



## MEMORANDUM

TO: Members of the Troy City Council  
FROM: Lori Grigg Bluhm, City Attorney  
DATE: May 12, 2010  
SUBJECT: Candlewood Amended and Restated Consent Judgment

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In November 2009, City Council approved a Second Amended and Restated Consent Judgment for the property at 2550 and 2660 Troy Center Drive. The memo, setting forth the reasons for the amendment to the consent judgment, is attached for your convenience.

At that time, we knew that the Candlewood Hotel portion of the property was owned by a Real Estate Investment Trust (REIT). The attorney representing Plaintiffs was unsuccessful in all her attempts to contact the registered agent for the REIT or any other person with the authority to sign the document on behalf of the successor owner of property. As a result, it was intended that the proposed Second Amended and Restated Consent Judgment would be presented to the Court for entry, and notice of the amendment would need to be sent to all individual owners of the REIT.

Notification to all members of the REIT would be a significant expense of time and money, and therefore we continued to attempt to locate a representative with the authority to approve the minor revisions to the Consent Judgment. Through some unexpected avenues, we were finally able to track down a representative with the authority to sign on behalf of the REIT. However, the name of the REIT had changed. The Candlewood Hotel portion of the property is now held by HPT IHG Properties Trust. At the request of this successor property owner, the Second Amended and Restated Consent Judgment has now been modified to reflect the name of the successor property owner. All other provisions are the same as the version approved by City Council in November 2009.

City Administration recommends ratification of the attached Second Amended and Restated Consent Judgment, which reflects the name of the successor owner. Upon the approval and execution of all parties, the document will be recorded with the Oakland County Register of Deeds.

Please let me know if you have any questions or concerns about this proposed amendment.

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

HPT IHG PROPERTIES TRUST, as  
Successor to CANDLEWOOD HOTEL  
COMPANY, INC., a Delaware Corporation  
and ROSSO DEVELOPMENT, INC., a  
Michigan Corporation,

Case No. 80-207200 CZ  
Hon.

Plaintiffs,

v

CITY OF TROY, a Michigan  
municipal corporation,

Defendant.

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BUTZEL LONG  
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CITY OF TROY  
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**SECOND AMENDED AND RESTATED CONSENT JUDGMENT**

At a session of said Court held  
In the Courthouse, in the City of  
Pontiac, Oakland County, MI,  
on: \_\_\_\_\_

PRESENT: HONORABLE \_\_\_\_\_  
CIRCUIT JUDGE

The PARTIES, HPT IHG PROPERTIES TRUST, as successor to CANDLEWOOD HOTEL COMPANY, INC., AND ROSSO DEVELOPMENT INC. (Plaintiffs) and CITY OF TROY (Defendant) agree to the terms and conditions of this SECOND AMENDED AND RESTATED CONSENT JUDGMENT, which is controlling for the real property at the Northeast corner of Kirts Boulevard and Troy Center Drive, as described below.

### **RECITALS**

A. On October 20, 1981, this Court entered a Consent Judgment (“Original Judgment”) affecting certain property (the “Property”) and more particularly described as:

City of Troy, Oakland County, Michigan, Lots 31 (20-28-101-021), 32 (20-28-101-020), 33 (20-28-101-019) and 34 (20-28-101-018) of F. J. Kirts Farms Subdivision, except the South 60 ft taken for Kirts Road.

B. The Plaintiffs for the Original Judgment were Rosso, Messer, Schell Partnership, a Michigan Co-Partnership, which subsequently transferred its interest in the Property to successor Plaintiff, Rosso Development Company, Inc. (Rosso). Rosso entered into an agreement with Candlewood Hotel Company, Inc. (Candlewood) for a portion of the Property. HPT IHG PROPERTIES TRUST is the successor in interest to CANDLEWOOD HOTEL COMPANY, INC., and is therefore a successor Plaintiff.

C. Under the terms of the Original Judgment, the Property was rezoned from the O-S-C zoning classification (Office-Service- Commercial District) to the O-1 zoning classification (Office Building District). The parties agree that these zoning classifications for the Property are both constitutional and reasonable.

D. Subsequent to the entry of the Original Judgment, the parties negotiated a First Amended and Restated Consent Judgment regarding the Property, which was entered by the

Court on July 2, 1997. The First Amended and Restated Consent Judgment allowed Plaintiffs to construct a three story extended stay hotel and a 47,200 square foot single story office building.

E. According to the last sentence of paragraph 5 (a), “The office building to be constructed on the Property shall have a meeting room available for rent to the public.” Plaintiffs have requested the deletion of this requirement, and the City is in agreement.

F. The parties therefore desire to amend the First Amended and Restated Consent Judgment to reflect this agreement, and therefore incorporate this modification into a Second Amended and Restated Consent Judgment.

IT IS ORDERED AND ADJUDGED AS FOLLOWS:

1. This Second Amended and Restated Consent Judgment shall completely replace the First Amended and Restated Consent Judgment, which replaced the Original Judgment. These previous versions of the consent judgment (the Original Judgment and the First Amended and Restated Consent Judgment) are no longer controlling for the Property.

2. The term Plaintiffs in this Second Amended and Restated Consent Judgment refers to ROSSO DEVELOPMENT, INC., and HPT IHG PROPERTIES TRUST, and any subsequent successor in interest.

3. The Recitals, as set forth above in Paragraphs A through F, are incorporated into this Second Amended and Restated Consent Judgment.

4. After the date of this Amended Judgment, the Property may be used, developed, occupied, and divided, subject to the terms of this Second Amended and Restated Consent Judgment.

5. The Property may be used and developed in accordance with the provisions of Article XXIV of Chapter 39 of the City of Troy Ordinances (O-1- Low Rise Office District), a

copy of which is attached as Exhibit A, and incorporated by reference. However, an extended stay hotel shall be permitted, as depicted on the Site Plan, Elevation Plan and Floor Plans (a copy of which is attached as Exhibit B).

6. The first two stories of the extended stay hotel, as referenced in paragraph 5, shall have a brick exterior material, and the exterior of the third story of the extended stay shall be EFIS (Exterior Insulation and Finish System).

7. Although the manager for the extended stay hotel (set forth in paragraph 5) may reside on the premises in a manager's suite, there shall be no other permanent residences in the extended stay hotel.

8. All height limitations, building setbacks, interior building configurations, intensity of development and similar matters are controlled by the provisions of the City of Troy Zoning Ordinance (Chapter 39), unless otherwise specifically provided for in this Second Amended and Restated Consent Judgment or as otherwise indicated on the Site Plan or Floor Plans, which are attached as Exhibit B and incorporated by reference. In the event that there is a conflict between the Site Plan or Floor Plans and the text of this Second Amended and Restated Consent Judgment, the Site Plan or Floor Plan shall control. However, minor modifications to the Site Plan or Floor Plans that are not inconsistent with the spirit of this Second Amended and Restated Consent Judgment may be made with the written agreement of the parties to any such modifications, and amendment of the Second Amended and Restated Consent Judgment shall not be required.

9. Plaintiffs shall adhere to all codes, ordinances and design standards of the City without variances except as otherwise provided in this Second Amended and Restated Consent Judgment.

10. When required by the City of Troy Development standards, Plaintiffs were required to construct deceleration lanes on Kirts Road and Troy Center Drive in connection with the construction of any buildings or structures on the Property.

11. The provisions of this Second Amended and Restated Consent Judgment shall be covenants running with the land, and shall be binding upon and inure to the benefit of the parties, their officers, employees, representatives, heirs, successors and assigns and all others acting under their direction and control.

12. Plaintiffs agree to hold the City of Troy, its officials, employees and agents harmless from any and all claims made, including attorney fees and other costs incurred by the City that arise from this Second Amended and Restated Consent Judgment, the Original Judgment, or the First Amended and Restated Consent Judgment.

13. A certified copy of this Second Amended and Restated Consent Judgment shall be recorded against the Property in the Office of the Register of Deeds for the County of Oakland, Michigan, and the Oakland County Register of Deeds is directed to accept this document for recordation.

14. In order to effectuate the intent of this Second Amended and Restated Consent Judgment and to reconcile any differences of the parties that may arise in connection with the performance of this Second Amended and Restated Consent Judgment, this Court shall retain jurisdiction of this action.

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Circuit Judge

(signatures continued on the following page)

Approved as to form and substance  
for entry:

ROSSO DEVELOPMENT COMPANY, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

HPT IHG PROPERTIES TRUST

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF TROY

By: \_\_\_\_\_  
Louise E. Schilling, Mayor

By: \_\_\_\_\_  
Tonni L. Bartholomew, City Clerk

Approved as to form:

\_\_\_\_\_  
Attorney for HPT IHG PROPERTIES TRUST

\_\_\_\_\_  
Attorney for Rosso Development, Inc.

\_\_\_\_\_  
Lori Grigg Bluhm (P46908)  
City Attorney, City of Troy