

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

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**THIRD AMENDMENT TO
DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF
EWA OCEANSIDE**

THIS THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF EWA OCEANSIDE (this "Amendment"), is made as of May 4, 2006, by SMITH/FOTI DEVELOPMENT LIMITED PARTNERSHIP, a Hawaii limited partnership ("Declarant"), the address of which is 212 Merchant Street, Suite 330, Honolulu, Hawaii 96813, and EWA OCEANSIDE, LLC, a Hawaii limited liability company ("Fee Owner"), the address of which is 212 Merchant Street, Suite 330, Honolulu, Hawaii 96813.

RECITALS:

A. By Declaration of Condominium Property Regime of Ewa Oceanside, dated January 20, 2005, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as Document No. 3221021, and noted on Transfer Certificate of Title No. 723,368 (the "Original Declaration"), Declarant and Fee Owner submitted certain land and improvements, as described in the Original Declaration, to a condominium property regime known as Ewa Oceanside (the "Project"), with the plans therefor filed in the Land Court as Condominium Map No. 1691 (the "Condominium Map").

B. The Original Declaration was amended by that certain First Amendment to Declaration of Condominium Property Regime of Ewa Oceanside (Amendment to Condominium Map No. 1691), dated August 18, 2005, recorded in the Land Court as Document No. 3315128, and noted on Transfer Certificate of Title No. 723,368 (the "First Amendment"), and by that certain Second Amendment to Declaration of Condominium Property Regime of Ewa Oceanside, dated December 7, 2005, recorded in the Land Court as Document No. 3366564, and noted on Transfer Certificate of Title No. 723,368 (the "First Amendment").

C. The Original Declaration, the First Amendment, and the Second Amendment are collectively referred to in this Amendment as the "Declaration".

D. Section Q.1 of the Declaration provides, in relevant part, that "Except as otherwise expressly provided in this Declaration or in the Act, this Declaration may be amended by the affirmative vote and/or written consent of the Owners holding not less than seventy-five percent of the common interest of the Project, and effective only upon the Recording of an instrument setting forth such amendment and vote and/or consent, duly executed by all of the consenting Owners or any two officers of the Association."

E. As of the date of this Amendment, Fee Owner is the Owner of one hundred percent (100%) of the Apartments in, and the common interests of, the Project, and there has been no Recording of any Apartment conveyances or agreements of sale with respect to any of the Apartments in the Project.

F. Pursuant to Section Q.1 of the Declaration, Declarant and Fee Owner desire to amend the Declaration as set forth in this Amendment and, by this Amendment, approve and consent to the amendments set forth herein.

G. Unless otherwise defined in this Amendment, all capitalized terms (other than those at the beginning of sentences) shall have the definitions given to them in the Declaration.

AMENDMENT:

NOW, THEREFORE, in consideration of the Recitals, Declarant and Fee Owner hereby amend the Declaration as follows:

1. Section E.10 of the Declaration is deleted in its entirety and replaced with the following:

"10. For Encroachments. If any part of the common elements now or hereafter encroaches upon an Apartment or limited common element, or if an Apartment now or hereafter encroaches upon another Apartment or upon a limited common element appurtenant to another Apartment or upon a portion of the common elements, then an easement shall exist for such encroachment and its maintenance for so long as the encroachment continues; provided, however, that if fifty percent or more of the encroaching improvement shall ever be removed, damaged, destroyed, or knocked down, then, if that improvement is replaced, repaired, and/or re-erected or if another

improvement is erected in its place, such improvement shall, subject to Section E.11 below, be placed in a location where it no longer encroaches on another Owner's Apartment or limited common element or on a common element."

2. A new Section E.11 is inserted, which shall read as follows:

"11. For Yard Area Fences. If a fence located between two Yard Areas is, now or hereafter, not entirely on the boundary line between those two Yard Areas (as determined by the metes and bounds description shown on the Condominium Map) and, thus, such fence encroaches into one or both of the Yard Areas, then an easement shall exist for such encroachment and its maintenance for so long as the encroachment continues; provided, however, that if fifty percent or more of such a fence shall ever be removed, destroyed, or knocked down, then, if that fence is repaired and erected or if another fence is erected in its place, such fence shall be placed entirely on the boundary line between the two Yard Areas in accordance with the metes and bounds descriptions of the respective Yard Areas shown on the Condominium Map."

3. Section I.1(a) of the Declaration is deleted in its entirety and replaced with the following:

"I. COMMON EXPENSES AND RESERVE FUNDS.

1. Common Expenses.

(a) Except as otherwise provided in this Declaration, all charges, costs and expenses incurred by the Association for or in connection with the administration, management and operation of the Project, and all other amounts designated as common expenses under the Act, this Declaration or the Bylaws, shall constitute common expenses. Unless separately metered, allocated or assessed to each Apartment, common expenses shall include, without limitation, all charges for taxes, governmental assessments, premiums for insurance, including fire, flood, and other casualty and liability insurance, required or permitted to be maintained by the Association pursuant to this Declaration and the Bylaws, any liability of the Association for loss or damage arising out of or in connection with the common elements or any accident, fire, flood, or nuisance thereon, costs of repair, rebuilding, replacement and restoration of the common elements of the Project, and any additions or alterations thereto, costs of yard, janitorial, security and other similar services, wages, accounting, legal and management fees, start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, the cost of all utility services (including water, electricity, gas, refuse disposal, sewer and any similar services). The common expenses shall also include such amounts as the Board of Directors may deem proper for the payment of any deficit in the common expense assessments for any prior year, for a reserve fund for the operation and maintenance of the Project and a reserve fund for working capital and replacements, repairs and contingencies. The common

expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Apartment by the Board or its designee on behalf of the Association."

4. Section J of the Declaration is deleted in its entirety and replaced with the following:

"J. INSURANCE.

Notwithstanding anything to the contrary contained in this Declaration or in the Bylaws, each Apartment must be covered by the "Apartment Insurance Coverage" (as defined in Section 7.7 of the Bylaws). Each Apartment Owner shall be required to pay the full amount of the premiums for the Apartment Insurance Coverage allocated to the Owner's Apartment, whether such premiums are to be paid to the insurance carrier by the Apartment Owner (or by the Owner's mortgage lender) or by the Association and reimbursed by the Apartment Owner (or the Owner's mortgage lender).

The Apartment Insurance Coverage to be paid for by each Apartment Owner shall include coverage for "Fire Insurance" (as defined in Section 7.2(c) of the Bylaws) and for floods, as described in Section 7.7 of the Bylaws. Premiums for such insurance shall generally be based on the replacement cost of the Apartment and appurtenant limited common elements and not on the Apartment's common interest. Further, premiums for such insurance shall be designated as special assessments, the unpaid amount of which shall constitute a lien against the subject Apartment, which lien may be foreclosed as provided for in the Bylaws and/or in the Act.

Unless such insurance would duplicate insurance that is obtained by or on behalf of the individual Apartment Owners (such as that described above), the Association, as a common expense, shall at all times maintain insurance against loss or damage by fire, flood, and other casualty covering such property as shall be provided in the Bylaws and/or required by the Act, provided that the Association shall have the right and duty to allocate premiums for such insurance in an equitable manner rather than based strictly on the common interests of the Apartments. Except as may be provided in the Bylaws or this Declaration, in every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the damaged or destroyed property covered by the insurance in a good and substantial manner as provided in this Declaration and the Bylaws.

The Association, as a common expense, shall also maintain such other insurance as may be required by the Bylaws or the Act, provided that the Association shall have the right and duty to allocate premiums for the insurance it obtains in an equitable manner rather than necessarily based strictly on the common interests of the Apartments. For example, if premiums for Fire Insurance are based on the respective replacement costs of the Apartments and their appurtenant limited common elements, those premiums shall be allocated among the Apartment Owners accordingly, rather than based on the Apartments' common interests, which may not reflect the Apartments' respective replacement costs."

5. Pages 4 and 5 of Exhibit "B" to the Declaration are deleted in their entirety and replaced with Exhibit "1" attached to this Amendment.


Except as amended by this Amendment and all other recorded amendments, the Declaration shall continue in full force and effect as first written.

[SIGNATURE PAGE FOLLOWS]

Declarant and Fee Owner have executed this Amendment as of the date referenced above.

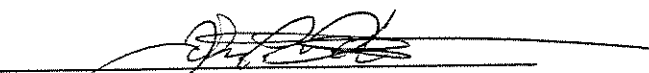
SMITH/FOTI DEVELOPMENT LIMITED
PARTNERSHIP,
a Hawaii limited partnership

By: SMITH/FOTI DEVELOPMENT, INC.
Its General Partner

By 
Name: John P. Foti
Title: Vice President

Declarant

EWA OCEANSIDE, LLC,
a Hawaii limited liability company

By 
Name: John P. Foti
Title: Member

Fee Owner

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this 4th day of May, 2004, before me personally appeared John P. Fohi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

LS

Noneth B. Sarinas
Notary Public, State of Hawaii
Print or Type Name: NONETH SARINAS
My commission expires: 4-10-2009

EXHIBIT "1"

"4. The portion of the property where the common mailbox facility is located, as shown on the Condominium Map, as well as the improvements to that area that are not owned by the U.S. Postal Service or some other third party.

5. Any and all apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

6. All the benefits, if any, inuring to the land or to the Project from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" to the Declaration.

LIMITED COMMON ELEMENTS:

The Apartments shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

1. **YARD AREA.** The land area ("Yard Area") appurtenant to each Apartment, as described in this Declaration, as defined by the metes and bounds description on the Condominium Map, and bearing the same Yard Area number as the apartment number assigned to the Apartment, is a limited common element appurtenant to and for the exclusive use of the relevant Apartment. Lines, utilities and other improvements that are within or beneath the Yard Area appurtenant to an Apartment (the "Burdened Apartment"), but which serve Apartments other than the Burdened Apartment, shall not be limited common elements for the exclusive use of only the Burdened Apartment. Yard Areas are not legally subdivided lots. Yard Areas include the land beneath the Apartment bearing the same number as the Yard Area. Yard Areas are defined by the metes and bounds descriptions shown on the Condominium Map. It is noted that any fences that may be located within a Yard Area may not coincide with the metes and bounds descriptions of the Yard Areas shown on the Condominium Map. As a result, the size and configuration of an Apartment's Yard Area are not necessarily defined by the fences, if any, located to the rear and sides of the Apartment. Depending on how the location of a fence relates to the metes and bounds description of a Yard Area, a Yard Area may be smaller or larger than what is indicated by the physical location of the fence.

| Apartment No. | Yard Area (approx. land area) | |
|---------------|-------------------------------|-------------|
| 1 | 7,543 | square feet |
| 2 | 3,069 | square feet |
| 3 | 3,536 | square feet |
| 4 | 3,221 | square feet |
| 5 | 3,295 | square feet |
| 6 | 3,867 | square feet |
| 7 | 2,868 | square feet |
| 8 | 4,184 | square feet |
| 9 | 5,810 | square feet |
| 10 | 9,985 | square feet |
| 11 | 9,626 | square feet |

| Apartment No. | Yard Area (approx. land area) | |
|---------------|-------------------------------|-------------|
| 12 | 8,478 | square feet |
| 13 | 9,192 | square feet |
| 14 | 4,833 | square feet |
| 15 | 4,740 | square feet |
| 16 | 2,789 | square feet |
| 17 | 4,415 | square feet |
| 18 | 4,696 | square feet |
| 19 | 2,842 | square feet |
| 20 | 4,068 | square feet |
| 21 | 3,723 | square feet |
| 22 | 2,881 | square feet |
| 23 | 3,552 | square feet |

NOTE: The boundaries of the Yard Area appurtenant to each Apartment, as shown on the Condominium Map, do not represent City and County-approved subdivided lots. Such boundaries serve only to delineate the limited common element Yard Area appurtenant to each Apartment.

2. UTILITY LINES. Any sewer lines and facilities, drainage facilities, electrical equipment, wiring, pipes, meters or other central and appurtenant facilities and installations over, under and across the Project which serve (a) just one Apartment, but which are located outside of the boundaries of the Apartment, or (b) more than one Apartment, but less than all of the Apartments, for drainage or for services such as power, light, water, gas, telephone, sewer and radio and television signal distribution, shall be limited common elements appurtenant to the Apartment or Apartments so served.

3. MAILBOXES. Private mailboxes are provided in a designated group mailbox location.

4. PARTY WALLS/FENCES. Fences and walls (or portions thereof) that may be located on or near the common boundary between Yard Areas are limited common elements, benefiting the Owners of the Yard Areas served by such fence or wall. Walls and fences located on the boundary of a Yard Area and the common area or the exterior boundary of the Project are limited common elements benefiting the Apartment to which the Yard Area is appurtenant."