

Condominium Plan No. 902B
(Amendment to Condominium Plan 902)

FIFTH AMENDMENT TO THE DECLARATION

Establishing a Plan for Condominium Ownership of the Premises known as and by the street number 633 Third Avenue, New York, New York, pursuant to Article 9B of the Real Property Law of the State of New York.

NAME: THE 633 THIRD AVENUE CONDOMINIUM

ORIGINAL DECLARANT: THE TRAVELERS INSURANCE COMPANY
c/o Real Estate Investments
388 Greenwich Street
New York, New York 10013

PROPONENT OF FIFTH AMENDMENT: DYNASTY PROPERTIES CO., LTD.
9841 Airport Boulevard
Los Angeles, California 90045

DATE OF ORIGINAL DECLARATION: FEBRUARY 22, 1995

DATE OF THIS FIFTH AMENDMENT: AS OF DECEMBER 16, 1998

PREPARED BY: GREENBERG TRAURIG
Attorneys for Dynasty Properties Co., Ltd.
200 Park Avenue
New York, New York 10166

212-501-9200

The Land affected by the within instrument lies in Block 1314, formerly known as Lot 1407, now known as Lots 1407 (Unit 8A), 1460 (Unit 8B), 1461 (Unit 8C), 1462 (Unit 8D) and 1463 (Unit 8E) on the Map of Taxes and Assessments in the Borough of Manhattan, City, County and State of New York.

RECORD AND RETURN TO:
GREENBERG TRAURIG
Attorneys for Dynasty Properties Co., Ltd.
200 Park Avenue
New York, New York 10166
Attn: Laura S. Norman, Esq.

**FIFTH AMENDMENT TO THE DECLARATION AND BY-LAWS
OF THE 633 THIRD AVENUE CONDOMINIUM**

**633 THIRD AVENUE
NEW YORK, NEW YORK**

Pursuant to Article 9-B of the New York State Real Property Law and Article IX of the Declaration of The 633 Third Avenue Condominium, dated February 22, 1995, and recorded in the New York City Register's Office, New York County (the "**Register's Office**") on March 9, 1995 in Reel 2189, Page 0766 (the "**Original Declaration**"), as amended by the First Amendment, dated August 8, 1995 and recorded in the Register's Office on September 14, 1995 in Reel 2243, Page 1131 (the "**First Amendment**"), the Second Amendment, dated October 11, 1995, and recorded in the Register's Office on November 28, 1995 in Reel 2266, Page 0037 (the "**Second Amendment**"), the Third Amendment, dated December 14, 1995, and recorded in the Register's Office on December 28, 1995 in Reel 2275, Page 2063 (the "**Third Amendment**"), the Corrective Amendment, dated February 14, 1996 and recorded in the Register's Office on May 7, 1996 in Reel 2320, Page 1759 (the "**Corrective Amendment**") and the Fourth Amendment, dated December 14, 1995 and recorded in the Register's Office on September 20, 1996 in Reel 2371 at Page 1260 (the "**Fourth Amendment**") is hereby further amended by Dynasty Properties Co., Ltd., the Unit Owner of Unit 8, a "**CS Unit**" as defined in Article IX of the Original Declaration. All capitalized terms used in this Fifth Amendment and not defined herein shall have the same meanings set forth in Schedule C of the Original Declaration as amended, unless the context otherwise requires. References in this Fifth Amendment to the "**Declaration**" shall be deemed to refer to the Original Declaration, and references to the "**By-Laws**" shall be deemed to refer to the By-Laws which are part of the Original Declaration, each as amended by the First Amendment, the Second Amendment, the Third Amendment, the Corrective Amendment, the Fourth Amendment, and this Fifth Amendment.

A. **Subdivision of Unit 8.**

Schedule B to the Declaration is amended to reflect the subdivision of Unit 8 into five new Units, 8A, 8B, 8C, 8D and 8E (collectively, the "**8th Floor Units**" and individually an "**8th Floor Unit**") as shown on Exhibit 1 annexed hereto and made a part hereof. Exhibit 1 indicates with respect to each 8th Floor Unit the following data: the unit designation; tax lot number; approximate area; the portion of the Common Elements to which the 8th Floor Unit has immediate access and the Common Interest of each such 8th Floor Unit. The reallocation of the Common Interest of Unit 8 among the 8th Floor Units was determined pursuant to the provisions of Article VI of the Declaration.

B. **Revised Eighth Floor Plan.**

The location and dimensions of the 8th Floor Units are shown on the copy of the revised Floor Plan for the 8th Floor of the Condominium annexed hereto as Exhibit 2 (the "**Revised Eighth Floor Plan**"). The Revised Eighth Floor Plan is intended to be filed

simultaneously with the recording of this Fifth Amendment and replaces and supercedes the original Floor Plan for Unit 8 certified by Swanke Hayden Connell Architects on February 23, 1995 and filed with the Real Property Assessment Bureau of the New York City Surveyor and in the Register's Office on March 9, 1995 as Condominium Plan No. 902A.

C. Easements in Favor of and Burdening 8th Floor Units.

I. The following terms used in this Fifth Amendment shall have the meanings set forth below:

(a) "8A Bathrooms" shall mean and refer to the bathrooms designated as 8A-1 and 8A-2 on the Revised Eighth Floor Plan.

(b) "8B-ADA Bathroom" shall mean and refer to the bathroom designated as 8B-ADA on the Revised Eighth Floor Plan.

(c) "8B Bathrooms" shall mean and refer to the bathrooms designated as 8B-1 and 8B-2 on the Revised Eighth Floor Plan.

(d) "8A Closet" shall mean and refer to the closet designated as the 8A Closet on the Revised Eighth Floor Plan.

(e) "8B Closet" shall mean and refer to the closet designated as the 8B Closet on the Revised Eighth Floor Plan.

(f) "8A Easement Areas" shall mean and refer to the 8A Corridor and the 8A Elevator Lobby.

(g) "8B Easement Areas" shall mean and refer to the 8B Corridor and the 8B Elevator Lobby.

(h) "8A Elevator Lobby" shall mean portion of the elevator lobby located in Unit 8A and designated as such on the Revised Eighth Floor Plan.

(i) "8B Elevator Lobby" shall mean the portion of the elevator lobby located in Unit 8A and designated as such on the Revised Eighth Floor Plan.

(j) "8A Corridor" shall mean the portion of Unit 8A designated on the Revised Eighth Floor Plan as the 8A Corridor, part of the 8A Corridor and the 8A Freight Elevator Lobby.

(k) “**8B Corridor**” shall mean the portion of Unit 8B designated as the 8B Corridor on the Revised Eighth Floor Plan.

(l) “**8th Floor Bathrooms**” shall mean the 8A Bathrooms, the 8B Bathrooms and the 8B-ADA Bathroom.

(m) “**8th Floor Common Elements**” shall mean the Common Elements located on the 8th Floor of the Condominium.

(n) “**8th Floor Easement Areas**” shall mean the 8A Easement Areas and the 8B Easement Areas.”

(o) “**8th Floor Easements**” shall mean all of the easements, rights and obligations set forth in paragraph 2 of this Section C.

(p) “**8th Floor Elevator Lobby**” shall mean the 8A Elevator Lobby and the 8B Elevator Lobby.

(q) “**8th Floor Janitor Closets**” shall mean the 8A Closet and the 8B Closet.

(r) “**8th Floor TE Closets**” shall mean the Existing Telephone Closets and the Existing Electric Closets located on the 8th Floor.

(s) “**8th Floor Unit Owner**” or “**8th Floor Unit Owners**” shall mean any or all of the Unit Owners of any or all of the 8th Floor Units, as the context so requires.

(t) “**elevators**” shall mean and include all passenger and freight elevators serving any of the 8th Floor Units.

(u) “**Unit Owner 8A**” shall mean the Unit Owner of Unit 8A.

(v) “**Unit Owner 8B**” shall mean the Unit Owner of Unit 8B.

(w) “**Unit Owner 8C**” shall mean the Unit Owner of Unit 8C.

(x) “**Unit Owner 8D**” shall mean the Unit Owner of Unit 8D.

(y) “**Unit Owner 8E**” shall mean the Unit Owner of Unit 8E.

2. The following perpetual, non-exclusive 8th Floor Easements shall run with and burden the 8th Floor Units and shall be available twenty-four (24) hours a day, seven (7) days a week, except as provided in Section 2(a) and except for interruptions resulting from

maintenance and cleaning requirements, Repairs and Alterations, force majeure, casualty or other cause beyond the reasonable control of the 8th Floor Unit Owner(s) of the 8th Floor Units burdened by the 8th Floor Easements and subject to the requirements of Applicable Law:

(a) Each 8th Floor Unit Owner shall have an easement over each of the other 8th Floor Units:

(i) for access to and use of those 8th Floor Common Elements which are not accessible from such 8th Floor Unit Owner's 8th Floor Unit to the extent permitted and in accordance with the other terms and provisions of the Declaration and By-Laws; and

(ii) for access to and use of the 8th Floor TE Closets in the manner and for the purposes permitted under the other terms and provisions of the Declaration and By-Laws, including without limitation, Sections E and F of Article XI of the Declaration.

To the extent access to the 8th Floor Common Elements or to the 8th Floor TE Closets is not available through the 8A Corridor or the 8B Corridor, access shall be limited to reasonable times after reasonable notice is given to the affected Unit Owner, except in the event of an emergency.

(b) Unit Owner 8A shall have easements:

(i) to use the 8B Bathrooms and the 8B-ADA Bathroom, in common with all other 8th Floor Unit Owners, and shall have an easement over the 8B Easement Areas necessary for access to and from the 8B Bathrooms and the 8B-ADA Bathroom;

(ii) to use the 8B Closet for storage of janitorial equipment and supplies in common with Unit Owner 8B only and shall have an easement over the 8B Easement Areas as necessary for access to and from the 8B Closet; and

(iii) over the 8B Elevator Lobby in common with all other 8th Floor Unit Owners for access to and from the elevators and its Unit.

(c) Unit Owner 8B shall have easements:

(i) to use the 8A Bathrooms in common with all other 8th Floor Unit Owners and shall have an easement over the 8th Floor Easement Areas as necessary for access to and from the 8A Bathrooms;

(ii) to use the 8A Closet for storage of janitorial equipment and supplies in common with Unit Owner 8A only and shall have an easement over the 8A Easement Areas as necessary for access to and from the 8A Closet; and

(iii) over the 8A Elevator Lobby in common with all other 8th Floor Unit Owners for access to and from the elevators and its Unit.

(d) Unit Owner 8C, Unit Owner 8D and Unit Owner 8E shall have easements:

(i) to use the 8th Floor Bathrooms in common with all other 8th Floor Unit Owners and shall have an easement over the 8th Floor Easement Areas as necessary for access to and from the 8th Floor Bathrooms;

(ii) over the 8th Floor Elevator Lobby in common with all other 8th Floor Unit Owners and the 8A Corridor and the 8B Corridor for access to and from the elevators and their Units.

D. Obligations of 8th Floor Unit Owners.

1. Unit Owner 8A shall construct and maintain the 8A Corridor in accordance with standards reasonably determined by Unit Owner 8A and Unit Owner 8B shall construct and maintain the 8B Corridor in accordance with standards reasonably determined by Unit Owner 8B. Each such Unit Owner shall begin such construction promptly after the filing of this Fifth Amendment, if such construction has not already begun, and shall prosecute such construction diligently and continuously to completion, if such construction has not already been completed.

2. Neither Unit Owner 8A or Unit Owner 8B shall perform Work or otherwise improve, carpet, paint, wallpaper, furnish, decorate or otherwise modify (make "Decorations") to any portion of the 8th Floor Elevator Lobby or shall perform Alterations to the 8B-ADA Bathroom, in each case, without the consent of the other Unit Owner. If Unit Owner 8A and Unit Owner 8B cannot agree on any such Repair, Alteration or Decoration or whether one should be performed, they shall jointly select a licensed architect to determine the matter. If within fifteen (15) days the parties cannot agree on an architect, each party shall select an architect and the two selected architects shall jointly select a third architect, who shall determine the matter. If a party does not select an architect within ten (10) days after written request from the other party, the other party's architect shall determine the matter. The decision of the architect determining the matter shall be final and binding upon the parties and may be enforced by either Unit Owner 8A or Unit Owner 8B in any court of competent jurisdiction. Notwithstanding the foregoing, if any Work to the 8th Floor Elevator Lobby or the 8B-ADA Bathroom is required by Applicable Law, by any holder of a mortgage on either Unit 8A or Unit 8B, by the Board of Managers, or in the event of an emergency, and the consent of the other Unit Owner has not or cannot reasonably be obtained within the time period required to complete the Work, then the consent of the other Unit Owner shall not be required to do such Work; however,

each party shall thereafter have the right to request changes to such Work, provided that if such Work was required by the holder of a mortgage on either Unit 8A or Unit 8B, then such changes shall be subject to the consent of such holder if required by the terms of such holder's mortgage. The procedure in paragraph 2 of this Section shall be applicable to any request for such changes. In no event shall the consent of any 8th Floor Unit Owner other than Unit Owner 8A or Unit Owner 8B, as applicable, be required in connection with any Decorations or Work performed by Unit Owner 8A and/or Unit Owner 8B pursuant to the provisions of this paragraph.

3. (a) Any Work or Decorations performed by Unit Owner 8A or Unit Owner 8B to the 8th Floor Elevator Lobby as permitted herein shall be paid for by Unit Owner 8A and Unit Owner 8B in equal shares, including without limitation the fees and expenses of any architect determining any matter under paragraph 2 of this Section, with Unit Owner 8C contributing to Unit Owner 8B's share in the percentages set forth in paragraph 4 of this Section and Unit Owner 8D and Unit Owner 8E contributing to Unit Owner 8A's share in the percentages set forth in paragraph 5 of this Section.

(b) Any Work performed by Unit Owner 8B to the 8B-ADA Bathroom as permitted herein shall be paid for by Unit Owner 8A and Unit Owner 8B in equal shares, including without limitation the fees and expenses of any architect determining any matter under paragraph 2 of this Section, with Unit Owner 8C contributing to Unit Owner 8B's share in the percentages set forth in paragraph 4 of this Section and Unit Owner 8D and Unit Owner 8E contributing to Unit Owner 8A's share in the percentages set forth in paragraph 5 of this Section.

4. Unit Owner 8B shall be permitted, without the consent of any other 8th Floor Unit Owner except as set forth in paragraph 2 of this Section, to make Decorations and Alterations to and shall be responsible to clean, maintain and to make Repairs to the 8B Bathrooms, the 8B Closet, the 8B Corridor and the 8B-ADA Bathroom. All costs and expenses thereof relating to the 8B Bathrooms, the 8B Closet and the 8B Corridor and for cleaning the 8B-ADA Bathroom, together with Unit Owner 8B's share of the costs and expenses of (a) any Decorations or Work to the 8th Floor Elevator Lobby and (b) any Work performed in or to the 8B-ADA Bathroom shall be shared by Unit Owner 8B and Unit Owner 8C with Unit Owner 8B paying fifty-three and one-half percent (53.5%) of such costs and expenses and Unit Owner 8C paying forty-six and one-half percent (46.5%).

5. Unit Owner 8A shall be permitted, without the consent of any other 8th Floor Unit Owners, to make Decorations and Alterations to and shall be responsible to clean, maintain and to make Repairs to the 8A Bathrooms, the 8A Closet and the 8A Corridor. All costs and expenses thereof, together with Unit Owner 8A's share of the costs and expenses of (a) any Decorations or Work to the 8th Floor Elevator Lobby and (b) any Work to the 8B-ADA Bathroom, shall be shared by Unit Owner 8A, Unit Owner 8D and Unit Owner 8E, with Unit Owner 8A paying fifty-five percent (55%) of such costs and expenses and Unit Owner 8D paying twenty-four percent (24%) of such costs and expenses and Unit Owner 8E paying twenty-one percent (21%).

6. Unit Owner 8A and Unit Owner 8B shall agree on a common standard of cleaning and routine maintenance of the 8th Floor Elevator Lobby. Both such Unit Owners shall jointly perform or arrange for the cleaning, maintenance and Repairs to the 8th Floor Elevator Lobby pursuant to such standard (and all 8th Floor Unit Owners shall share the cost thereof as set forth in paragraph 3(a) of this Section). If Unit Owner 8A and Unit Owner 8B cannot agree on such a common standard or if a dispute arises in connection with the cleaning, maintenance or the making of Repairs to the 8th Floor Elevator Lobby, they shall resolve such dispute in the manner described in paragraph 2 of this Section.

7. Nothing contained in this Section D is intended or shall be deemed to abrogate or modify in any way any of the indemnification obligations of each 8th Floor Unit Owner under Section 31 of Article V of the By-Laws or pursuant to any other provision of the Declaration or the By-Laws.

E. **Real Estate Taxes.**

Until such time as the 8th Floor Units are separately assessed, each 8th Floor Unit Owner shall pay when due without interest or penalties its share of all Real Estate Taxes assessed against the 8th Floor Units in the same proportion as the Common Interest of its Unit bears to the aggregate Common Interests of all 8th Floor Units.

F. **Electricity.**

1. Each 8th Floor Unit Owner shall, at its sole cost and expense, install a Dedicated Electric Meter to measure its electric usage if there is no such Dedicated Electric Meter already installed and operating and shall maintain such Dedicated Electric Meter.

2. The electric usage attributable to the 8th Floor Elevator Lobby, the 8th Floor Janitor Closets, the 8th Floor Bathrooms, the 8th Floor TE Closets, the 8A Corridor and the 8B Corridor will be measured by a Dedicated Electric Meter maintained by Unit Owner 8A with all cost and expense thereof and all electrical charges in connection therewith shared by all 8th Floor Unit Owners in the following percentages: (a) Unit Owner 8A, twenty-eight percent (28%); (b) Unit Owner 8B, twenty-six percent (26%); Unit Owner 8C, twenty-three percent (23%); Unit Owner 8D, twelve percent (12%); and (e) Unit Owner 8E, eleven percent (11%).

G. **Payment of Shared Expenses.**

1. Each 8th Floor Unit Owner shall pay its share of all costs and expenses required to be shared or paid by it pursuant to any of the provisions of this Fifth Amendment (collectively, the "8th Floor Expenses") within fifteen (15) days of demand therefor by the 8th Floor Unit Owner incurring such 8th Floor Expense. Each demand shall be accompanied by invoices or other reasonably satisfactory evidence of such 8th Floor Expense.

2. In the event any 8th Floor Unit Owner fails to make payment of its share of any 8th Floor Expenses within ten (10) days of demand therefor, such defaulting 8th Floor Unit

Owner shall be obligated to pay (a) a late charge at the rate of \$.02 per dollar per each 30 day period or any part thereof for all such overdue 8th Floor Expenses, from the due date of such 8th Floor Expenses until paid, and (b) all costs and expenses, including reasonable attorneys' fees and expenses paid or incurred by the non-defaulting 8th Floor Unit Owners, in any proceeding brought to collect such unpaid 8th Floor Expenses or in an action to foreclose the lien on such 8th Floor Unit arising from said unpaid 8th Floor Expenses as set forth in paragraph 3 below. All such late charges and costs and expenses shall be added to, and shall constitute, such defaulting 8th Floor Unit Owner's share of the 8th Floor Expenses payable by such defaulting 8th Floor Unit Owner.

3. By accepting a deed to any 8th Floor Unit, the 8th Floor Unit Owner thereof shall be deemed to have granted every other 8th Floor Unit Owner a lien against its 8th Floor Unit to secure the payment of its share of 8th Floor Common Expenses. The foregoing lien shall be subject and subordinate to the lien of the Board of Managers for Common Charges and the lien of any Registered Mortgagee of a first mortgage encumbering such 8th Floor Unit.

4. A suit to recover a money judgment for unpaid 8th Floor Expenses shall be maintainable without foreclosing or waiving the lien securing such 8th Floor Expenses. In the event the net proceeds received on such foreclosure (after deduction of all legal fees and expenses, advertising costs, brokerage commissions and other costs and expenses incurred in connection therewith) are insufficient to satisfy the defaulting 8th Floor Unit Owner's obligations, such 8th Floor Unit Owner shall remain liable for the deficiency

H. **Estoppel Certificates.**

Within ten (10) days of demand therefor by any 8th Floor Unit Owner, each 8th Floor Unit Owner shall deliver an estoppel certificate substantially in the form annexed hereto as Exhibit 3 stating whether any 8th Floor Expenses are owed by the 8th Floor Unit Owner requesting such estoppel certificate to the 8th Floor Unit Owner required to deliver such estoppel certificate.

I. **Miscellaneous.**

1. From and after the date hereof, the term "Unit" or "Units" contained in the Declaration and the By-Laws shall refer to the 8th Floor Units as subdivided pursuant to this Fifth Amendment.

2. The third paragraph in Article III of the Original Declaration is amended to reflect that the Building now contains sixty-two (62) Units.

3. All other terms and conditions of the Declaration and the By-Laws remain unmodified and in full force and effect.

J. **Due Authority and Power of Attorney.**

Pursuant to Section C of Article IX of the Declaration, neither the consent of the Board of Managers of the Condominium nor of any other Unit Owner is required in connection

with the promulgation and recording of this Fifth Amendment and the filing of the Revised Eighth Floor Plan, and pursuant to the irrevocable power of attorney, coupled with an interest, granted by the Board of Managers of the Condominium and all other Unit Owners under Section C of Article IX of the Declaration, Dynasty Properties Co., Ltd. has the authority to execute this Fifth Amendment as attorney in fact for the Board of Managers of the Condominium and all other Unit Owners.

IN WITNESS WHEREOF, Dynasty Properties Co., Ltd. has caused this Fifth Amendment to the Declaration to be executed as of the 16th day of December, 1998.

DYNASTY PROPERTIES CO., LTD.

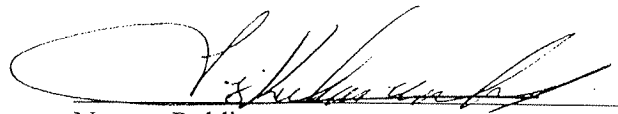
By: 

Name: Tai-Shi Chang

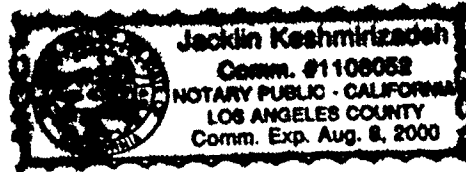
Title: President

STATE OF CALIFORNIA)
) s.s.:
COUNTY OF LOS ANGELES)

On the 22 day of December, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Tai-Shi Chang, personally ~~known to me~~ or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City and County of Los Angeles, California.



Notary Public



~~2009~~

EXHIBIT 1

Description of 8th Floor Units

Unit Designation	Tax Lot Number	Approximate Size of Unit in Square Feet	Common Interest	Portion of Common Elements to which each Unit has Immediate Access
Unit 8A	1407	8,716	1.109%	Elevators and Stairs
Unit 8B <i>870</i>	1460	8,292	1.055%	Elevators and Stairs
Unit 8C	1461	7,177	0.913%	Stairs
Unit 8D <i>146</i>	1462	3,756	0.478%	None
Unit 8E <i>146</i>	1463	3,384	0.430%	None

