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# COMPARED

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Robert F. Craig, P.C.  
1321 Jones Street  
Omaha, NE 68102

Grantor's name and address:  
Keystone Properties III, L.L.C.,  
501 South 13th Street  
Omaha, NE 68102

Grantee's name and address:  
Hollywood Diner 1, LLC  
501 South 13th Street  
Omaha, NE 68102

## CROSS ACCESS AND PARKING EASEMENT AGREEMENT

THIS CROSS ACCESS AND PARKING EASEMENT AGREEMENT (this "Agreement") is entered into as of the 21st day of January, 2011, by and among **KEYSTONE PROPERTIES III, L.L.C.**, a Nebraska limited liability company ("Keystone"); and **HOLLYWOOD DINER 1, LLC**, a Nebraska limited liability company ("Diner").

### Recitals

A. Keystone was the fee simple owner of that certain parcel of land located in Pottawattamie County, Iowa, designated as 2210 Abbott Drive, Carter Lake, Iowa, containing 1.985 acres more or less (the "Original Keystone Parcel").

B. By Quitclaim Deed dated January 21, 2011, ( the "Diner Deed"), Keystone conveyed a portion of the Original Keystone Parcel to Diner, which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Diner Parcel").

C. As a result of the delivery and recordation of the Diner Deed, the remaining portion of the Original Keystone Parcel has been reduced to 1.51 acres, more or less, and is more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "Keystone Parcel" and, together with the Diner Parcel, the "Parcels").

*AFTER RECORDING RETURN TO:* RETURN ENVELOPE  
PROFESSIONAL TITLE  
222 S. 15TH ST # 249N  
OMAHA NEBRASKA 68102

*Record 3rd  
NE 101638*

D. The parties desire to subject their respective Parcels to the provisions of this Agreement in order to provide for, among other things, cross access easements and partial parking easements on each Parcel (the "Easements"), as more particularly hereinafter set forth.

Agreement

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Access Easements.

(a) Keystone hereby grants and conveys for the use of Diner and its designees, guests, invitees, licensees, contractors, employees, agents, successors and assigns a permanent, non-exclusive easement and right of way (the "Diner Access Easement") for vehicular and pedestrian ingress over and across all drive aisles, drive lanes, driveways now or hereafter located on the Keystone Parcel (the "Diner Access Easement Area") to provide ingress and egress to and from the public thoroughfares adjacent to the Keystone Parcel and the twelve parking spaces located on the Keystone Parcel as depicted on Exhibit C hereto (the "Keystone Parking Easement Spaces").

(b) Diner hereby grants and conveys for the use of Keystone and its designees, guests, invitees, licensees, contractors, employees, agents, successors and assigns a permanent, non-exclusive easement and right of way (the "Keystone Access Easement" and together with the Diner Access Easement, the "Access Easements") for vehicular and pedestrian ingress over and across all drive aisles, drive lanes, driveways, sideways and walkways now or hereafter located on the Diner Parcel (the "Keystone Access Easement Area" and together with the Diner Access Easement Area, the "Access Easement Areas") and the twelve parking spaces located on the Diner Parcel as depicted on Exhibit D hereto (the "Diner Parking Easement Spaces and, together with the Keystone Parking Easement Spaces, the "Parking Easement Spaces"). The drive lanes and drive aisles now or hereafter located on each Parcel are referred to hereinafter as the "Driveways." Keystone and Diner shall each be referred to hereinafter from time to time as an "Owner."

(c) Each Owner shall have the right to relocate, from time to time, any of the Driveways now or hereafter located on its Parcel, provided that each Parcel shall have access to the Abbott Drive access road via at least one Driveway.

2. Grant of Parking Easements.

(a) Keystone hereby grants and conveys to Diner and its designees, guests, invitees, licensees, contractors, employees, agents, successors and assigns a non-exclusive easement and right to use the Keystone Parking Easement Spaces for the purpose of parking automobiles under the conditions set forth herein (the "Diner Parking Easement"). The foregoing Easement rights are subject to Keystone' right (i) to exercise reasonable control and

make reasonable changes from time to time with respect to directing and regulating vehicular traffic and providing safe and proper vehicular access to and from the Keystone Parking Easement Spaces and (ii) to specify and enforce reasonable rules and regulations with regard to the use of the Keystone Parking Easement Spaces. The Diner Parking Easement is further conditioned upon the continued use of the Diner Parcel as an eating establishment and, upon the conversion of the Diner Parcel to any use other than as an eating establishment, the Diner Parking Easement shall automatically terminate and be of no further force and effect.

(b) Diner hereby grants and conveys to Keystone and its designees, guests, invitees, licensees, contractors, employees, agents, successors and assigns a non-exclusive easement and right to use the Diner Parking Easement Spaces for the purpose of parking automobiles under the conditions set forth herein (the "Keystone Parking Easement" and, together with the Diner Parking Easement, the "Parking Easements"). The foregoing Easement rights are subject to Diner's right (i) to exercise reasonable control and make reasonable changes from time to time with respect to directing and regulating vehicular traffic and providing safe and proper vehicular access to and from the Diner Parking Easement Spaces and (ii) to specify and enforce reasonable rules and regulations with regard to the use of the Keystone Parking Easement Spaces. The Keystone Parking Easement is further conditioned upon the continued use of the Keystone Parcel as a motel/hotel establishment and, upon the conversion of the Keystone Parcel to any use other than as a motel/hotel establishment, the Keystone Parking Easement shall automatically terminate and be of no further force and effect.

(c) Each Owner reserves the right to reconfigure, at anytime and from time to time, the Parking Easement Spaces located on its Parcel, and to temporarily block access to the Access Easement Areas and the Parking Easement Spaces on its Parcel during periods of construction, maintenance or repair or as necessitated by any emergency or other circumstances beyond such Owner's control; provided, however, that no such reconfiguration by an Owner shall result in the Parcel owned by the other Owner being in violation of the then current zoning or similar ordinance of Pottawattamie County, Iowa, or any political subdivision of the State of Iowa having jurisdiction over the Parcels.

3. Maintenance. Each Owner shall maintain, at its own expense, the Access Easement Area and the Parking Easement Spaces located on its Parcel in clean condition, reasonably clear of water, debris, ice and snow, and in good repair and condition, and shall from time to time make or cause to be made all repairs and replacements as are necessary to maintain and preserve such Access Easement Area and Parking Easement Spaces in such condition.

4. Indemnification. Each Owner covenants and agrees to indemnify, defend and hold harmless the other Owner from and against any and all claims, actions, loss, damages, demands, liabilities and expenses, including, without limitation, reasonable attorneys' fees and costs, in connection with injuries to persons or loss of life or damage to property arising out of, resulting from or related to the use of the Access Easements and the Parking Easements, by each Owner and its respective guests, invitees, licensees, contractors, employees and agents, except for claims, actions, losses, damages, demands, liabilities and expenses arising out of the negligence or willful conduct of the other Owner or its respective guests, invitees, licensees, contractors, employees and agents.

5. Reservation of Rights. Keystone reserves the right to use the Keystone Easement Areas and the Keystone Parking Easement Spaces for any purpose not inconsistent with the rights granted to Diner in this Agreement. Diner reserves the right to use the Diner Easement Areas and the Diner Parking Easement Spaces for any purpose not inconsistent with the rights granted to Keystone in this Agreement.
6. No Barriers. Except as otherwise specifically set forth herein, no barriers, fences or other obstructions shall be erected within the Easement Areas so as to preclude or hinder access, ingress, egress and passage over the Access Easement Areas or the use of the Parking Easement Spaces.
7. Private Rights. Nothing contained herein shall be deemed to create any rights for the benefit of the general public in and to the Parcels or the Easements. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.
8. Additional Rights. No charge shall at any time be made for that portion of the Diner Parcel used by Keystone, or that portion of the Keystone Parcel used by Diner, as applicable, as permitted by this Agreement.
9. Binding Agreement. The terms and provisions of this Agreement shall be deemed to be covenants running with the land and shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto, their successors, grantees, devisees and assigns and any person claiming by, through or under any of them or their respective successors, grantees, devisees and assigns. Each party shall have the right to assign or transfer, without limitation, all or any part of the rights and easement granted by this Agreement. Any obligations contained herein shall be construed as covenants and not as conditions and a violation of any such covenants shall not result in a forfeiture or reversion of title of the Easements.
10. Matters of Record. The conveyance made and the rights granted in this Agreement are subject to all applicable easements, restrictions, covenants and conditions of record in the chain of title to the Parcels.
11. Severability. If any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been incorporated herein as so limited or as if such provision had not been included herein, as the case may be.
12. Waiver. A failure by any party to enforce any provision of this Agreement shall not be deemed a waiver of the right to enforce such obligation in the future or to enforce any similar or other obligation.

13. Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Iowa.

14. Interpretation. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural, and vice versa, and words in the masculine gender shall include the feminine and neuter genders, and vice versa. If any of the Parcels are owned by two or more persons or entities at any one time, all such owners shall be jointly and severally liable for all of the obligations imposed on the owner of such Parcel pursuant to this Agreement.

15. Title and Headings; References. Titles and headings to sections herein are inserted for convenience or reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. All paragraph references in this Agreement are to the paragraphs of this Agreement unless otherwise stated.

16. Entire Agreement; Modification. This Agreement contains the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument executed with the same formality as this Agreement and recorded in the real estate records of Pottawattamie County, Iowa.

17. Further Assurances. The parties agree to take such additional action, and execute, acknowledge and deliver such additional documents, and instruments, which are not specifically referred to herein as may be necessary, required or appropriate for the purpose of fully effectuating the provisions of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

19. Diner Cooperation. Diner hereby agrees that it will cooperate with the Keystone Owner in obtaining a transfer and/or a granting of a parking lease agreement with the City of Carter Lake, Iowa for the parking spaces across the access road from the Hotel Parcel.

*[signatures begin on following page]*

WITNESS the following signatures, pursuant to due authorization, as of the date first above written:

KEYSTONE PROPERTIES III, L.L.C.,  
a Nebraska limited liability company

By: [Signature], a Nebraska  
limited liability company, its Managing  
Member

By: [Signature]  
Name: LARRY RICHLING  
Title: Mgr-Owner

HOLLYWOOD DINER 1, LLC  
a Nebraska limited liability company

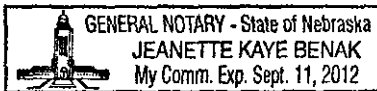
By: [Signature], its  
Managing Member

~~BY KEYSTONE GROUP, LLC, A NEBRASKA LIMITED LIABILITY  
COMPANY, ITS MANAGING MEMBER.~~  
Name: LARRY RICHLING  
Title: Mgr-Owner

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of January, 2011, by Larry Richling, the Mgr-Owner of Keystone Group, L.L.C., the managing member of Keystone Properties III, L.L.C., a Nebraska limited liability company, on behalf of the company.

(Seal and Expiration Date)



[Signature]  
Notary Public

[signatures continue on following page]

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of January, 2011,  
by Larry Richling, the mgr-owner \* of Hollywood Diner 1, LLC, a Nebraska limited  
liability company, on behalf of the company. \* OF KEYSTONE GROUP, LLC, A NEBRASKA  
LIMITED LIABILITY COMPANY, AS  
MANAGING MEMBER

(Seal and Expiration Date)

Jeanette Kaye Benak  
Notary Public



[signatures continue on following page]

**EXHIBIT A**  
**Diner Parcel**

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.



**EXHIBIT B**  
**Keystone Parcel**

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.

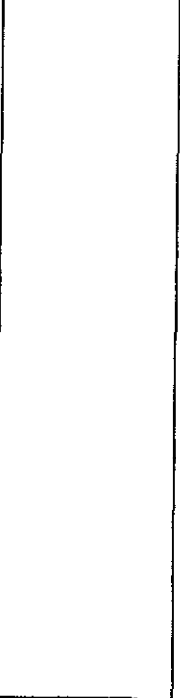
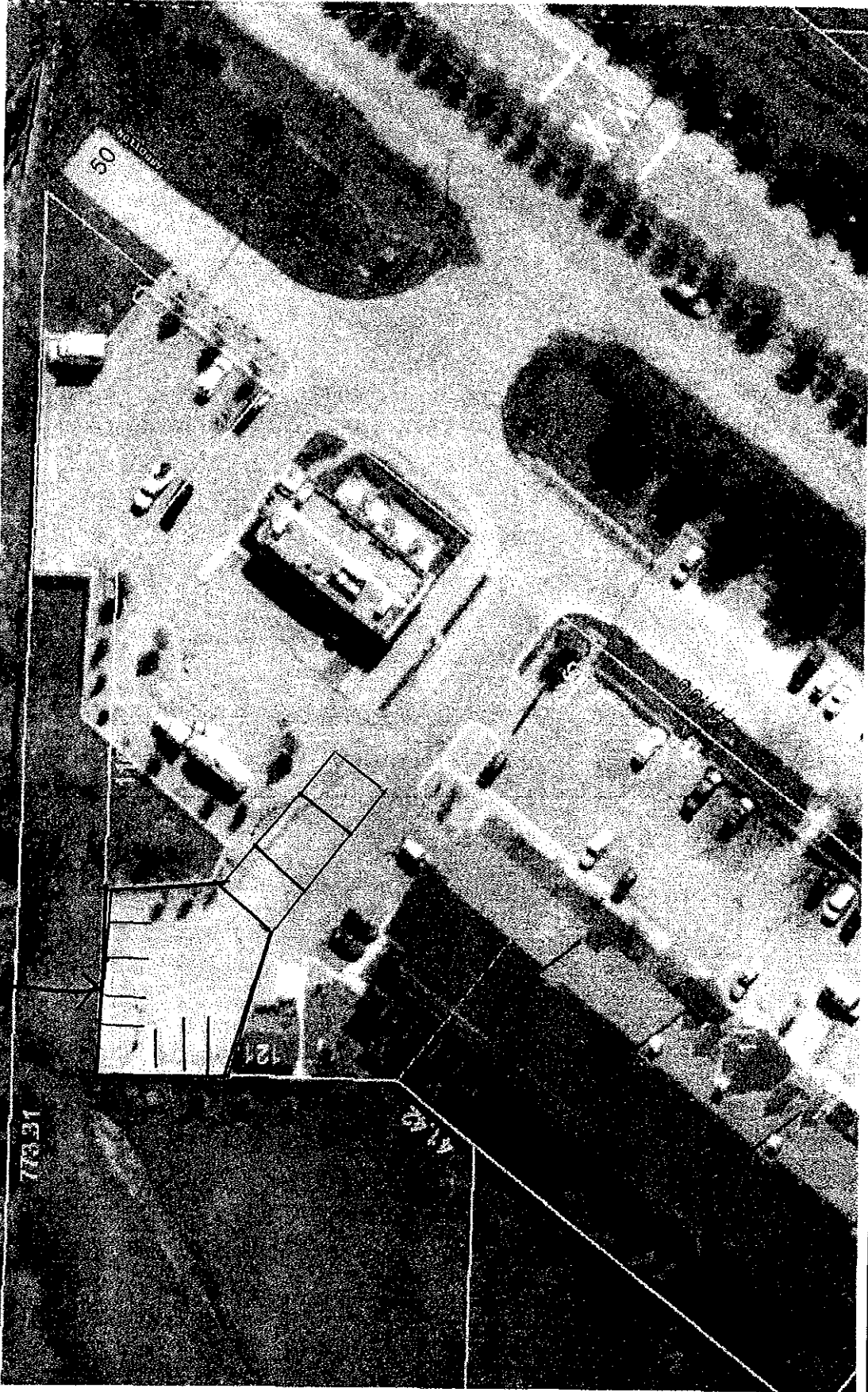
**EXHIBIT C**  
**Keystone Parking Easement Spaces**

**(see attached)**

Exhibit C

Pottawattamie County GIS

Diner  
Parking Easement Spaces



Pottawattamie County

Scale 1:1131

GIS Department  
223 S 6th St  
Council Bluffs, IA 51501  
(712) 328-4869  
gis@pottcounty.com  
www.gis.pottcounty.com  
Map Published 17-2011  
Aerial Photo 2010



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**EXHIBIT D**  
**Diner Parking Easement Spaces**

**(see attached)**

Exhibit D

Pottawattamie County GIS

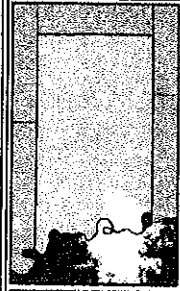
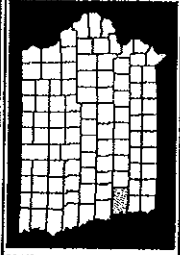
Keystone Parking Easement Space

Pottawattamie County



GIS Department  
 233 S. 6th St.  
 Council Bluffs, IA 51501  
 (712) 328-4869  
 gis@pottcounty.com  
 www.gis.pottcounty.com  
 Map Published 17/2011  
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Scale 1:1131



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