

NORTH CAROLINA

Prepared by and return to:

Fred B. Amos II, Attorney

PENDER COUNTY

P.O. Box 61, Wake Forest, NC 27588

SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

TIFFANY'S CONDOTEL

(Pender County Register of Deeds Unit Ownership File No. MB 40,  
Page 112)

TCB Holdings, LLC, a North Carolina Limited Liability Company with its principal place of business located in Wake Forest, North Carolina, hereinafter the "Declarant"), does hereby make, declare and establish this Second Amended and Restated Declaration of Condominium as, and for, the plan of ownership of TIFFANY'S CONDOTEL, a residential condominium development, being the property and improvements hereinafter described.

WITNESSETH:

WHEREAS, the Declarant is the Owner of certain real property located in Surf City, Pender County, North Carolina, more particularly described and defined in Exhibit "A" attached hereto and made part hereof (hereinafter the "Property"); and

WHEREAS, Declarant executed and caused to be recorded in Book 2878, Page 219 of the Pender County Registry, an instrument entitled "Amended Declaration of Condominium of Tiffany's Condotel" ("the Declaration"); and

WHEREAS, Declarant desires to amend and restate the Declaration in order to, among other things, correct certain inconsistencies within the Declaration; and

WHEREAS, Article XII, Section 12.2(b) of the Declaration provides that the Declaration may be amended by an instrument signed by not less than sixty-seven (67%) percent of the unit owners, and the Declarant owns more than sixty-seven (67%) percent of the units that have been made subject to the Declaration; and

WHEREAS, Declarant plans to convert existing improvements and to construct improvements upon the Property with the intention of dividing the improvements into Condominium Units as defined under the provisions of the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and to sell and convey said Units to purchasers subject to the covenants, conditions and restrictions herein reserved. The maximum number of units that the Declarant reserves the right to create is 62 units; and

WHEREAS, the Declarant desires to amend and restate the Declaration;

NOW, THEREFORE, Declarant hereby declares that all of the Property described as Exhibit "A" attached hereto shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, uses, limitations, and obligations in furtherance of a plan for the division of said Property into Condominium Units and which shall be deemed to run with the land and be binding on all parties having any right, title, or interest in the land or any part thereof, their heirs, successors and assigns.

#### ARTICLE I SUBMISSION

##### Section 1.1 Submission of Property to Condominium Status.

Declarant, **TCB HOLDINGS, LLC**, and Owner in fee simple of the real property described in Exhibit A attached hereto, located in Pender County, North Carolina, hereby submits the Exhibit A property, including all easements, rights and appurtenances thereunto belonging and the buildings and improvements erected thereon (collectively, the "Premises") to the provisions of the North Carolina Condominium Act, Codified as Chapter 47C of the North Carolina General Statutes, G. S. 47C-1-101 et seq. ("Act"), and hereby creates with respect to the premises a Condominium to be known as Tiffany's Condotel (the "Condotel").

Section 1.2 Easements for Utilities. Included among the easements, rights and appurtenances referred to in Section 1.1 above are easements granted to JONES ONSLOW Electrical Membership Corporation, and Town of Surf City, respectively, for the placement, installation and repair of electrical, telephone and water lines and equipment.

##### Section 1.3 Definitions

(a) Capitalized terms not otherwise defined in this Declaration shall have the meanings specified or used in the Act.

(b) The following terms shall have the meanings

described below:

(1) "Allocated Interest" means the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit.

(2) "Association" refers to the association of the unit owners of the Condotel. The name of the Association shall be Tiffany's Condotel Owner's Association.

(3) "Common Elements" means all portions of the Condotel other than the units.

(4) "Common Expenses" shall mean and refer to the total cost and expense incurred by the Association (as hereinafter provided) for the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the common areas and facilities as well as any other expense incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein and labeled as common expenses. Common expenses are additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association of unit owners as common expenses of the Association.

(5) "Common Surplus" shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses. Any such common surplus shall be used to reduce the assessments of members for the following fiscal year of the Association, based upon the proposed budget for the Association for the following fiscal year, subject, however, to the terms of Article VI.

(6) "Condominium" or "Condotel" means the Premises, portions of which called units which are designated for separate ownership and the remainder of which called the common elements is designated for common ownership solely by the owners of the units. Real estate is not a Condominium unless the undivided ownership of the common elements is vested in the owners of the units. The words "Condominium" and "Condotel" shall be used interchangeably throughout this Declaration.

(7) "Declarant" means the parties referred to by name in Section 1.1 and hereafter any person or group of persons who establish, modify, amend, delete or nullify any of the

provisions hereof in accordance herewith.

(8) "Development Rights" means those rights, if any, reserved by the Declarant herein to add real estate to the Condominium to create Units, Common Elements, or Limited Common Elements within the Condominium, to subdivide Units, convert Units into Common Elements or other rights as may be provided in the North Carolina Condominium Act, all as set forth in Article XV herein.

(9) "Declaration" means this instrument and any amendment to this instrument, however named.

(10) "Dispose" or "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest in such unit.

(11) "Executive Board" means the duly authorized body, regardless of name, that acts for and on behalf of the Association.

(12) "Identifying Number" means a symbol or address that identifies only one unit of the Condominium.

(13) "Limited Common Element" means a portion of common elements allocated by the Declaration or by operation of N.C.G.S. 47C-2-102(2) or (4) for the exclusive use of only one unit.

(14) "Mortgage" means a mortgage or deed of trust.

(15) "Mortgagee" means a mortgage or the owner and holder of a promissory note or other evidence of indebtedness and deed of trust or mortgage that described a Unit or Units as the secured property.

(16) "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, limited partnership, association, joint venture, government or other legal or commercial entity.

(17) "Purchaser" means any person who by means of a disposition acquires a legal or equitable interest in a unit

other than a security interest and other than a leasehold interest which together with renewal options does not exceed five years.

(18) "Residential Purposes" means any use of the Condominium for dwelling or recreational purposes, or both and does not mean commercial use (i.e., business operations).

(19) "Unit" refers to a physical portion of the Condominium designated for separate ownership or occupancy, primarily the living area owned by each unit owner, the boundaries of which are described pursuant to G. S. 47C-2-10 5 (a) (5).

(20) "Unit Owner" refers to the Declarant or other person who owns a unit, or a lease designated by a unit owner to exercise the voting rights of a unit owner, but does not include a person having an interest in a unit solely to secure the payment of indebtedness or to perform an obligation.

(21) "Building" means the structure on the Premises which contain the units.

(22) "Building Limited Common Elements" means the common elements within the Building that are limited to the use of one unit.

(23) "Condominium Documents" means this Declaration, the recorded plats that describe the Premises, and the Bylaws and Rules and Regulations established hereafter in accordance herewith.

(24) "Date of First Conveyance" means the date of the first conveyance of a unit to a person other than the Declarant.

(25) "Date of Transfer" means the date upon which control of the Executive Board by Declarant is completely transferred to the unit owners under Section 11.2 hereof.

(26) "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage on a unit, who has requested notice of one or more specific matters in accordance with Section 6.3 hereof.

(27) "Eligible Mortgagee" means a lender who

holds a first mortgage on a unit, and who has requested notice of one or more matters in accordance with Section 6.3 hereof.

(28) "Insurance Trust Agreement" means that certain agreement between the Association and the Insurance Trustee providing for the management and disbursement of insurance proceeds in accordance with Section 7.1 hereof.

(29) "Insurance Trustee" means that certain entity responsible for the management of insurance proceeds pursuant to the Insurance Trust Agreement, which entity's deposits are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or another federally constituted body serving in an equivalent function.

(30) "Party-Wall" means a common wall located between the boundaries of the two units.

(31) "Percentage Interest" means the undivided interest each unit owner owns in the common elements, as set forth in Exhibit C attached hereto.

ARTICLE II  
PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE  
LIABILITIES; UNIT BOUNDARIES; RELOCATION OF  
UNIT BOUNDARIES; MAINTENANCE RESPONSIBILITIES

Section 2.1 Percentage Interests. The two Buildings In Phase I contain 13 units per building for 26 units. Each unit will, therefore, initially have a 3.846 Percentage Interest in the common areas of Phase I. The addition of 12 units in Phase II results in a 2.632 Percentage Interest in the common areas. The addition of 12 units in Phase III results in a 2 Percentage Interest in the common areas. See Exhibit "B" for specific units and their corresponding percentage interests.

(a) Each unit shall be conveyed and treated as an individual property capable of independent use and fee-simple ownership.

(b) No unit may be divided or subdivided into a smaller unit or units than as shown on Exhibit "B" hereto, nor shall any unit or portion thereof be added to or incorporated into any other unit without the written consent of the Association.

Section 2.2 Votes. Each unit shall be allocated one vote, which vote shall be cast by the Unit Owner in any Association meetings. The vote allocated to each unit shall not be divisible. In the event a unit is owned by more than one Owner, then whichever one is present at a meeting of the Association is entitled to cast the vote. If more than one of the multiple owners is present, the vote allocated to that unit may be cast only in accordance with their mutual accord, which accord will be conclusively presumed if the vote is cast by one of the owners and the dissenting owner does not protest before the vote is affirmed by the presiding officer.

Section 2.3 Common Expenses Liabilities. The Common Expense Liability of each unit shall be assessed in accordance with the respective Percentage Interest of each unit as set forth in Section 2.1 above.

#### Section 2.4 Unit Boundaries

(a) The unit boundaries are the title lines or boundaries of each unit which are situated as shown on the recorded plats and plans and are formed by the following planes:

(1) The unit-side surface of all doors, and their sills and hardware, leading from such unit to interior corridors of the Building or directly to the outside of the Building and the unit-side surface of the door frames in which such doors are set;

(2) The unit-side surface of the sashes of windows which are set in the exterior walls of such unit, the exterior surfaces of the panes of such windows and the unit-side surface of the frames and sills for such windows;

(3) The unit-side surface of the portion of the structure to which the plaster or plasterboard is attached, with respect to ceilings and walls located at the perimeter of the unit;

(4) The unit-side face of the sub-floor of each Unit;

(5) The unit-side surface of the furring, as extended, around columns and "stacks" containing pipes, ducts, wires, conduits, chutes and flues that are either Common Elements or Limited Common Elements; and

(6) The exterior surface of any through-wall air conditioner units which serve only one unit, and the unit-side face of all air conditioning grilles which are attached to the outside face of a Building.

(b) Each unit consists of all portions of the Building within the aforesaid title lines, except the air space displaced by: (i) structural members and load-bearing columns within or passing through such unit all of which are deemed to be Common Elements; and (ii) other Common Elements within such unit including without limitation, chutes, flues, ducts, wires, conduits and pipe runs which serve more than one unit. With respect to such chutes, flues, ducts, wires, conduits and pipe runs, any portion thereof serving only that unit and lying partially within and partially outside the designated boundaries of a unit, shall be a Limited Common Element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the Common Elements is a Common Element.

(c) Those portions of any air conditioning units, heat pumps, lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only such unit and which lie either partially within and partially outside the title lines of a unit or lie totally outside the title lines of a unit shall be deemed to be a part of such unit, and shall not be part of the common elements.

(d) Any shutters, awnings, window boxes, door steps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit's boundary are Limited Common Elements allocated exclusively to that unit.

(e) The on-site coin operated laundry facility shall be part of the common elements.

Section 2.5 Relocation of Unit Boundaries; Alteration or Refurbishment.

(a) There will be no modification of common elements, refurbishment, alteration or any relocation of unit boundaries without the prior written consent of both unit owners, the members of the Home Owners Association, the Eligible Mortgagees, Motel

Management and Unit Management.

(b) Any alteration or refurbishment which modifies the appearance, location or condition of a Limited Common Element will be subject to Article III.

(c) Each unit owner will pay for all refurbishment and decoration of her/his unit if granted consent to do so.

(d) Written consent from the Home Owners Association, Motel Management and Unit Management will be required for a unit owner to decorate her/his unit using ordinary means such as paint, wallpaper, floor coverings, light fixtures and tile or other similar coverings for walls, floors or cabinets.

Section 2.6 Maintenance and Repair. The following provisions identify the parties responsible for the maintenance and repair of the Condominium.

(a) Each individual unit shall be maintained and repaired by its owner through the Unit Management program.

(b) The Limited Common Elements appurtenant to each unit shall be maintained and repaired by that unit's owner unless such Elements are destroyed or damaged by fire or other causes ordinarily insured or insurable against such hazards.

(c) The remaining Common Elements and all hot water heaters, decks, porches, balconies and outside stairways shall be maintained and repaired by the Association.

(d) All maintenance and repair of Common Elements will be conducted and completed in a first class, workmanlike manner, with materials and workmanship to be at least equal in quality to that which pre-existed the work done.

(e) The parties responsible for any particular maintenance or repair work as provided above will pay the cost thereof unless the payment for such work was the subject of a written agreement between the unit owners in which event such written agreement shall control.

(f) In the maintenance or repair of a unit or its

Limited Common Elements, the responsible owner will not interfere unnecessarily with the use of the other unit or its Limited Common Elements.

2.7 Unit Designations. The Unit designation of each Condominium Unit, location, floor plan and typical description are set forth in the Plans for this Condominium filed in the Office of the Register of Deeds of Pender County, North Carolina in the file number referenced at the top of the first page of this Declaration.

### ARTICLE III

#### DESCRIPTION AND ALLOCATION OF LIMITED COMMON ELEMENTS

Section 3.1 Description of Limited Common Elements. Limited Common Elements shall include those portions of the Building defined as such pursuant to G. S. 47C-2-102(2) (4), or as identified and designated as Limited Common Elements on the recorded plat.

The allocation of Limited Common Elements to each unit may not be altered without the unanimous written consent of unit Owners in each affected building.

Section 3.2 Specified Limited Common Elements. The following portions of the Building are designated as Limited Common Elements:

(a) window and door sills, frames and hardware which are not part of a unit but which are adjacent to and serve only such unit;

(b) The utility and storage areas on the ground level that serve only those units in that building and for a specific unit.

(c) The lighting fixtures mounted on the exterior of the Building that illuminate balconies adjacent to a unit;

(d) Except as herein provided, the decks, porches, balconies, landings and outside stairways are Limited Common Elements of the unit they adjoin for use and privacy purposes, but for maintenance and repair, they are treated as Common but not Limited Common Elements. Decks, porches, landings and outside stairways on the front and back of the Building and the elevator that serve more than one unit are Common Elements.

#### ARTICLE IV EASEMENTS

Section 4.1 Easements. In addition to the easements specifically granted by the Act, the Condominium shall be subject to the following easements and restrictions:

(a) An easement in favor of the appropriate utility companies for such facilities and access as are desirable or necessary to adequately serve the units and the Building and other Common Elements with electrical, water, sewer, telephone and other utilities; including (by way of illustration and not limitation) the right to install, lay, maintain, repair and relocate their respective systems, and all of the associated lines, devices and equipment used to provide their utility services over, under, through, in, along and on all parts of the Premises, including, without limitation, either or both of the units.

(b) The Common Elements (other than the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the unit owners and their invitees, employees, tenants and servants, the Association and the agents and employees of the Association for access, egress and ingress over, through and across each portion thereof, pursuant to such requirements and subject to such charges and Rules as the Executive Board may from time to time prescribe.

(c) The Common Elements (including, but not limited to the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, maintenance and repair of the Common Elements (including, but not limited to, the Limited Common Elements).

