UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7

Carefree Living of America (Burnsville), Inc. Case Nos.: 01-33545
Carefree Living of America (St. Cloud), Inc. 01-33546
Carefree Living of America (Brainerd), Inc. 01-33547

Debtors.

Brian F. Leonard, Trustee, ADV Case No. 02-9117

Plaintiff,

vs. **PLAINTIFF'S VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Jane L. Strom Revocable Trust and
Jane L. Strom, Trustee,

Defendants.

TO: THE ABOVE DEFENDANTS, AND THEIR ATTORNEY, RALPH MITCHELL, ATTORNEY AT LAW, ONE FINANCIAL PLAZA, SUITE 2500, 120 SOUTH SIXTH STREET, MINNEAPOLIS, MINNESOTA 55402.

1. The above Plaintiff, by and through its counsel, hereby brings this Motion for Summary Judgment and gives notice of hearing.

2. A hearing on this Motion will be held before Chief Judge Gregory F. Kishel in Courtroom 228B, Second Floor, U.S. Courthouse and Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101 on the 20th day of October, 2004 at 9:30 o'clock a.m. Any response to this motion must be served and filed no later than October 10, 2004 if by mail, or October 13, 2004 if by physical delivery. **IF NO RESPONSE OR OBJECTION IS SERVED AND FILED, THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.**

3. The Plaintiff moves for an Order granting the Plaintiff partial summary judgment against Defendants on the issue of the avoidance of the real estate mortgage granted by the above debtors to the Defendants on March 15, 2001.

4. This Motion is based upon the depositions of Michael Mahoney, Steven V. Hagberg and Jane Strom, the Affidavits of Merle Sampson and Brian F. Leonard, and all of the filings in the above bankruptcy case, and in this Adversary Proceeding, and upon the Memorandum of Law filed herewith.

5. The Plaintiff's claim against Defendants for the avoidance and return of payments received one year prior to the date the Debtors' filed the bankruptcy cases is reserved.

WHEREFORE, the Plaintiff moves for an order of summary judgment in favor of Plaintiff and against Defendants, adjudicating that the Mortgage is avoided for all purposes under 11 U.S.C. § 547 and 550 and for such other relief as is just and equitable.

LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.

/e/ Brian F. Leonard

Dated: September 16, 2004 By_____

Brian F. Leonard, #62236
Matthew R. Burton, #210018
Attorneys for Brian F. Leonard, Trustee
100 South Fifth Street
Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

VERIFICATION

Brian F. Leonard, Trustee of the above-referenced bankruptcy estate, declares under penalty of perjury that the foregoing is true and correct to the best of his knowledge, information and belief.

/e/ Brian F. Leonard

Dated: September 16, 2004 _____

Brian F. Leonard

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Brian F. Leonard, Trustee, ADV Case No. 02-9117

Plaintiff,

vs.

Jane L. Strom Revocable Trust and
Jane L. Strom, Trustee,

Defendants.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

STANDARD FOR SUMMARY JUDGMENT

The Plaintiff's Motion for Summary Judgment is brought under Bankruptcy Rule 7056, which incorporates Rule 56 of the Federal Rules of Civil Procedure. Under that rule, summary judgment may be granted if pleadings, answers to interrogatories, etc., show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

One of the principal purposes of this summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp v. Catrette*, 477 U.S. 317 (1986). That case stated that entry of summary judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. 477 U.S. at 322. The moving party discharges its burden

by demonstrating the absence of evidence to support the nonmoving party's position. 477 U.S. at 325. Once the moving party has done so, the burden shifts to the respondent to produce the evidence to support its position. A nonmoving party may not rely on its mere pleadings. The nonmoving party must produce evidence that is significant, probative, and substantial. If the respondent fails to produce such evidence, or if the evidence produced does not have the probity and substance required to meet its initial burden at trial, then summary judgment shall be granted to the moving party. *Celotex Corp v. Catrette*, *supra*, at 324. *Johnson v. Enron Corp.*, 906 F.2d 1234 (8th Cir. 1990). *Krause v. Perryman*, 825 F.2d 346 (8th Cir. 1987). *In re: Northgate Computer Systems, Inc.*, 240 B.R. 328 (Bnky. MN 1999). The summary judgment motion imposes a burden of production on the nonmoving party to bring forth evidence that is significant, probative, and substantial. *Prudential Insurance Co. v. Hinkel*, 121 F.2d 364 (8th Cir. 1997).

FACTS

On August 18, 2001, the above Debtors filed a petition under Chapter 11 of the United States Bankruptcy Code. On January 2, 2002, the Plaintiff was appointed the Chapter 11 Trustee in the Debtors' bankruptcy cases. The Plaintiff immediately replaced the existing management of the Debtors and contracted with Spectrum Community Health, Inc., to operate the Debtors' businesses. The business of the Debtor was the operation of three assisted living facilities located in Burnsville, St. Cloud, and Brainerd, Minnesota. The existing management was controlled by Kathleen Zeller ("**Zeller**"), who was the controlling shareholder of Summa Management, Inc. ("**Summa**"). Summa was the majority shareholder of each of the Debtors. Summa was being paid $33,000.00 per month by the Debtors as management fees. In addition, Zeller received a salary from each of the Debtors as a full-time employee, notwithstanding the fact that Zeller lived in Europe. (Leonard Aff. para.

4.)

The Debtors' financial and business records reflected the following partial list of liabilities owed jointly by all the Debtors as of March 15, 2001:

First Union Bank	$11,211,440.76
Linda Simmons (Selbak)	$3.3 million
Dwight Lindquist-Trustee	$218,700.00
Mahoney & Hagberg	$1.5 million
Jane Strom Trust	$62,160.35
David Broberg	$61,481.13
William Howard	$193,030.00
Hinshaw & Culbertson	$43,915.93
Total:	$16,590,728.17 (Leonard Aff. par. 5.)

Each of the above creditors have filed proofs of claim in one or more of the above bankruptcy cases.

The assets of the Debtors consisted solely of the three assisted living facilities located in Burnsville, St. Cloud and Brainerd. The aggregate value of the assets of the Debtor as of March 15, 2001, was $9.5 million or less, as stated in the Affidavit of Merle Sampson filed herewith.

The assets in the bankruptcy estates are, in the aggregate, $686,921.76. The unpaid administrative claims in this bankruptcy case are approximately $160,000.00. The secured claims in this case are $61,250.00 (Broberg) and $65,000.00 (the Mahoney and Hagberg Law Firm). The aggregate distributable assets in these cases are $440,671.76.

The aggregate dollar amount of the unsecured claims filed in these cases, net of duplicate claims and claims which have been paid, is $6,189,143.56.

If the Strom Trust claim is determined to be an unsecured claim, it would receive a distribution of $411.60 on a claim of $41,160.35. If the Trust were paid as a secured creditor in this case, it would receive a distribution of 100% of its claim. (The Trust now apparently asserts a secured claim in excess of $75,000.00.) Accordingly, the Trust would receive a greater distribution on a secured claim than it would if it had not received a mortgage on the Debtors' property on or about March 16, 2001 and merely received a distribution as an unsecured creditor in these cases. (Leonard Aff. paras. 8, 9, and 10.)

The salient additional facts are derived from the business and financial records of the Debtor, and the depositions of Michael Mahoney, Steven V. Hagberg and Jane Strom and the Affidavits of Brian F. Leonard and Merle Sampson.

ARGUMENT

The facts in this case are undisputed. The Debtors transferred a mortgage interest in the Debtors' real estate to the Defendants on March 15, 2001. The transferee named in the mortgage was "Jane L. Strom, Trustee." Jane L. Strom and Steven V. Hagberg are co-Trustees of the Jane L. Strom Revocable Trust. Jane L. Strom is also the settlor of the Trust. (Hagberg depo. 66.) The Defendants filed the mortgage between the dates of March 16, 2001 and March 28, 2001. The Debtors filed their voluntary petition under Chapter 11 on August 18, 2001.

At the time of the Transfer, the Defendants were creditors of the Debtors. The Defendants had extended a loan to the Debtors of $50,000.00 on August 30, 2000, evidenced by an unsecured promissory note which matured on January 15, 2001. The Debtors could not pay that note on

January 15, 2001, and requested an extension of the maturity date. Thereupon, the Debtors signed the replacement promissory note on or about January 15, 2001. Subsequently, on March 15, 2001, the Debtors granted the above-mentioned mortgage to the Defendants as collateral for the Debtors obligations under the replacement promissory note. (Hagberg depo. 76, 77, 86, 89, 97, 98.)

The Debtors were clearly insolvent as of January 1, 2001. The financial condition of the Debtors had been spiraling downward for some time, as evidenced by the two First Union mortgage foreclosures, the Complaint filed by Trustee Lindquist, the Debtors' inability to pay the first Strom Trust note when due, and the large payable owed by the Debtors to the Mahoney & Hagberg Law Firm. (Leonard Aff. paras. 11(d), (e) and (f).) The Affidavit of Brian F. Leonard demonstrates a partial listing of the joint obligations of the Debtors as of January 1, 2001 totaling $16,590,728.17. The Affidavit of Merle Sampson establishes that, as of March, 2001, the value of the Debtors' assets was between $8.5 and $9.5 million. The affidavit of Merle Sampson fully explains the dismal operating condition of the Debtors in March, 2001. Mr. Sampson, through his company, Spectrum Community Health Services, Inc. was hired to take over management of the Debtors' operations on January 2, 2002 by the Debtor's Chapter 11 Trustee, the Plaintiff in this proceeding. A corporate affiliate controlled by Mr. Sampson subsequently purchased the Debtors' facilities from the Plaintiff in August, 2002, for the sum of $12.5 million, after having restored the facilities to a more stable financial footing. (Sampson Aff. para. 13.)

The following are facts derived from the business and financial records of the Debtor, and the depositions of Michael Mahoney, Steven V. Hagberg and Jane Strom, all of which facts the Trustee believes are undisputed in this case:

(a) The Law Firm was the outside general counsel of the Debtor from at least mid-1995 to the date the Debtors commenced their bankruptcy case. (Hagberg depo. 19, 20.)[1] Steven V. Hagberg was a shareholder of the Law Firm from the early 1990s and was the Chief Executive Officer and Treasurer of the Law Firm. (Hagberg depo. 5, 6.) Mr. Hagberg was primarily responsible for oversight of the operating expenses, revenue recognition, and payment of bills and signed most of the checks that the firm issued. (Mahoney depo. 9.) Mr. Hagberg was the origination source lawyer for legal work done involving Kathleen Zeller, Summa Management, Inc., and her other affiliates, including the Debtors. (Mahoney depo. 12, 13.) Mr. Hagberg was one of three shareholders in the Law Firm in 1999. (Mahoney depo. 65.)

(b) Jane Strom is married to Steven V. Hagberg. Defendant The Jane L. Strom Irrevocable Trust was created in 1998. (Hagberg depo. 61.) Steve V. Hagberg and Jane Strom are co-Trustees under the Strom Trust. (Hagberg depo. 60, 61.)

(c) In the course of their representation of the Debtors, the Law Firm had reviewed the financial statements of the Debtors prepared by the Debtors' outside accountants, and on at least one occasion, transmitted comments to the Debtors' auditors on the draft financial statements compiled by the auditors. (Mahoney depo. 25, 26, 27.) Mr. Mahoney believes that he gave the auditor's draft reports to Mr. Hagberg for his comments. (Mahoney depo. 26, 27.) In addition, the Law Firm provided opinion letters to third party lenders and to the company's auditors, which opinion letters described the Debtors' business operations and litigation in which the Debtors were

[1]References to depositions are to the page number(s) of the transcript, and where indicated, to a deposition exhibit number.

involved. (Mahoney depo. 15, Ex. 1-A.) The Law Firm's procedure for the issuance of opinions was to circulate a request for information, and later the proposed opinion, to all lawyers in the firm, including Mr. Hagberg. The opinion letter would be based on the information received from the various lawyers. (Mahoney depo. 17, 18.) Mr. Hagberg signed the opinion letter dated April 30, 1999 to the Debtors' auditors. (Mahoney depo. 21, 22, 23.) (Hagberg depo. 36-42; Ex. 3.) The Law Firm represented the Debtors in a 1998 refinancing transaction in excess of $11 million involving Miller & Schroeder Investments Inc. (Mahoney depo. 18-20; Ex. 1-B.) Mr. Hagberg reviewed the documentation relating to the real estate aspects of that Miller & Schroder transaction. (Mahoney depo. 20.) (Hagberg depo. 30, 31.) Mr. Hagberg was actually the lead lawyer in the transactions involving Miller & Schroeder. (Hagberg depo. 33, 34.) Mr. Hagberg had been aware of, and had worked on, a separate transaction with Linda Selbak which involved the execution by the Debtors of a Confession of Judgment in 1998 in the amount of $3,837,600.00. (Hagberg depo. 127, Ex. 16.)

(d) In late 1998, the Debtors jointly obtained a loan from First Union Bank ("**First Union**") in the amount of $11.3 million, and granted First Union, as security therefor, a mortgage on all of the Debtors' real estate. In the Spring of 2000, First Union declared a default in the mortgage loan and brought an action in the Dakota County District Court for the appointment of a Receiver. Mr. Hagberg was aware of this first legal action commenced by First Union against the Debtors. (Mahoney depo. 33, 34.) Mr. Hagberg readmits that the Debtors had "periodic difficulties with

First Union." (Hagberg depo. 50.) Mr. Hagberg recalls "some involvement" in dealing with the receivership action commenced by First Union. (Hagberg depo. 53, 54.) Mr. Mahoney discussed different refinancing options with Mr. Hagberg after First Union commenced its initial action. (Mahoney depo. 35, 36, 37.) In August 2000, the Debtors stipulated to the appointment of a Receiver (Trustee Ex. 1), however, about September 1, 2000, the Debtor paid First Union the amount of $380,600.00 to cure the payment arrearage default in the First Union mortgage and that receivership action was then dismissed. (Trustee Ex. 2.) (Hagberg depo. 73.)

(e) In January, 2001, Trustee Dwight Lindquist commenced an action against the Debtors for the collection of $218,700.00 under a promissory note and confession of judgment which had been previously executed by the Debtors on August 10, 1999. (Mahoney depo. 39, 40 and Ex. 4.) This matter was also discussed between Mr. Mahoney and Mr. Hagberg. (Mahoney depo. 41.) The Debtors did not interpose an answer in that adversary proceeding, and on March 21, 2001, Judge Kressel entered a default judgment against the Debtors in favor of Trustee Lindquist in the amount of $221,381.75. (Trustee Ex. 4.)

(f) By February 2001, the Debtors had once again fallen into default of their mortgage obligations owed to First Union, and First Union sent a written notice of acceleration of all amounts owed under the mortgage loan, which totaled $11,211,440.76. (Trustee Ex. 3.) This notice of acceleration was discussed at the time of receipt by Messrs. Mahoney & Hagberg, and was also discussed with Zeller. (Mahoney depo. 46, 47, 48; Hagberg depo. 57, 58.) Mr. Hagberg admits that he was involved in

dealing with First Union regarding the notice of acceleration sent by First Union on February 16, 2001. (Hagberg depo. 57, 58, 59.) Mr. Hagberg had discussed the subject of bankruptcy for the Debtors in connection with the receivership action commenced by First Union. (Hagberg depo. 133, 134.)

(g) The Trust had entered into a loan transaction with the Debtors under which the Trust loaned $50,000.00 to the Debtors on August 31, 2000, which loan was evidenced by an unsecured promissory note of that date (the "**first note**"). (Hagberg 82 and Ex. 8.) The loan proceeds, together with loans from other sources, were used by the Debtors to cure the $380,600.00 default in the initial First Union mortgage described above. The first note was unsecured and was personally guaranteed by Zeller. (Hagberg 82.) The first note contained a maturity date of January 15, 2001. Jane Strom was told by Zeller that the loan was for purpose of helping the Debtors make a mortgage payment. (Strom depo. 30, 31.) Mr. Hagberg and Jane Strom had a long-standing friendship and social relationship with Zeller and had made a social visit to Zeller in Andorra. (Hagberg dep. 20, 21, 22.) The Trust had never made any other loans to any other businesses up to that time. (Hagberg depo. 70.) The loan was initially discussed at a social dinner attended by Mr. Hagberg, Jane Strom, and Kathleen Zeller. (Hagberg depo. 76, 77.)

(h) The Debtors were unable to pay the first note on its maturity date of January 15, 2001. Zeller requested that the maturity date of the loan be extended. (Hagberg depo. 89.) An unsecured replacement promissory note was then executed by Zeller on behalf of the Debtors in favor of the Trust on that date in the amount of

$62,160.35 (the "**replacement note**). (Hagberg depo. 86 and Ex. 10.) The replacement note reflected an accumulation of unpaid interest and fees under the first note and no new funds were advanced. Mr. Hagberg concedes that Zeller offered to secure the replacement note with a mortgage as an inducement to the Strom Trust to extend the loan. (Hagberg depo. 97, 98.) Subsequently, on March 15, 2001, Zeller signed, on behalf of the Debtors, a mortgage on all of the Debtors' real estate in favor of the Strom Trust (the "**Trust Mortgage**"). (Hagberg depo. 91 and Ex. 11.) The Strom Trust Mortgage was filed in the offices of the County Recorder of the affected counties between the dates of March 16, 2001 and March 28, 2001. The purpose of the mortgage was to secure the extended indebtedness owed under the replacement note. The Strom Trust subsequently received certain partial payments on the replacement note, and the balance due as of the date the Debtors filed their bankruptcy petition was $41,160.35. No consideration or value was given to the Debtors for the Trust Mortgage, other than forbearance and the extension of the maturity date of the first note. (Hagberg depo. 99.) The Trust Mortgage was drafted by the Law Firm, and Zeller's signature thereon was notarized by a Law Firm employee. (Hagberg depo. 94, 95, 96.)

(i) By January, 2001, the Debtors had a large account payable owed to the Law Firm which had accumulated over many years, beginning at least as of 1996. (Hagberg depo. 112, 113, 114.) The Law Firm contended that it was owed approximately $1.5 million by the Debtors. (Hagberg depo. 112, 113.) The principals of the Law Firm, Michael Mahoney and Steve Hagberg, became concerned about the magnitude of

that account receivable, and determined to take steps to collect that account receivable. The account receivable of the Debtors had become problematic for the Law Firm. (Mahoney depo. 57.) The shareholders of the Law Firm had regular meetings at which accounts receivable, collections, and financial matters were routinely discussed on a weekly basis. (Mahoney depo. 51.) The Debtors' account receivable was the largest single account receivable in the law firm. (Mahoney depo. 49, 50; Hagberg depo. 114, 115, 117.) Mr. Mahoney was told by Mr. Hagberg that he intended to secure that receivable with a mortgage and a note. (Mahoney depo. 51, 52.) Thereupon, on March 15, 2001, the Law Firm had Zeller, on behalf of the Debtors, execute a mortgage in favor of the Law Firm on all of the Debtor's real estate (the "**Law Firm Mortgage**"). The Law Firm Mortgage was also drafted by the Law Firm and was signed on the same day as the Trust Mortgage. (Hagberg depo. 116.) On that same date, Zeller executed, on behalf of the Debtors, a promissory note in the amount of $1.5 million in favor of the Law Firm. Mr. Hagberg was the lawyer responsible for preparation for drafting and review of the Law Firm Mortgage. (Mahoney depo. 54.) Mr. Hagberg negotiated the terms of the note signed by the Debtors in favor of the Law Firm. (Mahoney depo. 58.) The Law Firm Mortgage was also filed in the affected counties at the same time the Trust Mortgage was filed.

(j) Subsequently, on July 20, 2001, Zeller, on behalf of the Debtors, executed a real estate mortgage on all of the Debtors' property in favor of Zeller herself, purportedly to secure a debt of $62,500.00 (the "**Zeller Mortgage**"). (Hagberg depo. 131, 132.)

Less than four weeks later, the Debtors filed their petitions in this case. The Zeller Mortgage was also drafted by the Law Firm, and Mr. Hagberg personally notarized the signatures of Zeller on that mortgage. (Hagberg depo. 131, 132, 133 and Ex. 18.)

(k) The Trust Mortgage, the Law Firm mortgage, and the Zeller Mortgage all were drafted by the Mahoney & Hagberg law firm. The Debtors did not have separate legal counsel in connection with any of the foregoing mortgage transactions with the Strom Trust, the Law Firm, or Zeller. (Hagberg depo. 104, 105.) The funds of the Law Firm were used to file the Trust Mortgage as well as the Law Firm Mortgage. (Hagberg depo. 106, 107, 108.)

Clearly, Mr. Hagberg, as a principal in the law firm, and as a social friend of Zeller, and also having a professional fiduciary relationship with and duty to the Debtors, had extensive knowledge of the Debtors business and financial problems.

The Debtors' rapidly declining financial condition as of 2000 is dramatically evidenced by the two successive receivership and foreclosure actions commenced by First Union. In addition, the complaint filed against the Debtors by Trustee Lindquist in January, 2001 and the Debtors' inability to answer or respond to that complaint, and the Debtors' inability to pay the first note, reflects the Debtors' dire financial condition at that time. Lastly, and perhaps most tellingly, the Debtors' obligation owed to the Law Firm of $1.5 million as of March, 2001 (an amount which had accumulated over the previous five years) was not only well known to Mr. Hagberg, but caused he and Mr. Mahoney serious concern. That concern was of such a magnitude that the Law Firm determined it must take steps to collect that receivable and one of those steps was to obtain a mortgage on all of the Debtors' real estate. The Law Firm's Mortgage was, interestingly, obtained

on the same day that the Strom Trust obtained its mortgage. Both mortgages, and their accompanying promissory notes, were drafted by the Law Firm. The Debtors did not have separate legal counsel with respect to either transaction. Mr. Hagberg therefore cannot argue, with any credibility, that he did not have extensive knowledge about the business and difficult financial condition of the Debtors at the time the Strom Trust Mortgage was transferred and granted by the Debtors to the Defendants. The knowledge of Mr. Hagberg was gained through his confidential access to information as an attorney for the Debtors. This knowledge clearly was not accessible to the general creditors of the Debtor.

The Affidavit of Brian F. Leonard establishes that the Defendants would receive far less as an unsecured creditor than it would if its mortgage was not avoided.

A. Steven Hagberg's Insider Knowledge is Imputed to his Co-Trustee Spouse and the Strom Trust Under Agency Law

The general rule in Minnesota is that the knowledge of an agent is imputed to the principal. Mr. Hagberg, as a Trustee, is deemed to be an agent of the Strom Trust and his knowledge is imputed to the Trust and to co-Trustee Jane Strom. The Minnesota courts have generally followed the principal under the Restatement (2nd) of Agency. Restatement (2nd) of Agency Section 275 provides ample authority for the proposition that the Strom Trust was chargeable with the knowledge of its co-trustees, including Mr. Hagberg.

> § 275. Agent Having Duty to Reveal Knowledge
>
> Except where the agent is acting adversely to the principal or where knowledge as distinguished from reason to know is important, the principal is affected by the knowledge which an agent has a duty to disclose to the principal or to another agent of the principal to the same extent as if the principal had the information.
>
> Restatement (Second) of Agency, 1958.

Mr. Hagberg maintains that he, and the co-trustee (his wife, Ms. Strom) were acting within the scope of their authority on behalf of the Trust in extending the loan to the Debtors. (Hagberg depo. 84.) Mr. Hagberg owed a fiduciary responsibility to the Trust. As such, his extensive knowledge of the Debtors' financial condition, through his many years of representing the Debtors, is chargeable to the Strom Trust and to co-Trustee and spouse, Jane Strom. The knowledge of a dual agent is chargeable to both principals. *Union Central Life Ins. Co. v. Star Ins. Co.*, 227 N.W. 850 (1929) and *State Bank v. Adams*, 170 N.W. 925 (1919).

A principal is bound by the knowledge of the agent, where the agent is acting for the principal and even if the agent has a simultaneous fiduciary duty owed to a third party with whom the agent is dealing on behalf of the principal. *Commercial State Bank v. Algeo*, 331 S.W.2d 84 (Texas 1959); *Matanuska Valley Bank v. Arnold*, 116 F. Supp. 32 (1953), aff'd in part reversed on other points, 223 F.2d 778 (9th Cir. 1955). Accordingly, the fact that Mr. Hagberg wore at least two hats in the transaction results in the imputation of his intimate knowledge of the Debtors' financial condition to the Trust and the co-trustee and spouse, Jane Strom.

This concept is consistent with principles of agency generally recognized in other courts. Knowledge and information within the mind of an agent, even if acquired in a role outside the agency, but used within the agency, is chargeable to the principal. *State Bank v. Adams*, supra. In *Reynolds v. Snow*, 197 N.Y.S2d 590 (1960) the court stated an agent's knowledge is imputed to its principal so long as the agent is not acting antagonistically to the interest of his principal. In the present case, Mr. Hagberg was certainly not acting antagonistically toward the Strom Trust in connection with the mortgage granted by the Debtors to the Trust, and accordingly his knowledge is chargeable and imputed to the Trust and his co-Trustee.

B. Steven Hagberg's Insider Knowledge is Imputed to his Co-Trustee Spouse and the Strom Trust Under Trust Law

Under the general law of trusts, Mr. Hagberg and Jane Strom, as co-Trustees of the Strom Trust, are considered to be a single entity. As such, whatever insider knowledge and information that Mr. Hagberg possessed is deemed to be possessed by Jane Strom, his co-Trustee. Notice to one of several trustees of a trust is notice to all trustees. *Bisbee v. Mackey*, 102 N.E. 327 (Mass. 1913). Multiple trustees of a trust constitute one, single entity. *Scullin v. Clark*, 242 S.W.2d 542 (Mo. 1951).

The law of trusts deem trustees to be of equal status, and property held for the benefit of a trust is deemed to be held by <u>all</u> the trustees. The treatise known as Bogert's Trust, Sixth Edition, states all trustees hold title as joint tenants of the trust property.

Section 32 (in part):

> If two or more person are named as trustees, a transfer of title to them makes them joint tenants of the trust property unless the settler provides otherwise. . . .

Bogert's Trust, Sixth Edition, Section 32

Under the foregoing doctrine, Mr. Hagberg, as a co-Trustee is vested with the same title to the Trust Mortgage and the note that Jane Strom held. As an equal co-owner, Mr. Hagberg's knowledge is deemed to be that of the Strom Trust and Jane Strom, his co-Trustee and wife. Accordingly, Mr. Hagberg is deemed to be a transferee and owner of the Trust Mortgage and his knowledge of the Debtors' financial condition is that of the trust itself.

For all of the foregoing reasons, the law governing trusts imputes Mr. Hagberg's knowledge to the Strom Trust and his co-Trustee, Jane Strom, or Mr. Hagberg's knowledge is deemed to be that of the Strom Trust itself.

C. Mr. Hagberg is an Insider Under 11 U.S.C. § 101 (31).

In the case of *In re Northgate Computer Systems, Inc.*, 240 B.R. 328 (Bankr. D. Minn. 1999) (Kishel, J.), this Court provided a discussion the meaning of "insider" under the Bankruptcy Code. The Court stated that:

> The statutory examples of §101(31), of course are not exclusive. In pondering other characteristics that could confer the status, some courts have dwelled on any circumstances that gave the putative insider power over the debtor's decision-making process (and, in particular, over the decisions to make the payments or to enter into the transactions that are alleged to be avoidable). *In re Schuman*, 81 B.R. 583, 586 (9th Cir. BAP 1987); *In re Lemanski*, 56 B.R. 981, 983 (Bankr. W.D. Wis. 1986); *In re F & S Central Mfg.*, (Bankr. D. N.J. 1981). Others have brushed more broadly, opining <u>insider status could be founded on any complex of relationship and conduct between the debtor and defendant, so close that it overrode more independent business judgment to provide the motivation for the subject transaction</u>. *In re Three Flint Hill L.P.*, 213 B.R. 292, 300 (D. Md. 1997). *See also* H.R. Rep. No. 595, 95th Cong. 1st Sess. 312 (1977); S. Rep. No. 989, 95th Cong.2d Sess. 25 (1978). This broader one is an appropriate formulation, as long as it is applied with some restraint that is channeled by the policy of the applicable substantive law. (emphasis supplied)

Northgate, at 363 (emphasis added).

Insiders, for bankruptcy purposes, are those who do not deal at arms-length with the Debtor. *In re Tennessee Wheel & Rubber Co.*, 62 B.R. 1002 (M.D.Tenn. 1986). Transactions with Debtors are subject to special scrutiny, because of the incentive and opportunity to take advantage of exclusive knowledge not generally available to the body of creditors. *In re Mid-Town Produce Terminal, Inc.*, 599 F.2d 389 (10th Cir., 1979).

It is germane that the law firm of Mahoney & Hagberg (the "**Law Firm**") not only drafted the Strom Trust Mortgage, but also drafted the Mortgage in favor of M&H itself in the amount of $1.5 million (the "**M&H Mortgage**") which was signed at the <u>same</u> time. It is not a mere coincidence that the Strom Trust Mortgage and the Law Firm Mortgage were <u>BOTH</u> signed by Zeller and notarized by the <u>same</u> notary public on the <u>same</u> day and were <u>both</u> recorded on the very

next day in Hennepin County with consecutive document recording numbers.

Mr. Hagberg had personal knowledge of the financial status of the Debtors in March, 2001, as reflected in the following events and facts:

1. The action against the Debtors commenced by Trustee Dwight Lindquist for $218,700.00 on January, 2001 (the "**Lindquist Action**").
2. The acceleration and demand for immediate payment by First Union Bank of the Debtors' $11,211,440.76 mortgage obligation on February 16, 2001, and the foreclosure action commenced by First Union Bank just seventh months earlier.
3. The inability of the Debtors to pay when due on January 15, 2001 the unsecured loan to the Strom Trust in the amount of $62,160.35.
4. The problematic nature of the huge attorneys' fees ($1.5 million) which the Law Firm believed was owed by the Debtors.

In the Lindquist Action, a default Judgment was entered against the Debtors and Summa on March 20, 2001, in the amount of $221,381.75 (the "**Lindquist Judgment**"). (Leonard Aff. Ex. 5.) It is not simply a coincidence that Steven Hagberg, and the Law Firm, filed their mortgage on March 16, 2001, just four days before the Lindquist Judgment was entered by Judge Kressel. M&H and the Strom Trust scrambled to have both Mortgages signed and filed in advance of a docketing of the Lindquist Judgment, in an attempt to give them a lien interest in the Debtors' real estate which would be prior to the Lindquist Judgment.

The entire fact situation compels the conclusion that Jane Strom, having a marital and financial relationship with Steven Hagberg (a principal of the Law Firm) and the Strom Trust, are "insiders" as that term is used in 11 U.S.C. § 101(31). Steven Hagberg admitted that he had

represented the Debtors, together with Zeller and her company, Summa Management, Inc. ("**Summa**"), for many years prior to the Mortgage transactions in question. The Law Firm further represented the Debtors, Summa, and Zeller during and after the time the mortgages in question were drafted, signed, and filed. Jane Strom's obvious close relationship with Steven Hagberg is a relationship in which they have a financial common interest. Steven Hagberg used his close knowledge of the financial affairs of the Debtors in order to benefit he and his wife's financial interest. Jane L. Strom's relationship as a wife and financial partner of an indisputable insider is the type of relationship which makes her an insider under the case law previously cited.

An additional mortgage was granted by the Debtors in favor of Zeller and filed in Hennepin County on July 24, 2001 (the "**Zeller Mortgage**"). This third Mortgage further demonstrates the close, intense, and intertwined relationship by and between Zeller, the Debtors, M&H, and Steven Hagberg. The Zeller Mortgage reflects that it was not only drafted by M&H, but that Steven Hagberg, himself, was the notary public who acknowledged the signature of Kathleen Zeller on the Mortgage. (The Zeller Mortgage was not disclosed on the Debtors' schedules filed in this case, and it was filed post-petition in Crow Wing County.)

Any argument that Jane L. Strom Trust or Jane Strom, Trustee are not insiders is simply not credible. A comparable argument is that a wife who receives avoidable transfers from a corporate Debtor, with the active assistance of her CEO husband, cannot be deemed an insider under 11 U.S.C. § 101(31). In the foregoing hypothetical, the policy under which applicable law (the Bankruptcy Code) is grounded clearly will invest the wife with the same insider status as her husband. This conclusion is further mandated by the obvious lack of any benefit or value given to the Debtors in consideration for the Defendants' Mortgage and the M&H Mortgage conveyed in March, 2001, or

the Zeller Mortgage conveyed in August, 2001. Those transfers simply were not arms-length transactions, and the transfers were indisputably detrimental to the Debtors. No consideration or new value given to the Debtors in return for the Strom Trust Mortgage.

Lastly, Jane L. Strom, and the Strom Trust, are vested with the insider knowledge of Steven Hagberg under the applicable law of agency and trusts.

LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.

Dated: September 16, 2004

/e/ Brian F. Leonard
By_____

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Matthew R. Burton, #210018
Attorneys for Brian F. Leonard, Trustee
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AFFIDAVIT OF MERLE A. SAMPSON

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Merle A. Sampson, after being duly sworn on oath, states as follows:

1. I am 56 years of age.

2. I received a Bachelor of Arts Degree in Business Administration from the University of Minnesota in 1970. I received a Masters Degree in Industrial Relations from the University of Minnesota in 1972. I have completed minor studies in finance, economics, and psychology. I have also completed all labor law courses at the University of Minnesota Law School.

3. I was a member of the Board of Directors of Care Providers of Minnesota from 1983 to 1984. I was also a member of the Board of Directors of Minnesota Health & Housing Alliance (MHHA) from 1997 to 1998. The foregoing are trade associations involved in the long-term care industry in Minnesota. While on the Board of Directors of the aforementioned trade associations, I was involved in shaping public policy direction, teaching seminars, and providing consulting to the member organizations of the associations.

4. My employment history is as follows: I began my business career with Northern States Power Company in 1971 and held several human resource positions with that company. From 1974 to 1982, I was employed by Honeywell Corporation and Norwest Bank (now Wells Fargo Bank). In 1982, I became employed by Good Neighbor, Inc., a start-up company, whose business was the ownership of long-term health care facilities. I was the primary architect of the plans and business direction of Good Neighbor, Inc. ("**GNI**"). I was the vice president in charge of administration and finance for GNI. My role and function in that position was to, among other things, manage and oversee the purchase of thirty nursing homes, and the build-out of a 110-unit assisted living facility in Waconia, Minnesota. My role in those matters was to determine the

value of the health care facilities, conduct due diligence by examining the historical performance of the purchased facilities, deal with and negotiate employment and collective bargaining contracts and modifications, and reduce the expenses of the purchased facilities wherever possible. GNI then sold its facilities to Good Samaritan Society, a process which took approximately one year and was finalized in 1992. The Good Samaritan Society is the largest non-profit company in the nation, in the business of operating long-term health care facilities, serving over 25,000 senior citizens in 26 states. I was employed by the Good Samaritan Society from 1992 to 1997, holding the positions of risk management manager nationwide and management of employee relations for the fifty facilities and five thousand employees located in Minnesota. As the risk management manager, I was responsible for overseeing the asset management, worker's compensation and professional liability and other insurance programs for the company. As the Minnesota employee relations manager, I was responsible for all employee relations issues, collective bargaining agreements, reviewing compensation and benefit packages, and all other issues relating to the Minnesota employees of the Good Samaritan Society. The Good Samaritan Society has approximately forty assisted living facilities around the country. I was a member of the senior management team of the Good Samaritan Society. It acquired approximately five assisted living facilities during my tenure, and sold two assisted living facilities. As a member of senior management, I was closely involved as part of the team responsible for those purchases and sales.

5. In 1985, while employed at Good Neighbor, Inc., I founded Focus Homes, Inc., a health care service company serving the developmentally disabled community. Focus Homes, Inc., was sold in 1999, at which time it served over 360 people in 90 locations throughout the State of Minnesota. Focus Homes, Inc. operated group homes for individuals with various degrees of developmental disabilities. The residents of the group homes were mostly Medicaid recipients. As

President of the company, the operating manager of Focus Homes, Inc. reported to me and I oversaw all of its operations.

6. I acquired Allied Health Alternatives, Inc. in 1998, and also became a 50% shareholder in Arrowhead Health Alternatives of Virginia Minnesota in that same year. These two companies were merged into Spectrum Community Health, Inc. in the year 2000 and now operate as a statewide healthcare organization. The business of these companies was to provide in-home health care and therapy services, and to provide on-site nursing services in assisted living facilities. At that time, Arrowhead Health Alternatives of Virginia operated a 25-unit assisted living facility in Virginia Minnesota.

7. My work at Good Neighbor, Inc., the Good Samaritan Society, Focus Homes, Inc., Allied Health Alternatives, Inc. and Arrowhead Health Alternatives, Inc., and Spectrum Community Health, Inc., have been in the long-term health care industry. For over 20 years I have been directly involved in the acquisition, management and divestiture of these various entities and health care facilities. I have participated as a consultant, or a principal in the purchase and sale of over 30 nursing homes and assisted living facilities. Over the past twenty plus years in my various capacities described herein, I worked closely with all levels of local, state, and federal regulatory agencies and governmental units. Healthcare, especially the nursing homes/assisted living business, is highly regulated in part because the majority of the residents in most of the facilities have the costs of their residency paid by state and/or federal government programs. The facilities must adhere to a complex array of statutes and regulations imposed by these payors. A summary of the nursing homes and assisted facilities the purchase and sale of which I have been involved include:

< sale of 30 Good Neighbor Nursing Homes and related service companies to Good Samaritan Society

< purchase of 8 nursing homes with several attached assisted living facilities acquired by Good Neighbor

< acquisition of five and the sale of three assisted living facilities

< start-up and operation of 90 group home projects in Minnesota

8. Effective January 2, 2002, I was hired by the Trustee of the Carefree Living Bankruptcy Cases to manage the operation of three Carefree assisted living facilities, located in Burnsville, St. Cloud, and Brainerd, Minnesota ("**Carefree Facilities**"). The Carefree Facilities had a total of 235 occupyable units. At the time of my appointment, the census (occupancy) of the units, in the aggregate, was 86%. I subsequently purchased the Carefree Facilities from the Trustee under the authorization of an Order of the United States Bankruptcy Court effective August 1, 2002. In March 2003, I was also appointed by a State Court Receiver to manage a 78-unit facility formerly owned by Carefree Living of America (Minnetonka), Inc ("**Minnetonka Facility**") a an affiliate of the Carefree entities.

9. When I took over management of the operations of the three Debtors' facilities (the **Facilities**") in January 2, 2002, I found that their financial affairs were in extreme disarray. For instance, the financial statements purportedly generated by the Facilities during, and prior to the commencement of, their Chapter 11 cases did not reflect accurately their financial condition. Previous management had used a combination of the cash and the accrual methods of accounting for financial transactions and the financial condition of the facilities. Obviously, it is highly improper to mix and match the two methods of accounting and the financial statements generated internally by the Facilities were therefore totally inaccurate and misleading. In addition, the financial statements failed to reflect over 3 million dollars of obligations (in the aggregate) owed to the Trustee Dwight Lindquist and to Linda Simmons, both of which were evidenced by

Confessions of Judgement signed by the Debtors. When I took over management of the operations, I found that the Facilities had been placed on a COD basis by most of the suppliers and vendors to the Facilities, because the Facilities were grossly past due on payments owed to such vendors and suppliers. I also found that the Facilities had not been operated in a manner which would achieve economies of scale in their operations. Each Facility was operated mostly on a "stand alone" basis, and did not achieve the value and discounts from its vendors and service providers which would have been possible if the Facilities had been operated on a group basis. The day-to-day management of the Facilities was basically non-existent. Kathleen Zeller ("**Zeller**"), the controlling person of Summa Management Inc. ("**Summa**"), lived in Europe (Andorra), and obviously did not exercise day-to-day management of the Facilities. Summa was the contract manager of the Facilities. She visited the Facilities two or three times a year, expensing to the Facilities large travel amounts for airfare, hotels, etc. The morale of the employees was very low. The employees were concerned about working for an absentee owner, which caused unusual rates of turnover, and with the vendor payment problems, and the employees had concerns for their job future. Ms. Zeller had been draining cash from the Carefree Facilities for many years. For instance, upon reviewing the books and records of the Carefree Facilities, I found that a great deal of the cash flow of the three Carefree Facilities was being appropriated by Zeller, individually and through Summa. For at least two years before I took over management, Zeller had caused the Carefree Facilities to pay Summa approximately $33,000.00 per month for management services. However, Zeller, individually, also took a salary as a purported full-time employee of each of the Carefree Facilities in the aggregate amount of approximately $6,000.00 per month. The use of the cash flow of the Carefree Facilities to pay Summa and Zeller individually, as well as a general lack of management, caused the Carefree

Facilities to be under substantial and serious financial distress for years before I took over management.

10. The Carefree Facilities had been the subject of two receivership and mortgage foreclosure actions, the first having been commenced in August 2000, and the second in the spring of 2001. The mortgage lender, First Union Bank, had accelerated the $11,200,000.00 mortgage debt secured by the Facilities, due to various mortgage defaults of the Debtors. An Order for the Appointment of a Receiver had been issued by a Dakota County District Court Judge shortly before the Debtors filed their petition in ths case.

11. Based on my knowledge of the long-term health care industry, and my experience in buying and selling many health care facilities, and the factors explained in paragraph 12, my opinion is that the aggregate market value of the three Carefree Facilities in the period from January 1, 2001 to March 15 of 2001 was no more than 8.5 to 9.5 million dollars. This evaluation is also based on the financial condition of the Facilities, the poor financial performance of the Facilities, the poor management practices in the Facilities, the successive foreclosure actions commenced against the Facilities, and the cash flow drain imposed upon the Carefree Facilities by its management, all as described herein. I am also aware that a local long-term care provider (not for profit) had offered Zeller $8.5 million for the Facilities in 2001. In addition, according to Zeller herself, an entity controlled by Sidney Goodman, a Minneapolis businessman, offered Zeller $6 million for the Facilities in the summer of 2001.

12. The value of an assisted living facility, such as the three Carefree Facilities, is a function of several factors. These factors include: size of living units; number and quality of appliances in each living unit; the services available to residents, such as housekeeping, laundry, meals, transportation, activities, nursing case, and general health and memory care; census history

i.e. occupancy rates; age, physical condition, and amount of maintenance needed by the facility; the competency and morale of staff, and labor unit costs; and whether the residents were on public assistance or were private payors.

The valuation of an assisted living facility is usually expressed in terms of dollars per living unit.

The three Carefree Facilities have average to small size living units. None of the units had appliances. Each of the Facilities required substantial physical upgrades, including replacing 16 year old carpeting, installing handicap accessible improvements, replacing the roof on the Burnsville Facility, and repairing and effecting substantial improvements to the HVAC equipment. I was required to spend in excess of $400,000.00 in making immediate physical improvements to the three Carefree Facilities after I purchased them. The Facilities were burdened by the failure of management to implement a proper maintenance and repair program in the Facilities. The census of the Carefree Facilities, at 86%, was low by industry standards. Industry standards require a successful assisted living facility to have a census of at least 94%. The majority of the residents in the Carefree Facility were on public assistance, as opposed to private payors. This fact limited the revenue potential of the Facilities. The low occupancy rates for the Burnsville Facility was the result of, in part, Summa's poor working relationship in 2001 with the Dakota County Welfare Department, which had been an important source of referrals for the Burnsville Facility. In fact, the relationship had deteriorated so far that Dakota County actually refused in 2001 to place residents in the Burnsville Facility. One of my most important and difficult jobs after taking over management of the Burnsville Facility was to restore a positive working relationship with the Dakota County officials by demonstrating improved administration and operation of the Burnsville Facility. This took several months, and was not achieved until mid-2002. The services available

to residents were average by industry standards. The factors stated herein were all considered in my evaluation of the three Carefree Facilities. Based on the financial records of the Facilities, and my knowledge gained from operating the Facilities as of January 4, 2002, I know that the conditions of the three Carefree Facilities that existed in January, 2002, when I first took over management of the Facilities, also existed in March, 2001.

13. I was able, over eight months of management, beginning in January, 2002, to improve the aggregate census of the Facilities to approximately 96%. I was also able to achieve economies of scale by implementing sound and prudent management practices. I instituted a "hands on" day-to-day management practice, and the morale, and productivity of the staff, greatly improved, and, in my opinion, the care of the residents in the Facilities greatly improved. The price I paid to the Trustee equated to $53,191.00 per unit. A normal and average price for assisted living facilities in 2001 was approximately $50,000.00 per unit for a reasonably well operated and well maintained facility of the same nature as the Facilities. My initial offer to the Trustee was $12 million, which would have been paid solely through an assumption of the existing mortgage. The Trustee set a minimum bid of $12.5 million, so that value could be generated in the transaction for the unsecured creditors, and I reluctantly agreed to increase my offer. This was based upon my optimism that my efforts would achieve further improvements in the operations of the Carefree Facilities and I would be able to refinance the existing mortgage and reduce the interest of the mortgage by several percentage points. I ultimately purchased the Carefree Facilities in August of 2002, for the sum of $12.5 million (price set by the Trustee), which included the assumption of the First Union Bank mortgage thereon in the amount of 12 million dollars and a cash payment of $500,000. My willingness to pay this amount in August of 2002 was based on the improved performance of the Carefree Facilities after I had been operating the facilities for eight months.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: 9-9, 2004

Merle A. Sampson

Subscribed and sworn to before me
this 9th day of September, 2004.

Stephanie L Wood
Notary Public

STEPHANIE L. WOOD
Notary Public-Minnesota
My Commission Expires Jan 31, 2005

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7

Carefree Living of America (Burnsville), Inc. Case Nos.: 01-33545
Carefree Living of America (St. Cloud), Inc. 01-33546
Carefree Living of America (Brainerd), Inc. 01-33547

Debtors.

Brian F. Leonard, Trustee, ADV Case No. 02-9117

Plaintiff,

vs. **AFFIDAVIT OF BRIAN F. LEONARD**

Jane L. Strom Revocable Trust and
Jane L. Strom, Trustee,

Defendants.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Brian F. Leonard, being first duly sworn on oath and under penalty of perjury, states as follows:

1. I am the duly appointed and acting Trustee of the above-referenced Chapter 7 bankruptcy case ("**Trustee**").

2. In my capacity as Trustee, the actions I have taken include the following:

(a) examination and review of the Debtors' financial records, including records (i) reflecting the Debtors' financial operations, assets, and liabilities, and (ii) the Debtors' transactions with and relationship to its creditors and professional service providers;

(b) review of the Debtors' business records, including records pertaining to its internal corporate governance, organizational structure, operations and litigation; and

(c) receipt and review of voluminous records produced by the law firm of Mahoney & Hagberg (the "**Law Firm**") relating to the proof of claim filed in this case by said Law Firm, including invoices, billing records, attorney time records, and documents which reflect the legal services provided to the Debtors by the law firm.

3. The facts stated in this affidavit are based on (a) the financial and business records of the Debtor, and my review thereof, (b) the records produced by Mahoney & Hagberg, PA in Adv. Proc. 03-3154, (c) the deposition testimony of Michael Mahoney, Steven V. Hagberg, and Jane Strom (attached as Exhibits hereto), and (d) the records and information in the bankruptcy estates of the Debtors which are under my control as the Trustee of such estates.

4. On August 18, 2001, the above Debtors filed a petition under Chapter 11 of the United States Bankruptcy Code. On January 2, 2002, I was appointed the Chapter 11 Trustee in the Debtors' bankruptcy cases. As Chapter 11 Trustee, I immediately replaced the existing management of the Debtors and contracted with Spectrum Community Health, Inc., to operate the Debtors' businesses. The business of the Debtors was the operation of three assisted living facilities located in Burnsville, St. Cloud, and Brainerd, Minnesota. The management was controlled by Kathleen Zeller ("**Zeller**"), who was the controlling shareholder of Summa Management, Inc. ("**Summa**"). Summa was the majority shareholder of each of the Debtors. Summa was being paid $33,000.00 per month by the Debtors as management fees. In addition, Zeller received a salary from <u>each</u> of the Debtors as a full-time employee, notwithstanding the fact that Zeller lived in Europe.

5. My examination of the Debtors' financial and business records reflected the following partial list of liabilities owed jointly by all the Debtors as of January 1, 2001, which were unpaid as of March 15, 2001:

First Union Bank	$11,211,440.76
Linda Simmons (Selbak)	$3.3 million
Dwight Lindquist-Trustee	$218,700.00
Mahoney & Hagberg	$1.5 million
Jane Strom Trust	$62,160.35
David Broberg	$61,481.13
William Howard	$193,030.00
Hinshaw & Culbertson	$43,915.93
Total:	$16,590,728.17

6. Each of the above creditors have filed proofs of claim in one or more of the above bankruptcy cases.

7. The assets of the Debtors consisted solely of the three assisted living facilities located in Burnsville, St. Cloud and Brainerd. The aggregate value of the assets of the Debtor as of March 15, 2001, was $9.5 million or less, as stated in the Affidavit of Merle Sampson filed herewith.

8. The assets in the bankruptcy estates are, in the aggregate, $686,921.76. The unpaid administrative claims in this bankruptcy case are approximately $160,000.00. The secured claims in this case are $61,250.00 (Broberg) and $65,000.00 (the Law Firm). The aggregate distributable assets in these cases is approximately $400,671.76.

9. The aggregate dollar amount of the unsecured claims filed in these cases, net of duplicate claims, claims which have been paid, and settled claims, is $3,640,684.00. The cases each

have different and separate dollar amounts of claims and distributable assets.

10. Based on any calculation on the separate amounts of the clams and distributable assets in each case, if the claim of the Defendants' (the "**Strom Trust**") is determined to be an unsecured claim, it would receive an aggregate distribution from all three cases of an estimated $15,000.00 on a claim of $41,160.35. This calculation is based on the present status of administrative claims. If the Strom Trust were paid as a secured creditor in this case, it would receive a distribution of 100% of its claim. (The Strom Trust now apparently asserts a secured claim in excess of $75,000.00.) Accordingly, the Strom Trust would receive a greater distribution on a secured claim than it would if it had not received a mortgage on the Debtors' property on or about March 16, 2001 and merely received a distribution as an unsecured creditor in these cases.

11. The Jane Strom Irrevocable Trust, Steven V. Hagberg, and Jane Strom, Trustee, are insiders of the Debtors. The Strom Trust is managed by co-trustees, Jane Strom, and her husband, Steven V. Hagberg. Mr. Hagberg was the CEO and Treasurer of Mahoney & Hagberg, P.A., the Debtors' outside law firm. (Hagberg depo. 5, 6.) In that capacity, Mr. Hagberg was privy to extensive information about the dire financial condition of the Debtors which was not generally available to other creditors in early 2001. The Law Firm had rendered extensive services to the Debtors, and from 1996 to 2001, the Debtors ran up an unpaid payable to the Law Firm of $1.5 million. During the Law Firm's representation of the Debtors in that time frame, Mr. Hagberg personally represented the Debtors in an $11.8 million mortgage refinancing involving Miller & Schroeder Investments, Inc., and personally signed a letter on April 13, 1999 to the Debtors' outside auditors explaining the nature of the extensive and numerous items of litigation in which the Debtors were involved at that time. In addition, Mr. Hagberg was involved in, as an attorney for the Debtors, the two successive receivership and foreclosure actions instituted by the Debtors' mortgage lender,

First Union Bank. The first of such action was commenced in the Spring of 2000, and the second of such action was commenced on February 16, 2001, when First Union sent the Debtors a notice of acceleration of all indebtedness (totaling $11,211,440.76) and declared said amount to be immediately due and payable. Mr. Hagberg discussed these matters internally with his partner, Michael Mahoney, and also with the Debtors controlling management, Kathleen Zeller. The Law Firm became very concerned in early 2001 about the magnitude of the account receivable it claimed was owed by the Debtors of $1.5 million. Mr. Hagberg was involved in the process by which the Debtors, through Zeller, granted the Law Firm a mortgage in the amount of $1.5 million on all of the Debtors' real estate on the same day that the Debtors granted to the Trust the mortgage which is the subject of this proceeding. In addition, Mr. Hagberg was also aware that on January 21, 2001, Dwight Lindquist, Trustee, had commenced a collection action against the Debtors seeking recovery of $217,600.00, which action resulted in a default judgment against the Debtors entered on March 20, 2001 (five days after the mortgages were granted to the Trust and the Law Firm). In addition, Mr. Hagberg and his wife are social friends of Kathleen Zeller ("**Zeller**"), who controlled the Debtors. Mr. and Mrs. Hagberg had paid a social visit to Zeller at her home in Andorra (located somewhere between France and Spain).

12. Trustee Exhibit 1 attached hereto is a true and correct copy of a Stipulation for the Appointment of a Receiver dated August 28, 2000 which was part of the Debtors' business records.

13. Trustee Exhibit 2 attached hereto is a true and correct copy of a letter dated August 31, 2000 authored by the Debtors' counsel, which was part of the Debtors' business records.

14. Trustee Exhibit 3 attached hereto is a letter to the Debtors from First Union Bank dated February 26, 2001, which was part of the Debtors' business records.

15. Trustee Exhibit 4 is a copy of a default judgment against the Debtors due to an Adversary Complaint by Trustee Dwight Lindquist commenced against the Debtors dated January 21, 2001, which was part of the Debtors' business records.

16. Attached herewith as Exhibit 5 is a copy of the complete deposition of Michael Mahoney taken by the undersigned on April 29, 2004, with exhibits.

17. Attached herewith as Exhibit 6 is a copy of the complete transcript of the deposition of Steven Hagberg taken by the undersigned on June 29, 2004, with exhibits.

18. Attached herewith as Exhibit 7 is a copy of the complete transcript of the deposition of Jane Strom taken by the undersigned on February 13, 2003, with exhibits.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: September 16, 2004

Brian F. Leonard

Subscribed and sworn to before me
this 16th day of September, 2004.

Stephanie L. Wood
Notary Public

STEPHANIE L. WOOD
Notary Public-Minnesota
My Commission Expires Jan 31, 2005

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STATE OF MINNESOTA

COUNTY OF DAKOTA

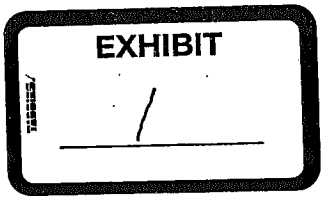
DISTRICT COURT

FIRST JUDICIAL DISTRICT

First Union National Bank, a national banking association, Plaintiff, v. Carefree Living of America (Burnsville), Inc., a Delaware corporation; Carefree Living of America (Brainerd), Inc., a Delaware corporation; and Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Defendants.	)	File No. C7-00-8920 **Stipulation and Order for the Appointment of a Receiver**

Stipulation

Plaintiff First Union National Bank ("First Union"), by execution of this Stipulation by its undersigned counsel, and defendants Carefree Living of America (Burnsville), Inc., Carefree Living of America (Brainerd), Inc. and Carefree Living of America (St. Cloud), Inc. (collectively "Defendants"), by execution of this Stipulation by their undersigned counsel, do hereby stipulate and agree that the Order for Appointment of Receiver below may be signed and entered immediately without further notice.



Dated: August 28, 2000
28

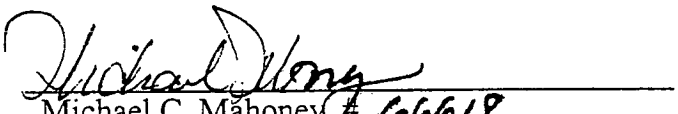
FAEGRE & BENSON LLP

D. Charles Macdonald, #151385
2200 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901
(612) 336-3000

Attorneys for Plaintiff

Dated: August 28, 2000

MAHONEY & HAGBERG, A. Professional Association



Michael C. Mahoney, # 66618
109 Bushaway Road
Minneapolis, MN 55391
(612) 332-2226

Attorneys for Defendants

Order for Appointment of a Receiver

The foregoing Stipulation is hereby approved. Based upon the files, records and proceedings herein, and the foregoing Stipulation,

IT IS HEREBY ORDERED that Board of Social Ministry (hereafter the "Receiver") is appointed receiver of the property located in the counties of Dakota, Crow Wing and Benton, more particularly described in Exhibit A attached hereto, together with all of the buildings, structures, improvements and fixtures thereon (the "Mortgaged Property"), all as more fully set forth in that certain Mortgage and Security Agreement and Fixture Financing Statement dated November 4,

1998, which mortgage was recorded on November 13, 1998 in the Office of the Dakota County Recorder as Document No. 1550542, on November 13, 1998 in the Office of the Crow Wing County Registrar of Titles as Document No. 133405, and on November 9, 1998 in the Office of the Benton County Recorder as Document No. 253680 (the "Mortgage").

Such appointment is made pursuant to the authority granted by Minn. Stat. § 559.17, subd. 2 on the grounds that:

i) First Union National Bank ("First Union") is the mortgagee under the Mortgage covering the Mortgaged Property and as additional security for the debt secured by the Mortgage holds an assignment of the rents, profits, and revenues from the Mortgaged Property;

ii) The Mortgage was executed subsequent to August 1, 1977 and secures an original principal amount in excess of $100,000;

iii) The Mortgage is not a lien upon property which was entirely homesteaded as agricultural property or residential real estate containing four or fewer dwelling units; and

iv) The Mortgage provides for appointment of a receiver upon the occurrence of an Event of Default as defined therein, and such a default now exists.

The appointment is made on the following terms and conditions:

(a) The Receiver shall post a bond in the amount of $10,000.

(b) Effective immediately, the Receiver shall collect all rents, income, fees, receipts, revenues and other payments, all as more fully set forth in the Mortgage (the "Rents") and shall distribute the Rents monthly in the following order of priority:

FIRST to the Receiver for payment of receivership fees, computed in accordance with paragraph (k) of this Order, and any expenses incurred by the Receiver in connection with its management of the Mortgaged Property;

SECOND to the repayment when due of any security deposits, with interest thereon, pursuant to the provisions of Minn. Stat. § 504.20;

THIRD to the payment when due of all delinquent or current real estate taxes and special assessments payable with respect to the Mortgaged Property, or the periodic escrow for the payment of said taxes or special assessments;

FOURTH to payment when due of all premiums for the insurance required by the provisions of the Mortgage, or the periodic escrow for the payment of said premiums;

FIFTH to payment of expenses incurred for normal maintenance of the Mortgaged Property;

SIXTH to First Union to be applied by First Union in accordance with the terms and conditions of its assignment.

(c) To the extent that the proceeds collected by the Receiver from its management of the Mortgaged Property are insufficient to pay the costs and expenses listed in paragraph (c), the Receiver may request First Union to advance funds necessary to pay such expenses. To the extent First Union in its sole discretion advances any such funds (including, without limitation, funds advanced by First Union to the Receiver for purposes of paying delinquent or current real estate taxes and special assessments payable with respect to the Mortgaged Property), sums so advanced shall (i) be secured in the same priority with the indebtedness secured by the Mortgage, (ii) bear interest from the date such advances are made at the same default rate of interest borne by the indebtedness secured by the Mortgage, and (iii) be part of the amount due pursuant to the promissory note secured by the Mortgage. If such advances are made after the foreclosure sale they shall, with interest, be part of the sum required to be paid to redeem from the sale.

(d) To the extent of the available Rents, the Receiver shall manage the Mortgaged Property so as to prevent waste, pay all expenses for normal maintenance of the property, and generally perform the duties customarily performed by managers of comparable properties.

(e) The Receiver may in its discretion from time to time contract with other parties to provide services to the property, and may pay for those services as an expense of the Mortgaged Property.

(f) The Receiver may from time to time execute leases of space in the Mortgaged Property within or beyond the period of the receivership if approved by the Court. Any lease or lease amendment for which the Receiver seeks approval may be mailed to the parties. If no objection to said lease or lease amendment is received by the Receiver within seven business days of the date of mailing, said lease or lease amendment shall be deemed approved by the Court and the Receiver shall be authorized to execute said lease or lease amendment.

(g) The Receiver shall file with the Court a monthly statement of revenues and expenses of the Mortgaged Property, and shall make and file with the Court a final accounting upon termination of the receivership or removal or resignation of the Receiver. The Receiver shall mail copies of the monthly statements and final accounting to the mortgagor and mortgagee under the Mortgage at the addresses for notice set forth in the Mortgage or as otherwise directed by the parties hereto.

(h) The Receiver shall serve until:

1) further order of this Court terminating the receivership; or

2) expiration of the redemption period following any foreclosure sale of the Mortgaged Property, in which case the receivership shall terminate automatically on the day following the expiration of the redemption period without further order of this Court upon filing of an affidavit with this Court by an officer of First Union; or

3) the substitution of a successor Receiver.

(i) The Receiver shall serve until discharged as provided in paragraph (h) above and, except as permitted by paragraph (h) above, may resign only upon 60 days' notice and appointment of a successor Receiver by this Court.

(j) Upon its appointment, the Receiver shall deliver to any tenants of the Mortgaged Property a copy of this Order and written notice that any such tenants shall pay all rents due under any leases to the Receiver and that all decisions relating to management of the Mortgaged Property will be made by the Receiver.

(k) For its services as Receiver pursuant to this Order, the Receiver shall receive a monthly fee equal to the greater of 6% of monthly Rents or $25,000.

(l) The Receiver shall cooperate with First Union in any requested environmental testing of the Mortgaged Property.

IT IS FURTHER ORDERED that Defendants, their agents or representatives: transfer and surrender possession of the Mortgaged Property to the Receiver effective no later than September 8, 2000; coordinate with the Receiver said transfer and surrender so as to ensure the continuing health

and welfare of the tenants of the Mortgaged Property and the continuing provision of needed or required medical or other health services; provide the Receiver with all necessary keys and other access devices; deliver to the Receiver originals or true and correct copies of all the leases, service contracts and other contracts and other books, records, documents or materials relating in any manner whatsoever to the maintenance, leasing or operation of the Mortgaged Property, immediately endorse and deliver to the Receiver all checks and other payments hereafter received representing payment of Rents; transfer to the Receiver any tenant security deposits with interest thereon pursuant to Minn. Stat. § 504.20, subd. 5; transfer to the Receiver all records pertaining to the Mortgaged Property; and generally provide immediate cooperation and assistance to the Receiver, including the prompt answering of verbal or written questions directed from the Receiver to defendant, so as to enable the Receiver to assume and discharge its duties under this receivership, including specifically providing immediate access to the Receiver to the Mortgaged Property and cooperating with the Receiver in the transition of any site specific personnel now employed by defendants or their agents who wish to be employed by the Receiver.

IT IS FURTHER ORDERED that any and all Rents received by Defendants, their agents or representatives, in connection with the leasing or other operations of the Mortgaged Property on or after the date of this Order shall be held in trust for the Receiver, shall not be negotiated, and shall be turned over to Receiver in the original form in which they were received (i.e. cash, check, money order or other) within 48 hours of receipt.

SO ORDERED.

Dated: _____

_____
Judge of District Court

M2:20329338.02

EXHIBIT "A"

Order Number: 98501571-1

LEGAL DESCRIPTION

Parcel 1:
All of Lot 3, and that part of Lot 4, Block 3, Eastern Park Addition, City of St. Cloud, Benton County, Minnesota, which lies westerly of a line 26.00 feet east of, as measured at a right angle to and parallel with the west line of said Lot 4, and which lies northerly of that certain highway easement described in Book 28 of Miscellaneous on Page 420, according to the files of the Benton County Recorder. Benton County, Minnesota.
Being Abstract land)

Known as 1225 Division Street, St. Cloud, Minnesota

Parcel 2:
Lot 1, Block 1, COPPERTOP II
Being Abstract land.

Known as 600 Nicollet Boulevard, Burnsville, Minnesota

Parcel 3:
All of the Southeast Quarter Northeast Quarter (SE1/4 NE1/4), Section Thirty (30), Township Forty-five (45), Range Thirty (30), EXCEPT that part thereof platted as "Parkdale Addition to the City of Brainerd";

AND ALSO

Lots One (1), Two (2), Five (5), Six (6), Seven (7), Eight (8) and Nine (9); AND the East Half of Lot Three (E1/2 L3) of Parkdale Addition to the City of Brainerd, EXCEPT: Commencing at the Southwest corner of the SE1/4 NE1/4, Section 30, Township 45, Range 30, thence North along the West boundary of said SE1/4 NE1/4 a distance of 704 feet more or less to the point of beginning, said point of beginning being the Northeast corner of Block Thirty-six (36), Cuyuna Range Addition to the City of Brainerd; thence North along said West boundary a distance of 617 feet, more or less, to a point being the Northwest corner of said SE1/4 NE1/4; thence East along the North boundary of said SE1/4 NE1/4 a distance of 551.54 feet more or less to a point being the Southwest corner of Block 27 of Cuyuna Range Addition to the City of Brainerd; thence in a Southwesterly direction to the point of beginning.

Being registered property as evidenced by certificate of Title No. 63536.
NOTE: The owner's Duplicated Certificate of Title must be submitted at closing.

Known as 2721 East Oak Street, Brainerd, Minnesota

STEWART TITLE
GUARANTY COMPANY

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
MINNEAPOLIS, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

VIA FACSIMILE & U.S. MAIL

August 31, 2000

D. Charles Macdonald, Esq.
Faegre & Benson LLP
2200 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Re: *First Union National Bank v. Carefree Living of America (Burnsville), Inc., et al.*
Our File No. 4600.015

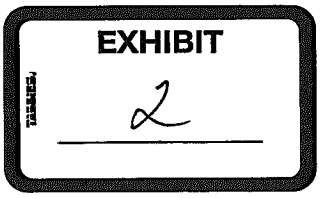
Dear Mr. MacDonald:

Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (St. Cloud), Inc. (the "Carefree Entities") have today made payment in full by wire or delivery to Faegre & Benson, LLP of funds totaling $380,600.00 in accordance with the Forbearance Agreement entered into among the Carefree Entities and First Union National Bank, as amended, to allow for payment by the close of business today. The payments have been made as follows:

1. Wire transfer from Wells Fargo in the amount of $173,000;
2. Check from US Bancorp Piper Jaffray in the amount of $50,000;
3. Wire transfer from Wells Fargo in the amount of $120,000; and
4. Wire transfer from Signal Bank in the amount of $37,600.

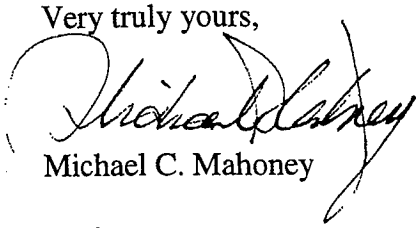
We have also enclosed the schedule of payments made by the Debtors as required under the Forbearance Agreement. If you need more detailed information please request it and we will provide it by mail the next day.

Payment and delivery of these funds and documents are conditional upon the understanding that they constitute all the conditions required under the Forbearance Agreement and First Union National Bank will dismiss the action pending against the Carefree Entities and will immediately acknowledge the cure of the events described in the Event of Default letter of July 25, 2000.



We are also entitled to immediate return of the executed Stipulation for Appointment of Receiver.

Very truly yours,



Michael C. Mahoney

Enclosures

SUMMA MGT INC. January through August
SUMMA
#2020035269

PAYEE	DESCRIPTION	CREDIT	DEBIT	BALANCE
OPEN				1,711.64
Bank Fee			91.45	1,620.19
Legal Fees			636.26	983.93
Licensing			2,582.00	(1,598.07)
Dwight lind quist	Purchase Contract		23,332.00	(24,930.07)
Hinshaw culbertson	Ltd's Agreeemnt		4,000.00	(28,930.07)
John g Kinnard	Financing fee		10,000.00	(38,930.07)
Legal Accounts Payable			3,000.00	(41,930.07)
Miscellaneous			92.53	(42,022.60)
Larson Allen	Accounting		11,000.00	(53,022.60)
Linda Selback	Purchase Contract		81,375.00	(134,397.60)
MN Dept Rev	Income taxes		550.00	(134,947.60)
Trn frm 226	Minnetonka	48,091.95		(86,855.65)
Trn frm 234	St.Cloud	19,500.00		(67,355.65)
Trn frm 242	Burnsville	36,000.00		(31,355.65)
Trn frm 250	Brainerd	31,500.00		144.35

SUMMA MGT INC. CLEARING ACCT # II
SUMMARY - 3 FACILITIES

	January	February	March	April	May	June	July	August
Beginning Balance	14,320.12	(117,467.65)	(15,926.68)	(52,058.12)	(49,661.94)	(109,096.10)	(66,585.51)	(42,483.02)
Deposit	326,151.33	368,929.44	437,293.60	329,669.81	441,612.77	357,424.37	401,213.75	328,508.34
1st Union	125,225.10	0.00	119,533.05	119,533.05	113,841.00	0.00	0.00	113,841.00
Accounting	1,570.00	893.40	5,814.60	1,178.90	0.00	4,261.19	0.00	0.00
Advertising	2,735.43	2,516.10	20.00	2,224.44	379.47	0.00	2,976.32	1,384.00
Bank charges	742.56	683.12	69.12	489.40	392.47	91.76	264.46	0.00
Cable T.V.	2,783.88	0.00	3,723.51	3,632.72	2,375.37	6,947.15	1,261.84	3,023.52
Employee Benefits	8,048.16	18,753.38	13,167.26	3.00	8,549.63	30,002.44	6,935.12	(1,338.78)
Employee expenses	9,504.75	3,912.33	3,997.94	4,500.00	525.85	6,092.25	4,537.48	3,000.00
Food	73,505.74	34,112.37	34,472.33	35,347.14	32,769.53	36,062.92	36,664.15	28,758.37
Insurance	0.00	5,063.94	5,317.14	5,317.14	10,887.48	5,063.94	4,810.74	4,810.74
Legal	7,500.00	7,500.00	15,000.00	10,688.00	16,000.00	7,500.00	10,000.00	5,000.00
License	0.00	277.00	0.00	490.00	1,926.06	0.00	1,058.73	430.00
Maintenance	6,785.64	10,905.98	(885.15)	5,876.99	7,060.84	897.40	13,610.29	1,657.62
Miscellaneous	130.35	14.07	0.00	544.17	140.65	0.00	190.24	0.00
Nursing	70,000.00	30,000.00	40,000.00	15,000.00	102,000.00	50,000.00	70,000.00	30,000.00
Op Supplies	515.71	1,742.41	451.22	2,121.45	1,813.59	1,180.02	2,781.12	1,410.03
Payroll	136,736.10	105,307.96	137,855.63	104,864.95	153,420.23	130,906.12	178,163.24	75,609.80
Petty cash	3,410.06	2,397.74	3,284.12	2,948.95	2,731.16	3,344.27	5,035.15	3,015.29
Postage	0.00	31.50	102.25	106.25	202.39	63.99	94.83	0.00
Printing	0.00	0.00	0.00	532.39	266.68	0.00	0.00	0.00
Rent refund	4,794.83	643.37	1,617.92	185.00	185.00	0.00	392.00	0.00
Summa	0.00	20,500.00	76,946.46	0.00	24,000.00	10,000.00	26,000.00	6,500.00
Telephone	2,121.22	1,766.47	2,816.66	1,304.71	1,427.20	1,763.87	2,957.47	0.00
Utilities	1,829.57	20,367.33	10,120.98	10,384.98	20,152.33	20,736.46	9,378.08	6,910.94
	(117,467.65)	(15,926.68)	(52,058.12)	(49,661.94)	(109,096.10)	(66,585.51)	(42,483.02)	2,012.79
	(117,467.65)	(15,926.68)	(52,058.12)	(49,661.94)	(109,096.10)	(66,585.51)	(42,483.02)	2,012.79

SUMMA MGT INC. CLEARING ACCT # III
CAREFREE BRAINERD

	January	February	March	April	May	June	July	August
Beginning Balance	6,826.28	(39,484.33)	(9,231.27)	(14,718.37)	(14,692.61)	(43,124.57)	(17,751.32)	(12,200.57)
Deposit	84,110.53	101,066.02	105,540.68	98,073.61	108,565.94	106,255.08	103,037.08	95,878.80
1st Union	37,612.55		30,000.00	30,000.00	33,841.00			30,000.00
Accounting	595.00	411.55	1,689.10	409.40		1,377.43		
Advertising	247.85	1,634.24		1,668.01			2,248.85	
Bank charges	497.77	205.54	69.12	131.31	68.94	8.43	137.34	
Cable T.V.	445.14		1,342.89			1,371.39		642.89
Employee Benefits	2,604.89	5,318.70	3,401.33		1,683.06	8,036.28	2,254.46	(803.62)
Employee expenses	3,168.25	1,912.33	1,000.00			2,030.75	2,000.00	1,000.00
Food	19,334.85	9,243.62	8,751.26	13,017.35	10,807.12	11,793.89	11,384.57	10,154.92
Insurance		1,687.98	1,772.38	1,772.38	3,629.16	1,687.98	1,603.58	1,603.58
Legal			3,750.00	5,000.00	2,000.00	2,500.00	3,500.00	
License				490.00			817.73	215.00
Maintenance	1,325.93	4,147.22		1,506.14	1,892.22	45.00	2,301.02	1,151.98
Miscellaneous		14.07		101.94			42.24	
Nursing	30,000.00	10,000.00	8,333.34		32,000.00	10,000.00	15,000.00	10,000.00
Op Supplies	263.79	1,121.59		207.31	152.57	194.83	846.28	
Payroll	27,718.84	16,225.48	43,899.34	40,227.14	27,838.49	31,065.92	37,720.92	21,000.00
Petty cash	483.07	488.00	490.79	498.42	993.42	984.25	1,914.65	927.86
Postage			47.25	59.00	47.25		47.58	
Printing				133.13				
Rent refund	3,798.66	358.90					196.00	
Summa		10,500.00	5,000.00		14,000.00	5,000.00	11,000.00	
Telephone	494.98	298.43	313.04	731.81	201.41	393.00	358.92	
Utilities	1,829.57	7,245.31	1,167.94	2,094.51	7,843.26	4,392.68	4,112.19	2,653.49
	(39,484.33)	(9,231.27)	(14,718.37)	(14,692.61)	(43,124.57)	(17,751.32)	(12,200.57)	5,132.13
	(39,484.33)	(9,231.27)	(14,718.37)	(14,692.61)	(43,124.57)	(17,751.32)	(12,200.57)	5,132.13

SUMMA MGT INC. CLEARING ACCT # II
CAREFREE BURSNVILLE

	January	February	March	April	May	June	July	August
Beginning Balance	4,299.02	(50,139.28)	(74.11)	(23,851.04)	(21,282.53)	(45,957.79)	(29,487.84)	(11,990.88)
Deposit	141,795.27	156,506.94	201,499.97	129,240.06	208,626.93	141,463.83	184,527.68	134,195.57
1st Union	50,000.00		59,533.05	59,533.05	50,000.00			50,000.00
Accounting	650.00	481.85	1,944.85	394.95		1,341.96		
Advertising	2,487.58	513.55		336.43	379.47		455.75	1,384.00
Bank charges		292.83		358.09	146.53	56.93	127.12	
Cable T.V.	1,219.95		1,261.83	2,513.15	1,256.58	1,261.84	1,261.84	1,261.84
Employee Benefits	2,655.59	6,625.20	5,135.03	3.00	3,016.25	11,250.96	1,171.42	(535.16)
Employee expenses	3,168.25	1,000.00	316.44	4,500.00	525.85	2,030.75	2,537.48	1,000.00
Food	31,749.82	13,271.12	14,707.18	11,523.39	13,814.49	14,131.62	13,788.47	10,766.63
Insurance		1,687.98	1,772.38	1,772.38	3,629.16	1,687.98	1,603.58	1,603.58
Legal	7,500.00		7,500.00	5,000.00	12,000.00	2,500.00	3,500.00	5,000.00
License		89.00			686.00		35.00	
Maintenance	2,091.64	3,500.59	1,467.87	619.04	5,168.62	852.40	7,384.79	(45.80)
Miscellaneous								
Nursing	30,000.00	10,000.00	23,333.32	5,000.00	50,000.00	25,000.00	25,000.00	10,000.00
Op Supplies	251.92	620.82	431.35	1,122.49	481.78	125.17	596.35	
Payroll	61,272.19	53,856.95	41,159.20	27,197.65	70,581.74	55,840.20	90,146.64	28,609.80
Petty cash	1,925.31	1,042.03	1,908.54	1,219.88	1,075.11	1,381.44	2,176.15	1,287.43
Postage			43.25	47.25	155.14		47.25	
Printing				133.00	266.68			
Rent refund		124.47	1,617.92		185.00			
Summa		5,000.00	56,682.04		10,000.00		15,000.00	3,500.00
Telephone	1,261.32	1,117.76	2,151.55	161.27	1,009.46	1,021.40	2,226.71	
Utilities		7,217.62	4,311.10	5,236.53	8,924.33	6,511.23	(27.83)	4,257.45
	(50,139.28)	(74.11)	(23,851.04)	(21,282.53)	(45,957.79)	(29,487.84)	(11,990.88)	4,114.92
	(50,139.28)	(74.11)	(23,851.04)	(21,282.53)	(45,957.79)	(29,487.84)	(11,990.88)	4,114.92

SUMMA MGT INC. CLEARING ACCT # II
CAREFREE ST. CLOUD

	January	February	March	April	May	June	July	August
Beginning Balance	3,194.82	(27,844.04)	(6,621.30)	(13,488.71)	(13,686.80)	(20,013.74)	(19,346.35)	(18,291.57)
Deposit	100,245.53	111,356.48	130,252.95	102,356.14	124,419.90	109,705.46	113,648.99	98,433.97
1st Union	37,612.55		30,000.00	30,000.00	30,000.00			33,841.00
Accounting	325.00		2,180.65	374.55		1,541.80		
Advertising		368.31	20.00	220.00			271.72	
Bank charges	244.79	184.75			177.00	26.40		
Cable T.V.	1,118.79		1,118.79	1,119.57	1,118.79	4,313.92		1,118.79
Employee Benefits	2,787.68	6,809.48	4,630.90		3,850.32	10,715.20	3,509.24	
Employee expenses	3,168.25	1,000.00	2,681.50			2,030.75		1,000.00
Food	22,421.07	11,597.63	11,013.89	10,806.40	8,147.92	10,137.41	11,491.11	7,836.82
Insurance		1,687.98	1,772.38	1,772.38	3,629.16	1,687.98	1,603.58	1,603.58
Legal		7,500.00	3,750.00	688.00	2,000.00	2,500.00	3,000.00	
License		188.00			1,240.06		206.00	215.00
Maintenance	3,368.07	3,258.17	(2,353.02)	3,751.81			3,924.48	551.44
Miscellaneous	130.35			442.23	140.65		148.00	
Nursing	10,000.00	10,000.00	8,333.34	10,000.00	20,000.00	15,000.00	30,000.00	10,000.00
Op Supplies			19.87	791.65	1,179.24	860.02	1,338.49	1,410.03
Payroll	47,745.07	35,225.53	52,797.09	37,440.16	55,000.00	44,000.00	50,295.68	26,000.00
Petty cash	1,001.68	867.71	884.79	1,230.65	662.63	978.58	944.35	800.00
Postage		31.50	11.75			63.99		
Printing				266.26				
Rent refund	996.17	160.00		185.00			196.00	
Summa		5,000.00	15,264.42			5,000.00		3,000.00
Telephone	364.92	350.28	352.07	411.63	216.33	349.47	371.84	
Utilities		5,904.40	4,641.94	3,053.94	3,384.74	9,832.55	5,293.72	
	(27,844.04)	(6,621.30)	(13,488.71)	(13,686.80)	(20,013.74)	(19,346.35)	(18,291.57)	(7,234.26)
	(27,844.04)	(6,621.30)	(13,488.71)	(13,686.80)	(20,013.74)	(19,346.35)	(18,291.57)	(7,234.26)

FIRST UNION

First Union National Ba
NJ3181
Special Assets Manager
190 River Road
Summit, NJ 07901

February 26, 2001

Carefree Living of America (Burnsville), Inc.
600 Nicollet Court
Burnsville, MN 55335

Carefree Living of America (Brainerd), Inc.
2723 East Oak Street
Brainerd, MN 56401

Carefree Living of America (St. Cloud), Inc.
1225 Division Street
St. Cloud, MN 56304

Re: Notice of Acceleration

Dear Sir/Madam:

Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (Brainerd), Inc., a Delaware corporation and Carefree Living of America (St. Cloud), Inc., a Delaware corporation (collectively the "Borrowers") executed and delivered a promissory note to First Union National Bank, a national banking association (the "Lender") dated as of November 4, 1998, in the original principal amount of $11,316,000 (the "Note"). The principal balance of the Note remaining unpaid is $11,057,783.58, and accrued and unpaid interest as of February 26, 2001 (not including default interest) amounts to $153,657.18. Interest (not including default interest) is presently accruing at the rate of $2,649.26 per day. All capitalized terms not otherwise defined herein shall have the meaning given them in the Note.

Repayment of the Borrowers' obligations to the Lender under the Note is secured by, among other things, certain real property known by the street addresses of 600 Nicollet Court, Burnsville, Minnesota, 2723 East Oak Street, Brainerd, Minnesota, and 1225 Division Street, St. Cloud, Minnesota (collectively the "Mortgaged Property") and described in (i) that certain Mortgage and Security Agreement and Fixture Financing Statement of even date with the Note (the "Mortgage"), and (ii) that certain Assignment of Leases and Rents of even date with the Note (the "Assignment").

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EXHIBIT
3

Under Section 1.2 of the Note, the Borrowers are required, on the first day of each month, to make certain installment payments of principal and interest. The failure of the Borrowers to make any such payment constitutes an Event of Default under Section 2.1 of the Note. Upon the occurrence of an Event of Default, among other things, all sums advanced or accrued under the Note and under any other Loan Document shall become due and payable, with or without demand.

PLEASE NOTE the Borrowers have failed to make the required monthly payment due on February 1, 2001 (the "Default"), constituting an Event of Default under the Note and an "Event of Default" under the other Loan Documents including, but not limited to, the Mortgage and the Assignment. GIVEN THE DEFAULT, THE LENDER HEREBY DECLARES THE NOTE IMMEDIATELY DUE AND PAYABLE AND DEMANDS IMMEDIATE PAYMENT IN FULL OF ALL AMOUNTS DUE THEREUNDER, INCLUDING APPLICABLE LATE CHARGES, DEFAULT INTEREST, PREPAYMENT FEES AND COLLECTION COSTS.

As a direct and proximate result of the Default and pursuant to the terms of the Assignment, the revocable license granted to the Borrowers to retain possession of the Leases and collect and retain the Rents (as defined in the Assignment) has been terminated and otherwise revoked. The Lender hereby demands that pursuant to the terms of the Assignment any Rents collected by the Borrowers be held in trust by the Borrowers for the sole and exclusive benefit of the Lender, and that the Borrowers pay the Rents to the Lender within one (1) business day after their receipt of the same.

Also, please be advised that under Section 2.6 of the Note, the Borrowers are liable to the Lender for, among other things, rents and revenues of all or any portion of the Mortgaged Property which are (a) received by the Borrowers during the period following the Default, and (b) either (i) are not applied to the ordinary and necessary expenses of owning and operating the Mortgaged Property or (ii) are not paid to the Lender. Pursuant to the terms of that certain Indemnity and Guaranty Agreement of even date with the Note, Kathleen L. Zeller and Summa Management, Inc. (collectively the "Guarantors") have, among other things, guaranteed payment of said liability.

The Lender reserves any and all rights and remedies available to it under the terms of the Loan Documents or under applicable law, and this notice shall not be deemed an exclusive election of remedies nor shall it constitute a waiver of any rights or remedies otherwise available to the Lender. By copy of this letter, the Guarantors are hereby notified of the Default and the acceleration contained herein.

Sincerely yours,

FIRST UNION NATIONAL BANK

John Puckhaber
Vice President

cc: Kathleen L. Zeller
Summa Management, Inc.

M2:20371280.01

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Wilnard Leif Selbak,

Debtor.

BKY 98-41421

Dwight R. J. Lindquist, Trustee,

Plaintiff,

ADV 01-4113

v.

ORDER FOR DEFAULT JUDGMENT

Summa Management, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., and Carefree Living of America (Minnetonka), Inc.,

Defendants.

At Minneapolis, Minnesota, March 20, 2001.

On application of the plaintiff and it appearing that the defendants are in default,

IT IS ORDERED: The plaintiff shall recover from the defendants, and each of them, a total of $218,670.00, together with attorney's fees in the amount of $2,525.60, and costs of $186.15, for a total of $221,381.75.

LET JUDGMENT BE ENTERED ACCORDINGLY.

ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE

Entered on docket on MAR 20 2001
Patrick G. De Wane, Clerk, By lmh

EXHIBIT
4

6-1

US BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 7 BKY Case Nos. 01-33545, 01-33546, 01-33547

DEPOSITION OF MICHAEL C. MAHONEY – 4/29/04

In Re:

Carefree Living of America (Burnsville), Inc.
Carefree Living of America (St. Cloud), Inc.
Carefree Living of America (Brainerd), Inc.,
Debtors.

ADV Case No. 02-9117

Brian F. Leonard, Trustee

vs.

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and
Jane L. Strom, individually.

CONDENSED TRANSCRIPT PREPARED BY:

NEUMANN REPORTING AGENCY INC.
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St. Paul, MN 55105
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EXHIBIT
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Page 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

- -

In Re: Chapter 7

Carefree Living of America (Burnsville), Inc.,
Carefree Living of America (St. Cloud), Inc.,
Carefree Living of America (Brainerd), Inc.,

Debtors.

BKY Case Nos. 01-33543, 01-33546, 01-33547

- -

Brian F. Leonard, Trustee,

Plaintiff,

vs. ADV Case No. 02-9117

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and
Jane L. Strom, individually,

Defendants.

- -

DEPOSITION OF MICHAEL C. MAHONEY

TAKEN ON 4/29/04

= =

DEPOSITION OF MICHAEL C. MAHONEY, taken pursuant to Notice of Taking Deposition on the 29th day of April, 2004, at 100 South Fifth St., Suite 2500, Minneapolis, MN, before Dale R. Neumann, Professional Freelance Reporter and Ramsey County Notary Public, and commencing at 9:02 a.m.

Page 2

A P P E A R A N C E S:

Representing the Plaintiff:

Mr. Brian F. Leonard
Leonard, O'Brien, Spencer, Gale
& Sayre, Ltd.
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
Phone: 612-332-1030
Fax: 612-332-2740

Representing the Defendants:

Mr. Ralph V. Mitchell
Lapp, Libra, Thomson, Stoebner & Pusch
120 South Sixth St., Suite 2500
Minneapolis, MN 55402
Phone: 612-338-5815
Fax: 612-338-6651

Representing the Witness, Michael C. Mahoney:

Mr. Thomas P. Malone
Barna, Guzy & Steffen
200 Coon Rapids Blvd., Suite 400
Minneapolis, MN 55433-5894
Phone: 763-783-5134
Fax: 763-780-1777

* * * * * * * *

ALSO PRESENT:

Ms. Jane L. Strom
Ms. Gina L. Miller

Page 3

WHEREUPON, the following proceedings transpired:

MICHAEL C. MAHONEY,
a witness in the above-entitled action, after having been first duly sworn, deposes and says as follows:

EXAMINATION

BY MR. LEONARD

Q. Will you state your full name, please?
A. Michael Charles Mahoney, M-A-H-O-N-E-Y.
Q. Mr. Mahoney, I know that you're an attorney, and I'm going to ask a few questions about that, but I'm simply going to skip the usual preliminaries about what a deposition is and who asks the questions and the usual protocols. I will ask you first off, are you here pursuant to a subpoena?
A. I am.
Q. I also want to state on the record right now that I am the trustee of the bankruptcy estates of the three debtors that are in this case. As trustee, under various Supreme Court

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rulings and lower court rulings, I hold the right to assert or not assert any attorney-client privilege relative to the three debtors that are the debtors in this case, and I'm indicating now on the record with respect to my questions to you that involve the three debtors, I am waiving that attorney-client privilege with respect to all communications and all matters for which you or your firm or anyone else in your firm may have been engaged or represented the three debtors.

So, with that cleared away, I will ask you to state your age.

A. I'm 57.
Q. What year did you graduate from law school?
A. In 1972.
Q. Would you give me a brief sketch of your employment history since your graduation from law school?
A. Yes. I joined the firm of Richard T. Curtin – that's C-U-R-T-I-N – before my graduation in June. I was admitted to the bar October 22nd, 1972. I became a partner in that firm, I believe, in 1973. At that time the name of the firm was Curtin, C-U-R-T-I-N, Emerick,

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E-M-E-R-I-C-K, and Mahoney, and I'm that Mahoney. That firm had many name changes through approximately 1990. My recollection is, the last name of that continuing firm was Mahoney, Walling & Kelley. Walling is W-A-L-L-I-N-G, Kelley is K-E-L-L-E-Y.

Immediately following the cessation of that firm as a practicing firm, I was one of the founding directors of a firm under the name Mahoney, Kelley – that's the same spelling, K-E L-L-E-Y – & Hagberg, H-A-G-B-E-R-G.

Q. What year was that last firm formed?
A. My recollection is about 1990.
Q. The name Hagberg, is that Steven Hagberg?
A. It is.
Q. And he's the Steven Hagberg that is a trustee in what's called the Strom trust that's involved in this adversary proceeding?
A. That's my understanding.
Q. Okay.
A. And that firm name was changed to Mahoney and Emerson. And, by the way, the ending or corporate identifying phrase for all of those corporations was "a Professional Association."

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The last ending name now is Mahoney & Emerson, a Professional Association.

Q. In what year did Mr. Kelley leave that firm?
A. The same year that it was formed. So I believe it was 1990, if that's the year of formation, or '91, if that's the year of formation.
Q. At some time between 1990 and 2003, was the firm name Mahoney, Hagberg & Rice?
A. It was. And, again, the ending corporate identifier was "a Professional Association."
Q. What year did Mr. Rice leave the firm?
A. My recollection is 1999.
Q. Is it correct then that from the time Mr. Rice left the firm, the firm has been named Mahoney & Hagberg?
A. No, there was an interim name of Mahoney, Hagberg & Davisson, D-A-V-I-S-S-O-N, a Professional Association. My recollection is, that was approximately from May of 2000 – could have been maybe 2001 – through sometime in 2002. Again, my dates and years might be incorrect.
Q. At some point in that time period, did Mr. Davisson leave the firm?

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A. Yes.
Q. And at that point was the firm then simply named Mahoney & Hagberg?
A. Yes.
Q. And that name continued in existence until sometime in 2003?
A. Correct.
Q. And at that point in time, which is the date in 2003 that it changed again, what did the name change to?
A. Mahoney & Emerson, a Profession Association.
Q. And is that the name of the firm as we sit here today?
A. Yes.
Q. I'm going to be referring to someone during the course of this deposition named Steven Hagberg, and I'll probably refer to him as Mr. Hagberg, and that's the individual that you've identified as joining the firm in 1990 or so, just to be clear.
A. I understand.
Q. I take it from 1990 or 1991, or thereabouts, until the firm's name changed to Mahoney & Emerson, I take it that Mr. Hagberg was a member of the firm?

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A. And what do you mean by "a member"?
Q. He was at least a lawyer in the firm?
A. Yes.
Q. Okay. Was he a shareholder during that time as well?
A. Yes.
Q. Did he hold a corporate office during that time?
A. Yes.
Q. Can you tell me what offices or office?
A. My recollection is that he held the office of president and, I believe, treasurer.
Q. Did he also hold the office of CEO, or chief executive officer?
A. He may have. I don't recall that title.
Q. Do you recall the time frame in which he held the office of president?
A. No, I do not recall the time period.
Q. Did he hold that office up until the time in 2003 when the firm's name was changed to Mahoney & Emerson?
A. I'm not sure.
Q. As president, what role or functions did Mr. Hagberg have other than being a lawyer in the firm?

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A. My recollection was, he was primarily responsible for oversight of the operating expenses, revenue recognition, payment of bills. My recollection was, it was sort of a checks and balances kind of approach so that Mr. Hagberg signed predominantly all of the checks for the firm.
Q. So is it fair to say that in that role Mr. Hagberg was involved to a large degree in the internal operations on the business side of the law firm?
A. That would be fair.
Q. As well as maintaining his law practice and functioning as a lawyer?
A. That would be fair as well.
Q. When Mr. Hagberg joined the firm, which I believe was in 1990 or '91, did he bring clients that you can recall by name into the firm at that time?
A. I recall some. The answer to the question is: He did bring his clients, and I can recall some of them.
Q. Can you recall what you might characterize as the largest or most important or clients which generated the most fees over the years that he

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was in the firm, who those were?
A. I think I can.
Q. Could you tell us those names, please?
A. Standard Aero, and that's S-T-A-N-D-A-R-D and A-E-R-O, and that was a group, so it had many different subsidiary names, but my recollection is that all of them had in common those two first identifiers, that is, Standard and Aero. Could have been Standard Aero, Limited, Standard Aero Corporation, Standard Aero, UK; various names.
He also represented a group of companies that were owned and controlled by Kathleen L. Zeller and Vern Zeller. I remember a couple of the names. One was – I think it was Underwriters International. I think another one was USNA. I don't remember the other name, but they were in the third-party assistance business or businesses. Another was Thomas Liejewski, L-I-E-J-E-W-S-K-I. He owned a couple of radio stations. The principal name that I recall is – the initials or the acronym was STAR. I don't remember what the S and the T and the A and the R referred to. Those are the ones that

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come to mind immediately.
Q. I take it that the person named Kate, or Kathleen, Zeller remained a client of the firm for several years?
A. Yes.
Q. Now, are you familiar with a company named Summa Management Inc.? Summa is spelled S-U-M-M-A.
A. I am.
Q. Is that a company that was incorporated by your law firm?
A. I believe it was.
Q. Do you recall what year that incorporation may have occurred?
A. No. I can approximate it as being 1997 or 1998.
Q. Somewhere in the mid 1990s?
A. I would put it in the last half of the nineties.
Q. Okay. On whose behalf or on behalf of what client was Summa Management incorporated?
A. I don't know what you mean by the question. On behalf of what client?
Q. Well, was Kate Zeller involved in Summa Management?

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A. Yes.
Q. Was she the shareholder of Summa Management after it became incorporated?
A. That's my recollection.
Q. Is it correct that, through a series of transactions involving a person named Wil or Wilnard Selbak, that Summa Management – and I may refer to that company simply as Summa this morning – became a controlling shareholder or the controlling shareholder of the debtors in this case?
A. Let me see if I understand the question. I think the answer is yes. My recollection is, Summa became the owner of 80 percent of the shares of the – 80 percent or even a hundred percent of the shares of the debtors.
Q. And was Kate Zeller the controlling shareholder of Summa?
A. That's my recollection.
Q. Within the firm, which attorney was, say, the primary advisor or primary attorney for Kate Zeller?
A. My recollection is that the originating lawyer, the one who is identified on all the records for Kathleen Zeller, was Steven

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Hagberg. That was your question, right? It was –
Q. Yes.
A. – Zeller not Summa.
Q. Did that relationship between Mr. Hagberg and Kate Zeller continue throughout Mr. Hagberg's tenure with the law firm?
MR. MITCHELL: I'm going to object to the question as vague. I'm not sure what relationship it's referring to.
MR. LEONARD: Just to clarify, the relationship described by Mr. Mahoney in his previous answer.
MR. MITCHELL: As originating lawyer on the firm's records?
MR. LEONARD: Yes, among other things.
THE WITNESS: If I understand the question, did he remain the originating lawyer, yes.
BY MR. LEONARD
Q. Can you describe what other legal work – and very briefly – was done by the law firm or by Mr. Hagberg for Kate Zeller in addition to forming Summa Management and the activities

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relative to Summa Management? What other work was done for them?
A. That's too broad a question, I think. I mean, I don't think I could answer that –
Q. All right.
A. – in a meaningful way. That's a lot of years and a lot of different possible subjects.
Q. Is it fair to say that over the years Kate Zeller, Summa Management and the debtors were important clients to the law firm?
MR. MALONE: Object to the form.
THE WITNESS: Can you narrow that as to "important"?
BY MR. LEONARD
Q. By "important" I mean a significant amount of legal work was done on behalf of those clients resulting in a significant dollar amount of billings.
A. Yes.
Q. Showing you what's been marked as Exhibit 1-A, I will just ask you to take a moment to review it, please.
A. (Witness complies.)
MR. MALONE: Off the record.
(Off the record.)

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THE WITNESS: Mr. Leonard, there's a blank page in here. Is there supposed to be a blank page?
MR. LEONARD: Well, I don't know, but I think it's a function of a copier machine malfunction as opposed to anything else.
THE WITNESS: Okay.
MR. MITCHELL: Me too.
MR. MALONE: That blank pages seems to separate.
MR. LEONARD: That's my view. It simply separates three documents that are represented.
MR. MALONE: Yeah.
THE WITNESS: I think your question was: Do I recognize it?
BY MR. LEONARD
Q. Yes. Have you seen these before?
A. I have seen them before.
Q. Is it a fair statement that Exhibit 1-A represents or is or are copies of three letters, each sent on October 30, 1998, to Miller & Schroeder Investments Corporation on behalf of Summa, the three debtors, and

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Kathleen Zeller?
MR. MALONE: I'm going to object to the form because the documents speak for themselves. He may answer.
THE WITNESS: That's my understanding.
BY MR. LEONARD
Q. Can you tell me – well, I'd like you to take a look at the signature page, which is the third page on each of these three letters, and I'll ask you if you recognize that signature and can tell us who signed the letters.
A. I believe I can, and I do recognize that as my handwriting.
Q. To your recollection, what was the purpose of Exhibit 1-A?
A. My recollection is that Miller & Schroeder Investments Corporation was the mortgagee, having loaned approximately 12 million dollars in connection with the acquisition and development of the Carefree Living facilities, the three debtors, and a company that was known as Carefree Living of America (Minnetonka) that was being developed or had been developed and that there was a

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1 refinancing necessary or a curing of some
2 defaults in connection with those mortgages.
3 Q. And so Exhibit 1-A would be an opinion letter
4 of your law firm issued to Miller & Schroeder
5 Investments Corporation opining on the matters
6 that are treated and stated in the letters, is
7 that a fair statement?
8 A. I believe that's a fair statement.
9 Q. Did the firm – and when I say "firm," I mean
10 however that firm was constituted. Did the
11 firm have protocols or procedures that it
12 followed prior to and at the time it issued
13 opinions to third parties?
14 A. Yes.
15 Q. Could you describe those protocols and
16 procedures?
17 A. Yes. My recollection is that the customary,
18 usual, standard procedure for the issuance of
19 all formal opinions was to send out to all
20 lawyers a memorandum indicating that we had
21 been requested to provide an opinion, identify
22 the request in some manner, perhaps attaching
23 the letter, asking each lawyer to then fill
24 out a request for information, particularly
25 with respect to litigation, and to identify

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1 what is known as the ABA AICPA Statement
2 Number 5 dealing with contingencies, then ask
3 the lawyers to provide whatever information is
4 necessary to answer those questions. Then I
5 believe draft opinions were then circulated
6 asking if anybody had any information that had
7 any bearing on the opinion being given.
8 Q. Do you believe Mr. Hagberg received such a
9 memo and then received drafts of Exhibit 1-A
10 in that procedure?
11 A. Yes.
12 Q. Do you recall specifically speaking with
13 Mr. Hagberg about Exhibit 1-A at any time?
14 A. Yes, I do recall talking about it.
15 Q. So Mr. Hagberg – strike that. Based on your
16 discussions with Mr. Hagberg about Exhibit
17 1-A, do you believe he was aware of the
18 contents of Exhibit 1-A as well as the
19 information contained in Exhibit 1-A?
20 A. Yes.
21 *(Off the record.)*
22 BY MR. LEONARD
23 Q. Showing you what has been marked Exhibit 1-B,
24 I will ask you to take a look at it and, after
25 you've done that, tell me whether you

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1 recognize it and what it is.
2 A. (Witness reviews document.) I do recognize
3 it. I believe this is the closing transcript
4 prepared by Oppenheimer Wolff & Donnelly as
5 counsel to Miller & Schroeder Investments
6 Corporation, and that the opinion letters that
7 are identified as 1-A were delivered in
8 connection with the closing that's referenced
9 on this exhibit. I don't know where they are,
10 but I think they're – I think I saw them.
11 They're items 15, 16, 17.
12 Q. Did the transaction reflected on Exhibit 1-B
13 – could you characterize it as a refinancing
14 transaction for the debtors and the other
15 borrowers listed near the top of Exhibit 1-B?
16 A. You could, but I think a narrower reference,
17 as I recall it, was that there were defaults
18 that needed to be cured; and, because of the
19 cure, it could be characterized as a
20 refinancing, but it also might be a little
21 misleading if it's not also described as what
22 I recall was cures of defaults.
23 Q. Was Mr. Hagberg, to your recollection,
24 involved in the transaction reflected on
25 Exhibit 1-B?

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1 A. If you can narrow the – I don't know what you
2 mean by "involved."
3 Q. Well, was he aware of the transaction?
4 A. Yes.
5 Q. Did he provide legal representation to the
6 debtors in any connection or in any respect
7 relative to this transaction?
8 A. That's what I recall.
9 Q. And what was the nature of his legal
10 representation or legal services?
11 A. I can describe it generally.
12 Q. Yes.
13 A. I believe that the real estate aspects, the
14 review of the documentation related to the
15 secured transactions aspect, the mortgage
16 aspects for the debtors was reviewed by
17 Mr. Hagberg.
18 Q. Would you characterize Mr. Hagberg's expertise
19 as a lawyer that one of his areas of expertise
20 was in the field of real estate?
21 A. I think that would be fair, but my
22 recollection was that he was the lawyer for
23 the debtors when the debtors acquired the real
24 estate. Therefore, any financing or
25 refinancing would have required his review.

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Q. Is it your recollection that the transaction reflected on Exhibit 1-B actually occurred and actually closed?
A. Yes, that's what I recall.
Q. Showing you now a document which the reporter has marked as Exhibit 1-C, I will ask you to just take a look at it and tell me when you've finished.
A. (Witness reviews document.) Yes, I recognize it.
Q. Can you tell us what it is, please?
A. I believe it represents a copy of what's known loosely as a lawyer's response to auditor's request letter in connection with audits of the debtors identified on the front page and which was addressed to Larson Allen Weishair & Company.
Q. I'd like you to turn to the last page and tell me if you recognize the handwriting that purports to be the signature of the firm on that page, and, if so, whose handwriting it is.
A. I know that's not my handwriting. I recognize it as – I believe it's Steven Hagberg's handwriting, who would be the only other one

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who could sign.
Q. Did Exhibit 1-C go through the same protocol and procedures that you described in connection with Exhibit 1-A?
A. It would have gone through at least that, and because it's an auditor's response letter and it does deal with litigation, I believe it would have had a more significant review process.
Q. Is it a fair statement or fair description of Exhibit 1-C that it describes for the benefit of the auditors the various actions or various litigation in which the debtors and their affiliates were involved on the date on April 30, 1999?
MR. MALONE: Objection to the form. Go ahead and answer.
THE WITNESS: I do understand the question, and my answer would be, generally, yes, with the exception that the debtors would have identified for us in response to questions those matters which we're allowed to disclose. So it's not correct to say it identified all litigation that they

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were involved in.
BY MR. LEONARD
Q. Calling your attention to the first page at the bottom on Exhibit 1-C, you'll see some handwritten notes there. Can you tell us whose handwriting that is?
A. I think – well, let me look and see if I can – the handwriting looks like Mr. Hagberg's.
Q. With respect to the handwriting on subsequent pages on the right-hand margin on pages 2, 3, and 4 and 5, can you identify whose handwriting that is?
A. That's how I tie them together. I believe the handwriting – it looks like Mr. Hagberg's.
Q. Do you recall speaking to Mr. Hagberg about Exhibit 1-C at any time?
A. Yes, I do.
Q. And do you recall the substance of that conversation?
A. Generally, I do.
Q. Could you state what the substance of that conversation or conversations was?
A. I believe we discussed the nature of the claims and the descriptions, the application of the principals, for example, they're

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enunciated in the last paragraph of Statement Number 5 about whether we could express a view of the risk. Generally, if the risk and the likelihood of success or failure cannot be identified, the standard that we follow, which is the Statement Number 5, is that we can express no opinion with respect to the outcome of the litigation. So we reviewed each claim and whether we could – exactly what we could say as a professional matter on the claims.
Q. I'll show you what's been marked as Exhibit 2, and I will ask you to take a look at it and, once you've done that, tell me if you recognize it.
A. (Witness reviews document.) I do recognize it.
Q. Can you tell me what Exhibit 2 is?
A. I believe Exhibit 2 is a copy of transmittal sheets transmitting copies of the independent auditor's report in draft form for the debtors for –
Q. Did you – I'm sorry, I didn't mean to interrupt you.
A. – for the years or the year indicated, which I believe is 1998. Yes, 1998.

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Q. Would you have received the independent auditor's report from Larson Allen Weishair for that purpose?
A. Yes.
Q. Was that normal practice for that accounting firm to send to you for comment their reports prior to putting them in final form?
A. I don't remember if it was their normal process. With respect to the debtors, I don't remember a prior year, but this would have been customary for us to ask to comment on financial statements.
Q. Do you recall if you had undertaken that process with respect to financial statements in other years?
A. I do not recall.
Q. Did you discuss at the time you – well, let me back up. You'll note throughout the exhibit – beginning with about the fourth page, you'll note that several pages contain handwritten notes, and I'll ask you if all those handwritten notes are yours or are only some of those notes yours and some are authored by somebody else.
A. They appear – some appear to be mine, some

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appear to be others'.
Q. Can you point us to the pages where the notes appear to be written by someone other than yourself?
A. I'll try. If we look at page 1 of the report, there's the last paragraph which is marked out, then there's an editor's comment, which is that squiggle to the right, which means exclude, delete, remove. I don't believe that's mine.
Q. Do you know who made that notation there?
A. No. The other comments on the page, the handwritten comments are mine. On page 15 there's handwriting that reads, at least to me, "Fix, probably move Note 8," et cetera. That's not mine.
Q. Do you know or can you recognize whose handwriting that might be?
A. I don't know. Page 17, Footnote 9, has been lined out. It's what we call a Z mark. There's a marginal note to the right with a star. Those notes are not mine.
Q. Do you know whose notes those are?
A. I do not.
Q. Do you know whether Mr. Hagberg looked at the

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independent auditor's report that is in Exhibit 2 on or about the time that you did?
A. I'm fairly certain that he did.
Q. And what is the basis for that belief?
A. I believe I gave it to him.
Q. What was your purpose for giving it to him?
A. Ask him to read it, comment, see if my comments were right.
Q. On the third page from the top of this exhibit is a copy of a fax transmittal to a person named Victoria. Do you recall who that person is?
A. No.
Q. It doesn't ring a bell?
A. Correct, it does not.
Q. Okay.
A. But the number looks like Larson Allen's.
Q. The fax number?
A. Right.
Q. Okay.
A. I believe Harold Dahl's number is 376-4847. That's from memory.
Q. And the person you just identified is Harold Dahl, D-A-H-L, who is an accountant at Larson Allen & Weishair?

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A. He was the partner in charge.
Q. At that accounting firm?
A. Correct.
Q. So he was in charge of the audit of the debtors?
A. Yes.
Q. After this marked-up document was transmitted to Kate Zeller as indicated on the top page of the exhibit, did you discuss this document with Ms. Zeller?
A. I would think so. I don't have a specific recollection of it, but –
Q. Did you discuss it, to your recollection, with Mr. Dahl or anyone at the accounting firm?
A. I recall discussing it with someone at the accounting firm. I can't be certain it was Mr. Dahl.
Q. Showing you what's been marked Exhibit 3, would you simply take a look at it and then tell us what it is, if you recognize it?
A. (Witness reviews document.) I do recognize it.
Q. And can you tell us what it is?
A. I believe it's a copy of a letter from me to D. Charles MacDonald, a lawyer at Faegre & Benson who was representing First Union Bank,

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sent on August 21st along with a term sheet from John G. Kinnard & Company regarding the possible financing for the debtors.
Q. Let me back up a moment and try to put Exhibit 3 in context, and I'll try to do this as expeditiously as possible. The first page reflects the name that would be in the caption in litigation, First Union National Bank versus Carefree Living of America (Burnsville) Inc. Was that an action that was pending and had been commenced at the time this letter was sent?
A. I can't be certain of that, but I have a general recollection that that was the case, that First Union had moved to foreclose its mortgage of debtors, and maybe others. First Union had replaced Miller Schroeder, at least as to the debtors, as the mortgagee. I believe an action had been commenced and that foreclosure proceedings was the focus of the proceeding.
Q. Do you recall what time in the year 2000, or month or season, that the action would have been commenced?
A. Would have been close in time to August, but

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I'm not – I don't have a specific recollection when it was begun.
Q. Sometime in the spring or summer of 2000?
A. I don't know.
Q. In any event, the action was one for foreclosure of a mortgage held by First Union on the real estate of the debtors and the appointment of a receiver?
A. I was just going to add, I don't know that – it could have been just for the appointment of a receiver. My recollection is, First Union commenced a lawsuit. The purpose of it was to take control of the facilities. It may have been to foreclose, may have been to appoint a receiver, could have been both, could have been one.
Q. At that time were you familiar with the complaint filed by the First Union Bank in that action?
A. I remember seeing it. I don't remember when I saw it.
Q. Did the complaint allege a default in the terms of the mortgages or loan agreements between the debtors and First Union?
A. Without seeing it, I wouldn't be certain.

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That's my recollection, but, without seeing it, I wouldn't be certain.
Q. Were you the attorney at the firm who handled this litigation on behalf of the debtors?
A. Yes.
Q. What involvement did Mr. Hagberg have in this action on behalf of the debtors?
A. Can you – that's a pretty broad question. Can you narrow that?
Q. Okay. Specifically referring to Exhibit 3, it refers to a term sheet which is attached from John G. Kinnard & Company, correct?
A. Correct.
Q. What was the purpose of attaching that term sheet to this exhibit which then was sent to Mr. MacDonald?
A. My recollection was, to indicate to First Union that a capacity to pay what I recall was a deficiency in the default, and that if they would just relax a little bit in terms of their posture, it was possible that First Union could be paid in full, and the term sheet was an indication of interest as to the capacity to do that.
Q. You had personally, prior to August 21st,

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2000, had some communications with John G. Kinnard Company with respect to that?
A. Yes.
Q. Describe those communications, the time frame in which they took place and the substance of those communications.
MR. MALONE: Objection to the form. Go ahead.
THE WITNESS: I think I understand the question. Three parts to it. I cannot recall when the conversations began. The nature of the conversations was, there was one or two particular brokers at John G. Kinnard & Company whose special area was debt financing and refinancings, and I met with them, gave them the financial statements for the debtors and asked if they could place mortgage financing to take out – that's just a term meaning "pay off" – First Union. And they indicated that they were confident that they could and had been working on it for some time before August 21. I don't remember whether it was a week or six months

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before.
BY MR. LEONARD
Q. Did at least one of the conversations with the people at Kinnard take place in the offices at Kinnard?
A. There were a couple financings like this, and so I – but I recall a meeting in an office with two brokers discussing the financials for the debtors, and it may have been this financing, and I believe it was at Kinnard.
Q. Did Mr. Hagberg know about your communications with Kinnard?
A. Yes.
Q. Did he participate in those communications?
A. I don't know what you mean by "participate."
Q. Well, did he attend the meeting at the office that you just described with you?
A. No, he did not.
Q. How did he come to know about your communications with Kinnard in this respect?
A. My recollection is that when First Union indicated it was going to foreclose or noticed that it was going to appoint a receiver, we received something in the office. I think it was a form of letter. It may have been a

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delivery, it may have been service, and I recall taking that almost immediately into Mr. Hagberg and discussing the serious nature of the problem for the debtors.
Q. The nature of the problem being the letter from First Union indicating they were going to take action of some kind against the debtors?
A. Yes, and I have a recollection of receiving a package sitting in the front of the office, and there may have been several people present, and somebody came in, and it could have been a process server or someone else, delivering a pretty substantial package involving the debtors. It may have been the commencement of the action.
Q. Was it at that time that you first discussed with Mr. Hagberg the possibility of obtaining a take-out loan from Kinnard?
A. No, I don't think so. I think that that was discussed on several occasions, and Kinnard wasn't the only possible broker/dealer or finance group. There were several.
Q. Is it true then that on more than one occasion, perhaps several occasions, you discussed the possibility or attempts to find

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replacement financing for the debtors with Mr. Hagberg?
A. Yes.
Q. Would you characterize that subject as being an ongoing topic of discussion?
A. I would characterize it that way.
Q. Did Mr. Hagberg see the term sheet that's attached to Exhibit 3 at the time or before it was sent to Mr. MacDonald?
A. That's my recollection.
Q. What ultimately happened with respect to the Kinnard proposal and refinancing? Did it go forward, was it consummated, did it simply get canceled?
A. Well, again, you've got several questions in there. The answer at the end is: It was not consummated. They did not do a financing. My recollection is, it did proceed, though, beyond just discussions. A lot of work was done, in terms of documents and reviews and meetings, to attempt to get the financing. They ultimately declined. I don't remember why.
Q. Did Mr. Hagberg participate in the work that was done in an attempt to get the financing

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from Kinnard or other sources?
MR. MITCHELL: Object; vague.
THE WITNESS: Yeah, I don't know what you mean by "participate."
BY MR. LEONARD
Q. Was he involved in the work and in the process in any respect?
MR. MITCHELL: Same objection; form.
THE WITNESS: I think that's – to me, that's too broad.
BY MR. LEONARD
Q. Well, you recall discussing a refinancing possibility with Mr. Hagberg on several occasions, correct?
A. Yes.
Q. Proposals were made to various lenders, including Kinnard, in connection with an attempt to find that financing?
A. Yes.
Q. What did those proposals consist of?
A. Papers that were prepared by the law firm outlining the general request for financing together with attendant financial information, general information about the debtors, balance

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1 sheets, income statements, all of the
2 information that the proposed lenders would
3 have needed to make a financial decision.
4 Q. And did Mr. Hagberg participate in preparing
5 those documents and assembling the information
6 that was sent to these proposed lenders?
7 **MR. MITCHELL:** Object as to form;
8 compound.
9 **MR. MALONE:** I join in that
10 objection.
11 **THE WITNESS:** If you can narrow
12 that. I mean, that's – that's –
13 BY MR. LEONARD
14 Q. Well, maybe let me ask you this. What did
15 Mr. Hagberg do in connection with or related
16 to the assembly of documents and information
17 that was sent to the various lenders?
18 A. My recollection is, he had a general oversight
19 knowledge of and awareness of what was going
20 on with respect to these financings, and I
21 believe that the packages were shown – what I
22 mean by "packages" would be a request for
23 financing, attached term sheets, financial
24 information. The general package would have
25 been given to Steve before – or Mr. Hagberg

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1 before it left the office.
2 Q. Okay. At the time that you sent Exhibit 3 to
3 Mr. MacDonald and First Union Bank had
4 commenced some sort of action against the
5 debtors – that's what you've testified to
6 generally a few moments ago?
7 A. Again, I want to be careful. First Union had
8 taken some action.
9 Q. Yes.
10 A. I don't remember whether the lawsuit had been
11 commenced. I know that one was commenced in
12 this relative time period, but I'm not
13 certain that the action had been served before
14 I sent the letter on August 21st.
15 Q. Was that action resolved in some respect or
16 some fashion, settled or consummated?
17 A. Yes, I think so.
18 Q. And how was it resolved?
19 A. Again, there were a couple of these kinds of
20 things that happened, and I have a general
21 recollection that there was a sum of money
22 that First Union said, "You pay us this sum of
23 money" or "the debtors pay us this sum of
24 money and we'll not proceed to foreclose and
25 appoint a receiver." I remember it was a

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1 relatively short time period. I remember that
2 – I believe the money was provided and it
3 closed and First Union said, "You're okay for
4 now."
5 Q. And was that money raised by the debtor from
6 more than one source?
7 A. Again, there were several of these. I believe
8 in all cases the answer was yes.
9 Q. Showing what you I believe has been marked as
10 Exhibit 4 – is that correct?
11 A. Yes, I've got Exhibit 4. This is a complaint
12 or it's marked as a complaint.
13 Q. The front page indicates the title of it is
14 "Complaint."
15 A. Is there a question outstanding?
16 Q. Do you recognize this document?
17 A. I do.
18 Q. Is this document, generally speaking, a
19 complaint for a recovery of money against the
20 debtors and Carefree Living of America
21 *(Minnetonka)?*
22 **MR. MALONE:** Objection to the form.
23 The document speaks for itself. Go
24 ahead and answer if you can.
25 **THE WITNESS:** If I understand the

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1 question, it's: Is that an action to
2 recover money from the debtors and
3 others? I believe it is.
4 BY MR. LEONARD
5 Q. You'll note on the first page near the bottom
6 there's a filing designation by the clerk of
7 the bankruptcy court bearing a date of January
8 29, 2001. Do you see that there?
9 A. Yes, I do.
10 Q. Based on your review of that and the rest of
11 the exhibit, can you tell us, generally
12 speaking, when you first might have seen this
13 complaint?
14 A. Probably shortly after the first of 2001.
15 Q. Did you discuss Exhibit 4 with anyone in your
16 law firm at the time you got it?
17 A. I did.
18 Q. And was one of those persons Mr. Hagberg?
19 A. It was.
20 Q. What was discussed, if you can recall, with
21 Mr. Hagberg at that time relative to Exhibit
22 4?
23 A. My recollection was, as to the debtors, the
24 focus of the discussion was the debtors'
25 defenses, and I believe Steve undertook –

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1 Mr. Hagberg undertook to examine and work on
2 the question of service and commencement, that
3 is, was it served, properly served, had the
4 action been commenced, and some other
5 discussions about defenses. I don't remember
6 what the other discussion was about, though.
7 **Q.** Do you recall what the outcome of the action
8 represented in Exhibit 4 was?
9 **A.** No.
10 **Q.** Do you recall that a default judgment was
11 entered against the defendants in the court
12 that's identified in the caption some months
13 later?
14 **A.** That sounds right. That sounds correct to me,
15 but I don't have – I don't--- I'm not
16 positive of that.
17 **Q.** Okay. Did you discuss the subject of Exhibit
18 4 with Mr. Hagberg on more than one occasion?
19 **A.** Yes.
20 **Q.** Did you discuss Exhibit 4 with Kathleen Zeller
21 at any time?
22 **A.** In her capacity as the chief executive of the
23 debtors, I did.
24 **Q.** And do you recall the substance of those
25 discussions?

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1 **A.** Generally, I do.
2 **Q.** And what was the substance of those
3 discussions?
4 **MR. MALONE:** Before he answers that
5 question, I want to confer with him
6 about privileges that may attach and
7 whether or not there would be a
8 privilege that's not waived by the
9 waiver that you explained in the
10 beginning. There may be a distinction
11 between Ms. Zeller as CEO of the
12 debtors and the debtors themselves,
13 which I understand you've waived the
14 privilege for them. Ms. Zeller may
15 have another privilege, and I think we
16 need to review that before he answers
17 the question.
18 **MR. LEONARD:** I'll just make the
19 observation, Counsel, that Ms. Zeller I
20 don't believe is named as a party in
21 the action. So I'll just make that
22 observation for your benefit.
23 **MR. MALONE:** Thank you, and that
24 makes it all the more important for me
25 to discuss this with him, because if

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1 she's not named as a party in this
2 action, then you, by definition, could
3 not have obtained a waiver from her,
4 and she may still have a privilege that
5 would apply.
6 **MR. LEONARD:** Well. Let's go off
7 the record.
8 **MR. MALONE:** If he was giving her
9 legal advice, then the waiver that
10 you've explained certainly would not
11 have applied to Ms. Zeller, because
12 she's not a party to this action. So
13 if I may consult with him for a moment.
14 **MR. LEONARD:** Okay, but keep in
15 mind, Counsel, the question is directed
16 to conversations with Ms. Zeller in her
17 capacity as the chief executive officer
18 of the debtors.
19 **MR. MALONE:** I understand that,
20 Counsel.
21 **MR. LEONARD:** Okay. All right.
22 **MR. MALONE:** May I have a moment?
23 **MR. LEONARD:** Sure. Let's take ten
24 minutes.
25 **MR. MALONE:** Thank you.

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1 *(Recess.)*
2 **MR. MALONE:** Counsel, based upon
3 your representation and, of course, the
4 fact that Carefree has waived its
5 privileges, and given that the question
6 is confined to Ms. Zeller's capacity as
7 executive officer of the debtors, I'll
8 allow the question. Thank you for your
9 cooperation.
10 **MR. LEONARD:** Sure.
11 **THE WITNESS:** If I recall, the
12 question is: Did I speak to her about
13 it, and do I recall what was said?
14 **MR. MALONE:** What was said.
15 **MR. LEONARD:** Yes.
16 **THE WITNESS:** I have a general
17 recollection of speaking to Ms. Zeller
18 about the complaint and the defenses
19 that I recall were available and her
20 desire to assert those defenses and
21 discussion she had had with Mr. Hagberg
22 about those defenses. I recall that
23 she did intend to assert the defenses
24 for the debtors.
25 *(Next page, please.)*

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1 *BY MR. LEONARD*
2 **Q.** Did or did not?
3 **A.** Did, affirmatively.
4 **Q.** Okay. Was Mr. Hagberg present during the
5 discussions you've just described with
6 Ms. Zeller?
7 **A.** I don't believe so. I believe there were – I
8 – I believe they were on the phone, and I
9 don't believe he was present.
10 **Q.** Okay. I've handed you Exhibit 5. I'll ask
11 you to simply take a look at it and tell me if
12 you recognize it.
13 **A.** (Witness reviews document.) Yes, I do
14 recognize it.
15 **Q.** Would you tell us what it is?
16 **A.** I believe it is a copy of a letter of February
17 26, 2001, from First Union National Bank to
18 the debtors, notifying the debtors of the
19 beginning of the foreclosure process. This
20 specifically was the acceleration of the note,
21 demanding immediate payment of the note.
22 **Q.** And is the note identified in the first
23 paragraph and the first page as being in the
24 original principal amount of $11,316,000?
25 **A.** It is.

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1 **Q.** And having a present principal unpaid balance
2 of $11,057,783.58?
3 **A.** That's correct.
4 **Q.** Okay. Calling your attention to the date of
5 this document, which is February 26, 2001, I
6 will ask you if you recall when you first saw
7 this Exhibit 5?
8 **A.** No, I don't. I can't recall a specific date.
9 **Q.** Generally, do you have any recollection as to
10 when you would have seen it?
11 **A.** I would expect it would be about the 26th of
12 February. It's just too important not to have
13 come immediately to my attention.
14 **Q.** When it came to your attention, what did you
15 do?
16 **A.** Can you be a little more specific?
17 **Q.** Sure. Did you discuss this document with
18 Mr. Hagberg at any time?
19 **A.** Yes, I did.
20 **Q.** What was the substance of those discussions?
21 **A.** My recollection is that this was such a
22 significant event and was in the nature of a
23 – for lack of a better reference, is a repeat
24 performance of another default by the debtors,
25 that I brought it to Mr. Hagberg and said

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1 something to the effect of, "We've got a –
2 our clients, the debtors, have a serious
3 problem and we need to formulate a response
4 and a plan."
5 **Q.** Do you recall what Mr. Hagberg's response was
6 to your comments that you just described?
7 **A.** Yes, I do.
8 **Q.** And what was his response?
9 **A.** I think his – the general sense of the
10 comment was, "This is bad. This is very bad,"
11 in the sense that First Union is not local,
12 they are a national bank, whereas before we
13 were dealing with Miller Schroeder Investment
14 Corporation and had an experience that was a
15 little more elastic, a little more plastique.
16 These bankers were not likely to be at all
17 like that. I remember – I believe I remember
18 Mr. Hagberg saying, because of his experience
19 as having a lot of banking work, he expected
20 that First Union would proceed immediately to
21 foreclose and that if something wasn't done
22 promptly and immediately, it could be
23 irreparable, and I believe he said he was
24 going to call Ms. Zeller. That's what I
25 recall generally.

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1 **Q.** Do you know whether Mr. Hagberg then in fact
2 did call Ms. Zeller?
3 **A.** He did, or that's what I recall.
4 **Q.** Did Mr. Hagberg tell you that he called
5 Ms. Zeller?
6 **A.** That's what I recall.
7 **Q.** And did he tell you what Ms. Zeller's response
8 was when she had that conversation with
9 Mr. Hagberg?
10 **A.** I have a general recollection of the response.
11 As I recall it, it was these debtors,
12 Burnsville, Brainerd and Saint Cloud, had, at
13 least according to Ms. Zeller, never paid
14 their mortgages on time from the outset and
15 that she was surprised and didn't expect this
16 immediate reaction from First Union and that
17 she didn't have an understanding of the level
18 of risk but that Mr. Hagberg did and said,
19 "These debtors need to act immediately."
20 **Q.** Subsequent to February 26, 2001, did First
21 Union National Bank in fact commence yet a
22 second action against the debtors?
23 **A.** I don't know if I can describe it as yet a
24 second action. I do know that they commenced
25 an action to foreclose and ultimately did

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1 foreclose.
2 Q. Subsequent to February 26, 2001?
3 A. Yes, sir.
4 Q. All right. Was the foreclosure, under
5 Minnesota law and the steps that lenders have
6 to take, actually consummated and completed?
7 A. I don't know. I don't recall. There may have
8 been the intervening petitions filed.
9 Q. Petitions? What kind of petitions?
10 A. Bankruptcy petitions.
11 Q. Okay. And, in fact, I believe the debtors
12 filed their Chapter 11 bankruptcy petitions in
13 mid August of 2001?
14 A. I don't recall the date, but I believe it was
15 related to that event, the event we were
16 talking about.
17 Q. At that point in time, which was, say, within
18 the first couple months of 2001, what was the
19 – well, let me ask it this way: Did the
20 debtors owe your law firm any money as an
21 account receivable generated for services
22 rendered by the law firm at that point in
23 time?
24 A. Yes.
25 Q. Do you recall at that point in time – let's

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1 just say March 1, 2001, as a target date. Do
2 you recall what amount was owed by the debtors
3 at that point?
4 A. I recall that it was a large amount. It was
5 more than a million, but I don't recall – I
6 couldn't get – maybe I could go to a million
7 and a half, but I couldn't get any closer than
8 round numbers. It was a lot of money.
9 Q. Relative to the other accounts receivable in
10 the office, was the receivable owed by the
11 debtors greater than any other receivable or
12 was it less than other receivables?
13 A. I can't recall any other single receivable
14 larger than that. There may have been, but I
15 can't recall any other one that large, and I
16 can't recall any other that would be even
17 close to it.
18 Q. Was the existence of that unpaid receivable of
19 concern to you at this point in time?
20 A. Yes.
21 Q. Did you discuss the existence of that unpaid
22 receivable with Mr. Hagberg at this point in
23 time?
24 A. Yes.
25 Q. What was the substance of those discussions?

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1 A. We routinely reviewed with, I think, virtually
2 everybody in the firm the status of
3 receivables at regular open meetings about
4 files and receivables and collections and
5 financial matters generally, and this was
6 right at the top.
7 Q. When you say routinely reviewed the status of
8 these matters at meetings, how frequently
9 would you say in the normal course of business
10 such meetings would occur?
11 A. My recollection is once a week.
12 Q. Around March 1st of 2001, did you discuss with
13 Mr. Hagberg the issue of what steps, if any,
14 should be taken to help assure the probability
15 of collection of the debtors' receivable owed
16 to the firm?
17 A. I can't remember the time. We discussed often
18 steps to take to assure collection, because
19 this was a substantial matter and taking more
20 and more time and effort. I can't put it in a
21 time frame as to when it became more urgent
22 than another time, but in this general time
23 frame we had a lot of discussions about it.
24 Q. Did Mr. Hagberg state what he thought should
25 be done relative to any steps that should be

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1 taken?
2 A. I don't know what you mean "what he thought
3 should be done."
4 Q. Did he have any proposals or recommendations
5 as to steps to be taken to help assure the
6 probability of collection of that receivable?
7 A. I believe he did. My recollection is that at
8 some point – I don't know what it was
9 relative to this time – that I recall him
10 saying he was going to secure our receivable
11 with mortgages from the debtors, get a note
12 and secure it with a mortgage.
13 **MR. LEONARD:** Let's go off the
14 record for a moment.
15 *(Off the record.)*
16 BY MR. LEONARD
17 Q. I'm going to show you what has been marked as
18 Exhibit 8 by the reporter.
19 **MR. LEONARD:** And I'm going to have
20 to ask if you two could just share that
21 one, because I don't have enough.
22 **MR. MALONE:** Sure, not a problem.
23 Has that been marked as Exhibit 6?
24 **MR. LEONARD:** No, it's 8. I'm a
25 little bit out of order here.

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1 **MR. MALONE:** Okay. I thought you
2 said 8, but I –
3 **MR. LEONARD:** Yes, it's 8.
4 BY MR. LEONARD
5 **Q.** Do you recognize Exhibit 8?
6 **A.** I do.
7 **Q.** And just very generally, just tell us what it
8 is.
9 **A.** I believe that Exhibit 8 represents a copy of
10 a mortgage, and the mortgagors are Carefree
11 Living – well, the debtors and Minnetonka.
12 **Q.** Is it fair to say that Exhibit 8 is the
13 mortgage given to the law firm by the debtors
14 and Carefree Living of Minnetonka on the
15 debtors' real estate and also on the real
16 estate of Carefree Living of Minnetonka?
17 **A.** I believe it is.
18 **Q.** And is the purpose of that mortgage to secure,
19 at least in part, the account receivable
20 obligation owed by the debtors to the law
21 firm?
22 **A.** That was my understanding.
23 **Q.** Calling your attention to page 2 of this
24 document and the last paragraph thereof in the
25 second line, does that indicate the dollar

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1 amount of the mortgage?
2 **A.** I believe it does.
3 **Q.** Is that $1,500,000?
4 **A.** It is. I mean, that's what it says.
5 **Q.** Do you know who in the law firm of Mahoney &
6 Hagberg drafted this mortgage?
7 **A.** My recollection is that Steve was the –
8 Mr. Hagberg was the lawyer who was responsible
9 for preparation, drafting and review of the
10 mortgage. If that's what you mean "who at the
11 firm."
12 **Q.** Yes. I'll suggest to you that the mortgage
13 appears to be dated, on the first line of the
14 first page, the 15th day of March 2001, and
15 I'll simply ask you: Do you recall being at a
16 meeting at which time this mortgage was
17 signed?
18 **A.** I don't know what you mean by "a meeting."
19 **Q.** Were you present when it was signed?
20 **A.** I'm not sure that I was.
21 **Q.** Did you talk to Kathleen Zeller about this
22 mortgage at any time?
23 **A.** Well, I want to limit my focus to her capacity
24 as an officer of the debtors. We may have had
25 a number of conversations about it. I just

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1 don't recall all of them, but I do recall, I
2 think, conversations with her about actions
3 that the debtors had to take to approve the
4 transactions, and I believe that there were
5 written actions outlining various matters that
6 I reviewed with her and that she signed.
7 **Q.** The fourth page of the document appears to be
8 a signature page.
9 **A.** Wait. Hang on. Yes.
10 **Q.** I'll simply ask you: Is there a person in the
11 employ of the law firm named Gina L. Miller?
12 **A.** Yes, that's the Gina Miller who's here today.
13 **Q.** And was she an employee of the law firm on
14 March 15, 2001?
15 **A.** No, but I can explain the relationship. She
16 was an employee of a separate enterprise that
17 provided all of the non-lawyer services to the
18 law firm.
19 **Q.** Do you recognize her signature as being the
20 person who notarized the signatures of the
21 mortgagors?
22 **A.** I do.
23 **MR. MALONE:** Okay. What's this one
24 marked?
25 **MR. LEONARD:** This will be 9.

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1 **MR. MALONE:** Nine, okay. Are you
2 just going to, you know, like blow
3 through 7 and –
4 **MR. LEONARD:** No, I'm going to go
5 back and deal with those before we
6 finish here.
7 **MR. MALONE:** Okay.
8 BY MR. LEONARD
9 **Q.** Showing you what's been marked as Exhibit 9,
10 I'll ask you to look at it and tell us what it
11 is.
12 **A.** I've seen this before. I believe it's a copy
13 of a promissory note effective March 15, 2001,
14 from the debtors and Summa Management to
15 Mahoney & Hagberg, a Professional Association.
16 **Q.** And is this the note, to your knowledge, that
17 is secured by the mortgage that we've looked
18 at as Exhibit 8?
19 **A.** I believe it is.
20 **Q.** Now, I'm not trying to put words in your
21 mouth. You indicated that the account
22 receivable owed by the debtors at this time
23 was a million dollars, or possibly a million
24 five, and I believe you also testified that it
25 was likely the largest single account

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1 receivable in the office. Is that generally a
2 fair representation of your previous
3 testimony?
4 A. That sounds right.
5 Q. Did the existence of this unpaid receivable at
6 this time cause any financial problems or
7 concerns for the law firm?
8 A. Yes.
9 Q. And describe what those problems or concerns
10 were.
11 A. My recollection is that the amount of effort
12 and work being put in on behalf of the debtors
13 was very substantial and significant, and the
14 revenues from the debtors was ever declining
15 – that is, they were opposite each other.
16 The effort level was growing geometrically and
17 the income was declining arithmetically, to
18 the point where I didn't think it was possible
19 to continue providing what we needed to do
20 without being paid.
21 Q. Was this unpaid receivable, did it accrue all
22 in, say, the year 2000, or did it accrue over
23 some larger period of time?
24 A. I don't recall how far back it went, but I
25 believe there was a point in time when it was

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1 – when we were being paid currently. I don't
2 know what year that was or what month of what
3 year. I couldn't – I don't know how far back
4 this went.
5 Q. Is it fair to say that the unpaid receivable
6 represented by Exhibit 9 accrued and
7 accumulated over more than just one year?
8 A. Maybe. I don't know.
9 Q. Okay. Did you tell Ms. Zeller in her capacity
10 as the controlling officer of the debtors that
11 the firm would not continue to provide legal
12 services to the debtor unless the Exhibits 8
13 and 9 were signed and provided to the firm?
14 A. My recollection is that this note was
15 negotiated by Mr. Hagberg with the debtors. I
16 don't recall much by way of conversation with
17 Ms. Zeller about the note or the mortgage.
18 Q. Did Mr. Hagberg tell you he was having those
19 discussions with Ms. Zeller?
20 A. Not that form. If I understand the question,
21 he told me he was going to take responsibility
22 for securing the mortgages and the note and
23 then did it. That's what I recall.
24 Q. So you had some general awareness of what he
25 was doing in that respect?

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1 A. Yes.
2 Q. Showing you what's been marked Exhibit 10,
3 I'll ask if you've seen that, and, if so,
4 tell us what it is.
5 A. I have a vague recollection of seeing it.
6 **MR. MITCHELL:** Is it two pages or
7 one?
8 **MR. LEONARD:** Just one. Did you
9 get two?
10 **MR. MITCHELL:** I got two.
11 **THE WITNESS:** I have a vague
12 recollection of seeing this, and it's a
13 joint and several guarantee signed by
14 the debtors and Summa Management in
15 favor of "all sums due Mahoney &
16 Hagberg, a Professional Association."
17 BY MR. LEONARD
18 Q. Did you speak with Ms. Zeller about this
19 document?
20 A. I don't have a specific recollection about the
21 specific documents. What I recall is having
22 conversations with her in her capacity as an
23 officer and director of the debtors to review
24 the procedures and the corporate actions that
25 had to be taken to effect certain transactions.

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1 I think there were several of them together,
2 and I believe it included note, mortgage, and
3 it may have included the guarantee.
4 Q. Now, you testified a moment ago that you
5 believe Mr. Hagberg had negotiated the note
6 and maybe the mortgage with Ms. Zeller. I'll
7 ask you, is the same true with respect to
8 Exhibit 10?
9 A. I believe so.
10 Q. Do you have an understanding as to why it was
11 necessary or what the purpose was from the
12 viewpoint of the law firm to have Exhibit 10
13 executed by the debtors?
14 A. I have a general view. I don't recall an
15 analysis, discussion, review at the time. I
16 just suspect we would – anyone who was trying
17 to secure payment would have wanted a
18 guarantee.
19 Q. So Exhibit 10, along with Exhibits 9 and 8,
20 were simply steps taken by the firm to assure,
21 to the extent possible, that it would be paid
22 the money owed to it by the debtors?
23 A. I think that's fair.
24 Q. Okay. I'm going to show you Exhibit 7. After
25 you've reviewed it, I'll ask you if you saw

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this document on or about March 16, 2001.
A. (Witness reviews document.) I don't think so.
Q. Can you tell us when the first time it was that you did see Exhibit 7?
A. I don't recall either the time or the event. I think it was an event for some reason that it came up, but I don't remember what it was.
Q. I'll represent to you simply for purposes of discussion that Exhibit 7 is a mortgage given by the debtors and Carefree Living of America (Minnetonka) to an entity known as Jane L. Strom, Trustee, as mortgagee, and I'll ask you: On or about March 15th or 16th of 2001, did you have an awareness that the debtors were going to or did grant a mortgage on their real estate of the debtors in favor of Jane L. Strom, Trustee?
A. I don't remember. I don't remember. Your question is: On the 15th – do I now remember that on the 15th I had that awareness?
Q. Correct.
A. I don't remember.
Q. Do you recall when you first became aware that Exhibit 7 had been signed and was a mortgage given by the debtors to Jane L. Strom,

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Trustee?
A. No, I don't remember.
Q. Did you have any discussions with Mr. Hagberg on or about March 15th or 16th about a mortgage given by the debtors to Jane L. Strom as trustee?
A. I don't remember the date of the first conversation about what you just described. I remember having conversations with Mr. Hagberg, but I can't put them in time.
Q. What were the substance of those conversations?
A. I have a general sense that they went something like this – this is Mr. Hagberg speaking: "I've decided to attempt to or have gotten approval for a mortgage for my trust, Jane's trust, from the debtors," and that was about it.
Q. What was your response to that indication from Mr. Hagberg?
A. I don't remember.
Q. You don't recall any particular response?
A. No, I don't have any – no, I don't recall anything.
Q. Okay. Showing you what's been marked as

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Exhibit 6, I'll ask you to look at it and tell us whether you recognize it.
MR. MALONE: Counsel, I need to ask you something before you go into Exhibit 6. With reference to Exhibit 7, do you know where the original of this document is?
MR. LEONARD: Well, the original's probably – the real original is probably at the various county recorders. I think there may be certified copies kicking around somewhere, but I don't know where right offhand.
MR. MALONE: Do you know whether you have a certified copy of the original?
MR. LEONARD: I may.
MR. MALONE: Okay. Thank you.
MR. LEONARD: I know I've seen certified copies somewhere.
MR. MALONE: All right. Thank you.
THE WITNESS: Is there a question now?
(Next page, please.)

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BY MR. LEONARD
Q. Yes, I think the question was, Mr. Mahoney, whether or not you've seen Exhibit 6 before, and, if so, can you tell us what it is?
A. I've seen it, and I believe it represents what it purports to represent, which is a promissory note for $62,160.35 of the debtors and Minnetonka to the Jane L. Strom Revocable Trust.
Q. Did you draft this note?
A. No, I did not.
Q. Do you know who did?
A. My recollection is that Mr. Hagberg did – or it was prepared under his direction. It could have been Mark Pirri or somebody else.
Q. Did you negotiate the terms of this note with the maker?
A. No, I did not negotiate the terms. It may have been part of what was reviewed with her in terms of the procedures for approval. I just have no recollection of it, though.
MR. LEONARD: At this point I don't have any – I may have some further questions, but I'd like just to take a five-minute break, let me review my

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1 notes, and then we can wrap up my
2 portion of this. I have no idea if
3 anyone else has questions. But can we
4 take five minutes?
5 **MR. MALONE:** Of course.
6 **MR. LEONARD:** Okay.
7 *(Recess.)*
8 **MR. LEONARD:** Okay. I guess I do
9 have a few more questions, but it
10 shouldn't take too long.
11 BY MR. LEONARD
12 **Q.** I want to just get back a little bit to the
13 members of the law firm in 1999 and 2000 and
14 after that.
15 **A.** Are you going to ask me who they are?
16 **Q.** Just the partners, just the shareholders. I
17 believe in 1999 at some point the firm was
18 named Mahoney Hagberg & Rice?
19 **A.** That's my recollection.
20 **Q.** So I'm assuming those three individuals were
21 partners in the firm.
22 **A.** Well, you need to be careful. We all, as
23 lawyers, use the reference "partners."
24 **Q.** Right.
25 **A.** But it was a corporation.

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1 **Q.** Okay.
2 **A.** And so the technical answer is, there were, to
3 my recollection, three shareholders: myself
4 Steve Hagberg, Jerome S. Rice.
5 **Q.** Then sometime in 1999 Mr. Rice left and
6 Mr. Davisson then was added as the third name
7 on the name of the law firm, which was then
8 Mahoney Hagberg & Davisson, is that correct?
9 **A.** In time, but the way you asked the question,
10 it sounded like right after Rice left,
11 Davisson was added, and that's not the case.
12 It was years before Mr. Davisson became an
13 owner.
14 **Q.** I believe Mr. Rice left in 1999?
15 **A.** That's correct.
16 **Q.** And Mr. Davisson then became a shareholder in
17 2000, 2001 or –
18 **A.** I think it was like 2002.
19 **Q.** Okay. At that point – until – let me back
20 up. From the time Mr. Rice left in 1999 to
21 the time Mr. Davisson became a shareholder in
22 what you believe is 2002, how many share-
23 holders were there and who were they?
24 **A.** It gets a little complicated. I'm sure you
25 were thinking that there were just human

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1 beings that were the shareholders, but the
2 complicated answer is, the law firm had
3 another professional corporation that held
4 shares.
5 **Q.** Okay.
6 **A.** And if you exclude that corporation, the
7 natural persons, if you just look through to
8 beneficial owners –
9 **Q.** Yes.
10 **A.** – the beneficial owners, I believe, were
11 Steve Hagberg and myself.
12 **Q.** So at least during that two-year period of
13 time it was a two-shareholder law firm?
14 **A.** Again, subject to that limitation, if you
15 exclude the corporate holder –
16 **Q.** Yes.
17 **A.** – there were two people who were the
18 beneficial owners, that's correct.
19 **Q.** And with a law firm of that size, is it a
20 correct statement that you and Mr. Hagberg
21 discussed matters concerning the firm on a
22 very frequent basis and often informal basis?
23 **A.** Yes.
24 **MR. LEONARD:** I don't have anything
25 else.

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1 **MR. MITCHELL:** I have some.
2
3 EXAMINATION
4
5 BY MR. MITCHELL
6 **Q.** I'm Ralph Mitchell and I represent the Jane
7 Strom Trust, the defendant in this case.
8 **MR. MITCHELL:** Can you pick me up
9 okay from here if I –
10 **THE COURT REPORTER:** Sure, if you
11 keep it up a little bit, sure.
12 **MR. MITCHELL:** Okay.
13 BY MR. MITCHELL
14 **Q.** Mr. Mahoney, we were just talking about this
15 two-person – two beneficial individual people
16 being the ownership of the firm at the time
17 that Mr. Leonard asked you about, you and
18 Mr. Hagberg, basically. Were you equal
19 owners, in your view? I understand the
20 corporate distinction. What was the
21 percentage of ownership?
22 **A.** No, I don't think we were equal owners.
23 **MR. MALONE:** You've answered the
24 question.
25 *(Next page, please.)*

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BY MR. MITCHELL
Q. All right. What was the percentage of ownership, if you can recall? Who had – if you weren't equal, who was the greater?
A. My recollection is, it gets – it gets technically different through that other corporation. I don't remember why; I think I had more. I just think I had more.
MR. MALONE: Don't guess.
BY MR. MITCHELL
Q. The other corporation you're referring to is called what?
A. It was called Professional Dispute Resolution, Ltd.
Q. And who was the shareholder or shareholders in that corporation?
A. I don't remember.
Q. Was it you?
A. I don't think I was the only one.
Q. But you were one of them?
A. Yes.
Q. And was Steve one of them as well?
A. Yes.
Q. And then were you individually a shareholder in the firm – not this firm but the Mahoney

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Hagberg firm?
A. Yes.
Q. And Steve also was individually a shareholder in that firm?
A. Yes.
Q. All right. I understand now. Did the firm maintain corporate records of its corporate actions taken?
A. Yes.
Q. And do you have those in your possession?
MR. MALONE: I'm going to object to the form of the prior question – my apologies for being slow on the uptake – as vague.
THE WITNESS: I don't know where those are.
BY MR. MITCHELL
Q. Have you ever held an office in the firm? I think you testified earlier that Steve, you thought, had been, at least at one point, president and treasurer. Did you ever hold any offices in the firm?
A. Yes.
MR. MALONE: Objection to the form.
(Next page, please.)

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BY MR. MITCHELL
Q. And what were they?
A. I don't remember.
Q. Were you ever the president at any point in time?
A. May have been. I may have been.
Q. How about treasurer?
A. I may have been.
Q. The records of the firm would show that for sure one way or the other?
MR. MALONE: Counsel, I'd like a continuing objection to form for this line of questioning. Anytime you use the words "the firm," it's vague.
We've already decided that there were two corporations or two entities here, and I don't know if there will be any confusion later.
MR. MITCHELL: I'm talking about Mahoney & Hagberg.
MR. MALONE: You used the term "the firm."
MR. MITCHELL: All right. That's what I'd like. Can I use that definition?

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MR. MALONE: Of course, as long as it's clear that that's what you're referring to.
THE WITNESS: I'm sorry, Ralph. I don't remember what the focus was. The focus was –
BY MR. MITCHELL
Q. The question is: Would the corporate records of the Mahoney & Hagberg firm reflect who were the officers of the corporation at various points in time?
A. Oh, there would be records that would reflect something. I don't know whether they were accurate.
Q. Who was the person that kept track of – that prepared the corporate resolutions and minutes for the Mahoney & Hagberg firm?
A. I think I was the secretary and prepared those.
Q. During the time periods that we've been discussing here – let's just fix it between 1998, which is the beginning of Exhibit 1, and 2002 – how would you describe your practice? Would you describe yourself as, for example, a litigator? Would you describe yourself as a

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corporate lawyer? Would you describe yourself as a real estate lawyer? What sort of a description would you give to your practice?
A. I think it was changing and evolving from a practice which had been predominantly transactional to one which was more than 50 percent litigation. I could not tell you what percentage of it was litigation by '99, 2000 and 2001, but far more than in 1990, for example.
Q. How about Hagberg, how would you describe his practice? I know you said he was a real estate lawyer to some extent. Did he do litigation at all?
A. I believe he supervised litigation. He – I think it would be fair to say he rarely went to court, but he supervised litigation on behalf of a number of clients, both with layers within the firm and outside counsel. I don't know if I answered the question.
Q. No, that's fine. That's fine. With respect to the debtor entities, which lawyers in the firm billed time to those clients?
A. All lawyers in all years would be my answer.
Q. Who else was there besides you and Hagberg

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that were billing time to these files of these debtors?
MR. MALONE: Objection to the form; vague.
THE WITNESS: It would be – I'll just give you a general overview and then a general answer. My recollection is Steve – Mr. Hagberg formed the debtors in 1995. Whoever was at the firm in 1995 – and I believe that may have included Linda Jensen, it may have included Ben Anderson, it may have included Mark Pirri – would have done work for the formation of the debtors and the sale and transfer of the assets to the debtors.
In 1996 I don't think much work was done until the second half of 1996.
From 1996 through 2000 and – well, certainly until the date of filing of the petitions – I don't know when the petitions were filed. I don't remember when they were filed – I think every lawyer employed at the firm did work for the debtors.

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BY MR. MITCHELL
Q. At the time that the debtors signed the note and mortgage in favor of the firm, which are Exhibit 9 and Exhibit 8, the million-five note and mortgage I'm talking about – at the time that the note and mortgage were signed up, what was the approximate balance of the receivable? Was it between the million and the million-five that you mentioned earlier?
A. I don't know.
Q. Of the time that was the balance that was due at the time, which of the lawyers in the firm had the greatest amount of time included in that account receivable?
MR. MALONE: If you know.
THE WITNESS: I'm not sure.
BY MR. MITCHELL
Q. You understand the question. I'm trying to find out, was it mostly your time that was wrapped up in the unpaid balance?
A. I had a significant amount of time, but "mostly" to me would push it over half, and I don't know that to be the case.
Q. One clarification. At the beginning you talked about Steve Hagberg bringing in clients

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into the firm when he came, and you mentioned – I think you mentioned Standard Aero, you mentioned a group of companies for the Zellers and another name that I can't pronounce.
A. Liejewski?
Q. Yes. It wasn't clear to me whether you were saying that those were his clients or if those were the clients that he brought with him at the time.
A. I understood the question to be: Did he bring them with him at the time. I was answering – that's what I understood to be answering.
Q. Okay. If you take a look at Exhibit 1, that's the opinion letter.
MR. MALONE: Excuse me, Mr. Mitchell; 1-A?
MR. MITCHELL: Yes. I'm sorry, 1-A.
THE WITNESS: Yes.
BY MR. MITCHELL
Q. If you look at the first page of Exhibit 1-A, it talks about – it says there, "We have reviewed and examined executed counterparts of the guarantee and pledge and the following organizational documents." And then it lists

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A, B and C. Do you see where that is?
A. I do.
Q. Now, it says, "We have reviewed." Can you tell me which persons in your firm would have done the review of these documents?
A. No.
Q. Would you typically be doing the review of the corporate documents, or would that be something you would assign to somebody else?
A. My recollection of this was, it related back to what Steve – what Mr. Hagberg had done, and it would be my expectation that he would have reviewed them.
Q. Did you review any of the documents that are referred to in the first letter, as far as you can recall?
A. I'm sure I did, but, specifically, I don't remember.
Q. Would that be the same answer then for the other two letters that comprise Exhibit 1-A? You know, I don't know precisely which documents you may have looked at.
A. If I take a moment to look at the letters, something might occur to me. So let me take a look at 1-A.

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Mr. Mitchell, you were asking of the A, B and C, do I remember looking at those? My answer is, no, I believe that Mr. Hagberg did.
Q. Okay.
A. And then I think you asked, do I recall looking at any other documents referenced in, first question, 1-A. Any other document in here, or can you narrow it?
Q. Well, okay. If you flip over – I'm looking at the first letter, which is part of 1-A, and basically this – if you look over on the second page, it refers to a guarantee and a pledge in item 1?
A. Yes.
Q. And, as I understand opinion letters, the law firm's required to or requested to give an opinion that the documents are valid and some other types of things. Is that generally what was done here?
MR. MALONE: Objection to the foundation, but go ahead.
THE WITNESS: If I understand the question, we provided the opinions that are reflected in the letter.

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BY MR. MITCHELL
Q. Right. And I understood you to say earlier that you had signed these opinion letters on behalf of the firm.
A. That's my signature for the firm. It's a firm opinion letter as opposed to an individual signing.
Q. I understand. When you – in connection with signing this opinion letter, what I'm trying to find out from you is, did you actually do any of the work about reviewing the documents that are necessary in order to generate this opinion letter, or was that done by others and you just signed the agreement, the letter?
A. I don't remember.
Q. Would it be a practice of the firm for you to sign an opinion letter where others had done all of the underlying review of the documents?
A. That did happen.
Q. Okay. Would that also be true if Mr. Hagberg signed an opinion letter, that he signed opinion letters where he hadn't necessarily been the person who did the investigation necessary to form the opinions?
A. I don't know.

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Q. If you look over on Exhibit 1-B, this is the closing transcript. Mr. Leonard was asking you whether this transaction could be characterized as a refinance, and I believe your testimony was that that wasn't exactly right. Would it be better to characterize it – more accurate to characterize it as what it says at the top of the closing transcript, which is "Partial Paydown and Restructure"?
A. No.
Q. That's less accurate than calling it a refinance?
A. No, I don't think it's less accurate.
Q. Now, it shows down here "borrower's counsel," and it has your name there and it doesn't have Mr. Hagberg's name individually, although it does have his name in the firm. Were you the lawyer with primary responsibility for this transaction on behalf of the borrowers?
A. No.
Q. Were you the person who was the primary contact person then between the lawyers at Oppenheimer and your firm as to this transaction?
A. I don't think so.

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1 Q. Do you have any reason why it would have your
2 name listed here as opposed to Mr. Hagberg's,
3 for example?
4 A. I think it was – I think I was present at the
5 meeting when documents were laid out and
6 signed.
7 Q. Did you prepare any of the documents that were
8 laid out and signed in this transaction that's
9 described in Exhibit 1-B?
10 A. I don't remember.
11 Q. Do you recall whether you would have prepared
12 corporate documents authorizing the borrowers,
13 as they're described here on 1-B, to enter
14 into these transactions?
15 A. I don't remember. My general recollection is
16 that all of these documents were prepared by
17 the lender's counsel, meaning Oppenheimer
18 prepared them on behalf of Miller Schroeder.
19 Q. How about the opinion letters, were those also
20 provided by the Oppenheimer counsel, the form
21 of the opinion letter?
22 A. It may have been. I don't have a specific
23 recollection as to how the requested
24 information was provided.
25 Q. Now, Exhibit 1-A still has Mr. Rice's name on

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1 the letterhead. At that time he was still a
2 shareholder in the corporation?
3 A. Yes, sir, that's my recollection.
4 Q. Did he have the ability – the authority to
5 sign opinion letters for the firm as well?
6 A. Yes, he did.
7 Q. Now, if you look over at Exhibit 1-C, you
8 talked about some handwritten notes there, and
9 you said that this was not your handwriting?
10 A. It doesn't look like my handwriting. It looks
11 to me like Mr. Hagberg's handwriting.
12 Q. But can you say for a fact that it is
13 Mr. Hagberg's handwriting?
14 A. No. Did I see him do it, for example? No.
15 Q. And you certainly don't have any special
16 training in handwriting analysis?
17 A. Correct.
18 Q. But if you look at the top, it says,
19 "Attention: Chad Kunze." Do you see where
20 that line is?
21 A. Yes, I do.
22 Q. And Mr. Kunze was a CPA with the Larson Allen
23 firm?
24 A. I presume that to be true.
25 Q. And if you look down at the bottom where the

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1 handwritten notes are on the first page there,
2 do you see that there are some initials, CDK,
3 with a date 5/10/99?
4 A. I don't know what that represents. I don't
5 see a CDK.
6 Q. Well, do you see the note that says, "See
7 notes following," and there's three lines of
8 handwriting there?
9 A. I do.
10 Q. And there's something – initials before a
11 date. Do you see the date 5/10/99 there at
12 the bottom?
13 A. I don't know what –
14 **MR. MALONE:** I'm going to object to
15 your characterization. It says what it
16 says, and I think the witness has said
17 that he doesn't know what that says.
18 **MR. MITCHELL:** Okay. Well, I'm
19 just asking him to take a look at that.
20 **MR. MALONE:** Sure.
21 BY MR. MITCHELL
22 Q. And my question, basically, is this: Would
23 those notes – would that indicate to you that
24 these notes were or could have been placed on
25 here by Mr. Kunze?

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1 A. I have no idea. I don't – I see a 5/10/99,
2 but I don't see the other references you're
3 making.
4 Q. Maybe we've got different copies. Are you
5 looking at the original exhibit?
6 A. I'm looking right at the front of that.
7 **MR. MALONE:** I think that the
8 confusion is that the witness is trying
9 to tell you that he doesn't read that
10 as CDK like you do.
11 **MR. MITCHELL:** Oh, okay. Perhaps
12 it's not as decipherable to us as it is
13 to you. Okay. That's fine.
14 BY MR. MITCHELL
15 Q. Looking at this 1-C –
16 A. 1-C?
17 Q. Yes, there's – if you look at paragraph –
18 page 2, the first paragraph has a bunch of
19 underlining there. It looks like it's the
20 names of the caption in a piece of litigation.
21 Is that what that is, those underlined names?
22 A. I don't know. I presume it is, because it has
23 a reference below it "United States District
24 Court (District of Minnesota) Court File
25 Number," but –

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Q. Do you remember that to be a piece of litigation that the Mahoney & Hagberg firm was representing the debtors?
A. No, I don't remember what it was.
Q. Were you working in that litigation, doing anything on that?
A. I don't remember the litigation, so I don't remember whether I worked on it.
Q. How about the next one? There's – two paragraphs further down, there's some underlining there. I'm just trying to –
A. Helterhoff?
Q. Yes.
A. And your question, sir, would be –
Q. The question is: Did you work in that litigation?
A. I believe there were several Helterhoff cases. I worked on at least one of them.
Q. Because you testified that some of your practice was moving from the transactional into litigation, I'm trying to get a feel whether you were involved at this point in doing litigation work for the debtor entities or whether your practice at this point was limited to still transactional.

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A. I don't think my practice was ever limited to transactional. That reference just isn't fair. In 1999 I believe Mr. Rice was the shareholder of the firm of the three shareholders who was primarily responsible for litigation. So he would have been involved in litigation. I may well have been involved in this.
Q. Were there – there are several more litigation matters listed in this exhibit. Can you tell me whether you were the primary or lead counsel in any of these litigations, representing the debtor entities, you personally?
A. I would expect I was not.
Q. But can you say that for a fact?
A. I can't say it for a fact, but my basis for saying I don't believe I was was that in April of 1999 I believe Mr. Rice was the shareholder, the named partner, if you will, who headed up all litigation and would have been the lawyer who was the lead counsel on all of these.
Q. So Mr. Hagberg would not have been the lead counsel on any of these?

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A. I think that's fair.
Q. Okay. I want to turn you now to Exhibit 2. Exhibit 2 is the draft of the auditor's report with the handwriting on it. Do you recall looking at that earlier?
A. I do.
Q. If you would turn over to page 1 of the independent auditor's report, which I think is five pages down in the exhibit.
A. Yes, it starts "Independent Auditor's Report."
Q. Yes, that's it.
A. There's a Bates number, 15200.
Q. Does that mean anything to you, that MHR Bates number?
A. No.
Q. Was it on the document that you saw before at the time that you first saw the document?
A. On this exhibit? I mean, I suspect it came from the law firm and we stamped it, but I don't know that.
Q. You testified that the last paragraph there, that the Z mark, I think as you called it, and the little squiggle, the notation on the right there for deletion, you don't believe was placed there by you?

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A. Correct.
Q. How are you able to know that? Do you recognize your squiggle?
A. Very stylistic squiggle. I'm not sure. It just doesn't look like my style. I typically – I've developed a standard for editing, and I try to follow the same standard. So it would have been – it would have marked the whole paragraph with either a caret or sort of a box and then the editor's mark to take it out, and I think the editor's mark is upside down. I think the editor's mark goes the other way.
Q. So when you would have edited this, you would have had your editor's mark the other way?
A. I think so.
Q. Well, let's look at what's in the text of the body of that paragraph. Have you seen a paragraph like this before? Could you recognize this? Is this kind of standard language that would go in an auditor's report?
A. No, it's not standard language that would go in an auditor's report. It's what we call a going concern exception, and I think if you look at the last page, note 9, those two

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1 paragraphs, at least when I looked at the last
2 paragraph, it occurred to me that those two
3 paragraphs go together, whoever took out 9
4 took out the first paragraph.
5 Q. So does this say to you that you did not want
6 to delete those going concern paragraphs?
7 **MR. MALONE:** Object to the form.
8 **THE WITNESS:** No, it doesn't say
9 that at all. Would I have wanted it
10 out? I don't remember, but I'm just –
11 my only comment was, it doesn't look
12 like my marks.
13 BY MR. MITCHELL
14 Q. All right, but did you agree that those
15 paragraphs should be deleted from the
16 independent auditor's report?
17 **MR. MALONE:** I'm going to object to
18 that as vague as to at what point in
19 time. Now or then?
20 **MR. MITCHELL:** No, at the time this
21 was prepared, was being done.
22 **MR. MALONE:** Then I object on
23 foundation.
24 **THE WITNESS:** I don't remember. It
25 requires a great deal of analysis.

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1 Going concern is a form of conclusion
2 that auditors reach that an enterprise
3 is not likely going to continue beyond
4 12 months and, as a consequence, they
5 add the last paragraph "Going Concern
6 Opinion," and that a typical analysis
7 that the debtors should have engaged in
8 would have been to determine whether or
9 not that was true: Are they likely
10 going to survive for more than a year?
11 BY MR. MITCHELL
12 Q. So let me kind of get this sequence right.
13 The independent auditor's report came to your
14 firm – the firm – with the paragraph in it
15 excluding this sentence that says, "These
16 conditions raise substantial doubt about the
17 corporation's ability to continue as a going
18 concern." That's how it came from the
19 accountants, is that right?
20 A. Correct.
21 Q. And had the accountants, if you know, done
22 some analysis that would have made them or
23 suggested to them that that paragraph ought to
24 go in there?
25 A. I presume that, because they put it in there,

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1 they had arrived at that conclusion.
2 Q. Did you have any discussions with the
3 accountants about that paragraph that you can
4 recall at that time?
5 A. Yes.
6 Q. What do you recall of it?
7 A. I recall that – just a discussion about it.
8 I don't remember anything more.
9 Q. Well, do you recall that you or someone at
10 your firm had recommended to the accountants
11 that they take that paragraph out?
12 A. No, I don't recall. I know we had discussions
13 about it. I don't recall.
14 Q. In the final version, was that paragraph
15 deleted?
16 A. I don't know.
17 Q. Do you recall any conversations with
18 Mr. Hagberg about the substance of these
19 paragraphs? I'm talking about the going
20 concern paragraphs you've pointed out.
21 A. I think so.
22 Q. Can you tell me what you recall of any
23 conversations you may have had?
24 A. I believe I gave him a copy of the draft
25 audited financials, and I believe I asked for

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1 his comments. My practice, since he was the
2 originating lawyer, was to give him copies of
3 virtually everything and allow him to comment
4 or participate. I recall a conversation about
5 the audited financials and their impact on
6 whatever we were doing at the time, and I
7 don't remember how it fit into the sequence.
8 I don't remember if it fits into the sequence
9 of the financing or it fits into another
10 sequence, talking about some of the aspects of
11 the audit.
12 Q. At this time had your firm done any investi-
13 gation that would enable it to conclude that
14 the company – that there was substantial
15 doubt about the company's – the corporation's
16 ability to continue as a going concern?
17 **MR. MALONE:** I'm going to object to
18 the form.
19 **THE WITNESS:** I don't know how to
20 answer that. I don't think I can
21 answer that, and let me explain why.
22 What I understood your question to
23 relate to was an accounting analysis
24 and the application of some accounting
25 principles. We did look at the facts

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1 surrounding those underlying questions
2 to be able to have whatever conversa-
3 tion we had with the auditors about the
4 risk attendant to its survival, but I
5 don't remember any – I think you
6 framed it as an independent investi-
7 gation.
8 BY MR. MITCHELL
9 Q. Right.
10 A. I – I don't remember – I'm not sure what
11 that means.
12 Q. Well, let me ask it another way. Do you agree
13 that someone at your firm indicated that this
14 paragraph should be deleted?
15 A. No, I don't.
16 Q. Did you think at the time that the paragraphs
17 should be deleted?
18 A. I don't remember.
19 **MR. MALONE:** Asked and answered.
20 BY MR. MITCHELL
21 Q. And I'm trying to find out: Was there any –
22 are you aware of any basis for the firm taking
23 the position that that paragraph should be
24 deleted?
25 A. Sure.

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1 Q. And what was that?
2 A. It would have been in an advocate's position
3 with the auditors, that is to say, something
4 akin to, "Look, it's only the next 12 months.
5 We're already wherever we are into that
6 period. We're a quarter into it." You know,
7 this is being issued at March. I don't know
8 when the report was issued. They may be
9 insolvent, broke, but the question is: Can
10 they pay their bills in the next 12 months if
11 they had some way to do that? I don't
12 remember the specifics of what that argument
13 would have been. Again, it's applying their
14 accounting principles to a limited set of
15 rules to make an argument.
16 *(Off the record for the reporter to*
17 *reload paper.)*
18 BY MR. MITCHELL
19 Q. On Exhibit 2 you said that there were some
20 things that weren't your comments, but you
21 didn't say whether all the rest are your
22 comments. Is everything else in there your
23 handwriting then?
24 A. I believe the comments – many of them look
25 like mine. Some don't.

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1 Q. I'm going to move ahead now to where you were
2 talking about sending out a package of
3 proposals to prospective lenders. Do you
4 remember that?
5 A. Yes.
6 Q. And you testified, I think, that Mr. Hagberg
7 would have received a copy of whatever
8 packages were sent out. Is that accurate?
9 A. That's what I said.
10 Q. Who determined what went into the packages?
11 Would that have been you?
12 A. No, it would not have been. The debtors,
13 Mr. Hagberg, Mr. Pirri and maybe others in
14 terms of – what I recall was, the goal was to
15 have a set of reasonably short documents that
16 would accurately describe the condition of the
17 client. So I think it was a joint sort of
18 package committee, if you will.
19 Q. But you had some input into what went in there
20 at least?
21 A. Yes, sir.
22 Q. If you look at Exhibit 3 here, Mr. Leonard was
23 asking you whether there had been any
24 litigation commenced by First Union. I think
25 you said you weren't sure whether it had been

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1 commenced by that time or not. Is that fair?
2 A. That's what I recall.
3 Q. Now, in the first sentence of that it talks
4 about a proposal to postpone a receivership
5 motion. Does that refresh your recollection
6 about whether there may have been litigation
7 commenced by that time actually?
8 A. Well, no. I do recall that there was
9 conversations and a focus on a receiver
10 motion, but I don't remember how – what the
11 status was, whether that had been commenced or
12 proposed or – I don't know.
13 Q. Have you ever known there to be a receivership
14 hearing scheduled were there wasn't a piece of
15 litigation pending?
16 A. No, but, as you're well aware, a receiver's
17 motion can be brought at the drop of a hat.
18 So if somebody sends me – I have seen on
19 occasion where they send me a copy, "This is
20 the filing that I'm going to get served
21 tomorrow and the hearing's going to be the
22 following morning." So I'm not trying to be
23 argumentative.
24 Q. No, I understand. That's the clarification I
25 was looking for. On this Exhibit 4, which is

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1 the complaint in the Selbak bankruptcy case
2 apparently, was there a specific person in the
3 firm that was assigned to defend this
4 litigation on behalf of the debtors?
5 A. I'm sure there was.
6 Q. Do you know who that would have been?
7 A. No, I don't.
8 Q. Would it – do you know if it was you?
9 A. I – I don't think it was. I think it was
10 Mr. Hagberg, and I think I recall conversa-
11 tions with Mr. Hagberg and Mr. Pirri
12 specifically about some defenses that were
13 available in this case.
14 Q. Mr. Pirri was a litigator primarily?
15 A. No, he was. He was not.
16 Q. But you think there was a decision made in the
17 firm to allow Mr. Hagberg to defend this piece
18 of litigation?
19 A. That's not what I understood any of the
20 questions to focus on. So the answer to that
21 question would be, I don't think he was the
22 one who was supposed to go to court on this,
23 but I believe he was the one who took the lead
24 on formulating the responses, and my
25 recollection is, he directed Mark Pirri to

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1 prepare and file papers in the case, and I
2 believe Mark Pirri appeared. I don't believe
3 Steve appeared, but he may have.
4 Q. By "appeared" you mean –
5 A. Stood up in court and said a word or two.
6 Q. All right. You don't mean it in the sense of
7 signing pleadings?
8 A. He – that's a good point. He may have signed
9 pleadings. I don't have any recollection that
10 he did.
11 Q. Now, do you have – is it your practice or was
12 it your practice at the time that the firm was
13 doing work for the debtors to have firm
14 meetings where you'd go over and discuss new
15 matters, for example?
16 A. Yes.
17 Q. How often was that done?
18 A. I think once a week.
19 Q. And would there also be discussion at those
20 meetings of ongoing matters?
21 A. Yes.
22 Q. So when Mr. Leonard would be asking if you had
23 discussions with Mr. Hagberg about pieces of
24 the litigation, would that have occurred in
25 those meetings?

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1 A. It would have included conversations,
2 discussions in those meetings, but it wasn't
3 limited to that.
4 Q. Were there other lawyers present at those
5 meetings other than Mr. Hagberg and you?
6 A. When you say "those meetings," do you mean
7 were there other lawyers present at the
8 firmwide meetings?
9 Q. I'm sorry. Yes.
10 A. Yes, there were.
11 Q. And were those required meetings or –
12 A. No, we didn't –
13 Q. – to the extent that you –
14 A. We did not take attendance, but it was
15 expected that lawyers who were able to attend
16 would attend.
17 Q. Exhibit 5, if you would take a look at that.
18 You said you recognized this. How is it that
19 you'd recognize this?
20 A. I would say from my memory. You mean, what is
21 it about the document?
22 Q. No, no, I'm not asking that. You recognize
23 this because you had seen it some other time
24 before?
25 A. I've seen this document many times. I have a

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1 – it's one of those kind of documents that
2 kind of sticks in my brain. I remember – I
3 have sort of a vivid recollection of the first
4 time I saw it. This is about as bad a notice
5 as you can get, and I've seen it multiple
6 times after that.
7 Q. You testified that you talked with Mr. Hagberg
8 and that he – his comment, as you recall it,
9 was that, "This it is bad," I think you said,
10 "very bad." And then you continued – you
11 testified about Mr. Hagberg's experience with
12 bankers and that – your testimony was that
13 this banker would not be likely to – and I'm
14 not sure exactly what you said – back off on
15 this. Is that about right?
16 A. Yes.
17 **MR. MALONE:** I'm going to object to
18 the form of the question.
19 BY MR. MITCHELL
20 Q. The question I have is: How much of that was
21 Mr. Hagberg's comments that you were relating
22 to us about what he said? Did Steve actually
23 tell you that this banker, because it's from
24 out of state and not local, was more likely to
25 be persistent than a local lender, or is that

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1 a conclusion you were making?
2 A. The words that he used, as I recall, conveyed
3 the message that First Union, in his
4 experience, will proceed to foreclose and have
5 a receiver appointed. My recollection is,
6 there were attendant features like Miller
7 Schroeder's local, First Union's not; First
8 Union's national, Miller Schroeder's not;
9 First Union has a collection department and
10 other references that supported the
11 conclusion, but the direction and the focus of
12 the emphasis was all Mr. Hagberg's.
13 Q. Now, these attendant features, as you called
14 them, were those things that he said or were
15 those things that you happen to know yourself,
16 for example, that First Union had its own
17 collection department? I'm trying to pin down
18 what he actually told you and what were the
19 attendant features that you may have known
20 yourself.
21 A. I'm trying to convey my recollection of what
22 was imported to me by Mr. Hagberg from his
23 observations.
24 Q. Did he mention to you in that conversation
25 what his experience with lenders of this type

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1 were that would give him a foundation to make
2 these statements?
3 A. Yes.
4 Q. What did he say about his experience?
5 A. What I remember was his comments that having
6 represented several bankrupt enterprises, that
7 is, companies filing for protection, that was
8 his experience. And I remember him mentioning
9 a couple of companies, but – one of them may
10 have been Standard Aero, but I think there
11 were others. I don't remember the names right
12 now.
13 Q. At some point you got – when we were talking
14 about securing the debtors' account with you
15 by the mortgage and the note, I think you said
16 that Steve was going to secure the note – the
17 account with the mortgages and get the note.
18 Did you suggest that he do that?
19 A. No.
20 Q. Is that just something he did on his own?
21 A. I'm sure he didn't do it on his own. My
22 recollection of the sequence was that he
23 volunteered to take responsibility for those
24 aspects – that is, asking for, getting and
25 securing mortgage and note and guarantees and

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1 promises to be paid.
2 Q. And obviously you agreed with that approach?
3 A. I thought it was a good thing to do.
4 Q. I think you were also asked whether you had
5 ever told Kate Zeller that you were not going
6 to do any more work on her files unless the
7 note and mortgage were given. Do you remember
8 being asked that?
9 A. Yes, I remember being asked that.
10 Q. And you didn't quite answer the question. Did
11 you ever tell her that you were not going to
12 work on her files anymore unless she gave you
13 a mortgage on the real estate?
14 A. The answer to that question would be: I don't
15 remember saying that.
16 Q. Did you ever tell Steve that – Steve Hagberg
17 – that you were not willing to put in any
18 more of your time on these files unless he
19 could get a note and mortgage from the debtors
20 – from the – yeah, the debtors entities?
21 A. I don't remember saying that.
22 Q. At the time that you were talking about the –
23 and I'm not a mathematician, but I think you
24 said that the effort was increasing
25 geometrically while the payments were

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1 declining arithmetically. Do you remember
2 saying that?
3 A. Correct.
4 Q. I hope I got that right. The effort that was
5 increasing, was that primarily your efforts in
6 terms of legal services that were being
7 provided, primarily your work at that time?
8 A. No.
9 Q. Whose work would have been primarily
10 increasing, which of the attorneys in the
11 firm?
12 A. My recollection was all.
13 Q. All of the attorneys?
14 A. I don't believe I can identify a lawyer who
15 was at the firm at this period who was not
16 putting in substantial time on these files.
17 Q. Was there a concern at the firm that it was
18 taking away from the firm's ability to work on
19 paying clients?
20 A. Sure.
21 Q. What percentage of your time would you say you
22 were putting in at the time that you testified
23 that there was this increasing effort and
24 decreasing payment?
25 A. I don't know.

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Q. Was it more than half?
A. I would doubt it.
Q. You had other matters you were working on then besides just this?
A. Many.
Q. As did Mr. Hagberg?
A. I think he had a couple.
Q. The Standard Aero matters?
A. Standard Aero matters.
Q. Would you say he was putting in more or less than 50 percent of his time dealing with debtor matters at that time?
A. Matters of the debtors, these debtors?
Q. Right.
A. I don't know.
Q. The work that the firm did for the debtors, was it all hourly work?
A. I can't think of any that was not.
Q. I think you mentioned that you prepared the corporate minutes for the debtors that would authorize them to grant the note and mortgage to the firm, is that accurate?
A. I don't think that's accurate. I know that there were written actions prepared. I don't know that I prepared them, but I know that I

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participated somehow in that process. I don't know whether it was reviewing it, I don't know whether it was preparing it or talking to the debtors about them, but I know that they were done.
Q. Did Hagberg prepare any corporate minutes for the debtors at any time that you are aware of?
A. Oh, I'm sure he did. Remember, the transactions in 1995 were all his.
Q. After that point in time, did you ever know that he had drafted any corporate resolutions?
A. Yes.
Q. Or did he draft them personally or did he oversee some other lawyer's work, or do you know?
A. I don't know.
Q. But at least he oversaw somebody's work, participated in drafting of corporate resolutions in some way?
A. I think that's fair, yes.
Q. Did you or any other lawyer in the firm ever sit on the board of directors of any of the debtors?
A. I'm fairly confident that I did not. I don't have any recollection of any lawyer ever being

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on the board of any of the debtors.
Q. Did the firm have any restrictions on its lawyers sitting on boards of directors of clients?
A. I don't think so.
Q. How about Summa Management Inc., did any of the lawyers in the firm ever sit as board members of that corporation?
A. I don't have any recollection of that.
Q. Do you ever recall any meetings of the boards of directors of any of the debtors or Summa Management occurring at the law firm's office? I'm talking about formal board meetings, you know, not just where the board members may have showed up all together.
A. That may have happened.
Q. A formal board meeting may have occurred?
A. Right.
Q. What makes you say that?
A. That I can't rule it out.
Q. Oh, you don't have a specific recollection, though, that it ever did occur?
A. It may have, and I think I have a recollection of times in which there would be telephonic conference meetings at which the directors of

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these companies, who, if my memory is right, were different directors of each debtor, and they would be on the phone and meeting the conditions for being able to conduct a meeting and took action.
Q. Do you recall being present for those types of phone conversations?
A. Vaguely. I – just vaguely. There may have been somebody else that was present, and I've seen secretary certificates of those meetings.
Q. Did you or any of the lawyers in the firm ever – were they ever officers of any of the debtor corporations or Summa Management?
A. Mark Pirri may have been an assistant secretary.
Q. Of which?
A. Of one or several of the debtors. Mr. Hagberg may have been an assistant secretary of the debtors when they were first formed. I don't have a specific recollection of that, but just something sort of triggers a sense that that might have occurred.
Q. Did you personally ever have any decision-making authority of any kind with respect to the business operations of the debtors or

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Summa Management?
A. No.
Q. Did Mr. Hagberg ever have any such decision-making authority?
A. No.
Q. How about Mr. Pirri?
A. No.
Q. Did you or any of the lawyers at your firm ever have any check-signing authority for any of the debtor entities or Summa Management Inc.?
A. Not that I am aware of.
MR. LEONARD: Let me just say, Ralph, you're getting into areas now that are way beyond the direct.
MR. MITCHELL: Yeah, I'm finished.
MR. LEONARD: Okay. I was going to say, I'm going to send you a bill for this portion of the deposition, for the reporter's cost.
MR. MITCHELL: Well, thank you, but I'm finished.
MR. LEONARD: Okay.
MR. MITCHELL: So you don't need to send that.

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MR. LEONARD: Okay. I should have said that earlier then.
MR. MITCHELL: You should have. It would have cut me off.
MR. LEONARD: Okay.
MR. MITCHELL: Thank you, Mr. Mahoney.
MR. LEONARD: I've got just a few more questions, Mr. Mahoney, if you'll bear with me.

FURTHER EXAMINATION

BY MR. LEONARD
Q. If you'll take a look at Exhibit 1-B, this is simply a follow-up on one of Mr. Mitchell's questions.
MR. MALONE: As I'm sure all of your questions will be.
MR. LEONARD: And they will be.
MR. MALONE: Thank you.
THE WITNESS: Let me find 1-B, unless I can answer without – okay, 1-B, Closing Transcript.
(Next page, please.)

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BY MR. LEONARD
Q. Mr. Mitchell asked you if you knew who the primary – who the attorney was who had primary responsibility for the transaction, or, perhaps more particularly, he asked if you were the attorney that had primary responsibility for the transaction. I believe you answered, no, you did not have primary responsibility. So my question to you is: Who did in the firm have primary responsibility for the transaction reflected on Exhibit 1-B?
A. My recollection is that it was Mr. Hagberg.
Q. All right. And was Mr. Hagberg also the primary contact responsibility with the lender's counsel as this transaction was going forward?
A. I don't remember who the primary contact was.
Q. Okay. Mr. Mitchell also asked you about firm meetings that occurred once a week in which general topics of the firm's business and clients' business were discussed. Do you recall those questions?
A. Yes.
Q. And did Mr. Hagberg attend those meetings on a

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regular and routine basis?
A. Yes.
Q. Was Mr. Hagberg as informed about the firm's business and the matters and the services provided to the firm's clients as you were?
A. I think so.
Q. Lastly, back in the last half of the 1990s, starting with '98, '99 into 2000, can you estimate on a monthly basis the dollar amount of billings that the firm did to the debtors and – the debtors and the affiliates for legal services rendered?
A. No. I mean, it just –
Q. You couldn't give me any parameters?
MR. MALONE: I don't want you guessing.
THE WITNESS: No. It was substantial, but I don't know whether it was – it would be a ballpark.
BY MR. LEONARD
Q. Well, give me your best ballpark recollection.
MR. MALONE: Without guessing.
THE WITNESS: 1998?
BY MR. LEONARD
Q. Well, in that period, '98, '99, 2000. And if

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there's a difference between the years, give me the difference.
A. My recollection is, it was somewhere in the neighborhood of 60,000 a month in '98 and more in '99 and – that's all I recall.
Q. And that level of billing continued on in 2000 and 2001 as well?
A. That's what I recall.
Q. My last question: In the late nineties, during the time period we just discussed with respect to billing levels, did Mr. Hagberg have any other clients other than the debtors and their affiliates, including Summa and Kate Zeller as one group of clients singularly, did Mr. Hagberg have any other clients that you would consider to be significant clients in terms of services and billing?
A. Yes.
Q. How many other clients do you feel that he would have had?
A. At that level?
Q. Yes.
A. You mean a comparable level?
Q. Yes.
A. One.

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Q. Which client was that?
A. Standard Aero.
Q. So he basically had two significant clients during that time?
A. At that level, yes.
MR. LEONARD: Okay. I have nothing else.
MR. MALONE: We'll read and sign. I'll take a copy of the transcript, Mr. Neumann, and I'll get you a copy of my card particulars.
(Whereupon, at 12:09 p.m., the foregoing deposition was terminated.)
**REPORTER'S NOTE - The original transcript is being delivered to Attorney Brian Leonard.

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STATE OF MINNESOTA)
COUNTY OF RAMSEY)

I hereby certify that I reported the deposition of Michael C. Mahoney on the 29th day of April, 2004, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed under my direction and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition was reserved by the witness and is to be accomplished in accordance with the attached letter.

WITNESS MY HAND AND SEAL this 19th day of May, 2004.

Dale R. Neumann
Seal

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D E P O S I T I O N C O R R E C T I O N S H E E T
TITLE - Leonard vs. Strom, et al.
VENUE - Minnesota Bankruptcy Court ADV Case 02-9117
WITNESS - Michael Mahoney REPORTER - D. Neumann

Pg/Line:	Change	Reason (Rule 30.05)

Signature of Witness Date

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5
6 Mr. Thomas P. Malone
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7 200 Coon Rapids Blvd., Suite 400
Minneapolis, MN 55433-5894
8
Re: Carefree Living Bankruptcy Matter
9 Deposition of Michael C. Mahoney
10 Dear Mr. Malone:
11 I have enclosed a copy of the above-referenced
deposition, along with the Deposition Correction
12 Sheet. Please have the witness read the transcript
and complete and sign the Deposition Correction Sheet
13 within 30 days of this letter or not later than the
hearing in this matter, whichever occurs first, and
14 then deliver it directly to Mr. Leonard, who has been
sent the original transcript.
15
Pursuant to Rule 30.05, if the read-and-sign procedure
16 is not timely completed, transcripts may be used fully
as if signed.
17
Thank you for your prompt cooperation.
18
Sincerely,
19
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Dale R. Neumann
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24 cc: Brian F. Leonard, Esq.
25

Depo-Dex Concordance Report Prepared For Special Clients By Neumann Reporting Agency

- - -

UNIQUE WORDS: **1,349**
TOTAL OCCURRENCES: **4,775**
NOISE WORDS: **696**
TOTAL WORDS IN FILE: **18,864**

- - -

SINGLE FILE CONCORDANCE

- - -

CASE SENSITIVE

- - -

PHRASE WORD LIST(S): **PHRASE.PHS**

- - -

COVER PAGES = 2

- - -

INCLUDES ALL TEXT OCCURRENCES

- - -

DATES **ON**

- - -

INCLUDES PURE NUMBERS

- - -

POSSESSIVE FORMS **ON**

- - -

MAXIMUM TRACKED OCCURRENCE THRESHOLD: **50**

- - -

NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD: **5**

- - -

LIST OF THRESHOLD WORDS:

- - -

debtors
Hagberg
LEONARD
MALONE
recollection

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October 30, 1998

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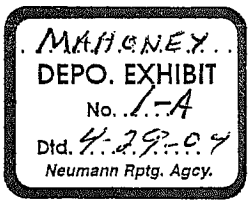


Gentlemen:

We have acted as counsel for Summa Management, Inc., a Delaware corporation ("Shareholder"), in connection with the execution and delivery the Shareholder to you of a certain Guaranty of even date ("Guaranty") and Pledge Agreement of even date ("Pledge") which Pledge is given to secure the payment by Carefree Living of America (Minnetonka), Inc., a Delaware corporation (the "Company"), of its outstanding obligation to you pursuant to its Promissory Note dated July 20, 1995, executed to your order in the principal sum of $4,136,000.00 ("Note") which Note is, among other things, secured by a Mortgage and Security Agreement and Fixture Financing Statement dated July 20, 1995, filed as Document No. 6454294, Office of the County Recorder, Benton County, Minnesota, as Document No. 483980, Office of the County Recorder, Crow Wing County, Minnesota, and as Document No. 1291033, Office of the County Recorder, Dakota County, Minnesota ("Mortgage").

In connection with the foregoing, we have reviewed and examined executed counterparts of the Guaranty and Pledge and the following ("Organizational Documents"):

a. the Certificate of Incorporation and By-Laws of the Shareholder as currently existing;
b. the Certificate of Good Standing of the Shareholder from the State of Delaware;
c. the records of the corporate proceedings taken by the Board of Directors and Shareholders of the Shareholder in connection with the Loan and the transactions contemplated thereby;

And have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as deemed necessary or appropriate for the purpose of this opinion.

We have not made or undertaken to make any investigation as to factual matters or as to the accuracy or completeness of any representation, warranty, data or any other information, whether

written or oral, that may have been made by or on behalf of the Shareholder and we may rely on certificates from the Shareholder as to factual assumptions for this opinion.

Based upon the foregoing, we are of the opinion that:

1. Each of the Guaranty and Pledge has been duly executed and delivered by the Shareholder and is the legal, valid and binding obligation of the Shareholder, enforceable in accordance with its terms, except as to enforcement of remedies, as may be limited by the bankruptcy or insolvency of the Shareholder or similar laws affecting generally the enforcement of creditor's remedies against the Shareholder.

2. The Shareholder is a corporation in good standing and organized under the laws of the State of Delaware and has all requisite power and authorization to execute and deliver the Guaranty and Pledge, and to conduct its affairs and to otherwise assume and perform the obligations on its part to be assumed and performed as contemplated by the Guaranty and Pledge and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

3. Neither the execution and delivery of the Guaranty and Pledge nor the performance of the provisions of the agreements therein on the part of the Shareholder will contravene, violate or cause a default under any law, Organizational Documents of Shareholder or any ordinance, governmental regulation, agreement or indenture to which the Shareholder is a party or by which they or any of Shareholder's properties are bound including specifically, Settlement Agreement dated March 26, 1998 by and among Summa Management, Inc., Minnesota Home Health Care, Inc., fka Carefree Living Home Health Agency, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Minnetonka), Inc. and Linda Marie Selbak, as amended by Amendment to Settlement Agreement between the Carefree Entities and Linda M. Selbak dated on or about November 3, 1998.

4. Except as otherwise previously disclosed to Miller Schroeder Investments Corporation, based on due inquiry there are no suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of our knowledge, threatened against the Shareholder or any of Shareholder properties, or both, nor has any judgment, decree or order been issued against the Shareholder or any of Shareholder's properties, or both, which would have a material adverse affect on the Guaranty, the shares pledged under the Pledge or the financial condition of Shareholder or such properties.

5. No consent, approval, order or authorization of or designation, registration, declaration, qualification or filing with any governmental or regulatory authority on the part of Shareholder is necessary or required by law as a prerequisite to the execution and delivery of the Guaranty and Pledge and the carrying out of the Transactions contemplated by or the enforcement of the remedies provided in the Guaranty and Pledge.

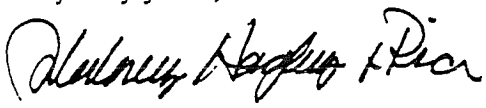
6. There is no litigation currently pending against or to our knowledge threatened against the Shareholder which in our legal judgment prohibits the execution and delivery of the Guaranty and Pledge and the guarantying of the Note or pledging of the shares pledged thereunder or the Shareholder's interest in such shares.

7. The Pledge Agreement creates a valid security interest in the Pledged Stock described therein which may be perfected by the delivery to and possession by you of the certificates evidencing the Pledged Stock. No filing of a Financing Statement is necessary to perfect your security interest in the Stock. Said security interest shall be a first and prior interest in the Stock described therein.

We are admitted to practice only in Minnesota and the foregoing opinions are limited to the laws of Minnesota and the corporate laws of Delaware.

This opinion letter may also be relied upon by Oppenheimer Wolff & Donnelly LLP and any participant with you in the Note. This opinion is governed by the legal opinion accord of the Business Section or Business Law of the American Bar Association. The General Qualifications, the Bankruptcy and Insolvency Exceptions, the Equitable Principles Limitations and other Common Qualifications apply to this opinion.

Very truly yours,



MAHONEY, HAGBERG & RICE
A Professional Association

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

October 30, 1998

Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, MN 55402

Gentlemen:

We have acted as counsel for Carefree Living of America (Brainerd), Inc., a Delaware corporation; Carefree Living of America (Burnsville), Inc., a Delaware corporation; and Carefree Living of America (St. Cloud), Inc., a Delaware corporation ("Companies") in connection with the execution and delivery by the Companies to you of a certain Cash Agreement dated of even date ("Cash Agreement") which Cash Agreement is given in connection with the partial release by you at the request of the Companies of certain properties of the Companies from a Mortgage and Security Agreement and Fixture Financing Statement dated July 20, 1995, filed as Document No. 6454294, Office of the County Recorder, Hennepin County, Minnesota, as Document No. 229853, Office of the County Recorder, Crow Wing County, Minnesota, and as Document No. 1291033, Office of the County Recorder, Dakota County, Minnesota ("Minnesota").

In connection with the foregoing, we have reviewed and examined executed counterparts of the Cash Agreement and the following ("Organizational Documents"):

a. the Articles of Incorporation and By-Laws of the Companies as currently existing;
b. the Certificate of Good Standing of the Companies from the State of Delaware.
c. The records of the corporate proceedings taken by the Board of Directors and Shareholders of the Companies in connection with the Loan and the transactions contemplated thereby;

and have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as deemed necessary or appropriate for the purpose of this opinion.

We have not made or undertaken to make any investigation as to factual matters or as to the accuracy of completeness of any representation, warranty, data or any other information, whether written or oral, that may have been made by or on behalf of our clients and we may rely on certification from our clients as to factual assumptions for this opinion.

Based upon the foregoing, we are of the opinion that:

1. The Cash Agreement has been duly executed and delivered by the Companies and is the legal, valid and binding obligation of each of the Companies, enforceable in accordance with its terms.

2. Each of the Companies is a corporation in good standing and organized under the laws of the State of Delaware and has all requisite power and authorization to enter into the Cash Agreement, and to conduct its affairs and to otherwise assume and perform the obligations on its part to be assumed and performed as contemplated by the Cash Agreement and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

3. Neither the execution and delivery of the Cash Agreement nor the performance of the provisions of the agreements therein contained on the part of the Companies, including the making of the "Payment" called for therein will contravene, violate or cause a default under any law, Organizational Documents of the Companies or any ordinance, governmental regulation, agreement or indenture to which the Companies is a party or by which they or any of the Companies' properties are bound including specifically the following:

a) Agreement dated March 26, 1998 by and among Summa Management, Inc., Minnesota Home Health Care, Inc., fka Carefree Living Home Health Agency, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Minnetonka), Inc. and Linda Marie Selbak as amended by Amendment to Settlement Agreement between the Carefree Entities and Linda M. Selbak dated November 3, , 1998

b) Settlement Agreement entered into as of March 17, 1998 by and among Carefree Living of America (Brainerd), Inc., and the limited partners of St. Cloud Manor, Ltd., Carefree Living of Burnsville, Ltd., and Brainerd Manor, Ltd., as amended by Court Order dated August 5, 1998.

c) The terms of any mortgage, loan agreement or lending arrangement between the Companies, individually, and First Union National Bank.

4. Except as otherwise disclosed to Miller Schroeder Investments Corporation based on due inquiry there are no suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of our knowledge, threatened against the Companies or any of Companies properties, or both, which would have a material adverse affect on the Premises or the financial condition of Companies or such properties.

5. No consent, approval, order or authorization of or designation, registration, declaration, qualification or filing with any governmental or regulatory authority on the part of the Companies is necessary or required by law as prerequisite to the execution and delivery of the Cash Agreement and the carrying out of the transactions contemplated by or provided in the Cash Agreement.

6. There is no litigation currently pending against the Companies which would in our legal judgment adversely affect the execution and delivery of the Cash Agreement and the payment of the cash payment called for therein.

We are admitted to practice only in Minnesota and the foregoing opinions are limited to the laws of Minnesota and the corporate laws Delaware.

This opinion letter may also be relied upon by Oppenheimer Wolff & Donnelly LLP and any participant with you in the loan made to Carefree Living of America (Minnetonka), Inc. by you and secured by the Mortgage. This opinion is governed by the legal opinion accord of the Business Section or Business Law of the American Bar Association. The General Qualification, the Bankruptcy and Insolvency Exceptions, the Equitable Principles Limitations and other Common Qualifications apply to this opinion.

Very truly yours,

Mahoney, Hagberg + Rice

MAHONEY, HAGBERG & RICE
A Professional Association

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

October 30, 1998

Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, MN 55402

Gentlemen:

We have acted as counsel for Kathleen L. Zeller ("Shareholder") in connection with the execution and delivery by the Shareholder to you of a certain Guaranty of even date ("Guaranty") and Pledge Agreement of even date ("Pledge") which Pledge is given to secure the payment by Carefree Living of America (Minnetonka), Inc., a Delaware corporation (the "Company") of its outstanding obligation to you pursuant to its Promissory Note dated July 20, 1995, executed to your order in the principal sum of $4,136,000.00 ("Note") which Note is among other things secured by a Mortgage and Security Agreement and Fixture Financing Statement dated July 20, 1995, filed as Document No. 6454294, Office of the County Recorder, Hennepin County, Minnesota, as Document No. 229853, Office of the County Recorder, Benton County, Minnesota, as Document No. 483980, Office of the County Recorder, Crow Wing County, Minnesota, and as Document No. 1291033, Office of the County Recorder, Dakota County, Minnesota ("Mortgage").

In connection with the foregoing, we have reviewed and examined executed counterparts of the Guaranty and Pledge and have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as deemed necessary or appropriate for the purpose of this opinion.

We have not made or undertaken to make any investigations as to factual matters or as to the accuracy of completeness of any representation, warranty, data or any other information, whether written or oral, that may have been made by or on behalf of our clients and we may rely on certificates from our clients as to factual assumptions for this opinion.

Based upon the foregoing, we are of the opinion that:

1. Each of the Guaranty and Pledge has been duly executed and delivered by the Shareholder and is the legal, valid and binding obligation of the Shareholder, enforceable in accordance with its terms, except as to enforcement of remedies, as

may be limited by the bankruptcy or insolvency of the Shareholder or similar laws affecting generally the enforcement of creditor's remedies against the Shareholder.

2. The Shareholder is an American citizen resident in the Principality of Andorra and is under no legal disability.

3. Neither the execution and delivery of the Guaranty and Pledge nor the performance of the provisions of the agreements therein contained on the part of the Shareholder will contravene, violate or cause a default under any law, or any ordinance, governmental regulation, agreement or indenture to which the Shareholder is a party or by which they or any of Shareholder's properties are bound.

4. Except as otherwise disclosed to Miller Schroeder Investments Corporation, based on due inquiry there are no suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of our knowledge, threatened against the Shareholder or any of Shareholder properties, or both, nor has nay judgment, decree or order been issued against the Shareholder or any of shareholder's properties, or both, which would have a material adverse affect on the Guaranty, the shares pledged under the Pledge or the financial condition of Shareholder or such properties.

5. No consent, approval, order or authorization of or designation, registration, declaration, qualification or filing with any governmental or regulatory authority on the part of Shareholder is necessary or required by law as a prerequisite to the execution and delivery of the Guaranty and Pledge and the carrying out of the transactions contemplated by or the enforcement of the remedies provided in the Guaranty and Pledge.

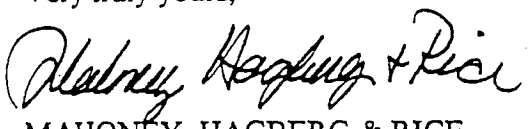
6. There is no litigation currently pending against or to our knowledge threatened against the Shareholder which in our legal judgment prohibits the execution and delivery of the Guaranty and Pledge and the guarantying of the Note or pledging of the shares pledged thereunder or the Shareholder's interest in such shares.

7. The Pledge Agreement creates a valid security interest in the Pledged Stock described therein which may be perfected by the delivery to and possession by you of the certificates evidencing the Pledged Stock. No filing of a Financing Statement is necessary to perfect your security interest in the Stock. Said security interest shall be a first and prior interest in the Stock described therein.

We are admitted to practice only in Minnesota and the foregoing opinions are limited to the laws of Minnesota and the corporate laws of Delaware. This opinion letter may also be relied upon by Oppenheimer Wolff & Donnelly LLP and any participant with you in the loan made to Carefree Living of America (Minnetonka), Inc. by you and secured by the Mortgage.

This opinion is governed by the legal opinion accord of the Business Section or Business Law of the American Bar Association. The General Qualifications, the Bankruptcy and Insolvency Exceptions, the Equitable Principles Limitations and other Common Qualifications apply to this opinion.

Very truly yours,



MAHONEY, HAGBERG & RICE,
A Professional Association

2 of 2

CLOSING TRANSCRIPT
Partial Paydown and Restructure
$11,332,000.00 Combined Mortgage Loan
Carefree Assisted Living Facilities
and
$975,000.00 Working Capital Loan

BORROWERS:	Carefree Living of America (Burnsville), Inc.	Tax ID No. 41-1813993
	Carefree Living of America (St. Cloud), Inc.	Tax ID No. 41-1813994
	Carefree Living of America (Minnetonka), Inc.	Tax ID No. 41-1813996
	Carefree Living of America (Brainerd), Inc.	Tax ID No. 41-1813995
	Carefree Home Health Agency, Inc.	Tax ID No. 41-1787850

BORROWER'S COUNSEL:
Michael Mahoney
Mahoney, Hagberg & Rice
109 Bushaway Road
Wayzata, Minnesota 55391
Tel.: 332-2226
Fax.: 332-8066

LENDER:
Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, Minnesota 55402
Attn: Jerome Tabolich
Tel.: 376-1421
Fax.: 376-1412

LENDER'S COUNSEL:
Donald P. Norwich
Oppenheimer Wolff & Donnelly LLP
3400 Plaza VII
45 South Seventh Street
Minneapolis, Minnesota 55402
Tel.: 607-7300
Fax.: 607/7100

DATE OF PAYDOWN: November 4, 1998

DOCUMENTS INCLUDED IN TRANSCRIPT

1. Guaranty of Summa Management, Inc.

2. Non Recourse Guaranty of Kate Zeller

MAHONEY
DEPO. EXHIBIT
No. 1-B
Dtd. 4-29-04
Neumann Rptg. Agcy.

7592/479

3. Pledge Documents of Summa Management, Inc. including

   a. Pledge Agreement

   b. Blank Endorsed Stock Powers with Original Share Certificates attached for Class A Non-Voting Common Stock of:
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

   c. Blank Endorsed Stock Powers with Original Share Certificates attached for Class B Voting Common Stock of:
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

   d. Stock Subscription Agreements
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

   e. Stock Purchase Notes
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

4. Pledge Documents of Kate Zeller including

   a. Pledge Agreement
   b. Blank Endorsed Stock Powers with Original Share Certificates of Summa Management, Inc.

5. Cash Agreement

6. UCC Financing Statements:

   a. Kate Zeller
   b. Summa Management, Inc.
      i) Minnesota
      ii) Delaware

7. Incumbency Certificate of Assistant Secretary of Summa Management, Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

8. Assistant Secretary's Certificate as to Stock Ledger of Summa Management, Inc.

9. Incumbency Certificate of Assistant Secretary of Carefree Living of America (Brainerd), Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

10. Assistant Secretary's Certificate as to Stock Ledger of Carefree Living of America (Brainerd), Inc.

11. Incumbency Certificate of Assistant Secretary of Carefree Living of America (Burnsville), Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

12. Assistant Secretary's Certificate as to Stock Ledger of Carefree Living of America (Burnsville), Inc.

13. Incumbency Certificate of Assistant Secretary of Carefree Living of America (St. Cloud), Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

14. Assistant Secretary's Certificate as to Stock Ledger of Carefree Living of America (St. Cloud), Inc.

15. Opinion of Counsel for Summa Management, Inc.

16. Opinion of Counsel for Carefree Companies

17. Opinion of Counsel for Kate Zeller 1 of 2 ↑

18. Partial Release Documents (First Mortgage Facility Loans): 2 of 2 ↓

    a. Partial Release of Mortgage (Brainerd, Burnsville, St. Cloud Facilities)
    b. UCC-3 Termination Statements (Minnesota and Delaware)
        i) Brainerd Facility
        ii) Burnsville Facility
        iii) St. Cloud Facility

19. Satisfaction Documents (Carefree Home Health Agency Working Capital Loan):

    a. Satisfaction of Second Mortgage and Assignment of Rents (Brainerd, Burnsville, St. Cloud Facilities)
    b. UCC-3 Terminations (Minnesota and Delaware)
        i) Brainerd Facility
        ii) Burnsville Facility
        iii) St. Cloud Facility
    c. UCC-3 Terminations (Wilnard Selbak) (Secretary of State of Minnesota and Hennepin County Recorder)
    d. UCC-3 Termination Carefree Home Health Agency, Inc.

20. Limited Partnership Settlement Documents:

    a. Original Settlement Agreement
    b. Order of Court
    c. Escrow Agreement

21. Linda Selbak Settlement Documents

    a. Original Settlement Agreement
    b. Amendment to Settlement Agreement
    c. Agreement Regarding Interests in Collateral

22. Approval Letter of Title Insurer

23. UCC Searches

24. Release of Professional Management Pledge

    a. Release and Satisfaction
    b. UCC-3 Termination

25. Union Bank Settlement Statement

26. Payoff Statement

27. Approved Pro Forma Cash Flow Summary

28. Approved Sources & Uses

29. Letter Reinstating Escrows

MAHONEY, HAGBERG & RICE

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MN 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

April 30, 1999

Larson Allen Weishair & Co., LLP
Suite 1000
220 South Sixth Street
Minneapolis, Minnesota 55402-4505

Attention: Chad D. Kunze, C.P.A.

Re: Carefree Living of America (Brainerd), Inc.
Carefree Living of America (Burnsville), Inc.
Carefree Living of America (St. Cloud), Inc.
1998 Audit

Dear Mr. Kunze:

Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., and Carefree Living of America (St. Cloud), Inc., Delaware corporations (collectively referred to as the "Companies"), have requested that we furnish you with certain information in connection with the preparation and audit of financial statements of the Companies as to matters that existed as of December 31, 1998 and during the period from that date to April 28, 1999 which is the effective date of our response. Our response is further limited to those express matters identified in the Companies' letter to us to furnish this response.

While this firm represents the Companies on a regular basis, our engagement has been limited to specific matters about which we were consulted by the Companies. Attached to Companies' letter was a list of certain matters which might constitute loss contingencies. However, subject to the foregoing and to the last paragraph of this letter, we advise you that from January 1, 1998 to December 31, 1998, and to the effective date of our response, we have not been engaged to give substantive attention to, or represent the Companies in connection with, those contingencies set forth on such list, nor any other loss contingencies coming within the scope of Clause (a) of paragraph 5 of the Statement of Policy referred to in the last paragraph of this letter, except as to the following matters:

MAHONEY... DEPO. EXHIBIT No. 1-C Dtd. 4-28-99 Neumann Rptg. Agcy.

See Notes following each case identified. No additional contingencies unknown to us were identified.
CDK 5/10/99

Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; and Carefree Living of America (Brainerd), Inc., all Delaware corporations v. Linda Marie Selbak and Linda Marie Selbak v. Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; and Carefree Living of America (Brainerd), Inc., all Delaware corporations and Linda Marie Selbak v. Wilnard L. Selbak; Kathleen Zeller and Vern Zeller, III; John Doe and Mary Roe; and John Doe Corporation; whose names are unknown to the parties
United States District Court (District of Minnesota) Court File No. 97-902 PAM/JGL

In April of 1997, Plaintiffs, Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation, Carefree Living of America (Minnetonka), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Brainerd), Inc., all Delaware corporations ("Plaintiffs") filed a Complaint in the United States District Court District of Minnesota against Defendant, Linda Marie Selbak ("Defendant") seeking judgment in excess of $75,000. In May of 1997, Defendant filed her Answer, Counterclaim and Third Party Complaint. Defendant's Counterclaim against Plaintiffs included claims for intentional infliction of emotional distress, abuse of process, and conspiracy to defraud and claimed damages in excess of $75,000. Defendant's Third Party Complaints against Wilnard L. Selbak, Kathleen Zeller, and Vern Zeller, III (collectively referred to as "Third Party Defendants") each claimed intentional infliction of emotional distress and each claimed damages in excess of $75,000. Defendant subsequently filed an Amended Answer, Counterclaim and Third Party Complaint. In March of 1998, the Plaintiffs and Defendant entered into a settlement agreement, which was amended in November of 1998 and all Complaints and Counterclaims have been dismissed pursuant to such settlement agreement.

Already Disclosed in F15

Helterhoff's Inc. Profit Sharing Trust v. Will Selbak and Carefree Living of America (St. Cloud) Inc., Carefree Living of America (Burnsville) Inc., Carefree Living of America (Brainerd) Inc., Carefree Living of America (Minnetonka) Inc., Summa Management Inc.
Hennepin County Court File No. FJ 96-003179

Lakeland High School Scholarship Fund Inc. v. Will Selbak and Carefree Living of America (St. Cloud) Inc., Carefree Living of America (Burnsville) Inc., Carefree Living of America (Brainerd) Inc., Carefree Living of America (Minnetonka) Inc., Summa Management Inc.
Hennepin County Court File No. FJ 96-003137

Save More Food Markets Inc., Profit Sharing Trust v. Will Selbak and Carefree Living of America (St. Cloud) Inc., Carefree Living of America (Burnsville) Inc., Carefree Living of America (Brainerd) Inc., Carefree Living of America (Minnetonka) Inc., Summa Management Inc.
Hennepin County Court File No. FJ 96-003138

In 1995, Plaintiffs/Judgment Creditors, Helterhoff's Inc. Profit Sharing Trust, Lakeland High School Scholarship Fund Inc. and Save More Food Markets Inc. Profit Sharing Trust (hereinafter collectively referred to as "Plaintiffs"), secured a default judgment against Will Selbak ("Defendant"). In 1997, Plaintiffs served third-party levies upon Third Parties, Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (Minnetonka), Inc. and Summa Management, Inc. (hereinafter collectively referred to as "Third Parties"). On January 26, 1998, Plaintiffs served a motion for leave of Court to file a supplementary complaint against Third Parties claiming that the Third Parties made false statements on the third-party levy disclosures submitted by Third Parties. The Court granted this motion and allowed Plaintiffs to commence an action against Third Parties. Subsequently, the court granted the Plaintiff/Judgment Creditors' motion to seek leave to file a supplemental complaint. The Plaintiff/Judgment Creditors then served a supplemental complaint on the Third-Parties seeking approximately $130,000 in damages arising out of the Third-Parties alleged failure to disclose or remit property of the Defendant. The Third Parties, rather than answering, filed a motion to dismiss the supplemental complaint for failure to state a claim upon which relief can be granted. That motion is now pending before the court. Given the preliminary nature of this matter, the likelihood of an unfavorable outcome to the Third Parties, including the Companies, and the costs to the Third Parties, including the Companies, cannot be evaluated at this time with any reasonable degree of certainty.

Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; and Carefree Living of America (Brainerd), Inc., all Delaware corporations v. Emeritus Corporation, a Washington corporation, and Linda Marie Selbak
United States District Court (District of Minnesota) Court File No. 4-96-1239

In October of 1996 Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation, Carefree Living of America (Minnetonka), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Brainerd), Inc., all Delaware corporations (hereinafter collectively referred to as the "Carefree Entities") brought an action in the United States District Court for the District of Minnesota against Emeritus Corporation ("Emeritus") for breach of contract and related claims. The

Carefree Entities sought to recover the $21,000,000 allegedly lost as a result of the claimed breach of contract by Emeritus to purchase the assets of the Carefree Entities.

Emeritus claimed that the Carefree Entities breached the agreement and answered in November of 1996. In June of 1997, the Carefree Entities served and filed an Amended Complaint against Defendant Emeritus and Defendant, Linda Marie Selbak. The Amended Complaint alleged breach of agreements, tortuous interference with prospective business advantage and tortuous interference with contractual relations. The Carefree Entities sought damages for Emeritus' wrongful termination of the agreements. Emeritus claimed that its termination was valid and that the Carefree Entities are not entitled to any damages or, in the alternative, that the Carefree Entities damages were limited to the purchase agreements' liquidated damages provisions. Subject to completion of outstanding discovery of third persons, the Carefree Entities and Linda Selbak have settled their disputes with each other and agreed to dismiss their suits against each other. Emeritus has moved the Court for entry of summary judgment, but has delayed the hearing pending completion of the settlement process.

SALY disclosures included in F/S

<u>David J. Broberg and Mary Lee Bradley v. Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Burnsville), Inc.</u>
Hennepin County Court File No. 31-C1-96-1076

On June 10, 1997, the parties to this lawsuit entered into a Stipulation and Settlement Agreement. That Stipulation and Settlement Agreement was secured by a Confession of Judgment by Defendants in favor of Plaintiffs in the amount of $388,000 in the event of a default. In February 13, 1998, the Hennepin County District Court entered and docketed judgment in the amount of $388,000 against Defendants and in favor of Plaintiffs, pursuant to this Confession of Judgment. On March 11, 1998, the Benton County District Court docketed the $388,000 Hennepin County judgment. In November of 1998, as a result of settlement discussions, the Plaintiffs were paid $327,679.68 to provide Defendants with a Satisfaction of Judgment.

Remaining amount in excess of 327,000 PJ and refinancing still shown as LT Debt.

It is our understanding that you have previously been provided with those stock transfer and related agreements entered into 1998 and up to the effective date of this letter, for which we were engaged to give substantive attention or to represent the Companies.

As of December 31, 1998, the Carefree Living of America (Brainerd), Inc., was indebted to us for services and expenses (billed and unbilled) in the aggregate amount of $117,486.57. During the year of 1998, we billed Carefree Living of America (Brainerd), Inc., $275,067.74 for fees and $1,935.95 for expenses for a total sum billed in 1998 of $277,003.69.

Agreed all payable amounts to each entity and recorded any difference as additional payables.

As of December 31, 1998, the Carefree Living of America (Burnsville), Inc., was indebted to us for services and expenses (billed and unbilled) in the aggregate amount of

$39,308.77. During the year of 1998, we billed Carefree Living of America (Burnsville), Inc., $180,845.36 for fees and $2,372.74 for expenses for a total sum billed in 1998 of $188,218.10.

As of December 31, 1998, the Carefree Living of America (St. Cloud), Inc., was indebted to us for services and expenses (billed and unbilled) in the aggregate amount of $92,926.86. During the year of 1998, we billed Carefree Living of America (St. Cloud), Inc., $181,574.58 for fees and $6,376.83 for expenses for a total sum billed in 1998 of $187,951.41.

The information set forth above is as of the effective date of our response, and we disclaim any undertaking to advise you of changes which hereafter may be brought to our attention. This response is limited by, and prepared in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975). Without limiting the scope of the foregoing, the limitations set forth in the Statement of Policy on the extent and use of this response (paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein as to any "loss contingencies" is qualified in its entirety by paragraph 5 of the Statement of Policy, and the accompanying Commentary, which is an integral part of the Statement. Consistent with the last sentence of paragraph 6 of the ABA Statement of Policy, and pursuant to the Companies' request, this will confirm as correct the Companies' understanding as set forth in its audit inquiry letter to us that whenever, in the course of performing legal services for the Companies, and with respect to a matter recognized as involving an unasserted possible claim or assessment that may call for financial statement disclosure, we have formed a professional conclusion that the Companies must disclose or consider disclosure concerning such a possible claim or assessment. Further, as a matter of professional responsibility to the Company, we will so advise the Company and will consult with the Companies concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5.

Very truly yours,

Mahoney, Hagberg & Rice,
A Professional Association

MAHONEY, HAGBERG & RICE,
A PROFESSIONAL ASSOCIATION

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

FAXED 5/12/99

TELECOPY COVER SHEET

TO: Kate Zeller

FAX NUMBER: 912-0131 PHONE NUMBER:

FROM: Gina L. Miller

DATE: May 12, 1999 FILE NUMBER: 4600.011

NUMBER OF PAGES INCLUDING COVER PAGE: 16

MESSAGE:

DOCUMENTS ACCOMPANYING THIS MESSAGE:

1. Comments from Michael Mahoney.

MAHONEY
DEPO. EXHIBIT
No. 2
Dtd. 4-29-04
Neumann Rptg. Agcy.

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TRANSMISSION VERIFICATION REPORT

TIME : 05/12/1999 11:31
NAME : MAHONEY HAGBERG RICE
FAX : 6123328066
TEL : 6123322226

DATE,TIME	05/12 11:25
FAX NO./NAME	9120131
DURATION	00:06:07
PAGE(S)	16
RESULT	OK
MODE	STANDARD ECM

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

FAXED 5/12/99

TELECOPY COVER SHEET

TO: Victoria

FAX NUMBER: 376-4820 PHONE NUMBER:

FROM: Gina L. Miller

DATE: May 12, 1999 FILE NUMBER: 4600.011

NUMBER OF PAGES INCLUDING COVER PAGE: 16

MESSAGE:

DOCUMENTS ACCOMPANYING THIS MESSAGE:

1. Comments from Michael Mahoney.

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TRANSMISSION VERIFICATION REPORT

TIME : 05/12/1999 10:21
NAME : MAHONEY HAGBERG RICE
FAX : 6123328066
TEL : 6123322226

DATE,TIME	05/12 10:09
FAX NO./NAME	3764820
DURATION	00:12:04
PAGE(S)	16
RESULT	OK
MODE	FINE ECM

INDEPENDENT AUDITOR'S REPORT

Board of Directors and Stockholders
Carefree Living of America, Inc.
Minnetonka, Minnesota

(collectively the "Corporations")

We have audited the accompanying combined balance sheet of Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (St. Cloud), Inc. as of December 31, 1998, and the related statements of stockholders' equity, operations, and cash flows for the year then ended. The financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to the Corporation's above present fairly, in all material respects, the financial position of ~~Carefree Living of America, Inc.~~ as of December 31, 1998, and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

~~The accompanying financial statements have been prepared assuming that the Corporations will~~ continue as a going concern. As described more fully in Note 9 to the financial statements, the Corporations incurred a net loss before extraordinary items of $3,284,689 during the year ended December 31, 1998, and, as of that date, had a working capital deficiency of $543,098 and a deficit of $5,851,348. These conditions raise substantial doubt about the Corporations' ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

ARBOR, ALLEN, WELSHIMER & CO., LLP

Minneapolis, Minnesota
March 29, 1999

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
COMBINED STATEMENT OF STOCKHOLDERS' EQUITY
FOR THE YEAR ENDED DECEMBER 31, 1998

	Capital Stock	Additional Paid-In Capital	Deficit	Stock Subscriptions Receivable	Total
BALANCE, JANUARY 1, 1998	$ 300	$ 4,777,265	$ (563,647)	$(4,529,865)	$ (615,947)
Net Loss	-	-	(2,662,559)	-	(2,662,559)
Issuance of Preferred Stock	219	2,194,301	-	-	2,194,520
Issuance of Special Preferred Stock	25	-	-	-	25
Contributed Capital to Affiliate	-	-	(2,394,260)	-	(2,394,260)
Contributed Capital from Affiliate	-	-	74,701	-	74,701
Dividends Paid	-	-	(5,583)	-	(5,583)
Subscriptions Redeemed	-	-	-	205,934	205,934
BALANCE, DECEMBER 31, 1998	$ 547	$ 6,971,566	$(5,851,348)	$(4,323,931)	$(3,203,166)

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

I don't like the idea of a contribution. Looks like Summa has made gift with no recognition. What can Summa get back? What choices available?

See accompanying Notes to Combined Financial Statements.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
COMBINED STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED DECEMBER 31, 1998

CASH FLOWS FROM OPERATING ACTIVITIES	
Cash Received from Services	$ 4,198,766
Cash Paid to Suppliers and Employees	(3,595,870)
Interest Paid	(529,973)
Net Cash Provided by Operating Activities	$ 72,923
CASH FLOWS FROM INVESTING ACTIVITIES	
Purchases of Property and Equipment	$ (23,589)
Payments of Other Assets from Escrows	17,700
Net Deposits into Escrows	(34,620)
Net Cash Used by Investing Activities	$ (40,509)
CASH FLOWS FROM FINANCING ACTIVITIES	
Principal Payments on Long-Term Debt	$ (36,281)
Financing Costs Incurred for Refinancing of Debt	(82,000)
Net Proceeds from Refinancing of Debt	2,394,260
? Capital Contributed to Affiliate	(2,394,260)
Dividends Paid	(5,583)
Net Proceeds from Issuance of Capital Stock	205,934
Net Cash Provided by Financing Activities	$ 82,070
INCREASE IN CASH	$ 114,484
Cash - Beginning	78,838
CASH - ENDING	$ 193,322

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

What @ write-off debt

See accompanying Notes to Combined Financial Statements.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
COMBINED STATEMENT OF CASH FLOWS (CONTINUED)
FOR THE YEAR ENDED DECEMBER 31, 1998

NET CASH PROVIDED BY OPERATING ACTIVITIES	
Net Loss after Extraordinary Items	$ (2,882,559)
Depreciation and Amortization	450,895
Write-off of Intercompany Receivables	2,061,670
Forgiveness of Debt	(622,130)
Real Estate Taxes Paid from Debt Proceeds	224,923
Payment of Settlements from Debt Proceeds	413,200
Payment of Accounts Payable from Debt Proceeds	59,000
Interest Paid from Debt Proceeds	473,354
Accrued Interest Paid from Debt Proceeds	32,710
(Increase) Decrease in Current Assets:	
Accounts Receivable	520
Other Current Assets	(650,489)
Increase (Decrease) in Current Liabilities:	
Accounts Payable	275,475
Accrued Expenses	16,354
Net Cash Provided by Operating Activities	$ 72,923

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

NONCASH TRANSACTIONS	
Mortgage Notes ~~Issuance of Bonds~~	$ 11,316,000
Escrow Funds received from Refinancing	21,831
Less:	
Refinancing Costs Incurred	(510,425)
Repayment of Refinanced Debt and Interest	(7,321,140)
Payments of Accounts Payable with Debt Proceeds	(59,000)
Repayment of Other Liabilities with Debt Proceeds	(537,680)
Property Taxes Paid with Debt Proceeds	(336,485)
Establishment of Escrows	(105,641)
Interest Prepaid with Debt Proceeds	(73,200)
Total Net Proceeds from Refinancing of Debt	$ 2,394,260
Capital Contributed from Affiliate	$ 74,701

~~Mortgage Debt~~

Schedule
Convert Pr. + 9 — PKL
Seal

See accompanying Notes to Combined Financial Statements.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization and Operations

The accounts and records of the following entities comprise the combined balance sheet. The majority of these Corporations outstanding common stock is owned by Summa Management, Inc. who also acts as management agent.

Carefree Living of America (Brainerd), Inc.

Carefree Living of America (Brainerd), Inc. owns and operates a 70-bed assisted living facility in Brainerd, Minnesota.

Carefree Living of America (Burnsville), Inc.

Carefree Living of America (Burnsville), Inc. owns and operates a 95-bed assisted living facility in Burnsville, Minnesota.

Carefree Living of America (St. Cloud), Inc.

Carefree Living of America (St. Cloud), Inc. owns and operates a 70-bed assisted living facility in St. Cloud, Minnesota.

All intercompany transactions and balances have been eliminated in combination.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Use of Estimates

The preparation of the combined financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenue and expense during the reporting period. Actual results could differ from those estimates.

Cash

The Corporations place temporary cash investments with financial institutions. At times such investments may be in excess of the FDIC insurance limit.

Accounts Receivable

The Corporations account for uncollectible accounts by the reserve method. As of December 31, 1998, there was no allowance for doubtful accounts deemed necessary.

Inventories

Inventories are stated at cost and consist of food, kitchen and maintenance supplies recorded on a first-in, first-out basis.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Assets Whose Use is Limited

Assets whose use is limited include assets held by trustees under indenture agreements.

Depreciation

Property and equipment are depreciated over their estimated useful lives by the straight-line method of depreciation.

Unamortized Financing Costs

Financing costs associated with the ~~mortgage payables~~ First Union National Bank refinancing are being amortized over the term of the mortgages.

Income Taxes

The Corporations follow the provisions of FASB Statement No. 109, *Accounting for Income Taxes*, which requires the asset and liability method of accounting for income taxes. A deferred tax asset or liability is recognized for the estimated future tax effects attributable to temporary differences and operating loss and tax credit carryforwards. Temporary differences are differences between the tax basis of assets and liabilities and their reported amounts in the financial statements. A valuation allowance is provided to the extent deferred tax assets may not be realized. There is no provision for income taxes as of December 31, 1998.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Resident Services Revenue

Resident services revenue includes room charges and ancillary services to residents. Resident care revenue is recorded at established billing rates net of contractual adjustments resulting from agreements with third-party payors.

Unearned Resident Rent

Unearned resident rent comprises rent payments received in advance from residents but unearned as of December 31, 1998.

NOTE 2 RELATED PARTY TRANSACTIONS

The Corporations paid $467,872 for management, accounting, and administrative services to Summa Management, Inc. (Summa), a related corporation, during the year ended December 31, 1998.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 2 RELATED PARTY TRANSACTIONS (CONTINUED)

As a ~~financing requirement of~~ condition imposed by First Union National Bank, all intercompany receivables and payables between affiliated entities were written-off in September 1998. The write-offs amounted to $2,061,870 as of December 31, 1998.

~~As discussed in Note 6, the Corporations received contributed capital from Summa Management, Inc. of $74,701 during 1998.~~

As discussed in Note 5, proceeds received from the First Union refinancing in excess of the original obligations were distributed to Summa. The distribution amounted to $2,394,280. Summa utilized the distributed funds to make a partial paydown and refinance of the debt and other obligations of two additional affiliates, Carefree Living of America (Minnetonka), Inc. and Minnesota Home Health Care, Inc. F/K/A Carefree Living Home Health Agency, Inc. (Home Health).

The Corporations lease office space to Home Health on a month-to-month basis. For the period ended December 31, 1998, the Corporations received $33,900 from Home Health for rent.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

NOTE 3 ASSETS WHOSE USE IS LIMITED

Assets whose use is limited that are available for obligations classified as current liabilities are reported as current assets.

Escrow - Asset Replacement - ~~According to indenture agreements~~ In connection with the First Union refinancing, an escrow fund is required to be established for replacement of furnishings, fixtures and equipment. Monthly deposits are required to be made by the Corporations to fund this account. As of December 31, 1998, $3,916 was held in escrow.

Escrow - Real Estate Taxes - ~~According to indenture agreements,~~ an escrow fund is required to be established for payment of semi-annual real estate tax payments. Monthly deposits are required to be made by the Corporations to fund this account. As of December 31, 1998, $37,375 was held in escrow.

Escrow - Insurance – ~~According to indenture agreements~~, an escrow fund is required to be established for payment of insurance premiums. As of December 31, 1998, $33,335 was held in escrow.

The escrow funds are held by a trustee in money market accounts in which the costs of the investments equal the fair market value.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 4 LONG-TERM DEBT

The following is a summary of the Corporation's long-term debt at December 31, 1998:

Description	Security	Amount
Mortgage Payable (Brainerd) - First Union National Bank, 8.625% Interest, Due December 1, 2005	See (1) on Page 12	$ 2,631,412
Mortgage Payable (Burnsville) - First Union National Bank, 8.625% Interest, Due December 1, 2005	See (1) on Page 12	5,618,430
Mortgage Payable (St. Cloud) - First Union National Bank, 8.625% Interest, Due December 1, 2005	See (1) on Page 12	3,058,128
Note Payable (Brainerd) - David J. Broberg and Mary Lee Bradley, 10% Interest, Due June 15, 2002	Real and Personal Property	26,034
Note Payable (St. Cloud) - David J. Broberg and Mary Lee Bradley, 10% Interest, Due June 15, 2002	Real and Personal Property	26,034
Note Payable (Burnsville) - David J. Broberg and Mary Lee Bradley, 10% Interest, Due June 15, 2002	Real and Personal Property	26,034
Long-Term Liability (Brainerd) - Limited Partners, Non-Interest Bearing, Due March 2003	Guaranteed by Summa	166,057
Long-Term Liability (St. Cloud) - Limited Partners, Non-Interest Bearing, Due March 2003	Guaranteed by Summa	166,158
Long-Term Liability (Burnsville) - Limited Partners, Non-Interest Bearing, Due March 2003	Guaranteed by Summa	190,785
Total Long-Term Debt		$ 11,911,072
Less: Current Maturities		144,216
Net Long-Term Debt		$ 11,766,856

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 4 LONG-TERM DEBT (CONTINUED)

(1) On November 4, 1998, the Corporations ~~received~~ borrowed $11,316,000 ~~of financing in the form of~~ pursuant to a loan agreement ~~and note~~ a mortgage payable to First Union National Bank. ~~The financing was used to refinance existing debt, paydown existing debt, pay settlement agreements to creditors, pay for delinquent taxes, and provide capital to affiliates for them to paydown their debts.~~ The mortgage bears interest at 8.625% and is due December 1, 2008. The mortgage is secured by the real and personal property and rents of the Corporations. In addition, Summa and its owner have guaranteed the debt.

Maturity requirements on long-term debt are as follows:

Year Ending December 31,	Amount
1999	$ 144,216
2000	151,620
2001	176,790
2002	172,929
2003	168,448
Later Years	11,047,069
Total	$ 11,911,072

TENTATIVE STATEMENTS FOR DISCUSSION PURPOSES ONLY SUBJECT TO REVISION

The provisions of the mortgage and loan agreements contain restrictive covenants pertaining to financial and operational requirements of the Corporation.

NOTE 5 CAPITAL STOCK

Capital stock consisted of the following common stock shares at December 31, 1998:

	Authorized	Issued and Outstanding
Carefree Living of America (Brainerd), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	6,941
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	892	892
Class A Non-Voting Common Stock ($.01 Par)	9,000	9,000
Class B Voting Common Stock ($.01 Par)	1,000	1,000
Total	110,892	17,833

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 5 CAPITAL STOCK (CONTINUED)

	Authorized	Issued and Outstanding
Carefree Living of America (Burnsville), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	7,976
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	946	946
Class A Non-Voting Common Stock ($.01 Par)	9,000	9,000
Class B Voting Common Stock ($.01 Par)	1,000	1,000
Total	110,946	18,922
Carefree Living of America (St. Cloud), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	7,028
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	895	895
Class A Non-Voting Common Stock ($.01 Par)	9,000	9,000
Class B Voting Common Stock ($.01 Par)	1,000	1,000
Total	110,895	17,923
Total Combined Capital Stock	332,733	54,678

During 1998, the Corporations' Board of Directors authorized and issued two new classifications of preferred stock. ~~These new classifications of stock resulted from settlement agreements with creditors.~~

Preferred Stock

The preferred stock issued and outstanding of the Corporations is a variable rate, non-voting convertible preferred stock with a par value of $.01 and a stated value of $100. Holders of this stock have priority over all other classifications of stock related to liquidation rights and dividends. A required monthly cumulative dividend is to be paid at rates varying from 3% to 20% during the first five years after issuance. The Corporations may redeem the preferred stock at the stated value plus all cumulative unpaid dividends and a premium specified by agreement. Holders of preferred stock shares may convert their preferred shares into fractions of either non-voting common stock or voting common stock based on conversion ratios specified by agreement.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 5 CAPITAL STOCK (CONTINUED)

	Authorized	Issued and Outstanding
Carefree Living of America (Burnsville), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	7,976
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	946	946
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TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 5 CAPITAL STOCK (CONTINUED)

Special Preferred Stock

The special preferred stock of the Corporations is a variable rate, non-voting convertible preferred stock with a par value of $.01. Holders of this stock have secondary priority related to liquidation rights. The stock is convertible to common voting stock upon default of covenants specified by the agreement. Upon liquidation the holders shall receive in aggregate, five percent of all amounts distributed to shareholders of any classification of stock.

Common Stock

Two classifications of $.01 par value common stock exist. Each classification has identical rights except for voting. Class A shareholders have no voting rights. Class B shareholders have voting rights equal to one vote for each share held.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

NOTE 6 STOCK SUBSCRIPTIONS RECEIVABLE

~~During~~ In 1997, Summa Management, Inc. purchased eighty (80%) of the then to be outstanding shares of common stock from the Corporations for cash and notes totaling $4,674,000. The notes bear interest at 8% and are collateralized by the stock issued but not yet paid for. Principal and interest are due in monthly payments through the year 2007. For the year ended December 31, 1998, $205,934 ~~of these stock subscriptions were redeemed.~~ was paid under the subscription ~~notes~~ agreement by Summa to the Corporations.

NOTE 7 INCOME TAXES

The Corporations file federal and state tax returns as part of a consolidated group.. As of December 31, 1998, the total group has available approximately $7,200,000 of unused operating loss carryforwards that may be applied against future taxable income and that expire in various years from 1999 to 2013.

Corporate income taxes have been allocated on a separate return basis. Net operating losses related to these Corporations were approximately $2,900,000 at December 31, 1998. A valuation allowance of $1,160,000 has been recorded as of December 31, 1998, including an increase of $1,084,000 in the allowance during the year, to totally offset the deferred tax benefit related to these loss carryforwards.

NOTE 8 CONTINGENT LIABILITIES

Litigation

The Corporations are third party defendants ~~as third parties~~ in connection with a judgment obtained against the founder of the Corporations. Plaintiffs are seeking to file a supplementary complaint against the Corporations claiming the Corporations made false statements on

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

disclosures. The matter was stayed pending resolution of the founder's bankruptcy proceedings. ~~Management cannot currently determine the outcome of this suit.~~ Stet

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Fix.
Probably move Note 8 to start on p. 15, not 14.
Thanks.

Stet

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 8 CONTINGENT LIABILITIES (CONTINUED)

Litigation (Continued)

The Corporations were named as defendants in a lawsuit claiming breach of contract related to the sale of the businesses owned by the Corporations. The Corporations had simultaneously filed a lawsuit against the plaintiff alleging wrongful termination of the contract. ~~Management believes the plaintiffs are seeking the return of $100,000 of earnest money~~. Management ~~cannot currently determine the outcome of the suit.~~ believes this suit has been settled.

Litigation Settlements

In March 1998, the Corporations, in addition to related affiliates, entered into an agreement to settle ~~its~~ their disputes with the founder's ex-wife. The agreement provided that the Corporations and affiliates each issue to the founder's ex-wife shares of variable rate, non-voting convertible special preferred stock. In addition, the Corporations entered into a covenant not to compete and employment agreements. The covenant provides for aggregate monthly payments in the amount of $10,000 payable over the actuarial determined remaining life of the founder's ex-wife. The employment agreement provides for aggregate monthly salary payments of $250 through March 15, 2010. The Corporations and affiliates have an option to make a lump sum distribution to the founder's ex-wife to terminate the covenant and employment agreements equal to the present value of the remaining payments. In October 1998, all of the rights and obligations of the Corporations and affiliates related to the above covenant not to compete were assigned to Summa Management, Inc. The Corporations recognized no gain or loss on the assignment. The difference between the liability owed to the founder's ex-wife and the non-compete asset has been recorded as contributed capital from Summa Management, Inc. in the amount of $74,701.

Value of Stock Received

In March 1998, the Corporations settled a lawsuit, subject to court approval, with certain limited partners who are also debtors of the Corporations. The agreement provided for issuance of variable rate, cumulative, non-voting, convertible, preferred stock to the limited partners in exchange for debt outstanding to them. The monthly dividend rate attached to the preferred stock varies from approximately 3% per annum in year one to 20% per annum in year five and thereafter. For the year ended December 31, 1998, the Corporations paid $5,583 in dividends to the limited partners. The Corporations may redeem the preferred stock at its stated value, plus an additional payment equal to all cumulative unpaid dividends and a premium amount specified in the agreement. In addition, $525,000 of the original debt remains a liability of the Corporations. This liability is due to the limited partners upon redemption of the preferred stock or after five years, whichever is first. The Corporations recognized an extraordinary gain of $622,130 related to the forgiveness of debt.

Get full # here

Guarantee

The Corporations as well as all related affiliates have guaranteed certain indebtedness of the Corporations founder in the aggregate amount of approximately $250,000.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 9 GOING CONCERN

~~At December 31, 1998, the Corporations combined current liabilities exceeded their combined current assets by $543,098, incurred a net loss before extraordinary items of $3,284,689 and have an accumulated deficit of $5,851,348. These factors create an uncertainty about the Corporations' ability to continue as a going concern. Management is actively pursuing settlements of the outstanding litigation, which would decrease legal expenses. A related party, Carefree Living of America (Minnetonka), Inc., intends to refinance their current debt which would allow excess proceeds from that refinancing to be used to redeem the preferred stock holders. The current year financial statements include unusual expenses that are not expected to occur in subsequent years.~~

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

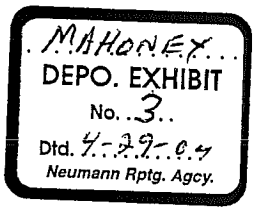
MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
MINNEAPOLIS, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

VIA FACSIMILE & U.S. MAIL

August 21, 2000

D. Charles MacDonald, Esq.
Faegre & Benson, LLP
2200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-3901



Re: *First Union National Bank v. Carefree Living of America (Burnsville), Inc. et al.*

Dear Mr. MacDonald:

As we discussed, I have a scheduling problem and a proposal to postpone the receiver motion.

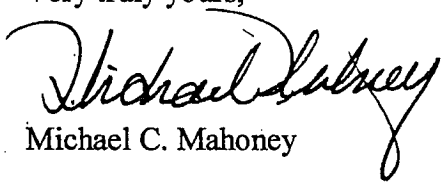
First, I am scheduled to be in Denver Thursday and Friday. The CEO of our client, Kathleen Zeller, lives in Andorra and cannot be here for the hearing before Friday. We need a few extra days to allow me to participate in this most serious hearing and for Ms. Zeller to prepare and attend. We would appreciate moving the hearing to Tuesday, August 29, 2000. I need to advise Ms. Zeller today by 2:00 P.M. our time. I have contacted the Court to get a time for a telephonic hearing, if that should become necessary.

Second, I suggested a means of satisfying your client for the meantime. We have a Term Sheet from John G. Kinnard & Co. indicating they are highly confident they can provide refinancing of about $13,000,000 to "take out" First Union. I have enclosed a copy. They have said they could expect to close within 45 to 60 days.

In the interim, Carefree would pay down a substantial portion of the deficiency (e.g. one month) and enter into a lock-box or similar arrangement to assure First Union of payments as they come due during the two-month refinancing period. Under this plan,

First Union gets more now, has little risk of any deterioration and most likely gets paid off within two months.

Very truly yours,



Michael C. Mahoney

Enclosure

cc: Kathleen Zeller
Vern Zeller III

August 16, 2000

$13,000,000*
First Mortgage Housing Facility Revenue Note
(Carefree Living of America Projects)

Term Sheet

Borrower:	The Borrower is Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc. (together the "Carefree Living of America Entities"), all Delaware corporations. All of the Borrower's outstanding common stock is owned by Summa Management, Inc. which also acts as management agent of the facilities.
Amount:	$13,000,000*
Type of Issue:	Negotiated sale of a first mortgage revenue note (the "Note") placed by John G. Kinnard & Co. in compliance with applicable federal and state laws.
Use of Proceeds:	The Note proceeds will be used to refinance the existing first mortgage note, to provide sufficient funds to pay certain outstanding debt obligations, to fund initial development costs of two planned 78-unit assisted living facilities and to pay the cost of issuance for the financing.
Loan Term and Amortization:	The Loan will mature on the tenth (10) anniversary date of the Loan closing and will amortize over twenty (20) years. The Loan will have monthly installments of principal and interest with first scheduled payment due thirty (30) days after Loan closing.
Interest Rate:	The interest rate on the Loan will be fixed for a period of three (3) years term and will be established on the Closing Date at approximately _____ basis points over the yield on three (3) year US Government Securities. The interest rate will reset every three (3) years to the then current yield on three (3) year US Government Securities plus _____ basis points.
Prepayment Option:	To Be Determined
Management Agent:	The Borrower currently has an operating agreement with Summa Management, Inc., a Delaware corporation headquartered in Andorra ("Summa"). Summa owns 100% of outstanding stock in the Borrower and operates four assisted living facilities

*Preliminary, subject to change.

located in St. Cloud, Burnsville, Brainerd and Minnetonka, Minnesota.

Estimated Sources and Uses of Funds:

The following is an estimate of the Sources and Uses of funds for the Project:

Sources	
Loan Proceeds	$13,000,000
Total Sources:	$13,000,000

Uses	
First Mortgage Brainerd	$2,600,000
First Mortgage Burnsville	5,500,000
First Mortgage St. Cloud	3,000,000
Placement Agent	260,000
Fund Mtka Mortgage Purchase	500,000
Fund Development Costs	1,080,000
Legal/Other (estimate)	60,000
Total Uses:	$13,000,000

Security:

Security for the Loan shall be as follows:

a) First mortgage and security interest in the Properties;
b) First mortgage and security interest in the land;
c) An assignment of revenues, rents and leases of the Borrower(s) and the Project, as described in the loan agreement;
d) Security interest in any fixtures, equipment, personal property;
e) Assignments of the Management Contracts;
f) Corporate secured guaranty from Summa Management, Inc.;
g) Personal guaranty from Ms. Katheen Zeller.

Appraisal:

An MAI appraisal to be completed with a minimum value of the combined properties of $17,500,000.

Loan to Value:

Not to exceed 75% of appraised value.

Funding:

The Loan is a permanent, first mortgage loan that will be funded upon completion of all required conditions for closing the transaction. Closing is anticipated to occur in October 2000.

Conditions Precedent to Closing:

Conditions which must be satisfied prior to disbursement of the Loan include, among others, the following:

a) An MAI Appraisal;
b) Title insurance;

c) The Phase I environmental study;
d) Assignment of Management Contracts with Summa;
e) The Lender and the Borrower have reached an agreement with respect to the business terms of the Loan;
f) All necessary legal documents and due diligence will have been completed and executed to the satisfaction of the Lead Bank;

Escrow Account: Real estate taxes, required insurance premiums and replacement reserves will be deposited by the Borrower monthly into escrow accounts maintained by the Lender.

Closing Costs: Borrower shall pay all closing costs associated with the Loan, including, but not limited to, appraisal fees, title insurance premiums, survey fees, legal fees, recording fees, inspections fees, environmental reports and any other relevant costs.

121321

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Wilnard Leif Selbak,

Debtor.

BKY No. 98-41421
ADV No. 01-4113 RJK

Dwight R.J. Lindquist, Trustee

Plaintiff,

v.

Summa Management, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (Minnetonka), Inc.,

Defendants.

COMPLAINT

MAHONEY
DEPO. EXHIBIT
No. 4
Dtd. 4-29-04
Neumann Rptg. Agcy.

Dwight R.J. Lindquist Trustee ("Trustee") of the Bankruptcy Estate of Wilnard Leif Selbak ("Debtor") as and for his Complaint against Summa Management, Inc. ("Summa"), Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (Minnetonka), Inc. (the "Companies") (collectively referred to as ("Defendants"), states and alleges as follows:

1. The Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.

Filed on 1-29-01
Patrick G. De Wane, Clerk
By [illegible] Deputy Clerk

1-1

2. This bankruptcy case was commenced on March 3, 1998 by the filing of a voluntary Chapter 11 petition. The case was converted to one under Chapter 7 on July 1, 1998.

3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334.

5. Each of the Defendants signed a $300,000 Promissory Note ("Note") payable to the Plaintiff. A copy of the Note is attached hereto as Exhibit A. The Note was signed as part of a Settlement Agreement between the Trustee and Summa. An Order of this court was entered approving the Settlement Agreement on October 13, 1999. The Note called for payments to be made as follows:

Months 1-3	$ 5,000 per month	= $ 15,000
Months 4-6	$ 6,666 per month	= $ 19,998
Months 7-9	$11,000 per month	= $ 33,000
Months 10-12	$12,000 per month	= $ 36,000
Months 13-23	$16,333 per month	= $179,663
Month 24	$16,379 (final payment)	= $ 16,379
TOTAL		**$300,000**

6. On November 27, 2000 a Notice of Default was provided as required by the terms of the Note stating that the total of payments which had been received on the Note was $81,300 and that the which should have been received by that time was $103,998 which included payments through payment number 12 under the Note.

7. The notice further provided that if the default was not cured within 10 days from the date of the notice, then the full indebtedness represented by the Note would become due and payable.

8. The default described in the November 27, 2000 notice has not been cured, and the Plaintiff has received no further payments on the Note.

9. The total now due under the Note, after acceleration of the Note as provided by its terms, is $218,700, together with all costs of collection, including attorneys' fees as provided by the Note.

10. The Defendants, and each of them, are liable to the estate on the Note for the sum of $218,700, together with costs of collection, including attorneys' fees.

11. Defendant Summa Management, Inc. also signed a Confession of Judgment for the Note, a copy of which is attached hereto as Exhibit B, and has consented to entry of judgment against it.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment against the Defendants, and each of them, in the amount of $218,700 together with the Plaintiff's costs of collection including attorneys' fees.

2. Awarding the Plaintiff any other or further relief as the court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: January 26, 2001

By: _____

Randall L. Seaver 152882
101 West Burnsville Parkway, Suite 201
Burnsville, MN 55337
(952) 890-0888

Attorneys for Plaintiff

PROMISSORY NOTE

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (Minnetonka), Inc., (the "Companies") and Summa Management, Inc. ("Summa") (collectively referred to as "Makers"), do hereby jointly and severally promise to pay to Dwight R. J. Lindquist (as Trustee of the estate (the "Estate") of Wilnard G. Selbak, ("Selbak"))("Holder") his successors and assigns at Holder's office at 1510 Rand Tower, 527 Marquette Avenue, Minneapolis, Minnesota 55402, or at any other place designated by the Holder hereof the principal sum of Three Hundred Thousand Dollars ($300,000)(subject to adjustment as set forth below), from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Monthly Payments. Commencing thirty (30) days after the Initial Payment Date, as that term is as defined in the Settlement Agreement and Mutual Release dated the same date as this Note, the Makers shall make begin monthly payments of principal as follows:

Months 1-3:	$5,000 per month
Months 4-6:	$6,666 per month
Months 7-9:	$11,000 per month
Months 10-12:	$12,000 per month
Months 13-23:	$16,333 per month
Month 24:	$16,379 (final payment)

Such payments shall be made on the same day of each month.

2. Prepayment and Adjustment of Principal. This Note may be prepaid in whole or in part at any time. In the event the Holder is paid a total of $275,000 (including the Initial Payment, as that term is as defined in the Settlement Agreement and Mutual Release dated the same date as this Note) within twelve months of the Initial Payment Date, this Note shall be deemed paid in full and shall be marked "Paid in Full" by the Holder and returned to the Makers.

3. Mortgage of Minnetonka Facility and Confession of Judgment. Carefree Living of America (Minnetonka), Inc. has executed and delivered to the Holder a mortgage on its facilities in Minnetonka (the "Mortgage") to secure payment of the obligations hereunder. Summa has executed and delivered to Holder a Confession of Judgment for $300,000 (the "Confession").

01/25/01 THU 16:08 FAX 6123328872 DWIGHT R.J. LINDQUIST 002
08/10/1999 15:13 6123328866 MAHONEY HAGBERG RICE PAGE 02

4. Interest. This Note shall not bear any interest.

5. Default. If payments are not paid when due, and the notice and cure period set forth below, shall have expired, the Note shall be immediately due and payable without further notice from Holder. This Note shall also become automatically due and payable without notice or demand should a petition be filed by or against any Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid after notice to Makers and termination of the cure period set forth below or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, the Makers agree to pay all costs of collection, including attorneys fees, and the Holder shall have the right to file the Mortgage and the Confession, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Except as set forth herein, presentment or other demand for payment, notice or dishonor and protest are hereby waived by the Makers.

6. Notice of Default. If Makers shall default by failing to perform the obligations imposed by this Note, then the Holder may, at his option and no earlier than five (5) days from the date of default, give notice to the Makers of such default and if the default is not cured within ten (10) days after such notice is provided in accordance with Paragraph 8.a. below, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against any Maker and shall commence no proceedings for collection, nor file the Confession, until ten (10) days after such notice of default without curing such default.

7. Waiver. Except as set forth herein, each Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidenced by this Note as extended, renewed, or modified.

8. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or transmitted by telefacsimile and, additionally, shall be sent by United States mail. Unless changed by written notice, the following addresses and telefacsimile numbers shall be used:

01/25/01 THU 16:09 FAX 6123328872 DRIGHT R.J. LINDQUIST 003
08/10/1999 15:13 6123328066 MAHONEY HAGBERG RICE PAGE 03

Kathleen Zeller
Mail Box 68
Credit Andorra
La Massana
Principality of Andorra
Facsimile # 011-376-844-638

Vern Zeller III
14505 Minnetonka Drive
Minnetonka, MN 55345
Facsimile # 612-912-0131

Michael C. Mahoney
MAHONEY & HAGBERG, A Professional Association
109 Bushaway Road
Wayzata, MN 55391
Facsimile # 612-332-8066

Steven Kluz, Sr.
RIDER, BENNETT, EGAN & ARUNDEL, A Limited Liability Partnership
2000 Metropolitan Centre
333 South Sixth Street
Minneapolis, MN 55402
Facsimile # 612-340-7900

Dwight R. J. Lindquist
Trustee of the estate
of Wilnard G. Selbak
1510 Rand Tower
527 Marquette Avenue
Minneapolis, MN 55402
Facsimile # 612-332-8877

b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

01/25/01 THU 16:09 FAX 6123328872 DWIGHT R.J. LINDQUIST 004
08/18/1999 15:13 6123328066 MAHONEY HAGBERG RICE PAGE 04

IN WITNESS WHEREOF, this Note has been executed to be effective as of the date set forth below.

SUMMA MANAGEMENT, INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (MINNETONKA), INC.

By: _____
Its: PRESIDENT

01/25/01 THU 18:09 FAX 8123328872 DRIGHT R.J. LINDQUIST ☑005
08/10/1999 15:13 6123328055 MAHONEY HAGBERG RICE PAGE 05

SUMMA MANAGEMENT, INC., a
Delaware corporation

Dated: AUG 10, 1999

By: [illegible]
Its: PRESIDENT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY No. 4-98-1421

In re:

Wilnard Leif Selbak,

CONFESSION OF JUDGMENT

Debtor.

This Confession of Judgment is entered into by and between:

1. Dwight R.J. Lindquist as Trustee of the Bankruptcy Estate of Wilnard Selbak ("Trustee"); and

2. Summa Management, Inc., a Delaware corporation ("Summa").

RECITALS

FIRST: The Trustee and Summa and others have entered into a Settlement Agreement and Mutual Release resolving various claims of the Trustee against Summa and others.

SECOND: There is due and owing on account of a Promissory Note ("Note") entered pursuant to the Settlement Agreement the amount of Three Hundred Thousand Dollars ($300,000) ("Debt") as set forth in the Note.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby made a part of this Agreement.

EXHIBIT B

2. Confession of Judgment. In the event of a default on the Note by an Obligor thereof, and a failure to cure the default in accordance with the terms and conditions set forth in the Note, Summa hereby confesses judgment in the sum of $300,000, less all payments received by the Trustee, from any Obligor pursuant to the Note, at which time:

a. Trustee may, at his sole option, docket judgment against Summa in accordance with the above, plus costs and reasonable attorneys' fees, which judgment may be docketed by affidavit, *ex parte*, in such jurisdiction as the Trustee may deem advisable;

b. Interest shall accrue on the Debt at the statutory rate from the date of docketing such judgment; and

c. In addition to any remedies provided herein, the Trustee may exercise any other remedies available to him at law or equity for purposes of enforcement of rights pursuant to the Note and this Confession of Judgment.

3. Return of Documents. Upon full and prompt performance of Summa's obligations under this Confession of Judgment, including payment of amounts owing at that time under the Note, the Trustee shall cancel and return all instruments evidencing the Debt.

4. Notice. Any notice required or contemplated hereunder shall be in writing and shall be effective if it is served, mailed or delivered in conformance with paragraph 10 of the Note.

Dated: 8-10-99, 1999

Dwight R.J. Lindquist, Trustee for the
Bankruptcy Estate of Wilnard Selbak

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY No. 4-98-1421

In re:

Wilnard Leif Selbak,

Debtor.

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

Vern G. Zeller, III, being first duly sworn on oath, deposes and states that he is the Vice President of Summa Management, Inc., that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to the best of his knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me this 16th day of August, 1999.

Denise Meyer
Notary Public

DENISE MEYER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

C:\wndy\Lindquist\Selbak\981802\Verification of Confession.wpd

First Union National Ba
NJ3181
Special Assets Manager
190 River Road
Summit, NJ 07901

February 26, 2001

Carefree Living of America (Burnsville), Inc.
600 Nicollet Court
Burnsville, MN 55335

Carefree Living of America (Brainerd), Inc.
2723 East Oak Street
Brainerd, MN 56401

Carefree Living of America (St. Cloud), Inc.
1225 Division Street
St. Cloud, MN 56304

MAHANEY
DEPO. EXHIBIT
No. 5
Dtd. 4-29-04
Neumann Rptg. Agcy.

Re: Notice of Acceleration

Dear Sir/Madam:

Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (Brainerd), Inc., a Delaware corporation and Carefree Living of America (St. Cloud), Inc., a Delaware corporation (collectively the "Borrowers") executed and delivered a promissory note to First Union National Bank, a national banking association (the "Lender") dated as of November 4, 1998, in the original principal amount of $11,316,000 (the "Note"). The principal balance of the Note remaining unpaid is $11,057,783.58, and accrued and unpaid interest as of February 26, 2001 (not including default interest) amounts to $153,657.18. Interest (not including default interest) is presently accruing at the rate of $2,649.26 per day. All capitalized terms not otherwise defined herein shall have the meaning given them in the Note.

Repayment of the Borrowers' obligations to the Lender under the Note is secured by, among other things, certain real property known by the street addresses of 600 Nicollet Court, Burnsville, Minnesota, 2723 East Oak Street, Brainerd, Minnesota, and 1225 Division Street, St. Cloud, Minnesota (collectively the "Mortgaged Property") and described in (i) that certain Mortgage and Security Agreement and Fixture Financing Statement of even date with the Note (the "Mortgage"), and (ii) that certain Assignment of Leases and Rents of even date with the Note (the "Assignment").

Exhibit D

Under Section 1.2 of the Note, the Borrowers are required, on the first day of each month, to make certain installment payments of principal and interest. The failure of the Borrowers to make any such payment constitutes an Event of Default under Section 2.1 of the Note. Upon the occurrence of an Event of Default, among other things, all sums advanced or accrued under the Note and under any other Loan Document shall become due and payable, with or without demand.

PLEASE NOTE the Borrowers have failed to make the required monthly payment due on February 1, 2001 (the "Default"), constituting an Event of Default under the Note and an "Event of Default" under the other Loan Documents including, but not limited to, the Mortgage and the Assignment. GIVEN THE DEFAULT, THE LENDER HEREBY DECLARES THE NOTE IMMEDIATELY DUE AND PAYABLE AND DEMANDS IMMEDIATE PAYMENT IN FULL OF ALL AMOUNTS DUE THEREUNDER, INCLUDING APPLICABLE LATE CHARGES, DEFAULT INTEREST, PREPAYMENT FEES AND COLLECTION COSTS.

As a direct and proximate result of the Default and pursuant to the terms of the Assignment, the revocable license granted to the Borrowers to retain possession of the Leases and collect and retain the Rents (as defined in the Assignment) has been terminated and otherwise revoked. The Lender hereby demands that pursuant to the terms of the Assignment any Rents collected by the Borrowers be held in trust by the Borrowers for the sole and exclusive benefit of the Lender, and that the Borrowers pay the Rents to the Lender within one (1) business day after their receipt of the same.

Also, please be advised that under Section 2.6 of the Note, the Borrowers are liable to the Lender for, among other things, rents and revenues of all or any portion of the Mortgaged Property which are (a) received by the Borrowers during the period following the Default, and (b) either (i) are not applied to the ordinary and necessary expenses of owning and operating the Mortgaged Property or (ii) are not paid to the Lender. Pursuant to the terms of that certain Indemnity and Guaranty Agreement of even date with the Note, Kathleen L. Zeller and Summa Management, Inc. (collectively the "Guarantors") have, among other things, guaranteed payment of said liability.

The Lender reserves any and all rights and remedies available to it under the terms of the Loan Documents or under applicable law, and this notice shall not be deemed an exclusive election of remedies nor shall it constitute a waiver of any rights or remedies otherwise available to the Lender. By copy of this letter, the Guarantors are hereby notified of the Default and the acceleration contained herein.

Sincerely yours,

FIRST UNION NATIONAL BANK

John Puckhaber
Vice President

cc: Kathleen L. Zeller
Summa Management, Inc.

M2:20371280.01

$62,160.35 PROMISSORY NOTE January 15, 2001

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Burnsville), Inc., a Delaware corporation, having an address of 600 Nicollet Court, Burnsville, Minnesota 55377, Carefree Living of America (Brainerd), Inc., a Delaware corporation, having an address of 2723 East Oak Street, Brainerd, Minnesota 56401, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, having an address of 1225 Division Street, St. Cloud, Minnesota 56304 and Carefree Living of America (Minnetonka), Inc., a Delaware corporation, having an address of 14505 Minnetonka Drive, Minnetonka, Minnesota 55345, jointly and severally (collectively referred to as the "Maker"), hereby promises to pay to the Jane L. Strom Revocable Trust U/A October 28, 1998 ("Holder"), and Holder's successors and assigns at Holder's office at 109 Bushaway Road, Wayzata, Minnesota 55391, or at any other place designated by the Holder hereof the principal sum of Sixty-Two Thousand One Hundred and Sixty and 35/100 Dollars ($62,160.35) together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable in consecutive monthly installments of Three Thousand Dollars ($3,000) in principal, plus all accrued and unpaid interest commencing on the 15th day of February, 2001, and continuing until the 15th day of September, 2001. On October 1, 2001, Maker shall pay Holder one-half of all unpaid principal and accured and unpaid interest. On November 1, 2001 all unpaid principal and accrued and unpaid interest shall become due and payable in full. Notwithstanding the foregoing, in the event that any Maker obtains refinancing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or any affiliate of any Maker obtains such financing for the benefit of any Maker, all unpaid principal and accrued and unpaid interest shall immediately become due and payable in full.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of Twenty-Two (22%) Percent per annum.

4. Default. If payments are not paid when due, or if any other indebtedness of Maker to the Holder is not paid when due, or if any Maker sells all or substantially of its assets, or secures financing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or if a garnishment summons or a writ of attachment is issued against to served upon the Holder for the attachment of any property of either Maker in the Holder's possession or any indebtedness owing to either Maker, Holder may, at its option, declare this Note to be immediately due any payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This

Exhibit B

MAHONEY
DEPO. EXHIBIT
No. 6
Dtd. 4-29-04
Neumann Rptg. Agcy.

Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should either Maker die or should a petition be filed by or against either Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by either Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within ten days from the sending of such notice, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Waiver. Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

   Carefree Living of America (Burnsville), Inc.,
   600 Nicollet Court
   Burnsville, Minnesota 55377

   Carefree Living of America (Brainerd), Inc.,
   2723 East Oak Street,
   Brainerd, Minnesota 56401

   Carefree Living of America (St. Cloud), Inc.
   1225 Division Street, St. Cloud
   St. Cloud, Minnesota 56304

Carefree Living of America (Minnetonka), Inc.,
14505 Minnetonka Drive
Minnetonka, Minnesota 55345

Jane L. Strom Revocable Trust U/A October 28, 1998
109 Bushaway Road
Wayzata, Minnesota 55391

b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Note has been executed to be effective as of the 15th day of January, 2001

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By: [signature]

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By: [signature]

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By: [signature]

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (MINNETONKA), INC.

By: [signature]

Its: PRESIDENT

7439570

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFICATE FILED AND OR RECORDED IN

01 MAR 16 PM 2:24

7439570 M. REC.

DEPUTY

Hennn Co HOT
JR645600
03/16/2001
Paid $149.28

MORTGAGE
By Corporation or Partnership

MORTGAGE REGISTRY TAX DUE HEREON:

$_____

THIS INDENTURE, Made this 15th day of January, 2001, between Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, Mortgagor, and Jane L. Strom, Trustee, Mortgagee,

WITNESSETH, That Mortgagor, in consideration of the sum of TEN DOLLARS, to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, does hereby convey unto Mortgagee, forever, real property in Minnesota, described as follows:

ALL OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, EXCEPT THAT PART THEREOF PLATTED "PARKDALE ADDITION TO THE CITY OF BRAINERD"
AND ALSO
LOTS 1,2,5,6,7,8 AND 9, AND THE E ½ OF LOT 3 OF PARKDALE ADITION TO THE CITY OF BRAINERD, EXCEPT: COMMENCING AT THE SW CORNER OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, THENCE NORTH ALONG THE WEST BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 704 FEET MORE OR LESS TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING THE NE CORNER OF BLOCK 36, CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE NORTH ALONG SAID WEST BOUNDARY A DISTANCE OF 617 FEET, MORE OR LESS, TO A POINT BEING THE NORTHWEST CORNER OF SAID SE ¼ OF NE ¼; THENCE EAST ALONG THE NORTH BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 551.54 FEET MORE OR LESS TO A POINT BEING THE SOUTHWEST CORNER OF BLOCK 27 OF CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE IN A SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING. CROW WING COUNTY, MINNESOTA.

AND

LOT 1, BLOCK 1, COPPERTOP II. DAKOTA COUNTY, MINNESOTA.

MAHONEY
DEPO. EXHIBIT
No. 7
Dtd. 4-29-04
Neumann Rptg. Agcy.

Certificate Number 63536
Vol. 212 Page 236
STATE OF MINNESOTA }
COUNTY OF CROW WING } ss.
OFFICE OF THE REGISTRAR OF TITLES
This is to certify that the within instrument was filed in this office on the 21 day of March 20 2001
at 2:41 o'clock
REGISTRAR OF TITLES
By
Deputy
146387

COUNTY RECORDER
HENNEPIN COUNTY, MINN.

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original on file and of record in my office
MAR 29 2001
MICHAEL H. CLEARY, COUNTY RECORDER
By
Deputy

63536-212-236

AND

ALL OF LOT 3, AND THAT PART OF LOT 4, BLOCK 3, EASTERN PARK ADDITION, CITY OF ST. CLOUD, BENTON COUNTY, MINNESOTA, WHICH LIES WESTERLY OF A LINE 26.00 FEET EAST OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE WEST LINE OF SAID LOT 4, AND WHICH LIES NORTHERLY OF THAT CERTAIN HIGHWAY EASEMENT DESCRIBED IN BOOK 28 OF MISCELLANEOUS ON PAGE 420, ACCORDING TO THE FILES OF THE BENTON COUNTY RECORDER. BENTON COUNTY, MINNESOTA

AND

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA; AND
THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTNEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING.
HENNEPIN COUNTY, MINNESOTA.

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever. Mortgagor covenants with Mortgagee as follows: That Mortgagor is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except as follows-

that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, That if Mortgagor shall pay to mortgagee the sum of Sixty Two Thousand One Hundred Sixty and 35/100 Dollars ($62,160.35) according to the terms of a Promissory Note of even date herewith (the "Obligation"), the final payment being due and payable upon demand, with interest at the rate provided in the Obligation, and shall repay to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the

covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND MORTGAGOR covenants with Mortgagee as follows:

1. To pay the principal sums of money and interest as specified in the Note;

2. To pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;

3. To keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of the outstanding indebtedness at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;

5. to commit or permit no waste on the Property and to keep it in good repair;

6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and

7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Mortgagor agrees to pay.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

MORTGAGOR

CAREFREE LIVING OF AMERICA (BRAINERD), INC

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA(MINNETONKA), INC.

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 15th day of March, 2001 by Kathleen L. Zeller, the President of Carefree Living of America (Brainerd), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Burnsville), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (St. Cloud), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Minnetonka), Inc. on behalf of the corporation.

Notary Stamp or Seal

GINA L. MILLER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

_____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

RETURN TO

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

RETURN TO

AND

ALL OF LOT 3, AND THAT PART OF LOT 4, BLOCK 3, EASTERN PARK ADDITION, CITY OF ST. CLOUD, BENTON COUNTY, MINNESOTA, WHICH LIES WESTERLY OF A LINE 26.00 FEET EAST OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE WEST LINE OF SAID LOT 4, AND WHICH LIES NORTHERLY OF THAT CERTAIN HIGHWAY EASEMENT DESCRIBED IN BOOK 28 OF MISCELLANEOUS ON PAGE 420, ACCORDING TO THE FILES OF THE BENTON COUNTY RECORDER. BENTON , COUNTY, MINNESOTA

AND

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA;
AND
THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTNEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING.
HENNEPIN COUNTY, MINNESOTA

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever. Mortgagor covenants with Mortgagee as follows: That Mortgagor is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except as follows:

that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, That if Mortgagor shall pay to mortgagee the sum of One Million Five Hundred Thousand and 00/100 Dollars ($1,500,000.00) according to the terms of a Promissory Note of even date herewith (the "Obligation"), the final payment being due and payable upon demand, with interest at the rate provided in the Obligation, and shall repay to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the

covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND MORTGAGOR covenants with Mortgagee as follows:

1. To pay the principal sums of money and interest as specified in the Note;

2. To pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;

3. To keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of the outstanding indebtedness at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;

5. to commit or permit no waste on the Property and to keep it in good repair;

6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and

7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Mortgagor agrees to pay.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

MORTGAGOR

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

CAREFREE LIVING OF AMERICA(MINNETONKA), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 15th day of March, 2001, by Kathleen L. Zeller, the President of Carefree Living of America (Brainerd), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Burnsville), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (St. Cloud), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Minnetonka), Inc. on behalf of the corporation.

_____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Notary Stamp or Seal

GINA L. MILLER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2006

1762668

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2001 APR -5 A 9:40

DOC. NO. 1762668
JOEL T. BECKMAN, COUNTY RECORDER
BY: Deputy
FEE 15.00 SURCHARGE 4.50
CASH ☐ CHECK ☑ ESCROW ☐
WELL ☐ CHARGE ☐
CHARGE TO:
O/R
DO NOT REMOVE

Mahoney & Hagberg
109 Bushaway Road
Mpls., MN 55391

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

$1,500,000.00 MARCH 15, 2001

PROMISSORY NOTE

FOR VALUABLE CONSIDERATION RECEIVED, Summa Management, Inc., a Delaware corporation, Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, (collectively called "Maker"), jointly and severally hereby promise to pay to Mahoney & Hagberg, A Professional Association ("Holder"), its successors and assigns, at Holder's office at 109 Bushaway Road, Wayzata, Minnesota, or at any other place designated by the Holder hereof the principal sum of One Million Five Hundred Thousand Dollars ($1,500,000) or, if less, the aggregate unpaid amount of all fees, costs and advances made by Holder to the Maker and its present or past affiliates together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable upon demand, at which time all unpaid principal and accrued and unpaid interest shall become due and payable in full.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of eight (8%) Percent per annum.

4. Default. If payments are not paid when due, or if any other indebtedness of either Maker to the Holder is not paid when due, or if a garnishment summons or a writ of attachment is issued against to served upon the Holder for the attachment of any property of either Maker in the Holder's possession or any indebtedness owing to either Maker, Holder may, at its option, declare this Note to be immediately due any payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should either Maker die or should a petition be filed by or against either Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by either Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

MAHONEY
DEPO. EXHIBIT
No. 9
Dtd. 4-29-04
Neumann Rptg. Agcy.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within ten days from the sending of such notice, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Waiver. Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

      Carefree Living of America (Minnetonka), Inc.
      14505 Minnetonka Drive
      Minnetonka, Minnesota 55345

   b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

   c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Note has been executed to be effective as of the 15th day of March, 2001

SUMMA MANAGEMENT, INC.

By: _____
KATHLEEN L. ZELLER

Its: President

CAREFREE LIVING OF AMERICA

(BRAINERD), INC.

By:_____
KATHLEEN L. ZELLER

Its: President

CAREFREE LIVING OF AMERICA
(BURNSVILLE), INC.

By:_____
KATHLEEN L. ZELLER

Its: President

CAREFREE LIVNG OF AMERICA
(ST. CLOUD), INC.

By:_____
KATHLEEN L. ZELLER

Its: President

JOINT AND SEVERAL GUARANTEE

THIS GUARANTEE is made as of March 16, 2001 by Summa Management, Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Brainerd), Inc., ("Guarantors") of all sums due Mahoney & Hagberg, A Professional Association ("M&H") by Carefree Living of America (Minnetonka), Inc., a Delaware corporation ("CM"), for legal services performed and expenses incurred by M&H for CM in connection with its bankruptcy, commenced by its Voluntary Petition on March 19, 2001, and for which M&H shall have an administrative claim in such bankruptcy (the "Bankruptcy Fees").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantors, and each of them, agree as follows:

1. Guarantors hereby guarantee the payment when due, whether upon demand, by acceleration or otherwise, whether for principal, interest, fees, expenses or otherwise, and the full and faithful performance of all obligations of CM now or hereafter existing for the Bankruptcy Fees (such obligations being the "Obligations").

2. Guarantors hereby represent and warrant that: (a) each Guarantor has full power and authority to enter into and perform its obligations under this Guarantee; (b) the execution, delivery and compliance with the terms hereof shall not contravene or constitute a default under any indenture, commitment, agreement or other instrument to which any Guarantor is bound or any judgment, order or decree to which it is subject; and, (c) the performance of the legal services resulting in the Bankruptcy Fees and the guaranty of payment and performance of the Obligations under this Guarantee shall benefit the Guarantors, and each of them.

3. No amendment or waiver of any provision of this Guarantee nor consent to any departure by the Guarantor herefrom shall in any event be effective unless the same shall be in writing and signed by M&H, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

4. No failure on the part of M&H to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

5. This Guarantee shall be governed by the laws of the State of Minnesota with reference to principles of conflicts of laws and shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns. If any provision of this Guarantee shall be held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions. Time is of the essence hereof.

IN WITNESS WHEREOF, the Guarantors have executed this Guarantee to be effective as of March 16, 2001.

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By: _____
Its: Vice President

SUMMA MANAGEMENT, INC.

By: _____
Its: Vice President

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By: _____
Its: Vice President

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By: _____
Its: Vice President

MAHONEY
DEPO. EXHIBIT
No. 10
Dtd. 4-29-04
Neumann Rptg. Agcy.

US BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 7 BKY Case Nos. 01-33545, 01-33546, 01-33547

DEPOSITION OF STEVEN V. HAGBERG – 6/29/04

In Re:

Carefree Living of America (Burnsville), Inc.
Carefree Living of America (St. Cloud), Inc.
Carefree Living of America (Brainerd), Inc.,
Debtors.

ADV Case No. 02-9117

Brian F. Leonard, Trustee

vs.

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and
Jane L. Strom, individually.

CONDENSED TRANSCRIPT PREPARED BY:

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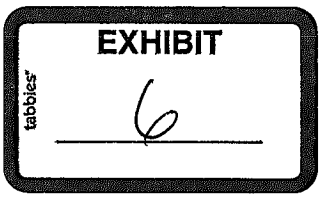

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Page 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7

Carefree Living of America (Burnsville), Inc.,
Carefree Living of America (St. Cloud), Inc.,
Carefree Living of America (Brainerd), Inc.,

Debtors.

BKY Case Nos. 01-33543, 01-33546, 01-33547

Brian F. Leonard, Trustee.

Plaintiff,

vs. ADV Case No. 02-9117

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and
Jane L. Strom, individually,

Defendants.

DEPOSITION OF STEVEN V. HAGBERG

TAKEN ON 6/29/04

DEPOSITION OF STEVEN V. HAGBERG, taken pursuant to Notice of Taking Deposition on the 29th day of June, 2004, at 100 South Fifth St., Suite 2500, Minneapolis, MN, before Dale R. Neumann, Professional Freelance Reporter and Ramsey County Notary Public, and commencing at 9:32 a.m.

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APPEARANCES:

Representing the Plaintiff:

Mr. Brian F. Leonard
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Phone: 612-338-5815
Fax: 612-338-6651

* * * * * * * *

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WHEREUPON, the following proceedings transpired:

STEVEN V. HAGBERG,
a witness in the above-entitled action, after having been first duly sworn, deposes and says as follows:

EXAMINATION

BY MR. LEONARD

Q. Mr. Hagberg, my name is Brian Leonard and I'm going to ask you a number of questions this morning relative to the Carefree Living of America companies. I know that you're an attorney and I think you've had your deposition taken on many occasions and you've testified at trials in the past, so I'm going to skip most of the preliminary instructions, other than to say that if there's a question that I ask that you don't understand, please feel free to ask me to rephrase it or explain it. Otherwise, I'll assume that you understand the question and you're answering accordingly.

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Could you give us your age?
A. Sixty-four.
Q. And you are an attorney, correct?
A. Yes.
Q. Where is your present office?
A. In Wayzata.
Q. And what year did you become licensed as an attorney?
A. 1971.
Q. Give me just a thumbnail sketch of your employment history since 1971 to the present, naming the entities, anyway, for whom you were employed.
A. Levitt, Palmer, Bowen, Bearmon & Rotman, '71 to '76, then it was Hollender & Hagberg.
Q. Can you spell the first name that you just mentioned?
A. H-O-L-L-E-N-D-E-R. Then it was Hagberg & Gronbeck.
Q. Before we get there, what were the years inclusive of Hollender & Hagberg?
A. Approximately '76 to '86.
Q. Okay. Then Hagberg and Gronbeck?
A. Right.
Q. And the years there?

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A. Approximately '86 to '90. Then there was – I don't remember how long, six months maybe, with Mahoney, Hvass & Kelley, and then in early '91 it became Mahoney & Hagberg, and that was until early 2003.
Q. I take it the firm of Mahoney & Hagberg, which you indicated you joined in 1991, underwent a couple of – at least a couple variations on its name during that period of time but it was still the same corporate entity; is that correct?
A. Right.
Q. Now, Mahoney, Hvass & Kelley, is that a firm that Mike Mahoney was in as well?
A. Yes.
Q. So you've been with Mike Mahoney then in one form or another in the same law firm since perhaps 1990 to 2003?
A. Right.
Q. Speaking about Mahoney & Hagberg then, did you hold – let me back up. I take it that's a professional corporation?
A. Right.
Q. So you were a shareholder?
A. Yes.

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Q. Did you become a shareholder immediately in 1991?
A. Yes.
Q. Did you hold any corporate offices in that professional corporation and, if so, would you name those and give me the inclusive dates?
A. Well, to the best of my recollection, I held CEO and treasurer positions intermittently throughout the entire time.
Q. Are you saying that you were the CEO and treasurer throughout the entire time and intermittently during the time you were also the president?
A. To the best I can recall, yes.
Q. Okay. As CEO and treasurer – well, let's just say CEO – what were your duties, generally speaking?
A. I don't recall.
Q. Well, you were the CEO of that firm for 13 years and you don't recall what your duties would have been?
A. That's correct.
Q. Are you sure about that, Mr. Hagberg?
A. We didn't function as a traditional corporation. We were a professional

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association, and those of us who were shareholders were basically considered equals. So we didn't follow the corporate formalities that one might encourage a client to follow.
Q. Were the management duties of the law firm divided up between the shareholders in any manner?
A. I don't think that they were formally divided up, no.
Q. As a matter of course, who was the shareholder who most frequently made sure that the bank accounts balanced, that the firm was making enough money to pay the expenses, that was dealing with personnel issues, dealing with banks and lenders to the firm, that sort of stuff?
MR. MITCHELL: Objection; compound question. You can answer it.
THE WITNESS: It was shared duties of those of us who were shareholders from time to time.
BY MR. LEONARD
Q. So, besides yourself during that time, who were the other shareholders?
A. For a period of time, Jerry Rice, and there

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might be some dispute about this, but there are minutes that purport to make Peter Davisson and Julianne Emerson shareholders.
Q. Was a person named – I'm sorry. You mentioned Jerry Rice, Peter Davisson and Julianne Emerson, those three names?
A. Yes.
Q. I take it, Mr. Hagberg, that when you left the firm of Hagberg & Gronbeck you had clients that you brought with you into the firm or firms in which Michael Mahoney was also a member, is that right?
A. That question includes an assumption that is not necessarily correct.
Q. Well, do you want to answer the question or do you want me to rephrase the question?
A. I can't answer it because I didn't leave the firm of Hagberg & Gronbeck.
Q. You didn't?
A. No.
Q. What happened to it?
A. The entity remained in existence and it became my entity. David Gronbeck left, so I retained the entity and changed its name and removed it as a professional corporation. To this day I

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1 remain an officer, director and shareholder of
2 that entity.
3 Q. All right. With that assumption being
4 resolved, can you remember the question?
5 A. No.
6 Q. All right. At the time you joined the law
7 firm or firms in which Michael Mahoney was
8 associated, did you bring clients of yours
9 into that firm?
10 A. Yes.
11 Q. And give me the names of the, say, most
12 important five clients that you brought into
13 the firm from the Hagberg & Gronbeck firm.
14 A. I make it a practice to have all of my clients
15 important to me, so it's hard for me to answer
16 that question.
17 Q. Let's say in terms of annual revenues based on
18 fees for service that were performed.
19 A. I'd just be speculating at this point in time.
20 You're talking about 1990.
21 Q. Right.
22 A. That's four years ago. I could name clients,
23 but I can't answer the question with the
24 precision you're asking.
25 Q. Well, just do it to the best of your

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1 recollection.
2 A. Well, I had a group of clients – represented
3 a group of entities in the aerospace industry
4 that I did a lot of work for. I've had a – I
5 don't remember if it was in existence at that
6 time. You know, there have been – I've been
7 practicing over 30 years, so I don't remember
8 what was around specifically at what period of
9 time. I know that there were clients that I
10 represented for many years, some of them I
11 still do, but what was in existence in 1990 I
12 can't say with certainty.
13 Q. Other than the aerospace entities?
14 A. Right.
15 Q. What year did you first meet Kathleen Zeller?
16 A. I don't recall.
17 Q. Well, give me your best recollection if you
18 want to put it in terms of age or years or –
19 A. In the eighties.
20 Q. Early eighties, mid eighties, late eighties?
21 A. I don't recall.
22 Q. How did you happen to meet her?
23 A. She and her husband had businesses that were
24 referred to me as clients.
25 Q. Did you do work for her and/or her businesses

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1 while you were with Hollender & Hagberg?
2 A. I don't recall.
3 Q. But, in any event, you started doing work for
4 her and/or her businesses either when you were
5 with Hollender & Hagberg or Hagberg &
6 Gronbeck, would that be true?
7 A. Well, I think it's probably true with
8 Hollender – with Hagberg & Gronbeck, but I
9 don't recall if it was with Hollender &
10 Hagberg.
11 Q. Well, my question was with either one or the
12 other.
13 A. Please read back the question so I can answer
14 with that specificity.
15 Q. Besides working on businesses that Kathleen
16 Zeller and her husband had, what other legal
17 work, in general terms, did you do for her?
18 **MR. MITCHELL:** I object to the
19 question; vague.
20 **THE WITNESS:** Well, I'm having
21 trouble with the assumption that I did
22 legal work for her. I don't recall. I
23 don't remember if I did any personal
24 legal work for Kathleen Zeller.
25 *(Next page, please.)*

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1 *BY MR. LEONARD*
2 Q. Did you or anyone in the firm in which you
3 were associated in the 1980s do any estate
4 planning or write a will for her?
5 A. I don't recall.
6 Q. After you joined the firm of Mahoney & Hagberg
7 back in 1991 as you've testified, you were
8 representing some entities that owned what
9 eventually turned into the debtor corporations
10 – and when I say that, I'm referring to
11 Carefree Living of America (Brainerd),
12 Carefree Living of America (Burnsville) and
13 Carefree Living of America (Saint Cloud) – is
14 that right?
15 A. At that time I don't recall if I was
16 representing any of the entities that – your
17 question was not very carefully done.
18 Q. All you have to do is listen to it, Steven,
19 you know, attach the common-sense interpre-
20 tation to the language I'm providing.
21 A. There are so many entities that carried the
22 Carefree name that it's difficult to answer
23 your question with the specificity that you're
24 trying to ask it.
25 Q. Just do the best you can.

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A. Okay. There were limited partnership entities that owned the properties that became owned by the debtor entities, and I don't remember when I did legal work for those three limited partnerships – or we did, my associates and my firm. I don't remember exactly when we started doing legal work for those entities.
Q. A person named Wilnard Selbak was associated with those limited partnership entities that you just mentioned, was he not?
A. Yes.
Q. So is it a fair statement that you were doing work for those limited partners and Wilnard Selbak as his interest appeared in those limited partnerships?
A. I'm sorry, I can't answer that.
Q. All right.
A. I don't know how to answer that.
Q. Well, let's move on to something we hope that you can answer. Explain the process by which the debtors came to own the properties that were once owned by the limited partnerships that you referred to earlier.
A. The debtors acquired the assets of the limited partnerships.

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Q. They purchased the real estate from the limited partnerships?
A. I believe it was all of the assets including the real estate.
Q. Okay. There was a purchase and sale agreement that was entered into between those parties?
A. Yes.
Q. Did you handle the transactions or members under your direction – members of your firm at that time handle the transactions?
A. We were involved in them, yes.
Q. Who did you represent, if you can recall, within those transactions?
A. The debtor entities.
Q. Did the limited partnerships then have separate counsel?
A. Yes.
Q. Did you form the corporate entities that the debtors have as their attorney?
A. Yes.
Q. Do you know what year that would have been done in?
A. I think it was 1995.
Q. Was Kathleen Zeller involved in or associated with the debtor entities at that time?

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A. No.
Q. Who were the shareholders then of the corporate entities when you formed them?
A. There were a lot of people as shareholders. If I remember correctly, Wil Selbak was one, but the limited partners of the selling limited partnerships also became shareholders.
Q. At some point in time, Kathleen Zeller or an entity which she controlled became the shareholder or majority shareholder of the debtor entities, isn't that correct?
A. I believe so, yes.
Q. And you were involved as the attorney for one or more of the entities during that process?
MR. MITCHELL: Objection; vague. Which entities are you referring to now?
MR. LEONARD: The debtor entities.
MR. MITCHELL: You mentioned entities owned by Kathleen Zeller.
MR. LEONARD: Okay. Let's start with the debtor entities.
THE WITNESS: Well, the law firm was, yes.
(Next page, please.)

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BY MR. LEONARD
Q. The law firm in which you were the chief executive officer?
A. The Mahoney & Hagberg law firm, yes.
Q. All right. Do you recall the name of a corporation named Summa Management Inc.?
A. Yes.
Q. That's spelled S-U-M-M-A Management Inc.?
A. Yes.
Q. Did you form that corporation?
A. I don't recall that I did, no.
Q. Did someone in your law firm, the Mahoney & Hagberg law firm, form the corporation?
A. I don't know.
Q. You don't recall?
A. I don't know if someone in the firm did.
Q. But you recall that you did not personally do that?
A. I don't recall that I did.
Q. Who was the shareholder or shareholders of Summa Management Inc.?
A. I don't know.
Q. You're kidding, Mr. Hagberg.
A. No. You're gesturing to me as though you don't believe it, but I don't know.

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Q. Well, to your knowledge and recollection, wasn't Kathleen Zeller a shareholder of Summa Management Inc.?
A. I think she probably was, but I don't know if she was the sole shareholder.
Q. That's not what I asked, of course.
A. You asked who the shareholders were.
Q. Right.
A. And I don't know who the shareholders were.
Q. Okay. I'm trying to be very precise, Mr. Hagberg, because I understand you're looking for ways not to answer my questions, and we're going to have to be here just as long as it takes to get the information that we have to get.
A. If you keep that up, I'll walk out.
Q. Well, all I want you to do is try to answer my questions to the best of your ability and recollection, placing a common-sense interpretation on the questions that I'm asking. We agree that you'll do that?
A. As long as you don't come back in the future and claim that I lied about something when I'm trying my best to answer as honestly as I can with my present recollection.

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Q. But you do recall that Kathleen Zeller was a shareholder of Summa Management Inc.?
A. I believe she was.
Q. And do you recall specifically or generally as to what percentage of the shares of Summa Management she owned?
A. I don't recall.
Q. Do you recall whether there were any other shareholders of Summa Management?
A. I think there were, but I don't know with certainty.
Q. Who would those persons have been, those other shareholders?
A. Well, I recently learned that William Howard may have been a shareholder in it, and I think, but I'm not certain, that Wil Selbak was a shareholder.
Q. Any other names you can recall?
A. Well, I don't know if Linda Selbak was a shareholder. She may have been, I don't know. I'm just guessing.
Q. Any other names that are possibilities?
A. No, not that I know of.
Q. But it's true that the firm of Mahoney & Hagberg, while you were a member of that firm,

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did legal work for Summa Management Inc.?
A. Yes.
Q. In fact, you did a lot of work for Summa Management Inc., didn't you?
MR. MITCHELL: Object to the form of the question.
THE WITNESS: I don't know what you mean by "a lot."
BY MR. LEONARD
Q. Well, just answer in terms of what you think "a lot" means.
A. I was working for another very large group of entities during this period of time, so I don't have firsthand knowledge of all of the work that was being done for Summa or Carefree Living or the debtor entities.
Q. So in your answer you just gave, did you mean to say you were working for a large group of entities other than Summa Management Inc., the debtors and their affiliates?
A. Yes.
Q. So do you mean to tell me that you weren't involved to any significant extent in the legal work being done by the firm of Mahoney & Hagberg for Summa Management or the debtor

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entities?
A. Yes.
Q. But you did do legal work for those entities, didn't you?
A. On occasion.
Q. And the law firm did quite a bit of work for those entities, didn't it?
MR. MITCHELL: Object to the form of the question.
BY MR. LEONARD
Q. Do you want me to be specific, or are you okay with that question, Mr. Hagberg?
A. Well, I don't know what you mean by "quite a bit," but there was lots of legal work, yes. But now I'm not certain – for the debtor entities and Summa, I'm not certain about that, because there were other Carefree Living entities that there was a lot of work done for.
Q. I understand.
A. That entire group, yeah, I would agree that there was a lot of legal work done.
Q. Do you have a friendship or social relationship with Kathleen Zeller?
A. Yes.

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1 Q. And when did that commence?
2 A. Probably in the eighties.
3 Q. Would that friendship and social relationship
4 also include your wife?
5 A. Yes – no, I will – I'll change that answer,
6 because you said "friendship and social
7 relationship." Friendship, yes, but social
8 didn't start in the eighties.
9 Q. So now you're changing your answer relative to
10 the start date?
11 A. As I said, friendship, yes, in the eighties;
12 social relationship, I don't believe that that
13 started in the eighties.
14 Q. Okay. And at what time did the social
15 relationship start?
16 A. Probably in the nineties.
17 Q. Did the friendship relationship that started
18 in the 1980s grow out of your representation
19 of her companies or her during that time?
20 A. That's how we became acquainted, yes.
21 Q. And how did the social relationship evolve?
22 A. We were – my wife and I were invited out for
23 an evening on the Zellers' boat on Lake
24 Minnetonka, and dinner, by them.
25 Q. Did you have other occasions then after that

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1 when you socialized with Kathleen Zeller and
2 her family or members of her family?
3 A. Yes.
4 Q. That first boat dinner event occurred in what
5 year, to your recollection?
6 A. I don't remember.
7 Q. Early nineties, mid nineties, late nineties?
8 A. Sometime in the nineties, but I don't remember
9 exactly.
10 Q. Sometime after that event, you visited
11 Kathleen Zeller at her home in Europe, isn't
12 that correct?
13 A. Yes.
14 Q. What year was that?
15 A. I believe it was 2000.
16 Q. And just to speed things along, was that visit
17 to the country of Andorra?
18 A. Three countries: Andorra, Spain and France.
19 Q. Which of those countries – in which of those
20 countries is her home?
21 A. Andorra they're located.
22 Q. Did you travel within Spain and France in the
23 company of Kathleen Zeller on that occasion?
24 A. Yes.
25 Q. From start to finish on that trip to Europe

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1 during which you visited Ms. Zeller in her
2 home in Andorra and traveled with her in Spain
3 and France, how many days would have elapsed?
4 A. Maybe three.
5 Q. You took a three-day trip to those three
6 countries with them and came right back?
7 A. No.
8 Q. Well, could you –
9 A. You said "with them."
10 Q. Yes. All right.
11 A. Three of the days of the trip were with them.
12 Q. You spent with the Zellers?
13 A. Yes.
14 Q. All right. So you traveled without the
15 Zellers in Europe for some time either before
16 or after the time you saw the Zellers?
17 A. Yes, right.
18 Q. How many times did you, other than the event
19 you have just described, visit the Zellers in
20 Andorra?
21 A. That was the only time.
22 Q. Do you recall when she established a home in
23 Andorra?
24 A. No, I don't.
25 Q. What year?

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1 A. No, I don't.
2 Q. Do you recall why she established a home in
3 Andorra? That is, did she ever tell you?
4 A. Well, I know they liked to golf and they liked
5 the mountains, but beyond that, I don't know.
6 **MR. LEONARD:** Would you mark that?
7 *(Hagberg Deposition Exhibit 1*
8 *marked for identification.)*
9 BY MR. LEONARD
10 Q. Showing you what has been marked as Hagberg
11 Exhibit 1, there's three documents – three
12 letters within this package. I'll just ask
13 you to take a moment and look at those,
14 please.
15 A. (Witness complies.)
16 Q. Have you looked at them?
17 A. Yes.
18 Q. Do you recognize those three letters?
19 A. No.
20 Q. Have you seen them before today?
21 A. I don't recall.
22 Q. Is it correct that these letters are opinion
23 letters given by the firm of Mahoney, Hagberg
24 & Rice to Miller & Schroeder Investments
25 Corporation?

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A. Well, they appear to be, but I haven't read all of the – I haven't read the entire thing. If you would like me to take the time to read them, I could and then I could tell you with certainty, but they look like opinion letters.
Q. Okay. All right. If you'll turn to the last page on each of the letters and just look at the signature for a moment, then after you've done that I'll ask you if you recognize the signature.
A. (Witness complies.) I think I do.
Q. Who do you think signed these letters?
A. It looks like Michael Mahoney's handwriting.
Q. Now, did your law firm – by that I mean Mahoney, Hagberg & Rice – in October 1998 have procedures that it followed when it issued opinion letters to third parties?
A. I don't recall that we had procedures.
Q. You don't recall one way or the other whether you had procedures?
A. I don't know. I would have to say I don't think we did have procedures.
Q. Well, were there standard practices that the firm followed prior to issuing an opinion letter?

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A. Well, I know if it were my transaction what I would do with an opinion letter, but I don't know what Michael Mahoney might do with an opinion letter.
Q. Well –
A. I don't know what his practice is, but I don't – I wouldn't say that that was a firm policy or a firm requirement or anything like that. The signature would be placed by a shareholder of the firm, in my recollection.
Q. You mentioned practices that you would apply in connection with issuance of an opinion letter, a transaction that, I think you said, you were involved in. Tell me what those practices or procedures would be.
A. It entirely depends upon what the law firm was asked to render an opinion on, and each opinion letter usually has different requests. So it depends on the request in the opinion letter.
Q. You mean it depends on the request of the recipient of the opinion letter?
A. Usually the party that is seeking an opinion letter will have what they want in an opinion letter, and the response would be based upon

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that request.
Q. Would you agree that Hagberg Exhibit 1 is an opinion letter rendered as counsel in the first letter for Summa Management Inc.?
A. Well, that's what it says.
Q. Any reason to doubt that it's anything other than that?
A. No. No, I think it speaks for itself.
Q. And similarly with respect to the second letter, it's an opinion letter drafted as counsel for the debtors?
A. Yeah, I don't recall the second letter, what it purports to be rendered on behalf of, but it's – yeah, I don't – again, I think it speaks for itself. I wasn't involved in preparing this, so I don't know.
Q. You would agree with my statement, my description of it?
A. I don't have any basis to disagree with it.
Q. Would you agree that the third letter appears to be, and is, a letter written by the law firm as counsel to Kathleen Zeller?
A. That's what it says, yes.
Q. And would you agree that is what it is?
A. Well, I didn't prepare it, so I assume that

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it's correctly stated, but I don't know. I didn't – I wasn't – I didn't do it, so I don't know.
Q. Do you have any recollection as to why these opinion letters were sent to Miller & Schroeder Investments Corporation?
A. No, I don't.
Q. Do you recall any transactions between Miller & Schroeder Investments Corporation and any of the entities mentioned in these opinion letters?
A. I recall transactions with Miller & Schroeder and the entities listed in the second letter, yes.
Q. In the debtor entities?
A. Yes.
Q. What were the nature of those transactions?
A. In, I think it was, 1995 Miller & Schroeder provided the financing for the acquisition of the assets of the limited partnerships that were sold to the debtor entities, and then in, I think it was, early '96 there was an additional Miller & Schroeder financing that I – I don't recall specifically, but I think it involved the debtor entities.

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1 Q. Were you personally involved in either of
2 those two transactions that you just
3 mentioned?
4 A. Yes.
5 Q. With respect to the first transaction where it
6 was an acquisition financing, what was your
7 role? What did you do?
8 A. We represented the acquiring entities, which
9 are the debtor entities and one other entity,
10 which acquired real estate, and the financing
11 was also to construct a building, an assisted
12 living facility, on the property. We
13 represented the four entities that acquired –
14 the three debtor entities acquiring real
15 estate and other assets and then the fourth
16 that acquired real estate and built a
17 facility.
18 Q. And the fourth entity was known as Carefree
19 Living America (Minnetonka) Inc.?
20 A. Correct.
21 Q. Now, in connection with representing the
22 debtors and the Minnetonka entity, what do you
23 recall that you actually did?
24 MR. MITCHELL: I'd Like to object
25 to the use of the term "you." Are you

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1 referring to Steve individually,
2 personally doing or the firm doing with
3 other people in the firm?
4 MR. LEONARD: Right now the
5 question is with respect to Mr. Hagberg
6 personally.
7 MR. MITCHELL: Okay. You can
8 answer.
9 THE WITNESS: I don't remember.
10 BY MR. LEONARD
11 Q. Well, do you expect that you would have been
12 involved in reviewing mortgage documents,
13 title documents, promissory notes?
14 A. Well, you're asking me personally? I had one
15 or more associates working on this.
16 Q. But I'm asking you personally if you expect
17 that you would have reviewed mortgage
18 documents, title documents, promissory notes,
19 insurance policies.
20 MR. MITCHELL: Objection; the
21 question is compound.
22 BY MR. LEONARD
23 Q. I'm just sort of giving you a shopping list to
24 see if it triggers any recollection or
25 expectation in your mind that, yes, you would

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1 have done that in connection with the
2 transaction.
3 A. Well, you're asking me to speculate, because I
4 don't have a specific memory of exactly what I
5 did, but I'm speculating as to what I likely
6 did. Those would be those kinds of things.
7 You know, in any transactions like those, I
8 was overseeing the work that was being done
9 and I did some of the work, but I don't
10 remember specifically what I personally did or
11 didn't do.
12 Q. I understand, and I'm just trying to get a
13 general view of the nature of the types of
14 work that you personally did in connection
15 with those transactions. Would you agree,
16 Mr. Hagberg, that one of your expertises as a
17 lawyer is in the area of real estate?
18 A. Real estate law?
19 Q. Real estate law, real estate transactions.
20 A. I wouldn't call it an expertise; a familiarity
21 but not an expertise.
22 Q. Who, if anybody did, I guess, was the primary
23 real estate authority in the law firm of
24 Mahoney & Hagberg during your tenure there?
25 A. I don't know. I did some real estate work,

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1 but I never have claimed – would never claim
2 that I have expertise in the area.
3 Q. You did say you were the attorney in charge of
4 the transactions with Miller & Schroeder and
5 supervised others that may have worked on
6 those transactions in the law firm.
7 MR. MITCHELL: I'm going to object.
8 I think it mischaracterizes his
9 testimony. The question was about the
10 first transaction. Your question was
11 about the first transaction. I thought
12 that's what we were talking about.
13 BY MR. LEONARD
14 Q. Did you understand my question to be referring
15 to the first transaction?
16 A. Transactions is what I thought you were
17 talking about.
18 Q. That's what I thought I was talking about too.
19 A. I'm glad we caught that.
20 MR. MITCHELL: So you did say
21 "transactions" in the plural.
22 MR. LEONARD: Okay.
23 THE WITNESS: Those were big
24 transactions and there were a number of
25 us. Mike Mahoney was involved in

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1 elements of it as well, and there were
2 a number of lawyers in the firm
3 involved in it, but I would say that I
4 was in the lead on it in the lawyer
5 group.
6 BY MR. LEONARD
7 **Q.** "In the lead," is that what you said?
8 **A.** Right.
9 **Q.** Okay. Let's just refer now to the second
10 transaction, which was, I think you mentioned,
11 the debtor entities obtained additional
12 financing from Miller & Schroeder. Is that
13 how you described it?
14 **A.** I think I said that I didn't recall exactly
15 what entities obtained additional financings
16 but I remember a much smaller transaction in
17 early '96, an additional financing with Miller
18 & Schroeder in early '96, but I don't remember
19 exactly the entities involved. It would have
20 been the Carefree Living entities, but I don't
21 remember which ones.
22 **Q.** Do you recall what you did personally in
23 connection with that transaction?
24 **A.** I remember doing some – oh, individually?
25 **Q.** Yes, sir, you personally.

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1 **A.** I had associates working on it, so my
2 involvement was similar to the involvement in
3 the first transaction. I don't remember
4 specifically what I personally may have done.
5 **Q.** But you were the lead attorney in that second
6 transaction as well?
7 **A.** Yes.
8 **Q.** Okay.
9 *(Hagberg Deposition Exhibit 2*
10 *marked for identification.)*
11 BY MR. LEONARD
12 **Q.** Showing you what has been marked as Hagberg
13 Exhibit 2, I will ask you to look at that for
14 a moment, please.
15 **A.** (Witness complies.)
16 **Q.** Would you just, both yourself, Mr. Hagberg,
17 and Ralph, see that it has five pages, make
18 sure there wasn't a mix-up here.
19 **MR. MITCHELL:** I see five pages.
20 **MR. LEONARD:** Okay.
21 **MR. MITCHELL:** But mine is
22 different than what he's looking at.
23 **MR. LEONARD:** Is it?
24 **THE WITNESS:** Yes.
25 **MR. MITCHELL:** Mine has Mahoney 1-C

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1 as the exhibit.
2 **MR. LEONARD:** Then you've got the
3 wrong one, Ralph, which is my fault.
4 This is what I meant to give you.
5 **MR. MITCHELL:** Okay. So this one
6 is Hagberg 2?
7 **MR. LEONARD:** Yes.
8 BY MR. LEONARD
9 **Q.** Having looked at Hagberg Exhibit 2, I'll ask
10 you if you recognize it.
11 **A.** I don't, no.
12 **Q.** Have you ever seen it before today?
13 **A.** I don't recall if I have.
14 **Q.** I note that about three-quarters of the way
15 down from the top of the first page there's
16 something called a "Date of Paydown" and it
17 has a date of November 4, 1998. Do you see
18 that?
19 **A.** Yes.
20 **Q.** Does that date help refresh your recollection
21 as to this document?
22 **A.** No.
23 **Q.** Did you work on – you personally – or were
24 you involved in any respect in a transaction
25 on behalf of the entities named as the

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1 borrowers near the top of the first page on or
2 around November 4, 1998?
3 **A.** I don't recall that I was.
4 **Q.** You'll note that the lender in this
5 transaction is once again Miller & Schroeder
6 Investments Corporation?
7 **A.** Yes.
8 **Q.** You were with the Mahoney & Hagberg law firm
9 at that time, were you not?
10 **A.** Yes.
11 **Q.** In reviewing the list of 29 documents
12 reflected in this exhibit, do any of those
13 documents listed on the exhibit refresh your
14 recollection as to the transaction to which
15 this exhibit refers?
16 **A.** (Witness reviews document.) No.
17 *(Hagberg Deposition Exhibit 3*
18 *marked for identification.)*
19 BY MR. LEONARD
20 **Q.** Please take a look at Hagberg Exhibit 3 and
21 then I'll ask you a few questions on it.
22 **A.** Do you want me to read it?
23 **Q.** Well, I think if you just kind of glanced at
24 it quickly and looked a little bit at the
25 signature and the handwriting on the

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1 right-hand margin of various portions of the
2 letter on the bottom of the first page it
3 would be sufficient.
4 A. (Witness complies.) Can you ask me the
5 question again?
6 Q. No, I'm waiting for you to finish looking at
7 it.
8 A. Oh, okay. (Witness reviews document.) All
9 right. I have looked at it.
10 Q. Are you there?
11 A. Yes.
12 Q. Do you recognize Hagberg Exhibit 3 at all?
13 A. I don't recall. I recognize that it's my
14 handwriting on page 5, but I do not recall the
15 rest of the document. I recall a little of it
16 but not – I recall what it refers to, but I
17 don't recall the rest of it.
18 Q. Now, the handwriting on page 5, are you
19 referring to the signature?
20 A. Yes.
21 Q. And it's your handwriting where it says
22 "Mahoney, Hagberg & Rice, a Professional
23 Association"?
24 A. Yes.
25 Q. Turning your attention to the first page at

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1 the bottom, there's some handwritten notes
2 there. Can you tell me whose handwriting that
3 is?
4 A. Well, I don't believe it's mine. I don't know
5 whose that is.
6 Q. Just to the – there's a date at the bottom
7 which I think is 5/10/99, and just to the left
8 of that date there appears to be initials of
9 someone, and I'm just asking if you recognize
10 whose those initials might be of.
11 A. No.
12 Q. Turning to the second page, you'll see in the
13 middle of the page in the right-hand margin
14 some handwriting. Do you recognize that
15 handwriting?
16 A. No.
17 Q. Similarly on the third page, do you recognize
18 the handwriting on the right-hand margin?
19 A. No.
20 Q. And on page 4, same question.
21 A. No.
22 Q. Is it true that Hagberg Exhibit 3 is an
23 opinion letter given to the accounting firm of
24 Larson Allen & Weishair?
25 A. I wouldn't identify it as being an opinion

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1 letter.
2 Q. And, in your words, how would you characterize
3 it?
4 A. An auditor's response.
5 Q. And what, in your view, is the purpose of
6 Hagberg Exhibit 3?
7 A. This would have been in response to a request
8 by Larson Allen Weishair as to the Carefree
9 Living auditors to their inquiry of the law
10 firm.
11 Q. And, generally speaking, what's the subject
12 matter of this inquiry to the law firm?
13 A. It's usually in connection with their
14 requesting information on loss contingencies.
15 It would be in connection with their audit,
16 which results in financial statements.
17 Q. Would you agree that Exhibit 3 appears to be a
18 description of the various actions or
19 litigation in which the debtors are involved
20 or in which the law firm represented the
21 debtors during the time period in question?
22 A. Well, not necessarily. It's a listing of
23 those that are considered to be material by
24 the debtors, the management of the debtors, in
25 consultation with the auditors.

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1 Q. Do you recall the procedure that you utilized
2 in generating this Exhibit 3 at the time it
3 was generated within the law firm?
4 MR. MITCHELL: I'm going to object
5 to the form of the question, that it
6 assumes facts not in evidence.
7 THE WITNESS: This specific one, I
8 can't answer that. I can tell you what
9 my normal procedures are when I get
10 auditors' requests.
11 BY MR. LEONARD
12 Q. Please do.
13 A. That would be to prepare a memorandum to all
14 of the lawyers in the firm attaching a copy of
15 the auditor's request, and I requested a
16 written response from each of the lawyers to
17 that request so that I would seek the
18 knowledge of all of the lawyers in the firm to
19 prepare a response.
20 I would then take those responses and
21 add to it. Of course I'd be one of those that
22 would respond to my own request on those
23 things I had knowledge of. I would put it all
24 together, and if there were any questions, I
25 would ask questions and then I would prepare

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1 the response to the auditor's letter, and
2 generally I would circulate that to confirm
3 its accuracy.
4 Q. Do you expect that that is a procedure you
5 followed with respect to Exhibit 3?
6 A. Probably.
7 Q. Are there other procedures that you would have
8 followed on letters that you would have signed
9 of this nature other than that which you have
10 just described?
11 A. For other clients?
12 Q. Yes.
13 A. There are clients for which I would receive
14 auditors' letters where I would be the only
15 one doing the work, but I generally would
16 circulate those as well just to confirm it.
17 Q. With respect to Exhibit 3, is it true that the
18 nature of the debtor clients on whose behalf
19 this letter was written were – let me strike
20 that. Let me back up.
21 Do you agree that the magnitudes and
22 volume of the legal work being done by your
23 firm for these debtors caused or would have
24 caused you to circulate the request for
25 information that you described to all the

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1 lawyers in the firm to make sure you would
2 provide as complete a response as possible to
3 the auditors?
4 A. Well, without specifically recalling, I think
5 on a general hypothetical basis I most likely
6 would have, because I wouldn't have firsthand
7 knowledge of these things.
8 Q. And you would have reviewed those responses
9 from the various lawyers, correct?
10 A. Yes, I would take those responses and
11 translate them into the words in this letter.
12 Q. And do you believe that is what you did with
13 respect to this Hagberg Exhibit 3?
14 A. I don't remember. You know, it may – I don't
15 know. I might have had an associate draft the
16 letter for me to look at. I don't recall.
17 Q. But you agree you would have read the letter
18 before you signed it?
19 A. Oh, yes.
20 *(Hagberg Deposition Exhibit 4*
21 *marked for identification.)*
22 BY MR. LEONARD
23 Q. Showing you what's been marked as Hagberg
24 Exhibit 4, will you just look through that
25 briefly and let me know when you're finished.

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1 A. (Witness complies.)
2 **MR. MITCHELL:** Those are all part
3 of the same exhibit, is that right?
4 The cover sheet, all the auditor's
5 records, that would have comprised the
6 exhibit?
7 **MR. LEONARD:** Correct, and I think,
8 Ralph – we're off the record.
9 *(Off the record.)*
10 **MR. LEONARD:** For the record,
11 Exhibit 4 has page numbers on the lower
12 right-hand corner beginning with MHR.
13 Number 015196 is on the first page and
14 MHR 015214 is the last page.
15 BY MR. LEONARD
16 Q. Calling your attention to Exhibit 4,
17 Mr. Hagberg, is there any part of this exhibit
18 that you've seen before today?
19 A. I don't recall.
20 Q. When you say that, are you saying that you
21 don't recall one way or the other whether
22 you've seen it before today?
23 A. Correct.
24 Q. If you would turn to the page marked with the
25 Bates Number 015200.

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1 A. (Witness complies.)
2 Q. There's some handwriting on that page. Do you
3 recognize that handwriting?
4 A. It looks like Mike Mahoney's.
5 Q. Do you recall whether Mr. Mahoney talked to
6 you about any part of Exhibit 4 at any time?
7 A. No.
8 Q. Calling your attention to the last paragraph
9 on that page, starting with the words "The
10 accompanying financial statements," do you see
11 that?
12 A. Yes.
13 Q. Do you see that someone appears to have
14 crossed out or indicated they wanted to cross
15 out that paragraph? Do you know who would
16 have done that?
17 A. No.
18 Q. Did Mr. Mahoney or anyone else talk to you
19 about the substance of the information in that
20 paragraph?
21 A. I don't think so.
22 Q. Did you ever talk to the auditors of the
23 debtors at any time?
24 A. Yes.
25 Q. Did you talk to the auditors of the debtors

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with respect to –
A. Well, wait a minute now. I don't know that. I've talked to accountants for the debtors, but I don't know if they were the auditors.
Q. I'm assuming the auditors and the accountants to be the same thing –
A. All right.
Q. – to be the same entity. And weren't the accountants for the debtors the Larson –
A. Well, I believe so. That's what this indicates.
Q. – Allen Weishair firm? But do you have an independent recollection of that from your work in the firm?
MR. MITCHELL: Your jumping into it before he finishes.
THE WITNESS: Sorry.
BY MR. LEONARD
Q. I think all I said was: Do you have an independent recollection of what that work was in the firm for the debtors?
A. I recall that Larson Allen did accounting work for the debtors, yes.
Q. Do you recall the names of any other accountants or accounting firm that might have

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done accounting work for the debtors?
A. I think the Schechter – they may have been for the entities preceding the debtors – Schechter Dokken or – I don't recall.
Q. Okay. Did you talk to anyone at Larson Allen Weishair with respect to Exhibit 4?
A. I don't think so.
Q. When would you have talked to anyone at Larson Allen Weishair?
A. I recall talking to them on a number of occasions.
Q. And can you tell me what those occasions were?
A. Well, I remember them filing for tax extensions for the law firm and for the entity that owns the building and for me personally. I talked to them about doing bookkeeping work for the entity that owns the building, our building, not Carefree. They were involved in various entities' accounting work, so my connection with them was almost entirely in connection with the other entities or organizations other than the Carefree Living entities.
Q. Turning your attention to a page designated as Bates Number 015201, do you recognize the

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handwriting on the lower third of that page?
A. It looks like Mike Mahoney's.
Q. Okay. To your knowledge, did Mr. Mahoney, as a matter of course each year, review the financial statements prepared by Larson Allen Weishair of the debtors prior to those statements being finalized by those accountants?
A. No.
Q. Do you agree that that's what he appears to have been doing as reflected in Exhibit 4?
A. I don't – I – I can't state as to what he was doing there.
Q. Okay. Do you agree that Larson Allen Weishair issued annual financial statements for the debtors in the ordinary course of the debtors' business?
A. I believe they did.
Q. Did you look at those financial statements, or would you have looked at those financial statements when they were issued?
A. Not likely.
Q. The debtor companies and Summa Management were considered to be your clients, were they not, in the sense that you were the, I guess,

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attorney in charge of the services performed by the firm for those entity debtors and Summa?
A. There are different ways in a law firm that a client can be an attorney's client, so I can't answer your question in the form that it's asked.
Q. Why don't you answer my question then in the form that you think it should have been asked so that we can simply get to the substance of the matter.
A. Those entities were my origination, but then – so in that sense they were my clients, but since approximately the fall of 1996 I no longer had primary responsibility for their legal work.
Q. And what changed in 1996?
A. We were asked – I was asked to do some work that would, in my view, be a considerable amount of work in a situation where we had been unpaid for the work done in connection with the early '96 Miller & Schroeder financing, and I think there was some other work perhaps subsequent to that, but I don't remember specifics, and I refused to reengage

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1 with this group of entities and the clients.
2 I had – I was very busy with work not related
3 to them.
4 Q. So at that point in time the work for these
5 entities was done primarily by other people
6 within the law firm?
7 A. Subsequent to that point in time, Michael
8 Mahoney took charge of all of the clients'
9 legal work and he directed it.
10 Q. When we talk about clients now, just to be
11 specific, we're talking about the debtor
12 entities and Summa Management and Carefree
13 Living of Minnetonka, for the most part?
14 A. For the most part, yes.
15 Q. Okay.
16 A. For the most part. There was another related
17 entity in there that I think had a lot of
18 work, which was a home healthcare entity.
19 Q. The name of that entity would be Home
20 Healthcare something or other?
21 A. Well, I've seen Minnesota Home Healthcare, but
22 I don't know what iterations there were of
23 that business.
24 Q. Okay.
25 *(Hagberg Deposition Exhibit 5*

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1 *marked for identification.)*
2 BY MR. LEONARD
3 Q. Showing what's been marked as Hagberg Exhibit
4 5, I will ask you to take a look at that,
5 please. It's a document with five pages to
6 it.
7 A. (Witness complies.)
8 Q. Having looked at it, I will ask you if you
9 recognize it.
10 A. No, I don't.
11 Q. Have you seen it before today?
12 A. I don't recall if I have.
13 Q. Do you recall that in the spring or summer of
14 the year 2000 that First Union National Bank
15 commenced a receivership action against the
16 debtors?
17 A. I don't recall that specifically. I recall
18 periodic – that there were periodic
19 difficulties with First Union, but I thought
20 they were based not on payment problems but on
21 problems conforming to their conditions.
22 Q. When you say "conditions," what do you mean?
23 A. Well, I remember two things, but I don't
24 remember if it was in exactly this time frame
25 or not. More general?

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1 Q. Sure.
2 A. That they – instead of escrowing taxes, they
3 paid them, the debtor entities. So they
4 didn't escrow but they paid them, and escrow
5 was, I think, called for in the loan
6 documents. And I think that there was the
7 same issue with insurance on the buildings, a
8 similar issue. So the issues were not in
9 connection with no payment, they were making
10 payments, but it was other issues.
11 Q. You do recall, though, that at some point in
12 time First Union commenced an action to have a
13 receiver appointed for the debtor entities?
14 A. I thought that was later than this. I thought
15 their receivership action is what precipitated
16 the petition for bankruptcy, and this time
17 frame doesn't fit with that.
18 Q. Perhaps I can represent to you as neutrally as
19 I can that there were two actions commenced by
20 First Union, one in the spring or summer of
21 2000 and then one in the spring again of 2001.
22 I think the latter action is what precipitated
23 the bankruptcy filing of the debtor entities.
24 A. Okay.
25 Q. I'd like to refer you again to Exhibit 5, and

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1 if you would take a look at the third and
2 fourth pages thereof.
3 A. (Witness complies.)
4 Q. Have you seen these pages? Have you seen that
5 part of this document ever before?
6 A. You're referring to the pages with John G.
7 Kinnard on the bottom?
8 Q. Yes.
9 A. No, I don't recall seeing them.
10 Q. I believe that discussions with John G.
11 Kinnard were taking place relative to a
12 replacement credit facility to pay off First
13 Union at that time.
14 A. Okay.
15 Q. Does that subject ring a bell? Can you recall
16 that subject being discussed in the law firm
17 between the lawyers or with any of the debtor
18 clients?
19 A. I don't recall.
20 Q. Do you recall speaking with Michael Mahoney
21 about a possible financing by John G. Kinnard?
22 A. I don't recall.
23 Q. Do you recall speaking to anybody at John G.
24 Kinnard relative to that matter?
25 A. I don't recall ever speaking to somebody at

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1 John G. Kinnard except for being solicited by
2 a broker.
3 Q. You mentioned earlier that you recall an
4 action – I'm not trying the mischaracterize
5 anything you said, so correct me if I do so –
6 an action, possibly a receivership action,
7 which First Union commenced which precipitated
8 the bankruptcy filing of the debtors. My
9 question to you is: What do you recall about
10 that action? What do you recall were the
11 reasons given by First Union for commencing
12 such action?
13 A. My recollection is that the defaults that they
14 claimed were in those conditions that I
15 mentioned, that the payment had been made to
16 First Union, the mortgage payments, but the
17 defaults were in conditions, and those
18 defaults couldn't be fixed. There were past
19 defaults that had occurred and it didn't make
20 sense to try to go back and create or pay into
21 escrow for something that had already been
22 paid.
23 Q. Do you recall speaking with any of the
24 corporate officers or management of the
25 debtors relative to that subject?

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1 A. I remember some involvement in that, but I
2 also recall that an associate in the firm was
3 working on that. So I don't recall
4 specifically who I might have talked to when,
5 but when I saw that "Charles MacDonald," I
6 think that I had communicated with him. I
7 recognize the name.
8 Q. Would you have – do you recall communicating
9 with Kathleen Zeller relative to this subject?
10 A. I would expect that I did, but I don't
11 remember specifically.
12 **MR. MITCHELL:** Would now be a good
13 time to go to the bathroom?
14 *(Recess.)*
15 BY MR. LEONARD
16 Q. Just before the break, Mr. Hagberg, we were
17 talking about the action commenced by First
18 Union Bank in 2001, and you indicated that
19 you'd expected that you would have spoken to
20 Kathleen Zeller about it. Do you recall that
21 one of the other – one of the issues that
22 were of concern to First Union Bank at that
23 time was the use and application of funds of
24 the debtors –
25 A. No.

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1 Q. – by the debtors' management?
2 A. No, I don't recall.
3 Q. Okay.
4 *(Hagberg Deposition Exhibit 6*
5 *marked for identification.)*
6 BY MR. LEONARD
7 Q. Showing you what's been marked as Hagberg
8 Exhibit 6, I'd like you to just take a quick
9 look at it, please.
10 A. (Witness complies.)
11 Q. I believe it has 11 pages.
12 A. (Witness reviews document.)
13 Q. Do you recall seeing any part of Hagberg
14 Exhibit 6 –
15 A. No.
16 Q. – before today?
17 A. No.
18 Q. Do you agree that it appears to be a complaint
19 by the trustee of the Wilnard Selbak
20 bankruptcy case against the debtors and Summa
21 Management Inc. and Carefree Living of America
22 *(Minnetonka)?*
23 A. That's what it appears to be, yes.
24 Q. All right. On the first page at the lower
25 right-hand corner there's a stamp by the clerk

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1 of the bankruptcy court bearing the date of
2 January 29, 2001. Does that date refresh your
3 recollection in any way as to whether or not
4 you've ever seen this document before?
5 A. No.
6 Q. Were you aware at any time that the debtors –
7 strike that. Were you aware at any time of
8 the existence of the promissory note, the
9 first page of which, as far as I believe, is
10 the fourth page of this exhibit?
11 A. No.
12 Q. Do you recall talking to Mr. Mahoney about the
13 complaint in this exhibit?
14 A. No.
15 Q. Were you aware at any time prior to today of
16 the confession of judgment which is reflected
17 in the final three pages of this document?
18 A. No.
19 Q. Did you direct anyone at the law firm in
20 January or February of 2001 to take any action
21 or do any work relative to this Exhibit 6?
22 A. No.
23 Q. So you don't recall – let me back up. It's
24 your testimony then that you had never seen
25 Exhibit 6 before and did not direct anybody at

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the law firm to do anything with respect to Exhibit 6?
A. I have no recollection of either of those.
Q. Okay. And you don't recall whether or not you directed Mark Peery to do anything relative to Exhibit 6?
A. In this, no.
(Hagberg Deposition Exhibit 7 marked for identification.)
BY MR. LEONARD
Q. Would you take a look at Exhibit 7.
A. (Witness complies.)
Q. Have you seen Exhibit 7 anytime before today?
A. I think so. I think I have.
Q. Okay. When?
A. It's an exhibit, so I don't know as to what it's an exhibit to.
Q. When and where do you think you've seen it in the past?
A. Well, I suspect that this was part of their – since it's got "Exhibit D" at the bottom, I think it's probably a part of their action sometime in 2001 that resulted in the appointment of a receiver or the possible appointment of a receiver.

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Q. On or about February 26, 2001, which is the date of this exhibit, had you seen this letter?
A. No.
Q. You'll note on the last page there's an indication of a carbon copy being sent to Kathleen Zeller and Summa Management Inc. Do you see that?
A. Yes.
Q. Do you recall speaking with Kathleen Zeller about this exhibit at any time?
A. As I said, in the time frame of First Union and the 2001 effort to get a receiver, I remember being involved in that. So I would have spoken with Kathleen Zeller in that time frame.
Q. Would you agree that Exhibit 7 is a letter from First Union National Bank to the debtors, the subject of which is noted above the salutation as "Notice of Acceleration" of amounts due under the mortgage?
A. Yes, it is. You know, whatever it is, it is. I don't know.
Q. Would you agree that is a significant event in the – I guess in the business of the debtors?

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A. Sometimes those things are and sometimes they're not. It depends on the motives of the party writing the letter and whether or not they're – I mean, I've seen these things where they're simply a wake-up call to the – to the other party saying, "If you don't conform to our requirements, we will do things." So sometimes they're not something that I would counsel a client on ignoring, but they're not necessarily a major event.
Q. In the case of this particular exhibit, do you believe it was a significant event in the business of the debtors?
A. With 20/20 hindsight, sure.
Q. And what do you mean by that?
A. Well, I believe that this is an exhibit to their proceeding to get a receiver appointed and it's a basis for the receivership or part of it. So, obviously, looking back from that perspective, one would have to consider it a significant event.
Q. Did you ever talk to Michael Mahoney about this Exhibit 7?
A. I don't – in what time frame? In the time frame of the action by First Union to get a

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receiver, probably so.
Q. And what time do you recall that as being?
A. I think that that was later in 2001.
Q. And give me –
A. Mid 2001, not in the spring. This is in February.
Q. So spring or summer of 2001?
A. I said mid 2001. This is in the spring, this letter, but the receivership effort I don't think was commenced until mid summertime 2001.
Q. Do you recall speaking to Mr. Mahoney about Exhibit 7 on or shortly after, within a few days, a week or so, of February 26, 2001?
A. No.
Q. Do you recall speaking with anyone else about Exhibit 7 within a week or two of February 26, 2001?
A. No.
(Hagberg Deposition Exhibit 8 marked for identification.)
BY MR. LEONARD
Q. Mr. Hagberg, you're the trustee – one of the trustees of a trust which is the defendant in this action, is that correct?
A. Yes.

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Q. Did you personally, as an attorney, draft the trust documents for that trust?
A. No.
Q. When was that trust set up?
A. 1998.
Q. How many trustees are there?
A. Trustees?
Q. Yes.
A. Two.
Q. Yourself and your wife?
A. Yes.
Q. And it's been that way since the inception of the trust?
A. Yes.
Q. Showing you what's been marked as Exhibit 8, do you recall seeing that document at any time before today?
A. Yes.
Q. When did you first see this document?
A. Well, it would be roughly in the September 1, 2000, time frame.
Q. Did you draft Exhibit 8?
A. No.
Q. Who did?
A. I don't know.

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Q. Did anyone in the Mahoney & Hagberg law firm draft it?
A. I don't know.
Q. What was the occasion for which you first saw Exhibit 8?
A. I don't know how to answer that, "occasion." I don't know what you mean by that, but I remember seeing it in the time frame that it was given to the trust or my wife in connection with the loan.
Q. Relative to Exhibit 8, did the trust actually extend a loan to the debtors?
A. Yes.
Q. And was that loan in the amount of $50,000?
A. Yes.
Q. And the purpose of Exhibit 8 was to evidence the existence of that loan and the debt?
A. Yes.
Q. What was the purpose for which the loan was made by the trust to the debtors as reflected on Exhibit 8?
A. My recollection is that the debtors needed money for something – and I don't remember what – that they had been able to arrange to borrow a portion of it from an entity that is

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in the business of making loans, I believe an Internet Financial. They had arranged to borrow a portion from William Howard on basically the same terms as Internet Financial had negotiated, and also from Kathleen Zeller. And my recollection is that they were $50,000 short of their borrowing objective, so my wife determined to be the last one in to meet that objective on the terms driven by Internet Financial.
Q. How much money aggregately from each of those lenders, from all of the lenders together, was borrowed at that time?
A. I don't remember. I'd have to look at the notes.
Q. But would you say that those borrowings took place at about the same time?
A. Yes.
Q. And what was the purpose for which the debtors needed those loans?
A. I don't recall.
Q. You don't recall that it was in connection with the action commenced by First Union?
A. No, I don't recall that.
Q. Did you know at the time what the loan was to

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be used for by the debtors?
A. I just recall that they needed money to fix something, but I don't remember what it was.
Q. At the time did you know what it was?
A. I don't believe that I did exactly, no.
Q. You never asked your wife what the purpose of the loan was?
A. No.
Q. You said a moment ago that you believed – or you characterized the decision by the trust to make this loan as being your wife's decision?
A. Yes.
Q. Why do you say that?
A. Because that's what it was.
Q. Well, as a co-trustee, did your wife, as the other co-trustee, consult with you on the decision as to whether the trust should make the loan?
A. She told me what she was intending to do.
Q. And in response to that information from her, what did you state to her?
A. I basically stayed out of it.
Q. You must have had some response, verbal response.
A. I don't remember. I don't know what I would

Page 65

1 have – that I responded. I don't remember.
2 This is 2001, correct?
3 Q. Yes, it's three years ago.
4 A. Or 2000, four years ago.
5 Q. Okay.
6 A. I don't recall specifics.
7 Q. How many trusts does your family – you or
8 your wife or other members of your family
9 have?
10 A. Other members of my family? I have no idea
11 what my older children have. I don't know.
12 Q. To your knowledge, there's only one trust that
13 you and your wife have?
14 A. No.
15 Q. How many trusts do you and your wife have?
16 A. My wife has a trust and I have a trust.
17 Q. Then in addition to that, there's the trust of
18 the defendant in this action?
19 A. No, this is my wife's trust that's the
20 defendant in this action.
21 Q. This is what you call your wife's trust and
22 you're characterizing –
23 A. It is my wife's trust. It's the Jane L. Strom
24 Revocable Trust.
25 Q. That's the name of the trust that –

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1 A. That's what it's called and that's what it is.
2 It's my wife's trust.
3 Q. So your wife has one trust, correct?
4 A. Yes.
5 Q. And you're a co-trustee?
6 A. I'm one of two trustees, yes.
7 Q. And your wife tells you as a co-trustee she
8 wants to make a loan to your clients, the
9 debtors, correct?
10 A. My wife is also the settlor. She has the
11 power to amend.
12 Q. Hang on, hang on. I asked –
13 A. She's the settlor.
14 Q. Try to listen to my question, Mr. Hagberg, so
15 we can finish this. You're going off on a
16 different tangent.
17 A. No, I'm not. I'm describing who has the
18 ultimate power in this trust.
19 Q. That wasn't my question.
20 A. And my wife has that ultimate power. When she
21 makes a decision to do something, I respect
22 it, because she is an intelligent person who
23 can make her own decisions.
24 Q. I appreciate that, but, as you know, being a
25 lawyer, that wasn't my question. So I'll

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1 simply ask you to listen to my question and
2 answer the question asked. That's what your
3 job is.
4 A. I'm frustrated when I do that, but I will do
5 that from now on –
6 Q. Please.
7 A. – and you can be frustrated. You don't like
8 it when I answer your questions specifically,
9 so don't you get angry with me and say, "Well,
10 just take it as a general – take it in the
11 context – take it in the sense that I ask
12 it." I'm trying to do that.
13 Q. Okay. Let me –
14 A. Or I'll have to go back to my former way of
15 answering the questions specifically.
16 Q. Fine, no problem. We have today, we have all
17 day tomorrow, we have all day Friday and we
18 have many days in the future to deal with your
19 deposition if you want to be uncooperative,
20 because that's what is going to result.
21 A. I'm not being uncooperative. I'm trying to
22 answer the questions in the spirit that you
23 asked me to.
24 Q. Let's go back and try it again.
25 A. But you corrected me on that. I'll not do

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1 that now.
2 **MR. LEONARD:** Mr. Mitchell, do you
3 want to have a moment with your client?
4 **MR. MITCHELL:** No, just ask him the
5 question.
6 **MR. LEONARD:** Why don't you
7 instruct your client to answer the
8 question, and then we can get on with
9 it.
10 **MR. MITCHELL:** I'm not going to
11 instruct him to do anything. Why don't
12 you ask the question again, because
13 I've forgotten what it is.
14 BY MR. LEONARD
15 Q. Listen to the question, Mr. Hagberg, and try
16 to answer it this time.
17 A. I don't like your implications, and I'm going
18 to terminate this deposition if you don't come
19 off that.
20 Q. Well, that's up to you, and whatever you do,
21 there will be consequences.
22 A. Fine.
23 Q. So my question was, Mr. Hagberg – please
24 listen carefully – your wife told you she, as
25 co-trustee, had made a decision to loan

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1 $50,000 to the debtors, is that correct?
2 A. No.
3 Q. Okay. Then tell me what your wife told you
4 with respect to –
5 A. You qualified that. You characterized it as
6 her decision to make a loan to the debtors.
7 My wife, as co-trustee, as settlor and as the
8 person with all – most of the power in that
9 trust, told me that she intended to make that
10 loan, not solely as co-trustee. You're asking
11 me to answer that question with her wearing
12 only one of several hats that she has in
13 connection with that trust.
14 Q. What did she tell you when she advised you or
15 informed you –
16 A. She –
17 Q. – wait until I finish the question – advised
18 you or informed you that she was intending to
19 make a loan from the trust to the debtors?
20 A. She told me that she determined to do it
21 because she thought it was a good opportunity
22 to make some money in the trust.
23 Q. So she told you she did it for a profit
24 motive?
25 A. Yes.

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1 Q. To your knowledge, up to that point, had the
2 trust made loans to any other businesses?
3 A. No.
4 Q. Had the trust made loans to any other
5 individuals?
6 A. I don't recall.
7 Q. To your knowledge at that time, which is
8 September of 2000, in what were the assets of
9 the trust invested just prior to the loan
10 reflected on Exhibit 8?
11 A. The trust had property in northern Minnesota,
12 the trust had property in Hennepin County, the
13 trust had stocks, bonds, investments, money
14 market funds. That's what I recall.
15 Q. When you say "property," do you mean real
16 estate?
17 A. Yes.
18 Q. So Exhibit 8 and the loan reflected therein is
19 the first time to your knowledge that the
20 trust was going to loan money to a person or a
21 business?
22 A. No, it's not the first time.
23 Q. Were there others prior to this time?
24 A. Yes, it – yes.
25 Q. And what were those other loans? When were

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1 they made?
2 A. They were – I believe that it purchased notes
3 as investments.
4 Q. The trust had purchased promissory notes?
5 A. Right.
6 Q. Sort of in the secondary market, notes that
7 already existed?
8 A. Yes.
9 Q. Anything else?
10 A. No.
11 Q. Were the notes that were purchased as we
12 described a moment ago notes made by persons
13 or entities known personally to you or to your
14 wife?
15 A. No.
16 Q. Isn't it true, Mr. Hagberg, that the purpose
17 of Hagberg Exhibit 8, that is, the purpose of
18 the loan and the purpose of monies from that
19 stem from William Howard and your Internet
20 Financial contacts to cover a financial
21 default by the debtors the day they committed
22 their mortgages to First Union Bank?
23 A. That's what you said, yes.
24 Q. I'm sorry?
25 A. That's what you previously said, yes.

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1 Q. I'm asking you if that's the case.
2 A. I don't know.
3 Q. You don't know one way or the other?
4 A. No, I don't.
5 *(Hagberg Deposition Exhibit 9*
6 *marked for identification.)*
7 BY MR. LEONARD
8 Q. Showing you what's been marked as Hagberg
9 Exhibit 9, would you take a look at it?
10 A. (Witness complies.)
11 Q. Consisting of seven pages, I believe.
12 A. (Witness complies.)
13 Q. Having looked at it, have you seen that letter
14 before, the first two pages?
15 A. No.
16 Q. Have you seen any part of Exhibit 8 before
17 today?
18 A. Well, I have not seen the letter. The rest of
19 it is – I mean, I could be – no.
20 Q. You have not seen it before today?
21 A. Well, I looked at a lot of pages with numbers
22 on it. These are pages with numbers on them.
23 They have no meaning to me. I don't know what
24 they are.
25 Q. Calling your attention to the middle of the

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first page of Exhibit 9, there are four sentences indented, enumerated 1 through 4. I will ask you if, upon reading those four sentences, if that refresh your memory relative to the purpose for the loan reflected in Exhibit 8.
A. The four numbered sentences?
Q. Correct.
A. Well, they're exactly what I testified to. There were a number of loans made, but I don't recognize – I don't recognize all the amounts in there, but it doesn't help me with the purpose of them. No, it doesn't say the purpose.
Q. When the trust, the Jane L. Strom Trust, purchased promissory notes in the secondary market prior to September 1 of 2000, did you participate in those decisions to do that?
A. Generally I would, yes.
Q. And what would your participation consist of?
A. I would listen to what the broker was recommending and, you know, discuss it with my wife.
Q. And would you, in discussing those matters with the broker, inquire about the financial

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capability of the borrower to pay on the notes?
A. You're asking would I ask that?
Q. Yes.
A. No.
Q. What did you ask or discuss with the broker?
A. Well, the broker does what the broker does. He makes a recommendation and then he tells why he thinks that they're good investments. That usually includes discussions about the quality of the investment.
Q. And then in connection with the loan reflected on Exhibit 8, did you make an inquiry of anybody relative to the quality of that investment or that loan?
A. No.
Q. Why would you consider it appropriate or necessary to make such inquiries or obtain some information relative to purchasing the promissory notes from a broker and not consider that sort of inquiry to be appropriate in connection with the loan reflected on Exhibit 8?
MR. MITCHELL: Objection; mis-characterizes the prior testimony. You

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can answer.
THE WITNESS: I didn't say that it was appropriate. That's what would happen.
BY MR. LEONARD
Q. When the promissory notes were purchased from the broker in the secondary market, did you receive information from the broker relative to the quality of that investment?
A. Sometimes.
Q. Sometimes you wouldn't?
A. I don't remember.
Q. In fact, Mr. Hagberg, isn't it true that that's normally the type of information you'd get before you'd make that sort of investment? Isn't that true?
A. The information that I was primarily responding to would be the recommendation of the broker, not necessarily the specific product that he was recommending.
Q. Who recommended the loan to the debtors reflected on Exhibit 8, if anybody?
A. I don't know.
Q. Did you ever ask your wife who recommended it, if anybody?

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A. No.
Q. Did you ever ask your wife where she got the idea to make that loan?
A. No.
Q. Why did you not ask her those questions?
A. I didn't need to.
Q. Why?
A. Because I was present when she learned about the opportunity.
Q. Tell me about that occasion.
A. Well, my recollection is that in a dinner with Kathleen Zeller she mentioned that she needed an additional $50,000, and she basically described the terms which had been negotiated by Internet Financial – I think that's the name of that company. So nobody recommended it that I know of.
Q. Where did that dinner take place that you just described?
A. In a restaurant.
Q. Do you recall the name of the restaurant?
A. No.
Q. Do you recall when the dinner occurred?
A. No.
Q. Who was present besides yourself?

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A. My wife and Kathleen Zeller.
Q. Was Ms. Zeller's husband present?
A. I don't remember.
Q. What was the occasion for the dinner?
A. Social.
Q. During the conversation at the dinner, did you or your wife ask Ms. Zeller what the purpose of the loan was?
A. I don't recall.
Q. Do you think, just looking back, that that would have been an appropriate question to ask?
A. I don't know.
Q. Well, when someone asks you for a loan in your capacity as co-trustee with a fiduciary duty to know these things, don't you think it's appropriate if someone asks you for a loan from the trust that you inquire of the borrower's use of the loan?
A. You're going to –
THE WITNESS: Ralph, are you going to object? I didn't testify that anybody had asked for a loan from the trust.
MR. LEONARD: Do you object? Who's

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objecting here? I don't know who the attorney is.
MR. MITCHELL: He said he never testified. That's my objection, that he never testified. My objection would be that the question assumes facts not in evidence.
MR. LEONARD: So there's –
MR. MITCHELL: It calls for a legal opinion.
BY MR. LEONARD
Q. At this dinner, then, Kathleen Zeller simply asked for a loan without specifying as to who the lender might be?
A. No.
Q. Tell me what she said, please.
A. She – I already testified to that. She mentioned the need for an additional $50,000. I don't remember that she ever asked for the money.
Q. Did she state what she needed the money for?
A. I don't remember that she did.
Q. Did she say that she needed that loan in connection with or in conjunction with loans at the same time she was obtaining from other

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parties?
A. Yes.
Q. Did she name those parties?
A. Yes.
Q. Did she indicate the amount of the aggregate of the loans that she was tying to obtain?
A. I don't remember that she did.
Q. Did you ask her that question?
A. I don't recall that I did.
Q. At what point in time did a communication from the trust – strike that. Did you personally tell Ms. Zeller that, yes, you'd make a loan or a loan would be made to her?
A. No.
Q. Did your wife at that point?
A. I never made a loan to her.
Q. Did your wife ever – at this dinner, did your wife indicate to Kathleen Zeller that a loan would be made in the amount of $50,000?
A. No.
Q. To your knowledge, when was that communication made to Ms. Zeller?
A. I think it was in the next day or so.
Q. By whom was that communication made?
A. I don't recall.

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Q. How do you know it was made?
A. Well, it had to be communicated somehow, didn't it?
Q. I don't know.
A. I don't remember. Sorry.
Q. Did you make the communication to Ms. Zeller?
A. I don't recall if I did.
Q. How many days after this dinner meeting did, as you testified, your wife tell you that the trust would be making a loan to the debtor entities?
A. I don't remember.
Q. Can you give me your best estimate?
A. No.
Q. Simply because you don't remember?
A. I don't remember. It's in that time frame, but I don't remember. I don't remember specifically.
Q. Did you communicate about the subject of the loan that's reflected on Exhibit 89 with Mr. Mahoney at any time?
A. I think I did.
Q. And when did you make that communication?
A. I don't know.
Q. What did you communicate to Mr. Mahoney with

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1 respect to that matter?
2 A. Well, I recall telling him that my wife had
3 determined to lend money in connection with
4 the need – or in connection with that overall
5 loan deal that he was working on.
6 Q. What did Mr. Mahoney tell you with respect to
7 the whole subject?
8 A. I don't recall.
9 Q. Pardon?
10 A. Not much.
11 Q. Well, if anything, what did he tell you?
12 A. I don't know.
13 Q. How do you know it wasn't much?
14 A. Because I don't recall that there was any time
15 spent talking about it.
16 Q. Didn't Mr. Mahoney tell you what the loans
17 were to be used for?
18 A. No.
19 Q. He didn't tell you that they were to be used
20 to cure a default by the debtors on the
21 mortgage with First Union National Bank?
22 A. That specific, no. I understood that money
23 was needed for something, but I don't know
24 that I knew exactly what it was needed for.
25 Q. When you say "something," you mean something

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1 having to do with the First Union National
2 Bank?
3 A. No.
4 Q. Could have been anything?
5 A. Yes.
6 Q. Fixing a roof?
7 A. Maybe.
8 Q. Fixing the sidewalk?
9 A. Possible.
10 Q. The loan made, as reflected in Hagberg Exhibit
11 8, was unsecured at the time it was made,
12 isn't that correct?
13 A. Yes.
14 Q. There was no collateral given at that time?
15 A. Correct. I think that it was personally
16 guaranteed.
17 Q. By whom?
18 A. I think Kathleen Zeller.
19 Q. Okay. But I consider collateral to be
20 something in the nature of security, of an
21 asset that could be utilized to be liquidated
22 and sold to pay the loan.
23 A. Okay.
24 Q. So you would agree that when Exhibit 8 was
25 made and the loan advanced relative to it that

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1 there was no collateral?
2 A. Yes.
3 *(Hagberg Deposition Exhibit 10*
4 *marked for identification.)*
5 BY MR. LEONARD
6 Q. Showing you what's been marked as Exhibit 10,
7 please take a look at it.
8 A. (Witness complies.)
9 Q. Have you seen Exhibit 10 before?
10 A. Yes.
11 Q. When did you first see Exhibit 10?
12 A. Early 2001.
13 Q. Did you draft this exhibit?
14 A. No.
15 Q. To your knowledge, who did?
16 A. I don't know.
17 Q. Did anyone at Mahoney & Hagberg draft it?
18 A. I just said I don't know.
19 Q. What was the occasion on which you first saw
20 Exhibit 10?
21 A. I don't know.
22 Q. How do you know you first saw it in early
23 2001?
24 A. Because that's the date on it.
25 Q. Does the date indicated on this exhibit give

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1 you an independent recollection of when you
2 first saw it?
3 A. No.
4 Q. You're simply going by the date?
5 A. Right.
6 Q. What is Exhibit 10?
7 A. A promissory note.
8 Q. And what is its purpose?
9 A. To reflect sums owed.
10 Q. From whom to whom?
11 A. From the makers to the holder.
12 Q. And who is the holder of the note?
13 A. The holder is the Jane L. Strom Revocable
14 Trust under agreement October 28, 1998.
15 Q. And that's the trust in which you are a
16 co-trustee?
17 A. Yes.
18 Q. Do you have an understanding of the
19 responsibilities of a co-trustee under
20 Minnesota law or a trustee of a trust?
21 A. Yes.
22 Q. Do you understand that the trustee has
23 fiduciary obligations to the trust?
24 A. Yes, in accordance with the terms of the
25 trust.

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1 Q. Exhibit 10 seems to reflect a dollar amount of
2 $62,160.35 as the principal sum thereunder.
3 Do you see that?
4 A. Yes.
5 Q. How was that dollar amount calculated?
6 A. That's the sum owed at that time of an
7 original promissory note, Exhibit – whatever
8 it is, 8, I think. Yes.
9 Q. All right. So is it a correct statement that
10 the amount – strike that. Turning to Exhibit
11 8, was the maturity date of that note January
12 15, 2001?
13 A. Whatever it says.
14 Q. Well, if you'd look under the first numbered
15 paragraph on the fourth line.
16 A. Yes, that's what it says in paragraph 1, yes.
17 Q. Where is the original of this note, Exhibit 8,
18 do you have any idea?
19 A. I think that it's – well, I don't know. It's
20 probably in a file. I don't know.
21 Q. Do you know where the original of Exhibit 10
22 is?
23 A. Probably in the same place.
24 Q. But you don't know one way or the other?
25 A. Well, I haven't seen it in a number of years,

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1 so it's – I have a lot of documents and
2 papers that I keep track of, and I would have
3 to go look in the logical place to see if it's
4 there.
5 Q. Would you agree that Exhibit 10 is what is
6 called a replacement or rollover note that
7 incorporates the obligations reflected in
8 Exhibit 8?
9 A. Yeah.
10 Q. That reflects accrual of interest?
11 A. Yes. Well, yes. I – I don't recall all of
12 the elements that went into determining how
13 much was then owed. I don't know if there was
14 accrual interest there or not.
15 Q. With respect to the terms of Exhibits 8 and
16 10, for instance, I'm talking about the
17 interest rate, how was that interest rate
18 determined?
19 A. My recollection is that the interest rate was
20 exactly the same as negotiated by the first
21 lender in the September 2000 borrowing.
22 Q. Who communicated on behalf of the trust, which
23 is the lender, with the borrowers relative to
24 determining the terms of these notes?
25 A. That was my wife.

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1 Q. Were you involved in those communications at
2 all?
3 A. I don't think so.
4 Q. So your wife and the debtors negotiated the
5 terms of these notes?
6 A. I think that characterization is not what I
7 said.
8 Q. How would you characterize the process by
9 which the terms of these two notes were
10 determined?
11 A. Offered/accepted. Very simple.
12 Q. Who made the offer and who made the
13 acceptance?
14 A. The opportunity was stated by Kate Zeller in
15 the dinner not as an offer, it was what was
16 needed, and she described the terms of other
17 borrowings. In effect, the offer, if you want
18 to be legalistic about it, was probably made
19 by my wife, "I will lend you money on these
20 terms."
21 Q. I note in Exhibit 8 about – oh, maybe about
22 14 lines from the top, the note talks about
23 the principal sum, then it talks about a fee
24 in the amount of $12,250. Do you see that?
25 A. Yes.

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1 Q. Do you consider a fee to be a common feature
2 in a promissory note in your experience?
3 A. In many lending transactions, there are fees
4 paid to the lender. Sometimes they're stated
5 in promissory notes, sometimes they're not.
6 Sometimes they're stated in the loan
7 conditions and it's deducted from the
8 proceeds.
9 Q. And the fee in this particular matter is just
10 about 25 percent of the principal amount of
11 the loan, is it not?
12 A. My recollection is that it is exactly the same
13 as Internet Financial, a loan that you as
14 trustee determined to pay in full.
15 Q. My question is: Isn't the fee of $12,250
16 about 25 percent of the principal amount of
17 the loan?
18 A. Whatever it calculates out to be. Probably; I
19 don't know. I don't have any reason to
20 dispute that. I don't have a calculator in
21 front of me.
22 Q. Okay. So is it the case that on January 15,
23 2001, the debtors were unable to make the
24 payment due as called for in Exhibit 8?
25 A. I don't know.

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Q. Did you communicate – by "you" I mean you personally – communicate with anyone on behalf of the debtors relative to Exhibit 10?
A. I remember having – I don't remember if it was Kathleen Zeller or Vern Zeller, but I remember some connection to that, and I don't remember if it was – I don't remember specifics, but I remember having a conversation with one of them.
Q. And what was the substance of that conversation?
A. Well, what I remember is that they asked to extend the note and there were determinations made as to what was due, but that's the extent of what I recall the conversations to be about.
Q. And when they – whoever – was asked to extend the note, what was your response?
A. Well, it was my wife's determination.
Q. Was this request, to the extent it was made, in your presence and your wife's presence?
A. No, I don't think that both of us participated in that conversation.
Q. Did your wife participate in that conversation?

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A. No, I think it was me.
Q. And what was your response to that request and that conversation?
A. My response was that I would pass that on to my wife.
Q. And did you do so?
A. I did, yes, I recall that I did.
Q. And did you discuss that request with your wife?
A. I don't remember a discussion about it.
Q. In the conversation during which the request was made, did you ask the party making that request the reason or need for the extension?
A. I don't recall that I did.
Q. Do you expect that that would have been a question you might have asked or would have asked?
A. I'd be speculating on that. I don't know.
Q. At that point did you ask the person the use or application that was to be made of the funds loaned in September of 2000?
A. I don't think I did.
Q. Was that information considered by you not to be important?
A. I don't think I thought about it either way.

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Q. Who communicated back to the debtors, whether it's Kathleen Zeller or Vern Zeller, the decision of the trust to agree to the extension that's embodied in Exhibit 10?
A. I don't recall.
Q. You don't know if it was you or your wife?
A. No.
Q. It would have been one of you two, right?
A. I don't recall.
Q. In your general recollection of the events, it would have been either you or your wife as opposed to some third party?
A. Well, I think it's highly probable, but, once again, I don't recall.
(Hagberg Deposition Exhibit 11 marked for identification.)
BY MR. LEONARD
Q. Showing you what's been marked as Exhibit 11, please take a look at it.
A. Can we go off the record a minute?
MR. LEONARD: Do you need another break or –
THE WITNESS: I just want to know when we're going to be done.
MR. LEONARD: We're off the record.

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(Recess.)
BY MR. LEONARD
Q. I think you have in front of you Exhibit 11?
A. Yes.
Q. Would you take a look at it, please?
A. I did.
Q. Tell us what it is.
A. It's a mortgage deed.
Q. Is it a mortgage from the debtors and Summa – or I guess the debtors anyway – to the trust that's the defendant here?
A. In part.
Q. And from the debtors and Carefree Living of America (Minnetonka), right?
A. Yes.
Q. To Jane L. Strom, Trustee?
A. Yes.
Q. Is that what you mean "in part," that it didn't mention the Minnetonka facility?
A. Right.
Q. Now, when did you first see Exhibit 11?
A. I think it was in the range of March 2001.
Q. And what was the occasion on which you first saw the exhibit?
A. It was drafted to replace prior mortgage deeds

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1 from each of the mortgagors, individual
2 mortgage deeds from each of the mortgagors
3 listed in this mortgage deed.
4 Q. When were the prior mortgages that you just
5 mentioned drafted?
6 A. Earlier, probably in January sometime.
7 Q. Of 2001?
8 A. I think so.
9 Q. Were those mortgage deeds ever signed?
10 A. I believe so.
11 Q. Why was there some need for a replacement?
12 A. Save money.
13 Q. And in respect to what?
14 A. If you record individual mortgage deeds, in
15 this case covering four properties from four
16 mortgagors, you spend four times as much money
17 in mortgage registration tax than if you
18 record one that covers all the properties from
19 all the mortgagors and then record certified
20 copies of that in the other counties.
21 Q. I've never seen those earlier mortgages. Do
22 they still exist?
23 A. I believe they were produced by the trust in
24 the document production in this case.
25 Q. Okay. Well, maybe I have seen them. I just

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1 don't recall. Do you know where the originals
2 are?
3 A. Specifically, no.
4 Q. But are they in your possession somewhere?
5 A. Well, they're, I believe, in a file.
6 Q. Under your control or your wife's control?
7 A. Yes, I believe so.
8 Q. Calling your attention to the second to the
9 last page of this exhibit, do you recognize
10 the signature of a Gina Miller on that page?
11 A. No. I see Gina Miller's signature, but I
12 don't know her signature well enough to
13 recognize it.
14 Q. Gina, was she associated with the Mahoney &
15 Hagberg law firm?
16 A. She functioned as Michael Mahoney's secretary.
17 Q. And it appears that this document was
18 notarized on March 15, 2001. Would you agree
19 with that?
20 A. Yes.
21 Q. And were you present when this document was
22 signed?
23 A. I don't think so.
24 Q. Were you present when it was notarized?
25 A. I don't think so.

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1 Q. You'll note on the first page of this
2 document, the very first line of the body has
3 a date of the 15th day of January, 2001?
4 A. Yes.
5 Q. Why is there a discrepancy between that date
6 – or a difference between that date and the
7 date on which the document is notarized?
8 A. Well, there are oftentimes.
9 Q. Well – but in this in particular case, why is
10 there a different date?
11 A. Well, it's because January 15, as I under-
12 stand, was the date it was intended to be
13 effective.
14 Q. Intended by whom?
15 A. By the mortgagor. As I testified to, it's a
16 replacement for these other mortgage deeds, so
17 my recollection is that it was – it would be
18 the same date as those mortgage deeds that
19 were replaced.
20 Q. But it's your recollection that it was
21 actually signed on March 15, 2001?
22 A. Yes – well, in that time frame.
23 Q. Okay.
24 A. No, as I stated, I'm not sure, because I don't
25 know if it was signed sometime before that and

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1 acknowledged on March 15 or if it was signed
2 in front of the notary.
3 Q. Who drafted Exhibit 11?
4 A. I don't know.
5 Q. Well, you know the entity who employed the
6 drafter, don't you?
7 A. Yes.
8 Q. And that would be Mahoney & Hagberg, right?
9 A. Yes, but you asked who, and I assumed you were
10 asking about an individual.
11 Q. And did you ask anyone to draft the document
12 or was this drafted at your instruction?
13 A. I don't think so.
14 Q. By whose instruction would it have been
15 drafted?
16 A. I don't know.
17 Q. Well, if not yours, whose?
18 A. I don't know.
19 Q. Did Mark Peery draft it?
20 A. I don't know.
21 Q. Did the Strom Trust, you know, request a
22 mortgage from these debtors?
23 A. My recollection is that that's what was
24 offered when the note, the original note, was
25 unpaid and it was agreed to and turned to a

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1 replacement note, a rollover renewal, as you
2 put it.
3 Q. Was that offer communicated at the time the
4 request for extension was made?
5 A. That's my recollection, that that was the
6 deal. It would be rolled over into a new note
7 that would be secured by the real estate.
8 Q. But the request for extension was made to you
9 by Kate Zeller or Vern Zeller, right?
10 A. Communicated through me.
11 Q. Communicated to you.
12 A. Well, from me to – from – through me to
13 Jane, yes; to me, then from me to Jane.
14 Q. That's what I'm asking. First, in this
15 conversation, is it now your recollection that
16 they offered to secure Exhibit 10 with a
17 mortgage?
18 A. My recollection is that it was offered as part
19 of a package deal. You may notice that
20 Minnetonka was added to the note.
21 Q. Mm-hmm.
22 A. And Minnetonka was on the mortgage deeds.
23 There was a – it was a package deal;
24 Minnetonka added and security given.
25 Q. This was an offer by either Kathleen Zeller or

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1 Vern Zeller?
2 A. Right.
3 Q. And it was an offer to induce or to try to
4 persuade the lender to extend the loan?
5 A. Yeah.
6 Q. Did Carefree Living (Minnetonka) receive any
7 of the proceeds of the loan?
8 A. I don't believe so.
9 Q. So they were just there as a volunteer, so to
10 speak?
11 A. I think you know the answer to that, because
12 you've seen the check that went to Faegre &
13 Benson.
14 Q. Well, I'm asking you to answer. My role is to
15 ask the questions, and your responsibility is
16 to give the answers.
17 A. Okay.
18 Q. So I'll ask it again. Did Carefree Living of
19 America (Minnetonka) Inc. receive any of the
20 proceeds of the loan made reflected in Exhibit
21 8?
22 A. I don't know.
23 Q. What do you think?
24 A. I don't think they did.
25 Q. Okay. Did the debtors receive any

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1 consideration from the Strom Trust in return
2 for the mortgage which is Exhibit 11, other
3 than the extension of the debt reflected on
4 Exhibit 10?
5 A. Forbearance.
6 Q. And that's the extension of the debt, correct?
7 A. As evidenced by the extension, yes.
8 Q. Yes.
9 A. Yes.
10 Q. Did they receive any other consideration to
11 your knowledge?
12 A. No.
13 Q. Why did the debtors, through Kate Zeller or
14 Vern Zeller as they may have stated to you,
15 feel the needed to offer a mortgage on the
16 debtor's real estate?
17 **MR. MITCHELL:** Objection; calls for
18 speculation. You can answer if you
19 can.
20 **THE WITNESS:** I don't know.
21 BY MR. LEONARD
22 Q. Did they tell you whether or not a mortgage
23 was offered to William Howard?
24 A. I don't recall.
25 Q. Do you know whether a mortgage was offered to

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1 William Howard?
2 A. Yes.
3 **MR. MITCHELL:** "Yes" you know or
4 "yes" he was?
5 **THE WITNESS:** Yes, I know.
6 BY MR. LEONARD
7 Q. And was a mortgage offered to William Howard?
8 A. Yes.
9 Q. And did you accept that offer?
10 A. It was in the process of being negotiated when
11 the petition in bankruptcy was filed and those
12 negotiations ceased.
13 Q. You mean later, in August of 2001?
14 A. Well, there was an ongoing dialogue that was
15 occurring over a longer period of time.
16 Q. Well, the petition in bankruptcy – I'm sorry.
17 A. "Later in August." I thought your question
18 was: Was that negotiation later in August?
19 They were over a longer period of time than
20 just later in August.
21 Q. How long a period of time did the negotiations
22 on Exhibit 11 extend?
23 A. I don't – I don't recall any negotiations on
24 that.
25 Q. Why do you think there would be an extended

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1 negotiating period of time for the William
2 Howard debts and not for the debt of the
3 trust?
4 **MR. MITCHELL:** Objection; assumes
5 facts not in evidence, the assumption
6 being that the Howard debt matured at
7 the same time.
8 BY MR. LEONARD
9 **Q.** Go ahead and answer.
10 **MR. MITCHELL:** Yeah, you can
11 answer.
12 **THE WITNESS:** Well, the Howard debt
13 was considerably greater and he was
14 seeking additional – additional things
15 in addition to – no. I mean, it's
16 going back a number of years, so this
17 is a general recollection that I have.
18 And I know you're going to ask
19 specifics, and I'm going to answer, "I
20 don't know specifics."
21 This was a general recollection.
22 Bill Howard was owed – I don't
23 remember how much – four or five
24 hundred thousand dollars by various of
25 the Carefree Living entities. He

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1 sought personal guarantees on those
2 debts. He was offered mortgages, and
3 that was negotiations that took place
4 through his lawyer, but it also
5 involved determinations as to the
6 amounts that he was owed, what
7 comprised the amount that he was owed,
8 what notes were outstanding and so on
9 and so forth.
10 BY MR. LEONARD
11 **Q.** Did you, Mr. Hagberg, assume responsibility
12 for seeing that Exhibit 11 was filed with the
13 various county recorders?
14 **A.** I recall being involved in that, yes.
15 **Q.** What was your involvement?
16 **A.** Well, my recollection was that I think I told
17 somebody in the office that it should be –
18 that they – I think I told them how to record
19 – record it in one county first, pay the
20 mortgage registration tax, get a certified
21 copy and then do the recordings of that in the
22 other counties, because I think that that
23 occurred in the same time frame as a mortgage
24 given to the law firm.
25 **Q.** Was the mortgage given to the law firm and the

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1 mortgage on Exhibit 11, were they recorded at
2 the same time?
3 **A.** I don't know.
4 **Q.** In the same process?
5 **A.** I don't know. I think the same process, but I
6 don't know about the same time.
7 **Q.** With respect to Exhibit 11, were law firm
8 funds used to record the mortgage, pay the
9 filing fees, et cetera?
10 **A.** None.
11 **Q.** Didn't you send various checks to the various
12 governmental units for that purpose?
13 **A.** I may have, I don't recall.
14 *(Hagberg Deposition Exhibits 12 and*
15 *13 marked for identification.)*
16 BY MR. LEONARD
17 **Q.** Going back to Exhibit 11 and Exhibit 10,
18 Mr. Hagberg, who was the law firm representing
19 in that transaction?
20 **A.** I don't know that the law firm was
21 representing anybody in this transaction.
22 **Q.** Well, was the law firm representing the
23 debtors?
24 **A.** I just said I don't know that the law firm was
25 representing anybody in that transaction.

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1 **Q.** Why do you say that?
2 **A.** I don't know that the law – how many times do
3 I have to say it? I don't know that the law
4 firm was representing anybody in that
5 transaction.
6 **Q.** Well, the law firm drafted at least the
7 mortgage, right?
8 **A.** Okay.
9 **Q.** Right?
10 **A.** That's what it says, yes.
11 **Q.** Who represented the debtors in the
12 transaction?
13 **THE WITNESS:** Can you help me out,
14 Ralph? I don't know that the law firm
15 represented any – I don't know that
16 anybody was represented in any of this.
17 BY MR. LEONARD
18 **Q.** I asked who represented the debtors in the
19 transaction. That's a different question than
20 the one just previous.
21 **A.** Yes, you asked who represented –
22 **Q.** I asked who represented the debtors.
23 **A.** I don't know that the debtors were represented
24 by anybody in this.
25 **Q.** Who represented the Strom Trust?

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A. I don't know that the Strom Trust was represented by anybody in this.
Q. The debtors were clients of the Mahoney & Hagberg law firm too, weren't they?
A. Yes.
Q. And did anyone in the Mahoney & Hagberg law firm advise the debtors to get legal representation?
A. I don't know.
Q. At least you didn't, personally?
A. I did not.
Q. Okay. And you don't know that anyone else did, correct?
A. I don't know.
Q. If the law firm advanced the funds which were used to pay for the filing of the mortgage, wouldn't that suggest that the law firm was acting on behalf of the entity that received the mortgage?
A. No.
Q. Why not?
A. The law firm routinely advanced funds for things that may be personal in nature and then were adjusted at a future time.
Q. But you agree that the law firm did advance

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funds to file Exhibit 11?
A. I didn't agree with that. I said I don't remember.
Q. If I showed you a check with your signature on it, would that help your recollection?
A. It might.
(Hagberg Deposition Exhibit 11-A marked for identification.)
BY MR. LEONARD
Q. Showing you what's been marked as Exhibit 11-A, I'll ask you to look at the checks, the face of the checks that are on the left-hand side of that sheet and ask you if that's your signature in the lower right-hand corner of the checks.
A. Yes.
Q. Look at check number 13317, which is third up from the bottom.
A. Yes.
Q. Is that in the amount of $149.28?
A. Yes.
Q. And that's your signature on it?
A. Yes.
Q. And if you look on Hagberg Exhibit 11, is that the exact amount of the filing fee paid or the

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MRT paid to Hennepin County?
A. Yes.
Q. Would you conclude from that that that tax was paid by Mahoney & Hagberg?
A. Well, it was a Mahoney & Hagberg check, yes.
Q. And so those were Mahoney & Hagberg funds that paid that tax, right?
A. Initially, yes.
Q. Okay. And when you say "initially," what do you mean by that?
A. Well, as I testified to, sums that are paid for any individual in the firm that would be personal in nature were routinely adjusted.
Q. And was such an adjustment made relative to check number 13317, to your knowledge?
A. I don't recall. I assume so, but I don't recall. $149 is not a significant amount of money. I don't remember those numbers.
Q. How would such an adjustment have been made?
A. Either against sums – against sums due me from the firm.
Q. Based on that check, so that we don't have to go through all of them, would you agree that the Mahoney & Hagberg funds were used to pay the MRT with respect to all of the counties in

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which Exhibit 11 was filed?
A. No, I don't agree with that. I don't agree that that was necessarily Mahoney & Hagberg funds.
Q. Well, it came out of their account, didn't it?
A. Well, yes, but it may not have been Mahoney & Hagberg funds. I don't know. I don't remember. Mahoney & Hagberg, I agree they cut the check. Okay.
Q. Out of an account that they owned?
A. Yes.
Q. And it was money – the law firm money in the account, right?
A. Or mine.
Q. There was a commingling of your personal funds and the law firm funds?
A. No.
Q. Oh. Then it had to be one or the other, right?
A. But they were spending money that was an obligation of mine, just as you do for client expenses.
Q. All right. So they were spending money for a client, the client being you?
A. I couldn't – no.

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1 Q. Well, you do agree that check number 13317 is
2 a check on an account owned by Mahoney &
3 Hagberg with Mahoney & Hagberg funds in the
4 account as opposed to –
5 A. Yes.
6 Q. – your personal funds?
7 A. Right.
8 Q. Okay. And you don't know whether or not there
9 was an adjustment made to reimburse the law
10 firm for that expense or not, do you?
11 A. I don't recall.
12 Q. You don't recall one way or the other whether
13 that reimbursement occurred, correct?
14 A. I'm sorry, but my memory is faulty going back
15 four years. Okay? It's faulty. I don't
16 remember those specifics. That amount of
17 money is not a considerable amount of money.
18 I assume it was adjusted as would be ordinary
19 course, ordinary business practice at Mahoney
20 & Hagberg to adjust for those things. So I
21 assume it was. If it didn't, I'll pay it
22 back.
23 Q. I'm just asking a yes-or-no question as to
24 whether you recall it.
25 MR. MITCHELL: He's already asked

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1 and answered it.
2 THE WITNESS: You know, you ask it
3 over and over again, and I keep giving
4 you the same answer and you're not
5 satisfied with that. So I try then to
6 expand, and then you don't like that.
7 Okay?
8 BY MR. LEONARD
9 Q. Let's take a look at Exhibits 12 and 13. Take
10 a look at them and let me know when you've
11 done that, please.
12 A. (Witness complies.) Okay.
13 Q. Turning to Exhibit 12 first, tell me when you
14 first saw that.
15 A. I don't remember.
16 Q. You have seen it before today, haven't you?
17 A. Yes.
18 Q. What was the occasion in which you first saw
19 it?
20 A. Well, if I don't remember the time, I don't
21 remember the occasion either.
22 Q. One can easily remember an event without
23 remembering when the event occurred.
24 A. You asked when I first saw it.
25 Q. Yes.

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1 A. Then you asked, "Have you seen it before
2 today?" "Yes." Then you asked, "What was the
3 occasion when you first saw it?"
4 Q. Yes.
5 A. And I said I don't remember when I first saw
6 it, therefore I don't remember the occasion at
7 which I first saw it. Okay?
8 Q. In my mind, the two failures of memory are not
9 necessarily connected. One can always
10 remember an event without remembering when the
11 event occurred.
12 A. All right. I stand corrected.
13 Q. What is Exhibit 12?
14 A. Exhibit 12 is a promissory note.
15 Q. Is it made by the debtors and Carefree Living
16 of America (Minnetonka) and Summa Management
17 Inc.?
18 A. Appears to be, yes.
19 Q. That's your understanding of it, right?
20 A. That's what it says, yes.
21 Q. And that's what you understood it to be when
22 you first saw it, whenever that was?
23 A. Yes, that's – that's what it says. It says
24 what it says.
25 Q. And the holder of the note is the Mahoney &

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1 Hagberg law firm?
2 A. Yes.
3 Q. And it's dated March 15, 2001?
4 A. Yes.
5 Q. Now, who drafted this document?
6 A. I don't know.
7 Q. Was it drafted, to your knowledge, by anyone
8 at Mahoney & Hagberg?
9 A. I don't know.
10 Q. What was the purpose of Exhibit 12?
11 A. Well, I assume it was to recognize sums due.
12 Q. Could you explain that, please?
13 A. Sums due the law firm by these various
14 entities.
15 Q. In other words, this was an amount that the
16 law firm felt was owed to it by the makers of
17 the note for legal fees?
18 A. I don't think it was based on feelings. You
19 said that the law firm felt. I don't think it
20 was based on feelings. I assume, without
21 specifically knowing, that it was based on
22 numbers, facts and numbers, not feelings.
23 Q. But it's based on amounts owed by the makers
24 of the note to Mahoney & Hagberg for services
25 rendered those entities, correct?

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A. That's my belief, yes.
Q. All right. Now, this note is in the amount of $1,500,000, right?
A. That's what it says, yes.
Q. So that's the amount of the indebtedness that these makers owed Mahoney & Hagberg at that time?
A. I believe so, yes.
Q. Over what period of time did that debt accrue?
A. Well, when I refused to do more work for the Carefree Living entities, the debtor entities included, in 1996, there was a considerable amount of money owed at that time that was unpaid, which was part of my personal decision not to continue representing them.
So I assume that this sum grew from 1996, maybe back into 1995, but I did not – I did not prepare or determine bills subsequent to early fall 1996 when Michael Mahoney took over the responsibility for these clients.
Q. You say the reason you refused to do further work, at least of the magnitude you had prior to 1996, was because of the amount that the debtor entities owed to the firm at that time?
A. It was because they owed money that was – in

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part, it was because they owed money at that time that had been long overdue to be paid. I was extremely busy working for my largest client, and I did not want to take on what appeared to me to be a lot of work for the debtor entities and its related entities in a situation where it was – where the payment history was very poor and I had good-paying work for a client that I liked working for to do. So I asked Mike Mahoney if he was interested, and he said yes. So he took over at that point.
Q. Now, in March of 2001, did you discuss the status of the amounts owed by the debtor entities and the other two entities on this note with Mr. Mahoney?
A. I don't recall that I did, no.
Q. Didn't the law firm have periodic meetings, weekly or monthly?
A. Yes.
Q. And at those meetings wasn't typically one of the agenda items the accounts receivable owed to the firm?
A. Well, sometimes it would be, sometimes not.
Q. But –

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A. It was more in the nature of revenue generation as opposed to collection efforts.
Q. But the existence of problem receivables was discussed from time to time at these meetings, wasn't it?
A. Well, generally?
Q. Yes.
A. On occasion, yes.
Q. And you were the chief executive officer of the law firm, right?
A. Well, as I testified –
Q. That's a "yes" or "no" question.
A. Well, I was CEO in the minute book, yes.
Q. Now, from January 1 of 2001 to March 15th of 2001, do you recall having discussions with Michael Mahoney or anyone else in the law firm about the amounts owed by the makers of this note to the law firm?
A. No.
Q. No?
A. No.
Q. You don't recall that whatsoever?
A. Right.
Q. Do you believe that those discussions did not take place with you?

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A. I do not believe those discussions took place with me.
Q. Okay. Turning your attention to Exhibit 13, is that document a mortgage given by the three debtors and Carefree Living of America (Minnetonka) to the law firm?
A. That's what it says, yes.
Q. And did you draft this document?
A. No.
Q. But someone did at Mahoney & Hagberg, right?
A. Maybe.
Q. Well, I'd like you to take a look at the last page, please.
A. (Witness complies.)
Q. Is there any indication on that page that would suggest who drafted the document, that is, as an entity?
A. As an entity, yes.
Q. And who would that entity be?
A. Mahoney & Hagberg.
Q. Okay. So based on that, you would – is it your belief that someone at Mahoney & Hagberg did draft this document?
A. Yes.
Q. Was Exhibit 13 or the subject of a mortgage

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1 from the debtors and Carefree Living
2 (Minnetonka) discussed by you and Michael
3 Mahoney or by you and anyone else at the law
4 firm prior to March 15, 2001?
5 A. I don't recall.
6 Q. Relative to the other clients of the law firm,
7 Mr. Hagberg, in March of 2001, how did the
8 amount owed by the makers of Exhibit 12
9 compare with the other parties who owed money
10 to the firm in terms of size?
11 A. Oh, it was very large, much larger than, I
12 think, anybody else.
13 Q. Just so I understand your answer, the amounts
14 owed to the firm by the makers of Exhibit 12
15 was the largest account receivable in the law
16 firm?
17 A. Probably.
18 Q. And was that causing you, as a member of the
19 law firm or a shareholder, concern?
20 A. Not significantly.
21 Q. Why is that?
22 A. Because my understanding is that these
23 entities had a considerable amount of equity
24 in the assets, and so security in the form of
25 a mortgage made sense to me because they had

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1 what appeared to be a considerable amount of
2 equity.
3 Q. And you felt a mortgage was necessary to
4 secure the debt that was owed to the law firm
5 by these entities?
6 A. Well, I don't know that I can answer that,
7 that it's a necessity. Is it a good business
8 judgment, sure, but as a necessity, I don't
9 know.
10 Q. Is it part of the steps taken to collect that
11 debt?
12 A. I think it was part of the steps taken to
13 assure recovery or payment ultimately on that
14 debt.
15 Q. Why was it that that step, that is, taking of
16 the mortgage, didn't occur prior to March 15th
17 of 2001?
18 A. (Laughing.) I don't know.
19 Q. I mean, the debt had been overdue, in your
20 words, since 1996, or part of it.
21 A. Well –
22 Q. Why didn't someone –
23 A. – I don't know.
24 Q. Why didn't someone get this done earlier?
25 A. Because – I don't know when the determination

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1 was made to either obtain or give a mortgage.
2 You're only looking at the date on which it
3 was executed. That's not necessarily, in my
4 mind – that doesn't signify the date on which
5 it was agreed. Those are two quite different
6 things.
7 Q. What is the date on which the giving of the
8 mortgage that is ultimately reflected in
9 Exhibit 13 made? What was that date of that
10 agreement?
11 A. I don't know.
12 Q. Well, was there any such pre-March 15, 2001,
13 agreement?
14 A. In connection with the law firm?
15 Q. Yes.
16 A. I don't know.
17 Q. Was there such a pre-March 15, 2001, agreement
18 in connection with the Strom Trust?
19 A. To grant a mortgage?
20 Q. Yes.
21 A. Yes.
22 Q. Okay. When did that agreement occur?
23 A. That's reflected in the first separate
24 mortgage deeds that I testified about.
25 Q. In early – or sometime in January 2001?

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1 A. Yes.
2 Q. Okay.
3 *(Hagberg Deposition Exhibit 14*
4 *marked for identification.)*
5 BY MR. LEONARD
6 Q. Showing you what's been marked Exhibit 14,
7 please take a look at it.
8 A. (Witness complies.)
9 Q. Do you recognize it?
10 A. No.
11 Q. Have you seen it before today?
12 A. I don't recall.
13 Q. Have you ever spoken to anyone about Exhibit
14 14 prior to today?
15 A. I remember – I don't remember this. Years
16 ago there was a – I recall cross guarantees
17 by the various entities for sums due or to
18 become due for legal fees to the law firm, but
19 I remember that back in '96 or thereabouts;
20 long ago.
21 Q. Did you have any involvement in the drafting,
22 negotiation or execution of Exhibit 14?
23 A. No.
24 Q. Who on behalf – or who in the law firm would
25 have had that involvement?

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A. Probably Michael Mahoney.
Q. Have you ever talked to Michael Mahoney about Exhibit 14?
A. I don't think so.
Q. Now, after 1996 I think you testified that you did do some work for the debtors and its related entities, isn't that correct?
A. A small amount, yes.
Q. Okay. So you didn't completely abandon them, you just reduced the level of your involvement in their legal affairs?
A. Well, a significant reduction, yes. I was no longer the lead lawyer in the firm for these entities.
(Hagberg Deposition Exhibit 15 marked for identification.)
BY MR. LEONARD
Q. Showing you what's been marked as Exhibit 15, I'll ask you to take a look at it.
A. (Witness complies.)
Q. Have you seen this document before?
A. Well, I must have. I signed it.
Q. When did you see it prior to today?
A. Well, I suspect, but I don't remember, when it was signed.

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Q. Are you saying that you suspect you saw it when it was signed, in any event?
A. You asked when.
Q. Yes.
A. And I said I suspect that I saw it when I signed it.
Q. You suspect you saw it when you signed it, right?
A. No.
Q. No? Then I don't understand your answer. Sorry.
A. When, you asked me when, when, and I said I suspect the "when" is when I signed it.
MR. LEONARD: Let's go off the record.
(Off the record.)
BY MR. LEONARD
Q. Just so we have a starting point, you agree that you saw this document when you signed it?
A. Yes.
Q. And that is your signature on the second page?
A. Yes, it is.
Q. And you believe you signed it on March 30, 2001?
A. Well, that's when it was acknowledged. I

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don't know if I signed it on that date.
Q. What was the purpose of Exhibit 15?
A. I don't recall.
Q. It purports to be – and I believe it is –
A. Oh, I know what it is.
Q. Okay. Go ahead.
A. I think that Minnetonka had gone into bankruptcy, and I think that that prior mortgage deed had included a mortgage on an entity that had gone into bankruptcy, and so this was done because that would be wholly inappropriate to take a mortgage against property of an entity that is in bankruptcy.
Q. You believe at the time the mortgage was taken on the Minnetonka property it was already in bankruptcy?
A. This is a vague recollection, but I think that that's possible, or recorded – this Exhibit 14 says, "for CM," which is Carefree Living of America (Minnetonka), "in connection with its bankruptcy commenced by voluntary petition on March 19, 2001."
Q. So you simply wanted to reverse that transaction in light of that bankruptcy, is that right?

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A. Well, I know enough that you don't record a mortgage against an entity that's in bankruptcy.
Q. So the answer is "yes"?
A. Well, you have to rephrase the question. I don't remember your question. Can you ask it again?
Q. I think we'll move on.
A. Okay.
Q. I draw your attention to Exhibits 11 and 13, which are the two mortgages, 11 being the mortgage granted to the Jane L. Strom Trustee and 13 being a mortgage granted to the law firm.
MR. MITCHELL: Sorry. What am I looking at now?
MR. LEONARD: 11 and 13.
THE WITNESS: Okay.
BY MR. LEONARD
Q. Just looking at the first and second pages of those two documents, would you agree that the legal descriptions on each document appear to be identical?
A. Looks like it, yes.
Q. And would you agree that the legal description

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for the property in Hennepin County is on the second page of each document?
A. Yes.
Q. And that Hennepin County real estate is owned by Carefree Living of America (Minnetonka) Inc.?
A. Yes.
Q. All right. Now, did the Strom Trust issue and grant a release of the mortgage on the Minnetonka property at any time?
A. Not that I know of.
Q. Is there any particular reason why the law firm would release its mortgage but the Strom Trust would not?
A. Well, I don't know. I can't find it. I don't know when the Strom Trust mortgage was recorded in Hennepin County. March 16th.
Q. That's the same date that the law firm mortgage was recorded, wasn't it?
A. I don't know. Yeah.
Q. So my question is, once again: Do you have any knowledge as to why – or information or insight as to why the law firm issued a release of its mortgage but the Strom Trust did not?

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A. No, I don't.
Q. I'm going to show you a document, Mr. Hagberg – and I don't know if I'm going to put it in evidence or not, but we'll just see if you recognize that document which at the top says "Exhibit C," and it's entitled "Confession of Judgment." You may have more than one copy there, so I apologize. Have you seen this document before?
A. Yes.
Q. When did you see it?
A. I don't remember.
MR. LEONARD: I guess we will mark it.
(Hagberg Deposition Exhibit 16 marked for identification.)
BY MR. LEONARD
Q. Can you tell us when you first saw Exhibit 16?
A. Datewise, no, I can't.
Q. What was the occasion, if you recall, on which you first saw it?
A. I had, in Michael Mahoney's absence – he was gone and an issue came up with Cass Weil of Moss & Barnett about the Linda Selbak matter, and I don't remember, I think she was

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threatening or something. I don't remember exactly, but I had for a short time some discussions and involvement after this had been set out with Cass Weil.
Q. Now, when you say "set out," the date of the confession of judgment which is Exhibit 16 appears to be March 27, 1998, at least as signed by the makers, and is that the date to which you were referring?
A. Sometime after this was set out.
Q. After March 27, 1998?
A. Well, yeah, I assume so. That's – I notice there's a March 31st of '98 signature by Cass Weil.
Q. Do you know, would have been a number of weeks, months after that date?
A. I don't remember.
Q. What were your discussions with Mr. Weil about it? Was there some problem in the payments that were being made?
A. I don't have a specific recollection of what the issues were – issue or issues.
Q. Do you have a general recollection?
A. No, I don't. I just remember something about Linda Selbak being unhappy with something, but

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I don't remember what it was exactly.
Q. We can agree, can't we, that this confession of judgment is a confession of judgment by the defendants named in the caption, including the debtors, Minnesota Home Healthcare Inc. and Carefree Living of America (Minnetonka) in the amount of $3,837,600?
A. No.
Q. It's not?
A. I don't necessarily agree with that.
Q. Okay. What part of what I just said don't you agree with?
A. Well, I would have to look at the settlement agreement and those documents that it refers to.
Q. But doesn't the –
A. Because – to determine what might be owed in connection with that settlement agreement. I think that the dollar amount here – I don't remember. I don't see where it is right now.
Q. Why don't you look on page 2 in the second numbered paragraph.
A. Yes. I don't know that that sum – how much of that would be due at any particular time.
Q. Well, it says, "There is now due and owing on

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the account of the settlement agreement the following amount which shall hereinafter be referred to as the 'Judgment Debt,' $3,837,600," correct?
A. That's what it says, yes.
Q. Okay.
MR. MITCHELL: I object to the exhibit because it's incomplete in that there's a reference to a copy of a settlement agreement as being annexed hereto which is not included in the exhibit.
MR. LEONARD: Okay.
BY MR. LEONARD
Q. So you're saying you don't know one way or the other whether that dollar amount was actually owed under the settlement agreement?
A. Well, I have a vague recollection that the dollar amount that she was entitled to get was based upon some obligation of hers to do or not do something, and it seemed to me – my recollection is that if she either didn't do what she was supposed to do or did things she was not supposed to do, that there would be an issue as to how much of that $3,000,000 number

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that is in there might be payable at any particular time.
Q. What is your recollection as to what it was she was supposed to do or refrain from doing?
A. I don't remember, consulting or something like that. I don't remember exactly.
Q. Showing you a document that's called "Order For Default Judgment," I'll ask you if you've seen that document before.
A. I don't think so.
Q. You have no recollection of seeing it before?
A. No.
Q. Did you have any knowledge or understanding of the indebtedness that the defendants in this document owed Dwight Lindquist?
A. Did I have? I think I did have. Do I have today? I don't know. I don't remember.
MR. LEONARD: Let's mark that.
(Hagberg Deposition Exhibit 17 marked for identification.)
BY MR. LEONARD
Q. When do you think you had an understanding of the amount that the defendants named in Exhibit 17 owed the plaintiff?
A. Well, I don't know about the defendants. I

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just remember that – I have a recollection that the Selbak bankruptcy obtained a – or had a judgment against Kathleen Zeller. She's not named here, so I don't know if that's in connection with this or a separate deal.
Q. Is that the extent of your recollection of the amounts that the named defendants might have owed Dwight Lindquist?
A. Yeah. I don't know that. I don't know this.
(Hagberg Deposition Exhibit 18 marked for identification.)
BY MR. LEONARD
Q. Showing what's been marked as Exhibit 18, I ask that you take a look at it.
A. (Witness complies.)
Q. Do you recognize Exhibit 18?
A. Yes.
Q. And what do you recognize it to be?
A. A mortgage deed from various entities to Kathleen Zeller.
Q. Did you draft this deed?
A. No.
Q. You would agree, based on the information on the last page, that someone from Mahoney & Hagberg drafted the deed?

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A. Yes.
Q. What was the purpose of this document?
A. To secure – I believe to secure sums due her, but I don't know. Since I wasn't involved in setting it up, I can't say that of my own knowledge.
Q. Who was involved in setting it up?
A. I don't know.
Q. Is that your signature on the last page as the notary public?
A. Yes.
Q. Do you recall Kathleen Zeller signing this in your presence?
A. No.
Q. Do you recognize that as her signature?
A. Yes.
Q. Do you recognize her signature?
A. Yes.
Q. And how do you recognize her signature?
A. I've seen her signature.
Q. On what occasions have you seen her signature?
A. I couldn't enumerate the times that I have seen her signature. Many times.
Q. Generally speaking, what sorts of documents would have borne her signature that you would

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1 have observed?
2 A. Checks, corporate documents. She ran –
3 basically ran the companies that she and her
4 husband had that I represented years ago. So
5 given that long history, I've seen her
6 signature many times.
7 Q. Would you agree that the real estate reflected
8 on Exhibit 18 is the same real estate that was
9 the subject of the mortgages in favor of the
10 Strom Trust and the Mahoney & Hagberg law
11 firm?
12 A. It looks like it, yes.
13 Q. Now, at this time – let me be more precise.
14 This document is dated July 20, 2001, on the
15 front page, and that's the date of your
16 acknowledgment. At that time isn't it true
17 that discussions were had regarding a
18 bankruptcy filing for the debtors, within the
19 law firm?
20 A. I don't recall that.
21 Q. Do you recall any discussions within the law
22 firm of a bankruptcy filing for the debtors?
23 A. I recall that in the context of the receiver-
24 ship sought by First Union that that was –
25 bankruptcy was one of the options, one of the

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1 possible courses of action, but I don't know
2 that there was any decision made at this point
3 in time to file bankruptcy.
4 Q. Who were those discussions with?
5 A. I don't remember.
6 Q. Do you remember having those discussions with
7 members of the Mahoney & Hagberg law firm?
8 A. I don't remember.
9 Q. How about with Kate Zeller?
10 A. I don't remember.
11 Q. How about Vern Zeller?
12 A. I said I don't remember.
13 Q. Okay. So you know that they were had, but you
14 don't know with whom?
15 A. I have a general, vague, years-ago
16 recollection of that, yes.
17 Q. I'm going to show you a document, Mr. Hagberg,
18 that I'll have you look at first before we
19 decide whether we need to mark it. It's a
20 document that has Bates numbers on the bottom
21 from 50 to 67.
22 A. Okay.
23 Q. Would you agree that Exhibit – well, I
24 haven't marked it. Would you agree that this
25 document consists of copies of invoices sent

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1 to the debtors and copies of time records
2 maintained by Mahoney & Hagberg reflecting
3 services rendered the debtors?
4 A. Well, that's a compound question. As to the
5 first part, invoices sent to the debtors, I do
6 not know if this was an invoice sent to the
7 debtors.
8 Q. All right. Let's go to the next part of the
9 question. Would you agree that, starting with
10 Bates number 60 through 67, that those pages
11 reflect time records or a summary of time
12 records kept by various members of the Mahoney
13 & Hagberg law firm?
14 A. Yes.
15 Q. Turning your attention to document number
16 61 –
17 A. Yes.
18 Q. – does that page, in the middle, reflect a
19 summary of time records kept by you during
20 March of 2001 for the account of Carefree
21 Living of America (Brainerd) Inc.?
22 A. Well, I could only answer that if I could
23 reference my time sheets.
24 Q. I'm just asking if that's what it appears to
25 be to you.

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1 A. Well, yes, it appears to be.
2 Q. All right. And do you see your name on the
3 top left-hand corner of the document? It says,
4 "Primary Timekeeper: Steven V. Hagberg"?
5 A. Yes.
6 Q. Calling your attention to page 61 to an entry
7 dated March 8, 2001, do you see that?
8 A. Yes.
9 Q. And on the right-hand side in the narrative it
10 appears to say "conferences" and underneath
11 that it says "Conference with MGM re: reorg."
12 Do you see that?
13 A. Yes.
14 Q. Do you recall that time entry?
15 A. No.
16 Q. Do you have any reason to believe that that
17 document 61 does not accurately reflect the
18 time entries you made or recorded?
19 A. I don't know.
20 Q. No, do you have any reason to believe that it
21 does not?
22 A. I don't have any reason to believe either way.
23 Q. Do you recall what that conference with – I
24 think it's MCM – was all about?
25 A. No.

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Q. You used the word, assuming it's your words, "reorg" there, do you see that?
A. Yes.
Q. What was meant by your use of that word?
A. I don't know. It could be – it could be a corporate reorganization.
Q. For Carefree Living of –
A. It doesn't necessarily – you're trying to get it into the bankruptcy. It doesn't necessarily mean that. There's a lot of different corporate reorganization processes that don't involve bankruptcy.
Q. And do you recall which process you were referring to in this time entry?
A. No.
Q. Okay.
MR. LEONARD: I think we'll go ahead and mark it.
(Hagberg Deposition Exhibit 19 marked for identification.)
BY MR. LEONARD
Q. I'm going to show you a document, Mr. Hagberg, entitled "Stipulation and Order for the Appointment of a Receiver in the Dakota County District Court," and I'm just going to see if

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you recognize that or have ever seen it before today.
A. (Witness reviews document.) No.
Q. You've never seen it before today, to your recollection?
A. No.
MR. LEONARD: Okay. I don't have anything else, Mr. Hagberg.
(Off the record.)
MR. MITCHELL: We're going to read and sign.
(Whereupon, at 1:32 p.m., the foregoing deposition was terminated.)
**REPORTER'S NOTE - The original transcript is being delivered to Attorney Brian Leonard.

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STATE OF MINNESOTA)
COUNTY OF RAMSEY)

I hereby certify that I reported the deposition of Steven V. Hagberg on the 29th day of June, 2004, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth:

That the testimony was transcribed under my direction and is a true record of the testimony of the witness:

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies:

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel:

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality:

That the right to read and sign the deposition was reserved by the witness and is to be accomplished in accordance with the attached letter.

WITNESS MY HAND AND SEAL this 8th day of July, 2004.

Dale R. Neumann
Seal

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DEPOSITION CORRECTION SHEET

TITLE - Leonard vs. Strom, et al.
VENUE - Minnesota Bankruptcy Court ADV Case 02-9117
WITNESS - Steven V. Hagberg REPORTER - D. Neumann

Pg/Line:	Change	Reason (Rule 30.05)

Signature of Witness Date

1 *NEUMANN REPORTING AGENCY*
2 *1487 Summit Avenue*
St. Paul, MN 55105
(651) 645-7629
3
4 July 8, 2004
5
6 Mr. Ralph V. Mitchell
7 Lapp, Libra, Thomson, Stoebner & Pusch
8 120 South Sixth St., Suite 2500
9 Minneapolis, MN 55402
10 Re: Carefree Living Bankruptcy Matter
Deposition of Steven V. Hagberg
11 Dear Mr. Mitchell:
12 I have enclosed your copy of the above-referenced
13 deposition, along with the Deposition Correction
Sheet. Please have the witness read the transcript
14 and complete and sign the Deposition Correction Sheet
within 30 days of this letter or not later than the
15 hearing in this matter, whichever occurs first, and
then deliver it directly to Mr. Leonard, who has been
16 sent the original transcript.
17 Pursuant to Rule 30.05, if the read-and-sign procedure
is not timely completed, transcripts may be used fully
18 as if signed.
19 Thank you for your prompt cooperation.
20 Sincerely,
21 NEUMANN REPORTING AGENCY INC.
22
23 Dale R. Neumann
Professional Freelance Reporter
24 Encls.
25 cc: Brian F. Leonard, Esq.

Depo-Dex Concordance Report Prepared For Special Clients By Neumann Reporting Agency

- - -

UNIQUE WORDS: **1,366**
TOTAL OCCURRENCES: **5,661**
NOISE WORDS: **696**
TOTAL WORDS IN FILE: **22,132**

- - -

SINGLE FILE CONCORDANCE

- - -

CASE SENSITIVE

- - -

PHRASE WORD LIST(S): **PHRASE.PHS**

- - -

COVER PAGES = 2

- - -

INCLUDES ALL TEXT OCCURRENCES

- - -

DATES **ON**

- - -

INCLUDES PURE NUMBERS

- - -

POSSESSIVE FORMS **ON**

- - -

MAXIMUM TRACKED OCCURRENCE THRESHOLD: **50**

- - -

NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD: **9**

- - -

LIST OF THRESHOLD WORDS:

- - -

debtors
entities
Hagberg
I don't know
i don't remember
law
LEONARD
Mahoney
mortgage

– DATES –

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Hagberg Deposition Exhibits 1 - 19

Carefree Living of America, et al., Debtors

Brian F. Leonard, Trustee, Plaintiff,

vs.

Jane L. Strom Revocable Trust, et al., Defendants.

US Bankruptcy Court MN Case Nos. 01-33545, 01-33546, 01-33547

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October 30, 1998

Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, MN 55402

MAHONEY
DEPO. EXHIBIT
No. 1-A
Dtd. 4-29-04
Neumann Rptg. Agcy.

Gentlemen:

We have acted as counsel for Summa Management, Inc., a Delaware corporation ("Shareholder"), in connection with the execution and delivery the Shareholder to you of a certain Guaranty of even date ("Guaranty") and Pledge Agreement of even date ("Pledge") which Pledge is given to secure the payment by Carefree Living of America (Minnetonka), Inc., a Delaware corporation (the "Company"), of its outstanding obligation to you pursuant to its Promissory Note dated July 20, 1995, executed to your order in the principal sum of $4,136,000.00 ("Note") which Note is, among other things, secured by a Mortgage and Security Agreement and Fixture Financing Statement dated July 20, 1995, filed as Document No. 6454294, Office of the County Recorder, Benton County, Minnesota, as Document No. 483980, Office of the County Recorder, Crow Wing County, Minnesota, and as Document No. 1291033, Office of the County Recorder, Dakota County, Minnesota ("Mortgage").

In connection with the foregoing, we have reviewed and examined executed counterparts of the Guaranty and Pledge and the following ("Organizational Documents"):

a. the Certificate of Incorporation and By-Laws of the Shareholder as currently existing;
b. the Certificate of Good Standing of the Shareholder from the State of Delaware;
c. the records of the corporate proceedings taken by the Board of Directors and Shareholders of the Shareholder in connection with the Loan and the transactions contemplated thereby;

And have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as deemed necessary or appropriate for the purpose of this opinion.

We have not made or undertaken to make any investigation as to factual matters or as to the accuracy or completeness of any representation, warranty, data or any other information, whether

HAGBERG
DEPO. EXHIBIT
No. 1
Dtd. 6-29-04
Neumann Rptg. Agcy.

written or oral, that may have been made by or on behalf of the Shareholder and we may rely on certificates from the Shareholder as to factual assumptions for this opinion.

Based upon the foregoing, we are of the opinion that:

1. Each of the Guaranty and Pledge has been duly executed and delivered by the Shareholder and is the legal, valid and binding obligation of the Shareholder, enforceable in accordance with its terms, except as to enforcement of remedies, as may be limited by the bankruptcy or insolvency of the Shareholder or similar laws affecting generally the enforcement of creditor's remedies against the Shareholder.

2. The Shareholder is a corporation in good standing and organized under the laws of the State of Delaware and has all requisite power and authorization to execute and deliver the Guaranty and Pledge, and to conduct its affairs and to otherwise assume and perform the obligations on its part to be assumed and performed as contemplated by the Guaranty and Pledge and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

3. Neither the execution and delivery of the Guaranty and Pledge nor the performance of the provisions of the agreements therein on the part of the Shareholder will contravene, violate or cause a default under any law, Organizational Documents of Shareholder or any ordinance, governmental regulation, agreement or indenture to which the Shareholder is a party or by which they or any of Shareholder's properties are bound including specifically, Settlement Agreement dated March 26, 1998 by and among Summa Management, Inc., Minnesota Home Health Care, Inc., fka Carefree Living Home Health Agency, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Minnetonka), Inc. and Linda Marie Selbak, as amended by Amendment to Settlement Agreement between the Carefree Entities and Linda M. Selbak dated on or about November 3, 1998.

4. Except as otherwise previously disclosed to Miller Schroeder Investments Corporation, based on due inquiry there are no suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of our knowledge, threatened against the Shareholder or any of Shareholder properties, or both, nor has any judgment, decree or order been issued against the Shareholder or any of Shareholder's properties, or both, which would have a material adverse affect on the Guaranty, the shares pledged under the Pledge or the financial condition of Shareholder or such properties.

5. No consent, approval, order or authorization of or designation, registration, declaration, qualification or filing with any governmental or regulatory authority on the part of Shareholder is necessary or required by law as a prerequisite to the execution and delivery of the Guaranty and Pledge and the carrying out of the Transactions contemplated by or the enforcement of the remedies provided in the Guaranty and Pledge.

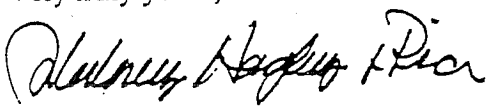
6. There is no litigation currently pending against or to our knowledge threatened against the Shareholder which in our legal judgment prohibits the execution and delivery of the Guaranty and Pledge and the guarantying of the Note or pledging of the shares pledged thereunder or the Shareholder's interest in such shares.

7. The Pledge Agreement creates a valid security interest in the Pledged Stock described therein which may be perfected by the delivery to and possession by you of the certificates evidencing the Pledged Stock. No filing of a Financing Statement is necessary to perfect your security interest in the Stock. Said security interest shall be a first and prior interest in the Stock described therein.

We are admitted to practice only in Minnesota and the foregoing opinions are limited to the laws of Minnesota and the corporate laws of Delaware.

This opinion letter may also be relied upon by Oppenheimer Wolff & Donnelly LLP and any participant with you in the Note. This opinion is governed by the legal opinion accord of the Business Section or Business Law of the American Bar Association. The General Qualifications, the Bankruptcy and Insolvency Exceptions, the Equitable Principles Limitations and other Common Qualifications apply to this opinion.

Very truly yours,



MAHONEY, HAGBERG & RICE
A Professional Association

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

October 30, 1998

Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, MN 55402

Gentlemen:

We have acted as counsel for Carefree Living of America (Brainerd), Inc., a Delaware corporation; Carefree Living of America (Burnsville), Inc., a Delaware corporation; and Carefree Living of America (St. Cloud), Inc., a Delaware corporation ("Companies") in connection with the execution and delivery by the Companies to you of a certain Cash Agreement dated of even date ("Cash Agreement") which Cash Agreement is given in connection with the partial release by you at the request of the Companies of certain properties of the Companies from a Mortgage and Security Agreement and Fixture Financing Statement dated July 20, 1995, filed as Document No. 6454294, Office of the County Recorder, Hennepin County, Minnesota, as Document No. 229853, Office of the County Recorder, Crow Wing County, Minnesota, and as Document No. 1291033, Office of the County Recorder, Dakota County, Minnesota ("Minnesota").

In connection with the foregoing, we have reviewed and examined executed counterparts of the Cash Agreement and the following ("Organizational Documents"):

a. the Articles of Incorporation and By-Laws of the Companies as currently existing;
b. the Certificate of Good Standing of the Companies from the State of Delaware.
c. The records of the corporate proceedings taken by the Board of Directors and Shareholders of the Companies in connection with the Loan and the transactions contemplated thereby;

and have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as deemed necessary or appropriate for the purpose of this opinion.

We have not made or undertaken to make any investigation as to factual matters or as to the accuracy of completeness of any representation, warranty, data or any other information, whether written or oral, that may have been made by or on behalf of our clients and we may rely on certification from our clients as to factual assumptions for this opinion.

Based upon the foregoing, we are of the opinion that:

1. The Cash Agreement has been duly executed and delivered by the Companies and is the legal, valid and binding obligation of each of the Companies, enforceable in accordance with its terms.

2. Each of the Companies is a corporation in good standing and organized under the laws of the State of Delaware and has all requisite power and authorization to enter into the Cash Agreement, and to conduct its affairs and to otherwise assume and perform the obligations on its part to be assumed and performed as contemplated by the Cash Agreement and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

3. Neither the execution and delivery of the Cash Agreement nor the performance of the provisions of the agreements therein contained on the part of the Companies, including the making of the "Payment" called for therein will contravene, violate or cause a default under any law, Organizational Documents of the Companies or any ordinance, governmental regulation, agreement or indenture to which the Companies is a party or by which they or any of the Companies' properties are bound including specifically the following:

a) Agreement dated March 26, 1998 by and among Summa Management, Inc., Minnesota Home Health Care, Inc., fka Carefree Living Home Health Agency, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Minnetonka), Inc. and Linda Marie Selbak as amended by Amendment to Settlement Agreement between the Carefree Entities and Linda M. Selbak dated November 3, , 1998

b) Settlement Agreement entered into as of March 17, 1998 by and among Carefree Living of America (Brainerd), Inc., and the limited partners of St. Cloud Manor, Ltd., Carefree Living of Burnsville, Ltd., and Brainerd Manor, Ltd., as amended by Court Order dated August 5, 1998.

c) The terms of any mortgage, loan agreement or lending arrangement between the Companies, individually, and First Union National Bank.

4. Except as otherwise disclosed to Miller Schroeder Investments Corporation based on due inquiry there are no suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of our knowledge, threatened against the Companies or any of Companies properties, or both, which would have a material adverse affect on the Premises or the financial condition of Companies or such properties.

5. No consent, approval, order or authorization of or designation, registration, declaration, qualification or filing with any governmental or regulatory authority on the part of the Companies is necessary or required by law as prerequisite to the execution and delivery of the Cash Agreement and the carrying out of the transactions contemplated by or provided in the Cash Agreement.

6. There is no litigation currently pending against the Companies which would in our legal judgment adversely affect the execution and delivery of the Cash Agreement and the payment of the cash payment called for therein.

We are admitted to practice only in Minnesota and the foregoing opinions are limited to the laws of Minnesota and the corporate laws Delaware.

This opinion letter may also be relied upon by Oppenheimer Wolff & Donnelly LLP and any participant with you in the loan made to Carefree Living of America (Minnetonka), Inc. by you and secured by the Mortgage. This opinion is governed by the legal opinion accord of the Business Section or Business Law of the American Bar Association. The General Qualification, the Bankruptcy and Insolvency Exceptions, the Equitable Principles Limitations and other Common Qualifications apply to this opinion.

Very truly yours,

Mahoney, Hagberg & Rice

MAHONEY, HAGBERG & RICE
A Professional Association

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

October 30, 1998

Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, MN 55402

Gentlemen:

We have acted as counsel for Kathleen L. Zeller ("Shareholder") in connection with the execution and delivery by the Shareholder to you of a certain Guaranty of even date ("Guaranty") and Pledge Agreement of even date ("Pledge") which Pledge is given to secure the payment by Carefree Living of America (Minnetonka), Inc., a Delaware corporation (the "Company") of its outstanding obligation to you pursuant to its Promissory Note dated July 20, 1995, executed to your order in the principal sum of $4,136,000.00 ("Note") which Note is among other things secured by a Mortgage and Security Agreement and Fixture Financing Statement dated July 20, 1995, filed as Document No. 6454294, Office of the County Recorder, Hennepin County, Minnesota, as Document No. 229853, Office of the County Recorder, Benton County, Minnesota, as Document No. 483980, Office of the County Recorder, Crow Wing County, Minnesota, and as Document No. 1291033, Office of the County Recorder, Dakota County, Minnesota ("Mortgage").

In connection with the foregoing, we have reviewed and examined executed counterparts of the Guaranty and Pledge and have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as deemed necessary or appropriate for the purpose of this opinion.

We have not made or undertaken to make any investigations as to factual matters or as to the accuracy of completeness of any representation, warranty, data or any other information, whether written or oral, that may have been made by or on behalf of our clients and we may rely on certificates from our clients as to factual assumptions for this opinion.

Based upon the foregoing, we are of the opinion that:

1. Each of the Guaranty and Pledge has been duly executed and delivered by the Shareholder and is the legal, valid and binding obligation of the Shareholder, enforceable in accordance with its terms, except as to enforcement of remedies, as

may be limited by the bankruptcy or insolvency of the Shareholder or similar laws affecting generally the enforcement of creditor's remedies against the Shareholder.

2. The Shareholder is an American citizen resident in the Principality of Andorra and is under no legal disability.

3. Neither the execution and delivery of the Guaranty and Pledge nor the performance of the provisions of the agreements therein contained on the part of the Shareholder will contravene, violate or cause a default under any law, or any ordinance, governmental regulation, agreement or indenture to which the Shareholder is a party or by which they or any of Shareholder's properties are bound.

4. Except as otherwise disclosed to Miller Schroeder Investments Corporation, based on due inquiry there are no suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of our knowledge, threatened against the Shareholder or any of Shareholder properties, or both, nor has nay judgment, decree or order been issued against the Shareholder or any of shareholder's properties, or both, which would have a material adverse affect on the Guaranty, the shares pledged under the Pledge or the financial condition of Shareholder or such properties.

5. No consent, approval, order or authorization of or designation, registration, declaration, qualification or filing with any governmental or regulatory authority on the part of Shareholder is necessary or required by law as a prerequisite to the execution and delivery of the Guaranty and Pledge and the carrying out of the transactions contemplated by or the enforcement of the remedies provided in the Guaranty and Pledge.

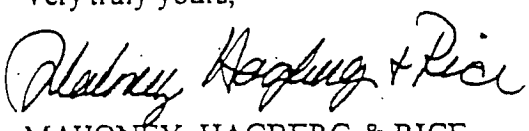
6. There is no litigation currently pending against or to our knowledge threatened against the Shareholder which in our legal judgment prohibits the execution and delivery of the Guaranty and Pledge and the guarantying of the Note or pledging of the shares pledged thereunder or the Shareholder's interest in such shares.

7. The Pledge Agreement creates a valid security interest in the Pledged Stock described therein which may be perfected by the delivery to and possession by you of the certificates evidencing the Pledged Stock. No filing of a Financing Statement is necessary to perfect your security interest in the Stock. Said security interest shall be a first and prior interest in the Stock described therein.

We are admitted to practice only in Minnesota and the foregoing opinions are limited to the laws of Minnesota and the corporate laws of Delaware. This opinion letter may also be relied upon by Oppenheimer Wolff & Donnelly LLP and any participant with you in the loan made to Carefree Living of America (Minnetonka), Inc. by you and secured by the Mortgage.

This opinion is governed by the legal opinion accord of the Business Section or Business Law of the American Bar Association. The General Qualifications, the Bankruptcy and Insolvency Exceptions, the Equitable Principles Limitations and other Common Qualifications apply to this opinion.

Very truly yours,



MAHONEY, HAGBERG & RICE,
A Professional Association

2 of 2

CLOSING TRANSCRIPT
Partial Paydown and Restructure
$11,332,000.00 Combined Mortgage Loan
Carefree Assisted Living Facilities
and
$975,000.00 Working Capital Loan

BORROWERS:

Carefree Living of America (Burnsville), Inc.	Tax ID No. 41-1813993
Carefree Living of America (St. Cloud), Inc.	Tax ID No. 41-1813994
Carefree Living of America (Minnetonka), Inc.	Tax ID No. 41-1813996
Carefree Living of America (Brainerd), Inc.	Tax ID No. 41-1813995
Carefree Home Health Agency, Inc.	Tax ID No. 41-1787850

BORROWER'S COUNSEL:
Michael Mahoney
Mahoney, Hagberg & Rice
109 Bushaway Road
Wayzata, Minnesota 55391
Tel.: 332-2226
Fax.: 332-8066

LENDER:
Miller & Schroeder Investments Corporation
300 Pillsbury Center
220 South Sixth Street
Minneapolis, Minnesota 55402
Attn: Jerome Tabolich
Tel.: 376-1421
Fax.: 376-1412

LENDER'S COUNSEL:
Donald P. Norwich
Oppenheimer Wolff & Donnelly LLP
3400 Plaza VII
45 South Seventh Street
Minneapolis, Minnesota 55402
Tel.: 607-7300
Fax.: 607/7100

DATE OF PAYDOWN: November 4, 1998

DOCUMENTS INCLUDED IN TRANSCRIPT

1. Guaranty of Summa Management, Inc.
2. Non Recourse Guaranty of Kate Zeller

HAGBERG
DEPO. EXHIBIT
No. 2
Dtd. 6-29-04
Neumann Rptg. Agcy.

MAHONEY
DEPO. EXHIBIT
No. 1-B
Dtd. 4-29-04
Neumann Rptg. Agcy.

7592/479

3. Pledge Documents of Summa Management, Inc. including

   a. Pledge Agreement

   b. Blank Endorsed Stock Powers with Original Share Certificates attached for Class A Non-Voting Common Stock of:
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

   c. Blank Endorsed Stock Powers with Original Share Certificates attached for Class B Voting Common Stock of:
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

   d. Stock Subscription Agreements
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

   e. Stock Purchase Notes
      i) Carefree Living of America (Brainerd), Inc.
      ii) Carefree Living of America (Burnsville), Inc.
      iii) Carefree Living of America (St. Cloud), Inc.

4. Pledge Documents of Kate Zeller including

   a. Pledge Agreement
   b. Blank Endorsed Stock Powers with Original Share Certificates of Summa Management, Inc.

5. Cash Agreement

6. UCC Financing Statements:

   a. Kate Zeller
   b. Summa Management, Inc.
      i) Minnesota
      ii) Delaware

7. Incumbency Certificate of Assistant Secretary of Summa Management, Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

8. Assistant Secretary's Certificate as to Stock Ledger of Summa Management, Inc.

9. Incumbency Certificate of Assistant Secretary of Carefree Living of America (Brainerd), Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

10. Assistant Secretary's Certificate as to Stock Ledger of Carefree Living of America (Brainerd), Inc.

11. Incumbency Certificate of Assistant Secretary of Carefree Living of America (Burnsville), Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

12. Assistant Secretary's Certificate as to Stock Ledger of Carefree Living of America (Burnsville), Inc.

13. Incumbency Certificate of Assistant Secretary of Carefree Living of America (St. Cloud), Inc. including:

   a. Certificates of Good Standing
   b. Articles of Incorporation
   c. By-Laws
   d. Resolutions

14. Assistant Secretary's Certificate as to Stock Ledger of Carefree Living of America (St. Cloud), Inc.

15. Opinion of Counsel for Summa Management, Inc.

16. Opinion of Counsel for Carefree Companies

17. Opinion of Counsel for Kate Zeller 1082↑

18. Partial Release Documents (First Mortgage Facility Loans): 2082↓

    a. Partial Release of Mortgage (Brainerd, Burnsville, St. Cloud Facilities)
    b. UCC-3 Termination Statements (Minnesota and Delaware)
        i) Brainerd Facility
        ii) Burnsville Facility
        iii) St. Cloud Facility

19. Satisfaction Documents (Carefree Home Health Agency Working Capital Loan):

    a. Satisfaction of Second Mortgage and Assignment of Rents (Brainerd, Burnsville, St. Cloud Facilities)
    b. UCC-3 Terminations (Minnesota and Delaware)
        i) Brainerd Facility
        ii) Burnsville Facility
        iii) St. Cloud Facility
    c. UCC-3 Terminations (Wilnard Selbak) (Secretary of State of Minnesota and Hennepin County Recorder)
    d. UCC-3 Termination Carefree Home Health Agency, Inc.

20. Limited Partnership Settlement Documents:

    a. Original Settlement Agreement
    b. Order of Court
    c. Escrow Agreement

21. Linda Selbak Settlement Documents

    a. Original Settlement Agreement
    b. Amendment to Settlement Agreement
    c. Agreement Regarding Interests in Collateral

22. Approval Letter of Title Insurer

23. UCC Searches

24. Release of Professional Management Pledge

    a. Release and Satisfaction
    b. UCC-3 Termination

25. Union Bank Settlement Statement

26. Payoff Statement

27. Approved Pro Forma Cash Flow Summary

28. Approved Sources & Uses

29. Letter Reinstating Escrows

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MN 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

April 30, 1999

Larson Allen Weishair & Co., LLP
Suite 1000
220 South Sixth Street
Minneapolis, Minnesota 55402-4505

Attention: Chad D. Kunze, C.P.A.

Re: Carefree Living of America (Brainerd), Inc.
Carefree Living of America (Burnsville), Inc.
Carefree Living of America (St. Cloud), Inc.
1998 Audit

HAGBERG DEPO. EXHIBIT No. 3 Dtd. 6-29-04 Neumann Rptg. Agcy.

Dear Mr. Kunze:

Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., and Carefree Living of America (St. Cloud), Inc., Delaware corporations (collectively referred to as the "Companies"), have requested that we furnish you with certain information in connection with the preparation and audit of financial statements of the Companies as to matters that existed as of December 31, 1998 and during the period from that date to April 28, 1999 which is the effective date of our response. Our response is further limited to those express matters identified in the Companies' letter to us to furnish this response.

While this firm represents the Companies on a regular basis, our engagement has been limited to specific matters about which we were consulted by the Companies. Attached to Companies' letter was a list of certain matters which might constitute loss contingencies. However, subject to the foregoing and to the last paragraph of this letter, we advise you that from January 1, 1998 to December 31, 1998, and to the effective date of our response, we have not been engaged to give substantive attention to, or represent the Companies in connection with, those contingencies set forth on such list, nor any other loss contingencies coming within the scope of Clause (a) of paragraph 5 of the Statement of Policy referred to in the last paragraph of this letter, except as to the following matters:

MAHONEY DEPO. EXHIBIT No. A-C Dtd. 4-28-04 Neumann Rptg. Agcy.

— See Notes following each case identified. No additional Contingencies unknown to us were identified.
CDK 5/10/99

Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; and Carefree Living of America (Brainerd), Inc., all Delaware corporations v. Linda Marie Selbak and Linda Marie Selbak v. Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; and Carefree Living of America (Brainerd), Inc., all Delaware corporations and Linda Marie Selbak v. Wilnard L. Selbak; Kathleen Zeller and Vern Zeller, III; John Doe and Mary Roe; and John Doe Corporation; whose names are unknown to the parties
United States District Court (District of Minnesota) Court File No. 97-902 PAM/JGL

In April of 1997, Plaintiffs, Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation, Carefree Living of America (Minnetonka), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Brainerd), Inc., all Delaware corporations ("Plaintiffs") filed a Complaint in the United States District Court District of Minnesota against Defendant, Linda Marie Selbak ("Defendant") seeking judgment in excess of $75,000. In May of 1997, Defendant filed her Answer, Counterclaim and Third Party Complaint. Defendant's Counterclaim against Plaintiffs included claims for intentional infliction of emotional distress, abuse of process, and conspiracy to defraud and claimed damages in excess of $75,000. Defendant's Third Party Complaints against Wilnard L. Selbak, Kathleen Zeller, and Vern Zeller, III (collectively referred to as "Third Party Defendants") each claimed intentional infliction of emotional distress and each claimed damages in excess of $75,000. Defendant subsequently filed an Amended Answer, Counterclaim and Third Party Complaint. In March of 1998, the Plaintiffs and Defendant entered into a settlement agreement, which was amended in November of 1998 and all Complaints and Counterclaims have been dismissed pursuant to such settlement agreement.

Already Disclosed in FIS

Helterhoff's Inc. Profit Sharing Trust v. Will Selbak and Carefree Living of America (St. Cloud) Inc., Carefree Living of America (Burnsville) Inc., Carefree Living of America (Brainerd) Inc., Carefree Living of America (Minnetonka) Inc., Summa Management Inc.
Hennepin County Court File No. FJ 96-003179

Lakeland High School Scholarship Fund Inc. v. Will Selbak and Carefree Living of America (St. Cloud) Inc., Carefree Living of America (Burnsville) Inc., Carefree Living of America (Brainerd) Inc., Carefree Living of America (Minnetonka) Inc., Summa Management Inc.
Hennepin County Court File No. FJ 96-003137

Save More Food Markets Inc., Profit Sharing Trust v. Will Selbak and Carefree Living of America (St. Cloud) Inc., Carefree Living of America (Burnsville) Inc., Carefree Living of America (Brainerd) Inc., Carefree Living of America (Minnetonka) Inc., Summa Management Inc.
Hennepin County Court File No. FJ 96-003138

In 1995, Plaintiffs/Judgment Creditors, Helterhoff's Inc. Profit Sharing Trust, Lakeland High School Scholarship Fund Inc. and Save More Food Markets Inc. Profit Sharing Trust (hereinafter collectively referred to as "Plaintiffs"), secured a default judgment against Will Selbak ("Defendant"). In 1997, Plaintiffs served third-party levies upon Third Parties, Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (Minnetonka), Inc. and Summa Management, Inc. (hereinafter collectively referred to as "Third Parties"). On January 26, 1998, Plaintiffs served a motion for leave of Court to file a supplementary complaint against Third Parties claiming that the Third Parties made false statements on the third-party levy disclosures submitted by Third Parties. The Court granted this motion and allowed Plaintiffs to commence an action against Third Parties. Subsequently, the court granted the Plaintiff/Judgment Creditors' motion to seek leave to file a supplemental complaint. The Plaintiff/Judgment Creditors then served a supplemental complaint on the Third-Parties seeking approximately $130,000 in damages arising out of the Third-Parties alleged failure to disclose or remit property of the Defendant. The Third Parties, rather than answering, filed a motion to dismiss the supplemental complaint for failure to state a claim upon which relief can be granted. That motion is now pending before the court. Given the preliminary nature of this matter, the likelihood of an unfavorable outcome to the Third Parties, including the Companies, and the costs to the Third Parties, including the Companies, cannot be evaluated at this time with any reasonable degree of certainty.

Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; and Carefree Living of America (Brainerd), Inc., all Delaware corporations v. Emeritus Corporation, a Washington corporation, and Linda Marie Selbak
United States District Court (District of Minnesota) Court File No. 4-96-1239

In October of 1996 Minnesota Home Health Care, Inc., a Minnesota corporation, f/k/a Carefree Living Home Health Agency, Inc., a Minnesota corporation, Carefree Living of America (Minnetonka), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Brainerd), Inc., all Delaware corporations (hereinafter collectively referred to as the "Carefree Entities") brought an action in the United States District Court for the District of Minnesota against Emeritus Corporation ("Emeritus") for breach of contract and related claims. The

Carefree Entities sought to recover the $21,000,000 allegedly lost as a result of the claimed breach of contract by Emeritus to purchase the assets of the Carefree Entities.

Emeritus claimed that the Carefree Entities breached the agreement and answered in November of 1996. In June of 1997, the Carefree Entities served and filed an Amended Complaint against Defendant Emeritus and Defendant, Linda Marie Selbak. The Amended Complaint alleged breach of agreements, tortuous interference with prospective business advantage and tortuous interference with contractual relations. The Carefree Entities sought damages for Emeritus' wrongful termination of the agreements. Emeritus claimed that its termination was valid and that the Carefree Entities are not entitled to any damages or, in the alternative, that the Carefree Entities damages were limited to the purchase agreements' liquidated damages provisions. Subject to completion of outstanding discovery of third persons, the Carefree Entities and Linda Selbak have settled their disputes with each other and agreed to dismiss their suits against each other. Emeritus has moved the Court for entry of summary judgment, but has delayed the hearing pending completion of the settlement process.

SALY disclosures included in F/S

<u>David J. Broberg and Mary Lee Bradley v. Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Burnsville), Inc.</u>
Hennepin County Court File No. 31-C1-96-1076

On June 10, 1997, the parties to this lawsuit entered into a Stipulation and Settlement Agreement. That Stipulation and Settlement Agreement was secured by a Confession of Judgment by Defendants in favor of Plaintiffs in the amount of $388,000 in the event of a default. In February 13, 1998, the Hennepin County District Court entered and docketed judgment in the amount of $388,000 against Defendants and in favor of Plaintiffs, pursuant to this Confession of Judgment. On March 11, 1998, the Benton County District Court docketed the $388,000 Hennepin County judgment. In November of 1998, as a result of settlement discussions, the Plaintiffs were paid $327,679.68 to provide Defendants with a Satisfaction of Judgment.

Remaining amount in excess of 327,000 PL and refinancing still shown as LT Debt.

It is our understanding that you have previously been provided with those stock transfer and related agreements entered into 1998 and up to the effective date of this letter, for which we were engaged to give substantive attention or to represent the Companies.

As of December 31, 1998, the Carefree Living of America (Brainerd), Inc., was indebted to us for services and expenses (billed and unbilled) in the aggregate amount of $117,486.57. During the year of 1998, we billed Carefree Living of America (Brainerd), Inc., $275,067.74 for fees and $1,935.95 for expenses for a total sum billed in 1998 of $277,003.69.

Agreed all Payable amounts to each entity and recorded any difference as additional Payables.

As of December 31, 1998, the Carefree Living of America (Burnsville), Inc., was indebted to us for services and expenses (billed and unbilled) in the aggregate amount of

$39,308.77. During the year of 1998, we billed Carefree Living of America (Burnsville), Inc., $180,845.36 for fees and $2,372.74 for expenses for a total sum billed in 1998 of $188,218.10.

As of December 31, 1998, the Carefree Living of America (St. Cloud), Inc., was indebted to us for services and expenses (billed and unbilled) in the aggregate amount of $92,926.86. During the year of 1998, we billed Carefree Living of America (St. Cloud), Inc., $181,574.58 for fees and $6,376.83 for expenses for a total sum billed in 1998 of $187,951.41.

The information set forth above is as of the effective date of our response, and we disclaim any undertaking to advise you of changes which hereafter may be brought to our attention. This response is limited by, and prepared in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975). Without limiting the scope of the foregoing, the limitations set forth in the Statement of Policy on the extent and use of this response (paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein as to any "loss contingencies" is qualified in its entirety by paragraph 5 of the Statement of Policy, and the accompanying Commentary, which is an integral part of the Statement. Consistent with the last sentence of paragraph 6 of the ABA Statement of Policy, and pursuant to the Companies' request, this will confirm as correct the Companies' understanding as set forth in its audit inquiry letter to us that whenever, in the course of performing legal services for the Companies, and with respect to a matter recognized as involving an unasserted possible claim or assessment that may call for financial statement disclosure, we have formed a professional conclusion that the Companies must disclose or consider disclosure concerning such a possible claim or assessment. Further, as a matter of professional responsibility to the Company, we will so advise the Company and will consult with the Companies concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5.

Very truly yours,

Mahoney, Hagberg & Rice,
A Professional Association

MAHONEY, HAGBERG & RICE,
A PROFESSIONAL ASSOCIATION

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

FAXED 5/12/99

TELECOPY COVER SHEET

TO: Kate Zeller

FAX NUMBER: 912-0131 PHONE NUMBER:

FROM: Gina L. Miller

DATE: May 12, 1999 FILE NUMBER: 4600.011

NUMBER OF PAGES INCLUDING COVER PAGE: 16

MESSAGE:

DOCUMENTS ACCOMPANYING THIS MESSAGE:

1. Comments from Michael Mahoney.

MAHONEY
DEPO. EXHIBIT
No. 2
Dtd. 4-29-04
Neumann Rptg. Agcy.

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EXHIBIT
tabbies
433

TRANSMISSION VERIFICATION REPORT

TIME : 05/12/1999 11:31
NAME : MAHONEY HAGBERG RICE
FAX : 6123328066
TEL : 6123322226

DATE,TIME	05/12 11:25
FAX NO./NAME	9120131
DURATION	00:06:07
PAGE(S)	16
RESULT	OK
MODE	STANDARD ECM

MAHONEY, HAGBERG & RICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
WAYZATA, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

FAXED 5/12/99

TELECOPY COVER SHEET

TO: Victoria

FAX NUMBER: 376-4820 PHONE NUMBER:

FROM: Gina L. Miller

DATE: May 12, 1999 FILE NUMBER: 4600.011

NUMBER OF PAGES INCLUDING COVER PAGE: 16

MESSAGE:

DOCUMENTS ACCOMPANYING THIS MESSAGE:

1. Comments from Michael Mahoney.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

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TRANSMISSION VERIFICATION REPORT

TIME : 05/12/1999 10:21
NAME : MAHONEY HAGBERG RICE
FAX : 6123328066
TEL : 6123322226

DATE,TIME	05/12 10:09
FAX NO./NAME	3764820
DURATION	00:12:04
PAGE(S)	16
RESULT	OK
MODE	FINE ECM

INDEPENDENT AUDITOR'S REPORT

Board of Directors and Stockholders
Carefree Living of America, Inc.
Minnetonka, Minnesota

(collectively the "Corporations")

We have audited the accompanying combined balance sheet of Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (St. Cloud), Inc. as of December 31, 1998, and the related statements of stockholders' equity, operations, and cash flows for the year then ended. The financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to the Corporations' above present fairly, in all material respects, the financial position of ~~Carefree Living of America, Inc.~~ as of December 31, 1998, and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

~~The accompanying financial statements have been prepared assuming that the Corporations will~~ continue as a going concern. As described more fully in Note 9 to the financial statements, the Corporations incurred a net loss before extraordinary items of $3,284,689 during the year ended December 31, 1998, and, as of that date, had a working capital deficiency of $543,098 and a deficit of $5,851,348. These conditions raise substantial doubt about the Corporations' ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

LARSON, ALLEN, WEINZIRL & CO., LLP

Minneapolis, Minnesota
March 29, 1999

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
COMBINED STATEMENT OF STOCKHOLDERS' EQUITY
FOR THE YEAR ENDED DECEMBER 31, 1998

	Capital Stock	Additional Paid-In Capital	Deficit	Stock Subscriptions Receivable	Total
BALANCE, JANUARY 1, 1998	$ 300	$ 4,777,265	$ (863,647)	$(4,529,865)	$ (615,947)
Net Loss	-	-	(2,662,559)	-	(2,662,559)
Issuance of Preferred Stock	219	2,194,301	-	-	2,194,520
Issuance of Special Preferred Stock	28	-	-	-	28
Contributed Capital to Affiliate	-	-	(2,394,260)	-	(2,394,260)
Contributed Capital from Affiliate	-	-	74,701	-	74,701
Dividends Paid	-	-	(5,583)	-	(5,583)
Subscriptions Redeemed	-	-	-	205,934	205,934
BALANCE, DECEMBER 31, 1998	$ 547	$ 6,971,566	$(5,851,348)	$(4,323,931)	$(3,203,168)

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

I don't like the idea of a contribution. Looks like Summit has made gift with no recognition. What can Summit get back? What choices available?

See accompanying Notes to Combined Financial Statements.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
COMBINED STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED DECEMBER 31, 1998

CASH FLOWS FROM OPERATING ACTIVITIES	
Cash Received from Services	$ 4,198,766
Cash Paid to Suppliers and Employees	(3,595,870)
Interest Paid	(529,973)
Net Cash Provided by Operating Activities	$ 72,923
CASH FLOWS FROM INVESTING ACTIVITIES	
Purchases of Property and Equipment	$ (23,589)
Payments of Other Assets from Escrows	17,700
Net Deposits into Escrows	(34,620)
Net Cash Used by Investing Activities	$ (40,509)
CASH FLOWS FROM FINANCING ACTIVITIES	
Principal Payments on Long-Term Debt	$ (36,281)
Financing Costs Incurred for Refinancing of Debt	(82,000)
Net Proceeds from Refinancing of Debt	2,394,260
? Capital Contributed to Affiliate	(2,394,260)
Dividends Paid	(5,583)
Net Proceeds from Issuance of Capital Stock	205,934
Net Cash Provided by Financing Activities	$ 82,070
INCREASE IN CASH	$ 114,484
Cash - Beginning	78,838
CASH - ENDING	$ 193,322

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

What @ write-off debt

See accompanying Notes to Combined Financial Statements.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
COMBINED STATEMENT OF CASH FLOWS (CONTINUED)
FOR THE YEAR ENDED DECEMBER 31, 1998

NET CASH PROVIDED BY OPERATING ACTIVITIES	
Net Loss after Extraordinary Items	$ (2,662,559)
Depreciation and Amortization	450,895
Write-off of Intercompany Receivables	2,061,670
Forgiveness of Debt	(622,130)
Real Estate Taxes Paid from Debt Proceeds	224,923
Payment of Settlements from Debt Proceeds	413,200
Payment of Accounts Payable from Debt Proceeds	59,000
Interest Paid from Debt Proceeds	473,354
Accrued Interest Paid from Debt Proceeds	32,710
(Increase) Decrease in Current Assets:	
Accounts Receivable	520
Other Current Assets	(650,489)
Increase (Decrease) in Current Liabilities:	
Accounts Payable	275,475
Accrued Expenses	16,354
Net Cash Provided by Operating Activities	$ 72,923

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

NONCASH TRANSACTIONS	
Mortgage Notes ~~Issuance of Bonds~~	$ 11,316,000
Escrow Funds received from Refinancing	21,831
Less:	
Refinancing Costs Incurred	(510,425)
Repayment of Refinanced Debt and Interest	(7,321,140)
Payments of Accounts Payable with Debt Proceeds	(59,000)
Repayment of Other Liabilities with Debt Proceeds	(537,680)
Property Taxes Paid with Debt Proceeds	(336,485)
Establishment of Escrows	(105,641)
Interest Prepaid with Debt Proceeds	(73,200)
Total Net Proceeds from Refinancing of Debt	$ 2,394,260
Capital Contributed from Affiliate	$ 74,701

Schedule
Consol Pr. + 7. — PK
Sal

See accompanying Notes to Combined Financial Statements.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization and Operations

The accounts and records of the following entities comprise the combined balance sheet. The majority of these Corporations' outstanding common stock is owned by Summa Management, Inc. ~~who~~ which also acts as management agent.

Carefree Living of America (Brainerd), Inc.

Carefree Living of America (Brainerd), Inc. owns and operates a 70-bed assisted living facility in Brainerd, Minnesota.

Carefree Living of America (Burnsville), Inc.

Carefree Living of America (Burnsville), Inc. owns and operates a 95-bed assisted living facility in Burnsville, Minnesota.

Carefree Living of America (St. Cloud), Inc.

Carefree Living of America (St. Cloud), Inc. owns and operates a 70-bed assisted living facility in St. Cloud, Minnesota.

All intercompany transactions and balances have been eliminated in combination.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Use of Estimates

The preparation of the combined financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenue and expense during the reporting period. Actual results could differ from those estimates.

Cash

The Corporations place temporary cash investments with financial institutions. At times such investments may be in excess of the FDIC insurance limit.

Accounts Receivable

The Corporations account for uncollectible accounts by the reserve method. As of December 31, 1998, there was no allowance for doubtful accounts deemed necessary.

Inventories

Inventories are stated at cost and consist of food, kitchen and maintenance supplies recorded on a first-in, first-out basis.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Assets Whose Use is Limited

Assets whose use is limited include assets held by trustees under indenture agreements.

Depreciation

Property and equipment are depreciated over their estimated useful lives by the straight-line method of depreciation.

Unamortized Financing Costs

Financing costs associated with the ~~mortgage payables~~ refinancing First Union National Bank are being amortized over the term of the mortgages.

Income Taxes

The Corporations follow the provisions of FASB Statement No. 109, *Accounting for Income Taxes*, which requires the asset and liability method of accounting for income taxes. A deferred tax asset or liability is recognized for the estimated future tax effects attributable to temporary differences and operating loss and tax credit carryforwards. Temporary differences are differences between the tax basis of assets and liabilities and their reported amounts in the financial statements. A valuation allowance is provided to the extent deferred tax assets may not be realized. There is no provision for current or deferred taxes as of December 31, 1998.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Resident Services Revenue

Resident services revenue includes room charges and ancillary services to residents. Resident care revenue is recorded at established billing rates net of contractual adjustments resulting from agreements with third-party payors.

Unearned Resident Rent

Unearned resident rent comprises rent payments received in advance from residents but unearned as of December 31, 1998.

NOTE 2 RELATED PARTY TRANSACTIONS

The Corporations paid $457,872 for management, accounting, and administrative services to Summa Management, Inc. (Summa), a related corporation, during the year ended December 31, 1998.

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 2 RELATED PARTY TRANSACTIONS (CONTINUED)

As a ~~financing requirement of~~ condition imposed by First Union National Bank, all intercompany receivables and payables between affiliated entities were written-off in September 1998. The write-offs amounted to $2,061,670 as of December 31, 1998.

~~As discussed in Note 6, the Corporations received contributed capital from Summa Management, Inc. of $74,701 during 1998.~~

As discussed in Note 5, proceeds received from the First Union refinancing in excess of the original obligations were distributed to Summa. The distribution amounted to $2,394,260. Summa utilized the distributed funds to make a partial paydown and refinance of the debt and other obligations of two additional affiliates, Carefree Living of America (Minnetonka), Inc. and Minnesota Home Health Care, Inc. F/K/A Carefree Living Home Health Agency, Inc. (Home Health).

The Corporations lease office space to Home Health on a month-to-month basis. For the period ended December 31, 1998, the Corporations ~~received $53,900 from Home~~ Health for rent.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

NOTE 3 ASSETS WHOSE USE IS LIMITED

Assets whose use is limited that are available for obligations classified as current liabilities are reported as current assets.

Escrow - Asset Replacement - In connection with the First Union refinancing ~~According to indenture agreements~~, an escrow fund is required to be established for replacement of furnishings, fixtures and equipment. Monthly deposits are required to be made by the Corporations to fund this account. As of December 31, 1998, $3,916 was held in escrow.

Escrow - Real Estate Taxes - ~~According to indenture agreements,~~ an escrow fund is required to be established for payment of semi-annual real estate tax payments. Monthly deposits are required to be made by the Corporations to fund this account. As of December 31, 1998, $37,375 was held in escrow.

Escrow - Insurance – ~~According to indenture agreements~~, an escrow fund is required to be established for payment of insurance premiums. As of December 31, 1998, $33,335 was held in escrow.

The escrow funds are held by a trustee in money market accounts in which the costs of the investments equal the fair market value.

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 4 LONG-TERM DEBT

The following is a summary of the Corporation's long-term debt at December 31, 1998:

Description	Security	Amount
Mortgage Payable (Brainerd) - First Union National Bank, 8.625% Interest, Due December 1, 2005	See (1) on Page 12	$ 2,631,412
Mortgage Payable (Burnsville) - First Union National Bank, 8.625% Interest, Due December 1, 2005	See (1) on Page 12	5,618,430
Mortgage Payable (St. Cloud) - First Union National Bank, 8.625% Interest, Due December 1, 2005	See (1) on Page 12	3,058,128
Note Payable (Brainerd) - David J. Broberg and Mary Lee Bradley, 10% Interest, Due June 15, 2002	Real and Personal Property	26,034
Note Payable (St. Cloud) - David J. Broberg and Mary Lee Bradley, 10% Interest, Due June 15, 2002	Real and Personal Property	26,034
Note Payable (Burnsville) - David J. Broberg and Mary Lee Bradley, 10% Interest, Due June 15, 2002	Real and Personal Property	26,034
Long-Term Liaibility (Brainerd) - Limited Partners, Non-Interest Bearing, Due March 2003	Guaranteed by Summa	165,057
Long-Term Liability (St. Cloud) - Limited Partners, Non-Interest Bearing, Due March 2003	Guaranteed by Summa	165,158
Long-Term Liability (Burnsville) - Limited Partners, Non-Interest Bearing, Due March 2003	Guaranteed by Summa	190,785
Total Long-Term Debt		$ 11,911,072
Less: Current Maturities		144,216
Net Long-Term Debt		$ 11,766,856

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 4 LONG-TERM DEBT (CONTINUED)

(1) On November 4, 1998, the Corporations ~~received~~ borrowed $11,316,000 ~~of financing in the form of~~ pursuant to a loan agreement ~~and note~~ a mortgage payable to First Union National Bank. ~~The financing was used to refinance existing debt, paydown existing debt, pay settlement agreements to creditors, pay for delinquent taxes, and provide capital to affiliates for them to paydown their debts.~~ The mortgage bears interest at 8.625% and is due December 1, 2008. The mortgage is secured by the real and personal property and rents of the Corporations. In addition, Summa and its owner have guaranteed the debt.

Maturity requirements on long-term debt are as follows:

Year Ending December 31,	Amount
1999	$ 144,216
2000	161,620
2001	176,790
2002	172,929
2003	168,448
Later Years	11,047,069
Total	$ 11,911,072

TENTATIVE STATEMENTS FOR DISCUSSION PURPOSES ONLY SUBJECT TO REVISION

The provisions of the mortgage and loan agreements contain restrictive covenants pertaining to financial and operational requirements of the Corporation.

NOTE 5 CAPITAL STOCK

Capital stock consisted of the following common stock shares at December 31, 1998:

	Authorized	Issued and Outstanding
Carefree Living of America (Brainerd), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	6,941
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	892	892
Class A Non-Voting Common Stock ($.01 Par)	9,000	9,000
Class B Voting Common Stock ($.01 Par)	1,000	1,000
Total	110,892	17,833

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 5 CAPITAL STOCK (CONTINUED)

	Authorized	Issued and Outstanding
Carefree Living of America (Burnsville), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	7,976
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	946	946
Class A Non-Voting Common Stock ($.01 Par)	9,000	9,000
Class B Voting Common Stock ($.01 Par)	1,000	1,000
Total	110,946	18,922
Carefree Living of America (St. Cloud), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	7,028
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	895	895
Class A Non-Voting Common Stock ($.01 Par)	9,000	9,000
Class B Voting Common Stock ($.01 Par)	1,000	1,000
Total	110,895	17,923
Total Combined Capital Stock	332,733	54,678

During 1998, the Corporations' Board of Directors authorized and issued two new classifications of preferred stock. ~~These new classifications of stock resulted from settlement agreements with creditors.~~

Preferred Stock issued and outstanding

The preferred stock of the Corporations is a variable rate, non-voting convertible preferred stock with a par value of $.01 and a stated value of $100. Holders of this stock have priority over all other classifications of stock related to liquidation rights and dividends. A required monthly cumulative dividend is to be paid at rates varying from 3% to 20% during the first five years after issuance. The Corporations may redeem the preferred stock at the stated value plus all cumulative unpaid dividends and a premium specified by agreement. Holders of preferred stock shares may convert their preferred shares into fractions of either non-voting common stock or voting common stock based on conversion ratios specified by agreement.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 5 CAPITAL STOCK (CONTINUED)

	Authorized	Issued and Outstanding
Carefree Living of America (Burnsville), Inc.		
Variable Rate, Non-Voting Convertible Preferred Stock ($.01 Par)	100,000	7,976
Variable Rate, Non-Voting Convertible Special Preferred Stock ($.01 Par)	946	946
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Total Combined Capital Stock	332,733	54,678

During 1998, the Corporations' Board of Directors authorized and issued two new classifications of preferred stock. ~~These new classifications of stock resulted from settlement agreements with creditors.~~

Preferred Stock

The preferred stock of the Corporations is a variable rate, non-voting convertible preferred stock with a par value of $.01 and a stated value of $100. Holders of this stock have priority over all other classifications of stock related to liquidation rights and dividends. A required monthly cumulative dividend is to be paid at rates varying from 3% to 20% during the first five years after issuance. The Corporations may redeem the preferred stock at the stated value plus all cumulative unpaid dividends and a premium specified by agreement. Holders of preferred stock shares may convert their preferred shares into fractions of either non-voting common stock or voting common stock based on conversion ratios specified by agreement.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 5 CAPITAL STOCK (CONTINUED)

Special Preferred Stock

The special preferred stock of the Corporations is a variable rate, non-voting convertible preferred stock with a par value of $.01. Holders of this stock have secondary priority related to liquidation rights. The stock is convertible to common voting stock upon default of covenants specified by the agreement. Upon liquidation the holders shall receive in aggregate, five percent of all amounts distributed to shareholders of any classification of stock.

Common Stock

Two classifications of $.01 par value common stock exist. Each classification has identical rights except for voting. Class A shareholders have no voting rights. Class B shareholders have voting rights equal to one vote for each share held.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

NOTE 6 STOCK SUBSCRIPTIONS RECEIVABLE

~~During~~ In 1997, Summa Management, Inc. purchased eighty (80%) of the then to be outstanding shares of common stock from the Corporations for cash and notes totaling $4,674,000. The notes bear interest at 8% and are collateralized by the stock issued. Principal and interest are due in monthly payments through the year 2007. For the year ended December 31, 1998, $205,934 ~~of these stock subscriptions were redeemed.~~ was paid under the subscription ~~notes~~ agreement by Summa to the Corporations.

but not yet paid for

NOTE 7 INCOME TAXES

The Corporations file federal and state tax returns as part of a consolidated group.. As of December 31, 1998, the total group has available approximately $7,200,000 of unused operating loss carryforwards that may be applied against future taxable income and that expire in various years from 1999 to 2013.

Corporate income taxes have been allocated on a separate return basis. Net operating losses related to these Corporations were approximately $2,900,000 at December 31, 1998. A valuation allowance of $1,160,000 has been recorded as of December 31, 1998, including an increase of $1,084,000 in the allowance during the year, to totally offset the deferred tax benefit related to these loss carryforwards.

NOTE 8 CONTINGENT LIABILITIES

Litigation

The Corporations are third party defendants ~~as third parties~~ in connection with a judgment obtained against the founder of the Corporations. Plaintiffs are seeking to file a supplementary complaint against the Corporations claiming the Corporations made false statements on

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

disclosures. The matter was stayed pending resolution of the founder's bankruptcy proceedings. ~~Management cannot currently determine the outcome of this suit.~~ Stet

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Fix.

Probably move Notes to start on p. 15, not 14. Thanks.

Stet

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 8 CONTINGENT LIABILITIES (CONTINUED)

Litigation (Continued)

The Corporations were named as defendants in a lawsuit claiming breach of contract related to the sale of the businesses owned by the Corporations. The Corporations had simultaneously filed a lawsuit against the plaintiff alleging wrongful termination of the contract. ~~Management believes the plaintiffs are seeking the return of $100,000 of earnest money~~. Management ~~cannot currently determine the outcome of the suit.~~ believes this suit has been settled.

Litigation Settlements

In March 1998, the Corporations, in addition to related affiliates, entered into an agreement to settle its disputes with the founder's ex-wife. The agreement provided that the Corporations and affiliates each issue to the founder's ex-wife shares of variable rate, non-voting convertible special preferred stock. In addition, the Corporations entered into a covenant not to compete and employment agreements. The covenant provides for aggregate monthly payments in the amount of $10,000 payable over the actuarial determined remaining life of the founder's ex-wife. The employment agreement provides for aggregate monthly salary payments of $250 through March 15, 2010. The Corporations and affiliates have an option to make a lump sum distribution to the founder's ex-wife to terminate the covenant and employment agreements equal to the present value of the remaining payments. In October 1998, all of the rights and obligations of the Corporations and affiliates related to the above covenant not to compete were assigned to Summa Management, Inc. The Corporations recognized no gain or loss on the assignment. The difference between the liability owed to the founder's ex-wife and the non-compete asset has been recorded as contributed capital from Summa Management, Inc. in the amount of $74,701.

Value of Stock Received

In March 1998, the Corporations settled a lawsuit, subject to court approval, with certain limited partners who are also debtors of the Corporations. The agreement provided for issuance of variable rate, cumulative, non-voting, convertible, preferred stock to the limited partners in exchange for debt outstanding to them. The monthly dividend rate attached to the preferred stock varies from approximately 3% per annum in year one to 20% per annum in year five and thereafter. For the year ended December 31, 1998, the Corporations paid $5,583 in dividends to the limited partners. The Corporations may redeem the preferred stock at its stated value, plus an additional payment equal to all cumulative unpaid dividends and a premium amount specified in the agreement. In addition, $525,000 of the original debt remains a liability of the Corporations. This liability is due to the limited partners upon redemption of the preferred stock or after five years, whichever is first. The Corporations recognized an extraordinary gain of $622,130 related to the forgiveness of debt.

Get full # here

Guarantee

The Corporations as well as all related affiliates have guaranteed certain indebtedness of the Corporations founder in the aggregate amount of approximately $250,000.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

CAREFREE LIVING OF AMERICA (BRAINERD), INC.,
CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.,
CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.
NOTES TO COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 1998

NOTE 9 GOING CONCERN

At December 31, 1998, the Corporations combined current liabilities exceeded their combined current assets by $543,098, incurred a net loss before extraordinary items of $3,284,589 and have an accumulated deficit of $5,851,348. These factors create an uncertainty about the Corporations' ability to continue as a going concern. Management is actively pursuing settlements of the outstanding litigation, which would decrease legal expenses. A related party, Carefree Living of America (Minnetonka), Inc., intends to refinance their current debt which would allow excess proceeds from that refinancing to be used to redeem the preferred stock holders. The current year financial statements include unusual expenses that are not expected to occur in subsequent years.

TENTATIVE STATEMENTS
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
MINNEAPOLIS, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

VIA FACSIMILE & U.S. MAIL

August 21, 2000

D. Charles MacDonald, Esq.
Faegre & Benson, LLP
2200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-3901

MAHONEY
DEPO. EXHIBIT
No. 3
Dtd. 4-27-04
Neumann Rptg. Agcy.

Re: *First Union National Bank v. Carefree Living of America (Burnsville), Inc. et al.*

Dear Mr. MacDonald:

As we discussed, I have a scheduling problem and a proposal to postpone the receiver motion.

First, I am scheduled to be in Denver Thursday and Friday. The CEO of our client, Kathleen Zeller, lives in Andorra and cannot be here for the hearing before Friday. We need a few extra days to allow me to participate in this most serious hearing and for Ms. Zeller to prepare and attend. We would appreciate moving the hearing to Tuesday, August 29, 2000. I need to advise Ms. Zeller today by 2:00 P.M. our time. I have contacted the Court to get a time for a telephonic hearing, if that should become necessary.

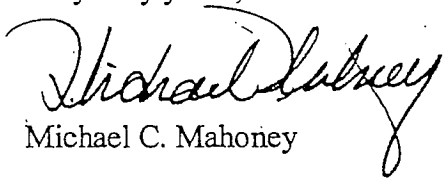
Second, I suggested a means of satisfying your client for the meantime. We have a Term Sheet from John G. Kinnard & Co. indicating they are highly confident they can provide refinancing of about $13,000,000 to "take out" First Union. I have enclosed a copy. They have said they could expect to close within 45 to 60 days.

In the interim, Carefree would pay down a substantial portion of the deficiency (e.g. one month) and enter into a lock-box or similar arrangement to assure First Union of payments as they come due during the two-month refinancing period. Under this plan,

HAGBERG
DEPO. EXHIBIT
No. 5
Dtd. 6-29-04

First Union gets more now, has little risk of any deterioration and most likely gets paid off within two months.

Very truly yours,



Michael C. Mahoney

Enclosure

cc: Kathleen Zeller
Vern Zeller III

August 16, 2000

$13,000,000*
First Mortgage Housing Facility Revenue Note
(Carefree Living of America Projects)

Term Sheet

Borrower:	The Borrower is Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc. (together the "Carefree Living of America Entities"), all Delaware corporations. All of the Borrower's outstanding common stock is owned by Summa Management, Inc. which also acts as management agent of the facilities.
Amount:	$13,000,000*
Type of Issue:	Negotiated sale of a first mortgage revenue note (the "Note") placed by John G. Kinnard & Co. in compliance with applicable federal and state laws.
Use of Proceeds:	The Note proceeds will be used to refinance the existing first mortgage note, to provide sufficient funds to pay certain outstanding debt obligations, to fund initial development costs of two planned 78-unit assisted living facilities and to pay the cost of issuance for the financing.
Loan Term and Amortization:	The Loan will mature on the tenth (10) anniversary date of the Loan closing and will amortize over twenty (20) years. The Loan will have monthly installments of principal and interest with first scheduled payment due thirty (30) days after Loan closing.
Interest Rate:	The interest rate on the Loan will be fixed for a period of three (3) years term and will be established on the Closing Date at approximately _____ basis points over the yield on three (3) year US Government Securities. The interest rate will reset every three (3) years to the then current yield on three (3) year US Government Securities plus _____ basis points.
Prepayment Option:	To Be Determined
Management Agent:	The Borrower currently has an operating agreement with Summa Management, Inc., a Delaware corporation headquartered in Andorra ("Summa"). Summa owns 100% of outstanding stock in the Borrower and operates four assisted living facilities

*Preliminary, subject to change.

located in St. Cloud, Burnsville, Brainerd and Minnetonka, Minnesota.

Estimated Sources and Uses of Funds:

The following is an estimate of the Sources and Uses of funds for the Project:

Sources	
Loan Proceeds	$13,000,000
Total Sources:	$13,000,000

Uses	
First Mortgage Brainerd	$2,600,000
First Mortgage Burnsville	5,500,000
First Mortgage St. Cloud	3,000,000
Placement Agent	260,000
Fund Mtka Mortgage Purchase	500,000
Fund Development Costs	1,080,000
Legal/Other (estimate)	60,000
Total Uses:	$13,000,000

Security:

Security for the Loan shall be as follows:

a) First mortgage and security interest in the Properties;
b) First mortgage and security interest in the land;
c) An assignment of revenues, rents and leases of the Borrower(s) and the Project, as described in the loan agreement;
d) Security interest in any fixtures, equipment, personal property;
e) Assignments of the Management Contracts;
f) Corporate secured guaranty from Summa Management, Inc.;
g) Personal guaranty from Ms. Katheen Zeller.

Appraisal:

An MAI appraisal to be completed with a minimum value of the combined properties of $17,500,000.

Loan to Value:

Not to exceed 75% of appraised value.

Funding:

The Loan is a permanent, first mortgage loan that will be funded upon completion of all required conditions for closing the transaction. Closing is anticipated to occur in October 2000.

Conditions Precedent to Closing:

Conditions which must be satisfied prior to disbursement of the Loan include, among others, the following:

a) An MAI Appraisal;
b) Title insurance;

c) The Phase I environmental study;
d) Assignment of Management Contracts with Summa;
e) The Lender and the Borrower have reached an agreement with respect to the business terms of the Loan;
f) All necessary legal documents and due diligence will have been completed and executed to the satisfaction of the Lead Bank;

Escrow Account: Real estate taxes, required insurance premiums and replacement reserves will be deposited by the Borrower monthly into escrow accounts maintained by the Lender.

Closing Costs: Borrower shall pay all closing costs associated with the Loan, including, but not limited to, appraisal fees, title insurance premiums, survey fees, legal fees, recording fees, inspections fees, environmental reports and any other relevant costs.

121321

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Wilnard Leif Selbak,

Debtor.

BKY No. 98-41421
ADV No. 01-4113 RSK

Dwight R.J. Lindquist, Trustee

Plaintiff,

v.

Summa Management, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (Minnetonka), Inc.,

Defendants.

COMPLAINT

MAHONEY
DEPO. EXHIBIT
No. 4
Dtd. 4-29-04
Neumann Rptg. Agcy.

Dwight R.J. Lindquist Trustee ("Trustee") of the Bankruptcy Estate of Wilnard Leif Selbak ("Debtor") as and for his Complaint against Summa Management, Inc. ("Summa"), Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (Minnetonka), Inc. (the "Companies") (collectively referred to as ("Defendants"), states and alleges as follows:

1. The Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.

HAGBERG
DEPO. EXHIBIT
No. 6
Dtd. 6-27-04
Neumann Rptg. Agcy.

Filed on 1-29-01
Patrick G. De Wane, Clerk
By [illegible] Deputy Clerk

1-1

2. This bankruptcy case was commenced on March 3, 1998 by the filing of a voluntary Chapter 11 petition. The case was converted to one under Chapter 7 on July 1, 1998.

3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334.

5. Each of the Defendants signed a $300,000 Promissory Note ("Note") payable to the Plaintiff. A copy of the Note is attached hereto as Exhibit A. The Note was signed as part of a Settlement Agreement between the Trustee and Summa. An Order of this court was entered approving the Settlement Agreement on October 13, 1999. The Note called for payments to be made as follows:

Months 1-3	$ 5,000 per month	= $ 15,000
Months 4-6	$ 6,666 per month	= $ 19,998
Months 7-9	$11,000 per month	= $ 33,000
Months 10-12	$12,000 per month	= $ 36,000
Months 13-23	$16,333 per month	= $179,663
Month 24	$16,379 (final payment)	= $ 16,379
TOTAL		**$300,000**

6. On November 27, 2000 a Notice of Default was provided as required by the terms of the Note stating that the total of payments which had been received on the Note was $81,300 and that the which should have been received by that time was $103,998 which included payments through payment number 12 under the Note.

7. The notice further provided that if the default was not cured within 10 days from the date of the notice, then the full indebtedness represented by the Note would become due and payable.

8. The default described in the November 27, 2000 notice has not been cured, and the Plaintiff has received no further payments on the Note.

9. The total now due under the Note, after acceleration of the Note as provided by its terms, is $218,700, together with all costs of collection, including attorneys' fees as provided by the Note.

10. The Defendants, and each of them, are liable to the estate on the Note for the sum of $218,700, together with costs of collection, including attorneys' fees.

11. Defendant Summa Management, Inc. also signed a Confession of Judgment for the Note, a copy of which is attached hereto as Exhibit B, and has consented to entry of judgment against it.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment against the Defendants, and each of them, in the amount of $218,700 together with the Plaintiff's costs of collection including attorneys' fees.

2. Awarding the Plaintiff any other or further relief as the court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: January 26, 2001

By: _____

Randall L. Seaver 152882
101 West Burnsville Parkway, Suite 201
Burnsville, MN 55337
(952) 890-0888

Attorneys for Plaintiff

PROMISSORY NOTE

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (Minnetonka), Inc., (the "Companies") and Summa Management, Inc. ("Summa") (collectively referred to as "Makers"), do hereby jointly and severally promise to pay to Dwight R. J. Lindquist (as Trustee of the estate (the "Estate") of Wilnard G. Selbak, ("Selbak"))("Holder") his successors and assigns at Holder's office at 1510 Rand Tower, 527 Marquette Avenue, Minneapolis, Minnesota 55402, or at any other place designated by the Holder hereof the principal sum of Three Hundred Thousand Dollars ($300,000)(subject to adjustment as set forth below), from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Monthly Payments. Commencing thirty (30) days after the Initial Payment Date, as that term is as defined in the Settlement Agreement and Mutual Release dated the same date as this Note, the Makers shall make begin monthly payments of principal as follows:

Months 1-3:	$5,000 per month
Months 4-6:	$6,666 per month
Months 7-9:	$11,000 per month
Months 10-12:	$12,000 per month
Months 13-23:	$16,333 per month
Month 24:	$16,379 (final payment)

Such payments shall be made on the same day of each month.

2. Prepayment and Adjustment of Principal. This Note may be prepaid in whole or in part at any time. In the event the Holder is paid a total of $275,000 (including the Initial Payment, as that term is as defined in the Settlement Agreement and Mutual Release dated the same date as this Note) within twelve months of the Initial Payment Date, this Note shall be deemed paid in full and shall be marked "Paid in Full" by the Holder and returned to the Makers.

3. Mortgage of Minnetonka Facility and Confession of Judgment. Carefree Living of America (Minnetonka), Inc. has executed and delivered to the Holder a mortgage on its facilities in Minnetonka (the "Mortgage") to secure payment of the obligations hereunder. Summa has executed and delivered to Holder a Confession of Judgment for $300,000 (the "Confession").

01/25/01 THU 16:08 FAX 6123328872 DWIGHT R.J. LINDQUIST 002
08/10/1999 15:13 6123328866 MAHONEY HAGBERG RICE PAGE 02

4. Interest. This Note shall not bear any interest.

5. Default. If payments are not paid when due, and the notice and cure period set forth below, shall have expired, the Note shall be immediately due and payable without further notice from Holder. This Note shall also become automatically due and payable without notice or demand should a petition be filed by or against any Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid after notice to Makers and termination of the cure period set forth below or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, the Makers agree to pay all costs of collection, including attorneys fees, and the Holder shall have the right to file the Mortgage and the Confession, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Except as set forth herein, presentment or other demand for payment, notice or dishonor and protest are hereby waived by the Makers.

6. Notice of Default. If Makers shall default by failing to perform the obligations imposed by this Note, then the Holder may, at his option and no earlier than five (5) days from the date of default, give notice to the Makers of such default and if the default is not cured within ten (10) days after such notice is provided in accordance with Paragraph 8.a. below, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against any Maker and shall commence no proceedings for collection, nor file the Confession, until ten (10) days after such notice of default without curing such default.

7. Waiver. Except as set forth herein, each Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidenced by this Note as extended, renewed, or modified.

8. Miscellaneous.

a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or transmitted by telefacsimile and, additionally, shall be sent by United States mail. Unless changed by written notice, the following addresses and telefacsimile numbers shall be used:

01/25/01 THU 16:09 FAX 6123328872 DAIGHT R.J. LINDQUIST 003
08/10/1999 15:13 6123328066 MAHONEY HAGBERG RICE PAGE 03

Kathleen Zeller
Mail Box 68
Credit Andorra
La Massana
Principality of Andorra
Facsimile # 011-376-844-638

Vern Zeller III
14505 Minnetonka Drive
Minnetonka, MN 55345
Facsimile # 612-912-0131

Michael C. Mahoney
MAHONEY & HAGBERG, A Professional Association
109 Bushaway Road
Wayzata, MN 55391
Facsimile # 612-332-8066

Steven Kluz, Sr.
RIDER, BENNETT, EGAN & ARUNDEL, A Limited Liability Partnership
2000 Metropolitan Centre
333 South Sixth Street
Minneapolis, MN 55402
Facsimile # 612-340-7900

Dwight R. J. Lindquist
Trustee of the estate
of Wilnard G. Selbak
1510 Rand Tower
527 Marquette Avenue
Minneapolis, MN 55402
Facsimile # 612-332-8877

b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

01/25/01 THU 16:09 FAX 6123328872 DRIGHT R.J. LINDQUIST 004
08/10/1999 15:13 6123328066 MAHONEY HAGBERG RICE PAGE 04

IN WITNESS WHEREOF, this Note has been executed to be effective as of the date set forth below.

SUMMA MANAGEMENT, INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By: _____
Its: PRESIDENT

CAREFREE LIVING OF AMERICA (MINNETONKA), INC.

By: _____
Its: PRESIDENT

01/25/01 THU 16:09 FAX 8123328872 DRIGHT R.J. LINDQUIST 005
08/10/1999 15:13 6123328066 MAHONEY HAGBERG RICE PAGE 05

SUMMA MANAGEMENT, INC., a
Delaware corporation

Dated: AUG 10, 1999

By: [signature]
Its: PRESIDENT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY No. 4-98-1421

In re:

Wilnard Leif Selbak,

Debtor.

CONFESSION OF JUDGMENT

This Confession of Judgment is entered into by and between:

1. Dwight R.J. Lindquist as Trustee of the Bankruptcy Estate of Wilnard Selbak ("Trustee"); and

2. Summa Management, Inc., a Delaware corporation ("Summa").

RECITALS

FIRST: The Trustee and Summa and others have entered into a Settlement Agreement and Mutual Release resolving various claims of the Trustee against Summa and others.

SECOND: There is due and owing on account of a Promissory Note ("Note") entered pursuant to the Settlement Agreement the amount of Three Hundred Thousand Dollars ($300,000) ("Debt") as set forth in the Note.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby made a part of this Agreement.

EXHIBIT B

2. Confession of Judgment. In the event of a default on the Note by an Obligor thereof, and a failure to cure the default in accordance with the terms and conditions set forth in the Note, Summa hereby confesses judgment in the sum of $300,000, less all payments received by the Trustee, from any Obligor pursuant to the Note, at which time:

a. Trustee may, at his sole option, docket judgment against Summa in accordance with the above, plus costs and reasonable attorneys' fees, which judgment may be docketed by affidavit, *ex parte*, in such jurisdiction as the Trustee may deem advisable;

b. Interest shall accrue on the Debt at the statutory rate from the date of docketing such judgment; and

c. In addition to any remedies provided herein, the Trustee may exercise any other remedies available to him at law or equity for purposes of enforcement of rights pursuant to the Note and this Confession of Judgment.

3. Return of Documents. Upon full and prompt performance of Summa's obligations under this Confession of Judgment, including payment of amounts owing at that time under the Note, the Trustee shall cancel and return all instruments evidencing the Debt.

4. Notice. Any notice required or contemplated hereunder shall be in writing and shall be effective if it is served, mailed or delivered in conformance with paragraph 10 of the Note.

Dated: 8-10-99, 1999

Dwight R.J. Lindquist, Trustee for the
Bankruptcy Estate of Wilnard Selbak

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY No. 4-98-1421

In re:

Wilnard Leif Selbak,

Debtor.

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Vern G. Zeller, III, being first duly sworn on oath, deposes and states that he is the Vice President of Summa Management, Inc., that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to the best of his knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me this
16th day of August, 1999.

Denise Meyer
Notary Public

DENISE MEYER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

C:\wndy\Lindquist\Selbak\981802\Verification of Confession.wpd

FIRST UNION

First Union National Ba
NJ3181
Special Assets Manager
190 River Road
Summit, NJ 07901

February 26, 2001

Carefree Living of America (Burnsville), Inc.
600 Nicollet Court
Burnsville, MN 55335

Carefree Living of America (Brainerd), Inc.
2723 East Oak Street
Brainerd, MN 56401

Carefree Living of America (St. Cloud), Inc.
1225 Division Street
St. Cloud, MN 56304

MAHONEY
DEPO. EXHIBIT
No. 5
Dtd. 4-29-04
Neumann Rptg. Agcy.

Re: Notice of Acceleration

Dear Sir/Madam:

Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (Brainerd), Inc., a Delaware corporation and Carefree Living of America (St. Cloud), Inc., a Delaware corporation (collectively the "Borrowers") executed and delivered a promissory note to First Union National Bank, a national banking association (the "Lender") dated as of November 4, 1998, in the original principal amount of $11,316,000 (the "Note"). The principal balance of the Note remaining unpaid is $11,057,783.58, and accrued and unpaid interest as of February 26, 2001 (not including default interest) amounts to $153,657.18. Interest (not including default interest) is presently accruing at the rate of $2,649.26 per day. All capitalized terms not otherwise defined herein shall have the meaning given them in the Note.

Repayment of the Borrowers' obligations to the Lender under the Note is secured by, among other things, certain real property known by the street addresses of 600 Nicollet Court, Burnsville, Minnesota, 2723 East Oak Street, Brainerd, Minnesota, and 1225 Division Street, St. Cloud, Minnesota (collectively the "Mortgaged Property") and described in (i) that certain Mortgage and Security Agreement and Fixture Financing Statement of even date with the Note (the "Mortgage"), and (ii) that certain Assignment of Leases and Rents of even date with the Note (the "Assignment").

HAGBERG
DEPO. EXHIBIT
No. 7
Dtd. 6-29-04
Neumann Rptg. Agcy.

Exhibit D

Under Section 1.2 of the Note, the Borrowers are required, on the first day of each month, to make certain installment payments of principal and interest. The failure of the Borrowers to make any such payment constitutes an Event of Default under Section 2.1 of the Note. Upon the occurrence of an Event of Default, among other things, all sums advanced or accrued under the Note and under any other Loan Document shall become due and payable, with or without demand.

PLEASE NOTE the Borrowers have failed to make the required monthly payment due on February 1, 2001 (the "Default"), constituting an Event of Default under the Note and an "Event of Default" under the other Loan Documents including, but not limited to, the Mortgage and the Assignment. GIVEN THE DEFAULT, THE LENDER HEREBY DECLARES THE NOTE IMMEDIATELY DUE AND PAYABLE AND DEMANDS IMMEDIATE PAYMENT IN FULL OF ALL AMOUNTS DUE THEREUNDER, INCLUDING APPLICABLE LATE CHARGES, DEFAULT INTEREST, PREPAYMENT FEES AND COLLECTION COSTS.

As a direct and proximate result of the Default and pursuant to the terms of the Assignment, the revocable license granted to the Borrowers to retain possession of the Leases and collect and retain the Rents (as defined in the Assignment) has been terminated and otherwise revoked. The Lender hereby demands that pursuant to the terms of the Assignment any Rents collected by the Borrowers be held in trust by the Borrowers for the sole and exclusive benefit of the Lender, and that the Borrowers pay the Rents to the Lender within one (1) business day after their receipt of the same.

Also, please be advised that under Section 2.6 of the Note, the Borrowers are liable to the Lender for, among other things, rents and revenues of all or any portion of the Mortgaged Property which are (a) received by the Borrowers during the period following the Default, and (b) either (i) are not applied to the ordinary and necessary expenses of owning and operating the Mortgaged Property or (ii) are not paid to the Lender. Pursuant to the terms of that certain Indemnity and Guaranty Agreement of even date with the Note, Kathleen L. Zeller and Summa Management, Inc. (collectively the "Guarantors") have, among other things, guaranteed payment of said liability.

The Lender reserves any and all rights and remedies available to it under the terms of the Loan Documents or under applicable law, and this notice shall not be deemed an exclusive election of remedies nor shall it constitute a waiver of any rights or remedies otherwise available to the Lender. By copy of this letter, the Guarantors are hereby notified of the Default and the acceleration contained herein.

Sincerely yours,

FIRST UNION NATIONAL BANK

John Puckhaber
Vice President

cc: Kathleen L. Zeller
Summa Management, Inc.

M2:20371280.01

PROMISSORY NOTE

$50,000

September 1, 2000

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Burnsville), Inc., a Delaware corporation, having an address of 600 Nicollet Court, Burnsville, Minnesota 55377, Carefree Living of America (Brainerd), Inc., a Delaware corporation, having an address of 2723 East Oak Street, Brainerd, Minnesota 56401, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, having an address of 1225 Division Street, St. Cloud, Minnesota 56304, jointly and severally (collectively, the "Maker"), hereby promise to pay to the Jane L. Strom Revocable Trust ("Holder"), at Holder's office at 109 Bushaway Road, Minneapolis, Minnesota 55391, or at any other place designated by the Holder hereof the principal sum of Fifty Thousand Dollars ($50,000.00) together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, and fee in the amount of Twelve Thousand Two Hundred and Fifty Dollars ($12,250.00) from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable in consecutive monthly installments of Eight Hundred and Thirty Three Dollars and Thirty Three Cents ($833.33) commencing on the fifteenth day of September, 2000 and on the fifteenth day of each month thereafter until the fifteenth day of January, 2001 at which time all unpaid principal, accrued and unpaid interest, and fees shall become due and payable in full. Notwithstanding any language to the contrary, all sums due hereunder shall be paid in full from the proceeds of any financing by the Maker in the aggregate in excess of $13,000,000.00.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of Twenty (22%) Percent per annum.

4. Events of Default. If payments are not paid when due, or if any other indebtedness of Maker to the Holder is not paid when due, or if Maker sells all or substantially all of their assets or secures financing in the aggregate in excess of Thirteen Million Dollars ($13,000,000.00), or if a garnishment summons or a writ of attachment is issued against and served upon the Holder for the attachment of any property of Maker in the Holder's possession or any indebtedness owing to Maker, Holder may, at his option, declare this Note to be immediately due and payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should Maker die or should a petition be filed by or against Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note

Exhibit A

HAGBERG
DEPO. EXHIBIT
No. 8
Dtd. 6-29-04
Neumann Rptg. Agcy.

to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within thirty days from the receipt of such notice by Maker, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Extension; Payment of Costs of Collection. Maker shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the addresses provided above shall be used to notify Maker.

   b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

   c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Note has been executed to be effective as of the 1st day of September, 2000

MAKER:

CAREFREE LIVING OF AMERICA (BURNSVILLE) INC., a Delaware corporation

By: _____

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (Brainerd) INC., a Delaware corporation

By: _____

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (St. Cloud) INC., a Delaware corporation

By: _____

Its: PRESIDENT

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

109 BUSHAWAY ROAD
MINNEAPOLIS, MINNESOTA 55391
TELEPHONE (612) 332-2226
FACSIMILE (612) 332-8066

VIA FACSIMILE & U.S. MAIL

August 31, 2000

D. Charles Macdonald, Esq.
Faegre & Benson LLP
2200 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Re: *First Union National Bank v. Carefree Living of America (Burnsville), Inc., et al.*
Our File No. 4600.015

Dear Mr. MacDonald:

Carefree Living of America (Brainerd), Inc., Carefree Living of America (Burnsville), Inc. and Carefree Living of America (St. Cloud), Inc. (the "Carefree Entities") have today made payment in full by wire or delivery to Faegre & Benson, LLP of funds totaling $380,600.00 in accordance with the Forbearance Agreement entered into among the Carefree Entities and First Union National Bank, as amended, to allow for payment by the close of business today. The payments have been made as follows:

1. Wire transfer from Wells Fargo in the amount of $173,000;
2. Check from US Bancorp Piper Jaffray in the amount of $50,000;
3. Wire transfer from Wells Fargo in the amount of $120,000; and
4. Wire transfer from Signal Bank in the amount of $37,600.

We have also enclosed the schedule of payments made by the Debtors as required under the Forbearance Agreement. If you need more detailed information please request it and we will provide it by mail the next day.

Payment and delivery of these funds and documents are conditional upon the understanding that they constitute all the conditions required under the Forbearance Agreement and First Union National Bank will dismiss the action pending against the Carefree Entities and will immediately acknowledge the cure of the events described in the Event of Default letter of July 25, 2000.

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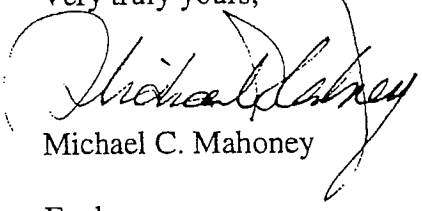
No. 9
Dtd. 6-29-04
Neumann Rptg. Agcy.

We are also entitled to immediate return of the executed Stipulation for Appointment of Receiver.

Very truly yours,



Michael C. Mahoney

Enclosures

SUMMA MGT INC. January through August
SUMMA
#2020035269

PAYEE	DESCRIPTION	CREDIT	DEBIT	BALANCE
OPEN				1,711.64
Bank Fee			91.45	1,620.19
Legal Fees			636.26	983.93
Licensing			2,582.00	(1,598.07)
Dwight lind quist	Purchase Contract		23,332.00	(24,930.07)
Hinshaw culbertson	Ltd's Agreeemnt		4,000.00	(28,930.07)
John g Kinnard	Financing fee		10,000.00	(38,930.07)
Legal Accounts Payable			3,000.00	(41,930.07)
Miscellaneous			92.53	(42,022.60)
Larson Allen	Accounting		11,000.00	(53,022.60)
Linda Selback	Purchase Contract		81,375.00	(134,397.60)
MN Dept Rev	Income taxes		550.00	(134,947.60)
Trn frm 226	Minnetonka	48,091.95		(86,855.65)
Trn frm 234	St.Cloud	19,500.00		(67,355.65)
Trn frm 242	Burnsville	36,000.00		(31,355.65)
Trn frm 250	Brainerd	31,500.00		144.35

SUMMA MGT INC. CLEARING ACCT # II
SUMMARY - 3 FACILITIES

	January	February	March	April	May	June	July	August
Beginning Balance	14,320.12	(117,467.65)	(15,926.68)	(52,058.12)	(49,661.94)	(109,096.10)	(66,585.51)	(42,483.02)
Deposit	326,151.33	368,929.44	437,293.60	329,669.81	441,612.77	357,424.37	401,213.75	328,508.34
1st Union	125,225.10	0.00	119,533.05	119,533.05	113,841.00	0.00	0.00	113,841.00
Accounting	1,570.00	893.40	5,814.60	1,178.90	0.00	4,261.19	0.00	0.00
Advertising	2,735.43	2,516.10	20.00	2,224.44	379.47	0.00	2,976.32	1,384.00
Bank charges	742.56	683.12	69.12	489.40	392.47	91.76	264.46	0.00
Cable T.V.	2,783.88	0.00	3,723.51	3,632.72	2,375.37	6,947.15	1,261.84	3,023.52
Employee Benefits	8,048.16	18,753.38	13,167.26	3.00	8,549.63	30,002.44	6,935.12	(1,338.78)
Employee expenses	9,504.75	3,912.33	3,997.94	4,500.00	525.85	6,092.25	4,537.48	3,000.00
Food	73,505.74	34,112.37	34,472.33	35,347.14	32,769.53	36,062.92	36,664.15	28,758.37
Insurance	0.00	5,063.94	5,317.14	5,317.14	10,887.48	5,063.94	4,810.74	4,810.74
Legal	7,500.00	7,500.00	15,000.00	10,688.00	16,000.00	7,500.00	10,000.00	5,000.00
License	0.00	277.00	0.00	490.00	1,926.06	0.00	1,058.73	430.00
Maintenance	6,785.64	10,905.98	(885.15)	5,876.99	7,060.84	897.40	13,610.29	1,657.62
Miscellaneous	130.35	14.07	0.00	544.17	140.65	0.00	190.24	0.00
Nursing	70,000.00	30,000.00	40,000.00	15,000.00	102,000.00	50,000.00	70,000.00	30,000.00
Op Supplies	515.71	1,742.41	451.22	2,121.45	1,813.59	1,180.02	2,781.12	1,410.03
Payroll	136,736.10	105,307.96	137,855.63	104,864.95	153,420.23	130,906.12	178,163.24	75,609.80
Petty cash	3,410.06	2,397.74	3,284.12	2,948.95	2,731.16	3,344.27	5,035.15	3,015.29
Postage	0.00	31.50	102.25	106.25	202.39	63.99	94.83	0.00
Printing	0.00	0.00	0.00	532.39	266.68	0.00	0.00	0.00
Rent refund	4,794.83	643.37	1,617.92	185.00	185.00	0.00	392.00	0.00
Summa	0.00	20,500.00	76,946.46	0.00	24,000.00	10,000.00	26,000.00	6,500.00
Telephone	2,121.22	1,766.47	2,816.66	1,304.71	1,427.20	1,763.87	2,957.47	0.00
Utilities	1,829.57	20,367.33	10,120.98	10,384.98	20,152.33	20,736.46	9,378.08	6,910.94
	(117,467.65)	(15,926.68)	(52,058.12)	(49,661.94)	(109,096.10)	(66,585.51)	(42,483.02)	2,012.79
	(117,467.65)	(15,926.68)	(52,058.12)	(49,661.94)	(109,096.10)	(66,585.51)	(42,483.02)	2,012.79

SUMMA MGT INC. CLEARING ACCT # III
CAREFREE BRAINERD

	January	February	March	April	May	June	July	August
Beginning Balance	6,826.28	(39,484.33)	(9,231.27)	(14,718.37)	(14,692.61)	(43,124.57)	(17,751.32)	(12,200.57)
Deposit	84,110.53	101,066.02	105,540.68	98,073.61	108,565.94	106,255.08	103,037.08	95,878.80
1st Union	37,612.55		30,000.00	30,000.00	33,841.00			30,000.00
Accounting	595.00	411.55	1,689.10	409.40		1,377.43		
Advertising	247.85	1,634.24		1,668.01			2,248.85	
Bank charges	497.77	205.54	69.12	131.31	68.94	8.43	137.34	
Cable T.V.	445.14		1,342.89			1,371.39		642.89
Employee Benefits	2,604.89	5,318.70	3,401.33		1,683.06	8,036.28	2,254.46	(803.62)
Employee expenses	3,168.25	1,912.33	1,000.00			2,030.75	2,000.00	1,000.00
Food	19,334.85	9,243.62	8,751.26	13,017.35	10,807.12	11,793.89	11,384.57	10,154.92
Insurance		1,687.98	1,772.38	1,772.38	3,629.16	1,687.98	1,603.58	1,603.58
Legal			3,750.00	5,000.00	2,000.00	2,500.00	3,500.00	
License				490.00			817.73	215.00
Maintenance	1,325.93	4,147.22		1,506.14	1,892.22	45.00	2,301.02	1,151.98
Miscellaneous		14.07		101.94			42.24	
Nursing	30,000.00	10,000.00	8,333.34		32,000.00	10,000.00	15,000.00	10,000.00
Op Supplies	263.79	1,121.59		207.31	152.57	194.83	846.28	
Payroll	27,718.84	16,225.48	43,899.34	40,227.14	27,838.49	31,065.92	37,720.92	21,000.00
Petty cash	483.07	488.00	490.79	498.42	993.42	984.25	1,914.65	927.86
Postage			47.25	59.00	47.25		47.58	
Printing				133.13				
Rent refund	3,798.66	358.90					196.00	
Summa		10,500.00	5,000.00		14,000.00	5,000.00	11,000.00	
Telephone	494.98	298.43	313.04	731.81	201.41	393.00	358.92	
Utilities	1,829.57	7,245.31	1,167.94	2,094.51	7,843.26	4,392.68	4,112.19	2,653.49
	(39,484.33)	(9,231.27)	(14,718.37)	(14,692.61)	(43,124.57)	(17,751.32)	(12,200.57)	5,132.13
	(39,484.33)	(9,231.27)	(14,718.37)	(14,692.61)	(43,124.57)	(17,751.32)	(12,200.57)	5,132.13

SUMMA MGT INC. CLEARING ACCT # II
CAREFREE BURSNVILLE

	January	February	March	April	May	June	July	August
Beginning Balance	4,299.02	(50,139.28)	(74.11)	(23,851.04)	(21,282.53)	(45,957.79)	(29,487.84)	(11,990.88)
Deposit	141,795.27	156,506.94	201,499.97	129,240.06	208,626.93	141,463.83	184,527.68	134,195.57
1st Union	50,000.00		59,533.05	59,533.05	50,000.00			50,000.00
Accounting	650.00	481.85	1,944.85	394.95		1,341.96		
Advertising	2,487.58	513.55		336.43	379.47		455.75	1,384.00
Bank charges		292.83		358.09	146.53	56.93	127.12	
Cable T.V.	1,219.95		1,261.83	2,513.15	1,256.58	1,261.84	1,261.84	1,261.84
Employee Benefits	2,655.59	6,625.20	5,135.03	3.00	3,016.25	11,250.96	1,171.42	(535.16)
Employee expenses	3,168.25	1,000.00	316.44	4,500.00	525.85	2,030.75	2,537.48	1,000.00
Food	31,749.82	13,271.12	14,707.18	11,523.39	13,814.49	14,131.62	13,788.47	10,766.63
Insurance		1,687.98	1,772.38	1,772.38	3,629.16	1,687.98	1,603.58	1,603.58
Legal	7,500.00		7,500.00	5,000.00	12,000.00	2,500.00	3,500.00	5,000.00
License		89.00			686.00		35.00	
Maintenance	2,091.64	3,500.59	1,467.87	619.04	5,168.62	852.40	7,384.79	(45.80)
Miscellaneous								
Nursing	30,000.00	10,000.00	23,333.32	5,000.00	50,000.00	25,000.00	25,000.00	10,000.00
Op Supplies	251.92	620.82	431.35	1,122.49	481.78	125.17	596.35	
Payroll	61,272.19	53,856.95	41,159.20	27,197.65	70,581.74	55,840.20	90,146.64	28,609.80
Petty cash	1,925.31	1,042.03	1,908.54	1,219.88	1,075.11	1,381.44	2,176.15	1,287.43
Postage			43.25	47.25	155.14		47.25	
Printing				133.00	266.68			
Rent refund		124.47	1,617.92		185.00			
Summa		5,000.00	56,682.04		10,000.00		15,000.00	3,500.00
Telephone	1,261.32	1,117.76	2,151.55	161.27	1,009.46	1,021.40	2,226.71	
Utilities		7,217.62	4,311.10	5,236.53	8,924.33	6,511.23	(27.83)	4,257.45
	(50,139.28)	(74.11)	(23,851.04)	(21,282.53)	(45,957.79)	(29,487.84)	(11,990.88)	4,114.92
	(50,139.28)	(74.11)	(23,851.04)	(21,282.53)	(45,957.79)	(29,487.84)	(11,990.88)	4,114.92

SUMMA MGT INC. CLEARING ACCT # II
CAREFREE ST. CLOUD

	January	February	March	April	May	June	July	August
Beginning Balance	3,194.82	(27,844.04)	(6,621.30)	(13,488.71)	(13,686.80)	(20,013.74)	(19,346.35)	(18,291.57)
Deposit	100,245.53	111,356.48	130,252.95	102,356.14	124,419.90	109,705.46	113,648.99	98,433.97
1st Union	37,612.55		30,000.00	30,000.00	30,000.00			33,841.00
Accounting	325.00		2,180.65	374.55		1,541.80		
Advertising		368.31	20.00	220.00			271.72	
Bank charges	244.79	184.75			177.00	26.40		
Cable T.V.	1,118.79		1,118.79	1,119.57	1,118.79	4,313.92		1,118.79
Employee Benefits	2,787.68	6,809.48	4,630.90		3,850.32	10,715.20	3,509.24	
Employee expenses	3,168.25	1,000.00	2,681.50			2,030.75		1,000.00
Food	22,421.07	11,597.63	11,013.89	10,806.40	8,147.92	10,137.41	11,491.11	7,836.82
Insurance		1,687.98	1,772.38	1,772.38	3,629.16	1,687.98	1,603.58	1,603.58
Legal		7,500.00	3,750.00	688.00	2,000.00	2,500.00	3,000.00	
License		188.00			1,240.06		206.00	215.00
Maintenance	3,368.07	3,258.17	(2,353.02)	3,751.81			3,924.48	551.44
Miscellaneous	130.35			442.23	140.65		148.00	
Nursing	10,000.00	10,000.00	8,333.34	10,000.00	20,000.00	15,000.00	30,000.00	10,000.00
Op Supplies			19.87	791.65	1,179.24	860.02	1,338.49	1,410.03
Payroll	47,745.07	35,225.53	52,797.09	37,440.16	55,000.00	44,000.00	50,295.68	26,000.00
Petty cash	1,001.68	867.71	884.79	1,230.65	662.63	978.58	944.35	800.00
Postage		31.50	11.75			63.99		
Printing				266.26				
Rent refund	996.17	160.00		185.00			196.00	
Summa		5,000.00	15,264.42			5,000.00		3,000.00
Telephone	364.92	350.28	352.07	411.63	216.33	349.47	371.84	
Utilities		5,904.40	4,641.94	3,053.94	3,384.74	9,832.55	5,293.72	
	(27,844.04)	(6,621.30)	(13,488.71)	(13,686.80)	(20,013.74)	(19,346.35)	(18,291.57)	(7,234.26)
	(27,844.04)	(6,621.30)	(13,488.71)	(13,686.80)	(20,013.74)	(19,346.35)	(18,291.57)	(7,234.26)

$62,160.35 PROMISSORY NOTE January 15, 2001

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Burnsville), Inc., a Delaware corporation, having an address of 600 Nicollet Court, Burnsville, Minnesota 55377, Carefree Living of America (Brainerd), Inc., a Delaware corporation, having an address of 2723 East Oak Street, Brainerd, Minnesota 56401, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, having an address of 1225 Division Street, St. Cloud, Minnesota 56304 and Carefree Living of America (Minnetonka), Inc., a Delaware corporation, having an address of 14505 Minnetonka Drive, Minnetonka, Minnesota 55345, jointly and severally (collectively referred to as the "Maker"), hereby promises to pay to the Jane L. Strom Revocable Trust U/A October 28, 1998 ("Holder"), and Holder's successors and assigns at Holder's office at 109 Bushaway Road, Wayzata, Minnesota 55391, or at any other place designated by the Holder hereof the principal sum of Sixty-Two Thousand One Hundred and Sixty and 35/100 Dollars ($62,160.35) together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable in consecutive monthly installments of Three Thousand Dollars ($3,000) in principal, plus all accrued and unpaid interest commencing on the 15th day of February, 2001, and continuing until the 15th day of September, 2001. On October 1, 2001, Maker shall pay Holder one-half of all unpaid principal and accured and unpaid interest. On November 1, 2001 all unpaid principal and accrued and unpaid interest shall become due and payable in full. Notwithstanding the foregoing, in the event that any Maker obtains refinancing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or any affiliate of any Maker obtains such financing for the benefit of any Maker, all unpaid principal and accrued and unpaid interest shall immediately become due and payable in full.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of Twenty-Two (22%) Percent per annum.

4. Default. If payments are not paid when due, or if any other indebtedness of Maker to the Holder is not paid when due, or if any Maker sells all or substantially of its assets, or secures financing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or if a garnishment summons or a writ of attachment is issued against to served upon the Holder for the attachment of any property of either Maker in the Holder's possession or any indebtedness owing to either Maker, Holder may, at its option, declare this Note to be immediately due any payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This

Exhibit B

HAGBERG DEPO. EXHIBIT No. 10 Dtd. 6-29-04 Neumann Rptg. Agcy.

MAHONEY DEPO. EXHIBIT No. 6 Dtd. 4-29-04 Neumann Rptg. Agcy.

Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should either Maker die or should a petition be filed by or against either Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by either Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within ten days from the sending of such notice, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Waiver. Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

   Carefree Living of America (Burnsville), Inc.,
   600 Nicollet Court
   Burnsville, Minnesota 55377

   Carefree Living of America (Brainerd), Inc.,
   2723 East Oak Street,
   Brainerd, Minnesota 56401

   Carefree Living of America (St. Cloud), Inc.
   1225 Division Street, St. Cloud
   St. Cloud, Minnesota 56304

$62,160.35

PROMISSORY NOTE

January 15, 2001

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Burnsville), Inc., a Delaware corporation, having an address of 600 Nicollet Court, Burnsville, Minnesota 55377, Carefree Living of America (Brainerd), Inc., a Delaware corporation, having an address of 2723 East Oak Street, Brainerd, Minnesota 56401, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, having an address of 1225 Division Street, St. Cloud, Minnesota 56304 and Carefree Living of America (Minnetonka), Inc., a Delaware corporation, having an address of 14505 Minnetonka Drive, Minnetonka, Minnesota 55345, jointly and severally (collectively referred to as the "Maker"), hereby promises to pay to the Jane L. Strom Revocable Trust U/A October 28, 1998 ("Holder"), and Holder's successors and assigns at Holder's office at 109 Bushaway Road, Wayzata, Minnesota 55391, or at any other place designated by the Holder hereof the principal sum of Sixty-Two Thousand One Hundred and Sixty and 35/100 Dollars ($62,160.35) together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable in consecutive monthly installments of Three Thousand Dollars ($3,000) in principal, plus all accrued and unpaid interest commencing on the 15th day of February, 2001, and continuing until the 15th day of September, 2001. On October 1, 2001, Maker shall pay Holder one-half of all unpaid principal and accured and unpaid interest. On November 1, 2001 all unpaid principal and accrued and unpaid interest shall become due and payable in full. Notwithstanding the foregoing, in the event that any Maker obtains refinancing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or any affiliate of any Maker obtains such financing for the benefit of any Maker, all unpaid principal and accrued and unpaid interest shall immediately become due and payable in full.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of Twenty-Two (22%) Percent per annum.

4. Default. If payments are not paid when due, or if any other indebtedness of Maker to the Holder is not paid when due, or if any Maker sells all or substantially of its assets, or secures financing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or if a garnishment summons or a writ of attachment is issued against to served upon the Holder for the attachment of any property of either Maker in the Holder's possession or any indebtedness owing to either Maker, Holder may, at its option, declare this Note to be immediately due any payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This

Exhibit B

HAGBERG DEPO. EXHIBIT No. 10 Dtd. 6-29-04 Neumann Rptg. Agcy.

MAHONEY DEPO. EXHIBIT No. 6 Dtd. 4-29-04 Neumann Rptg. Agcy.

(2)

7439570

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFICATE FILED AND OR RECORDED IN

01 MAR 16 PM 2:24

7439570 M. REC.

DEPUTY

Hen Co KAT
JR65600
03/16/2001
Paid $149.20

MORTGAGE
By Corporation or Partnership

MORTGAGE REGISTRY TAX DUE HEREON:

$_____

THIS INDENTURE, Made this 15th day of January, 2001, between Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, Mortgagor, and Janie L. Strom, Trustee, Mortgagee,

WITNESSETH, That Mortgagor, in consideration of the sum of TEN DOLLARS, to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, does hereby convey unto Mortgagee, forever, real property in Minnesota, described as follows:

ALL OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, EXCEPT THAT PART THEREOF PLATTED "PARKDALE ADDITION TO THE CITY OF BRAINERD"
AND ALSO
LOTS 1,2,5,6,7,8 AND 9, AND THE E ½ OF LOT 3 OF PARKDALE ADITION TO THE CITY OF BRAINERD, EXCEPT: COMMENCING AT THE SW CORNER OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, THENCE NORTH ALONG THE WEST BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 704 FEET MORE OR LESS TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING THE NE CORNER OF BLOCK 36, CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE NORTH ALONG SAID WEST BOUNDARY A DISTANCE OF 617 FEET, MORE OR LESS, TO A POINT BEING THE NORTHWEST CORNER OF SAID SE ¼ OF NE ¼ : THENCE EAST ALONG THE NORTH BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 551.54 FEET MORE OR LESS TO A POINT BEING THE SOUTHWEST CORNER OF BLOCK 27 OF CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE IN A SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING. CROW WING COUNTY, MINNESOTA.

AND

LOT 1, BLOCK 1, COPPERTOP II, DAKOTA COUNTY, MINNESOTA.

MAHONEY
DEPO. EXHIBIT
No. 7
Dtd. 4-29-04
Neumann Rptg. Agcy.

Certificate Number 63536
Vol. 212 Page 236
STATE OF MINNESOTA }
COUNTY OF CROW WING } ss.
OFFICE OF THE REGISTRAR OF TITLES
This is to certify that the within instrument was filed in this office on the 20 day of March, 20 2001
at 9 o'clock A.M.
REGISTRAR OF TITLES
By
Deputy
146387

COUNTY RECORDER
HENNEPIN COUNTY, MINN.

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original on file and of record in my office
MAR 20 2001
MICHAEL N. CASHMAN, COUNTY RECORDER
By
Deputy

63536-212-236

HAGBERG
DEPO. EXHIBIT
No. 11
Dtd. 6-29-04
Neumann Rptg. Agcy.

AND

ALL OF LOT 3, AND THAT PART OF LOT 4, BLOCK 3, EASTERN PARK ADDITION, CITY OF ST. CLOUD, BENTON COUNTY, MINNESOTA, WHICH LIES WESTERLY OF A LINE 26.00 FEET EAST OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE WEST LINE OF SAID LOT 4, AND WHICH LIES NORTHERLY OF THAT CERTAIN HIGHWAY EASEMENT DESCRIBED IN BOOK 28 OF MISCELLANEOUS ON PAGE 420, ACCORDING TO THE FILES OF THE BENTON COUNTY RECORDER. BENTON COUNTY, MINNESOTA

AND

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA;
AND
THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTNEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING.
HENNEPIN COUNTY, MINNESOTA.

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever. Mortgagor covenants with Mortgagee as follows: That Mortgagor is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except as follows:

that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, That if Mortgagor shall pay to mortgagee the sum of Sixty Two Thousand One Hundred Sixty and 35/100 Dollars ($62,160.35) according to the terms of a Promissory Note of even date herewith (the "Obligation"), the final payment being due and payable upon demand, with interest at the rate provided in the Obligation, and shall repay to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments, payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the

covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND MORTGAGOR covenants with Mortgagee as follows:

1. To pay the principal sums of money and interest as specified in the Note;

2. To pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;

3. To keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of the outstanding indebtedness at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a Federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;

5. to commit or permit no waste on the Property and to keep it in good repair;

6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and

7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Mortgagor agrees to pay.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

MORTGAGOR

CAREFREE LIVING OF AMERICA (BRAINERD), INC

By _____
KATHLEEN L ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By _____
KATHLEEN L ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By _____
KATHLEEN L ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA(MINNETONKA), INC.

By _____
KATHLEEN L ZELLER

Its PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 15th day of March, 2001 by Kathleen L. Zeller, the President of Carefree Living of America (Brainerd), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Burnsville), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (St. Cloud), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Minnetonka), Inc. on behalf of the corporation.

Notary Stamp or Seal

GINA L. MILLER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

_____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

RETURN TO

Account 6008635

HAGBERG
DEPO. EXHIBIT
No. 11-A
Dtd. 6-29-04
Neumann Rptg. Agcy.

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13314

[redacted]

#013314# 091000506 600 863 5# /0001500000/

[redacted]

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13315

[redacted]

#013315# 091000506 600 863 5# /0000002360/

[redacted]

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13316

DATE 03/16/01 CHECK 13316 AMOUNT **$3,604.00

*** THREE THOUSAND SIX HUNDRED & 00/100 DOLLARS

PAY TO THE ORDER OF: Hennepin County Treasurer

#013316# 091000506 600 863 5# /0000360000/

Ck# 13316 Date 3/20 Amt 3,600.00

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13317

DATE 03/16/01 CHECK 13317 AMOUNT ****$149.28

*** ONE HUNDRED FORTY-NINE & 28/100 DOLLARS

PAY TO THE ORDER OF: Hennepin County Treasurer

#013317# 091000506 600 863 5# /0000014928/

Ck# 13317 Date 3/20 Amt 149.28

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13318

DATE March 16, 2001 CHECK 13318 AMOUNT $49.00

PAY Forty-nine and 00/100

PAY TO THE ORDER OF: Hennepin County Treasurer

#013318# 091000506 600 863 5# /0000004900/

Ck# 13318 Date 3/20 Amt 49.00

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13319

DATE 03/20/01 CHECK 13319 AMOUNT *****$33.00

*** THIRTY-NINE & 00/100 DOLLARS

PAY TO THE ORDER OF: Benton County Recorder

mc 43728

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13321

DATE 03/20/01 CHECK 13321 AMOUNT *****$39.00

*** THIRTY-NINE & 00/100 DOLLARS

PAY TO THE ORDER OF: Crow Wing County Recorder

#013321# 091000506 600 863 5# /0000003900/

Ck# 13321 Date 3/30 Amt 39.00

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13322

[redacted]

#013322# 091000506 600 863 5# /0001884123/

[redacted]

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13323

[redacted]

#013323# 091000506 600 863 5# /0001038898/

[redacted]

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13324

[redacted]

#013324# 091000506 600 863 5# /0000617964/

[redacted]

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13326

[redacted]

#013326# 091000506 600 863 5# /0000001000/

[redacted]

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION
OPERATING ACCOUNT
100 BLUEMONT ROAD
WAYZATA, MN 55391

13329

[redacted]

#013329# 091000506 61

M&H
0600

$1,500,000.00 MARCH 15, 2001

PROMISSORY NOTE

FOR VALUABLE CONSIDERATION RECEIVED, Summa Management, Inc., a Delaware corporation, Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, (collectively called "Maker"), jointly and severally hereby promise to pay to Mahoney & Hagberg, A Professional Association ("Holder"), its successors and assigns, at Holder's office at 109 Bushaway Road, Wayzata, Minnesota, or at any other place designated by the Holder hereof the principal sum of One Million Five Hundred Thousand Dollars ($1,500,000) or, if less, the aggregate unpaid amount of all fees, costs and advances made by Holder to the Maker and its present or past affiliates together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable upon demand, at which time all unpaid principal and accrued and unpaid interest shall become due and payable in full.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of eight (8%) Percent per annum.

4. Default. If payments are not paid when due, or if any other indebtedness of either Maker to the Holder is not paid when due, or if a garnishment summons or a writ of attachment is issued against to served upon the Holder for the attachment of any property of either Maker in the Holder's possession or any indebtedness owing to either Maker, Holder may, at its option, declare this Note to be immediately due any payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should either Maker die or should a petition be filed by or against either Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by either Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

HAGBERG DEPO. EXHIBIT No. 12 Dtd. 6-29-04 Neumann Rptg. Agcy.

MAHONEY DEPO. EXHIBIT No. 9 Dtd. 4-29-04 Neumann Rptg. Agcy.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within ten days from the sending of such notice, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Waiver. Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

Carefree Living of America (Minnetonka), Inc.
14505 Minnetonka Drive
Minnetonka, Minnesota 55345

b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Note has been executed to be effective as of the 15th day of March, 2001

SUMMA MANAGEMENT, INC.

By: Kathleen L. Zeller
KATHLEEN L. ZELLER

Its: President

CAREFREE LIVING OF AMERICA

(BRAINERD), INC.

By: _____
KATHLEEN L. ZELLER

Its: President

CAREFREE LIVING OF AMERICA
(BURNSVILLE), INC.

By: _____
KATHLEEN L. ZELLER

Its: President

CAREFREE LIVNG OF AMERICA
(ST. CLOUD), INC.

By: _____
KATHLEEN L. ZELLER

Its: President

(30)

7439571

Hennn Co ORT
JR6#5399
03/16/2001
Paid $3,600.00

COUNTY CONSERVATION FEE $5.00
DAKOTA COUNTY
TREASURER-AUDITOR
4-4-01

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR RECORDED ON

01 MAR 16 PM 2: 24

7439571

CO. REC.

DEPUTY

Ex. Mahoney + Hagberg

MORTGAGE
By Corporation or Partnership

1762668

MORTGAGE REGISTRY TAX DUE HEREON:

$ 3,600

THIS INDENTURE, Made this 15th day of March, 2001, between Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, Mortgagor, and Mahoney & Hagberg, A Professional Association Mortgagee,

WITNESSETH, That Mortgagor, in consideration of the sum of TEN DOLLARS, to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, does hereby convey unto Mortgagee, forever, real property in Minnesota, described as follows:

ALL OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, EXCEPT THAT PART THEREOF PLATTED "PARKDALE ADDITION TO THE CITY OF BRAINERD"
AND ALSO
LOTS 1,2,5,6,7,8 AND 9, AND THE E ½ OF LOT 3 OF PARKDALE ADITION TO THE CITY OF BRAINERD, EXCEPT: COMMENCING AT THE SW CORNER OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, THENCE NORTH ALONG THE WEST BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 704 FEET MORE OR LESS TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING THE NE CORNER OF BLOCK 36, CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE NORTH ALONG SAID WEST BOUNDARY A DISTANCE OF 617 FEET, MORE OR LESS, TO A POINT BEING THE NORTHWEST CORNER OF SAID SE ¼ OF NE ¼; THENCE EAST ALONG THE NORTH BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 551.54 FEET MORE OR LESS TO A POINT BEING THE SOUTHWEST CORNER OF BLOCK 27 OF CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE IN A SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING. CROW WING COUNTY, MINNESOTA.

AND

LOT 1, BLOCK 1, COPPERTOP II. DAKOTA COUNTY, MINNESOTA.

COUNTY RECORDER
HENNEPIN COUNTY, MINN.

STATE OF MINNESOTA, COUNTY OF HENNEPIN.
Certified to be a true and correct copy of the original on file and of record in my office
MAR 20 2001
MICHAEL H. CUNNIFF, COUNTY RECORDER
By E. Wise Deputy

RECEIVED
MAR 27 2001
DAK
TAX SUPERVISOR

EXHIBIT 2

H.AGBERG
DEPO. EXHIBIT
No. 13
Dtd. 6-29-04
Neumann Rptg. Agcy.

M.A.HONEY
DEPO. EXHIBIT
No. 8
Dtd. 4-29-04
Neumann Rptg. Agcy.

AND

ALL OF LOT 3, AND THAT PART OF LOT 4, BLOCK 3, EASTERN PARK ADDITION, CITY OF ST. CLOUD, BENTON COUNTY, MINNESOTA, WHICH LIES WESTERLY OF A LINE 26.00 FEET EAST OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE WEST LINE OF SAID LOT 4, AND WHICH LIES NORTHERLY OF THAT CERTAIN HIGHWAY EASEMENT DESCRIBED IN BOOK 28 OF MISCELLANEOUS ON PAGE 420, ACCORDING TO THE FILES OF THE BENTON COUNTY RECORDER BENTON COUNTY, MINNESOTA

AND

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA;
AND
THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTNEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING.
HENNEPIN COUNTY, MINNESOTA.

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever. Mortgagor covenants with Mortgagee as follows: That Mortgagor is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except as follows:

that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, That if Mortgagor shall pay to mortgagee the sum of One Million Five Hundred Thousand and 00/100 Dollars ($1,500,000.00) according to the terms of a Promissory Note of even date herewith (the "Obligation"), the final payment being due and payable upon demand, with interest at the rate provided in the Obligation, and shall repay to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the

covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND MORTGAGOR covenants with Mortgagee as follows:

1. To pay the principal sums of money and interest as specified in the Note;

2. To pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;

3. To keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of the outstanding indebtedness at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;

5. to commit or permit no waste on the Property and to keep it in good repair;

6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and

7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Mortgagor agrees to pay.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

MORTGAGOR

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

CAREFREE LIVING OF AMERICA(MINNETONKA), INC.

By _____
KATHLEEN L. ZELLER

Its: PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 15th day of March, 2001, by Kathleen L. Zeller, the President of Carefree Living of America (Brainerd), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Burnsville), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (St. Cloud), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Minnetonka), Inc. on behalf of the corporation.

Notary Stamp or Seal

GINA L. MILLER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2006

_____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

1762668

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2001 APR -5 A 9:40

DOC. NO. 1762668
JOEL T. BECKMAN, COUNTY RECORDER
BY: Deputy
FEE 15.00 SURCHARGE 4.50
CASH ☐ CHECK ☑ ESCROW ☐
WELL ☐ CHARGE ☐
CHARGE TO:
O/R
DO NOT REMOVE

Mahoney & Hagberg
109 Bushaway Road
Mpls., MN 55391

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

JOINT AND SEVERAL GUARANTEE

THIS GUARANTEE is made as of March 16, 2001 by Summa Management, Inc., Carefree Living of America (Burnsville), Inc., Carefree Living of America (St. Cloud), Inc., and Carefree Living of America (Brainerd), Inc., ("Guarantors") of all sums due Mahoney & Hagberg, A Professional Association ("M&H") by Carefree Living of America (Minnetonka), Inc., a Delaware corporation ("CM"), for legal services performed and expenses incurred by M&H for CM in connection with its bankruptcy, commenced by its Voluntary Petition on March 19, 2001, and for which M&H shall have an administrative claim in such bankruptcy (the "Bankruptcy Fees").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantors, and each of them, agree as follows:

1. Guarantors hereby guarantee the payment when due, whether upon demand, by acceleration or otherwise, whether for principal, interest, fees, expenses or otherwise, and the full and faithful performance of all obligations of CM now or hereafter existing for the Bankruptcy Fees (such obligations being the "Obligations").

2. Guarantors hereby represent and warrant that: (a) each Guarantor has full power and authority to enter into and perform its obligations under this Guarantee; (b) the execution, delivery and compliance with the terms hereof shall not contravene or constitute a default under any indenture, commitment, agreement or other instrument to which any Guarantor is bound or any judgment, order or decree to which it is subject; and, (c) the performance of the legal services resulting in the Bankruptcy Fees and the guaranty of payment and performance of the Obligations under this Guarantee shall benefit the Guarantors, and each of them.

3. No amendment or waiver of any provision of this Guarantee nor consent to any departure by the Guarantor herefrom shall in any event be effective unless the same shall be in writing and signed by M&H, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

4. No failure on the part of M&H to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

5. This Guarantee shall be governed by the laws of the State of Minnesota with reference to principles of conflicts of laws and shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns. If any provision of this Guarantee shall be held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions. Time is of the essence hereof.

IN WITNESS WHEREOF, the Guarantors have executed this Guarantee to be effective as of March 16, 2001.

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By: _____
Its: Vice President

SUMMA MANAGEMENT, INC.

By: _____
Its: Vice President

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By: _____
Its: Vice President

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By: _____
Its: Vice President

HAGBERG DEPO. EXHIBIT No. 14 Dtd. 6-29-04 Neumann Rptg. Agcy.

MAHONEY DEPO. EXHIBIT No. 10. Dtd. 4-29-04 Neumann Rptg. Agcy.

SVM

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR RECORDED ON

01 MAR 30 PM 3:55

AS DOCUMENT 7447293

CO. REC.

BY _____ DEPUTY

Duplicate Filing Certificate

PARTIAL RELEASE OF MORTGAGE

By Corporation or Partnership

Partial Release of Mortgage

Date: March 16, 2001

(reserved for recording data)

FOR VALUABLE CONSIDERATION, the real property in Hennepin County, Minnesota, legally described as follows:

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA; AND

THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTNEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING. HENNEPIN COUNTY, MINNESOTA.

together with all hereditaments and appurtenances belonging thereto (the "Property").

MAGBERG
DEPO. EXHIBIT
No. 15
Dtd. 6-29-04
Neumann Rptg. Agcy.

M&H
0300

is hereby released from the lien of the Mortgage, owned by the undersigned, dated March 15, 2001, executed by Carefree Living of America (Minnetonka), Inc., as Mortgagor, to Mahoney & Hagberg, A Professional Association, as Mortgagee, and filed for record on March 16, 2001, as Document Number 7439571 in the Office of the County Recorder of Hennepin County, Minnesota.

MAHONEY & HAGBERG
A PROFESSIONAL ASSOCIATION

By Steven V. Hagberg
Its Chief Executive Officer

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 30th day of March, 2001, by Steven V. Hagberg the Chief Executive Officer of Mahoney & Hagberg, A Professional Association, under the laws of Minnesota, on behalf of the Corporation.

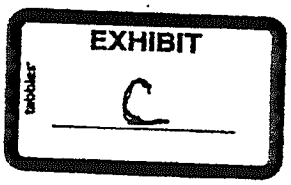
THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Mahoney & Hagberg
A Professional Association
109 Bushaway Road
Minneapolis, MN 55391

SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL
(OR OTHER TITLE OR RANK)

MARK W. PEERY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005



STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

CASE TYPE: Contract

COURT FILE NO. _____

Linda M. Selbak,

Plaintiff,

v

Minnesota Home Health Care, Inc., a Minnesota corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations,

Defendants.

CONFESSION OF JUDGMENT

This Confession of Judgment is entered into by and between:

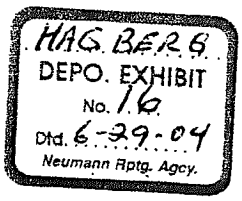
1. Linda M. Selbak ("Selbak"), Plaintiff in the above-captioned matter.

2. Minnesota Home Health Care, Inc., a Minnesota corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka), Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations, Defendants in the above-captioned action.

RECITALS

FIRST: Selbak commences the captioned action to recover judgment against the Defendants on account of amounts owed to her pursuant to that certain Settlement Agreement between and among the parties, dated March 26, 1998 in the amount of

171811/2



$3,837,600. A copy of the Settlement Agreement is annexed hereto and incorporated herein by reference.

SECOND: There is now due and owing on account of the Settlement Agreement the following amount which shall hereinafter be referred to as the "Judgment Debt": $3,837,600.

THIRD: Defendants acknowledge and agree that the Judgment Debt is immediately due and payable in full, without offset, deduction, counterclaim or defense of any kind whatsoever.

FOURTH: The Settlement Agreement settled litigation between the parties in two cases that were pending in the United States District Court for the District of Minnesota styled as Minnesota Home Health Care, et al v. Linda Marie Selbak, Court File No. 97-902 PAM/JGL and Court File No. 4-96-1239, which actions have been dismissed pursuant thereto.

FIFTH: The parties wish to resolve this matter without further litigation.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby made a part of this Agreement.

2. Confession of Judgment. Defendants and each of them hereby confess judgment to the full amount of the Judgment Debt and agree that in the event of any

default by Defendants in the performance of any obligation imposed upon Defendants under any provision of this Confession of Judgment, or in the event that the Defendants fail to pay the amounts due to Selbak or perform or fail to perform any other obligation in violation of the terms of the Settlement Agreement.

a. Selbak may, at her sole option, docket judgment against any or all of the Defendants for the full amount of the Judgment Debt, plus costs and reasonable attorneys' fees, minus any amounts actually paid pursuant to the Settlement Agreement, which judgment may be docketed by affidavit, *ex parte*, in such jurisdiction as Selbak may deem advisable;

b. Interest shall accrue on the Judgment Debt at the statutory rate from the date of docketing such judgment;

c. In addition to any remedies provided herein, Selbak may exercise any other remedies available to her at law or equity including recission of the Settlement Agreement pursuant to paragraph 9.1 of the Settlement Agreement;

d. Any expenses incurred by Selbak in connection with the exercising of her rights herein shall be added to the Judgment Debt;

e. Selbak shall give Defendants notice of default before exercising any right hereunder, which notice shall provide the Defendants ninety (90) days from the effective date of the notice to cure the default specified.

3. Dismissal of Action, etc. Upon full and prompt performance of Defendants' obligations under this Confession of Judgment, including payment of all

amounts under the terms of the Settlement Agreement, Selbak shall, upon the written request of Defendants:

a. Dismiss the captioned action, with prejudice and on the merits.

b. Cancel and return all instruments evidencing the Debt.

4. Notice. Any notice required or contemplated hereunder shall be in writing and shall be effective if it is served or delivered in conformance with paragraph 10.3 of the Settlement Agreement.

MINNESOTA HOME HEALTH CARE, INC.

Dated: MAR 27TH, 1998. BY _____

CAREFREE LIVING OF AMERICA (MINNETONKA), INC.

Dated: MAR 27TH, 1998. By _____

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

Dated: MAR 27TH, 1998. By _____

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

Dated: MAR 27TH, 1998. By _____

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

Dated: MAR 27TH, 1998. By _____

Dated: March 31, 1998.

MOSS & BARNETT
A Professional Association

By _____
Cass S. Weil #115228
Attorneys for Plaintiff
4800 Norwest Center
90 South Seventh Street
Minneapolis MN 55402-4129
Telephone: (612) 347-0300

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Linda M. Selbak,

Plaintiff,

v.

Minnesota Home Health Care, Inc. a Minnesota Corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka),Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations,

Defendant.

COURT FILE NO._____

VERIFICATION OF CONFESSION OF JUDGMENT

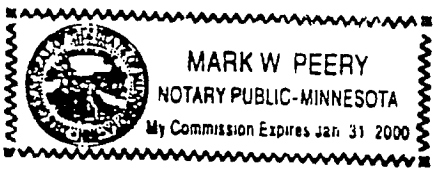
STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Vern G. Zeller, III, being first duly sworn on oath deposes and states that he is the Vice President of Minnesota Home Health Care, Inc., Defendant in the captioned action, that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to his own knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me
This 27th day of March, 1998.

Notary Public



STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Linda M. Selbak,

Plaintiff,

v.

Minnesota Home Health Care, Inc. a Minnesota Corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka),Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations,

Defendant.

COURT FILE NO._____

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Vern G. Zeller, III, being first duly sworn on oath deposes and states that he is the Vice President of Carefree Living of America (Brainerd), Inc., Defendant in the captioned action, that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to his own knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me
This 27th day of March, 1998.

Notary Public

MARK W PEERY
NOTARY PUBLIC MINNESOTA

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Linda M. Selbak,

Plaintiff,

v.

Minnesota Home Health Care, Inc. a Minnesota Corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka),Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations,

Defendant.

COURT FILE NO._____

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Vern G. Zeller, III, being first duly sworn on oath deposes and states that he is the Vice President of Carefree Living of America (Burnsville), Inc., Defendant in the captioned action, that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to his own knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me
This 6th day of March, 1998.

Notary Public

MARK W PEERY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan 31 2000

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Linda M. Selbak,

Plaintiff,

v.

Minnesota Home Health Care, Inc. a Minnesota Corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka),Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations;

Defendant.

COURT FILE NO._____

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Vern G. Zeller, III, being first duly sworn on oath deposes and states that he is the Vice President of Carefree Living of America (Minnetonka), Inc., Defendant in the captioned action, that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to his own knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me
This 27th day of March, 1998.

Notary Public

MARK W. PEERY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2000

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Linda M. Selbak,

Plaintiff,

v.

Minnesota Home Health Care, Inc. a Minnesota Corporation; Carefree Living of America (Brainerd), Inc.; Carefree Living of America (Minnetonka),Inc.; Carefree Living of America (Burnsville), Inc.; Carefree Living of America (St. Cloud), Inc.; all Delaware corporations,

Defendant.

COURT FILE NO._____

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Vern G. Zeller, III, being first duly sworn on oath deposes and states that he is the Vice President of Carefree Living of America (St. Cloud), Inc., Defendant in the captioned action, that he has read the foregoing Confession of Judgment, knows the contents thereof, and that the foregoing Confession of Judgment is true and correct to his own knowledge and belief.

Vern G. Zeller, III

Subscribed and sworn to before me
This 27th day of March, 1998.

Notary Public

MARK W PEERY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan 31, 2000

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Wilnard Leif Selbak,

Debtor.

BKY 98-41421

Dwight R. J. Lindquist, Trustee,

ADV 01-4113

Plaintiff,

v

ORDER FOR DEFAULT JUDGMENT

Summa Management, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., and Carefree Living of America (Minnetonka), Inc.,

Defendants.

At Minneapolis, Minnesota, March 20, 2001.

On application of the plaintiff and it appearing that the defendants are in default,

IT IS ORDERED: The plaintiff shall recover from the defendants, and each of them, a total of $218,670.00, together with attorney's fees in the amount of $2,525.60, and costs of $186.15, for a total of $221,381.75.

LET JUDGMENT BE ENTERED ACCORDINGLY.

ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE

HAGBERG
DEPO. EXHIBIT
No. 17
Dtd 6-29-04
Neumann Rptg. Agcy.

[illegible] ORDER ON JUDGMENT
[illegible] made on MAR 3 0 2001
Patrick G. De Wane, Clerk, By mh

6-1

7510012

(30)

REC FEE 15 -
COPY FEE 1 -

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR RECORDED ON

2001 JUL 24 PM 4: 16

DOC. NO. 7510012 CO. REC.

DEPUTY

0503014000A 00009, 0916300001200 9, 0916300005700 9
0916300007200 9, 0916300009000 9

MORTGAGE

By Corporation or Partnership

MORTGAGE REGISTRY TAX DUE HEREON:

$ 150.00

Henn Co MRT
VLV # 17055
7/24/2001
Paid $150.00

THIS INDENTURE, Made this 20th day of July, 2001, between Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, Mortgagor, and Kathleen L. Zeller, Mortgagee,

WITNESSETH, That Mortgagor, in consideration of the sum of TEN DOLLARS, to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, does hereby convey unto Mortgagee, forever, real property in Minnesota, described as follows:

ALL OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, EXCEPT THAT PART THEREOF PLATTED "PARKDALE ADDITION TO THE CITY OF BRAINERD"
AND ALSO
LOTS 1,2,5,6,7,8 AND 9, AND THE E ½ OF LOT 3 OF PARKDALE ADITION TO THE CITY OF BRAINERD, EXCEPT: COMMENCING AT THE SW CORNER OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, THENCE NORTH ALONG THE WEST BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 704 FEET MORE OR LESS TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING THE NE CORNER OF BLOCK 36, CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE NORTH ALONG SAID WEST BOUNDARY A DISTANCE OF 617 FEET, MORE OR LESS, TO A POINT BEING THE NORTHWEST CORNER OF SAID SE ¼ OF NE ¼ ; THENCE EAST ALONG THE NORTH BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 551.54 FEET MORE OR LESS TO A POINT BEING THE SOUTHWEST CORNER OF BLOCK 27 OF CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE IN A SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING. CROW WING COUNTY, MINNESOTA.

AND

EXHIBIT
3

COUNTY RECORDER
HENNEPIN COUNTY, MINN.

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original on file and of record in my office.
AUG 03 2001
MICHAEL H. CONNIFF COUNTY RECORDER
By B Smart Deputy

HAGBERG
DEPO. EXHIBIT
No. 18
Dtd. 6-29-04
Neumann Rptg. Agcy.

43536-212-236

LOT 1, BLOCK 1, COPPERTOP II. DAKOTA COUNTY, MINNESOTA.

AND

ALL OF LOT 3, AND THAT PART OF LOT 4, BLOCK 3, EASTERN PARK ADDITION, CITY OF ST. CLOUD, BENTON COUNTY, MINNESOTA, WHICH LIES WESTERLY OF A LINE 26.00 FEET EAST OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE WEST LINE OF SAID LOT 4, AND WHICH LIES NORTHERLY OF THAT CERTAIN HIGHWAY EASEMENT DESCRIBED IN BOOK 28 OF MISCELLANEOUS ON PAGE 420, ACCORDING TO THE FILES OF THE BENTON COUNTY RECORDER. BENTON COUNTY, MINNESOTA

AND

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA;
AND
THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTNEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING.
HENNEPIN COUNTY, MINNESOTA.

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever.

PROVIDED, NEVERTHELESS, That if Mortgagor shall pay to mortgagee the sum of Sixty Two Thousand Five Hundred and No/100 Dollars ($62,500.00) according to the terms of a Promissory Note dated September 1, 2000 (the "Obligation"), with interest at the rate provided in the Obligation, and shall repay to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose

authorized herein, and shall keep and perform all the covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND MORTGAGOR covenants with Mortgagee as follows:

1. To pay the principal sums of money and interest as specified in the Note;

2. To pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;

3. To keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of the outstanding indebtedness at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;

5. to commit or permit no waste on the Property and to keep it in good repair;

6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and

7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Mortgagor agrees to pay.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

MORTGAGOR

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By _____
KATHLEEN L. ZELLER
Its PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By _____
KATHLEEN L. ZELLER
Its PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By _____
KATHLEEN L. ZELLER
Its PRESIDENT

CAREFREE LIVING OF AMERICA (MINNETONKA), INC.

By _____
KATHLEEN L. ZELLER
Its PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 20th day of July, 2001 by Kathleen L. Zeller, the President of Carefree Living of America (Brainerd), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Burnsville), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (St. Cloud), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Minnetonka), Inc. on behalf of the corporation.

Notary Stamp or Seal

STEVEN V. HAGBERG
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

_____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

RETURN TO

Certificate Number 63536
Vol. 212 Page 236
STATE OF MINNESOTA)
COUNTY OF CROW WING) ss.
OFFICE OF THE REGISTRAR OF TITLES
This is to certify that the within instrument was filed in this office on the 27th day of August A.D. 2001 at 8 o'clock 0 M
REGISTRAR OF TITLES
By _____ DEPUTY

148688

MAHONEY & HAGBERG
A Professional Association
109 Bushaway Road
P.O. Box 846
Minneapolis, MN 55391
(612) 332-2226
(612) 332-8066

HAGBERG
DEPO
19
6-29-04

Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600M

PROJECT SUMMARY SHEET

Previous Balance	Fees	Expenses	Advances	Payments	Balance due
4600-004 Matter: Limited Partners					
0.00	46.68	0.00	0.00	-46.68	$0.00
4600-005 Matter: Miscellaneous					
0.00	3,976.28	0.00	0.00	-2,453.32	$1,522.96
4600-009 Matter: Helterhoff's, Inc., et al v. Selbak					
67,534.17	0.00	0.00	0.00	0.00	
			Interest	792.96	$68,327.13
4600-010 Matter: First Union Financing					
32,187.95	0.00	0.00	0.00	0.00	
			Interest	377.33	$32,565.28
4600-014 Matter: Kinnard Financing					
48,237.91	8,750.00	0.00	0.00	0.00	
			Interest	557.07	$57,544.98
4600-015 Matter: First Union v. CLA (Brainerd) , Inc.					
20,498.25	1,575.33	0.00	0.00	0.00	
			Interest	258.81	$22,332.39
168,458.28	14,348.29	0.00	0.00	-2,500.00	
			Interest	1,986.17	$182,292.74

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

MAHONEY & HAGBERG
A ofessional Association
109 Bushaway Road
P.O. Box 846
Minneapolis, MN 55391
(612) 332-2226
(612) 332-8066

Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600-004M
Statement No: 16874

Matter: Limited Partners

02/09/01 Conferences

02/12/01 Conferences

Total Due	46.68
Total Current Work	46.68
Total Payments for 03/16/01	-46.68
Balance due	$0.00

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

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Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600-005M
Statement No: 16875

Matter: Miscellaneous

02/05/01	Conferences
02/07/01	Conferences
02/08/01	Conferences
02/09/01	Conferences
02/12/01	Conferences
02/14/01	Conferences
02/15/01	Conferences
02/16/01	Conferences
03/01/01	Conferences
	Drafting
	Conferences
	Drafting
03/05/01	Conferences
03/06/01	Conferences
03/07/01	Conferences
03/08/01	Conferences
03/12/01	Investigations

Matter: Miscellaneous

03/13/01 Research

03/14/01 Investigations

Research

03/15/01 Conferences

03/16/01 Research

03/22/01 Drafting

03/23/01 Research

Conferences

Research

Drafting

03/26/01 Conferences

Drafting

Research

Drafting

Conferences

03/27/01 Conferences

Drafting

03/28/01 Conferences

Drafting

Research

Conferences

03/29/01 Conferences

Drafting

Drafting

Conferences

Carefree Living of Ar ica (Brainerd), Inc. April 01, 2001
Client Matter Number 4600-005M
Statement No: 16875

Matter: Miscellaneous

03/30/01 Conferences

Drafting

Total Due	3,976.28
Total Current Work	3,976.28
Total Payments for 03/16/01	-2,453.32
Balance due	$1,522.96

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

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Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600-009M
Statement No: 16876

Matter: Helterhoff's, Inc., et al v. Selbak

Previous Balance	$67,534.17
Interest on Unpaid Balance	792.96
Balance due	$68,327.13

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

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Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600-010M
Statement No: 16877

Matter: First Union Financing

Previous Balance	$32,187.95
Interest on Unpaid Balance	377.33
Balance due	$32,565.28

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

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Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600-014M
Statement No: 16878

Matter: Kinnard Financing

	Previous Balance	$48,237.91
02/06/01	Conferences	
02/07/01	Conferences	
02/08/01	Conferences	
02/09/01	Conferences	
02/13/01	Conferences	
02/14/01	Conferences	
02/15/01	Conferences	
02/16/01	Conferences	
02/20/01	Conferences	
02/21/01	Conferences	
02/22/01	Conferences	
02/23/01	Conferences	
02/27/01	Conferences	
02/28/01	Conferences	
03/01/01	Conferences	
03/02/01	Conferences	

Carefree Living of A rica (Brainerd), Inc. April 01, 2001
Client Matter Number 4600-014M
Statement No: 16878

Matter: Kinnard Financing

03/06/01 Conferences

03/07/01 Conferences

03/09/01 Conferences

03/13/01 Conferences

03/14/01 Conferences

03/16/01 Conferences

03/20/01 Conferences

03/21/01 Conferences

03/23/01 Conferences

Total Due	8,750.00
Total Current Work	8,750.00
Interest on Unpaid Balance	557.07
Balance due	$57,544.98

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

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(612) 332-8066

Carefree Living of America (Brainerd), Inc.
c/o 14505 Minnetonka Drive
Minnetonka MN 55345

April 01, 2001
Client Matter Number 4600-015M
Statement No: 16879

Matter: First Union v. CLA (Brainerd) , Inc.

	Previous Balance	$20,498.25
03/05/01	Investigations	
03/08/01	Investigations	
03/09/01	Investigations	
03/12/01	Investigations	
03/15/01	Investigations	
03/16/01	Investigations	
03/19/01	Investigations	
03/22/01	Investigations	
03/23/01	Investigations	
	Total Due	1,575.33
	Total Current Work	1,575.33
	Interest on Unpaid Balance	258.81
	Balance due	$22,332.39

Invoice reflects activity from 03/01/01 through 03/31/01
Payment due upon receipt
Please remit cover sheet with payment

Primary Timekeeper: Steven V. Hagberg

Client: 4600.004M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: Limited Partners Office: 988-0011

Primary Timekeeper: 11 SVH Category: 23 Miscellaneous
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 10/20/97

Prev Balance: 0.00

Date	Tmkr	Cat	Src	H P	T X	B C	R E	Tcode	Ref #	Rate	Hours	Amount	Write Up/Down	Description
Fees														
02/09/01	20 MWP	23						21	10	175.00	0.13	23.34	0.59	Conferences ~~conference with client re: Trustee lawsuit; corporate status~~
02/12/01	20 MWP	23						21	11	175.00	0.13	23.34	0.59	Conferences ~~conference re: Guaranty documents~~
Billable Total:	20 Mark W. Peery										0.26	46.68		
	Total Fee Write-Up												1.18	
Total Billable Fees											0.26	46.68		
	Total Fee Write-Up												1.18	

******** R E C A P ********

Fees:	46.68				
Expenses:	0.00	Prev Bal:	0.00		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	46.68	Bal Due:	0.00	Total:	46.68

A/R: 0-30	31-60	61-90	91-120	121-180	181+
0.00	0.00	0.00	0.00	0.00	0.00

Bill

Primary Timekeeper: .. Steven V. Hagberg

Client: 4600.005M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: Miscellaneous Office: 988-0011

Primary Timekeeper: 11 SVH Category: 23 Miscellaneous
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 10/20/97

Prev Balance: 0.00

Date	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Hours	Amount	Write Up/Down	Description
Fees														
02/05/01	10 MCM	23						21	45	350.00	0.50	175.00		Conferences ~~Numerous conferences re: issues~~
02/07/01	10 MCM	23						21	46	350.00	0.50	175.00		Conferences ~~Numerous conferences re: issues~~
02/08/01	10 MCM	23						21	47	350.00	0.25	87.50		Conferences ~~Numerous conferences re: issues~~
02/09/01	10 MCM	23						21	48	350.00	0.75	262.50		Conferences ~~Numerous conferences re: various matters~~
02/12/01	10 MCM	23						21	41	350.00	0.50	175.00		Conferences ~~Numerous conferences re: issues~~
02/14/01	10 MCM	23						21	42	350.00	0.50	175.00		Conferences ~~Numerous conferences re: issues~~
02/15/01	10 MCM	23						21	43	350.00	0.25	87.50		Conferences ~~Numerous conference re: issues~~
02/16/01	10 MCM	23						21	44	350.00	0.75	262.50		Conferences ~~Numerous conferences re: various matters~~
Billable Total:	10 Michael C. Mahoney										4.00	1400.00		
03/01/01	11 SVH	23						21	49	275.00	0.10	27.50		Conferences ~~Conference with MCM, MWP, K Zeller and W Howard~~
03/01/01	11 SVH	23						23	50	275.00	0.15	41.25		Drafting ~~review pers gty~~
03/05/01	11 SVH	23						21	82	275.00	0.13	34.38	-1.37	Conferences ~~Conference with MCM~~
03/06/01	11 SVH	23						21	83	275.00	0.15	41.25		Conferences
03/07/01	11 SVH	23						21	84	275.00	0.30	82.50		Conferences ~~Conference with MCM, K. Zeller~~
03/08/01	11 SVH	23						21	73	275.00	0.30	82.50		Conferences ~~Conference with MCM re: reorg~~
03/12/01	11 SVH	23						25	74	275.00	0.50	137.50		Investigations ~~Work on receiver motion~~
03/13/01	11 SVH	23						27	75	275.00	0.75	206.25		Research ~~Research~~
03/14/01	11 SVH	23						25	76	275.00	0.50	137.50		Investigations ~~Review O'Leary v. M&S documents~~
03/14/01	11 SVH	23						27	77	275.00	0.38	103.13	-1.37	Research ~~Continued research~~
03/15/01	11 SVH	23						21	78	275.00	0.38	103.13	-1.37	Conferences ~~Conference re: receiver~~
03/26/01	11 SVH	23						21	79	275.00	0.25	68.75		Conferences ~~Conference with V. Zeller, K. Zeller review Spectrum etc.~~
03/28/01	11 SVH	23						21	80	275.00	0.25	68.75		Conferences ~~Conference with MWP re: various issues~~
03/29/01	11 SVH	23						21	81	275.00	0.63	171.88	-1.37	Conferences ~~Conference with J. Hedback, MWP, K. Zeller, V. Zeller~~
Billable Total:	11 Steven V. Hagberg										4.77	1306.27		
	Total Fee Write-Down												-5.48	
03/01/01	20 MWP	23						21	57	175.00	0.18	30.63	-0.87	Conferences ~~Conference with MCM, SVH and client re: notes and guaranties~~
03/01/01	20 MWP	23						23	58	175.00	0.20	35.00		Drafting ~~Drafting notes and guaranties~~
03/23/01	20 MWP	23						21	54	175.00	0.13	21.88	-0.87	Conferences ~~conference with SVH re: releases, agreements~~
03/23/01	20 MWP	23						27	55	175.00	0.25	43.75		Research ~~review files and materials, research partial mortgage releases, Releases, agreements, etc.~~
03/23/01	20 MWP	23						23	56	175.00	0.13	21.88	-0.87	Drafting ~~drafting release documents~~
03/26/01	20 MWP	23						21	59	175.00	0.63	109.38	-0.87	Conferences ~~review files and corporate records, conference with B. Minish, clients, SVH, re: Shareholders and Mtks~~
03/26/01	20 MWP	23						23	60	175.00	0.25	43.75		Drafting ~~revising release documents, corp. docs and records~~
03/27/01	20 MWP	23						21	61	175.00	1.00	175.00		Conferences ~~review files and corporate records, conference with B. Minish, clients, SVH, Hedback re: Shareholders and Mtks~~

000061

Primary Timekeeper: Steven V. Hagberg

Client: 4600.005M Carefree Living of America (Brainerd), Inc. (Continued)

Date	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Hours	Amount	Write Up/Down	Description
03/27/01	20 MWP	23						23	62	175.00	0.50	87.50		Drafting ~~revising release documents, corp. docs and records~~
03/28/01	20 MWP	23						21	63	175.00	0.75	131.25		Conferences ~~review files and documents, corporate documents and records; conference with clients, SVH, re: asset sale~~
03/28/01	20 MWP	23						23	64	175.00	0.25	43.75		Drafting ~~prepared and organize corporate documents and records~~
03/29/01	20 MWP	23						21	65	175.00	0.63	109.38	-0.87	Conferences ~~review files and documents, corporate documents and records; conference with client, SVH re: asset sale~~
03/29/01	20 MWP	23						23	66	175.00	0.50	87.50		Drafting ~~prepared and organize corporate documents and records~~
03/30/01	20 MWP	23						21	67	175.00	0.25	43.75		Conferences ~~review files and documents, corporate documents and records; conference with client, SVH re: asset sale~~
03/30/01	20 MWP	23						23	68	175.00	0.25	43.75		Drafting ~~prepare and organize corporate documents and records~~
Billable Total:	20 Mark W. Peery										5.90	1028.15		
	Total Fee Write-Down												-4.35	
03/16/01	81 GLM	23						27	51	45.00	1.75	78.75		Research
03/26/01	81 GLM	23						27	69	45.00	0.75	33.75		Research ~~research re: liabilities of CLA, pull docs~~
03/28/01	81 GLM	23						27	70	45.00	1.00	45.00		Research ~~research for asset sale book~~
03/29/01	81 GLM	23						23	71	45.00	1.13	50.63	-0.22	Drafting ~~create asset sale book~~
Billable Total:	81 Gina L. Miller										4.63	208.13		
	Total Fee Write-Down												-0.22	
03/23/01	83 RNR	23						27	53	125.00	0.03	3.13	-0.62	Research ~~Faxed Order to client.~~
Billable Total:	83 Roshan N. Rajkumar										0.03	3.13		
	Total Fee Write-Down												-0.62	
03/22/01	87 TLP	23						23	52	36.00	0.44	15.75	-0.09	Drafting ~~Drafting Promissory Note and Loan Agreement for MGM.~~
03/26/01	87 TLP	23						23	72	36.00	0.41	14.85	0.09	Drafting ~~Scanning documents per SVH~~
Billable Total:	87 Tracy L. Poitra										0.85	30.60		
	Total Fee Write-Up												0.09	
	Total Fee Write-Down												-0.09	
Total Billable Fees											20.18	3976.28		
	Total Fee Write-Up												0.09	
	Total Fee Write-Down												-10.76	

Bill

++++++++ R E C A P ++++++++

Fees:	3976.28				
Expenses:	0.00	Prev Bal:	0.00		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	3976.28	Bal Due:	0.00	Total:	3976.28

A/R: 0-30	31-60	61-90	91-120	121-180	181+
0.00	0.00	0.00	0.00	0.00	0.00

Primary Timekeeper: . Steven V. Hagberg

Client: 4600.006M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: Linda Selbak Office: 988-0011

Primary Timekeeper: 11 SVH Category: 23 Miscellaneous
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 10/20/97

Prev Balance: 0.00

Date	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Hours	Amount	Write Up/Down	Description
Fees														
03/01/01	20	MWP	23					21	24	175.00	0.15	26.25		Conferences ~~Conference re: Lundquist complaint~~
03/02/01	20	MWP	23					21	25	175.00	0.15	26.25		Conferences ~~Conference re: Lundquist complaint~~
03/06/01	20	MWP	23					21	26	175.00	0.25	43.75		Conferences ~~conference re: Lundquist complaint~~
03/07/01	20	MWP	23					21	27	175.00	0.25	43.75		Conferences ~~conference Seaver re: settlement of Lindquist litigation~~
Billable Total:	20	Mark W. Peery									0.80	140.00		
Total Billable Fees											0.80	140.00		

******** R E C A P ********

Fees:	140.00				
Expenses:	0.00	Prev Bal:	0.00		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	140.00	Bal Due:	0.00	Total:	140.00

A/R: 0-30	31-60	61-90	91-120	121-180	181+
0.00	0.00	0.00	0.00	0.00	0.00

Misposted
transfer to
4621 . 005

Primary Timekeeper: Steven V. Hagberg

Client: 4600.009M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: Helterhoff's, Inc., et al v. Selbak Office: 980-0011

Primary Timekeeper: 11 SVH Category: 51 BILLABLE
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 02/18/98

Prev Balance: 67534.17

******** R E C A P ********

Fees:	0.00				
Expenses:	0.00	Prev Bal:	67534.17		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	0.00	Bal Due:	67534.17	Total:	67534.17

A/R: 0-30	31-60	61-90	91-120	121-180	181+
0.00	0.00	416.64	359.66	914.94	65842.93

Bill

Primary Timekeeper: Steven V. Hagberg

Client: 4600.010M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: First Union Financing Office: 988-0011

Primary Timekeeper: 11 SVH Category: 23 Miscellaneous
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 07/14/98

Prev Balance: 32187.95

******** R E C A P ********

Fees:	0.00				
Expenses:	0.00	Prev Bal:	32187.95		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	0.00	Bal Due:	32187.95	Total:	32187.95

A/R: 0-30	31-60	61-90	91-120	121-180	181+
0.00	0.00	198.26	198.26	390.12	31401.31

Bill

Primary Timekeeper. Steven V. Hagberg

Client: 4600.014M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: Kinnard Financing Office: 988-0011

Primary Timekeeper: 11 SVH Category: 51 BILLABLE
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 06/27/00

Prev Balance: 48237.91

Date	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Hours	Amount	Write Up/Down	Description
Fees														
02/06/01	10	MCM	51					21	99	350.00	1.00	350.00		Conferences ~~Review financial statements~~
02/07/01	10	MCM	51					21	100	350.00	1.00	350.00		Conferences ~~Numerous conferences re: fin statements~~
02/08/01	10	MCM	51					21	101	350.00	1.00	350.00		Conferences ~~Numerous conference re: fin. statements~~
02/09/01	10	MCM	51					21	102	350.00	1.00	350.00		Conferences ~~Numerous conferences re: fin statements~~
02/13/01	10	MCM	51					21	95	350.00	1.00	350.00		Conferences ~~Review financial statements~~
02/14/01	10	MCM	51					21	96	350.00	1.00	350.00		Conferences ~~Numerous conferences re: fin. statements~~
02/15/01	10	MCM	51					21	97	350.00	1.00	350.00		Conferences ~~Numerous conference re: fin. statements~~
02/16/01	10	MCM	51					21	98	350.00	1.00	350.00		Conferences ~~Conferences re: fin statements~~
02/20/01	10	MCM	51					21	103	350.00	1.00	350.00		Conferences ~~Review financial statements~~
02/21/01	10	MCM	51					21	104	350.00	1.00	350.00		Conferences ~~Numerous conferences re: fin. statements~~
02/22/01	10	MCM	51					21	105	350.00	1.00	350.00		Conferences ~~Numerous conferences re: fin. stamens~~
02/23/01	10	MCM	51					21	106	350.00	1.00	350.00		Conferences ~~Conferences re: fin statements~~
02/27/01	10	MCM	51					21	107	350.00	1.00	350.00		Conferences ~~Review financial statements~~
02/28/01	10	MCM	51					21	108	350.00	1.00	350.00		Conferences ~~Numerous conferences re fin statements~~
03/01/01	10	MCM	51					21	118	350.00	1.00	350.00		Conferences ~~numerous conference re: fin statements~~
03/02/01	10	MCM	51					21	119	350.00	1.00	350.00		Conferences ~~conferences re: fin statements~~
03/06/01	10	MCM	51					21	109	350.00	1.00	350.00		Conferences ~~Review financial statements~~
03/07/01	10	MCM	51					21	110	350.00	1.00	350.00		Conferences ~~Numerous conference re: financial statements~~
03/08/01	10	MCM	51					21	111	350.00	1.00	350.00		Conferences ~~Conferences re: financial statements~~
03/13/01	10	MCM	51					21	112	350.00	1.00	350.00		Conferences ~~Review financial statements~~
03/14/01	10	MCM	51					21	113	350.00	1.00	350.00		Conferences ~~Numerous conferences re: financial statements~~
03/16/01	10	MCM	51					21	114	350.00	1.00	350.00		Conferences ~~conference re: financial statements~~
03/20/01	10	MCM	51					21	115	350.00	1.00	350.00		Conferences ~~Review financial statements~~
03/21/01	10	MCM	51					21	116	350.00	1.00	350.00		Conferences ~~numerous conferences re; financial statements~~
03/23/01	10	MCM	51					21	117	350.00	1.00	350.00		Conferences ~~conferences re: financial statements~~
Billable Total:	10 Michael C. Mahoney										25.00	8750.00		
06/26/00	81	GLM	51	H				23	9	36.00	0.25	9.00		Drafting ~~CLA Kinnard -- Draft letter~~
06/27/00	81	GLM	51	H				23	10	36.00	3.00	108.00		Drafting ~~CLA Kinnard -- Prepare package for bank~~
Billable Total:	81 Gina L. Miller										3.25	117.00		
Total Billable Fees											28.25	8867.00		

Bill

******** R E C A P ********

Fees:	8867.00				
Expenses:	0.00	Prev Bal:	48237.91		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	8867.00	Bal Due:	48237.91	Total:	57104.91

A/R: 0-30	31-60	61-90	91-120	121-180	181+
0.00	0.00	9156.82	4876.64	12275.45	21929.00

Primary Timekeeper: Steven V. Hagberg

Client: 4600.015M Carefree Living of America (Brainerd), Inc. Contact:
CAREFREE LIVING Matter: First Union v. CLA (Brainerd) , Inc. Office: 988-0011

Primary Timekeeper: 11 SVH Category: 51 BILLABLE
Secondary Timekeeper: 11 SVH Rate Code: 1 Draft: 00000001 Final: 00000001
Originating Timekeeper: 11 SVH Date Opened: 08/16/00 Prev Balance: 20498.25

Date	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Hours	Amount	Write Up/Down	Description
Fees														
03/05/01	10	MCM	51					25	54	350.00	1.00	350.07	0.07	Investigations ~~Review issues; review docs~~
03/08/01	10	MCM	51					25	55	350.00	0.17	58.35	-1.15	Investigations ~~Review how to proceed~~
03/09/01	10	MCM	51					25	56	350.00	0.33	116.69	1.19	Investigations ~~Investigate issues; review with client~~
03/12/01	10	MCM	51					25	57	350.00	1.00	350.07	0.07	Investigations ~~Review issues; review docs~~
03/15/01	10	MCM	51					25	58	350.00	0.17	58.35	-1.15	Investigations ~~Review how to proceed~~
03/16/01	10	MCM	51					25	59	350.00	0.33	116.69	1.19	Investigations ~~Investigate issues; review with client~~
03/19/01	10	MCM	51					25	60	350.00	1.00	350.07	0.07	Investigations ~~Review issues; review documents~~
03/22/01	10	MCM	51					25	61	350.00	0.17	58.35	-1.15	Investigations ~~review how to proceed~~
03/23/01	10	MCM	51					25	62	350.00	0.33	116.69	1.19	Investigations ~~Investigate issues; review with client~~
Billable Total:											4.50	1575.33		
													3.78	Total Fee Write-Up
													-3.45	Total Fee Write-Down
Total Billable Fees											4.50	1575.33		
													3.78	Total Fee Write-Up
													-3.45	Total Fee Write-Down

Okay never mind.

******** R E C A P ********

Fees:	1575.33				
Expenses:	0.00	Prev Bal:	20498.25		
Advances:	0.00	Pymt/Cr:	0.00		
Total WIP:	1575.33	Bal Due:	20498.25	Total:	22073.58

A/R:	0-30	31-60	61-90	91-120	121-180	181+
	0.00	0.00	135.98	109.08	1269.50	18963.69

Bill

US BANKRUPTCY COURT, DISTRICT OF MINNESOTA

DEPOSITION OF JANE L. STROM – 2/13/03

In Re:

Carefree Living of America (Burnsville), Inc. – 01-33545

Carefree Living of America (St. Cloud), Inc. – 01-33546

Carefree Living of America (Brainerd), Inc. – 01-33547

Brian F. Leonard, Trustee – ADV Case No. 02-9117

vs.

Jane L. Strom Revocable Trust,

Jane L. Strom, Trustee, and

Jane L. Strom, individually

CONDENSED TRANSCRIPT & DEPO-DEX® CONCORDANCE

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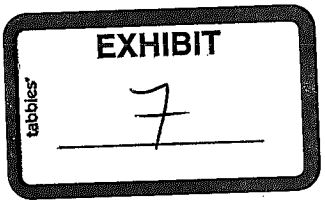

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Page 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7

Carefree Living of America (Burnsville), Inc. 01-33545
Carefree Living of America (St. Cloud), Inc. 01-33546
Carefree Living of America (Brainerd), Inc. 01-33547

Debtors.

Brian F. Leonard, Trustee. ADV Case No. 02-9117

Plaintiff.

v.

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and
Jane L. Strom, individually,

Defendants.

DEPOSITION OF JANE L. STROM

TAKEN ON 2/13/03

DEPOSITION OF JANE L. STROM, taken pursuant to Notice of Taking Deposition on the 13th day of February, 2003, at Suite 1200, 100 South Fifth Street, Minneapolis, Minnesota, before Patricia S. Onken, Court Reporter and Carver County Notary Public, and Commencing at 9:55 a.m.

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A P P E A R A N C E S:

Representing The Trustee:

Mr. Brian F. Leonard
Leonard, O'Brien, Wilford, Spencer & Gale
100 South Fifth Street
Suite 1200
Minneapolis, Minnesota 55402
Phone: (612) 332-1030
Fax: (612) 332-2740

Representing Jane L. Strom:

Mr. Ralph V. Mitchell
Lapp, Libra, Thomson Stoebner & Pusch
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, Minnesota 55402
Phone: (612) 338-5815
Fax: (612) 338-6651

Also present:

Steven V. Hagberg

* * * * * * * *

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WHEREUPON, the following proceedings transpired:

JANE L. STROM,
a witness in the above-entitled action, after having been first duly sworn, deposes and says as follows:

EXAMINATION

BY MR. LEONARD

Q. Okay. Ms. Strom, my name is Brian Leonard, and I'm the trustee and actually acting as counsel for the trustee in this deposition, which deals with an Adversary Proceeding Number 02-9117, having to do with the proof of claim that you filed in the bankruptcy cases of the Carefree Living of America companies.

First let me explain how a deposition proceeds. I'll be asking you questions, and as you've been sworn in, you are required to answer those under oath, just as if we were in court. The court reporter is taking down all of my questions and all of your answers, so it'll be important that we not speak at the same time. I

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will endeavor not to ask a question until you've finished answering the previous one. If you are confused or not sure of my question, feel free to ask me to repeat it or explain it.

During the course of this deposition I'm going to refer to the three companies that are in bankruptcy as "the debtors," just for expedience sake. Those companies are Carefree Living of America Burnsville, Carefree Living of America St. Cloud, and Carefree Living of America Brainerd. So rather than repeating all three names each time, I'll just refer to them as the debtors, if that's okay with you.

A. So all three – when you're speaking of the debtors, you're speaking of just those three.

Q. Yes.

A. Burnsville, St. Cloud, and Brainerd.

Q. Correct. Correct.

A. Okay.

Q. You'll see that we've got some water and coffee here. If you need to avail yourself of any of that during this morning's proceedings, feel free. If you want to take a break just let us know and we'll be happy to accommodate you.

A. Okay.

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Q. To start with, then, if you don't have any questions, will you state your full name, please?
A. With middle?
Q. Yes.
A. Jane LuAnn Strom.
Q. And your address, please?
A. 3305 Fairchild Avenue.
Q. Your age?
A. 44.
Q. And your marital status?
A. Married.
Q. And your husband is Steven V. Hagberg?
A. Yes, it is.
Q. And Mr. Hagberg is present today?
A. Yes.
Q. And Ralph Mitchell is present today, correct?
A. Yes.
Q. And Mr. Mitchell is acting as your attorney today?
A. Yes.
Q. What is your occupation?
A. Homemaker and student.
Q. You're presently attending classes somewhere?
A. Uh-huh. Yes.
Q. Where is that?

Page 6

A. University of Minnesota.
Q. Do you have a post-secondary degree?
A. No.
Q. Can you give me, since high school, just a synopsis of your occupational history to the present date?
A. I worked for First Bank Minneapolis, I worked for Griffen Properties, I worked for First Trust, I worked for Lund's. I think that's it. And I've been a stay-at-home mom.
Q. I'm sorry, I didn't catch the last part.
A. A stay-at-home mother.
Q. Presently, then, you're not employed outside the home?
A. No.
Q. That is correct?
A. I'm sorry?
Q. You are not employed outside the home?
A. No, not at this time.
Q. And you were married to Mr. Steven Hagberg I believe in 1990?
A. Yes.
(Strom Deposition Exhibit 1 marked for identification.)
MR. MITCHELL: Brian, she wants

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to add one more place that she worked that she forgot.
MR. LEONARD: Sure.
THE WITNESS: I worked for a law firm.
BY MR. LEONARD
Q. Which one?
A. Halpern & Druck.
Q. And what years were those?
A. I don't remember.
Q. Would it have been in the 1980s or 1990s?
A. 1980s.
Q. And what did you do there?
A. A lot of things.
Q. Clerical?
A. Clerical.
Q. Secretarial type things?
A. Yes.
Q. All right. For how many years were you employed there?
A. Two to three years.
Q. I'd like you to take a look at Strom Exhibit 1, which is the notice of your deposition, or today's deposition, and refer you to the last page, which is Exhibit A. I'll ask if you've

Page 8

seen this before?
A. (Reviewing document.) I don't remember seeing it before.
Q. This wasn't sent to you by anybody?
A. I don't remember this one specifically.
Q. Calling your attention to Exhibit A, that's a list of documents you were asked to bring either today or supply prior to today. And I know I got some documents from your attorney on Monday or Tuesday of this week, from Mr. Mitchell. Do you believe that all of the documents that are listed on Exhibit A were produced to me by Mr. Mitchell?
MR. MITCHELL: Let me interpose an objection and an explanation. We answered the written request for production of documents. We did not answer Exhibit A. This is – party discovery is done through written interrogatories, not through exhibits to depositions. That's our position.
MR. LEONARD: Mr. Mitchell, let me ask you, do you believe you have produced, in the documents you sent over with your letter of February 10, 2002, the documents that are responsive

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to those listed on Exhibit A?
MR. MITCHELL: I haven't compared them with what's in the document request that we responded to.
(Strom Deposition Exhibit 2 marked for identification.)
BY MR. LEONARD
Q. I'll ask you to take a look at Exhibit 2, Ms. Strom, and tell me if you've seen that before, particularly the last page with your signature on it.
A. (Reviewing document.) Yes, I've seen this last page before.
Q. And did you read this document before you signed it? Well, let me back up.
Is that your signature on the last page?
A. Yes, it is.
Q. Did you read this document before you signed it?
A. Yes.
Q. And the person who has notarized your signature, a Tracy Lynn Poitra, who is she?
A. Poitra? She's Steven's secretary.
Q. So she's an employee of the law firm of Mahoney & Hagberg?
A. Yes, she is.

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Q. And is it your testimony that the answers you gave to theses interrogatories are true and correct to the best of your knowledge?
A. Well, yes.
(Strom Deposition Exhibit 3 marked for identification.)
BY MR. LEONARD
Q. Please take a look at Exhibit 3. And to simplify things, I'll ask you if that's a copy of the Jane L. Strom Revocable Trust Agreement that is one of the defendants in this case?
A. (Reviewing document.) Yes, it is.
Q. Is it your understanding that yourself and Steven V. Hagberg, your husband, are the trustees under this trust agreement?
A. Yes.
Q. And you created the trust, correct?
A. Yes.
Q. What was the trust created for? For what purpose?
A. Estate planning.
Q. And when the trust was created, what was the source of the assets that were put into the trust?
A. The source of the assets?

Page 11

Q. Yes. Where did the assets come from that went into the trust? Did you own them, did Mr. Hagberg own them, did somebody else own them?
A. Both.
Q. Okay.
A. I'm ...
Q. So just to try to simplify things, some of the assets that went into the trust were owned by you and some were owned by Mr. Hagberg, is that what you meant to say?
A. I'm still not sure if I understand your question. Are you asking were they owned individually by us or were they owned jointly by us?
Q. Both. I'm just trying to find out where they came from, from however and whoever owned them.
A. A variety of sources.
Q. Well, can you just tell me what the sources are?
A. I still don't – I'm still not understanding the question.
MR. LEONARD: Well, Counsel, I'm not sure I can make it any clearer.
MR. MITCHELL: Let me try to help out.
I think what he's asking is there

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are some trusts or some assets that are in the trust, and before they were in the trust who did they belong to?
THE WITNESS: Both of us.
BY MR. LEONARD
Q. So they were jointly owned?
A. Not – okay. I have to refresh my memory what's in ... (Reviewing document.)
Yes, they were jointly – well, just a minute.
MR. MITCHELL: Let me ask this, let me just – I think that some of this is a legal conclusion, and that's why she's struggling with it.
MR. LEONARD: And I'm just asking for her understanding as opposed to a legal opinion.
MR. MITCHELL: I hear you. Can I ask her some foundational questions?
Maybe that would help.
BY MR. LEONARD
Q. Well, let me approach it this way: Is it a correct statement that some of the assets that were transferred into the trust were owned by you individually?

Page 13

A. Yes. Let me just –
(Whereupon, the witness and Mr. Mitchell confer sotto voce.)
MR. MITCHELL: Just by way of objection, the parties had been married eight years by the time this trust was entered into and no doubt had a number of joint assets, could have had what formerly were individual assets commingled together. That's her problem. I don't want to testify, but ...
BY MR. LEONARD
Q. Do you agree with your counsel's explanation?
A. Yes.
Q. And that would be your answer?
A. That would be my answer.
Q. All right. Okay. I just want to ask your understanding of how the trust works. Does the trust authorize either trustee to make decisions about investments or other business decisions, or does it require both trustees to agree unanimously?
MR. MITCHELL: I'm going to object to the extent it calls for a legal

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interpretation of the agreement.
You can testify as to what your understanding of the agreement is, if you have one.
THE WITNESS: My understanding of this is the second thing that you said, that it's – repeat that second part again, please.
BY MR. LEONARD
Q. Is it your understanding that the trust agreement requires both trustees to unanimously agree on investment decisions or other business decisions regarding the trust rather than authorizing either of the trustees to act by themselves?
MR. MITCHELL: And I'll interpose the same objection.
MR. LEONARD: We understand. I'm asking for her understanding.
MR. MITCHELL: I understand. Do you know the answer?
THE WITNESS: No, I really don't.
MR. MITCHELL: Can you answer?
THE WITNESS: My personal understanding, I can answer that.
(Next page, please.)

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BY MR. LEONARD
Q. That's what I'm asking for, yes.
THE WITNESS: And I should answer that?
MR. MITCHELL: Yes.
THE WITNESS: Well, it's – what I do and what the legal – what's legal in here, legally, I – it would be – we would not – I would not do anything without discussing it with Steven and he would not do anything without discussing it with me. Does that answer the question?
BY MR. LEONARD
Q. So your practice is that both trustees makes joint decisions, correct? Is that what you're telling me?
A. Yes.
Q. And you're not sure what the trust agreement says with respect to that. Is that a fair statement of your understanding?
A. I just don't remember anymore.
Q. Okay. When did you first meet Kathleen Zeller?
A. First? I don't – I'm not sure. I don't remember.

Page 16

Q. Well, can you give me an approximate time, like a year or a group of years or a decade or something like that?
A. Somewhere probably between like 1980 and 1991.
Q. And what were the circumstances under which you met her?
A. I don't remember.
Q. Would it have been socially or would it have been on a business matter or something else?
A. Oh, socially.
Q. Okay. Why don't you take a look, if you would, at Exhibit 2, and go to page 4.
A. (Complying.) Okay.
Q. In the middle of the page there's Interrogatory 7 and then your answer below that, do you see that?
A. Yes, mm-hmm.
Q. It says here that you met her sometime between 1986 and 1991.
A. Mm-hmm.
Q. Does that refresh your memory?
A. Mm-hmm.
MR. MITCHELL: You need to answer audibly, "yes" or "no." Remember, she's taking this down.
THE WITNESS: Oh. Yes.

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BY MR. LEONARD
Q. Would you characterize your meetings with Ms. Zeller as being social?
A. Yes.
Q. Other than the transaction dealing with your trust that is in the subject of this case, did you have any other business transactions directly or indirectly with Ms. Zeller or any of her companies?
A. No.
MR. MITCHELL: Let me just make an objection. You haven't identified what her companies are, and I'm not sure the witness knows all of the companies that Ms. Zeller may be involved in.
MR. LEONARD: Well, any companies that she had any knowledge of Ms. Zeller's involvement.
MR. MITCHELL: Okay.
THE WITNESS: No.
BY MR. LEONARD
Q. Okay. You indicate in this answer that you – the following summer, which I take to be 1992, you and Mr. Hagberg met socially with Kate and Vern Zeller.

Page 18

A. Yes.
Q. Do you recall that occasion?
A. Yes.
Q. And what was that occasion?
A. A social occasion.
Q. I understand. What was the nature of the social occasion?
A. We had dinner with them.
Q. Now, how is Vern Zeller related to Kate Zeller?
A. The Vern referred to here is her husband.
Q. Are there two Vern Zellers?
A. Yes, there is.
Q. And is one a child of Kathleen Zeller?
A. Child of Vern's.
Q. Okay. So Vern Zeller, Junior would be that person's –
A. Actually, it's "the third."
Q. – distinguishment?
MR. MITCHELL: There's three of them, Brian.
BY MR. LEONARD
Q. So the husband of Kate Zeller is Vern Zeller, Junior?
A. Yes.
Q. About the middle of that paragraph, Ms. Strom,

Page 19

you indicate that social meetings occurred before and after the Zellers left Minnesota. My question is when did the Zellers leave Minnesota?
A. I don't remember exactly.
Q. Do you remember the year, or approximate year?
A. Not with any accuracy.
Q. What's your best recollection? That's all I'm asking for.
A. Oh, God, I'd have to think – I'd have to think about that. (Pausing.) 1993, 1994.
Q. And when the Zellers left Minnesota, as you indicate, where did they go, to your knowledge?
A. Ireland.
Q. Did they move there on a semi-permanent basis?
A. I don't know what their plans – I don't know what their plans were at that time.
Q. How long did they stay in Ireland, to your knowledge?
A. I don't know.
Q. When did they come back to Minnesota, if they did?
A. You mean permanent, to live?
Q. Yes.
A. They didn't.
Q. So to your knowledge, is Kathleen Zeller living

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in Andorra at the present time?
A. Yes, she is.
Q. Is she living there with Vern Zeller, her husband?
A. Yes.
Q. Do you know what year they established a residence or a house or something in Andorra?
A. I don't remember what year it was.
Q. Did you talk about that on your social occasions with them?
A. Yes.
Q. When is the first time that you had knowledge that they established a residence in Andorra?
MR. MITCHELL: Object to the form of the question. I'm not sure whether you're asking when they first established or when did she first learn they were in Andorra.
BY MR. LEONARD
Q. The latter.
A. I don't remember what year it was.
Q. In a given year before they moved to Ireland and then perhaps on to Andorra, on how many social occasions a year would you have met or seen Kathleen Zeller?

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A. I don't – I don't know.
Q. Would it have been more than one?
A. Yes.
Q. Would it have been once a month?
A. I don't know.
Q. I'm just trying to get an idea of how frequently your social contact was with her.
MR. MITCHELL: Object to the form of the question. Can you define what you mean by "social"? Is it something – a telephone call? Would that be part of what you're saying? I'm trying to help her narrow down.
BY MR. LEONARD
Q. Well, let's have communications of any kind.
A. Once a month.
Q. And would these communications be social –
A. Yes.
Q. – occasions? All right.
Would you consider yourself to be a personal friend of Kathleen Zeller?
A. Yes.
Q. And when, if you know, did Mr. Steven Hagberg first become acquainted with Kathleen Zeller?
A. I don't know.

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Q. Did he ever tell you that?
MR. MITCHELL: Objection. It's invading the husband-wife privilege, and I'll instruct her not to answer.
MR. LEONARD: Just to be clear, Mr. Mitchell, you're asserting a husband-and-wife privilege under Minnesota statutes?
MR. MITCHELL: Yes.
MR. LEONARD: All right. And that's the privilege because Mr. Hagberg and Ms. Strom are married?
MR. MITCHELL: Yes.
BY MR. LEONARD
Q. Did you know Ms. Zeller – well, you knew Kathleen Zeller before you were married to Mr. Hagberg, didn't you, or had met her?
A. Yes.
Q. Were you familiar with the debtor's businesses at all prior to the year 2000? That is, the Carefree companies that are the debtors?
A. Was I ...
Q. Familiar with them.
A. Define familiar.
Q. Let me ask you this. Let me back up.

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What knowledge did you have, say, in January 1 of 1999 of the businesses that Kathleen Zeller was affiliated with?
A. Ask that again? I'm – what do you – I'm sorry.
Q. I'm trying to pick a date, so that we don't have to argue about the date. Let's say January of 1999, okay?
A. January of 1999. Okay.
Q. What knowledge did you have of Kathleen Zeller's businesses?
A. I knew what they were. I knew the names. I mean ...
Q. And what was your understanding of what they were?
A. They're healthcare facilities. Or, excuse me, they're residential facilities.
Q. And what knowledge did you have at that time of the ownership interest of Kathleen Zeller in those businesses?
A. Specifically, I didn't have any knowledge of that.
Q. Were you aware at that time that her businesses were clients of the law firm of Mahoney & Hagberg?
A. Oh, that the businesses were? Yes.

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Q. And were you aware that Kathleen Zeller was a client of the law firm of Mahoney & Hagberg?
A. I don't know what her exact position was.
Q. No, I'm asking if you knew that Kathleen Zeller individually was a client of the law firm of Mahoney & Hagberg say in January of 1999?
A. I don't know if she was or not.
Q. Do you know at any time whether she was or not?
A. That she was a client of Steven's?
Q. Yes.
A. I don't know what her relationship was with the law firm.
Q. Did you have any knowledge, in January of 1999, whether Summa, S-u-m-m-a, Management, Inc. was a client of the law firm of Mahoney & Hagberg?
A. At that time? No, I'm not familiar – I don't know about the relationship with the law firm.
Q. Presently do you have knowledge about that?
A. That – I don't know – I still don't really know exactly what the relationship of the businesses are to the law firm.
Q. Okay. But you know generally that the healthcare facilities were clients of the law firm?
A. Yes.
Q. And how did you come by that knowledge?

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MR. MITCHELL: I'm going to object, and I need to consult with you to see if we have to assert a privilege on that. It may be that she knows that or doesn't know that from conversations with her husband.

So if you can answer that without disclosing – if you know that from some other source, then you can answer that; otherwise, you don't have to answer.

THE WITNESS: Oh, I know that, yes, from other source – a friend of mine, another source, yes.

BY MR. LEONARD

Q. And what source is that?
A. It would have been because of Kate.
Q. And what did she tell you?
A. No, I mean not specifically. It was through conversation.
Q. So she just indicated that her companies were clients of your husband's law firm, generally?

MR. MITCHELL: We'll have to confer for privilege again. Do you want to step outside?

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THE WITNESS: Yeah.

MR. LEONARD: Let me object to that. Ms. Strom has indicated that the source of her information was Kathleen Zeller, and I'm simply asking about that information that she got from Kathleen Zeller.

MR. MITCHELL: Okay. Well, you can answer that if you have any –

THE WITNESS: Well, nothing specific. I'm – through conversation I gained that knowledge.

BY MR. LEONARD

Q. From her?
A. From her.
Q. Okay. What information do you have about Kathleen Zeller's background, her business background or educational background, her professional background?

Let's start with education. What information do you have about her educational background?

MR. MITCHELL: I'm going to make another objection here on the marital privilege again.

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You can answer as to information you gained from sources other than speaking with Steve.

THE WITNESS: Okay. I know she's a college graduate.

BY MR. LEONARD

Q. And a degree in what, if you know?
A. I don't remember.
Q. Is that all you know about her educational background?
A. Yes.
Q. What college did she go to?
A. I don't remember.
Q. How about her business background? Let me be more specific. Her employment background, what information do you have from sources other than your husband about her employment background since she graduated from college?
A. I knew she had a business.
Q. And the nature of that business?
A. Insurance.
Q. Can you be more specific?
A. No.
Q. Do you know when that business was operating?
A. No.

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Q. Do you know if she had, prior to her involvement with the debtors and an outfit called Carefree Living of Minnetonka, whether she had any experience in the healthcare, nursing home, or assisted-living business?
A. I do not know.
Q. Did you ever ask her that?
A. No.
Q. In August of 2000 you met with Kathleen Zeller and talked about a loan to her, is that correct?
A. Yes.
Q. When was the subject of you or the trust giving her a loan first brought up or mentioned to you?
A. I don't remember specifically.
Q. Who mentioned it for – excuse me. Who mentioned it to you for the first time?

MR. MITCHELL: Again, marital privilege. If you can answer without invading that, you can.

THE WITNESS: Ask the question again.

(Whereupon, the record was read aloud by the reporter.)

THE WITNESS: Mentioned which part?

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BY MR. LEONARD
Q. Any part of the subject of you or the trust making a loan to Kathleen Zeller or the debtors?
A. She never asked me to make a loan. Is that what you're asking?
Q. Yeah. I'm trying to find out how it is that the subject was first introduced to you.
A. I don't remember exactly.
Q. Who asked you to make a loan to her or her companies?
A. Nobody asked me to make the loan to her companies.
Q. How did the subject of the loan, I guess, come up in conversations with you and Ms. Zeller?
A. Nonspecifically. It's – just in conversation.
Q. Did these conversations take place over a period of time or in one meeting or social event?
A. I don't remember.
Q. This was in August of 2000?
A. Approximately, yeah, it would have been August.
Q. Well, what did Kathleen Zeller say about her need for a loan to you?
A. I don't remember exactly.
Q. What was your understanding of why she needed a loan?

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A. To cover a debt.
Q. And what was your understanding of what debt that was?
A. It was the mortgage payment.
Q. And a mortgage owned to whom or to what?
A. I don't remember who it was right now.
Q. Was it a mortgage on the debtor's property?
A. Property or properties?
Q. Properties.
A. Yeah.
Q. I'd like you to think back, to the best of your recollection, tell me what you understood the purpose of that mortgage – excuse me, the loan to be.
MR. MITCHELL: The mortgage loan on the properties?
BY MR. LEONARD
Q. No. The purpose of the loan that was made by the trust.
A. The purpose of my loan?
Q. Yes.
A. To the company?
Q. Yes.
A. To cover a – to cover the debt, the payment.
Q. Did Kathleen Zeller tell you how much that debt

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was that had to be covered?
A. I don't remember if she did or not.
Q. Did you ask her?
A. I probably did.
Q. You don't recall her answer?
A. She probably – it's – I don't remember exactly, so I'm just speculating right now.
Q. Did Kathleen Zeller explain to you what the default was or arrearage was on the mortgage that her businesses had that had to be paid?
A. I don't remember.
Q. Did you ever ask her how much she needed?
A. No, I don't – didn't ask her.
Q. Did she tell you how much she needed in order to help her cover that debt?
A. Well, I knew somehow.
Q. And what was your knowledge?
A. From her.
Q. And what was the knowledge? I mean, what did you know about that?
A. That it was more than what I was lending.
Q. Did she explain to you how much the total payment to the mortgage company was going to be, inclusive of your loan?
A. I don't remember.

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Q. Did she explain to you how many months that mortgage was behind that she needed to pay?
A. I don't remember.
Q. Were you aware of how many months the mortgage was behind at that time?
A. No.
Q. Did you ask her?
A. I don't remember.
Q. Is that something you think you would have discussed with her?
A. Not necessarily.
Q. Why don't you think that would be important?
A. Because I was one of a group making the loan.
Q. And how would that make the amount of the –
A. And it was a short-term loan.
Q. – payment not important?
A. And it was a short-term loan.
MR. MITCHELL: You need to wait for him to finish the question before you answer.
THE WITNESS: Oh.
MR. MITCHELL: Sorry, Brian.
(Whereupon, the interrupted question was read aloud by the reporter.)

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BY MR. LEONARD
Q. Let me repeat that question, then.
How would that – how would the fact that there were other people lending money at the same time make the amount of the debt that had to be paid unimportant?
MR. MITCHELL: I'm going to object to the extent it mischaracterizes her prior testimony, but you can answer.
THE WITNESS: What's the question again?
MR. MITCHELL: Sorry.
(Whereupon, the question was read aloud by the reporter.)
MR. MITCHELL: Same objection. You can answer.
THE WITNESS: I can answer?
MR. MITCHELL: Well, if you can. Try to answer.
THE WITNESS: I can't answer. I'm still not – the question is vague.
MR. LEONARD: You don't understand the question?
THE WITNESS: Yeah.
MR. LEONARD: All right.

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BY MR. LEONARD
Q. Did you at any prior time ever loan any money of yours personally or through the trust to a business prior to this loan?
A. No.
Q. Did you ever have any experience loaning money to businesses?
A. To businesses, no.
Q. Did you ever have – well, let me back up.
When you worked for First Bank or your other employment positions, did those positions involve lending money or financing companies?
A. No.
Q. Is it fair to say that you had no background in lending money to businesses at that time, in the year 2000?
A. Yes.
Q. Did you ask Ms. Zeller to give you financial statements of her businesses?
A. No.
Q. Did you ask her about the financial condition of her businesses?
A. No.
Q. Did you not think that was important?
A. What I thought at the time, I don't remember.

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Q. As you sit here today, do you think that's important?
A. If I'm – that loan specifically or if I'm making a loan today?
Q. That loan specifically.
A. That's using 20/20 hindsight.
Q. I understand.
A. Which is a situation that was different at the time than it is today.
Q. Let me ask you this: Did you receive any financial information from any source about the debtors before you made – before the trust made the loan that you're alleging was made?
A. Did I ...
MR. MITCHELL: I will object as to the form. She's trying to be precise, here, Brian and answer your questions as you're asking them.
MR. LEONARD: Then perhaps we're trying to be too specific. I think if we could just listen to the plain meaning of the questions, that would probably help some of the confusion that may be coming up.
Do you understand my last question

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or would you like it repeated?
THE WITNESS: Did I have any knowledge of the financial situation of the companies?
MR. MITCHELL: No, that wasn't the question.
MR. LEONARD: I'll restate it.
BY MR. LEONARD
Q. Did you receive information about the financial condition of the companies from any source before you made the – before the trust made the loan that it's alleging was made?
A. No.
Q. Did you speak to anyone about the wisdom of making that loan?
MR. MITCHELL: I'm going to assert marital privilege.
If you can answer without invading it, you may.
THE WITNESS: I can't.
MR. LEONARD: I'm sorry?
MR. MITCHELL: We're going to assert the privilege on that question.
BY MR. LEONARD
Q. Did you speak to Steven Hagberg about the wisdom

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of making that loan at the time?
MR. MITCHELL: Same objection.
MR. LEONARD: No. No. I'm not asking for the substance of the communication. I'm asking whether this witness spoke to Mr. Hagberg. There's a big difference there, so I don't think you can assert the privilege with respect to that particular question.
MR. MITCHELL: Well, it's the communication privilege and the fact that she communicated at all. It's not like an attorney-client privilege. The fact that if she – the communication – any communication between husband and wife are protected, so I'll instruct her not to answer. If you want to fight about it, we can.
BY MR. LEONARD
Q. Did you talk to anyone else affiliated with the law firm of Mahoney & Hagberg about the loan before it was made?
A. No.
Q. Did you talk to Michael Mahoney about it?
A. No.

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Q. You state in your answer to Interrogatory 8, and I refer you to page 5 of Strom Exhibit 2, you state, six lines from the bottom of the first paragraph of that answer, "She believed it to be a good term" – "a good short term investment and an appropriate departure from the other investments in the trust." Do you see that there?
A. Mm-hmm, I do. Yes.
Q. What is it that you – what information that you had at that time that allowed you to draw the conclusion that it would be a good short-term investment?
A. There were other investors in it, and it was set up to be short term.
Q. Anything else?
A. No.
Q. In the previous sentence you say, "The next day, Jane offered to lend 50,000 from her trust." How did that offer come about? How was that communicated?
A. I don't – I'm not sure.
Q. What is the basis for you to say, in your answer there, that you offered to lend 50,000 from your trust?

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A. You're asking how I did it?
Q. I'm asking how it came about, yeah. How did you make that offer?
A. I told her.
Q. Did you call her on the phone or ...
A I don't remember.
Q. Did Kathleen Zeller tell you what would happen or what she expected to happen if the loan were not made?
A. No.
Q. Were you aware at the time that the loan was made that the debtors were clients of the Mahoney & Hagberg law firm?
MR. MITCHELL: Object to the extent it's already been answered.
MR. LEONARD: Go ahead, you may answer.
MR. MITCHELL: Were you aware at the time you made the loan that they were clients of the Mahoney & Hagberg law firm?
THE WITNESS: Yes.
BY MR. LEONARD
Q. Did Mr. Hagberg ever discuss with you the subject of a potential conflict of interest that the

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debtors being clients of Mahoney & Hagberg would have with respect to his role as a trustee in your trust?
MR. MITCHELL: Objection. Invades the marital privilege, instruct you not to answer.
BY MR. LEONARD
Q. Did anyone else ever talk to you about the subject of a conflict of interest that Mr. Hagberg may have by virtue of the fact that the debtors were clients of Mahoney & Hagberg law firm?
A. No.
Q. Did you ever seek independent advice or consult with anyone other than Mr. Hagberg with respect to making this loan?
A. No.
MR. MITCHELL: I'm going to object to that, states facts not in evidence.
There's been no testimony she consulted with Mr. Hagberg.
BY MR. LEONARD
Q. Did you consult with Mr. Hagberg relative to this loan?
MR. MITCHELL: I'm going to

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1 instruct her not to answer, marital
2 privilege.
3 BY MR. LEONARD
4 Q. Were you aware that a receivership action had
5 been started against the debtors before you made
6 this loan –
7 A. No.
8 Q. – in the months before?
9 Were you aware that the debtors, who were
10 then represented by Mahoney & Hagberg, had signed
11 an agreement allowing a receivership, a receiver
12 to come in and take possession of the debtors
13 under certain circumstances?
14 A. I'm not familiar with the specifics of the
15 relationship.
16 Q. No one ever told you about the litigation that
17 was going on between the mortgage company and
the
18 debtors at that time?
19 A. I don't remember.
20 Q. You don't remember if anyone ever told you that?
21 A. I don't remember – I don't remember. I'm not
22 sure – I'm not sure of the question. It's a
23 little vague for me.
24 Q. Do you recall whether anyone told you or informed
25 you that First Union, the mortgage company on the

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1 debtors' properties, had started a foreclosure
2 and receivership action, and that was pending in
3 August of 2000?
4 A. I don't remember. I don't know.
5 Q. If you had known that, would that have made a
6 difference in your decision to make the loan?
7 **MR. MITCHELL:** Objection. Calls
8 for speculation, hindsight. You can
9 answer if you can.
10 **MR. LEONARD:** You may answer.
11 **THE WITNESS:** I don't know.
12 BY MR. LEONARD
13 Q. You don't know if that would have made a
14 difference?
15 A. No, I don't know.
16 Q. Did anyone tell you, anyone from Mahoney &
17 Hagberg or any other source, that the debtors,
18 when represented by Mahoney & Hagberg, had
signed
19 a confession of judgement in favor of a person
20 named Linda Selback in an amount in excess of
21 $3.5 million?
22 **MR. MITCHELL:** Objection to the
23 extent the answer may invade – require
24 disclosure of marital communications.
25 If you can answer without invading

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1 the marital communication privilege,
2 then you can.
3 **THE WITNESS:** Hmm-mm. No.
4 BY MR. LEONARD
5 Q. Let me ask the question again a little
6 differently.
7 Were you aware of that confession of
8 judgment at the time that the loan was made from
9 the trust?
10 A. I don't know if I was.
11 Q. You don't recall that you were one way or the
12 other?
13 A. No.
14 Q. If you had known that, would that have made a
15 difference in your decision to make the loan?
16 **MR. MITCHELL:** Objection. Calls
17 for speculation.
18 You can answer subject to the
19 objection.
20 **THE WITNESS:** I don't know if it
21 would have.
22 BY MR. LEONARD
23 Q. As we sit here today, do you wish you had known
24 that?
25 A. I don't know. It's using 20/20 hindsight. I

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1 can't apply that.
2 Q. Do you have – at the time this loan was
3 allegedly made in August or September of 2000,
4 did you have knowledge of how Kathleen Zeller
5 came to own her interest in the debtors?
6 A. No.
7 Q. Did you ever ask anybody?
8 A. No.
9 Q. Did you ever ask her how she came to acquire that
10 interest?
11 A. I don't remember.
12 Q. Would you – is it fair to say that the loan that
13 you made was – excuse me, the loan that the
14 trust allegedly made was done because of your
15 friendship for Kathleen Zeller more than for any
16 other reason?
17 **MR. MITCHELL:** I'm going to object
18 to the form, the use of the term
19 "allegedly." She's – the witness is
20 not, obviously, claiming her loan was
21 allegedly made.
22 You can answer subject to the
23 objection.
24 Sorry I mucked it up for you.
25 **THE WITNESS:** I need to confer

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with my counsel, please.
MR. LEONARD: The record may reflect a whispered conversation –
MR. MITCHELL: For purpose of asserting a potential privilege.
MR. LEONARD: – between the witness and her attorney.
(Whereupon, the witness and Mr. Mitchell conferred sotto voce.)
MR. MITCHELL: Well, I made that objection, so you can answer.
THE WITNESS: Repeat the question, please.
MR. MITCHELL: Repeat the question, please.
(Whereupon, the record was read aloud by the reporter.)
MR. MITCHELL: I'm going to make an objection and perhaps a clarification, so that we can clear this out. If you want to use the term "allegedly," that's fine with us, as long as we have a standing objection and understanding that we're not conceding that it was allegedly made,

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and in her answering the questions we're not acknowledging that it was allegedly made. Our position, as you know, is that we did make the loan.
MR. LEONARD: I understand.
MR. MITCHELL: So I don't want to have to mince with these words every time. If you want to keep using the term you're free to do so, but that's – our responses are going to be subject to that qualification.
MR. LEONARD: That's fine. I simply didn't want my questions to be interpreted later by anyone there that was a concession on that subject by either side.
MR. MITCHELL: All right. I think we've got that cleared up. Go ahead and answer, if you can remember what the question is.
THE WITNESS: There's two parts to the question. I can't answer it.
MR. LEONARD: Well, why don't you answer one part at a time.
THE WITNESS: Well, I can't

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remember the parts now.
MR. LEONARD: Do you want to repeat it again, and can we try to proceed?
MR. MITCHELL: Yes. I won't be objecting on that. We've got that covered.
(Whereupon, the record was read aloud by the reporter.)
THE WITNESS: I can't say that.
BY MR. LEONARD
Q. You can't say that because you don't know or because you disagree with that statement?
A. I disagree with the statement.
Q. What was the purpose for making the loan, then?
A. The purpose – whose purpose?
Q. Your purpose.
A. My purpose?
Q. Yes.
A. To – to – in part it was another investment opportunity, and also to lend her – lend the money.
Q. So you came to the conclusion by yourself that this was an investment opportunity for the trust?
A. Yes.

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Q. Do you make – what other investment decisions for the trust have you made?
A. Can you be more specific?
Q. No. I mean, that's pretty straightforward. What other investment decisions for the trust have you made?
A. I make a lot.
Q. Give me some examples.
A. The stocks that we'll buy. I'm not – I don't know. I don't know what you're asking.
Q. Had the trust ever made a commercial or business loan prior to August or September of 2000?
A. No.
Q. Has it made any since then?
A. No.
Q. Is it fair to say that the investment decisions that are being made by the trust are mostly in stocks and bonds investments as opposed to commercial loans, except for the loan in question here?
A. I can't answer that question. You're asking me if it's – if the trust only makes investment decisions in stocks? No.
Q. What other investments does the trust make besides stocks and bonds or securities?

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A. It has property.
Q. Real estate?
A. Yes.
Q. Okay. Anything else?
A. Right at this moment, I don't think so.
Q. Did you ask Kathleen Zeller why it was that she hadn't made the mortgage payments that the mortgage company needed to be paid?
A. Did I ask her?
Q. Yes.
A. No.
Q. Did she ever tell you?
A. I don't remember.
Q. Do you know how many payments had been missed by August of 2000 by the debtors?
A. I don't remember if I knew that then or not.
Q. Do you know now?
A. No.
Q. Was that not important, for you to understand that?
A. I don't know.
Q. Well, if you don't know, who does?
A. You're –
MR. MITCHELL: Do you want her to answer that question?

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MR. LEONARD: Well, I'd just like an answer to the question. I don't think "I don't know" is an – a correct – or a truthful answer.
THE WITNESS: Maybe yes, maybe no.
BY MR. LEONARD
Q. I don't know what that means.
A. I'm sorry, I can't ...
Q. I don't understand your answer.
A. Well, I'm not sure that I understand the question.
MR. LEONARD: Could we read it again?
(Whereupon, the record was read aloud by the reporter.)
THE WITNESS: In this case specifically, not necessarily.
BY MR. LEONARD
Q. And why wasn't that important? Why wouldn't you think that is something you'd like to know if you're making a loan to that business?
A. You asked two questions.
Q. Let's take the first one.
THE WITNESS: Repeat it, please.

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(Whereupon, the record was read aloud by the reporter.)
THE WITNESS: If I was making a loan to a business, I'd probably like to know that. I was making this loan to Kate's business. I didn't necessarily need to know that.
BY MR. LEONARD
Q. Why didn't you need to know that because they were Kate's businesses?
A. In part.
Q. I'm sorry, I didn't understand your answer.
MR. MITCHELL: She said "In part."
BY MR. LEONARD
Q. In part what?
A. In part because they were Kate's businesses.
Q. And how does that alleviate the need to know what the arrearages were? How does the fact that they were Kate's businesses resolve that or make that unnecessary?
A. Because I trusted her ability as a business person.
Q. But you testified earlier that other than knowledge that she was in the insurance business at some time, you didn't know what her business

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or employment background was, is that correct?
A. Not specifically. I said that, yes.
Q. Do you want to add to that answer –
A. No.
Q. – at this time?
What is the other part of why that information was not important? In other words, you said it's in part because they were Kate's businesses. What was the other part?
A. The bigger picture. There were others that were putting their money in too, and I knew one of the other people and I trusted their judgment also.
Q. Did you talk to those people?
A. No.
Q. Did you know these people?
A. Not personally.
Q. But did you know of them, or how did you know them?
A. I just – I knew who they were from Kate.
Q. And what did Kate tell you about them?
A. Not much.
Q. Did she simply identify them as people who were also at the same time going to make loans –
A. Yes.
Q. – to the debtors?

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A. Yes.
Q. Did you think, in August or September of 2000, that it was important to try to understand or come to an opinion as to the ability of this borrower, the debtors, to repay the loan?
A. Say that again?
(Whereupon, the record was read aloud by the reporter.)
THE WITNESS: I don't remember what I thought in 2000. I don't remember what I thought then.
BY MR. LEONARD
Q. So you don't know at that point whether you were concerned about that or not?
A. I don't remember.
(Strom Deposition Exhibit 4 marked for identification.)
BY MR. LEONARD
Q. Showing you what's been marked Exhibit 4, I'll ask you to take a look at it, please. After you've looked at it just let me know if you've seen this before.
A. (Reviewing document.) Yes, I have.
Q. And just to try to speed things along, is this the promissory note that was signed by the

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debtors representing what you considered to be a loan made by the trust to the debtors?
A. Is this the – is this the paperwork for the loan that the trust made? Yes.
Q. Okay.
A. Or a copy of, yes.
Q. I'd like to refer you to paragraph 1, under the heading of "Payment," on the first page there. Do you see that?
A. Yes.
Q. When this loan was made, did you discuss with Ms. Zeller the terms of the payment of the loan?
A. No.
Q. Well, how were the terms of the payment of the loan as represented on that paragraph in Exhibit 4 arrived at?
A. She did it.
Q. "She," meaning?
A. Kate.
Q. And how did she do it?
A. She just put it together.
Q. In other words, this was – the payment terms came from her rather than from you?
A. Yes.
Q. Was Kate Zeller talking to anyone else about this

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loan at that time?
A. I don't know.
MR. MITCHELL: Objection. Calls for speculation. You can answer if you know.
THE WITNESS: I don't know.
BY MR. LEONARD
Q. Do you know if Kate Zeller was talking to anyone at the Mahoney & Hagberg law firm relative to this loan?
A. I don't know.
Q. Do you have any idea who typed this document, Exhibit 4?
A. Nope.
Q. In any event, you did not type it?
A. No.
Q. You don't know if anyone at Mahoney & Hagberg typed it?
A. I don't know.
Q. Calling your attention to paragraph 2, headed by the word "Prepayment," how did those terms – how were those terms agreed to between you and Kate Zeller?
A. It was just the terms that she set forth.
Q. And who did she communicate to that those were

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the terms? Who did she tell that to?
A. (Pausing.)
Q. I'll try to be more precise.
You've indicated that the payment terms and the prepayment terms came from or originated from Kate Zeller.
A. Mm-hmm.
Q. Who did she tell those – who did she tell or who did she inform that those were the terms she wanted in the promissory note?
A. I don't know.
Q. You didn't – those terms weren't important to you?
MR. MITCHELL: Objection. Assumes facts not in evidence, argumentative.
THE WITNESS: That's not the question.
BY MR. LEONARD
Q. Weren't those terms important to you? Was the term of the repayment schedule under this note important to you?
A. The terms?
Q. Yes, how it was to be repaid, monthly payments, et cetera, et cetera?
A. Yes.

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Q. Okay. And did you – did Kate Zeller tell you what terms she wanted in the note?
MR. MITCHELL: Objection to the form. I think the problem you're having is the use of the word tell, whether you mean orally, whether it meant delivering this note with the contained terms.
But answer if you can, subject to the objection.
THE WITNESS: I'm still having a problem with the form of the question because there's some verbiage in there that makes it difficult for me to answer.
MR. LEONARD: Let me try to do better.
BY MR. LEONARD
Q. Did you and Kate Zeller communicate in any form about the terms of the repayment of this note?
A. The terms of the repayment, or the terms? I knew what the – no, it's important, because I knew what the terms of the note would be before I signed it.
Q. Let's build on that, because maybe that deals

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with this.
Did you talk to Kate Zeller about the payment terms before the note was signed by her?
A. Define "talk about."
MR. LEONARD: Man, we're getting really bogged down, Counsel. Is there something we can do here?
MR. MITCHELL: I think he's asking if you had any oral discussions with Kate Zeller before she signed the note about the terms in this note.
THE WITNESS: Well, that's the problem I'm having. If discussion means that we discussed it and it was negotiated, no.
BY MR. LEONARD
Q. Did you communicate in any manner?
A. Yes.
Q. And what was that communication?
A. She told me what they would be.
Q. And when did she tell you that?
A. I don't remember.
Q. Well, was it at the same time that you communicated to her – as you indicate in response to Interrogatory 8, Exhibit 2, the next

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day, after a dinner meeting, you offered to lend $50,000. Was it during that communication that she told you what she wanted the terms to be?
MR. MITCHELL: I think that mischaracterizes the answer.
MR. LEONARD: Well, the answer is – no, it doesn't. The answer is – let's take a look at Exhibit 2, seven lines from the bottom of the first paragraph, which is the response to Interrogatory 8.
It says, "The next day, Jane offered to lend $50,000 from her trust.
THE WITNESS: Okay.
MR. MITCHELL: Your question was –
MR. LEONARD: My question now is, just to cut through this –
MR. MITCHELL: Okay.
BY MR. LEONARD
Q. My question now is at the time you offered to lend the $50,000 from the trust, is that the time that the terms of the note were communicated by Kate Zeller to you?
A. Some of them.

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Q. And which terms, if you recall, were communicated at that time?
A. I knew what the percentage rate was going to be, I knew that it was short term; but the $833, I didn't know that at that time.
Q. When did you first learn that the repayment terms would be those set forth in paragraph 1 of the note, which is Exhibit 4?
MR. MITCHELL: Paragraph 1, right here (indicating).
THE WITNESS: Oh, that. I'm not sure when I first knew that.
BY MR. LEONARD
Q. Was it when you first saw the note, perhaps?
A. Probably.
Q. Did you see this note before it was signed?
A. I don't remember.
Q. Where is the original of the note presently?
A. I'm not sure where it is right now.
Q. You mentioned a few minutes ago that some of the terms were discussed by Kate Zeller at the time you made the offer of the loan. So now my question is what other terms were discussed and at what other time with Kate Zeller?
A. What other terms and at what other time?

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Q. Yes.
MR. MITCHELL: Of this loan (indicating).
BY MR. LEONARD
Q. Yes. We're talking about Exhibit 4.
A. I thought I just answered that. I'm not sure of your question now.
Q. Let me back up.
I believe you testified that at the time you made the offer to Kate Zeller to loan the $50,000.
A. Mm-hmm. Yes.
Q. That you discussed some of the terms, including the interest rate and the duration.
A. Yes.
Q. At what point in time were other terms of the note discussed between you and Kate Zeller?
MR. MITCHELL: Objection to the extent it assumes facts not in evidence.
You can answer.
THE WITNESS: I don't know.
BY MR. LEONARD
Q. You don't recall?
A. No, I don't recall.

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Q. Turning your attention to paragraph 4 of the first page of Exhibit 4, it's a paragraph entitled "Events of Default." Were those terms discussed between you and Kathleen Zeller at any time prior to this note being signed?
A. Repeat the question.
(Whereupon, the record was read aloud by the reporter.)
THE WITNESS: I don't remember.
BY MR. LEONARD
Q. Do you believe the terms in that paragraph 4 originated with Kathleen Zeller?
A. Yes.
Q. She made those up?
A. I don't know who made them up.
Q. But they didn't come from you, in any event?
A. No.
Q. Okay. What terms of this note were terms that you believe you required or told Kate Zeller you wanted in the note?
A. None of them.
Q. Okay. So they all came from her or some other source?
A. I don't know who they came from.
Q. And you don't even know if they even came from

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Kathleen Zeller –
A. No.
Q. – correct? I'm sorry?
A. I don't – yes.
Q. According to Exhibit 4, it says, and I'll simply state this not as a question, but to preface further questions, that it would become due on January 15, 2001.
My question to you is what communications, if any, did you receive from Kathleen Zeller between the date of this note, which is September 1, 2000, and January 15, 2001, relative to the debtors' ability or capability to pay this note under its terms?
A. What communications? I don't remember.
Q. Well, turning your attention to page 5 of Exhibit 2, you'll see the second paragraph of your response to Interrogatory 8. The first sentence of that second paragraph says, "When the note became due in January, 2001, Jane was already aware that it would not be paid."
A. Yes.
Q. How were you aware that it would not be paid?
A. I don't remember exactly.
Q. How do you know that you were aware it would not

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be paid at that time?
A. Because I heard it.
Q. From whom?
A. I don't remember.
Q. What did you hear?
A. That it wouldn't be paid.
Q. Relative to the subject that it wouldn't be paid, did you hear why it wouldn't be paid, what the problem was, anything else?
A. I may have. I don't remember.
Q. And you don't know from whom you received that information?
A. Hmm-mm, I don't remember.
Q. Do you recall – do you know that it was not from Kathleen Zeller?
A. No, I don't know that.
Q. So it may have been from her?
A. May have been.
Q. Okay. Did you discuss that with Steven Hagberg?
MR. MITCHELL: Objection.
Instruct not to answer, marital privilege.
BY MR. LEONARD
Q. Just asking if it was discussed, not what the substance of the discussions may have been.

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1 **MR. MITCHELL:** Same instruction.
2 Don't answer.
3 BY MR. LEONARD
4 **Q.** Did you discuss that with anyone else other than
5 Steven Hagberg, if you even discussed it with
6 Mr. Hagberg?
7 **A.** I don't remember.
8 **Q.** The next sentence says that "Kate faxed a
9 proposed payment schedule." Do you recall
10 receiving that fax?
11 **A.** No.
12 **Q.** How do you know it was actually transmitted?
13 **A.** I've seen it.
14 **Q.** Where is it? I haven't seen it.
15 **MR. LEONARD:** Is it in the
16 documents, Mr. Mitchell?
17 **MR. MITCHELL:** Yup.
18 **MR. LEONARD:** I'm sorry?
19 **MR. MITCHELL:** Yes.
20 **MR. LEONARD:** It is? Could you
21 just point me to it? Do you know
22 approximately which number it would
23 have been?
24 **MR. MITCHELL:** No, I don't.
25 **MR. LEONARD:** If it's there then I

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1 simply missed it as I reviewed the
2 documents.
3 **MR. MITCHELL:** (Looking through
4 documents.)
5 **MR. HAGBERG:** Do you want me to
6 look?
7 **MR. MITCHELL:** Yes.
8 **MR. LEONARD:** Why don't we go
9 forward while you do that.
10 **MR. MITCHELL:** Yes, please.
11 BY MR. LEONARD
12 **Q.** To whom was that fax transmitted?
13 **A.** I don't remember.
14 **Q.** Did you meet with Kathleen Zeller in January of
15 2001, or see her?
16 **A.** I don't know. I don't remember if I did or not.
17 **MR. MITCHELL:** Brian, the document
18 we're talking about is Strom 32.
19 **MR. LEONARD:** Okay.
20 **MR. MITCHELL:** Is this a good
21 time to take a break?
22 **MR. LEONARD:** Sure. It's fine
23 with me.
24 *(Short break.)*
25 *(Strom Deposition Exhibits 5 and 6*

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1 *marked for identification.)*
2 BY MR. LEONARD
3 **Q.** I'll ask you to look at Exhibit 6, Ms. Strom, and
4 I'll ask you if that's the proposal that is
5 indicated in the second sentence of the second
6 paragraph of your response to Interrogatory 8,
7 which is Exhibit 2.
8 **A.** This is – now, what is the question?
9 **MR. MITCHELL:** Is this the exhibit
10 that she faxed you? Is this the
11 proposed payment schedule that was
12 faxed to you?
13 BY MR. LEONARD
14 **Q.** As you are indicating in that sentence in
15 Exhibit 2.
16 **A.** I think so.
17 **Q.** You're not aware of any other fax proposals or
18 faxes from her?
19 **A.** No.
20 **Q.** Then showing you what's been marked as Exhibit 5.
21 **MR. LEONARD:** And Ralph, you've
22 got that, right?
23 **MR. MITCHELL:** Yes, I do.
24 BY MR. LEONARD
25 **Q.** I'll ask you to look at Exhibit 5, and let me

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1 know when you've done that and I'll ask you some
2 questions on it.
3 **A.** What?
4 **Q.** Could you look at Exhibit 5, please.
5 **A.** (Reviewing document.)
6 **Q.** Is Exhibit 5 the new note that is referred to in
7 the third sentence of the second paragraph in
8 response number 8 on page 5 of Exhibit 2?
9 **A.** Yes, it is.
10 **Q.** Did you meet with Kathleen Zeller at the time
11 Exhibit 5 was signed?
12 **A.** Did I meet with her when she signed it?
13 **Q.** Yes.
14 **A.** No.
15 **Q.** Did you meet with her at any time in connection
16 with or at about the time this note was signed?
17 And you'll note it's dated January 15, 2001.
18 **A.** Yeah. Did I meet with her at any time?
19 **Q.** Right. Did you see her during this period of
20 time?
21 **A.** I don't remember if I did or not.
22 **Q.** Do you believe that you did not meet with her at
23 the time this was signed? I mean, can you recall
24 the negative of that?
25 **A.** Specifically when she signed this?

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Q. Right.
A. No, I didn't meet with her right when – I wasn't meeting with her when she actually signed the document, no.
Q. Do you know where it was, what office or what location this document was signed?
A. No.
Q. Calling your attention to Strom Exhibit 6 again. At the top there's a fax notation. Would you read the date of that fax notation, please?
A. January 30, 2001.
Q. And Exhibit 5 is dated January 15, 2001, correct?
A. Mm-hmm.
MR. MITCHELL: You need to answer "yes" or "no."
THE WITNESS: Oh. Yes.
BY MR. LEONARD
Q. My question is that Exhibit 6 was the proposal – as I read your responses to Interrogatory 8, was the proposal from Kate Zeller that resulted in Exhibit 5 being signed, yet Exhibit 6 seems to have been transmitted after Exhibit 5 was signed.
MR. MITCHELL: Object to the from. Compound.
(Next page, please.)

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BY MR. LEONARD
Q. So I'll ask if you can explain the differences in those two dates.
A. No, I can't.
Q. When did you first see Exhibit 6?
A. I don't remember when I first – I don't remember when I first saw it.
Q. Did you see it within the last month?
A. I've seen it within the last month, yes.
Q. And what was the context that you saw it then, within the last month?
MR. MITCHELL: Object to the form. I'm not clear whether you're asking whether she saw it for the first time during the last month or whether she just saw it.
MR. LEONARD: No. I'm asking whether she saw it within the last month, and I believe the answer was yes.
MR. MITCHELL: Yes.
BY MR. LEONARD
Q. So my next question, just to clarify, is what were the circumstances under which you saw Exhibit 5 in the last month?

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A. Reviewing documents.
Q. At Mr. Mitchell's office?
A. I don't remember.
Q. You don't know where it was?
A. I don't remember exactly where it was, no. I don't remember.
Q. Can you explain why there's a difference between the two dates? That is, why Exhibit 5 bears the date of January 15, 2001 and Exhibit 6 bears a date that's sometime later?
A. No, I can't.
Q. The second sentence of the second paragraph of the response to Interrogatory 8 states that Kate "offered to secure the balance due with mortgages." Do you see that there?
A. Yes.
Q. Did she make that offer to you?
A. Just to me?
Q. Did she make it to you?
MR. MITCHELL: At all.
THE WITNESS: Yes.
BY MR. LEONARD
Q. Not exclu – not necessarily exclusively.
A. Yes.
Q. Okay. How did she make that offer to you?

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A. How?
Q. Yes. Did she call you, write you, e-mail you? How did she make the offer to you?
A. In the documents.
Q. In what documents?
A. The note.
Q. Did she make that offer to you before the note was generated or signed?
A. The – I'm – it's the offer – I mean, it was part of the proposal for the renewal for the new note.
Q. Yeah. I'm using the word offer, which is your word, so I'm simply using your word.
A. Okay. Okay. Okay.
Q. So how did she make that offer to you? Was it a telephonic, was it in a letter, was it a meeting?
A. I don't remember.
Q. Was it made to you or was it made to somebody else?
MR. MITCHELL: Objection. Asked and answered. I think she said it was made in the documents. That's what I heard.
THE WITNESS: Well, yeah, it was – this is getting very confusing.

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BY MR. LEONARD
Q. Let me ask it this way: Did Kate Zeller offer to secure the balance due with mortgages to you prior to the time Exhibit 5 was signed?
MR. MITCHELL: Object as to the form. She's testified she doesn't know when Exhibit 5 was signed, so I don't know how she can answer your question.
BY MR. LEONARD
Q. Well, prior to January 15, 2001, if that helps.
A. I don't know.
Q. Is that what you meant to convey in the second sentence of the second paragraph of response number 8?
MR. MITCHELL: Was what what you meant to convey? I'm sorry, Brian, your questions are not precise.
BY MR. LEONARD
Q. Give me the sequence of events. That's what I'm trying to get at. The second sentence of the second paragraph of your response to Interrogatory 8 says Kate faxed a proposal, "a proposed payment schedule and offered to secure the balance due with mortgages."
My question is, to your knowledge, did the

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events stated in that sentence occur before Exhibit 5 was signed?
A. I don't know if she faxed another payment schedule before the note was signed. I know about this payment schedule dated January 30th, but I don't know if there was another one before that.
Q. And do you know if the payment schedule dated January 30th, which is Exhibit 6, was faxed by Kate Zeller before Exhibit 5 was signed?
A. Was this (indicating) –
Q. Yes.
A. – document faxed before this was signed?
Q. Yes.
A. Well, this was signed on the 15th of January and this date on this fax is January 30th, so this was faxed after the thing was signed.
Q. Okay. And that's what you meant to say in your response to the interrogatory? Because to me it sounds like the sequence of events is reversed, that you're saying that proposed payment schedule and offer to secure the balance came first and the documents came second.
A. I don't know. This was prepared with my husband, so if there was – there may have been another

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faxed payment schedule beforehand. I'm not aware of it.
Q. Okay. Did Kate Zeller communicate or converse with your husband, Steven Hagberg, regarding Strom Exhibit 5, to your knowledge?
A. I don't know.
Q. What is your understanding as to how Exhibit 5 came to be signed?
A. I don't know. Exhibit – wait, exhibit – I don't know.
Q. You don't know how it came to be signed?
A. No.
Q. When did you first see it?
A. Back in – sometime – the exact date, I don't know, but it wasn't too long after it was signed.
Q. And who gave it to you or what were the circumstances under which you first became aware of it?
A. I'm not sure.
Q. Well, did Mr. Hagberg have Ms. Zeller come into his office to sign Exhibit 5?
A. I don't know.
Q. You never asked him?
A. No.
MR. MITCHELL: Objection. Don't

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answer.
THE WITNESS: I don't know.
MR. MITCHELL: Communication privilege.
MR. LEONARD: I'm just asking for knowledge.
THE WITNESS: I don't know.
BY MR. LEONARD
Q. Have you talked to Kate Zeller since January of 2001?
A. Yes.
Q. And what are those occasions, starting with the ones – those occasions most recent to January 1 up to the present?
A. I don't know. I can't give specific dates. There's been many.
Q. How many times would you estimate that communication would have occurred?
A. Since then or in that year?
Q. No, since then to the present time.
A. January 2001 is – 20. I have no idea. I don't know. I can't count them.
Q. And have you seen her socially –
A. Yes.
Q. – since then?

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When is the last time you saw her socially?
A. Last year sometime.
Q. On these occasions, these 20 or so, whatever the number is, I know you're estimating them, did you discuss with Kate Zeller the payments and the notes and the mortgage?
A. Since this was signed?
Q. Since Exhibit 5 was signed, yes. Did you talk to her about it?
A. I think I have.
Q. And as I understand it, the last payment that was received from – or under Strom Exhibit 5 was sometime around August of 2001, would you agree with that?
A. The last payment received from – there's other payments on here. Wait, is that the last one, the August?
Q. Let me ask you, when was the last payment received?
A. From – I'm not sure if there was – if it was August – I can't remember how many payments we've gotten.
Q. Have you talked to Kate Zeller about the fact that you haven't received any payments since whenever it was the last payment was received?

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A. No, we've not discussed it.
Q. Have you tried to communicate with her on that subject?
A. No.
Q. Why not?
A. There's no need to right now.
Q. Why is that?
A. Because this – it's in bankruptcy.
Q. I understand. But she personally guaranteed this loan, didn't she?
A. If Kate had the ability to pay it, she would have.
Q. But my answer is – or my question is you understand –
A. Yes.
Q. – that she has personally guaranteed Exhibit 5?
A. Yes.
Q. Did you ask her to pay the loan?
A. No, I have not.
Q. When she signed her guarantees, were you aware whether or not she had the ability to make good on the guarantees?
A. Not specifically.
Q. When did you become aware – or are you aware now or is it your understanding that she does not

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have the ability to –
A. I really don't have an –
Q. – pay this debt?
A. I don't know what her financial situation is.
Q. So without that knowledge of her inability to pay this debt, why haven't you asked her to pay it?
A. I haven't.
Q. I understand. Why, is my question.
A. I don't have an answer for that.
Q. Well, there must be some reason.
MR. MITCHELL: Why she didn't do something?
MR. LEONARD: Yes, why she hasn't asked a guarantor to pay a debt that's not being presently paid.
MR. MITCHELL: Asked and answered. She said she didn't know.
BY MR. LEONARD
Q. Is that your answer?
A. Yes.
Q. That's the answer you're going to give at the trial in this matter?
A. I don't know.
Q. Well, are you saying that you're going to reserve the right to change your answers at the trial in

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this matter from those you're giving this morning?
MR. MITCHELL: Objection. Argumentative.
MR. LEONARD: No, I'm just trying to find out, you know, where we're coming from here.
MR. MITCHELL: Her recollection could be refreshed from some intervening source.
BY MR. LEONARD
Q. This isn't a recollection question; this is a – why an effort to collect a debt hasn't been made.
MR. MITCHELL: Same objection. Answer if you can. It's already been answered, but do you have anything to add?
THE WITNESS: Because I haven't asked her for it yet doesn't mean I'm not going to ask her for it.
BY MR. LEONARD
Q. And my question is why haven't you done that to this date? Why haven't you asked her for it?
A. Because I'm still trying to collect from the entities.
Q. All right. Now, we agreed that Kathleen Zeller

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did guarantee the obligations that are recited in Strom Exhibit 5 and Strom Exhibit 4, right? Do you agree with that?
A. What's the question again?
Q. The two promissory notes.
MR. MITCHELL: Objection to the extent it calls for a legal conclusion.
You can testify as to your understanding.
THE WITNESS: Repeat the question.
MR. MITCHELL: Did she guarantee the debts.
THE WITNESS: Did Kate guarantee the debts? Yes.
BY MR. LEONARD
Q. On the two promissory notes? Is that your understanding, that that's what she did?
A. Yes.
Q. What is your understanding of why you had Kate Zeller personally guarantee Exhibits 4 and 5?
A. I didn't have her do it. She did it.
Q. She volunteered to do it?
A. Yes.

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Q. So had she not done that, had she not volunteered to do it, that would not have been a condition to granting the loan?
MR. MITCHELL: Objection to the form of the question. Double negative.
BY MR. LEONARD
Q. Do you understand the question?
A. I'm not sure if I do or not. Repeat it.
Q. Let me try to do better.
Was a personal guarantee by Kate Zeller a requirement that you imposed as a condition to the loan –
A. No.
Q. – that was made from the trust?
A. No.
(Strom Deposition Exhibit 7 marked for identification.)
BY MR. LEONARD
Q. Showing you what's been marked as Exhibit 7.
Please take a look at it and then tell me when you've finished looking at it.
A. (Reviewing document.)
Q. You've finished looking at it?
A. Yes.

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Q. Can you tell me what you understand Strom 7 to be?
A. It's a recording of the mortgages.
Q. And when you say mortgages, you mean the mortgages by the debtors in favor of the trust?
A. Mm-hmm. Yes.
Q. Now, I note that the first paragraph of Exhibit 7, the last line of the first paragraph, identifies you as the trustee, do you see that there?
A. Yes.
Q. I also note that it does not appear to identify Steven Hagberg as a trustee or state his name in that paragraph.
A. Okay.
Q. Is there any reason, to your knowledge, why Mr. Hagberg was not named as a grantee under this mortgage, as a trustee?
A. No.
Q. Do you know who drafted this mortgage?
A. No, I don't.
Q. When is the last time you've seen this mortgage other than today?
A. Within the last month.
Q. And is that when you were reviewing documents, as

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you've indicated earlier?
A. Yes.
Q. Did you meet or see Kathleen Zeller in March of 2001?
A. I don't remember if I did or not.
Q. Did you see her in connection with her signing this mortgage?
A. No.
Q. Did you speak with her, to her about it –
A. No.
Q. – at that time?
A. No.
Q. Did you speak to anyone at Mahoney & Hagberg about this mortgage?
MR. MITCHELL: Other than your husband.
THE WITNESS: No.
BY MR. LEONARD
Q. Were you aware that at the same time that this mortgage was signed, that is, Exhibit 7, that Mahoney & Hagberg, as a law firm, was obtaining a mortgage from the debtors in the amount of $1,500,000?
A. No.
Q. When did you first become aware of that?

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A. I'm not sure if I ever have been aware of that.
Q. So to your knowledge that might be news to you today?
A. I know of – okay. Ask the question again.
Q. I'm just trying to figure out – I'm just trying to have you tell me when the first time was that you became aware that Mahoney & Hagberg obtained a mortgage from the debtors at the same time as Exhibit 7 was signed.
A. I have no idea.
Q. Was it quite recently, within the last month?
A. No.
Q. Would it have been during the year 2001?
A. I don't recall.
Q. Were you aware that in March of 2001 Mahoney & Hagberg had the debtors sign a promissory note in favor of that law firm in the amount of $1,500,000?
A. Was I aware then?
Q. Yes.
A. No.
Q. When did you become aware of that fact?
MR. MITCHELL: Objection. Assumes facts not in evidence.
THE WITNESS: That they – I'm

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not – no, I don't ...
BY MR. LEONARD
Q. You're not aware that such a note exists?
A. I don't – I'm not aware of the specifics of anything.
Q. Before today were you aware that in March of 2001 the debtors signed a note in favor of Mahoney & Hagberg, the law firm, in the amount of $1,500,000?
A. No, I'm not – I'm not familiar with the specifics of that.
Q. So the answer is no?
MR. MITCHELL: Objection. Her answer was she's not aware of the specifics.
MR. LEONARD: You know, I'm just trying to – she said no and then she said she's not aware of that, so I'm not sure which answer which answer she wanted to have stand. And I'll – if it's – if there's a hedging of the answer, then I have to ask some follow-up questions.
MR. MITCHELL: The hedging of the answer –

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MR. LEONARD: I would try to alleviate the necessity of follow-up questions, is what I'm trying to do.
MR. MITCHELL: The hedging comes from the question. She may be aware of the note and not the amount. You've got compound pieces in the question.
She's trying to say she's aware of it, she's not aware of the specifics. You can ask her if she's aware that the note is in this specific dollar amount. She may not be.
BY MR. LEONARD
Q. Let me break it down.
Before today did you have any awareness that in March of 2001 Mahoney & Hagberg had the debtors sign a note in favor of the law firm?
A. No.
Q. Did anyone at Mahoney & Hagberg discuss with you the filing of Exhibit 7 with the various county recorders?
MR. MITCHELL: I'm going to object to the extent it invades the marital privilege.
Anybody other than your husband,

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you can answer.
THE WITNESS: No.
BY MR. LEONARD
Q. At this point I'm not going to have this document marked, Ms. Strom, but I've handed a copy to Mr. Mitchell and I'm going to ask you if you've seen it before. And it may be that we won't have to mark it or deal with it, but I'll just ask you if you've seen it before today.
A. No, I've never seen this before.
Q. All right. I'll take your copy back.
MR. LEONARD: If you want to keep yours, Ralph, that's okay.
(Strom Deposition Exhibit 8 marked for identification.)
BY MR. LEONARD
Q. Ms. Strom, I'll ask you to take a look at what the reporter has marked as Exhibit 8. You'll note that there's a previous marking of Exhibit 4, and I'll ask you to ignore that because that's from a proceeding that's unrelated to today. After you've look at Exhibit 8, I'll ask you if you've ever seen that before.
A. No.
Q. Were you aware in March of 2001 or anytime prior

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to that that a lawsuit had been started by Dwight R.J. Lindquist against the debtors and Summa Management, Inc. and Carefree Living of America Minnetonka?
A. No.
Q. Were you aware that on March 20, 2001, which is about four or five days after the mortgage on Exhibit 7 was signed, that a judgment was entered against the entities I just mentioned, including the debtors, that is reflected in Strom Exhibit 8?
A. Was I aware then or am I aware now?
Q. Were you aware then.
A. No.
Q. When did you first become aware that that had happened?
A. I'm not sure.
Q. Was it before that lawsuit was started, before you retained Mr. Mitchell?
A. No.
(Strom Deposition Exhibit 9 marked for identification.)
BY MR. LEONARD
Q. Handing you what's been marked Exhibit 9, I'll ask you to look at it and then just let me know

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when you've finished doing that.
A. (Reviewing document.)
Q. Ms. Strom, is it your signature that appears on page 2 of Exhibit 9?
A. Yes.
Q. And what were the circumstances that resulted in your signing Exhibit 9? How did that come about?
A. Signing it?
Q. How did Exhibit 9 come about?
A. It was a letter that I put together.
Q. And who, if anyone, asked you to put this letter together?
A. Nobody.
Q. You did it all on your own?
A. Not entirely.
Q. Well, who assisted in that process?
MR. MITCHELL: I'm going to object on the basis of the marital privilege, instruct you not to answer if it was – if it was anyone other than your husband, you can answer.
THE WITNESS: No, I can't – decline to answer.
BY MR. LEONARD
Q. On the instructions of your attorney?

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A. Mm-hmm.
Q. Who typed this letter, Exhibit 9?
A. I didn't.
Q. You did not?
A. No, I did not.
Q. Do you know who did?
A. No, I don't.
Q. Who gave this letter to you to review or to sign?
MR. MITCHELL: Objection. The question is compound.
BY MR. LEONARD
Q. Who gave this letter to you?
MR. MITCHELL: You mean after it was typed?
BY MR. LEONARD
Q. At any time.
A. (Pausing.)
Q. I see you appear to be confused. I'll try to clarify.
A. Yeah.
Q. Before you signed Exhibit 9, you read this letter before you signed it?
A. The typed version?
Q. Yes.
A. Yes.

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Q. And who gave the typed version to you?
A. My husband.
Q. And is there an untyped version of this letter somewhere?
A. Somewhere.
Q. Did you write the untyped version?
A. In part.
Q. Where is that?
A. I don't know where it is today.
MR. LEONARD: Mr. Mitchell, and maybe I missed it in the documents, do you recall if it's in the group that you sent to me?
MR. MITCHELL: I don't remember seeing it. We'll look for it if you want us to.
MR. LEONARD: Please.
THE WITNESS: The untyped version?
MR. LEONARD: Yes.
THE WITNESS: I don't know if it's around anymore.
MR. LEONARD: I understand.
BY MR. LEONARD
Q. Do you understand – what is your understanding

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of why it would be beneficial to you – let me strike that.
What is your understanding as to why this letter was sent to Judge Kishel?
A. It had to do with the entities, the Carefree Living entities.
Q. And what was your objective in sending this letter to Judge Kishel?
A. Sending it –
MR. MITCHELL: You can read through it if you want to.
THE WITNESS: Yeah, thanks.
(Reviewing document.)
I thought it would harm my chances of recovering.
BY MR. LEONARD
Q. And how did you come about that conclusion? What information did you have to lead you to that conclusion?
A. Just some general information.
Q. Isn't it true that the information that – the conclusions you drew came from information from your husband, Mr. Hagberg?
MR. MITCHELL: Objection. Instruct not to answer, marital

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privilege.
BY MR. LEONARD
Q. You mentioned earlier that you authored some portions of Exhibit 9 that appeared in the untyped handwritten form. Is that a fair, correct statement?
A. Mm-hmm.
MR. MITCHELL: You need to answer audibly.
THE WITNESS: Yes. Yes.
BY MR. LEONARD
Q. What portions of Exhibit 9 did you author?
A. Specifically?
Q. Yes.
A. Nothing in specific.
Q. Well, how about generally?
A. Generally, yes.
Q. What portions of Exhibit 9 did you author generally?
A. All of it.
Q. Did anyone assist you in authoring Exhibit 9?
A. Yes.
Q. And who was that?
MR. MITCHELL: If it's anybody other than your husband, you can

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answer; otherwise, we'll assert the marital privilege. Can you answer?
THE WITNESS: No. I'm asserting the marital privilege on the advice of my attorney.
BY MR. LEONARD
Q. I'd like to call you attention to the second page. At the top of that page, the first full sentence begins with the words, "No third party could possibly step in and run the business without causing at least temporary damage." Do you see that?
A. Yes. Yes, I do.
Q. What information did you have at the time you signed this letter to lead you to the conclusion and opinion that is stated in that sentence?
A. General information from Kate.
Q. And what information was that?
A. I don't remember specifically. I just remember conversations.
Q. And generally, to the best of your recollection, what was the substance of those conversations?
A. Conversations about Spectrum.
Q. Okay. And what were those conversations?
A. I don't remember the specifics of them.

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MR. MITCHELL: Can you give a general answer?
THE WITNESS: Well, Kate and I – we discussed his running of the business.
BY MR. LEONARD
Q. "His." Who do you mean by "his"?
A. Spectrum. Merle.
Q. And with respect to Spectrum's running of the business, specifically or generally what was the discussion? What did she tell you?
A. That it wasn't going well.
Q. Kate told you that the business was not going well?
A. No. That his running of it wasn't going well.
Q. I see. Is it your understanding that you sent this letter to Judge Kishel to persuade the judge not to appoint Merle Sampson or his company as manager or operating trustee of the debtors?
A. That's my understanding. Yes, that's my intention.
Q. Okay. And the source of the information, then, that you received relative to Merle Sampson and his company came solely from Kate Zeller?
A. Solely?

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1 Q. Yes.
2 A. No. No.
3 Q. From what other sources did that information come?
4 MR. MITCHELL: Other than your
5 husband, you can answer.
6 THE WITNESS: Yes, there were
7 other people.
8 BY MR. LEONARD
9 Q. And who are they?
10 A. Vern Zeller, III.
11 Q. Which is Kate's stepson?
12 A. Stepson.
13 Q. Okay.
14 A. And Jane Weiss.
15 Q. Both of those parties were employees of Kate
16 Zeller or one of her companies, weren't they?
17 A. Vern was. I'm not sure when Jane came in,
18 exactly.
19 Q. But you have an understanding that at some point
20 in time Jane Weiss was an employee of one of Kate
21 Zeller's companies?
22 A. She worked for Carefree, yes.
23 Q. Okay. Did you, during this time of
24 communications with Kate Zeller, ask her how much
25 money she was being paid directly or through

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1 Summa Management from the debtors?
2 A. No.
3 Q. Did you think that her position on an operating
4 trustee might be influenced by her desire to keep
5 that money coming to her?
6 A. I don't know what I thought.
7 Q. You don't recall what you thought?
8 A. No, I don't recall what I thought.
9 Q. Did you ever think of that, that Kate Zeller
10 might have a self-interest in telling you that –
11 A. No.
12 Q. – a trustee – that you should write to the
13 judge?
14 A. Repeat that question?
15 Q. That was – my apologies. That was a clumsy
16 question.
17 Did you ever believe that Kate Zeller might
18 be acting in her own self-interest in the
19 communication she had with you relative to Merle
20 Sampson and Spectrum?
21 A. No.
22 Q. The thought never entered your mind?
23 A. Not in that way.
24 Q. Okay. The next sentence, which is the second
25 full sentence on the top of page 2 of Exhibit 9,

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1 seems to be a prediction or opinion of creditors
2 being paid or not paid if an operating trustee is
3 appointed. Would you agree that that's a fair
4 characterization of that sentence?
5 A. Which sentence is it? The first one in
6 paragraph 2?
7 Q. No. The second full sentence in the first – the
8 second full sentence starting from the top of
9 page 2.
10 A. This sentence? "No third party could possibly
11 step in"?
12 Q. The next one.
13 A. Okay. "If an operating trustee is appointed,
14 then I believe that no creditors other than First
15 Union would be paid, it being highly unlikely
16 that the business could be sold, especially in
17 the time frame set forth."
18 Now, what was your question about that?
19 Q. What information did you have that led you to the
20 conclusions or the opinions stated in that
21 sentence?
22 A. Well, general information. I don't remember the
23 specifics. I just remember generally, from
24 conversations with Kate.
25 Q. So this is what Kate was telling you?

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1 A. Yes, in part.
2 Q. And what was the other part?
3 A. Probably things that – conversations also with
4 Vern.
5 Q. Vern Zeller, the son-in-law?
6 A. Mm-hmm.
7 Q. Step-son-in-law. Sorry.
8 Information from any other source on that
9 matter?
10 MR. MITCHELL: Other than your
11 husband, you can answer.
12 THE WITNESS: No.
13 BY MR. LEONARD
14 Q. You didn't do any independent –
15 A. No, I did not.
16 Q. – investigation?
17 A. No.
18 Q. Didn't talk to any other consultants?
19 A. No.
20 MR. MITCHELL: You need to try to
21 focus on letting him finish his
22 question so you're not talking at the
23 same time.
24 *(Strom Deposition Exhibit 10*
25 *marked for identification.)*

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1 *BY MR. LEONARD*
2 **Q.** Please take a look at Exhibit 10, and then just
3 let me know when you've finished doing that.
4 **A.** (Reviewing document.) Okay.
5 **Q.** Exhibit 10 is a document I received from your
6 attorney, Mr. Mitchell. I'm simply going to ask
7 you, to try to speed things along, if to your
8 knowledge Exhibit 10 reflects the payments
9 received under promissory notes which are
10 Exhibits 4 and 5 of your deposition.
11 **A.** Oh, does this reflect it, the payments? Yes.
12 **MR. MITCHELL:** Did you mean,
13 Brian, all of the payments?
14 **MR. LEONARD:** Yes.
15 BY MR. LEONARD
16 **Q.** And so I mean all the payments that you ever
17 received under the first version or second
18 version of the note. That's the intent of the
19 question. Does that change your answer at all?
20 **A.** Oh, there's some payments on the second note.
21 I'm confused now.
22 **Q.** Is Exhibit 10 – does Exhibit 10 show all of the
23 payments received under both notes?
24 **A.** Oh, this is the payment – yes. Or – yes.
25 Payments, yes.

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1 **Q.** So is it correct and can we conclude from
2 Exhibit 10 that the last payment was received on
3 August 17, 2001?
4 **A.** From Carefree, yes.
5 **Q.** Have you received any other payments since
6 August 17, 2001?
7 **A.** Yes.
8 **Q.** What payments have you received since then?
9 **A.** Two payments from Summa.
10 **Q.** And these payments are not reflected on
11 Exhibit 10?
12 **A.** No. (Pausing.)
13 Now, wait. Now I'm not sure.
14 **Q.** What I'm trying to get at is whether or not
15 Exhibit 10 shows all the payments, and I think
16 now you're indicating you're not sure if they
17 show all the payments.
18 **A.** I don't know.
19 **Q.** How would you find out?
20 **A.** I'd have to look back at my own records.
21 **Q.** I'd ask you to do that and if the – and indicate
22 one way or the other whether your records show
23 that payments not on Exhibit 10 were received
24 under either of the notes. Can you do that?
25 **A.** Can I go back to my records and do that? Yes, I

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1 can.
2 **Q.** Just so I understand things, does Exhibit 10 show
3 all the payments received under either of the two
4 notes up to August 17, 2001?
5 **A.** That's – that's what this looks like. Yeah,
6 that's ...
7 **Q.** And that's your belief?
8 **A.** Yeah. I mean, there hasn't been anything other
9 than this.
10 **Q.** Okay. And there may or may not be additional
11 payments that are not reflected on Exhibit 10?
12 **A.** Right.
13 *(Strom Deposition Exhibit 11*
14 *marked for identification.)*
15 BY MR. LEONARD
16 **Q.** Showing you Strom Exhibit 11. Please take a look
17 at it.
18 **A.** (Reviewing document.) Oh, do you want – I've
19 looked at it.
20 **MR. MITCHELL:** There's no
21 question.
22 **MR. LEONARD:** I just wanted her to
23 indicate that she'd looked at it.
24 **THE WITNESS:** Yes, I've looked at
25 it.

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1 BY MR. LEONARD
2 **Q.** Is that your handwriting on Exhibit 11?
3 **A.** No.
4 **Q.** Do you know whose it is?
5 **A.** No.
6 **Q.** You don't recognize the handwriting at all?
7 **A.** No, I don't know whose it is.
8 **Q.** Okay. Have you seen Exhibit 11 before today?
9 **A.** No, I haven't.
10 **Q.** You did sign something like Exhibit 11 that was
11 typed up, is that true?
12 **A.** I may have.
13 **Q.** Do you recall whether you did or not?
14 **A.** I've signed a lot of things. I don't remember
15 what I've signed.
16 **MR. MITCHELL:** Are you asking her
17 if she signed a proof of claim form? I
18 think we can stipulate that she did.
19 BY MR. LEONARD
20 **Q.** On the proof – do you recall signing a proof of
21 claim form?
22 **A.** Not specifically, no. I'm sure I did. I just
23 don't remember it.
24 **MR. LEONARD:** Well, let's take
25 about a five-minute break. I'll review

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my notes and see how much further we have to go.
(Short break.)
MR. LEONARD: Before I forget, I take it, Mr. Mitchell, that in the documents that you've produced or in response to our request for production of documents that you held back some documents on the basis of either an attorney-client privilege or marital privilege?
MR. MITCHELL: I don't believe I did.
MR. LEONARD: What I would simply ask is that if you did that you prepare a log of those –
MR. MITCHELL: Sure.
MR. LEONARD: – so that we can deal with those if we need to. Maybe you could confirm one way or another whether you have or not.
MR. MITCHELL: All right.
MR. LEONARD: I didn't have too many more questions, so we'll try to wrap this up as soon as we can.

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THE WITNESS: Okay.
BY MR. LEONARD
Q. Did you ever discuss with Kathleen Zeller how it was that she lived in Andorra yet had the responsibility of running the debtors and Carefree Living of Minnetonka?
A. In regard to what part of that?
Q. Well, let me ask, did you ever ask Kathleen Zeller how she was able to accomplish running the debtors and Carefree Living of Minnetonka –
A. We may have.
Q. – while she was in Andorra?
A. We may have had conversations about that. I don't remember anything specifically.
Q. Do you recall specifically or generally what she said with respect to that?
A. No.
Q. Were you satisfied in your mind that she could run the debtors and the related companies from Andorra?
A. Yeah.
Q. Did you have any thoughts or conclusions on your own as to how she did that?
A. We live in the day of modern technology. Computers, telephones, you can do it. I don't

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have a problem with that.
Q. Okay. Have you ever communicated with Kate Zeller from the United States or from your home or your business to Kate Zeller in Andorra?
A. Have I ever – yes, I have.
Q. Is that through e-mail or telephonic or –
A. Both.
Q. How often do you do that?
A. Not very often.
Q. When's the last time you had any communication with Kate Zeller when she was in Andorra?
A. Oh, I don't know. I don't remember.
Q. Well, in terms of months, give me a best estimate of the number of months.
A. Telephone or fax or letter? I mean, what –
Q. Any of them.
A. Anything, communication?
Q. Right.
A. I don't know. I'm not sure.
Q. Is it your recollection that it would have been more than three months ago?
A. More than three months. Maybe. I'm just not sure. Yeah, probably more than three months ago.
Q. Have you ever been to Andorra?
A. Yes, I have.

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Q. And you visited her there?
A. Yes, I have.
Q. When did that happen?
A. May 2001. Or was it May 2000? I can't remember what year it was. I have to think.
I think it was May of 2000. Yeah, without looking at my calendar, the years blur together. I can't remember if it was May of 2000 or May of 2001.
Q. Do you remember whether it was before or after the first promissory note was signed and you loaned the $50,000?
A. If I can't remember if it was May of 2001 or May of 2000, I don't remember if it was before or after the first note was signed.
Q. I was just giving that frame of reference to see if it assisted in your recollection.
A. That doesn't help me.
Q. Okay. How long did you stay there?
A. In Andorra?
Q. Yes.
A. Two days.
Q. Did you stay at her home?
A. Yes.
Q. And were you accompanied on that trip by

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Mr. Steven Hagberg?
A. Yes.
Q. And was Kathleen Zeller living there with her husband Vern Zeller, Junior –
A. Yes.
Q. – at that time?
A. Yes.
Q. So you visited them in their home for a couple days?
A. Yes.
Q. What is your understanding of the source of the payments, that is, where the payments came from that are on Exhibit 10? If you wanted to take another look at that ...
A. My understanding –
Q. Yes.
A. – is they come from Carefree.
Q. Well, when payments would come in, for example, the payments that are under the schedule or reflected in Exhibit 10, did those payments come to you personally or did they go to some other place?
A. No, they came to – they came to us. They came to me.
Q. To your home?

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A. Sometimes they – sometimes they'd just be dropped off with Steve.
Q. At the office?
A. Mm-hmm.
Q. And sometimes were they mailed to your home?
A. One or two might have been. Yeah, I just don't ...
Q. When the payments came in, whether they came to Mr. Hagberg or were mailed to your home, did you actually look at the checks?
A. A couple of them.
Q. Where were those checks deposited? That is, into what account?
A. To the trust.
Q. Each time?
A. Yeah, I'm pretty sure each time. I'm not sure without looking at my records.
Q. Do your records show where the checks came from? That is, on what entity or account the checks were written?
A. Not unless it's on – no, not unless it's on the deposit slip.
Q. You don't keep copies of those checks?
A. No, I don't.
Q. Do you know whether some of the payments came

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from Summa Management, Inc.?
A. Not – I don't think any of them did then.
Q. And when you say "then," you're referring to your previous testimony that there may have been some additional payments that are not on Exhibit 10?
A. The additional payments would have been after this date, and that would have been from Summa.
Before that date I don't think anything came from Summa.
Q. You think they all came from the debtors?
A. I believe so.
Q. Okay. Did you personally make out the deposit slips and deposit those payments into the trust account?
A. Sometimes.
Q. Deposit account?
A. Sometimes.
Q. And on the occasions where you did not do that, who would?
A. Steven would.
MR. LEONARD: I don't think I've got any further questions.
MR. MITCHELL: I've got a couple questions, just clarifications.
(Next page, please.)

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EXAMINATION

BY MR. MITCHELL
Q. Ms. Strom, would you turn back to Exhibit 5, if you would.
Mr. Leonard asked you about the date that this note was signed. Initially you said you didn't know and then later you turned over to the third page and you said, oh – I believe that your testimony was, oh, that this was signed on January 15th. Do you remember saying that?
A. Yes, I do.
Q. Now, what led you to believe that this note was signed on the 15th when before you testified you couldn't remember?
A. The date on the document.
Q. The date on Exhibit 5?
A. Yes. The date – I made an assumption that it was signed on the 15th because that's the date – it says – that's the date on the document.
Q. Does it say on there, the document, that it was signed on the 15th?
A. No, it doesn't.
Q. And that was the basis of your –
A. Yes, it –

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Q. – refreshed recollection?
A. Yes, it was.
Q. Now, Mr. Leonard was just asking you, with respect to Exhibit 10, where all these payments came from that are on here. Do you remember him asking you that?
A. Yes.
Q. And your testimony was you thought they came from Carefree, is that your recollection?
A. Yes.
Q. If there were checks in existence, would that be the best evidence of where those came from?
MR. LEONARD: Are you asking the witness for an evidentiary –
MR. MITCHELL: Strike that question.
MR. LEONARD: – legal question?
BY MR. MITCHELL
Q. Do you know if you have any copies of the checks in any of these documents that we've produced?
A. I don't think there's any copies of the checks.
Q. But would those checks show the source of the payments?
A. Yes, they would. Yes.
Q. Can you say for certain as you sit here whether

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those payments were drawn on Carefree accounts or somebody else's account?
A. No, I can't.
MR. MITCHELL: I don't have anything further.

FURTHER EXAMINATION

BY MR. LEONARD
Q. So you're changing your testimony, then, about the source of the payments? Because I understand earlier you said that you believe that all the payments came from Carefree.
A. I do believe, but without having the checks in front of me I can't be 100 percent sure. But that's my belief, yes.
Q. Is there any other answers that you want to change that I've asked you this morning, before we close this deposition?
A. None that I can think of.
MR. LEONARD: Okay. Very good.
(Next page, please.)

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FURTHER EXAMINATION

BY MR. MITCHELL
Q. I've got one more.
Did you have an understanding what Mr. Leonard meant when he said what is the source of these payments?
A. Oh. No, I don't, come to think of it.
When you said source I thought you meant where did the checks come – what were the checks written on or – source of the payments. Who – where did the money come from, Carefree or somebody else? My understanding is the money comes from Carefree. That's my understanding of the question.
Q. So your answer, what you thought you were answering, was where the money ultimately originated?
A. Yeah. Yeah.
Q. Not necessarily on what –
MR. LEONARD: Well, Ralph, you're just leading the witness all over the place.
MR. MITCHELL: Okay.
MR. LEONARD: Where are we going

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with this?
MR. MITCHELL: I'm trying to clarify, because I've produced to you documents that show copies of these payments that come from Summa Management. They're in the documents.
MR. LEONARD: Okay.
THE WITNESS: Oh, yeah, the copies are there. I was thinking about the ...
MR. MITCHELL: We'll read and sign.
(Whereupon, at 12:23 p.m., the foregoing deposition was terminated.)
**REPORTER'S NOTE - The original transcript is being delivered to Attorney Leonard.

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STATE OF MINNESOTA)
COUNTY OF RAMSEY)

I hereby certify that I reported the deposition of Jane L. Strom on the 13th day of February, 2003, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition was reserved by the witness and is to be accomplished in accordance with the attached letter.

WITNESS MY HAND AND SEAL this 15th day of February, 2003.

Patricia S. Onken

Page 0

NEUMANN REPORTING AGENCY
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February 18, 2003

Mr. Ralph V. Mitchell
Lapp, Libra, Thomson, Stoebner & Pusch,
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402

Re: In Re: Carefree Living of America, et al.
Leonard v. Strom, et al.
Deposition of Jane L. Strom

Dear Mr. Mitchell:

I have enclosed a copy of the above-referenced deposition, along with the Deposition correction Sheet. Please have the witness read the transcript and complete and sign the Deposition Correction Sheet within 30 days of this letter or not later than the hearing in this matter, whichever occurs first, and then deliver it directly to Attorney Leonard, who has been sent the original transcript pursuant to the rules. If the read-and-sign procedure is not timely completed, transcripts may be used fully as if signed.

Thank you for your prompt cooperation.

Sincerely,

NEUMANN REPORTING AGENCY

Patricia S. Onken
Court Reporter

Encls.

cc: Mr. Leonard

Page 118

D E P O S I T I O N C O R R E C T I O N S H E E T

TITLE - In Re: Carefree Living of America, et al.
Leonard v. Strom, et al.
VENUE - U.S. Bankruptcy Court FILE - 01-33545, 6, 7
ADV Case No. 02-9117
WITNESS - Jane L. Strom REPORTER - P. Onken

Pg/Line:	Change	Reason (required)

Signature of Witness Date
(Mail completed form to Attorney Leonard by 3-19-03 or transcript may be used as if signed. Do not mail to court reporter.)

Depo-Dex Concordance Report Prepared For Special Clients By Neumann Reporting Agency

- - -

UNIQUE WORDS: **1,009**
TOTAL OCCURRENCES: **4,241**
NOISE WORDS: **696**
TOTAL WORDS IN FILE: **17,378**

- - -

SINGLE FILE CONCORDANCE

- - -

CASE SENSITIVE

- - -

PHRASE WORD LIST(S): **PHRASE.PHS**

- - -

COVER PAGES = 2

- - -

INCLUDES ALL TEXT OCCURRENCES

- - -

DATES **ON**

- - -

INCLUDES PURE NUMBERS

- - -

POSSESSIVE FORMS **ON**

- - -

MAXIMUM TRACKED OCCURRENCE THRESHOLD: **50**

- - -

NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD: **8**

- - -

LIST OF THRESHOLD WORDS:

- - -

answer
I don't know
I don't remember
LEONARD
loan
MITCHELL
signed
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Carefree Living of America (Burnsville), Inc.
Carefree Living of America (St. Cloud), Inc.
Carefree Living of America (Brainerd), Inc.

Debtors.

Chapter 7

Case No. 01-33545
01-33546
01-33547

Brian F. Leonard, Trustee,

Plaintiff,

v.

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and
Jane L. Strom, individually,

Defendants.

ADV Case No. 02-9117

NOTICE OF TAKING DEPOSITION OF JANE L. STROM

TO: DEFENDANT JANE L. STROM AND HER ATTORNEY, RALPH MITCHELL, LAPP, LIBRA, THOMSON, STOEBNER & PUSCH, 120 SOUTH SIXTH STREET, SUITE 2500, MINNEAPOLIS, MINNESOTA 55402.

PLEASE TAKE NOTICE, that the deposition of Jane L. Strom will be taken before a qualified notary public at the office of Leonard, O'Brien, Wilford, Spencer & Gale, Ltd., 100 South Fifth Street, Suite 1200, Minneapolis, Minnesota, 55402, on Thursday, February 13, 2003, at 10:00 a.m., and thereafter by adjournment until the same shall be completed.

DEPOSITION EXHIBIT
Strom 1
2/13/03 PD

Jane L. Strom is directed to bring with her at the deposition the documents listed on Exhibit A. attached hereto.

LEONARD, O'BRIEN
WILFORD, SPENCER & GALE, LTD.

Dated: January 6, 2003

By _____

Brian F. Leonard, #62236
Attorneys for Plaintiff
100 South Fifth Street
Suite 1200
Minneapolis, MM 55402
(612) 332-1030

@PFDesktop\::ODMA/GRPWISE/GWDMPLS.GWPOMPLS.MPLSLIB1:99782.1

EXHIBIT A

1. True and accurate copy of all documents constituting the "Jane L. Strom Trust".

2. All documents reflecting, in any manner, any communication by and between (a) Jane L. Strom, and (b) any of the following: Steven Hagberg, Kathleen Zeller, Vern Zeller, Michael Mahoney, any member or employee of the law firm of Faegre & Benson, and any member or employee of the law firm of Mahoney & Hagberg, or any entity in which Michael Mahoney and Steven Hagberg held an interest, which communications dealt with or related to, in any manner whatsoever, the promissory notes and mortgages which are the subject of Adversary Proceeding No. 02-9117.

3. Documents reflecting, in any manner, any and all payments from any source, in payment of, in whole or in part, or related to, the promissory notes which are the subject of Adversary Proceeding No. 02-9117, including bank account deposit records, check records, wire transfer records, and the like, of any of the Defendants.

4. Document reflecting any and all communications between Jane L. Strom and any third party or entity, relating, in any manner, to the proof of claim filed by the Jane L. Strom Trust on or about January 8, 2002, in the bankruptcy case captioned on the notice of this deposition.

5. Documents which reflect the calculation of the amount of any proof of claim filed by any of the Defendants in this bankruptcy case.

@PFDesktop\::ODMA/GRPWISE/GWDMPLS.GWPOMPLS.MPLSLIB1:99782.1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 7
Carefree Living of America (Burnsville), Inc. Carefree Living of America (St. Cloud), Inc. Carefree Living of America (Brainerd), Inc. Debtors.	Case No. 01-33545 01-33546 01-33547
Brian F. Leonard, Trustee, Plaintiff, vs. Jane L. Strom Revocable Trust, Jane L. Strom, Trustee, and Jane L. Strom, individually, Defendants.	ADV. No. 02-9117 **DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES - SET I**

TO: PLAINTIFF BRIAN F. LEONARD, TRUSTEE, AND HIS ATTORNEYS, BRIAN F. LEONARD, LEONARD, O'BRIEN, WILFORD, SPENCER & GALE, LTD., 100 SOUTH FIFTH STREET, SUITE 1200, MINNEAPOLIS, MN 55402.

GENERAL OBJECTIONS

Jane L. Strom, in her capacity as a trustee of the Jane L. Strom Revocable Trust, and Jane L. Strom, individually, ("Defendant") objects to each interrogatory to the extent it seeks information subject to the attorney/client privilege, work product doctrine, or otherwise seeks the disclosure of mental impressions, conclusions, opinions, or legal theories of an attorney or the representative of the Defendant in this litigation.

DEPOSITION EXHIBIT
Strom 2
2/13/03 PD

The answers provided herein are given with the understanding that by so doing, the Defendant does not waive her attorney/client privilege or work product protection and does not waive any other applicable objection or the right to file a motion for a protective order.

For her answers to Plaintiff's Interrogatories to Defendants – Set I, Defendant answers as follows:

Interrogatory No. 1

Identify all persons preparing or assisting in the preparation of the answers to these Interrogatories. Set forth the specific interrogatories for which the person assisted in your response.

Answer

Jane Strom, Steve Hagberg, assisted by counsel.

Interrogatory No. 2

Identify all persons who are known to you to have information related to the matters alleged in the parties' pleadings, including the knowledge held by such person(s) and also including the means or method by which such person(s) obtained such knowledge.

Answer

Kathleen L. Zeller (Officer, Director of Debtors and Summa Management, Inc., the management company for the Debtor facilities; Brian Leonard (Chapter 11 and 7 Trustee and is believed to have all books and records of Debtor entities and Summa Management, Inc.); Vern Zeller III (worked for Debtors or Summa Management, Inc.); unknown persons at Piper Jaffray who prepared check; unknown persons at Faegre & Benson who accepted, endorsed and forwarded the $50,000 check; unknown persons at First Union Mortgage who received and credited the $50,000 payment; William Howard, made loan at same time for same problem; Internet Financial personnel; Michael C. Mahoney (Attorney at Mahoney & Hagberg, A Professional Association, former counsel to Debtors; Jane L. Strom (Trustee of Jane L. Strom Revocable Trust U/A October 28, 1998; Steven V. Hagberg (Attorney at Mahoney & Hagberg, A Professional Association, former counsel to Debtors); Jane Weiss, bookkeeper for Summa Management, Inc., Debtor entities and Carefree Living of America (Minnetonka), Inc. Discovery is continuing.

Interrogatory No. 3

Identify all persons whom you intend to call as witnesses at the trial of this matter and for each such person state the subject matter of his or her expected testimony and the substance of the facts to which said witness is expected to testify.

Answer

Defendants have not yet identified who will be witnesses at trial. Defendants expect that the witnesses will be selected from the list provided with the answer to Interrogatory No. 2.

Interrogatory No. 4

Identify each person whom you expect to call as an expert witness at trial and for each such person state:

(a) the subject matter of which said expert is expected to testify;

(b) the substance of all facts and opinions to which said expert is expected to testify; and,

(c) a summary of the grounds for each such opinion.

(d) the qualifications, including educational background, for each expert identified.

Answer

Defendants have not yet identified any expert witnesses.

Interrogatory No. 5

Have you taken or received any statements, depositions, or recorded information relating to the matters alleged in the pleadings herein? If so, identify each person from whom you have such a statement, indicating whether the statement was oral, written, or by court reporter, tape recorder or otherwise preserved; state the date, time and location of each such statement; identify the person taking the statement and state whether the person from whom the statement was taken has provided a copy thereof.

Answer

None.

Interrogatory No. 6

State and describe, in chronological order, each and every communication, whether oral, written or otherwise, by and between Steve Hagberg and the Defendants concerning the Debtors, and/or Carefree Living of America (Minnetonka), Inc. and/or Kathleen Zeller.

Answer

All such communications are privileged under F.R.E. 501 and Minn. Stat. § 595.02 and will not be disclosed.

Interrogatory No. 7

State and describe each and every occasion in which the Defendants and Kathleen Zeller met, and/or communicated with each other, and/or attended the same event, gathering or meeting. For each such meeting, event and occasion, describe the date thereof, the persons present, and the subject and substance of all communications by and between the Defendants and Kathleen Zeller.

Answer

Defendant Jane Strom first met Kate Zeller sometime between 1986 and 1991. They became reacquainted at a party in late 1991. The following summer Jane Strom and her husband Steve Hagberg met socially with Kate and Vern Zeller. Thereafter, Jane, Kate, and sometimes Vern and Steve met socially on many occasions. These social meetings occurred both before and after the Zellers left Minnesota. Defendant Jane Strom cannot remember each and every occasion, nor can she remember with specificity the date, time, discussions, event, etc. Discovery is continuing.

Interrogatory No. 8

Describe, in detail and with particularity, all of the circumstances which preceded and led to (a) the Promissory Note in favor of the Defendants dated September 1, 2000, (b) the

Promissory note in favor of the Defendants dated January 15, 2001, and (c) the Mortgage in favor of Defendants filed on March 16, 2001.

Answer

The transaction came together in a very informal manner and over two days. Kate Zeller came to Minnesota sometime in late August, 2000. While here, she worked on curing the First Union mortgage default by the Debtor entities. Jane Strom, Kate Zeller and Steve Hagberg had their usual social gathering over dinner during this visit. During that dinner, Kate briefly stated that she was not quite able to raise all the money she needed to cure the mortgage default and that she was $50,000 short. She indicated that Internet Financial, Bill Howard and herself were lending some, but not all, the money needed. Kate related that the existing commitments included a fee and interest and were short term. Kate did not solicit a loan or participation in any financing from either Jane Strom or Steve Hagberg at that time. The next day, Jane offered to lend $50,000 from her trust. She believed it to be a good short term investment and an appropriate departure from the other investments in the trust. The trust had the available cash and more was expected. Steve Hagberg told Kate of Jane's willingness and the deal got done very quickly. First Union had demanded good funds so a check from the trust account would not suffice. Faegre & Benson agreed that a check from Piper would be acceptable. A check was delivered directly from Piper to Faegre & Benson. Kate signed and delivered the first note.

When the note came due in January, 2001, Jane was already aware that it would not be paid. Kate faxed a proposed payment schedule and offered to secure the balance due with mortgages. A new note was signed when Kate was next in Minnesota, about January 24, 2001, together with a new personal and corporate guaranty, and mortgage deeds covering the Debtors' properties and the Minnetonka property. Kate returned to Andorra. Shortly thereafter, Steve Hagberg realized that by securing the note with four separate mortgage deeds, it would require payment of four duplicate mortgage registration taxes. When Kate returned to Minnesota in March, a new single mortgage deed was executed covering all 4 properties and was recorded first in Hennepin County, and thereafter in the other 3 counties obviating the need for duplicate mortgage registration taxes.

Interrogatory No. 9

State and describe, in detail and with particularity, all of the circumstances which preceded and led up to the issuance of a check in the amount of $50,000.00 to Faegre & Benson, which check purportedly represents the consideration for the Promissory Note dated September 1, 2000.

Answer

See answer to Interrogatory No. 8.

Interrogatory No. 10

With respect to the Promissory Note dated September 1, 2000, the Promissory Note dated January 15, 2001, and Mortgage signed on or about March 15, 2001, identify all persons who participated in the negotiating and setting of the terms thereof, and the drafting thereof.

Answer

See answer to Interrogatory No. 8.

Interrogatory No. 11

With respect to the Mortgage in favor of Defendants signed and notarized on March 15, 2001, state the names of all persons and/or entities which paid the filing fees and mortgage registration tax with respect to said Mortgage.

Answer

Defendants do not know who paid such fees at this time. Discovery is continuing.

Interrogatory No. 12

State and list by date and amount each and every payment received by the Defendants on the Promissory Notes dated September 1, 2000, and January 15, 2001, the source of such payments, and whether such payments were by cash, check, electronic transfer, or otherwise.

Answer

Checks:

9/21/00	$833.33	No specific receipt indicating payor
10/16/00	$833.33	Receipt from Piper shows Summa Mgt. as payor
11/13/00	$833.33	Copy of check shows Summa Mgt. as payor
12/12/00	$833.33	No specific receipt indicating payor

Carefree Living of America (Minnetonka), Inc. (Fed. Tax ID # 41-1813996) issued a form 1099 to Defendant Strom Trust for all of the interest portion of such payments.

Checks:

1/12/01	$833.33	Receipt shows Summa Mgt Inc
2/15/01	$4,139.61	No specific receipt indicating payor
3/15/01	$4,084.61	No specific receipt indicating payor
4/23/01	$4,029.61	No specific receipt indicating payor
5/21/01	$3,974.61	No specific receipt indicating payor
6/25/01	$3,934.61	No specific receipt indicating payor
7/17/01	$3,809.61	Cashier's Check from Summa Mgt

Carefree Living of America (Minnetonka), Inc. (Fed. Tax ID # 41-1813996) issued a form 1099 to Defendant Strom Trust for interest in the amount of $833.33. Summa Management Inc. issued a 1099 for interest paid in the amount of 8,346.48. These 1099's account for all the interest paid and each payment included interest.

Interrogatory No. 13

State and date of the commencement of the marriage of Jane L. Strom and Steven Hagberg.

Answer

Jane L. Strom and Steven Hagberg were married on December 28, 1990.

Interrogatory No. 14

To the extent you have not provided the same, state, with particularity and in detail, and describe all of the communications by and between Jane L. Strom, on the one hand, and any other person, on the other hand, relative to the Promissory Notes dated September 1, 2000, and January 15, 2001, and the Mortgage signed on March 15, 2001.

Answer

See response to Interrogatory No. 6 as to communications between Strom and Hagberg. See generally, response to Interrogatory No. 8. Discovery is continuing.

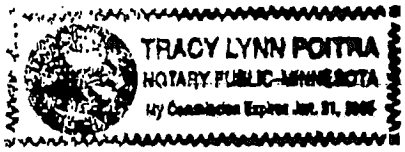
Jane Strom, being first duly sworn upon oath deposes and says that the foregoing answers to interrogatories are true and correct to the best of her present knowledge, information, and/or belief, subject to inadvertent error and/or omission, facts later recollected, found, or

learned, and subsequent discovery.

Jane Strom

Subscribed and sworn to before me this 5th day of February, 2003.

Notary Public



As to Objections:

Dated: February 5, 2003

LAPP. LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

Ralph V. Mitchell (#184639)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815
ATTORNEYS FOR DEFENDANTS

JANE L. STROM

REVOCABLE TRUST AGREEMENT

THIS TRUST AGREEMENT, is executed this 28th day of October, 1998, by and between Jane L. Strom, hereinafter called the "Settlor," and Jane L. Strom and Steven V. Hagberg, hereinafter collectively called the "Trustee."

WITNESSETH:

WHEREAS, I desire to establish a revocable trust for the benefit of myself, my husband, Steven V. Hagberg, my children and their issue; said Trust to be designated as the "JANE L. STROM REVOCABLE TRUST"; and

WHEREAS, I may from time to time transfer property to the Trustee, and any such property transferred to the Trustee shall be recorded on Schedule A attached hereto and a receipt therefor executed by the Trustee; provided, however, that the failure to record or provide a receipt for such property shall in no way limit the efficacy of the transfer of such property to the Trustee. The property of this Trust shall consist of all such property together with the proceeds of any policy of insurance with respect to which I have caused the Trustee to be named as beneficiary and any other property transferred to the Trustee by me or any other person, by will or otherwise, to be sometimes hereinafter referred to as the "trust estate."

NOW THEREFORE, it is agreed by and between the parties that the trust estate is hereby transferred to the Trustee in trust to be held, administered and disposed of in accordance with the following terms and provisions.

ARTICLE 1
Powers Reserved by Settlor

1.1 In General. The following powers and rights are reserved by me during my life, to be exercised by me without the consent or participation of the Trustee or any beneficiary of the Trust:

1.1.1 Additions to Trust. To add other items of real or personal property to the Trust by assigning, transferring, conveying and delivering the same to the Trustee, and to add insurance to the Trust by making the Trustee the beneficiary of the policy or policies, such other items of property and the proceeds of such insurance to be held and distributed by the Trustee under the terms of this Agreement as though it had originally been a part of the trust estate.

DEPOSITION EXHIBIT
Strom 3
2/13/03 PD

102898/1/TRUST-JLS

1.2 Insurance Policies. With respect to any insurance policy of which the Trustee is named as beneficiary:

1.2.1 To receive or apply dividends or distributive shares of surplus, disability benefits, surrender values or proceeds of matured endowments.

1.2.2 To obtain and receive from the respective insurance companies such advances or loans on account of any of the policies as may be available.

1.2.3 To exercise any option or privilege granted under the policy.

1.2.4 To sell, assign or pledge any policy.

1.2.5 To change the beneficiary of any policy.

1.3 Annual Accounting. At any time during my life that I am not actively serving as a Trustee hereunder, to receive an annual written account of the administration of the Trust. My approval thereof shall be binding and conclusive as to all persons, living or unborn, who are or may become entitled to share in the income or principal of the Trust, and the Trustee need not account to any other person, either before or after my death, for any period for which they have accounted to me and obtained my approval. During such period of time as I am actively serving as Trustee hereunder, the Trustee need not furnish me such a written account, and my approval of the Trustee's account shall be deemed to have been given during and for such period.

1.4 Trustee Records. To examine the books and records of the Trustee insofar as they relate to the Trust at reasonable times.

1.5 Direction to Trustee. To direct the Trustee as to the retention, acquisition, sale or other disposition of assets of the Trust by an instrument in writing filed with the Trustee. The Trustee shall be under no duty to wait for such directions before acting, but upon receipt thereof by the Trustee, such directions shall have the same force and effect as though they were a part of this Agreement and shall be followed if reasonably possible, and any assets acquired pursuant to any such directions shall be retained as a part of and at the risk of the trust estate during my life and competency until I shall otherwise direct in a writing filed with the Trustee. The Trustee shall not be liable or responsible to anyone for any loss resulting from so retaining any assets acquired pursuant to any such directions. During such period as I am actively serving as a Trustee hereunder, any assets of the trust estate retained or disposed of shall be deemed to have been retained or disposed of with the same effect as though I had given written direction to the Trustee providing for the same.

1.6 Amendment or Revocation. To amend or revoke this Agreement, in whole or in part, by written instrument signed by me, provided the duties and responsibilities of the Trustee shall not be substantially increased by any such amendment without its consent. A copy of such

written instrument shall be delivered to the Trustee.

1.7 Amendment Affecting the Disposition of Real Estate. Notwithstanding any other provision of this Agreement, no amendment to this Agreement which affects the disposition of any real estate contained in this Trust or which affects the power of the Trustee to sell or otherwise dispose of such real estate or affects the succession in trusteeship provided for herein shall be effective until recorded with the Register of Deeds (or equivalent office) of the county in which real estate held in this Trust is located.

ARTICLE 2
Administration During Life of Settlor

2.1 In General. The Trustee shall collect, receive, receipt for, and manage the principal and income of the trust estate and, after paying the proper charges and expenses of the Trust, the Trustee shall hold and distribute the principal of and the net income from the trust estate in the manner hereinafter set forth. During my life, the trust estate shall be administered and distributed as follows:

2.1.1 Distribution of Income to Settlor. The Trustee shall pay to me, or to my order, the entire net income from the trust estate in monthly or other convenient installments.

2.1.2 Distribution of Principal to Settlor. The Trustee shall also pay to me, or in accordance with my written instructions, such sums from the principal of the trust estate as I may from time to time request.

2.1.3 Administration During Incompetency or Incapacity. If during my life, I should be adjudicated incompetent, or if in the opinion of the Trustee other than myself who is then serving, I should become incapacitated by reason of illness, accident, or other emergency, which opinion shall be rendered only after receipt by said Trustee of a letter so stating from my then attending physician, Steven V. Hagberg shall thereupon become sole Trustee, and during such period of incompetency or incapacity, the trust estate shall be administered and distributed as follows:

> 2.1.3.1 In lieu of the payments of income and principal above provided, and for so long as in the judgment of the Trustee (including any Corporate Trustee) other than myself my condition of incompetency or incapacity continues to exist, said Trustee other than myself is hereby authorized to pay or apply directly such sums from either the income or principal of the trust estate as said Trustee, in its sole discretion, deems necessary or advisable to provide for the health, education, support, maintenance and general welfare of myself, my husband, and my issue. In making payments of income and principal to my children, said Trustee need not make the same for the children's equal benefit. In addition, said Trustee is hereby authorized to pay or apply directly such sums from either the income or

the principal of the trust estate as said Trustee, in its sole discretion, deems advisable to continue any program, established by me, of making gifts to my spouse, my issue, or any charitable or other nonprofit organization.

2.1.3.2 During the period of my incompetency or incapacity, and in addition to the discretion provided above to distribute income and principal of the trust estate during said period, the Trustee other than myself who is then serving may by itself and without my consent or knowledge, exercise such or all of the other rights, powers and duties conferred by this Agreement on the Trustee as it, in its discretion, determines to be necessary or advisable for the proper administration of the trust estate.

2.1.3.3 In determining whether I have become incapacitated, the duration of any such period of incapacity, the advisability of distributing income and principal of the trust estate and the person or persons to or for whom such distribution is to be made, and whether and to what extent to exercise the other rights, powers and duties of the Trustee, the discretion of the Trustee other than myself, who is then serving shall be conclusive, and said Trustee shall incur no liability for exercising or failing to exercise any such discretion.

2.1.3.4 Notwithstanding anything to the contrary in this paragraph 2.1.3, during any period of my incompetency or incapacity, the discretion conferred on the Trustee to distribute income or principal of the trust estate shall be subject to the same limitations and restrictions as are provided in Paragraph 5.7.4 of Article 5 with respect to the discretion of the Trustee to distribute income or principal of the Family Share.

2.1.3.5 If during my life this Trust owns any real property used as my personal residence, my husband and I shall have exclusive use of such property during my lifetime/and for real estate tax purposes and income tax purposes I shall be deemed the owner of the property.

ARTICLE 3
Marital and Family Trust Allocations

3.1 Division Into Separate Shares. Upon my death, if my husband, Steven V. Hagberg, survives me, the trust estate shall be divided into a MARITAL SHARE and a FAMILY SHARE as follows:

3.1.1 Marital Share. The Trustee shall transfer to the MARITAL SHARE assets of the trust estate selected by it having a value which, when added to the value of all interests in property passing to my husband, either by my Will or apart from my Will, in a manner qualified for the marital deduction under the provisions of

the United States Internal Revenue Code (the "Code") in effect at the time of my death, will equal the maximum marital deduction allowable to my estate under the provisions of the Code, less the amount, if any, required to increase my taxable estate to the maximum amount as to which, considering the unified credit (under Section 2010 of the Code) and the credit for state death taxes (under Section 2011 of the Code) (to the extent the use of such credit does not increase the death tax payable to any State) but no other credit, and disregarding any estate tax imposed exclusively on any excess retirement accumulation included in my gross estate, there will be no federal estate tax payable by reason of my death.

3.1.2 Family Share. The FAMILY SHARE shall be comprised of the remaining assets of the trust estate (including any portion of the MARITAL SHARE which my husband shall disclaim pursuant to Section 2518 of the Code), or the entire trust estate, if my husband does not survive me.

3.1.3 Selection and Valuation of Assets. The Trustee shall satisfy the foregoing division by transferring to the MARITAL SHARE only cash or other assets which are capable of qualifying for said marital deduction. In satisfying the foregoing division, the Trustee shall value the assets allocated to the MARITAL SHARE in accordance with the federal estate tax values finally determined in my estate, provided that assets allocated to the MARITAL SHARE shall have an aggregate fair market value on the date or dates of allocation fairly representative of the appreciation and depreciation in value.

3.1.4 Marital Share Not Liable for Taxes. Except as otherwise specifically provided in paragraph 4.1.4 of Article 4, the assets transferred to the MARITAL SHARES shall not be liable for the payment of inheritance, estate or other similar taxes of the United States of America, or of any state or territory thereof, or of any foreign country or territory, imposed against my estate, or the recipients thereof, whether passing by Will or otherwise.

3.1.5 Administration of Trusts. The MARITAL SHARE shall be administered and distributed by the Trustee under the terms of Article 4 and the FAMILY SHARE shall be administered and distributed by the Trustee under the terms of Article 5.

ARTICLE 4
Marital Trust Administration

The MARITAL SHARE shall be held and administered as follows:

4.1 Distribution of Trust Property. The assets transferred to the MARITAL SHARE shall be held and administered as a separate trust for the benefit of my husband, pursuant to the

following terms:

4.1.1 Distribution of Income. The net income from the trust, beginning as of the date of my death, shall be paid to my husband in monthly or other convenient installments, but at least annually, during his life.

4.1.2 Distribution of Principal. The Trustee from time to time shall pay my husband or apply for his benefit such amounts from the principal of the trust as he requests in writing. In addition, the Trustee may from time to time pay to or apply for the benefit of my husband such amounts of the principal of the trust as the Trustee deems necessary or advisable for his care, comfort, support, maintenance and welfare, including reasonable luxuries.

4.1.3 General Power of Appointment. Upon the death of my husband, the entire amount remaining in the trust, including any accrued or undistributed income, shall be distributed to such appointee or appointees in such manner and proportions as my husband may designate by his Will, expressly referring to this power of appointment, including the power in him to appoint all thereof to his estate free of any trust hereunder, I hereby give and grant to him. Such power of appointment shall exist immediately upon my death and shall be exercisable by my husband exclusively and in all events.

4.1.4 Application to Taxes and Expenses. Without in any way limiting the general power of appointment hereinbefore conferred upon my husband, which shall be exercisable by him alone and in all events, the Trustee may pay from the trust as much of the principal thereof remaining unappointed on his death as is needed to pay the following taxes and expenses. Any such payments may be made directly or through the legal representative of his estate by way of advancement to or reimbursement of said legal representative.

4.1.4.1 The expenses of his last illness, funeral and interment, unpaid income and property taxes properly chargeable against his estate, and attorney and personal representative fees incurred in the administration of his estate.

4.1.4.2 All inheritance, estate, generation-skipping and other similar taxes of the United States of America, or of any state or territory thereof, or of any foreign country or territory, imposed against his estate, or the recipients thereof, whether passing by his Will or otherwise, without reimbursement or contribution from any person.

4.2 Distribution to Family Share. Any portion of the Marital Trust which is not effectively disposed of by the above provisions shall be added to the FAMILY SHARE of

Article 5 and administered and distributed as though it had originally constituted a part of the FAMILY SHARE.

4.3 Conversion of Unproductive Property. In the event any unproductive property is held by the Trustee in the Marital Trust, my husband may any time, by written instrument to the Trustee, compel conversion of such unproductive property to productive property, it being my intention that my husband is to have the full beneficial enjoyment of the Marital Trust.

4.4 Interpretation. It is my intention that the Marital Trust shall qualify for the marital deduction allowable under the federal estate tax provisions of the Code and, to the extent available, under State law in effect at the time of my death. All of the provisions of this Trust Agreement so far as they relate to the Marital Trust shall be so construed; otherwise, such provisions shall not be considered applicable to the Marital Trust.

ARTICLE 5
Administration of Family Share

5.1 In General. All of the rest, residue and remainder of the trust estate shall be allocated to the FAMILY SHARE. The income and principal of the FAMILY SHARE shall be administered and distributed as provided in this Article 5.

5.2 Allocation of Assets. The Trustee shall separately identify that portion, if any, of the assets of the FAMILY SHARE attributable to a disclaimer by my husband pursuant to Section 2518 of the Code and shall maintain such assets as a separate trust (the "Disclaimer Trust") for the life of my husband. The balance of the FAMILY SHARE shall held by the Trustee as the "Family Trust." Except as otherwise specifically provided in paragraphs 5.4.3, 5.4.4, and 5.5.2 of this Article, the following provisions for the administration and distribution of the FAMILY SHARE shall apply to both the Family Trust and the Disclaimer Trust.

5.3 Payment of Bequest, Taxes and Expenses. The Trustee may apply as much of the net income and principal of the FAMILY SHARE as is needed to pay the following bequest, expenses, debts, and taxes. Any such payments may be made either directly or through the personal representative of my estate by way of advancement to or reimbursement of said legal representatives.

5.3.1 Expenses of Last Illness. The expenses of my last illness, funeral and interment, unpaid income and property taxes properly chargeable against my estate, and expenses of administration of my estate; my legal debts; and legacies made in my Will.

5.3.2 Transfer Taxes. All inheritance, estate, generation-skipping and other similar taxes of the United States of America, or of any state or territory thereof, or of any foreign country or territory, imposed against my taxable estate, or the

recipients thereof, whether passing by my Will or otherwise, without reimbursement or contribution from any person. To the extent funds are available in any Disclaimer Trust, the Trustee shall first pay such death taxes out of the property in the Disclaimer Trust before using assets of the Family Trust for this purpose.

5.3.3 Flower Bonds. Even though the power of the Trustee under this paragraph 5.3 to pay taxes is discretionary, if the trust estate holds United States Treasury bonds, bills, notes or certificates of indebtedness which may be used at par to pay federal estate taxes, then such bonds, bills, notes and certificates of indebtedness shall be used by the Trustee for the payment of my federal taxes specified in subparagraph 5.3.2 above, without reimbursement or contribution from any person.

5.3.4 Payments not Permitted from Certain Sources. Notwithstanding the foregoing, the payments authorized by this paragraph 5.3 shall in no event be made from any of the following sources:

5.3.4.1 The assets of the MARTIAL SHARE.

5.3.4.2 Any assets which, but for application to such payments, would be excluded from my gross estate for federal estate tax purposes.

5.3.5 Tangible Personal Property. The trustee shall distribute all tangible personal property that comes into the trusts as follows:

5.3.5.1 Written Statement. Those items of tangible personal property that I have described in a separate written statement signed by me or in my handwriting and prepared in accordance with Section 524.2-513 of Minn. Stat. or other applicable law, to the persons who survive me and are designated in my statement to receive those items; and

5.3.5.2 Balance of Property. The balance of my tangible personal property not effectively disposed of by the foregoing provisions, to my husband if he survives me, or, if he does not survive me, to my children who survive me in equal shares.

5.4 Administration During Life of Husband. If my husband survives me (and after paying or making provision for the payments permitted under the foregoing provisions of this Article), the Trustee shall hold and distribute the FAMILY SHARE as follows:

5.4.1 Distributions to Husband. During the life of my husband, the Trustee

from time to time may pay to or apply directly for the benefit of my husband such sums from the net income and principal of the Family Trust and Disclaimer Trust as the Trustee considers necessary or advisable for his health, education, support and maintenance.

5.4.2 Distributions to Issue. During the life of my husband, the Trustee may also pay to or apply for the benefit of any issue of mine, such amounts from net income and principal of the Family Trust and the Disclaimer Trust as the Trustee deems necessary or advisable to provide for their respective health, education, support and maintenance.

5.4.3 Personal Residence. In the event this Trust owns any real property used as my or my husband's personal residence, my husband shall have the right to exclusive use of such residence. During such time of exclusive use my husband shall pay the interest on any mortgage and the real estate taxes for the property. For income tax purposes this real estate shall be treated as if my husband owned a life estate in the residence.

5.5 Administration After Death of Settlor and Husband. Upon the death of my husband, or in the event he predeceases me, then upon my decease (and after paying or making provision for the payments directed or permitted under the foregoing provisions of this Article), the Trustee shall hold and distribute the FAMILY SHARE as follows:

5.5.1 Division Into Shares. The Trustee shall divide each of the Family Trust and the Disclaimer Trust into the following shares; one-eighth (1/8) share for my husband's daughter, Stephanie Ann Boldt; one-eighth (1/8) share for my husband's daughter, Emily Leah Hagberg; three-eighth (3/8) share for my daughter, Katherine Anita Hagberg; and three-eighth (3/8) share for my son, Julian Vincent Hagberg. The shares of each of the Family and Disclaimer Trusts thus established shall be combined so that there is each share for each living child of mine and each share for the living issue collectively of each deceased child of mine. Each share allocated for the benefit of a living child of mine shall be held and distributed as provided in subparagraph 5.5.2 following. Each share allocated for the benefit of the living issue of a deceased child of mine shall be divided into equal shares by right of representation and held and distributed as provided in subparagraph 5.5.3 following:

5.5.2 Administration of Share for Child. Each share allocated for the benefit of a living child of mine shall be held and administered as follows:

5.5.2.1 The Trustee may pay to or apply for the child's benefit such amounts from the net income and principal of such child's trust share as the Trustee in the exercise of its discretion deems necessary

or advisable to provide for the child's health, education, support and maintenance. In making distributions the Trustee shall be guided by my desires as set forth in Article 5.5.2.2 et sec.

5.5.2.2 Discretionary Payments to Child and Grandchildren. If any child of mine is a full-time student at an accredited college, university, vocational school or similar institution (hereinafter referred to as "school") and maintains the equivalent of a grade point average of 2.5 or better on a scale in which 4.0 is an A grade, the Trustee shall pay for the child's reasonable education, including school tuition, books, fees, supplies, travel and living expenses. The Trustee shall have the absolute discretion to determine the reasonableness of all such educational costs. Distributions in payment of educational costs for undergraduate education shall not extend beyond five (5) years nor shall distributions in payment of educational costs for post-graduate education extend beyond four (4) years.

5.5.2.3 If any child of mine is employed full-time, the Trustee may pay to such child each calendar year an amount, but not in excess of the income of such child's trust, equal to such child's gross income from employment during such calendar year. The Trustee shall have the absolute discretion to determine whether such child is employed full-time. The term "gross income" includes both gross earnings from employment and gross earnings if self-employed. The term "gross income" shall not include passive income, such as interest, stock dividends or rentals, if the capital producing such passive income was received by the child as a gift or inheritance. The Trustee may require such verification, including income tax returns, as the Trustee deems reasonable to determine such child's gross income and the Trustee may establish such budgets and reserves as the Trustee considers reasonable.

5.5.2.4 The Trustee may also, in the Trustee's absolute discretion, pay to such child such sums, if any, as the Trustee determines to be appropriate, taking into account the Settlor's strong desire that my child be a productive and self-supporting member of society so long as he or she is not so disabled as to prevent him or her from being productive and self-supporting. Payments may be made under this paragraph for any or all of the following reasons:

5.5.2.4.1 if such child becomes so disabled, either mentally or physically or both, that he or she is unable to earn amounts approximately equal to the amounts she had earned, or was capable of earning, in the absolute discretion of the Trustee,

prior to such disability. The Trustee may, but shall not be required to, purchase and maintain in effect medical insurance for such child.

5.5.2.4.2 if such child requires funds for scientific, education educational or charitable purposes, if in the absolute discretion of the Trustee such purposes are in the best interest of such child and the general public, and such child is being a productive member of society in the pursuit of such purposes;

5.5.2.4.3 if such child is pursuing a career which is socially productive but which does not produce a substantial monetary reward, such as an artist, musician or a teacher;

5.5.2.4.4 if such child does not earn a living by reason of such child's obligation to care for one or more family members, including children and other relatives, and if the Trustee determines, in the Trustee's absolute discretion, that such obligation reasonably precludes such child from earning a living; or

5.5.2.4.5 any other situation which in the Trustee's absolute discretion, warrants payments to such child, provided that the Trustee determines that such payments are in accord with the Settlor's overall philosophy regarding the productivity of an individual as a member of society. It is the Settlor's intention that a child not receive distributions from the trust, except in the event of a medical or psychiatric emergency, if such child is capable of either attending school or being employed but has voluntarily declined to do either.

5.5.2.5 Upon such child's attaining the age of thirty-five (35) years, the Trustee shall pay over and distribute to him or her one-half (1/2) of his or her trust share as it then exists; upon such child's attaining the age of forty (40) years, the Trustee shall pay over and distribute to him or her the entire balance of his or her trust share as it then exists, and his or her trust shall terminate.

5.5.2.6 If such child shall have attained one or more of the ages for distribution mentioned in subparagraph 5.5.3.5 above, at the time such child's trust share is created, then, upon the creation of such trust share, the Trustee may pay over and distribute to such child that portion of such trust share to which such child would be entitled if he or she has attained such age or ages for distribution subsequent to the creation of his

or her trust share.

5.5.2.7 If such child shall die before receiving complete distribution of his or her trust share, the Trustee shall distribute the balance of his or her share, or any part thereof, to any one or more of the spouse and the issue of such child in such amounts as such child may designate by his or her Will, expressly referring to this special power of appointment. It is provided, however, that the special power of appointment conferred upon such child under this subparagraph shall not be exercisable in favor of, or for the benefit of, such child, his or her estate, his or her creditors or the creditors of his or her estate, or for the purpose of discharging his or her legal obligations. However, if any portion of such child's trust is not exempt from the generation-skipping transfer tax under the Code, such child shall have a general power to appoint such portion of such trust by her Will, expressly referring to such general power of appointment, to such appointees (including such child's estate) and in such manner and proportions as such child may so designate. Such general power of appointment shall be exercisable by such child exclusively. To the extent that any part of such child's trust, including income, is not disposed of by the exercise of such special or general power of appointment, the same shall be distributed to the surviving issue of such child by right of representation; or, if such child should die without issue, then to my other living children and to the issue of any deceased child of mine by right of representation. Any such share distributable to a living child of mine shall be added to an existing trust hereunder for his or her benefit in lieu of outright distribution; and any share distributable to the issue of the deceased child of mine shall be distributed in accordance with the provisions of subparagraph 5.5.4 following.

5.5.4 Administration of Share for Issue of a Deceased Child. Each share allocated for the benefit of an issue of a deceased child of mine shall be held and distributed as follows:

5.5.4.1 A share for any such issue who has attained the age of twenty-five (25) years shall be distributed outright to him or her.

5.5.4.2 A share for any such issue who has not attained the age of twenty-five (25) years shall be administered in trust until he or she attains such age, and then be distributed outright to him or her. In the meantime, the Trustee may pay to or apply directly for his or her benefit such sums from the net income and principal of such share as the Trustee deems necessary or advisable to provide for his or her health, education, support, and maintenance. If such issue should die before receiving complete

distribution of the trust share held for his or her benefit, and if any portion of such issue's trust share is not exempt from the generation-skipping transfer tax under the Code, the Trustee shall distribute such portion of his or her trust share to such appointee or appointees (including such issue's estate) in such manner and proportions as such issue may designate by his or her Will, expressly referring to this general power of appointment. Such general power of appointment shall be exercisable by such issue exclusively. Any portion of such issue's trust share which is not effectively disposed of by the exercise of such issue's power of appointment shall be distributed to his or her surviving issue by right of representation; and if he or she has no surviving issue then equally to his or her surviving brothers and sisters and the issue of a deceased brother or sister by right of representation; and if he or she has no surviving issue, brothers, sisters or issue of deceased brothers or sisters, then to my surviving issue by right of representation. Any share distributable to any issue of mine for whose benefit there is an existing trust under this Article 5 or for whom the provisions of this Article 5 would otherwise provide a trust shall be added or distributed thereto in lieu of outright distribution.

5.6 Disposition of Trust if No Surviving Wife or Issue. If, at the time of my death or at any time before final distribution of all trusts hereunder, neither my wife nor any of my issue shall then be living, then and in that event the balance of the trust estate as it then exists shall be distributed outright as follows:

5.6.1 One-half (1/2) thereof to and among the persons then living who, if I had died then, would have been my next of kin under the then existing laws of the State of Minnesota relating to the distribution of the intestate personal property in the proportions prescribed by such laws of distribution.

5.6.2 The remaining one-half (1/2) thereof to and among the persons then living who, if my wife had died then, would have been the next of kin to my wife under the then existing laws of the State of Minnesota relating to the distribution of intestate personal property in the proportions prescribed by such laws of distribution.

5.7 Miscellaneous Provisions Regarding Administration of Trust:

5.7.1 Separate Trusts. It is my intention that each trust share created by this Article shall be held and administered by the Trustee as a separate trust and, where appropriate, reference herein to a "trust share" shall mean a separate trust; however, if in the discretion of the Trustee, considering all tax consequences, this would result in undue administrative burdens or would be uneconomical, then the Trustee shall have the discretion to hold and administer separate shares of the trust as a single trust.

5.7.2 Treatment of Undistributed Income. Net income of a trust not distributed shall be accumulated and added to the principal of the trust.

5.7.3 Statement of Intent. In exercising the discretionary powers herein conferred on the Trustee by this Article, the Trustee shall be guided by the following statement of my purposes and intentions. It is my primary purpose to make adequate provision, first for my husband and, then, for my children, and I desire that the Trustee shall liberally exercise its discretion to distribute income and principal of the trust in this regard. Insofar as my husband is concerned, I desire him to be comfortable in all respects, and it is my hope that he will always be able to maintain a standard of living not less than that enjoyed by the two of us while I was alive. Insofar as my children are concerned, I desire each to be enabled to obtain the highest education of which he is capable and to purchase a home. The Trustee in making payments of income and principal need not make the same for the equal benefit of the beneficiaries of the trust, and the Trustee shall have discretion whether or not to take into consideration other resources or funds available to a beneficiary, including income or principal of other trust funds, and in the case of my husband, income and principal from the MARITAL SHARE, prior to making distribution to him. I desire the Trustee to exercise the discretionary powers conferred on it in a manner which will provide flexibility in the administration of the trust under conditions from time to time existing, and in exercising such powers, the discretion of the Trustee shall be conclusive as to the advisability of any distribution of income or principal, and as to the person to or for whom such distribution is to be made, and the same shall not be subject to judicial review. If the Trustee, in exercising any power conferred on it to distribute principal, shall distribute the entire remaining principal of any trust being administered under this Article, such trust shall thereupon terminate.

5.7.4 Limitation on Discretion of Trustee. Notwithstanding any provision of this Agreement to the contrary, at no time shall the discretion conferred on the Trustee (in its capacity as Trustee) to distribute income or principal of the FAMILY SHARE be exercisable by a Trustee, acting alone or in conjunction with any other person, in favor of himself, his estate, his creditors, or the creditors of his estate, or to discharge his legal obligations, including his legal obligations of support. If any such discretion is not exercisable by a Trustee under the provisions of this paragraph, such discretion shall be exercisable by (but only by) the other Trustee who is capable of exercising the discretion, and if there be none, such discretion shall not be exercisable until a Trustee is appointed who is capable of exercising the same. This paragraph shall be unequivocally construed to prevent the creation of a general power of appointment over income or principal of the FAMILY SHARE, in a Trustee based on the discretion given the Trustee to distribute income or principal of such share or trust to such Trustee or for his

benefit.

ARTICLE 6
Limitation on Duration of Trusts

Notwithstanding any other provision of this trust instrument, the trusts created hereunder shall terminate not later than twenty-one (21) years after the death of the last survivor of all natural persons who are beneficiaries hereunder living at the date of my death, and if any trust herein created has not sooner terminated, the Trustee shall at said time distribute the principal together with accrued and undistributed income from the trust, or to have it accumulated for their benefit, in the same shares as those in which such income is then being distributed to, or accumulated for, them.

ARTICLE 7
Powers of Trustee

The Trustee shall have power and authority to do any act or thing reasonably necessary or advisable for the proper administration and distribution of each trust created by this Agreement. Except as may be otherwise expressly directed or required by this Agreement, and in extension but not in limitation of the powers provided by applicable law, the Trustee shall have full power and authority as to any properties, real, personal or mixed, at any time comprising a part of any trust hereunder and without the necessity of notice to or license or approval of any court or person during the term of such trust after its termination, in the Trustee's continuing sole discretion.

7.1 To retain cash or other assets for so long as they deem advisable whether or not such assets are hereinafter authorized for investment; and specifically to retain any and all interests in real property which I may have invested in at any time, without regard to the yield on such properties; and to sell, exchange, mortgage, lease or otherwise dispose of any assets of the trust estate for terms ending within or extending beyond the term of the trust.

7.2 To invest and reinvest in, or exchange assets for, any securities and properties they deem advisable including without limiting the generality of the foregoing, common and preferred stocks and shares in mutual funds or other securities of so-called registered investment companies, without being limited in the selection of investments by any statutes, rules of law, custom or usage; to commingle for investment all or any part of the funds of this trust in any common trust fund or funds now or hereafter maintained by the Corporate Trustee, if any; and to lend funds of the trust estate to any person, including any beneficiary hereunder, upon such terms, at such rate of interest, if any, and upon such security, if any, as the Trustee may determine.

7.3 To collect, receive and receipt for any principal or income; to enforce, defend against, compromise or settle any claim by or against the trust; to vote, issue proxies to vote, join in or oppose any plans for reorganization, and to exercise any other rights incident to the ownership of any stocks, bonds or other properties of the trust estate.

7.4 To hold assets in bearer form or in the name of the Trustee or of the Corporate Trustee, if any, or in the name of its nominee or nominees without disclosing any fiduciary relationship, and to deposit cash funds as a general deposit in a special account in the deposit department of the Corporate Trustee, if any; provided, however, that such assets and cash shall at all times appear as a part of the trust estate on the books of the Trustee.

7.5 To determine finally all allocations, charges or credits as between principal and income according to the generally accepted rules of trust accounting where there is no provision made therefor by statute, but regardless of any statute, to charge the Trustee's customary annual fee to income.

7.6 To make, without intervention of a legal guardian, any payments by the terms hereof payable to or for the benefit of any minor or person suffering under a legal disability in any one or more of the following ways: (1) directly for the benefit of such beneficiary; (2) to the parent or natural or legal guardian (in each case other than myself) of such beneficiary; (3) to anyone (other than myself) who at the time shall have custody and care of the person or such beneficiary; (4) to a custodial account for such beneficiary under an applicable Uniform Transfers to Minors Act (including such an account established by the Trustee); or (5) directly to the beneficiary. The Trustee shall not be obligated to see to the application of the funds so paid, but the receipt of any such persons shall be full acquittance of the Trustee.

7.7 To make any election with respect to the manner of payment of benefits permitted the beneficiary under the terms of any qualified retirement plan or individual retirement account the benefits of which are payable to the Trustee. In making such election, the Trustee shall take into account the estate and income tax consequences, if any, of the manner of payment selected, but the Trustee's decision shall be final and binding on all parties and the Trustee shall not be liable to any person for an election made in good faith.

7.8 To make division or distribution of the trust whenever herein required in whole or in part in money, securities or other property, and, in their discretion, to allocate particular assets, or portions thereof, or undivided interests therein to any one or more of the beneficiaries or trusts hereunder regardless of whether the share to be distributed to such beneficiary or trust is defined as a pecuniary

amount or as a fractional share. The Trustee may make such division, distribution, or allocation in whatever manner they shall deem to be for the best interest of the beneficiaries and of any trust hereby created, and in so doing they may take into account the income tax bases of such assets. Subject to the provisions of Article 3 hereof, in making such division or distribution, the judgment of the Trustee concerning the propriety thereof and the valuation of the properties and securities concerned shall be binding and conclusive on all persons in interest. It is provided however, that any amounts received by the Trustee by reason of my death, but not includable in my gross estate for estate tax purposes shall be allocated to the FAMILY SHARE, which allocation shall be in addition to any amounts allocated to the FAMILY SHARE under Article 3.

7.9 To enter into any transaction authorized by this Article with the legal representatives of any estate or with the Trustee of any other trust estate notwithstanding the fact that a Trustee hereof may also be a legal representative of any such estate or a trustee of any other such trust estate.

7.10 To receive other items of real or personal property, including policies of life insurance and the proceeds thereof, as part of the trust estate, when assigned, transferred, conveyed or delivered by any person to the Trustee, and any such other items of property when received shall be held and distributed according to the terms of this Agreement as though they had originally constituted a part of the Trust estate.

7.11 To receive on behalf of the Trustee reasonable compensation for its services hereunder and to pay all reasonable expenses and charges of the trust.

7.12 To employ such accountants, attorneys, brokers, banks, custodians, investment counsel, and other agents, and to delegate to them such of the rights, powers and duties herein conferred on the Trustee as the Trustee deems proper, without liability for any mistake or default of any such person selected or retained with reasonable care and prudence.

7.13 To borrow money for any purpose incidental to the administration of the trust estate or for the protection and preservation of the assets thereof, and to mortgage or pledge any assets of the trust estate for the payment thereof.

7.14 Assets of any trust or trust share created hereunder which are to be distributed to another trust or trust share created hereunder and which will immediately be distributed to a beneficiary of such other trust or trust share upon receipt thereof by the trustee of such other trust, may be directly distributed by the Trustee of such first mentioned trust or trust share to such beneficiary of such other trust or trust share in the same manner as provided in such other trust or

trust share and need not first be distributed to the trustees of such other trust or trust share.

7.15 If my residence or residences, including summer residences, become a part of the trust estate, in the discretion of the Trustee, to retain or sell the same or make arrangements for the use of any of said residences by my husband, my children, or their issue, or any one or more of them; to invest the proceeds from the sale of any such residence in another residence for the proper accommodation of such persons, and in like manner to sell, in the discretion of the Trustee, such substituted residence and invest the proceeds thereof in the purchase of another residence for the same purposes. It is my desire that my children be allowed to remain in my home at no expense to the guardians and that the guardian of my children may occupy my home until my youngest child attains the age of 21 years. Further, it is my desire that when making distributions to my guardians for expenses such as music lessons, ballet lessons, swimming lessons, skiing lessons, sports and music equipment and etc., that the guardians' minor children be considered my children for such expenses. It is my desire that the guardians be able to provide for their children the same opportunities that are provided for my children.

7.16 If the trust estate shall include interests owned by me in a business or businesses, whether as sole proprietor, partner, or holder of the outstanding stock thereof, the Trustee is authorized to exercise all powers with respect to any such business which I could exercise if present and acting. This shall include, but shall not be limited to, the power to continue, expand, limit, alter, reconstitute, incorporate or terminate such business in any way the Trustee may determine to be advisable and the power to name or to change officers, directors, or employees, or to act as an officer, director or employee (and receive compensation therefor). Furthermore, the Trustee shall have full and continuing authority and discretion as to whether to retain or sell any such business interest, and if a sale or disposition is deemed advisable, the terms thereof shall be wholly within the discretion of the Trustee. If any such business interest held in the trust estate is subject to an agreement requiring the sale of such interest at my death, the Trustee is hereby authorized and directed to take all action necessary to fully effectuate such agreement.

7.17 To allocate, without court approval, any federal exemption from the generation-skipping transfer tax under the Code to any property with respect to which I am the transferor for purposes of such tax and to exclude any such property from such allocation. If my Personal Representative must file the documents necessary to exercise such allocation, the Trustee shall provide my Personal Representative with a timely written direction as to how to make the

allocation.

7.18 To divide any trust hereunder at any time into two separate trusts in order that the generation-skipping transfer tax inclusion ratio for each such trust shall be either zero or one.

ARTICLE 8
Presumption of Survivorship

In the event that my husband and I shall die under such circumstances that it is difficult to determine which of us died first, it shall be presumed that my husband survived me with respect to all dispositive provisions for his benefit under this Agreement.

ARTICLE 9
Prohibition on Anticipation of Benefits

Neither the principal nor the income of any trust created hereunder shall be liable for the debts of any beneficiary, and, except as otherwise expressly provided herein with respect to the power granted to a beneficiary to appoint the income and principal of a trust, no beneficiary shall have any power to sell, assign, transfer, encumber, or in any other manner to anticipate or dispose of his or her interest in any such trust, or the income produced thereby, prior to the actual distribution in fact by the Trustee to said beneficiary.

ARTICLE 10
Definitions and Birth Dates

10.1 Definitions: As used in this Trust Agreement where appropriate, the masculine shall include the feminine, and the singular shall include the plural (and vice versa), the term "my", "I", "me" and "myself" shall be inter-changeable, and the following terms shall have the following meanings:

"Issue" shall mean all persons who are descended from the person referred to, either by legitimate birth to, or legal adoption by, her or any of her legitimately born or legally adopted descendants. An issue in gestation at the time of an event who is later born alive is "living" or "surviving" at the time of such event.

"Child" shall mean an issue of the first generation of the person referred to.

"Grandchild" shall mean an issue of the second generation of the person referred to.

10.2 Birth Dates of Children. I declare that as of the date of the execution of this Trust

Agreement, the names and birth dates of my children are as follows: Katherine Anita Hagberg born February 18, 1992, and Julian Vincent Hagberg, born May 16, 1994. Said birth dates of my children may be relied upon conclusively by the Trustee in making any determination for which the same are pertinent.

ARTICLE 11
Life Insurance Policies Payable to the Trust

11.1 In general. With respect to any life insurance policy made payable to the trust, the following provisions shall apply:

11.1.1 Full Discharge. The payment by an insurance company of the proceeds of any policy of insurance to the Trustee shall be a full discharge of said insurance company on account of such policy, and such insurance company shall not be responsible for the proper discharge of the trust or any part thereof.

11.1.2 Indemnification of Trustee. The Trustee shall not, except at its option, enter into or maintain any litigation, endorse payments of policies, or take any other action with respect to any policies until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it may in its judgment be involved by such action on its part. The Trustee shall not have any duty or responsibility to inquire as to whether or not it has been designated as and is a beneficiary of any policy or of any employee death benefit of which it has not received notice.

11.1.3 Premiums. The Trustee shall have no duty or responsibility of any kind whatever with respect to the payment of any premium on any policy made payable to the Trustee or to see that any such policy is kept in force.

11.1.4 Exculpation of Insurer. No insurance company, association or other body issuing any policy or policies of life insurance upon my life, or upon the life of any other person, which at any time are transferred to or made payable to the Trustee shall be required to ascertain whether or not any person other than the Trustee initially named hereunder has become a Trustee of the trust or trusts created hereunder, but may deal with a Trustee initially named hereunder, or with the Corporate Trustee, and make payments to it of the amounts payable on account of any such policy of insurance as if it were then the sole Trustee hereunder.

ARTICLE 12
Accounting

The Trustee shall render an annual written account of the administration of each trust to

the beneficiary or beneficiaries currently eligible to receive income from the trust. Subject to the provisions of Article 1 providing for approval of the Trustee's account during my life, the approval of the Trustee's account by the income beneficiary or beneficiaries, and in the case of a minor beneficiary or other beneficiary suffering under a legal disability, the approval by the legal guardian or other person who has care and custody of such beneficiary, shall be binding and conclusive as to all persons, living or unborn, who are or may become entitled to share in the income or principal of the trust, and the Trustee need not account to any other person or court; provided, however, that a beneficiary or the Trustee may request court approval of the Trustee's account. If no objection is made to a written account of the Trustee within ninety (90) days after the time it is rendered, approval of the account shall be deemed to have been given. In the event of the resignation or discharge of a Trustee, the procedures outlined in this Article shall apply with respect to the rendition by such Trustee of its account, and the approval thereof, for the accounting period ending with the date of resignation or discharge. It is provided, however, that this Article shall not be construed to give the person or persons entitled to approve the Trustee's account the power to alter, amend, revoke or terminate any trust created hereunder or to enlarge or shift the beneficial interest of any beneficiary in any such trust.

ARTICLE 13
Trust Records

The records of the Trustee relating to the trust shall be open for inspection at all reasonable times by the beneficiaries of the trust or by the legal guardian or other person who has care and custody of the person of a minor beneficiary or other beneficiary suffering under a legal disability.

ARTICLE 14
Waiver of Judicial Review

I expressly waive any requirement that the trust or trusts created by this Agreement be submitted to the jurisdiction of any court, that the Trustee be appointed or confirmed by any court, or that the Trustee's accounts be heard and allowed by any court. This provision, however shall not prevent any of the beneficiaries hereunder or the Trustee from requesting any of the procedures waived in this Article.

ARTICLE 15
Additions to Trusts

Any person shall have the right at any time and from time to time to make additions to the trust estate which are acceptable to the Trustee. All such additions shall be held, controlled and distributed by the Trustee in accordance with the terms, conditions, and purposes of this Agreement; provided, however, that notwithstanding anything in this Agreement to the contrary, following my death, any such addition received from another individual, from the estate of

another individual, from another trust estate as a result of the merger of said trust estate with the within trust estate, or from an insurance policy owned by another individual, the proceeds of which are payable to the Trustee, shall not be used for the payment of any taxes, debts, administration expenses, legacies, or other obligations enforceable against my estate, it being my intention that any such additions shall not be includable in my gross estate for federal estate tax purposes or subject to any inheritance or estate tax.

ARTICLE 16
Merger With Other Trusts

In the event that either my spouse or I create another trust or trusts, whether by will or by agreement, the provisions of which are substantially the same as those of the trust or trust shares created hereunder, the Trustee in its discretion may, after my death, merge the trust or trusts; provided, however, that any trust created hereunder which qualifies for the marital deduction shall be merged only with a similar trust created by me which likewise qualifies for said marital deduction. In determining whether the provisions of such other trust or trusts are substantially the same as those of the trust or trusts created hereunder, the discretion of the Trustee shall be conclusive and shall not be subject to judicial review. Specifically, the fact that any such other trust is subject to a provision requiring the termination of such other trust pursuant to any statute or rule of law limiting the permissible duration of a trust or the period for which the power of alienation may be suspended, which permissible period is shorter than the period specified in Article 6 hereof, shall not be deemed to make the provisions of such other trust not substantially the same as the provisions of a trust hereunder, rather, such shorter permissible period shall be controlling with respect to such trust created hereunder as well as such other trust.

ARTICLE 17
Appointment and Succession of Trustee

17.1 Powers of Appointment and Removal. With respect to the appointment of Trustees the following provisions shall apply:

17.1.1 During life of Settlor. Until my death, I reserve the right to appoint additional or successor Trustees and to remove any Trustee(s) and substitute another Trustee(s).

17.1.2 At death of Settlor. At my death, my sister-in-law, Maren L. Emerson, shall become Trustee with my husband, Steven V. Hagberg. In the event Maren L. Emerson is unable to serve as Trustee, my friend, Warren Berg, shall become a Co-Trustee. In addition, at the time that neither my husband or I are capable to serve as Trustees, Maren L. Emerson or Warren Berg shall become a Trustee.

17.1.3 Right of husband to appoint and remove individual Trustees. After my death, my husband, Steven V. Hagberg, may at any time designate and appoint

death, my husband, Steven V. Hagberg, may at any time designate and appoint such individual persons he desires as Trustee(s) to serve with the Trustee then acting or to serve at some date or upon some event in the future specified by such designation and appointment, and, furthermore, my husband may at any time remove any individual Trustee. If, however, a Disclaimer Trust is established under Article 5 of this Trust Agreement, my husband shall not serve as a Trustee of such Trust, and notwithstanding the foregoing provisions of this Paragraph 17.1.3, he shall not have the power to appoint himself as a Trustee of said Trust.

17.1.4 Trustee at death of Settlor or Spouse. At the death of the survivor of my husband and me, my step-daughter, Stephanie Ann Boldt, shall become Trustee. In the event Stephanie is unable to survive my daughter, Emily Leah Hagberg should become a Co-Trustee.

17.1.5 Right of Husband to Appoint and Remove Corporate Trustee. After my death, my husband shall have the right at any time to designate and appoint a Corporate Trustee of his choice to serve with the Trustee(s) then acting or to serve at some date or upon some event in the future specified by such designation and appointment, and furthermore, my husband may at any time remove any Corporate Trustee, or fill a vacancy caused by the resignation of any Corporate Trustee, and substitute another Corporate Trustee of his choice in place of a Corporate Trustee who has been removed or who resigned.

17.1.6 Right of Adult Beneficiaries to Appoint and Remove Individual Trustees. Following the deaths of my husband and me, a majority of the adult beneficiaries here-under currently eligible to receive income from the trust shall have the right to designate and appoint such individual persons as they desire as Trustee(s) to serve with the Trustee then acting or to serve at some date or upon some event in the future specified by such designation and appointment, and, furthermore, a majority of said beneficiaries may remove any individual Trustee. In the case of a beneficiary suffering under a legal disability, the rights granted under this paragraph 17.1.5 shall be exercisable by the legal guardian or other person who has care and custody of such beneficiary.

17.1.5 Right of Adult Beneficiaries to Appoint and Remove Corporate Trustees. Following the deaths of my husband and me, a majority of the adult beneficiaries here-under currently eligible to receive income from the trust shall have the right to designate and appoint a Corporate Trustee to serve with the Trustee(s) then acting or to serve at some date or upon some event in the future specified by such designation and appointment, and, furthermore, a majority of said beneficiaries may remove any Corporate Trustee, or fill a vacancy caused by the resignation of any Corporate Trustee, and substitute another Corporate Trustee for the one who has been removed or who resigned. In the case of a beneficiary suffering under a

legal disability, the rights granted under this paragraph 17.1.6 shall be exercisable by the legal guardian or other person who has care and custody of such beneficiary. If at any time following the deaths of my husband and me there are no adult beneficiaries currently eligible to receive income from the trust, the individual Trustee shall have all the rights which would be conferred by this paragraph 17.1.6 on such adult beneficiaries if they existed.

17.1.8 At Least One Trustee U.S. Citizen or Domestic Corporation. Notwithstanding the foregoing provisions of this Article, the powers hereinabove provided to appoint and remove Trustees shall be exercised in a manner such that at all times following my death, at least one Trustee shall be a citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a Trustee.

17.2 Miscellaneous Provisions Relating to Trustees.

17.2.1 Manner of designating or removing Trustee. To effect the designation, appointment and selection of an additional or successor Trustee(s), or the removal of the same, as permitted under paragraph 17.1, the person or persons entitled to make such designation, appointment and selection, or removal, shall effect such action by an instrument signed by each of them stating that pursuant to the provisions of this Article, such designation, appointment and selection or removal, is made; thereupon, or upon the date or event specified in the instrument of appointment or removal, the Trustee removed shall cease to serve, and, upon acceptance of the trust, the Trustee designated shall become a Trustee hereunder.

17.2.2 Resignation by Trustee. Any Trustee hereunder, including any Corporate Trustee, may resign as said Trustee at any time. To effect such resignation, the said Trustee shall execute an instrument in writing stating that pursuant to the provisions of this Article such resignation is made. Thereafter, upon delivery of the said instrument to the remaining Trustees, the said instrument shall be effective and the resigning Trustee shall cease to serve; provided, however, that if no other Trustee shall then be serving, the resignation shall not be effective until such other Trustee shall be appointed.

17.2.3 Nonresident Trustee. It is my request and direction that a person designated as a Trustee under the foregoing provisions of this Article, including any Corporate Trustee, be entitled to serve as a Trustee even though such person is a nonresident of the state of situs of the trust.

17.2.4 Definitions. Except where otherwise provided under this Agreement, the words "Trustee" or "Fiduciary" shall mean and include all persons, including any Corporate Trustee, serving in such capacity at any given time, and if more than

one is serving, the singular tense shall be interpreted as plural.

17.2.5 Delegation of powers and duties among Trustees. During such time or times as more than one Trustee is serving, the rights, powers, duties and discretions conferred on the Trustee under the provisions of this Agreement shall be exercisable in the following manner:

17.2.5.1 The Trustee at any time and from time to time may delegate to one or more of them, including any Corporate Trustee, the power to exercise any or all of said rights, powers, duties and discretions acting by themselves, and any such delegation may be later revoked by the Trustee who but for the delegation would then have such rights, powers, duties, and discretions. It is provided, however, that no such right, power, duty or discretion shall be delegated to a Trustee who under other provisions of this Agreement would not be capable of exercising the same. Any such delegation shall be effected by a written instrument signed by the Trustee, and any such revocation shall likewise be effected by a written instrument signed by the Trustee empowered to effect the revocation. Any such delegation shall be revoked automatically, without further action by the remaining Trustees, if the Trustee to whom such delegation is made dies or is adjudicated incompetent. Such delegation or revocation may also contain such limitations and conditions as the persons executing the same determine. It is my wish that the Trustee(s) to whom any such delegation is made be aware at least generally of the attitudes of the other Trustee(s) concerning the exercise of any such delegated right, power, duty or discretion.

17.2.5.2 Until so delegated, and except as otherwise provided herein, said rights, powers, duties and discretions shall be exercisable jointly provided that at any time I am serving as a Trustee I shall be able to act independently and this Trust shall be able to purchase, mortgage and sell any assets with my sole signature. Provided further that anytime after my death or disability and Steven V. Hagberg is acting as Trustee, he shall be able to purchase, mortgage and sell any assets with his sole signature and in her sole discretion. To the extent such power does not conflict with paragraph 5.7.4.

17.2.6 Execution of instruments. At any time while there shall be more than one Trustee serving hereunder, such Trustees may, respectively, by a written instrument executed by all of them (in one or more counterparts), designate any one or more of them, severally or jointly, on behalf of all of them, to execute all documents, and other instruments, including, but not limited to, checks, drafts, notes, endorsements and instructions, and to have access to safe deposit boxes;

and any such Trustee may, by a written instrument executed by him (in one or more counterparts) and delivered to the other Trustee(s) then acting, revoke any such designation theretofore made. Any such designation shall be revoked automatically, without further action by the remaining Trustees, if the designated Trustee dies or is adjudicated incompetent. Any third party may rely upon the continued effectiveness of any such designation until such third party shall have notice of the revocation thereof.

17.2.7 Limitation of liability. No Trustee shall at any time be held liable for any action taken or not taken, or for any loss or depreciation of value of any property in any trust created hereby, whether due to an error of judgment or otherwise, where such Trustee has exercised good faith and ordinary diligence in the exercise of his duties. Further, each of the Trustees, under the above standard, shall be severally held to the faithful performance of his own acts, but, except in the case of bad faith, shall not be liable for the acts or omissions of any other Trustee, and in the case of the delegation of any discretionary power hereunder, the Trustee(s) so delegating shall not be liable for the acts, omissions or defaults of the Trustee(s) to whom the delegation is made. In addition, no successor Trustee hereunder shall be liable for the acts or omissions of predecessor Trustees.

17.2.8 Custody of assets. Any Corporate Trustee then serving hereunder shall have custody of all assets, attend to the handling of receipts and disbursements, and attend to all accountings.

17.2.9 Waiver of bond. It is my request and direction that no bond shall be required of any Trustee hereunder, and I request that if a bond be exacted, it be made as nominal as possible.

17.2.10 Exculpation of third parties. No purchaser of any property sold by the Trustee shall be bound to inquire into the necessity or propriety of any such sale or see to the application of the purchase money arising therefrom, and the written receipt of the Trustee for the purchase money of any property sold, or for any money or securities or property which may be paid or transferred to the Trustee, shall effectively discharge the purchaser or other persons buying or transferring the same. Any person dealing with the Trustee shall be absolutely protected in relying upon the certificate of such Trustee as to the extent of its authority by reason of any delegation of discretion or otherwise, and no person shall be required to ascertain whether or not the Trustee has the power to exercise the rights, powers and duties herein conferred.

ARTICLE 18
Governing Law

This Agreement shall be construed and regulated according to the laws of the State of Minnesota.

IN WITNESS WHEREOF, I, Jane L. Strom, as Settlor and as Trustee, and Steven V. Hagberg, as Trustee, have hereunto set our hands the day and year first above written.

IN THE PRESENCE OF:

Witness

Witness

Jane L. Strom, Settlor and Trustee

Witness

Witness

Steven V. Hagberg, Trustee

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 28th day of October, 1998, before me, a Notary Public within and for said County, personally appeared Jane L. Strom, to me known to be the person described in and who executed the foregoing instrument as Settlor and Trustee, and acknowledged to me that she executed the same as her free act and deed.

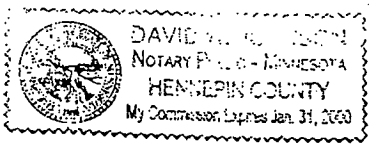
DAVID W. JOHNSON
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Jan. 31, 2000

Notary Public

102898/1/TRUST-JLS

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

On this 28th day of October, 1998, before me, a Notary Public within and for said County, personally appeared Steven V. Hagberg, to me known to be the person described in and who executed the foregoing instrument as Trustee, and acknowledged to me that he executed the same as his free act and deed.



Notary Public

102898/1/TRUST-JLS

Strom
0304

JANE L. STROM

REVOCABLE TRUST AGREEMENT
Schedule A

Description of Property Transferred to Trust:

Cash $10.00

Description of Insurance Policies Made Payable to Trust:

Insurance Company	Policy	Amount

JANE L. STROM

REVOCABLE TRUST AGREEMENT

Schedule A (as of March 8, 2002)

Real Property

St. Louis County, MN

Lot 9 Barr's Lake First Addition

Hennepin County, MN

All that part of the East Half of the Northeast Quarter of Section 17, Township 117 North, Range 22 West of the Fifth Principal Meridian, lying easterly of Town Road ~~(now known as Fairchild Avenue)~~ and lying south of a line parallel with and distant 600 feet north , measured at right angles, from the south line of said northeast quarter and lying north of a line parallel with and distant 450 feet north, measured at right angles from the south line of said northeast quarter All that part of the East half of the Northeast Quarter

and

Lot 4, Block 1, Tonkaha Shores

Promissory Notes

October 25, 2000 Piney Ridge Management, LLC $5,000

March 12, 2001 Piney Ridge Management, LLC $5,000

January 15, 2001 Carefree Living (all corps.) $62,160.35

Entity Interests

US Bancorp Prime Account Number 81064977

JANE L. STROM

FIRST AMENDMENT

TO

REVOCABLE TRUST AGREEMENT

THIS FIRST AMENDMENT TO REVOCABLE TRUST AGREEMENT, is executed effective this 23rd day of April, 2001, by and between Jane L. Strom, the "Settlor" and Jane L. Strom and Steven V. Hagberg, "Trustee."

WITNESSETH:

WHEREAS, Settlor established a revocable trust designated as the JANE L. STROM REVOCABLE TRUST, under agreement dated October 28, 1998; and

WHEREAS, Settlor desires to amend the JANE L. STROM REVOCABLE TRUST, in the manner set forth below.

NOW THEREFORE, it is agreed by and between the Settlor and Trustee that the JANE L. STROM REVOCABLE TRUST is amended in accordance with the following terms and provisions.

AMENDMENT

1. Article 2, paragraph 2.1.3.4 is hereby amended by deleting said paragraph in its entirety.

2. Article 5, paragraph 5.5.1 is hereby amended by deleting the second sentence thereof and inserting in its place: "The shares of each of the Family and Disclaimer Trusts thus established shall be combined so that there is one share for each living child of mine and my husband's daughters, Stephanie Ann Boldt and Emily L. Hagberg, and one share for the living issue collectively of each deceased child of mine and my husband's daughters, Stephanie Ann Boldt and Emily L. Hagberg."

3. Paragraph 5.5.3 is intentionally omitted.

4. Except as expressly modified, amended, or added to, the JANE L. STROM REVOCABLE TRUST, under agreement dated October 28, 1998, shall remain in full force and effect in all its terms and conditions.

IN WITNESS WHEREOF, I, Jane L. Strom, as Settlor and as Trustee, and Steven V. Hagberg, as Trustee, have hereunto set our hands effective the 23rd day of April, 2001.

IN THE PRESENCE OF:

Witness

Jane L. Strom, Settlor and Trustee

Witness

Witness

Steven V. Hagberg, Trustee

Witness

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

On this 3 day of ~~April~~ May, 2001, before me a Notary Public within and for said County, personally appeared Jane L. Strom, to me known to be the person described in and who executed the foregoing instrument as Settlor and Trustee, and acknowledged to me that she executed the same as her free act and deed.

Notary Public

MARK W. PEERY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

On this 3 day of ~~April~~ May, 2001, before me a Notary Public within and for said County, personally appeared Steven V. Hagberg, to me known to be the person described in and who executed the foregoing instrument as Trustee, and acknowledged to me that he executed the same as his free act and deed.

Notary Public

MARK W. PEERY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

PROMISSORY NOTE

$50,000

September 1, 2000

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Burnsville), Inc., a Delaware corporation, having an address of 600 Nicollet Court, Burnsville, Minnesota 55377, Carefree Living of America (Brainerd), Inc., a Delaware corporation, having an address of 2723 East Oak Street, Brainerd, Minnesota 56401, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, having an address of 1225 Division Street, St. Cloud, Minnesota 56304, jointly and severally (collectively, the "Maker"), hereby promise to pay to the Jane L. Strom Revocable Trust ("Holder"), at Holder's office at 109 Bushaway Road, Minneapolis, Minnesota 55391, or at any other place designated by the Holder hereof the principal sum of Fifty Thousand Dollars ($50,000.00) together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, and fee in the amount of Twelve Thousand Two Hundred and Fifty Dollars ($12,250.00) from the date of this Note until this Note is fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable in consecutive monthly installments of Eight Hundred and Thirty Three Dollars and Thirty Three Cents ($833.33) commencing on the fifteenth day of September, 2000 and on the fifteenth day of each month thereafter until the fifteenth day of January, 2001 at which time all unpaid principal, accrued and unpaid interest, and fees shall become due and payable in full. Notwithstanding any language to the contrary, all sums due hereunder shall be paid in full from the proceeds of any financing by the Maker in the aggregate in excess of $13,000,000.00.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of Twenty (22%) Percent per annum.

4. Events of Default. If payments are not paid when due, or if any other indebtedness of Maker to the Holder is not paid when due, or if Maker sells all or substantially all of their assets or secures financing in the aggregate in excess of Thirteen Million Dollars ($13,000,000.00), or if a garnishment summons or a writ of attachment is issued against and served upon the Holder for the attachment of any property of Maker in the Holder's possession or any indebtedness owing to Maker, Holder may, at his option, declare this Note to be immediately due and payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should Maker die or should a petition be filed by or against Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note

DEPOSITION EXHIBIT

Strom 4
7/13/03 PD

to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within thirty days from the receipt of such notice by Maker, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Extension; Payment of Costs of Collection. Maker shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the addresses provided above shall be used to notify Maker.

   b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

   c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Note has been executed to be effective as of the 1st day of September, 2000

MAKER:

CAREFREE LIVING OF AMERICA (BURNSVILLE) INC., a Delaware corporation

By: _____

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (Brainerd) INC., a Delaware corporation

By: _____

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (St. Cloud) INC., a Delaware corporation

By: _____

Its: PRESIDENT

$62,160.35 PROMISSORY NOTE January 15, 2001

FOR VALUABLE CONSIDERATION RECEIVED, Carefree Living of America (Burnsville), Inc., a Delaware corporation, having an address of 600 Nicollet Court, Burnsville, Minnesota 55377, Carefree Living of America (Brainerd), Inc., a Delaware corporation, having an address of 2723 East Oak Street, Brainerd, Minnesota 56401, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, having an address of 1225 Division Street, St. Cloud, Minnesota 56304 and Carefree Living of America (Minnetonka), Inc., a Delaware corporation, having an address of 14505 Minnetonka Drive, Minnetonka, Minnesota 55345, jointly and severally (collectively referred to as the "Maker"), hereby promises to pay to the Jane L. Strom Revocable Trust U/A October 28, 1998 ("Holder"), and Holder's successors and assigns at Holder's office at 109 Bushaway Road, Wayzata, Minnesota 55391, or at any other place designated by the Holder hereof the principal sum of Sixty-Two Thousand One Hundred and Sixty and 35/100 Dollars ($62,160.35) together with interest (calculated on the basis of actual days elapsed) on the unpaid principal hereof, from the date of this ~~Note until this Note is~~ fully paid in the following manner and upon the following terms and conditions:

1. Payment. This Note shall be payable in consecutive monthly installments of Three Thousand Dollars ($3,000) in principal, plus all accrued and unpaid interest commencing on the 15th day of February, 2001, and continuing until the 15th day of September, 2001. On October 1, 2001, Maker shall pay Holder one-half of all unpaid principal and accured and unpaid interest. On November 1, 2001 all unpaid principal and accrued and unpaid interest shall become due and payable in full. Notwithstanding the foregoing, in the event that any Maker obtains refinancing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or any affiliate of any Maker obtains such financing for the benefit of any Maker, all unpaid principal and accrued and unpaid interest shall immediately become due and payable in full.

2. Prepayment. This Note may be prepaid in whole or in part at any time provided that any such prepayment shall be applied first to accrued interest with the remainder applied to reduction of principal. Any extension of time for the payment of the principal of the Note resulting from the due date falling on a Saturday, Sunday or legal holiday shall be included in the computation of interest.

3. Interest. Interest shall accrue on this Note at the rate of Twenty-Two (22%) Percent per annum.

4. Default. If payments are not paid when due, or if any other indebtedness of Maker to the Holder is not paid when due, or if any Maker sells all or substantially of its assets, or secures financing in the aggregate in excess of Thirteen Million Dollars ($13,000,000), or if a garnishment summons or a writ of attachment is issued against to served upon the Holder for the attachment of any property of either Maker in the Holder's possession or any indebtedness owing to either Maker, Holder may, at its option, declare this Note to be immediately due any payable and thereupon the Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice of demand. This

DEPOSITION EXHIBIT
Strom 5
2/13/03 PD

Note shall also become automatically due and payable (including unpaid interest accrued hereon) without notice or demand should either Maker die or should a petition be filed by or against either Maker under the United States Bankruptcy Code or any other law relating to insolvency, reorganization, receivership or relief of debtors. If this Note is not paid on the due date or any event occurs that would entitle the Holder to declare this Note to be immediately due and payable, Maker agrees to pay all costs of collection, including attorneys fees, and the Holder shall have the right to set off the indebtedness evidenced by this Note against any indebtedness of the Holder to Maker, to file any Confessions of Judgment executed by either Maker, and to take any other action authorized by law Holder deems appropriate to collect the sums due under this Note. Presentment or other demand for payment, notice or dishonor and protest are hereby waived by Maker.

5. Notice of Default. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of default and if the default is not cured within ten days from the sending of such notice, then the full indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against either Maker and shall commence no proceedings for collection until the expiration of such notice.

6. Waiver. Maker waives demand, presentment, notice of nonpayment of dishonor, protest and notice of protest, and agrees that they shall continue to remain liable to pay the unpaid balance of the indebtedness evidence by this Note as extended, renewed, or modified. Maker further agrees to pay all costs of collection, including reasonable attorney's fees, in case any payment due hereunder shall not be made when due or other default occur.

7. Miscellaneous.

   a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by United States mail. If sent by mail, notice shall be deemed given when deposited in the U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

   Carefree Living of America (Burnsville), Inc.,
   600 Nicollet Court
   Burnsville, Minnesota 55377

   Carefree Living of America (Brainerd), Inc.,
   2723 East Oak Street,
   Brainerd, Minnesota 56401

   Carefree Living of America (St. Cloud), Inc.
   1225 Division Street, St. Cloud
   St. Cloud, Minnesota 56304

Carefree Living of America (Minnetonka), Inc.,
14505 Minnetonka Drive
Minnetonka, Minnesota 55345

Jane L. Strom Revocable Trust U/A October 28, 1998
109 Bushaway Road
Wayzata, Minnesota 55391

b. Governing Law. This Note shall be construed and interpreted and enforced in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of law.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the parties and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Note has been executed to be effective as of the 15th day of January, 2001

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By: Karla Yell

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (BRAINERD), INC.

By: Karla Yell

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By: Karla Yell

Its: PRESIDENT

CAREFREE LIVING OF AMERICA (MINNETONKA), INC.

By: Karla Yell

Its: PRESIDENT

JANE L. STROM REVOCABLE TRUST

AMOUNT FINANCED	62,160.35	
ANNUAL INTEREST	22.00%	
DURATION OF LOAN - MONTHS	10.00	
MONTHLY PAYMENT	3,000.00	PLUS INTEREST

	BEGINNING BALANCE	PAYMENT	INTEREST	PRINCIPLE	BALANCE	
FEBRUARY 15TH	62,160.35	4,139.61	1,139.61	3,000.00	59,160.35	2/14/01
MARCH 15TH	59,160.35	4,084.61	1,084.61	3,000.00	56,160.35	3/15/01
APRIL 15TH	56,160.35	4,029.61	1,029.61	3,000.00	53,160.35	4-23-01
MAY 15TH	53,160.35	3,974.61	974.61	3,000.00	50,160.35	5-21-01
JUNE 15TH	50,160.35	3,919.61	919.61	3,000.00	47,160.35	6-25-01
JULY 15TH	47,160.35	3,864.61	864.61	3,000.00	44,160.35	7-18-01
AUGUST 15TH	44,160.35	3,809.61	809.61	3,000.00	41,160.35	8-17-01
SEPTEMBER 15TH	41,160.35	3,754.61	754.61	3,000.00	38,160.35	10/9
OCTOBER 1ST	38,160.35	19,699.61	699.61	19,000.00	19,160.35	
NOVEMBER 1ST	19,160.35	19,511.62	351.27	19,160.35	0.00	
TOTAL		70,788.08	8,627.73	62,160.35		

DEPOSITION EXHIBIT

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2/13/03 PD

(32)

7439570

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFICATE FILED AND OR RECORDED IN

01 MAR 16 PM 2:24

7439570 CO. REC.

DEPUTY

Hann Co MRT
J1695600
03/16/2001
Paid $149.28

Cir Mahoney - Hagberg

MORTGAGE

By Corporation or Partnership

MORTGAGE REGISTRY TAX DUE HEREON:

$_____

THIS INDENTURE, Made this 15th day of January, 2001, between Carefree Living of America (Brainerd), Inc., a Delaware corporation, Carefree Living of America (Burnsville), Inc., a Delaware corporation, Carefree Living of America (St. Cloud), Inc., a Delaware corporation, Carefree Living of America (Minnetonka), Inc., a Delaware corporation, Mortgagor, and Jane L. Strom , Trustee, Mortgagee,

WITNESSETH, That Mortgagor, in consideration of the sum of TEN DOLLARS, to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, does hereby convey unto Mortgagee, forever, real property in Minnesota, described as follows:

ALL OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, EXCEPT THAT PART THEREOF PLATTED "PARKDALE ADDITION TO THE CITY OF BRAINERD"
AND ALSO
LOTS 1,2,5,6,7,8 AND 9, AND THE E ½ OF LOT 3 OF PARKDALE ADITION TO THE CITY OF BRAINERD, EXCEPT: COMMENCING AT THE SW CORNER OF THE SE ¼ OF NE ¼, SECTION 30, TOWNSHIP 45, RANGE 30, THENCE NORTH ALONG THE WEST BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 704 FEET MORE OR LESS TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING THE NE CORNER OF BLOCK 36, CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE NORTH ALONG SAID WEST BOUNDARY A DISTANCE OF 617 FEET, MORE OR LESS, TO A POINT BEING THE NORTHWEST CORNER OF SAID SE ¼ OF NE ¼ ; THENCE EAST ALONG THE NORTH BOUNDARY OF SAID SE ¼ OF NE ¼ A DISTANCE OF 551.54 FEET MORE OR LESS TO A POINT BEING THE SOUTHWEST CORNER OF BLOCK 27 OF CUYUNA RANGE ADDITION TO THE CITY OF BRAINERD; THENCE IN A SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING. CROW WING COUNTY, MINNESOTA.

AND

LOT 1, BLOCK 1, COPPERTOP II. DAKOTA COUNTY, MINNESOTA.

Certificate Number 63536
Vol. 212 Page 236
STATE OF MINNESOTA }
COUNTY OF CROW WING } ss.
OFFICE OF THE REGISTRAR OF TITLES
This is to certify that the within instrument was filed in this office on the 20 day of March A.D. 2001 at 2 o'clock A.M.
REGISTRAR OF TITLES
By DEPUTY
146387

COUNTY RECORDER
HENNEPIN COUNTY, MINN.

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original on file and of record in my office
MAR 20 2001
MICHAEL N. CARNEY, COUNTY RECORDER
By Deputy

63536-212-236

DEPOSITION EXHIBIT
Strom 7
2/13/03 PO

AND

ALL OF LOT 3, AND THAT PART OF LOT 4, BLOCK 3, EASTERN PARK ADDITION, CITY OF ST. CLOUD, BENTON COUNTY, MINNESOTA, WHICH LIES WESTERLY OF A LINE 26.00 FEET EAST OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE WEST LINE OF SAID LOT 4, AND WHICH LIES NORTHERLY OF THAT CERTAIN HIGHWAY EASEMENT DESCRIBED IN BOOK 28 OF MISCELLANEOUS ON PAGE 420, ACCORDING TO THE FILES OF THE BENTON COUNTY RECORDER. BENTON COUNTY, MINNESOTA

AND

THAT PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTERLINE OF OLD COUNTY ROAD NO. 5, HENNEPIN COUNTY, MINNESOTA;
AND
THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 16, TOWNSHIP 117 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF SAID SECTION 16 DISTANT 529.65 FEET NORTH OF THE SOUTHEAST CORNER OF THE NORTH ½ OF SOUTHEAST ¼ OF SOUTHEAST ¼ OF SAID SECTION; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ A DISTANCE OF 634 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID SECION 16 TO AN INTERSECTION WITH THE CENTERLINE OF OLD COUNTY ROAD NO. 5, ALSO KNOWN AS MINNETONKA BOULEVARD; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF SAID ROAD TO THE NORTH LINE OF SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SAID SECTION 16; THENCE EAST ALONG SAID NORTH LINE TO THENORTHEAST CORNER OF THE SOUTHEAST ¼ FO THE SOUTHEAST ¼ OF SAID SECTION; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 16, TO POINT OF BEGINNING.
HENNEPIN COUNTY, MINNESOTA.

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever. Mortgagor covenants with Mortgagee as follows: That Mortgagor is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except as follows:

that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, That if Mortgagor shall pay to mortgagee the sum of Sixty Two Thousand One Hundred Sixty and 35/100 Dollars ($62,160.35) according to the terms of a Promissory Note of even date herewith (the "Obligation"), the final payment being due and payable upon demand, with interest at the rate provided in the Obligation, and shall repay to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the

covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND MORTGAGOR covenants with Mortgagee as follows:

1. To pay the principal sums of money and interest as specified in the Note;

2. To pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;

3. To keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of the outstanding indebtedness at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;

5. to commit or permit no waste on the Property and to keep it in good repair;

6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and

7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage. .

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Mortgagor agrees to pay.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

MORTGAGOR

CAREFREE LIVING OF AMERICA (BRAINERD), INC

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA (BURNSVILLE), INC.

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA (ST. CLOUD), INC.

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

CAREFREE LIVING OF AMERICA(MINNETONKA), INC.

By _____
KATHLEEN L. ZELLER

Its PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 15th day of March, 2001 by Kathleen L. Zeller, the President of Carefree Living of America (Brainerd), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Burnsville), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (St. Cloud), Inc., a Delaware corporation, and Kathleen L. Zeller, the President of Carefree Living of America (Minnetonka), Inc. on behalf of the corporation.

Notary Stamp or Seal

GINA L. MILLER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

_____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:
Mahoney & Hagberg,
A Professional Association
109 Bushaway Road
Minneapolis, Minnesota 55391
(612) 332-2226

RETURN TO

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Wilnard Leif Selbak,

Debtor.

BKY 98-41421

Dwight R. J. Lindquist, Trustee,

Plaintiff,

v.

Summa Management, Inc., Carefree Living of America (Brainerd), Inc., Carefree Living of America (St. Cloud), Inc., Carefree Living of America (Burnsville), Inc., and Carefree Living of America (Minnetonka), Inc.,

Defendants.

ADV 01-4113

ORDER FOR DEFAULT JUDGMENT

DEPOSITION EXHIBIT
Strom 8
2/13/03 PO

At Minneapolis, Minnesota, March 20, 2001.

On application of the plaintiff and it appearing that the defendants are in default,

IT IS ORDERED: The plaintiff shall recover from the defendants, and each of them, a total of $218,670.00, together with attorney's fees in the amount of $2,525.60, and costs of $186.15, for a total of $221,381.75.

LET JUDGMENT BE ENTERED ACCORDINGLY.

ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE

FILING ORDER OR JUDGMENT
Entry made on MAR 20 2001
Patrick G. De Wane, Clerk, By mh

EXHIBIT
4

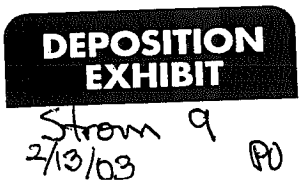
6-1

JANE L. STROM

3305 Fairchild Avenue
Wayzata, Minnesota 55391

TELEPHONE: (952) 933-3022
FACSIMILE: (952) 945-0805
E-MAIL: JLSTROM1@AOL.COM

November 27, 2001



The Honorable Gregory F. Kishel
United States Bankruptcy Judge
United States Bankruptcy Court
200 Warren E. Burger Federal Building
316 North Robert Street
St. Paul, MN 55101

Re: In Re: Carefree Living of America (Burnsville), Inc./Case No. 01-33545
Carefree Living of America (St. Cloud), Inc./Case No. 01-33546
Carefree Living of America (Brainerd), Inc./Case No. 01-33547

Dear Judge Kishel:

I am aware that Merle A. Sampson, as Chairman of the Unsecured Creditors' Committee, has brought a motion before this court for the appointment of a Chapter 11 operating trustee. This motion is based on the premise that the termination of Spectrum Community Health, Inc. as a healthcare provider to tenants of the debtors would somehow be harmful to the business. My trust, the Jane L. Strom Revocable Trust U/A October 28, 1998 is a secured creditor holding a junior real estate mortgage on real property owned by the Debtors to secure a loan made to the Debtors with a balance due in excess of $40,000. I am a trustee of the trust and am married to Steven V. Hagberg, an attorney with Mahoney & Hagberg, A Professional Association.

First, I have the general understanding that conflicts are not taken lightly in the bankruptcy court. Therefore, I do not believe that the offices of the Unsecured Creditors' Committee should be used by its Chairman, Merle A. Sampson and his company, Spectrum Community Health, Inc. to foster his own interests. Neither do I believe that this court would give any credence to that self-serving effort.

Second, and most importantly, I understand from the STIPULATION FOR USE OF CASH COLLATERAL AND ADQUATE PROTECTION which was approved by the Court in connection with the secured position of First Union National Bank that if the business is not sold by December 31, 2001, that the arrangement will end and First Union National Bank may proceed to foreclose on its collateral.

I believe that if an operating trustee is appointed the result would be a significant reduction of the value of the business. I do not believe that an operating trustee could

possibly step in and adequately perform nearly as well as Summa Management through Kathleen Zeller. No third party could possibly step in and run the business without causing at least temporary damage. If an operating trustee is appointed, then I believe that no creditors other than First Union would be paid, it being highly unlikely that the business could be sold especially in the time frame set forth.

For the foregoing reasons, I ask that you refuse to appoint an operating trustee, allow the termination of Spectrum Community Health, Inc., and continue the management under Summa Management, Inc.

Very Truly Yours,

Jane L. Strom,
Trustee of the Jane L. Strom Revocable Trust, U/A October 28, 1998

Carefree Note Payments

Date	Principal	Interest	Interest Due	Principal Addition
9/21/2000	441.41	421.92		
10/16/2000		833.33	926.56	93.23
11/15/2000		833.33	898.5	65.17
12/12/2000		833.33	899.4	66.07
1/17/2001		833.33	930.62	97.29
2/15/2001	3000	1139.61		
3/15/2001	3000	1084.61		
4/23/2001	3000	1029.61		
5/21/2001	3000	974.61		
6/25/2001	3000	910.61		
7/17/2001	3000	864.61		
8/17/2001	3000	809.61		

As of January 15, 2001

Principal Due	49910.35
Fee	12250
Total Note 2	62160.35
Principal paid to 8/18	-21000
Sum Due on Filing	41160.35

DEPOSITION EXHIBIT

Strom 10
2/13/03 PO

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

PRO

Name of Debtor: Carefree Living of America (Burnsville), Inc.

Case Number: 01-33547

DEPOSITION EXHIBIT
Strom 11
7/13/03

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor: (The person or entity to whom the debtor owes money or property) Jane L. Strom Revocable Trust U/A October 28, 1998

Name and address where notices should be sent:
Jane L. Strom Revocable Trust
3305 Fairchild Ave.
Wayzata, MN 55391
Telephone number: 952-933-3022

G Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
G Check box if you have never received any notices from the bankruptcy court in this case.
☒ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:

Check here if this claim: G replaces G amends a previously filed court claim, dated: _____

1. Basis for Claim:
G Goods sold
G Services performed
☒ Money loaned
G Personal injury/wrongful death
G Taxes
G Other _____

G Retiree benefits as defined in 11 U.S.C. § 1114(a)
G Wages, salaries, and compensations (Fill out below)
Your SS# _____
Unpaid compensations for services performed
from _____ (date) to _____ (date)

2. Date debt was incurred: January 15, 2001

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: $ 41,160.35 See attachment
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.
G Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. ~~(X) joint and Several with Carefree Living of America (Burnsville), Inc and Carefree Living of America (St. Cloud), Inc~~

5. Secured Claim See attachment
☒ Check this box if your claim is secured by collateral (including a right of setoff).
Brief Description of Collateral:
☒ Real Estate G Motor Vehicle
G Other _____

Value of Collateral: $ UNKNOWN

Amount of arrearage and other charges at time case filed included in secured claim, if any: $_____

6. Unsecured Priority Claim
G Check this box if you have an unsecured priority claim.
Amount entitled to priority claim $_____
Specify the priority of the claim:
G Wages, salaries, or commissions (up to $4,650*), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier — 11 U.S.C. § 507(a)(3)
G Contributions to an employee benefit plan — 11 U.S.C. §507(a)(4)
G Up to $2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. §507(a)(6)
G Alimony, maintenance, or support owed to a spouse, former spouse, or child — 11 U.S.C. §507(a)(7)
G Taxes or other penalties of governmental units — 11 U.S.C. § 507(a)(8)
G Other — Specify applicable paragraph of 11 U.S.C. § 507(a) _____
Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. **Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.
8. **Supporting Documents:** *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. See attachment
9. **Date-Stamped Copy:** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

SEND CLAIMS TO:

U.S. BANKRUPTCY COURT
200 U.S. COURTHOUSE
316 NORTH ROBERT STREET
ST. PAUL, MN 55101

Date: January 4, 2001

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):
Jane L. Strom, Trustee

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

For CHAPTER 7, 11 or 12 CASES filed on or after April 1, 2001

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:	Chapter 7
Carefree Living of America (Burnsville), Inc. Carefree Living of America (St. Cloud), Inc. Carefree Living of America (Brainerd), Inc.	Case No. 01-33545 01-33546 01-33547
Debtors.	

Brian F. Leonard, Trustee, Plaintiff, v. Jane L. Strom Revocable Trust and Jane L. Strom, Trustee, Defendants.	ADV Case No. 02-9117

UNSWORN CERTIFICATE OF SERVICE

I, Stephanie Wood, declare under penalty of perjury that on the 16th day of September, 2004, I hand delivered a copy of the annexed ***Plaintiff's Verified Motion for Summary Judgment, Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgment, Affidavit of Merle Sampson and Affidavit of Brian F. Leonard*** on:

Ralph V. Mitchell, Esq.
Lapp, Libra, Thomson,
Stoebner & Pusch
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402

by handing to and leaving with Stephanie Smith.

Dated: September 16, 2004

Stephanie Wood

Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

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