

October 19, 1999

**Mr. Gregory Craig**  
Williams & Connolly  
725 12<sup>th</sup> Street Northwest  
Washington, DC 20005-5901

**CONFIDENTIAL**

**Affidavit (Rough Draft)**

This is the sworn affidavit of Harmon L. Wilfred, age 50, with respect to the account of my personal knowledge and involvement in the events and the investigation surrounding the embezzlement of funds from the El Paso County Pension Fund in Colorado. These events spanned a time period from June of 1993 through the Spring of 1996 (**see Pension Fund Investigation / Time Line and Events attached as exhibit A**):

In June of 1993, I was employed by Alliance Partners Inc., d/b/a ReMax Commercial Properties Inc., to provide commercial property sales and leasing services, to list properties managed and/or owned by In-house entities, and to provide general brokerage services on behalf of ReMax. The principals who owned the ReMax franchise also owned and operated the following entities in-house for the purposes of providing services and retaining ownership of properties:

Paragon Management Co. Inc., d/b/a Paragon Management Company, Paragon Properties, and Colorado Commercial Contractors, Inc. The three primary Principals and officers of these entities were Douglas A. Dragoo, Russell Roehrkasse, and Edwin Hume.

In the summer of 1994, I was assigned a position to list, lease, and sell an El Paso County Pension Fund Property called *The Landing Shopping Center* located at the Northeast corner of Fountain Blvd. and Jet Wing Drive. I was also given the responsibility of providing construction management services for the construction of all tenant finish as leases were signed on this property as well as on several other Pension Fund properties in their inventory. The Principals listed above represented to me that they were in partnership as co-owners of all Pension Fund properties under their contractual care for services, with full authority to make ownership decisions.

In August of 1994, while in the process of submitting construction draws to the Pension Fund for the payment of sub-contractors for work completed on tenant finish at the

Landing, I discovered that the latest construction draw funds belonging to the Pension Fund were missing from the operating account in the amount of \$50,000. This discovery was made as a result of cheques to sub-contractors that had bounced. When I questioned the Principals of the construction company, I was told to cover the expenses of the current job by advance funding from the next two jobs. When I inquired about the \$50,000 received from the Pension Fund assigned to this job, I was told to "mind my own business". As this practice was at least financially careless, if not unethical, I proceeded to follow my employer's instructions only under protest. From that point on, cheques presented from subsequent draws on future projects to suppliers and contractors continued to bounce. This occurred through the next three draws totalling an additional \$45,000. Upon further investigation of the books and records involving all the transactions I was authorised to access, I discovered that money was being removed from these accounts at specific intervals and replaced at later dates. I also discovered that commissions and fees billed to the Fund were as much as double, triple, and in some cases quadruple the amounts being represented to me and to the general public.

In the latter part of August, 1994, I made a private appointment with Mr. Michael Witty, the Pension Fund Administrator, accompanied by a tenant of The Landing, Pastor John Woods, whose tenant finish construction schedule was being affected adversely by the bounced cheques to his suppliers and contractors. Mr. Witty told us both essentially to mind our own business. During the meeting, Pastor Woods threatened to go to the District Attorney, upon which Mr. Witty retorted, "Go ahead, I have close friends in the DA's office. They will do nothing".

On September 7, 1994, Pastor Woods and I presented the entire situation with files and documented evidence to the El Paso County District Attorney's Office. This interview was conducted under the authority of Assistant DA, David Zook, with the interview actually carried out by Special Investigator, John Kramer. At the close of our interview with John Kramer, Pastor Woods and I were sworn to secrecy by Mr. Zook and were told that such was necessary to provide the element of surprise for the immediate confiscation of records before they could be altered or destroyed. Two weeks passed with no activity and no announcement of an investigation. After numerous attempts to reach the DA's office by telephone for an explanation, with no return calls, I took all my files and information to Pam Zubeck, a business news reporter at the Gazette Telegraph. Upon examining the files and information, Ms. Zubeck immediately contacted David Zook to find out why nothing was being done. Within 24 hours, the DA's office publicly announced a criminal investigation.

Thereafter, in following up with all the individuals having critical information and evidence pertinent to the investigation given to the DA, I discovered that the DA's office had contacted no one. Virtually nothing happened in the way of any action taken by the DA's office. My contract for services was cancelled verbally by Mr. Witty and his contractors, and I was told to vacate my office and that I would not be paid the then owing \$75,000 in fees for back services performed. (After numerous attempts over several months to collect my fees, I filed suit against Michael Witty, the Pension Fund, and all the contracting entities in January of 1995 for non-payment of my fees). For the next two months, Michael Witty and the entities and individuals in question continued to manage and operate the Pension Fund properties and accounts with full uninterrupted authority. In the process of their so-called investigation, I was visited by Michael Witty's

contracted secretary who represented herself as a paralegal and secretarial service doing contract work for the Pension Fund and the District Attorney's office. Her office was located in the Pension Fund administration building at 105 E. Vermijo Street, in Colorado Springs. Mr. Witty's company managed the executive suite offices in this building. My new office was also located there at the time. Mr. Witty's secretary informed me that she was aware of my turning over evidence against him and his contractors and that she agreed with my action. She also said that she had overheard Mr. Dan May reassuring Mr. Witty in a meeting in Mr. Witty's office that the DA's office had no intention of investigating anything with regard to the information I turned over to the DA involving Pension Fund real estate business. Dan May was serving a dual role at the time as a member of the Pension Fund Board as well as holding a position in the DA's office as Deputy District Attorney. She stated that I should drop the whole thing for my own safety. She also said that if it was ever revealed that she gave me this information, she would deny it. In November of 1994, the DA's office announced that the contracting entities in question, along with Michael Witty, were cleared of any wrongdoing.

Pam Zubeck, being as suspicious as I, launched her own further investigation into the matter and requested my assistance for real estate research of properties with regard to transfers and ownership that involved the Pension Fund and the above-named entities and individuals. I also involved my business associates Collin Finn and Phillip Freytag in researching documents and assisting Ms. Zubeck. Our investigation revealed that none of the above entities were in actual partnership with the Pension Fund as I had been previously told. We discovered that the principals mentioned above were, in fact, involved in a secret profit-sharing plan with Michael Witty to share profits on grossly inflated fees and services being charged to the properties owned by the Pension Fund and that in some cases, the services never even took place. In talking with the property management assistants of Paragon Management, as well as with one former property management assistant name Teresa, I was told that she quit because she refused to be involved with submittals of inflated and fraudulent invoices being submitted to the Pension Fund for payment.

During the course of our collective investigation, Pam Zubeck revealed numerous "questionable, if not illegal, business transactions" between Mr. Witty and his contracted partners involving hundreds of thousands of dollars of Pension Fund money, including but not limited to the following:

Ms. Zubeck showed us transactions where Mr. Witty made independent loans to his contractor partners utilising Pension Fund money without the knowledge of the Pension Fund in order to purchase local commercial properties not owned by the Fund. In one instance, he provided a loan of 100% of the purchase price of a retail property on North Academy Blvd. in Colorado Springs wherein the partnership realised in excess of 40% profit within 30 days through a quick presale of the property to the Pension Fund;

Partnerships were formed between the parties and certain Pension Fund board members utilising Pension Fund money to purchase local and state-wide property, including a vacation property in Breckenridge, Colorado;

The Landing Shopping Center was sold to an Asian group wherein a 90% loan was carried back by the Fund. With the exorbitant "profit-sharing" fees paid to

the contracting entities, the Pension Fund effectively realised no cash profit at closing. Four months later, after receiving no payments from the Asian entity, Mr. Witty then permitted a transfer of the property with an assumption of the loan to a company named Essex Corporation. Upon investigation, Essex Corporation turned out to be a secret entity owned and controlled by Messrs. Witty, Dragoo, Roehrkasse, and Hume with a provision in the transfer documents that “. . . all parties agree not to reveal any aspect of this transaction as it relates to the original purchase, Deed in Lieu of Foreclosure, or the transfer to Essex Corporation”.

During the course of our investigation, Pam Zubeck met with me at my office in December of 1994 to inform me that she was directed by her editor to discontinue any further communication with me and my associates, and that she was barred from printing anything that had to do with me or my association and investigation involving the DA's office, Messrs. Dragoo, Roehrkasse, Hume, and their entities. I asked her why and she said tha any further discussion may cause her to lose her job.

Having no further recourse locally, I met with representatives of the Colorado State Attorney General's Office Criminal Investigations Division in Denver, Colorado on June 29, 1995. Both the assistant SAG, Mr. Terry Gillespie, and his investigator, Robert Kalutkiewicz, agreed that all my evidence was credible and worthy of investigation; however, they informed me that in the State of Colorado, the SAG's office has no jurisdiction over County District Attorney's Offices without an executive order from the Governor. They strongly suggested that because the El Paso County Pension Fund was also subsidised by the US Federal Government, and that because the situation clearly involved political corruption of at least one or more elected officials, the Federal Bureau of Investigation would have jurisdiction, and they immediately referred the case to the FBI office in Denver. Upon contact with the Denver FBI office, they referred me to Special Agent David Bailey at the local FBI office in Colorado Springs. I was interviewed by Special Agent Bailey on July 25, 1995 and gave him copies of all my evidence and records. Mr. Bailey promised that he not only would begin an investigation but also would be contacting FBI Headquarters in Washington, DC for the possibility of having a Special Investigator flown in to look into the matter. On July 27, 1995, as per Special Agent Bailey's request, I sent him a written account of the content of a conversation that took place between myself and Assistant District Attorney David Zook on September 27, 1994, providing Mr. Zook with a detailed list identifying all the places in which to look for potential improprieties in his investigation. **(see FBI letter, attached Exhibit B)**

On August 4, 1995, I sent a letter to 70 Pension Fund members who had filed suit to open the Pension Fund real estate records for public scrutiny, as a Judge had recently granted a motion by the Pension Fund Board requesting that all real estate transaction records be deemed closed and private. **(see Pension Fund letter, attached Exhibit C)** On August 14, 1995, I received an official letter from District Attorney John Suthers accusing me of slander and making reckless accusations. **(see District Attorney letter, attached Exhibit D)** Thereafter, I was contacted by Mr. Tom Orr, a former El Paso County Attorney, on October 10, 1995. He recently had been fired by the county, along with Ms. Beth Whittier, his superior in the County legal department. He insisted on meeting with me immediately and during our meeting expressed concern for my safety. He said that he and Ms. Beth Whittier were familiar with the investigation on Mr.

Witty and his contractor partners and did not agree with the DA's office on the handling of the situation as there truly had been no investigation. He insisted that they were both fired for taking this position. Mr. Orr offered to represent me legally and to introduce me to Ms. Whittier and also said that I would hear from him soon. After one more conversation by telephone, he told me that he was being called up by the military reserves to Bosnia, and I never heard from him again.

On November 8, 1995, as there seemed to be no activity on the part of the FBI, I was recommended to Colorado State Senator Charles Duke. Senator Duke reviewed my evidence and information and followed up with a call to Mr. Dick Schussler, Special Government Legal Advisor to the FBI. Thereafter, Senator Duke informed me that due to John Suthers' connections with the State Legislature through Mr. Kenneth Sparks, his law partner, there was nothing more he could do. Thereafter, in November, 1995, I had a friend of mine named Michael Austin, with his contacts and influence in Washington DC, contact the US Justice Department who confirmed their receipt of Michael's request for assistance and forwarded the information on the Pension Fund investigation to the Office of Congressional Affairs ("OCA"). On December 4, 1995, I received a call from the Colorado Spring's FBI office Supervisor, Mr. Greg Groves, asking me in a very annoyed tone "Who in the hell do you know in Washington?". He then carried on to say that FBI Headquarters in Washington DC had been contacted by the OCA and asked why the Colorado Springs FBI office had not pursued the Pension Fund Matter. The local supervisor was then chewed out by the OCA representative and ordered to pursue the matter immediately. He then begged me not to contact Washington again and said that I could contact him personally for further updates on the matter. On December 15, 1995, I received a call from Mr. Groves assuring me that the FBI was considering presenting the case to the US Attorney for possible prosecution for political corruption.

In January, 1996, a "new" investigation was announced by the El Paso County District Attorney's Office against Mr. Witty. The investigation results and findings were virtually identical to the information given to Mr. Suthers in September of 1994 with regard to Mr. Witty's activity, with a total omission of any investigation of Mr. Witty's contractor accomplices. Mr. Witty was convicted, along with certain pension fund board members (the same group previously named by me) who were released and fined, and the County Treasurer (also previously named) who was released and fined.

Mr. Witty pleaded guilty and was incarcerated some time during 1996. On January 30, 1996, I was called to settle my law suit for unpaid fees along with a counter suit for slander. I was forced, under duress and threat of severe punitive damages, to sign a release agreement (**see attached agreement, RELEASE IN FULL OF ALL CLAIMS AND RIGHTS, Exhibit E**) by a consortium of three law firms representing Mr. Witty, the Pension Fund, and Mr. Witty's participating contractors, stating that I would not reveal any further information to the authorities nor to anyone or even so much as mention the names of those involved in the Pension Fund embezzlement scheme, including, of course, Mr. Suthers, or even reveal the existence of the Release Agreement itself, without suffering a penalty of \$50,000 per event. Mr. Suthers' direct law firm, Sparks and Dix, was one of the three law firms involved in this release agreement. I was even offered cash, only a fraction of what was already owed to me for services performed as consultant to the Pension Fund, on condition that I sign the release agreement immediately without review by my attorney; otherwise, I would forfeit that cash. At that point in time, as these law firms were all fully aware, they had delayed my

compensation to the extent of making my financial situation so severe that I was subject to eviction from my home.

I believe, as a direct result of my activity in the forcing of the Pension Fund investigation, that John Suthers, David Zook, Dan May, and others in the El Paso County District Attorney's office have filed malicious and fraudulent charges against me in my divorce and custody case and are continuing to harass me and all of those close to me who participated in the investigation. I believe that their motive in illegally wielding the power given them as elected and assigned officials in order to discredit and crush me, my business, and my associates is only for the purpose of protecting their political careers by concealing their direct involvement in covering up the Pension Fund embezzlement scheme for nearly four years. I also believe that Mr. Suthers is protecting his career further by deliberately and continuously avoiding any further investigation, prosecution, and recovery of what may be millions of dollars of embezzled funds through the involvement of his very wealthy and powerful friends involved with Mr. Witty in the scheme—namely, Alliance partners Inc., d/b/a ReMax commercial Properties, Paragon Management Co. Inc., d/b/a Paragon Management Company, Paragon Properties, and Colorado Commercial Contractors, Inc.—through their three primary principals and officers, Douglas A. Dragoo, Russell Roehrkasse, and Edwin Hume.

The above account is to the best of my recollection. Supporting documents and information may be obtained from my current files and records as well as from those copied and retained by the Federal Bureau of Investigation. Back-up and additional information may be obtained from Phil Freytag, Collin Finn, and through the Gazette Telegraph from Ms. Pam Zubeck, as well as from the records of the Pension fund, both public and private.

Further Affiant sayeth naught



Harmon L. Wilfred

October 19, 1999

## EXHIBIT A

### **Pension Fund Investigation / Time Line and Events**

The following is a time line of important events as they relate to the El Paso County Pension Fund embezzlement investigation and John Suther's complicity:

- |                          |   |
|--------------------------|---|
| June 28, 93              | Employed by Pension fund contractor to service properties.  |
| September 7, 94          | Brought evidence and testimony to the DA against Witty and contractors from myself and a tenant named Pastor John Woods. Interviewed by investigator, John Kramer.  |
| September 8, 94          | DA announces Pension fund investigation through Gazette Telegraph.  |
| September 27, 94         | Telephone conversation with David Zook, Assistant DA assigned to the Witty investigation. Provided detailed information as to availability of documents, witnesses and evidence of embezzlement. This was designed to supplement same already provided by Pastor Woods and myself. This conversation was documented in my note book and transcribed in my letter to the FBI dated July 27, 95 |
| November 15, 94 (approx) | DA announces investigation is complete, no wrong doing by Witty or contractors.   |
| January, 95 (approx)     | Pension Fund (Witty) refuses to pay me on work completed by contract. Amount owed in excess of \$75,000.00. After numerous attempts to collect, I filed suit against Witty, the Pension Fund and the contractors. 95 CV 0721 Witty's attorney is Sparks and Dix, Suther's law partners.   |
| June 29, 95              | Meeting with Terry Gillespie, Criminal Investigations Division, State Attorney General's Office. Gillespie said, " no jurisdiction over DA", referred me to the FBI.  |

July 16, 95                      Appeared on KVOR radio by invitation from Chuck Baker. Revealed Suther's involvement in the Pension Fund embezzlement cover-up publicly.

July 19, 95                      Invited back to KVOR for follow-up. At the last minute, physically escorted out of the station by two men, interview cancelled with no explanation.

July 21, 95                      Met with Charles Dodson, President of Colorado Federal Public Employees, to assist in providing information in his case to obtain Pension Fund documents against Witty, Civil action 94 PR 1000.

July 25, 95                      Meeting with FBI, Special Agent, David Bailey. Revealed all documentation, files and notes on the suspected embezzlement of monies from the Pension Fund. Left copies of everything.

July 27, 95                      Letter to Special Agent Bailey by his request, outlining telephone conversation with Assistant DA David Zook on September 27, 94 providing information on suggested availability of documents, witnesses and evidence of Witty's embezzlement scheme.

August 4, 95                      Letter to 70 Pension participants ( Brian Allen and 69 others, 94 PR 1000) involved in the suit to obtain Pension Fund records. This letter was designed to directly inform these pension fund members of the cover-up going on between Witty and Suthers, and create a public record with full disclosure of Suther's complicity with Witty, the Pension Fund Board, and the County Treasurer as to the embezzlement of their money.

August 14, 95                      Letter from Office of the District Attorney, John Suthers stating that he had received a copy of the aforementioned letter to the 70 Participants in the suit to obtain Pension fund documents. Accused me of making "irresponsible accusations..... slander" and dared me to put forth my proof for judicial scrutiny.... All the while knowing that I had been attempting to do exactly that in the suit against Witty for non-payment of my fees. He also knew that by my suit having been filed pro se, that I had no resources to hire council and effectively challenge at the magnitude it would take to confront the system at his level. Witty's attorney, in September, 95 was arrogant enough to file a copy of that same letter in the law suit counter suing me for slander. The result was, of course, after the forced Release Agreement and settlement of the

- suit on January 30, 1996, Witty's subsequent conviction in 1996.
- December, 95 (approx) Made contact with FBI Headquarters, Washington, DC complaining about the inaction of Special Agent David Bailey. This was done through Mr. Michael Austin, a friend and business associate with contacts in Washington, DC.
- December, 95 (approx) Received a call from David Bailey's supervisor reassuring me that they (the FBI) would move forward with the Pension Fund case immediately.
- January, 96 (approx) New investigation announced against Witty. The investigation results and findings were virtually identical to the information given to Suthers in September of 1994. Witty was convicted along with certain pension fund board members (the same group previously named by me) being released and fined and the County Treasurer (also previously named) being released and fined. Witty pleaded guilty and was incarcerated sometime during 1996.

# EXHIBIT B

HARMON L. WILFRED  
31 NORTH TEJON SUITE 320  
COLORADO SPRINGS, COLORADO 80903  
(719) 475-9048

July 27, 1995

David O. Bailey  
Federal Bureau of Investigation  
212 North Wahsatch Ave., Suite 305  
Colorado Springs, Colorado 80903

Re: The El Paso County Pension Fund Property Activity / El Paso County DA's Investigation

Dear Mr. Bailey;

As per your request, the following is a typed account of the content of a conversation that took place on September 27, 1994 between myself and David Zook, the El Paso County Assistant District Attorney. Mr. Zook along with his special investigator, John Kramer were assigned to a criminal investigation regarding certain real estate transactions and business records of The El Paso County Pension Fund and its contractor service agents and their principals. The contractors and their principals are as follows:

Alliance Partners, Inc., d/b/a/ Re/Max Commercial Properties, Inc., Paragon Management Co. Inc., d/b/a/ Paragon Management Company, Paragon Properties, Colorado Commercial Contractors, Inc. and their respective principals; Douglas A. Dragoo, Russell Roehrkasse and Edwin Hume.

The basis of the conversation was focused upon providing the DA with the location of information within the offices of the above named contractors and their principals and through specific individuals doing business within or by contract with these organizations to expose potential criminal activity. The moneys referenced in this examination were in all cases being funded directly from the Pension Fund into the hands of the above named companies and individuals who have since been found to be in a profit sharing arrangement relating to these specific contracts and accounts through the Pension Fund administrator Mr. Michael Witty. Mr. Witty has since resigned from the Fund and is now being investigated for considerable alleged personal expense violations during his time as Administrator of the Fund. The following are thirteen primary points communicated to David Zook and recorded in my business diary based upon where verified information regarding possible improprieties and criminal activity could be obtained for this investigation, provided the DA's office moved quickly:

- 1) The examination of all commission invoices submitted to the Pension fund for payment on all tenant lease transactions for the properties known as the Village Market Place and the Landing Shopping Center. Such invoices were submitted from Paragon Management Company and or Remax commercial Properties. ( Information received since this conversation would indicate that at least two additional entities under the names Sierra Equities and Paragon Properties should also be examined.)
- 2) Colorado Commercial Contractor's bank account should be examined for the construction draw submittals and deposits before, during and after the invoiced draws dated June 6, 1994 and June 16, 1994 in the amounts of \$35,416.40 and \$15,114.52 respectively. Also check for any maintenance deposits or withdrawals. Find out where the money went during the following approximately two week period when, to my knowledge, no legitimate expenses or withdrawals were authorized, yet no money was in the accounts.
- 3) Check the invoices submitted to the Fund for all common area maintenance (CAM), taxes and property insurance expenses for the Landing and Village Market Place and all other properties being serviced for the Fund from Paragon Management Company's records. From my direct information and observation these expenses were being billed for as much as double the amounts contracted for or justified. In some cases services were being billed that may not have been performed at all. In a specific incident a tenant at the Landing, Chuck Kellog of Jet Way Liquors, complained that when he sent an asphalt contractor to Paragon Management Company to submit a proposal, he was told that the only way he could be hired is if he would be willing to kick back money to Ed Hume, the President of Paragon, under the table. ( I also provided Mr. Zook with Mr. Kellog's telephone number and a list of all of Paragon's maintenance contractors to verify the specific incident referenced and check for other possible illegal activity.)
- 4) Conduct interviews with all of the tenants of the properties being serviced for the Fund with a special emphasis upon the Landing and Village Market regarding the quality and or the existence of services being performed with a special emphasis on the amounts being billed for same.
- 5) Conduct interviews with all maintenance and subcontractor companies doing business with Paragon and Colorado Commercial Contractors to determine the extent of kick backs and or other improprieties including, but not limited to, unreported thefts of major amounts of construction materials, equipment and tools taken from secured storage areas and or job sites with no apparent evidence of forced entry.
- 6) Conduct an overall visual inspection of the Pension Fund properties herein referenced for the clear evidence of neglect and or deferred maintenance. Special attention should be given to those areas that directly affect the properties marketing image and or the tenants functional ability to conduct business (ie: parking lot condition, HVAC, roof integrity, lighting, etc.). Such information should be compared to the fact that the expenses being charged for such maintenance and upkeep is being billed at over twice the market average when the tenants have generally

complained that such services are nearly non-existent. Also with the occupancy at less than 50% during the period in question, these services and expenses were being substantially funded directly by the Pension Fund.

7) Conduct an audit for financial leaks in the billing system to the tenants that may be deliberate or a direct result of negligence. Examples already found and noted are as follows:

a) The tenant known as SS Sub having their utilities paid by the property subsidized by the Fund when the lease contract clearly states that the tenant is required to contract and pay for its utilities directly.

b) The tenant known as Mike's and other tenants having their trash removal paid by the property subsidized by the Fund with leases that clearly denote such expense as the tenants responsibility.

8) Conduct an audit for all subcontractor services performed directly by Colorado Commercial Contractors and their affiliate maintenance group for improprieties such as overcharging and billing for work never completed. (ie: billing basic labor for parking lot and grounds clean-up at \$15.00 per hour, a rate nearly 3 times the market when work in some cases was reported by the tenants as non-existent.)

9) Conduct interviews with two former seasoned property managers of Paragon Management who left the organization during the period in question. One former manager will have direct information on the highly questionable business practices of the firm with a special emphasis on invoices presented to the Fund for payment that were either highly inflated or for non-existent materials and services.

10) Conduct an interview with Pastor John Woods, a new tenant at the Landing during the period in question, and a participant with me in reporting the suspected improprieties and criminal wrong doings of the above organizations and individuals in question on September 9, 1995 to the DA. Discuss the specifics of the lease agreement with respect to moneys funded, checks bounced, broken promises and the overall effect of a total breach of contract that dramatically effected the loss of over \$100,000 of the Pension Funds money and the financial ruin of Pastor Wood's church and business. Also conduct similar interviews with the principals of two other businesses who signed leases during the period in question with substantially the same or similar results as the Wood's deal with proportionate amounts of financial losses incurred to the tenants and the Fund.

11) Conduct interviews with the contractors and agents involved in-house as to the degree of incentives and payment plans that were offered, utilizing the Funds properties without the authority or authorization of the Fund, in order to bribe and or bait and switch with these contractors and agents creating excessive expense and or potential legal liability for the Fund.

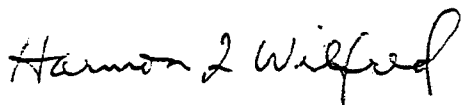
12) Enquire with the Pension Fund Administrator, Michael Witty, as to why the companies in question have continued to service the Fund's properties, control bank accounts, and disperse hundreds of thousands of dollars of funds monthly, in light of his full knowledge of the alleged improprieties and criminal activity reported to his office on the morning of September 9, 1994. (These companies have continued to operate and control the properties in question on behalf of the Fund without interruption through the so called DA's investigation and up to the present date.)

13) Answer the question ; Why is the DA's office not being more receptive to involving me, and answering my phone calls to offer further information and assistance as one who not only reported this situation in the first place but have the in depth information readily available to locate and investigate this situation with considerable efficiency.

The answer to the Question in #13 has become obvious since the so called two month investigation came and went last year. By checking with the tenants, contractors and other individuals mentioned in this letter, I can confidently report to the Federal Bureau of Investigation at this time that no investigation ever took place. This entire situation appears to involve a cover up involving at least Re/Max, Paragon, Colorado Commercial, Douglas Drago, Russell Roherkasse, Edwin Hume, Mike Witty, the DA's office and other elected officials including Pension Fund Board members and possibly even the County Treasurer's office.

I trust that the FBI will utilize this information to conduct its own investigation of these matters. Thank you for your prompt attention this situation. I am available to help in any way I can.

Sincerely,



Harmon L. Wilfred

EXHIBIT C

HARMON L. WILFRED  
31 NORTH TEJON, SUITE 320  
COLORADO SPRINGS, COLORADO 80903  
(719) 475-9048

August 4, 1995

Brian Alien and 69 Others  
Reference Civil Action No. 94 PR 1000

Re: The El Paso County District Attorney's participation in a cover-up of tens of thousands of dollars alleged as stolen and or misappropriated by Michael Witry and his business partners.

Dear Plaintiff Intervenor;

My name is Harmon Wilfred and the following is a brief of my encounter with Michael Witry, the District Attorney's office and a host of others as a result of my attempt to expose the alleged mishandling and misappropriation of funds involving the real estate investments of the El Paso County Pension Plan:

From June 28, 1993 until approximately July 1, 1994 I was employed as an independent contractor to provide commercial real estate services on behalf of the El Paso County Pension Plan through its contractors, Remax Commercial Properties, Inc., Paragon Management Co., Inc. and Colorado Commercial Contractors, Inc., and their respective Principals, Douglas Drago, Russell Roehrkasse, and Edwin Hume. My duties and responsibilities included commercial property leasing and sales, property management consulting and construction management. The property I was primarily responsible for was the Landing Shopping Center located at the northeast corner of Fountain Blvd. and Jet Wing Drive.

In the process of completing construction draws for construction of tenant finish at the subject property as well as the billing for my services I discovered that funding belonging to the Pension Fund that had been transferred to the contractor's account was missing in amounts of up to \$50,000. When I questioned the Principals of the construction company I was told to cover the expenses of the current job by funding the next two jobs at the Landing. When I enquired about the \$50,000 I was essentially told to mind my own business. Upon further investigation of the books and records involving all the transactions I was authorized to access I discovered that commissions and fees being charged to the Pension Fund were as much as double the amounts being represented by contract to me and to the general public. When I reported this information to the Pension Fund administrator,

Michael Witty, to my shock and dismay, I was again essentially told to mind my own business. From that point on checks were presented to suppliers and contractors that were either bouncing or the suppliers were smart enough to check with the bank before submittal and find out that no funds were present. This was occurring even after the next three draws were funded into the account in amounts totaling over \$45,000 in additional funding. At that point one of the recipients of the bogus checks, a tenant at the Landing named Pastor John Woods, came to me with the proposal that we take all of our documentation and evidence of what we believed to be at least misappropriation of funds to the local District Attorney's Office.

On September 7, 1994 Pastor Woods and I presented the entire situation to the El Paso County District Attorney's Office. By then we had discovered a number of other suspicious transactions and or blatant transgressions that were all reported to the Pension Fund in our taped interview with the El Paso County District Attorney. This interview was conducted under the Assistant DA's authority, David Zook, by his special investigator, John Kramer. .... ( In a meeting on July 21, 95 with Charles Dodson, the Colorado Federation of Public Employees representative for your group in the ongoing lawsuit to obtain the Pension Fund books and records, I delivered into his possession copies of supporting documents and a copy of a 39 page transcript of the one hour taped interview referenced above.)

At the close of our taped interview with John Kramer, Pastor Woods and I were sworn to secrecy by the DA's office and told that such was necessary to provide the element of surprise for the obtaining of records before they could be altered or destroyed. Two weeks passed with no activity and no announcement of any investigation. In fact, an existing DA's investigation on Michael Witty regarding a conflict of interest issue was reported by the media as complete and that Mr. Witty was found to be virtually "clean" short of having to recuse himself of his official employment with the county from a personal standpoint. However, he was permitted to continue with all of his investment management contracts under his company called Pinnacle Investments. After attempting to reach the DA's office by telephone on numerous occasions over the next few days to no avail, I took all of my files and information to Pam Zubeck, a business news reporter of the Gazette Telegraph. Ms Zubeck immediately called the DA's office to find out why nothing had been done. Within 24 hours the DA's office announced a criminal investigation and an article followed in the Gazette briefly announcing the same.

For the next two months virtually nothing happened in the way of any investigation or action taken by the DA's office that would indicate a serious approach to a serious situation. In fact, during this period ( from September 21, 94 to the middle of November, 94) Michael Witty and the companies in question continued to operate the pension fund properties and accounts with full authority and without interruption. They were permitted to deliver their books and records to the Pension Fund Board (and not the DA's office) for examination with plenty of notice to alter, destroy or otherwise create their books and records to provide a semblance of total innocence. Short of the bounced checks, which could not be covered up, they were found by the Pension Fund Board and subsequently, the DA's office as having not been involved in any criminal activity and the investigation was terminated. Since that time I have checked with some of the individuals whose

names were given to the DA's office as having critical information and evidence as to the missing money and the other management, contractual and accounting discrepancies originally reported only to find that the DA's office had contacted no one. Recent conversations with Pam Zubeck of the Gazette Telegraph have revealed that even though she has also uncovered, through her continued investigation of this matter, at least questionable, if not illegal business transactions between Witty, Dragoo, Roehrkasse and Hume, involving hundreds of thousands of dollars of Pension Fund money, she has been barred from printing or going public with this information by her editor with no reasonable explanation as to why. In my further investigation of the matter I found out that one of the Pension Fund Board members is also employed by the DA's office and may have influenced the curtailment of the so-called investigation. Another member of the board is in direct partnership with Witty for property in Breckenridge, Colorado. I have also discovered that Witty, Dragoo, Roehrkasse and Hume are involved in a profit sharing deal involving the Pension Fund properties where they have all been benefiting personally beyond the normal and customary fees being paid to their respective companies. Even the sale of properties have been laced with secret inside deals. In one instance, a note being carried by the Fund, by Witty's recommendation, for as much as 90% of the purchase price (\$800,000.00) was defaulted on within 4 months with virtually no payments made to the Fund. The action taken by Witty "and company" was to return the down payment to the purchaser with no penalty and the property has since been transferred back to a secret entity controlled by the Witty, Dragoo, Roehrkasse and Hume combination with a provision in the contract that states, "Due to the sensitive nature of this transaction.....all parties agree not to reveal any aspect of the transaction as it relates to the original purchase, Deed in lieu of foreclosure or the transfer to ESSEX CORPORATION". The above information on the Pension Fund's activities with "Witty and friends" at the helm are what I believe to be only the tip of the iceberg.

With no apparent further recourse through any local law enforcement agencies, I phoned a local radio talk show host, Chuck Baker, to share my story. On Friday, June 16, 1995 I was given the opportunity to appear on KVOR radio with the theme of exposing this conspiracy and cover-up by the DA's office in concert with Michael Witty, Douglas Dragoo, Russell Roehrkasse, Edwin Hume and a host of others including but not limited to specific Pension Fund Board members, the County Treasurer's office and the Gazette Telegraph's Editor. After appearing on a one hour introductory show I was invited back the following week for 3 more hours. Upon arriving at the studio for the second show I found myself being escorted out of the radio station by two individuals with the explanation that the show had been canceled and the subject matter would not be discussed further. Even Mr. Baker felt strongly that the radio station had been threatened into submission by "someone".

On June 29, 1995 I met with the Colorado State Attorney General's Office, through their Criminal Investigations Division. Both the assistant SAG, Mr. Terry Gillespie and his investigator, Robert Kalutkiewicz, agreed that all of my evidence was credible and worthy of a full investigation. However, they announced that in the state of Colorado, the SAG's office has no jurisdiction over county District Attorney's offices without an executive order from the Governor. They did share, however, that due to the federal government's contribution to this pension fund of over \$10,000.00 and the fact that this situation clearly involved political corruption of at least one or more elected

officials, the Federal Bureau of Investigation would have jurisdiction and they immediately referred the case on to the FBI office in Denver. Since then I was interviewed by Special Agent, David Bailey of the FBI on July 25, 1995 with the promise of looking into the matter with considerable detail for the possibility of a full investigation through a special investigator to be flown in out of FBI headquarters in Washington D.C.. All of this is well and good, however, wouldn't it be better if the State of Colorado could clean up its own "back yard" without having to call in the Federal Government.....that is, even if it takes an executive order from Governor Roy Romer to get it done? I believe if you and your fellow employees and retirees join together and ring the Governor's telephone off the hook **DEMANDING AN EXECUTIVE ORDER** to put the State Attorney Generals Criminal Investigation Section to work on this matter, .....**YOUR COLLECTIVE EFFORT WILL MAKE IT HAPPEN!**

The El Paso County Pension Fund belongs to you!.....the good people who are retired from or are currently employed by El Paso County. This Fund can no longer be entrusted to the administrators and elected officials who are standing by and permitting your pension dollars to be utilized as a personal "piggy bank" by the local "Good Ole Boy" network.

Governor Romer's office can be contacted at the following address and telephone number:

Governor Roy Romer  
Colorado State Governor's Office  
136 State Capitol  
Denver, Colorado 80203  
1-800-283-7215

This is my story to date. I have felt a need to put all of this in writing and into your hands to solicit your help and because of the obvious potential danger to my personal safety should I continue to pursue this matter to a full conclusion alone. The primary purpose of this effort in concert with the Colorado Federation of Public Employees and the County Commissioners is to protect the rights and opportunities of the employees and retirees of El Paso County to contribute to and receive a continuing pension from your plan without interruption. It is my sincere hope that Governor Romer will support us in this goal.

Sincerely,

*Harmon L. Wilfred*

Harmon L. Wilfred

CC: Governor Roy Romer

# OFFICE OF THE DISTRICT ATTORNEY

Fourth Judicial District  
326 South Tejon Street  
Colorado Springs, Colorado 80903

(719) 520-6169 / FAX (719) 520-6185



**EXHIBIT D**

JOHN W. SUTHERS  
District Attorney

JEANNE M. SMITH  
Assistant District Attorney

August 14, 1995

Mr. Harmon Wilfred  
31 N. Tejon, Ste. 320  
Colorado Springs, CO 80903

Dear Mr. Wilfred:

El Paso County employees have supplied me with a copy of a letter dated August 4, 1995 in which you allege the participation of my office and numerous others in the "cover-up" of a crime committed by Michael Witty and your former employers. In your letter you detail your efforts to get the state or federal government to investigate the matter, apparently believing they will determine the evidence will support a criminal prosecution. I'm quite confident that any law enforcement agency that chooses to investigate your allegations will reach the same conclusion that we have. As you are well aware, we have never endorsed the conduct of Mr. Witty or given him a "clean bill of health". In fact we have uncovered numerous conflicts of interest and poor record keeping. We simply have thus far not found a sufficient basis to commence a criminal prosecution.

Nevertheless, I'm writing to alert you to the fact that the Colorado law provides that any citizen who believes that the District Attorney has arbitrarily and capriciously failed to prosecute a crime can file a petition in the District Court asking that the court order the District Attorney or a special prosecutor to file and prosecute a case. Upon the filing of such a petition, it would be your burden of showing that the District Attorney's Office has acted arbitrarily and capriciously in failing to file criminal charges. We would respond to the petition by informing the court of the results of our investigation and the basis of our decision not to file.

I wanted to inform you of this remedy so that you might utilize it if you so choose. While my office deals with disgruntled persons such as yourself, who make irresponsible allegations, on a fairly frequent basis, others who are being slandered by your reckless accusations might prefer you to put forth your proof for judicial scrutiny in the manner described.

Sincerely,



JOHN W. SUTHERS  
District Attorney  
4th Judicial District  
of Colorado

JWS:sl

cc: El Paso County Commissioners  
El Paso County Attorney  
David Zook, Chief Deputy District Attorney  
Pam Zubeck, Gazette Telegraph  
Chuck Baker, KVOR Radio

# EXHIBIT E

## RELEASE IN FULL OF ALL CLAIMS AND RIGHTS

FOR AND IN CONSIDERATION OF FIVE THOUSAND DOLLARS, (\$5,000.00) and RE/MAX COMMERCIAL PROPERTIES, INC. assignment of all rights it might have to certain commissions that may be owing by Case Holdings Company, L.L.C. (a copy of said assignment is attached hereto, incorporated here in a marked as exhibit 1) receipt and sufficiency of which is acknowledged, HARMON L. WILFRED (here in after "Releasor") does release and forever discharge, ALLIANCE PARTNERS, INC., d/b/a RE/MAX COMMERCIAL PROPERTIES, INC., COLORADO COMMERCIAL CONTRACTORS, INC., PARAGON MANAGEMENT COMPANY, INC., d/b/a PARAGON MANAGEMENT COMPANY, DOUGLAS A DRAGOO, RUSSELL ROEHRKASSE, and EDWIN HUME III, their heirs, executors, administrators, agents, liability insurers, and assigns or any other business with which they have an interest, (herein after "releasees") from any and all rights, claims, demands and damages of any kind, known or unknown, existing on or before the execution of this RELEASE IN FULL OF ALL CLAIMS AND RIGHTS. This release includes, but is not limited to, all claims contemplated AGAINST ALL PARTIES or facts alleged in the pleadings filed in the District Court, County of El Paso, State of Colorado, Case No. 95CV0721, HARMON L. WILFRED, Plaintiff, v. ALLIANCE PARTNERS, INC., d/b/a RE/MAX COMMERCIAL PROPERTIES, INC., COLORADO COMMERCIAL CONTRACTORS, INC., PARAGON MANAGEMENT CO., INC., d/b/a PARAGON MANAGEMENT COMPANY, EL PASO COUNTY RETIREMENT PLAN, a Statutory Trust, and individually, DOUGLAS A. DRAGOO, RUSSELL ROEHRKASSE, ED HUME, MICHAEL WITTY.

Releasor agrees to dismiss any and all claims that he has against all parties in the above mentioned lawsuit, with prejudice, and not pursue any claims alleged or contemplated by the facts contained within the pleadings in that case against any person or entity.

Releasor covenants and agrees that from the time of the execution of this agreement he will not communicate about the releasees with any person or entity, in any situation. By way of example, but not limitation, this specific covenant precludes the Releasor from discussing any businesses with which the Releasee's are, at any time associated, personal matters, this agreement, the lawsuit

*HW*

described above or any other of releasees activities. Releasor agrees that it is the intent of this specific covenant that he will never communicate to anyone about the Releasees ever again whether said communication is truthful or not. It is to be construed in the broadest sense and is meant to preclude the Releasee from even mentioning the Releasees name. The only time that Releasor may communicate about the Releasees is if he is ordered to do so by a Judge so authorized by the laws of the United States or specifically as is absolutely necessary to enforce any rights he receives as a result of the assignment referred to herein and marked as exhibit 1. A subpoena issued by an Attorney shall not satisfy the requirements of this specific covenant.

By entering into this agreement the parties recognize that if there is a breach, damages may be difficult to compute, but that serious and irreparable damages would result to the Releasee's, jointly, severally. By way of example, Releasor acknowledges that the Releasees are involved, in the business of buying, selling, managing and leasing real estate and are regularly involved in sales and leases involving commissions and fees of over \$100,000. Releasor also acknowledges that because of his past activities, including but not limited to his communications and involvement with the media, the District Attorney's Office and other parties in reference to the El Paso County Retirement Fund and because of his reputation, his communication with other parties in breach of this agreement will likely have an adverse effect upon the reputation of the releasees which may in turn cause the Releasees to lose business, including but not limited to commissions similar to those referred to herein. The parties to this agreement acknowledge that although it is likely that his breach of this agreement will cause the Releasees damages, it may be very difficult if not impossible to determine whether or not such damage occurred and the extent of any such damage. Therefore, the parties agree that liquidated damages in the amount of \$50,000.00 would be a reasonable amount to fix should there be a breach of this covenant. Therefore, should the Releasor breach this covenant, he agrees the Court of any competent jurisdiction may award the sum of \$50,000.00 to each person or entity that is the subject of any communication in breach of this agreement.

Releasor specifically represents and warrants that it is his clear intention to fully release Releasees for himself, his heirs, executors, administrators, successors, and assigns, from any and all claims or damages of whatever nature. Releasor hereby assumes the risk of any mistake of fact and acknowledges that a substantial portion of the aforesaid consideration is being paid for: (i) the release

of unknown, damages and losses, which either may have occurred in the past and yet to be unknown, but also which may occur in the future and therefore be incapable of prediction, even if this Release results from a presently existing mistaken belief as to the present nature and extent of the injuries and

damages, and (ii) the assumption of the obligation to indemnify and hold Releasees harmless as set forth herein.

It is expressly understood and agreed that the payment made pursuant hereto by Releasees is in full accord and satisfaction of any and all claims Releasor presently has or at any time might acquire against Releasees as a result of any and all transactions and relationships between Releasers and Releasees prior to the date of execution of this Release; that payment made pursuant hereto is not to be considered in any way an admission of liability on the part of any one or all of Releasees, but on the contrary, Releasees specifically deny liability for the harm suffered by Releasor giving rise to Releasor's claims or otherwise; that all agreements and understandings between Releasor and Releasees provided for and expressed herein and the terms of this Release are contractual and not mere recitals; and that this Release is made in good faith and the receipt and sufficiency of the consideration is acknowledged by Releasor and Releasees pursuant to C.R.S.A. Section 13-50.5-101, et. seq., as amended, uniform contribution among tortfeasor's act.

Releasees make no warranties or representations concerning the commissions assigned by RE/MAX COMMERCIAL PROPERTIES, INC. to Releasor. RE/MAX COMMERCIAL PROPERTIES, INC. is only assigning any rights it might have to such commissions. Releasor accepts such assignment as is and agrees to hold Releasees harmless and indemnify them from any and all costs including attorney fees that they may incur as a result of his attempts to collect said commissions.

Releasor represents and warrants that no promise or inducement has been offered except as herein set forth; that this Release is being executed without reliance upon any statement or representation by any person or parties released, or their representatives, concerning the nature and extent of any personal injuries, legal liability, or any other matter except as set forth herein; THAT AS TO ANY QUESTIONS CONCERNING THE MEANING, LEGAL NATURE AND BINDING EFFECT OF THIS RELEASE RELEASOR IS HEREBY ADVISED THAT HE SHOULD HAVE LEGAL COUNSEL TO ADVISE HIM AND THAT WHETHER OR NOT HE SEEKS SUCH COUNSEL HE ASSUMES COMPLETE RESPONSIBILITY FOR ANY MISTAKE HE MIGHT MAKE CONSTRUING THE TERMS OF THIS RELEASE OR HIS OBLIGATIONS AS SET OUT HEREIN; that this document shall be legally binding upon Releasor; that Releasor assumes any risk

of mistake as to any facts or injuries or the extent thereof, whether disclosed or known, at any time he sustains them; that this Release embodies the entire understanding of Releasers and Releasees; that Releaser has not assigned, transferred, or conveyed all or any part of his rights or claims against each or any of Releasees; that there are no further or other agreements or understandings, written or oral, in effect between Releasers and Releasees relating to the subject matter hereof; that this Release cannot be modified except by a writing signed by all Releasees and Releasers; and that it is the parties' agreement that this Release shall be interpreted and construed according to the laws of the State of Colorado.

If any portion of this agreement is found by a Court of competent jurisdiction to be unenforceable the remaining provisions shall remain valid,

After having reviewed and fully understanding the foregoing, Releaser, being first duly sworn, does hereby declare to the undersigned authority that he signed and executed this instrument willingly, that he executed it as his free and voluntary act, and that he is not under any undue influence.

Harmon L. Wilfred  
HARMON L. WILFRED

STATE OF COLORADO    )  
  )ss.  
COUNTY OF EL PASO    ).

SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of January, 1996,  
by Harmon L. Wilfred.

My commission expires: 3/3/97

Patricia W. McElroy  
NOTARY PUBLIC

[SEAL]

*HW*