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**FILED**

MAR 21 2000

KEVIN E. O'BRIEN CLERK  
UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In Re ) Chapter 11  
)  
RAINTREE HEALTHCARE ) No. B-00-01961-ECF-GBN  
CORPORATION, a Delaware ) through 00-01975-ECF-GBN  
corporation, ) (Jointly Administered)  
)  
Debtor. ) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
) REGARDING ASSUMPTION  
) AND ASSIGNMENT OF  
) "NON-OMEGA" LEASES  
)

Debtor in possession RainTree Healthcare Corporation, a Delaware corporation, with affiliates that have filed chapter 11 cases being jointly administered (collectively, "RainTree"), having moved for an order for authority to assume and assign certain leases<sup>1</sup> under which RainTree is a lessee, parties having appeared through counsel, including Omega Healthcare Investors ("Omega"), Heller Healthcare Finance, Inc., Ridgewood Health Care, Health Partners, Boonville Convalescent Center, Inc., and an informal bondholders' committee ("bondholders"), the court having held hearings on March 3, 2000 and March 6, 2000, and

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<sup>1</sup>The leases are identified in debtor's motion to assume and assign unexpired real property leases filed March 1, 2000. Administrative docket no. 10.

1 having heard evidence, including testimony, and finding that the  
2 abbreviated notice given is appropriate given the exigent  
3 circumstances of this matter,<sup>2</sup> finds and concludes as follows:

4 FINDINGS OF FACT

5 1.) Based on the testimony presented and exhibits  
6 admitted, the court finds that an emergency exists in that  
7 RainTree lacks predictable reliable revenue sufficient to operate  
8 its nursing home and assisted living facilities in a prudent and  
9 responsible manner. Without an immediate assumption and  
10 assignment to Omega of RainTree's leasehold interests, patients,  
11 many of whom are elderly and infirm, may not receive adequate  
12 care.

13 2.) Based on the testimony presented, the court finds  
14 RainTree does not have sufficient resources to adequately care  
15 for patients and adequately protect Omega's secured interests to  
16 allow an unconsented use of cash collateral.

17 3.) Omega made an offer on the record that under  
18 specified conditions, it would allow the bondholders to obtain  
19 Omega's interest in all (but not less than all) thirty facilities  
20 that Omega will now operate in place of RainTree.<sup>3</sup> Conditions  
21 imposed included that: (a) if a new master lease is entered into  
22 with regard to the eighteen facilities formerly subject to a  
23

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24 <sup>2</sup>See 11 U.S.C. § 102(1)(A).

25 <sup>3</sup>Eighteen facility leases have previously been rejected by  
26 order of March 3, 2000. Docket nos. 32, 33. Omega was the  
27 lessor of these leases and has received possession of the  
premises. Supra.

1 master lease, such lease would contain the same terms and  
2 conditions, including security deposits, as the former master  
3 lease, (b) an order is entered permitting an assignment to the  
4 bondholders of the twelve facilities RainTree assumed and  
5 assigned to Omega, (c) Omega is made whole for all of its costs,  
6 expenses and loans made in regard to its acquisition of the  
7 lessees' interests in the thirty RainTree facilities, including  
8 all out-of-pocket expenses and expenditures, credit bids, loans  
9 and any liabilities incurred in the interim management of the  
10 facilities (such as a contract with Vencor), (d) the successor  
11 has adequate working capital as reasonably determined by Omega,  
12 and (e) Omega has the same overall security it had prior to the  
13 RainTree default of the master lease.

14 4.) RainTree has reasonably exercised sound business  
15 judgment in deciding to assume the subject leases and assign them  
16 to Omega for a credit bid of \$3.1 million.

17 5.) Any of the foregoing findings of fact that might  
18 be deemed conclusions of law shall be incorporated as a  
19 conclusion of law.

#### 20 CONCLUSIONS OF LAW

21 1.) There being no direct evidence of default under  
22 any of the leases that are the subject of RainTree's motion,  
23 RainTree may assume such leases pursuant to 11 U.S.C. section  
24 365(b)(1). In the event a landlord files a timely objection to  
25 this order and establishes, after notice and a hearing, that a  
26 default exists, Omega will be required to (1) cure such default,  
27 (2) compensate for actual pecuniary loss resulting from such

1 default, and (3) provide adequate assurance of future performance  
2 under such lease, pursuant to 11 U.S.C. section 365(b).

3 2.) All of the leases subject to RainTree's motion are  
4 assumable and assignable by a debtor in possession. None of the  
5 provisions of 11 U.S.C. section 365(c) is applicable to any of  
6 these leases.

7 3.) All of the leases that are subject to RainTree's  
8 motion are assignable to Omega pursuant to 11 U.S.C. section  
9 365(f)(2). In the event a landlord files a timely objection to  
10 this order and establishes, after notice and a hearing, that  
11 Omega cannot be an assignee of these leases, the court will  
12 reconsider the assignment.

13 4.) Bankruptcy Code section 363(m) is applicable to  
14 assumptions and assignments of leases. Omega is an entity that  
15 has taken the assignments of the leases in good faith.

16 5.) Any of the foregoing conclusions of law that might  
17 be deemed findings of fact shall be incorporated as a finding of  
18 fact.

19 6.) Based upon credible testimony, and the exigent  
20 circumstances, immediate assumption and assignment of RainTree's  
21 leasehold interests is in the best interests of RainTree, its  
22 creditors, and particularly in the interests of the residents and  
23 patients of the nursing home and assisted living facilities  
24 operated by RainTree. The assumption and assignment is approved.  
25 The court's complete ruling and reasoning will be reflected in a

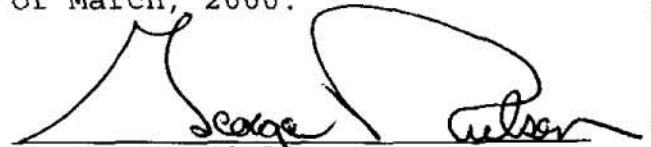
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1 transcript of the hearings of March 3 and 6, 2000.

2 DATED this 21<sup>st</sup> day of March, 2000.

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George B. Nielsen, Jr.  
Chief U.S. Bankruptcy Judge

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6 Copy mailed the 21<sup>st</sup> day  
of March, 2000, to:

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By *S. Temple*  
Deputy Clerk