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Pottawattamie County, IA 2011-001556  
Recorder John Sciortino  
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**COMPARED**

Case 10-01344-als11 Doc 170 Filed 01/19/11 Entered 01/19/11 12:22:56 Desc  
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**UNITED STATES BANKRUPTCY COURT**

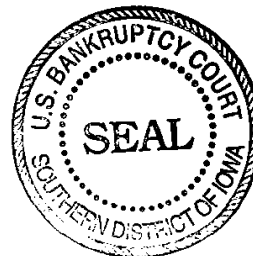
**SOUTHERN DISTRICT OF IOWA**

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

I hereby certify that the foregoing is a true copy of the official document which is on file with the U.S. Bankruptcy Court, Southern District of Iowa.  
Signed this 20th day of January, 2011.  
LARRY M. WEIBEL, CLERK U.S. BANKRUPTCY COURT

BY: [Signature]  
Deputy Clerk



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PROFESSIONAL TITLE  
222 S. 15TH ST # 249N  
OMAHA NEBRASKA 68102

RETURN ENVELOPE

Revised 4/11  
1/19/11

Limited Partnership; and Steve Kluyers 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 South35°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°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°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°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°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 South35°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°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°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°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°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")