

**UNITED STATES BANKRUPTCY COURT**

**SOUTHERN DISTRICT OF IOWA**

In Re:	)	Case No. 10-01344-als11
	)	
<b>KEYSTONE PROPERTIES III, LLC</b>	)	Chapter 11
	)	
Debtor and Debtor in Possession.	)	Honorable Anita L. Shodeen
	)	
2210 Abbott Drive	)	<b>ORDER AFTER HEARING</b>
Carter Lake, IA 51510	)	<b>GRANTING DEBTOR'S MOTION FOR</b>
	)	<b>ENTRY OF ORDER APPROVING</b>
EIN: xx-xxx0280	)	<b>ASSET PURCHASE AGREEMENT</b>
	)	<b>AND AUTHORIZING SALE FREE AND</b>
	)	<b>CLEAR OF ALL LIENS, CLAIMS,</b>
	)	<b>ENCUMBRANCES AND INTERESTS</b>
	)	
	)	Date: December 14, 2010
	)	Time: 3:00 p.m.
	)	Courtroom: 1
	)	
	)	Date Entered on Docket: <u>January 19, 2011</u>

The matter of the Motion of Keystone Properties III, LLC, the Debtor and Debtor in Possession herein for entry of an Order approving asset purchase agreement and authorizing the sale free and clear of all liens, claims, encumbrances and interests ("Motion")(Docket Item 136) was heard by this Court at a duly-noticed hearing held on December 14, 2010 at 3:00 p.m. Present in court and representing the Debtor was its General Reorganization Counsel, Jeffrey D. Goetz, Esq. Also appearing were Jeffrey Wegner for General Electric Capital Credit Corporation; James Snyder, Esq. Assistant United States Trustee for Region 12 representing the Office of the United States Trustee; William J. Fisher, Esq. for Country Inns & Suites By Carlson, Inc.; Jerry Pollard, Esq. on behalf of Steven Slowey; John Waters, Esq. for the Iowa Department of Revenue; Jon P. Sullivan, Esq. appeared on behalf of Kelly Midwest Ventures

Limited Partnership; and Steve Kluvers was represented by Mr. Michael Mallaney. Upon hearing the arguments and statements of counsel:

**THE COURT HEREBY FINDS AND CONCLUDES THAT:**

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested are sections 105, and 363 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

C. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

D. Notice of the Motion was given in accordance with the directives of the Court and as otherwise required by applicable law, as evidenced by the affidavits of service on file with the Clerk of the Court.

E. The Motion seeks authority to sell the property (the “Hotel Property”) specifically identified on Exhibit A attached hereto.

F. The notice of the Motion was adequate and sufficient under the circumstances, and any otherwise applicable requirement for notice is hereby waived and dispensed with. A reasonable opportunity to object or to be heard with respect to the Motion and the relief requested therein and with respect to the sale of the Hotel Property has been afforded to all

interested persons and entities.

G. The Debtors have conducted the sale process for the Hotel Assets fairly and diligently, with adequate opportunity for interested parties to submit bids.

H. The amended offer of Steve Slowey (“Slowey”) to purchase the Hotel Property in the amount of \$3,072,000 cash is: (i) the highest and best offer received by the Debtor and (ii) fair and reasonable; and the sale of the Hotel Property to Slowey on the terms offered by Slowey as set forth in the Contract of Sale of Real Estate proposed by Slowey and as modified on the record of the Hearing and (the “APA”) is in the best interests of the Debtor’s estate.

I. The Debtor has full corporate power and authority to consummate the sale of the Hotel Property.

J. Neither the Debtor nor Slowey has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of or implicate Section 363(n) of the Bankruptcy Code with respect to the consummation of the transaction contemplated hereby.

K. The Debtor was free to deal with any other party interested in purchasing some or all of the Hotel Property. Slowey has not violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, Slowey has not acted in a collusive manner with any person and was not controlled by any agreement among bidders or creditors.

Now, therefore, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Debtor is hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to consummate the sale of the Hotel Property to Slowey on the terms set forth in the APA .

2. Except as otherwise provided in this Order, pursuant to Section 363(f) of the Bankruptcy Code, the Hotel Property being sold shall be sold free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances, interests or claims of any kind or nature (including, without limitation, any and all “claims” as defined in section 101(5) of the Bankruptcy Code, including, for the avoidance of doubt, any claims based on alleged successor liability of the Debtor), including, without limitation, General Electric Capital Corporation, or any other person or entity including any post-petition creditors, whether arising by agreement, statute or otherwise and whether arising before, on or after the date on which the Chapter 11 case was commenced, except for and subject to that certain Cross Access and Parking Easement Agreement between the Debtor and Hollywood Diner 1, LLC, (collectively, the “Interests”), with such Interests to attach to the proceeds from the sale of the Hotel Property with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs the Debtors may possess.

3. Notwithstanding any later due dates established by the Iowa Code or Iowa Administrative Code, the sale of the Hotel Property shall not close until the Debtor (a) files Iowa sales tax returns for the period from October 1, 2010, to the closing date, (b) files Iowa income tax withholding returns for the period from October 1, 2010, to the closing date, and (c) pays the amount shown due on the returns by cashier's check or electronic funds transfer.

4. Closing of the sale of the Hotel Property shall not occur prior to the Debtor filing the report required pursuant to Iowa Admin. Code § 701-12.6 and paying all tax therein due except those taxes accruing on or before March 22, 2010.

5. The proceeds from the sale of the Hotel Property shall be indefeasibly disbursed on the closing date of such sale as follows:

(i) first, in full satisfaction of any and all liens, claims and encumbrances upon the Hotel and Diner Parcels held by or through the Treasurer of Pottawattamie County, Iowa, an amount which is sufficient to satisfy the unpaid real estate taxes and prorated taxes, together with accrued interest thereon, through the Closing Date attributable to the Hotel and Diner Parcels, with taxes attributable to the Diner Parcel, as determined by an agreement (“Tax Agreement”) between Council Bluffs Savings Bank and General Electric Capital Corporation, to be reimbursed by Council Bluffs Savings Bank to General Electric Capital Corporation pursuant to the Tax Agreement.

(ii) second to the United States Trustee in the amount of \$10,400 in satisfaction of fees due pursuant to 28 U.S.C. § 1930(a)(6) as a result of the sale of the Hotel Property.

(iii) third to General Electric Capital Corporation.

6. The cash, accounts receivable and other assets of the Debtor shall remain within the bankruptcy estate subject to the liens and security interests of General Electric Capital Corporation and shall be disbursed only upon further order of the Court.

7. All of the transactions contemplated by the Motion and Order shall be protected by section 363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal.

8. The provisions of this Order, and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered converting the Debtor's cases from chapter 11 to chapter 7, or dismissing this case and the rights and interests granted pursuant to this Order shall continue in this or any superseding case and shall be binding upon the Debtor, Slowey and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code and Slowey and any such trustee shall be and hereby are authorized to perform as agreed amongst the parties upon the appointment of a trustee without the need for further order of this Court.

9. This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Hotel Property.

10. The Debtor and its respective officers, employees and agents are hereby authorized and directed to execute such documents and to do such acts as are necessary or desirable to consummate the sale of the Hotel Property to Slowey and any related actions set forth therein.

11. Upon completion of the disbursements provided in Paragraph 5: (i) the Treasurer of Pottawattamie County, Iowa shall cause all tax liens recorded upon the Hotel and Diner

Parcels to be released and expunged; (ii) General Electric Capital shall, provided all tax liens upon the Hotel Parcel are released and expunged, release all of its mortgage liens and security interests upon the Hotel Property.

12. Notwithstanding Bankruptcy Rules 4001 and 6004, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

13. No bulk sale or similar law shall prohibit the Debtors or Slowey from taking the actions contemplated and authorized by this Order.

14. All of the transactions contemplated by the APA shall be protected by section 363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The transactions contemplated by the APA are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

15. No executory contracts are being assumed and assigned pursuant to this Order.

16. In the event the closing of the sale of the Hotel Property pursuant to this Order shall not occur on or before January 21, 2011, this Order shall cease to be effective and the Debtor shall not, while a debtor or debtor in possession in this proceeding, have authority to sell the Hotel Property without further order of the Court. In the event that the sale of the Hotel Property is not completed on or before January 21, 2011 as a result of any failure of the Slowey to perform, the Debtor shall be entitled to retain the Slowey's Good Faith Deposit.

**/s/ Anita L. Shodeen**

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Judge, U.S. Bankruptcy Court

Respectfully submitted by:

Jeffrey D. Goetz, Esq., IS# 9999366  
Bradshaw Fowler Proctor & Fairgrave, P.C.  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309-8004  
515/246-5817  
515/246-5808 FAX  
[goetz.jeffrey@bradshawlaw.com](mailto:goetz.jeffrey@bradshawlaw.com)

General Reorganization Counsel for  
Keystone Properties III, LLC, Debtor and Debtor in Possession  
Approved as to Form:

          /s/ John Waters  
John Waters, Esq.,  
Iowa Department of Revenue

          /s/ Jeffrey Wegner  
Jeffrey T. Wegner, Esq.  
Attorney for GE Capital Corporation

          /s/ Jerry Pollard  
Jerry L. Pollard, Esq.  
Attorney for Steven Slowey

          /s/ Charles L. Smith  
Charles L. Smith, Esq.  
Attorney for Council Bluffs Savings Bank

No Objection as to Form:

          /s/ James Snyder  
James L. Snyder, Esq.  
Assistant United States Trustee, Region 12

Parties receiving this Order from the Clerk of Court:  
Electronic Filers in this Chapter Case



## EXHIBIT A

The "Hotel Property" shall consist of:

1. Real Property described as:

Lots 11 and 12, Owen Parkway, a Subdivision, as surveyed, platted and recorded in Pottawattamie County, Iowa. EXCEPT THAT part of Lot 12 described as follows: Beginning at the 1" open top pipe at the east corner of said Lot 12; thence South $35^{\circ}00'04''$  West (bearings referenced to the Final Plat of Owen Parkway) for 131.92 feet along the southeast line of said Lot 12 to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 12089; thence North  $54^{\circ}49'13''$  West for 144.75 feet to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 12089; thence North  $03^{\circ}23'33''$  West for 77.92 feet along the extended centerline of the existing storm sewer to the north line said Lot to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 12089; thence North  $87^{\circ}48'00''$  East for 116.30 feet along said north line to a 1" open top pipe at an angle point therein; thence South  $55^{\circ}02'46''$  East for 100.50 feet along said north line to the point of beginning.

All buildings, structure and improvements now located on the above-described real property and all of the right, title and interest of Keystone Properties, III to all public and private streets, roads, avenues, alleys and passageways abutting the above-described property. The above described property shall hereinafter be referred to as the "Hotel Parcel."

For purposes of clarity, the "Hotel Parcel" shall not include:

That portion of Lot 12, Owen Parkway, a Subdivision, as surveyed, platted and recorded in Pottawattamie County, Iowa described as follows:

Beginning at the 1" open top pipe at the east corner of said Lot 12; thence South $35^{\circ}00'04''$  West (bearings referenced to the Final Plat of Owen Parkway) for 131.92 feet along the southeast line of said Lot 12 to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 12089; thence North  $54^{\circ}49'13''$  West for 144.75 feet to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 12089; thence North  $03^{\circ}23'33''$  West for 77.92 feet along the extended centerline of the existing storm sewer to the north line said Lot to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 12089; thence North  $87^{\circ}48'00''$  East for 116.30 feet along said north line to a 1" open top pipe at an angle point therein; thence South  $55^{\circ}02'46''$  East for 100.50 feet along said north line to the point of beginning (hereinafter defined as the "Diner Parcel").

3. Personal Property described as follows:

All fixtures, furniture, furnishings, equipment, machinery, apparatus, appliances, vehicles and articles of personal property owned by Keystone Properties, III as of the Closing

Date installed upon or located in and used in the maintenance or operation of the Hotel Parcel including all cleaning equipment and machines, alarm systems and all plumbing, heating, air conditioning and lighting fixtures and equipment, cabinets and awnings (collectively, the “Hotel Personal Property and Fixtures”)

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<b>KEYSTONE PROPERTIES III, LLC</b>	)	Chapter 11
	)	
Debtor and Debtor in Possession.	)	Honorable Anita L. Shodeen
	)	
2210 Abbott Drive	)	<b>MOTION OF THE DEBTOR FOR</b>
Carter Lake, IA 51510	)	<b>ENTRY OF ORDERS APPROVING</b>
	)	<b>ASSET PURCHASE AGREEMENT AND</b>
EIN: xx-xxx0280	)	<b>AUTHORIZING THE SALE FREE AND</b>
	)	<b>CLEAR OF ALL LIENS, CLAIMS,</b>
	)	<b>ENCUMBRANCES AND INTERESTS</b>
	)	
	)	Date: December 12, 2010
	)	Time: 3:00 p.m.
	)	Courtroom: 1

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Keystone Properties III, LLC, the Debtor and Debtor in Possession herein (“Debtor”), by and through its duly-employed General Reorganization Counsel, Jeffrey D. Goetz, of the law firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C., and pursuant to this motion (“Motion”), hereby moves the Court pursuant to Sections 105, 363, 365, 503 and 507 of Title 11 of the United States Code, 11 U.S.C. Sections 101-1532 (as amended, the “Bankruptcy Code”), for entry of an order approving the sale of substantially all of its assets free and clear of all liens, claims and interests, and in support of this Motion, the Debtor respectfully states as follows:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are §§ 105, 363, 365, 503 and 507 of the Bankruptcy Code and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”).

### **Background**

4. On March 22, 2010 (“Petition Date”), Keystone Properties III, L.L.C., a Nebraska limited liability company authorized to do business in the State of Iowa, filed its Voluntary Petition under Chapter 11 of the Bankruptcy Code (Docket Item 1). The Debtor owns and continues to operate an 83 room, limited-service hotel (the “Hotel”) that primarily caters to business guests. Together, the Hotel and the Debtor’s related real and personal property shall be referred to hereinafter as the “Hotel Property.”

5. The Debtor remains in possession of its assets and is a Debtor in Possession pursuant to Bankruptcy Code §§ 1107 and 1108. No request for the appointment of a trustee or examiner has been made in this Chapter 11 case, and no committees have been appointed or designated.

6. The Debtor has employed approximately twenty three (23) employees in connection with its operation of the Hotel Property as a Country Inns & Suites By Carlson<sup>SM</sup> pursuant to governing executory contracts (the “Franchise Agreements”) by and between the Debtor and Carlson Hotels (“Carlson”). The Hotel Property is encumbered by mortgage liens and security interests held by General Electric Capital Corporation (“GECC”) to secure debt that exceeds \$5.9 Million.

7. Despite diligent efforts and limited success during the recent summer months, the Debtor has not built sufficient momentum and cash needed to propose and implement a feasible Plan of Reorganization without substantial concessions from its largest creditor constituencies

including (i) GECC; (ii) Carlson; and (iii) governmental taxing authorities and persons holding claims relating to real property taxes (together, "Tax Claimants").

8. Pursuant to this Court's Order dated November 9, 2010 (Docket No. 118), Carlson, Inc., the Debtor's franchisor, has been granted relief from the automatic stay to permit it to proceed to terminate the Debtor's franchise rights. Carlson is proceeding with efforts to terminate the Debtor's franchise. Without the right to operate the Hotel as a Country Inns & Suites By Carlson<sup>SM</sup> the Debtor expects that it would have to cease operating in the immediate future.

9. At present, neither GECC, Carlson nor the Tax Claimants has indicated a willingness to grant the Debtor the substantial concessions that the Debtor needs to propose, confirm and implement a feasible Plan of Reorganization.

10. After due and deliberate evaluation of alternatives, the Debtor determined that it was faced with either a voluntary surrender of the Hotel Property to GECC, a conversion of the case to Chapter 7 or a sale of the Hotel Property.

11. The Debtor has aggressively marketed the Hotel Property for sale. Attached hereto as Exhibit "A" is a marketing brochure that was posted on Loopnet and HotelsforSale.com, and also delivered to regional hotel specialty brokers across the country. Loopnet and HotelsforSale.com are industry leading commercial real estate online line services. Loopnet has over 4 million registered users and an average of 1.5 million visitors to its listings. Additionally, the Hotel Property was marketed for sale by direct contact with several known potential hotel buyers in the region and the area.

12. As a result of the marketing efforts, the Debtor has been presented with several offers to purchase the Hotel Property. The Debtor elected to pursue an auction sale designed

around an approximate \$4 Million “stalking horse” offer presented by Rikesh Patel.

Unfortunately, Mr. Patel abandoned his offer and is no longer willing and able to proceed pursuant to his offer. The next highest and best offer presented to the Debtor is from Steve Slowey (“Slowey”) for \$3.2 Million less a broker’s commission to be paid by Slowey (“Slowey Offer”). Based on the Debtor’s analysis and consultations with its constituencies, the Debtor believes that it is in the best interest of the Debtor, its estate, creditors and other stakeholders to sell the Hotel Property pursuant to the Slowey Offer or to a higher and better offer as determined by the Court at the hearing on this Motion.

13. In particular, the sale of the Hotel Property to Slowey pursuant to the Slowey Offer or a similar transaction would allow a significant portion of the Debtor’s business to continue operations as a going concern thereby maintaining the important services the Debtor provides to its customers and, most importantly, preserving many of the jobs of the employees of the Debtor.

**Proposed Sale of Substantially All of the Debtor's Assets**

14. Subject to Court approval and any offer determined by the Court to be a higher and better offer, the Debtor has agreed to sell and Slowey has agreed to purchase the Property, as defined in the Slowey Offer, pursuant to the terms of Slowey Offer, which includes the following principal terms:<sup>1</sup>

- a. The Property consists of the Hotel Property and substantially all of the operating assets of the Debtor.
- b. Slowey proposes to purchase the Property for \$3.2 Million less a 4% broker’s commission to be paid by Slowey. The Purchase Price shall be paid by Slowey in cash.

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<sup>1</sup> This summary of the Slowey Offer is provided for the benefit of the Court and other parties in interest. The Slowey Offer is attached hereto as Exhibit “B.” To the extent there are any conflicts between this summary and the Slowey Offer, the terms of the Slowey Offer shall govern. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Slowey Offer.

- c. Representations, warranties, covenants and conditions typical of transactions of this type.

15. The Debtor believes that the terms of the proposed transaction (“Transaction”) are fair and equitable and that the Purchase Price represents reasonably equivalent value for the Property. Additionally, the Debtor intends to test the current offer through the marketing process set forth in the Bid Procedures to ensure that the consideration received for the Property represents the best and highest value that can be achieved for the assets of the Debtor’s estate.

**A. Approval of the Sale is Appropriate**

16. Bankruptcy Code Section 363(b)(1) provides: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” A sale of a debtor’s assets should be authorized pursuant to Bankruptcy Code Section 363(b) if a sound business purpose exists for the sale. *See In re Delaware & Hudson Rwy. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re W.A. Mallory Co., Inc.*, 214 B.R. 834 (Bankr. E.D. Va. 1997); *In re WBQ Partnership*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995); *see also Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983).

17. The test of whether a sound business purpose exists is comprised of the following four elements:

- (a) a sound business reason or emergency justifies the sale;
- (b) adequate and reasonable notice of the sale was provided to interested parties;
- (c) the sale has been proposed in good faith; and
- (d) the purchase price is fair and reasonable.

*See WBQ Partnership*, 189 B.R. at 102 (citing *Delaware & Hudson Rwy. Co.*, 124 B.R. at 176).

18. The proposed sale to Slowey or another party determined by the Court to have made a higher and better offer, reflects the exercise of the Debtor's sound business judgment and a proper exercise of its fiduciary duties. A sound business purpose exists for consummating the transaction outside of a Plan of Reorganization; namely, that (i) the proceeds of the transaction represent the maximization of the value of the Debtor's assets; (ii) there is significant uncertainty regarding the Debtor's ability to continue operations through the upcoming winter months; (iii) the Debtor does not believe that it has the ability to confirm a Plan of Reorganization; and (iv) while the proposed sale will not result in distribution to pre-petition unsecured creditors, the proposed sale will (a) likely preserve over 20 jobs and maintain a going concern business for the benefit of the local and economy; (b) result in payment of post petition claims held by employees, vendors and professionals; and (c) provide a better recovery to the Debtor's secured creditor and franchisor than would a subsequent foreclosure sale. As described above, the key terms of the proposed sale result from extensive marketing of the Hotel Property and have been arrived at in good faith and at arms length, resulting in a fair and reasonable purchase price for the Hotel Property. The Debtor believes that approval of the relief requested in this Motion is in the best interests of the Debtor's creditors, estates and other parties in interest and should be approved.

**B. The Sale Satisfies the Requirements of Section 363(f)**

19. Under Bankruptcy Code Section 363(f), a Debtor in Possession may sell property of a Debtor's estate free and clear of any lien, claim or interest in such property if, among other things:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such lienholder consents;



- (c) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because Section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to approve the sale of the assets free and clear. *See* 11 U.S.C. § 363(f); *see also In re Wolverine Radio Co.*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991); *In re Elliot*, 94 B.R. 343 (E.D. Pa. 1988).

20. The Debtor submits that a sale free and clear of all pledges, liens, security interests, claims, charges, options and interests thereon and there against (collectively, the “Interests”) is appropriate under the circumstances because one or more of the conditions of section 363(f) will be satisfied. GECC, the lender that holds the senior security interest in the Property, consents to the sale to Slowey or a higher and better bidder determined by the Court provided that GECC’s liens attach to the proceeds of the sale and the net proceeds of the sale are paid to GECC at closing. The Debtor agrees that the net sales proceeds<sup>2</sup> from the sale of the Property shall be paid to GECC at closing and therefore Section 363(f)(2) is satisfied and the Property may be transferred free and clear of all Interests. In the alternative, any party asserting an Interest that does not consent, to the extent any such party exists, has the opportunity to protect its purported Interests through a credit bid for the assets that serve as its collateral. Additionally, any remaining lien, claim or interest in the Property that exists immediately prior to the closing of the Transaction will attach to the net sales proceeds after payment of GECC with

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<sup>2</sup> Net sales proceeds from the sale of the Property shall mean the gross cash sales proceeds from the Property less: (i) accrued unpaid real property taxes relating to the Property; (ii) commissions paid by any buyer to its broker; (iii) amounts necessary to cure defaults under any executory contracts that are assumed and assigned; and (iv) fees and expenses of Debtor’s professionals agreed to by GECC.

the same validity, priority, force and effect as it had prior to such Transaction, thereby providing adequate assurance for the holder of any such interest.

**C. Slowey is a Good Faith Purchaser**

21. As set forth above, the Debtor believes that Slowey, or any other purchaser determined by the Court to be a higher and better purchaser, will be a buyer in good faith of the Property under Section 363(m) of the Bankruptcy Code and, as such, will be entitled to the protections afforded thereby. Although the Bankruptcy Code does not define the term “good faith purchaser,” the traditional equitable definition of “one who purchases the assets for value, in good faith, and without notice of adverse claims” has been adopted by various courts. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 778 F.2d 113 (3d. Cir. 1986); *In re Willemain*, 764 F.2d 1019, 1023 (4th Cir. 1985) (quoting *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1197 (7th Cir. 1978)).

22. Slowey, or any other purchaser determined by the Court to be a higher and better purchaser, will provide substantial value for the Hotel Property after the Hotel Property has been fully and fairly exposed to the marketplace. Further, the Debtor submits that neither Slowey nor any other purchaser determined by the Court to be a higher and better will have engaged in any of “the misconduct that would destroy a purchaser’s good faith status at a judicial sale [such as] fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *Willemain*, 764 F.2d at 1023.

**D. Abrogation of Ten-Day Stay**

23. Bankruptcy Rule 6004(g) provides, “An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(g). Similarly, Bankruptcy

Rule 6006(d) provides that an order authorizing the assignment of an executory contract or unexpired lease “is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). The Debtor submits that, given the nature of the proposed sale and the need to close the sale shortly after its approval, cause exists for the Court to exercise its discretion and abrogate the 10-day stay provided for by Rules 6004(g) and 6006(d).

**Notice**

24. The Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Iowa; (b) the Iowa Department of Revenue; (c) all Creditors appearing on the matrix; (d) Slowey; (e) Rikesh Patel; (f) the Internal Revenue Service; and (g) the taxing authorities to which the Debtor pays taxes. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

WHEREFORE, the Debtor respectfully requests that this Court enter its Order granting the relief set forth herein and approving the sale of the Hotel Property to Slowey or to a purchaser deemed by the Court to be a higher and better purchaser free and clear of all liens, claims and encumbrances subject to the terms and conditions set forth herein.

Dated: 11/22/2010

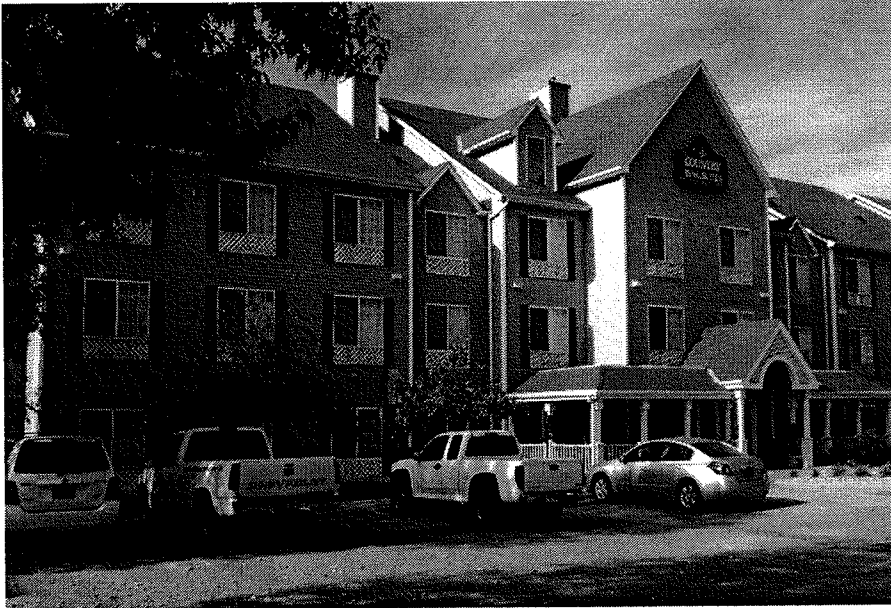
/s/ Jeffrey Goetz  
Jeffrey D. Goetz, Esq., IS# 9999366  
Bradshaw Fowler Proctor & Fairgrave, PC  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309-8007  
515/246-5817  
515/246-5808 FAX  
goetz.jeffrey@bradshawlaw.com

General Reorganization Counsel  
For Keystone Properties III, LLC,  
Debtor and Debtor in Possession

CERTIFICATE OF SERVICE: This document was served electronically on parties who receive electronic notice through CM/ECF as listed on CM/ECF’s notice of electronic filing. /s/ Nissa Maddalone

# Hotel for Sale

Country Inn & Suites Hotel  
 2210 Abbott Drive, Carter Lake, IA 51510



## Snapshot:

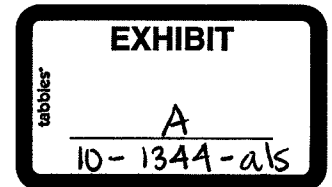
**Operating Hotel for Sale - Lender Auction.**  
**Bids Due: November 15, 2010**

This Omaha Airport Hotel is for sale in a corporate bankruptcy case. Located just 1.5 miles from downtown Omaha this hotel is close to the Qwest Convention Center & Arena, TD Ameritrade ballpark, the Old Market, Gallup

Type of Listing:	Hotel for Sale	Intersection:	Abbott Dr & Locust St.	Comments:
Price:	\$3,850,000	LoopNet #:		•Convenient Omaha Airport Hotel
Price Per Key:	\$46,500	Features:	Indoor Pool Breakfast Bar Four Suites Two Patio Rooms	•Expanded & Updated in 2006
Available:	Immediately - Bid Deadline is November 15, 2010	Restaurant:	On Site - not owned	•1.5 Miles from Downtown Omaha
Building Sq. Ft.:	47,170	Lobby:	Sitting Area with Fireplace	•Close to Omaha attractions
Lot Size:	1.98 Acres	Heat/AC:	PTEC Units	•Close to Restaurants, Concerts, Conventions, Ball Games.
Year Built:	1997 / 2006	Roof:	Asphalt Shingle	•Shuttle Van for Airport & Downtown
# of Floors:	3	Elevators:	1	•Creighton University 2 miles
				<b>Priced at:</b> <b>Less than 3x 2009 revenue &amp; trailing 12 months revenue.</b>
				<b>Less than 1.95x each 2008</b> 2

To learn more, please contact:  
 6464 Center Street, Suite 200  
 Omaha, NE 68106  
 402.345.5866 main  
 402.345.0422 fax  
 www.gepacificrealty.com

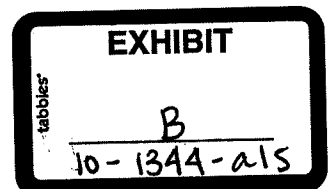
Terry Root  
 troot@gepacificrealty.com  
 402.763.1714



## CONTRACT OF SALE OF REAL ESTATE

THIS CONTRACT is entered into effective the date it is last executed, between **KEYSTONE PROPERTIES III** ("Seller") and, **Steve Slowey**, or assigns, ("Buyer"). Upon approval of this Contract by both Seller and Buyer, evidenced by their signatures hereto, a valid and binding contract of sale shall exist. The "Effective Date" hereof shall be the date this Contract is last executed. The terms and conditions of which shall be as follows:

1. **SALE:** Seller agrees to sell to Buyer the land, three-story building consisting of a 86-room Country Inn Hotel located at 2210 Abbott Drive, in the City of Carter Lake in Pottawattamie County, Iowa, adjacent parking facilities and all other buildings, structures and improvements now or on the Closing Date included in the property described on the attached Exhibit A (the "Property"). Seller also agrees to sell to Buyer all right, title and interest of Seller now owned or acquired by Seller prior to the Closing Date in and to (1) all public and private streets, roads, avenues, alleys and passageways, opened or proposed, in front of or abutting the Property, (2) any award made or to be made and any unpaid award for damage to the Property by reason of any change of grade of any such street, road, avenue, alley or passageway, and (3) any strips or gores of land adjoining the Property; (4) all fixtures, furniture, furnishings, equipment, machinery, apparatus, appliances, vehicles and articles of personal property owned by Seller and now or on the Closing Date installed upon or located in and used in the maintenance or operation of the Property, including all cleaning equipment and machines, alarm systems, and all plumbing, heating, air conditioning and lighting fixtures and equipment, cabinets and awnings.
2. **PURCHASE PRICE:** The total purchase price is Three Million Seventy Two Thousand Dollars (\$3,072,000.00), the "Purchase Price", payable by Buyer as follows:
  - (a) Twenty five thousand dollars (\$25,000.00) on execution of this Contract, receipt of which is acknowledged by Seller as earnest money and part payment of the Purchase Price, the "Earnest Money Deposit." The Earnest Money Deposit shall be held in an interest bearing account by Assured Quality Title, "Title Company". Such interest shall be for the benefit of Buyer in all instances, except when the Earnest Money Deposit is defaulted to Seller. If the Earnest Money Deposit is defaulted to Seller as provided herein, the interest shall be for the benefit of Seller.
  - (b) The balance of the Purchase Price, in full, shall be paid to Seller, in immediately available funds, upon delivery of the deed at Closing.
3. **TITLE:** Seller, within ten (10) days after execution of this Contract, shall obtain a commitment from Title Company located for a standard First American Title insuring the Buyer in the amount of the purchase price as of the date of the recording of the deed, subject only to reasonable utility easements and building restrictions of record, if any, which do not hinder the Buyer's intended plans for the Property. Buyer shall have twenty (20) days after receipt in which to have the commitment examined and furnish Seller notice in writing of any objections to the title. In case of valid objections to the title, Seller shall have ten (10) days or such additional time as may be agreed to in writing by Seller and Buyer to satisfy such objections. If such valid objections cannot be satisfied within the time specified in this paragraph, the earnest money shall be returned to the Buyer, Buyer shall return the commitment to Seller, and this Contract shall be of no further force and effect. The cost of title insurance and escrow fees shall be split equally between Buyer and Seller at Closing. Seller warrants that it has no knowledge of any easements, conditions, road improvements, restrictions and/or limitations not now appearing of record.
4. **DUE DILIGENCE:** Buyer will have thirty (30) days after the Effective Date of this Contract to arrange financing and to perform due diligence (the "Due Diligence Period") for the purpose of investigating the Property, documents related to it, and/or exploring and obtaining approval of governmental authorities or third parties for the intended purpose of the Property and any changes in zoning, if necessary. Upon a failure to arrange financing or presentation by Buyer to Seller of



the written refusal(s) of such governmental authorities to Buyer's request for approval of such intended purposes and zoning prior to expiration of the Due Diligence Period, Buyer may deliver written notification to Seller to cancel this Contract and this Contract will be terminated. In the absence of such termination notice, the Inspections and Due Diligence shall be deemed to be satisfactory to Buyer.

5. TAXES AND PRORATIONS:

(a) The Seller shall pay in full:

- (i) all special assessments against the Property upon the date of Closing, whether or not payable in installments;
- (ii) all taxes, other than general ad valorem taxes for the current calendar year, which are a lien on the Property upon the date of Closing;
- (iii) the cost of any item of workmanship or material furnished on or prior to the date of Closing, including utility charges, which is or may become a lien on the Property; and
- (iv) franchise fees associated with the Property

(b) The following items shall be prorated between the Seller and Buyer as of the date of Closing, with Seller paying an amount proportionate to the number of days this year prior to the day of Closing and the Buyer paying an amount proportionate to those post Closing:

- (i) general ad valorem taxes for the current calendar year, provided that, if the amount of such taxes has not then been fixed, the proration shall be based upon the rate of levy for the previous calendar year and adjusted upon receipt of actual bills.

6. CONTINGENCIES:

(a) Appropriate financing acceptable to buyer. Existing lender will be paid the full purchase price minus closing costs and other fees pursuant to this agreement.

(b) Country Inn and Suites Franchise

7. INSPECTIONS: Seller shall grant Buyer reasonable access to the Property and all its associated records for thirty (30) days after the Effective Date of this Contract (the "Inspection Period") for the purpose of inspecting the physical conditions of the Property. Buyer's inspection rights shall include reviewing financial and other records, performing soil tests, conducting surveys, environmental tests or audits, foundation and mechanical inspections and such other inspections or surveys as Buyer may reasonably request. If at any time before Closing Buyer identifies any unacceptable condition of the Property, Buyer may, unilaterally and in its sole discretion, terminate this Contract and receive a full refund of its Earnest Money Deposit less the \$100 termination fee listed in this Contract. Buyer agrees to repair any damage to the Property arising from these inspections and to indemnify, defend, and hold Seller harmless from and against all claims, costs, demands, and expenses, including without limitation, reasonable attorney's fees, court costs and other legal expenses, resulting from these inspections. Buyer's obligations imposed by this paragraph shall survive termination of this Contract. Buyer agrees to provide Seller with copy of any written reports resulting from such inspections within five (5) days of the completion of said inspections. Buyer shall be deemed to be thoroughly acquainted and satisfied with the physical condition of the Property, other than as set forth in the Contract. In addition, Buyer, or Buyer's representatives, may re-inspect the Property before Closing upon reasonable notice to Seller.

8. RISK OF LOSS: Until Closing or transfer of possession, whichever occurs last, risk of loss to the Property shall be upon Seller.

ENVIRONMENTAL DISCLOSURES: Seller represents that Seller has disclosed to Buyer all information which Seller may have relative to the use, storage or disposal of any hazardous substance or chemical or hydrocarbon product in connection with the Property.

9. **TERMINATION AND REFUND OF EARNEST MONEY DEPOSIT:** By notice to Seller Buyer may terminate this Contract for any reason (including the Property condition, Title condition, or financial concerns) and in its sole discretion before Closing. In the event Buyer terminates this Contract herein, the Escrow Agent shall immediately pay One Hundred Dollars (\$100.00) of the Earnest Money to Seller in full consideration for this Contract and the granting of this right of termination. The balance of the Earnest Money shall be returned to Buyer upon Buyer's unilateral request, whereupon no party hereto shall have any further right, duties, claims or liabilities hereunder.
10. **CLOSING:** Subject to all the provisions of this Contract, the closing of this Contract (the "Closing") shall take place at the offices of Chicago Title thirty days from the Effective Date, or prior thereto by mutual consent, and possession shall be delivered upon closing. At the Closing, the Seller shall deliver to Buyer a duly executed and acknowledged Warranty Deed, with any necessary documentary stamps attached, conveying the Property to Buyer and such other documents as may be reasonably required at Closing, including an Owner's Affidavit and such other items required or appropriate for the issuance to Buyer of an owner's title insurance policy upon the payment of the Purchase Price less any costs of Seller to be charged at Closing. Possession shall be transferred at Closing.
11. **BREACH OR FAILURE TO CLOSE:** If, after the Seller has performed Seller's obligations under this Contract, and if within five (5) days after the date specified for Closing under Paragraph 17 - CLOSING, the Buyer fails to make the payments under this Contract, without reasonable cause or extension, then the Earnest Money Deposit shall be retained as such as liquidated damages for the breach of the Contract by the Buyer. The Seller and Buyer agree that such amount is a reasonable amount for liquidated damages and that it would be impractical and extremely difficult to determine actual damages. If the Buyer shall perform all of the obligations of Buyer hereunder and Seller shall breach this Contract or fail to perform any of Seller's obligations hereunder, then Buyer shall be entitled to either cancel and terminate this Contract, and receive a refund of the Earnest Money Deposit or pursue any other legal rights or remedies available at law or in equity for Seller's breach, including, but not limited to, specific performance. Both Buyer and Seller may mutually agree, in writing, to terminate this Contract. If so, Buyer shall receive a full refund of his earnest money. In any dispute or court action concerning this Contract, the prevailing party shall receive a full award against the other party that includes all attorneys' fees and costs associated with the dispute or court action.
12. **NOTICES:** All notices required under this Contract shall be deemed to be properly served if reduced to writing and sent by certified mail or personal delivery and the date of such notice will be deemed to have been the date on which such notice is mailed, delivered, or attempted to be mailed or delivered, as shown by the certified mail return receipt or a commercial delivery service record. All notices shall be addressed as follows, unless otherwise specified in writing:

**SELLER:**

Name Keystone Properties III

Attn

Address

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**BUYER:**

Name Steve Slowey

Address:

Slowey Construction, Inc.  
PO Box 113  
2510 West 31st Street

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13. **BROKER:** Seller and Buyer each represent and warrant to each other that except for Warmbrodt Hotel Investments, Inc., no real estate broker or finder or any other person has represented either party in connection with the transaction contemplated by this Agreement. Only upon the completion of the sale transaction at closing, Warmbrodt Hotel Investments will be due One Hundred and Twenty Eight Thousand Dollars (\$128,000.00) as compensation for their sales efforts. The total price paid at closing by the buyer would therefore be Three Million Two Hundred Thousand Dollars (\$3,200,000.00).
14. **EFFECT:** This Contract, when executed by both Seller and Buyer, shall be binding upon and inure to the benefit of Seller and Buyer, their heirs, legal representatives, successors and assigns.
15. **ENTIRETY:** This Contract sets forth the complete understanding of Seller and Buyer and supersedes all previous negotiations, representations and agreements between them and their agents.
16. **AMENDMENT:** This Contract can only be amended or modified by a written agreement signed by Seller and Buyer.
17. **TIME OF ESSENCE:** This Contract shall be null and void unless signed by Seller and delivered to Buyer on or before 5:00 PM Wednesday November 17th. Time is of the essence of the Contract.

EXECUTED BY SELLER: This \_\_\_\_ day of \_\_\_\_\_, 2010.

By \_\_\_\_\_

Title \_\_\_\_\_

EXECUTED BY BUYER: This 22<sup>nd</sup> day of November, 2010.

**Steve Slowey** and or assigns:

By \_\_\_\_\_

Title \_\_\_\_\_