a letter from Mr. Wells
23 was rejected out of hand. He proposed a different approach,
24 essentially proposing the basic document, the basic stipula-
25 tion and motion for dismissal, as I recall, that was filed

1 with the Court on March the 16th, 1977, in which there was no
2 such safety valve language included.

3 And as I understood then, the last meeting, I think,
4 was that date on March 16th, 1977, that Mr. Wells indicated
5 that he had contacted you, sir, and apparently you at that
6 time had seen no problems with the documents that would be
7 then executed and filed with the Court, and so the documents
8 were executed and the money was tendered to the Court, all
9 of which were filed of record on March the 16th, 1977.

10 So, the language in the stipulation to me, sir,
11 very clearly called out that we wanted to protect and preserve
12 our right to arbitrate the dispute, which certainly involves
13 the underlying jurisdictional issue which has caused so much
14 difficulty in the past months, and I think that in order to
15 fully represent my clients, that after I protected their
16 rights there, Mr. Silverman had a right to object and to have
17 a hearing.

18 But notwithstanding that, I still believe that the
19 ultimate modification of the order which was signed on March
20 16th, 1977, I think it was signed, the amended order with the
21 amended language for the care and custody of the funds was
22 signed in your April 7th, 1977 ruling, but because of this
23 it seemed to me that we could not very well consent to its
24 being recorded with the modified language written there.
25 There was no such preservation of our jurisdictional rights,

1 and which was contrary to the express language which Mr.
2 Williams and Mr. Wells signed in the March 16th, 1977 language,
3 so it seems to me that we acted very properly based on the
4 documents which were filed with the Court that were ultimate-
5 ly signed in detail on March 16th, 1977.

6 I think we're clearly acting in good faith. I
7 think there's a serious question whether Mr. Wells is acting
8 in good faith right now with regard to the statements that he
9 has made, together with his highly prejudicial statements
10 that he made at our last hearing.

11 Fundamentally, Your Honor, it seems to me, I don't
12 see any safe, clear-cut procedural alternative to resolving
13 this issue without first getting a final appellate decision
14 on the jurisdictional question which would have a bearing
15 here, and I think to go ahead for anybody to record a certifi-
16 cate of release before that is resolved would be the wrong
17 thing to do.

18 THE COURT: Mr. Love, why don't you want to record
19 the certificate of release?

20 MR. LOVE: Well, because -- there's two reasons,
21 Your Honor. First is that there is no language in there
22 which --

23 THE COURT: In what?

24 MR. LOVE: -- preserving the right to arbitration.

25 THE COURT: In what?

1 MR. LOVE: In the substituted language.

2 THE COURT: There isn't in the language of the
3 original order that I signed preserving that. That's in
4 your stipulation.

5 MR. LOVE: No. I believe, as I recall, there is
6 some language in your March 16th, 1977 order that was compat-
7 ible with the language in the stipulation, and this proposed
8 order that was tendered to the Court with the knowledge of
9 Capitol and Transamerica contained a similar type of language.
10 I think we've detailed this relationship in detail in our
11 motion to alter and amend the judgment which has subsequently
12 been filed.

13 Now, if I may proceed.

14 THE COURT: Well, I still don't understand why
15 you don't want to record the release.

16 MR. LOVE: Well, because if we consented to record-
17 ing the release whereby the money can be paid out with any
18 order of Court without any protection for jurisdictional
19 language, I mean we don't want to be in the position of having
20 to have the money paid out by the Court to the plaintiff and
21 lose that money and then ultimately prevail in a right to
22 arbitrate and then have a terrific time trying to collect
23 upon it.

24 And also the language is so broad, Your Honor.
25 Respectfully, it seems to me that the money for the substi-

1 tuted security which only involves the lien which is one of
2 their complaints can be applied to Count 2, which is a con-
3 tract claim, and Count 3, which is a quantum meruit claim.

4 So, in light of all of this, it seems to me that
5 essentially that we were in a position -- I think Mr. Blewitt
6 finally after our settlement meeting on March the 16th, as I
7 understand it, had agreed to bring the documents over to the
8 Court. I'll let him speak to those things which he did, but
9 I don't think that we could guarantee to Capitol or Trans-
10 america that the Court would approve it or that the plaintiff
11 would not object, and so with the posture of it, since there
12 was no safety valve, I don't see any sound procedural alterna-
13 tive but to resolve the question on appeal.

14 Now, with regard to appeal, yesterday afternoon we
15 lodged an original proceeding with the Supreme Court which
16 has been filed, I think, as Case No. 27677, which is another
17 petition for a writ of prohibition.

18 Now, there's a couple things which I would like to
19 mention here in very broad terms. I talked with one of the
20 ladies at the clerk's office of the Supreme Court. She would
21 like me to deliver one or two of those copies of those docu-
22 ments to the Court here this morning since we did have a
23 hearing this morning, and she had indicated to me that ap-
24 parently they would go ahead and take care of it. I have no
25 idea right now whether they will act on the petition or how

1 long it will take them to consider the merits of it, but in
2 light of what Mr. Wells has indicated here on a couple of
3 points, is that first of all, and I would presume here that
4 if the Court does act that you will receive copies of the
5 brief shortly, and if you don't and you would like to have a
6 copy, we will certainly make it available to you if that
7 doesn't come down, and we would like for you to take judicial
8 notice of that.

9 But there's a conceptual problem here, and the
10 relationship, I guess, really kind of clearly emerged in the
11 final stages of preparing this unusual petition, and I think
12 it hinges, sir, upon the significance of those critical
13 deposition admissions which Paul Mullins made last year as
14 to the full scope of the arbitration provisions.

15 THE COURT: Mr. Love, I want you to confine your
16 remarks to the issue of the motion of Capitol Federal to
17 compel recordation of the lien release.

18 MR. LOVE: Well, Your Honor -- well, Your Honor, to
19 me this involves that, sir.

20 THE COURT: Well, I don't think it does, and I
21 don't want to hear any more about arbitration. I've ruled
22 on that. The Supreme Court has said they will consider the
23 matter on appeal, and that is that. I want to hear no more
24 about arbitration.

25 THE COURT: Very, very well, Your Honor. I'll

1 lodge an objection for the record and make an offer of proof
2 and drop that right there.

3 I guess that in view of that there's no point in me
4 saying anything further.

5 Mr. Blewitt, do you want to make any comments with
6 regard to the tendering of these documents to the Court on
7 March the 16th?

8 MR. BLEWITT: All I can say is, Your Honor, that
9 you and I had a conversation when I brought them over here,
10 and you're pretty much aware of what happened. They were
11 brought over and I offered to record them, and we saw Mr. --
12 we saw the court clerk, and I left. But it was the intent
13 at that time to record them, and I think I expressed this to
14 you, and at that time I think there's evidence of good faith
15 on the part of the Alspaugh's. I hand-delivered them over
16 here, and I think the Court is aware of what I'm trying to
17 say.

18 THE COURT: Mr. Silverman, do you have any comments?

19 MR. SILVERMAN: Yes. My comment, of course, is
20 that we wouldn't mind having double security, but forgetting
21 that for a moment, I just want to emphasize that any agree-
22 ment that might have been in a stipulation that I or my client
23 was not a part of is not binding on us. We never agreed
24 that anything is or is not a waiver of arbitration. They
25 may put it into some stipulation, but it's certainly not

1 binding on us.

2 I think that perhaps this is the reason that I
3 initially raised the question about the language of the Court
4 because it did seem to me to raise a question about arbitra-
5 tion again, and the Court, I think, cleared it up in the
6 revision.

7 We, of course, again emphasize that the posture of
8 the case, as we see it, is already set in terms of this ar-
9 bitration issue. The action about arbitration is over. The
10 Court has ruled on it, as the Court stated, and I don't think
11 that it's within the power of Capitol Federal or Transamerica
12 or the Alspaugh's to suddenly resurrect the issue, and I just
13 want to emphasize here, and now that I have, it has been
14 waived, and if I can argue on appeal that this stipulation
15 that they entered into substituting security was an addition-
16 al waiver, then I'm going to do it because I have previously
17 made my objections known.

18 Number two, I was during the hearing asking Mr.
19 Williams if he had proof positive that the \$20,000.00 was
20 actually in the Court. I just raised that because of the
21 peculiarities of this case. I want to be assured. I've
22 always assumed that the \$20,000.00 is physically with the
23 Court, and may be at this time physically at Capitol Federal
24 in a savings deposit book, but again because of the twists
25 and turns of fate, I would just like to ask for an

1 acknowledgement that, in fact, \$20,000.00 is physically
2 within the control of the Court.

3 If for some reason it is not, then of course we
4 don't want the release to take place. So, I would ask for
5 that clarification.

6 Finally, I can speak gladly to the fact that my
7 motion on discovery, I'd like to withdraw it because we have
8 reached an agreement as to how to handle the matters.

9 I would like to state at this time the stipulation,
10 and if it's approved by the Court, to make it an order of the
11 Court.

12 First of all, by tomorrow I will put in the mail
13 the report of our expert witness who is a meteorologist. By
14 June 1st, 1977, I will put into the mail a report of our ex-
15 pert witness, Mr. Jack Lippoldt, who viewed the house two
16 days ago. By June 10th, 1977, I will have the opportunity
17 to have the roofing man look at the films and photographs in
18 Mr. Love's office. This is up to and including June 10th.

19 Now, this shall take place upon forty-eight hours
20 notice to Mr. Love. It shall take place at high noon, and
21 it is subject to one other proviso, and that is that Mr.
22 Alspaugh be in town that day.

23 Now, again, anytime between now and June 10th that
24 I give him forty-eight hours notice, I can see the films as
25 long as Mr. Alspaugh is in town, and I am assured that he

1 will be in town for the majority of the time.

2 MR. LOVE: I believe that's right, Mr. Silverman,
3 to my knowledge.

4 MR. SILVERMAN: All right; so --

5 MR. LOVE: He will be out of town a couple of days.

6 MR. SILVERMAN: I hope this is a fail-safe mechanism
7 that will allow me to see the films. That, I believe, states
8 our stipulation. Is that correct, counsel?

9 MR. LOVE: Did you mention that your report of your
10 person who would be viewing the films would be done on June
11 the 17th?

12 MR. SILVERMAN: Oh, that is very good, John. I
13 understand that within seven days after my expert witness or
14 proposed expert witness views the films, we'll get them a
15 written report, and that as an additional item, and since
16 it is a stipulation, I would appreciate it being the order
17 of the Court.

18 THE COURT: Is that your understanding of the stipu-
19 lation, Mr. Love?

20 MR. LOVE: Yes, that's my understanding, sir.

21 THE COURT: The stipulation is approved and made
22 the order of the Court.

23 Mr. Wells, do you have any further comments?

24 MR. WELLS: There certainly was no comment on his
25 part that warranted response on mine, and I have no further

1 comments.

2 THE COURT: The motion to compel recordation of
3 the certificate of lien release executed by the Clerk of the
4 District Court is granted. There's no prejudice to the
5 Mullins (sic) by the recordation to the extent that they have
6 entered into the stipulation. They have reserved their
7 rights to have the determination of whether there was a
8 waiver of arbitration reviewed by the Supreme Court, as the
9 Supreme Court indicated in its ruling on their petition for
10 writ of prohibition.

11 MR. WELLS: Your Honor, with reference to a point
12 of clarification, who has the original certificate of release
13 right now?

14 THE COURT: The original is in the Court file.
15 A certified copy was prepared and given to Mr. Blewitt, as I
16 recall.

17 MR. LOVE: No, I don't think that's --

18 THE COURT: Or was it mailed to you?

19 MR. LOVE: I think it was ultimately mailed to me
20 by someone, and then we had returned that, Your Honor, and
21 refiled it with the Court, I think, when we filed the motion
22 to alter and amend, so that copy is with the Court.

23 THE COURT: All right; I will locate it and find
24 out where it is and also verify that the money has been paid
25 into the Registry of the Court.

1 MR. WELLS: Who is instructed to record this?

2 THE COURT: Mr. Love will be instructed to record
3 it.

4 MR. WELLS: Fine. That will be forthwith as soon
5 as you make these determinations?

6 THE COURT: Yes. The motion for a preliminary
7 injunction is denied.

8 Is there anything further?

9 MR. LOVE: I don't think so, other than I want to
10 object for the record, Your Honor. I want to give this some
11 thought.

12 THE COURT: The trial will be held during the week
13 of July 10th. Is that when it's scheduled?

14 MR. SILVERMAN: I think it's the week of July 11th.
15 Your Honor, you have previously ordered the method under
16 which the pre-trial order will take place, and I believe it's
17 the traditional method of the plaintiff preparing it and
18 sending it to defendant and there will be comments.

19 Is there a necessity at this time, or is it just
20 something we should wait on whether we need a formal confer-
21 ence a week or two before the trial for some preliminary
22 rulings, because I'm sure by the history of the case that we
23 won't reach, at least among counsel, an agreement as to the
24 pre-trial order.

25 THE COURT: I think if I'm not mistaken the

1 pre-trial minutes indicated you should just file a proposed
2 pre-trial order with the Court. I will sign it and give Mr.
3 Love an opportunity to file written objections.

4 MR. SILVERMAN: All right.

5 THE COURT: We'll be in recess.

6 (Whereupon, the Court was in recess at 10:37
7 o'clock a.m., May 19, 1977.)

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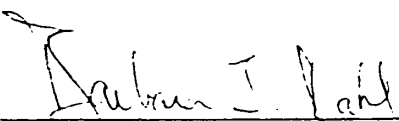
REPORTER'S CERTIFICATE

STATE OF COLORADO)
)ss
COUNTY OF BOULDER)

I, Barbara J. Dahl, do hereby certify that I am a Certified Shorthand Reporter and Official Court Reporter for the Twentieth Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled action.

I do hereby further certify that I caused my stenotypy notes to be reduced to typewritten form, and that the foregoing twenty-three pages constitute a true and correct transcript of all proceedings had.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, 1977.



Barbara J. Dahl

IN THE DISTRICT COURT IN AND
 FOR THE COUNTY OF BOULDER
 STATE OF COLORADO

Civil Action No. 75-0383-1

PAUL MULLINS CONSTRUCTION CO.,)	
A Colorado Corporation,)	
)	
Plaintiff,)	
	)	HOMEOWNERS' REQUEST FOR
vs.	)	CLARIFICATION OF SCOPE
)	
MARK H. AND JUANITA S. ALSPAUGH,)	
	)	OF
Defendants and)	
Third-Party	)	MAY 19, 1977 HEARING
Plaintiffs,)	
)	
vs.)	
)	
PAUL MULLINS, Individually and a/b/a)	
PAUL MULLINS CONSTRUCTION CO.)	
)	
Third-Party)	
Defendant)	

COME NOW, Mark H. and Juanita S. Alspaugh, by and through their attorneys, John H. Love and Dennis L. Blewitt, and requests the Court to clarify the May 4, 1977 "NOTICE OF HEARING":

On May 3, 1977, by the direction of the Court for a hearing in May, 1977, counsel for the parties agreed to set down for hearing the following two motions:

- (1) Capitol Federal Saving's "MOTION TO COMPEL RECORDATION OF CERTIFICATE OF RELEASE OF MECHANICS' LIEN," and
- (2) Alspaugh's "HOMEOWNERS' MOTION FOR TEMPORARY INJUNCTION TO PRECLUDE THE RECORDATION OF THE CERTIFICATE OF THE RELEASE OF MECHANICS' LIEN."

at 10:00 a.m. on Thursday, May 19, 1977, for one-half (½) hour. However, the confirming notice of hearing dated May 4, 1977, indicates that "Pending Motions" will be heard.

Because there are other motions which have not yet been ruled upon, and to avoid any possible mis-understanding by any of the parties as to the scope of the forthcoming hearing, the undersigned called Kay Nugent, Division Clerk, on May 5, 1977 for clarification and learned that she felt

that it was clearly understood that only the two motions noted in the above paragraph were to be heard. A clarification of the said notice was requested by the undersigned, who understood that she would discuss the matter with Judge William D. Neighbors. Since no communication has been received, this request is herein confirmed.

It is noted that since the Court (i) in its discretion as noted on the December 7, 1976 "Minutes of Pre-Trial Conference," has not requested oral argument on the motion(s) for summary judgment and (ii) since the Court has recently denied an evidentiary hearing and a related jurisdictional ruling as is indicated by the Court's April 7, 1977 rulings, the above setting of the two motions for recordation and for a temporary injunction for the one-half hour period were made upon an assumption that any other motions would not be the subject of such a hearing. In the event that such understanding is not correct, I request that I be notified immediately.

The undersigned has just received a copy of Mr. Silverman's "MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS," which requests that such motion also be heard on May 19, 1977. The undersigned objects because he disagrees both with several specific statements and also with the general context of Mr. Silverman's motion, which will be the subject of a more specific response under the Rules of Civil Procedure to which the Homeowners are entitled. However, from the standpoint of the scheduled hearing date, my preliminary reaction is as follows:

- (a) Five (5) months elapsed since the pre-trial conference. On May 2, 1977, and a few days before expert witness reports are due on May 11, 1977 according to Mr. Silverman's calculation, he wanted almost immediate access to the premises.
- (b) Notwithstanding the time problem of Mr. Silverman, both Mr. and Mrs. Alspaugh have reasonably attempted to cooperate with Mr. Silverman. Before any definite final agreement was verbally reached for an inspection and a

viewing, in behalf of the Alspaugh's and based upon several client consultations while I understood Mr. Silverman was checking out possible times, I offered in their behalf a number of alternative times during evenings and weekends. Mr. Silverman refused to consider such alternatives, and he had made a comment that "lawyers generally don't work on Saturdays and Sundays." Yet, according to my time records, Mr. Silverman and a few other persons had previously appeared for an inspection of the premises on Saturday, January 25, 1975, to inspect the house and the roof!

- (c) The minutes of the pre-trial conference do not require that the inspection and viewing be in normal business hours. For the Court's information, I am summarizing the following times which I understand Mr. and Mrs. Alspaugh would make available through May 22, 1977, for such an inspection and viewing and which I would temporarily hold open my schedule with a request that the Court indicate to Mr. Silverman that he make arrangements at one of those times and that he provide me with forty-eight hours notice of the names of the persons, with whom each person is associated, and the persons which Mr. Silverman will offer as expert witnesses. It would seem that this scheduling problem could be worked out without a formal hearing.

Monday,	7:00 - 9:00 p.m.
Tuesday,	5:30 - 8:00 p.m.
Wednesday,	5:15 - 6:45 p.m.
Thursday,	5:15 - 8:30 p.m.
Saturday,	2:00 - 5:00 p.m.
Sunday,	2:00 - 5:00 p.m.

One purpose of such request is to assure that it will be possible for Mr. and Mrs. Alspaugh to be assured that the persons coming into the residence can be personally escorted while in and around their residence.

- (d) If Mr. Silverman does not wish to reconsider the times of inspection, then in behalf of the Alspaugh's, I reserve their procedural rights under the Rules of Civil Procedure.

I also definitely wish to be present at the time of inspection and viewing. It should also be recalled that, without the necessity of going to Court, that Mr. Alspaugh has previously shown the film and exhibited the photographs to Mr. Mullins and Mr. Silverman. In addition to making photographs available for viewing, I also recall that an offer was made to Mr. Silverman that they could have copies provided that they paid for the cost.

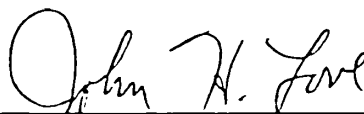
- (e) In addition, I understood that I had reached a verbal agreement with Mr. Silverman that the date for the submission of expert witness reports would be extended by counsel mutually from the sixty (60) day period prior to trial, as is indicated on page two of the December 7, 1976 pre-trial minutes to the Friday preceding the sixth week prior to any scheduled trial date and the undersigned has relied upon such verbal agreement. This extension should be ample to enable Mr. Silverman to have such viewing and inspection as may be required to complete his expert witness reports which he apparently feels are dependent thereon. I understood that such language was to be incorporated into either a letter or a stipulation after a final agreement was reached on a time of inspection. In the event that the Court wishes to formally approve such extension for expert witness reports, a stipulation can be prepared or the Court, as far as I am concerned, may so order such an extension of time. I note that Mr. Silverman makes no mention of such extension by agreement in his motion.

In the event the Court would wish to have a meeting with Mr. Silverman and I at the Court's convenience to arrange a definite time, I

would be willing to meet at short notice. I wish to assure the Court that I do not intend to advise my clients to refuse to permit discovery as may be ordered by the Court, subject to any application for protective orders as may be justified under particular circumstances.

A confirming notice clarifying the scope of the hearing is requested within several days.

Respectfully submitted,



John H. Love

Dated: May 9, 1977

CERTIFICATE OF MAILING

The undersigned hereby certifies that she did mail a true and correct copy of the foregoing Homeowners' Request for Clarification of Scope of May 19, 1977 Hearing to Mr. Eldon Silverman, Silverman and Reeves, P.C., 700 Denver Club Bldg., Denver, Colorado 80202, and as a courtesy to:

Mr. David Wells
1300 Canyon
Boulder, Colorado 80302

Mr. Harry Williams
Williams and Karr
625 Steele Park
50 S. Steele St. Suite 625
Denver, Colorado 80209

and also as a courtesy to:

Mr. Richard Gebhardt
Public Trustee
1906 13th Street
Boulder, Colorado 80302

MAY 10 1977

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF BOULDER
STATE OF COLORADO

Civil Action No. 75-0383-1

MULLINS CONSTRUCTION COMPANY)

VS.)

AMENDED)

NOTICE OF HEARING)

MARK H. AND JUANITA S. ALSPAUGH)

IN ACCORDANCE WITH THE ORDER OF COURT, you are hereby notified as follows:

This matter is set for hearing on: MOTION TO COMPEL RECORDATION OF
CERTIFICATE OF RELEASE OF MECHANIC'S LIEN AND MOTION FOR TEMPORARY INJUNCTION
(1/2 Hour Allotted)

Time: 10:00 a.m. Date: May 19, 1977

Place: Division 1, District Court
2025 14th Street
Boulder, Colorado

Witnessed this 9th day of May, 1977.

BY ORDER OF THE COURT:

Kay Nugent
Division Clerk

cc: David C. Wells
Eldon E. Silverman
Harry M. Williams
Dennis L. Blewitt
John H. Love

The above and foregoing was placed
in the file and copies were made
for the purpose of entering judgment

Date: 5/19/77 By: K.N.

MAY 16 1977

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF BOULDER
STATE OF COLORADO

Civil Action No. 75-0383-1

PAUL MULLINS CONSTRUCTION COMPANY)

VS.)

MARK H. AND JUANITA S. ALSPAUGH)

SECOND AMENDED
NOTICE OF HEARING

IN PURSUANT TO ORDER OF COURT, you are hereby notified as follows:

This matter is set for hearing on: Motion to Compel Recordation of Certificate of Release of Mechanic's Lien, Motion for Temporary Injunction and Motion to Compel Discovery and Sanctions (1/2 Hour Allotted)

Time: 10:00 a.m. Date: May 19, 1977

Place: Division 1, District Court
2025 14th Street
Boulder, Colorado

Dated this 12th day of May, 1977.

BY ORDER OF THE COURT:

Kay Nugent
Division Clerk

cc: David C. Wells
Eldon E. Silverman
Harry M. Williams
Dennis L. Blewitt
John H. Love

Date: 5/12/77 by: K.N.

IN THE DISTRICT COURT
 IN AND FOR THE COUNTY OF BOULDER
 STATE OF COLORADO
 Civil Action No. 75-0383-1

PAUL MULLINS CONSTRUCTION CO.)	
A Colorado Corporation,)	
)	
Plaintiff,	)	HOMEOWNERS' OBJECTION
)	
vs.	)	TO THE "SECOND AMENDED
)	
MARK H. AND JUANITA S. ALSPAUGH,	)	NOTICE OF HEARING"
)	
Defendants and	)	AND
Third-Party)	
Plaintiffs	)	MOTION TO VACATE SAID
)	
vs.	)	NOTICE
PAUL MULLINS, Individually and)	
d/b/a PAUL MULLINS CONSTRUCTION CO.)	
)	
Third-Party)	
Defendant)	

THE HOMEOWNERS object to the second amended notice of hearing as follows:

(1) They incorporated by reference their preliminary response in the "Homeowners' Request for Clarification of Scope of May 19, 1977 Hearing," with regard to Mr. Silverman's motion to compel discovery and for sanctions.

(2) On May 12, 1977, I received a telephone call from Mr. Silverman in which he indicated that he would endeavor to make arrangements for the requested inspection and viewing within the times proposed by the Homeowners which was set forth in the above referenced clarification of the scope of the hearing, and I have agreed to hold such times open as stated therein. As of the present time, I have not received any further oral or written communications from Mr. Silverman.

(3) It was orally agreed that when a time was mutually agreed upon, that a new time would be agreed upon for submittal of expert witness statements.

(4) The Homeowners reserve a right to move the Court for protective orders and to be entitled to all rights under the C.R.C.P., including an adequate time to respond under the Rules of Civil Procedure. However, since a Petition for an Original Proceeding is being finalized, they are filing this objection to clearly reflect for the record that:

(a) The Homeowners are again renewing their assertion that this Court lacks jurisdiction over the subject matter in Civil Action No. 75-0383-1 and that, therefore, this Court lacks jurisdiction to award the sums requested to Plaintiff and Third-Party Defendant, Paul Mullins, which are without merit in any case.

(b) The Homeowners are again renewing their request for a one-day evidentiary hearing on the jurisdictional and related arbitration issues, and further requests leave of Court to serve a subpoena duces tecum upon Paul Mullins for previously designated documentation relating to such issues.

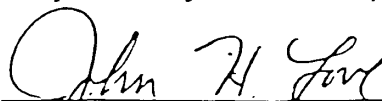
(c) Such hearing for the Contractor's motion is premature, especially in light of the May 12, 1977 telephone conversation between counsel and in view of the time permitted for moving for protective orders, if necessary.

(d) The time scheduled on May 19, 1977 and the short notice of the scheduling of the motion is inadequate for a meaningful opportunity to be heard, previously briefed before the Court, in connection with the motion filed in behalf of Plaintiff and Third-Party Defendant, Paul Mullins.

WHEREFORE, the Homeowners request that the Court vacate the Second Amended Notice of Hearing and reinstate the Amended Notice of Hearing.

Dated: May 16, 1977

Respectfully submitted,



John H. Love
Attorney for the Alspaugh's
250 Arapahoe, Suite 202
Boulder, Colorado 80302
(303) 449-6762

CERTIFICATE OF MAILING

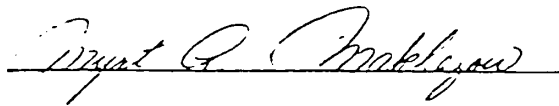
The undersigned hereby certifies that she did mail a true and correct copy of the foregoing Homeowners' Objection to the "Second Amended Notice of Hearing" and Motion to Vacate Said Notice to Mr. Eldon Silverman, Silverman and Reeves, P.C., 700 Denver Club Bldg., Denver, Colorado, 80202, and as a courtesy to:

Mr. David Wells
1300 Canyon
Boulder, Colorado 80302

Mr. Harry Williams
Williams and Karr
625 Steele Park
50 S. Steele St. Suite 625
Denver, Colorado 80209

and also as a courtesy to:

Mr. Richard Gebhardt
Public Trustee
1906. 13th Street
Boulder, Colorado 80302



IN THE DISTRICT COURT

IN AND FOR THE COUNTY OF BOULDER

STATE OF COLORADO

Civil Action No. 75-0383-1

PAUL MULLINS CONSTRUCTION CO.,)
 A Colorado Corporation,)
)
 Plaintiff,)
)
 vs.)
)
 MARK H. AND JUANITA S. ALSPAUGH,)
)
 Defendants and Third-Party)
 Plaintiffs, et al.)

RELEASE

WHEREAS, in consideration of a compromise and settlement agreement between Mark H. and Juanita S. Alspaugh, Capitol Federal Savings and Loan Association of Denver, hereinafter referred to as Capitol, and Transamerica Title Insurance Co., hereinafter referred to as Transamerica, whereby Capitol has agreed to provide an additional advance to the Alspaughs to enable a bond to be filed with the District Court in and for the County of Boulder, State of Colorado, based upon the respective promises and obligations of each of the parties as set forth in the "Stipulation and Motion to Discharge the Mechanics' Lien" and with the associated closing documents also included as a part of the compromise and settlement agreement; and

WHEREAS, in consideration of a release by Transamerica for the benefit of Mark H. and Juanita S. Alspaugh and John H. Love; and

WHEREAS, in consideration of a release by Mark H. and Juanita S. Alspaugh for the benefit of Capitol and Transamerica; and

WHEREAS, Capitol represents that it either has knowledge or has had the opportunity to be adequately informed about the respective claims between the parties in the proceedings before the Court in this Civil Action No. 75-0383-1:

NOW THEREFORE, it is hereby agreed as follows:

(1) Capitol and its successors, assigns, attorneys, employees, officers, directors and representatives and each and all of them do hereby release, acquit, and forever discharge Defendants and Third-Party Plaintiffs Mark H. and Juanita S. Alspaugh and their devisees, heirs, personal representatives, executors, administrators, and attorneys from any and all debts, claims, liabilities, demands and causes of action of every kind, nature and description in this Civil Action or in related matters therein alleged;

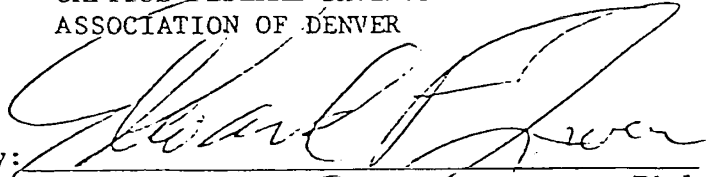
(2) Capitol agrees to waive any prior restrictions against the utilization of proceeds obtained on or about June 25, 1976 from Sate Farm Fire and Casualty Co.

and hereby releases the Alspaugh from any liability or any restriction of any nature whatsoever in connection with the application of such proceeds; and

(3) Capitol acknowledges that the Alspaugh have fully performed all of the terms, provisions, obligations, agreements and covenants of the original promissory note and deed of trust except for the repayment of the principal balance (loan number 23-37113-0) together with the payment of the principal balance also due as a result of the additional advance under the deed of trust.

DATED THIS 11TH DAY OF MARCH, 1977.

CAPITOL FEDERAL SAVINGS AND LOAN
ASSOCIATION OF DENVER

By: 
Authorized Representative Title
VICE PRESIDENT

KNOW ALL MEN BY THESE PRESENTS, that Transamerica Title Insurance Company, a California corporation, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged to it in hand paid, has remised, released and forever discharged and by these presents does, for itself, its successors and assigns, remise, release and forever discharge Mark H. Alspaugh, Juanita S. Alspaugh and their attorney John H. Love, their heirs, executors, administrators, personal representatives, successors and assigns of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or equity, which against Mark H. Alspaugh, Juanita S. Alspaugh and John H. Love we ever had, now have, or which our heirs, executors, administrators, personal representatives, successors and assigns hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing relating to Civil Action No. 75-0383-1 in the District Court in Boulder County, Colorado, from the beginning of the world to the date of the date of these presents.

IN WITNESS WHEREOF, we hereunto set our hand and seal this 15th day of March, 1977.

TRANSAMERICA TITLE INSURANCE CO.

By Jerry G. Percy
Jerry G. Percy
Counsel, Boulder County

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 15th day of March, 1977, by Jerry G. Percy as Counsel, Boulder County, of Transamerica Title Insurance Co..

WITNESS my hand and official seal.
My commission expires: July 24, 1979

Margaret C. Sinclair
Notary Public